

BOARD OF APPEALS MINUTES

March 11, 2003

On Tuesday March 11, 2003 at 7 p.m. the Clarence Board of Appeals will hear the following requests for variances:

OLD BUSINESS

**Dominic Piestrak
Jay Birnbaum**

**5621 Woodruff Drive
4715 Transit Road - Carmine's Restaurant**

**APPEAL NO I
John Campanella
Agricultural**

Requests the Board of Appeals approve and grant a two hundred foot (200') variance creating a three hundred foot (300') front yard setback line for construction of a new single family home at 9100 Wolcott Road.

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

**APPEAL NO II
Brian Buzak**

Residential A

Requests the Board of Appeals approve and grant a two foot (2') variance to allow construction of a single family home on ninety eight (98') feet of frontage on vacant lot adjacent to 5170 Thompson Road.

APPEAL NO II is in variance to Article II, section 30-10, size of lots.

**APPEAL NO III
Sal Campione
Agricultural**

Requests the Board of Appeals approve and grant a five and a half foot (5'6") variance creating a one hundred four foot six inch (104'6") front yard setback for home already constructed at 10970 Howe Road.

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

**APPEAL NO IV
Alan Nigro
Residential A**

Requests the Board of Appeals approve and grant a one hundred twenty five foot (125') variance creating a seventy five foot (75') front lot line setback for the construction of a new home at 9111 Greiner Road.

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

**APPEAL NO V
Kenneth Bieger
Agricultural**

Requests the Board of Appeals approve and grant a four foot six inch (4'6") variance creating a thirty nine foot six inch (39'6") roof height for a new home at 6525 Belle Way (in open development west of 8440 Stahley - east of 8420 Stahley)

APPEAL NO V is in variance to Article V, section 30-26, size of buildings.

**APPEAL NO VI
Sandra Baker
Residential B**

Requests the Board of Appeals for an interpretation that fence permit #01-33 issued for Robert Maines at 9490 Maple Street is in compliance with the Fence Ordinance L.L.101-3 B & C.

**ATTENDING: John Brady
 John Gatti
 Ronald Newton
 Arthur Henning
 Eric Heuser**

**INTERESTED
PERSONS: Stephen Castilone
 Dominic Piestrak
 Marc Mussachio
 Michael Denz
 Toni Frain
 Jay Birnbaum
 Sean Hopkins
 John Campanella
 Brian Buzak
 Sal Campione
 Alan Nigro
 Ken Bieger
 Sandra Baker
 Robert Baker**

MINUTES

Motion by John Gatti, seconded by Arthur Henning to approve the minutes of the meeting held on February 11, 2003 as written

ALL VOTING AYE. MOTION CARRIED.

OLD BUSINESS

5621 WOODRUFF DRIVE

This is the fourth time this appeal has been to the Zoning Board of Appeals for consideration, it has been tabled three times - once on January 14, 2003, a site meeting on January 21, 2003 and again on February 11, 2003. Ron Newton read the original request from the meeting held on January 14, 2003. Mr. Castilone said AWe met with the Town Engineers and they said they would be willing to entertain setting the cul-de-sac back. We are willing to compromise and set the house at 72 feet.@ Ron Newton read a memo from Joe Latona and Joe Floss dated February 25, 2003 item number three into the record:

The subdivision design includes a front yard setback that is thoroughly considered in designing drainage for the overall development and in maintaining a consistent character for the full build-out of the subdivision. This design is approved as a part of the Development Plan Approval for every subdivision and is carried over as a part of the Final Plat Approval. Very often an applicant may request a larger front yard setback at the time of Development Plan Review, where unique circumstances may allow for a greater setback. No such request was made as a part of the Hidden Pond II Development Plan Review. The Development Plan was submitted with the stand forty five (45') front yard setback for most lots, with a few reduced thirty five (35') foot setbacks at corner lots and directly adjoining the floodplain/wetlands. Because of this subdivisions relationship to these floodplain and wetland areas, it is even more important to maintain the approved setback limits to ensure compliance with engineering approvals.

The members of the Board said they asked for a report from an expert, and they said they will abide with the report written by the Town Engineer Joseph Latona.

ACTION:

Motion by John Gatti, seconded by Arthur Henning to DENY Appeal No IV originally from the agenda of January 14, 2003.

