

Town of Clarence  
Zoning Board of Appeals Minutes  
Tuesday, December 12, 2006  
7:00 PM

Ronald Newton, Chairman, called the meeting to order at 7:00 PM.

Board of Appeals members present were:

Ronald Newton, Chairperson	Raymond Skaine, Vice-Chairperson
Daniel Michnik	Arthur Henning
Ryan Mills	Hans Mobius

Other Town officials present were:

James Callahan, Director of Community Development  
Jim Hartz, Assistant Director of Community Development  
Steven Bengart, Town Attorney  
Rick Bigler

Other Interested Parties Present:

Richard Sowinski	Linda Chaffee
Stephen Levandusky	Susan Pettigrew
Alan Nigro	David Pettigrew
Robert LaCarrubba	Perry Smith
Joe Cirillo	Craig Tierney
Irene Toloue	Jeff Toloue
Kate Li	Jonathon Graff
Dave Sutton	Michael Wrobleski

Motion by Raymond Skaine, seconded by Dan Michnik, to approve the minutes of the meeting held on November 14, 2006, as written.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

**Old Business**

**Appeal No. 1**

Richard Sowinski  
Agricultural Flood Zone  
Appeal No. 1 is in variance to Section 229-31 Setbacks.

Requests the Board of Appeals approve and grant 110' variance creating a 250' front yard setback for the construction of a new single family home at 8600 Northfield.

**DISCUSSION:**

Mr. Sowinski explains that he has changed his request for a front yard setback from 250' to 187'. He checked with the neighbor two doors down and their setback is at 210', the setback for the people next door is 147'. The road veers at this point, so from the road Mr. Sowinski's house would look in line with the other houses. Mr. Skaine wonders if the house that is setback 210' establishes the front yard lot line for the neighbors, Mr. Newton said this does not set the lot line because it is not next door. There is one adjacent neighbor and his notification is in the file, he is aware of the change in the variance request.

Mr. Michnik voices his concern with regards to granting this variance; if the Zoning Board of Appeals grants this variance, then the lot next to it will ask for a variance as well. He advises that he could not support granting this request.

**ACTION:**

Motion by Raymond Skaine, seconded by Arthur Henning, to **approve** Appeal No. 1 subject to the applicant's request to change the variance from a 250' front yard setback to a 187' front yard setback, which would result in an approximate 40' variance.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Nay	Arthur Henning	Aye
Ryan Mills	Nay		

MOTION CARRIED.

**Appeal No. 9**

Stephen Levandusky  
Residential Single Family

Requests the Board of Appeals approve and grant two (2) variances:

1. A 26' variance to create a new residential building lot with 99' of public road frontage.
2. A 5,000 sq. ft. variance creating a new residential building lot with 15,000 sq. ft. of area.

Both variances apply to 10830 Bodine Road.

Appeal No. 9 is in variance to Section 229-50 (A) Lot Width and Section 229-49 (A) Lot Area Provisions.

**DISCUSSION:**

Mr. Levandusky explains that the lot in question is a lot of record. Before he purchased the lot the Town Planning Department told him it met the requirements. Jim Hartz explained at that time it may have been a Residential B zoning district which allowed 85' frontage, with 12,000 square feet of area. If the variance is not granted, Mr. Levandusky would probably sell the lot at a loss. He has already put \$8,000 into it. There are plans to have a sewer system put in this area; this is the reason Mr. Levandusky waited to request the building lot.

Mr. Skaine thinks granting this variance would only add to the congestion in the area; it is a substantial request and he could not support granting it.

Mr. Henning said granting the variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood.

Mr. Levandusky purchased the lot last October for \$140,000. The house is approximately 3,200 square feet and contains four (4) apartments. If the variance is granted Mr. Levandusky plans on selling the lot.

**ACTION:**

Motion by Raymond Skaine, seconded by Ryan Mills, to **deny** Appeal No. 9 based on the five factors the Board considers, specifically, that granting this request would create an undesirable change in the character of the neighborhood. The requested variance is substantial. It will have an adverse effect on the environment. There is no hardship because there are four (4) income producing apartments on the lot. The benefit sought could be achieved by some other method.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

**Appeal No. 3**

Michael Wrobleski  
Residential Single Family

Requests the Board of Appeals approve and grant a 50’ variance to allow 150’ front yard setback for the construction of a new home at a lot that is to be split from 5405 Thompson Road.

