

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday, September 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
Ryan Mills

Other Town officials present were:

James Callahan, Director of Community Development
Jim Hartz, Assistant Director of Community Development
Councilman Bernie Kolber
Tim Lavocat, Deputy Town Engineer
Joe Latona, Town Engineer

Other Interested Parties Present:

Walter J. Floss Jr. Brad Davidzik
Gerald Schrader Charles Bosch
Jeff Palumbo Sean Hopkins
Akos Seres Gary Zimmerman
David Kawaler Ronald Daigler
Carmen Alaimo Arabella Alaimo

Motion by Raymond Skaine, seconded by Ryan Mills, to approve the minutes of the meeting held on August 8, 2005, as written.

Ronald Newton Aye Raymond Skaine Aye
Ryan Mills Aye

MOTION CARRIED.

Old Business

Appeal 3

Walter Floss
Residential Single-Family

Requests the Board of Appeals approve and grant a 25' variance to allow a 100' wide buildable lot at 8141 Floss Lane.

Appeal No. 3 is in variance to Section 229-50 Lot Width.

DISCUSSION:

Joe Latona, Town Engineer, explains that there is a flood damage ordinance in effect. The applicant has not entered into any type of process for application at this juncture. One of the requirements of the ordinance states that a technical analysis by a licensed professional engineer may be required. The Town has taken the liberty to require this analysis prior to any application being made. Mr. Latona said the analysis conducted by the licensed professional indicates that there will not be any physical damage to any of the properties. Ronald Newton said he read the report and it was referring to the effects on Gott Creek, what Mr. Newton is looking for is the effect on the pond. Mr. Latona said another analysis would have to be done to find the effect on the pond. Mr. Newton has been in the area when Gott Creek has not exceeded its banks, however, the pond is overflowing and going across the road. Mr. Latona said that flood heights vary for numerous reasons, there is no guarantee that there will never be flooding. Mr. Newton's concern is with regards to building the lot up to raise it above the 100 year floodplain; a portion of the lot is in the floodplain. How will this further restrict the flow of the water? Mr. Latona explains that you are allowed to build in a floodplain and based on what the licensed professional has reported he does not think that there will be any additional increase in flooding. Tim Lavocat, Deputy Town Engineer, explains that currently the water is piped under Floss Lane; he believes the applicant is proposing to extend the pipe. Mr. Newton asks if the pipe can be made bigger so it carries more water out of the pond and across the road. Mr. Latona said that at any given time the pipes in Town get overloaded. There is an economic limitation on the size of the pipe.

ACTION:

Motion by Raymond Skaine, seconded by Ryan Mills, to **deny** Appeal 3, under Old Business, as written, based on the following reasons:

1. An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. Most of the surrounding lots are 125' in width; with this lot at 100' it will affect the surrounding properties.
2. The benefit sought could be achieved by another method. The petitioner could attempt to re-purchase the 25' of land from the adjacent homeowner who he sold the 25' to.
3. The requested variance is substantial, it is 25% of the total variance
4. When this development was first submitted in 1987, this parcel was an exception, or a non-building lot. This is confirmed by the Assessor's office which reflects the reduced assessment for this parcel. It was so designated because of a proposed drainage ditch. If this is filled, it is most likely that the adjoining properties would suffer physical changes to their property.
5. The situation was self-created for two (2) reasons: (1) This was designated as an exception lot for the development as, stated in number 4, (2) The petitioner sold twenty feet (20') of this property and never applied until May 2006, after the Town adopted the new Zoning Law in 2005.

ON THE QUESTION:

Ronald Newton asks for clarification on the size of the lot, it is confirmed that the lot is 108' wide. Of the 108', twenty feet (20') is drainage easement, there is no pipe on it.

Ronald Newton	Aye	Raymond Skaine	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 4

Clarence Crossroad Medical Center LLC
Commercial

Requests the Board of Appeals to interpret allowing the established setback for a new construction within the pre-existing portion of the project at 9095 Main Street.

Appeal No. 4 is regarding Section 229-87 Development & Design provisions.

