

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday, February 10, 2015
7:00 p.m.

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

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Vice-Chairman Ryan Mills
David D'Amato	Patricia Burkard
Gregory Thrun	Richard McNamara

Town Officials present:

Director of Community Development James Callahan
Junior Planner Jonathan Bleuer
Deputy Town Attorney Steven Bengart

Other interested parties present:

Chris Lavocat
Don Lavocat Jr.

Motion by David D'Amato, seconded by Gregory Thrun, to **approve** the minutes of the meeting held on January 13, 2015 with the following changes as suggested by Deputy Town Attorney Bengart:

-the minutes are amended to reflect that the Board entered into attorney-client privilege, not an Executive Session at the end of the meeting.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

New Business

Appeal No. 1

Chris Lavocat
Agricultural Rural Residential

Requests the Board of Appeals approve and grant:

1.) A 36 square foot variance to allow for a 40 square foot freestanding sign.

2.) A 2' variance to allow for an 8' fence.

Both requests apply to 8441 County Road.

Appeal No. 1 is in variance to §181-3(E)(1) and §101-3(B).

DISCUSSION:

Chris Lavocat is present. A neighbor notification form is on file. Mr. Lavocat said they want to install an 8' fence along the west side of the greenhouse the full length back, this will give the neighbors and the applicant some privacy. Mr. Lavocat noted that there were comments made from neighbors at previous meetings that there would be a greenhouse in their backyard. He does not feel a 6' fence would be adequate, they would like to go a little higher. The building sits a little higher than the ground around it so 6' would be low on the building. They will do some display gardens on the side of the greenhouse, inside the fence. It would be a wood picket fence, board on board.

Mr. Lavocat said the proposed sign is 37.5 square feet and it is rounded, so the actual square footage is less than that. The sign will not be illuminated. They are requesting the variance because a 4 square foot sign is allowed in the Agricultural district, but that would be too small. They want it large enough so there is clear visibility from County Road. They are moving some of their business operations from Heroy Road to County Road and they want to make sure people will be able to see that. Mr. Lavocat looked at other businesses in the area and they had similar sized signs, if not bigger than what he is proposing. He distributed pictures of signs for "Greggs U-Pick", "Szulis'", and "CJ Krantz". There will be some culture rock and landscaping around the sign. They will work with the Planning Office for the appropriate setbacks for placement of the sign.

Chairman Michnik asked if the applicant knows the location of the sign now. It is clarified that the location is not part of the variance request. Mr. Callahan said the sign must be a minimum of 10' from the right-of-way. The applicant will work with the Planning Office and the setback will conform to code. Chairman Michnik asked if there is any reason the applicant would not continue a 6' fence after the 8' fence stops to continue to the front of the neighbor's homes. Mr. Lavocat said they will do landscaping in that area, they don't want a fence to be the focal point of their operation. Chairman Michnik said the 6' fence could go to the front of the neighbor's house. The greenhouse ends at the back of the neighbor's house. Mr. Lavocat said he could do that but noted that they are not required to have a fence. Chairman Michnik said that is correct but personally he would like to see the fence continue further north to block the neighbor's view, it can be dropped from the 8' height to 6' along the neighbor's house, assuming the 8' is granted. Mr. Lavocat said the landscaping will be denser in that area to buffer the neighbor's view. Chairman Michnik said the signs that Mr. Lavocat took pictures of are grandfathered in because they have been there longer than when the sign ordinance went into effect. Mr. Lavocat noted that they have 550' of frontage and there will only be one (1) sign. Chairman Michnik said this is a huge variance.

Mr. Thrun asked if the applicant considered other options for the fence, like a landscaped berm. Mr. Lavocat said the problem with that is if there are children or people they can roam through the landscaping, and for security reasons a fence would be better in case of theft. If there are customers on the applicant's property

he does not want them venturing out onto the neighbor's property. Mr. Thrun said the fence should come out at least half the distance of the parking lot in order to block that view. Mr. Lavocat said the plan is to put some trees, like spruces, there to enhance the landscaping. He noted that there is a glass side to the greenhouse and that is why he wanted a fence on the side yard. Mr. Thrun said the sign is large. Mr. Lavocat said with the sign being round the square footage is closer to 32 square feet, which makes the variance a 28 square foot request. It is clarified that the actual sign, not the base, is what is measured to meet the code requirements.

Mrs. Burkard said she is concerned about the neighbor next door because she thinks he was under the impression there was going to be a berm along the property line. The proposed fence will end at the back of the neighbor's house, so that house is in full view of the parking lot. Mr. Lavocat said that is why they are proposing denser landscaping in that area, he thinks the neighbor would rather look at landscaping than a fence. The applicant's parking lot is 70' off the property line, so customers won't be walking onto the neighbor's property. Mr. Callahan said with reference to a berm there is a wetland on the property in that area and fill cannot be introduced into wetland. A fence could be installed and trees can be planted. Mrs. Burkard asked if the neighbor knows what type of fence the applicant will be installing. Mr. Don Lavocat spoke to the neighbor on the phone and told him the fence plans and the neighbor was all for a higher fence. Mr. Lavocat is in discussions with one of his suppliers to obtain trees that will work in wetlands.

