

Clarence Board of Appeals Minutes  
Tuesday, July 10, 2007  
7:00 PM

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

Board of Appeals members present were:

Chairman Raymond Skaine  
Arthur Henning  
Hans Mobius

Vice-Chairman Daniel Michnik  
Ryan Mills (arrived late)

Other Town officials present were:

Jim Hartz, Assistant Director of Community Development

Other Interested Parties Present:

Brad Davidzik  
Todd Bushorr  
Christiana Clack  
David Wetzel  
William Schuster  
May Jane Dombek  
Alfonse J. Gambacorta  
Ron Santora  
Lynne Bona

Jeff Palumbo  
Hanna Kfour  
Krista Marie Bushorr  
Barbara Wetzel  
Christine Schuster  
Richard B. Owen  
Paul Gilden  
Joe Bona  
Marissa Bona

Motion by Hans Mobius, seconded by Arthur Henning, to **approve** the minutes of the meeting held on June 12, 2007, with the following correction:

-Appeal No. 5 is amended to include the address it pertains to: 8710 Clarence Center Road.

Raymond Skaine     Aye  
Arthur Henning     Aye  
Hans Mobius         Aye

Daniel Michnik     Aye  
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:**

Jeff Palumbo and Brad Davidzik, from Damon & Morey, are representing the applicant. Mr. Palumbo explains that the last time this request was before the Board he had no objection to the Board tabling the request until such time as the building was completed and a determination could be made at that point as to whether or not the parking spaces were actually needed. Since then it has come to his attention that the original plan had no retention above ground, this plan had 38 parking spaces. The plan that should have been submitted shows the retention in the rear. The site plan was changed due to financial cost. In changing the plan the parking spaces were reduced from 38 to 34. Mr. Davidzik said putting the retention pond in above ground wiped out 9 parking spaces. If the Board denies this request the plan is down to 31 parking spaces; there are 22 employees, that would only leave 9 spaces for customers. The applicant describes various businesses in the area with parking at the front of their sites. He feels the health, safety and welfare of the community is better served if the request is granted. This request is not out of harmony with the neighborhood and there are no environmental impacts that would result from the granting of the variance. The benefit of granting the variance far outweighs any detriment. There is no other area at the site to add anymore parking.

The proposed spaces in the front of the building are not handicapped parking; handicapped parking is on the side of the building. Arthur Henning asked if the plan is to have the employees park in the back of the building and the customers park on the side. Mr. Palumbo said yes. In response to Mr. Henning's question regarding nighttime banking, Mr. Palumbo is not sure if there are night hours, there are weekend hours and there is an ATM at the bank. Mr. Henning said he has a hard time justifying the three parking spaces in the front of the building.

In response to Mr. Michnik's question regarding the make up of the shifts for the 22 employees, Mr. Palumbo said he is not sure, but he knows that there will be times when there are 22 employees in the building. Mr. Michnik asked if the applicant could pick up two spots in the back by the drive-thru. Jim Hartz said if the isle is left open the width requirement is 20'-24'. Mr. Michnik said there are spots in the back that the applicant could pick up extra parking spots. People are going to take the shortest route to get to the ATM. Mr. Michnik is not comfortable with the three parking spaces in the front of the building; it is not going to flow. Mr. Palumbo said if the applicant can meet the code and find parking spaces in other areas, that is fine with him.

Mr. Skaine has visited the sites of other banks in the area, the Bank of Akron has 18 parking spaces and M & T Bank had 24 parking spaces. Mr. Skaine said he does not see the hardship, he refers to an article in the newspaper where a representative of the bank said that, with the trailer, the business has increased tremendously, the representative also told the Town Board that these three parking spaces were not needed in order to move the project along, now the representative is using the Zoning Board of Appeals to circumvent the Town Board's decision. Mr. Skaine is not in favor of approving this request. He explains that the veterinarian clinic has parking in the front because the business would have had to shut down for six (6) months during their reconstruction of a new building had the Board not allowed parking in the front, that was a hardship. The parking in front of Nativity Church is a safety issue brought about by the DOT against the church, there was no other place to put parking, this was a hardship as well. Mr. Palumbo said when the representative of the bank made the statement that Mr. Skaine is referring to, it was when the retention was planned for underground and there was enough parking planned for the site, this has since changed. Mr. Palumbo said he does not have to prove a hardship because this is not a use variance; he has to prove that the benefit outweighs the detriment. Mr. Skaine does not think the benefit has been proven.

