

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday September 9, 2008
7:00 p.m.

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

Zoning Board of Appeals members present:

Chairman Raymond Skaine	Arthur Henning
Hans Mobius	Ryan Mills
David D'Amato	

Zoning Board of Appeals members absent:

Vice-Chairman Daniel Michnik

Other 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	Roni Schroeder
Eric Bloom	Paul Mitchell
Russell Christopher	Mary Pellitieri
Andrew Pellitieri	Jeff Costanzo

DISCUSSION:

Ryan Mills reads a letter from Charles F. Kelkenberg with regards to 7060 Salt Road. The letter is dated August 14, 2008 and is on file. The letter provides background on the vacant lot and asks for an opportunity for the applicant to come to the next Zoning Board of Appeals meeting to present his case. Chairman Skaine explains that the last denial was on February 14, 2006, the applicant appealed the decision and is requesting the Board review the request again. The Board is committed to re-open any hearing provided it is a unanimous vote by all members of the Board present. Chairman Skaine asked what the pleasure of the Board is. Hans Mobius asked what the applicant is going to build on the lot and how will it affect the neighbors; will the applicant have to ask for a variance again to put a house on the lot? Mr. Mobius does not see where the hardship is; the situation is self-created. Arthur Henning would like to review the reasons for the previous denial.

ACTION:

Motion by Arthur Henning to hold a Public Hearing to consider re-opening the variance request for 7060 Salt Road made by Charles F. Kelkenberg. There is no second.

MOTION FAILED.

Chairman Skaine explains that the applicant was advised via a letter sent to him that he did not have to attend the meeting this evening; the letter is on file. No further action taken.

In the absence of Vice-Chairman Daniel Michnik, alternate Zoning Board of Appeals member David D'Amato will partake in all discussions and vote on all agenda items.

Old Business**Appeal 1**

William L. Henderson
Commercial

Requests the Board of Appeals approve and grant:

- 1.) a 23' 1 & 5/8" variance to allow a 1' 10 & 3/8" side yard setback to an adjoining commercial use.
- 2.) a 40' variance to allow a 5' side yard setback to an adjoining residential use.

Both requests apply to 10060 Main Street.

Appeal No. 1 is in variance to section 229-87 (C) (2) and 229-87 (C) (4).

DISCUSSION:

Bill Henderson, of William L. Henderson Architect, is representing the applicant and explained that the 45' setback from the residential side requirement and the 25' setback from the commercial side requirement leaves a building space of 6'. The proposal is for a 3300 square foot building. The reason the applicant chose this lot is because the lots to the west are extremely expensive; one has asbestos in it and the other is a long term lease. Dianne Bloom, owner, is present and advises she has photos for the Board to review. Ms. Bloom does not want to be too close to Passport Liquors, which is a direct competitor.

Eric Bloom, Ms. Bloom's attorney, is present and explained that he asked the architect if, when the property was initially sub-divided (in the 1950's), could it be utilized for commercial or residential purposes consistent with the ordinances. The architect advised him that under the prior laws there is a commercial value to this property because a building could be constructed on it. When the new Zoning Ordinances were passed in 2005 it rendered this lot completely unbuildable. Mr. Bloom refers to a Court of Appeals case which was decided in 1995 called Sasso vs. Osgood on behalf of the Zoning Board of Appeals of the Town of Henderson. He believes it is relevant to this case and goes on to read: "The Zoning Board concluded that no alternatives other than the grant of the area variances existed because the intervener's lot is of sub-standard size and that no improvement to the property could be made without the request of lot size and width variances. The Zoning Board then acknowledged that the variances sought were substantial but there was no available adjacent land for the intervener to purchase so that he could meet the Zoning requirements. Granting the variance would merely permit the intervener to use his property for a permitted use equal to that of all the other neighboring lots. The neighboring lots are commercial." Mr. Bloom said by enacting the Zoning Ordinance of 2005 the Town of Clarence has removed the ability of an owner to use this property for any type of development at all; it is incorrect for

anyone to say this is a self-imposed hardship. Ms. Bloom does not currently own the property; she is under an option to purchase. Mr. Henderson said the Allstate building owner does not have a problem with the project as long as the building is flipped back to the original proposal; he does not want to see the back of the building. Mr. Bloom said the resident on the other side of the property does not mind seeing the back of the building as long as it is properly landscaped and there is an adequate buffer.

