

Clarence Board of Appeals Minutes
Tuesday, December 13, 2005
7:00 PM

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

Board of Appeals members present were:

Ronald Newton	John Brady
Daniel Michnik	Raymond Skaine
Arthur Henning	

Other Town officials present were:

James Callahan, Director of Community Development
Dave Metzger, Senior Building Inspector

Other Interested Parties Present:

James Peacock	Bob Gentner
C. Griffasi	Pamela Griffasi
Michelle Yemma	David Yemma
Linda Clark	Paul D. Cole
J. Bevilacqua	William Burkard
Sean Hopkins	Charles Kelkenberg
Randy Saltzman	Ron D'Angelis

Motion by John Brady, seconded by Arthur Henning, to approve the minutes of the meeting held on November 8, 2005, as written.

Ronald Newton	AYE	John Brady	AYE
Arthur Henning	AYE	Raymond Skaine	ABSTAIN
Daniel Michnik	ABSTAIN		

MOTION CARRIED.

OLD BUSINESS:

Appeal No. 6

David and Michelle Yemma
Residential Single Family

Requests the Board of Appeals approve and grant a 210' variance to allow for the construction of a new home at 5665 Thompson Road.

DISCUSSION:

Ronald Newton asks for David Yemma to provide an updated status regarding the variance request. Mr. Yemma advises the last time he was in front of the Board of Appeals he altered the request from 210' to be more in compliance for the privacy of the neighbors; he did not have exact numbers at that time. Today he has the figures. He has both surveys for either side of the property and the request has been changed from 210' to 200'. So his request is actually a 100' variance. The property has been re-staked. The front of the house would be at 200', and the other end would be at 195'.

Jim Callahan asks what the two adjoining setbacks are. Mr. Yemma advises that the south setback is 206' and to the north it is 150'.

ACTION:

Motion by Arthur Henning, seconded by John Brady, to APPROVE Appeal No. 6 per the following adjustment as discussed: a 100' variance creating a 200' front yard setback.

Ronald Newton	AYE	John Brady	AYE
Arthur Henning	AYE	Raymond Skaine	ABSTAIN
Daniel Michnik	AYE		

MOTION CARRIED.

Appeal No. 4

Linda Clark
Restricted Business

Requests the Board of Appeals approve and grant a 7' variance to allow a 3' side yard setback for the construction of an addition at 8469 Sheridan Drive.

DISCUSSION:

Linda Clark explains that her neighbor has a survey and tried to match the real property line to the west part of the neighbor's garage. Jim Callahan explains that, originally, there was a misinterpretation or a misprint on the survey, so when the variance was initially discussed it was a larger setback, the request for a

variance should actually be for less than 4'. The addition has been modified to enclose a portion of the stairway and the ramp.

Dave Metzger, Senior Building Inspector for the Town of Clarence, advises, "The addition was always going to be a 6'4" addition to the existing building, leaving 3' and change, because it was a 10' setback to the existing building." Mr. Metzger goes on to explain that the latest concept is to enclose what was going to be the covered porch area and leave the handicap ramp as it was originally designed, so the setback to the property line has not changed. At times, the children of the daycare center will be in the covered porch area.

Ronald Newton reads partial context from a letter that was received from a neighbor of 8469 Sheridan Drive:

"What are you going to do about this? Both the addition and the foundation for the covered walkway are clearly substantially in violation of the variance granted,"

Mr. Newton interjects at this point and advises that there has been no variance granted. He continues to read the letter:

"...look oppressive and out of place with other structures in the neighborhood, completely destroys the privacy of my home and yard without even the minimal setback granted by the Appeals Board, and lowers the value of my property. There will be no buffer between my property and the frequent traffic of people in and out of the day care.

I've lived at this address and been a taxpayer in Clarence for over 40 years. Who is responsible for notification regarding variance hearings, and for enforcing town codes and variances during construction? Work could have been stopped when the concrete blocks were placed for the foundation, but was allowed to continue by town officials.

Are you going to require County Park Day Care to remove this illegally placed structure? Or does the town code in Clarence allow contractors to place additions anywhere they want in violation of code, and as long as they are complete before the property owner is caught, it's okay and they are allowed to violate the law?

I look forward to your response."

The letter is signed by Barbara Bucklaew of 8473 Sheridan Drive Williamsville NY.

Jim Callahan states that there was a variance granted on the previous drawing which showed a 6'4 addition, but the drawing was wrong. The actual measurement is the same; it's the survey that was wrong. The open veranda is now closed.

