

BOARD OF APPEALS MINUTES

May 10, 2005

On Tuesday May 10, 2005 at 7 p.m. the Town of Clarence Zoning Board of Appeals heard the following requests for variances:

OLD BUSINESS from 4-12-2005

APPEAL NO II
Michael Drescher
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a five hundred twenty foot (520') variance creating a five hundred seventy foot (570') front yard setback for the construction of a new home and barn at 7060 Goodrich Road.

APPEAL NO I is in variance to section 3.2.6 setbacks.

NEW BUSINESS

APPEAL NO I
Krislyn Construction
Major Arterial

Requests the Board of Appeals approve and grant a forty one foot (41') variance to create a front yard setback of ninety four feet (94') from the center line of Transit Road for the construction of a new office building at 6215 Transit Road. (South of Roger's Piano's)

APPEAL NO I is in variance to 3.8.4 development and design provisions.

APPEAL NO II
Spaulding Lake Properties
PURD

Requests the Board of Appeals approve and grant a variance to the Town of Clarence grading code top of wall requirements to allow daylight basements in Spaulding Lake Part 4, Phase 5. (Stonecliff)

APPEAL NO II is in variance to 2.17 grade.

APPEAL NO III
Emily Crawford
Residential Single Family

Requests the Board of Appeals approve and grant a ten foot (10') variance creating a thirty five foot (35') rear yard setback for the construction of a family room addition at 4226 Foxwood Lane. (Off Wehrle Drive)

APPEAL NO III is in variance to 3.3.7 setbacks.

APPEAL NO IV
John Carubba
Agricultural Rural Residential

Requests the Board of Appeals approve and grant two variances:
1) A three foot (3') height variance creating a thirty eight foot (38') building height for a single family home at 10377 Clarence Center Road.
2) An eighty foot (80') variance creating a two hundred eighty foot (280') front yard setback for the construction of a new single family home at 10377 Clarence Center Road.

APPEAL NO IV is in variance to 3.2.6 setbacks and 3.2.8 building height.

APPEAL NO V
Stonecraft Homes
Residential Single Family

Requests the Board of Appeals approve and grant a fifty five foot (55') variance creating a one hundred foot (100') front yard setback for the construction of a new home at 4565 Thompson Road.

APPEAL NO V is in variance to 3.3.7 setbacks.

APPEAL NO VI
Paul & Connie Donnelly
Residential Single Family

Requests the Board of Appeals approve and grant a four foot (4') variance creating a forty one foot (41') front lot line setback for the construction of an addition to the garage at 5220 Brookfield Lane. (Off Greiner Road)

APPEAL NO VI is in variance to 3.3.7 setbacks.

APPEAL NO VII
Cesare Banach
Residential Single Family

Requests the Board of Appeals approve and grant a use variance to allow for expansion of existing commercial use of the property located at 8500 Roll Road.

APPEAL NO VII is in variance to 3.3.2 permitted uses.

ATTENDING: Ronald Newton
John Brady
John Gatti
Arthur Henning
Raymond Skaine
Eric Heuser

INTERESTED
PERSONS:

Michael Drescher
Norman Castine
Rocco Del Grosso
John Haas
Nick Piestrak
Emily Crawford
John Carubba
Andreas Federman
Chris Fasanello
Paul Donnelly
Mark Coyn
Sally Banach
Cesare Banach

MINUTES

Motion by Raymond Skaine, seconded by Arthur Henning to approve the minutes of the meeting held on April 12, 2005 as written.

Raymond Skaine	AYE
Arthur Henning	AYE
John Brady	AYE
Ron Newton	AYE
Eric Heuser	AYE
John Gatti	ABSTAINED he was not present for the meeting.

OLD BUSINESS FROM 4-12-2005
APPEAL NO II
Michael Drescher
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a five hundred twenty foot (520') variance creating a five hundred seventy foot (570') front yard setback for the construction of a new home and barn at 7060 Goodrich Road.

