

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday September 14, 2010
7:00 p.m.

Chairman Arthur Henning called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Chairman Arthur Henning	Ryan Mills
David D'Amato	Robert Geiger
Patricia Burkard	

Zoning Board of Appeals members absent:

Vice-Chairman Daniel Michnik

Town Officials present:

Planner Brad Packard
Town Attorney Steven Bengart

Other interested parties present:

Michelle Eschborn	Sharon Corrigan
Scott Hughes	Jim Morabito
Russ Sciolino	Marcus R. Knoll
Lucy Wells	John Fisgus
Ashley Fisgus	

Appeal No.1

Michelle Eschborn
Residential Single-Family

Requests the Board of Appeals approve and grant a 184 square foot variance to allow for a 384 square foot shed at 5140 Ledge Lane.

Appeal No. 1 is in variance to § 229-55(H).

DISCUSSION:

Michelle Eschborn is present.

Chairman Henning read an e-mail received on September 13, 2010 from William J. Donohue of 5148 Ledge Lane: "We would like to know what such a large shed is to be used for? It is the size of a two car garage. We are also concerned about its height and where on the property the proposed shed is to be placed? If the proposed shed is for storage only of lawnmower, tools, year furniture and the like, if it is no higher than the shed they demolished, and if it is placed at the very rear of the fenced yard, we would have no objection to a code variance." The e-mail is a permanent part of the file.

Ms. Eschborn said she demolished a 10' x 12' shed last month, they have outgrown everything. They made an inventory list of the items they need to remove from the garage and the neighbor's garage which include but is not limited to bicycles, a snow blower, large grills, garden tools, patio furniture and a riding lawnmower. A hand drawn elevation is reviewed by all members.

There is one neighbor notification form on file.

The proposed shed will be 20'-25' behind the previously existing shed, along the fence line. It will be 16' in height with a 6' or 8' door. There is a cost difference of approximately \$400.00 between the 6' and 8' door. It will be sided, trimmed and roofed to match the home. Planter boxes will be installed under the windows. She would like to save as many trees as possible as she lost many in the October storm. Ms. Eschborn has lived in the home for 25 years. Granzel Construction will be doing the work; he can start next week. No cars will be kept in the shed. Ms. Eschborn clarified that the siding would be the horizontal vinyl not the shake vinyl. The foundation will be a concrete slab.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 1, as written.

Patricia Burkard	Aye	Robert Geiger	Aye
David D'Amato	Aye	Ryan Mills	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 2

Scott Hughes
Residential Single-Family

Requests the Board of Appeals approve and grant a 160 square foot variance to allow for a 360 square foot accessory structure at 4510 Greenbriar Road.

Appeal No. 2 is in variance to § 229-55 (H)

DISCUSSION:

Chairman Henning noted that the applicant was not present at the July 2010 meeting thus the request was tabled, the same request was denied at the August 2010 meeting. The applicant has since lowered his request from a 200 square foot variance for a shed to 160 square foot variance; this is a decrease of 20%.

Mr. Hughes is present and explained he has many items that he needs to store in the garage and he needs a work area for himself and his wife. He needs a work area for things he may be working on around the house and his wife is into gardening and needs some space for tools and pots.

Two neighbor notification forms are on file.

Mr. Mills asked if the applicant contemplated going smaller with size of the structure. Mr. Hughes said he could go smaller and ask for 340'. There will be a 14' overhead door on the south side of the structure. The building materials will match the house. The man door will match the house as well. There will be electric in the garage. The structure will not be pre-fabricated. Mr. Mills reviewed a document entitled

84 18' x 20' garage which shows various cross-sections and some exterior elevations. Mr. Hughes will do the work. He has lived in the house for two (2) years. The height of the structure will be 15'.

Mr. Geiger asked if the applicant could make the garage 18' x 16'. Mr. Hughes said he can do that if it is the only way to get the variance although he would rather do 18' x 18'.

The current garage is a one and a half car garage and the house measures 1700 square feet. Mrs. Burkard asked why the applicant didn't locate the proposed structure at the end of the driveway where the basketball net is. Mr. Hughes said if he put it there it would take away from the country setting and it would block his view from the house.

There are two (2) neighbor notification forms on file with no objections.

It is 21' from the side of the proposed building to the house.

ACTION:

Motion by Ryan Mills, seconded by Robert Geiger, to **approve** Appeal No. 2, as follows:

-a 124 square foot variance to allow for a 324 square foot accessory structure at 4510 Greenbriar Road. This amounts to an 18' x 18' structure.

