

Clarence Board of Appeals Minutes
Tuesday, October 11, 2005
7:00 PM

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

Board of Appeals members present were:

Ronald Newton
Arthur Henning
Dan Michnik

Eric Heuser
John Brady

Board of Appeals members absent:

Raymond Skaine

Other Town officials present were:

James Callahan

Jim Hartz

Other Interested Parties Present:

Robert McCarthy
Gaetano Modica Amore
George Gardner
John Tiffany
Eric Saenger
Valerie Vullo-Saenger
Charles Griffasi
Pamela Griffasi
Aldine Tarbell
Phil Silvestri

Linda Clark
Randy Anger
Susan Anger
Larry Ramunno
Joanne Bender
David Yemma
Jeff Schwartz
Donald Collins
Regina Britton
Peter Casilio

Motion by Arthur Henning, seconded by John Brady, to approve the minutes of the meeting held on September 13, 2005, as written.

ALL VOTING AYE. MOTION CARRIED.

Appeal No. 8

Robert McCarthy
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow for the construction of a second garage (24' X 30') structure at 8924 Amy Leigh Lane.

Discussion:

Ronald Newman reviewed the issues determined at the last meeting. Approval from the Army Corps of Engineers is still pending. The applicant needs their approval to build in a wetland area. All other requirements have been met. Robert McCarthy is confident he will receive approval prior to the next BOA meeting so he requested to be added to the November 8th agenda.

Action:

Motion by Arthur Henning, seconded by John Brady, to TABLE Appeal No. 8 under Old Business until approval from the Army Corps of Engineers has been received.

ALL AYES. MOTION CARRIED.

Appeal No. 12

Linda Clark
Restricted Business

Requests the Board of Appeals approve and grant a 4' 6" variance to allow for a 6' 4" side yard setback for the construction of an addition at 8469 Sheridan Drive.

Discussion:

Ron Newton asked Linda Clark to review the reasons for her request for variance for the Board. She said that the initial reason was to cover the handicap ramp for safety issues. They want to relocate a roofline so they can fire rate their lunchroom. She said they have major ice buildup issues and would like to extend the roof and increase the pitch at the same time in an effort to alleviate some of the problems. They also want to add some additional lockers. These changes should correct the problems.

Mr. Heuser wondered if the handicap ramp was already existing or if it was being newly created. It is existing. Linda Clark replied that there are safety issues involved. She said they have received a health and safety grant from the State of New York to correct this problem. The additional lockers are a health issue, in Ms. Clark's opinion, since the current lockers don't divide the children's belongings. It's not something the State has asked her to do, but it's something she'd like to do at this point.

Dan Michnik asked if the handicap ramp is a concrete structure or a wooden ramp. Linda Clark replied it is concrete and she does not want to enclose it with sides, but simply to construct a roof over it. The major reason for this project is to eliminate the icicles from the

roof. The roof pitch needs to be improved; she also feels the electrical coils on the roof are a fire hazard.

Arthur Henning asked what other approvals she needed to obtain before this project came before the Zoning Board of Appeals. Linda Clark replied that the only other approval she needed to obtain was from the Town Board for architectural design which she did receive.

Action:

Motion by Arthur Henning, seconded by Eric Heuser to approve Appeal No. 12 under Old Business, as written.

ALL AYES. MOTION CARRIED.

Appeal No. 1

Gaetano Modica Amore
Residential Single Family

Requests the Board of Appeals approve and grant a 152' variance to allow for the construction of a 352 sq. ft. accessory structure at 6525 Poplar Hill Lane.

Discussion:

Mr. Modica Amore explained to the Board that his existing one-car garage is too small to house all his lawn equipment. Mr. Newton asked him if there was a reason that he needed it 152' back? Mr. Modica Amore responded that he'd like it "off the house" and that he thought it would like nice back there, nestled between the trees.

Chairman Newton presented a letter the Board received from a concerned neighbor. He read the letter to the Board dated October 11, 2005, and signed by Kristine Miranda. Mr. Newton noted that there were no neighbor notification forms in the file. Mr. Modica Amore had them with him. He also had a letter from his lawyer that he sent to Randy and Sue Anger. Mr. Modica Amore shared with the Board an incident that occurred over the summer that resulted in Mrs. Anger "threatening a lawyer on me." At that point, Mr. Modica Amore decided not to speak to his neighbor's about this project and to seek legal counsel for himself. He said his attorney suggested he send the aforementioned letter to the Anger's certified mail. His other neighbor, John Russo, completed the neighbor notification form.

