

Clarence Board of Appeals Minutes
Tuesday, July 12, 2005
7:00 PM

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

Board of Appeals members present were:

Ronald Newton
Raymond Skaine
Eric Heuser

John Brady
Arthur Henning

Other Town officials present were:

James Callahan, Director of Community Development
Anne Case, Deputy Town Supervisor

Other Interested Parties Present:

Mark Ziemba
Amy Costanzo
John Leone
Andrew Terragnoli
Sandra Salley

Russell Benfanti
Tracie Benfanti
Jim Walleshauser
Anthony Napoli
Jay Capozzi

Motion by Raymond Skaine, seconded by John Brady, to approve the minutes of the meeting held on June 14, 2005, as written.

ALL VOTING AYE. MOTION CARRIED.

Appeal No. 1

Mark Ziembra
Residential Single Family

Requests the Board of Appeals approve and grant a forty-nine foot (49') variance to allow the construction of a second detached garage at 8290 Stahley Road.

Discussion:

Mark Ziembra explained to the Board that the pole barn would be used to house building materials until the house is installed. He said that he is in the process of getting an approval to move an existing house on Transit Road to his property on Stahley Road. If it's not approved, he will be building a home. He said he also wanted to request that the Board grant a 8 foot variance to allow the pole barn to have a finished dimension of 24 by 40. He explained that the address of the property will be 8300 Stahley when he splits the two lots. He indicated that the area where the house is to be located is not staked, nor did he stake the location of the pole barn. Members of the Board indicated that it was difficult to assess where the applicant wanted to locate his structures because of property addresses involved and the lack of a staked area.

The applicant was asked if the structure would be permanent. Mr. Ziembra said that it would be permanent. It would be a tan color with a green base, and will match the eventual siding of the house. He said he would like to have the house installed in October and the pole barn constructed within a month.

Ray Skaine said that he would like to see the area staked (for the barn and the house) before the variance is granted and indicated the applicant's request tonight would be tabled. Ron Newton said the variance would be advertised with the additional size included.

Mr. Henning asked if it was possible for two houses to be on one piece of property. Jim Callahan said that Mr. Ziembra has an approved split which will occur once the new house is placed. He just has to go through the legal framework of separating the lot. Mr. Heuser said, "Once it is split legally, this would not be a second structure on the property." Jim Callahan said, "Right, but it would violate the size."

Action:

Motion made by Ray Skaine, seconded by Eric Heuser, to **table** Appeal No. 1 with the applicant to adequately stake the proposed pole barn at the desired location, indicating orientation; applicant to also stake the front part of the house. Variance will be readvertised, indicating the increase in size, as requested by applicant.

ALL AYES. MOTION PASSED.

Appeal No. 2

Russell Benfanti
Residential Single Family

Requests the Board of Appeals approve and grant a forty-nine foot (49') variance to allow the construction of an accessory structure and swimming pool in the front yard at 5100 Goodrich Road.

Discussion:

Russell Benfanti indicated that the previous owner of his property had a pool that was filled in. His intention is to scrap back the earth to see if it is a viable hole to use. In front of this area, he would like to put a detached 3-car garage that will take the place of his current garage. He plans to remodel and turn the current garage into more living space. He indicated that he had the neighbors' consent. When asked by Mr. Henning, the applicant said he would be using the detached garage to house two cars, bikes, lawnmowers, etc., and the section in the back will be a workshop/pool house.

Ron Newton indicated that the property is so well hidden that the variance would not affect anyone.

Action:

Motion by Ray Skaine, seconded by Arthur Henning to approve Appeal No. 2 as written.

ALL AYES. MOTION PASSED.

Appeal No. 3

Michael & Amy Costanzo
Residential Single Family

Requests the Board of Appeals approve and grant a 2.7 ft. variance to allow the construction of an attached garage addition at 9419 Bonnie Fay Drive.

Discussion:

John Leone, counsel for Michael and Amy Costanzo, said, "when the Costanzo's completed their addition, they got an as-built survey which showed that the house was 7'3" as opposed to 10'. They have come to the Board to ask for a variance because of the issue related to the garage. Basically, they filed their paperwork and hired professionals to do a job, but it appears there was a mistake in the plotting. They are coming forward to have the situation remedied."

Eric Heuser confirmed that this is a garage that has already been built. Mrs. Costanzo added that it will be three years this January since the garage has been up. Mr. Leone said the survey was done in 2004. Mr. Skaine said, "You came voluntarily to us to ask for relief?" Mrs. Costanzo said, "Right."

Mr. Newton said, "For the record, they have notified the neighbors at 9413 Bonnie Fay Drive. Mr. Skaine said, "I appreciate you coming forward before this became an issue down the road."

