

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday November 18, 2008
7:00 p.m.

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

Board of Appeals members present:

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

Other Town officials present:

Director of Community Development James Callahan
Planner Brad Packard
Town Attorney Steven Bengart
Councilman Bernard Kolber
Planning Board Liaison Richard Bigler

Other interested parties present:

Michael McHugh	Paul Ganzenmuller
Diane Burton	Thomas S. Gerstner
Douglas Larkin	Donald Boyd Jr.
Richard Rockwood	John Stavros

New Business

Appeal No. 1

Michael McHugh
Agricultural Rural-Residential

Requests the Board of Appeals approve and grant a 77' variance to allow a 198' front yard setback for the construction of a new home at 10335 Clarence Center Road.

Appeal No. 1 is in variance to Section 229-41 (C).

DISCUSSION:

Mr. McHugh and his future son-in-law are present. Mr. McHugh explains he is giving his daughter a piece of his property to build a house on; the lot is approximately 175' frontage by 400' deep. Clarence Center Road twists and turns in this area. His neighbor's house is 100' behind Mr. McHugh's house because of the turns in Clarence Center Road. There are two sections of trees in the front of the property that the applicant wants undisturbed. The property slopes forward, the location in the proposal is the beginning of the flat spot at the top of the property; thus the proposed house will have good drainage.

There are no neighbor notification forms on file. Mr. McHugh said there are no forms because he owns the land all around the property in question.

Mr. Mobius asked if the neighbor's on Strickler Road had any objection. Mr. McHugh said they can't have an objection because he sold the property to them and in that contract it is stated that the owner's of the property can never have any problems pertaining to zoning.

Mr. Mills explains that, although Mr. McHugh owns a large parcel of land, he still has neighbors and asked if Mr. McHugh spoke with any of them. Mr. McHugh said he has no neighbors. Mr. Mills explains that at some point Mr. McHugh's parcel ends and there is a neighbor. Mr. McHugh saw no reason to talk to his neighbors. Mr. McHugh said when the neighbor built his home, he did not ask for Mr. McHugh's permission. Mr. Mills said the placement of the neighbor's home may not have required a variance.

The size of the proposed house is approximately 2900 square feet. Mr. Mills asked if there was any compromise in terms of distance to the road, perhaps slide the home forward but still preserve the trees. The proposed location is set approximately 30'-40' from the trees, any closer and it might pose a problem if a tree should fall. The big issue is the drainage, thus the reason for proposing the house on the top of the hill, off the slope.

Mr. McHugh has owned the property for approximately 10 years. Mr. Henning asked what the applicant's plan is if the request is denied. Mr. McHugh said there is no reason for denial. He would build his house wherever the Board tells him to build it. Mr. Henning is not sure there is a hardship connected to the request and asked why the house can't be built in a different lot. Mr. McHugh said because this is the lot he is giving his daughter. Paul said it is a very nice piece of land.

ACTION:

Motion by Hans Mobius, seconded by Daniel Michnik, to **approve** Appeal No. 1, as written.

ON THE QUESTION:

Mr. Mills asked for an explanation on the procedure for neighbor notifications. Jim Callahan explains that it is the applicant's responsibility to notify an adjoining or impacted property owner. Mr. Mills voices his concern with the impact on the neighbor's backyard. Mr. McHugh said it will not impact the neighbor's backyard as he has four rows of white pine, blue spruce and weeping willow trees planted behind their house.

Town Attorney Steven Bengart suggests tabling the request until the December 2008 meeting in order to provide the applicant time to obtain neighbor notifications as they are legally required.

Mr. Mobius said he walked the property and it makes good sense to put the house on the hill.

Mr. McHugh said the Erie County Health Department visited the site and the property would not pass a perc test, this is a hardship and another reason for located the house as requested.

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

MOTION CARRIED.

Appeal No. 2

Diane J. Burton
Residential Single-Family

Requests the Board of Appeals approve and grant a variance to allow the placement of a generator within the front yard space at 5200 Meadowbrook.

Appeal No. 2 is in variance to Section 229-55 (D).

DISCUSSION:

Neighbor notification forms are on file.

Mrs. Burton said she and her husband are both physically unable to handle a mobile generator. They were without power and telephone service for 10 days. Shorter outages can be a problem as well; they have a sump pump that empties every 5 minutes in rainy times. They would like to be prepared when another power outage occurs. Although the proposed location is in the front yard it would not be seen from the road. If the generator was on the back or the north side of the property, they get so much snow that Mrs. Burton would not be able to clear the snow as it accumulated around the unit.

Mr. Mills asked Mrs. Burton to explain the exploration of different locations for the generator. Mrs. Burton said the generator would be more obvious on the north side; the snow also piles up in this area more than in other areas around the house. If it were put in the back of the house it wouldn't be so easy for the electrical work to be done. There is no room on the south side of the house.