DISCUSSION:

Mr. Drescher said he had talked to the neighbors, explained his plans, and submitted nine letters of notification for the file. Mr. Drescher also staked the property for inspection. Arthur Henning asked how the neighbors responded. Neighbors did not have a problem except for one person on Lapp Road who had a problem with drainage. He called Town Engineer Joe Latona and Joe said there were no problems. Most people said the farther back the better. He is not going to take any trees down in front of them so they were okay with it. Ray Skaine said he would like to make that part of the motion - that the trees are left as much as possible to protect the privacy of the neighbors. Mr. Drescher said he didn't want to take the trees down.

ACTION:

Motion by Raymond Skaine, seconded by John Brady to approve Appeal No II from the 4-12-2005 meeting as requested based on the condition that trees will be left to buffer the neighbors as much as possible.

Ray Skaine AYE
John Brady AYE
Arthur Henning AYE
Ron Newton AYE
John Gatti ABSTAINED He was absent.

MOTION CARRIED.

APPEAL NO I
Krislyn Construction
Major Arterial

Requests the Board of Appeals approve and grant a forty one foot (41') variance to create a front yard setback of ninety four feet (94') from the center line of Transit Road for the construction of a new office building at 6215 Transit Road.

DISCUSSION:

Jim Callahan said "I might just preface this one by identifying the Planning Board has initiated review of this. Through mutual agreement with the applicant and the Planning Board, they are looking to see if there is an opportunity to move the building forward, to eliminate parking in the front and create a more attractive building setting with parking to the rear. The Planning Board hasn't officially approved the concept yet, they have forwarded it to the Municipal Review Committee on the design and it is perfectly acceptable, the design with parking in the front could probably work. The applicant is here to see if there is an opportunity to move the building forward to match the existing setback lines in that area." The building in front with the parking all in the back, will allow for more green space in the front of the building.

ACTION:

Motion by John Gatti, seconded by Raymond Skaine to approve Appeal No I as requested.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO II
Spaulding Lake Properties
PURD

Requests the Board of Appeals approve and grant a variance to the Town of Clarence grading code top of the wall Requirements to allow daylight basements in Spaulding Lake Part 4, Phase 5. (Stonecliff)

DISCUSSION:

Ron Newton read the memo from the Town Engineer into the record:
The Engineering Department has reviewed the above ZBA Appeal that is based on a grading plan dated 2/14/2005. The Engineering Department has denied the grading plan because all the top of foundation wall elevations exceed the 40" maximum above centerline of the road allowed by code. A revised grading plan in compliance with the following conditions would be acceptable to the Engineering Department.

1. The maximum top of foundation wall elevation not to

exceed 48" above the centerline of the road which would be in compliance with the approved PURD.

2. All proposed homes to be constructed with daylight basements must be designed with daylight basement window wells to achieve a minimum of 1% grade from the proposed rear yard grade at the structure to the proposed rear yard drains (if drains are available). The daylight basement window wells (if required by grade) are to include drains to prevent the accumulation of water within the wells and drain to the subdivision drainage system.

3. If both condition 1 and 2 cannot be met then the lot is not suitable for daylight window construction. The home can be constructed with a second egress (stairwell) from the basement to the garage to satisfy the requirement for finishing a basement **recreation room**.

4. **ALL** building permit applications for all lots within Spaulding Lake Part 4, Phase 5 must be accompanied by a detailed lot grading and drainage plan stamped and signed by a Professional Engineer licensed in the State of New York. Individual drainage and grading plans must be of sufficient detail and be acceptable to the Engineering Department before the Building Department will issue a building permit. The individual grading and drainage plans must show side yard swale grades, top of wall elevations (existing or proposed) of proposed structure and the immediately adjacent structures, rear yard drain rim and invert elevations and individual grading and drainage plans must show all existing and proposed grades.

