

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday July 8, 2008
7:00 p.m.

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

Zoning Board of Appeals members present:

Chairperson Raymond Skaine
Arthur Henning
David D'Amato

Vice-Chairman Daniel Michnik
Hans Mobius

Zoning Board of Appeals members absent:

Ryan Mills

Other Town officials present:

Director of Community Development James Callahan
Planner Brad Packard
Town Attorney Steven Bengart
Planning Board Liaison Richard Bigler
Senior Building Inspector David Metzger

Other Interested Parties Present:

Sterling McCarriagher
John Quesada
Mark Carrow
Domenico Giammusso
Dan Dombrowski
David Wylier

Libby and Larry Smith
Robert Linde
John Wabick
Drew Gundlach
Robyn Cierniak
Tom Roberts

Appeal No. 1

Sterling McCarriagher
Residential Single-Family

Requests the Board of Appeals approve and grant a 1' variance to allow a 9' side yard setback for the placement of a back-up generator at 9574 English Ivy Court.

Appeal No. 1 is in variance to Section 229-55 (E) (1) Dimension and Area Requirements.

DISCUSSION:

Sterling McCarriagher was present and said there was much confusion with Anderson Water Systems, the company who installed the generator.

Senior Building Inspector David Metzger said Anderson Water Systems has been to the Town Court and has been fined in the past for the violations regarding generators. Town Attorney Steven Bengart said the Town’s prosecutor’s office and the Building Department are both satisfied with the results of the court action at this point.

Mrs. McCarriagher confirmed that she had no knowledge that anything was wrong. She only knew that she needed a permit and Anderson’s said they would handle everything.

Neighbor notification forms are on file.

David D’Amato asked if the applicant would consider putting shrubbery around the generator; she has no problem with this and asked how far away from the unit the plants have to be. It is confirmed that the plants need to be 3’ away from the unit.

Daniel Michnik would like to see landscaping in the front and along the side that faces the neighbor.

ACTION:

Motion by Daniel Michnik, David D’Amato seconded by, to **approve** Appeal No. 1, as written with the stipulation that the shrubbery cover three (3) sides of the generator. The shrubbery shall be three feet (3’) away from the standing generator.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
David D’Amato	Aye		

MOTION CARRIED.

Appeal No. 2

Lawrence and Libby Smith
Residential Single-Family

Requests the Board of Appeals approve and grant a 4’4” variance to allow a 5’8’ side yard setback for the placement of a back-up generator at 4460 Shisler Road.

Appeal No. 2 is in variance to Section 229-55 (E) (1) Dimension and Area Requirements.

DISCUSSION:

Lawrence and Libby Smith were present. Mr. Smith explains that he has high water baseboard and hired an electric company to professionally install the generator, he did not know he needed a permit to have the generator installed. Mrs. Smith said there was discussion with regards to moving the generator down towards the pond but the property slopes in that area and the water runs down to the pond when it rains; it would also have been more expensive to place the generator closer to the pond as it would have been further away from the service portals.

Neighbor notification forms are on file; both are supportive of the variance request.

Mr. Michnik walked the backyard and said there is room for the generator to be placed there. He asked if Mr. Smith received a quote on how much more it would cost to move the generator closer to the

pond. Mr. Smith said it would cost \$500 to \$1,000 to move it. Mr. Michnik voices his concern saying the current neighbor does not have a problem with the placement of the generator but a future neighbor may. Mr. Smith said the generator would be uglier if placed closer to the pond.

Mr. Mobius asked if the applicant would be willing to landscape the area around the generator. Mr. Smith said yes.

ACTION:

Motion by Hans Mobius, seconded by Daniel Michnik, to **approve** Appeal No. 2, as written with the stipulation that the shrubbery cover three (3) sides of the generator. The shrubbery shall be three feet (3') away from the standing generator.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
David D'Amato	Aye		

MOTION CARRIED.

Appeal No. 3

John Quesada
Residential Single-Family

Requests the Board of Appeals approve and grant:

- 1.) a 4' variance to allow a 1' side yard setback for an accessory structure wholly in the rear yard.
- 2.) a 361 square foot variance to allow the construction of a 1,081 square foot accessory structure.

Both requests apply to 4160 Harris Hill Road.

Appeal No. 3 is in variance to Section 229-55 (E) (1) Dimension and Area Requirements and Section 229-55 (D).

Hans Mobius recuses himself from the discussion and the vote for Agenda Item No. 3.

DISCUSSION:

John Quesada is present.

Neighbor notification forms are on file.

