

Town of Clarence  
Zoning Board of Appeals Minutes  
Tuesday August 12, 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  
Ryan Mills

Vice-Chairman Daniel Michnik  
Hans Mobius  
David D'Amato

Town Officials present:

Director of Community Development James Callahan  
Planner Brad Packard  
Town Attorney Steven Bengart  
Councilman Bernard Kolber  
Planning Board Liaison Richard Bigler

Other interested parties present:

Bill Henderson  
Dianne Bloom  
Deborah Swain  
Nancy Olivieri  
Peter Kerwin  
Pam Biesik  
Tom Charnock  
Robert Stanley

Paul Bloom  
Veronica Schroeder  
Stephen P. Swain  
Ronald Berke  
John Kinkel  
David Burke Jr.  
Edwin Friel

**Appeal No. 1**

William L. Henderson  
Commercial

Requests the Board of Appeals approve and grant:

1. A 20' variance to allow an 80' front yard setback for the construction of a new commercial plaza.
2. A 39' variance to allow a 6' side yard setback to an adjoining residential use along the west side of the property for the construction of a new commercial plaza.
3. A 5' variance to allow no setback to parking along the east side of the property.

All requests apply to 10060 Main Street.

Appeal No. 1 is in variance to Section 229-87 (C) (1), Section 229-87 (C) (4) and Section 229-88 (B).

**DISCUSSION:**

Bill Henderson is the architect on the project and will be the spokesmen. He explains that the setbacks are based on a 100' wide lot. This lot is 80' on the diagonal; the actual lot is 76' wide. The building space that is allowable is 6'; a building can not be put in 6'. It is not a buildable lot and was done prior to the implementation of the zoning setbacks. He is looking for relief from the setbacks.

Dianne Bloom, owner of Clarence Wine and Spirits, said the adjacent Allstate building is 5' from the side lot line with a 45' front setback; they must have received a variance for both of these. The Allstate building has only been there a few years so they have set the precedent. Mr. Henderson said most of the buildings on this section of Main Street are not within the setback requirements. Mr. Skaine points out that the existing setbacks on the buildings being referred to took place prior to the zoning change.

Ronnie Schroeder, of 10050 Main Street, reads a letter she wrote explaining the reasons she is against the granting of this variance, the letter is on file.

Ms. Bloom said she does not presently own the property; she has a proposal to purchase the property based on the Zoning Board of Appeals approval. There are possibly three (3) stores planned for the building. Ms. Bloom's liquor store is currently across the street but she does not own that building and wants to move her business to the proposed location. Mr. Henning said he noticed empty buildings and asked Ms. Bloom if she could rent or lease one of them. Ms. Bloom said they want a lot of money for those buildings.

Ms. Bloom does not have another plan if this request is denied; she will have to find some land. Mr. Mills asked for a description on the building layout and materials. Mr. Henderson said it will be a wood frame building with a shingled roof, fitting in with the character of the other businesses in the area. Thirty parking spaces is the Town Code requirement; Ms. Bloom does not need that many.

The property was not staked. Chairman Skaine did not see neighbor notification forms in the file. However, after further review of the file one form was located.

Mr. Henderson said the height of the fence will be whatever the code requires. Ms. Bloom would prefer to put in a hedgerow of shrubbery. Jim Callahan said the maximum fence height is 6', in a commercial zone the Town Board has the ability to increase the maximum. Mr. Henderson said the placement of the building was so the back of the building would face the neighbors as opposed to the parking lot.

Mr. Michnik asked if the applicant explored other properties with existing buildings on Main Street. Ms. Bloom said she looked at other properties and they did not fit into her plan.

**ACTION:**

Motion by Raymond Skaine, seconded by Arthur Henning, to **deny** Appeal No. 1 based on the following:

- This project would be out of character for the neighborhood and the Town of Clarence. With a zero setback, there is no room for landscaping on the east side.
- The benefit sought by the applicant can be achieved by decreasing the size of the building.

