

BOARD OF APPEALS MINUTES

October 14, 2003

On Tuesday October 14, 2003 at 7 p.m. the Town of Clarence Zoning Board of Appeals heard the following requests for variances:

OLD BUSINESS

**APPEAL NO I (8-12-2003)
Jim & Laura Ferguson
Commercial/Residential A**

Requests the Board of Appeals approve and grant two variances:

- 1. A nine foot (9') variance creating a one foot (1') side lot line for the construction of a new addition to 4671 Overlook Drive.**
- 2. A seven foot (7') variance creating a twenty eight foot (28') front lot line setback for the construction of an addition at 4671 Overlook Dr.**

**APPEAL NO IX (9-9-2003)
Santo Padilla
Residential B**

Requests the Board of Appeals approve and grant two variances:

- 1. To allow a second garage to be constructed.**
- 2. A seven hundred eight square foot variance to allow the construction of a fourteen hundred forty square foot (1440 sq ft) garage at 5045 Salt Road.**

NEW BUSINESS

**APPEAL NO I
Adam Knoebel
Residential A**

Requests the Board of Appeals approve and grant a twenty foot (20') variance creating a one hundred twenty foot (120') front lot line setback for the construction of a new home at 8770 County Road.

APPEAL NO I is in variance to Article II, section 30-12 B, size of yards.

**APPEAL NO II
Richard Lancellotti
Residential A**

Requests the Board of Appeals approve and grant a one hundred eighty two square foot (182 sq. ft.) variance to allow an addition to the existing detached garage creating a nine hundred two square foot (902 sq. ft.) garage at 5190 Thompson Road.

APPEAL NO II is in variance to Article II, section 30-13, accessory buildings.

**APPEAL NO III
Carl Vogel
Residential B**

Requests the Board of Appeals approve and grant two variances:
1. Requests a four foot (4') height variance creating a twenty foot (20') height for a new accessory structure at 4278 Connection Drive.
2. Requests a five hundred sixty eight square foot (568 sq ft) variance creating a seven hundred sixty eight square foot (768 sq ft) accessory structure at 4278 Connection Drive.

APPEAL NO III is in variance to Article II, section 30-13, B & C, accessory buildings.

**APPEAL NO IV
Diane Patcyk
Agricultural**

Requests the Board of Appeals approve and grant a two and a half foot (2.5') variance to allow the reconstruction of a barn using pre-existing foundation which is 2.5' below the base flood elevation at 8850 Wolcott Road.

APPEAL NO IV is in variance to L.L. 107-5 D (1 a) non-residential structures.

**APPEAL NO V
Elias Eldayrie
Residential B**

Requests the Board of Appeals approve and grant a ten foot (10') variance to allow a new swimming pool & fence to be located partially in the front yard (corner lot) at 9119 Michael Douglas Drive.

APPEAL NO V is in variance to L.L. 196-3 C, permits & site location.

**APPEAL NO VI
Jaweed Shariff
Agricultural**

Requests the Board of Appeals approve and grant a sixty foot (60') variance creating a one hundred sixty foot (160') front lot line setback for three lots at 5705, 5715, & 5725 Shimerville Road.

APPEAL NO VI is in variance to Article V, section 30-27 B, size of yards.

**APPEAL NO VII
James Purcell Jr**

Requests the Board of Appeals approve and grant a sixty foot (60') variance creating a one

a new sixty-six square foot (66 sq. ft.) free standing sign at 8250 Main Street.

**APPEAL NO XII (1) is in variance to Article VIII, section 30-46 A, size of yards.
APPEAL NO XII (2) is in variance to L.L. 181-4 B, commercial sign specifications.**

**APPEAL NO XIII
Michael P. Brady
Agricultural** **Requests the Board of Appeals approve and grant a one hundred forty five foot (145') variance creating a two hundred forty five foot (245') front lot line setback for construction of a new home at 5785 Kraus Road.**

APPEAL NO XIII is in variance to Article V, section 30-27 B, size of yards.