Mr. Quesada explains that he would like to extend the back side of his garage to permit the storage of his boat and his conversion van. The boat needs extra space and the van requires the roof of the garage to be raised. He wants to move backward of the existing garage to keep the frontage looking the same. The siding will match the current siding. The structure as it exists today needs a new roof; he believes it will be a nice improvement for him and the character of the neighborhood. Mr. Quesada provided information regarding similar variances in the neighborhood. He did not know he needed a permit for adding on to an existing structure; an inspector from the Building Department advised Mr. Quesada he needed a permit.

In response to Mr. D'Amato's question regarding who is doing the work, Mr. Quesada said he is doing all the work. The actual ground breaking of the construction was in May 2008. He has put about \$8,000 into the project thus far. He will spend an additional \$5,000 to complete the project. Mr. Henning points out that if the request was denied it would be a hardship for the applicant due to the money he has invested already. The house adjacent at 4150 Harris Hill is currently being used for storage.

ACTION:

Motion by Arthur Henning, seconded by Raymond Skaine, to **approve** Appeal No. 3, as written.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Recuse
David D'Amato	Aye		

MOTION CARRIED.

Appeal No. 4

Robert Linde
Restricted Business

Requests the Board of Appeals approve and grant an 8" variance to allow a 584.3' elevation for the construction of a new pole barn at 7569 Transit Road.

Appeal No. 4 is in variance to Section 107 Flood Damage Prevention.

DISCUSSION:

Robert and Diane Linde are present. Mr. Linde explains that he needs a cold storage building. Currently the flood plain elevation is at 585, the exact same elevation as his garage floor which is approximately 6" above Transit Road. He would like to be 4" above his garage floor. If he goes much higher it will be very costly to purchase the stone.

Chairman Skaine reads a letter from Wendy Merkel, which was received in the Planning and Zoning office on July 7, 2008. The letter states that Ms. Merkel has some objections to the elevation variance. The letter is on file. Chairman Skaine asked Mr. Linde if he will be using the pole barn for a commercial business, Mr. Linde said he is not going to use it for a commercial business. He had all the proper permits prior to building the structure. Mr. Linde reiterates that he will not be using the structure for an auto repair shop. He wants to clean up his back yard and store his snowmobiles and boat in the pole barn. Mr. Linde explains that there are drainage problems with the property next to his at 7545 Transit Road.

Town Attorney Steven Bengart asked the Linde's if they would have any issue with the request being approved and a condition being set that the structure can never be used as a commercial use. The Linde's do not have a problem with this. Mr. Linde said he will work on his own cars or help a friend once in a while, but he does not get paid and he is not running an auto repair business from his home. At one time Mr. Linde had the auto repair business approved by the Town, but his plans fell through.

ACTION:

Motion by David D'Amato, seconded by Hans Mobius, to **approve** Appeal No. 4, as written with the stipulation that the building will have no commercial use as it exists.

Raymond Skaine Aye
 Arthur Henning Aye
 David D'Amato Aye

Daniel Michnik Aye
 Hans Mobius Aye

MOTION CARRIED.

The Zoning Board of Appeals move to an Attorney Client Privilege Session.

Appeal No. 5

Saturn of Clarence
 Major Arterial

Requests the Board of Appeals approve and grant a sign number and installation variance to allow a new sign at 5535 Transit Road.

Appeal No. 5 is in variance to Section 181-6 Construction Standards and Maintenance.

DISCUSSION:

Mark Carrow, General Manager of Saturn of Clarence, is present. John Wabick, vice-president of West Herr Auto Group, is also present.

Daniel Michnik clarifies the request: the applicant is seeking a variance to allow for the addition of a secondary building sign, the required variances are as follows: 1.) to allow for the construction of two (2) signs along one building façade. 2.) to allow a wall sign that extends beyond or over the top of the wall it is attached to. 3.) to allow a sign to be elevated above the ridgeline of the roof or any elevated support. 4.) to allow a wall sign to exceed 100 square feet.

Mr. Wabick explains that Saturn is attempting to have all dealers throughout the country re-façade their buildings to distinctively set them apart from other manufacturers. The signs will be required by the company and will harm this store if they are not in compliance. If the signs are not changed as requested the company will hold it against this store location even though the store is adhering to the Town of Clarence Law. Mr. Skaine explains that the Board needs to be very careful in setting precedence.

Mr. Wabick explains if the sign is lowered to below the ridgeline, the canopy would have to be removed and put on the other side, now the architecture of the building is being changed. There was some confusion at the Planning Board level regarding the calculations for the dimensions of the sign; when the calculations were complete, Mr. Wabick said they were relatively close to the requirement, but hesitated to state a number.

Mr. Michnik asked for clarification on the size of the white box. Mr. Wabick said it is 9'7" high; roughly 83 square feet. The emblem itself in the center of the sign is back lit.

