

TOWN OF CLARKSON – ZONING BOARD OF APPEALS

November 7, 2012

PRESENT – Board Members

Conrad Ziarniak – Chairperson
Paul Dittman
Jackie Smith
Michael Beadling
Joseph Perry

Support Board Members

Richard Olson, Town Attorney *
Chad Fabry, Code Enforcement
Ursula M. Liotta, Administrative Assistant

Excused *

CALL TO ORDER

C. Ziarniak called the meeting to order at 7:00 p.m., led in the Pledge of Allegiance and reviewed the agenda.

PUBLIC HEARING

1. **Clarkson Crosby Mart**, Applicant
8389 Ridge Rd., Tax ID#054.13-2-16.1, Zoned: HC
Application for an **Appeal Variance** of ARB's Determination

C. Ziarniak began by summarizing the chain of events that led to this Application for an Appeal Variance.

- Applicant made application for an area variance for the addition of an 8'x12' freezer extension.
- Because the property is in the Historical Overlay District (HOD), review by the Architectural Review Board (ARB) was required by Town code.
- The ARB reviewed the application and arrived at a determination per letter dated 10-22-12.
- C. Ziarniak read aloud from the letter which stated "*Pursuant to Clarkson Town Code Section 140-25 (F) (2) (b), the ARB disapproves the application as the style and finish of the proposed addition is inconsistent with the architectural style of adjacent Class I buildings, and the proposed structure could detract from their value*".
- Because of ARB's determination, the Applicant made Application for an Appeal Variance.

C. Ziarniak read the legal notice for the Appeal Variance aloud and opened the Public Hearing. Applicant was asked why the company would not adhere to ARB's requests. M. Mahar, company representative, stated that:

- He provided two letters written by the installer of the proposed 8'x12' freezer unit indicating that the siding will not deteriorate, and that if the unit was altered in any way, it would affect the efficiency of the freezer, and the warranty would be voided. C. Ziarniak stated that the two letters dated 10-18-12 and 10-25-12 written by Rick Ponzi, with ABC Refrigeration & Air Conditioning Inc., were made part of the file.

C. Ziarniak asked for public comment. RoseMary Shaw, 8721 Ridge Road, stated that she resides two properties South of the Crosby store, and thought that adding the freezer unit to the exterior of the building might bring it a bit "tight" to the adjoining property. Further, she felt it was important that the Applicant and Town arrive at a compromise regarding the ARB's determination.

M. Mahar responded by stating that there is 40' of clearance from the back of the building to the property line; further, that the Applicant had made other concessions with the ARB, i.e. to replace the fence on the side and rear side of the building; that it would not have been economically feasible to incorporate the freezer unit into another structure like a shed.

There were no other public comments. C. Ziarniak closed the Public Hearing. There were no further comments from the Board members. C. Ziarniak stated that it is this Board's responsibility to consider the findings of fact as to why it disagrees with the ARB's determination.

C. Ziarniak stated that the letters provided by the installer indicate that this is a self-contained unit kit; that it is a rated appliance; that the letters and specs were made part of the file; that there are other appliances or accessory structures outside of the building, i.e. propane storage tanks, fuel tanks, ice machine, A/C condensers; that the new freezer unit is an appliance, and it's consistent with what already is present at the building.

P. Dittman stated that he viewed the surrounding HOD area, and found that there are many instances of flat roofs on accessory structures, and that a peaked roof would not necessarily fit the area; further, that accessory structure siding is also varied.

C. Ziarniak made a motion determining that this matter is a Type II SEQR action and therefore, not subject to further environmental review. Second by P. Dittman; unanimously carried.

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C. Ziarniak made a motion to approve the appeal variance based on the two letters provided by the installer, and this Board's review of the ARB's disapproval based on its two concerns: the roof and siding. Second by J. Smith; unanimously carried. The Notice of Decision reads as follows:

PLEASE TAKE NOTICE that pursuant to a Public Hearing held on November 7, 2012, the Zoning Board of Appeals hereby grants Applicant's appeal variance request pursuant to Clarkson Town Code §140-25 (F)(2)(b).

2. **Clarkson Crosby Mart**, Applicant – cont'd
8389 Ridge Rd., Tax ID#054.13-2-16.1, Zoned: HC
Application for **Area Variance**

C. Ziarniak stated that the Public Hearing was originally opened on 10-3-12, continued on 10-17-12, and will be completed this date. He asked for public comment. None were offered. No further comments from the Board. C. Ziarniak made a motion to close the Public Hearing; second by J. Perry; unanimously carried.

