

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday July 8, 2014
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Vice-Chairman Ryan Mills
David D'Amato	Patricia Burkard
Gregory Thrun	Richard McNamara

Town Officials present:

Director of Community Development James Callahan
Junior Planner Jonathan Bleuer
Senior Building Inspector David Metzger
Deputy Town Attorney Steven Bengart
Councilman Peter DiCostanzo

Chairman Michnik asked all attendees to leave the conference room as the Zoning Board of Appeals members and the Deputy Town Attorney entered into an Attorney/Client privilege session.

The meeting resumed.

Other interested parties present:

Gerald Thomas	Theresa Thomas	Richard Santucci
Richard Freeman	Robert Hohman	Laurel Hohman
David Sutton	Tim Pazda	Philip Ratzel
Tom Brady	Joe Latona	Jim Popiela
Charles Vallone	Jane Vallone	Corey Auerbach
Rebecca Bylewski	Michael C. Burwick	David J. Altman
Susan Altman		

New Business

Appeal No. 1

Gerald Thomas
Residential Single Family

Requests the Board of Appeals approve and grant a 3' variance to allow for a 7' side yard setback for an existing accessory structure (generator) at 8451 Lakemont Drive.

Appeal No. 1 is in variance to §229-55(E)(1).

DISCUSSION:

There are no notification forms. Theresa Thomas was present and explained that the neighbor to the west was confused by the legality of the form, the neighbor said he does not have a problem with the request but he will not sign anything that looks legal. Gerald Thomas is also present and said he took the form to the neighbor then waited a week before he contacted him. The neighbor said he called his lawyer who advised him that if he signed the neighbor notification form something would happen to his deed and he wants to sell the house in five (5) years, so he would not sign the form because he is afraid it will appear on the deed as some kind of encumbrance.

Senior Code Enforcement Office David Metzger is present to provide background on the application. The house was built in 1993, in April 2014 Mr. Thomas called the Building Department to question the operation of his generator and ask when it was inspected. The Building Department issued permits for generators and when Mr. Metzger checked the records, there was no permit issued. Mr. Metzger visited the location and determined that the generator had been installed for a period of time by Anderson Water Systems based on the paperwork that the applicant had. He took measurements and also determined that the generator is in violation of the side yard setback, hence the variance request. Mr. Metzger contacted Anderson Water Systems to check their files and found that there was no paperwork filed with the Town for the installation of the generator. Anderson has filed permits previously and subsequently with the Town for the installation of numerous generators, in fact, there is a generator that Anderson installed next door to this residence in which a permit was filed with the Town only a month before the generator in question was installed. Anderson is well aware of the procedure to obtain a permit to install a generator in the Town of Clarence. Anderson has applied for the generator permit, they are also applying for the appeal. If the appeal is granted the Building Department can issue the permit and charge the standard \$50.00 fee for the generator, a \$200.00 fee for installing it without a permit and the normal electrical inspection fee, which is \$75.00. If Anderson would have obtained the permit properly they could have saved \$200.00. The Building Department has the option to charge additional money instead of going through the court system. If Anderson does not want to pay the additional fees, Mr. Metzger will issue a court appearance ticket. It is clarified that the generator is proper distance from the house.

Mr. Thomas said he paid Anderson Water Systems \$220.00 to have the generator inspected. Mr. Metzger clarified that the paperwork states "includes permit and inspection". The generator has been installed in this location for about six (6) years.

Mr. Mills asked the applicant if Anderson said what they would do for him if the variance was denied. Mr. Thomas said he has not talked with them. Mr. Metzger said the only opportunity would be to relocate the generator to the rear of the house which would increase the cost and diameter of the gas pipe and the electrical installation. It would be approximately \$300-\$500 in addition to the cost to relocate the unit. From an aesthetic standpoint, Mr. Thomas prefers to have the generator on the side of the house, he planted shrubbery around the generator to hide it.

Chairman Michnik visited the property and said the shrubbery looks good. The neighbors have never complained about it. Mr. Metzger spoke with one of the neighbor's and she seemed comfortable with location of the generator. A representative from Anderson was not asked to be

in attendance at the meeting this evening, however they are well aware of this action. Mr. Metzger said in years past he has had Anderson in the court system for six generators. Mrs. Burkard asked if Anderson has a history of doing this when a variance is needed. Mr. Metzger said no not in the recent past, they are pretty good now because they have been educated on the Town’s procedure.

