

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday, June 12, 2007
7:00 p.m.

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

Board of Appeals members present were:

Raymond Skaine, Chairman
Arthur Henning
Hans Mobius

Daniel Michnik, Vice-Chairman
Ryan Mills

Other Town officials present were:

James Callahan, Director of Community Development
Town Attorney, Steven Bengart
James Hartz, Assistant Director of Community Development
Councilman Bernie Kolber
Planning Board Liaison Richard Bigler

Other Interested Parties Present:

Gary Frey
Edward Steele
Wendy Swantek
Susan Wickenhiser
Beatrice Carollo
Christiana Clack
Todd Bushorr
Paul Gross
Glenn May
Mike Cassidy
Bruce C. Torrey
Thomas Plotas
Roland Boller

Joseph Dorigo
Kathleen Steele
John Swantek
Christopher Carollo
Hanna Kfourri
Krista Marie Bushorr
Ken Pearl
Karen May
Eric Glassman
David Kloss
Bruce I. Torrey
Shirley Boller
Jeff Palumbo

Motion by Arthur Henning, seconded by Raymond Skaine, to **approve** the minutes of the meeting held on May 8, 2007, as written.

Raymond Skaine Aye
Arthur Henning Aye
Hans Mobius Aye

Daniel Michnik Abstain
Ryan Mills Aye

MOTION CARRIED.

Old Business**Appeal No. 1**

Waterford Village Bank
Traditional Neighborhood

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. 1 is in variance to Section 229-67 (B1) Design Standards.

DISCUSSION:

Jeffrey Palumbo, of Damon & Morey, is representing the applicant. Mr. Palumbo asked the Board to table the Appeal No.1 under Old Business. He thought they would wait until the building was complete to see if the need for front yard parking is still there.

ACTION:

Motion by Daniel Michnik, seconded by Hans Mobius, to **table** Appeal No. 1 under Old Business.

Raymond Skaine	Aye
Arthur Henning	Aye
Hans Mobius	Aye

Daniel Michnik	Aye
Ryan Mills	Recuse

The applicant is advised to notify the Planning and Zoning Office when they are ready to come back before the Zoning Board.

MOTION CARRIED.

Appeal No. 2

Roland & Shirley Ann Boller
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 600' variance to allow a 700' front yard setback for the construction of a new home at 7615 Goodrich Road.

Appeal No. 2 is in variance of Section 229-31 Setbacks.

DISCUSSION:

Jeffrey Palumbo, of Damon & Morey, is representing the applicant. Raymond Skaine refers to the minutes of the November 14, 2006 meeting in which the applicant is asked to come back to the Zoning Board of Appeals with a new location for the house. Mr. Palumbo explains that although Mr. Boller and the Mr. Plotar, the engineer, have not arrived for the meeting yet, the both have every intention of being here. Mr. Plotar has been working with FEMA to have the location removed from the floodway, this has been accomplished. Mr. Plotar might be able to explain why the building can not be moved elsewhere.

Mr. Palumbo reads a Notice of Support of Variance Application dated June 12, 2007 and signed by Jean Schaedler: "My name is Jean Schaedler and I reside/own property directly adjacent to the above

referenced parcel. I have had the opportunity to meet with the applicants, Roland and Shirley Ann Boller, to discuss the proposed development of the site. As a result of said discussions, I am in support of the proposed development of 7615 Goodrich Road. I feel that the project will not negatively impact my property, or the surrounding neighborhood. As such, please accept this letter as my written support for the front-yard setback variance that the Bollers are requesting.”

Mr. Palumbo submits photos to the Board that show the view of the property from Mr. Boller’s backyard towards Dr. Schaedler’s property. There is a substantial amount of shrubbery on the site that blocks the view. Ms. Schaedler’s house is approximately 100’ from the roadway; the depth of her lot is approximately 567’. The building that Boller’s intend to build is located approximately 30’- 40’ off the property line; this house would be about 500’ away from the neighbors house.

Mr. Palumbo refers to a map that FEMA based their decision on for removal from the flood way, the rest of the property, except for the two shaded areas are in the floodway that would require the addition of three to ten feet of fill.

Mr. Palumbo refers to the Town Code and said that is what the applicant is trying to accomplish by proposing to put the house in the highest area and keep it out of the flood way designation. The benefit to the Boller’s is saving the cost of the fill, protecting their own scenic view while not interrupting the neighbor’s view.