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

**DISCUSSION:**

Mr. Wrobleski explains there is an update on the request, he is now asking for an additional 30’ which would make the request an 80’ variance to allow for a 180’ front yard setback. The lot has legally been split and Mr. Wrobleski owns it. Mr. Newton and Mr. Skaine agree that with this substantial change the variance has to be re-advertised and neighbors notified. Mr. Wrobleski has notified the neighbors of the change, notifications are in the file. There is also a letter in the file from the southern neighbor advising they do not have an issue with the 180’ setback request. There is one large lot between the southern neighbor and Mr. Wrobleski’s property, this lot appears to have 2 frontage lots on Thompson Road.

Mr. Wrobleski said he would like to build a two-story single-family home estimating it to be approximately 2500 square feet. The driveway will be on the north side of the lot. It is undetermined what type of trees or how many trees Mr. Wrobleski will add; he said he will probably add evergreens.

Mr. Newton asks why the applicant went back 30 more feet in his request; he is concerned with the neighbor’s backyard privacy. Mr. Wrobleski explains the increase in the request is to aid in his privacy and notes that the neighbors are not concerned with the increase; they support it.

Mr. Mills said one thing the Board takes into account is not only the current owner of the neighboring property, but future owners as well.

Mr. Michnik said granting this request may cause a “snow ball” effect and future builders may want to ask for such setbacks as well. If the Board grants this request they will have to grant similar future requests in the area.

Mr. Wrobleski said to have the house set back would be an advantage to the Town because it would save many trees in the front of the lot.

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **deny** Appeal No. 3, as written, taking into consideration the change from a 50’ variance request to an 80’ variance request. The denial is based on the following criteria: granting the request would create an undesirable change in the character of the neighborhood, the house could be moved closer to the road, the request is substantial, the request will have an adverse effect on the physical conditions of the neighborhood by compromising the neighbors backyard privacy, the request does not conform with the other front elevations on the street, the alleged difficulty is self-created, the applicant knew he would have to ask for a variance when he purchased the lot.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

**New Business**

**Appeal No. 1**

David & Susan Pettigrew  
Residential Single Family

Requests the Board of Appeals approve and grant two variances:

1. A 5’2” variance to allow a 40’ 8” rear yard setback at the covered porch area.
2. A 3’2” variance to allow a 42’ 8” rear yard setback at the breakfast area.

Both requests apply to the construction of new home at 5200 Thompson Road.

Appeal No. 1 is in variance to Section 229-52 A (4) (c) Setbacks.

**DISCUSSION:**

Alan Nigro is the builder for David and Susan Pettigrew and explains that the depth of the lot is 200 feet and coupled with the 97 foot front yard setback to stay in line with the neighbors to the south, there is a 22 foot section of the house that is in violation of the Town’s requirements. Mr. Nigro explains that he has asked for an additional 1 foot for each request so that when the house is being built there will be some leeway. The house is a 2200 square foot ranch house. The plans were submitted to the Building Department and that is when the applicant was notified of the violation.

Mr. Skaine said the Planning Board recently approved the split of this land into four (4) lots and wonders what will happen to the vacant lot that is south to the site in question. Gene Jason of Properties Unlimited owns the vacant land to the west of the site. Mr. Skaine asked Mr. Nigro if he spoke with Mr. Jason to discuss acquiring more land so that the variance requests would not be needed. The house to the

south of the lot is at a 97.5 foot front yard setback and Mr. Nigro has kept this house in line with that. Mr. Nigro thought the Town Code allowed 5' or 10', plus or minus, from the setback of the house to the south of the lot, but the Building Department told him he can not pull the house forward and needs a variance. He is willing to pull the house forward, if that is allowed. Mr. Skaine reads from the Town Code book section 229-52 (A) (3) which states "No building in any such developed area shall be erected or otherwise located with its front building line more than 10 feet behind the building line so established by the Zoning Code Enforcement Officer." The Boards interpretation of this law is that Mr. Nigro can bring the house forward within 10' of the established lot line, which was established by the house to the south of this lot.

**ACTION:**

Motion by Raymond Skaine, seconded by Daniel Michnik, to **approve** Appeal No. 1, as written, but under the proviso that this appeal will not go into effect if, in fact, the Zoning Officer determines that the house can be moved up five feet (5'). The Building Department needs to be contacted for clarification.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

**Appeal No. 2**

Dr. Robert LaCarrubba  
Residential Single Family

Requests the Board of Appeals approve and grant a 200 square foot variance to allow the construction of a 20' x 20' free standing garage at 8771 Fairbrook Court.

Appeal No. 2 is in variance to Section 229-55 (H) Accessory Structures.

