

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday October 14, 2008
7:00 pm

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

Zoning Board of Appeals members present:

Chairman Raymond Skaine
Arthur Henning
Ryan Mills

Vice-Chairman Daniel Michnik
Hans Mobius
David D'Amato

Town Officials present:

Director of Community Development James Callahan
Town Attorney Steven Bengart
Planning Board Liaison Richard Bigler

Other Interested Parties Present:

Eric Bloom
Dianne Bloom
Tom Baum
Sue Muchow
Mark Zeis
Brian Ritter
Susan Geary

Bill Henderson
Veronica Schroeder
Judy Baum
Larry Muchow
Renette Janora
Robert Geary
Clayt Ertel

Motion by Raymond Skaine, seconded by Daniel Michnik, to **approve** the minutes of the meeting held on August 12, 2008, as written.

Raymond Skaine Aye
Arthur Henning Aye
Ryan Mills Aye

Daniel Michnik Aye
Hans Mobius Aye

MOTION CARRIED.

Old Business

Appeal No. 1

William L. Henderson
Commercial

Requests the Board of Appeals approve and grant:

- 1.) a 43'2" variance to allow a 1'10" side yard setback to an existing residential use.
- 2.) A 10' variance to allow an 80' front yard setback (existing setback is defined by surrounding properties at 70').

Both requests apply to the proposed construction of a new commercial plaza at 10060 Main Street.

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

DISCUSSION:

A letter dated October 10, 2008 is submitted to the Zoning Board of Appeals and reads as follows: "Dear Chairman Skaine: We are writing to you as the current owner and eventual owner of record for the above mentioned property, 10060 Main Street, Clarence New York. It is our understanding that Paul and Diane Bloom, with or through their Attorney Eric Bloom, are addressing the Board during a meeting to be held at the above date with respect to 10060 Main Street. Please know that it is our intent to enter into a contract of sale agreement to eventually transfer title of 10060 Main Street to Paul and Diane Bloom. Therefore, it is with our permission as the property owners that the Blooms and/or their Attorney will be speaking before the Board on the 14th on matters concerning 10060 Main Street. In our absence we would greatly appreciate the Zoning Board showing the Blooms the same courtesy as we would be shown as owners. Thank you for your time and attention. Sincerely, Maria and Anthony Pacenzia." A copy of the letter is on file.

Eric Bloom, attorney for the applicant, is present. Bill Henderson is the architect for the project and is present as well. Mr. Henderson said the location of the building has been flipped. The plan that is currently being reviewed is dated September 19, 2008. The building will be 3,300 square feet; the setback is to accommodate the neighbor. If the Board wants the building moved towards Main Street, the applicant has no objection to doing this.

Veronica Schroeder, neighbor to the right of the project site, spoke to Mrs. Bloom, her attorney and the architect. Ms. Schroeder felt intimidated by the attorney as he explained this issue would go to court if the Board denied it again. The stakes are 2' from her garage, which is where her patio and grill are set up. Mr. Bloom said the stakes are 12' from the garage. Ms. Schroeder thinks the delivery area is too close to her property. Mr. Bloom said the way the Zoning Ordinance is written makes it impossible to build any type of commercial structure on the property. He brought court of appeals cases to the attention of the Zoning Board of Appeals. The cases expressed the view that it would be improper for a zoning ordinance to be enacted which makes it impossible to construct any type of structure on the property and thus deprive the owner of the commercial value of the property. Mr. Bloom explains that the property is not a forever-wild zone. Any other conclusion, aside from granting the variance, would be grounds for an Article 78 proceeding. Chairman Skaine said it is also the right of Ms. Schroeder to take an Article 78 if the variance is granted.

Arthur Henning asked if there has been input from the owner of the All State building, which is on the other side of the proposed building. The owner's input asked for the proposed building to be placed

on the other side of the lot, farthest from his property. This request was received at the September 9, 2008 Zoning Board of Appeals meeting written on a neighbor notification form; the form is on the file. Mr. Henning asked Mrs. Bloom what she would do if the variance request is denied. She does not know, but she feels this is necessary to expand her business, especially with the growing competition in the area.

