

Clarence Board of Appeals Minutes
Tuesday, March 14, 2006
7:00 PM

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

Board of Appeals members present:

Ronald Newton, Chairperson
Arthur Henning

Daniel Michnik
Ryan Mills

Board of Appeals members absent:

Raymond Skaine, Vice Chairperson

Eric Heuser

Other Town officials present:

James Callahan, Director of Community Development
James Hartz, Assistant Director of Community Development

Other Interested Parties Present:

Joseph Mannarino
Mike Wolter
Sean Hopkins
Sean O'Mahony
John Ciminelli
Norine Catalano
Bernadette Elia
Darlene DiFrancesco
Chris McCarthy
Deborah R. Swain
Gerald S. Perreault
Marilyn Brady
Adrienne Lechner

Bill Dengler
Matthew Randazzo
Andy Hunt
David Sutton
Richard Forrestel
Vincent Catalano
David Elia
Mary Scamacca
Richard Murphy
Stephen Swain
Wes Stone
Richard Lechner
Dominic Montanino

Motion by Dan Michnik, seconded by Arthur Henning, to approve the minutes of the meeting held on February 14, 2006, as written.

Ronald Newton AYE
Daniel Michnik AYE

Arthur Henning AYE
Ryan Mills ABSTAIN

MOTION CARRIED.

Old Business:**Appeal No. 1**

Joseph Mannarino
Residential Single Family

Requests the Board of Appeals approve and grant:

1. a 24' variance to allow a 79' front yard setback for construction of a new home at 5229 Donnington Road.
2. a 1,249 sq. ft. variance to allow the construction of a 1,969 sq. ft. garage at 5225 Donnington Road.

Appeal No. 1 is in variance to Chapter 229, Article VI, sections 52 and 55.

DISCUSSION:

The address has been corrected to reflect 5225 Donnington Road. Joseph Mannarino is present and addresses the Board. He purchased the land five (5) years ago and has been working on a design for the home since. Mr. Mannarino has detailed the five (5) concerns of the Board of Appeals from the February 14, 2006 meeting. The concerns are as follows: the impact of the design on the line of sight of Mr. Tasca, relocate the septic system to the yard, setback consistent with other properties on the street, garage design consistent with other properties in the neighborhood, height of the building consistent with the zoning code.

In addressing the concerns, Mr. Mannarino has changed the height of the first floor ceiling from ten feet (10') to nine feet (9'); the height of the house is now thirty-five feet (35'). The septic system has been redesigned to be located at the rear of the yard.

Mr. Mannarino has discussed his plans with Mr. Randazzo, the neighbor to the south. The setback in the plan needs to address Mr. Randazzo's and Mr. Tasca's line of sight. Mr. Tasca lives on Hollingson Road. Mr. Mannarino owns approximately one and a half (1/2) acres, it touches the yards of four (4) houses on Hollingson Road.

Mr. Mannarino walked the property with Chris Grandy from Deb's Tree Service and identified the best trees on the property. The applicant used this information in determining the location of the house.

The proposed garage would have a setback equal to the setback of Mr. Randazzo's garage. This allows a number of trees to be saved. There is a ninety (90) year old tree on the property; the proposed setback would allow the porch to be twelve feet (12') from this tree.

There is a letter on file from Mr. and Mrs. Randazzo, dated February 20, 2006, that indicates Mr. Randazzo would prefer to see Mr. Mannarino's house setback enough so that the view from the Randazzo home would be of the trees in the front yard as opposed to the side of a house or garage.

Mr. Mannarino explains photo's four (4) and five (5) from the packet he has provided. The photos show that, with the proposed design, he can retain approximately two hundred fifty feet (250') of a wooded lot.

Mr. Mannarino has provided a setback analysis. The analysis found that the average setback on his side of the street is eight six feet (86'), he hopes that his request for a seventy nine foot (79') setback would be consistent with the rest of the properties on the street.

Mr. Mannarino said that the Zoning Code states an accessory structure can not exceed forty percent (40%) of the principal use of the structure area. The area inside his proposed garage is less than forty percent (40%) of the finished area of the house. The garage has been redesigned from the original plan; it is smaller. The front of the house and the front of the garage will be made of Waterford brick. The siding will be white and the roof shingles will be black. The garage was designed to establish safe egress.

Mr. Mannarino has met with all the neighbors to discuss his plans. There are letters on file with their comments.

The placement of the house is very important and it appears that the redesign is the optimal setback; it addresses Mr. Tasca's concern. It also appears that the house will be consistent with the neighborhood.

The square footage of the home is approximately forty two hundred feet (4200').

A positive feature of this garage is that the doors are essentially hidden from the road. There are two means of access to the second floor of the garage, one from the garage and the other from the house. There will be a library on the second floor of the garage. There are no water or gas lines to this part of the garage; there is no intention for the floor to be used as an in-law apartment in the future. Part of the approval should reflect the condition that this house will only be used as a single-family dwelling.

