

Clarence Zoning Board of Appeals Minutes
Tuesday, August 8, 2006
7:00 PM

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

Zoning Board of Appeals Members present:

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

Other Town Officials present:

James Callahan, Director of Community Development
Jim Hartz, Assistant Director of Community Development
Steven Bengart, Town Attorney
Councilman Bernie Kolber

Other Interested Parties present:

Tim Berndt	Jeff Palumbo
Walter Floss	Howard L. Yood
Tony DiMichele	Frank Gaglione
Maryellen Demmy	Candace Vogel-Yood
Barbara Fricano	Sandra Cecchini
James Cecchini	Janet DiMichele
Jin Soh	Andrew Soh
Mike Ferraraccio	Sean Hopkins
Akos Seres	Debra Popp
Betty Kellerman	Jeff Schneider
Cindy Schneider	Richard Kellerman
Mark Francisco	Jay Capozzi
Domenic Magliaccio	Joe Magliaccio

Motion by Raymond Skaine, seconded by Arthur Henning, to **approve** the minutes of the meeting held on July 11, 2006, as written.

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

MOTION CARRIED.

New Business**Appeal No. 1**

Mike Mesi/Mike Ferraraccio
Residential Single-Family

Requests the Board of Appeals approve and grant two (2) variances:

1. a 5' variance to allow a 5' side yard setback for the construction of a new accessory building at 8300 Hirschwood.
2. a 5' variance to allow a 40' front yard setback for the construction of a new accessory building at 8300 Hirschwood.

Appeal No. 1 is in variance to Sections 229-55 (E) (1) Accessory Structures and 229-52 (A) (2) Setbacks.

DISCUSSION:

Mike Ferraraccio is the contractor for the project and is representing the applicant. Mr. Ferraraccio explains that Mr. Mesi owns four (4) cars and currently only has a two (2) car garage. The backyard, at a depth of fifteen feet (15'), is not large enough for a garage. There will not be a separate driveway; there will be a twelve foot (12') apron off the side of the garage.

Daniel Michnik asks what the height of the building will be. Mr. Ferraraccio said the height will be approximately sixteen feet (16') and will comply with the normal standards for building a garage.

Neighbor notifications are on file.

Mr. Ferraraccio explains the building materials as vinyl siding and wood frame construction. He is unaware of any landscaping to go around the structure, nor does he see the need for it.

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 No. 2

Tim Berndt
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 215' variance creating a 315' front yard setback for the construction of a new single family home at 8185 Goodrich Road. This is an additional 60' to a variance that was previously granted.

Appeal No. 2 is in variance to Section 229-31 (A) Setbacks.

DISCUSSION:

Mr. Berndt explains that, with all the rain, he now has a "pond" on the property. He would like to install a drainage system to avoid further "ponding" and needs more room to work it in. Ronald Newton

advises Mr. Berndt that the conditions that were set on the previous variance are still in effect. Mr. Berndt understands. Mr. Newton said the barn looks worse and wonders if Mr. Berndt has done any work to maintain it. Mr. Berndt has cleaned around the foundation and disposed of much debris. He needs to get rid of the water that is around it before he can work on it further.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning, to **approve** Appeal No. 2, as presented with the reiteration of the following conditions as previously set forth:

- The applicant will eliminate the residence and maintain the barn before a new build permit is issued.
- Be in compliance with the letter from Tim Lavocat regarding Local Law 03-2000.

Mr. Berndt agrees.

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

MOTION CARRIED.

Appeal No. 3

Walter Floss

Residential Single-Family

Appeal No. 3 is in variance to Section 229-50 Lot Width.

Requests the Board of Appeals approve and grant a 25' variance to allow a 100' wide buildable lot at 8141 Floss Lane.

DISCUSSION:

Jeff Palumbo and Brad Davidzik from Renaldo & Palumbo are present, along with Walter Floss. Mr. Palumbo explains that the lot in question initially had 120' frontage. It was noted as an exception to the original twenty-five (25) lot subdivision. In 1992, twenty feet (20') of the lot was sold to the neighbor to the west. The reason the lot was noted as an exception is because of a wetlands issue. The lot was not part of the original Map Cover 2516. There are about six (6) sublots that have 125' frontage, the vast majority does not have 125' frontage and the majority have 100' frontage.

