

The Town of Clarence Zoning Board of Appeals Minutes
Tuesday, April 10, 2007
7:00 PM

Raymond Skaine, Chairman, called the meeting to order at 7:00 PM.

Board of Appeals members present:

Raymond Skaine, Chairperson
Arthur Henning

Daniel Michnik, Vice Chairperson
Hans Mobius

Board of Appeals members absent:

Ryan Mills

Other Town officials present were:

Jim Hartz, Assistant Director of Community Development
Steven Bengart, Town Attorney

Other Interested Parties Present:

Doug Bugenhagen
David Lechner
Mike Wroblewski

Clayt Ertel
Dan Palumbo

Motion by Daniel Michnik, seconded by Hans Mobius, to approve the minutes of the meeting held on March 15, 2007, as written.

Raymond Skaine Aye
Arthur Henning Aye

Daniel Michnik Aye
Hans Mobius Aye

MOTION CARRIED.

Old Business

Appeal No. 4

Silvestri Architects/Waterford Village Bank
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a variance to allow parking within the front yard setback for a new bank at 8411 Main Street.

Appeal No. 4 is in variance to Section 229-67 (B) (1) Design Standards.

DISCUSSION:

Mr. Skaine reads a letter from Jeffery Palumbo requesting this request be tabled until the May 8, 2007 meeting. The letter is on file.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning, to **table** Appeal No. 4 under Old Business, it will be placed on the May 8, 2007 Zoning Board of Appeals agenda.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye

MOTION CARRIED.

New Business**Appeal No. 1**

Douglas Bugenhagen
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 6,938 square foot variance to allow a 51,000 square foot building lot to be split at 6739 Strickler Road.

Appeal No. 1 is in variance to Section 229-39 Lot Provisions.

DISCUSSION:

Mr. Bugenhagen explains that he is trying to divide the lot in half so he can have two lots.

Clayt Ertel, real estate agent, introduces himself and Mr. Lechner, who is the neighbor adjoining the property and potential buyer of the property to the east; labeled lot #2 on the plan. Mr. Ertel explains the lot conforms to the minimum frontage requirement; however, it does not conform to the minimum square footage requirement. By requesting the variance it would allow Mr. Bugenhagen to break off the existing house and conform to all the regulations, if the request is denied it becomes a hardship; the lot is then landlocked.

Mr. Bugenhagen is the current owner of the property. Lot #1 on the plan is the non-conforming lot, by 6,000 square feet.

Mr. Lechner said he is interested in the buying the property now, but has no immediate plans for the property.

Mr. Henning asks about the "For Sale" sign that is at the property. Mr. Lechner said the sign is in reference to lot #1; this lot has an unoccupied house on it. Mr. Henning clarifies that the applicant needs this variance granted in order to sell the lot, Mr. Ertel agrees. The property has been in the Bugenhagen's family for almost 60 years.

Mr. Michnik asks Mr. Lechner if he would be willing to purchase the lot if it were smaller. This would protect against a neighbor moving in next to Mr. Lechner, and would allow lot #1 to conform. Mr. Lechner said he would still be interested; however, it would significantly decrease the value of the lot.

Mr. Ertel explains the hardship. The lot is on the market for \$127,000, with the house. The value of the lot will decrease by approximately \$30,000 if the variance is not granted. Mr. Bugenhagen has been pondering the sale of the house and lot for about a year. The applicant's intention has always been to section off the land and sell it.

Mr. Mobius is impressed by the upkeep of the property.

Mr. Michnik clarifies the variance is for approximately 7,000 square feet.

Mr. Skaine asks if it would be possible for the applicant to buy 10 feet of land from Mr. Lechner to make the adjacent lot a legitimate lot and then sell it back to Mr. Lechner, no variance would be needed then. Mr. Lechner said his house is too close to the property line for this suggestion to work; the setback would be non-conforming.

Neighbor notifications are on file.

ACTION:

Motion by Hans Mobius, seconded by Arthur Henning, to **approve** Appeal No. 1, as written.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye

MOTION CARRIED.

Appeal No. 2

Daniel Palumbo
Residential Single-Family

Requests the Board of Appeals approve and grant a 70’ variance to allow a 145’ front yard setback at 5385 Thompson Road.

Appeal No.2 is in variance to Section 229-52 (A) Setbacks.

DISCUSSION:

Mr. Palumbo explains that whatever type of structure he builds will look much better if it setback. There are similar setbacks throughout the Town and he thinks it is a credit to the Town to have a larger setback.

