

Town of Clarence  
Zoning Board of Appeals Minutes  
Tuesday March 10, 2009  
7:00 p.m.

Chairman Arthur Henning called the meeting to order at 7:00 p.m.

Board of Appeals members present:

Chairman Arthur Henning  
Ryan Mills  
Robert Geiger

Vice-Chairman Daniel Michnik  
David D’Amato

Other Town officials present:

Director of Community Development James Callahan  
Planner Brad Packard  
Councilman Bernard Kolber

Other interested parties present:

Michael Schiavone  
Caroline Wagner  
Karl Wagner  
Karen Kist  
Craig Mathis  
Roberta Mathis  
Bob Friedman  
Kathy Stutzman  
David Robinson

Elizabeth Myszka  
Terri James  
Rhys James  
Frank Cirillo  
David Mathis  
Fred Cimato  
Don Stutzman  
Camille O’Reilly

**Appeal No. 1**

Michael Schiavone  
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a 6’ variance to allow a 4’ side yard setback for the installation of a new generator at 9716 Stonecliff Court.

Appeal No.1 is in variance to Section 229-55 (E) (1) Accessory Structures.

**DISCUSSION:**

Michael Schiavone is present and explains that his house is from 10.89’ to 10.95’ from the property line on the westerly side of the house. There is a garage on the easterly side of the house. The utilities come in on the westerly side of the house. This is not a self-imposed hardship; it is a function of the interpretation of the statute. The neighbors on either side of the applicant have no objection to the variance. Mr. Schiavone explains that the generator will have to be closer to the lot line that 4’ in order to meet the NYS Building Code requirement for the distance between the generator and the house. The generator needs to be 5’ from the house, the width of the generator is approximately 2.5’, which is a total of 7.5’, this leaves approximately 2’-3’ to the lot line. Mr. Schiavone understands that the Zoning Board

of Appeals can not grant a variance from the NYS Building Code. If Mr. Schiavone has problems with the State Regulations he probably won't install the generator.

**ACTION:**

Motion by Robert Geiger, seconded by Daniel Michnik, to **approve** Appeal No. 1, as written.

**ON THE QUESTION:**

Mr. Mills suggests the motion be amended to reflect a 7.5' variance request. Mr. Geiger agrees to amend his motion to reflect approval for a 7.5' variance, Mr. Michnik agrees to amend his second to the motion.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

**Appeal No. 2**

Jacklyn Dec  
Residential Single-Family

Requests the Board of Appeals approve and grant:

- 1.) a 31' variance to allow a 17' side yard setback for the construction of a new detached garage.
- 2.) a variance to allow more than one private garage on any one lot where a principal building exists.

Both requests apply to 5745 Martha's Vineyard.

Appeal No.2 is in variance to Section 229-52 (B) Setbacks and Section 229-55 (H) Accessory Structures.

**DISCUSSION:**

Jim Callahan explains the applicant has asked to be removed from the agenda. The request was advertised; public comment will be heard at this time.

Frank Cirillo, of 5724 Martha's Vineyard, would like further details on the proposed project. The site plan is shown to Mr. Cirillo.

An attendee of the meeting asked what the distance is between the detached structure and the principal structure. Mr. Mills said the property is staked and should be visible from the road; it is approximately 6'.

Chairman Henning explains that the request is being tabled this evening; applicant can come before the Zoning Board of Appeals at a subsequent meeting. At that point, the request will be re-advertised via the newspaper and a posted sign. The neighbors in attendance are advised to visit the Clarence website to keep updated on the project.

Karen Kist, of 9400 Bonnie Fay, said other residents in Martha's Vineyard have added garages but they have been attached. The integrity of the neighborhood has been kept in tact. She is concerned with

setting a precedent if this variance is granted and changes will spiral out of control. Ms. Kist wants to know what the precedent is in the Town regarding deviating from the Code. Mr. Mills said each request is looked at on an individual basis keeping in mind the five (5) criteria to be considered when making a decision.

A structural plan needs to be submitted to the Building Department.

Terri James said the original Patrick Homes plan was for attached garages. She asked if there is any comment regarding the reduced value of a home with a detached garage, if this is true, she does not want this variance granted. She is also concerned with the design of the garage and wonders if it can be regulated.

Liz Myszka, of 5432 Martha’s Vineyard, said there are deed restrictions that say a detached garage is not allowed. A copy of the deed restriction is placed in the file.