Jim Walleshauser, 9425 Bonnie Fay Drive, said, "As a interested party and neighbor, I'm just curious as to how the Town can approve a permit for building inspection after it was built, and then it becomes 2-1/2 feet over the easement. Before I built my home, I had to move it 15 feet to the right because it was on an easement – I didn't get a variance. Once you build a home and you find these things out after the fact, it's a little perplexing to know how these things happen." Ray Skaine asked him if he had applied for a variance. Mr. Walleshauser said, "No, I did not. I could not build it over the easement that was there – it's a sewer easement."

Jim Callahan stated that he wondered how this was missed. He said, "After a basement is poured, the Building Department asks for the 'as built.'" Mrs. Costanzo said that everything was inspected. She said, "We had to have the certificate of occupancy before we could move in." Mr. Walleshauser said that his question is just one of principle.

Mr. Skaine said that this is a problem that just slipped through the crack. Mr. Newton said, "periodically we get something like this where the people digging a basement get off-line or misjudge the stake; but it has never gotten to this point where it's up and occupied." Mr. Walleshauser said, "But if you look at the two homes, they are very close together. I would assume an inspector would want to go in and verify that it is surveyed and in the correct location. Two and a half feet is substantial. I am not implying intent; from the Town's perspective, how does it happen? I am not implying any intent by the Costanzo's." Mr. Skaine said, "We have a representative from the Supervisor's office here with us tonight and I'm sure she'll take it back to Supervisor Hallock." Anne Case said, "You can count on it." Mr. Skaine said, "We can only apologize; we're correcting a bad situation to give them a clear title for when they sell down the road." Mr. Newton said, "We can't answer your question because it's for the Building Department. But, we do see conditions like this periodically, but none that have progressed for such a time period. Usually the Building Department will pick it up before it gets that far."

Mr. Walleshauser said. "The unfortunate part of the entire situation is that no one can quantify what impact it will have on my resale value, if any, when I go to sell my home." Mr. Newton explained about a situation where a variance was granted for a wrap-around porch which ended up impinging on the separation between the two lots; both houses have since sold (12 or 14 years ago). Neither house sold below the general 'going' price for houses in the area.

Mr. Skaine asked the applicant if she had landscaping on the side of the garage. She responded that she did not, but had plans to do so. Mr. Skaine said that landscaping might help buffer the area. Mr. Walleshauser said, "That's not my point. I just wanted to (1) get a better understanding of how this happened, and (2) understand how this Board works." Mr. Skaine said, "Unfortunately, we can make it better for them, but not for you." Mr. Walleshauser said, "I did not sign the form because it's not my decision, but the Town's decision, on how to handle it. I'm not in a position to be able to say 'take it down'. I would like to see the proper process take place; my only concern was 'how does something like that happen.' Thank you very much; I appreciate your explanation."

Action:

Motion by John Brady, seconded by Arthur Henning, to approve Appeal No. 3 as written.

ALL AYES. MOTION PASSED.

Appeal No. 4

Anthony Napoli
Residential Single Family

Requests the Board of Appeals approve and grant four (4) variances at 4010 Harris Hill Road :

1. a use variance to allow the construction of a six (6)-unit townhouse apartment building.
2. A twenty foot (20') variance creating a twenty-five foot (25') rear yard setback.
3. A seventy-five foot (75') variance creating a one hundred twenty foot (120') front yard setback off of Harris Hill Road.
4. A five foot (5') variance creating a thirty foot (30') front yard setback off of Wehrle Drive.

Discussion:

Andrew Terragnoli, from Lauer Manguso and Associates, introduced himself to the Board and said he was representing the applicant, Tony Napoli. He showed a site plan to the Board which addresses the four variances requested. He added that one of the other contingencies was an out-of-district customer agreement from the Erie County Sewer District to tap a proposed sanitary lateral. Mr. Newton said, "That doesn't come here; it goes to the Town." Jim Callahan said, "Probably Erie County and whatever sewer district it is." Mr. Terragnoli indicated that the neighbors to the north have been talked to and they approve of what is shown. The other neighbors that are here tonight approve, contingent upon us putting a landscaped berm in with evergreen plantings (to the western side). Mr. Newton asked for neighbor notification forms and they were put into the file.