ACTION:

Motion by David D’Amato, seconded by Ryan Mills, to **approve** Appeal No. 1, as written.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D’Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 2

Richard Santucci
Residential Single Family

Requests the Board of Appeals approve and grant a 16’ variance to allow for a 9’ rear yard setback for a wood framed patio enclosure at 4070 Thornwood Lane.

Appeal No. 2 is in variance to §229-52(C), Map Cover defined rear yard setback of 25’.

DISCUSSION:

Richard Santucci is present and explained that he built the house in 2001, in 2002 he put up a Kohler awning, it has been there for 12 years. He would like to take the awning down and put up a permanent wood structure with screen sides to be used seasonally. It would not be used in the winter, there will be no heat in it. He wants a more solid structure on the existing concrete. He wants to enclose the area. It will be the exact same size as the existing Kohler awning. It will be a wood roof shingle, three aluminum posts and two screen doors.

There are five (5) neighbor notification forms on file.

Mr. Mills asked for clarification on the footprint, Mr. Santucci said it is the same size as the existing awning. Mr. Santucci would like to get additional use out of the room, also, he is in a very windy area and it gets really loud with the canvas awning, the awning takes a beating with wind and it is starting to leak. Mr. Mills asked if the applicant could get away with any less size. Mr. Santucci said he would prefer to keep the same size because he has his patio furniture in there and it all fits.

If the variance is approved, Mr. Santucci is looking to start construction on Tuesday July 15, 2014.

ACTION:

Motion by Gregory Thrun, seconded by Patricia Burkard, to **approve** Appeal No. 2, as written.

ON THE QUESTION:

Mr. Mills said this structure differs from other structures in that it is predominately open, it is not an addition to a house used all year round. It is screened, no glass, with posts. Mr. Mills referred to the plan entitled A-1 which delineates the fact that there will be posts, a roof and a screened enclosure, it is not a solid structure all the way around.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 3

Richard Freeman
Residential Single Family

Requests the Board of Appeals approve and grant a 184 sq. ft. variance to allow for a 384 sq. ft. secondary detached garage at 5241 Shimerville Road.

Appeal No. 3 is in variance to §229-55(H).

DISCUSSION:

Richard Freeman is present and explained that he likes to use his garage for his vehicles especially in the winter. He wants to store his lawn tractor in there and with him getting close to retirement he wants room to store jet skis and four-wheelers that he may purchase. It will only be for personal use.

Two neighbor notification forms are on file.

Mr. Freeman has lived at this address for almost four years. If the variance is granted the concrete work will be done by Blair. Mr. Freeman will construct the building himself. He does not have any specifications because he was waiting for approval first. The structure will have a metal roof and square windows. The sides will match the siding on the house.

Mr. Mills asked why the structure is not being attached to the existing house, next to the existing garage. Mr. Freeman said there is a shed out there now and he likes it there. He is not planning on using the proposed structure as a garage it is more for storage. The shed will be removed. He likes the proposed location of the structure for the covered area and the view it provides. Mr. Mills asked if the size could be reduced and still accomplish the goal, Mr. Freeman said he could. Mr. Mills asked him how much he could pare it down. Mr. Freeman said he likes the square footage he is asking for, he wants to keep his equipment protected and inside. He uses the regular garage for his vehicles.

Mr. Thrun asked if the fence will be modified. Mr. Freeman said after the structure is built he wants to have the fence come out and across, he shows the Board what he wants to do on the survey that is on file. There will be no driveway back to the proposed structure. The structure is

approximately double in size as the existing shed. The trailer will not be stored inside the structure. The roof of the proposed structure would be maroon to match the shutters.

Chairman Michnik asked if the applicant planned on putting more fence along the east side of the property where the wood pile is, whose wood pile is it? Mr. Freeman said neither he nor his neighbor knew whose tree it was but Mr. Freeman agreed to take it down and his neighbor was going to take the wood, but the wood has never been moved. The fence is going to lead up to the building and the building will then act as a fence. Chairman Michnik asked if the applicant would be willing to plant something there to buffer the view of the neighbor. Mr. Freeman said yes, if the neighbor wants him to.

