

Clarence Board of Appeals Minutes
Tuesday, November 8, 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

John Brady

Board of Appeals members absent were:

Ronald Skaine
Daniel Michnik

Eric Heuser

Other Town officials present were:

James Callahan

Other Interested Parties Present:

Regina Britton
Bob Gentner
Pamela Griffasi
Jeff Schwartz
Julie Conschafter
Jay Dean
Jerry Metz
Andy Hunt

David Yemma
EJ Griffasi
Jaclyn Patrignani
Steve Harrison
David Conschafter
Sean Hopkins
Marianne Metz

Motion by Arthur Henning, seconded by John Brady, to APPROVE the minutes of the meeting held on October 11, 2005, as written.

ALL AYES. MOTION CARRIED.

OLD BUSINESS:

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 asks if the above request is correct. Regina Britton who is the engineer for Aldine Tarbell answers, "Yes, basically, the ordinance calls for 40" maximum and I want to build above that." Jim Callahan advises that they have submitted the drawing identifying the top-of-walls.

Arthur Henning asks for a refresher on why this item was previously tabled. Jim Callahan advises that the board asked for the chart showing where the differential was between the 40" on each of the lots proposed within the subdivision. Ronald Newton advises that per the chart, 8" would be sufficient. Regina advises that is correct, although there is one house that needs 12". Ronald asks if that is 8" over the 40", Regina advises that is correct. Ronald clarifies that she is actually looking for 48", Regina confirms.

Regina explains why she has requested this variance: she has to put sand filters in and with the high water table that is out there, basically, the sand filter beds sit on existing ground, the sand filter bed is 51" thick, in order to try to hide it, so that it is not a 4 ½ foot lump in the yard, she wants to bring the houses up a little bit and grade down and blend it in a little bit better.

Ronald Newton reads the Engineering comments from the document that is on file. The Town Engineer did not feel that the 8" is a necessity based on information in his memo. Arthur Henning asks what the bottom line is in the Town Engineer's memo. Ronald Newton advises the memo indicates that a revised grading plan in compliance with the following conditions would be acceptable, then goes on to read the bullet points from the memo. Arthur Henning asks Regina if she agrees to the memo, she advises she does not agree with the memo because the engineer wants all the homes to be kept at 40". She wonders if the engineer has looked at the latest information she has submitted it provides better detail regarding the request for the additional 8".

Arthur Henning advises that if the board approves this variance, they override the Town Engineer's memo and he does not want to do that. He thinks there should be some kind of a blend between the Town Engineer's memo and Regina's request. Jim Callahan has advised that there has been no further correspondence from the Town Engineer's office regarding this project. Regina advises that, if she had to, she would change the request to include all houses to be 8" instead of 1 house at 12".

ACTION:

Motion by Arthur Henning, seconded by John Brady, to APPROVE Appeal No. 8 with the caveat that the Town Engineer's memo is considered. The maximum is 8".

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 advises that at the last meeting they were requesting a setback up to 310', since that meeting they have met with the Town Engineers and have developed a preliminary fill plan that would allow them to "not have to be so far back". So at this time Mr. Yemma is requesting an amendment to the original request. The revised request is for the setback up to or equal to his neighbor on the right, Jeff Schwartz, who is present at the meeting. The distance is approximately 210' total.

Bob Gentner, project manager and father to Michelle Yemma advises that they would like to be in line with the corner of each house on either side, up to the equal distance of the neighbor on the right hand side. The reason for this request is that there are some trees out there and they aren't exactly sure where everything is located so they would like to have the flexibility of saving a tree or two if possible. According to the Town, they have to be in a line between each corner of the houses on either side. The neighbor on the left side sits up further to the front of the street. Ronald Newton points out that this neighbor would have a problem with backyard privacy if the home were put in at 210'. Bob Gentner says, "Maybe yes, maybe no." They do not have exact drawings from a surveyor; therefore cannot be sure of how it will affect the backyard privacy. Bob Gentner advises that they could be a few feet behind the neighbor on the left hand side, but it will not be 100' as they originally requested. David Yemma advises it would be a matter of "maybe 10' at a distance of over 75' away".

Ronald Newton asks who will give them the corner-to-corner line. Bob Gentner advises it will be a surveyor. Michelle Yemma advises that the Town Engineer told them the approximate feet for the neighbor's lots are 160' and 210', so they would want the center of the lot to be approximately 185', however, they do not have exact figures. Ronald Newton advises that this meeting is slightly premature because they do not have actual drawings to show were this is going.

