

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday November 9, 2010
6:30 p.m.

Chairman Arthur Henning called the meeting to order at 6:30 p.m.

Zoning Board of Appeals members present:

Chairman Arthur Henning	Vice-Chairman Daniel Michnik
Ryan Mills	David D'Amato
Robert Geiger	Patricia Burkard

Town Officials present:

Director of Community Development James Callahan
Town Attorney Steven Bengart

Other interested parties present:

Corey Auerbach	Jeffery Palumbo
Justin DeStefano	Otto Misso
Don Ehrenreich	Msgr. Frederick Leising
James Smith	Michelle Smith
Mike Kouimanis	Steven Northman
Joe Reinhart	

Old Business

Appeal No. 6

Maria DeStefano
Residential Single-Family

Requests the Board of Appeals approve and grant a 5' variance to allow 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:

Chairman Henning noted that neighbor notification forms are on file from 6450, 6400, 6404 and 6408 Heise Road. A negative notification has been received from the Kings, property owners at 6450 Heise Road, it reads, "We object to the variance due to the fill added in past causing ponding and erosion on our property. Additional fill will cause more damage. The owners disregarded the stop order from the Town."

Jeffery Palumbo, of Damon Morey LLC, is representing the applicant. Justin DeStefano will build the house and live there with his family, he is present at the meeting. Mr. Palumbo said they moved the variance up 50 feet, from 660' to 610', in order to provide the benefit to Mr. DeStefano of setting the house back for the safety of his children while not imposing on the neighbors. Mr. Palumbo believes the

house would be in line with the neighbors closest to them. If they moved it up more it would create more problems than it solves. The applicant has no problem with providing the Board with the information they need at the building permit stage to make sure the fill is appropriate and will not cause any drainage problems for the neighbors.

Mr. Palumbo referred to a TVGA survey that shows the approximate location of where the applicant would like to build his house; it is 610' back from the roadway. The survey is dated June 24, 2010 and is on file.

Mr. DeStefano said he has certified plans for the house and the deed is in his name. He will be contracting the work through friends and family in the construction business. Mr. DeStefano will be his own general contractor and Mr. Natale will be the construction manager. The existing roadway on the property will be the driveway for the new house.

Mr. Geiger asked for details on the sewer system. Mr. Palumbo said there will be a lateral from the Lucente property north to project site. Mr. Geiger also asked about the fill issue. Mr. Callahan explained there was an on-going battle with the neighbor in the past, the complaint letter in the file is from 2003. The fill would be resolved upon development of the property.

The sister's house is set back 230'. Mr. D'Amato asked why the applicant insists on a 610' setback. Mr. DeStefano said he is not insisting on anything, he asked for 660' but that was removed. In a way meant to show good faith he moved the request up 50', for a setback of 610' in hopes to get this accomplished. The reason is more for the safety of his children as cars speed on Heise Road. Another reason is to keep in the good flow of the development area, it is in line with the other homes and it will be a beautiful home. Mr. D'Amato said fencing can also be used for the safety of the children. Mr. DeStefano said it would be expensive to fence in the entire property. Mr. D'Amato pointed out that the average setback in the area is 125', Mr. DeStefano's sister's house is setback at 230', but Mr. DeStefano wants a 610' setback, which is extreme. In Mr. D'Amato's opinion, the situation does not warrant 610'. Mr. DeStefano asked why the house can't be setback that far, he doesn't understand the setback. Mr. D'Amato explained the setback is in place to keep the neighborhood uniform. Mr. DeStefano said the proposed house is in line with the other houses in the development next to him. Mr. D'Amato said his property is different from his neighbors. Mr. Palumbo said the applicant did not create this situation; the Town approved the development to the south. By putting this house at the proposed location they are in line with what is in the neighborhood.

Mr. Mills asked if the applicant can compromise anymore on the setback and still accomplish what he is looking for. Mr. DeStefano said he is sure he can, whatever needs to get done. His point is he does not want to build next to the shed on his sister's property. Mr. Mills points out there are two (2) houses at 660', but the street as a whole, it's average is at 125'. Mr. Mills would like to see more of a compromise, perhaps in the range of a 300'-400' setback. He does not think Mr. DeStefano's sister's children are unsafe given the setback of their home.

Mr. Palumbo asked what the detriment is to moving the house back. Mr. Mills said the detriment is the character of the neighborhood. Mr. Palumbo said there is no one at the meeting objecting to the request. The Zoning Board needs to look at how the request will impact the entire area, not just the immediate neighbors. Mr. Palumbo said there is no indication that it impacts anyone negatively.

Town Attorney Steven Bengart reminds everyone that this is a public hearing and offers the opportunity for the applicant to provide information to the Board. It is not a question and answer period where the applicant questions the Board.