DISCUSSION:

Sean Hopkins, of Hopkins, Garas & Sorgi, PLLC, is representing the applicant. Mr. Hopkins explains that there is an existing paved area at the site and the request is to take a portion of the existing paved area and turn it into a 3,700 square foot, single story, class A, medical office building, with some greenspace and landscaping. Mr. Hopkins said the Town of Clarence Zoning Code has been amended since the previous approval of building one and now requires a 45' greenspace buffer when Commercial property borders Residential property. His position is that the pavement is already there, it consists entirely of impervious surfaces. The applicant was thinking of seeking an area variance for the parking requirements, but rather than do that, has put additional property under contract so that the project will comply with the Town's parking requirements. The additional property to be acquired complies with all relevant setbacks. Mr. Hopkins explains the lighting situation, there are lights along the property line, shields have been provided and the lights have been adjusted on the building. The proposed building will be very similar, in architecture, to the existing building.

It is clarified that this request is not for a Use Variance, it is for interpretation of the code. As Zoning Officer, Jim Callahan's interpretation of the law was, since it pre-existed, that the setback is legal. The Planning Board disagreed and said the applicant must meet the new requirements of the 45' greenbelt. Jim Callahan also said the building itself meets the setbacks; it's just the greenspace requirement, which is already impacted.

Ryan Mills asks if there is any other way the building could be constructed to meet the setback. Mr. Hopkins said, "No," and explains that there is no other way to comply with the greenspace requirement. If the building was put to the rear of the property, it would disturb more of the residential area. Mr. Hopkins explains that the parking has been addressed and some of it has been changed to parallel parking so there are fewer cars parked and facing the adjoining residences, this was done specifically in response to concerns raised by neighbors. Raymond Skaine thinks the parking will be a problem to the east of the building.

Ronald Newton reads a letter from the Popp family dated September 12, 2006:

"Words are everything and who came up with pre-existing? This building should have remained at the original square footage when this idea was first proposed then we might have learned to live with

this. Look back at the original proposal and you will see why this new building is wrong to build so close to a residential area. The first building should have been less than 4,000 square feet; however, when building this, they had requested an addition for it before completion of the original planned building. Personally, I'm beginning to think that who planned this in the first place must think that bordering residents are naïve and stupid. How did this building get there to begin? The first proposal was 6000 square feet and this was denied. They came back with a plan of 3800 square feet and before it was officially open for business, an addition was added on and now you look at the total square footage. It is nearly 6000 square feet. Now you want another identical building next to it. Appeasement is that no further development will occur here once this has been built. Well, the current set up is atrocious to have to live near. The view is not easy on the eyes when you want to enjoy your back yard. The place of business is very busy and out of line when you live in the Town of Clarence. We were an established neighborhood with a sufficient buffer between our homes and businesses. Now it is like living in the fast lane. Constant noise from Main Street, then the business itself, the lights blazing all night and at 6:30am when they reopen for a new business day. Weekends are landscaping days-lawn cutting, weed wacking, leaf blowing, carpet cleaning and spreading of landscaping chemicals such as manure for one example. Life as we knew it had stopped when the first building was built. Home life changed for us and when needs were addressed to the Town, the response was nothing. Once a business is put into place it takes over and what one was is gone. For example: the peace and quiet, the privacy of one's yard, the view of swimmers in our pool from all of the clientele entering the business, the glimpses into our bedroom windows, the noise of slamming car doors, remote alarms that blow the horn of a vehicle when activated, the parking along the border of the whole backyard, a lot of traffic in and out all day long. It has been an awful experience having to live this way. We had not planned on having to compete with a commercial business within the perimeters of our home. And now you are discussing the building of another commercial building.”

Ryan Mills does not have a problem with the building since there is existing pavement at the site. He would like to see additional measures taken along the perimeter of the residential area, maybe some larger trees.

ACTION:

Motion by Raymond Skaine, seconded by Ryan Mills, to **approve** Appeal 4, based on the interpretation that the second appurtenant structure will not alter the green space because it is going over a black top surface, the petitioner will do additional work in buffering with additional landscaping to the east of the property and continue working with the lighting issues. Buffering shall also be added to the west.

