

APPROVED
JOINT TOWN / VILLAGE OF CLAYTON
ZONING BOARD OF APPEALS
June 16, 2014

The meeting opened at 7:03 p.m. with the **following members present:** Chairman Jim Kenney, Les Drake, Harold Carpenter, Don Bell, Dale Maclaughlin, Alternate Ann Aubertine. No absentees.

Also Present: Kim Johnston, Clerk; Susan Kenney, Recording Clerk

Townpeople Present: George Dunham, Karen Lashomb, Steve Taylor, Gary McElfresh, Lee McElfresh, Sally Bogenschutz, Larry Aubertine, Nancy Hyde, JoAnne Eschenberg, Jim Eschenberg, David Natali, Sanford Chapman

The minutes for the May 19 meeting were reviewed, and no corrections noted. **MOTION** was made by Don Bell, 2nd by Les Drake, to approve the minutes as submitted. Motion was carried, with an abstention by Dale Maclaughlin, who was not present at that meeting. The minutes for the June 2 special meeting will be reviewed at either the June 30 special meeting or at the next regular meeting on July 21.

7:06 --- Town --- James W. Eschenberg, 38115 NYS Route 12E, Clayton, Tax Map # 19.20-1-21, in the Marine-Residential District. Request to erect a porch closer to east side yard property line than allowed by the zoning ordinance.

James Eschenberg did the presenting. The property is in a trailer park. New surveys showed that the property lines were different than what had been thought, and the porch built in 2006 is overhanging the property line onto the neighbor's property. This porch was built without a permit as Mr. Eschenberg did not realize one was necessary. He now proposes to remove part of the porch to get it off the neighbor's property, leaving the larger portion of the porch, which requires a variance for the setback of 5 feet at one end and 1 foot at the other end.

The hearing was opened to the public. The neighbor in question, George Dunham, said that he had sent in a letter and pictures, and he disputed the applicant's statement that he did not know where the property line was. Mr. Dunham said that the water lines run more or less along the property lines in the park, and Mr. Eschenberg should have seen the water lines and realized where the property line was. Mr. Dunham asked that the porch be forced back to the full 5-foot setback. When informed that the setback in that district was 15 feet rather than 5 feet, he said that he would not ask for that full 15 feet, but would be content with 5 feet, at both ends of the porch. According to Mr. Dunham, since Mr. Eschenberg had violated the rules already with the erection of the porch, he should not be rewarded with so large a variance.

Mrs. Eschenberg said that to move the whole trailer and porch so that it would be 5 feet from the line at both corners would cost them around \$4000 and would be very hard. Both she and her husband rejected the idea of cutting diagonally through the porch to make the 5-foot setback at both corners; that would leave them with an odd-shaped and almost useless porch.

There was some discussion of the distance between Mr. Dunham's trailer and his property line, and between other trailers in the park. The Board decided that a proper decision could not be made without the presence of either ZEO LaClair or CEO Ingerson, and without a closer look at the properties in question. At 7:35 **MOTION** was made by Les Drake, 2nd by Dale Maclaughlin, to adjourn this hearing until the next meeting on July 21, at 7 p.m. or shortly thereafter. Motion was carried.

7:37 --- Town --- Karen Lashomb, 16729 County Route 5, Clayton, Tax Map # 31.15-1-24, in the Agricultural-Rural Residential District. Request to subdivide her property into two properties with less square footage than allowed by the zoning ordinance.

Karen Lashomb did the presenting. She wants to divide her property in half so that her son can put in a house on the half where a bungalow is now located. The bungalow would be removed to accommodate a house. There are already a septic system and a well, put in with the bungalow. The problem is that as divided, both new lots are about 800 square feet less than the required area in the zoning ordinance, hence the need for a variance. Board Member Drake emphasized to Mrs. Lashomb that she make the designers and builders aware of the required setbacks, so that if other buildings were put up in the future, it would be easier to accommodate them.

At 7:42 **MOTION** was made by Harold Carpenter, 2nd by Les Drake, to declare this a Type II action. Motion was carried. **MOTION** was made by Les Drake, 2nd by Dale Maclaughlin, to close the public hearing. Motion was carried.

Chairman Jim Kenney did the finding of fact. At 7:51 **MOTION** was made by Les Drake, 2nd by Don Bell, to approve the application as submitted.

Aye: Kenney, Carpenter, Maclaughlin, Bell, Drake
Nay: none Abstain: none Absent: none

7:55 --- Village --- Sally Bogenschutz, 714 Union St., Clayton, Tax Map # 20.46-2-14, in the Neighborhood-Residential District. Request to extend her house and add a deck closer to property lines than allowed by local zoning law.