ALL VOTING AYE. MOTION CARRIED.

Ron Newton said he would like to mention as part of the closure that.

1. It has been recommended by the Flood Plain Administrator that the setback be maintained at 45 feet. It will change the character of the neighborhood, if we allow one to go back, they will all want to go back.
2. We are not sure if the ground is stable so therefore at some point in time there might be some type of safety issue. There are a lot of negatives going on here.

OLD BUSINESS

4715 TRANSIT ROAD - CARMINES RESTAURANT

This is the third meeting that the Board of Appeals has considered this request for an interpretation. The original request was presented at the meeting held on January 14, 2003 and it was tabled. It was tabled again on February 11, 2003. Chairman Brady asked if anyone had anything new to present. Jay Birnbaum and both Attorneys restated the exact points that were made at the meeting held on January 14, 2003 (see minutes). Jim Callahan stated that Major Arterial zoning did not exist at the time the restaurant was constructed. Therefore, there was no parking standard identified with the use. The Zoning Boards action in 1985 was to approve the addition to the building. Parking approval is a function of the Town Board and Planning Board - not the Zoning Board of Appeals. For these reasons the Zoning office has identified this use as pre-existing non conforming, and may continue as of right.

ACTION:

Motion by John Gatti, seconded by Arthur Henning to DENY the request for declaratory relief, revocation of building permits and certificates of occupancy, and enforcement of zoning ordinances at 4715 Transit Road. (Carmine=s Restaurant)

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO I
John Campanella
Agricultural

Requests the Board of Appeals approve and grant a two hundred foot (200') variance creating a three hundred foot (300') front yard setback line for the construction of a new single family home at 9100 Wolcott Road.

DISCUSSION:

Mr. Campanella said there is a ditch about 50 feet from the property line. There is a natural high spot on the land that is outside of the flood zone. They would be even with the house that is already there. They have applied for a letter of map amendment, because they are above the base flood elevation.

ACTION:

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

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO II
Brian Buzak
Residential A

Requests the Board of Appeals approve and grant a two foot (2') variance to allow construction of a single family home on ninety eight feet (98') of frontage on vacant lot adjacent to 5170 Thompson Road.

DISCUSSION:

Mr. Buzak said he owns the home at 5170 Thompson Road. There was a lot showing as a paper road, next to him. He purchased the lot from Gene Jason a year ago, who had purchased it from Anthony Horousis. He did not want his lot, to become a corner lot if it ever became a future road. To his knowledge, this is not the sole access if the land Gene Jason owns is ever developed. He would like to have the ability to sell it as a building lot in the future.

ACTION:

Motion by Ronald Newton, seconded by Eric Heuser to Approve Appeal No II as written.

ALL VOTING AYE. MOTION CARRIED.

Page 2003-18

APPEAL NO III
Sal Campione

Requests the board of Appeals approve and grant a five and a half foot (5'6") variance creating a one hundred four foot

Agricultural

six inch (104'6") front yard setback for home already constructed at 10970 Howe Road.

DISCUSSION:

Mr. Campione said it was an honest mistake. He measured from the wrong stake, and the way the house is angled. They set the stakes in. They had a drainage pipe put in, and the stakes got moved.

ACTION:

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

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO IV
Alan Nigro
Residential A

Requests the Board of Appeals approve and grant a one hundred twenty five foot (125') variance creating a seventy five foot (75') front lot line setback for the construction of a new home at 9111 Greiner Road.

DISCUSSION:

Mr. Nigro said he didn't understand why the variance is for one hundred twenty five feet, he wants to set the house seventy five feet from the property line. Jim Callahan told Mr. Nigro that figure is accurate - the established setback of the existing homes on either side of the lot at 9111 Greiner is two hundred feet. Mr. Nigro said the main reason is that the neighbor to the north has his driveway encroaching on Mr. Nigro's property by 16 to 18 feet. If the house is set back in line with the other homes, they are going to lose part of their driveway. So, they pulled the house forward as close to Greiner as we felt would be applicable, and they want to be far back from Greiner because of the traffic. There will still be roughly 80 to 100 feet of trees from the back of this home to the two existing homes. The neighbors said it was okay with them. Ron Newton said it is the neighbors problem if he is encroaching on this property with his driveway. Ron said what he is trying to prevent is the jigsaw look along Greiner Road. We originally approved the 200 foot setback because we thought that was a reasonable distance to be away from Greiner Road. Other than the driveway, what is your reason for wanting to go forward. Mr. Nigro said the cost of pulling it back even further. Mr. Newton said he is sorry Mr. Nigro didn't do a little more research on it, but it is