Mr. Newton asked if Randy and Sue Anger were the neighbors most affected by the proposed garage. They are. The proposed garage would be placed on their side of the Modica Amore property.

Mr. Henning asked why the applicant needs to have a variance for the shed. He wondered why it has to be larger than what's acceptable? Mr. Modica Amore explained that he was told structures under 400 sq. ft. did not require a variance. However, when he attempted to get his permits, he was told that the zoning had changed and anything over 200 sq. ft. needed to go through variance. He intends to house his lawn mower, thatcher, roller,

etc. in the new shed. Further, he advised that all his neighbors have two-car garages and his is only a one-car garage. He also has an old car that he has restored that he would like to store in the structure for the winter. He said he would not use it as a garage and would not "drive it up and down the driveway." He said he knows the neighbors originally thought he was going to bring the car to his property to work on it. That is not the case. He has no intention of bringing the car home.

Mr. Henning mentioned that when he checked out the property, he noticed a big extension of Mr. Modica Amore's driveway which was comprised of gravel and stone. He wondered why the applicant needed a space that big. The applicant replied that the area in question was all mud last summer. He had intentions of putting all stone there. He took up 2"-3" of dirt and filled in the crevices on the other side of his yard. He had intentions of putting 2 – 3 feet of dirt and filling it in with flowers and landscaping making it like a big path to go back to the proposed garage. There would be no mud and if he DID drive anything back there, it wouldn't be over the grass.

Mr. Henning thought the gravel driveway was unsightly and that it appeared to be another driveway. He went on to say that the Board gets lots of requests for sheds and that he has never seen a gravel driveway as big as the applicant's. The applicant assured the Board he would make it look nice. He has a permit for a fence and he intends to put a 6' gate up as well so it's not visible from the road.

Mr. Brady wondered if the proposed structure was staked. The applicant said it was and that he intends to put it about 80' from the house. Mr. Brady commented that the area proposed for the shed was beautiful and that he didn't think the structure looked right. Mr. Modica Amore said that his neighbor had a bigger garage and that it wasn't hidden in any way. He said both his neighbors have garages and shed. He stated he would not be putting a garage door on it. He said, "I don't want a garage."

Mr. Heuser referred to the blueprints and asked the applicant if what's represented was what he intended to build. He said it was. Mr. Modica Amore was asked what the outside of the structure would look like. He replied it would most likely be T-111 and painted white or tan. Mr. Heuser asked what his landscape plans were. He replied that his neighbors have shrubbery and that the structure was nestled between the trees. Mr. Heuser brought up the intended usage of the structure. He asked about the vehicle that the applicant is restoring. Mr. Modica Amore replied that he is a mechanic by trade and that they own their own business. He assured the Board he is restoring it; it is not on the road. He would like to *store* it in the shed for the winter.

Mr. Heuser asked whether the 48" X 80" door size would fit the residential code. Jim Callahan said he thought they could go to 9'.

Dan Michnik asked the applicant if he intended to take power out to the shed. He was told there would be no electrical power in the shed. Mr. Michnik asked why he needed such a big structure to which the applicant replied again that he has a lot of stuff that he would like to store. He said, "I would like to bring it all home."

Randy Anger stated his name for the record. He lives immediate adjacent to the property. He voiced his opposition to the proposed shed. He said they moved from Tonawanda 17 years ago and fell in love with the neighborhood. He believes the proposed building totally distracts from the neighborhood. He thinks it is going to dramatically affect the value of his property. He said, "You've got a warehouse, basically, going up next door to me." He mentioned the driveway. He showed the Board pictures of where the shed is proposed. He is concerned that they are going to go from "this gorgeous view" to a huge building. For clarification, it was stated that the Anger's live on the left side of the applicant. Mrs. Anger explained the various views presented as being from her kitchen window, her patio, etc. She also said the shed would be up against their fence, and angled facing into their backyard. Further, she said she is a stay-at-home mom with 4 children and they "pretty much vacation in their backyard." She said they would have views of the garage from their kitchen window, family room, dinner table, Florida room, and patio. She said that instead of looking at the beautiful trees, she would be looking at "this big storage shed."

Mr. Newton asked where the other shed was that was alluded to by the applicant. The Anger's said they have a "little shed." The larger shed in question is on the property on the right side of the applicant. Mr. Modica Amore stated that the larger shed is also visible from the Anger's yard.