Mr. Skaine asked if Mr. Boller would agree to no further development on this lot. Mr. Boller will not further develop the lot, however if he or his wife pass away Mr. Boller does not want any constraints on the land if sold. Mr. Skaine said if a variance is granted it is granted and applies forever, unless otherwise stated.

Mr. Skaine is concerned with regards to the date on the letter from Ms. Schaedler. Mr. Palumbo confirms that the date on the letter is June 12, 2007.

Jim Callahan explains that the State Building Code now requires that the structure be within 600’ of a charged fire hydrant; there will be some cost to the applicant to bring a charge fire line back in order to meet the code. Mr. Palumbo said the applicant is aware of this additional cost.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **table** Appeal No. 2 under Old Business, until the end of the meeting to allow the applicants time to arrive. If the applicants do not arrive by the end of the meeting the item will be tabled until the next Zoning Board of Appeals meeting.

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

MOTION CARRIED.

New Business**Appeal No. 1**

Gary Frey
Residential Single-Family

Requests the Board of Appeals approve and grant an 8' variance creating a 42' front yard setback line for the construction of new front porch and roof addition at 5175 Meadowbrook Road.

Appeal No. 1 is in variance of Section 229-52(A1) Setbacks.

DISCUSSION:

Gary Frey explains that a 50' setback is required. Currently the house is setback at 49'4". Neighbor notification is on file. Mr. Frey explains that the current porch, which is a concrete slab, is just under 6', he will basically be building a deck over it with a roof over the deck, he does not plan to take the concrete slab out. It will not be an enclosed porch. The roof of the porch will match the shingles on the house. Mr. Frey will do the construction himself during the week of July 4th. The neighbor has a similar porch that was constructed approximately four (4) years ago.

ACTION:

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

Raymond Skaine	Aye
Arthur Henning	Aye
Hans Mobius	Aye

Daniel Michnik	Aye
Ryan Mills	Aye

MOTION CARRIED.

Appeal No. 2

George Detwiler
Residential Single-Family

Requests the Board of Appeals for an interpretation that the fence installed at 8387 Kimberly Drive was installed according to the fence regulations.

Appeal No. 2 is in regards to Chapter 101 of the Code of the Town of Clarence (the fence law).

DISCUSSION:

Jim Hartz explains that Mr. Derigo, neighbor to the applicant, is appealing the fence installation on the basis of height. The fence permit was issued to Mr. Detwiler in 2006; Mr. Derigo was in Florida at the time. When Mr. Derigo returned in the spring he took measurements of the fence and found that some spots along the fence were more than the maximum height of 6' in the sides and rear yard, and more than the maximum height of 4' in the front yard. The areas of the fence that do not comply are in the range of 4"-7" over the maximum height allowed.

Mr. Derigo said the applicant has put at least 1' of fill in all along the fence. The fence is at different heights. The applicant has submitted photos and a letter with an explanation; Raymond Skaine

reads the letter received June 11, 2007 as follows: "I carefully followed the guidelines explained to me by the Town of Clarence Zoning and Planning Department. Because of the below grade roots that still exist from very large trees that were removed at the location of the fence, the grade of my property is higher than my neighbor's. I also tried to keep in line the bottom rails of the fence to look appealing to other neighbors that view it and not an up and down look that follows every depression in the grade. I then added mulch to even the grade in the low spots and keep weeds from growing. I reject any notion of lowering fence panels a couple of inches for reasons it would leave holes in the posts, it would cause a problem in time from the fence settling and the frost heaving in winter, also I would not be able to mulch under fence to keep weeds from growing. Full time resident of the Town of Clarence, George Detwiler."

Mr. Skaine asked who provides the approval of the final inspection once the construction of the fence is completed. Jim Hartz explains that the Planning and Zoning Office will issue a fence permit if the description of the fence meets the Town's fence regulations and if the fence is not located in a public easement. There is not a final inspection requirement under the Town regulations; however the Planning and Zoning Office will do a final inspection if there is an issue. A code enforcement officer visited the site and found sections of the fence do not comply with the Town's Code.

