

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday May 8, 2012
7:00 p.m.

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

Zoning Board of Appeals members present:

Chairman Arthur Henning	Vice-Chairman Daniel Michnik
Ryan Mills (arrived at 7:04pm)	David D'Amato
Patricia Burkard	Jonathan Hickey

Town Officials present:

Director of Community Development James Callahan
Deputy Town Attorney Steven Bengart
Councilman Bernard Kolber

Other interested parties present:

Thomas M. Cutspec	Joanne Cutspec
Greg Wolmering	Veronica Schroeder
Mary Eicher	Bill Eicher

Old Business

Appeal No. 1

Greg Wolmering
Residential Single Family

Requests the Board of Appeals approve and grant a 24' variance to allow for a 33' front yard setback to a primary residence for the construction of a new attached garage addition at 8185 West Ledge Lane.

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

DISCUSSION:

Chairman Henning noted that this is the second meeting the applicant has attended. The request was tabled at the April 2012 meeting due to complaints of Mrs. Cutspec who lives next to the applicant. It was the Zoning Board of Appeals opinion that the applicant and Mrs. Cutspec should get together to try and resolve the situation.

Greg Wolmering is present. Joanne and Thomas Cutspec are present as well.

Mr. Wolmering explained that he did get together with the Cutspecs but the situation has not been resolved. He wants to increase the living square footage of his home. He plans to turn his garage into a living space which includes a master bedroom and master bath. He is getting married in a couple weeks. Because the existing garage is being converted to living space, he wants to add a new garage to the front of what was the old one.

Ryan Mills arrived at the meeting.

It is clarified that nothing has changed since last month's Zoning Board of Appeals meeting.

In response to Mr. Wolmering's question, Mr. Callahan clarified that the measurement for the variance starts at the property line, not the center line of the road. Mr. Wolmering disagrees with the measurements stated on the agenda. Mr. Callahan said the established setback is at 57', Mr. Wolmering is asking for a 33' front yard setback, so the variance request is for 24'. Mr. Wolmering said the garage that he is looking to build in front of his existing garage is 23', his house sticks out in front of his garage 7', in reality is he looking at adding 23' or 16' to the front of his house? Mr. Callahan explained that the request is encroaching forward of the established setback line. Mr. Wolmering understands.

Mrs. Burkard asked if this plan is really more cost effective than adding a 2nd story, as Mr. Wolmering indicated in the previous meeting. Mr. Wolmering is living in a ranch style house today; if he wanted to live in a 2-story house he would buy one. He has no desire to go up; he wants to keep it on a one floor level. Mrs. Burkard visited the property and saw that the request is almost double the size of what is there now.

Mr. Wolmering said another issue is that his house and the other houses on the road are set back from the road at a consistent level, but the Cutspec's front door is at the back of his house; the Cutspec's house is set back much further than the other houses on the road. The Cutspec's house was built in 1966, Mr. Wolmering's was built in 1958.

Mr. Mills asked if the applicant explored the option of adding on to the south east side of the house. Mr. Wolmering has looked into this, but in discussing it with two contractors, he was told that from a time and cost effective standpoint it would be better to build what he is currently proposing. If he were to build on the south east side it would double the cost of the project. The ground would have to be excavated to allow a crawl space or a basement under the house for a freeze level. Heavy construction equipment would be needed to excavate, that equipment would have to drive over his other neighbor's lawn to access the site. He would lose the 100 year old Maple tree and a Cherry tree if the addition went on the south east side of the house. The whole back of the house would have to be ripped off if the addition was to go on the back. Utilities would be much more involved and costly if the addition went on the back.

Mr. Hickey asked what communications were had between Mr. Wolmering and the Cutspec's. Mr. Wolmering said they spoke two weeks ago. He has no desire to create pain and suffering for his neighbors but does not want pain and suffering for himself either. He and the Cutspec's have basically agreed to disagree.

Mr. Michnik asked if the applicant thought about putting a garage on the northeast part of the house. He has not thought of that because he is dealing with an existing driveway that needs maintenance, and by putting the addition in the proposed location he will be maintaining the driveway as part of the construction work. This would be less expensive than trying to put in a totally new driveway. If the garage was put on the east end of the house it would not connect to the house in the right way as there is a bedroom and a bathroom at that end. There is only 8'-10' to the neighbor's property on the east side of the house.

The variance request is to add living space to the existing home, so the occupants can live more comfortable. If the variance is not granted it means the applicant would not live as comfortably as he'd like. Mr. Wolmering agreed with this statement.

Mr. Cutspec said Mr. Wolmering never mentioned that his mother may be moving in with him.

Mrs. Cutspec said she drove around the neighborhood, including Clarherst, to see if there are other similar additions, she found none. So obviously it is not a usual occurrence in Clarence to have this type of variance. She walked out of her home on Monday and saw a big truck and a dumpster on the applicant's property and the view was bad. She said she told the applicant she didn't want the addition built on the front of his garage because of the close proximity of their houses. Mrs. Cutspec spoke with Paul Gross of the Building Department who confirmed it is not a full basement and the same digging would be required for the foundations and driveway. The cost would not double; it would be approximately the same no matter where the addition was located. Mr. Gross told Mrs. Cutspec there are other options for this addition. Mrs. Cutspec said if this variance is granted her way of life will be adversely affected. It will also negatively impact the value of her home.

