

BOARD OF APPEALS MINUTES

On Tuesday June 8, 2004 at 7 p.m. the Town of Clarence Board of Appeals heard the following requests for variances:

OLD BUSINESS

APPEAL NO I
Alan Nigro
Residential A

Requests the Board of Appeals approve and grant a fifty foot (50') variance creating a one hundred fifty foot (150') front yard setback for the construction of a new single family home at 9081 Greiner Road.

NEW BUSINESS

APPEAL NO I
Jeff Feinen
Residential B

Requests the Board of Appeals approve and grant two variances:

- 1. A ninety five square foot (95 sq. ft.) variance creating an eight hundred fifteen square foot (815 sq. ft.) garage at 4702 Sawmill Road.**
- 2. A four foot (4') variance creating a twenty foot (20') height for a new garage at 4702 Sawmill Road.**

APPEAL NO I is in variance to Article II, section 30-13 B & C, accessory buildings.

APPEAL NO II
Peter Scharf
Residential B

Requests the Board of Appeals approve and grant construction of an accessory building in advance of construction of a principal use at 5041 Salt Road.

APPEAL NO II is in variance to Article II, section 30-9, uses.

APPEAL NO III
Karen Walk
Residential A

Requests the Board of Appeals approve and grant a thirteen foot (13') variance creating a twenty two foot (22') front yard setback for the construction of a garage addition at 9199 Via Cimato Drive. (Off Heise Road)

APPEAL NO III is in variance to Article II, section 30-12 A, size of yards.

APPEAL NO IV
A.J. Colicchia
Residential A

Requests the Board of Appeals approve and grant a two foot six inch (2'6") variance creating ten foot (10') side yard setbacks on both sides of property for construction of a new home at 6384 Landstone Drive. (Heise to Stonebriar to Landstone)

APPEAL NO IV is in variance to Article II, section 30-12 D, size of yards.

APPEAL NO V
Thomas Cutter
Commercial

Requests the Board of Appeals approve and grant a five foot (5') variance creating a zero foot (0') rear lot line setback for the construction of a new shed located at Tops Xpress 10655 Main Street.

APPEAL NO V is in variance to Article VIII, section 30-47 B, accessory buildings.

APPEAL NO VI
FWS - Ned Gian
Major Arterial/Commercial

Requests the Board of Appeals approve and grant a variance to allow additional signs to outbuilding for FWS at 4199 Transit Road. (Transitown Plaza)

APPEAL NO VI is in variance to L.L. 181, section 3-L, number of signs.

APPEAL NO VII
Mary Dittenhauser
Major Arterial

Requests the Board of Appeals approve and grant a thirty five foot (35') variance to allow a five foot (5') setback for a new sign at 6281 Transit Road.

APPEAL NO VII is in variance to L.L. 181, section 3-C, location of signs.

APPEAL NO VIII
David Meyer
Residential A

Requests the Board of Appeals approve and grant a four foot (4') variance creating a forty one foot (41') front yard setback for the construction of a new porch at 9515 Melinda Drive. (Off Gunville)

APPEAL NO VIII is in variance to Article II, section 30-12 A, size of yards.

**APPEAL NO IX
Jaweed Shariff /Wes Schmidt
Agricultural**

**Requests the Board of Appeals approve and grant a
seven foot (7') variance creating a three foot (3') side lot
line for basement entrance on north side of 5715
Shimerville Road.**

APPEAL NO IX is in variance to Article V, section 30-27 - C, size of yards.

ATTENDING: Ronald Newton
John Brady
John Gatti
Raymond Skaine
Arthur Henning

INTERESTED PERSONS:
Loretta Stock
Alan Nigro
Jeff Feinen
Peter Scharf
Karen Walk
A. J. Colicchia
Carol Sciortino
Thomas Cutter
Richard Zakalik
Rich Decker
Ned Gian
Mary Dittenhauser
David Meyer
Wes Schmidt

MINUTES

Motion by Raymond Skaine, seconded by John Gatti to
approve the minutes of the meeting held on May 11, 2004
with the correction that on page 2004-18 on Appeal No I,
the motion was made by Arthur Henning, and seconded by
Ray Skaine.

Raymond Skaine	AYE
John Gatti	AYE
John Brady	AYE
Arthur Henning	NAY motion needs correction
Ronald Newton	AYE

MOTION CARRIED.

