

Town of Clarence  
Zoning Board of Appeals Minutes  
Tuesday November 13, 2007  
7:00 p.m.

Vice-Chairperson Daniel Michnik called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Vice-Chairperson, Daniel Michnik	Arthur Henning
Hans Mobius	Ryan Mills
David D'Amato	

Zoning Board of Appeals member(s) absent:

Chairperson Raymond Skaine

Other Town officials present:

Director of Community Development James Callahan  
Town Attorney Steven Bengart

Other interested parties present:

Wayne Felle	Shelagh Thomas
Sam Cappiello	Rich Engasser
Donna Engasser	Andrew Engasser
Eduardo Leon	Erwin Rakoczy
Carol Rakoczy	Robert Oates
David Sutton	Mark Hamister
Sharon Hamister	Henry Jurek
William Schutt	Jon R. Zywczyński
Dean Gowen	Richard Bigler

Motion by Arthur Henning, seconded by Ryan Mills, to **approve** the minutes of the meeting held on October 13, 2007, as written.

Daniel Michnik	Aye	Arthur Henning	Aye
Hans Mobius	Aye	Ryan Mills	Aye
David D'Amato	Abstain		

MOTION CARRIED.

For the record, Town Attorney Steven Bengart explains that he spoke with Mr. Thomas McGinley before the meeting. Mr. McGinley is requesting the Zoning Board of Appeals consider re-hearing his

variance request; however that would require a unanimous vote by the Board that was present on the evening of his original request. The Vice-Chair felt it would be unfair to go forward without any member of the Board who voted “no” at the last meeting not being here. Mr. McGinley agreed to wait until the December 2007 meeting.

**Appeal No. 1**

Wayne Felle  
Residential Single-Family

Requests the Board of Appeals approve and grant a 2’ variance to allow a 3’ side yard setback for the construction of a 16’ x 10’ shed at 6280 Crosswinds Court.

Appeal No. 1 is in variance to Article 6 Section 229-55 (E) Accessory Structures.

**DISCUSSION:**

A neighbor notification is on file. Mr. Felle explains he would like to build a 16’ x 10’ shed; it will be on cement blocks so it can be moved at any time. The shed will be vinyl sided and have shutters and will somewhat match the house.

Mr. Mills asked the applicant to explain why the shed can no be built at a different location. Mr. Felle said he chose this location because it was the least obtrusive to the neighbors with regards to the view of the lake. He explains that the shed is needed for storage.

**ACTION:**

Motion by Hans Mobius, seconded by David D’Amato, to **approve** agenda item #1, as written.

Daniel Michnik	Aye	Arthur Henning	Aye
Hans Mobius	Aye	Ryan Mills	Aye
David D’Amato	Aye		

MOTION CARRIED.

**Appeal No. 2**

Berkshire Homes/Shelagh Thomas  
Residential Single-Family

Requests the Board of Appeals approve and grant a 240 square foot variance to allow the construction of a 960 square foot accessory structure at 6330 Herr Road.

Appeal No. 2 is in variance to Article 6 Section 229-55 (D) Accessory Structures.

**DISCUSSION:**

Shelagh Thomas is representing the applicants Mr. & Mrs. Cappiello. Neighbor notifications are on file. The reason for the accessory structure is to store the applicant’s toys, which include a boat, a trailer and an ATV.

Mr. Michnik reads the following letter into the record: To Town of Clarence Variance Department, We are writing to inform you that we have been notified that Sam and Mie Cappiello are

applying for a variance to build a 24 foot by 40 foot pole barn at their place of residence, 6330 Herr Rd., Clarence Center, NY 14032. We have discussed the structure with them in detail and have no concerns or reservations about the proposed project. If you would like to hear our testimony in person please feel free to contact us at the above number. Sincerely, David and Denise Trabucco.

Mr. Mills asked why the main structure's garage can't be enlarged, why does it have to be a separate structure? The applicant said the house has only 20' on either side of it now; the garage would have had to be deeper than the house.

Mr. Henning said he did not see any stakes when he visited the site. It is indicated that 2 stakes were knocked down and the other two were buried by the pad.

Mr. Michnik is concerned with the size of the proposed structure and asked if it really needs to be that large. He does not want a precedent set for the neighborhood. He asked if the applicant thought about buying the property next to theirs so there would be more property to work with. The applicant said to purchase the lot next to them would have been expensive, the lot to the north is not for sale, they did not consider this option. Mr. Michnik does not think the structure will blend with the neighborhood; he thinks it will stick out and be an eye soar.