Ryan Mills asked if the applicant has a more detailed landscape plan, Mr. Bloom said no.

Daniel Michnik asked how much of the 3,300 square feet of the building will be for Mrs. Bloom's business and how much will be rented. Mrs. Bloom said there will be no rentals, her husband will run the gourmet store and have an office there; she will have approximately 2,000 square feet for her business. If the request is granted Mrs. Bloom has no intention of leasing or renting out any part of the building. Mr. Michnik explains that if the usage of the building is changed, the traffic pattern will change as well.

There is no motion made.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning, to **close the hearing** for Appeal No. 1 under Old Business.

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

MOTION CARRIED.

Chairman Skaine asked if any member wishes to make a motion on Appeal No. 1 under Old Business. There is no motion made.

New Business

Appeal No. 1

Thomas and Judy Baum
Restricted Business

Requests the Board of Appeals approve and grant a 6" variance from the Flood Damage Prevention Local Law to allow a first floor elevation of 585' for the construction of a new pole barn at 7581 Transit Road.

Appeal No. 1 is in variance to section 107 Flood Damage Prevention.

DISCUSSION:

Mr. & Mrs. Baum are present. Mr. Baum explains he wants to build a pole barn to be no more than six inches above the road.

Chairman Skaine reads a letter dated September 11, 2008 from Timothy Lavocat, the Assistant Town Engineer: "The property located at 7581 Transit Road is located within the density floodway for Black Creek. The applicant proposes to construct a detached pole barn with a proposed floor elevation at the base flood elevation (BFE) of 585.0. The proposed pole barn floor elevation is not in compliance with

development standards set forth in Town of Clarence Local Law 03-2000-Flood Damage Prevention. The Town of Clarence Local Law 03-2000-Flood Damage Prevention states that all non-residential structures must have the lowest floor (pole barn floor) elevated to one foot above the base flood elevation (586.0). Due to the hardship of extensive fill required to comply with LL 03-2000 we recommend approval of the variance to construct the pole barn with a floor elevation at the base flood elevation (585.0) with the following conditions:

- Property owner submit a letter of understanding to the Engineering Department accepting the increased flood risk associated with constructing the pole barn with a floor elevation 1.0' lower than the requirements set forth in Local Law 03-2000.
- All other proposed construction and/or filling operations on the subject property must be in conformance with all requirements set forth in Local Law 03-2000-Flood Damage Prevention.
- Property owner submit a certified as-built elevation survey of the structure showing the finished floor elevation. This will be required prior to issuance of Certificate of Compliance.

Mr. Baum is aware of and agrees to all conditions listed in the Town Engineers letter. The letter is on file.

Mr. Michnik asked what the applicant plans to store in the proposed building. Mr. Baum said he will store personal property such as his lawn tractor; there will be no business run out of the proposed pole barn.

In response to Mr. Mills' question regarding the materials to be used for the construction of the pole barn, Mr. Baum said it will be steel and will match the house color. There will be one single garage door, a service door and one window. There will be stone on the ground in the area leading to the pole barn.

ACTION:

Motion by Hans Mobius, seconded by Arthur Henning, to **approve** Appeal No. 1, as written with the conditions to be followed as stated in the Town Engineer's letter dated September 11, 2008. There will be no business run out of the proposed structure; it is for storage of personal property only.

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

MOTION CARRIED.

Appeal No. 2

Susan and Larry Muchow
Residential Single-Family

Requests the Board of Appeals approve and grant a 3' variance to allow a 7' side yard setback for the construction of a new garage at 4178 Shimerville Road.

Appeal No. 2 is in variance to section 225-55 (E) (1).

DISCUSSION:

Mr. Muchow explains that his garage was falling apart. The garage currently has an 8.5' setback from the lot line. He does not have a basement and would like more storage room.

In response to Mr. Mills question regarding the materials to be used in construction, Mr. Muchow said the siding and the roof will match the house. The back area of the proposed garage will be for storage and the front portion will accommodate one vehicle. There will be one single garage door and two entry (man) doors.