Mr. Mobius said every business needs every parking space they can get. He thinks the Board should approve this request.

Mr. Skaine would like to see the request tabled until the bank is up and running to see if the extra parking spaces are needed. Mr. Palumbo is in agreement. Mr. Henning is not in agreement with tabling the project, he thinks it should be either granted or denied, there is no benefit to anyone in tabling the request.

**ACTION:**

Motion by Arthur Henning to **deny** Appeal No.1 under Old Business as presented. There is no second.

**ACTION:**

Motion by Hans Mobius to **approve** Appeal No.1 under Old Business, as presented. There is no second.

**ACTION:**

Motion by Daniel Michnik, seconded by Raymond Skaine, to **table** Appeal No. 1 under Old Business, as written to allow the applicant time to reconfigure parking. The applicant is not to come back to the Zoning Board of Appeals until the bank is operational and in function for at least six (6) months.

**ON THE QUESTION:**

Mr. Henning asked what happens if the applicant does not come back in six (6) months. Mr. Skaine said that means they don't need the three (3) spots. Mr. Henning asked what happens if they come back in a year? Mr. Skaine clarifies the motion saying the applicant can come back to the Zoning Board of Appeals no earlier than six (6) months of the bank being operational and in function or any time thereafter.

Mr. Palumbo asked what might happen if the bank representative told him to come back to the Board for a definite answer. Mr. Skaine said that question is out of order at this point.

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

MOTION CARRIED.

**Appeal No. 6**

Hanna Kfour  
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:**

Mr. Kfoury has discussed the request with his neighbor. He said the request for 100'-110' would benefit him more than the 125'. The neighbor said he is comfortable with the request. Mr. Kfoury said he staked the property at 90', 100' and 120'. The middle stake is what he would prefer at a minimum of 100', maximum 110'; this is a higher point in the land. Mr. Skaine said the applicant is now looking for a 60' variance, Mr. Kfoury agrees, then said it is actually a 55' request.

Todd Bushorr agrees with the setback of 100'-110'.

Mr. Michnik asked the applicant if the vegetation is going to remain, Mr. Kfoury said it will remain on the east side of the property. He will clear on either side of the driveway for safety reasons, but the rest of the vegetation will remain. Mr. Bushorr agrees that there is a gentlemen's agreement that this will work.

Mr. Henning recalls a floodplain issue and asked for clarification. Mr. Kfoury said he is aware that fill must be brought in to bring the area to code. He is willing to put a line of pine trees on the east side of the property.

Since the request has been changed, Mr. Skaine asked if the Board can move forward with the request. Jim Hartz said yes. If the request was for a larger setback it would have to be re-advertised.

**ACTION:**

Motion by Raymond Skaine, seconded by Hans Mobius, to **approve** Appeal No.6 under Old Business, with the variance of approximately 55' for a 110' setback.

**ON THE QUESTION:**

Arthur Henning asked if it is necessary for the Town Engineer to look at the property as it is being built. Jim Hartz said the Town Engineer has to look at the property anyway due to its location; the applicant must meet the regulations. Mr. Kfoury said he already met with the Town Engineer and was given the form and instructions for the procedure.

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

MOTION CARRIED.

**New Business**

**Appeal No. 1**

David Wetzel  
Agricultural Rural-Residential

Requests the Board of Appeals approve and grant an 855' variance creating a 900' front yard setback line for the construction of a single-family home at 5550 Davison Road.

Appeal No.1 is in variance to Section 229-41 Setbacks.