The pole barn would be made of steel roofing and siding to match the colors of the house.

Mr. D'Amato asked what else is kept in the existing garage besides two vehicles. Mr. Cappiello explains that he owns an extended cab long bed pick-up truck, a six-wheeler, a Gator, a 34 foot boat and a four-wheeler.

#### **ACTION:**

Motion by Hans Mobius to **approve** agenda item #2, as written. There is no second.

MOTION FAILED.

Mr. Mills suggests the applicant add depth to the house so that the applicant would be asking for less of a variance on the garage. It is indicated that the house is already built. A hand-drawn map of the house is viewed and discussed. A survey showing the house is not available.

Mr. Henning suggests tabling the item because he did not see the stakes and he asked if it is possible for the proposed structure to be moved closer. It is made clear that the variance is a size variance not a setback variance. There will be a paved driveway to the proposed structure.

Mr. Michnik is concerned with the appearance of the proposed structure because it is steel and not vinyl to match the house.

Mr. Mills asked if the applicant would consider decreasing the size of the structure. Mr. Cappiello said he would consider that; he also plans to put landscaping in around the structure. Mr. Cappiello explains that the structure is sold in packages so even if he doesn't build the structure as large as the package allows, he will still have to pay the same price. The color vinyl on the house is clay; this is the same color as the proposed structure.

**ACTION:**

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** agenda item #2 as a 24' x 36' structure. The total square footage of the proposed building is 864'. The variance being granted is for 144 square feet.

Daniel Michnik      Aye  
 Hans Mobius        Aye  
 David D'Amato      Aye

Arthur Henning      Aye  
 Ryan Mills            Aye

MOTION CARRIED.

**Appeal No. 3**

Richard P. Engasser  
 Residential Single-Family

Requests the Board of Appeals approve and grant a 520 square foot variance to allow the construction of a 720 square foot accessory structure with a 300 square foot porch at 4715 Schurr Rd.

Appeal No. 3 is in variance to Article 6 Section 229-55 (H) Accessory Structures.

**DISCUSSION:**

Donna Engasser explains that the porch variance is no longer being requested. Richard Engasser explains that they have several vehicles and they would like to keep them inside; it will help clean up the clutter around the house. Mrs. Engasser said they are also looking for storage room. There is a 20 year old 12'x14' out building on the property that they would like to replace. This small barn will be removed. There will be a black-topped driveway leading to the proposed structure. The propose garage would be the same height as the house. The house is a ranch style. Andrew Kelkenberg will do the construction of the proposed accessory structure; the materials will consist of metal roof and sides, the garage door will be vinyl, they will try to match the house. There will be landscaping around the structure.

Mr. Mills asked if the applicant would consider less depth to the structure. Mr. Engasser said he really needs all the space for what he plans to store inside; he has a tractor with attachments.

Mr. and Mrs. Engasser have only one neighbor, they have talked with him and he does not have a problem with their request, Mrs. Engasser can have the notification signed if need be. The neighbor notification is not a legal requirement.

The total square footage of the primary residence is 1740'.

**ACTION:**

Motion by Arthur Henning, seconded by Hans Mobius, to **approve** agenda item #3 as written.

Daniel Michnik     Aye  
 Hans Mobius        Aye  
 David D'Amato     Aye

Arthur Henning     Aye  
 Ryan Mills          Nay

MOTION CARRIED.

**Appeal No. 4**

Eduardo Leon  
 Residential Single-Family

Requests the Board of Appeals approve and grant two variances:

1. a 200 square foot variance to allow the construction of a 400 square foot accessory structure.
2. a 3' height variance to allow the construction of a 19' high accessory structure.

Both variances apply to 8937 Greiner Road.

Appeal No. 4 is in variance to Article 6 Section 229-55 (E) and (H) Accessory Structures.

**DISCUSSION:**

Mr. Leon explains that they need more storage space. He presents photos that show similar structures in the neighborhood.

Neighbor notifications are on file.

This variance request asks for a smaller structure than that of the adjacent neighbor's.

Mr. Mills asked if the existing shed is coming down. Mr. Leon asked if he can keep it up; are two sheds allowed? Mr. Mills's preference would be one shed on the property. Mr. Mills asked if the pre-fabricated shed can be modified at all. Mr. Leon has not purchased it yet.

Jim Callahan said the code allows two 200 square foot sheds on the property.

Mr. Leon said it is acceptable to him that the existing shed needs to come down. He would like to put the new shed up before snow falls.