Mr. Michnik suggested a 350'-400' setback, this will provide distance from his sister's house and there is a big backyard for the children to play in. Mr. Palumbo asked if Mr. DeStefano can live with 350'-400', Mr. DeStefano said he is sure he can, however, he would like to know where that would be in comparison to the shed on his sister's property.

Mr. Michnik suggested the setback be in the 300' range so that the precedent is set for the vacant lot next to the applicant. Mr. DeStefano said the owners will never build on that lot. Town Attorney Steven Bengart said the current owners may not build on the land but somebody else will.

Mr. Palumbo asked if the Board would consider a 400'-450' setback, this puts Mr. DeStefano further away from his sister's house and further away from the road. Mr. Michnik said he would consider a 350'-400' range.

ACTION:

Motion by Daniel Michnik, seconded by David D'Amato, to **grant** a 250' variance for Appeal No. 6, under Old Business, to allow for a maximum of 375' front yard setback based upon the TVGA survey dated June 24, 2010, provided by the applicant.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

New Business

Appeal No. 1

Nativity of Mary School
Traditional Neighborhood District

Requests the Board of Appeals approve and grant:

- 1.) A 40 square foot variance to allow for a sign 60 square feet in area.
- 2.) A 6 square foot variance to allow for the changeable copy portion of a sign at 18 square feet.

Both requests apply to the installation of a new sign at 8500 Main Street.

Appeal No. 1 is in variance to § 181-3 (D)(5) & § 181-3 (B)(4).

DISCUSSION:

Otto Misso, facility manager at Nativity Parish, is present along with Don Ehrenreich who is the business manager at the church. Monsignor Leising, pastor of the church is also present. Mr. Misso explained the church is trying to increase enrollment in the school, they are also trying to make the front of the property more attractive, the current sign is in decay and the letters easily fall off. Originally they wanted an LED

sign, but they were told it was not allowed. The old sign will be removed. The old sign is 72 square feet; the new sign will be 60 square feet. They will use the original posts to install the new sign.

Mr. Michnik said the design of the proposed sign should incorporate the stonewall that was recently installed around the church; this sign just doesn't make it. He would like to see some stonework on the sign. Mr. Misso said they are improving the signage around the campus; they have to look at cost effectiveness as well.

Mr. Mills agreed with Mr. Michnik and said he would like to see something more dynamic that integrates the surrounding buildings, perhaps two (2) brick columns on each side of the sign, some stonework at the base of the sign, something that blends with the surrounding area.

Mr. Misso said blue and gold are the school colors, that's why the sign is that color. The posts can be repainted black. It is interior lit, photo cell operated. The three (3) lines on the sign will be interchangeable to display different messages. Mr. D'Amato agreed with Mr. Mills and Mr. Michnik and wondered if there will be landscaping around the sign. Mr. Misso said he plans on landscaping around the sign; but it is cost prohibitive. The old sign has been there since 1953.

Mr. Geiger agreed that some fieldstone at the bottom of the sign would tie the sign into the surrounding campus. Mr. Misso said he can do that.

If the variance is not granted the old sign will probably remain.

Mr. Mills suggested the applicant explore the cost of doing a couple different things and come back to the Board with those ideas. Perhaps showing two (2) brick or stone columns for the sign, box the sign in with some brick or stone work. The applicant asked for something in writing from the Board with specifics as to what they are looking for. Chairman Henning said the Board will not put specifics in writing; however they may make some suggestions in the form of a motion.

Mr. Michnik suggested the applicant look at the various brick signs in Clarence, including Dash's Market, BJ's and Goodrich Coffee and Tea.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **table** Appeal No. 1 under New Business to provide the applicant the opportunity to explore additional treatment of the posts on the north and south side of the sign, making them stone or brick faced which will tie in with the stone work on the grounds.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 2

James Smith
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 1' variance to allow for a proposed addition floor elevation of 586.0' at 8320 Wolcott Road.

Appeal No. 2 is in variance to § 107-5 (C)(1).

DISCUSSION:

James and Michelle Smith are present. Chairman Henning noted that a memo from the Town Engineer dated November 9, 2010 was received and is on file. The Engineering Department will go along with the request but they have three (3) caveats that Chairman Henning would like to make the applicant aware of. They are as follows: 1. Property owner submit a letter of understanding to the Engineering Department accepting the increased flood risk associated with constructing the addition with a floor elevation 1.0' lower than the requirements set forth in Local Law 03-2000, at the base flood elevation of 586.0. 2. 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. 3. 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. Smith does not have a problem with any of these conditions.

Mr. Smith would like to put a sunroom on the back of his house.

The property is in the 100 year flood zone. Mr. Smith said flood waters have not come close to his house and he lived through the 1960 and 1985 floods.

Mr. Smith provides a copy of the plan for the Board to view. Cortese Builders will do the construction.

Mr. Mills asked what the cost would be to comply with the elevation. Mr. Smith said he does not want to break up the patio that he has already put in.