Linda Clark states that, with the veranda now closed, it provides Barbara Bucklaew with 80% more privacy. Daniel Michnik points out that Ms. Bucklaew will be looking at a wall. Ms. Clark advises that she will be looking at the Maple tree, pretty windows and shrubbery.

Linda Clark advises that she spoke with Barbara Bucklaew the other day and discussed the Maple tree. It has been a problem and Ms. Clark offered to pay for trimming the tree, Ms. Bucklaew seemed satisfied with the offer.

Dave Metzger lists a few contributing facts: a 10' setback to the existing building, the garage that was relocated is at 9' +/- . Ms. Bucklaew is 11' from the property line and most of her living space, when she is outside, is away from the addition.

Ronald Newton asks how much space will be left from the roof line to the property line. Dave Metzger replies, "3'5 or 3'6."

Ronald Newton suggests installing a solid fence along the property line in question, to provide Ms. Bucklaew with some privacy.

Linda Clark has thought about installing a fence further back, but hesitated with installing it because it would be 50' from where Ms. Bucklaew sits. Ms. Clark also mentioned the snow situation, she could put up the fence in the fall and take it down in the spring, but Ms. Bucklaew would see her and the children less by putting up the wall.

Daniel Michnik states that a permanent fence needs to be installed for privacy. The parameter should be worked out with Ms. Bucklaew with a minimum to the playground. Ms. Clark indicates that Ms. Bucklaew's evergreens are in the way of a fence, the trees are on Ms. Bucklaew's property but the branches are 4' off the ground. Jim Callahan suggests putting a fence to the evergreens.

Dave Metzger clarifies the request from the Zoning Board of Appeals. The request is to shield the side of the building and the activity Ms. Clark has in her backyard from the children traveling from the building to the play area. Ms. Clark does not have a problem with this request. Dave Metzger advises the fence should be 6' to provide enough privacy.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning, to APPROVE Appeal No. 4 with the following stipulations:

- a privacy fence is erected, length to be determined by a meeting with Dave Metzger, Linda Clark and Barbara Bucklaew.
- the fence to be a minimum of 6' high.

-the fence contract be written and signed before the continuation of the project.

Ronald Newton	AYE	John Brady	AYE
Arthur Henning	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE		

MOTION CARRIED.

NEW BUSINESS:

Appeal No. 1

Paul D. Cole
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a variance to allow the construction of a new accessory structure 6' inside the rear lot line and 20' inside of side lot line at 10475 Bergtold Road.

DISCUSSION:

The above request reflects the clarification made by Paul Cole regarding the rear and side lot figures.

Mr. Cole advises that the new structure will be storage for a Model T that he owns. He has already had trees moved. He was not going to put a driveway in, just a path.

There is a neighbor notification in the file from 4380 Autumn Terrace. This neighbor is to the backside of the project. There is also a neighbor notification from 10465 Bergtold Road.

Raymond Skaine has concerns regarding the size of the structure. Mr. Cole addresses this concern by indicating that he will keep the structure low, perhaps 13' high, at the peak. The doors will be 8' high. Daniel Michnik shares this concern.

Ronald Newton asks if there will be gutters installed on the structure. Mr. Cole advises he can put gutters on the structure.

ACTION:

Motion by Daniel Michnik, seconded by Raymond Skaine, to APPROVE Appeal No. 1 as follows: a construction of a garage/shed of 12'x28' with the addition of gutters.

ON THE QUESTION:

Arthur Henning makes sure Mr. Cole understands that, under the conditions of the approval, he needs to put gutters on the garage. Mr. Cole understands.

Jim Callahan clarifies the dimensions: 6' inside the rear lot line and 20' off the west side lot line.

Ronald Newton	AYE	John Brady	AYE
Arthur Henning	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE		

MOTION CARRIED.

Appeal No. 2

Chris McCaffrey/Ulrich Signs
Major Arterial

Requests the Board of Appeals approve and grant a 25' variance to allow a front setback of 15' for a double-sided ground sign at 6471-6507 Transit Road.

DISCUSSION:

Chris McCaffrey with Ulrich Sign Company introduces himself and advises the Board that the request is correct. He is present to request a variance for a setback of 15' for Mr. Bevilacqua's new medical park.

Ronald Newton advises that the property was not staked. Mr. Newton reiterates the importance of having the property staked so the members of the Zoning Board of Appeals can view the site where the proposed sign is located.

Ronald Newton asks Mr. Bevilacqua why he hasn't contacted any of his neighbors to see if they have any problems with this variance request. There are no neighbor notifications in the file. Jim Hartz of the Planning/Zoning Department spoke with the neighbor in the Floss Office Building.