Jim Callahan clarifies the Zoning Law, which states the setback not be more than 10' off the established line. He points out on the survey that the line is at 150'.

Ronald Newton points out that the request is to build on an angular line, zoning only deals with straight lines. He also advises that the board would need to know what the setback point is for the neighbors immediately to the north and to the south. Bob Gentner advises he will obtain the information

the board needs to make a decision. Ronald Newton reminds him to keep the Engineering Department in mind to discuss the Flood Plain issue while they proceed with their plans.

ACTION:

Motion by Arthur Henning, seconded by John Brady, to TABLE Appeal No. 6, from the 10-11-05 Board of Appeals meeting, pending settlement of the set-back issue and the staking of the lot.

ALL AYES. MOTION CARRIED.

Appeal No. 1

David & Julie Conschafter
Agricultural Flood zone

Requests the Board of Appeals approve and grant a 5' variance to allow a 10' side yard setback for construction of an attached garage at 8140 Salt Road.

DISCUSSION:

Mr. Conschafter advises that they have requested this variance because they do not have the space for a 2-car garage without having the extra 5 feet. Mr. Conschafter confirms that there is no garage currently on the house. Jim Callahan identifies this as a pre-existing lot in the Agricultural Zone and with the adoption of the new zoning law in March 2005, there is an extra 5-foot increase in the side yard setback requirement, they would have been in conformance under the old code. For the record, there are neighbor notifications in the file.

Ronald Newton reads a letter from the Town Engineer indicating that the proposed side yard setback distance of 10 feet from the north property line does not impact compliance with Local Law 03-2000 – Flood Damage Prevention. The entire property at 8140 Salt Rd was removed from the 100-year floodplain via a Letter of Map Amendment (LOMA) from FEMA. The letter is on file. Ronald Newton asks for confirmation regarding this variance: if it is granted, Mr. Conschafter will be able to put the 2 car garage adjacent to the side of his house. Mr. Conschafter replies, "Yes."

ACTION:

Motion by John Brady, seconded by Arthur Henning, to APPROVE Appeal No. 1 as written.

ALL AYES. MOTION CARRIED.

Appeal No. 2
Jay M. Dean
Residential Single Family

Requests the Board of Appeals approve and grant a 3' variance for a 122.71' proposed building lot at 6210 Gott Creek Trail.

DISCUSSION:

Mr. Dean advises that he owns a lot with a total of 247.7' across the front, he wants to divide it in half and at some point either sell the other half to someone who will build a house there or possibly build another house himself and move into it.

Ronald Newton points out that the Town Board approved this lot, as originally configured. He does not believe that the Zoning Board of Appeals has the right to sub-divide a lot once it has been approved by the Map Cover as one lot. Also, according to the survey a good portion of the proposed new lot is designated wetlands and is not to be disturbed. Therefore, Mr. Dean would be asking the Zoning Board of Appeals to approve a piece of property where nobody can build on.

Mr. Dean advises that the wetlands line has changed over the past 10 years and he is not sure what designates it. He was speaking with a couple of people who were interested in purchasing a portion of his lot and they had some new surveys done which said that some of the lot is still in the wetlands, but a good portion of the lot is no longer. His plan is to mitigate that. He hasn't completed much research on it yet but he understands from the State that if you purchase additional wetlands somewhere else the State will take that part of the property out of the wetlands designation.

Ronald Newton asks Jim Callahan to clarify the following: if the Town Board has approved this property as a single lot, the Zoning Board of Appeals does not have the right to subdivide. Jim Callahan confirms that this is correct, it is on a Map Cover and only the Town Board has the ability to amend it.

Jim Callahan clarifies that Mr. Dean is actually requesting prior to asking the Town Board to approve the division of the lot, would the Zoning Board of Appeals consider something less than the required minimum lot size? Arthur Henning indicates that if the Zoning Board of Appeals approves this variance, then anyone else who comes in for the same situation the Board would have to approve them too, he asks if that makes sense. Ronald Newton says, "Yes," and advises that Mr. Dean is also asking for the Board to approve a lot that, right now according to the documents that the Zoning Board of Appeals has, is not "buildable". He agrees that the buyer should be aware, but the Board should not create a hazard for the buyer. If the Zoning Board of Appeals approved the variance Mr. Dean could say to a potential buyer. "Oh you can build your house there." When the potential buyer goes to the Town to obtain a building permit they would find out that they are in an area that cannot be filled, and so forth, and they'll be stuck.