Mrs. Burton has owned the house for 12 years.

In response to Mr. Michnik's questions, Mrs. Burton explains that she uses a snowplowing service. Mr. Michnik asked if the applicant will put something around the generator so the snowplow does not damage it. Mrs. Burton said she will advise the gentleman who snowplows for her, she has employed him for a number of years and she can rely on him to be careful. Mr. Michnik voices his concern with the snowplow piling the snow too close to the generator. Mrs. Burton said the area around the generator will be hand shoveled.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 2, as written.

ON THE QUESTION:

Mrs. Burton said Brian Ritter of Zenner and Ritter will be installing the generator.

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

MOTION CARRIED.

Appeal No. 3

Richard Meyer
Residential Single-Family

Requests the Board of Appeals approve and grant a 5' 6" variance to allow a 4' 6" side yard setback for the placement of a new generator at 5333 Shimerville Road.

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

DISCUSSION:

Neighbor notification forms are on file.

Tom Gerstner is the contractor and is representing the applicant. He explains the another location for placement of the generator would be in the back of the house, the problem is that it would be unsightly as there is a patio back there where the applicant spends a lot of time. There is a shed on the side of the house that will block the view of the generator from the neighbors.

The property was not staked. Mr. Michnik said this is not the first time Anderson Water Systems has been before the Zoning Board of Appeals; Anderson is aware of the requirements. The Zoning Board of Appeals members can not make a decision based on an assumption.

Mr. Mills asked if the survey accurately depicts the proposed placement of the generator. Mr. Gerstner said not exactly, and goes on to explain the placement. The survey is on file.

ACTION:

Motion by Arthur Henning, seconded by Ryan Mills, to **approve** Appeal No. 3, as written.

ON THE QUESTION:

Mr. Mills said he seconded the motion with hesitation due to the absence of stakes at the property. Mr. Gerstner will make sure his clients are reminded about the staking requirements.

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

MOTION FAILED.

Appeal No. 4

Douglas Larkin
Residential Single-Family

Requests the Board of Appeals approve and grant a variance to allow a permanent monument sign at 5170 Bank Street.

Appeal No. 4 is in variance to Section 181-3 (J) (1).

DISCUSSION:

Mr. Larkin said he needs the variance because a sign in the residential area goes against the Town Code. He would like the sign for his business. His home and his business are at the same location; the business has been run out of his home for 3 years.

Mr. Henning voices his concern with putting a sign in a residential area and asked Mr. Larkin if he would continue running the business out of his home if his request was denied. Mr. Larkin said yes he would continue running his business out of his home even if the sign was denied. His business is successful. Mr. Henning said it is possible that the business would remain successful even without the sign. Mr. Larkin said the problem he is having is that customers are going to the neighbor's house or stopping at other houses to find his house. He has tried to keep the design small and tasteful so sign is not unsightly. Mr. Henning suggests a sign on his mailbox. Mr. Larkin said the problem with a sign on his mailbox is the snowplows would knock it down.

Neighbor notification forms are on file.

Mr. Larkin explains the sign as being 3' by 4', wooden, no electric, no lights and no neon.

Mr. D'Amato asked if the applicant explored other options for the sign. Mr. Larkin said no, this location would satisfy their needs. If his neighbor had a sign like this he would not have a problem with it.

Mr. Larkin said the wet snow from the snowplows plowing the street would destroy a sign hanging on the mailbox.

Mr. Larkin has owned the property for 30 years. He spoke with his neighbors and none of them had a problem with the request. The sign will be south of the mailbox; from the lot line to the driveway it is just about in the center.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **deny** Appeal No. 4 based on the following:

- the character of the neighborhood will be adversely affected by a 3' by 4' sign.
- there are other feasible alternatives; the applicant stated he has been doing business without this sign; the applicant could possibly explore a smaller sign at an alternative location possibly affixed to the mailbox.
- the request is substantial given the proposed square footage.
- there will be an adverse effect in the residential neighborhood, aesthetically it will be problematic.
- the difficulty is self-created because the applicant purchased a home in a residential zone not a business district.

Daniel Michnik Nay
 Hans Mobius Aye
 David D'Amato Aye

Arthur Henning Aye
 Ryan Mills Aye

MOTION CARRIED.

Appeal No. 5

Clarence Hollow Association/Donald Boyd
 Traditional Neighborhood District

Requests the Board of Appeals approve and grant:

- 1.) a variance to allow more than one monument sign on a single parcel.
- 2.) a 12 square foot variance to allow a 32 square foot permanent monument sign.

Both requests apply to 10215 Main Street.

Appeal No. 5 is in variance to Sections 181-3 (L) (1) and 181-4 (C) (4).

DISCUSSION:

Neighbor notification forms are on file.