Patricia Burkard	Aye	Robert Geiger	Aye
David D'Amato	Nay	Ryan Mills	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 3

F & V Morabito Mgmt./Jim Morabito
Commercial

Requests the Board of Appeals approve and grant a 24 square foot variance for the installation of a 24 square foot LED sign display board (complete existing sign board would total a cumulative 120 square feet) at 8206 Main Street.

Appeal No. 3 is in variance to § 181-2 (B)(1)

DISCUSSION:

Mr. Morabito explained that the sign will placed on a sign stanchion; the correct address for the stanchion is 8224 Main Street.

Michael Yost, with Yost Neon Displays, is present. Russ Sciolino, president of the Computer Discount Center is also present along with Jim Morabito who owns and operates the Main Transit Plaza.

Chairman Henning clarified that the area in question is zoned Commercial.

Mr. Morabito explained a sign needs to be added to the stanchion for Mr. Sciolino's business. The stanchion originally had five (5) signs on it but they began to show signs of weather and needed to be

replaced. The sign was rebuilt which then only had four (4) signs on it, but was approved and built for five (5). They want to install the fifth sign now.

Mrs. Burkard asked if the other businesses on the sign have a problem with the proposed sign being LED while their signs are not. Mr. Morabito said no. There is an inch difference in the proposed sign and the existing signs. Mr. Morabito said the will abide by the current sign regulations.

Mr. Morabito said none of the other businesses in the plaza have expressed any interest in changing their signs to LED.

Mr. Sciolino has been in this location for approximately 6 years.

Mr. Mills asked Mr. Morabito how important it is to have the Main Transit Plaza portion of the sign up. Mr. Morabito said it is important as an identifier for the businesses within the plaza. He explained that he owns Louie's Deli and the Ballow Law Firm but they are separate entities. Mr. Mills asked if there is any other way the client can be satisfied without achieving the variance. Mr. Morabito does not believe there is another location for the proposed sign that would not require a variance. Mr. Mills pointed out that there are other tenants in the plaza who are not represented on the sign and asked Mr. Morabito if he could tell the Board that those tenants will not want a sign and he will not be back before the Board asking for a variance. Mr. Morabito said he does not have room on the sign anyway; he will not be back before the Board for another sign variance. Town Attorney Steven Bengart asked Mr. Morabito if he would agree if this was made a condition to the motion. Mr. Morabito said he feels this issue would need further discussion before he would agree to it. After further discussion, Mr. Morabito said it seems reasonable if a condition is set which states he cannot come back to the Board for a variance that exceeds 120 square foot of signage.

The cap on the sign is about 6" or 8". Mr. D'Amato asked if the same thing can be accomplished if the Main Transit Sign was put on the cap or on the sides of the sign. Mr. Morabito said he would not do it that way.

Mrs. Burkard asked if signs will be added to the Bill Gray's sign, Mr. Morabito does not know what will happen in the future; currently there are no plans for that. Town Attorney Steven Bengart clarified that just because there were other signs in the past and the new sign is up, does not give Mr. Morabito an automatic right to replace those. Mr. Morabito understands this. There are six (6) businesses in the plaza that do not have signs on the poles; they all have signs on the building.

ACTION:

Motion by Ryan Mills, seconded by Robert Geiger, to **approve** Appeal No. 3, with the following stipulation and condition:

-the applicant or any legal owner of the plaza will not come before the Zoning Board of Appeals again to request any variance related to this sign that would exceed 120 square feet.

Patricia Burkard	Aye	Robert Geiger	Aye
David D'Amato	Aye	Ryan Mills	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 4

Wilson Farms
Commercial

Requests the Board of Appeals approve and grant a variance to allow a secondary building wall sign for a franchise tenant not having one or more separate interior walls at 9440 Main Street.

Appeal No. 4 is in variance to § 181-2 (K)

David D’Amato recused himself from the meeting with regard to discussion and voting for this agenda item.

DISCUSSION:

Marcus Knoll, with TRM Architects, is representing the applicant. Mr. Knoll explained the variance is needed due to the contractual relationship with the Subway franchise; they are requiring signage on the building. Wilson Farms is undergoing a remodeling of the interior and exterior of the building. They made an effort to stay under the 100 square foot sign requirement with the combination of the two (2) signs, but a second sign is what requires the variance. Wilson Farms does not have independent franchise owners. They are entering a five (5) store agreement to try the combination of the two (2) stores. The signage will be the same for Subway on all five (5) combination stores. The sign will be internally lit and will be the same as what is depicted on the photo in the file entitled Wilson Farms #731.

Mr. Mills asked if there is any other way to preserve the contractual relationship with Subway and not have this exterior sign. Mr. Knoll said the sign is vital to the contractual relationship. It will be the same size as those signs on the other combination buildings.