In response to Mr. Henning's question regarding what Mr. Derigo wants done, Mr. Derigo said he wants the parts of the fence that are not up to code taken care of. Mr. Henning asked what Mr. Derigo's motive is. Mr. Derigo said the motive is he had a \$7,000 driveway put in, Mr. Detwiler had 5 pine trees in which half of them were coming out on Mr. Derigo's property and raising his driveway, he had to take the roots out, with this, Mr. Detwiler was worried about the trees falling, Mr. Derigo said this is not his problem. Mr. Derigo also said Mr. Detwiler moved his RV from one side of his property to the side that Mr. Derigo is next to. Mr. Henning points out that Mr. Detwiler has followed procedure. The only thing that is an issue is the fence being 4" to 6" higher than code allows, Mr. Henning does not see this as an issue. He suggests Mr. Derigo put arborvitae in if he thinks the fence is an eye sore. Mr. Derigo said it is not his responsibility to put arborvitae in.

Mr. Hartz explains that the measurement of the fence begins at the average grade and goes to the top of the fence. Mr. Derigo said there is plenty of room to bring the fence down. Mr. Mills asked if Mr. Derigo agrees that the variance is anywhere from 4" to 8" throughout the fence. Mr. Derigo said he has filled in so much,

Mr. Mobius asked Mr. Detwiler if he is concerned with the fence blocking his view, Mr. Detwiler said he does not care about the fence blocking his view. Mr. Mobius also points out that a land owner has the right to put of a fence for privacy.

Mr. Michnik clarifies that the fence must be 4' high from the front of the house towards the road. His concern is, if the fence is "zigzag", the Zoning Board of Appeals members have the responsibility of saying, "Do what is right." He thinks there is quite a difference if a fence is 6' high as opposed to 6'5" high. The Zoning Board of Appeals needs to make sure the fence is put in line, if the applicant needs to lower it to bring it in line, that's what he needs to do.

ACTION:

Motion by Daniel Michnik to have the Planning and Zoning Department visit the site to make a determination to make the fence comply with Town procedure.

Jim Callahan said the Planning and Zoning Department has already determined that it is a good fence.

Mr. Michnik withdraws his motion.

ACTION:

Motion by Hans Mobius, seconded by Arthur Henning, to **affirm** the Planning and Zoning Department’s decision, as the fence is in compliance with the intent of the permit that was issued.

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

MOTION CARRIED.

Appeal No. 3

Edward & Kathleen Steele
Residential Single-Family

Requests the Board of Appeals approve and grant a 3’ variance creating a 9.5’ side yard setback for the construction of a building addition at 8761 Millcreek Drive.

Appeal No. 3 is in variance to Section 229-52 Setbacks.

DISCUSSION:

Mr. Steele explains that he is looking for a variance so he can add 10’ x 20’ structure on to the west side of the house. The attached structure would include a third car garage and the extension of a mud room.

Mr. Henning asked about the driveway and the construction materials. Mr. Steele said the driveway would be concrete and the materials will be identical to the existing house. Neighbor notifications are in the file.

Mr. Michnik did not see any other three car garages in the neighborhood. Mrs. Steele explains there are many three car garages in the neighborhood; the neighbors do not have a problem with the request.

The roof line on the additional structure will have the same rise and run as the house.

ACTION:

Motion by Ryan Mills, seconded by Hans Mobius, to **approve** Appeal No. 3, as written.

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

MOTION CARRIED.

Appeal No. 4

John & Wendy Swantek
Residential Single-Family

Requests the Board of Appeals approve and grant a 1.5' variance to allow a principal building addition to be within 4.5' of an accessory structure at 4171 Connection Drive.

Appeal No. 4 is in variance to Section 229-55 Accessory structures.

DISCUSSION:

Mr. Swantek explains he would like to put a two-story addition off the back of the existing house, this is where the garage is right now, there is supposed to be a 6' distance but this is not physically possible.

Mr. Skaine asked about the firewall. Mr. Swantek explains that originally they were advised to put up a firewall in the garage, Joe Basil, the builder, will do this.

Mr. Mills asked the applicant to elaborate on his previous remark stating that a 6' distance was not possible. Mr. Swantek explains that he wants to extend part of the kitchen as well, and if the addition were moved over it would not line up with the kitchen; the house lines would be off. The second story would consist of bedrooms, a bathroom and a closet. The siding will tie in with the existing structure.

Mr. Swantek said his family is growing, this would allow all the bedrooms to be upstairs and the family room to be extended.

Neighbor notifications are in file.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No. 4, as written.

ON THE QUESTION:

Mr. Mills suggests amending the motion to include all fire prevention practices are employed as per the Building Department.

