

APPROVED
JOINT TOWN / VILLAGE OF CLAYTON
ZONING BOARD OF APPEALS
July 21, 2014

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

Also present: CEO Richard Ingerson, Recording Clerk Susan Kenney

Townspople Present: Nancy Hyde, Catherine Fleming, David Fleming, George Dunham, Irene Dunham, Don Pickworth, Pat Pickworth, Roxane Pratten, David Natali, Kevin Kittle, Sally Bogenschutz, Carlyn Hammersley, Colleen Norwood, Chris Spaeth, Terry Vieau, Milton Rusho, Brian Jones, Larry Aubertine, Albert Cerow, Joanne Eschenberg, Jim Eschenberg, Mary Zovistoski

Minutes for the special meetings on June 2 were reviewed; no corrections were noted. **MOTION** was made by Harold Carpenter, 2nd by Dale Maclaughlin, to approve the minutes as submitted. Motion was carried. Minutes for the regular meeting on June 16 were reviewed and corrections noted. **MOTION** was made by Harold Carpenter, 2nd by Les Drake, to accept the minutes as amended. Motion was carried. Minutes for the special meeting on June 30 were reviewed; no corrections noted. **MOTION** was made by Dale Maclaughlin, 2nd by Harold Carpenter, to approve the minutes as submitted. Motion was carried.

7:08 --- Village --- Sally Bogenschutz, 714 Union St., Clayton, Tax Map # 20.46-2-14, in the Neighborhood-Residential District. Reopening of public hearing for request to extend her house and add a deck closer to property lines than allowed by local zoning laws.

The Board wanted to see how the variance granted to Ms. Bogenschutz in 2010 had been followed. This current variance request involves a change of use of the garage, from storage to living quarters. The requested deck on the back is for proper egress and for a fire escape.

The meeting was opened to public comments. Larry Aubertine asked if this was a use or an area variance. He was told it is just an area variance.

Nancy Hyde said she had nothing to add to her comments from the previous meeting other than a restatement of the biggest issue being the fact that the original variance, from 2010, was not followed, so why should more be granted to Ms. Bogenschutz.

Ms. Bogenschutz was asked where the steps were supposed to be; she said that they were on the back, going toward the house.

CEO Ingerson found the information from the previous variance and said that it was supposed to be a 9-foot variance. The current setback is 5' 4", so the garage had been built 3' 8" closer to the property line than it should have been. Ms. Bogenschutz said that the breezeway connecting the

house to the garage had been made bigger than originally planned, so the garage had moved closer to the property line.

In the Board's discussion, it was stated that the Board has granted more significant variances; it wasn't good that the original variance was not followed, but looking strictly at the current variance request, this is not out of bounds. The Board is not meant to be punitive. A question arose about having living quarters over a garage. CEO Ingerson asserted that this is all right as long as the garage is attached to the house; it is then considered as an addition.

Nancy Hyde stated that the original variance allowing the garage had specified that it would be for storage, but that is not being followed. No permit had been sought for the current project except that she had "blown the whistle." No thought had been given to the possible risk to the entire neighborhood of fire spreading from the new living quarters with no firewall. If the Board agrees to this variance now, it is in effect saying that it is okay to everybody to not bother following the rules.

Kevin Kittle, working for Ms. Bogenschutz as builder, thinks the main problem stemmed back to the original building contractors who built too close to the property line without Ms. Bogenschutz's knowledge, so it is not really her fault. CEO Ingerson added that the slab was poured and not inspected before the building went up; there is no way to cut it back now. After a number of discussions, the plans for the project have been altered to include a firewall, thus ensuring more safety for the occupant. A member of the Board noted that is it the responsibility of the homeowner, not the contractor, that the variance be followed.

In response to a question from one a board member, CEO Ingerson stated that the conversion of the 2nd floor of the garage to living space would not need a variance if the rear deck was 4' x 6'. Because the applicant wants an 8' x 12' deck, the variance is needed.

At 7:29 **MOTION** was made by Les Drake, 2nd by Dale Maclaughlin, to declare this a Type II action. Motion was carried. **MOTION** was made by Dale Maclaughlin, 2nd by Les Drake, to close the public hearing. Motion was carried.

Chairman Kenney did the finding of fact. At 7:46 **MOTION** was made by Les Drake, 2nd by Dale Maclaughlin, to approve the application as requested.