- When there are three (3) variances for one (1) parcel it, in itself, is substantial. The front yard is a 20% variance on the west side which is 87% and the east is 100% or zero setback.
- The project is too large for this location.
- The use as it stands is appropriate and any changes would be self-created.

Raymond Skaine     Aye  
 Arthur Henning     Aye  
 Ryan Mills           Aye

Daniel Michnik     Aye  
 Hans Mobius        Aye

MOTION CARRIED.

**Appeal No. 2**

Deborah Swain  
 Residential Single-Family

Requests the Board of Appeals approve and grant a .106 acre variance to allow a .833 acre lot at 4231 Old Hickory Lane.

Appeal No. 2 is in variance to Section 229-49 (A).

**DISCUSSION:**

Steven and Deborah Swain, property owners, are present. Mr. Swain said they are looking to sell a small piece of the property to the neighbor. Chairman Skaine did not see stakes on the property. Ms. Swain said there are stakes in the ground; however they are not visible from the street.

Mr. Michnik said it was difficult to understand the variance request. He spoke with the land owner to clarify the request and he saw the stakes on the property.

The perspective purchaser is present. Chairman Skaine asked if she would be willing to accept a condition on the motion, if approved, not to build a house on the lot. She agrees not to build a house saying the lot is too small. She has four children and would like more room for them to play when they are outdoors.

**ACTION:**

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No. 2 as written with the following condition:

- this portion of the lot will never be used for a building lot or in combination for a future building lot.

**ON THE QUESTION:**

Ryan Mills suggests the above stated condition. This will not restrict the owners from putting up a shed or accessory structure on the lot.

Raymond Skaine     Aye  
 Arthur Henning     Aye  
 Ryan Mills           Aye

Daniel Michnik     Aye  
 Hans Mobius        Aye

MOTION CARRIED.

**Appeal No. 3**

Ron Berke

Residential Single-Family

Requests the Board of Appeals approve and grant:

1. A +/-34' variance to allow an 81' front yard setback for the placement of a new detached garage.
2. A variance to allow a detached accessory structure within the front yard space of a residential lot.
3. A 4' variance to allow a 6' side yard setback for the placement of a new detached garage.
4. A variance to allow both an attached and detached garage on the property.

All requests apply to 8190 Stahley Road.

Appeal No. 3 is in variance to Section 229-52 (A) (3), Section 229-55 (D), Section 229-55 (E) (1) and Section 229-55 (H).

**DISCUSSION:**

Ron Berke is present and explains that his home is set on a narrow property with Stahley Road running diagonal to his home. His property is set back 115' on one side and 130' on the other side. The plan is for 2 floors with the living space on the second floor; the first floor is a storage facility. The home was constructed on a cement slab and there is no attic. He does not believe it is safe to live directly above his vehicles. There is a built in pool on the northeast side of the yard. The two-car garage would be on the southwest corner of the property. The size of the garage would be 24' x 24' and would be tucked behind the trees; the natural ambiance of the property will be preserved.

Neighbor notification forms are on file.

In response to Mr. Mills question regarding the materials to be used for the garage, Mr. Berke said he will be constructing it himself, with help from other individuals. The siding on the garage will be the same color as the house. Mr. Berke said he does not have the width on his property to attach a two-car garage.

The blue building next to Mr. Berke's property is a garage. Mr. Mobius asked if the applicant considered putting the garage in the back of the house with a driveway leading to it. Mr. Berke said he would then have to build an access road. Mr. Mobius said he would have to build a driveway; this is an alternative that could work. Mr. Berke said his wife may not feel comfortable walking back to the garage; she would rather exit from the front of the house.

Mr. Berke said the evergreens on the south side of the property will remain. The house was built in 1952. His wife has lived in the house since 1978. Mr. Berke said he has had problems with his vehicles such as depreciation because his vehicles are subject to the inclement weather. Mr. Henning agrees with Mr. Mobius' idea of putting the garage in the back of the property.

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 3 as written.