unfair to ask us to change what we have already set in motion, and move you forward. You are creating a hardship for the other neighbors, even if the neighbor with the driveway doesn't care. You are changing the character of the neighborhood by doing this. There might be a safety issue, somewhere down the road, that is one of the reasons we pushed them back, to get away from Greiner Road. People come in here, and they want to go back. This will be a speculation house, but Mr. Nigro doesn't feel the setback will be a problem. John Gatti said he feels the same way as Mr. Newton. Eric Heuser asked how much it would cost to move the house back. Mr. Nigro said between seven and ten thousand dollars. Eric Heuser said he is in agreement with Mr. Newton and Mr. Gatti. It would be very noticeable and not be in the character of the neighborhood. The cost of moving it back could be absorbed in the price of the house. Chairman Brady said he agrees with the other board members, and the setback could be changed now before anything goes up.

ACTION:

Motion by Ronald Newton, seconded by John Gatti to DENY Appeal No IV. It is a self created hardship, and there are other ways to deal with the situation other than coming to this board for a variance. It would have a definite change on the character of the neighborhood.

ALL VOTING AYE. MOTION CARRIED.

**APPEAL NO V
Kenneth Bieger**

Requests the Board of Appeals approve and grant a four foot six inch (4'6") variance creating a thirty nine foot six inch (39'6") roof height for a new home at 6525 Belle Way (in Open Development west of 8440 Stahley and east of 8420 Stahley Road).

DISCUSSION:

Mr. Bieger said he and his wife picked out a french style house. The roof is going to actually be 37'8", not what they asked for. There will be four houses in the open development, and the houses will all be close to 5000 square feet. It is removed from Stahley, and with all the trees, you probably will not even see the house. He has gotten the approval from Roy Jordan who is building his house at pretty much the same height. He got a variance for the

height of his home. One third of the roof will be somewhat above the ordinance of 35 feet, but not the whole roof line.

ACTION:

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

ALL VOTING AYE. MOTION CARRIED.

**APPEAL NO VI
Sandra Baker
Residential B**

Requests the Board of Appeals for an interpretation that fence permit #01-33 issued for Robert Maines at 9490 Maple Street is in compliance with the Fence Ordinance Local Law 101-3 B & C.

DISCUSSION:

Jim Hartz gave a brief history and an opening statement because he is the one who issued the fence permit under the law, and did the inspection after he received a complaint from the Bakers that the fence was not in compliance with the fence ordinance. Upon inspection, I did notice that the grade of the neighbor-s property is somewhat elevated from the Baker-s. The fence permit was actually issued for Robert Maines, and a neighbor next to him, a Jonathan Kyle for six foot sections in their rear yard, as well as a section of fence toward Railroad - there is a small front yard section where it is supposed to be four feet in height. That was noted on the permit. Upon inspection of the fence that the six foot sections are in fact, are a little higher from the Baker-s property because of the difference in elevation.

Sandy Baker showed some photographs of the property in question from the year 2000. There is not much of a grade difference as far as she can see. It seems as though they brought dirt in after they put the fence up. Mr. Baker said they put the fence in, and built flower beds right along side the fence, and the flower beds are up six to eight inches on their side of the fence, and they filled that in with dirt. At the bottom of the fence they have four by six blocks under the six foot section, and down on the east end of the fence it looks like he has a two by eight underneath the fence, and has the fence sitting on top of that. Then on his side, he has built flower beds again, that have created pools of water all the way down the side of our property.

Sandra Baker said Mr. Maines lives on the corner of Maple

and Railroad Street, and because it is a corner property so the fence should not be higher than four feet from the angle of the front of his house or the side of his house. It is six and a half feet back here, and this is five feet. Eric Heuser asked what the regulation definition for the front yard of a house. Jim Hartz said the Zoning law definition of a front yard is described as the space between the right of way of the street, and the closest point of the principal building. On a corner lot your front yard is a V along both roads.