Mr. Palumbo comments on the packet that was received on August 8, 2006 by Frank T. Gaglione, who represents the neighbor to the west of the lot in question. He notes there are two (2) pending court actions, neither one of them have any impact on the Zoning Board's ability to make a decision on the variance application. The first action is against the Town and was brought about to prohibit the Town Board from making a decision on the initial action asking for an amendment to the original Map Cover. It was agreed that the Zoning Board of Appeals would be the appropriate agency to resolve this issue, so the action was withdrawn on behalf of Mr. Floss. The second lawsuit is against Mr. Floss and his corporation, it alleges that the owner of Sublot Five (5) has the right to receive notice of a sale if Mr. Floss was to sell the property, this per an agreement entered into years ago by both parties.

Mr. Palumbo explains that there are drainage issues in the area; however, it is a non-issue relative to this request. There is no proof of impact on the drainage with regards to the frontage whether it is 125'

or 100'. The Town Engineer and Bill Schutt, from William Schutt & Assoc., have both stated that the development of this lot will not exacerbate an existing problem.

Mr. Palumbo explains there is no available land to add on to the frontage.

Mr. Palumbo refers to the NYS Freshwater Wetland Permit that was issued by the NYS DEC, a copy is on file.

Mr. Palumbo said the variance was not self-created because the lot was in conformance prior to the Zoning Law change of 2005.

Mr. Floss said it took years for the DEC to go through the lot to approve it. The reason he sold part of the lot to the neighbors is so they could build the larger house that they desired.

Frank Gaglione represents Sandra and James Cecchini who live at subplot five (5). He clarifies the history of the lot by explaining that in 1988 there was a Plot plan filed by Mr. Floss for twenty (20) plus lots in the area, subplot four (4) was designated as an exception. There is water flow across subplot four (4). When Mr. Cecchini bought twenty (20) additional feet on the west side of lot four (4) he received an easement from Mr. Floss to be able to utilize the rest of the lot to landscape and make aesthetically pleasing to the neighborhood. It appeared that Mr. Floss never considered this lot (lot 4) to be a building lot. Mr. Floss did not re-plat the lot.

Mr. Gaglione explains that the DEC letter states the lot will not be considered wetlands any longer; it does not refer to flooding or engineering. He also refers to the Town Engineer's letter of June 20, 2005 which states proper filling and grading of subplot 4 should not create any additional flooding problems in the area. Mr. Gaglione refers to Mr. Schutt's floodplain calculations and indicates that they are incorrect.

Mr. Gaglione said the situation is self-created because Mr. Floss did not re-plat the lot. If the variance request is granted it will change the character of the neighborhood with regards to aesthetic and drainage issues. There will clearly be an adverse impact; the focus should be on correcting the flooding not exacerbating it.

Mr. Skaine asked if an independent water expert has been hired to review the issues/problems. It appears that one has not been hired.

Mr. Floss said for fifteen (15) years he has been pursuing getting this lot cleared. The flooding is nothing that he has caused. If he is allowed to fill this lot he will put culvert pipe within 150' back so the flow coming out of the pond will travel back out to the bank where it can dissipate.

Mr. Cecchini said he made Mr. Floss an offer to buy the lot, but was turned down. It was Mr. Cecchini's understanding that the lot in question would never be built on. His house was designed for the lot next to him to stay as it was. Mr. Cecchini received the Town Engineer's approval to build his house and it has flooded twice.

Maryellen Demmy lives on the other side of the exception lot at 8145 Floss Lane and explains that her backyard fills with two feet (2') of water. Every time it rains she said the lot next to her (the exception lot) floods with two feet (2') of water, this is her buffer. If a house is built on the exception lot where is this water going? Her house is on the market and she feels she will not be able to sell it.

Barbara Fricano, of 8137 Floss Lane, said that when they bought their lot seventeen (17) years ago Mr. Floss advised her not to buy the Cecchini's lot because it would never be built on, it was for drainage only. She has seen the increasing water problems as the other lots have been developed, she now has flooding problems in her backyard and the exception lot becomes filled with water. Where will the water go if the exception lot is filled?

Andrew Soh, of 8155 Floss Lane, explains that there is clearly a flooding problem. He does not know where the water will be dispersed if the lot in question is built on. Floss Lane actually flooded. Gott Creek is eroding; he has lost ten feet (10') of his backyard. Jin Soh explains that their property has flooded in the past and they have made many repairs to their home due the water damage.

