

Clarence Board of Appeals Minutes
Tuesday, June 13, 2006
7:00 PM

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

Board of Appeals members present:

Ronald Newton, Chairperson	Raymond Skaine, Vice-Chairperson
Daniel Michnik	Arthur Henning
Ryan Mills	

Other Town officials present were:

James Callahan, Director of Community Development
 Jim Hartz, Assistant Director of Community Development

Other Interested Parties Present:

Scott Zak	M. Richard Dudkowski
Kathryn Dudkowski	Sean Hopkins
Andy Hunt	Barbara Latona
Sandra Jonas	Sandra Kelly
Jim Kelly	Columba Surianello

ACTION:

Motion by Daniel Michnik, seconded by Raymond Skaine, to **approve** the minutes of the meeting held on May 23, 2006, as written.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Old Business

Appeal 3

Scott Zak
 Residential Single-Family

Requests the Board of Appeals approve and grant a 5.5' height variance to allow the construction of a 21.5' high garage at 5716 Fieldbrook Drive.

Appeal No.3 is in variance to section 3.3.10 Accessory Structures.

DISCUSSION:

Scott Zak explains the reason for the change in his request. The builder, which is House Crafters, provided Mr. Zak with the rough plans; the height requirement was not exact because the builder did not

think there was a height requirement in Clarence. Mr. Zak did not figure in the pitch of the garage. Another reason for the increased height request is to allow room for the “pull-down” stairs to be utilized while the three cars are in the garage.

Ryan Mills points out that a car can be pulled out of the garage to allow the stairs to be pulled down. Mr. Zak agrees but explains that in the winter the cars can not be taken out of the garage. Mr. Mills asks if a crawl space has been considered as opposed to the full height. Mr. Zak explains that he would like to be able to walk around on the second floor; he has two (2) herniated disks in his back and given his height he would rather walk instead of crawl.

Arthur Henning asks what Mr. Zak would do if this request is not granted. Mr. Zak does not know what his other options are; he would not go ahead with this project if the request is not granted. If the pitch is low there will be no brick on the front of the garage will not match the house or his other garage. The second floor of the garage would be used for storage, not living space.

Raymond Skaine does not see how a garage of this height will fit in with the character of the neighborhood. The vehicles are at Mr. Zaks home now, but in the winter he pays to store them.

Daniel Michnik explains that this request is substantial; it changes the whole texture of that neighborhood. The alleged difficulty is self-created because Mr. Zak requested a variance that the Zoning Board of Appeals agreed to work with, now Mr. Zak has submitted a different request. It is suggested that Mr. Zak go to an architect and discuss perhaps connecting the garage to his house. If the garage is attached to the house the height requirement is thirty-five feet (35’), it must meet all the setback requirements and a building permit is required.

ACTION:

Motion by Daniel Michnik, seconded by Raymond Skaine, to **deny** the variance request for Appeal No. 3, as written. The request does not meet the Town specifications for height of an accessory structure. The benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than the area variance. The request of the area variance is substantial.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

New Business

Appeal 1

M. Richard & Kathryn Dudkowski
Residential Single-Family

Requests the Board of Appeals approve and grant a 200 square foot variance to allow the construction of a 400 square foot shed at 8674 Bonview Terrace.

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

DISCUSSION:

M. Richard Dudkowski explains that he does not have a basement and would like to build a storage shed for his summer lawn furniture, grills and bicycles which are now stored on the front porch. Neighbor notifications are on file. There are two (2) windows and a garage door to allow the lawn mower to be brought in and out of the shed. There will be no pavement. The garden will wrap around the shed. The garage will be vinyl sided to match the house and there will be exterior lighting. The existing shed will be used as a potting shed.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning, to **approve** Appeal No. 1, as submitted.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal 2

Columba Surianello
Agricultural Rural-Residential

Requests the Board of Appeals approve and grant two variances:

1. A 25’ variance for four (4) lots between 9375 and 9401 Martin Road to allow for the construction of four (4) single-family homes.
2. A .27 acre variance to allow four (4) building lots less than 1.33 acre minimum; lots are between 9375 and 9401 Martin Road.