Bob Baker said a few years ago, he took down a lot of trees and brought in a lot of fill, and everything was level. Sandra Baker said we would like the neighbors to comply, with the rules for fencing in Clarence, and we would like this fence to be six foot, instead of patched underneath it. Bob Baker said they would have to bring in fill to hide what they have put in. If they brought the fence down to where it should be, all this patchwork wouldn't be there. Arthur Henning asked if they had talked to him. She said Jim Hartz talked to him, and he said he wasn't going to do anything about it. Ron Newton said you would have to take the top off, he certainly isn't going to dig up the fence and make it lower. They take a little bit off the top. Sandra Baker said that is fine - as long as they bring it down to six foot and four foot that is fine. John Gatti said According to the memo we have here, Mr. Hartz feels that the installation is in compliance with the law, and his interpretation that the law allows six foot sections of fence to be installed from average grade, and he allowed a tapered section in the front yard to be installed. Jim Hartz said under the fence law, we interpret that as allowing six foot sections and in this instance from average grade. I honestly don't know when he brought in planting gardens on his side of the fence. All I am saying is that they do have six foot sections of fence. Mr. Baker said they also have a six foot sections of fence over here, where it should only be four foot. Jim Hartz said AWell, the tapered section, right.@Eric Heuser said his next door neighbor is three feet higher than his property is. If I put up a fence where would the measurement be taken from - my property? Jim Hartz said if your property is three feet lower, we aren't going to allow a nine foot fence to be installed on the property. The way I interpret the fence law is - it is a six foot fence and is to be installed from that applicants grade. John Gatti said AWhen

it was first installed you looked at it and it was in compliance. Jim Hartz said they were six foot sections. Since then he has changed it? Jim Hartz said AWell, no since then I have been invited over to Bakers to look at it from their point of view., and see what they have done. Ron Newton said AAs I understand it, the plank is underneath the fence to keep the fence level. They filled in the bottom so they could put a flower bed underneath. I think it would be a hardship for the Maines to have to trim a fence that-s pre-existing. It looks to be the same height all the way around. Bob Baker asked Ron Newton when he was at the property to look at the fence. Ron Newton replied yesterday. Sandra Baker asked if he got out of his car. Ron Newton replied, ANo@. Bob Baker said with all the snow and ice, you can not see the bottom of the fence to come back in April or may and you would see a problem.

Sandra Baker asked if the 2 2 feet over height section of fence going to stay? It-s suppose to be 4 feet. Ron Newton stated the whole fence is 6 feet, then tapers down. Bob Baker said that the part of the fence tapers down to 5 2 feet, but it should be 4 feet.

Arthur Henning questioned whether the board ever approved a permit. Jim Callahan said AYes@. Arthur Henning questioned AWhy@? Jim Callahan said it was the interpretation of this office, the fence was in compliance. The Bakers are challenging our interpretation and say the fence is in violation. We say it is not. The Bakers are appealing our decision, which is their right.

Sandra Baker asked Jim Hartz if all their discussions regarding the fence being out of compliance was false. Jim Hartz said no, the only way for you to appear on tonights agenda was for us to word it the way we worded it. Sandra Baker questioned Jim Hartz whether she specifically asked him if the tapered section of the fence was higher than 4 feet. Jim Hartz replied, AAnd I said yes it was. Sandra Baker stated to Jim Hartz, that-s not in compliance with the fence rules. Is that correct? Jim Hartz replied, ALiterally, yes@. John Brady stated we are suppose to be giving an opinion. My opinion is a 6 foot fence is a 6 foot fence. Bob Baker replied saying, put 10" on the bottom of a 6 foot fence, you have a 6'10" fence. John Gatti said Jim Hartz

says it-s in compliance, the Bakers say it-s not. Sandra

Baker said that Jim Hartz told them it's not in compliance. John Gatti said, well he gave them the permit to build it and you're challenging that right? Sandra Baker said ANo, Jim Hartz told me that they're not in compliance, otherwise I would have not wasted my time and come down here. Jim Hartz said, what I'm saying is that tapered section is really a Agrey@ area for us. We issued the permit based on a 6 foot fence. He installed a tapered section afterwards. I am looking for an interpretation on whether to go back and tell them to saw off that tapered section to "L" it to 90 degrees or to allow that tapered section to be as meaning the general intent of the fence ordinance. John Gatti said he's in favor of tabling this to allow Jim Hartz to go back and make a determination if it's in compliance or not. Sandra Baker said, he's already told me it's not. John Gatti replied, AExcuse me, he didn't tell me that@. Jim Hartz said, AWe don't have to table it. I'm telling you, it meets the general intent of the fence ordinance@.