The Town of Clarence does not technically have jurisdiction over deed restrictions.

Another attendee asked the Board to enforce the code that is in place; this is a huge variance.

Caroline Wagner, of 5734 Martha’s Vineyard, said the proposed garage would be on a corner lot and everyone driving in and out of the subdivision is witness to it.

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **table** Appeal No. 2.

**ON THE QUESTION:**

Mr. Callahan said if the applicant comes before the Zoning Board of Appeals again a new application will need to be submitted and it will be re-advertised. Mr. Michnik and Mr. Mills agree to amend the motion to include this condition.

Robert Geiger	Aye	David D’Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

**Appeal No. 3**

David Mathis  
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 752’ variance to allow an 800’ front yard setback for the construction of a new home at 8800 Sesh Road.

Appeal No.3 is in variance to Section 229-31 (A) (4) Setbacks.

**DISCUSSION:**

David Mathis is present along with his wife, Bobby, and son, Craig.

Chairman Henning refers to a letter dated March 6, 2009 from the Assistant Town Engineer Timothy Lavocat which states a floodplain development permit is required prior to any land disturbance on the property. A copy of the memo is on file; a copy is provided to the applicant.

Mr. Mathis explains the reason for positioning the house in the back behind the pond is because there is no room to put it any place else due to the location of the pond and the existing barn. He does not yet own the property. Mr. Mathis would like to stay a couple hundred feet from the pond. The two existing buildings will remain on the property. The barn will be used for storage. Mrs. O'Reilly's animals will remain on the property; this is part of the purchase contract agreement. Mr. Mathis owns a horse and will put it on the property; he may also purchase other animals to live on the property. His intention is to build only one house on the property. He does not plan to split the land and sell it.

Mr. Mills asked for details on the proposed house. Mr. Mathis said the house will be approximately 2600 square feet, a story and a half cape style with an attached garage. Mr. Mathis will build the house. The eastern portion of the property is for animals to graze on. Mr. Mathis has explored other locations for the placement of the house such as across in the open pasture, but this would be just as far back as what he is currently proposing; the land rolls in this area and there is a low point. If the variance is denied he would have to re-think his plan. Mr. Mathis said there are other homes in the neighborhood that have varying setbacks.

In response to Mr. D'Amato's question on how sturdy the barn is, Mr. Mathis said it is very sturdy with steel I-beams.

Mr. Geiger asked if there is any possibility of placing the house further to the front more in line with the house to the west. Mr. Mathis said there is roughly 85' between the property line and the side of the barn, the house would be too close to the barn. If the house was placed there it would also create a serious water re-routing issue.

Mrs. O'Reilly has owned the property since 1950; the land has been for sale for four (4) years.

Donald Stutzman lives to the west of the property. He and the neighbors have homes that are close to the road. He feels setting a house far back will impact the looks of the neighborhood. He voices his concern with the field in the back as it is flooded and has always been wet. When he built his home the Town told him all the water will drain to the back of the property because there is not ditch in the front of the property; this is what it does. If the house is built in the proposed location all the water will drain to Mr. Stutzman's property. A signed petition stating opposition to the variance request is submitted and made a permanent part of the file.

Robert Friedman, attorney for Donald Stutzman, is present. Mr. Stutzman's property is 140' x 1160'. Mr. Friedman submits photos showing the property and surrounding area. The photos are on file. Mr. Stutzman hunts in his yard every year; the proposal will prevent him from hunting in the future. He does not want headlights shining in the back of his house every time someone goes in or out of the driveway. Mr. Stutzman's leach field is behind his house. He has lived on this property for twenty (20) years and would not have an objection if the house was built in line with the rest of the houses in the immediate area. He would like to see the barn torn down as it is an eyesore to the whole community.

Mr. Mathis does not think he can move the proposed location of the house without moving the barn.

Fred Cimato said there is a drainage ditch at the back of the property; the applicant would only have to run a drainage ditch back to the existing ditch to resolve the water problems. To move the fence would cost about \$30,000.

Kathy Stutzman points out the drainage ditches in the area.

Mr. Michnik suggests the Engineering Department produce a report on the elevation of the property and provide more information on the ditching and the water flow.

The applicant agrees to have the request tabled to provide an opportunity for the Town Engineering Department to comment on the drainage issue.

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **table** Appeal No. 3 to allow the Town Engineering Department to produce a report on drainage at the project site.

**ON THE QUESTION:**

Mr. Mills suggests Mr. Stutzman submit a landscape plan to mitigate the view shed in the back yard.

