

Town of Clarence
 One Town Place, Clarence, NY
 Zoning Board of Appeals Minutes
 Tuesday January 12, 2016
 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	Gregory Thrun
Richard McNamara	

Zoning Board of Appeals member(s) absent: Patricia Burkard

Town Officials present:

Director of Community Development James Callahan
 Junior Planner Jonathan Bleuer
 Deputy Town Attorney Steven Bengart
 Councilman Paul Shear

Motion by David D'Amato, seconded by Ryan Mills, to **approve** the minutes of the meeting held on December 8, 2105, as written.

Richard McNamara	Aye	Gregory Thrun	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Other interested parties present:

Sharon Barker	Paul Barker	Henry Jurek	William Moses
Eloise Gardner	Chris Bowers	Ron Gutowski	Madelina Gutowski
Kenneth Dowse	Colleen Dowse	Roy Schneiderman	Cliff Cramer
Mr. & Mrs. R. Fiegl	Jenn Schneider	Bill Schneider	David Thompson
Barb Thompson	Matthew Richards	Todd Bushorr	Jane Yousey
David DuFrane			

The Zoning Board of Appeals Committee entered into Attorney/Client Privilege session at 7:02 p.m. The Attorney/Client Privilege session ended at 7:11 p.m. and the Zoning Board of Appeals meeting opened.

Old Business

Appeal No. 1 (from June 2015)

Upstate Cellular Network
Restricted Business

Requests the Board of Appeals approve and grant:

- 1) A 20' variance to allow for a 120' tall commercial cellular tower.
- 2) A 46' variance to allow for a 74' setback to lot line.

Both requests apply to 7377 Transit Road.

Appeal No. 1 is in variance to §173-4(D) and §173-5(C)(3)(a).

DISCUSSION:

Mr. Mills read a letter dated January 12, 2016 from Robert Brenner of Nixon Peabody to Steven Bengart, Deputy Town Attorney for the Town of Clarence. The letter requests this variance request be held over from this evening's meeting agenda to the February 9, 2016 meeting. The letter is on file.

The item remains tabled.

New Business

Appeal No. 1

Sharon Barker
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow up to a 250' front yard setback for the construction of a single family residence located at 9860 Greiner Road.

Appeal No. 1 is in variance to §229-52(A).

DISCUSSION:

Sharon Barker is present.

Mr. Mills read the following memo dated January 7, 2016 from James Callahan to the Zoning Board of Appeals Members in which it states: "Should the ZBA contemplate an action to allow a variance at the above referenced project site, an action under SEQRA will be required as the demolition of a structure built prior to 1950 is a Type I Action." The memo is on file along with a Short Environmental Assessment Form.

Ms. Barker and her husband are looking to build a 4,000 square foot house on the property. They are asking for a setback because they want to keep as many trees as possible and to stay away from the traffic. Mr. Barker said a landscape architect will be involved in order to save as many trees as possible on the site. The proposed home is a craftsman-style home that will fit in with the surroundings. He said they spoke with both adjacent neighbors and neither has an issue with the request.

Two (2) neighbor notification forms are on file.

Mr. Barker said the purchase of the property is contingent upon this request being approved. Mr. Mills asked if the applicant has evidence of any nearby properties having a similar or greater setback. Mrs. Barker said within a mile there are one or two closer to Goodrich Road, although she does not know the exact

setback. 9930 Greiner Road, which is the third house to the east of the project site, has a much larger setback than the house next to it, that setback is similar to what the applicant is asking for. Further down Greiner Road towards Goodrich Road there are a number of homes setback at a similar distance. Mr. Barker said they want to take advantage of the property, it slopes to the back. They are trying to create a nice estate with privacy in the front.

Mr. Mills asked if the applicant would move forward with the project on this parcel if the variance was not granted. The applicant said no.

Mr. Thrun noted that the homes on the front portion of the parcel will be demolished, he also noted that the applicant received a Negative Declaration from the Historical Society noting those buildings have nothing to indicate historical landmark status. Mr. Barker confirmed this information.