With regard to the privacy fence, ARB did not give specifications for what they preferred. Applicant, did however, provide a photograph of the proposed replacement fence, i.e. a professionally installed, natural finish wooden flat top design privacy fence, to be placed in exactly the same location as the current fencing, and will be installed in a reasonable time frame. The fence will serve as somewhat of a visual block for the new freezer.

C. Ziarniak made a motion determining that this matter is a Type II SEQR action and therefore, not subject to further environmental review. Second by M. Beadling; unanimously carried.

J. Smith made a motion to grant the area variance; second by J. Perry; unanimously carried. The Notice of Decision shall read:

PLEASE TAKE NOTICE that pursuant to a Public Hearing held on the following dates: 10-3-12, 10-17-12, and 11-7-12, the Zoning Board of Appeals granted Applicant's request for a 12' area variance pursuant to Clarkson Town Code §140-36 (C), to allow for the addition of an 8' x 12' exterior freezer at the rear of the building. This Notice of Decision is conditioned upon the following:

1. That the pre-fabricated 8' x 12' exterior freezer unit shall have white vertical siding.
2. That the existing wooden stockade fencing on the property shall be replaced with professionally installed flat topped wooden privacy fencing that is durable, easily repaired, and relatively low in maintenance, and that shall offer more privacy and noise reduction.
3. That the pre-fabricated exterior freezer unit and the fencing shall be kept in like new condition.

3. **Michelle Hare**, Owner/Applicant, 2227 Ireland Rd., Tax ID#041.02-1-29, Zoned RS-20
Application for Area Variance

C. Ziarniak read the legal notice aloud and opened the Public Hearing. He asked the Applicant to state the justification for the request.

M. Hare introduced herself and Audra DelPriore, Medicaid Service Coordinator with Hillside Children's Center. M. Hare explained that she made application because three of her five children have autism; that they have a tendency to wander; that their ability to have self awareness of safety is limited; that the front door is the only one the children recognize for in and out of the house, and it's the only door that the family uses because of the way the house and land are situated. The other two exit doors are through a laundry room to the garage, and from the garage to the backyard, but the children aren't even aware of those two doors. Eventually she will install a 6' fence in the backyard.

Because the children are "skillful Houdini's" and have compromised the security windows and door locks, she is requesting a 4' fence (not 6') in her front yard to give her the extra assurance of safety when the children do get out. A 3' fence allowed by code will not provide that sense of security.

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M. Hare provided a sketch by NYS Fence for the 48'x50' area in the front yard that she wishes to fence. She also provided supporting documents, i.e. a letter from A. DelPriore, Hillside Children's Center dated 10-30-12, and from Valerie Johnson, Center of Disability Rights, un-dated but received 11-5-12. Both letters stated that in the author's opinion, the family should have a fence for the safety of the children, and to increase the children's independence. M. Hare further stated that she started a nationwide petition, a grassroots campaign, to support her application. C. Ziarniak stated that from a fact gathering standpoint, letters from professionals personally acquainted with the household are more pertinent to the Board in arriving at their decision. A. DelPriore added that M. Hare also has some medical issues and is unable to get to the children quickly if they got out of the house unattended; that the fence would be a barrier and afford her more time to get to the children before they headed toward the road.

C. Ziarniak asked the ages of her autistic children. M. Hare stated that they are 6, 8 and 19; that she gauges the younger children's behavior on the older child.

C. Ziarniak asked for public comment. Mary Marone, 2105 Ireland Road, stated that the legal notice did not state what the fence will be made of. M. Hare stated that the fence will be a wooden picket fence, 4' tall, no points on top, with a flat top, and the wood will be stained cherry in the Spring 2013 to match the house; the fence will be professionally installed.

C. Ziarniak stated that in the past, the granting of area variances is a "property" variance, not an "applicant" variance. But he wishes to consult with the Attorney for the Town in this particular matter. M. Hare stated that whether this application is approved or not, she will put up a 3' fence. The Notice of Decision could be conditioned on the removal of the fence when it is no longer needed, and the Code Enforcement Officer could compel a new owner to remove the fence.