OLD BUSINESS

APPEAL NO I
Alan Nigro
Residential A

Requests the Board of Appeals approve and grant a fifty foot (50') variance creating a one hundred fifty foot (150') front yard setback for the construction of a new single family home at 9081 Greiner Road.

DISCUSSION:

Ray Skaine said "Due to the letter from Engineer Tim Lavocat, I will make the motion to approve the appeal as written."

ACTION:

Motion by Raymond Skaine, seconded by John Brady to approve Appeal No I as written.

ALL VOTING AYE. MOTION CARRIED.

NEW BUSINESS

APPEAL NO I
Jeff Feinen
Residential B

Requests the Board of appeals approve and grant two variances:

1. A ninety five square foot (95 sq.ft.) variance creating an eight hundred fifteen square foot (815 sq.ft.) garage at 4702 Sawmill Road.
2. A four foot (4') variance creating a twenty foot (20') height for a new garage at 4702 Sawmill Road.

DISCUSSION:

Mr. Feinen said he likes to take care of his cars, and would like a garage big enough to work on the cars, and have room to store the usual items you find in a garage. No one had a problem with the request.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No II as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO II
Peter Scharf
Residential B

Requests the Board of Appeals approve and grant construction of an accessory building in advance of construction of a principal use at 5041 Salt Road.

DISCUSSION:

Mr. Scharf said he has a garage on the property now that is old. Eventually when the sewer comes through, he is going to build a house on this lot. He would have to build where the existing building is presently located. In preparation he would like to move the garage to the rear of the property. The existing garage is not in good condition, it leaks when it rains, and he wants to take it down. There were two neighbor notifications signed by residents at 5015 and 5045 Salt Road. Ray Skaine asked Jim Hartz what this will be zoned. Jim Hartz said it is zoned Residential B. Mr. Scharf did apply for a minor subdivision split which was approved by the Planning Board under the existing zoning law, so it will be a lot of record if the new zoning law ever passes. The sewer district is formed, and there are plans to develop it, but they are a million dollars short of a six million dollar project. Hopefully, we will have another million dollars in a year to complete the project. Mr. Scharf said he has the deed recorded with Erie County. The new garage will be a 24 x 30 foot building. Arthur Henning asked if it would be a hardship to wait until the sewer comes in. Mr. Scharf said the exiting garage leaks, and he would have to repair it. Ray Skaine said he would like to see the plans for the garage, and recommended tabling this item until next month.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to table this item until the meeting to be held on July 13th. The plans for the building should be brought to the meeting, so the board can see what they are approving.

On the Question?

Ron Newton said he thought this should wait until the sewers are a more definite factor.

On the Question?

Ray Skaine said he thought it is a hardship to repair the existing building until the sewers are available. John Gatti agreed.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO III
Karen Walk
Residential A

Requests the Board of Appeals approve and grant a thirteen foot (13') variance creating a twenty two foot (22') front yard setback for the construction of a garage addition at 9199 Via Cimato Drive.

DISCUSSION:

Karen Walk said they have no other choice, with the way the house is sitting. They want to attach it to the house. John Gatti said he has a real problem with this, there was no marking, and he has no idea where the garage is going to be placed. Karen Walk said two doors would be facing Via Cimato Drive, and the other two face Jennifer Court. Ray Skaine said he was there on June 3rd and it was not staked. He also observed there was nothing like this in the neighborhood. The board has not seen this situation on a corner lot. Perhaps the applicant could find out where this situation has occurred and inform the board of the location so they can see it. The applicant could explore the possibility of a free standing garage, and deed restrictions.

ACTION:

Motion by Ray Skaine, seconded by John Brady to table this item until the meeting of July 13th. The applicant must stake the proposed garage addition and inform the Planning office that it has been done, unless they chose to go with the free standing garage.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO IV
A.J.Colicchia
Residential A

Requests the Board of Appeals approve and grant a two foot six inch (2'6") variance creating a ten foot (10') side yard setbacks on both sides of the property for construction of a new home at 6384 Landstone Drive.

DISCUSSION:

Mr. Colicchia said his architect thought it was a ten foot side yard setback when the house was designed. Dominic Piestrak is the owner of the development. The previous phases did fall under the old rule which was ten foot side yard setbacks. The newer phases are twelve and half foot side yard setbacks. The law did change in 2000. Several members complained that the lot was not numbered, and the house was not staked. Ray Skaine said if we approve 6384 a ten foot side yard setback, what will keep the other people from wanting the same thing?