Mr. Muchow confirms that there will not be a business run out of the proposed garage.

Neighbor notification forms are on file.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 2, as written.

Raymond Skaine	Aye
Arthur Henning	Aye
Ryan Mills	Aye

Daniel Michnik	Aye
Hans Mobius	Aye

MOTION CARRIED.

Appeal No. 3

Mark Zeis
Residential Single-Family

Requests the Board of Appeals approve and grant:

- 1.) a 1' variance to allow a 4' rear yard setback for the construction of an accessory structure.
- 2.) A 1'6" variance to allow a 3'6" side yard setback for the construction of an accessory structure.

Both requests apply to 4692 Brentwood Drive.

Appeal No. 3 is in variance to section 229-55 (E) (1).

DISCUSSION:

Mark Zeis is present.

Chairman Skaine notes that neighbor notification forms are on file.

Mr. Zeis explains that the shed has been installed for 2 years; he was unaware that he needed a variance. His neighbor is currently building a shed and Paul Gross, of the Building Department, was in the neighborhood checking on the neighbors shed when he noticed a variance was needed for Mr. Zeis' shed. Mr. Zeis has an above ground pool in his back yard and if he has to move the shed he is concerned that it will be too close to the electric line for the pool.

Mr. Mobius asked if it would be a hardship to the applicant if the application was denied. Mr. Zeis said yes as it would require him to disconnect the electric and re-level the shed; the shed would be uncomfortably close to the electric line.

Mr. Zeis landscaped either side of the shed when it was installed.

Mr. Henning does not think the shed is in a bad location; there is no one living behind Mr. Zeis' property.

Mr. Mills asked what Mr. Zeis would do if his application was denied. Mr. Zeis said he would keep it in the same area but would be forced to move it up and over.

Chairman Skaine agrees with Mr. Henning in that the shed is not imposing on any neighbor.

ACTION:

Motion by Arthur Henning, seconded by Hans Mobius, to **approve** Appeal No. 3, as written.

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

MOTION CARRIED.

Appeal No. 4

Paul Gilden
Residential Single-Family

Requests the Board of Appeals approve and grant a 4'6" variance to allow a 5'6" side yard setback for the placement of a new generator at 8851 Clarence Center Road.

Appeal No. 4 is in variance to section 229-55 (E) (1).

DISCUSSION:

Renette Janora, owner of the property, is present. Mr. Gilden, a representative from the company that will be installing the generator, is not present. Ms. Janora said the reason for the request is because the generator needs to be near the gas line; it would not look decent if it were placed in the back yard as plants and bushes would need to be removed.

Chairman Skaine said neighbor notification forms are on file.

Mr. Mobius said the generator will be well hidden. There is a 5' hedgerow, the neighbor's driveway, some property and then the house. So the generator will be far from the neighbor's actual living quarters.

Ms. Janora believes the hedgerow is on her property.

ACTION:

Motion by Hans Mobius, seconded by Daniel Michnik, to **approve** Appeal No. 4, as written.

Raymond Skaine Aye
 Arthur Henning Aye
 Ryan Mills Aye

Daniel Michnik Aye
 Hans Mobius Aye

MOTION CARRIED.

Appeal No. 5

Susan Sicignano
 Residential Single-Family

Requests the Board of Appeals approve and grant a 6' variance to allow a 4' side yard setback for the placement of a new generator at 8817 Stonebriar Drive.

Appeal No. 5 is in variance to section 229-55 (E) (1).

DISCUSSION:

Brian Ritter, from Zenner and Ritter, is representing the applicant.

Chairman Skaine said there are neighbor notifications forms are on file. The form from 8823 Stonebriar Drive notes that the owner "does not object to the variance so long as the generator is placed 4+' from the mutual property line they share as displayed in the drawing. Any variation from the drawing will void his approval without a modified drawing being approved before placement." The drawing being referred to is from Landesign Surveyors, dated June 4, 2008 and is on file.

Mr. Ritter explains that there are poured concrete patios to the rear and to the right side of the house, there is also a garage on one side of the house. If the generator were placed anywhere else on the property it would require excavating concrete to get the necessary gas and electric lines to the generator. The neighbor has a side load garage so there is substantial distance from the property line.