Mr. Palumbo spoke with the neighbor to the south and a 15’ undisturbed treed berm along the adjoining property line was requested, Mr. Palumbo said he agreed to this request.

Mr. Skaine asks the applicant to think about a 125’ setback for this lot, and a 185’ setback for the next lot, which Mr. Palumbo also owns. The lot which is north of Mr. Palumbo’s will be at a 225’ setback. This would provide a nice “step-back”.

Mr. Michnik suggests a 100’ setback; this would put the front of Mr. Palumbo’s building close to being in line with the back of the neighboring house. Mr. Michnik spoke with the neighbor to the south who would like to see a berm, trees preserved and the driveway to the north side of the property. He asks if the house will be built for the applicant or will it be a spec house. Mr. Palumbo said it will most likely be a spec house. In response to Mr. Michnik’s question regarding what type of house is proposed, Mr. Palumbo explains that originally the plan was for a 4,000 square foot house but if he builds too big, he will not be able to sell the house. He thinks the house will be two-story. Mr. Palumbo also spoke to the neighbor to the south and the location of the driveway was discussed, he agreed to put the driveway to the north end of this property. Mr. Michnik asks where the family room and the exit from the house are

going to be located. Is the patio going to be located to the north or south? Mr. Palumbo said the patio and the exit would be located in the center of the house.

Mr. Palumbo does not think a berm makes sense at this location.

Mr. Michnik asks if Mr. Palumbo would accept a 100' setback. Mr. Palumbo said if the Board insisted on it, he would have to. The 100' setback is Mr. Michnik's suggestion; he goes on to say that the next house can be staggered as Mr. Skaine suggested.

Mr. Palumbo plans on building houses on both lots he purchased and selling them.

Neighbor notifications are on file.

Michael Wroblewski, owner of the lot north to Mr. Palumbo's lots, said he understands the variance request and he is not at the meeting to object to the request.

In response to Mr. Skaine's question regarding the setback on the houses that Mr. Palumbo is building at Hidden Pond, Mr. Palumbo states they are 45'- 47' back and goes on to explain that in a subdivision the 45' - 47' setback must be maintained.

Town Attorney, Steven Bengart, clarifies, for the record, that whether or not there is an employee of the Town involved in any variance request, everyone is treated the same.

Mr. Palumbo would like to have both his lots granted the 145' setback, he thinks it is a fair request.

ACTION:

Motion by Daniel Michnik, seconded by Raymond Skaine, to **deny** Appeal No. 2 as written, for the following reasons:

- An undesirable change will be produced in the character of the neighborhood; most homes south of this lot are within 75'-100' setback.
- The benefit sought can be achieved by some other method; the house can be moved in line with the other setbacks.
- The requested 70' variance is substantial; it is not in line with the other setbacks.
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood; if this variance is granted, everyone going forward will request the same variance.
- The alleged difficulty was self-created; the applicant knew what the setback requirement was at the time he purchased the lot(s).

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Nay	Hans Mobius	Nay

MOTION FAILED.

Mr. Palumbo asks if a 125' setback would be acceptable to the Board. Mr. Skaine asks Mr. Palumbo if he would agree to a 125' setback. Mr. Palumbo said, "Yes."

ACTION:

Motion by Raymond Skaine, seconded by Hans Mobius, to **re-open** and **approve** Appeal No. 2 with the addendum of a 125' setback and subject to the following conditions:

- The driveway is to be placed to the north side of the lot.
- A 15' buffer, located on this lot, shall remain untouched. This buffer is to be adjacent to the neighboring property to the south.

ON THE QUESTION:

Mr. Michnik states for the record that this request is not a hardship and is self-created. He is in favor of a 100' setback with evergreen type trees to be planted at the south side of the building to protect the neighbor on the south side, the driveway would have to be placed to the north and any exterior living such as a deck would be placed on the north side of the building as well.

Mr. Bengart points out that Mr. Palumbo's own statement is that there is no hardship here. Mr. Bengart voices his concern regarding future requests in which the applicant expects a larger setback to be granted because Mr. Palumbo received one under similar conditions. Mr. Bengart's legal advice indicates that he is not sure enough evidence has been presented either way.

Mr. Michnik voices his concern with the privacy issues regarding the requested variance. He asks Mr. Palumbo if he is agreeable to work with the neighbors to the south, Mr. Palumbo agrees.

Raymond Skaine	Aye	Daniel Michnik	Nay
Arthur Henning	Aye	Hans Mobius	Aye

MOTION CARRIED.

Meeting adjourned at 7:55 p.m.

Carolyn Delgato
Senior Clerk Typist