

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday August 11, 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
David D'Amato

Vice-Chairman Daniel Michnik
Robert Geiger

Board of Appeals member(s) absent:

Ryan Mills

Other Town officials present:

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

Other interested parties present:

Mary Roth
Stephanie Lukacz
Art Hook Jr.
Diane Kaufman
Michael Lock
Scott Snowden

Michael Lukacz
Brett Rawdin
Kathy Grimm
Michael Kaufman
Lisa Krue

Appeal No. 1

Mary Roth
Residential Single-Family Zone

Requests the Board of Appeals approve and grant a variance to allow the placement of a generator in the front yard space of a home located at 8155 Clarherst Drive. The generator is currently installed.

Variance No. 1 is in variance to Section 229-55 (D) Accessory Structures.

DISCUSSION:

Mary Roth and her son-in-law are present. Ms. Roth did not know the generator had not been approved. Frey Electric is the contractor and did not know he was in violation. Ms. Roth's son-in-law said the generator is actually on the side of the house.

Neighbor notification forms are on file.

Mr. D'Amato asked if Ms. Roth would agree to put shrubbery around the generator. There is some shrubbery in place but she agreed to add more.

Jim Callahan explained that since this is a corner lot there are technically two front yards, thus a variance is required.

Mr. Michnik agrees with the request to add more landscaping around the generator.

ACTION:

Motion by Daniel Michnik, seconded by Robert Geiger, to **approve** Appeal No. 1 as written, with the codicil that more landscaping is to be worked around the generator to screen it from view.

Robert Geiger	Aye	David D'Amato	Aye
Daniel Michnik	Aye	Arthur Henning	Aye

MOTION CARRIED.

Appeal No. 2

Michael & Stephanie Lukacz
Agricultural Flood Zone

Requests the Board of Appeals approve and grant an 85' variance to allow a 250' front yard setback for the construction of a new home at 7865 Goodrich Road.

Variance No. 2 is in variance to Section 229-31 (A) (1) Setbacks.

DISCUSSION:

Michael and Stephanie Lukacz are present.

Chairman Henning reads a letter from the Town Engineer dated August 10, 2009: The proposed requested setback distance of 250 feet does not impact compliance with Local Law 03-2000-Flood Damage Prevention. All proposed construction and/or filling operations on the subject lot must be in accordance with all requirements set forth in Local Law 03-2000 and will be reviewed for compliance prior to issuance of a building permit. Building restrictions and conditions will apply for compliance with Local Law 03-2000 since the proposed structure will be located within the density floodway. A floodplain development permit is required prior to any land disturbance on the property. A copy of the memo is on file.

Mr. Lukacz is asking for this variance because he has two small children and a dog that he wants to keep away from the road. He also wants to farm the land and the variance will help keep the farm animals further from the road. Mr. Lukacz has owned the property for approximately two weeks. If his request is denied he would move the home forward. The lots next to his are not for sale at this time.

Neighbor notification forms are on file.

Mr. Lukacz has no opposition to the Town Engineer's letter dated August 10, 2009.

There is a total of approximately 52 acres, with 328' of frontage. Mr. Lukacz would like to start as soon as possible. The total square footage of the proposed house is 1824'.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No. 2 as written, with the codicil that the Town Engineer’s letter was provided to the applicant and he is in agreement with it.

Robert Geiger	Aye	David D’Amato	Aye
Daniel Michnik	Aye	Arthur Henning	Aye

MOTION CARRIED.

Appeal No. 3

Brett Rawdin
Residential Single-Family Zone

Requests the Board of Appeals approve and grant a 112 square foot variance for the construction of a 312 square foot shed at 4575 Shimerville Road. The shed is currently installed.

Variance No. 3 is in variance to Section 229-55 (H) Accessory Structures.

DISCUSSION:

Brett Rawdin is present and explained that he had to pay fines for not obtaining a building permit for the shed; the contractor built the shed larger than what the code allows. He met with Paul Gross and Mr. Rawdin has adhered to the guidelines to build the shed. There is no electric in the shed. It will be used to store his 4-wheeler, lawn mower and patio furniture.

One neighbor notification form is on file. The other neighbor notification form has been given to the neighbor but has not been returned.