ACTION:

Motion by Gregory Thrun, seconded by Daniel Michnik, to **approve** Appeal No. 3, as written, with the condition that at least four (4) plants be planted along the eastern side of the building that will grow to be 4’-5’ tall. The plants are to be planted at the time of the issuance of the Certificate of Completion.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D’Amato	Aye	Ryan Mills	Nay
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 4

Robert Hohman
Agricultural Rural Residential and Industrial
Business Park

Requests the Board of Appeals approve and grant:

- 1.) A 20’ variance to allow for the creation of a parcel with 130’ frontage.
- 2.) A variance to allow for the construction of two single family homes within the Industrial Business Park zoning classification.
- 3.) A variance to allow for up to a 400’ front yard setback for two proposed single family homes.

All requests apply to 9520 Wehrle Drive.

Appeal No. 4 is in variance to §229-40(A), §229-100(A), §229-41(A).

DISCUSSION:

One neighbor notification form is on file. The applicant was unable to contact the other neighbor after numerous attempts.

Dave Sutton, of Sutton Architecture, is present along with Laurie and Bob Hohman, owners of the property. Mr. Sutton said it is the Hohman’s intent to build two (2) single family homes on this property that they own for both of their children to live there. In order to split the property a few

variances are needed. The first variance is for the frontage. The lot is unique in that there is 280' of frontage but once you go back 271' it widens out to 400' in width, therefore they feel this variance is a reasonable request because the location of the houses will then meet the width requirement. One lot will be in compliance, the second lot will have a 20' deficiency. There is flexibility with this split, if the Board wishes an equal split the applicant is willing to entertain that.

Mr. Sutton explained that the back part of the property is Zoned Industrial Business Park, however it is primarily residential in this area so the applicant feels the best use of this property is residential.

Mr. Sutton explained that the lot is 1600' deep, they want to take full advantage of the lot and have the most respectful buffer to the neighbors. To the west of the property there is a house that is set back, this proposal is approximately in line with that house. The plan is to design one 2500 square foot house at this time. Mr. Sutton submitted the full set of plans for the house.

It is clarified that both houses will be at the same setback, and they will be similar in size.

Mr. D'Amato asked if the residents on Gunnville will be able to see the proposed houses. Mr. Hohman said not with the tree line that is there and there is dense vegetation in that area. Mr. D'Amato asked what the other number is. Mr. Sutton explained that they are asking for 400' setback due to the jog in the lot, which is 271'. If they go close to 300' they feel they will not make the best use of the lot, they want to respect the existing neighbors and make the most of the landscape features.

Mr. Mills voiced his concern saying even though there is a unique jog in the property, the applicant is still asking for a 20' deviation from the standard. He agreed that this property is better suited for residential use rather than industrial. Mr. Mills thinks the setback is substantial in comparison to the other homes. The average setback is 45'-100'. He asked if the applicant can come closer to a 350' setback and still achieve the desired outcome. Mr. Hohman said no because then they would not be able to separate the houses enough from each other. The Hohmans have owned the property for approximately 2 years, and the intended use has always been to build homes for their two daughters. Mr. Mills asked if the Hohman's looked into the frontage and setback requirements prior to purchasing the property. Mr. Hohman said no and went on to say that the frontage requirement changed recently in the Town. It is clarified that the frontage requirement changed in 2005.

Mr. Sutton said he had a conversation with the Town building inspector and there are no code violations or firefighting approaches for the distance, they are well within NY State standards for distance from the road and from a hydrant. Mr. Sutton does not see the benefit of moving the house to 300' because he does not think it will change the street façade or character, nor will it benefit any of the neighboring properties.

Chairman Michnik asked if the applicant is willing to provide additional buffering for the neighbors if needed. Mr. Sutton referred to Exhibit #1 and points out a buffer that they will try to preserve, if not, they have talked about, over time, redefining the buffer if they lose it as a result of construction. They are sensitive to the neighboring properties. The redefinition of the buffer would be similar to what is there now. The plan is to have one driveway to get to both houses, but

a possible second driveway if the parcel is ever sold off. The applicants plan to start construction this Fall if the request is approved.

Mr. Thrun asked what the distance is between the back property line at 9530 Wehrle Drive to the front of the proposed house on the east side of the property. Mr. Sutton said it is approximately 130'.