Tony DiMichele, of 8135 Floss Lane, said that he has watched Gott Creek erode over the past couple of years. Janet DiMichele explains that weeks go by before the lawn can be cut because it is so wet.

Sandra Cecchini explains that she has lost her basement twice due to flooding. She is concerned that if a house is built on the exception lot it will have flooding and water damage as well. If the house is built high enough maybe they won't have much flooding, but then all the water will travel to the Cecchini's property.

Candy Vogel-Yood, of 8127 Floss Lane voices her concerns regarding the flooding in the area. She has lost many photographs and important documents as a result of past flooding. The private drainage goes through her lot. Howard L. Yood explains he wrote a few letters and was able to have his property removed from the floodplain. Mr. Yood said there will be an impact in regards to the water issues if a house is built on the lot in question.

One of the neighbors has spoken to Jeffrey Dietz, of the NYS DEC, several times and he has advised her that the exception had nothing to do with the DEC, it was put on when the Town plotted the twenty-five (25) lots; he would be happy to see the property remain an exception.

Ronald Newton explains that the Zoning Board of Appeals can not address the Gott Creek problem; however, they can address the water that may be created if the variance is granted. He would like the Town Engineer to revisit the issue and discuss it with him.

ACTION:

Motion by Ronald Newton, seconded by Raymond Skaine, to **table** Appeal No. 3 pending discussion with Mr. Latona, the Town Engineer. This will also allow the Zoning Board of Appeals the chance to read all the submissions that were recently distributed.

ON THE QUESTION:

Raymond Skaine will review all the paperwork and walk the site.

Clarification is made with regards to the ownership of the lot, it is owned by Walter Floss.

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

MOTION CARRIED.

Appeal No. 4

Clarence Crossroads Medical Center LLC
Commercial

Requests the Board of Appeals to interpret allowing the established setback for new construction within the pre-existing portion of the project at 9095 Main Street.

Appeal No. 3 is regarding Section 229-87 Development & Design provisions.

DISCUSSION:

Sean Hopkins, representing the applicant, explains that there is an existing building directly east of the satellite store on Main Street. The applicant would like to construct a second single-story office building approximately 3,700 square feet in size. The building would have a residential sloped roof and a brick façade. Within the Zoning Code, adopted in March 2005, there is a requirement of a minimum green belt buffer of forty-five feet (45') from adjacent residential property. The property to the east is zoned residential; the property located to the west and all other sides is zoned commercial. Mr. Hopkins position is that this Zoning requirement should not apply because there is existing pavement. The proposed project is actually removing pavement and installing green space, parking will be provided at the rear of an adjacent parcel. Apparently, there is a history regarding the intensity of the lighting at this site, the neighbors have expressed concerns over the past several years. The applicant has agreed to mitigate the lighting problem by using softer lighting and by installing shielding.

Dick Kellerman, of 4430 Barton Road, lives directly behind the existing building. His main concern is the lighting; it shines in his windows all the time. He would like to see the surveyor stakes re-installed.

Debbie Popp, of 4440 Barton Road, lives directly behind the entrance to the existing building. When the existing building was put up she asked for an acoustic fence, but a wooden fence was put up on her property, she can not get behind her shed and there is constant noise. She was promised ten feet (10') of space and a berm which they don't have. Ms. Popp also voices her concerns regarding the lighting. The light shines into the windows of her house and the only thing that blocks it out is black paper on the windows. The pole light is very near her pool, is very bright and attracts bugs.

Sean Hopkins explains that the second proposal was not part of the original proposal. The second building will probably be a medical specialist.

ACTION:

Motion by Raymond Skaine, seconded by Daniel Michnik, to **table** Appeal No. 4 until the September 12, 2006 meeting to allow the Board members more time to evaluate the situation.

ON THE QUESTION:

Mr. Hopkins will provide further detailed information on the lighting, landscaping and fencing at the September 12, 2006 meeting.

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

MOTION CARRIED.

Mr. Hopkins will make sure the whole perimeter is painted so the proposed site will be easily identified.

Appeal No. 5
 Capozzi Homes
 Planned Unit Residential District

Requests the Board of Appeals approve and grant a 24” variance, creating a first floor elevation of 5’4” above the crown of the road at 5117 Rockledge Drive.

Appeal No. 5 is in variance to Section 229-23 Grade.