Aye: Kenney, Drake, Maclaughlin

Nay: Carpenter, Bell

Abstain: none

Absent: none

7:50 --- Town --- Willard Galvin, Jr., 9611 Palisades Lane, Clayton, Tax Map # 30.05-1-45, in the Marine-Residential District. Request to erect addition closer to property line than allowed by zoning ordinance.

Before calling Mr. Galvin to present his application, it was noted that the application had to be amended to a 35-foot north front yard variance.

Willard Galvin did the presenting. His cottage was built in 1964, prior to zoning. He just wants to increase the cottage 8 feet toward the road, adding bedrooms on 2 levels. From his cottage, there are about 80 steps to get down to the river level.

There have been no calls or letters regarding this application. At 7:56 **MOTION** was made by Don Bell, 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 8:03 **MOTION** was made by Dale Maclaughlin, 2nd by Harold Carpenter, to approve the application as amended.

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

8:10 --- Town --- Roxanne Pratten, 43787 Canoe Point, Clayton, Tax Map # 12.00-1-16.19, in the Marine Residential District. Request to erect addition and deck on cottage closer to property line than allowed by zoning ordinance.

Brian Jones did the presenting. This is another nonconforming structure. It needs a 55-foot variance because it is right on the edge of the water. The original house is about 600 sq. ft.; the proposed addition will add about 1000 sq. ft., with the two parts connected by a bridge/breezeway. The addition will go on top of a large rock mass, so it will be a bit higher than the original.

The zoning office has received no calls or letters regarding this application. Mr. Jones had received a couple of emails which will be put into the record.

At 8:14 **MOTION** was made by Don Bell, 2nd by Les Drake, to declare this a Type II action. Motion was carried. **MOTION** was made by Les Drake, 2nd by Harold Carpenter, to close the public hearing. Motion was carried.

Chairman Kenney did the finding of fact. At 8:23 **MOTION** was made by Les Drake, 2nd by Don Bell, to approve the application as submitted.

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

8:25 --- Village --- David Fleming, Sr., 317 Merrick St., Clayton, Tax Map # 20.38-2-48, in the Neighborhood-Residential District. Request to add deck and screened porch closer to property line than allowed by local zoning law.

David Fleming did the presenting. The house itself is nonconforming, which necessitates a variance. He will not be making it any more nonconforming than it already is. He wants to put a deck in back to help alleviate the steepness of the stairs that are already there. The maximum footprint of the new porch would be 13x14 ft. He is planning on a California porch, with 3-foot

railings, screens, and a roof. The porch roof will be slanted like a shed roof. He is hoping to put in a sauna on the porch at some time in the future.

The meeting was opened for public comment. Terry Vieau said that Mr. Fleming's last project had gotten out of hand, and he was concerned that this one would end up on someone else's property. Carlyn Hammersley, Mr. Vieau's mother-in-law, and also one of the Flemings' neighbors, stated that she doesn't want her air cut off, and that she seems to lose something every time someone gets a variance. CEO Ingerson explained to her that this project would not encroach on either her property or her air circulation.

At 8:41 **MOTION** was made by Harold Carpenter, 2nd by Don Bell, to declare this a Type II action. Motion was carried. **MOTION** was made by Dale Maclaughlin, 2nd by Harold Carpenter, to close the public hearing. Motion was carried.

Chairman Kenney did the finding of fact. AT 8:49 **MOTION** was made by Dale Maclaughlin, 2nd by Les Drake, to approve the application with the noted change in the porch dimensions and clarification of setback numbers.

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

8:52 --- Town --- Albert Cerow, 12641 Sunset Lane, Clayton, Tax Map # 11.00-1-22, in the Marine-Residential District. Request to erect screen porch closer to property line than allowed by the zoning ordinance.

Building the screened porch would require a 3-foot west side yard variance. Albert Cerow and CEO Ingerson did the presenting. Mr. Cerow had bought a very dilapidated cottage and is rebuilding it. The structure is already nonconforming; he would not be adding to that. He plans to increase the size of the screened porch on the side facing the cemetery, but not changing the footprint on the opposite side, which is the least conforming.

There have been no letters or calls concerning this application.

At 8:56 **MOTION** was made by Les Drake, 2nd by Dale Maclaughlin, to declare this a Type II action. Motion was carried. **MOTION** was made by Dale Maclaughlin, 2nd by Don Bell, to close the public hearing. Motion was carried.

Chairman Kenney did the finding of fact. At 9:03 **MOTION** was made by Dale Maclaughlin, 2nd by Les Drake, to approve the application with the dimensions as added.

