

Clarence Board of Appeals Minutes
Tuesday, May 9, 2006
7:00 PM

Raymond Skaine, Vice-Chairperson, called the meeting to order at 7:00 PM.

Board of Appeals members present:

Raymond Skaine, Vice-Chairperson
Daniel Michnik

Board of Appeals members absent:

Ronald Newton, Chairperson
Ryan Mills
Arthur Henning
Eric Heuser

Other Town officials present were:

James Callahan, Director of Community Development
James Hartz, Assistant Director of Community Development
Councilman Bernard Kolber

Other Interested Parties Present:

Mark Ziemba	Michael Dentico
Jonathan Grapes	Jeanmaire Polvino
Ron Kinn	Larry Kinn
Donna Hollmer	Daniel Pazderski
Arlene Pazderski	Patricia Haas
Joyce Normandin	Jerry Normandin
George Tinklepaugh	Mark Wood
Dawn Murty	Joan Matheis
James Murty	Martia Stengel
John Akiki	Lucy Duff
Tim O'Brien	Eric Stockwell
Timothy Morgan	Christopher Carollo

Due to the number of absent Zoning Board of Appeals members there will be no action taken on any agenda items at this meeting. The meeting will be re-scheduled for May 23, 2006.

Old Business:

Appeal No. 1	Requests the Board of Appeals approve and grant a
Mark Ziemba	240' variance to allow for the construction of a
Residential Single Family	1,200 square foot accessory structure at 8290
	Stahley Road.

Appeal No. 1 is in variance to section 3.3.10 Accessory Structure.

DISCUSSION:

There has been a motion by the Zoning Board of Appeals to hold a re-hearing on Appeal No. 1. Raymond Skaine references the Town Law, section 267, which states that any order, decision or determination of the Board, not previously re-heard, may be heard by any member of the Board. A unanimous vote by the Board then present is required for such a rehearing to occur. Such rehearing is subject to the same notice provisions as the original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith and reliance upon the reheard order, decision or determination will not be prejudice thereby. On February 14, 2006 Raymond Skaine suggests re-opening and re-addressing the variance request for Mark Ziembra at 8290 Stahley Road. Daniel Michnik was not part of the Zoning Board of Appeals when this appeal was reviewed; however he was at the Town Board meeting when the applicant was present to discuss the project. The action taken was a motion by Raymond Skaine, seconded by Daniel Michnik, to re-open the variance request for Mark Ziembra at 8290 Stahley Road. The applicant will be provided with two (2) months to prepare. This variance request will be placed on the May 2006 Zoning Board of Appeals Agenda. All members voted "Aye", motion carried unanimously.

Raymond Skaine explains that, due to the absence of various Board members, no action can be taken at this evenings meeting on this agenda item, or any other agenda item. A meeting has been rescheduled for May 23, 2006.

Mark Ziembra explains the first variance was approved without conditions; this was for a secondary accessory structure. The second variance, the size of the structure, was approved with conditions regarding the rear aesthetics of the building; it was conditioned that the applicant uses landscaping for screening purposes. The paperwork was filed with the Town for the construction of the building and was assessed through every step; the final inspection for construction has been received. The site is approximately 1.35 acres.

Raymond Skaine recaps: in July 2005 the request was tabled to allow the applicant time to stake the property, Mr. Ziembra was going to put a house on the site. On August 9, 2005 the motion was made to grant the request with the condition that the petitioner provide an adequate berm and appropriate landscaping to shield the facility from the neighbors on the back an sides, voting showed all "Ayes" and the motion carried. Mr. Ziembra assured the Board, on that evening, that all the neighbors were notified and the landscaping plan for shielding the neighbors would be done, however, this has not happened. Mr. Ziembra explains the berm was constructed from the "get go." It was extended as a courtesy to Dr. Schultz, who lives directly behind Mr. Ziembra's site. There is no visibility to the neighbors on the left and right of Mr. Ziembra's site. There was a berm the entire length of the lot. Mr. Ziembra did not have the opportunity to move the home. The post office was supposed to buy the land where the home sat, but due to forces beyond their control, i.e. Hurricane Katrina, the funding for the purchase was stopped. Mr. Ziembra had the berm pushed down so he could begin to grade in order to make this a normal building lot.

In previous meetings, Mr. Ziembra stated the pole barn would be used to house building materials until the house was built, he also requested a variance for a larger structure. At the previous meeting, Mr. Skaine asked why the applicant needed a larger accessory building. Mr. Ziembra replied he wanted one structure, instead of the "three (3) car garages with a shed" that you see in the neighborhood. Mr. Ziembra did not have the option of an attached garage due to the rezoning of the property. The use of the structure was to be for storage of two (2) vehicles and eventually a trailer and landscaping equipment. There would

be minimal work performed “out of the garage.” This is acceptable as long as there is no employee parking or taking equipment out of the garage.