Mr. Boyd explains that presently there is a welcome sign in front of the church at the east end of Main Street. Several years ago there was a similar sign on the property in question. At that time the lot was owned by a dentist, until about 5 years ago the sign stood on the dentist's property. The dentist notified the applicant that he did not want the sign on his property any longer, took it down and destroyed it. Legal action was taken. The dentist settled out of court and paid the Clarence Hollow Association \$1,000 for damaging the sign. The property is now owned by Kelkenberg Builders and they are willing to allow the sign on the property, they would also erect the sign at their own cost. This will allow welcome signs at both ends of the Clarence Hollow service area. The previous sign was lit, but Mr. Boyd does not know if the new sign will be illuminated. Mr. Kelkenberg is a member of the Association.

Mr. Mills asked if the sign will look exactly like the photo. Mr. Boyd is not quite sure, but he does know that the sign would be painted. The proposed size of the sign is 8' by 4'; these are the same dimensions as the previous sign. There would be landscaping around the sign. The same wooden posts that are in the ground now would be used for the proposed sign.

The Clarence Hollow Association is 20 years old; it was incorporated in 1978 as the Clarence Hollow Merchants Association Incorporated. They are a 501C6.

Mr. Michnik asked if the Association has a Gentlemen's Agreement or a contract with Mr. Kelkenberg. Mr. Boyd said at this point it is a Gentlemen's Agreement; however he thinks they need something in writing.

ACTION:

Motion by Arthur Henning, seconded by David D'Amato, to **approve** Appeal No. 5, as written.

Daniel Michnik Aye
Hans Mobius Aye
David D’Amato Aye

Arthur Henning Aye
Ryan Mills Aye

MOTION CARRIED.

Appeal No. 6

Richard J. Rockwood
Residential Single-Family

Requests the Board of Appeals approve and grant a 2’ variance to allow a 10’ 6” side yard setback for the construction of an addition to an existing home at 4188 Wildwood Drive.

Appeal No. 6 is in variance to Section 229-52 (A) (4) (B).

DISCUSSION:

Neighbor notification forms are on file.

Mr. Rockwood explains he is the contractor and his customer wants to build an addition on to the family room and in order to make it a usable space it needs to be 12’ by 16’. The outside of the addition will be the same as the current white vinyl siding on the house. Mr. Rockwood’s company RJR Improvements will be constructing the addition. He has explored other possible locations for the addition but the measurements get tight due to the driveway on the other side of the house. The addition would be used for office space. The property owners do not run a business out of this house.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 6, as written.

Daniel Michnik Aye
Hans Mobius Aye
David D’Amato Aye

Arthur Henning Aye
Ryan Mills Aye

MOTION CARRIED.

Appeal No. 7

Brian Ritter
Residential Single-Family

Requests the Board of Appeals approve and grant a 1’ 6” variance to allow a 10’ side yard setback for the placement of a generator at 4950 Clearview Drive.

Appeal No. 7 is in variance to Section 229-55 (E) (1).

DISCUSSION:

The applicant is not available at this time.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **table** Appeal No. 7 until the applicant is available.

Daniel Michnik Aye
Hans Mobius Aye
David D’Amato Aye

Arthur Henning Aye
Ryan Mills Aye

MOTION CARRIED.

Appeal No. 8

The Capozzi Corp.
PURD

Requests the Board of Appeals approve and grant a 24” variance to allow the grade of a new single-family home at 9743 Cobblestone Drive to be 72” over road grade

Appeal No. 8 is in variance to Section 229-23.

DISCUSSION:

The applicant is not available at this time.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **table** Appeal No. 8 until the applicant is available.

Daniel Michnik Aye
Hans Mobius Aye
David D’Amato Aye

Arthur Henning Aye
Ryan Mills Aye

MOTION CARRIED.

Appeal No. 9

John C. Stavros
PURD

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 4965 Spaulding Drive.

Appeal No. 9 is in variance to Section 229-55 (E) (1).

DISCUSSION:

Mr. Stavros is present and explains he wants to install a generator on his property. The way his property line runs makes it necessary to request a variance, if he moved the generator back further it gets closer to the line and does not solve the problem. Kevin Crotty and representatives from Hector’s are installing the generator. Mr. Stavros has explored other locations but the proposed is the best.

Mr. Stavros recently purchased the property. In response to Mr. Mills question regarding the easement on the property, Mr. Stavros said he was not aware of the easement. The generator would be 3’ or less from the edge of the house. Town Attorney Steven Bengart said if the generator is put on the easement and the utility company finds out about it they can make Mr. Stavros move the generator. Mr. Stavros will look into the easement issue. Nothing will be built on the other side of the generator.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 9, as written.

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

MOTION CARRIED.

Motion by Arthur Henning, seconded by David D'Amato, to **approve** the minutes of the meeting held on October 14, 2008, as written.

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

MOTION CARRIED.

Meeting adjourned at 8:15 p.m.

Carolyn Delgato
Senior Clerk Typist