Daniel Michnik amends his motion; Arthur Henning amends his second to include the above requirement.

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

MOTION CARRIED.

Appeal No. 5

Susan Wickenhiser
Residential Single-Family

Requests the Board of Appeals approve and grant two variances:

1. A 520 sq. ft. variance to allow a second free-standing garage that measures 720 sq. ft. in area.
2. A second garage.

Appeal No. 5 is in variance to Section 229-55 Accessory structures.

DISCUSSION:

Ms. Wickenhiser explains the garage will be for storage for lawn equipment, toys, patio furniture and a fishing boat in the future.

Mr. Skaine clarifies that there is no structure on this lot, it is currently vacant. Ms. Wickenhiser said she does not want to build the garage before the principle structure. Mr. Skaine voices his concern with regards to staking the property; the garage was staked but the house was not, it was difficult to judge were the garage would be in relation to the house.

Mr. Michnik said he prefers the incorporation of the garage into the house. Or the appeal can be tabled until the house is built so there will be a better view of where the structures will be.

Christopher and Beatrice Carollo own 8720 Clarence Center Road; they sold Mrs. Wickenhiser her piece of land at 8710 Clarence Center. They are concerned with the structure because the Carollo's are in the midst of requesting a 2-lot Open Development Area at 8720 Clarence Center Road and they do not know the positioning of their houses to be built on the property, they do not know how the garage will affect their property and their plans. Mrs. Carollo would like to see pictures of what the garage would look like. Mrs. Wickenhiser provides photos of the garage and said the Carollo's wanted to see pictures of what the house would look like before they would sell her the land.

Mr. Mobius said it appears the applicant is within the setback code. He suggests a breezeway. Mrs. Wickenhiser said she wants to take the plans for the house to the Building Department by the end of June 2007. She shows the Board members a sketch of the garage and advised them that she had thought of a breezeway but thought a free-standing building would be better for safety reasons when the children play outside. There would also be an added financial cost to put in a foundation.

Mr. Mills is concerned with an additional accessory structure. He would like to see additional designs explored to incorporate all the garages together. The applicant has the benefit of knowing she will need additional space before the house is built.

Mr. Henning has an issue without seeing where the house will be and its relationship to where the garage will be. He does not have a problem with the size, but does have a problem with the detachment. He suggests talking to the designer to see if an attached garage can be incorporated into the design of the house.

Mrs. Wickenhiser would like the Board to table the request. She will consider all the points brought up and will look at other options.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **table** Appeal No. 5, as written, until further notice based on the applicant notifying the Planning and Zoning Office.

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

MOTION CARRIED.

Appeal No. 6

Hanna Kfouri
Residential Single-Family

Requests the Board of Appeals approve and grant a 70' variance to allow a front yard setback of 125' for the construction of a new single-family home at 9254 Roll Road.

Appeal No. 6 is in variance to Section 229-52 Setbacks.

DISCUSSION:

The applicant purchased the property in March 2007 and he is looking to build a single family home on it. The Building and Engineering Department have advised the applicant that he needs to bring the land out of the flood zone. He obtained a flood plan, a drainage plan and a new survey in order to find out how much fill he will need to bring it out of the flood zone. The drainage plan suggested were to place the house and were to put the drainage. This property is in the 500-year flood zone, the 100-year flood zone and the flood way. The applicant was aware of this before he attempted to purchase the property, the sale is pending based on the decision of whether it is a buildable lot or not. The applicant has not closed on the purchase of the property.

Todd Bushorr explains that he did research and understood that a house could not be built on the property in question.

Two neighbor notifications are in the file.

Mr. Mills clarifies, and Mr. Kfouri agrees that the optimum location for the house is depicted on the survey; the location is based on drainage per the engineer. The house could be moved forward but that would require additional fill and Mr. Kfouri thinks it will adversely affect his neighbors. The proposed house is in the floodplain.

Mr. Henning would like to see a copy of the Town Engineers requirements. Mr. Kfouri provides a copy of the letter and indicates he agrees with the content of the letter and will abide by all requirements and suggestions contained in the letter.

Mr. Michnik asked the applicant if he would buy the property if the request was declined by the Zoning Board of Appeals. Mr. Kfouri would not buy the property. There are other options. Mr. Kfouri said the highest point on the fill to be brought in is still almost level with the neighbor's lowest point; there is no way the drainage can go to the neighbors land and that is why the engineer suggested this plan.