Mr. Michnik asked why the applicant is requesting 19' of height. Mr. Leon said for bicycles, there will be storage on a second floor. He explains that anything that is stored in the basement gets lost because it is damp and when it rains flooding is possible. They do not store items in the basement anymore. Mr. Michnik asked if the applicant would consider a 16' high structure. Mr. Leon said the size of the structure he wants is 19' high.

Mr. Mobius asked what happens if the applicant buys a structure with a different height. Further discussion ensued regarding the correct measurements of the shed; at this point it is unclear.

Mr. Michnik suggests the item be tabled this evening to allow the applicant to come back before the Board with the exact measurements. Mr. Leon said all the two-story sheds were the same height; he would not be able to get a smaller one with two-stories.

**ACTION:**

Motion by Hans Mobius, seconded by Arthur Henning, to **approve** agenda item #4 as written with the stipulation that the old shed be taken down. Let it be known that the Weekender model is what is approved. The shed can be smaller than the Weekender model, but it can not be any larger. Information on the measurements of the Weekender model is on file.

Daniel Michnik	Nay	Arthur Henning	Aye
Hans Mobius	Aye	Ryan Mills	Nay
David D’Amato	Nay		

MOTION FAILED.

Town Attorney Steven Bengart said the applicant can come back before the Board with another model, one that is smaller. The height requirement is 16’. There is further discussion on what size the applicant wants and what is acceptable under code. The applicant decides that he is now requesting a 12’ x 20’ accessory structure, 16’ high; this is a 40 square foot variance.

**ACTION:**

Motion by Hans Mobius, seconded by Daniel Michnik, to **approve** agenda item #4 with the following conditions:

- the size of the shed will not exceed 12’ x 20’.
- the height of the shed will not exceed 16’.
- the existing shed will be removed from the property.

Daniel Michnik	Aye	Arthur Henning	Aye
Hans Mobius	Aye	Ryan Mills	Aye
David D’Amato	Aye		

MOTION CARRIED.

**Appeal No. 5**

Carol & Erwin Rakoczy  
Residential Single-Family

Requests the Board of Appeals approve and grant two variances:

1. a 176 square foot variance to allow the construction of an 896 square foot accessory structure.
2. an 8’ height variance to allow the construction of a 24’ high accessory structure.

Both variances apply to 4850 Ransom road.

Appeal No. 5 is in variance to Article 6 Section 229-55 (D) and (H) Accessory Structures.

**DISCUSSION:**

Neighbor notification is on file.

Mr. Rakoczy explains that he is replacing two buildings that were damaged in the October 2006 storm. One building was a two-story garage and the other was a one-story garage. The proposed building is not higher than the house. The house is in an isolated area, thus the proposed structure will not obstruct any neighbors view. The house on the property is older and does not have much storage space.

Mr. Mobius asked what the height of the building next to the applicant is. The applicant said it is a two and a half to three-story building and the barn behind it is three stories.

Mr. Rakoczy said the second floor is for storage only. The building would be white vinyl siding. The Rakoczy's tried to save the old garage but could not; it has been down since February 2007. Mr. Mills asked if the applicant would consider less height to the proposed garage. Mrs. Rakoczy said they have no place to store anything that is why they are asking for this size. The basement is small and wet and they have no attic. Mr. Mills suggests more depth and less height to the garage. Mrs. Rakoczy said there was a shed next to the old garage and they have lost that too. Mr. Rakoczy said there is an architectural plan for the proposed building. Only electricity will be run out to the proposed barn, no other utilities will be hooked up. Currently they are storing household items in a tent and in the wet basement. He would like to start construction as soon as possible. The existing gravel floor will be taken out and a new one installed. The original garage was over 28'.

**ACTION:**

Motion by Hans Mobius, seconded by Arthur Henning, to **approve** agenda item #5, as written.

Daniel Michnik	Aye	Arthur Henning	Aye
Hans Mobius	Aye	Ryan Mills	Aye
David D'Amato	Aye		

MOTION CARRIED.

**Appeal No. 6**

Rob & Lori Oates  
Residential Single-Family

Requests the Board of Appeals approve and grant a 640 square foot variance to allow the construction of a 1600 square foot garage at 4590 Boncrest Drive.

Appeal No. 6 is in variance to Article 6 Section 229-55 (D) Accessory Structures.

**DISCUSSION:**

Neighbor notifications are on file.

Dave Sutton, from the office of Dean Sutton Architects, is representing the applicant. Mr. Sutton distributes a site plan. The applicant is proposing a three-car garage in addition to the three-car garage that is currently there. The existing one-car garage will be taken over as part of the new three-car garage. Mr. Oates has secured the property to the north. The addition will consist of a master bedroom on the

second floor and the three-car garage on the lower level. Mr. Oates owns four cars and a tractor. The proposed addition is to take the place of any need for any accessory structures. The architectural style and the size of the proposed addition are in keeping with the style and size of the house.

