

Clarence Zoning Board of Appeals Minutes
Tuesday, July 11, 2006
7:00 PM

Ronald Newton, Chairman, called the meeting to order at 7:00 PM.

Board of Appeals members present were:

Ronald Newton, Chairperson	Raymond Skaine, Vice-Chairperson
Daniel Michnik	Arthur Henning
Ryan Mills	

Other Town officials present were:

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

Other Interested Parties Present:

Charles Kelkenberg	Edward Zimmerman
Martha Zimmerman	Ed Zimmerman Jr.
Drew Gundlach	Mike Wroblewski
Johathan Winnie	John Miller

ACTION:

Motion by Raymond Skaine, seconded by Daniel Michnik, to approve the minutes of the meeting held on June 13, 2006, as written.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 1

KLH Holdings Inc./Charles Kelkenberg
Agricultural Rural Residential

Requests the Board of Appeals approve and grant 2 variances:

1. A 2.3' variance to allow a 197.7' wide corner lot at 6375 Strickler.
2. A 75' variance to allow a 150' front yard setback for lots 6375-6415 Strickler Road.

Appeal No. 1 is in variance to Section 3.2.6 Setbacks.

DISCUSSION:

Mr. Kelkenberg explains that these lots under contract for him to purchase from Kelly Schultz. He would like to divide the parcel into three (3) lots and have the homes setback from the road more than the code allows. The next door neighbor's house is set back seventy-five feet (75'). There is a row of pine

trees at the property line so there should not be a privacy issue. The house on the other side of the parcel is set back one-hundred seventy five feet (175').

Ryan Mills asks if there are house orders on all the lots. Mr. Kelkenberg explains only one lot has an order, he can only build on two (2) of the lots. The Health Department can not release a permit until October 2008 for the third (3rd) lot. The square footage of the house that will be built on 6415 Strickler is approximately 1,800 square feet.

Arthur Henning asks why Mr. Kelkenberg is asking for such a large setback. Mr. Kelkenberg wants the houses to be away from the road and explains that there is a slight uphill slope about one-hundred-forty feet (140') back, then it starts to level off; the level ground is a better place to build a house. Mr. Kelkenberg said if the Zoning Board of Appeals denies this request eventually he would probably buy the land, Kelly Schultz would go through the legal system to "make it happen."

Raymond Skaine suggests staggering the front yard setbacks. The setback at 6415 Strickler Road would be one-hundred feet (100'), the setback at 6395 Strickler Road would be one-hundred twenty-five feet (125') and the setback at 6375 Strickler Road would be one-hundred fifty feet (150').

Daniel Michnik agrees with Mr. Skaine's idea to stagger the setbacks, however, he thinks the setback should start at seventy-five feet (75') because this is the setback of the neighbor's house. Then increase the setbacks by twenty-five feet (25') for the next two (2) lots, making the setbacks at one-hundred feet (100) and one-hundred twenty-five feet (125').

Mr. Skaine asks the Zimmerman's, of 6425 Strickler Road if they have a problem with the house at 6415 Strickler Road if it was setback one-hundred feet (100').

Martha Zimmerman explains that her and her husband agreed to a variance that was granted at 6435 Strickler Road and that house is adjacent to Mrs. Zimmerman's back yard and they do not have much privacy, she feels they made a terrible mistake by agreeing to that variance and they do not want to make the same mistake. Mrs. Zimmerman asks if tall (at least 6') evergreens can be planted, she also wonders where the driveway will go. Mr. Kelkenberg explains that currently the driveway is on the Zimmerman's side of the property, near the evergreens. Mrs. Zimmerman does not want the driveway there because her living room and her bedroom are at the back of the house. Mrs. Zimmerman said if the driveway is put on the south side of the property she would be in agreement with the 100' setback. Mr. Kelkenberg does not have a problem continuing the evergreens on the south side of the property next to the Zimmerman's.

ACTION:

Motion by Raymond Skaine, seconded by Daniel Michnik, to **approve** Appeal No. 1, Request No. 1, as written. Appeal No. 1, Request No. 2 is altered and approved as follows:

- The property at 6415 Strickler Road will be set back at one-hundred feet (100').
- The property at 6395 Strickler Road will be set back at one-hundred twenty-five feet (125').
- The property at 6375 Strickler Road will be set back at one-hundred fifty feet (150').
- The petitioner will put the driveway to the south of the property.
- Trees will be planted to provide a secondary buffering on the north side of the property.