DISCUSSION:

Jay Capozzi explains the reason for the variance is to obtain natural light through the windows on the lower floor/basement of the house. It would also be cost efficient if he didn’t have to dig so deep. There is only one neighbor, thus one notification is on file.

Mr. Skaine asks about the egress for the basement. Mr. Capozzi explains that the window can not be more than forty inches (40”) from the finished floor of the basement; the window on the proposed project will be lower than forty inches (40”) from the finished floor. He also explains that there is special hardware, with regards to the egress, for windows that are two feet (2’) in size; however, the proposed project will have basement windows that are larger than two feet (2’).

ACTION:

Motion by Arthur Henning, seconded by Ryan Mills, to **approve** Appeal No. 5, as written.

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

MOTION CARRIED.

Mr. Capozzi advises the house will be approximately seven thousand square feet (7,000’) on three (3) floors.

Appeal No. 6
 Domenic J. Migliaccio
 Residential Single-Family

Requests the Board of Appeals approve and grant a zoning variance to allow the construction of a two-family home at 4930 Hillcrest Drive.

Appeal No. 6 is in variance to Section 229-47 Permitted Uses.

DISCUSSION:

Mr. Migliaccio explains that the property borders on the Traditional Neighborhood Zone which allows multi-family dwellings and is fairly close to nearby commercial properties. Mr. Migliaccio's son is getting married next year and would like to move into the duplex and rent out the second unit. It is not quite a hardship but it would make it easier to pay the mortgage. He has approached the neighbors and most seem to approve of the proposal.

Neighbor notifications are on file.

Jim Callahan said he received a call from Mr. Alessi who adjoins the property on the north side. Mr. Alessi said he was never contacted regarding this variance request. Mr. Migliaccio said he made an effort to contact him but was never home.

Mark Francisco, of 4925 Hillcrest, lives across the street from the empty property. He reiterates that the location in question is zoned Residential Single-Family. Mr. Francisco understands that Mr. Migliaccio's son wants to move into the home, but what happens when he wants to move out? He knows of apartments where there is trouble and people constantly move in and out. He is opposed to the request for a two-family home. Mr. Migliaccio asks if it would make a difference to Mr. Francisco if one of the requirements of building this home was to have it always "owner-occupied". Mr. Francisco would rather a single-family home be constructed there.

Mr. Migliaccio explains the reason for the proposed three (3) car garage is one (1) garage for each unit plus one for storage.

Mr. Migliaccio currently owns the property. If the request was denied Mr. Migliaccio said he would probably look into what other type of house could be constructed at the site.

Arthur Henning explains that a two-family house would be a detriment to nearby properties because the property is too small to support a duplex. The variance would have an adverse impact on the physical or environmental conditions of the neighborhood.

The side yard setback in the Residential Single-Family Zone is 12.5'.

Jim Callahan clarifies that this request is for a Use Variance not an Area Variance; there is a different set of proofs for a Use Variance. Jim Hartz explains the proofs: that in order to approve such a necessary hardship the applicant shall speak to the Board of Appeals in each and every permitted use under the Zoning regulation for that particular district where the property is located and that the applicant can not realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence, that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood, that the requested use variance if granted would not alter the essential character of the neighborhood, that the alleged hardship has not been self created.

Raymond Skaine thinks the lot is too small for this type of house; it would change the character of the neighborhood. Daniel Michnik and Ronald Newton agree.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **deny** Appeal No. 6, as written.

ON THE QUESTION:

Ryan Mills is receptive to work more with this issue in that a single family house could be built with the same dimensions on this lot, perhaps the exterior façade could have a single door and it could be owner occupied. After further discussion it is stated that it would be impractical if the house was owner occupied.

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

MOTION CARRIED.

Ronald Newton advises the Zoning Board of Appeals of the Joint Meeting that is scheduled for Wednesday August 30, 2006 at 7:00pm at the Town Hall Auditorium.

Councilman Bernie Kolber, representing the Town Board, discusses the Land Use Training Program and explains that the State of New York is going to require all the Town Boards that make decisions to be certified in this type of training. The requirement for the Zoning Board of Appeals is to complete four (4) of the ten (10) sections in the Land Use Training manual. The manual was previously distributed to the Zoning Board of Appeals members.

Meeting adjourned at 9:30 p.m.

Ronald Newton, Chairperson