ACTION:

Motion by Robert Geiger, seconded by Arthur Henning, to **approve** Appeal No. 4, as written.

Patricia Burkard	Aye	Robert Geiger	Aye
David D’Amato	Recuse	Ryan Mills	Aye
Arthur Henning	Aye		

MOTION CARRIED.

David D’Amato returned to the meeting.

Appeal No. 5

Earl and Lucy Wells
Residential Single-Family

Requests the Board of Appeals approve and grant:
 1.) A variance to allow for both an attached and detached garage.
 2.) A 7’ variance to allow a 3’ side yard setback to a detached accessory structure.
 Both requests apply to the construction of a detached garage at 6420 Heise Road.

Appeal No. 5 is in variance to § 229-55 (H) and § 229-55 (E) (1).

DISCUSSION:

Lucy Wells is present and explained they changed the plan to locate the structure even with the pool; there will be no garage door.

Mr. Packard explained that typically any structure over 400' has enough space to operate as a garage.

Mrs. Wells said they are asking for the variance because they need more space for their children's toys, pool equipment, etc.; currently there is no room to park a car in the garage. The storage portion of the structure will be 13' x 23'; there will also be a bathroom and a changing room. The total size is 43' x 13'. The existing accessory structure is 20' x 25' and houses lawn maintenance equipment. Mrs. Wells said the variance for the side yard setback is needed because that location will aesthetically match the pool as they are both rectangle shaped. The building materials for the proposed structure will be brick and will match the house. There will be a right-of-way next to the structure. A double-door will be on the side that faces the pool. There will also be a window installed.

The parcel in question is 100' x 1100'. Maria DeStefano has owned the property since the 1980's. Mrs. Wells built her house in 1997. The shed that is currently on the property was built shortly after the home was completed. Mr. D'Amato asked if the plan could be reconfigured to encompass the current shed with what the plans are now. Mrs. Wells said the bathroom facilities will be closer to the pool if the proposed structure is built. Mr. D'Amato noted that the current shed is full. Mrs. Wells confirmed this. Mr. D'Amato does not want to see this proposed structure become too full in the future where the Wells' would want to put another accessory structure on the property. Mrs. Wells said she would not put another shed on the property. She is trying to make her property look pleasing from the road by putting the proposed structure up and not using the existing vinyl sided shed.

The proposed kitchen will have a sink and a refrigerator, no stove. Mr. Mills is concerned with the aesthetics in the area given the large accessory structure(s) on the property. He asked the applicant if she would be amenable to a condition that stated the proposed structure's materials must match the house. Mrs. Wells agreed. The principle structure is 3930 square feet in size.

Mrs. Wells will have family and friends construct the garage. She will contract out the electrical and plumbing and would like to have the structure completed this year.

There are no neighbor notification forms on file for 6408, 6404 or 6400 Heise Road.

It is confirmed that the proposed structure would start where the curb of the pool starts on the property.

ACTION:

Motion by Ryan Mills, seconded by Robert Geiger, to **approve** Appeal No. 5, as written with the following conditions:

- all sides of the accessory structure are to be all brick.
- the size of the structure is to be 45' x 13' and the approximate start of the structure is to be in line with the pool curb closest to Heise Road.
- the east wall elevation of the structure, facing Heise Road, will either include one window or one door.

ON THE QUESTION:

Mrs. Burkard asked if a window will be installed on the side of the accessory structure that will face any vehicles pulling in the driveway. Mrs. Wells said there will either be a double door or a window to mimic those on her house.

Patricia Burkard	Aye	Robert Geiger	Aye
David D'Amato	Aye	Ryan Mills	Aye
Arthur Henning	Aye		

MOTION CARRIED**Appeal No. 6**

Maria DeStefano
Residential Single-Family

Requests the Board of Appeals approve and grant a 535' variance to allow for a 660' front yard setback for the construction of a new residence at 6430 Heise Road.

Appeal No. 6 is in variance to § 229-52 (A) (3).

DISCUSSION:

Mrs. DeStefano is the owner of the property; Lucy Wells is her daughter and will be speaking on her behalf. Mrs. Wells said her brother wants to build a house next to her, but they want to locate the house further back on the property to add some privacy to each house. This location will be in line with the Lucente and Wilcox properties. If approved, the construction would start this year.

Mr. Mills asked the applicant if there is any way they could reduce the size of the variance request as it is a substantially large variance. Mrs. Wells said it would look odd if the house was stuck in the middle of the property; it would be too close to the storage/pool house that was just approved. The size of the proposed house is 3857 square feet.