ACTION:

Motion by Daniel Michnik, seconded by Gregory Thrun, to **approve** Appeal No. 4, as written with the following conditions:

- no additional building lots.
- in the event there is a disturbance in the natural buffer on the east and west lines of the property, the applicant agrees to mitigate same in a similar manor as what exists, prior to the issuance of a final Certificate of Occupancy.
- the house at 9530 Wehrle Drive is to have buffering at the back of their property.

ON THE QUESTION:

The applicant is amenable to the conditions set forth.

Mr. Mills said this request can be distinguished from others in that the total frontage on this parcel is 400' although it does jog back. This is predominantly an area of residential single family homes and while it is currently zoned Industrial Business Park, it appears that Residential Single Family is more fitting with this particular parcel. The setback is going to be mitigated by making sure the natural buffer is in effect for the Gunnville Road side as well as the Wehrle Drive side. The homes will be in line with some recently construction homes in the area.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 5

Clarence Center VFC
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a variance to allow for an LED changeable copy panel within the existing freestanding sign at 9415 Clarence Center Road.

Appeal No. 5 is in variance to §181-3(D)(5).

DISCUSSION:

Tim Pazda is present, he is Chairman of the Sign Committee and explains that they envision this sign as an extension of their public service mission. They plan on using it for public safety announcements and community messages. They believe this change will be better than the existing

internally illuminates sign. Currently the sign is lit from dusk 'til dawn without control. The new sign has the ability to dim at any given hour and remain dim until morning, so it could end up being darker than the existing sign. It can also serve as a valuable public service to the members, with the proper interface, the location of calls could be uploaded to the outside sign. The applicant agreed to comply with the current code which includes no flashing, no movement, no bouncing or waving. They would agree to what Passport Liquor did when they were granted an LED sign in a TND, Mr. Pazda believes the agreement is for a three (3) minute hold. Mr. Pazda spoke with adjoining neighbors about the application and there were no objections. The Hoovers are 327' away, the church is 733' away and the neighbors across the road are 167' to their doorway (Photos were provided). There are two (2) neighbor notification forms on file.

Mr. Pazda said the current sign is landscaped which adds to the problem, it is almost impossible to crawl under the glass to change the message without wrenching your back or ruining the flowers, consequently the sign does not get used as it should. They are proposing to raise the sign up 1' to allow more visibility during snow conditions (drawings provided).

Jim Popiela, of Santoro Signs, is present.

Phil Ratzel, of 9590 High Street, said he did the sign for 4 years and it is extremely difficult to change. The proposed sign would be used to send out safety messages to the public, they could change the messages from day to day instead of letting the sign sit there for 2 weeks to a month until someone can come out and change it.

Jim Popiela stated that it is fine from his stand point. They have replaced many manual boards with LED. There are liability issues with the manual boards which include protective covers, getting hit in the head, being shocked, winds catch the bars that are used to hold them steady. LED is more effective in attracting customers.

They are looking to have it completed by Labor Day.

Ryan Mills asked if the lumens are similar or lighter than the existing brightness. Jim Popiela said basically lumens are meaningless. The LED boards have automatic dimmers and intensifiers, they do not shine out directly, and they are self-contained. They will be slightly brighter.

The question was asked in regards to percentage of use for public safety as opposed to marketing. It is clarified that 95% will be used for community events and public safety.

The height of sign will be increased by one (1) foot. The sign itself will be smaller than current model, due to pre-set measurements and the use of "filler panels". The height change is due to the fact that the added landscaping and snow piles ruin the sign effectiveness.

Other Fire Companies that have LED signs include Main-Transit, Harris Hill, and East Amherst. The sign will have a steady output. It is a detailed sign, and they are hoping to include a Labor Day scene showing rides, etc. It will be a steady picture, with no flashing or moving images. Also, it can be programmed to change scenes, words, etc., for up to a year. Fires will not be posted on the sign. The majority of funds came from Labor Day profits, not taxpayers.

ACTION:

Motion by Daniel Michnik, seconded by Dave D'Amato, to **approve** Appeal No. 5, as written.

ON THE QUESTION:

Chairman Michnik said the majority of use for the sign is related to public safety which is the distinguishing factor in allowing the sign.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 6

Charles and Jane Vallone
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow for an existing fence greater than 6' in height located at 5102 Donnington Road.

Appeal No. 6 is in variance to §101-3(B).