Mr. Randazzo speaks to the Board. The view of the trees from his kitchen is important to him.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to APPROVE Appeal No. 1 with the following conditions:

- The second story of the garage is to be used as a library only.
- In-law apartments, bedrooms or dormitory set-ups are not acceptable on the second story of the garage.
- There will be no running water to the second story of the garage.

Ronald Newton	AYE	Arthur Henning	AYE
Daniel Michnik	AYE	Ryan Mills	AYE

MOTION CARRIED.

Appeal No. 3

Walgreen's
Traditional Neighborhood

Requests the Board of Appeals approve and grant a 30' variance to create a 10' front yard setback to erect a new free-standing sign at 6785 Transit Road.

Appeal No. 3 is in variance of Chapter 181, section 3.C.1.

DISCUSSION:

Sean Hopkins, of Hopkins, Garas & Sorgi PLLC, is present and speaks to the Board. On behalf of his client Mr. Hopkins is asking to install a pile-on sign in close proximity to the intersection of County Road and Transit Road. Since this project began in 2004 the Zoning Code has changed, the applicant was unaware of the code change for signs until it was brought to his attention under a different matter. There is no other place at the site to erect a sign without redesigning the entire plan. It is a single pole sign.

The measurement from the property marker to the metal stake is six feet (6'). The measurement from the control box pad for the signal light to the orange line at the site is nine feet (9'). The orange line at the site runs north to south.

Ronald Newton asks how this sign will interface with the proposed decorative wall to be constructed. Mr. Hopkins states that the landscaping has been designed to make the decorative wall blend in. The Landscape Committee has approved the landscaping design.

The width of the sign is approximately two feet (2'). Andy Hunt states he is not happy with the design and will submit another design to the Planning Board once completed.

The Zoning Board of Appeals does not want a precedence set for future signs going north on Transit Road by granting this variance.

There is signage on both sides of the building which complies with the Zoning Code. The Code allows for building signs facing both public streets as well as a pole sign.

Arthur Henning suggests having no pole sign at all. Transit Road will be widened at some point in the future, at this location. Mr. Hunt informs the Zoning Board of Appeals that the sign is very important to all Walgreen's stores as they are plugged into the nationwide program "Amber Alert". The "Amber Alert" program will notify all Walgreen's stores if a child is missing and each Walgreen's store is able to put that information on their sign to notify the public. The signs are used for other emergency information as well. All local Walgreen's Stores have either a digital sign or a sign with changeable letters.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to DENY Appeal No. 3.

Ronald Newton	AYE	Arthur Henning	AYE
Daniel Michnik	AYE	Ryan Mills	AYE

MOTION CARRIED.

New Business:**Appeal No. 1**

Eva Blum
Residential Single Family

Requests the Board of Appeals approve and grant a front yard setback of 264' for the construction of a new home at 4925 Winding Lane.

Appeal No. 1 is in variance of Chapter 229, Article VI, section 52.

DISCUSSION:

David Sutton, of Dean Sutton Architects, representing Eva Blum, is present and addresses the Board. The reason for the variance request is the lot has a very unique shape. The proposed home is a single-family, three thousand (3,000) square foot, ranch style house. Due to the unique shape of the lot and in order to abide by the one hundred foot (100') setback requirement the house would be at the bottom of the escarpment. The applicant is asking to further set the house back and have the driveway type entrance into the basement of the house. The house would be in line with the houses that are located on the escarpment. The main concern is the visual impact this house may have on the area. The applicant will try to preserve as much of the heavy growth vegetation and trees as possible to continue the buffer and many of the existing features. The applicant will also try to retain the value of the property as well as the surrounding properties. The Blum's bought the property in 1990 and intended on building a house. Mr. Blum became ill and they were unable to build. They would like to make this lot marketable in order to re-coop some of their investment. Mr. Sutton states the applicant is willing to modify the plan in order to address any concerns. There is a hardship created due to the natural features of the lot. The septic system would be located in such a way as to minimize the impact on the trees. He is not aware of any public safety problems regarding the variance request.

Vincent Catalano, of 4912 Strickler Road, addresses the Board. Mr. Catalano voices his concern regarding the placement of the septic system; most of the trees would have to be removed. He has lived at this location since 1978 and the beauty of the trees is the reason he bought the land. The "Tree Doctor" comes to inject trees so they stay alive and healthy.