**DISCUSSION:**

Mr. Wetzel distributes copies of information regarding his request to the Board members, a copy is on file. The applicant is looking to purchase part of lots 12 & 13.1 which would consist of 30.3 acres. The only frontage to the land is 167.4', the applicant wishes to install an extended driveway back to a natural cove in the trees where he would construct a single-family home, a small equipment barn and maybe a private stable to breed horses. There will still be ample privacy for neighbors. Donald Greggs is the seller of the property. Mr. Wetzel knows he has to talk to the fire department about putting a pond on the property or a fire hydrant. Mr. Skaine said an e-mail was received from the Building Department July 2, 2007 advising that the applicant should be ready to install a hydrant. Mr. Wetzel knows that he will have to talk to the Health Department with regards to septic, etc. Currently the land is leased back to the Kreher Brothers for farming; Mr. Wetzel intends to keep the lease alive because after purchase of the land he would not be in a financial position to build on it for a one to two year period, there may be a partial lease after that. His intention is to add tree lines around the borders of the property. There is about a 900' drop from the back of the property to the houses on Salt Road.

William Schuster, of 5500 Davison Road, said Mr. Wetzel has answered all of his questions and he does not stand in opposition of the request. Christine Schuster, also of 5500 Davison Road, said she spoke with Mr. Wetzel on various items, one was the size of the stable; she voiced her concern saying she hoped it would not be too big. Mr. Schuster asked what the plan was for the lighting of the driveway. Mr. Wetzel said he would use the minimal amount of lighting while still providing safety. The Schuster's do not want a "runway". Mr. Wetzel said they are looking at building approximately a 2500 square foot house.

In response to Mr. Henning's question regarding the location of the stable and disturbing the woods, Mr. Wetzel said he would only take out what he needs to in order to construct the building, however, his intention is to add woods and trees to the property. The lease on the land runs year to year. If the variance is approved, the Wetzel's will purchase the property. The neighbors have been notified.

Ryan Mills joined the meeting at 7:55 p.m.

Mr. Skaine asked if the applicant has a standing offer on the table for the purchase of the property. Mr. Wetzel said no. Mr. Skaine asked if the Board can approve the request based only on the fact that the Wetzel's would be owners of the property. Can the approval be conditional on the purchase of the land by the Wetzel's? Mr. Hartz said the Board can condition the variance on the sale and indicate that if for some reason the sale of the property falls through, the variance is null and void.

**ACTION:**

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No.1 as written, with the following conditions:

- This variance is only granted if the property is purchased by David and Barbara Wetzel.
- The applicant must be ready to install a fire hydrant on the property.

**ON THE QUESTION:**

Ryan Mills suggests amending the motion to include the following: the variance is approved based on the presentation by the Wetzel's. Daniel Michnik and Arthur Henning agree to this amendment.

Raymond Skaine     Aye  
 Arthur Henning     Aye  
 Ryan Mills           Recuse

Daniel Michnik     Aye  
 Hans Mobius        Aye

MOTION CARRIED.

**Appeal No. 2**

Mary Jane Dombek  
 Residential Single-Family

Requests the Board of Appeals approve and grant a 2' variance to allow a 6' fence in the Willow Wood front portion of an existing home/pool at 5300 Park Ledge Court.

Appeal No.2 is in variance to Section 101-3 (C2) Fence Regulations.

**DISCUSSION:**

Mary Jane Dombek explains that she had a 4' fence around the entire yard and around the pool. She lost parts of the fence due to the October 2006 storm; many trees which acted as a privacy fence were knocked down. She wants to install a 6' stockade fence because without the trees she no longer has privacy.

Mr. Mills asked why a 4' fence would not be sufficient. Mr. Dombek said his land slopes down and a 4' fence would not provide much privacy. Only the sloping portion of the property will be greater than 4'. The additional height is also for the benefit of the Dombek's dogs.