Roni Schroeder, of 10050 Main Street, asked the Zoning Board of Appeals members to carefully consider granting this variance to allow a plaza at 10060 Main Street. She said she spoke with the architect and he advised her of some changes in the plan; however it still appears that the back of the proposed building will be within a few feet of her property. The architect told her only a few trees would be removed and if she wanted, they could turn the building so that the back faced her house. A white vinyl fence or junipers will be added. She is concerned that the proposal may decrease the value of her property.

Chairman Skaine reminds everyone that the Zoning Board of Appeals is not dealing with the size of the building; it is dealing with the setbacks.

Mr. Henderson said there are no rental stores proposed.

Ms. Bloom refers to photos that show other properties she has looked into purchasing but did not work for her. Ryan Mills asked if Ms. Bloom explored adding on to the plaza next to her; to the east. Mr. Henderson said nothing can be done with that building because there is a residential building next to it.

In response to Mr. Henning's question regarding the expansion of Ms. Bloom's current building, Ms. Bloom advises that she can not expand because she does not own the building; she rents it. 15 parking spaces are required; the proposal can easily achieve this. The applicant is more than willing to ask for a variance to reduce the parking spaces. Mr. Henning asked Ms. Schroeder would be satisfied if the proposed building is flipped and moved to be equal with the front of her garage. Ms. Schroeder said it would be better; she does not want to look at headlights and people coming in and out of the property.

The lease on Ms. Bloom's current building is up in May 2009. If the variance is granted Ms. Bloom said she would start construction immediately so she can be in the new building in May 2009.

ACTION:

Motion by Chairman Skaine, seconded by David D'Amato, to **deny** Appeal No. 1 under Old Business for the following reasons:

-This project would be out of character with the properties in the area. It would be the only building which would be perpendicular to Main Street, the position of the parking lot would have a definite negative impact on the neighbor to the west.

-What the applicant seeks can be achieved by another method, feasible for the applicant to pursue, other than the area variance. The building size could be decreased adding a freestanding building with the parking in the back.

-The variance is substantial with it being 89% on the east side and 92% on the west side.

-The proposed structure and parking will have a definite impact on the area. From the east it will be a long wall which would be totally out of character with Town of Clarence.

-The situation is self-created; the proposed structure does not conform to other buildings in the area. There will be no hardship to the applicant as she does not own the land.

Raymond Skaine Aye
Hans Mobius Nay
David D'Amato Nay

Arthur Henning Aye
Ryan Mills Aye

MOTION CARRIED

New Business

Appeal No. 1

Paul Mitchell
Residential Single-Family

Requests the Board of Appeals approve and grant a 2' variance to allow an 8' tall fence in the rear yard at 4590 Hedgewood Drive.

Appeal No. 1 is in variance to section 101-3 (B).

DISCUSSION:

Paul Mitchell is present and explained that he requires the variance because he has lights coming in his windows at night, through his backyard, it is very intrusive. He currently has a 6' fence in his backyard and it does not adequately cover the lights. The two extra feet will alleviate vehicle headlights from shining into Mr. Mitchell's house. Mr. Mitchell has not approached the neighbor about the issue.

Neighbor notification forms are on file.

Mr. Henning asked if the applicant considered curtains or blinds to help block the light from the neighbor. Mr. Mitchell has put up curtains and he opens them every day and closes them every night; he likes to keep them open as often as possible. Mr. Mitchell said it is only a night time problem; he can alleviate the problem by closing the curtains.

Mr. Mills asked if the reason for the sectional length of the fence is because there are trees along the other portions of his property. Mr. Mitchell said yes and goes on to explain that when the trees grow it will look very nice; he just wants to block the light. His proposal is for a wood fence because it is more economical than a vinyl fence. If this variance is denied his plan would be to create a 2' berm and put a 6' fence on that. The fence that is on his property now would be removed.

The length of the proposed fence is 40'. Mr. D'Amato asked if the applicant explored the option of landscaping with 10' trees/shrubs instead of the fence. Mr. Mitchell explored this option but said he cut down 10 pine trees in the back due to the 2005 October Storm because of the telephone wires above them; he does not want a problem with the phone company coming through there.

ACTION:

Motion by Ryan Mills, seconded by Hans Mobius to **approve** Appeal No. 1 to a maximum height of 7' 6" as the situation appears to be a hardship due to the elevation change. The smaller fence is to be removed.

ON THE QUESTION:

The applicant agrees with the maximum height of 7' 6".

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

MOTION CARRIED.**Appeal No. 2**

Mr. & Mrs. Russell Christopher
Residential Single-Family

Requests the Board of Appeals approve and grant a 2'6" variance to allow a 7'6" side yard setback for the placement of a back up generator at 5050 Thompson Road.