C. Ziarniak made a motion to close the Public Hearing; second by P. Dittman; unanimously carried.

Board discussion: J. Perry stated that he would feel better if when the fence is no longer needed, it would be taken down. P. Dittman stated that he is concerned about the abuse the fence could get if the kids get out, especially as it weathers. Further, he questioned why the fence needs to be 48' from the house. M. Hare stated that the size was what she aesthetically wished for, and that she intends to plant lots of trees or shrubs near the fence so that house becomes less visible. P. Dittman asked if she had considered a smaller version.

It was mentioned that the fence M. Hare wishes to install is a rather decorative fence, and may not be much of a deterrent to the kids. M. Hare stated that it's all based on the children's perception. A 3' fence is a barrier, but 4' would be better because it would allow her more time to reach the children if they manage to get out of the house unattended.

C. Ziarniak reviewed the criteria required by NYS Town Law for the granting of an area variance; that this criteria is established to grant the minimum variance; that the Board's discussion with the Applicant at this time may bring about some other ideas.

- benefit derived: the children will be safer.
- changes to neighborhood: the fence would not be the norm and may change the character of the neighborhood.
- other methods: C. Fabry reviewed other methods that the Applicant may use to increase the safety of the children within the home, and that may be as effective as the fence. M. Hare stated that the fence is a temporary safety measure; that this is not the children's play area; that the house is a raised ranch with a minimal entryway for five people in the household; that the layout of the house, and the water and drainage issues all affect where the fence is placed.
- physical & environmental issues: none
- how was the difficulty created: the children were born with a functional disability.

C. Ziarniak stated that this Board has not dealt with fencing for autistic children before; yet he understands that the fence would allow the family to safely come in and out of the house; that the fence would be an extra barrier or buffer to keep the kids from wandering. Further, he stated that he contacted the fence company that partners with the Flutie Foundation in New England; that they install fences using stronger components, self closing gates and special locks for families with autistic children.

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C. Ziarniak stated that the application will be tabled to 11-21-12 to allow for:

1. a consultation with Attorney Olson as to whether the granting of the area variance may be revoked if the Applicant moves from the home; and
2. a review of a compromise solution by the Applicant, i.e. a smaller fenced area than the originally proposed 48'x50' area, and yet will satisfy her safety concerns. Applicant stated that the width is necessary because of certain house issues, but she would scale back the depth.

NEW BUSINESS:

4. **Gordon & Diana Niedermeier**, Owners/Applicant
3806 & 3810 Sweden Walker Road, Zoned RS-20; Tax ID#s 070.01-1010 & 11
Application for an Area Variance

Applicants were not present. U. Liotta explained that Applicants own adjacent properties with existing lot lines that do not coincide with how the properties appear visually. The present lot line of 3806 intersects the driveway of 3810 at the road. The Applicants are unable to sell 3806 because of the discrepancy; that it is causing the Applicants financial hardship; that they are requesting two area variances to correct the lot line issue at the road, as follows:

1. An area variance pursuant to §140-21(D)(2)(b) of the Clarkson Town Code, wherein it states that dimensional requirements in the RS-20 district for single-family dwellings in non-integral subdivisions with public sanitary sewers, shall have a minimum lot width of 100 feet. The Applicants propose a front lot width dimension change for **3806 Sweden Walker Road** to 89.5 feet, resulting in a 10.5% area variance request.
2. An area variance pursuant to §140-21(D)(1)(a) of the Clarkson Town Code, wherein it states that dimensional requirements in the RS-20 District for single-family dwellings in non-integral subdivisions with public sanitary sewers, shall have a minimum lot area of 20,000 square feet. The proposed change of the front lot width dimension in #1 above will result in a lot area of 16,428 square feet at **3806 Sweden Walker Road**; therefore, Applicants request a 16% area variance.

C. Ziarniak made a motion to schedule a Public Hearing for 11-21-12; second by J. Smith; unanimously carried.

REVIEW OF MEETING MINUTES: October 17, 2012

J. Smith made a motion to approve the minutes; second by M. Beadling; unanimously carried.

ADJOURNMENT: C. Ziarniak made a motion to adjourn at 9:00 p.m.; second by P. Dittman; unanimously carried.

NEXT MEETING: November 21, 2012; J. Smith will be unable to attend.

Approved 11-21-12

Respectfully Submitted,

Ursula M. Liotta
Administrative Assistant