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

MOTION CARRIED.

**Appeal No. 4**

Peter Kerwin  
Residential Single-Family

Requests the Board of Appeals approve and grant:

1. A variance to allow a second garage in the Residential Single-Family Zone.
2. A height variance for a detached garage.

Both variances apply to 5905 Thompson Road.

Appeal No. 4 is in variance to Section 229-55 (H) and Section 229-55 (E) (2).

**DISCUSSION:**

Peter Kerwin is present. Chairman Skaine asked what the height of the garage will be. Mr. Kerwin does not have an exact height at this time but it will be based on the finished grade in the submitted drawing. The drawing is on file. Mr. Kerwin explains the primary purpose for his request is to provide shade in the back yard. Half of the garage will be a finished area for entertaining, the other half will be for storage of lawn equipment, bikes, etc. The garage will be finished with a walkway in front of it, not a paved driveway. Cars will not be parked in the garage. Mr. Kerwin submits a landscape plan.

Neighborhood notification forms are on file.

Mr. Kerwin plans to do the construction himself, with help from a friend, and hopes to start as soon as the permits are issued.

The Clarence Fire Department owns the property behind Mr. Kerwin's so there will probably never be house built there.

Mr. Mills asked if it was possible to modify the elevation to accommodate the current code without a variance. Mr. Kerwin is concerned with the patio lining up.

**ACTION:**

Motion by Raymond Skaine, seconded by Arthur Henning, to **approve** Appeal No. 4 as written per the drawing as submitted by Mr. Kerwin.

Raymond Skaine     Aye  
Arthur Henning     Aye  
Ryan Mills             Aye

Daniel Michnik     Aye  
Hans Mobius         Aye

MOTION CARRIED.

**Appeal No. 5**

John Kinkel  
Residential Single-Family

Requests the Board of Appeals approve and grant a 2’ -6” variance to allow a 10’ side yard setback for the construction of an addition at 4220 Cameron Drive.

Appeal No. 5 is in variance to Section 229-52 (B).

**DISCUSSION:**

John Kinkel and Pam Biesik are present. Mr. Kinkel said he wants to put an addition on his house.

Jim Callahan explains that the Zoning Code changed in 2005. The side yard setback in a Residential zone was 10’ prior to 2005, when the code changed the setback increased to 12’ 6”. This lot and house pre-existed under the old code.

**ACTION:**

Motion by Arthur Henning, seconded by Hans Mobius, to **approve** Appeal No. 5 as written.

Raymond Skaine     Aye  
Arthur Henning     Aye  
Ryan Mills             Aye

Daniel Michnik     Aye  
Hans Mobius         Aye

MOTION CARRIED.

**Appeal No. 6**

David Burke  
Agricultural Rural-Residential

Requests the Board of Appeals approve and grant a variance to utilize a recreational vehicle as a primary living space until the completion of construction of a new home at 10965 Stage Road.

Appeal No. 6 is in variance to Section 226-16 (A) (1).

**DISCUSSION:**

David Burke is present and explains that he does not want to use the recreational vehicle as a primary living space. His family will be staying with his brother-in-law in Depew, NY. Mr. Burke will be doing some of the work on the new home so this recreational vehicle will be a place for him to change his work clothes as he begins construction of the new home. It will also serve for a place to entertain his children on the weekends while he is working on the new home.

Chairman Skaine reads a letter dated August 11, 2008 from Sr. Code Enforcement Officer David R. Metzger. The letter explains that Mr. Burke has incurred a financial burden and requests the Board consider the use of the recreational vehicle. The letter and a photo of the recreational vehicle are both on file, as well as one neighbor notification form.

Mr. Michnik asked how long the recreational vehicle will be on the property. Mr. Burke said probably until December 2008, because the owner of the vehicle will winterize it then.

Mr. Burke said the house is going to be 2,500 square foot ranch. The vehicle will not remain on the property when the house is complete

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 6 as written with the condition that the recreational vehicle be removed from the property by February 2009.