David Elia, of 4950 Strickler Road, is opposed to the variance request. He feels it will change the whole character of the valley, which is the primary reason for him purchasing his property. He built his home in such a way as to not disturb the trees and has always appreciated the beauty of the area. This is not a minor variance request. The houses within five hundred feet (500') of the proposed house were not depicted on the plan. This should have been done to show how the project will impact the neighbors. In Mr. Elia's opinion the house would be built in the middle of the neighbors back lawns and in the middle of a beautiful valley that is ecologically important. There are fireflies, dragonflies, frogs and many other critters in the valley. Mr. Elia does not use insecticide on his property in order to maintain the pristine nature of the area. He feels it is disingenuous of the Blum's to send Mr. Sutton as the representative of the project. Blum Builders are developers, they bought the land in 1990 with the intention of selling it for a profit, they were unable to sell because of the uniqueness of the lot. He suggests it would be economically cheaper to build a house on Winding Lane instead of in the middle of the valley.

Sean O'Mahony, of 4909 Winding Lane, is the owner of the house that sits in front of the lot that is being discussed. He bought the property seven (7) years ago. Mr. O'Mahony was told the lot next to him is a non-buildable lot and is more of a conservation area. He objects to the variance.

Richard Forrestel Jr., of 4975 Winding Lane, speaks to the Board. He purchased his home in 1993. He is a contractor for Cold Spring Construction, they built Main Street. He knows much about moving rock; he knows how much it costs and how hard it is. The reason he bought his house was because he know a house could not be built on the lot in question with a one hundred foot (100') setback. Mr. Forrestel Jr. would not like to see the Town offer a variance solely for a commercial purpose.

John Ciminelli, of 4994 Strickler Road, is a developer. He has lived at this location since 1970. He would like the Zoning Board of Appeals to address some factual issues that he is concerned with. Between cultural, archeological and other significance of the escarpment this area could not be developed for a commercial purpose. He asks that a wetlands study be done on the area. Mr. Ciminelli agrees with the neighbors that many trees would be taken down in order to provide the proper volume of percolating soil to have the right functioning leach field in the area. Mr. Ciminelli also questions the power source, would the power come from Strickler Road or Winding Lane? There is a significant cost difference in putting these power lines either overhead or underground; he would like to know the plan. He asks the Zoning Board of Appeals to question the function ability of the area being used for a leach field, how the utilities would be brought in to serve the property, whether or not there is any wetland delineation that needs to be done and whether or not an archeological study needs to be done. Even if the area passes all these tests he is still opposed to the variance.

The area was not staked. This is a mandatory requirement of the Zoning Board of Appeals.

Arthur Henning indicates that four (4) homes will have their back yard privacy affected if this variance is granted.

Four (4) of the five (5) Zoning Board of Appeals Criteria will have a major impact on the area and are as follows:

- An undesirable change will be produced in the character of the neighborhood and a detriment to nearby properties will be created by the granting of this area variance. This is evident by the amount of neighbors that came to this meeting to voice their concerns.
- This requested variance is very substantial.
- The alleged difficulty is self-created. When the property was purchased it was apparent that there would be difficulties in putting a home on the lot.
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Ronald Newton points out that when the owners of the lots that back up to 4925 Winding Lane purchased their respective lots, it was apparent that there was an undeveloped lot behind each one and this lot may be developed in the future. If these owners want to further their backyard privacy they could consider buying the lot behind them.

Sean O'Mahony thinks the Conservation Department should be contacted regarding the lot in question. There are many different conservation programs available.

Mr. Sutton thanks the neighbors for participating.

ACTION:

Motion by Arthur Henning, seconded by Daniel Michnik, to DENY Appeal No. 1, as presented. The denial is based on the proofs listed above with regard to the Zoning Board of Appeals Criteria.

Ronald Newton AYE
Daniel Michnik AYE

Arthur Henning AYE
Ryan Mills AYE

MOTION CARRIED.

Appeal No. 2

First Niagara Bank
Major Arterial

Appeal No. 2 is in variance of Chapter 181- (3), (e).

Requests the Board of Appeals approve and grant a third sign at 4435 Transit Road.

DISCUSSION:

Chris McCaffrey, of Ulrich Sign Co., explains that the building has peaks on three different elevations, points north, south and west. The west is the entrance; obviously the applicant wants a sign over the entrance. With visibility on Transit Road it is important to have north and south elevations displaying signs. The signs are not big, they measure twenty-seven point four (27.4) square feet each. Mr. McCaffrey points out the other financial institutions on Transit Road and their numerous signs. These signs are critical for visibility.

Arthur Henning asks how many signs are on the First Niagara Bank located at Transit and Casey Roads. There are two (2) signs. There are trees that would have blocked a third sign at the Transit and Casey Road location.

The Zoning Law reads that the applicant can have a sign to any public street or parking area, it is basically an interpretation of the Zoning Law.

All the signs would be internally illuminated with white L. E. D.'s. Only the white portion of the sign lights up, there is a black border. The letters are fabricated aluminum. The signs would have acrylic faces. The height of the upper case letters will be sixteen inches (16") and the lower case letters will be nine inches (9") high.