Dominic Piestrak said it was an honest mistake. Someone should have checked to see what the setbacks should have been.

ACTION: Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No IV as written with the stipulation that this will not occur again in this subdivision.

On the Question? Mr. Piestrak said he will send a letter to everyone who has purchased a lot from him to make sure they know the setback is twelve and a half feet and not ten feet.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO V
Thomas Cutter
Commercial
Requests the Board of Appeals approve and grant a five foot (5') variance creating a zero foot (0') rear lot line setback for the construction of a new shed located at Tops Xpress located at 10655 Main Street.

DISCUSSION: Mr. Cutter said they need room to store items, they have had a problem with merchandise being stolen. The shed will be made of pressure treated wood. There is litter out back, and the shed will accommodate the products, allowing them to keep it tidy.

ACTION: Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No V as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VI
FWS - Ned Gian
Major Arterial/Commercial
Requests the Board of Appeals approve and grant a variance to allow additional signs to outbuilding for FWS at 4199 Transit Road. (Transitown Plaza)

DISCUSSION: FWS has been there for 10 years. They are trying to increase their business, their sales are down. Customers have a hard time trying to locate the business in the plaza. After much discussion it was decided that an FWS sign to the north, two murals to the west, four murals to the south, and blanking out the window that now exists on the south side would be acceptable.

ACTION: Motion by Raymond Skaine, seconded by Arthur Henning to approve an FWS sign to the north, two murals to the west, and four murals to the south and blank out the window that now exists on the south side.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VII
Mary Dittenhauser
Major Arterial
Requests the Board of Appeals approve and grant a thirty five foot (35') variance to allow a five foot (5') setback for a new sign at 6281 Transit Road.

DISCUSSION: Mary Dittenhauser said the State D.O.T. widened Transit Road and there isn't forty feet to the front of the building. Forty feet would be behind the building. She would like to have a pole sign on the lawn in front of the building. Jim Hartz explained that the leading edge of the sign will be five feet from the sidewalk. No one had a problem with the sign.

ACTION: Motion by Arthur Henning, seconded by John Brady to approve Appeal No VII as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VIII
David Meyer
Residential A
Requests the Board of Appeals approve and grant a four foot (4') variance creating a forty one foot (41') front yard setback for the construction of a new porch at 9515 Melinda Drive.

DISCUSSION: Everyone on the board thought this would be a huge improvement to the property, and enhance the neighborhood. The applicant had it well staked. No one had any problem with the applicants request.

ACTION: Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No VIII as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO IX
Jaweed Shariff/Wes Schmidt
Agricultural

Requests the Board of Appeals approve and grant a seven foot (7') variance creating a three foot (3') side lot line for basement entrance on north side of 5715 Shimerville Road.

DISCUSSION:

Wes Schmidt the builder, said there were a lot of changes made. He completely lost sight of this part of the code. This is the first time this builder has been here to the Board of Appeals. Ray Skaine said he appreciated Mr. Schmidt's honesty. Mr. Gatti said there are some options. One is to tear it down. Secondly, Mr. Shariff owns the property to the north, and could transfer a part of the frontage over to this lot. Ron Newton said at some point in time, we have to have the people of Clarence stop running over the top of our laws. Ray Skaine said that is why the Town of Clarence, the Town Board, and the State of New York created the ZBA's of each town, because there are exceptions. To say that Mr. Schmidt is stepping on the Town law - he admits he made a mistake, and that is what the ZBA was created for - to alleviate and relieve some of these problems. Ron Newton said the relief is that the gentleman who owns this house on the existing property, also owns the adjacent property, and by deeding a small portion of that property to this property could settle this matter. Ray Skaine said Mr. Schmidt admits it was his mistake that he didn't consider the side lot line, not the petitioner Mr. Shariff.
Mr. Schmidt has not had a problem before.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No IX as written due to the fact that this was an admitted mistake by Mr. Schmidt, but to our recollection this is the first time that he has ever been here. I don't believe this is going to create a hardship for the neighborhood, because the other house isn't even built yet.

John Gatti	NAY
Ray Skaine	AYE
John Brady	AYE
Arthur Henning	AYE
Ron Newton	NAY

MOTION CARRIED.

Meeting adjourned at 9:10 p.m.
Ronald Newton, Chairman