Mr. Michnik said an option might be to bring in more fill so that the house could be built more in-line with the neighbors; there is a privacy issue with the neighbor to the east.

Mr. Skaine agrees with Mr. Michnik with regards to preserving the privacy of the neighbors.

The Board looks at an aerial photograph. Mr. Michnik asked the neighbor to the east, whose house is at a 30' setback, if the Board allows a 40' setback for the new house, would that be an issue. The neighbor said it's hard for him to tell because there is so much area.

Mr. Mills asked the neighbors to the east if they have a problem with a house setback behind them or just any house on that lot in general. The neighbor said he has a problem with both; he would like to talk to Zoning Board members regarding the variables that relate to building a house on this lot.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **table** Appeal No. 6, with the codicil of access to the property through the neighbor to the east, the property is to be staked at 125' and 50' setbacks, one stake is acceptable to indicate the setbacks, the stakes should be at the southeast corner of the front of the house, the stakes are to be high enough and clearly marked to be easily sited. Before the applicant comes back to the Zoning Board of Appeals he needs to submit, in writing, a documented agreement that the applicant and the neighbor to the east have discussed all issues and are willing to work together.

ON THE QUESTION:

Mr. Mills would like to see a plan that shows how far he can build without hitting the 500-year floodplain; it does not have to be staked.

Mr. Henning suggests the applicant leave as much brush and trees on the east side of his property as possible to provide the neighbor with as much privacy as possible. The applicant agrees to do this.

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

MOTION CARRIED.

Appeal No. 7

Timothy Higgins
Residential Single-Family

Requests the Board of Appeals approve and grant a 2' height variance to allow a 6' high fence in the front yard at 4615 Sawmill Road.

Appeal No. 7 is in variance to Chapter 101-3(C) Fence regulations.

DISCUSSION:

At the applicants request Appeal No. 7 is removed from the agenda. The written request is on file.

Appeal No. 8

Kenneth Pearl
Residential Single-Family

Requests the Board of Appeals approve and grant an 8' variance creating a 37' front yard setback line to allow a new garage addition at 6254 Tamarack View.

Appeal No. 8 is in variance to Section 229-52 Setbacks.

DISCUSSION:

Mr. Pearl explains that there are other houses in the neighborhood with a similar setback. The purpose of the garage is functional. He shows the elevations of the proposed garage to the Board members.

Paul Gross, of the Town's Building Department, supports the design.

Mr. Pearl said the house and garage will match; the outside of the house needs some work and it will be done with the same materials as the garage.

Mr. Gross explains that on a corner lot, typically, the setback is 45' on one corner and 35' on the other. The map cover did not indicate these measurements for this area.

ACTION:

Motion by Hans Mobius, seconded by Arthur Henning, to **approve** Appeal No. 8, as written.

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

MOTION CARRIED.

There is a five (5) minute recess.

Appeal No. 9

Karen May
Residential Single-Family

Requests the Board of Appeals approve and grant two variances:

1. A 2' height variance to allow an 18' high accessory structure.
2. A 184 sq. ft. variance to allow for the construction of a 384 sq. ft. (16' x 24') shed at 9140 Wehrle Drive.

Appeal No. 9 is in variance to Section 229-55 Accessory structures.

DISCUSSION:

Ms. May explains the reason for the request is for storage space. Two of their sheds were damaged in the October 2006 Storm. Neighbor notification is on file.

The structure will be used only for storage; there will be no driveway going to it. The neighbor does not have an issue with the request.

The shed is a Duro-Shed, the shingles will match the house, the paint will be a light yellow.

The lot to the east is also owned by the Mays.

ACTION:

Motion by Hans Mobius, seconded by Daniel Michnik, to **approve** Appeal No. 9, as written.

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

MOTION CARRIED.

Appeal No. 10

Eric Glassman
Residential Single-Family

Requests the Board of Appeals approve and grant a 10' variance to allow a 2.5' side yard setback for the construction of a new garage addition at 5566 Old Goodrich Road.

Appeal No. 10 is in variance to Section 229-55 Accessory structures.

DISCUSSION:

Mr. Glassman would like to build over the existing stone that is there for equipment, trailers, camper and a vehicle. The structure blends well with the house and surroundings. The garage can not go on the back of the house because the septic system is there. Neighbor notifications are on file.