Mrs. Anger expressed that she feels her name/character has been maligned. She referred back to the incident in July when her neighbor was putting some boards down – about 20' x 30'. She told him he couldn't have a shed that big. He ignored her. She repeated herself and told him there are zoning laws. Mr. Modica Amore said that just because the boards are there doesn't mean that's how big the shed will be. She admitted she did yell at him and knew she had reacted childishly. A couple of days later Mrs. Anger approached Grace Modica Amore and asked her forgiveness. She said she had never yelled at anyone before. The two women prayed together that there would be a suitable resolution to this issue. That was the last time they've spoken; it was mid-July. She said her husband hasn't talked to the Modica Amore's since June 23rd, 2005. Mr. Anger added that, "this has made my wife very uncomfortable." She no longer wants to go in her backyard.

Other letters from neighbors were brought to the Board's attention. George Gardner, of 6540 Poplar Hill Lane, who has lived in his home for 28 years, said that the previous owners never had any problem storing their lawn mowers, etc. He said he personally has a 10' X 10' lawnmower shed that holds all his equipment. Referring to the proposed shed, he said, "I can't imagine needing a shed that large. It's pretty obvious to me that this shed's being built for other purposes." He continued by saying that when he goes by there, he sees a gravel driveway; he sees large doors that means one can pull a car in there. He said, "that is a garage; that is a driveway ... You can call it a shed, you can call it a path ... a duck is a duck." The applicant replied, "Not true."

Mrs. Anger referred to the letters in the file from other neighbors and said they represent people who had either seen the driveway or who had asked her about it. Chairman Newton said they don't have to be adjacent neighbors. The applicant is required to contact the adjacent neighbors, but other comments are welcome. Mr. Modica Amore

questioned the fact that the letters were all the same. Mrs. Anger said she had people who wanted to voice an objection and offer support. Mr. Modica Amore cited several neighbors who have no problem with his project.

Mr. Newton questioned the applicant regarding the shed that he removed. The applicant said, "That was unsightly." Mr. Newton asked how much space the applicant has from the side of his garage to the side of his property line. It was determined there is 8'. Mr. Newton asked if there is a reason why the applicant cannot add to the side of the garage. Mr. Modica Amore said that he could but that he felt it would be a lot more costly. Mr. Newton said, "But don't you think that would fit into the neighborhood much better?" Mr. Modica Amore expressed that he doesn't think the structure will be easily seen from the street. He does understand the anger and concerns about the view from their kitchen. Mr. Newton asked again if the applicant was willing to do any compromising to keep peace and harmony in the area. The applicant replied, "I don't want to add onto the house." Mr. Newton said, "That's your decision."

Action:

Motion by John Brady, seconded by Arthur Henning to DENY Appeal No. 1 of New Business, as written.

ALL AYES. MOTION CARRIED.

Appeal No. 2

John Tiffany
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 5' variance creating a 5' side lot line for the construction of a shed at 10683 Jones Road.

Discussion:

John Tiffany explained to the Board that he doesn't want to take away from the view of the backyard. He has a small tree he doesn't want to block. The property line is already lined with pine trees from his neighbor's property so he'd like to "slide it over a little bit." The neighbor doesn't have a problem with it. John Tiffany was asked to present neighbor consent forms. He had one for his neighbor to the east, but not for the one directly behind his property. Mr. Neuman said it looked like he was putting it "almost in his backyard also." Mr. Tiffany said he is coming forward 25' to the rear.

Mr. Henning asked if Mr. Tiffany was in the construction business and if he was going to build the shed himself. Mr. Tiffany is in the building business but the shed is going to be ready-made. Mr. Henning said Mr. Tiffany did a beautiful job staking the site. He also asked why Mr. Tiffany wants the shed in that location. Is there another place for it that doesn't need a variance? Mr. Tiffany replied that he doesn't want to put it "smack in the middle," and that he thought with all the pine trees, it would be the best on the left side of the property. Mr. Henning questioned whether the shed could've gone right in the back of the property rather

than on the side. It could have, but for convenience, the applicant wants it on the side. It will be used to store garden tools, lawn mowers, etc.

Mr. Heuser asked the applicant what hardship it would cause him if he moved the shed 5' over, thus not requiring a variance. Mr. Tiffany replied that he didn't think there would be any structural hardship. He just thought it looked better. He said he originally staked it out at the 10' spot, but since he didn't want to block the view and since the neighbor didn't have any objections, he preferred the shed on the side. The shed is to be 16' X 24'. The pine trees are the neighbors and they are right on the property line. The outside of the shed will be vinyl sided to match the house with green shutters.