There are two (2) Saturn dealers in Western New York. This store has been in existence since 1994. Mr. D'Amato asked if the applicant came up with any other designs. Mr. Wabick said the design came from the national location. The other option that was discussed was to raise the front of the building; Mr. Wabick would be willing to entertain this option. If this variance request is denied he would not move forward with changing the street sign; he would inform the national office that the request was denied and wait for their suggestions.

Chairman Skaine suggests tabling this item to allow the applicant to forward the secondary design of raising the façade/roof elevation. Mr. Wabick is willing to do this. If a new design is submitted, it appears that the only issue remaining will be multiple signs; however, there is no guarantee.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning, to **table** Appeal No. 5 until the August 12, 2008 meeting. The petitioner is in agreement.

ON THE QUESTION:

Daniel Michnik said if the re-submitted sign meets the qualifications and the “Saturn of Clarence” sign can be removed from the building, the petitioner will not need to come back to the Board for the second variance.

Mr. Wabick said the sign is the only identity through the whole facility. Mr. Michnik suggested the identity be incorporated in the new street sign. Mr. Wabick asked if there was a compliance issue with the street sign; this was further discussed. Town Attorney Steven Bengart said the Board needs to be consistent in its decisions or they will be sued.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
David D’Amato	Aye		

MOTION CARRIED.

Appeal No. 6

Domenico Giammusso
Residential Single-Family

Requests the Board of Appeals approve and grant a 4’ 6” variance to allow for the construction of an accessory structure 1’ 6” from the principle structure at 8672 Millcreek Drive.

Appeal No. 6 is in variance to Section 229-55 (E) (1) Dimension and Area Requirements.

DISCUSSION:

Mr. Giammusso explains that the shed that was in the proposed location was destroyed in the October 2006 storm; he wants to rebuild it now. There is no other option for the location of the shed as there is a lake behind his house. The shed will be used for storage of lawn maintenance equipment and will be the same size as the previous shed.

One neighbor notification form is on file.

The shed would have to meet the Building Code which would address fire proofing.

Mr. Michnik said the measurements in the request are off. The front of the building that faces the pond is 7½” away from the building and the back end of it is 9” away. So the variance request should be for a 5’ 2” variance. The previous shed came just above the fireplace outlet. The Building Department will not issue a permit if the shed does not meet all codes.

ACTION:

Motion by Raymond Skaine, seconded by Hans Mobius, to **approve** Appeal No. 6, as amended to 5' 2" to 5' 4" based on Daniel Michnik's calculations.

ON THE QUESTION:

The accessory structure must meet all the Building and Fire Codes of the Town of Clarence. Mr. Giammusso said the same siding that is on the house will be used for the accessory structure.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
David D'Amato	Aye		

MOTION CARRIED.

Appeal No. 7

Drew Gundlach
Residential Single-Family

Requests the Board of Appeals approve and grant a 240 +/- square foot variance to allow for the construction of an addition to an attached garage totaling 1200 +/- square feet at 6380 Heise.

Appeal No. 7 is in variance to Section 229-55 (D).

DISCUSSION:

Drew Gundlach is representing the homeowners, Dr. Michael and Michelle Parentis. Mr. Gundlach explains that the homeowners have four (4) children and two (2) cars and have run out of garage space. They also have a pool with patio furniture that needs to be stored. The proposed structure is not only a garage for storage but a changing house for the pool. The materials of the accessory structure will match the house. The proposal will create an additional formal entrance to the house.

A neighbor notification form is on file.

ACTION:

Motion by David D'Amato, seconded by Daniel Michnik, to **approve** Appeal No. 7, as written.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
David D'Amato	Aye		

MOTION CARRIED.

Appeal No. 8

Lia Honda
Major Arterial

Requests the Board of Appeals approve and grant:

- 1.) two (2) freestanding signs on any one business/parcel establishment.
- 2.) a single automobile dealership two (2) signs within less than 300 linear feet of frontage along the principle façade of the automobile dealership.
- 3.) a newly constructed sign within the Major Arterial zoning district to be less than 40' from the right of way.

All requests apply to 4891 Transit Road.

Appeal No. 8 is in variance to Section 181-4 (A) (1), 181-4 (A) (2) and 181-4 (A) (3) Sign District Specifications.

DISCUSSION:

Dan Dombrowski, agent for Lia Honda is present along with Robin Cierniak of William Schutt and Associates. Mr. Dombrowski said the dealership needs this sign in order to succeed in the used car dealership industry. He staked out 40' and that almost puts the sign in the parking lot; they wanted to keep it in line with the sign that should have stayed; but was mistakenly knocked down. Ms. Cierniak said the existing sign that was demoed was 13' from the right-of-way; this is what they are proposing for the new sign. The sign will be similar to the one that was submitted with the request with the addition of the reader board under the sign. The property was staked.