Mr. Michnik asked if the applicant thought about building a 2-story putting bedrooms on the second floor. Mr. Wolmering said no, as he said previously, he wants to continue living in a ranch style home. He likes the home's location, the tax base is good, and he likes the neighborhood.

ACTION:

Motion by Jonathan Hickey, seconded by Arthur Henning, to **deny** Appeal No. 1 under Old Business. There is criteria that is looked at when reviewing variance requests which includes whether granting the variance would adversely impact the neighborhood. This request will impact the neighborhood. The applicant has control of what he does on his property. The request would be a detriment to the neighbor's property. It is a small neighborhood; this is a substantial request.

Jonathan Hickey	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Ryan Mills	Recuse

MOTION CARRIED.

New Business

Appeal No. 1

Veronica Schroeder
Commercial

Requests the Board of Appeals approve and grant a use variance to permanently allow the operation of a single family residence at 10050 Main Street.

Appeal No. 1 is in variance to § 229-84(A).

DISCUSSION:

Veronica Schroeder is present. She has been a resident of Clarence for 40 years and has lived at her current address for 30 years. She has always maintained her property and is currently planting more than 35 pine trees in the front and back of her property to restore the beauty as she still recovers from the

October Storm. She recently applied to re-finance her home with the Bank of Akron. The bank advised her that her property was commercially zoned in the front where the house sits and zoned residential in the rear of her property. The bank representative advised Mrs. Schroeder that she could not give her a residential loan because it didn't meet Fannie Mae requirements. The bank representative explained to Fannie Mae that there are many other residential properties along Main Street and Fannie Mae agreed to grant the re-finance. However, the appraiser would not grant the re-finance indicating that he will strictly adhere to the commercial zoning status. She asked that the Board grant the variance so she can continue her ancestry residing in this home.

Two neighbor notification forms are on file.

Mr. Michnik asked the applicant if she decided to sell the property down the road and a potential buyer asked if it was zoned commercial because it would be worth more that way, what would she say. Mrs. Schroeder said she would tell them it is zoned residential.

Mr. Callahan explained that the zoning was probably agricultural when the home was built. The Town subsequently introduced Commercial zoning along Main Street in the 1960's or 1970's. The fact that the home existed when the zone was changed allows that use to continue, it would be identified as a pre-existing, non-conforming use. The Commercial zoning classification does not allow for single-family use; however if in fact this home were destroyed by an act of God or a natural disaster, it would require an act of the Zoning Board of Appeals to approve the re-building of a single family residence. Absent that, the property will remain Commercial. The zone is not being changed; the use of the property is being changed to allow residential single family in that Commercial zone. The banks are being very critical now and saying they will not provide a mortgage to an applicant because in the event there is destruction of this home, they can't guarantee that the use is allowed.

Mr. Mills asked what the frontage is of the lot and said if the request is granted would there be enough frontage to allow another building lot. Mrs. Schroeder will never put up another home on that lot. Mr. Mills said a future owner may. Mrs. Schroeder owns the lot on the other side of her property as well. Mr. Mills asked if Mrs. Schroeder would be agreeable to a condition on the approval stating there can never be another building put on this lot. Mrs. Schroeder would agree to that condition.

Mr. Callahan confirmed that there is not enough frontage to allow a lot split at 10050 Main Street; it is one lot.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** Appeal No. 1 as written.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 2

William and Mary Eicher
Residential Single Family

Requests the Board of Appeals approve and grant a 3.5' variance to allow for the construction of a new detached accessory structure (shed) setback at 1.5' from the side lot line within the rear yard space of 9087 Michael Douglas Drive.

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

DISCUSSION:

Bill and Mary Eicher are present. Mr. Eicher explained that the request has changed to a 3' variance request to allow a 2' side yard setback. He said that due to the landscaping in the yard, the proposed location is in the only section that would allow it without being in the middle of the yard.

There is a private/public easement agreement for the installation of a shed that the Town Engineers office has reviewed. The Engineer requires this release form in case there is any construction that has to occur to replace the drainage line; it releases the Engineer from having to replace the shed. Mr. Eicher has agreed and signed the form. The form is on file.

Mrs. Burkard asked if the shed is moveable. Mr. Eicher said no it will be on a stone foundation. Mr. Eicher spoke with both his neighbors and they had no objections to his request.

Two neighbor notification forms are on file.

Mr. Eicher explained that he would like to use the 12' x 8' shed for storage of patio furniture and lawn maintenance equipment. The siding and roofing of the shed will match the house. The shed will have double doors that face the Eicher's property.

Mr. Michnik asked if it would be a big problem if the shed was moved to the west. Mr. Eicher said it would not be a big problem, but the shed would then be in the site line from the windows in his home. He wants to utilize the space in his backyard as best as he can. He has two daughters and a beagle who use the backyard all the time. They have lived in the house for 10 years.

ACTION:

Motion by Arthur Henning, seconded by Ryan Mills, to **approve** Appeal No. 2 as written with the following change:

-the request is changed to reflect a 3' variance to allow a 2' side yard setback.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Motion by Arthur Henning, seconded by David D'Amato, to **approve** the minutes of the meeting held on April 10, 2012 with the following change:

-replace Deputy Town Attorney Steve Bengart with Town Attorney Larry Meckler as being in attendance at the meeting.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Meeting adjourned at 7:54 p.m.

Carolyn Delgato
Senior Clerk Typist