DISCUSSION:

Gregory Thrun recused himself and left the meeting, the appropriate paperwork is on file. In the absence of Mr. Thrun, Richard McNamara will participate in the discussion and have full voting privileges on Appeal No. 6.

Corey Auerbach of Damon Morey is in attendance on behalf of Charles and Jane Vallone and spoke to the beauty of the grounds in question.

Invasive deer population is a major issue facing the Vallones, destroying the fruits of all the labors invested in the property, it also became a safety issue to the family dogs. They decided that a physical barrier was needed to protect their home. Initially there was a fence around the pool area only as dictated by state/town codes. Mr. Vallone consulted the Building Department in order to move the fence to enclose the perimeter, not just the pool area, which is why they are here tonight regarding a non-conforming fence and coming to the Board after the fact. Town code referencing fencing under the "Pool Section" states a minimum of 48" height requirement. Building Inspectors confirmed that he could move it to the perimeter. He was genuinely unaware of the maximum height restriction. After extensive research, Mr. Vallone determined that 7 feet was appropriate to be effective in eliminating the deer problem. They added 3 feet to the existing 4 foot fence, which has been very efficient. There were many documents submitted showing that neighbors have no opposition to the fence height. Copies of neighbor notification forms were available to view for all present. Submitted into the record as Exhibit no. 1, is a visual from the Erie County Geographic Information Systems Website which demonstrates Donnington Road and surrounding parcels. Yellow reflects neighbors who submitted a "Letter of No Objection". Blue represents the applicants parcel. Also submitted was a Statutory Analysis. Zoning Boards are required to weigh a "balancing of the equities": One side: benefit to the applicant / Other Side: detriment to the

health, safety and general welfare of the community. There is no undesirable change in the character of the neighborhood, which is supported by the agreement of the surrounding neighbors. The benefit is that the landscape and character of the property are now free from the severe and damaging deer population. The applicants did not create the issue. The 7 foot fence has been a complete solution, achieving the benefit the applicant is seeking. The applicant admits they made a mistake in not approaching the Board prior to getting the variance. The Vallones attempted to contact the opposing neighbor whose land is adjoining to the south and is 80 feet away from the fence which proved unfruitful. The Vallones are open to some kind of landscaping that would appease the Altman's.

Michael Burwick is present and representing Dr. and Mrs. Altman who oppose the variance for the fence. The Altman's claim that they were not given proper notice or information about the meeting and no permit was ever obtained for the first fence. They claim the fence totally violates the law. Neighborhood restrictions provide that the fence has to be approved by a committee no longer active, and the neighbors have the right to approve or disapprove. Their position is that the four (4) foot fence would be sufficient. No other properties in the area have a fence. The Altman's are the only neighbors affected by the fence and they do not approve of it. The Altman's position is that the variance should not be granted. The fence should be taken down and the process should be started over from the beginning.

For the record, Mrs. Altman handed the Board various photographs of the fence from the view of the Altman's property.

Submitted to the Board for the record are 12 Neighbor Notification forms. The forms are on file.

Mr. Callahan stated that the Zoning Department did not issue any permits for the fence. Upon receipt of the complaint, the applicants were approached and the violation was identified which brings us to this meeting for a remedy. Mr. Callahan stated that he has no knowledge of the Building Department's approval or disapproval. A permit cannot be issued without the variance being granted.

Mr. McNamara asked how far the property line is from the fence on the south side. He was told it was 3 to 5 feet. The Altman's disagreed and said it is 1 to 2 feet.

Submitted into evidence for the record is Exhibit 16, a survey of the property in question. From Donnington Road there is a 1 to 2 ft. high rock wall, the northerly portion from the corner is 6.9 feet from the greatest distance from the fence line. It is almost 7 feet off.

Referring to Exhibit No. 8, a photo depicting the rocks and the fence, the rock wall goes back about 100 feet which is fine. The Altman's object only to the fence. Mr. D'Amato was asked if the two neighbors ever discussed the issue prior to this meeting and they answered yes, but without resolution.

Mr. D'Amato said all this discussion and disagreement is about a fence and suggested further conversation between the two parties would be efficacious. The Board could table this until next month if the parties are amenable.