**ON THE QUESTION:**

Town Attorney Steven Bengart suggests amending the motion to include a condition setting a time frame for the removal of the recreational vehicle. The above motion reflects this amendment; Daniel Michnik and Ryan Mills agree to the amendment.

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

MOTION CARRIED.

**Appeal No. 7**

Thomas R. Charnock  
Residential Single-Family

Requests the Board of Appeals approve and grant a 40 square foot variance to allow the construction of a 240 square foot shed at 9111 Hillview Drive.

Appeal No. 7 is in variance to Section 229 (H).

**DISCUSSION:**

Thomas Charnock is present. Neighbor notification forms are not on file; however Mr. Charnock said the neighbors are aware of his request. Mr. Charnock said he wants to put a shed up with an overhead door because his lawn mower is 75” wide. Much of the construction is already done. When Mr. Charnock applied for a building permit a representative of the Building Department informed Mr. Charnock that he would need a variance. Mr. Charnock started the construction knowing he needed a variance. He will use the shed for storage of his lawn mower, garden tools, snow blower and children’s toys. He is doing all the work except for the concrete. The siding will match the house. He anticipates completion of the shed this year. If the Board denied this request, Mr. Charnock said it would cause a hardship; the only recourse would be to move a wall to 10’. If this happens there will be two feet of concrete where water will seep in. It is clarified that if the request was denied the foundation would have to be conform. Mr. Charnock now understands the process if he were to build another accessory structure.

Mr. Michnik asked how the water coming off the shed will be directed so it doesn't end up on the neighbor's property. Mr. Charnock said the land slopes to the south. There will be gutters on the shed they will deposit to the north. Town Attorney Steven Bengart suggests making the approval subject to engineering approval regarding drainage issues.

Mr. Charnock explains the landscaping plan; there are various trees and Lilacs that will be planted on the south side of the applicant's property running behind the full length of the proposed structure. Mr. Charnock submits a drawing of the landscaping. The drawing is labeled Exhibit 1 and is a permanent part of the file.

Chairman Skaine suggests decreasing the length to 16'; a variance would not be required with this change. Mr. Charnock said if the length was 16' it would not allow for a convenient man door. Chairman Skaine was not happy with what he saw when he visited the site.

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 7 as written with the following conditions:

- as shown on Exhibit 1, the applicant will plant five (5) Lilac bushes in the rear portion of the structure, running it's full length along the property line to the south directly behind the structure.
- Engineering approval for the drainage issues that were raised.

**ON THE QUESTION:**

Mr. Charnock asked if engineering approval is normally a condition of building a 12' x 20' shed. Town Attorney Steven Bengart said it certainly can be.

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

MOTION CARRIED.

**Appeal No. 8**

Edwin J. Friel  
Residential Single-Family

Requests the Board of Appeals approve and grant a 97 square foot variance to allow the construction of a 297 square foot accessory structure at 4850 East Avenue.

Appeal No. 8 is in variance to Section 229 (H).

**DISCUSSION:**

Mr. Friel is present and explains he wishes to replace a shed that was damaged in the October 2006 storm. The existing shed will come down prior to any construction of the new proposed shed. The proposed shed is a pre-fabricated unit and will be used for storage of lawn equipment. There will be no business use. Mr. Friel will hire someone to do the concrete and will take his advice on how to proceed with the floor of the shed. Mr. Michnik suggests moving the structure away from the existing tree stump.

Robert Stanley, neighbor, is present.

Mr. Henning thinks it will be an improvement to the property.

**ACTION:**

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No. 8 as written with the understanding that no commercial business is to be run out of the structure.

**ON THE QUESTION:**

The applicant agrees to the motion.

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

MOTION CARRIED.

Motion by Hans Mobius, seconded by Arthur Henning, to **approve** the minutes of the meeting held on July 8, 2008, as written.

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

MOTION CARRIED.

Meeting adjourned at 8:55 p.m.

Carolyn Delgato  
Senior Clerk Typist