Chairman Skaine recuses himself as he has had a working relationship with Zenner and Ritter in the past.

Mr. Mobius asked if there were any plans to landscape the area around the generator. Mr. Ritter said Ms. Sicignano has plans to landscape the area.

Mr. Ritter explains that it would be a substantial cost increase to place the generator in an area other than the proposed location. Mr. Michnik said in the past generators were placed where the family room, fire place and driveway meet. He suggested digging under the sidewalk, run the utility line there and then the full length of the basement to the other side. Mr. Ritter said that creates about 70' of electrical and gas line connections, which creates an issue with the fuel supply because the gas meter and the electrical panel are located at the opposite end of the structure, thus there are concerns with the fuel supply over that distance; they would have to go to an inch and a quarter line.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 5 as written with the condition that landscaping is provided around the generator with focus towards the street and the neighbor's side. The landscaping must be complete within 9 months.

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

MOTION CARRIED.

Appeal No. 6

Robert J & Susan H Geary Jr.
Residential Single-Family

Requests the Board of Appeals approve and grant a 184 square foot variance to allow the construction of a 384 square foot shed in the rear yard at 8287 Vernon Circle.

Appeal No. 6 is in variance to section 229-55(H).

DISCUSSION:

Chairman Skaine notes that neighbor notification forms are on file.

Robert and Susan Geary Jr. are present. Mr. Geary explains that he needs more storage space for their children’s toys. They have no attic, a damp basement and a one car garage that is fully packed. The proposed shed will have 2 windows at the top on either end of the structure and 2 windows facing the house; no windows on the back or the one side for security reasons. The second floor of the accessory structure will be for storage. The first floor would hold what is currently in the garage. A vehicle can then be parked in the garage. The applicant refers to the advertising flyer to clarify the structure he is looking to install, there are two structures pictured towards the top of the flyer, the one on the right is what the applicant is looking to buy. It is a 16’ x 24’ shed. The color of the shed will be white with blue trim; it will match the gazebo. The manufacturer only offers the double door. There will be no business run out of the structure.

There is a question on the actual height of the structure; Chairman Skaine clarifies the height saying it is 15’ 6”.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 6, as written, with the condition that no business is run out of the accessory structure.

ON THE QUESTION:

The applicants understand and agree with the motion.

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

MOTION CARRIED.

Appeal No. 7

Marita Haas
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a 145' variance to allow a 195' front yard setback for the construction of a new house at 8100 Stahley Road.

Appeal No. 7 is in variance to section 229-63.

DISCUSSION:

Clayt Ertel is representing the applicant and explains that the property is actually adjacent to 8100 Stahley Road.

Ryan Mills recuses himself from discussion and voting on this agenda item.

Mr. Ertel said the proposal of the house meets all setback requirements; the driveway will come down through the center.

The setback requirement is 70' in the Traditional Neighborhood District. Chairman Skaine said if this variance is granted it will establish the new front yard setback for the other two lots. Mr. Ertel understands.

The acreage on the property in question is .773.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No. 7, as written.

ON THE QUESTION:

It is clarified that the variance requested is 175' to allow a 225' front yard setback.

Mr. Michnik amends his motion to reflect a 175' variance to allow a 225' front yard setback for the construction of a new house, Mr. Henning amends his second.

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

MOTION CARRIED.

Motion by Arthur Henning, seconded by Hans Mobius, to **approve** the minutes of the meeting held on September 9, 2008, as written.

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

MOTION CARRIED.

As this is Chairman Skaine's last meeting, he remarks that it has been a pleasure working with the Zoning Board of Appeals members. Town Attorney Steven Bengart thanks Chairman Skaine for everything he has done for the Town of Clarence. Jim Callahan also thanks Chairman Skaine for his work. Daniel Michnik thanks Chairman Skaine for his 14 years of service to the Town of Clarence.

Meeting adjourned 8:20 p.m.

Carolyn Delgato
Senior Clerk Typist