**APPEAL NO XIV
Paul Allaire
Agricultural** **Requests the Board of Appeals approve and grant an eight hundred foot (800') variance creating a nine hundred foot (900') front lot line setback at 6161 Salt Road. A variance for 825 feet was approved on 4-8-2003 with the addendum that the petitioner agrees there will be no further development or requests for additional houses to the rear of this piece of property.**

APPEAL NO XIV is in variance to Article V, section 30-27 B, size of yards.

ATTENDING: John Brady
 John Gatti
 Arthur Henning
 Ron Newton
 Eric Heuser

INTERESTED PERSONS:
 Bonnie Engasser Jean Acker Robert Teno
 Michael Burkjardt Frank Acher Santo Padilla
 Adam Knoebel Nancy Leising Rich Lancellotti
 Carl Vogel Diane Patcyk Elias Eldayrie

Wesley Schmidt Jaweed ShariffJames Purcell
Chet Borkowski Chuck Eckerd Jack Willert
Kevin Saxon Frank Brezenski Mike Brady
Paul Allaire

MINUTES

Motion by John Gatti, seconded by Arthur Henning to approve the minutes of the meeting held on September 9, 2003 as written.

ALL VOTING AYE. MOTION CARRIED.

OLD BUSINESS

APPEAL NO I (8-12-2003)
Jim & Laura Ferguson
Commercial/Residential A

Requests the Board of Appeals approve and grant two variances:
1. A nine foot (9') variance creating a one foot (1') side lot line setback for the construction of a new addition to 4671 Overlook Drive.
2. A seven foot (7') variance creating a twenty eight foot (28') front lot line setback for the construction of an addition at 4671 Overlook Drive.

DISCUSSION:

Laura Ferguson explained that the staking for the appeal was correct, the numbers she had identified were incorrect. No one on the board had a problem with this request.

ACTION:

Motion by John Gatti, seconded by Arthur Henning to approve Appeal No I as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO IX (9-9-2003)
Santo Padilla
Residential B

Requests the Board of Appeals approve and grant two variances:
1. To allow a second garage to be constructed.
2. A seven hundred eight square foot (708 sq ft) variance to allow the construction of a fourteen hundred forty square foot (1440 sq ft) garage at 5045 Salt Road.

DISCUSSION:

Mr. Padilla presented additional information to the board. Mr. Padilla spoke with the neighbors individually to dispel incorrect information that was on the petition that had been circulated. The neighbors said they are opposed to a building this large, they are afraid it will be used for a

business in the future if Mr. Padilla sells his home and property. The size is 60' x 24' and 16 feet high. Mr. Padilla said at the present time he has two storage units that he has to pay for. He has a total of seven cars that he has in storage. Eric Heuser said he felt it was too big of a building and too commercial looking in a residential neighborhood. The neighbors said Mr. Scharf has a business in a residential neighborhood, what would prevent Mr. Padilla from doing the same thing? Jim Callahan explained that this has always been a business, and is considered a pre-existing non-conforming use. Mr Padilla would have to have a temporary conditional permit to operate a business from a residential area, which is very rare.

ACTION:

Motion by Arthur Henning, seconded by John Gatti to approve Appeal No IX as presented.

- Arthur Henning AYE
- Ronald Newton NAY the size is not necessary for all practical purposes.
- John Gatti NAY he only made the second on the motion to get the vote to the floor
- Eric Heuser NAY
- John Brady NAY

MOTION FAILED.

Mr. Padilla said he is willing to make the building smaller. He would have to resubmit a new variance application and new drawings if he wants to exceed 720 square feet, and if he wants a second garage.

NEW BUSINESS

APPEAL NO I
Adam Knoebel
Residential A

Requests the Board of Appeals approve and grant a twenty foot (20')variance creating a one hundred twenty foot (120') front lot line setback for the construction of a new home at 8770 County Road.

DISCUSSION:

Mr. Knoebel explained that he would like to set his house back twenty feet more than the ordinance allows to get away from the noise, and traffic on County Road. The board took a poll at the September meeting so Mr. Knoebel could get his home started, due to the bad weather coming. Mrs. Nancy Leising expressed concern for starting a

project before the variance is granted, and she had an issue with natural drainage being closed up. She lives across the street from where the house is being built. There is a large culvert pipe buried seven feet underground. Could the Town have an easement in case there is a problem there? Everyone agreed this should be up to the Town Engineer, and he should look at it, the board is not qualified to make that request of the applicant.