ACTION:

Motion by Raymond Skaine, seconded by Daniel Michnik, to GRANT Appeal No. 2 as written with the stipulation that the petitioner guarantees the sign is a minimum of 15' from the front property line.

ON THE QUESTION:

Arthur Henning asks if this sign is going to be illuminated. Chris McCaffrey advises the sign will have one ground light on each side, externally only, shining up on the sign.

Ronald Newton	AYE	John Brady	AYE
Arthur Henning	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE		

MOTION CARRIED.

Appeal No. 3

William J. Burkard
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 150' variance to allow for a 250' front setback to construct a single family dwelling at 7054 Salt Road.

DISCUSSION:

William J. Burkard is present and explains that the existing house has an approximate setback of 24', there is no existing lot line, therefore he needs to establish a new lot line. Mr. Burkard would like the house to be close to the barn. The barn will not be removed. The house would be in front of the barn and off to the side.

Raymond Skaine states that by going back 250', the setback is actually providing the neighbors with more privacy than if he went back 150'.

Arthur Henning asks if Mr. Burkard owns the property, Mr. Burkard advises, "Yes, I do." Mr. Henning then asks who owns the vacant land at 7060 Salt Road (see Appeal No. 6). Mr. Burkard advises Charles Kelkenberg owns that lot. The width of Mr. Burkard's lot is approximately 220'. Mr. Henning states that if the Zoning Board of Appeals grants the setback to Mr. Burkard, then a setback would also have to be granted to Mr. Kelkenberg. Jim Callahan advises that Mr. Kelkenberg does not have a building permit at this time; his first step is to obtain a variance to allow a legal lot at the location.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning, to APPROVE Appeal No. 3, as written.

Ronald Newton	AYE	John Brady	AYE
Arthur Henning	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE		

MOTION CARRIED.

Appeal No. 4

Pinecrest Homes
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 50' variance to allow three single-family homes on three 100' wide lots between 10500-10520 Miland Rd.

DISCUSSION:

Sean Hopkins advises that the request is correct. Ron D'Angelis, owner of the property is present. Mr. Hopkins explains that there was some confusion created, regarding this request, relative to several things that were going on in the Town of Clarence:

- The moratorium was in effect last year.
- The question as to whether this is a major or minor subdivision. The Town ruled that this could be treated as a minor subdivision.
- The change in the Zoning Code that went into effect March, 2005.

The problem with these lots is at the time they were created the moratorium was in effect, so there's a question as to whether they were legal lots at that time. The Town has resolved the issue saying that the project can move forward with the caveat that, because the lots have been in existence for more than a year, there is now a 150' frontage requirement. Each of the lots is more than 30,000 square feet, there will never be a house built on it that exceeds 2500 square feet on any of the three lots. The minimum side yard setback on each side will be 20'. The applicant has the Erie County Health Department Approvals.

Jim Callahan explains that this location was one parent parcel with one tax parcel ID number in 2003. At the time, the Town's Subdivision Law would allow a parent parcel to be split up to four times. At the end of the 2003 year, a minor subdivision review committee was created to review the four splits. This parent parcel received approval on three splits and was granted an additional split to create the fourth split. The average lot size in this area is 100'.

Daniel Michnik is concerned if the Zoning Board of Appeals grants this request at 100'; they will have to grant all the other requests that come in for 100' frontage.

Arthur Henning asks what the applicant will do if this request is denied. Ron D'Angelis does not know what he will do at this point. Mr. D'Angelis builds homes that are 2500 square feet; larger homes are not his market. If this request is not granted it will create a hardship for him, because this is not what he usually does.

Raymond Skaine states that there are five areas that the Zoning Board of Appeals is empowered to use when reviewing a project. He refers to the Review Sheet for ZBA Members that is kept in the file. Specifically, he indicates that by granting the variance it will produce an undesirable change, reduce the character of the neighborhood and will be a detriment to nearby properties. Even though there is a mix, there have been a lot of them built over previous years. Mr. Skaine thinks the newer ones are larger frontage lots. The applicant can still get four lots very comfortably at 150'.

Sean Hopkins asks if the Zoning Board of Appeals would consider a frontage requirement somewhere between 100' and 150'. If Mr. D'Angelis has to build on bigger lots he has to charge more money and then he is priced out of his market.

ACTION:

Motion by Raymond Skaine, seconded by Daniel Michnik, to DENY Appeal No. 4 as written, based on the Review Sheet for ZBA Members.