The intentions of Mr. Ziembra have not come to pass, thus the re-opening of the variance request. The Zoning Board of Appeals has the legal right to deny the request.

Joyce Normandin, of 8360 Stahley Road, refers to previous minutes which indicate if the variance request was not granted Mr. Ziembra would build a home. She wants to know what happened. Mr. Ziembra explains he could not afford to build a home. The only direction he can go with, on this property, is to sell it. Joyce Normandin feels this variance was granted under false information and asks if there was to be a public hearing for this project. Mr. Skaine explains that no neighbors attended the meetings that were held in August and September of 2005. A zoning variance is a public hearing, in which the neighbors are heard. The procedure for notification of a variance request is that it is published in the paper, a sign is posted at the project site and the applicant needs to provide neighbor notification forms, Mr. Ziembra has provided these forms.

Mr. Ziembra explains the only activity on the lot is the moving of some of the trees away from the property.

James Murty, of 8285 Stahley Road, recaps the minutes from all previous meetings and points out that many of the things that were supposed to happen, did not. Mr. Murty refers to the five (5) questions from the Review Sheet for ZBA Members; he indicates the answers are all “yes”. The day the garage door was put on the building “Mike’s Landscaping” moved into the building and employees were in and out all day, causing a disturbance throughout the neighborhood. This project has caused drainage problems as well as traffic problems.

Michael Dentico, of 8309 Parliament Circle, is directly behind the site. Mr. Dentico explains that Mr. Ziembra contacted him regarding his plans. A berm was put in and if trees are planted, as he was told they would be, Mr. Dentico will not see the site.

The land was supposed to be split, this has not been done.

The opinion of the neighbors is they want to see the structure taken down.

Jean Polvino, of 8235 Miles Road, voices her concern regarding this commercial structure in a residential neighborhood, each year her assessment increases. She is also concerned about the increase in traffic.

Donna Hollmer, of 8255 Stahley Road, doesn’t understand why the pole barn had to be built the way it is. She reads a letter she wrote dated May 3, 2006:

“My name is Donna Hollmer. I reside at 8255 Stahley Road. My husband and I have just renovated our house in the past two years. I have lived here since 1979. The quietness of the street is what attracted us to live out here. We are aware that times change, however, we never expected to have what looks like a business going in across the street from us. When we renovated we were excited to put on a front porch so that we may sit out there and enjoy the beauty of our street. With the pole barn across the way and the mounds of earth and trees, it hasn’t been a pretty site. We are not difficult people. We only ask that something be done to beautify the site and not allow a full business to be run from there. When we upgraded our house, we were hoping that it would increase its value. However,

with the site across the street, I believe that would only decrease our value if we chose to sell. Please take into consideration that we are all family people around here and we would like to still have a little bit of country living around us. To give you a little bit of insight from a business person, let me tell you that twenty years ago, I started a business in my home. It was a small dance business that did not interfere with anyone. However, in time the business took off and I had to move it to a Transit location merely because there was too much traffic in and out of my driveway. I did not have a problem with that and I moved to Mark Spoth's plaza. I was a very happy lady. So, if I was asked to move back then, what is the difference now? The fact is, that a nursery would definitely produce much more traffic than I had back then. If there is anything else I can do, or information that I might give you, please do not hesitate to ask. I noticed that a back-hoe and a truck to remove the trees just showed up late last night. Even that I was able to see, as the road is narrow and projects enough noise."

The letter will become a permanent part of the file.

Raymond Skaine reads a letter dated May 9, 2006 from Private Citizen Joe Weiss:

"After reviewing the situation on Stahley Road I would recommend removal of the structure given the description and lack of cooperation by the applicant. Signed by Joe Weiss of 4575 Timberlakes Road. Mr. Weiss was unable to attend the meeting this evening due to another issue demanding his attention."

The letter will become a permanent part of the file.

Joan Matheis, of 8310 Stahley Road, explains that Mr. Ziemba told her he was going to build a garage. The drainage ditch he refers to is where the Town told Joan Matheis to run her sump pump, the ditch is currently plugged up. The berm does not go across the whole property and has created a large water hole. She has water in her backyard that she never had before. Joan Matheis does not think Mark Ziemba has the right to sell the property as it still belongs to his great-grandmother. The lot is not as wet as Mr. Ziemba says it is. There are many brush piles on the lot. She would also like to see the structure come down.

Daniel Michnik asks Mr. Ziemba what his intention is with the fence on the property. Mr. Ziemba indicates he planned to put a fence up along the back of his property as a courtesy to the neighbors. He installed the fence, however if fell down.

There is no electricity in the building. The extension cords are for a power strip on the floor in the back of the second structure.

Mark Wood, of 8319 Parliament Circle, is concerned with the mixed stories regarding what will happen on this property. He is also concerned with the drainage in the area due to this project.

The Town Engineer has been and will continue to be involved in this project.