Mr. D'Amato asked if the applicants could decrease the setback number. Mrs. Barker said the 250' setback has a lot to do with the existing trees, at 250' there is somewhat of a clearing and that is why they went with that number. Mr. D'Amato pointed out that the area will open up once the existing house is removed, and trees can be replanted. Mrs. Barker said the age of the trees comes into play, they are huge trees. The applicant said he would not want decrease the setback measurement. Once a landscape architect looks at the trees to see what is worth saving there may be a 30' leeway. Mr. D'Amato said the variance request is substantial. He suggested a compromise of 75'-100'.

Chairman Michnik noted that the property was not staked. Mrs. Barker said there was a miscommunication and the property was not staked until yesterday. Chairman Michnik suggested the applicant re-stake the property. The applicant is hoping to close on the property by the end of the month. Mrs. Barker said they do not have a final plan on the house because if the Board were to deny the request they didn't want to spend a lot of money on plans. The existing house would be demolished in the Summer of 2016.

Mr. Mills asked if the applicant wants the Board to table the request so they (the Board members) can look at the property, as it is now staked or would they (the applicant) rather the Board move forward with a vote. It is clarified that tabling the request would provide another month's time before it is heard again before the Board. Mrs. Barker thinks her purchase is in jeopardy if they have to wait another month because the seller has another offer. Mr. Barker said they lost last month's because of Thanksgiving.

ACTION:

Motion by Ryan Mills, seconded by Gregory Thrun, to **table** Appeal No. 1 under New Business. There is evidence and testimony in the record that the property was not staked until just recently. This will allow the Zoning Board members the opportunity to see the position of the stakes and how they sit in comparison to the foliage and the trees on the lot.

ON THE QUESTION:

Mr. Thrun said this is a substantially large structure that is being built and without that orientation you can't see how it lines up with the other properties. The Board members need a line of sight so they can make a proper determination as to where it sits.

Chairman Michnik noted that there is a possibility that, even when the applicant stakes the property, it could be denied.

Deputy Town Attorney Steve Bengart noted that the Board members should not make a decision until they have done their due diligence.

Richard McNamara	Aye	Gregory Thrun	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 2

William Moses
Agricultural Floodzone

Requests the Board of Appeals approve and grant a variance to the requirements of a pool permit for electrical bonding, liner, filter, fence and alarm at 9209 Tonawanda Creek Road.

Appeal No. 2 is in variance to §196.

DISCUSSION:

Chairman Michnik said two (2) neighbor notification forms were sent via Certified Mail, however no one has signed off on them. Copies of the forms and receipts are on file.

William Moses is present and said he was before the Board last year for a variance application for a pond permit. Initially, the Town Engineer said he would need a permit for the excavation of a pond that would have to be dug 30' x 30' and at least 6' deep. One of the recommendation from Mr. Mills was to look into getting a permit for a pool because the requirements for the amount of acreage and the distance from the property line could be met for excavation if it was permitted as a pool. Mr. Moses has looked into this extensively. They drew up an application with the Town Building Department and where they reached a point they couldn't get past was the electrical requirement for bonding. In order to permit the excavation as a pool, he is asking that the requirements that would be applicable to a human pool would be waived because it is not a swimming pool it is for birds, ducks and geese that they keep. He does not think that the concern for having a liner, a filter, an alarm on the gate and electrical bonding is appropriate.

Mr. D'Amato does not understand why this has become such a big deal.

Mr. Mills noted that the requirements are State requirements, Deputy Town Attorney Steve Bengart concurred and went on to say that the Board members do not have jurisdiction over anything that is not Town Law. It is further discussed as to whether or not the Zoning Board has any jurisdiction over this request. Chairman Michnik said it appears that the applicant's only option is to try and obtain a variance from the State. Mr. D'Amato suggested he could fill it in and get a pool and comply. Mr. Moses said the law does not pertain to his excavation, ultimately he would be allowed to keep the excavation as it sits. He wants to exhaust all the recommendations that were made by the Town Engineer and this Board. If those recommendations are denied, the way the law is written in the Town of Clarence is a pond excavation would be 30' x 30' and 6' or more, so ultimately it wouldn't pertain to his request, he wouldn't be filling it in, he was told this by the Town Prosecutor he spoke with previously. He did not want to just beat the violation on a technicality because ultimately he thinks the Town should have a requirement for permitting for a hole that is less than 30' x 30' because in certain neighborhoods he doesn't think it would be appropriate for someone to dig. Mr. Callahan clarified that the Town has requirements for any kind of disturbance. Mr. Moses said the issue is currently in court. The existing hole is 20' x 30'.