Action:

Motion by Arthur Henning, seconded by Dan Michnik, to approve Appeal No. 2 as written.

ALL AYES. MOTION CARRIED.

Appeal No. 3

Lawrence Ramunno
Residential Single Family

Requests the Board of Appeals approve and grant two variances at 4610 Sawmill Road for:

1. construction of a second detached garage, and
2. a 5' variance creating a 5' setback to the property line.

Discussion:

The garage the applicant, Lawrence Ramunno, is currently using is a one-car garage. He currently has a shed where he is asking for the variance. He would like to remove the shed and construct a two-car garage. He needs the 5' variance to his neighbor in order to comply with the regulation that says he has to build the garage 10' from his house.

Mr. Newton asked if he has any consent forms. Mr. Ramunno presented his documentation. There were no adverse comments on the forms. Dan Michnik asked what type of doors the new garage would have. It will have one door. The applicant is going to close off the single door on the current garage space and turn it into a mudroom. The neighbors on both sides have no problems with this project. There were no further questions from the Board.

Action:

Motion by Dan Michnik, seconded by Eric Heuser to approve Appeal No. 3 as written.

ALL AYES. MOTION CARRIED.

Appeal No. 4
Eric Saenger
PURD

Requests the Board of Appeals approve and grant a 1' 6" side yard variance for the construction of a 770 sq. ft. addition at 5025 Spaulding Drive.

Discussion:

Eric Saenger explained to the Board that they are interested in an addition that would grant them more upstairs living space in a few bedrooms and an extra bath. Downstairs they would like to put a therapy swimming pool in. The manufacturer requires 12' clear to handle the mechanicals underneath it. This will generate the space around it without taking up the entire room and to create adequate space upstairs. He wants to take out a total width of 12'10" of the proposed addition. It's a little wider than the opposite feature on the opposite side of the house; he didn't think that would be terribly noticeable. He would finish it in the same brick as the house and bring the brick around the side of the house as well. John Brady brings attention to the stakes being placed almost in the bushes. Eric advises they rearranged the planting bed. Ronald Newton advises he has neighbor notifications from 5015 Spaulding and 5000 Sandstone Court. Eric advises these neighbors had no objections. Arthur Henning asks how long Eric has lived at this location; he advises 11 years. No further questions.

Action:

Motion by Eric Heuser, seconded by Arthur Henning to approve Appeal No. 4 as written.

ALL AYES. MOTION CARRIED.

Appeal No. 5
Arden Bender
Residential Single Family

Requests the Board of Appeals approve and grant a 230 sq. ft. variance to allow for the construction of a garage addition at 5025 Harris Hill Road.

Discussion:

Joanne Bender advises they currently have a two-car garage and it is full with 2 vehicles, a lawn mower & children's bikes. They want to enclose an outside entrance to the basement as well. Ronald Newton asks if they will follow the same roof plan or drop it down, Joanne thinks it will be dropped down. There is neighbor notification from 5005 Harris Hill. Eric Heuser looks at a diagram and notices that there are a couple feet between the front of the proposed new garage and the existing garage, he asks why the difference. Joanne replies that the difference is just for looks, to have the structure set back. Eric also asks if Joanne intends to have the siding and color match the existing structure. Joanne advises "yes". No further questions.

Action:

Motion by Daniel Michnik, seconded by Arthur Henning to approve Appeal No. 5 as written.

ALL AYES. MOTION CARRIED.

Appeal No. 6

David & Michelle Yemma
Residential Single Family

Requests the Board of Appeals approve and grant a 210' variance to allow for the construction of a new home at 5665 Thompson Road.

Discussion:

David Yemma explains that he wants to build back this far due to the flood zone. It extends to the distance of 310'. It has been recommended that they build back that far so the house is not in the flood zone & to maintain the mature trees in the front of the yard. David did not receive the memo from the town engineer regarding the property. Ronald Newton read the memo from the town engineer:

The proposed front yard setback distance variance of 210 feet does not impact compliance with Local Law 03-2000-Flood Damage Prevention. Approval of the variance would allow the applicant to build outside of the 100-year floodplain.

I recommend approval for the above referenced request with the following conditions:

The applicant secures a Floodplain Development Permit from the Engineering Department prior to any land disturbance on the site.

The applicant must have the Gott Creek crossing designed by a Licensed Professional Engineer and approved by the Engineering Department prior to issuance of a Building Permit.

All work Performed within the 100-year floodplain must comply with Local Law 03-2000- Flood Damage Prevention.