Mr. Henning asked what is in the shed behind the garage. Mr. Glassman said smaller equipment like lawnmower and lawn sweeper.

The garage will be completely covered and blend with the house. The trees and shrubbery will remain. The trees are owned by the neighbors. Mr. Glassman has discussed taking the trees down with his neighbor and he will continue to discuss it with him. Mr. Michnik asked Mr. Glassman if he would be willing to put trees in on his property, if the trees on his neighbor's property were ever taken down. He said he would.

ACTION:

Motion by Arthur Henning, seconded by Daniel Michnik, to **approve** Appeal No. 10, as written.

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

MOTION CARRIED.

Appeal No. 11

Patrick Homes
Residential Single-Family

Requests the Board of Appeals approve and grant a 10' variance to create a 35' front yard setback line for the construction of a new single-family home at 5638 Martha's Vineyard Drive.

Appeal No. 11 is in variance to Section 229-52 Setbacks.

DISCUSSION:

Mike Cassidy, from Patrick Homes, is representing the applicant. Although the land is on a bend, he feels it should be treated as if it were on a corner lot. The lay-out was designed by McIntosh & McIntosh a long time ago; the design was approved and accepted knowing the limitations. Mr. Cassidy agrees that a smaller house could be put on the lot and it would then comply with the code.

Mr. Cassidy said Patrick Homes designed the subdivision. The proposed house for this lot is 3100 square feet. There are houses being constructed in the neighborhood that are 4,000 square feet. There is some interest in the lot with a proposed 3100 square foot house built on it.

The lot is on a bend, it is not a corner lot.

In response to Mr. Mills question regarding the presence of a Homeowners Association in Martha's Vineyard, Mr. Cassidy said there is no Homeowners Association; there is no restriction on square footage. He is not sure if there is a deed restriction. There is no floor plan selected. Mr. Cassidy agrees that this lot would accommodate lesser square footage without a variance.

Jim Callahan spoke with Mr. Curry, of Patrick Homes, who was unable to attend this evening's meeting. He asked, if there were any questions, that the item be tabled until the next meeting in which he could attend.

Mr. Skaine said this is a substantial request for a variance. It is a self-created hardship. The house could be a spec house.

ACTION:

Motion by Raymond Skaine, seconded by Hans Mobius, to **deny** Appeal No. 11, based on the following:

- This is a sizeable variance.
- The hardship is self-created.
- Another way the benefit can be achieved is to build a smaller house.

ON THE QUESTION:

Mr. Mills said if this variance was granted it would impact the character of the neighborhood. Other floor plans can accommodate the lot in compliance with the code. The variance is substantial based upon the percentage of the setback requested. The variance would adversely affect the neighborhood based on the setback not conforming to the nearby setbacks. Patrick Homes knew the lot lines going into this project, thus the self-created hardship.

Raymond Skaine amends his motion; Hans Mobius amends his second to include the basis for denial stated above.

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

MOTION CARRIED.

Appeal No. 12

David & Maryellen Kloss
Residential Single-Family

Requests the Board of Appeals approve and grant a 3' variance to allow the placement of a new shed 3' from the principal structure at 9430 Brookside Drive.

Appeal No. 12 is in variance to Section 229-55 Accessory structures.

DISCUSSION:

Mr. Kloss explains that the shed is pre-built; it fits perfectly on the deck. There is a maple tree on the property that adds value to the property and would cause a problem if the shed had to be moved. He is prepared to install any type of fireproofing. The shed will be used to store deck furniture, there is no foundation.

Mr. Skaine could not get back on the property to see the stakes.

Mr. Michnik indicates there are 2 other structures and a gazebo on the property. He asked if the applicant was aware of what needed to be done when the shed was first put up. Mr. Kloss said he was not aware. An inspector that was working at his neighbor's house suggested he check with the Town to see if he needed a variance. Mr. Michnik asked how bothersome it would be if the Board asked the applicant to move the shed three feet. Mr. Kloss said he would probably lose the maple tree; it would greatly diminish the value of the property. Mr. Michnik asked if there is an alternate place the shed can be moved to. Mr. Kloss said there really isn't.

Mr. Henning said the shed is not an eye-sore; it is very well concealed and is not obstructing the neighborhood.

Neighbor notifications are on file.