Mr. Newton asked the applicant for an explanation of his request for a zoning change from residential to commercial. Mr. Callahan said, "it's not a change in zoning; he's asking for a use that's not allowed in that district." Mr. Napoli said he didn't want a commercial zoning, but wanted to keep it residential 'feel'. He didn't feel that anyone would ever want to build a single family home there; approximately 10,500 cars go by that street per day. He said he felt his use was better than a Tim Hortons, a store, etc. Mr. Skaine said, "Getting a change from the Town Board from residential to commercial is a big assumption. Houses have been built in Clarence on intersections that are as busy or busier than this one. So, tell me why we should change the laws of Clarence to allow you this 'change in use' permit?" Mr. Napoli said that the land has been vacant for many, many years and he thinks an attractive building on the property would be a nice addition to the Town of Clarence. He said they would be high-end residential townhouses. Mr. Skaine said, "But

that's a multiple family dwelling in a single family zoning. You are asking us to change the zoning to a multiple family use. Have you bought the land already?" Mr. Napoli responded that the sale is contingent upon this approval. Mr. Skaine asked the applicant if it was a hardship to him if the approval doesn't go through. Mr. Napoli said, "Financially, no."

A Wehrle Drive resident expressed her concerns regarding privacy. Mr. Skaine explained to her that this property was not zoned commercial and, based on Master Plan 2015, he doubted it would ever be rezoned. She indicated that it (the site plan) was very attractive, but that she doesn't know the "ins and outs".

Mr. Skaine said, "As a Board member, I don't want to establish a precedent that we are changing single resident use lots to multiple residents lots. It's a nasty precedent to change the use from a single-family to a multi-family in that location."

Mr. Henning asked the applicant if he knew how long the present owner has owned the property. Mr. Napoli said, according to the agent, it's been 40 to 50 years. He said it is an estate, with 3 – 4 owners. Mr. Henning stated that he felt the traffic would still have an impact on the resident whether it was single family or a townhouse. Mr. Napoli said that he has townhouse apartments in the Village of Kenmore, and when someone is renting, there is a convenience factor. "This location is centrally located. When you own a home, you want more privacy, but when you are renting, you are only there for a year or two or three. It's temporary and you don't take it personally. It's a completely different mentality from a renter to a homeowner. I have been renting for 22 years. As townhouse apartments, I don't think I would have any problem renting them. They would not be worried about the traffic; they would be worried about the conveniences."

Mr. Skaine said, "This is a use change, and you can't tell me that it can't be used as single family home. To the neighbors, 6 versus 1 is very out of character. If they have a 6-unit apartment building next to them, what is their property going to be worth. You are saying that renters are all going to be wonderful." Mr. Napoli said, "If I were to sell each of these townhouses individually, they would probably be worth more than the houses in the area, as individual homes. I can guarantee that the ranch homes in the area would sell for 25% less in price. The townhouses would be very upscale. I wouldn't do it any other way."

Mr. Newton said, "It's clear that you don't have a hardship if this Board turns you down – you don't own the property, and therefore, we're not depriving you of anything. It's a drastic change to the character of the neighborhood and we're not ready to make that change. Is this something that could come up at the Planning Board?"

Jim Callahan said, "It's ultimately a Town Board decision on changing that, but as Mr. Skaine identified, it's a Master Plan issue, first and foremost."

Action:

Motion by Ray Skaine, seconded by Arthur Henning, to DENY Appeal No. 4 based on:

"No such variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district

where the property is located, the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the neighborhood."

Ray Skaine	AYE	John Brady	AYE
Arthur Henning	AYE	Ron Newton	AYE
Eric Heuser	Recused		

MOTION CARRIED.

Appeal No. 5

Capozzi Homes
PURD

Requests the Board of Appeals approve and grant a twenty-four inch (24") variance, creating a first floor elevation of five feet four inches (5'4") above the crown of the road at 5129 Rockledge Drive.

Discussion:

Jay Capozzi explained that most of the homes in the area of this home are 'around' 5 feet over the road. Recently, the Town Building and Engineering Departments have wanted 42 inches or 48 inches over the roadway. He said, "In the past I've had the luxury of these lots where the street is high and the lot drops off. I've still kept the lot 5'4", 5'6" or even 6 ft over the road. I just finished a house on Rockledge and it was 5'4" over the road." Mr. Capozzi then explained various details on pictures he brought in to show the Board. Mr. Capozzi explained that the deeper he goes with the foundation, the more it will cost him (because of rock).

Mr. Newton asked the Board if there were any questions and there were none. He added that Mr. Capozzi presented his case well, showing there will be a certain amount of hardship. Also, the neighbors will be at the same approximate elevation, so this house would not 'stand out like a sore thumb.'

Action:

Motion by Eric Heuser, seconded by Ray Skaine, to approve and grant Appeal No. 5 as written.

ALL AYES. MOTION CARRIED.

Meeting adjourned at 8:00 PM
Ronald Newton, Chairman