Eloise Gardner, of 9215 Tonawanda Creek Road, voiced her concern asking if it is legal to have the excavation on that lot size. The pond itself is a health problem, it has stagnant water, it is not spring fed it is just rain water. If that was converted into a pool, it still sits on her property line or a few feet from it. Chairman Sackett noted that it could not be on her property line because Mr. Moses has it fenced in. It is Ms. Gardner's understanding that there needs to be leeway between the fence and the property line and Mr. Moses has not complied with that. She noted that the fence is six inches from the property line. It is too big for the amount of land he has. It is not a proper pond because half the time it is stagnant water that does nothing but breed mosquitoes; it is a health hazard. The placement takes away from property values. She wondered if the big hole in the ground is what will be converted into a pool.

Chris Bowers, of 9205 Tonawanda Creek Road, said his objections are the same as they were the last time this was before the Board. The lot is graded as such so that all the water drains towards the hole, because he has a fair amount of fowl on his property, it actually takes the feces from those fowl to that property.

Mr. Mills asked the Deputy Town Attorney if this is considered a use or area variance. Deputy Town Attorney Steve Bengart said he thinks today's petition is a use variance.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **deny** Appeal No. 2 under New Business. Due to this being categorized as a use variance one of the requirements is that the applicant must show all of the following:

- 1.) That the property is incapable of earning a reasonable return on initial investment if used for any of the allowed uses in the district. There is no evidence, testimony or documentary evidence of this in the record.
- 2.) The property is being effected by unique or at least highly uncommon circumstances. There is no evidence, testimony or documentary evidence of this in the record.
- 3.) That the variance, if granted, would not alter the character of the neighborhood. There is testimony in the record from neighbors noting that they are concerned about the character of the neighborhood, specifically relating to wildlife and the discharge from animals related to the pond.
- 4.) That the hardship is not self-created. This request appears to be a self-created hardship.

ON THE QUESTION:

Mr. Mills noted that this appears to be a State Law issue that the applicant is requesting. The pool permit requirements appear to all be codified in State Law and not Town Law. This creates an additional issue with regards to jurisdiction and capability of this Board to grant a variance as the Request for Action has been drafted. This is in addition to the above as the basis of the denial. For the record, Mr. D'Amato agreed to have this basis added to the denial.

Richard McNamara	Aye	Gregory Thrun	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 3

Ronald J. Gutowski
Residential Single Family

Requests the Board of Appeals approve and grant a 5' variance to allow for a 5' side yard setback for an accessory structure (emergency generator) located at 4730 Harris Hill Road.

Appeal No. 3 is in variance to §229-55(E)(1).

DISCUSSION:

Two (2) neighbor notification forms are on file.

Mr. Gutowski said they are looking for a 5' variance to install a back-up generator, the electricity goes out so often he feels he needs one. Mrs. Gutowski said they are getting up in years, their eyesight is changing so it is a safety and comfort issue for them.

Mr. Thrun asked if the proposed location is the most logical place to put the generator. Mr. Gutowski said that was the most reasonable place the installer found. Mrs. Gutowski said the house to the north of them is set back so the generator would be facing their neighbors front lawn, that house would be almost 100' away from where the generator would be. Mr. Thrun asked if the generator will be enclosed or if anything will be placed around it to keep it from view. Mr. Gutowski said he could do that once it is installed although they don't recommend that.

Chairman Michnik asked who will be installing the generator. Mr. Gutowski said Anderson Water will be installing it.