Appeal No. 2, request No. 1 is in variance to section 3.2.5 Lot Width.
Appeal No. 2, request No. 2 is in variance to section 3.2.4 Lot Area.

DISCUSSION:

At the request of the applicant, Mrs. Surianello, this Appeal will be moved to the last agenda item to allow time for a representative to arrive.

Appeal 3

Walgreen’s
Traditional Neighborhood

Requests the Board of Appeals approve and grant two variances:

1. A 13’ variance to allow a 27’ setback from County Road for the proposed pylon sign.
2. A 29’ 6” variance to allow a 10’6” setback from Transit Road for the proposed pylon sign.

Sign location is at 6785 Transit Road.

Appeal No. 3 is in variance to Chapter 181-3 (C) (1) Location of Signs.

DISCUSSION:

Ronald Newton reads a letter from a concerned citizen:

“Why in God’s name would we want a garish tall sign for Walgreen’s when the developer has agreed to place an aesthetic smaller sign? Does anyone on this committee travel out of Erie County? When somebody conforms to our need for conforming fixtures why do we demand such a commercial look? Please, Please, O.K. their smaller sign in the corner.”
Signed by Citizen Weiss.

Sean Hopkins, of Hopkins, Garas & Sorgi, PLLC, is representing the applicant. Mr. Hopkins explains that the previous request included a sign to be located ten feet (10’) from Transit Road and ten feet (10’) from County Road. The proposed height was fourteen feet (14’).

The new proposed height for the sign is eleven feet two inches (11’2”). Columns have been added to the proposed sign design. The proposed setback is now twenty-seven feet (27’) from County Road, but remains a ten foot (10’) setback from Transit Road.

Ronald Newton speaks as a citizen: the Town Board, the Planning Board and the Zoning Board of Appeals asked Walgreen’s to save as many trees as possible. The trees have been stripped from the site. It appears that Walgreen’s did not do as the various Board’s requested.

Daniel Michnik speaks as a citizen: his is also concerned that no trees were saved. He is sure saving trees was discussed at every Board level and wonders if Walgreen’s has any plans to plant any trees. Andy Hunt explains that the Landscape Committee has approved Walgreen’s Landscape Plan. Mr. Metz is a neighbor of Walgreen’s and has helped design the landscape.

Raymond Skaine would prefer a smaller sign and thinks it will be attractive in this area.

Ryan Mills would agree with the smaller sign and would like to see the column lines extended up on both sides.

ACTION:

Motion by Raymond Skaine, seconded by Ryan Mills, to **approve** Appeal No. 3, as written with the following conditions:

-The columns are to be extended up on both sides of the sign.

The applicant accepts this condition and will submit a revised plan.

Ronald Newton	Abstain	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal 4

Barbara Latona
Traditional Neighborhood

Requests the Board of Appeals approve and grant a 5’ variance creating a 0’ lot line setback for the construction of a new shed at 6039 Goodrich Road.

Appeal No. 4 is in variance to section 3.4.10 Accessory Structures.

DISCUSSION:

Barbara Latona explains that her lot is small and all the back yards come together. Ms. Latona has discussed the fence with her neighbors and they have no problems with it. Neighbor notifications are on file.

ACTION:

Motion by Raymond Skaine, seconded by Daniel Michnik, to **approve** Appeal No. 4, as written.

Ronald Newton	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal 2

Columba Surianello
Agricultural Rural-Residential

Requests the Board of Appeals approve and grant two variances:

1. A 25’ variance for four (4) lots between 9375 and 9401 Martin Road to allow for the construction of four (4) single-family homes.
2. A .27 acre variance to allow four (4) building lots less than 1.33 acre minimum; lots are between 9375 and 9401 Martin Road.

Appeal No. 2, request No. 1 is in variance to section 3.2.5 Lot Width.

Appeal No. 2, request No. 2 is in variance to section 3.2.4 Lot Area.

DISCUSSION:

Columba Surianello explains that the land was split but not sold prior to the new Zoning Law.

Jim Kelly, a potential buyer, explains that he has been trying to purchase this land for two (2) years. Mrs. Surianello has completed most of the paperwork, however she did not realize the paperwork needed to be completed in a timely manner, since then, the Zoning Law has changed.