ON THE QUESTION:

Ronald Newton notes that the Zoning Board of Appeals members have done what they can to try and placate the neighbors. It is difficult to inter mingle residential and commercial.

Ronald Newton	Aye	Raymond Skaine	Aye
Ryan Mills	Aye		

MOTION CARRIED.

New Business**Appeal No. 1**

Carmen & Arabella Alaimo
Agricultural Rural-Residential

Requests the Board of Appeals approve and grant a 105' variance to allow a 175' front yard setback for the construction of a single-family home at 6425 Salt Road.

Appeal No. 1 is in variance to Section 229-31 Setbacks.

DISCUSSION:

Carmen Alaimo explains that he called the Tennessee Gas Line Company and they suggested it would be beneficial to set the house back for a number of reasons. One reason is the soil can not be disturbed, which creates a hardship case for the septic tank; the tank can not be placed in front of the house. Mr. Alaimo also points out that the speed limit is 55 and he would like to be set back far from the road since he has a young son. Mr. Alaimo has not closed on the land yet. Ronald Newton knows of a couple other situations where a driveway has been built over the Tennessee Gas Line. Mr. Alaimo said it is acceptable to go over the gas line with a black top driveway however to center the house you would have to put it back 165'-170'. A representative with Mr. Alaimo indicates that an absorption field will have to be 80' by 22', the drain line will have to come out of the absorption field and this will disturb the gas line. Ronald Newton asks why the system can't be placed to the back of the property; the representative explains that the ditch is up front. If the sand filter is in the backyard the absorption bed will be elevated above the ground a minimum of 4'6", this will be a \$13,000 absorption bed. Mr. Alaimo said that the Gas Company also advised him that he can not change the elevation of the land; he asks how can he have a nice drainage off his house if there is 5"- 8" difference in elevation?

Ronald Newton explains that the neighbors have the right to their backyard privacy.

Raymond Skaine said he saw only one marker for the gas lines, per the survey there are two gas lines on the property. Mr. Alaimo said there are two markers on the lot that indicate the gas lines.

David Kawaler, of 6445 Salt Road, said that when the lot was mowed and staked, someone stood in front of the staked lines and looked right into Mr. Kawaler's family room. Mr. Alaimo said that is not his lot, he has letters from Barden stating that they (Barden) own both of the lots on either side of the lot in question. Mr. Alaimo said he was standing on the wrong lot; Mr. Alaimo is 175' away from Mr. Kawaler's house. Two (2) neighbor notifications are on file. Mr. Alaimo said in the front of his house he can not see into anyone's home and in the back of his property he can put tight tall trees. If it pleases the Board, Mr. Alaimo said he would put the house even further to the left.

Ronald Newton suggests putting the garage on the north side of the structure; the house could be pulled forward.

Raymond Skaine looks at the setbacks of the surrounding houses and suggests Mr. Alaimo's setback to be at 160'. Mr. Alaimo said what if the Tennessee Gas Line says you still need three feet to clear the gas lines, can't the Zoning Board of Appeals grant the variance with such wording to allow this. Mr. Newton explains that the pipe itself is in the middle of the right-of-way, not on the edges.

Raymond Skaine said part of the motion will be to put a buffer in immediately, prior to any construction. The trees should be Evergreens and a minimum of 5' tall. Mr. Newton explains that Mr. Alaimo will not get his building permit unless the trees are there.

Ryan Mills voices his concern with regards to the hardship, has this lot been purchased and does Mr. Alaimo have the option to purchase other lots were this hardship would not be a concern. Mr. Alaimo said he is buying the lot.

It is clarified that the buffer is to be approximately 40'.

Ryan Mills asks Mr. Kawaler if there is anything else he would like to see made as a condition to this request, if granted. Mr. Kawaler would like to see a longer buffer.

ACTION:

Motion by Ryan Mills, seconded by Raymond Skaine, to **approve** Appeal 1 at a 160' front yard setback with the condition that 5' pine trees be planted on the north side of the lot as a buffer for an approximate distance of 40'-60', but not less than 40', this must be done prior to construction. The trees are to be double staggered and 3' apart. The buffer is at a 120' setback.