Barb Guida questioned Jim Hartz if when he gave out the permit, if his understanding was the fence was going to be 6 feet all the way around. Jim Hartz said correct. Barb Guida said, so what happened was it was tapered off without your knowledge. So it still is in compliance with a 6 foot fence permit that you gave them. Correct? Jim Hartz said the survey is in the file. When the permit was issued, Mr. Maines yard on Railroad Street side is 6 feet. If you literally read the fence law it should only be 4 feet. But, in an area like this, where he wanted to taper the section for decorative purposes, I didn't think that was a big deal for me. I don't have to live next to it and look at it, but it is a problem for the Bakers. So I need this board to tell me if I should tell Mr. Maines to saw it off or should we let it ride?

Ron Newton said the point we have to look at is it a hazard? Is it creating a hardship for the neighborhood? It's creating a hardship for the Bakers, but they're only one person in the neighborhood. We have to look at all the facets. I didn't see it as a hazard or hardship. A fence is a fence. A couple of inches here and there. Now you're getting picky. Bob Baker said AWe're talking 2 2 feet@. Ron Newton questioned AWhere? In that little corner@?

Page 2003-24

John Gatti questioned the Bakers, AWhat hardship is this for you@? Bob Baker replied, AThe hardship is, I mow out

there all year long. He built up the fence. If he hadn't filled in the dirt underneath the fence, there would be no puddles of water laying in my yard where I have to try and mow. I have to look at a 2x10, a 2x6 and a few bricks coming out from under this fence. Sandra Baker stated that they followed the rules when they put up their fence. She stated that Mr. Maines started putting up his fence on a Sunday, when the actual permit wasn't issued until the next day. She stated that the remainder of the fence was then put up 2 weeks later without a permit. Jim Hartz stated that he issued one fence permit. It was modified.

Sandra Baker stated the fence is 6 2 feet in certain sections.

Ron Newton replied that measurement is taken from your side. Jim Hartz said that the measurement is taken from the side of the land on which the person is requesting a permit.

Sandra Baker said ok, but according to Jim Hartz and the rules, a portion of his fence, by law of Clarence should be 4 feet and it is not. I can no longer see the sidewalk because what should be 4 feet is 6 feet. I'm asking the board to consider the rules.

Eric Heuser questioned where they base the 4 feet height. The garage or the front corner of the house closest to the road? Jim Hartz stated that you look at the average layout of the land or the grade of the land and take it 4 or 6 feet from that point. Eric Heuser stated that Mr. Maines garage is set back from where the corner of his house would be closest to the road. So where would you consider that 4 feet? Sandra Baker asked, where would you consider, from the house or the garage? Jim Hartz explained that if he's mistaken, there's a decent land slope to his driveway.

Bob Baker asked from what point would the 4 foot fence extend out? From the front or the back corner of the house or garage? Jim Hartz answered from the front corner of the house back, he can have a 6 foot fence, before that a 4 foot fence. Sandra Baker stated that that's what she's objecting to. It's not 4 feet, it's 2 2 feet over.

Sandra Baker asked Jim Hartz if it was correct that he asked Mr. Maines to comply and cut the fence down, but Mr. Maines refused. Jim Hartz stated that was correct.

Jim Callahan stated we issued this permit. We are sticking by this. Now, the action is for you to interpret, are we right?

ACTION:

Motion by John Gatti, second by Arthur Henning to accept the interpretation as being correct and in compliance with the Fence Ordinance L.L.101-3 B&C.

VOTING:

Aye: John Gatti
Arthur Henning
John Brady

Nay: Ron Newton
Eric Heuser

MOTION CARRIED.

Meeting adjourned at 9:15 p.m.