

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday December 9, 2008
7:00 p.m.

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

Zoning Board of Appeals members present:

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|---------------------------------|----------------|
| Vice-Chairperson Daniel Michnik | Arthur Henning |
| Ryan Mills | David D'Amato |

Town officials present:

Planner Brad Packard
Town Attorney Steven Bengart
Councilman Bernard Kolber
Planning Board Liaison Richard Bigler

Other Interested Parties Present:

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|-----------------|-------------------|
| Brian Ritter | Michelle Eschborn |
| Sharon Corrigan | Joseph Romanello |
| Jay Capozzi | Tom Gerstner |
| Susan Ballard | Kevin Curry |

Old Business

Appeal No. 7

Brian Ritter
Residential Single-Family

Requests the Board of Appeals approve and grant a 1'6" variance to allow an 8' 6" 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:

Brian Ritter is present and explains the generator is already installed at the location. There was an issue with installing the generator in the rear yard and a miscommunication regarding the distance between the house and the side lot line. The measurement does not satisfy the 10' side lot line setback requirement. At this point the applicant discussed the situation with the Building Department and it was decided that requesting a variance would be the next step.

One neighbor notification is on file. Mr. Ritter spoke with the other neighbor who said the generator does not seem to affect him as he did not know it was there.

Mr. Mills asked what was wrong with the rear location. Mr. Ritter said there is a patio in place there and the applicant did not want to run the gas line through the basement and under the patio. There was also confusion because of the Williamsville mailing address, the applicant thought they had to meet the Williamsville requirement.

Mr. Ritter said it would cost approximately \$1500 to \$1800 to move the generator to the back of the property.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal #7 under Old Business as written.

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|----------------|-----|----------------|-----|
| Daniel Michnik | Aye | Arthur Henning | Aye |
| Ryan Mills | Aye | David D'Amato | Aye |

MOTION CARRIED.

New Business

Appeal No. 1

Michelle Eschborn
Residential Single-Family

Requests the Board of Appeals approve and grant a 6' variance to allow a 44' front yard setback for an addition to the garage of an existing home at 5140 Ledge Lane.

Appeal No. 1 is in variance to Section 229-52 (A) (1).

DISCUSSION:

Michelle Eschborn and Sharon Corrigan are present. Ms. Eschborn explains that they have outgrown their existing garage; they need more room for storing items and parking at least one vehicle in the garage. She would also like another entrance/exit to the house. The addition will be made of the same materials as the existing home.

One neighbor notification form is on file.

Mr. Mills asked if there was any other way this addition could be achieved without a variance, could it go back further in the rear yard. Ms. Eschborn said there is a family room in the back. There are no plans drawn up yet.

ACTION:

Motion by Arthur Henning, seconded by Daniel Michnik, to **approve** Appeal #1 as presented.

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|----------------|-----|----------------|-----|
| Daniel Michnik | Aye | Arthur Henning | Aye |
| Ryan Mills | Aye | David D'Amato | Aye |

MOTION CARRIED.

Appeal No. 2

Joe Romanello
Residential Single-Family

Requests the Board of Appeals approve and grant a 3’ variance to allow a 7’ side yard setback for the installation of a new generator at 5176 Willowbrook Drive.

Appeal No. 2 is in variance to Section 229-55 (E) (1).

DISCUSSION:

Joseph Romanello is present and explains the gas line is on the side of the house were the generator is being proposed.

Two neighbor notification forms are on file.

Mr. Romanello said Home Depot may do the work. He will also talk to a representative from Anderson Water Systems. He plans to put some shrubbery around the generator. If the generator was installed on the other side of the house it would cost approximately \$1500 more.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal #2 as written.

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|----------------|-----|----------------|-----|
| Daniel Michnik | Aye | Arthur Henning | Aye |
| Ryan Mills | Aye | David D’Amato | Aye |

MOTION CARRIED.

Appeal No. 3

The Capozzi Corp
PURD

Requests the Board of Appeals approve and grant:
1.) a 24” variance to allow the grade of a new single-family home to be built 72” over road grade.
2.) a 5” variance to allow a 40’ front yard setback for the construction of a new home.

Both requests apply to 5057 Shale Bluff Drive.

Appeal No. 3 is in variance to Section 229-23 Grade and Section 229-52 (4) (a) Setbacks.

DISCUSSION:

Ryan Mills corrects the second request indicating the measurement should be for 5’ not 5”.

Jay Capozzi is present and explains the reason for going 24” above the road is because they are digging into rock and that can be expensive. There will be a finished basement so this will also allow natural light to come through basement windows. Mr. Capozzi refers to the survey of the property and said he wants to move the house to the east which is towards Shale Bluff Court. If Mr. Capozzi had to choose only one variance, he would want the height variance granted.

There are no neighbor notifications forms on file.

Mr. Capozzi has owned the lot for approximately two years. He did not stake the property because he is asking for a height variance. Mr. D'Amato asked if the applicant could make the house smaller to fit the requirements. Mr. Capozzi said the small houses in Spaulding Lake are not selling. The proposed house would be just over 5,000 square feet plus 1400 square feet for the basement. He is hoping to break ground next month.