Mr. Mills asked what the plan would be if this request was denied. Mrs. Wells said they would not sell the land, she does not see why granting the variance would be an issue because Mr. Wilcox and Mr. Lucente are back there and if the house is even with those homes it shouldn't be a problem. Mrs. Wells said there is no other plan.

Mrs. Wells was unable to contact the Kings, who are neighbors at 6450 Heise Road.

Mr. D'Amato said, in his opinion, he would put the home in line with the other homes on Heise Road including Mrs. Wells house which is set back 280'. Mr. D'Amato suggested going towards the road 200', but Mrs. Wells said that would put the house right on top of the accessory structure that was just approved.

There is a private right of way Open Development next to the property in question. Mr. Geiger asked if there was any intention for the DeStefano's property to become an Open Space Development. Mrs. Wells said no. Mrs. Wells said she received a variance when she built her house at 6420 Heise Road. Her brother has two young children and they want to be as far away from the road as possible. Mrs. Wells

talked to Mr. Wilcox and he has no problem with the variance request. She said Mr. King has no intentions of living at 6450 Heise Road as he wants to sell it someday.

Mr. Mills is concerned that there is no neighbor notification form from 6450 Heise Road. Mrs. Wells said she mailed a form to the owners home address and placed a phone call but there was no answer.

ACTION:

Motion by Arthur Henning, seconded by Robert Geiger, to **approve** Appeal No. 6, as written.

Patricia Burkard	Nay	Robert Geiger	Aye
David D'Amato	Nay	Ryan Mills	Nay
Arthur Henning	Aye		

MOTION FAILED.

Town Attorney Steven Bengart said the Board has the option to table the agenda item to allow additional neighbor notifications to be obtained or to allow time to rethink positions.

Motion by Ryan Mills, seconded by Robert Geiger, to **table** the hearing on Appeal No. 6, pending the following:

- a neighbor notification from 6450 Heise Road. It is important that the neighbor be notified because the layout of the house that may be built on that property is going to be integral to layout and fabric of this area of the community.
- There is to be more exploration in terms of where the house could be positioned. This variance is asking for a very large setback. Alternative layouts are to be submitted for the next meeting.
- Letters from adjacent property owners at 6450, 6400, 6404 and 6408 Heise Road stipulating they understand what the applicant is asking for and they agree to it.

Town Attorney Steven Bengart explained that the above items are not legal requirements but the Zoning Board of Appeal members are asking for them to provide a comfort level to the Board when rendering a decision.

Patricia Burkard	Aye	Robert Geiger	Aye
David D'Amato	Aye	Ryan Mills	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 7

John and Ashley Fisgus
Residential Single-Family

Requests the Board of Appeals approve and grant a 4' variance to allow for a 42' front yard setback for the construction of an addition to an existing attached garage at 9503 Boxwood Drive.

Appeal No. 7 is in variance to § 229-52 (A) (1).

DISCUSSION:

John and Ashley Fiskus are present. Mr. Fiskus said they moved into the area about three (3) years ago, they are one (1) of the two (2) houses on the street that has a side-load garage. The garage measures 19' x 6" deep and 17" x 6" wide. Presently, he can only fit one car in the garage; both he and Ashley have large cars. He would like a front-load garage and to be able to park both cars in the garage. Entry into the garage now is difficult and dangerous in the winter. A new driveway is not needed, just an apron into the front where the two (2) windows are. Mr. Fiskus has hired an architect; there is a baring wall and a beam will be installed further to the east beyond the garage. The beam will be extended into the addition; the blueprints have not been started yet because they wanted to see if the variance was granted first. No one else in the neighborhood has made an adjustment like this, but there are many with the same problem. The house was built in 1998. Bob Bechtel will be doing the work; he has done other work in the house for the Fiskus'. There will be no windows on the east side of the addition. The building materials will match the house. Some shrubs and part of the front grass will have to be removed to build the addition.

One neighbor notification form is on file. Ms. Fiskus attempted to contact the other neighbor but there was no answer at the door after various attempts.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 7, as written.

Patricia Burkard	Aye	Robert Geiger	Aye
David D'Amato	Aye	Ryan Mills	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Motion by David D'Amato, seconded by Arthur Henning, to **approve** the minutes of the meeting held on August 10, 2010, as written.

Patricia Burkard	Aye	Robert Geiger	Aye
David D'Amato	Aye	Ryan Mills	Aye
Arthur Henning	Aye		

MOTION CARRIED

Meeting Adjourned at 9:00 p.m.

Carolyn Delgato
Senior Clerk Typist