Ronald Newton	Aye	Raymond Skaine	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 2

Ronald Daigler
Residential Single-Family

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

1. A 3' variance to allow for the construction of an accessory structure 19' in height.
2. A 320 square foot variance to allow the construction of a 520 square foot accessory structure.

Both requests apply to 8401 Clarence Center Road.

Appeal No. 2(1) is in variance to Section 229-55 (E) (2) Accessory Structures.

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

DISCUSSION:

Ronald Daigler said he was told he needed a third variance for non-similar construction. Jim Callahan said that is not a variance, the Zoning Board of Appeals does not consider architectural style, they consider the size. Mr. Daigler's intentions are to use the upstairs of the accessory structure as a walk-in loft; it will store children's toys, lawn furniture and family heirlooms. The bottom floor will be a potting shed for his wife; it will also be used as storage for his lawn mower, snow blower, utility trailer and various maintenance equipment. It is a barn style accessory structure because Mr. Daigler has a family history of farming and this is a tribute to his past farming experience. The material of the structure will be vinyl siding, Dutch Lap siding, barn red in color.

Raymond Skaine voices his concern with the height of the structure. He feels it is out of character with the neighborhood. Mr. Daigler said the dimensions are 20' x 26'. Mr. Skaine asks if Mr. Daigler can do anything about the height. Mr. Daigler said not without taking away from the style of the building. Ronald Newton suggests decreasing the height by 3', Mr. Daigler may not be able to stand up straight in the loft, but the storage space would still be there and the requirements would be met. Mr. Newton points

out the garage door on the plan and asks if there will be a driveway installed. Mr. Daigler said he has no intention of putting in a driveway.

Ryan Mills suggests taking the first floor down to 6' and the second floor down by 1'. He thinks this style can still be constructed with the adjusted heights.

Ronald Newton advises Mr. Daigler that his request can be tabled this evening to allow him to discuss the possibility of adjusting the height with his architect or if he wants to stay with the 19' height the Board will vote on the request as written. Mr. Daigler wonders if there would be any compromise on the height, perhaps if it was 17' instead. Mr. Skaine said he is willing to look at the request if Mr. Daigler resubmitted it as 17' in height. Mr. Daigler agrees to table the request.

ACTION:

Motion by Raymond Skaine, seconded by Ryan Mills, to **table** Appeal 2, to allow the applicant time to resubmit a design at 17' in height.

Ronald Newton	Aye	Raymond Skaine	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 3

Gerald R. Schrader
 Residential Single-Family
 Appeal No. 3 is in variance to Section 229-55 (H) Access Structures.

Requests the Board of Appeals approve and grant a 40 square foot variance to allow the construction of a 12' x 20' shed at 4595 Christian Drive.

DISCUSSION:

Gerald Schrader explains that there are no basements on his block. He has a lawn mower, snow blower, bicycles, etc. and would like to use the shed for storage. To construct a third garage he would have to move the utilities, to build a shed is more practical. He apologizes for not staking the property.

Raymond Skaine explains that the property must be staked prior to the Board voting on the request. He advises Mr. Schrader to have the property staked at least one week prior to the next Zoning Board of Appeals meeting.

ACTION:

Motion by Raymond Skaine, seconded by Ryan Mills, to **table** Appeal 3, to allow the applicant time to stake the property.

ON THE QUESTION:

Ronald Newton asks for clarification regarding the house adjacent to Mr. Schrader's as being rented. Mr. Schrader explains that he received the phone number of the owner from the renter. The owner was originally opposed to this plan because he thought it would obstruct his view. Mr. Schrader asked how he could obstruct the owner's view when the owner does not reside at this location. Mr. Newton advises the applicant to notify the owner of this neighboring property again.

Ronald Newton Aye
Ryan Mills Aye

Raymond Skaine Aye

MOTION CARRIED.

Meeting adjourned 8:30 p.m.

Chairperson, Ronald Newton