Town Attorney Steven Bengart said the applicant has two options: he can ask for the item to be tabled this evening in order to provide him with the opportunity to properly stake the property and to obtain neighbor notifications, or he can go ahead with a vote from the Board.

Mr. Capozzi explains that in order to break up the rock an extra 2 feet, it costs about \$1500 a day and the machine would have to be used for about 3 extra days. The basement would be a 9' daylight basement.

Mr. Henning asked what the applicant would do if the request was denied. Mr. Capozzi said he has always received a variance when building in this neighborhood. He would keep the property as he can not afford to sell it. He plans on building a house worth \$900,000 plus, the house next to this lot is worth one and a half million dollars. Houses across the street are worth three million dollars.

Mr. Michnik voices his concern with regards to the lack of neighbor notification forms. Mr. Capozzi said he has spoken with the neighbors and they do not have a problem with his request. Furthermore, he has made many similar requests and has never been asked to produce neighbor notification forms.

ACTION:

Motion by Arthur Henning, seconded by Daniel Michnik, to **table** Appeal #3 to allow the applicant time to stake the property and obtain neighbor notification forms.

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| Daniel Michnik | Aye | Arthur Henning | Aye |
| Ryan Mills | Aye | David D'Amato | Aye |

MOTION CARRIED.

Appeal No. 4

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 be built 72" over road grade at 9743 Cobblestone.

Appeal No. 4 is in variance to Section 229-23 Grade.

DISCUSSION:

Jay Capozzi is present. This lot has been under contract for three years with no closing. Mr. Capozzi explains that digging 2' into rock will be a financial burden, adding \$4,000 to \$6,000 to the cost. He wants daylight windows in the basement.

There are no neighbor notification forms on file.

Mr. Michnik asked if the applicant should be in front of the Board of Appeals even when he doesn't own the lot. Town Attorney Steven Bengart said as long as there is an owner who has authorized the applicant to come in, it is acceptable. The variance runs with the land, not the owner. The applicant asked the Zoning Board of Appeals to table the request.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **table** Appeal #4 at the applicant's request.

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|----------------|-----|----------------|-----|
| Daniel Michnik | Aye | Arthur Henning | Aye |
| Ryan Mills | Aye | David D'Amato | Aye |

MOTION CARRIED.

Appeal No. 5

Athol Abrahams
Residential Single-Family

Requests the Board of Appeals approve and grant a 6' variance to allow a 4' side yard setback for the installation of a new generator at 5899 Forest Creek Drive.

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

DISCUSSION:

Tom Gerstner, of Anderson Water Systems, is representing the applicant. He explains the generator needs to be placed on the side of the house because if it is placed in the rear of the house it will be seen from the patio area. Putting it on the side of the house best hides it from all the neighbors. Mr. Gerstner anticipates installing the generator next week.

The property was staked with one stake. This stake represents the placement of the generator 5 feet from the house. Neighbor notification forms are on file. Mr. Gerstner has no problem with relocated the generator to the east in order to fall within the 5' combustible requirement. Mr. Henning asked how far east the applicant is willing to put the generator. Mr. Gerstner said they will go back as far as possible as long as the generator will not be seen from the patio.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal #5 with the condition that the location of the generator be 5' or more from the shed that is depicted on the northern part of the survey.

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| Daniel Michnik | Aye | Arthur Henning | Aye |
| Ryan Mills | Aye | David D'Amato | Aye |

MOTION CARRIED.

Appeal No. 6

Kevin Curry
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a variance to confirm 8135 County Road as a pre-existing non-conforming lot acceptable for the construction of a duplex in accordance with the Traditional Neighborhood Zoning Ordinance.

Appeal No. 6 is in variance to Section 229-58 Permitted Uses.

DISCUSSION:

Kevin Curry and Susan Ballard are present. Mr. Curry explains he wants to build a two family home on the lot. He understands it is a non-conforming lot. He thinks it is a good lot for a two family use, it does not require any setback variances. The zoning permits a two family home.

Mr. Michnik said there is previous history dated June 19, 2001 and September 10, 2001 at which time the variances were approved.

Mr. D’Amato asked if the applicant has specs for the proposed house. Mr. Curry said yes, he will be building the house. Mr. Curry does not own the land yet. If the request is not granted, Mr. Curry does not know what he will do. He knows that he would not need a variance if he built a single family home. The house would be approximately 2400 square feet. It would be two units with two bedrooms each. If the request is approved Mr. Curry would start construction now. Ultimately, Mr. Curry will own the land and the building. The construction would be such that the home will look like a single family home with a two car front load garage.

ACTION:

Motion by David D’Amato, seconded by Ryan Mills, to **approve** Appeal #6 as written.

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| Daniel Michnik | Aye | Arthur Henning | Aye |
| Ryan Mills | Aye | David D’Amato | Aye |

MOTION CARRIED.

Motion by Arthur Henning, seconded by Daniel Michnik, to **approve** the minutes of the meeting held on November 18, 2008, as written.

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| Daniel Michnik | Aye | Arthur Henning | Aye |
| Ryan Mills | Aye | David D’Amato | Aye |

MOTION CARRIED.

Meeting adjourned 8:15 p.m.

Carolyn Delgato
Senior Clerk Typist