ACTION: Motion by Ron Newton, seconded by Eric Heuser to approve Appeal No I as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO II
Richard Lancellotti
Residential A

Requests the Board of Appeals approve and grant a one hundred eighty two square foot (182 sq ft) variance to allow an addition to the existing detached garage creating a nine hundred two square foot (902 sq ft) garage at 5190 Thompson Road.

DISCUSSION: Mr. Lancellotti said he restores classic cars, and needs room to work on them. He needs a larger work area, and would like to add on to the existing garage. It will have the same look as the present garage.

ACTION: Motion by Arthur Henning, seconded by John Gatti to approve Appeal No II as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO III
Carl Vogel
Residential B

Requests the Board of Appeals approve and grant two variances:

1. Request s four foot (4') height variance creating a twenty foot (20') height for a new accessory structure at 4278 Connection Drive.
2. Requests a five hundred sixty eight square foot (568 sq ft) variance creating a seven hundred sixty eight square foot (768 sq ft) accessory structure at 4278 Connection Drive.

DISCUSSION: Mr. Vogel said he needs extra height to get enough head space on the first floor with the door. It brings it up to sixteen feet. It will have a second floor, which Mr. Vogel

considers attic space. They need storage space, and rather than rent storage, they prefer to upgrade their own property.

ACTION: Motion by Ron Newton, seconded by Arthur Henning to approve Appeal No III as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO IV
Diane Patcyk
Agricultural

Requests the Board of Appeals approve and grant a two and a half foot (2.5') variance to allow the reconstruction of a barn using the pre-existing foundation which is 2.5' below the base flood elevation at 8850 Wolcott Road.

DISCUSSION:

Diane Patcyk said the floor of the barn will be raised, but the foundation will not be raised. The barn will be used for their horses. John Gatti asked the applicant if she had received a letter from the Town Engineer, and is she willing to abide by the conditions stated. Diane Patcyk said she was willing to abide by the recommendations. No one else had any questions.

ACTION:

Motion by Ron Newton, seconded by John Gatti to approve Appeal No IV as written.

Arthur Henning said he would like to add that the applicant agrees with the stipulations of the Engineers memo dated September 30, 2003 to the motion.

Motion by Ron Newton, seconded by John Gatti to approve Appeal No IV with the amendment that the applicant agrees with the stipulations of the Engineers memo dated September 30, 2003.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO V
Elias Eldayrie
Residential B

Requests the Board of Appeals approve and grant a ten foot (10') variance to allow a new swimming pool & fence to be partially in the front yard (corner lot) at 9119 Michael Douglas Drive.

DISCUSSION:

The applicants contractor stated that with the easement that goes across on the bike path side, there is not sufficient room to have the patio and the pool in that area without

crowding the easement with the elevation changes. So if we could crowd ten feet on to that right of way easement on the front side toward Heise Road, everything works and fits a lot better. The contractor showed pictures of similar installations. The pool will be 45 feet off the shoulder of the road, at the point where we are asking for. It is on the right of way, but there is a significant amount of distance between it. There will be a berm and a fence for privacy. Arthur Henning said he was out there Saturday and it was not staked. He will not vote until there are some stakes to identify where the pool is going. They had painted it, but it rained and washed it away. The only one who saw the location was John Gatti, and that was because Mrs. Eldayrie showed him. No one else saw any markings, they could only guess from the survey. Mr. Eldayrie said they have children and didn't want to put stakes out.

ACTION:

Motion by John Gatti to approve Appeal No V as requested. There was no second to the motion.

Motion by Arthur Henning, seconded by Ron Newton to table this request until it is properly staked, the board said they will look at it again when it is staked properly. A meeting was set for October 17, 2003 at 5:00 p.m.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VI
Jaweed Shariff
Agricultural

Requests the Board of Appeals approve and grant a sixty foot (60') variance creating a one hundred sixty foot (160') front lot line setback for three lots at 5705, 5715, & 5725 Shimerville Road.