Mr. D’Amato asked how high the shed is; Mr. Rawdin said 13’6” at the peak. The garage door is 8’.

Mr. Michnik would like to see landscaping on the sides and front of the shed done within 30-45 days of approval, if granted. Mr. Rawdin agrees.

ACTION:

Motion by Robert Geiger, seconded by Arthur Henning, to **approve** Appeal No. 3 as written, with the codicil that landscaping be put on the south and west sides of the shed within 45 days of the approval.

Robert Geiger	Aye	David D’Amato	Aye
Daniel Michnik	Aye	Arthur Henning	Aye

MOTION CARRIED.

Appeal No. 4

Art Hook Jr.
Agricultural Flood Zone

Requests the Board of Appeals approve and grant:
1.) a 9' variance to allow for a reduced front yard setback at 25'.
2.) a variance to allow for an accessory structure in the front yard space of a principal structure.

Both requests apply to 9140 Tonawanda Creek Road.

Variance No. 4 is in variance to Section 229-31 (A) (1) Setbacks and 229-34 (E) Accessory Structures.

DISCUSSION:

Mr. Hook is present and explained that his existing garage is in need of much repair and not worth fixing.

Since the original submission, the location of the garage has been changed to the other side of the home; the variance request remains the same as it is still in the front yard and is the same distance from the road. Mr. Hook said the reason for the change in location is his neighbors thought it would look nicer in the same location as the existing garage; Mr. Hook agrees with them.

Chairman Henning reads a memo from the Town Engineer dated August 10, 2009: The proposed requested setback distance of 25 feet does not impact compliance with Local Law 03-2000-Flood Damage Prevention. A structure is not permitted in the rear yard due to the Floodway of Tonawanda Creek. All proposed construction and/or filling operations on the subject lot must be in accordance with all requirements set forth in Local Law 03-2000 and will be reviewed for compliance prior to issuance of a building permit. Building restrictions and conditions may apply for compliance with Local-Law 03-2000 since the proposed structure may be located within the density floodway of Black Creek. A floodplain development permit may be required prior to any land disturbance on the property. The memo is on file and Chairman Henning provides a copy to the applicant.

Mr. Hook explained that he had an elevation survey done and he is out of the 100 year floodplain; he is in the 500 year floodplain. The size of the garage he is looking to build is 24'x 36' or 24' x 40'; the existing garage is 28'x 25'. He would like to start construction when he obtains the permit. The construction materials will be similar to the house.

Mr. Geiger likes the idea of saving the trees on the east side of the property. Mr. Hook said erosion from the creek is not an issue.

ACTION:

Motion by Arthur Henning, seconded by Robert Geiger, to **approve** Appeal No. 4 as written, with the caveat that the Town Engineer's letter dated August 10, 2009 was provided to the applicant and he is in agreement with it.

Robert Geiger	Aye	David D'Amato	Aye
Daniel Michnik	Aye	Arthur Henning	Aye

MOTION CARRIED.

Appeal No. 5

Andrew Grimm
Residential Single-Family

Requests the Board of Appeals approve and grant a 15' 6" variance to allow a 37' front yard setback for the construction of a new home at 6260 Heise Road.

Variance No. 5 is in variance to Section 229-52 (A) (3) Setbacks.

DISCUSSION:

Kathy Grimm, owner of the property, is present. She explained her purchase of the property was made late last year without the knowledge of a 50' buffer requirement. The buffer requirement is due to the close proximity of Ransom Creek. She submits the survey as evidence that there was no buffer shown on it. Had a buffer been shown on the survey she would have thought twice about purchasing the property. Ms. Grimm is an architect and she worked with the boundaries to make the proposed home fit. She is proposing a 2200 square foot ranch house and considered the neighbor as she designed the house. She will reside in the house. Ms. Grimm did not want to build a small house; this would decrease the value of the surrounding larger homes.