The Board reviewed the photographs submitted. The question was asked if there were any pictures that weren't close up that would give a better idea of what the Altman's were dissatisfied with. Mrs. Altman stated that the aerial shots are obsolete since many of the trees are no longer there. A member of the Board asked if the chicken wire is on the inside or outside. Mr. Vallone said he believes in some areas it is on the south side, which is the Altman's view.

Mrs. Burkard questioned the permit and process. Mr. Vallone responded that the original 4 foot fence was put in approximately January of 2013. They had just completed a house remodel and were dealing with the Building Department. He spoke to the Town's plumbing inspector John Binner about moving the fence from around the pool to the perimeter and was told yes. Mr. Vallone was unaware of the whole process involved to move the fence.

Mr. D'Amato asked if Mr. Vallone hired a fence company to move it and he answered yes. The fence company did not get permission because there was verbal permission given.

Mr. Callahan stated that the Zoning Department was never involved and that the correct answer was given by the Building Department.

Mrs. Burkard asked that if this was not approved by the Board, if only the top part of the fence would need to be removed and was told that yes, but the Vallones still would need to get a permit, which the Zoning Department would issue to them.

Chairman Michnik stated that it would be a ministerial permit, not a discretionary permit providing they meet the appropriate requirements.

Mrs. Burkard noted that the neighbors are going to see either one or two lines when this is done, there is no other option, which was agreed to.

Exhibits 13, 14 and 15 were entered into for the record which are photographs of fence from Altman's view. In regards to the chicken wire, the Vallones were asked if they could remove it from the Altman's side and Mr. Vallone answered yes.

Exhibits 17, 18, 19 and 20 were entered to the record which are photographs of the fence from the Vallones view.

Mrs. Burkard stated that when she was out at the Altman property, she did not even notice the chicken wire.

Mr. D'Amato said that he understands why a permit was not obtained, but has concerns about setting a precedence for a 7 foot fence, which he feels is unnecessary and that a 6 foot fence should be sufficient to address the deer issue.

The Vallones were asked what other methods they employed to alleviate the deer problem and they answered that deer resistant plants and barking dogs were ineffective. No chemicals were employed.

The Vallones were asked if this is an aesthetic issue, which is part of it.

The Altman's were asked what their dissatisfaction with the aesthetics of the fence are and Mr. and Mrs. Altman answered that their friends come over and laugh and make comments that it is like living in a penitentiary.

The Vallones were then asked if there was another kind of fence that could be put up, perhaps Plexiglas or similar that would be less noticeable. Mr. Auerbach stated that there has been an extensive review of deer deterrent structures. Upon reading academic papers specifically targeting how to keep deer out of agricultural areas, the best fence to accomplish this is the ugliest one available. It is mesh and goes up to 9 feet. He argues that the Vallones have chosen the most aesthetically pleasing fence in order to achieve the objective.

The question was posed if a landscaping buffer was offered to the Altman's and Mr. Altman replied that yes, it was offered, they discussed it and the Vallones said that trees would not grow there but they would be willing to plant shrubbery on their side of the fence. When the Altman's approached them again the next day to discuss it, Mr. Vallone became emotional and said forget it, the offer was off the table and that he would be going for a variance. That was the last time the two parties spoke.

The Altman's were asked if they were open to landscaping on their side that would meet their approval. Mr. Altman answered that only with an iron clad agreement. However, there is the issue of maintenance. The Vallones would agree to substantial landscaping to their side, not the Altman's.

Deputy Town Attorney Steve Bengart stated for the record that along the North line, it goes from the property line, heads north to a maximum of 6.9 feet until it reaches the stone. Mrs. Altman disagreed stating that the fence doesn't go that far. Deputy Town Attorney Steve Bengart advised Mrs. Altman that he was reading the measurements straight from their (the Altman's) own survey.

Mr. Auerbach wants to lay out exactly what the Vallones are willing to put in to rectify the situation. They will plant 10 to 15, 7 foot Colorado Spruce Trees on their side of fence. To do it on the Altman side would be a maintenance nightmare and a medical hazard for Mr. Vallone.

Chairman Michnik asked how far from the Altman house to the black fence? From the back corner of the residence it is 97.50 feet to property line, taking its furthest point would be another 6.9 feet. The den and family room are facing the black fence. Chairman Michnik addressed the fact that there were trees along the fence previously that are no longer there. The Altman's said that was due to the October Storm and that they cleaned the area out after that. It was suggested that they are now asking for trees that they didn't want or replace from the Vallones. They answered that is only due to the fence extension. Chairman Michnik then said that he was out there and saw the visual of the black fence and stakes. Black fences are very popular due to the fact that they meld into the scenery. He addressed the issue that both of the neighbors need to give and take to resolve this issue, because if the board decides, one of them would be very disappointed.