ACTION:

Motion by Daniel Michnik, seconded by David D'Amato, to **approve** appeal No. 3 under New Business as written. Based on the information the applicant has provided, their eyesight is changing and they want to be sure to have lights on in their building. The adjacent neighbor is 100' away.

Richard McNamara	Aye	Gregory Thrun	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 4

Kenneth and Colleen Dowse
Agricultural Floodzone

Requests the Board of Appeals approve and grant a variance to allow up to a 650' front yard setback for the construction of a single family residence located on SBL #5.00-3-23.

Appeal No. 4 is in variance to §229-31(A).

DISCUSSION:

Kenneth and Colleen Dowse are present. Mr. Dowse said he has been on active duty for the past six (6) years and have moved 5-6 times within that time period. He now has a three (3) month old son and an

eighteen (18) month old son. It is time for them to settle down, they are looking to build a single family home. Mrs. Dowse said they are excited to move back to the area, there are great schools and it is a great neighborhood. The 75' strip of land that goes up to Westphalinger is part of the parcel, there are no easements on the property. It goes back about 355' where it opens up to over 10 acres of land.

Mr. Thrun asked if there are future plans to develop more than just a single family residence on the parcel. Mr. Dowse said no, the purpose is strictly for a single family home with possibly an attached garage, no more than that. They have no plans to subdivide the property. The Dowse' closed on the property in October 2015. They are working with Sutton Architecture and are looking at a 2500-3000 square foot house. Mr. Dowse referred to Tab D of his submission and noted that is a depiction of where they would like to locate the house. They are asking for a minimum setback of 520' and a maximum of 650'. There are no other plans for the property, it will be a place for his boys to play when they grow up. There will be no farming and no motor cross racing.

Mr. Mills asked if the applicant could bring the house up closer to the road, it looks like there is space for it. Mr. Dowse said he is trying to keep with the current spacing of the existing homes in the neighborhood. He explained that the 520' setback is 180' back from the property line that backs up to the neighbors along the street. They are trying to keep as much privacy as they can. The setback will also keep the house in line with the house at 8161 which is at the corner of Westphalinger at the 90 degree bend. Mr. Mills clarified that the house could be brought up, there are no restrictions pertaining to the site. Mr. Dowse said that is correct, it is there personal preference to have the house setback. Mr. Mills asked what the applicant's next course of action would be if the variance was denied. Mr. Dowse said the denial would make it a non-buildable lot, so they would probably have to appeal the appeal. He said given that 75' strip of land they cannot build on the land at all without the setback variance, they were aware of this when they purchased the lot. Mr. Dowse met with Mr. Callahan before they bought the lot who informed him that it was a pre-existing buildable lot that the Town approved the subdivision of years ago. Mr. Mills asked if the applicant has explored doing an open land development with this parcel. Mr. Dowse said he does not know what that is.

Mr. Dowse said he knew he would have to come before the Board for a variance but because of the 75' strip, the variance would not be impossible to obtain, so it was worth the risk to purchase the lot. Chairman Michnik asked if the applicant considered purchasing the lot contingent on obtaining a variance. Mr. Dowse was not aware that he could do that. When he first looked into this process he was told he couldn't go through the process unless he owned the property, he thought that was his only option. Katherine Glaser was the previous owner, she now lives in Maryland.

Seven (7) neighborhood notification forms are on file.

Mr. Callahan explained that the Town's information shows that the lot was split in 2002, it has been assessed as a buildable lot since that time. The options for developing are either building a house on the 75' and getting a setback variance, or pursue an Open Development Area which would allow up to four (4) lots however that is not an as of right, it would need Town Board review and approval.

Roy Schneiderman, of 8160 Westphalinger Road, voiced his concern saying he paid a substantial amount over the assessed value and over the asking price of his property, he paid more because he was buying privacy. The real estate agent that sold him his property told him not to worry, no one can build behind him because it is landlocked. He is concerned with drainage issues. Chairman Michnik noted that there is a letter dated January 5, 2016 from the Town of Clarence Highway Superintendent James Dussing

addressed to Jonathan Bleuer and Zoning Board of Appeals. Mr. Mills read the letter: “This letter is in regard to the request for a variance on a piece of property that is listed a “O” Westphalinger Road owned by the applicant Kenneth and Colleen Dowse. I appreciate the efforts by Jonathan Bleuer and the ZBA to keep the Clarence Highway Department in the loop on variances especially in the north end of our town. The Highway Department and Engineering Department in Clarence have a responsibility to keep the ditches clean and free of debris, especially in and around the floodplain. Town of Clarence Engineer Tim Lavocat is the Town’s Flood Plain Manager and has the ultimate decision on what works and what can occur on this piece of property. The ditches that run both east-west and north-south on this piece of property have always been maintained and mowed by the Town. There has always been an understanding that these ditches are to be kept open and cannot be blocked or re-routed without consultation of the Highway Superintendent and the Town Engineer. Although there are only a few actual easements in the north end of the Town of Clarence, we have had a long history of working very well with the different property owners to make sure that the ditches and creeks in our town flow as best as they possibly can. This work aids the residents, businesses and agriculture in using their properties throughout the year. If this variance is granted, I would like to have assurance from the owners that access to these very important ditches will not be taken away from the Town. The best case scenario for us would be to get a permanent easement for access to these ditches. I would be happy to meet with the owners on site at any time during this process to discuss this in further detail. Sincerely, James Dussing.”

Mr. Schneiderman went on to say that he believes the applicant has good intentions but there is nothing stopping him from putting more lots in, which would be in Mr. Schneiderman’s back yard. He does not want a house behind him. He believes the detriment to all the neighbors outweighs the benefit to the applicant.

Mr. Dowse explained that he talked to the architect who spoke with the Highway Department last week and they understand that those ditches are essential and they are going to work with the Highway Department to ensure that they maintain their ability to drain water. The Dowse’s are willing to work with the Town.

Ron Fiegl, 8280 Westphalinger Road, said that ditch drains into another property which drains out to Tonawanda Creek. So Mr. Dowse’s property can be maintained as much as he allows them to but what if the property on Tonawanda Creek doesn’t allow the ditch to be cleaned, that’s not going to drain anywhere. Mr. Fiegl said he is a hunter and he has tree stands set up back there. If the house is put out by the road he still has his 500’ of shooting distance that is New York State Law. If the house is put back there he is cut right off. That is one of the reasons he bought the property he has.

Mr. Thrun said the Board can guarantee that Mr. Dowse will work with the Highway Department and Mr. Dowse said he is willing to work with the Highway Department regarding his property and the ditches that run through it. This is the approval the Board is looking at tonight. The Board has no control over the other properties that lay outside of Mr. Dowse’s property and his control. The Board cannot guarantee that the adjacent property owners will work with the Highway Department and keep the ditches clean. That is part of the easement and they need to do their due diligence. The Board can only address the applicant’s issues, they cannot address the other property owner issues, whether upstream or downstream.

Mr. Feigl said there is plenty of road frontage that needs to be developed before we start putting houses in people’s back yards. His tree stands are on his property but if the house is built he can’t hunt there anymore. He has lived in Clarence his whole life and that is one thing Clarence has always kept under control is the development. He asked why we need 150’ road frontage if we are building on 75’. He and Roy have ponds in their backyards and it is very close to the proposed location of the house. He also voiced his concern

with depreciation of property values. He asked what the applicant planned on using for a driveway. Once a driveway goes in there will be more drainage issues, it is all flat land around there. Mr. Feigl said there are a lot of similar variances like the one on Wolcott Road that happened 10 years ago, they had enough road frontage to put their house in but what happened was the front of their house was to start at the back of the neighboring houses. 600' is too far back, and how high is the house going to be? It is going to be sitting on top of a mound, it is not a place to put a house. Keep Clarence beautiful.

Mr. Dowse noted Tab "E" of his submission and agreed with Mr. Feigl saying these setbacks are not new to Clarence. Tab "E" shows similar situations where houses have been approved to sit back behind other houses.

Clifford Cramer, of 8204 Westphalinger Road, voiced his concern regarding the ditch. Before that ditch was put in you could see the water run from the back ditch behind him out to Westphalinger. The ditch has been relatively dry, he does not want to see that ditch change. He does not have an issue with the location of the house.

Mrs. Feigl, of 8280 Westphalinger, has lived there for 15 years and knows what goes on behind her house. It scares her. There are hunters. It's agricultural. They lease the land behind the big farming equipment. There are farmers that shoot deer at night to control the deer so they don't eat the crop. Where they want to put their house is not a safe spot.

Chairman Michnik said there are laws that would protect the property owner from having someone shoot a gun on his property. Deputy Town Attorney Steve Bengart said that is correct, there is a 500' law. Mrs. Feigl said she can hear it in her house. She is concerned with the children.

Jennifer Schneider, of 8184 Westphalinger, said has lived her for four (4) years. Her husband is a home builder so they knew the applicant's property was a landlocked parcel. She knows there is no guarantee that the applicant is not going to expand or change their minds. There is no insurance for her that there is not going to be someone in her back yard. She moved out of living boxed in by neighbors, she does not want to do that anymore. They came in and for two (2) weekends in a row she listened to them clear out, the wildlife has changed. They just came in and cleared everything out. One of her neighbors had to go over and say, "You have to leave something". They did not go to the neighbors to advise what is going on. Ms. Schneider said it is their property, they are entitled and they can do what they want but you would think they would introduce themselves to the neighbors and tell them what is going on. She doesn't understand why the house has to be in all of their backyards. What is her guarantee that they will not build a garage and work on cars or have horses or build two more houses, there is plenty of room for them to do that and there is no guarantee. She does not want a house in her backyard.

Bill Schneider, of 8184 Westphalinger, asked what the height of the home will be over the centerline of the road, is it held at 35' like normal homes? Chairman Michnik said whatever the Building Code is will be what the applicant can build to. Mr. Schneider said they are going to elevate the home, are they going to raise it out of the floodplain? Chairman Michnik noted that the applicant will have to go through the building department for a building permit and they will have stipulations on the height and the location as well as the drainage. There are many discussions and permits needed in order to build a house, it doesn't just get dropped in there. Mr. Schneider referred to the drainage issue and asked what guarantees the neighbors have. Chairman Michnik said there is a form that the applicant will sign for a permanent easement for that property. Mr. Schneider asked if that form will be signed before the building permits are issued. Chairman Michnik said there are many steps that need to be taken before a building permit is issued

and that is if it even gets past the Zoning Board of Appeals. Mr. Schneider said, for the record, the neighbors are very concerned about the water issue, yes it is stated and yes the Attorney understands it, but he wants it duly noted. The water in that neighborhood is of the utmost concern, it should be their concern too. Chairman Michnik said it was stated that if this is approved the applicant would do his due diligence and the neighbors around him also need to do their due diligence and keep their ditches open too, you can't put it on one person. Mr. Schneider asked if the applicant will be going for a FEMA permit. Mr. Callahan clarified that any disturbance of that land will require a floodplain development permit as issued by the Town Engineer. Mr. Schneider asked if there are further homes built on the property will they be back for another variance or once this variance goes through can they put multiple homes on the property. Deputy Town Attorney said if they ever came back it would probably go to the Town Board, not this Board. The neighbors would be notified. Mr. Schneider said there were some property owners that were not notified. Mr. Callahan clarified that the adjoining properties are notified by the applicant as part of the application. Mr. Schneider said neighbors on Tonawanda Creek Road should have been notified. Deputy Town Attorney said the law was followed as far as notifications.

Ron Fiegl, of 8280 Westphalinger, said he owns a large parcel next to the applicant's property. He has enough road frontage that he could develop his property as well. He really has no intentions of doing this but if houses are going to be plastered in people's back yards, he might as well capitalize on it too. He has concerns with the location of the applicant's home so it won't interfere with a home he might want to build in the future. Chairman Michnik said that would be discussed at the time Mr. Fiegl decides to build, it is not something the Board can predict.

Mr. D'Amato said the appeals that the Board hears are all unique. The Board listens to every single concern, question or issue that is brought up and then they make a decision. This piece of property is unique in design and location. Mr. Feigl said the property sold for a low price because it is undevelopable. Mr. D'Amato said that has nothing to do with this hearing. Mr. Fiegl asked what the 150' of road frontage mean. Mr. D'Amato said it is unique to each property, Mr. Dowse does not have that advantage right now. Mr. Feigl said 10 years ago the Town made people divide their properties because the frontage changed from 100' to 150'. So if you had 200' you had to divide your property into two (2) lots and pay double taxes on it. Now 75' is enough to build on? Mr. Callahan clarified that this is a pre-existing lot, this lot was created long before the law changed to 150', this lot has been assessed as a buildable lot.

Deputy Town Attorney Steve Bengart reminds everyone that this is not a debate, it is a public hearing to provide information to the Board so they can make a decision.

Mr. Mills asked Mr. Feigl if it is more or less appealing to him if the house was setback even further. Mr. Feigl said less appealing. The farther forward the better. It should be on the 75', keep it even.

Roy Schneiderman, of 8160 Westphalinger, said the applicant is inconsiderate of all of his neighbors. He and his neighbors all paid a lot for their homes because of the privacy. There are houses going up but they are going up next to the road, no one has a problem with that. He said all the neighbors are against this.

Bill Schneider, of 8184 Westphalinger, addresses the distance from the road. He suggested the Board move the house forward, don't disrupt the entire neighborhood. It will help the neighborhood in that they won't walk out into their back yards and see his house. If he lives back there it is not going to be a good feeling with the rest of the neighbors. Pulling it forward would be a sign of good faith. Chairman Michnik asked what the reasoning is for moving the house forward. Mr. Schneider said the rest of the street is like that.

Mr. Mills said the size house that Mr. Dowse said he wants to build theoretically could fit on the 75' frontage with a 15' side yard setback and it would be in line with the other homes. He asked Mr. Dowse why he is so averse to keeping it in line. Mr. Dowse said it is septic in this area, not sewer water, and the Erie County Health Department requires 150' of width to put in a septic system for public safety. Mr. Mills asked if he could run the septic system farther back, Mr. Dowse does not know. Mr. McNamara said the house would have to be raised higher and higher in order to get the proper pitch to the septic system if it was farther back. He would have to increase the fill. There would be no advantage to this.

A resident asked, if the house was built on the 75', how would the Town get back on the property to maintain the ditch? The house would take up most of that 75'.

Some neighbors were suggesting the house be moved closer to the road, this would put it closer to one of the neighbor's homes at 8204 Westphalinger, but that neighbor does not want the house right behind his. That neighbor said he has no objection to the original proposed location of the home. He does not want it any closer than what the applicant originally told him.

Mr. McNamara referred to the aerial photos and said it appears that there is a tree line along the back property lines of the three (3) houses that border the property and front on Westphalinger (8170, 8184 and 8204), it appears that the tree line will block the view of the proposed house. 8160 Westphalinger is behind two (2) other houses 8170 and 8184 Westphalinger. The proposed house is almost at the same distance as 8160 Westphalinger.

Mr. D'Amato referred to the applicant's submission with regards to 8535 Wolcott, Mr. D'Amato lives at 8485 Wolcott, he has a house directly behind him and they share a common driveway. Drainage problems are very common in Clarence. As far as neighbors behind him, he does not hear anything because they are blocked by shrubs and trees. He has a farm and animals on Wolcott, the Town does a good job of clearing the ditches, they do not have any issues. He and his neighbor work together using the driveway or blocking it depending on the weather. This is a similar situation to what is being discussed here and it does not negatively affect the neighbors.

Mr. Dowse realizes that neighbor's concerns that he will be building in their backyards. There is an existing hedgerow there. He bought 10 acres because he wants space and his own privacy also. He and his wife are planning on planting an evergreen hedgerow to help block any view the neighbors have and the view that he would have of them.

Jennifer Schneider, of 8184 Westphalinger, said there is a bend in the road. The three houses that were referred to are not behind each other, the road curves there. