

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday, September 11, 2007
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-Chairperson Daniel Michnik
Ryan Mills

Zoning Board of Appeals members absent:

Hans Mobius

Other Town officials present were:

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

Other Interested Parties Present:

Dan Singer
Eric Bulmahn
Craig Witt
Brian Ritter

Clayt Ertel
David Saleh
Shelagh Thomas
Patrick Story

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** the minutes of the meeting held on August 14, 2007, as written.

Raymond Skaine Aye
Arthur Henning Aye
David D'Amato Aye

Daniel Michnik Aye
Ryan Mills Aye

MOTION CARRIED.

Old Business

Appeal No. 6

Daniel Singer
Residential Single-Family

Requests the Board of Appeals approve and grant a use variance to allow a commercial personal service shop (nail salon) in the Residential Single-Family Zoning District at 8353 Main Street.

Appeal No. 6 is in variance to Section 229-47, Permitted Uses.

DISCUSSION:

Raymond Skaine refers to criteria regarding variances in section 229-163 (F) (1) (a) of the Town code which states that no such use variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals, for each and every permitted use under the zoning regulations for the particular district where the property is located: (1) that the applicant can not earn a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence and asks the applicant what he has to support this. Mr. Singer provides a letter from Clayt Ertel, a licensed Real Estate Broker. Mr. Ertel is present. Mr. Singer said he bought the property in 2004 based on it being zoned Commercial, in March 2005 the property was rezoned from Commercial to Residential.

Ryan Mills asked, with regards to the septic system, if the applicant has tried to obtain a variance for anything larger than a one or two-bedroom house. Mr. Singer has discussed his intended project with a representative of the Health Department; the rep said a nail salon would be a good fit at this location.

Mr. Ertel said it would be impossible for Mr. Singer to obtain a return if he were to have a single family home built on this parcel.

Mr. Skaine refers to the second item of the code which states that the applicant must prove the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. Mr. Singer said his situation is unique because he has the only parcel in the area that was rezoned; it was rezoned as a mistake.

Mr. Skaine refers to item 3 and 4 of the code which states the requested use variance, if granted, will not alter the essential character of the neighborhood and that the alleged hardship has not been self-created. Mr. Singer said he submitted a site plan with a building design that fit into the character of the neighborhood, he paid much attention to maintaining the greenspace next to the adjoining properties, he does not believe his proposal will alter the character of the neighborhood. The parking and driveway would be located on Main Street so as not to impact traffic on Susan Drive. The salon would be family owned and operated with minimal employees. Customers would be by appointment only, thereby reducing traffic. He feels his hardship is not self-created; it was created when the Town adopted the amendment on March 9, 2005 which included the rezoning of this property.

Mr. Michnik asked what will happen to the family owned and operated business 10 years down the road, Mr. Singer said he can not predict that. Jim Callahan identifies that, if this use variance is granted, the Zoning Board of Appeals should put a condition on the motion indicating that any changes on the use in the future is subject to Town Board approval. Mr. Singer said he does not have an issue with this.

Mr. Michnik is concerned with the customers that walk in off Main Street; is Mr. Singer going to turn them away because they do not have an appointment? Mr. Singer explains that he is buying a franchise, which includes guidelines in the agreement. He said the hours will probably by 8:00 a.m. to 6:00p.m. Tuesday through Friday, Saturday until 2:00 p.m., he may open on Mondays if the demand is there. He may be open some evenings for a special occasion such as a wedding or a prom. Mr. Michnik wonders if Mr. Singer will make evening appointments for anyone who wants one; there are many special occasions.

Mr. Skaine refers to Section 229-163 (F) (1) (b) of the Town Code which states the Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning, to **approve** appeal #6, under Old Business, with the following conditions:

- The applicant is applying for a nail salon.
- The business hours will be controlled and adhered to, as agreed by Mr. Singer, which is 8:00 a.m. to 8:00 p.m., never open on Sundays.
- The applicant will abide by the current laws of the Town of Clarence in the Traditional Neighborhood District (TND) which states no parking in the front yard of the building, and can not come before the Board of Appeals for a variance to this condition.
- Any other change in use or additional modifications for this property is to be addressed by the Town Board.
- The applicant is to work with the neighbors, through the Landscape Committee, to provide a berm, trees or possibly a fence in order to shield the neighbors from the headlights of the vehicles that visit the site.

ON THE QUESTION:

Town Attorney Steve Bengart suggests the applicant state the hours of operation that his business will, undoubtedly, not extend past, this will eliminate any chance for interpretation of the motion; this is reflected in the motion and Mr. Singer agrees with it. Mr. Bengart also wants the applicant to understand that if there is a complaint of his business operating after hours he will be put on notice, if it happens again a violation will be issued and he can ultimately end up in court.

Mr. Singer said he designed the parking in the front of the building so as not to have any concerns with the neighbors on Susan Drive. Mr. Skaine said the design had no concern for the laws of the Town of Clarence; if the applicant can not abide by the parking condition stated in the motion, he can withdraw his application and put a halt to the project.

Mr. Singer asked if he was allowed to have parking on the side of the building. Mr. Callahan explains that the TND limits parking in the required front yard setback so it pushes the building and the architectural style up front and the parking to the rear; parking is allowed on the side of the building. Mr. Ertel points out that the neighbors will have to deal with headlights from the cars that pull into the parking lot behind the building. Mr. Singer is in agreement with parking on the side of the building and behind the building.

Mr. Michnik voices his concern with the issue of headlights shining on to the neighbor's property from the vehicles that visit the site. He wonders if the applicant would be willing to erect a 6' fence to mitigate the issue. Mr. Singer said there is a fence and evergreens on the neighbor's property that is behind his site. He would agree to putting in a small berm with some evergreens on his property, he also agrees to work with the neighbors through the Landscape Committee; this is a condition of the motion.

Raymond Skaine Aye
 Arthur Henning Aye
 David D'Amato Aye

Daniel Michnik Aye
 Ryan Mills Aye

MOTION CARRIED.

New Business

Appeal No. 1

Eric Bulmahn
 Residential Single-Family

Requests the Board of Appeals approve and grant a 120 square foot variance allowing a 320 square foot storage shed in the rear yard of 9600 Hartwig Drive.

Appeal No. 1 is in variance to Section 229-55 (H), Accessory Structures.

DISCUSSION:

Mr. Bulmahn explains that he would use the shed for storage. He currently has a one-car garage and would like to store his carpentry tools and lawn maintenance equipment.

Neighbor notifications are on file.

Mr. Bulmahn said he thought he could build a moveable structure on skid lumber without a permit, a stop work order was issued by the Building Department and he has complied with it.

Mr. Michnik asked the applicant how much labor would be involved and how much it would cost if the Zoning Board of Appeals asked him to adjust the size of the structure. Mr. Bulmahn said he is confused and does not understand the question.

Mr. Mills asked what materials the applicant will use, Mr. Bulmahn said the materials will match the house; the structure will be plywood with vinyl siding, shutters on the windows and flower boxes. The height of the structure is 15' 6".

Mr. Henning asked the applicant if he works out of his home, Mr. Bulmahn said he does not; he works for a general contractor. Mr. Bulmahn has no intention of starting a business out of the structure. Town Attorney Steve Bengart said if this was a condition of the motion would the applicant agree to it. Mr. Bulmahn said absolutely.

Mr. Henning said he would probably vote against this request if the structure wasn't already up; however, he sure the applicant did not do this on purpose. Mrs. Bulmahn said there is a garage in the neighborhood that is quite large; it is a two-car garage and is just as high as the Bulmahn's. Mr. Bulmahn plans on completing the garage as soon as he obtains approval to do so.

Mr. Skaine agrees with Mr. Michnik's questioning and explains to the applicant that knowing how much it would cost to adjust the structure would help the Board in approving the request because it could prove to be a personal hardship. Mr. Bulmahn said it would cost him approximately \$6,000.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **approve** appeal #1, with the caveat that it is for residential personal use only.

ON THE QUESTION:

Mr. Mills explains that if the variance was not granted it would be a hardship and it has been demonstrated that it would be an additional cost to adjust the structure. He does not feel the structure will be detrimental to the neighborhood.

Raymond Skaine	Aye	Daniel Michnik	Nay
Arthur Henning	Aye	Ryan Mills	Aye
David D'Amato	Aye		

MOTION CARRIED.

Appeal No. 2

Paul Heist/Pegasus Property
Commercial

Appeal No. 2 is in variance to Section 229-87, Additional Parking Requirements.

Requests the Board of Appeals approve and grant
a variance to allow front yard parking at 9545
Main Street.

DISCUSSION:

David Saleh, of Pegasus Property Management, is present. He explains that his company is growing and they have decided to move some of their software operations to this building. He would like to develop the parking to 15 spaces. Jim Callahan explains that the existing parking is grandfathered, but to expand that is a violation of the Commercial Code, thus the variance request.

Mr. Henning asked how many cars will be parking in the area. Mr. Saleh said 35 to 40 spaces for both buildings. There will be approximately 15 people working full time at the site. There is room for 4 spaces in the front of the building. Mr. Henning does not think the applicant needs the variance; he thinks there is enough parking as it is. Jim Callahan asked if the applicant could get permission to use the large empty parking lot that is adjacent, Mr. Saleh said the owners of that property are selling it and they can not provide any long term agreement.

Mr. Saleh said the neighboring properties have front parking

Mr. Michnik asked if the applicant showed interest in purchasing the property that is for sale next to the site. Mr. Saleh said they showed interest in purchasing part of the lot and the owners refused it; it is not feasible to purchase the whole property, at this point. Mr. Michnik does not see how adding parking spots in the front will help anyone; there is traffic congestion now.

Mr. Skaine said the corner of the site on Main Street can be dangerous and he does not want to create additional dangers by adding parking spaces to the front. He thinks Gunville Road is the more appropriate way to get off the property.

Mr. Saleh asked the Zoning Board of Appeals to table the request and allow him to return before the Board with Mr. Heist who is the engineer on the project.

Jim Callahan said the he told the Engineer that the project has to go to the Town Board; he knows they will deny it but they should have an opportunity to look at it.

Town Attorney Steven Bengart said, procedurally, the Zoning Board of Appeals should not be hearing the variance at this time; it needs to go to Town Board. It is clarified that if the Town Board denies the request will be heard before the Zoning Board of Appeals.

The applicant agrees to **withdraw** the application.

Appeal No. 3

Craig Witt
Residential Single-Family

Requests the Board of Appeals approve and grant a variance to the side yard setback requirement to allow the installation of an automatic standby generator at 4341 Connection Drive.

Appeal No. 3 is in variance to Section 229-55 (E), Accessory Structures.

DISCUSSION:

Neighbor notifications are on file.

Mr. Witt said the generator is closer than 10' away from the side yard property line and it has to be 5' away from the house. Thomas Gersner is present and is representing the company that will be installing the generator. This is the only location that the generator can be located due to the foliage that is around the house and the hook-ups for the gas and electric lines. It is clarified that the applicant is requesting a 3' variance. The generator will run for 20 minutes a week, the neighbor is aware of this and does not have a problem with it.

Mr. Henning asked what the cost of the generator is, Mr. Gersner said it is approximately \$4,900 and will handle a refrigerator, freezer, furnace, sump pump, the essentials. It will do 10.5 kilowatts starting and 7 kilowatts running.

Mr. Michnik asked what the base will consist of. Mr. Gersner said the manufacturer says that it should be dug down 4" and a bed of stone be done for it. Throughout the state they have installed 23,000 of these generators. They are four times less noisy than a portable generator but it can still be heard outside, inside the house it is barely audible.

Mr. Skaine asked if the applicant will be working with the neighbor as to establish the weekly day and time that the generator will run. Mr. Witt said yes.

ACTION:

Motion by Arthur Henning, seconded by Daniel Michnik, to **approve** appeal #3 as written.

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

MOTION CARRIED.

Appeal No. 4

Berkshire Homes/Shelagh Thomas
Agricultural Rural-Residential
Appeal No. 4 is in variance to Section 229-43 (A) (1), Building Height.

Requests the Board of Appeals approve and grant a 2' height variance to allow the construction of a 37' high new house at 5619 Kraus Road.

DISCUSSION:

Shelagh Thomas is present. Brian Ritter, owner of the property, is present as well. Ms. Thomas said the proper pitches of the roof from front to back is causing the height to be 37'. If the pitch were decreased it would cause the addition of more square footage to the first floor. The variance request is for the length of approximately 40' of the house; it does not apply to the entire length of house and would be about 4' in width. The house is approximately 4,000 square feet.

Mr. Mills asked if it is more favorable to have the membrane or the architectural pitch on the roof. Ms. Shelagh said the flat roof would probably be more expensive.

Mr. Henning does not have a problem with the request, especially since the house is far removed from any neighbors.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** appeal #4 as written.

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

MOTION CARRIED.

Appeal No. 5

Patrick Story
Residential Single-Family

Requests the Board of Appeals approve and grant a 120 square foot variance to allow the construction of a 320 square foot shed at 5310 Park Ledge Court.

Appeal No. 5 is in variance to Section 229-55 (H), Accessory Structures.

DISCUSSION:

Mr. Story explains that he currently has no storage at his residence. He would like to store his riding lawn mower, bikes, possible ATV's and seasonal items. The materials will match the house. He has two contractors that will do the work. Mr. Story has a full basement but it is finished off.

Neighbor notifications are on file.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** appeal #5 as written.

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

MOTION CARRIED.

Raymond Skaine commends the Zoning Board of Appeals members for doing a great job in getting out to all the properties on the agenda and being very cognoscente of what is going on in each neighborhood.

Meeting adjourned at 8:20 p.m.

Carolyn Delgato
Senior Clerk Typist