Mr. Michnik asked if the applicant would be willing to put a 4' fence on the Park Ledge area of the property and a 6' fence on the Willow Wood area. Mrs. Dombek asked what the reason was for this suggestion, Mr. Michnik said for safety reasons when you pull into the driveway. Mrs. Dombek said the proposed fence is not solid, you can still see through the fence. Mr. Dombek said they would prefer not to put up a 4' fence, they prefer the 6', but if they have to they will.

Mr. Henning asked if the applicant has considered shrubbery rather than a fence. Mrs. Dombek said with the pool, mosquitoes and bugs they would rather have the fence. The 4' foot fence has been there since they moved into the house, about 10 years ago, but there were also pine trees in this area to add to the privacy. Mr. Henning suggests a 4' fence and trees be installed similar to what was there prior to the October storm; Mrs. Dombek said she really does not want the bugs if additional trees were planted. Mr. Michnik suggests planting the trees on the outside of the fence. Mrs. Dombek said that is were the prior trees were and the bugs were still a problem. Mr. Henning did not see many other fences in the neighborhood, Mr. & Mrs. Dombek said there are other fences in the neighborhood.

Mr. Skaine asked if the applicant is going to put another section of fence to the south toward Willow Wood Drive. The applicant said yes.

**ACTION:**

Motion by Hans Mobius, seconded by Ryan Mills, to **approve** Appeal No. 2, as written.

Raymond Skaine     Aye  
 Arthur Henning     Aye  
 Ryan Mills             Aye

Daniel Michnik     Nay  
 Hans Mobius         Aye

MOTION CARRIED.

### **Appeal No. 3**

Alfonse Gambacorta  
 Residential Single-Family

Requests the Board of Appeals approve and grant a 4' variance to allow a 6' side yard setback for the construction of a new shed at 4060 Foxwood Lane.

Appeal No.3 is in variance to Section 229-55 (E1) Dimension and area requirements.

### **DISCUSSION:**

Mr. Gambacorta explains that he is in the process of installing an in-ground pool, he has a 15' private easement and the concrete pad for the shed can not be in the easement. The pool installers talked with John Binner of the Town's Building Department and the pool can not be placed in any other area on the property, thus the only site for the shed is the proposed location. The concrete pad for the proposed shed is to help prevent groundhogs and raccoons from burrowing under the shed.

Mr. Mills asked why the shed can not go in the back left portion of the property. Mr. Gambacorta explains that the grade of the yard dips considerably in that area, he is trying to place a swing set in that back corner. If fill was brought in the shed could be put in the back left corner, however, Mr. Gambacorta was advised that he can not adjust the grade more than five feet.

There is no objection from the neighbor; one neighbor notification is in file.

In response to Mr. Henning's question regarding what will be stored in the shed, Mr. Gambacorta said pool supplies, rafts, toys for the children. It will not be a garage and the doors will open in the front and the back of the shed.

Mr. Gambacorta said the fence will be connected and go off the house to create the privacy in the yard, he reassures Mr. Michnik that the fence will go over the sidewalk correctly. Mr. Michnik agrees there is quite a drop off in the area.

### **ACTION:**

Motion by Arthur Henning, seconded by Daniel Michnik, to **approve** Appeal No. 3, as written.

Raymond Skaine     Aye  
 Arthur Henning     Aye  
 Ryan Mills             Aye

Daniel Michnik     Aye  
 Hans Mobius         Aye

MOTION CARRIED.

**Appeal No. 4**

Paul Gilden for Diane Moran  
Residential Single-Family

Requests the Board of Appeals approve and grant a 1’ variance to allow a 9’ side yard setback for the installation of a natural gas generator at 6279 Crosswinds Court.

Appeal No.4 is in variance to Section 229-55 (E1) Dimension and area requirements.

**DISCUSSION:**

Mr. Gilden, of Energy Cost Control, explains that the neighbor’s garage is on this side of the applicant’s house, he tries to place the generators where there will be the least complaints. He explains that the generator will be on for 10 minutes a week to “exercise”. It is 71 decibels, which is about as loud as a lawn mower, with a softer tone. The generator will kick on when the power goes out.