APPEAL NO VII
James Purcell Jr.
Agricultural

Requests the Board of Appeals approve and grant a sixty foot (60') variance creating a one hundred sixty foot (160') front lot line setback for the construction of a new home at 5745 Shimerville Road.

DISCUSSION:

Ron Newton read the appeals for Appeal No VI as well as Appeal No VII.. Wes Schmidt of Barden Homes represented Mr. Shariff. The homes will all be in line including Mr. Purcells parcel. They would like to set back because it will be more aesthetically pleasing, and in the event Shimerville Road is ever widened they will not be so

close to the road. Traffic is always an issue. John Gatti said he didn't have any questions, he thought all four lots lined up was agreeable. No one had any problems establishing this line for the four homes.

ACTION: Motion by John Gatti, seconded by Eric Heuser to approve Appeal No VI as written.

ALL VOTING AYE. MOTION CARRIED.

ACTION: Motion by John Gatti, seconded by Arthur Henning to approve Appeal No VII as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VIII
Tom Zehler
Agricultural

Requests the Board of Appeals approve and grant a six hundred foot (600') variance creating a seven hundred foot (700') front lot line setback for the construction of a new home at 8889 Sesh Road.

DISCUSSION: This item was removed at the applicants request.

ACTION: Motion by John Gatti, seconded by Eric Heuser to table this item.

APPEAL NO IX
Chester & Lillian Borkowski
Agricultural

Requests the Board of Appeals approve and grant a twenty two foot (22') variance creating a three foot (3') rear yard setback, and a two foot (2') variance creating an eight foot (8') side yard setback for a shed at 7080 Goodrich Road.

DISCUSSION: Mr. Borkowski said they just want to set the shed in the rear of the yard so they don't lose all the yard in that corner. No one on the board had any real questions with the request.

ACTION: Motion by Eric Heuser, seconded by Arthur Henning to approve Appeal No IX as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO X
Chuck Eckert
Commercial

Requests the Board of Appeals approve and grant two variances:

1 A thirty eight square foot (38 sq ft) variance creating a seventy square foot (70 sq ft) free standing sign at 8274 Main Street.

2.A three foot (3') height variance creating a fifteen foot (15') height for a sign at 8274 Main Street.

DISCUSSION:

Mr. Eckert said they would like to have a larger sign to compete with surrounding signs. John Gatti said the sign is too large, it is going to block traffic. Mr. Eckert cited the large signs at the Thunderbird Motel, Victorian Manor Motel, Alethea's, and Hirsch's restaurant. Eric Heuser asked if there was any reason he couldn't go with a smaller sign? Jim Callahan explained that the new law was passed in 1997 allowing a maximum of 32 square feet and a maximum of 12 feet in height. Most of these signs if not all, pre-dated the change in the ordinance. Ron Newton said that his current sign is 24 square feet and 11 feet in height. Ron said he didn't think people were walk ins when they are looking for a photographer, particularly for a wedding. The size is inappropriate and not in keeping with the neighborhood, since the law has been passed. To use examples that are 2 or 3 miles away from you Mr. Eckert asked what size would be the maximum acceptable size for a sign? Jim Callahan said thirty two square feet is the maximum. We designed this law to give it character on Main Street, and anything above that really destroys the intent of what we were trying to achieve when we adopted this law in 1997. When signs are replaced they are replaced with a smaller sign. We are trying to keep in the character of Main Street. Any variance granted to violate those conditions really disrupts the whole character of what we are trying to achieve - to keep Main Street looking like Clarence. We worked with the Chamber on this law, and we feel like a smaller, lower sign is more attractive and works for your betterment. Ron Newton said the existing sign is 24 square feet, you could go to 32 square feet and stay within the requirements. Mr. Eckert asked for a 48 square foot.

ACTION:

Motion by John Gatti, seconded by Arthur Henning to DENY the request. It is too large

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO XI
Jack & Suzanne Willert
Agricultural

Requests the Board of Appeals approve and grant a five foot (5') height variance creating a forty foot (40') height for construction of a new home at 5004 Winding Lane Farms.