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

9:06 --- Town --- Ken and Anne Norwood, 17085 Blanchard Lane, Clayton, Tax Map # 12.20-2-14, in the Marine-Residential District. Request to erect addition closer to the property line than allowed by the zoning ordinance.

Brian Jones did the presenting. The variance asked for was clarified at 45 feet front yard variance, 4 feet east side yard variance, and 11 feet west side yard variance. The proposal is to put an 8x20 addition on the rear of the existing cottage: the existing deck would be taken out, the footprint shortened, and the deck replaced with living area. They also plan to improve the septic system as best as they can: the lot is too small for the current Health Department's required 100-foot distance, nor can they do a shore well; but since the house is existing, they can use a regular pump with filtration.

Mr. Jones was asked if there would be any concern with the roof pitch and possible rain runoff onto the neighbor's property. He responded that rain gutters will be used. Chris Spaeth, a neighbor, also spoke and said that he was okay with the project, and so were all the other neighbors he had talked to.

At 9:15 **MOTION** was made by Les Drake, 2nd by Dale Maclaughlin, 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 9:22 **MOTION** was made by Dale Maclaughlin, 2nd by Les Drake, to approve the application with the amended numbers.

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

9:24 --- Town --- James W. Eschenberg, 38115 NYS Route 12E, Clayton, Tax Map # 19.20-1-21, in the Marine-Residential District. Reopening of hearing for request to erect a porch closer to east side yard property line than allowed by the zoning ordinance.

CEO Ingerson related some information of what had been done over the past month. He and Mr. Eschenberg had presented alternative proposals to Mr. Dunham over a solution to the impasse, but Mr. Dunham had rejected both of them. He had signed one but later rejected it feeling that the facts had been misrepresented. CEO Ingerson said that to simply cut 5 feet off the offending porch would not work structurally, due to aluminum posts and double floor joists used in construction of the porch.

Mr. Dunham spoke from his perspective: none of the constructions are okay because no permits were obtained, and there was no knowledge of the property line. He was not happy with the drawings presented by the Eschenbergs since none of the drawings were to scale or had proper numbers on them. Mr. Dunham said that they had received a letter from ZEO LaClair back in December 2013 stating that the Eschenbergs had agree to move the trailer in spring, yet this had not happened. CEO Ingerson explained that by asking for a variance, the Eschenbergs had put all previous agreements on hold; Mr. Eschenberg also had not been willing to risk having heavy equipment on his blacktop after the severe winter.

Mr. Dunham has sent in pictures of the area, which will be added to the official record. He stated that this is an illegal building, and such should not be encouraged. He related an instance

3 years ago when another trailer owner started encroaching on the Dunhams' property. He bought his property in 1978 and had it surveyed then, though several of the pins were not in the ground as of the building of the porch. The property was surveyed again in June 2013 by a surveyor hired by Mr. Dunham, and then some months later (November 2013) by another surveyor hired by Mr. Eschenberg. The two surveys agreed as to the property line.

The owner of the trailer is asking for a 17-inch overhang on the porch; CEO Ingerson suggested cutting that back to a 6-inch overhang, so the setback would become 2 feet rather than just 1 foot.

Mr. Eschenberg spoke, saying that it was his own fault that he had not known about needing permits for building, and that he had not known exactly where the line was. If he had known, he would not have allowed the trailer owner to build where he did. When asked if the porch could be moved to a different side of the trailer, or if part of the porch could be moved, Mr. and Mrs. Eschenberg were reluctant to do so since it would affect the looks of the trailer park and make it more crowded. That would affect their business since space is so limited. They are now asking for a 13-foot variance, going with a 6-inch overhang rather than the original 17-inch overhang.

Chairman Kenney read letters that had been received from the Dunhams.

At 10:13 **MOTION** was made by Les Drake, 2nd by Dale Maclaughlin, 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 began the finding of fact. Mrs. Eschenberg interrupted partway through and said that they now proposed to change the application to put the porch on the front of the trailer. However they did not have accurate numbers as to how that would affect the setbacks. At 10:26 **MOTION** was made by Les Drake, 2nd by Don Bell, to adjourn the vote to the next regular meeting (August 18, at 7:00 pm or shortly thereafter), so that the Eschenbergs will have time to measure accurately and confer with the Dunhams.

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

At 10:27 **MOTION** was made by Les Drake, 2nd by Jim Kenney, to adjourn the meeting. Motion was carried.

*Respectfully submitted,
Susan Kenney, Recording Clerk*