Sally Bogenschutz did the presenting. She wishes to make the top level of her garage into a living space for her son, and add a deck on back, with stairs. There would be a bathroom but no kitchen. She did not know she needed a permit, so the work has already been started, and is almost done. It was noted by the Board that this is a conforming use in a nonconforming structure. Mrs. Bogenschutz would also like to take down the current shed in the back and put up a smaller building to house the mower, etc. When asked if a certificate of occupancy had been granted, she said no.

The hearing was opened for public comment. Nancy Hyde, one of the immediate neighbors, said that the original variance for the garage, granted in 2010, was not adhered to, nor was the slab ever inspected. To approve the current application would mean the ZBA was not adhering to their original variance. She has met with the ZEO, CEO, and Mrs. Bogenschutz, without

receiving a satisfactory answer. She noted that the houses are now too close, and that Mrs. Bogenschutz did not intend to put in a firewall, thereby creating a big fire hazard. She feels that her property is getting more and more encroached upon. She also questions the statement by the applicant that this won't change the neighborhood: the garage is much larger than others on the street, almost as large as the house. She is upset that permission was not asked before construction was begun. She said that the original variance was granted for 3 feet, so the distance from the property line should be 9 feet; however, it is currently only 5 ft. 4 in.

The Board members were agreed that they would like to review the original application and minutes before making a final decision on this application. At 8:16 **MOTION** was made by Les Drake, 2nd by Harold Carpenter, to adjourn this hearing to the July 21st meeting, at 7 p.m. or shortly thereafter, so that the Board can look at the desired information. Motion was carried.

8:17 --- Town --- Gary O. McElfresh, 16463 Grenell Island, Clayton, Tax Map # 12.11-2-38.1, in the Marine-Residential District. Reopening of public hearing concerning subdivision of nonstandard lot.

Steve Taylor did the presenting. Mr. and Mrs. McElfresh were present as well. Mr. Taylor said that CEO Ingerson was supposed to have documentation from the state – an email stating that a variance was not required – of which Mr. Taylor could not find his copy. The official copy was found in the CEO's files on the McElfresh case. The Board also spoke with CEO Ingerson on speakerphone; he verified that the email had come in, and that it needed to be put in the deed that the septic was shared on the two new properties. The email stated that no variance was needed for the septic system, but strongly recommended an easement that would withstand challenges or loopholes. The said easement was presented and documented, and terms of it were incorporated into the deed. A variance is needed, however, for the subdivision.

It was noted that the requested area variance meant cutting a small lot in half, making far smaller lots; but the two resultant lots are still larger than most lots on Grenell Island. The division of the lot is so that Mr. and Mrs. McElfresh can give one lot to each of their sons.

At 8:29 **MOTION** was made by Les Drake, 2nd by Harold Carpenter, to declare this a Type II action. Motion was carried. **MOTION** was made by Don Bell, 2nd by Dale Maclaughlin, to close the public hearing. Motion was carried.

Chairman Kenney did the finding of fact. At 8:38, **MOTION** was made by Les Drake, 2nd by Harold Carpenter, to approve the application as submitted.

Aye: Kenney, Drake, Carpenter, Bell

Nay: Maclaughlin

Abstain: none

Absent: none

8:41 --- Town --- David & Donald Taylor, 43335 Schoolhouse Rd., Clayton, Tax Map # 12.00-1-6, in the Marine-Residential District. Request to extend house closer to front property line than allowed by zoning ordinance.

Sandy Chapman did the presenting. The Taylors plan to put on a single story addition on the upper level of a split level house, an addition designed to be wheelchair accessible. The septic/leach field is on the other side of the house, so the addition cannot go there, and the slope of the land on the back side of the house prohibits building there as well. The Taylors have owned this house since 1958. They would have to remove the existing stair and add another on the back. Measurements are from the existing seawall, which by default is the high water mark. To put the addition further from the water, a prohibitive amount of dirt would have to be moved. The house is several hundred feet from any neighbors, and also blocked by trees so that it can be seen only from the water. The submitted design shows a proposed boathouse, but that boathouse is not included in the present application.

At 8:50 **MOTION** was made by Dale Maclaughlin, 2nd by Harold Carpenter, to declare this a Type II action. Motion was carried. **MOTION** was made by Les Drake, 2nd by Dale Maclaughlin, to close the public hearing. Motion was carried.

Chairman Kenney did the finding of fact. At 8:58 **MOTION** was made by Dale Maclaughlin, 2nd by Les Drake, to approve the application as submitted.

Aye: Kenney, Carpenter, Maclaughlin, Bell, Drake
Nay: none Abstain: none Absent: none

At 9:00 **MOTION** was made by Dale Maclaughlin, 2nd by Les Drake, to adjourn the meeting. Motion was carried.

*Respectfully submitted,
Susan Kenney, Recording Clerk*