Nick Piestrak said it is all rock out there, and there isn't a problem with drainage. This is the very last section, and it will add to the subdivision. No one up there has a problem with drainage. I don't think we would be putting anyone at risk. We are not asking for any walkouts. This variance will not insure that someone can build a daylight basement, it just gives someone an opportunity to go to the Town Engineer and make sure their plan will satisfy the code. Ray Skaine said "So when you sell a lot to a builder you will present this Engineering Memo to them? Dominic Piestrak Jr. said "Yes." Ray Skaine said this will be included in the motion. John Gatti said the

Engineering Department has put down these requirements. You do it this way or you don't do it at all. Follow the Engineering Department requirements. Jim Callahan said "The purpose of the variance is to vary the code to increase the minimum top of wall from 40 to 48 inches. He is saying if you grant this, we want these conditions to be followed. Right now the code says 40, to get a daylight basement in they have to raise the elevation of the first floor. John Gatti said "I would recommend this be included in the motion, and that it is given to anyone interested in any of these lots."

ACTION:

Motion by Raymond Skaine, seconded by John Brady to approve Appeal No II as requested with the stipulation that the amended memo dated May 9, 2005 from Timothy Lavocat our Assistant Town Engineer becomes part and parcel of this motion, and that this information is conveyed to the prospective purchasers of these five lots, and the petitioner agrees to this.

On the Question?

Nick Piestrak said "But before closing on the lot, the prospective purchaser could just say what have you got available?"

John Gatti said "We don't want anyone you sell a lot to, to come in here and ask for a variance. They won't get it."

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO III
Emily Crawford
Residential Single Family

Requests the Board of Appeals approve and grant a ten foot (10') variance creating a thirty five foot (35') rear yard setback for the construction of a family room addition at 4226 Foxwood Lane.

DISCUSSION:

Mr. Crawford said when they bought the house the rear yard setback was only 25 feet, and with the recent change it has gone to 45 feet. They need a variance so they can build the addition to a setback of 35 feet. Their backyard is very well screened with brush. The property was well staked, and the neighbor notifications are in the file. No one had any questions.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No III as requested.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO IV

John Carubba
Agricultural Rural Residential

Requests the Board of Appeals approve and grant variances:

1. A three foot (3') height variance creating a thirty eight foot (38') building height for a single family home at 10377 Clarence Center Road.
2. An eighty foot (80') variance creating a two hundred eighty foot (280') front yard setback for the construction of a new single family home at 10377 Clarence Center Road.

DISCUSSION:

Mr. Carubba and his builder Andy Fetterman said the height variance is for one portion of the house approximately 3 feet by 6 feet. The setback has already been established by the neighbor Michael Mc Hugh. They would be in line with his home. Mr. Carruba bought the property and it had a setback obtained by another owner Peter Zaleski which was established at 200 feet. That was before Mr. McHugh built his house. Arthur Henning asked "As far as the height is concerned - would it ruin the overall plans if we didn't grant it?" Mr. Carubba said "It would be possible but it would be a shame to ruin the integrity of the house." No one had a real problem, it is pretty hard to tell from the ground whether a house has a peak that is 35 or 38 feet in a small portion of the home.

ACTION:

Motion by John Gatti, seconded by Ray Skaine to approve Appeal No IV as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO V
Stonecraft Homes
Residential Single Family

Requests the Board of Appeals approve and grant a fifty five foot (55') variance creating a one hundred foot (100') front yard setback for the construction of a new home at 4565 Thompson Road.