Chairman Michnik spoke to the positive outcome of a handshake and an agreement.

Procedurally, unless the parties want it held over, all the evidence must be collected.

Mrs. Burkard asked about Privet Hedge. Mr. Vallone stated that he initially offered Wisteria and Trumpet Vines which would provide beautiful flowering plants from May through November. The Altman's response was "what about the winter"?

Deputy Town Attorney Steve Bengart says that it basically comes down to the Vallones are willing to plant on their side of the fence and the Altman's want to plant on their side of the fence.

Mr. Vallone stated that he will abide by the decision of the Board, however, he will be planting Colorado Spruce Trees along the fence on the inside and build it up with a berm as an additional deterrent to the deer.

Mrs. Altman said she understood what Chairman Michnik said about a handshake. On June 4th they did have a handshake when Mr. Vallone came over and agreed that it did not look nice. He offered to place vines on his side, but she objected to that because it would be unappealing for 6 months of the year.

The Altman's were asked if they were willing to share the cost of the trees that are planted. Deputy Town Attorney Steve Bengart said he believed it is more about what side of the fence, not the dollar amount.

Mr. Altman believes he has to put a lot more than 13 trees and that it is not a great sacrifice for the Vallones' to plant 13 trees. The question was again asked if Mr. Altman was willing to split the cost. He said he was not sure and would prefer a shorter fence.

Deputy Town Attorney Steve Bengart stated that the parties should discuss the amount of trees on their own.

Mrs. Altman said that the neighbors who signed off on the fence "cannot see what we see". On July 3rd, one of the neighbors who signed the No Objection letter stated to her that they were unaware of what they were signing and that they couldn't see the fence at all.

Mr. Burwick asked to submit to the record restrictions and was told by Deputy Town Attorney Steve Bengart that they are not enforceable by the town since they are private. Deputy Town Attorney Steve Bengart stated for the record that there were restrictions that should have been followed and were not. Mr. Altman disagreed. Re-stated for the record: There are restrictions of record that are not a relevant issue as it is a private cause of action between two parties. For record purposes, it is agreed.

Mr. Auerbach spoke to the fact that there are 5 adjoining properties to the Vallone property. Every property except the Altman's submitted a letter to this Board saying they do not object to the fence. He made the point that the 4 other properties abut the Vallones property and that for the Altman's to say the other neighbors aren't in the same position is patently false. They all share property value that is covered by the fence.

The Altman's representative objected about the notice and that they didn't know about the variance or the nature of this hearing. Mr. Altman himself testified that they met with the Vallones and that the end result was that the Mr. Vallone said they were just going to go for the variance.

Previously, Mr. Callahan indicated that the height indication was of the top, horizontal bar. Mrs. Altman may have measured to the top of the finial. The standard is that you are allowed a 6 foot fence from existing grade. We are not sure were that is. We asked for the variance to authorize the fence as it exists, not to exceed 7 feet because we know that it does not. No matter the outcome, the Vallones will have a 6 foot fence and they agreed to plant tall spruce trees to camouflage it. The offer to plant trees on the Altman side is now withdrawn. They have been offered 10 to 15 7 foot tall Spruce trees bermed up which is more than adequate. That covers any potential detriment the Altman's may object to. Their only concern is the aesthetics of the top of the fence. If the board agrees that it is a detriment to the Altman's, the Vallones will bring the fence down to 6 feet only on the south side, since no other neighbor takes issue with it. To say it is "prison like" on Donnington Road is ridiculous. Also, there is a giant fence on a 10 acre lot down the street that is in direct opposition to the Altman's comments about no other fences in the area. The benefit of keeping the deer out far exceeds the detriment of the difference between a 6 foot and 7 foot fence. Deputy Town Attorney Steve Bengart asked if Mr. Auerbach understands that if the board denies the fence, it is the total fence, not just one section. Mr. Auerbach totally disagreed. He will withdraw the variance from the south side only and subject to being permitted, they want the variance for a 7 foot fence. It is a ministerial permit that we are seeking. The variance application would be for every other portion of the property. Although that is not necessary since we are saying that in relation to the south property line, the detriment will be relieved by the planting of Colorado Spruce trees. If the board does not believe that is enough to cover the additional inches of the fence, the variance will be withdrawn on the south boundary only. Then it is incumbent on the Vallones to get a permit for that portion of the fence. Deputy Town Attorney Steve Bengart stated that the Town will do what they think is necessary in regard to an illegal fence. Mr. Auerbach stated they understand they need to get a permit for a 6 foot fence and Deputy Town Attorney Steve Bengart qualified that it is for the entire perimeter which Mr. Auerbach disputed. He said the remedy for not having a permit for the 7 foot fence is to come before the Zoning Board. They agree it is a ministerial permit provided the fence height is met.