Chairman Henning reads a letter from the Town Engineer dated August 10, 2009: The proposed requested setback distance of 37 feet does not impact compliance with Local Law 03-2000-flood Damage Prevention. The structure can be constructed in compliance with the established setback by filling more of the lot and obtaining a Letter of Map Revision Based on Fill (LOMR-F). This is a common process for building within the floodplain. The NYSDEC buffer area is 100' wide centered on Ransom Creek. Any work within this buffer area requires NYSDEC and USACOE permits. A floodplain development permit is required prior to any land disturbance on the property. A copy of the memo has been provided to the applicant and a copy is on file.

Andy Grimm, who is listed as the applicant, is Ms. Grimm's brother and will be the builder.

ACTION:

Motion by Daniel Michnik, seconded by Robert Geiger, to **approve** Appeal No. 5 as written, with the codicil that the applicant follow the instructions and rules stated in the Town Engineer's letter dated August 10, 2009.

Robert Geiger	Aye	David D'Amato	Aye
Daniel Michnik	Aye	Arthur Henning	Aye

MOTION CARRIED.

Appeal No. 6

Diane Kaufman
Residential Single-Family

Requests the Board of Appeals approve and grant:

- 1.) a variance to allow more than one private garage.
- 2.) a variance to allow an accessory structure in the front yard space of a principal structure.
- 3.) a 480 square foot variance to allow for a 1, 200 square foot detached garage.

All requests apply to property at the southeast corner of Old Goodrich Road and Greiner Road.

Variance No. 6 is in variance to Section 229-55 (H) and 229-55 (D) Accessory Structures.

DISCUSSION:

Diane and Michael Kaufman are present. Mike Lock, builder, is present as well. Mr. Kaufman said he wants to build a home and have a detached garage to store a 30' boat, recreational vehicles and lawn equipment.

Jim Callahan explained the Kaufman's are purchasing all three lots on this corner, making one large corner lot. Instead of 3 homes on 3 lots, it will be 1 home on approximately 3 acres. The property will remain green and as treed as possible, especially along Greiner Road.

One neighbor notification form is on file, Ms. Kaufman spoke with this neighbor and they do not have a problem with the request.

The accessory structure will be finished with the same materials as the house with one large door or two small ones; the height of the doors will be 9' or under. The height on the building will be under 16'.

Ms. Kaufman explained the accessory structure will be moved a bit further north than what is shown on the plan. It is clarified that this change will not change the variance request. Closing on the property is scheduled for September 1, 2009 depending on the outcome of this evening's meeting. The Kaufman's do not have drawings for the house yet but are estimating the size at 3,000-3,500 square feet. There are no plans to build anything else but the house and barn; they will be built at the same time.

Councilman Kolber suggests locking the property in so it will remain undisturbed for the life of the property. Ms. Kaufman said the green space and the trees are why they like the property and her plan is to leave it as green as she possibly can. Councilman Kolber suggests a deed restriction. Chairman Henning had a discussion with Town Attorney Steven Bengart who indicated a condition can be placed in the motion to leave the greenspace undisturbed. Mr. & Mrs. Kaufman have no problem with this condition and agreed to the greatest extent possible to leave the first 100' on Greiner Road undisturbed as they want to protect the greenspace as well. There will be no animals kept on the property and construction should start next Spring.

Mr. Michnik suggests doing the same on the other side of the property. Ms. Kaufman did not agree and said next the Board may ask for a buffer in the rear of the property.

ACTION:

Motion by Robert Geiger, seconded by Daniel Michnik, to **approve** Appeal No. 6 as written, with the stipulation that 100' of the property on the north side be left undisturbed to the greatest extent possible. Reasonable shrubbery is required to protect the view of the barn from the neighbors to the south. The pole barn and the house will be moved closer to Greiner Road by 50' maximum per the applicant's request.

ON THE QUESTION:

Mr. Michnik said the applicants should use good taste when planting trees and shrubbery on the south side of the property; this is made part of the motion.

Robert Geiger	Aye	David D'Amato	Aye
Daniel Michnik	Aye	Arthur Henning	Aye

MOTION CARRIED.

Appeal No. 7

North Pines Construction
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 5' variance to allow a 10' side yard setback for the construction of an attached garage at 7485 Salt Road.

Variance No. 7 is in variance to Section 229-41 (B) (2) Setbacks.