Ronald Newton explains that the Town has recognized that the standard size that was allowed prior to the change in Zoning Law was not adequate to meet all the requirements that were necessary, for example, it did not provide adequate space for a septic system. The Master Plan was adopted in 2001, and it includes addressing these issues. Mr. Newton does not want to set a precedent for future land owners if this request is granted, at some point, the law has to apply. The applicant should be looking at three (3)

lots instead of four (4) in order to meet the requirements. A house is not built yet, so Mr. Kelly is not in jeopardy of losing his house. The applicant is not in jeopardy of losing her land; she is only going to lose a building lot.

If Mrs. Surianello would have filed the lots with the Erie County Clerk's Office back in 2004, these lots would have been legal building lots. Her husband used to handle these issues, but he has since passed away and she did not understand that she had to file the lots with the Erie County Clerk's Office to complete the process.

Raymond Skaine explains that there is the option to divide the property into three (3) lots. Mr. Kelly said there are lots down the street that have 110' of frontage, so if Mrs. Surianello's land is divided into four (4) lots, it will not change the character of the neighborhood.

Mrs. Surianello has plans to live on one of the lots herself.

Mr. Kelly has had a Percolation test done and the Army Corp of Engineers has come out to look at the land to prove that there are no wetlands.

Ronald Newton reads a letter from a neighbor:

"This letter is concerning the request for a variance to properties on Martin Road. The applicant is Mrs. Colomba Surianello. Due to a prior commitment, we are unable to attend the meeting but would like to express our views. We are not in support of this proposal and have the following concerns: Severe water problems exist with the property; each spring there is flooding from the creek that encroaches on the road and adjacent properties. We feel that adding four lots with drainage will greatly add to this flooding and endanger our property. We do not feel that the town should bear the responsibility or cost for moving the creek. This is private property and there is no benefit for the town to do this. Also, we are not willing to absorb the cost through future tax increases. The applicant was notified about the pending change in zoning and took no action. We do not believe that this can be grand-fathered in and should have to adhere to the new law. Thank you for letting us express our concerns. Respectfully, Elizabeth and Willi Werner."

If the property is split in three (3), Mr. Kelly's lot would have an extra twenty-five feet (25') of land. There would be two (2) conforming lots and one (1) non-conforming lot.

Ronald Newton suggests Mrs. Surianello call for the services of an attorney to make sure the property lines are re-drawn correctly. The deed needs to show the exact lines.

Ryan Mills is sympathetic to the situation however is concerned with the precedent that will be established if any variance is granted. Mr. Kelly plans to put a 2900 square foot house on the property.

Arthur Henning agrees with the suggestion to split the property into two (2) conforming lots and one (1) non-conforming lot.

Daniel Michnik is sympathetic to Mrs. Surianello's situation and Mr. Kelly's situation; however it is not the Town's fault that the paperwork was not completed. Mr. Michnik is concerned with the precedent that will be set if the variance is granted. This will be the last variance of this type that Mr. Michnik will consider. Against his better judgment, he would go along with the variance request for three (3) lots; two (2) conforming and one (1) non-conforming.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning, to **approve** Appeal No. 4 as follows: A variance is granted for a twenty-five foot (25') variance at lot 9401 Martin Road **only**; this is the northeast corner of Martin Road. Also, a .27 acre variance is granted for the same lot at 9401 Martin Road **only**.

ON THE QUESTION:

It is confirmed that the granted variance is the north east lot **only**. It is lot number four (4). The address is 9401 Martin Road. The 500' frontage lot on Martin Road will be divided into three (3) lots. The first lot being 125', this is the northeast lot, it is lot number four (4), the address is 9401 Martin Road and it is a non-conforming lot, a variance is granted to allow this lot **only** as an approved building lot. The remaining two (2) lots have to meet the current Zoning Code.

Ronald Newton	Nay	Raymond Skaine	Aye
Daniel Michnik	Aye	Arthur Henning	Aye
Ryan Mills	Nay		

MOTION CARRIED.

Since this is a minor subdivision it will need Town Board approval. The survey must reflect the redrawn property lines.

Meeting adjourned at 8:34 p.m.

Ronald Newton, Chairperson