ON THE QUESTION:

Daniel Michnik asks what the requirement is for the trees that are to be planted for the buffer along the north property line, how far back do they need to go?

ACTION:

Motion by Raymond Skaine, seconded by Daniel Michnik, to amend the above motion to reflect the following additional requirement:

-The trees to be planted as the buffer on the north side of the property will go back fifty feet (50') and will be four and a half to five feet (4'.5" to 5') tall. This is to the satisfaction of the Zimmerman's.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 2

Drew Gundlach
Agricultural Rural Residential

Requests the Board of Appeals approve and grant:

1. A pole barn to be constructed prior to the construction of a house.
2. A 100' variance to allow for a 200' front yard setback for construction of a new house at 5754 Salt Road.

Appeal No. 2 is in variance to Section 3.2.6 Setbacks.

DISCUSSION:

Mr. Gundlach explains that he wants to put the pole barn up for "staging" of the house. His primary reason for the pole barn is he currently leases a building for storage on Transit Road and Roll Road; this lease expires April 1, 2007. He does not think the weather will allow him enough time to construct the pole barn prior to his lease expiring in 2007.

Mr. Gundlach explains that the lot is approximately 420' deep and he would like to set the house back to utilize the yard more efficiently.

Daniel Michnik asks what will be stored in the pole barn. Mr. Gundlach explains that he is a contractor and he will store his equipment in the pole barn. The equipment consists of a cube van, a pick-up truck, three trailers and scaffolding. He has outgrown the 30' x 50' building that he currently leases. The total height will be twenty feet (20') to the peak. There will be no walk-in area above the pole barn. There will be a tin ceiling on the inside and a concrete floor. Gas will be run through the pole barn to allow heat. Mr. Gundlach is undecided as to whether or not he will put a bathroom in the pole barn. He would like to have three bays, one for each of the trailers. The house he is planning to build will be between 2,400 and 2,800 square feet.

Raymond Skaine asks what the setback is for the pole barn. Mr. Gundlach explains he tried to keep it in line with the house that is on the adjacent lot to the south, the house on that lot is setback

eighty-five feet (85'). Mr. Gundlach would like to provide a buffer along this property line to afford his neighbors privacy. He has knowledge that the house to the south may be on the market in 2007. He also has the knowledge that the land owner to his north would like to build a house in the wooded area of that lot, which is approximately 1,000 feet behind his proposed house.

Mr. Gundlach said the only activity in the pole barn will be him and his equipment. He has employees and on occasion they will stop by, but they do not stop every morning to pick up a truck, they have their own vehicles.

The driveway is designed to allow Mr. Gundlach room to back his trailer into the pole barn. The garage on the house will be a side load garage. He has placed the pole barn in the area shown on the plan to keep costs down on the driveway, if he put the pole barn in the back of the property the driveway would have to extend to it and the cost would be astronomical.

Mr. Gundlach explains why he is asking for the front yard set back, it is to keep the house in the center of the lot, utilize the trees on Salt Road as a buffer and have a front yard.

Mr. Gundlach describes the pole barn as a wood frame structure with posts; it will have steel siding and roof. He may put wainscoting on the bottom half and he will put in a couple of windows. The construction on the home will begin in the March 2007 and will be completed by September 2007.

Mr. Gundlach explains there will be one trailer kept outside the building.

Ronald Newton voices his concern with the two-hundred foot (200') setback because this will set the precedent for any future homes that may be built to the north. He wonders if Mr. Gundlach would be agreeable to a one-hundred seventy-five foot (175'). Mr. Gundlach agrees.

ACTION:

Motion by Daniel Michnik, seconded by Raymond Skaine, to approve Appeal No. 2 as written with the following conditions:

- The front yard setback is granted at one-hundred seventy-five feet (175').
- The house is to be completed by November 1, 2007. If the house is not completed legal action will be taken against the applicant to remove the pole barn.
- As the applicant has stated, seven foot (7') trees are to be planted on the south lot line.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 3
Michael Wrobleski
Residential Single Family

Requests the Board of Appeals approve and grant a 50' variance to allow 150' front yard setback for the construction of a new home at a lot that is to be split from 5405 Thompson Road.

Appeal No. 3 is in variance to Section 3.3.7 Setbacks.

DISCUSSION:

Mr. Wrobleski explains the reasons for the request. He would like to save some of the trees on the front of the lot and he would like privacy. He feels it fits into the character of the neighborhood because there are other homes on the street with an increased setback.