DISCUSSION:

Lisa Krue of North Pines Construction is present. She explained that the owners of 7485 Salt Road also own the land next to them. Ms. Krue shows the blueprints of the proposed structure and submits the neighbor notification forms. The applicant bought the vacant lot to the north because the applicant's brother lives north of the vacant lot and they did not want anyone between them.

Mr. Michnik asked if the entire exterior of the house will be redone. Ms. Krue said they will match the color of the proposed structure to the existing home.

Ms. Krue said the applicants will use the attached garage for their two (2) cars. No part of the proposed structure will be on the vacant lot.

Mr. Michnik said the applicant told him they will move the existing shed.

Mr. Geiger asked if the driveway will have to be moved to make room for the proposed attached garage. Ms. Krue said the driveway will not have to be moved. She would like to start construction as soon as possible.

ACTION:

Motion by Arthur Henning, seconded by Daniel Michnik, to **approve** Appeal No. 7 as written.

Robert Geiger	Aye	David D'Amato	Aye
Daniel Michnik	Aye	Arthur Henning	Aye

MOTION CARRIED.

Appeal No. 8

Vilma & Scott Snowden
Residential Single-Family

Requests the Board of Appeals approve and grant a 5' variance to allow a 40' front yard setback for the construction of a new home at 4237 Susan Drive.

Variance No. 8 is in variance to Section 229-52 (A) (4) (a) Setbacks.

DISCUSSION:

Scott Snowden is present and explained that there was a fire that destroyed his house; the insurance company declared it a total loss right down to the foundation.

Mr. Geiger points out there is a bike path on the north side of the property. Mr. Snowden said that property is either owned by the school or the Town.

Neighbor notification forms are on file. The neighbors have no objections to the variance request.

Mr. Snowden said one or both of the trees on the property will remain. He has owned the property since 2000. Wall to Wall Construction will build the home.

ACTION:

Motion by Daniel Michnik, seconded by David D'Amato, to **approve** Appeal No. 8 as written.

Robert Geiger	Aye	David D'Amato	Aye
Daniel Michnik	Aye	Arthur Henning	Aye

MOTION CARRIED.

Appeal No. 9

Transit Valley Animal Hospital
Restricted Business

Requests the Board of Appeals approve and grant a 21' 6" variance to allow for a 3' 6" side yard setback for the construction of an addition to an existing structure at 7591 Transit Road.

Variance No. 9 is in variance to Section 229-79 (B) (2) Development and Design Provisions.

DISCUSSION:

Teresa, a representative of Kelkenberg Homes, is present. A representative from the Transit Valley Animal Hospital and David Fleming, architect, are present as well. Mr. Fleming explains that the animal hospital needs to expand their surgery and treatment area in order to properly work and prosper. Currently where this work is done, which is on the side of the building, is 4'-5' away from the property line; the applicant would like to extend the building back thus extending the non-conforming condition.

Chairman Henning asked why the property was not staked. Mr. Fleming said there was some miscommunication and he apologizes for that.

Mr. Fleming explains that there will be a 10' gap between the lobby and the side of the new addition; this will help prevent any structural issues. The addition will match the existing concrete block. The outside kennel will be pushed back. The south wall of the addition will be in line with the existing south wall. The upper level of the proposed addition is 590 square feet. The lower level is 1,141 square feet. A new accessible bathroom will be included in the addition. The building in the back is mostly used for the Dr.'s personal storage.

Two neighbor notification forms are on file.

Mr. Fleming hopes to wrap up the construction drawings in three weeks; Kelkenberg Homes will do the construction. A new roof will only be put on the addition, not on the existing building. Mr. Fleming will be able to tie the roof lines together.

ACTION:

Motion by Robert Geiger, seconded by Daniel Michnik, to **approve** Appeal No. 9 as written.

Robert Geiger	Aye	David D'Amato	Aye
Daniel Michnik	Aye	Arthur Henning	Aye

MOTION CARRIED.

Motion by David D'Amato, seconded by Arthur Henning, to **approve** the minutes of the meeting held on July 14, 2009, as written.

Robert Geiger	Aye	David D'Amato	Aye
Daniel Michnik	Aye	Arthur Henning	Aye

MOTION CARRIED.

Meeting adjourned at 8:35 p.m.

Carolyn Delgato
Senior Clerk Typist