Mary Scamacca is project manager for the construction of bank. Ms. Scamacca states that she spoke with the landlord and was told there are no pylon signs allowed.

One of Daniel Michnik's concern is if this third sign is approved and the applicant finds out a pylon sign is allowed, this would make four (4) signs. Mr. Michnik is also concerned with the signage if the Eastern Hills Corridor comes through. He is not opposed to looking at a third sign as requested with the understanding that the applicant needs to find out the details of having a pylon sign at this location. Mary Scamacca will obtain complete details on the pylon.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to APPROVE Appeal No. 2, as written, with the condition that a maximum of three (3) signs is allowed. If signage is allowed on the pylon this would be included in the maximum number of signs allowed.

Ronald Newton AYE
Daniel Michnik AYE

Arthur Henning AYE
Ryan Mills AYE

MOTION CARRIED.

Appeal No. 3

Stephen P. & Deborah R. Swain
Residential Single-Family

Requests the Board of Appeals approve and grant a frontage of 66.12' for the construction of a new home at 4231 Old Hickory Lane.

Appeal No. 3 is in variance of Chapter 229, Article VI, section 52.

DISCUSSION:

Richard Murphy, attorney for the applicant, advises that the home is already built, therefore the request is not "for the construction of a new home". The home is now ready for occupancy. The Swain's purchased the property in August of 2005 and had a contract with Patrick Homes to construct a home. Jim Roll, attorney for Patrick Homes is present. A building permit was issued by the Town and construction began. In October 2005 Mr. Roll advised Mr. Murphy that there was a 1960 dedication made to the Town that relates to a portion of the property that was deeded to the applicant. Mr. Murphy refers to the survey dated January 21, 2005. Mr. Murphy discussed the situation with the Town Attorney and wondered if the Town could transfer the piece of property to the applicant so the frontage would be conforming, however if this was done it would create non-conforming frontage for the properties at 4221 Old Hickory Lane and 8780/8790 Howard Drive, thus the request for a variance. If the variance is not granted it will be a financial hardship for the applicant. The request is not self-created. If the variance is granted it will not change the aesthetics of the neighborhood, it will look exactly the same.

James Brady, owner and resident of 4221 Old Hickory Lane. Mr. Brady is in favor of the Zoning Board of Appeals granting this variance. He understands that the grassy area will be returned to the Town. Mr. Brady has no objection to moving the driveway.

Mrs. Brady addresses the drainage issue and wants assurance that it will be taken care of. There has never been standing water on her property and now there are significant areas when it rains; perhaps piping can be installed.

Mr. Brady wants to make sure he still has a buildable lot and his frontage is conforming.

Ronald Newton explains that out of the one hundred foot (100') lot that was purchased, the new owner only owns approximately forty percent (40%) of the lot. In other words sixty-six feet (66') was purchased but the buyer was charged for one hundred feet (100'). He suggests taking this up with Patrick Homes.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to APPROVE Appeal No. 3, as written, with the stipulation that the Town Engineer review and approve the drainage plans for properties affected.

Ronald Newton AYE
Daniel Michnik AYE

Arthur Henning AYE
Ryan Mills AYE

MOTION CARRIED.

Dominic Montanino, of 10660 Croop Road, has requested a meeting with the Zoning Board of Appeals members in order to discuss the variance that was granted to Charles Kelkenberg for 10680 Croop Road. Mr. Montanino feels he was not properly notified. The applicant contacted Mr. Montanino in the early stages of the variance request. Mr. Montanino is present this evening.

Mr. Montanino discussed the situation with Mr. Kelkenberg in December 2005, the content of the discussion was that either Mr. Montanino would buy land from Mr. Kelkenberg or Mr. Kelkenberg would buy land from Mr. Montanino. They would further discuss the issue after the holidays. A second discussion never took place.

Mr. Montanino did not want a house so close to him. The drainage ditch on the property is approximately twenty to thirty feet (20'-30') in on the property. Mr. Montanino wondered if the ditch would be closed. He has contacted Mr. Kelkenberg twice regarding the ditch. Mr. Montanino was not notified of the procedure on the variance and wants to know if he has any rights or any say in the situation.

Ronald Newton explains that the drainage ditch issue is Mr. Kelkenberg's concern. The Town has no obligation to notify the neighbors, however, the Zoning Board of Appeals requires the applicant to notify the affected neighbors. After the neighbors have been notified, it is up to each individual neighbor to take the initiative to find out when the variance request would be presented to the Zoning Board of Appeals so he or she can take part in the public discussion.

Mr. Montanino does not want to sell any property to Mr. Kelkenberg.

Mr. Kelkenberg has suffered a hardship; he had several lots that were made into unbuildable lots due to the change in the Zoning Law, these lots were previously filed with Erie County.

Meeting adjourned at 9:34 p.m.

Ronald Newton, Chairperson