David can obtain a copy of the letter on-line or from the engineer. He has no issues with the requirements.

Eric Heuser asks if David is planning to do anything to protect his neighbors backyard privacy. They are going to plant privacy trees. Eric also asked if he spoke with the neighbors to see if there were any concerns going so far back. David advised he spoke with the neighbors & told them it was not their intent to be back for any reason other than to be safe from the water. If they build out of the floodplain they are not required to purchase flood insurance. This is a cost savings. Neighbor notifications were received from 5645 & 5675

Thompson Rd. John Brady emphasized that the town engineer letter should be made part of the file. Resident of 5645 Thompson Rd is concerned about the possible flood issue, because of the way the creek runs.

Another neighbor voices his concern regarding what this will do to his property, the property upstream and to the property they are going to purchase. He doesn't want to lose his privacy in his backyard. The value of his home will depreciate with another home built behind it. Arthur Henning requests that the property be looked at again.

Eric Heuser asks what the time frame is for building the home; the reply is they are looking to start in April 2006.

Action:

Motion by Arthur Henning, seconded by Daniel Michnik to TABLE Appeal No. 6 based on the need to review the facts and revisit the property.

Ronald Newton	AYE	Eric Heuser	NO
Arthur Henning	AYE	John Brady	AYE
Dan Michnik	AYE		

MOTION CARRIED.

Appeal No. 7

Donald Collins
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 45' variance to create a 100' front yard setback for the construction of a new home at 9655 Martin Road.

Discussion:

Donald Collins would like to create an upfront yard for a septic system. Neighbor notifications were received from 9635, 9665 and 9685 Martin Rd. Donald has had test pourings done by APEX engineering. They show no problems. Donald would like to eventually put trees up on the sides.

Jim Hartz suggests that the setback line be established for adjoining lots to avoid future appeals. After further discussion the line does not need to be established. It was generally agreed that a staggered setback would be acceptable for the adjoining lot in the future.

Action:

Motion by Daniel Michnik, seconded by Arthur Henning to approve Appeal No. 7 as submitted.

ALL AYES. MOTION CARRIED.

Appeal No. 8

Aldine Tarbell
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a variance to the grading code to allow houses to be raised 40" above the centerline of the road within the Forestbrook Farms subdivision.

Discussion:

Ronald Newton read the memo from the town engineer regarding Forestbrook Farms Subdivision, ZBA Appeal No 8 October 9, 2005. A copy is in the file. Aldine advises if the appeal is granted it will be easier to grade the lots.

Ronald Newton asks if the street can be elevated so she can meet the town codes, Aldine advises it really wouldn't be economically feasible.

Daniel Michnik asks why Aldine wants the septic in the front. Aldine replies that there are wetlands in the back and the land slopes down.

The question was raised on what is the maximum height she is looking for; the maximum "top of the wall" has been established in the design. Ronald Newton questions why the design was not broken down by lots, currently it appears to be a general broadcast of information. Ronald is uncomfortable in approving an open-ended answer to his question. The engineers need to make clear how many inches above the 40 needed to meet top of wall requirements.

Action:

Motion by Eric Heuser, seconded by Arthur Henning to DENY Appeal No. 8 as submitted, pending further information on details for each individual lot and the height they are looking for.

ALL AYES. MOTION CARRIED.

Appeal No. 9

Arthur Fuerst
Commercial

Request the Board of Appeals approve and grant one variance for a 100' variance allowing a 200' corner lot width at 9450 Main Street.

Discussion:

Phil Silvestri advises the board that he has been working on this project for a long time trying to remove any self-created variance requests. This is an existing non-conforming

situation that lends to the request for a variance. Advised that he has been very cooperative with the planning board, has provided all information they have requested. Neighbor notifications from 4624 Goodrich Rd and 9470 Main Street.

Phil confirmed that the plan is for 1000 sq. ft. coffee shop. It is not currently a franchise but the applicant hopes it will eventually become a franchise. Arthur Henning asks if this will be like a Tim Horton's, Phil advises this is not like a Tim Horton's; it is coffee only. If there is a change of use for the building it will have to be approved by the Town.

Action:

Motion by Arthur Henning, seconded by Daniel Michnik to grant Appeal No. 9 as written.

Ronald Newton	AYE	Eric Heuser	RECUSE
Arthur Henning	AYE	John Brady	NO
Dan Michnik	AYE		

MOTION CARRIED.

Meeting adjourned at 10:15 P.M. Ronald Newton, Chairman