Mr. D'Amato asked what the space is between the applicant's fence and the neighbors. The neighbor has a chain link fence and Mr. Lavocat is not sure if it goes right to the property line or not. Mr. D'Amato is concerned about the growth between the fences, who will maintain that? Mr. D'Amato suggested taking the chain link fence out and replace it with what the applicant is proposing. Mr. Lavocat said the applicant has a pool so he does not think the chain link fence can be removed. The neighbor mows a path on the other side of his fence, which is actually on the applicant's property. Mr. Lavocat said he would probably leave the path when installing his fence, because it would be too hard to maintain the area between if he installed it right next to the neighbors. Mr. Lavocat said he will work with the neighbor regarding the fence. Mr. D'Amato referred to the concern of the neighbors view and said he (Mr. D'Amato) would not like to look at a fence and agreed with the applicant's plan to install shrubs and/or trees in that area. Mr. D'Amato asked what the smallest size the applicant could live with regarding the sign. Mr. Lavocat said he spoke with a few sign guys and found that this is one of the smaller signs that they suggested. Mr. Lavocat submits a sign rendering for the file, it is noted as 'V3'. It is a non-illuminated sign. A spot light might be added to illuminate the sign from the outside but it would be more like landscape lighting, not a bright spot light. Mr. Lavocat said this is the size sign that they want to put up, they want it to look good. Mr. D'Amato asked if the applicant would consider decreasing the sign by a foot. Mr. Lavocat said they would consider reducing it a couple square feet.

Mr. Mills clarified that, for computing purposes, the circular sign is being computed as a square, the smaller sign on the base is being added into the square footage. The applicant is definitely installing the stone base, Mr. Mills said that nicer architectural detail mitigates the size of the sign a bit. Mr. Mills asked if the applicant could do anything else aesthetically if the Board was to afford the applicant the opportunity for a larger sign than what the code allows. He suggested columns. Mr. Lavocat said they like the wood look. They were originally going to do stone just around the posts but Ulrich designed the rendering that is being submitted and the applicant likes it better. He wants something more natural looking, that's why he went with the stone and the wood.

Chairman Michnik said if someone is coming down County Road, they are going to see the building and not drive past it. He thinks it is a huge sign for the area; it can be reduced and still have the same effect.

He then asked about the placement of the sign. Mr. Lavocat said they have to work around the utilities and setbacks. They are putting utilities in now, so he will figure the location of the sign once those are completely in. Chairman Michnik said the height of the poles is higher than the sign. Mr. Callahan clarified that the requirements in the Sign Code use the measurements of the sign only, never the base or the poles. Mr. Lavocat said he could consider removing the sign that says, "Greenhouse & Nursery" which would be about 7 square feet, then it would be a 26 square foot variance. He said the stone base could be removed so it isn't so high but then it doesn't look as nice. Mr. Lavocat said he thinks his neighbors and local residents would rather see a larger aesthetically pleasing sign, then a smaller not so nice looking sign; they were always worried about the eye sore and the view. Chairman Michnik suggested the applicant re-work the design of the sign, making it smaller, then come back to the Board with that plan. Mr. Lavocat said he could drop the sign lower to the ground but he doesn't think that will matter to the variance because it is based on the square footage of the sign. He could square off the sign and make it look like every other sign, then get it down to a much smaller number.

Mr. D'Amato asked if the applicant is willing to have the request tabled and come back to the Board with other options for the sign. This would also give him time to look into the fence issues per the discussion. Mr. Lavocat would like to get everything squared away now because they are looking at opening the business in April, he is willing to reduce the size of the sign.

Deputy Town Attorney Steve Bengart explained the options available to Mr. Lavocat with regards to the Zoning Board of Appeals procedure moving forward. He said if the applicant goes ahead with changing the dimensions and the Board makes a decision, then the applicant would have to come back to the Board to undo that decision. If the sign request is denied, the applicant has to come back to the Board with a new application. If the request is tabled and the applicant comes back with his design guy to the next meeting he (the design guy) will be able to say what can and cannot be done with the sign, plus the applicant will have the next 30 days to redo the sign. Deputy Town Attorney Steve Bengart said the applicant makes his own decision, but based on what he (Deputy Town Attorney Steve Bengart) has heard at this meeting the vote may not be positive.

The applicants stepped out of the meeting room to discuss the options.

Mr. Bleuer noted that the Code indicates that this zone allows for a 32 square foot sign for churches, civic institutions and schools, but not for retail. There is not a height requirement.