Deputy Town Attorney Steve Bengart clarified that it doesn't mean they will be able to keep 7 feet the rest of the way around automatically.

Mr. Auerbach clarified that the variance is for the entire property so if it was denied, the south portion would be withdrawn and they will still seek a variance for the remainder since the other property owners do not object. He is trying to demonstrate the balancing factors: the detriment versus the benefit. There is no detriment whatsoever or even alleged detriment anywhere but the south property.

Mr. Mills clarified that if this board is inclined to not grant the variance to the south portion, then the applicant is asking the board to grant it for the north and west portion.

Mr. Burwick read from the statute that states an application must be filed, a site plan put forth, etc. and that that has not even been done so the law has been violated. Mr. Callahan disagreed since

the Building Inspector was consulted and gave permission. He will contact Mr. Binner in the morning in relation to the verbal permission.

Mr. Mills asked the Altman's if the only objectionable portion of the fence is the south portion. Mrs. Altman responded that she has been to the Planning and Zoning Department on several occasions and has been blown off which Mr. Callahan took exception to as he takes great pride in his department and addresses everything and everyone that comes in. Mrs. Altman apologized. She then stated they didn't produce a permit which Mr. Callahan countered that if it came from Building, he would not have one.

The question was answered by the Altman's that they are unable to see the other portion of the fence and they are agreeable to a variance to the other portions.

Mr. Auerbach reiterated saying should the variance be granted to the south portion, they are willing to plant 10-15 Colorado Spruce inside the fence.

Mr. Mills asked Mr. Auerbach to speak to the character of the neighborhood and the other fences specifically on Donnington Road. The Altman's have a 4 foot fence surrounding their pool, identical to the bottom 4 foot portion of the Vallones fence. At 5001 Donnington there is a tremendous electronic fence on a berm that encloses the front of their property. The Kites have a 2.5'-3' stone wall that borders the Altman property. Mr. Auerbach did not see another house in the development that has a fence, but this cannot be confirmed since the entire neighborhood has not been canvassed for fences.

Mr. Burwick stated that there is a fence around their pool, the Kites have a 2.5 foot stone wall, there is a section between the stone wall and the house that is 3.5 to 4 foot tall, 5001 Donnington has a fence across the front. No other house in the development has a fence enclosing the rear yard.

Photos of the stone wall on the Kites property are submitted.

Mrs. Burkard asked the applicant if the fence was brought down to 6' and the Spruce trees were planted, would that solve the deer problem. Mr. Vallone said it would depend on the size of the trees, they are hoping to plant 7' trees on a berm. Mr. Auerbach said there is no way to know.

It is confirmed that the applicant has withdrawn the variance request on the south property line only. The fence on that portion of the property will comply with the 6' requirement.

Mr. Burwick stated that the Board keeps skipping over the issue of the permit; he was told that it was definitively answered by Mr. Callahan.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** Appeal No. 6, as written with the exception that the south portion of the fence is to be only 6 feet in height. The amended variance is granted with the understanding that the applicant has withdrawn the portion of the variance as it relates to the south property line, the variance only applies to the north and west

portion of the property. The fence height is not to exceed 7' on the north and west property lines. The material to be utilized is consistent with what already exists. The south portion of the fence will comply with code, which is 6 feet in height.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Motion by David D'Amato, seconded by Ryan Mills, to **approve** the minutes of the meeting held on June 10, 2014, as written.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Meeting adjourned at 9:38 p.m.

Carolyn Delgato
Senior Clerk Typist
and Diane Nardolillo