DISCUSSION:

Mr. Algier said he would like to set back to position the house better on the property, because of the slope of the bedrock, and to locate the sand filter system in the front of the house for drainage purposes. The neighbors have been notified. The home that is existing is set at 45 feet, that is the reason for this variance request. This would establish the line for the properties going north on Thompson Road. Ray Skaine said he thinks the setback for future homes will enhance the neighborhood. John Gatti asked how the existing neighbors

privacy will be protected. Kirk Algier said there is an empty lot and a tree line between them. He showed the neighbor the plans, and the house is built on an angle so the garage and the side of the house will be looking at the neighbors. The neighbor was fine with the plan. There is a right of way road for the small engine repair shop on Main Street. John Gatti was still concerned about the neighbors privacy. Mr. Algier said the tree line will not be removed. Mr. Gatti said he would like that in the motion for approval. Ron Newton said he would like some evergreens inter-spaced with the trees for winter coverage. Mr. Algier said he didn't have a problem with that at all.

ACTION:

Motion by John Gatti, seconded by Raymond Skaine to approve Appeal No V with the condition that the tree line remains to insure the privacy of the existing neighbor.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VI
Paul & Connie Donnelly
Residential Single Family

Requests the Board of Appeals approve and grant a four foot (4') variance creating a forty one foot (41') front lot line setback for the construction of an addition to the garage at 5220 Brookfield Lane.

DISCUSSION:

The Donnelly's would like to have a mud room off the garage. They cannot extend out the back because of the location of the septic system. They would like to use part of the existing garage for the mud room, and extend the front of the garage out eight feet. They will need a variance to come four feet out past the set back line. No one had any problems with the request.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No VI as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VII
Cesare Banach
Residential Single Family

Requests the Board of Appeals approve and grant a use variance to allow for expansion of existing commercial use of the property located at 8500 Roll Road.

DISCUSSION:

Cesare Banach, Sally Banach, and their attorney Mark Longo were present. Mark Longo said his client purchased this property in 2003, and it was zoned Commercial. Prior to 2003 they met with a number of people in the Town including Jim Callahan, the Assessors, the Town Board, the Engineering and Building Department, and also met with the Erie County Sewer Department. They talked about what they wanted to do with the land. The most important part of the land is the commercial area, that is about two thirds of the parcel that they own. Their intention was to locate their business, which is there now, and has been there since 2003. In the future they planned on expanding the building, making it a nicer building, and putting up a one story warehouse in the back. Since then the Town re-zoned this to Residential Single Family - this was the only parcel that was affected in that area. Across from them is the Industrial zone, and of course some residential. The hardship that has been created is due to the re-zoning. They have talked with the Erie County Sewer Department. They have a letter from them dated March 21, 2005. Because it will be for commercial use they have plans to connect to the sewer, but it would be for minimal capacity. Mr. Banach purchased the land for 207,000.00, and it was zoned commercial. Now if they sold it for residential the six acres would bring about 10,000.00 per acre. The bank that gave them a loan for commercial property could actually call the loan, seeing as it is no longer in a commercial classification. Mr. Longo said his clients did their due diligence, however, they weren't planning on a re-zoning. Cesare Banach said he is looking to put up a nice building. The building that is there could use some upgrading. We are just looking to work on the whole corner there. It was zoned commercial when I bought it. Ron Newton said just for clarification - you are only looking for two acres to be re-zoned from Residential back to Commercial? Jim Callahan said "What the board could allow is the use as a Commercial property. At one point Cesare did come in with a housing project, and it was rejected by the Sewer Authority Erie County District # 5. They said there was no capacity for a

housing project.” Cesare said they explained to the neighbors what they were going to do, and they sent back the neighbor notification forms. He invited them to attend the meeting tonight if they so chose to. Arthur asked what kind of business this is. Cesare Banach said it is general construction. Arthur Henning asked “Are we going to re-classify this property?” Jim Callahan said “No, you are not re-zoning property, you are allowing a Commercial use.” Arthur said “So, it will still be Residential property, we are just giving them a variance to do what they want to on the residential property?” Jim Callahan said “The Town Board could re-zone the property, but it would be a fairly difficult process based on the Master Plan. This allows you the Commercial use on that property.”

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No VII as written.

ALL VOTING AYE. MOTION CARRIED.

Meeting adjourned at 9:00 p.m.

Ronald Newton, Chairman