Ronald Newton advises that there was a floodplain issue about 10 years ago with this same property and doesn't know if the issue has "gone away". He has not seen any maps or any other indications showing that the line has changed. Mr. Dean shows the Board an updated color-coded map indicating the wetlands have receded considerably within the past 10 years. Jim Callahan advises that the map is off the GIS and is highly inaccurate. Ronald Newton is concerned that a potential buyer may not be as familiar with the history on that lot.

ACTION:

Motion by Arthur Henning, seconded by John Brady, to DENY Appeal No. 2 due to lack of information. Clarification is also needed for where the boundaries of wetlands are located. The Zoning Board of Appeals would be creating a minimum lot size. The Zoning Board of Appeals is in favor of looking at this Appeal again if the questions that the Board has are cleared up.

Mr. Dean asks if he were to take the lot, re-survey it, make the lot size 125' will this Appeal be mute? Arthur Henning advises that the wetlands need to be taken into consideration as well. Jim Callahan reiterates that the only way to have the lot size changed is to obtain approval from the Town Board.

ALL AYES. MOTION CARRIED.

Appeal No. 3

Andy Hunt
Traditional Neighborhood

Requests the Board of Appeals approve and grant an area variance to allow for a reduced number of parking spaces for construction of a new drug store (A total of 39 less parking spaces).

DISCUSSION:

Ronald Newton reminded the applicants that, at a previous meeting, they advised the Zoning Board of Appeals that they really needed all the changes they were asking for and now they are saying, "We're not going to let so many people in the store, we don't have room for 39 parking spaces."

Andy Hunt is representing the applicant; he is a local real estate developer. He indicates that the parking requirements in the Town of Clarence, relative to other communities that he builds in, are quite restrictive. It requires much more parking than in other areas; frankly, it's more parking than Walgreen's needs, even with a very productive store. He took a sampling of the parking spaces for existing Walgreen's located in other areas: the Lackawanna store at Abbott and Ridge has 56 parking spaces, Hertel and Parkside in the City of Buffalo has 61 parking spaces, Sheridan-Parker, which is one of the busiest stores in Western New York has 67 spaces, Transit and Greiner, in Clarence, has 76 spaces. It is his understanding that the code would require this location to have over 90 spaces. He anticipates being a very busy store but this is significantly more than this store needs. He would like to offer, and prefer, that the store have more green area and less paved area.

Mr. Hunt points to an updated diagram that shows a row of parking spaces has been deleted, to the easterly edge of the plan. He expects that 61 parking spaces will be ample, he would be happy to add more spaces, if the Town wants him to. On the plan he indicates an area where 21 parking spaces can be added, he would like this to be an option for the future, if the store needs to add more parking spaces at a later date.

Sean Hopkins, project attorney, advises that they have discussed this situation with Mr. and Mrs. Metz who are the adjacent neighbors; they have been very involved in the process.

Mr. Hopkins advises they do not want to put extra parking spaces on the northern side of the project site. This decision was made based on the meetings with the Engineering Department: “the further back you go, the closer you get to the creek bed, the flood way, the flood zone.” He would like to avoid getting into a very difficult permitting process. He clarifies that the variance he is asking for is, “to technically go down to 61 spaces, but with the opportunity for us to provide 82 in terms of some of that being paper-parking, that we would provide anytime if someone tells us we need it, whether it’s the Planning Dept, this Board or Walgreen’s.”

Andy Hunt advises that if this Board advises tonight that there needs to be 82 spaces, it will be completed that way, there is not a problem, but it seems a bit excessive.

Ronald Newton asks what will be going into the space that has been listed as the future parking. Andy Hunt advises they will place trees at the back of the property so that if the parking spaces need to be added, those trees will not have to come out. The surplus parking area will be grass. Construction is to start in the Spring 2006. Andy Hunt advises that they will try and retain as much as they can with regards to trees.

Ronald Newton asks Jerry and Marianne Metz if there are any questions or concerns that they have regarding the project. Mr. Metz thinks it will be great to have the landscaping as they propose, and if they need to add the parking spaces he has no problem with it.

ACTION:

Motion by Arthur Henning, seconded by John Brady, to APPROVE Appeal NO. 3 with the caveat that in the future, if they need to add 21 more parking spaces it will have to be approved by the Town Board.

ALL AYES. MOTION CARRIED.

Meeting adjourned at 8:10 p.m.

Ronald Newton
Chairman