Daniel Michnik asks for confirmation that the land is under contract to purchase, Mr. Wrobleski advises it is. Mr. Michnik asks if the variance is not granted will Mr. Wrobleski still purchase the land. Mr. Wrobleski advises he will still purchase the land. He is looking to build a European cottage type house, approximately 2,500 square feet.

Mr. Skaine said the property at 5405 Thompson Road was just sold this past weekend. Mr. Wrobleski does not know who purchased it. He is buying the land from the current owner, not the new owner. Mr. Skaine questions whether the Board can take any action because the site in question is currently not a legal lot. He suggests tabling the appeal until further information is obtained on the split and registration of the lot. If the lot is split it will be 200' x 665'.

Ryan Mills states that the new owners of the home at 5405 Thompson Road have no knowledge of the variance request.

Since Mr. Wrobleski plans on having a driveway, Mr. Newton asks if he can cut a path so the members of the Board can walk the site to see where the house is proposed. Mr. Newton could not access the lot without going on to the neighbor's property. A requirement of the Board is to have markings/stakes at the site, there were none.

ACTION:

Motion by Raymond Skaine, seconded by Daniel Michnik, to **table** Appeal No. 3, until the lot becomes a defined legal lot where a house can be built. A Neighbor Notification form must be provided to the perspective/new owner of 5405 Thompson Road; the form must be signed and kept on file in the Planning and Zoning Office. The property must be properly staked and a path must be made to access the property.

ON THE QUESTION:

It is noted that the purchase contract for the existing home at 5405 Thomspson Road must be a solid contract. Once the contract is final, the Neighbor Notification form must be completed by the new owner.

Mr. Wrobleski has read the letter from the neighbor that is on file.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 4

Jonathan & Cynthia Winnie
Traditional Neighborhood District
Appeal No. 4 is in variance to Section 196-3 (C) Swimming Pools.

Requests the Board of Appeals approve and grant a 7' variance to allow a 3' side yard setback for an above ground pool at 6017 Elm Street.

DISCUSSION:

Mr. Winnie explains that when they acquired the pool, he and his wife were not aware that there was a permit requirement for installing a pool in the Town of Clarence. In the meantime, he was reconstructing a garage with an in-law apartment and when the inspector came to inspect the garage he asked about the pool permit. The permit application has been completed and is at the Town of Clarence Building Department on John Binner's desk awaiting the result of the variance request. The pool was installed by Mr. Winnie in the spring of 2004; it took close to two (2) months before the pool was completely installed. The Winnie's have lived in this house since 2001.

Mrs. Winnie is concerned if the pool has to be moved. The yard is only fifty-two feet (52') and if there is ten feet (10') on each side of the pool it would put the pool right in the middle of the yard.

Mr. Skaine makes sure that Mr. and Mrs. Winnie understand that, if the variance is granted, it dies with the demise of the pool.

If Mr. Winnie was asked to move the pool, he would seriously consider not putting it back up once he has taken it down to relocate it.

ACTION:

Motion by Raymond Skaine, seconded by Ryan Mills, to **approve** Appeal No. 4 with the caveat that when this pool is taken down or falls down, this granted variance will cease to exist.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 5

John Miller
Residential Single Family
Appeal No. 5 is in variance to Section 101-3 (C) (2) Fences.

Requests the Board of Appeals approve and grant a 1' variance to allow for the installation of a 5' fence in a front yard at 9105 Beech Meadow Court.

DISCUSSION:

Mr. Miller explains he is planning on putting in a pool, having children within the next year and he owns a dog, who is six feet (6') tall when he stands on his hind legs. Mr. Miller is afraid the dog will go into the street and cause an accident. He was advised a black chain link fence would blend in and not be so obtrusive.

Neighbor notifications are on file.

Mr. Skaine thinks the fence will blend nicely, especially with the evergreens along the property. He also agrees with the fence for the safety of the dog and people/vehicles passing by. It would not be a detriment to the neighborhood.

There is an existing berm that is in bad shape; Mr. Miller will reconstruct the berm so it is consistent. From the street, the fence will be behind the trees.

ACTION:

Motion by Arthur Henning, seconded by Raymond Skaine, to **approve** Appeal No. 5, as presented.

Ronald Newton	Nay	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Meeting adjourned at 8:17 p.m.

Ronald Newton, Chairperson