Town Attorney Steven Bengart asked who created the hardship, was it the contractor who took down a sign that shouldn't have been, was it the previous owner before they sold the property, why did the sign come down. Mr. Dombrowski said it was his contractor who knocked it down.

Chairman Skaine voices his concern with the unspecific request regarding the setback from the right-of-way; he wants to see it more definitive. He also takes issue with the two (2) signs so close together. Brad Packard explains that the setback was not known at the time the agenda was set; it was only known that it would be less than 40' from the right-of-way. The total height of the sign is 152".

ACTION:

Motion by Arthur Henning, seconded by Hans Mobius, to **approve** Appeal No. 8, as written. The set back shall come no closer than 15' to the established line on the property.

ON THE QUESTION:

Town Attorney Steven Bengart notes for the record the reason the variance was granted is based on the fact that there was a prior sign and through no direct fault of the applicant it was taken down. This Board would consider approving, only in this particular case, based on the fact that the sign could have clearly gone up there, had the original sign not been knocked down.

Brad Packard points out that the sign is on a separate parcel.

Richard Bigler, as a concerned citizen, makes reference to the reader board and voices his concern on the frequency of the changing displays. Mr. Dombrowski is aware of the reader board regulations and will abide by them. Mr. Callahan explains the message can change and hold every 10 seconds.

Arthur Henning and Hans Mobius agree to amend the motion to include all points discussed above. Mr. Dombrowski agrees to all points discussed.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
David D’Amato	Aye		

MOTION CARRIED.

Appeal No. 9

David J. Wylier
Major Arterial

Requests the Board of Appeals approve and grant a 79’ variance to allow a 56’ front yard setback for the construction of a new office building at 8625 Transit Road.

Appeal No. 9 is in variance to Section 229-94 (D).

DISCUSSION:

David Wylier is present and explains that he would like to build a 3800 square foot office building which will house professional offices. This building will mimic the building that is out front. They would like to include a ground sign and incorporate an illuminated “Welcome to Clarence” sign at the bottom of this sign on both sides.

Jim Callahan explains that this project still has to go to the Town Board and the Planning Board. The issue before the Zoning Board of Appeals is strictly the front yard setback variance request.

Mr. Wylier was the architect who did the exterior renovation on the first building. The building can hold up to three (3) tenants; there are tenants currently in the building. The parking lot would hold a total of 54 cars. The building would be an empty shell until a tenant occupies the space.

Mr. Wylier met with many neighbors and they do not have any issues with the proposal. Mr. Henning asked if there will be shrubbery between the house and the proposed building. Mr. Wylier said there is a wooded 50’ vacant lot between the proposed building and the neighbor. The existing trees will remain and there will be additional landscaping done on the project site. Chairman Skaine points out that the project will be subject to a Landscape Committee Review if it moves forward.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No. 9, as written.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
David D’Amato	Aye		

MOTION CARRIED.

Appeal No. 10

Tom Roberts
Residential Single-Family

Requests the Board of Appeals approve and grant a 2' height variance to allow the construction of a 6' high fence in the front yard space of a corner lot at 4059 Thornwood.

Appeal No. 10 is in variance to Section 101-3 (C) (2).

DISCUSSION:

Tom Roberts is present and submits neighbor notification forms for the file. He explains he wants to erect the fence off the side of the garage 12' and then continue straight back. He wants more enclosure on that side of the house for such items as garbage cans. There is a commercial building behind his house and the fence will somewhat obstruct their view of that commercial property.

Chairman Skaine clarifies that the Board is reviewing this variance because, since it is a corner lot, it is considered having two (2) front yards.

Mr. Roberts explains that he would like the added 2' for more privacy, especially from the traffic that flows around the corner. When the Rose Garden has an event the parking extends to Mr. Roberts property, the fence would provide safety for his children. The fence will be a composite material.

Town Attorney Steven Bengart points out that the petitioner needs to be aware of the private drainage easement on the property; he should check with the Town Engineer's Department to see if there will be issues with putting a fence in that area.

ACTION:

Motion by David D'Amato, seconded by Daniel Michnik, to **approve** Appeal No. 10, as written.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
David D'Amato	Aye		

MOTION CARRIED.

Motion by David D'Amato, seconded by Raymond Skaine, to **approve** the minutes of the meeting held on June 10, 2008, as written.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
David D'Amato	Aye		

MOTION CARRIED.

Meeting adjourned 9:10 p.m.

Carolyn Delgato
Senior Clerk Typist