

Town of Clarence  
Zoning Board of Appeals Minutes  
Tuesday December 8, 2009  
7:00 p.m.

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

Board of Appeals members present:

Chairman Arthur Henning  
Ryan Mills  
Patricia Burkard

Vice-Chairman Daniel Michnik  
Robert Geiger

Board of Appeals members absent:

David D'Amato

Other Town officials present:

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

Other interested parties present:

Jeffrey Palumbo  
Joe Kwiatkowski

Stacy Berardi

The Zoning Board of Appeals members entered into an attorney client privilege session.

**Appeal No. 1**

J. D. Berardi Enterprises, Inc.  
Major Arterial

Requests the Board of Appeals approve and grant:

- 1.) A 40' variance to allow a commercial accessory structure 5' to adjoining rear residential zone.
- 2.) A 5' variance to allow a 5' side yard variance for a second commercial accessory structure.

Both requests apply to 5885 Transit Road.

Appeal No. 1 is in variance to §229-95(B).

**DISCUSSION:**

Jeffrey Palumbo, of Damon and Morey, is representing J. D. Berardi Enterprises, Inc./All Season Rental. He explained that the two proposed buildings will mainly be used for storage as they need more space to store the equipment that they ultimately rent. The equipment includes many items such as linens,

place settings, chairs and tables, etc. Currently, All Season Rental is outsourcing some of its items to be stored elsewhere as they do not have enough room on site, adding these two (2) buildings will eliminate that need. It will also save them money as they will not have to travel to obtain their equipment. It would also benefit the Town by keeping a business that is strong and healthy. If All Season Rental cannot construct these buildings they will, ultimately, have to move. The applicant has attempted to contact neighbors on all three (3) sides of their property. The only response is from Mr. Frey, and he has no problem with the request. Mr. Palumbo said there were no objections from the other neighbors; however, they did not submit neighbor notification forms. The applicant knows that he has to meet the design guidelines for Major Arterial and is willing to do so.

Mr. Geiger asked if the trailers will be removed. Ms. Berardi said yes. She has contacted the gas company and the can move the propane tank behind the existing building. The retention pond would be moved to drain water into the ditch near the Tae Kwon Do building. A drainage plan would need to be approved as part of the building permit process; the applicant has no problem with this. There is a berm with a fence on top of it in the back of the property; if there was a house built behind the property it would be very difficult to see the proposed buildings due to the buffer and fencing. Adding these two (2) buildings will clean up the site as it is today.

Mr. Mills asked for details on the loading dock. Ms. Berardi said most likely it will be a concrete pad with concrete walls on each side. The loading dock will be into the ground. The roofing would be metal clad roofing and there is a total of five (5) overhead doors. Mr. Mills asked if it was possible for the applicant to decrease the size of the proposed buildings in any way. Ms. Berardi said it is not worth it if they did anything smaller than what is proposed. All Season Rental has been at this location since 1971, but Ms. Berardi's family has owned it since 1996.

Mr. Michnik suggests moving the location of the proposed building, but Ms. Berardi said she needs some place to put the snow in the winter that is why she proposed the buildings as indicated. The height of the building will be 25'. She would like to start construction next week.

#### **MOTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 1, as written, with the following conditions:

- All trailers currently on the premises be removed within 30 days of the Certificate of Occupancy being issued.
- All sheds currently on the premises also be removed within 30 days of the Certificate of Occupancy being issued.
- Engineering approval prior to Building permits being issued.
- The propane tank, currently on the premises be moved to the northeast portion of the existing building.

Robert Geiger	Aye	Patricia Burkard	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

**MOTION CARRIED.**

**Appeal No. 2**

Joseph J. Kwiatkowski  
Residential Single Family

Requests the Board of Appeals approve and grant a 612 square foot variance to allow for the construction of a 1,140 square foot accessory structure at 5205 Bank Street.

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

**DISCUSSION:**

Chairman Henning clarified the request noting the square footage is changed from 612' to 672' to include the overhang. Mr. Kwiatkowski is present and agreed to the change.

Mr. Kwiatkowski explained there was an old dilapidated building in this same location that he decided to finally take down and replace. The new building is bigger to store tractors, mowers, garden equipment and pool equipment. It will not be used for business. The total tear down of the old building was done in May 2009. Mr. Kwiatkowski's neighbors helped him build the new building and do not have a problem with the variance request. There are five (5) neighbor notification forms on file, along with a letter dated December 3, 2009 from a neighbor. Chairman Henning reads the letter: "To whomever it may concern, The Kwiatkowski's at 5205 Bank Street have been our neighbors for over 15 years. Joe is a man who takes pride in his family, home and community. In reference to the newly built garage at said property, and compared to what was originally there, it is our opinion that this garage not only enhances his property but our view as well. Donna and Joel Falkowski."

The height of the building is 14' 11", Mr. Kwiatkowski may install a concrete floor in the future, if he obtains the money for it.