The Lavocat's returned to the meeting room and said they could work with a 32 square foot sign. He read from the Sign Code where it states that a 32 square foot sign is acceptable for community institutions, such as places of worship, libraries, museums, social clubs or society. If a 32 square foot sign is acceptable in those situations, he thinks it can work in an agricultural setting, too. Given that the applicant is located in the Agricultural District with plenty of frontage, it is a good looking sign, and a 20% reduction is substantial, he thinks it should be acceptable. Regarding the fence issue, the applicants have no problem working with the neighbors. They would offset the fence enough so that a mower can get in there to maintain the area. Chairman Michnik asked if the applicant would drop the 8' fence down to 6' along the neighbor's home. Mr. Lavocat said he thinks landscaping in that area will be better for aesthetic reasons. Chairman Michnik wants to see the 6' fence and trees planted in that area. He said this would help deter customers from wandering onto the neighbors property Mr. Lavocat has no problem putting a fence up, he will work with the neighbor, but he thinks, for the neighbor's benefit, that the neighbor would rather see screening with trees. The neighbor has already put up some spruces. The parking lot to the wetlands drops off 2', if a customer was to wander they would have to then walk through 70' of wetlands. Chairman Michnik voiced

his concern about approving a variance without knowing what the conversation was between the applicant and the neighbor. Mr. Lavocat wants to keep the fence at 8' along the greenhouse and do landscaping up the side.

ACTION:

Motion by Ryan Mills, seconded by Gregory Thrun, to **deny** Appeal No. 1, part 1: a 36 square foot variance to allow for a 40 square foot freestanding sign on the basis that the Board is asked to look at Town Law §267 when evaluating a variance. Specifically, whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by granting the area variance. Because this is such a large variance, although it was reduced slightly by the applicant, verbally, to a 28 square foot variance to allow for a 32 square foot sign, it still exceeds the signage sizes in that area other than some signs that were grandfathered in. Secondly, whether the benefit sought by the applicant can be achieved by some other method that would be feasible for the applicant to pursue, but would not require a variance. The applicant can produce a sign within the Town Law. Third, whether the requested area variance is substantial, it is. The initial request and the revised request is well in excess of Town Law. Fourth, whether the proposed variance will have an adverse effect or impact on the physical environmental conditions of the neighborhood, it will base upon its size and location. Finally, whether the variance is self-created, it is based upon the fact that the applicant purchased the property knowing what district it was and where it was located and what the Sign Law was for that area.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Deputy Town Attorney Steve Bengart asked the Board members if there was a number less than the requested variance that any one of the members be willing to make a positive motion on instead of making the applicant come back.

Mr. Lavocat would like to get an approval at this meeting, he is concern about waiting until the next meeting for an approval of a different request because he has to wait 4-6 weeks for his sign to come in once it is ordered. Chairman Michnik said they can have a temporary "Grand Opening" sign approved until the permanent sign came in. If the applicant comes back to the Board next month, Chairman Michnik thinks he will end up with a better product. Mr. Mills suggested the applicant come back with new drawings of different sign configurations. Mr. Callahan clarified that a temporary sign is not allowed in the Agricultural Zone. A variance could be requested for a temporary sign but it has to be noticed just as any other variance request. Mr. Lavocat asked for recommendations from any Board member on the size of the permanent sign. Mr. McNamara suggested 21', a 3' by 7' sign. Further discussion ensued regarding the proportion of the sign as it relates to decreasing the size.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **approve** a 17 square foot variance to allow for a 21 square foot freestanding sign under Appeal No. 1, under the condition that the applicant produces the sign, yet smaller, but similar in every other aspect to the originally proposed sign per the plan located in the

file, Exhibit A. The sign itself will not be backlit. The only lighting allowed would be some external landscape-type lighting.

ON THE QUESTION:

Mr. Mills said one reason for the Board granting the variance of the amended dimensions is the size, the frontage and the scope of the project. The overall plan of the nursery encompasses a great deal of property, some variance is appropriate.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Mr. Mills asked how long the fence is going to span. Chairman Michnik said it is 156' and only along the west end of the property.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, **approve** part 2 of Appeal No. 1, as written with the condition that it is a 156' span along the west of the property as depicted in Exhibit B. The applicants are to work with the property owners at 8431 County Road to come up with a mitigation technique to protect privacy and create a barrier between the parking lot and the residence at 8431 County Road, which may include additional fencing cut down to 6' or additional landscaping. The fence it to be set off the property line far enough from 8431 County Road to allow for maintenance between the fences which shall be accomplished by whomever owns the land.

ON THE QUESTION:

Mr. Mills noted that one of the reasons the Board is accommodating this variance is because of the large size of this project, the large square footage, the security concern as well as the neighboring visual concerns. Also the concerns of the applicant about people wondering onto the neighbor's property. For these reasons the 2' variance for this fence is appropriate.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Meeting adjourned at 8:12 pm.

The Board members and the Deputy Town Attorney entered into an Attorney Client privilege meeting.

Carolyn Delgato
Senior Clerk Typist