ACTION:

Motion by Hans Mobius, seconded by Arthur Henning, to **approve** Appeal No. 12, as written with the addendum that the applicant complies with all fire prevention techniques of the local Fire Department recommendation and/or the Town's Building Department recommendation.

Raymond Skaine Aye
 Arthur Henning Aye
 Hans Mobius Aye

Daniel Michnik Aye
 Ryan Mills Aye

MOTION CARRIED.

Appeal No. 13

Bruce Torrey
 Residential Single-Family

Requests the Board of Appeals approve and grant five variances:

1. A .5' variance creating a 4.5' side yard setback.
2. A 1' variance to allow for 10' garage doors.
3. A 2.5' height variance creating an 18.5' height.
4. A 520 sq. ft. variance allowing a second accessory structure of 720 sq. ft.
5. A variance to allow a second garage.

All for a new second garage built at 8327 Kimberly Drive.

Appeal No. 13 is in variance to Section 229-55 Accessory structures.

DISCUSSION:

Bruce Torrey explains that requests 4 and 5 do not apply. This proposal must be approved prior to the applicant putting an addition on his home.

In response to Mr. Mills question regarding the reason for the height of the structure, Mr. Torrey explains it is for additional storage. The primary use for the structure is vehicles storage.

A permit has been obtained to build the garage, however it seems to have changed without notifying the Town. Mr. Torrey said he was not aware that 10' doors were not acceptable. Mr. Torrey works for his father's electrical company and said there are no commercial vehicles that park in his driveway. The business address is 8337 Kimberly Drive.

Jim Callahan explains that number 5 on the variance request applies. Mr. Bruce I Torrey runs his business out of his garage.

ACTION:

Motion by Arthur Henning, seconded by Ryan Mills to **approve** Appeal No. 13, as written with the elimination of request number 4.

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

MOTION CARRIED.

Raymond Skaine reads a letter written by Paul R. Meyer, Sr. and dated May 29, 2007. The letter indicates his disgust with a barn that was built on the property next to him. Mr. Skaine said, for the record, this was not a Zoning Board of Appeals decision.

Appeal No. 2

Roland & Shirley Ann Boller
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 600' variance to allow a 700' front yard setback for the construction of a new home at 7615 Goodrich Road.

Appeal No. 2 is in variance of Section 229-31 Setbacks.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **re-open** Appeal No. 2 under Old Business.

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

MOTION CARRIED.

DISCUSSION:

Jeff Palumbo, of Damon & Morey, is representing the applicant. Tom Plotar of Greenman Pedersen, Inc. explains that he wrote the density floodway code for the Town of Clarence back in 1995. He goes on to explain that this property is located in the Black Creek floodplain. There is a little portion of the property that is high enough to be out of the floodplain. He went to FEMA to have it removed from the floodplain. Mr. Plotar explains that if all the homes are at the same setback, essentially, a damn is being created. The floodplain ordinance prefers to have the homes staggered, as it allows water to work its way through. The proposed location will not displace as much water as it would if the house were located elsewhere on the property. The water flows east to west on this property.

The proposed house would be cape style and 2400 square feet in size.

Mr. Michnik asked the applicant what his plans are for the additional property. Mr. Boller said he hopes he can keep it just the way it is.

Mrs. Boller said they have owned the land for 52 years and she has no intention of doing anything with the land but living there, maybe put a pond in. There are 43 acres. The driveway was put in to accommodate the neighbor.

Mr. Mills asked what would happen if the applicant put in fill and built the house in accordance with the law. Mr. Plotar said it would raise the floodplain elevations for all the properties along Goodrich Road. This would have a mild to moderate effect.

There is a letter in file from Jean Schaedler, dated June 12, 2007 supporting the applicant.

Raymond Skaine asked what the status was on Open Development proposal. Mrs. Boller said she has no intention of an Open Development on the lot. Mr. Skaine asked Mrs. Boller if the appeal was approved would she be willing to accept that no Open Development area can take place as part of the motion. She said she can not do that because if something were to happen to her husband she would want to sell the land to somebody who could do something with it.

ACTION:

Motion by Hans Mobius, seconded by Daniel Michnik, to **approve** Appeal No. 2 under Old Business.

ON THE QUESTION:

Jim Callahan explains that the fire code requirements for the hydrants have to be identified for future reference.

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

MOTION CARRIED.

Meeting adjourned at 9:52 p.m.

Carolyn Delgato
Senior Clerk Typist