Mr. Mills asked if the additional garage bay is absolutely necessary. Mr. Sutton said the attempt is to not need any accessory structures or any off site storage. The current structure is approximately 4,000 square feet. The materials proposed are to compliment outdoor living space. The side and the back of one garage will be brick; it will match the house. Dryvit will also be used.

Mr. Henning asked if the variance was not granted would it be a hardship on the applicant. Mr. Oates feels it is a legitimate investment and an important element. He is currently renting storage space and if this variance is granted he would not have to rent any longer.

The spiral staircase and the covered porch are not included in the square footage. There will be no problem obtaining the brick to match the house.

**ACTION:**

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** agenda item #6, as written.

Daniel Michnik	Aye	Arthur Henning	Aye
Hans Mobius	Aye	Ryan Mills	Aye
David D’Amato	Aye		

MOTION CARRIED.

**Appeal No. 7**

Jeffrey D. Palumbo  
Residential Single-Family

Requests the Board of Appeals approve and grant five variances:

1. a 443.3’ variance to allow a 543.3’ front yard setback for the construction of a new home on Parcel #2.
2. a 218.9’ variance to all a 268.9’ front yard setback for the construction of a new home on Parcel #1.
3. a 100’ variance to allow the construction of a pond 0’ from the property line.
4. a 2,840 square foot variance to allow for the construction of a 3,040 pool house.
5. a 2,410 square foot variance to allow the construction of a 2,610 guest house.

All variances apply to a lot located at Orchid Ledge and Thompson Road.

Appeal No. 7 (1) is in variance to Article 6 Section 229-52 (A) (2) Setbacks.

Appeal No. 7 (2) is in variance to Article 6 Section 229-52 (A) (1) Setbacks.

Appeal No. 7 (3) is in variance to Section 93-19 (D) (1) Operation Restrictions.

Appeal No. 7 (4 & 5) are in variance to Article 6 Section 229-55 (H) Accessory Structures.

**DISCUSSION:**

Brad Davidzik, of Damon & Morey, is representing the applicant. Mr. Davidzik reviews each variance as it is written. He explains that the Town Board has issued a Special Exception Use Permit for the guest house. He reviews the buildings on the plan, among them are a guest house, a pool house and a main house which is a one-bedroom, one-story home. The other principle structure is a single-family home-no variance is required. The accessory structures are attached to the main house; it is decided that the variance request is required as submitted. There is a walking path and a few holes for golf denoted on the plan.

Mr. Davidzik explains that the applicant thinks the variance requests preserve the character of the neighborhood. He does not see an option in using this site any other way without variances due to the setbacks. The variances are substantial, but the proposal mitigates the request. The environment will be improved, especially with the installation of the pond. Most of the trees will be preserved; the landscaping on the site will be enhanced. This is a unique site; it is self-created, however it is mitigated by the proposal.

Another representative said there is an existing ditch that runs through the property; the discharge points will be preserved.

Mr. Mills asked if the applicant explored lesser setbacks with more aggressive landscaping. Mr. Hamister said he held a neighbor meeting and the neighbors liked the idea of the buildings in the middle of the property versus closer to their property. Mr. Hamister said he plans to build some 3' - 4'berms and plant a lot of foliage particularly evergreens; he wants a natural looking buffer around the site. He envisions a fence, but not a cement barrier. There is no plan for additional structures at the site. The area around the vehicular courtyard may have a more decorative fence to establish a courtyard look. The square footage of the primary structure is 5,400 square feet.

Mr. Hamister does not own the property, he has it under contract. If the variance was turned down, Mr. Hamister said he would walk away from the project.

The applicant agrees that by putting a pond at the site it will alleviate other water issues in the area. Mr. Henning is concerned with the safety of the pond and asked if a fence will be installed. The applicant said there will be a fence around the entire parameter of the property; the two entrances will be gated. The pond will require a gradual slope.

**ACTION:**

Motion by Arthur Henning, seconded by Daniel Michnik, to **approve** agenda item #7, as written.

Daniel Michnik	Aye	Arthur Henning	Aye
Hans Mobius	Aye	Ryan Mills	Aye
David D'Amato	Aye		

MOTION CARRIED.

Meeting adjourned at 8:56 p.m.

Carolyn Delgato  
Senior Clerk Typist