Ronald Newton	AYE	John Brady	AYE
Arthur Henning	NAY	Raymond Skaine	AYE
Daniel Michnik	AYE		

MOTION CARRIED.

Appeal No. 5

Charles Kelkenberg
Agricultural Rural Residential

Requests the Board of Appeals approve and grant two variances:

1. A 50' variance to allow the construction of a single-family home on a 100' wide lot at 10680 Croop Rd.
2. A 25' variance to allow the construction of a single-family home on a 125' wide lot at 10716 Croop Rd.

DISUSSION:

Charles Kelkenberg is present and explains that he bought the property and split the lots. He started with 100' lot on the west side and then two 150' lots. The next lot, 10710, is an odd shaped lot because the water line ends at the east side of that lot. The lots were split prior to the Town changing their lot size requirement.

Raymond Skaine asks if any of the lots have been sold yet. Mr. Kelkenberg advises he has sold lots. There are houses on lots one, three and four. Lot number

five is under contract. Mr. Kelkenberg advises that he did not have any difficulty selling the lots. Lots two and six are not sold. Mr. Skaine suggests that Mr. Kelkenberg approach his neighbors to discuss purchasing some land from them to increase the width of his lots and come closer to the lot requirements.

Ronald Newton states that there are no neighbor notifications in the file.

ACTION:

Motion by Raymond Skaine, seconded by Daniel Michnik, to TABLE Appeal No.5 pending the applicant is attempting to add frontage footage to both lots.

ON THE QUESTION:

Arthur Henning asks for clarification on the Action. Ronald Newton states that Mr. Kelkenberg is going to contact his neighbors to ask if they are willing to sell him some of their land so he can meet the frontage requirements. Mr. Henning indicates neighbor notifications are required as well, Mr. Newton confirms.

Ronald Newton	AYE	John Brady	AYE
Arthur Henning	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE		

MOTION CARRIED.

Appeal No. 6

Charles Kelkenberg
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 50' variance to allow a single-family home on a 100' wide lot at 7060 Salt Road.

DISCUSSION:

Charles Kelkenberg explains that when he bought the parcel he bought it as four 100' lots. He sold three of the 100' lots to one customer, who combined them to make one large lot, and will put a house on this large lot. It is suggested that Mr. Kelkenberg approach the owner of this large lot and discuss the purchase of some land to be added to 7060 Salt Road in order to meet the lot width requirement.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning, to TABLE Appeal No. 6, pending the applicant's attempt to negotiate an extra 50' of frontage.

Ronald Newton	AYE	John Brady	AYE
Arthur Henning	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE		

MOTION CARRIED.

Appeal No. 7

Mark Brewer/Summit FCU
Major Arterial

Requests the Board of Appeals approve and grant a variance to allow an additional 18 square feet of additional signage at 5641 Transit Road.

DISCUSSION:

Randy Saltzman is representing Summit Federal Credit Union. Mr. Saltzman clarifies the difference between banks and credit unions. Banks can accept anyone as a customer, where as not everyone can become a member of a credit union. The sign would be a promotional venue.

Ronald Newton asks if the applicant would consider using temporary signs to advertise.

The proposed location of the sign was not staked. The site plan shows the proposed location of the sign, but there was a communication error and the proposed location was not staked.

Raymond Skaine asked if the existing sign was going to come down. Mr. Saltzman advises that wasn't the intention. Mr. Skaine advises the applicant can have only one sign.

Jim Callahan advises that the code allows one-third of a pole sign be changeable copy, he indicates this may be an option. Mr. Saltzman adds that he wanted a sign that looked a little nicer than the portable signs. The sign requirement is 60 square foot, Mr. Saltzman indicates that sign is currently in the 50 square foot range.

Arthur Henning asks if Summit Federal Credit Union is part of another group or if it is a free-standing operation. Mr. Saltzman advises that this credit union is based in Rochester with this branch in Buffalo. There are 48,000 members and three hundred sixty million dollars in assets. It is part of a larger organization that happens to have facilities in Buffalo. They merged with the Buffalo Telephone Employees Credit Union to create the presence here, two and a half years ago. There will be another location planned for 2006 in the City of Buffalo.

ACTION:

Motion by Raymond Skaine, seconded by Daniel Michnik, to DENY Appeal No. 7 based on previous decisions made on additional signage on Transit Road.

Ronald Newton	AYE	John Brady	AYE
Arthur Henning	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE		

MOTION CARRIED.

Meeting adjourned at 9:10 p.m.

Ronald Newton
Chairman