Appeal No. 2 is in variance to section 229-55 (E) (1).

DISCUSSION:

Russell Christopher is present and explained that the placement of the generator encroaches on the 10' setback requirement of the Town code.

Mr. D'Amato asked if Mr. Christopher would be willing to add shrubbery around the generator. Mr. Christopher said there are no shrubs around the air conditioning unit. Mr. D'Amato explains that the air conditioning unit is setback a bit further. Mr. Christopher has no objection to putting shrubbery around the generator.

Neighbor notification forms are on file.

Mr. Henning asked if the applicant considered another location for the generator. Tom Gerstner, from Anderson Water Systems, explains there is not another place to put the generator without an \$800.00 expense. The meters are on the side of the house of the proposed location for the generator; in Mr. Gerstner's opinion, the proposed location is the best location.

The generator kicks on once a week for 20 minutes for an auto-check, the customer can choose the time for the auto-check. The times chosen are generally during the day when the customer is home.

ACTION:

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

Raymond Skaine Aye
 Hans Mobius Aye
 David D'Amato Aye

Arthur Henning Aye
 Ryan Mills Aye

MOTION CARRIED.

Appeal No. 3

Andrew & Mary Pellitieri
 Agricultural Rural Residential

Requests the Board of Appeals approve and grant:

- 1.) a 153' variance to allow a 170' front yard setback for the construction of a new home.
- 2.) a 5' variance to allow a 10' side yard setback for the construction of new home.

Both requests apply to 5565 Kraus Road.

Appeal No. 3 is in variance to section 229-41 (A) (C) and 229-41 (B) (2).

DISCUSSION:

Neighbor notification forms are on file.

Mary and Andrew Pellitieri are present. Mrs. Pellitieri explained that they would like to preserve as many trees as possible by moving the house closer to the road; this also provides a buffer to protect the neighbor's privacy.

The applicant does not own the property; the sales contract is contingent on the variance. Cippilone Homes would be the builder. Mr. Mills asked if the applicant considered an alternate configuration of the home in order to avoid the side yard setback. The applicant changed the side load garage to a front load garage, but other than that they did not consider other designs.

Mr. Mobius asked what the structure is that has a 400' setback to the north of the applicant's property. Mrs. Pellitieri said it is a work shop and a guest house. Mr. Mobius asked if the applicant could build deeper on the lot. Mr. Pellitieri said at about 300' the land starts to slope and is wet.

Chairman Skaine spoke with the neighbors to the south; they are in favor of the Board granting this variance.

ACTION:

Motion by David Amato, seconded by Hans Mobius to **approve** Appeal No. 3 as written.

Raymond Skaine Aye
 Hans Mobius Aye
 David D'Amato Aye

Arthur Henning Aye
 Ryan Mills Aye

MOTION CARRIED

Appeal No. 4

Jeffrey Costanzo
PURD

Requests the Board of Appeals approve and grant a 220 square foot variance to allow the construction of a 420 square foot accessory pool room at 5948 Killarney Manor.

Appeal No. 4 is in variance to section 229-55 (H).

DISCUSSION:

Jeffrey Costanzo is present and explained that the pool house will be a bathroom, a changing room and used for shade from the sun.

Chairman Skaine said he did not see the property stakes when he visited the site. Mr. Costanzo said the stakes were there; however they were not the conventional stakes. Mr. Mills saw the property staked. Mr. Costanzo explained that the covered porch is what initiated the need for a variance. The pool house will be used for storage in the winter. The construction materials will match the house; there are two small windows on each side of the proposed structure.

Chairman Skaine said he did not see any secondary structures in the Waterford area. He suggests the applicant contact the homeowners association and/or check for any deed restrictions to make sure a secondary structure is allowed.

ACTION:

Motion by Ryan Mills, seconded by David D’Amato, to **approve** Appeal No.4 as written.

Raymond Skaine	Aye	Arthur Henning	Aye
Hans Mobius	Aye	Ryan Mills	Aye
David D’Amato	Aye		

MOTION CARRIED.

MISCELLANEOUS:

The minutes of the meeting held on August 12, 2008 will remain tabled for further review.

Chairman Skaine announced his resignation. His last meeting as Chairman of the Zoning Board of Appeals will be October 14, 2008. He thanked the Town for the opportunity to serve for the past 13 years.

Meeting adjourned at 8:25 p.m.

Carolyn Delgato
Senior Clerk Typist