ACTION:

Motion by Ryan Mills, seconded by Robert Geiger, to **approve** Appeal No. 2, as written with the following conditions:

1.) Property owner submit a letter of understanding to the Engineering Department accepting the increased flood risk associated with constructing the addition with a floor elevation 1.0' lower than the requirements set forth in Local Law 03-2000, at the base flood elevation of 586.0.

2.) 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.

3.) 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.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 3

Virginia Kouimanis
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 64 square foot variance to allow for a 784 square foot detached accessory structure.
- 3.) A 9' variance to allow for a detached accessory structure 25' in height.

All requests apply to the construction of a new detached garage at 9366 Hunting Valley Road South.

Appeal No. 3 is in variance to § 229-55 (H) & § 229-55 (D).

DISCUSSION:

Dave Sutton from Dean Sutton Architects is representing the homeowner Mike Kouimanis, who is also present. Mr. Sutton said they are requesting a detached garage because there are physical limitations that prevent them from building an attached garage. There is a change in grade and connecting elements. This proposal seems to be the best and most appropriate way of solving their need for additional storage on site.

With reference to the second request, Mr. Sutton's calculations are for a 686 square foot detached accessory structure, thus a size variance is not needed. He would like to continue with the submittal of the variance request without the excess in square footage.

The reason for the height variance is to tie it into the existing house. There will be a steep pitch and the gutter line will be kept down low. If the height was not increased the structure would be architecturally incompatible.

Neighbor notification forms are on file.

Mr. Michnik asked why the garage couldn't go at the end of the driveway. Mr. Sutton said there is a major drop there and numerous physical challenges. The garage will be approximately 30' off the side property line. The existing trees will remain. Additional landscaping is planned, but if the Board feels more is necessary to provide a buffer for the neighbor, the applicant will comply.

Mr. Kouimanis has owned the house for eight (8) years, he did not foresee running out of storage space.

Mr. Mills suggested a breezeway and then bring in some fill. Mr. Sutton said they explored the breezeway option but it would affect the stonework too much. If the breezeway was built around the stonework it would be quite an imposing structure. The proposed plan is much simpler.

Mr. Sutton would like the Board to consider the mean height of the building, which is the average between the peak and the gutter. The height variance is not intended to gain space; it is strictly from an architectural point of view. The second floor space will be attic space, not finished space. There will be a pull-down stair to access the second floor.

The materials will consist of cedar, not vinyl cedar, or a material that simulates cedar but will not rot and will not promote insects. The stone will be incorporated into the original design of the house. The neighbor to the north supports the variance request.

ACTION:

Motion by Ryan Mills, seconded by Robert Geiger, to **approve** Appeal No. 3, as written, with the deletion of request #2 and with the following condition:

The accessory structure is to have the same stone and cedar exterior treatment as the principal structure.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 4

Kenyon's Gas Station
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a variance to allow for the operation of an LED sign display board at 8520 Goodrich Road. Applicant is proposing to utilize the display board for gas prices only; no other text or images of any type would be displayed.

Appeal No. 4 is in variance to § 181-3 (D)(5).

DISCUSSION:

Joe Reinhart, of Ulrich Sign Co., said the applicant is in the Traditional Neighborhood District and LED signs are not permitted. The sign will display the gas prices only; there will be no other messages or graphic display. They have taken the architecture of the building into consideration when designing this sign as it corresponds with the façade of the structure.

Jim Callahan explained the Sign Review Board approved the sign, what they can't approve is the LED display in the TND.

The Sunoco sign will be removed. The owner is not present. There are no neighbor notification forms on file.

Mr. Mills asked the applicant if he is aware of any other LED signs on Goodrich Road. Mr. Reinhart is not. Clarence Center Road and Roll Road both have LED signs. The applicant would not move forward

with the sign if this variance is denied. The sign will only advertise one (1) gas price. The sign will be in the same location as the current sign. It will take approximately 4-6 weeks to install.

Mr. Michnik is hesitant to move forward on this request without neighbor notifications on file.

ACTION:

Motion by Daniel Michnik, seconded by David D'Amato, to **table** Appeal No. 4 until the applicant can produce neighbor notification forms from neighbors on either side of the property and perhaps across the street as well. The owner should be present at the next meeting.

ON THE QUESTION:

Daniel Michnik reiterated that the neighbors to the north and south of the applicant must be notified. It is strongly suggested that the neighbor across the street be notified of the request as well. The applicant can obtain neighbor notification forms from the Planning and Zoning office.

Tim and Bill Kenyon are both out of town.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Motion by Robert Geiger, seconded by Arthur Henning, to **approve** the minutes of the meeting held on October 12, 2010, as written.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Meeting adjourned at 7:50 p.m.

Carolyn A. Delgato
Senior Clerk Typist