Robert Geiger	Aye	David D’Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

**Appeal No. 4**

David Robinson  
Residential Single-Family

Requests the Board of Appeals approve and grant:

- 1.) a 2,520 square foot variance to allow 30% lot coverage for the construction of a new addition to an existing home.
- 2.) A 4.5 foot variance to allow a 5.5 foot side yard setback for the installation of a new generator.

Both requests apply to 6095 Clarence Lane North.

Appeal No.4 is in variance to Section 229-56 Lot Coverage and Section 229-55 (E) (1) Accessory Structures.

**DISCUSSION:**

David Robinson is present and explains the first request is due to his growing family, they need more room. He wants to add a master suite and a room for the children to play, with a pool.

Two (2) neighbor notification forms are on file. Mr. Robinson spoke with both neighbors and they were supportive of the project. The addition is approximately 1,000 square feet. There will be French doors that open up to the pool. The exterior of the addition will look like the rest of the house with stone on the outside.

Mr. D'Amato asked if the applicant explored the option of putting a second story on the house. Mr. Robinson said his wife's brother is in a wheelchair and he stays with them often, they want to give him full access to the house so they didn't want a second story. The house is handicap accessible, the addition would be too. The existing house is approximately 2300 square feet. The entire outside of the house will be redone; the addition will match the new materials on the existing house. Mr. Robinson bought the house from his brother-in-law about a year ago. The size of the pool will be 16' x 35'. He will make the addition as safe and as environmentally friendly as possible.

Mr. Mills asked if the applicant considered other options. Mr. Robinson explained that this is the perfect location for his family; he likes the neighborhood so this was the only option. Mr. Mills voices his concern with the roof line fitting in with the character of the neighborhood. Mr. Robinson has not talked to the neighbors directly behind him about his addition; however there are trees between Mr. Robinson's property and the neighbors behind him.

Mr. Michnik voices his concern about the neighbors behind the Robinson's property and asked if Mr. Robinson would be opposed to planting more evergreens on the east side. Mr. Robinson would not be opposed to adding trees.

Mr. Robinson explained the proposed location of the generator is due to the fact that the utility lines come in on that side of the house. It would be a big cost to change the location as the utility lines would need to be extended. He does not want the generator outside his children's bedrooms. He is willing to put landscaping in around the generator.

Mr. Mills asked the applicant to provide details on the RV pad on the southern portion of the property. The RV will be parked on the pad during the summer; it is stored elsewhere in the winter. The neighbors are aware of the RV. There is a side garage door on the southern portion of the property, but it is not for cars, it will be for property maintenance equipment such as a lawn mower and a snow blower.

There is a stockade fence at the proposed location, so the noise made by the generator will be reduced. The neighbor's garage is next to the fence and their bedrooms are on the other side of the house. Mr. Robinson hopes to start construction in the Spring of 2009.

Mr. D'Amato asked if the applicant explored the option of turning the proposed addition. Mr. Robinson said turning it would get to close to the edges of the property.

Mr. Robinson is willing to plant shrubs around the RV pad however the ground is very wet and planting shrubs there would cut off access to the backyard on that side of the house. He would rather not plant anything next to the RV pad.

Mr. Mills suggested referring the applicant to the Landscape Committee for their approval. Mr. Mills' main concerns for landscaping are on the east and south sides of the property.

#### **ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 4 as written contingent upon referral to and approval by the Landscape Committee which will include dealing with the landscape issues raised on the southern and eastern portions of the property. Note: there are distance issues on the southern portion of the property. Foliage should be present on the eastern portion of the property to protect the neighbor's views.

Robert Geiger	Aye	David D'Amato	Nay
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Motion by Robert Geiger, seconded by Arthur Henning, to **approve** the minutes of the meeting held on January 13, 2009, as written.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Chairman Henning notes that he received a memo from the Erie County Department of Environment and Planning regarding the NYS mandated 4 hour education training. All Zoning Board of Appeals Members e-mail addresses will be forwarded to the training coordinator so that they will received notifications regarding on-line training.

Mr. Michnik suggests a time limit be put on certain conditions for approved variances for follow-up on such items as landscaping. Mr. Callahan explains that the Building Department issues permits depending on the ZBA's action. The Building Department enforces the ZBA's condition set forth on variances.

Meeting Adjourned 8:32 p.m.

Carolyn Delgato  
Senior Clerk Typist