Mr. Ziemba asks what the time frame is for taking the structure down.

Councilman Bernard Kolber explains that the Town Board is very concerned with the impact this project has on the neighbors.

George Tinklepaugh, of 8390 Stahley Road, asks what time frame Mr. Ziembra feels is appropriate. Mr. Ziembra feels the structure should be taken down by the end of the year 2006. It will be difficult for it to be taken down sooner because of his financial situation.

Raymond Skaine advises this item will be scheduled for the May 23, 2006 Zoning Board of Appeals, at that point the Board will decide on a time frame if the structure is to be taken down. The Board will also consult the Town Attorney.

Mr. Ziembra will bring the lot back to grade and will address the drainage issues.

There is a driveway cut permit issued by Erie County.

Mr. Ziembra can start taking the building down now. If removing the structure will appease all the neighbors he has no problem taking it down. He will replace Ash trees along the back of the lot and there is the option to install other trees to form a natural barrier between lots.

Appeal No. 4

Christopher D Carollo
Residential Single Family

Requests the Board of Appeals approve and grant a 300' variance creating a 400' front yard setback for the construction of a new home at 8720 Clarence Center Road.

Appeal No. 4 is in variance of Chapter 229, Article VI, section 52 (A) (4) (a).

DISCUSSION:

Lucy Duff, of 6133 Blossom Court, asks for confirmation regarding the variance request. She points out that Mr. Carollo is now only asking for one variance.

Tim O'Brien, of 6143 Blossom Court, questions the stakes that are at the property, are they accurate? It is suggested that Mr. O'Brien look at his survey for exact measurements of his property line, if he is unable to locate his survey he would need to contact a surveyor to have his property surveyed.

Mr. O'Brien thinks the building has asbestos in it. Jim Callahan explains that the applicant is required to have a pre-demolition survey done and if there is asbestos he will have to have it removed by a licensed New York State contractor.

John Akiki, of 6153 Blossom Court, said there has been removal of the siding. Senior Building Inspector Dave Metzger would have issued the permit for this and would be aware of any problems. Mr. Carollo has gone through the proper procedures.

There was a concern voiced regarding the burning of the chicken barn, was that handled properly? Mr. Skaine explains this was probably done properly or the applicant would have been sited by a law enforcement officer.

For clarification: 8710 Clarence Center is a legitimate building lot.

The applicant will return on May 23, 2006.

New Business

Appeal No. 1

G. Franklin Gaskill
Residential Single Family

Requests the Board of Appeals approve and grant a 7.5' variance creating a 5' side yard setback to construct a garage addition at 5135 Old Goodrich Road.

Appeal No. 1 is in variance to section 3.3.7 Setbacks.

DISCUSSION:

The applicant will return on May 23, 2006 to discuss the variance request.

Appeal No. 2

Eric R. Stockwell
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 300' variance creating a 500' setback for the construction of a new house at 9155 Sesh Road.

Appeal No. 2 is in variance to section 3.1.6 Setbacks.

DISCUSSION:

Eric Stockwell will obtain the measurement of how far the house to the east is set back. Engineering will have to issue the flood plane development. The applicant can discuss it with Tim Lavocat, the Town Engineer. Mr. Stockwell can discuss the building with Carl Carlson from the Building Department.

The applicant will return on May 23, 2006 to discuss the variance request.

Appeal No. 3

Forbes Homes, Inc.
Residential Single Family

Requests the Board of Appeals approve and grant up to a 35' variance creating up to an 80' front yard setback for the construction of two (2) new homes at 4624 and 4634 Brentwood Drive.

Appeal No. 3 is in variance to section 3.3.7 Setbacks.

DISCUSSION:

Forbes Homes, Inc. representative, Timothy Morgan is present and explains the variance request is due to the unique shape of the lot. Raymond Skaine said that the property was not staked, this is a requirement of the Board. Timothy Morgan will have the property staked.

Appeal No. 4

Georgina Hartman

Agricultural Rural Residential

Appeal No. 4 is in variance to section 3.2.9 Accessory Structures.

Requests the Board of Appeals approve and grant an 8' variance creating a side yard setback of 2' to allow the construction of a garage at 9215 Martin Road.

DISCUSSION:

The representative for Georgina Hartman will return on May 23, 2006 to discuss the variance.

Appeal No. 5

Martin Stengel

Agricultural Rural Residential

Appeal No.5 is in variance to section 3.2.9 Accessory Structures.

Requests the Board of Appeals approve and grant a 2' variance to allow for an 8' setback from the principal structure for a new pool at 6720 Salt Rd.

DISCUSSION:

Raymond Skaine voices his concern with the applicant for not obtaining a building permit prior to putting the pool in.

The applicant will return on May 23, 2006 to discuss the variance.

Meeting adjourned at 8:18 p. m.

Raymond Skaine, Vice-Chairperson