DISCUSSION:

Mr. Willert said they picked a house design that they liked, and that section of the house that is 40 feet tall. The section that is that height is the center section. Mr. Willert showed the board the house plans. Ron Newton said the roof could be brought down to meet the requirements. Mr. Willert said it would change the looks. No one else really had a problem with the variance request.

ACTION:

Motion By John Gatti, seconded by Eric Heuser to approve Appeal No XI as written.

APPEAL NO XII
Kevin Saxon
Commercial

Requests the Board of Appeals approve and grant two variances:
1. A thirty two foot (32') variance creating a thirteen foot (13') front yard setback for the construction of a new overhead canopy.
2. A thirty four square foot (34 sq ft) variance creating a new sixty six square foot (66 sq ft) free standing sign at 8250 Main Street.

DISCUSSION:

Members of the Board of Appeals were not pleased that the property had not been staked, no markings at all. Members of the board did not like the size of the sign, the ordinance allows a maximum of 32 square feet, a height of twelve feet, and a setback of 10 feet on Main Street .The applicant will call the Planning/Zoning office when the property has been marked for the canopy request. Members of the board will be notified and will take another look at the request.

ACTION:

Motion by John Gatti, seconded by Arthur Henning to table the request for the overhead canopy setback until it has been marked for the Board, and to DENY the request for a 66 square foot sign..

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO XIII
Michael P. Brady
Agricultural

Requests the Board of Appeals to approve and grant a one hundred forty five foot (145') variance creating a two hundred forty five foot (245') front lot line setback for the construction of a new home at 5785 Kraus Road.

DISCUSSION:

Mr. Brady said they wanted to be in line with the other neighbors. Arthur Henning said it didn't look like the house was in line. Mr. Brady said it is. Ron Newton said he was confused - you say you are in line with the other houses, the closest neighbor to the south is 5745 Kraus sits at 175 feet. (Don Metz) Mr. Newton said he stood at the basement wall, and their house is clearly going to be beyond the house to the south. There is a definite difference in distance. Why do you want to be in this gentlemen's backyard? Jim Callahan said he did some research today and learned that Mr. Metz had received a variance to build at 250' and built at 176 feet. Mr. Rivett received a variance to build at 250, and built at 244 feet. Basically, they were all granted in a line but for some reason Mr. Metz moved the house forward, probably due to soil conditions on the site. Ron Newton thought the houses were gradually going to be stepped down. When Mr. Brady bought the property, Mr. Metz told him he wanted them to build at least 225 feet back. Those were his conditions, not mine. There is 120 feet between us. Mr. Newton said "You have no vegetation in the way of trees and bushes between you to provide some screening. Ron Newton said when Mr. Metz moves and the new neighbor comes in and complains that this house is in his backyard, it will be in the minutes that Mr. Metz said it was all right with him. The foundation is already in. Mr. Metz had the deed restriction that the house would be built at no closer than 225 feet to be in line with Frank Rivett, and the neighbor that will be building next to me. Jim Callahan said there were variances granted for the lots on either side at 250 feet. We established the line at 250 feet.

ACTION:

This appeal was withdrawn due to mis-communication.

APPEAL NO XIV
Paul Allaire
Agricultural

Requests the Board of Appeals approve and grant an eight hundred foot (800') variance creating a nine hundred foot (900') front lot line setback at 6161 Salt Road. A variance for 825 feet was approved on 4-8-2003 with the addendum that the petitioner agrees there will be no further development or requests for additional houses to the rear of this piece of property.

DISCUSSION:

The Allaire's are installing a passive solar energy system in their new home. The path of the sun will require the house to be placed at 900 feet rather than the 825 feet they requested in April of 2003. No one had a problem with this request.

ACTION:

Motion by John Gatti, seconded by Ronald Newton to approve Appeal No XIV as written.

ALL VOTING AYE. MOTION CARRIED.

Meeting adjourned at 10:00 p.m.
John Brady, Chairman