Mr. Mills asked if there will be additional landscaping around the generator. The owner of the property would like to put bushes around the generator but they have to be 3’ away from the generator because they are air-cooled. The generator is 28” high so most any bush will hide it.

Mr. Skaine thanks Mr. Gilden for staking the property. Mr. Gilden commends the Town of Clarence saying the people he has dealt with have been personable and helpful.

**ACTION:**

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

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

MOTION CARRIED.

**Appeal No. 5**

Paul Gilden for Donald Dussing  
Residential Single-Family

Requests the Board of Appeals approve and grant a 2’ variance to allow an 8’ side yard setback for the installation of a natural gas generator at 6201 Senate Circle.

Appeal No.5 is in variance to Section 229-55 (E1) Dimension and area requirements.

**DISCUSSION:**

Mr. Gilden explains if the generator was to be placed in the back yard about 40’ of gas line would have to be run and gas pressure would be lost. The neighbor’s trees will block the neighbor’s view of the generator at the proposed location. One neighbor notification is on file.

Mr. Mills asked if the generator were placed in the backyard, would it require a thicker gas pipe. Mr. Gilden said it would have to be an inch and a half gas line zigzagging down the side of the house; it could not be buried because of the trees that are there.

Mr. Michnik asked for the dimensions of the generator. Mr. Gilden said it is 2' by 4'. He makes a frame about 2' by 6' from pressure treated lumber and fill it with 300 pounds of pea gravel, the generator sits on top of this. The generator is 10,000 watts. Mr. Michnik asked what the advantage is for the air-cooled vs. the electric-cooled. Mr. Gilden said there is a price difference. The most popular generator is the Guardian.

**ACTION:**

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 5, as written.

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

MOTION CARRIED.

**Appeal No. 6**

Ron Santora  
Residential Single-Family

Requests the Board of Appeals approve and grant a 280 square foot variance to allow the construction of a 480 square foot pool cabana at 9292 Emerald Lane.

Appeal No.6 is in variance to Section 229- (H) Accessory Structures.

**DISCUSSION:**

When Mr. Skaine went to the location the property was not staked, it has since been staked.

Mr. Santora wants to build a larger than normal cabana house for his pool.

Mr. Michnik asked what materials will be used. Mr. Santora said wood with a concrete foundation. There is a small back area in the proposed cabana for storage and a functioning bathroom with an outside shower head.

Mr. Mills asked the applicant why an additional size is necessary. Mr. Santora said the pool is larger than a normal pool, he has a lot of land and he entertains quite a bit. Both neighbors have not problems with the request. Neighbor notifications are in the file.

**ACTION:**

Motion by Daniel Michnik, seconded by Hans Mobius, to **approve** Appeal No. 6, as written.

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

MOTION CARRIED.

**Appeal No. 7**

Joseph M. & Lynne M. Bona  
Residential Single-Family

Requests the Board of Appeals approve and grant a 7.5' variance to allow a 42.5' front yard setback for the construction of an addition to an existing house at 5000 Meadowbrook Rd.

Appeal No.7 is in variance to Section 229-52 (A) Setbacks.

**DISCUSSION:**

Mrs. Bona said they have a small dining room and a large family; they would like to add 8' on to it, so they can use it.

Neighbor notifications are in the file.

Mr. Mills asked the applicant what prevents them from putting the additional space in the back of the house. Mr. Bona said the dining room does not run the full front to back of the house; the kitchen is in the back along with the family room. The materials used for the addition will be consistent with the materials on the existing house, it may not be the exact same materials but it will match, Mrs. Bona thinks the materials will be stone.

Mr. Henning asked if the applicant is going to knock down part of the house and extend it out. Mrs. Bona said yes. The applicant is not sure who the contractor will be at this point.

**ACTION:**

Motion by Hans Mobius, seconded by Arthur Henning, to **approve** Appeal No. 7, as written.

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

MOTION CARRIED.

Meeting adjourned 8:45 p.m.

Carolyn Delgato  
Senior Clerk Typist