Mr. Michnik refers to the criteria that the Zoning Board of Appeals members look at when reviewing a request. He notes that the property has been staked. Granting the variance would either create an undesirable change in the character of the neighborhood or be a detriment to nearby properties because this is a residential neighborhood and the proposed structure resembles a barn, which changes the look of the neighborhood. The benefit sought by the applicant can be achieved by building a structure that conforms to the Law. With the request being increased to a 672' variance, it makes for a substantial request. The variance would have an adverse impact on the physical condition of the neighborhood as it would change the whole look of the surrounding area. Mr. Michnik said the alleged difficulty was self-created because Mr. Kwiatkowski did not obtain a building permit prior to constructing the new structure. Mr. Kwiatkowski said he thought he was blending it in by the way he designed it.

Mr. Mills asked what the siding material would be. Mr. Kwiatkowski said he planned to put darker vinyl siding on the front portion of the structure. There will be overhead doors and there is some work that needs to be done to the back of the structure yet before it is complete. He would like to pave but the floor has to come first. Most of the construction has been done by Mr. Kwiatkowski himself. He thought he wouldn't need a permit because he was replacing an existing structure. It is explained that even if the size of a structure is exactly the same as the one that it is replacing, a building permit is still required. Mr. Mills asked if a smaller structure would be feasible to the applicant. Mr. Kwiatkowski said he would have to look into that.

Mrs. Burkard asked what the square footage of Mr. Kwiatkowski's house is. It is 1800 square feet.

Rafters will be in place to use the ceiling space for storage, there is no electricity or plumbing in the structure. Mr. Kwiatkowski would like electricity in the building eventually.

In response to Chairman Henning's question regarding the cost of the materials, Mr. Kwiatkowski said he has spent approximately \$7,000. If the request was denied and half of the building would have to be torn down, Mr. Kwiatkowski said he would lose a lot of lumber because it would not be salvageable at that point.

Mr. Michnik notes the correct square footage of the building is 1,210 square feet. The old building was 24' x 24'.

#### **MOTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **deny** Appeal No. 2, as written for the reasons read into the record and stated above.

#### **ON THE QUESTION:**

Mr. Mills said the structure is aesthetically pleasing and is certainly better than what was there before, but it does change the character of the neighborhood because of its large size. A similar goal can be achieved with a smaller structure.

Mrs. Burkard suggested the rear of the building be taken down to decrease its size. That portion of the building is approximately 300 square feet.

Mr. Mills asked Mr. Kwiatkowski if he is willing to work with the Zoning Board members in resolving the size issue, perhaps work out the square footage somewhere in between what he is asking for and what the code allows. Mr. Kwiatkowski said he will do what the Board asks. Mr. Mills suggested not denying the variance but reducing the square footage. If the 10' x 30' extended area of the structure is removed the applicant would then be asking for a 372 square foot variance. There is a support beam at this section of the building. Town Attorney Steven Bengart said he does not want to see the applicant take down part of the garage if it will not work structurally, this needs to be reviewed. Mr. Kwiatkowski thinks the building will remain structurally sound if he takes down the 10' x 30' section. Mr. Mills suggests Mr. Kwiatkowski measure the building to see if a 372 square foot variance is what he wants, then come back to the Zoning Board of Appeals in January 2010. Mr. Kwiatkowski agreed to do this.

Mr. Michnik **withdrew** his motion, Mr. Mills **withdrew** his second.

#### **MOTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **table** Appeal No. 2, to provide the applicant time to verify the measurements and any other information he needs to bring before the Zoning Board of Appeals.

Robert Geiger	Aye	Patricia Burkard	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Chairman Henning suggests the applicant make his changes very clear when staking the property so the members will understand what he is asking for when they re-visit the site. Mr. Kwiatkowski is advised to speak with the Building Department to clarify what will count as square footage.

#### MISCELLANEOUS:

Chairman Henning explained the Board has been asked to re-open the Charles Kelkenberg request of February 14, 2006. Mr. Kelkenberg requested a 50' variance to allow a single-family home on a 100' wide lot at 7060 Salt Road, it was denied. On September 9, 2008 the Zoning Board of Appeals was asked to re-open the request, this request was denied. Again on July 14, 2009 the Board was asked to re-open the request, it was denied.

Jeffrey Palumbo, of Damon & Morey LLP, is representing Mr. Kelkenberg and said he would like to have the opportunity to appear on Mr. Kelkenberg's behalf. He is willing to stipulate that if the Board allows a new hearing and denies it there won't be an Article 78 Action taken against the Board. He just wants the opportunity to make a presentation with information that was not available to the Board at the previous hearings.

Mr. Palumbo explained the proposed house is approximately 1800-1900 square feet. The house design that has been distribute to the Zoning Board of Appeals members is just to show the maximum amount of square footage he would put on the lot, the design of the house may change. The applicant is willing to provide the Board with surveys detailing the location of the proposed home. The applicant will stake the property and the proposed location of the house.

It must be a unanimous decision by the Zoning Board of Appeals in order to re-open this request.

#### ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **re-hear** the variance request made by Charles Kelkenberg for 7060 Salt Road with the caveat that the property be staked, both front and back. The location of the proposed house must also be staked.

Robert Geiger	Aye	Patricia Burkard	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 November 11, 2009, as written.

Robert Geiger	Aye	Patricia Burkard	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Meeting adjourned at 7:57 p.m.

Carolyn Delgato  
Senior Clerk Typist