**DISCUSSION:**

Perry Smith is the builder and is representing Dr. LaCarrubba. Mr. Smith explains that the homeowner now has an attached two car garage; however, the garage is unique because both the entrance to the basement and the entrance to the house are in the garage, which takes space away from the building. An attachment was considered but it would have to be put where the chimney is. The applicant has a large concrete area to the right of the house and is proposing to build in this area; no additional concrete will be needed. The appropriate code separation between the house and the garage will be maintained. Photographs of other freestanding garages in the neighborhood are on file. Neighbor notifications are in the file.

Mr. Newton asks if a breezeway could be constructed to add this garage on to the house. Mr. Smith said there is a way to construct a breezeway; however, the issue then becomes aesthetics and cost. If the garage is attached to the house it has to be put on a full foundation, this is costly. The front of the garage will be bricked in a similar fashion to the front of the house; the roof will be the same as the house as well. The applicant would like the ability to store three (3) cars and children's toys.

**ACTION:**

Motion by Raymond Skaine, seconded by Arthur Henning, to **approve** Appeal No. 2, as written, based on the following: it will not produce an undesirable change to the neighborhood, this request is cost

efficient, it is not a substantial request and it will not have an adverse effect on the environment of the neighborhood.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Nay	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

**Appeal No. 3**

Joseph Cirillo  
Residential Single Family

Requests the Board of Appeals approve and grant a 40 square foot variance to allow the construction of a 12' x 20' shed at 5181 Thompson Road.

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

**DISCUSSION:**

Mr. Cirillo explains that when he purchased the property there were two (2) existing sheds on the property, which added up to a total of approximately 256 square feet. The sheds suffered storm damage from the October 2006 storm and he is looking to replace them with a single shed, both sheds will be removed from the property. The new shed would be inline with the existing garage. He would have a Duro Shed put up. Mr. Cirillo does not know when the company will schedule the construction of the new shed. The shed will be used for storage. The proposed shed will have three (3) windows, a swing door on one end and a 36" access door on the other end. It will be Gable style with an asphalt shingle roof.

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 3, as written.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

**Appeal No. 4**

Gene Jason  
Residential Single Family

Requests the Board of Appeals approve and grant a 4' variance to allow a 41' rear yard setback for the construction of a new home at the southwest corner of Greiner Road and Thompson Road.

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

**DISCUSSION:**

This is a similar variance request to Appeal No. 1. See discussion for details.

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 4, with the same conditions as Appeal No. 1: the first recourse is to contact the Building Department to see if the house can be moved forward, if not, it will be moved back and a five foot (5') variance will be granted.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

**Appeal No. 5**

David Sutton

Planned Unit Residential Development

Requests the Board of Appeals approve and grant two variances:

1. A 4' variance creating a 21' rear yard setback and
2. A 4.3% variance to allow 17.3% of the lot to be covered by a single-family home at 5099 Rockledge Drive.

Appeal No. 5 is in variance to Section 229-52 Setbacks: Section 229-56 Lot Coverage

**DISCUSSION:**

David Sutton of Dean Sutton Architects is representing Kate Li, the proposed resident. Both neighbors have been notified, certification is on file. Mr. Sutton is proposing a two (2) story structure, which limits the applicant to 13%. The Building Department reviewed the plan and suggested that the applicant was in excess of the 13% required lot coverage. Detaching the garage was recommended at this point, by the Building Department. The footprint for the main house is approximately 3100 square feet; the total square footage is 4200. The proposal would include a detached garage with a breezeway to the house.

Jonathan Graff, of 5093 Rockledge Drive, asks what the implication of the house in the backyard would be. Mr. Sutton said the rear yard setback does not have an impact on Mr. Graff's property.

Mr. Graff submits a letter of approval for the construction of this home by the Spaulding Lake Association, the approval included an attached garage, the letter is on file.

Estimated time of construction is unknown.

Mr. Sutton explains the exterior material will be primarily Dryvit with some stone accents. The roof will either be architectural shingles or synthetic rubberized slate roof.

Mr. Sutton understands that the southern part of the property is screened with a series of evergreens, where the impact of the variance may occur. The rest of the lot is covered with a series of variations of shade and ornamental trees. The foliage will be introduced with the introduction of the house construction.

Mr. Newton asks why the center bay is higher than the rest of them; Mr. Sutton said the reason is purely architectural; it is a three (3) gate concept design.

**ACTION:**

Motion by Raymond Skaine, seconded by Arthur Henning, to **approve** Appeal No. 5, as written.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Meeting adjourned at 8:30 p.m.

Ronald Newton, Chairman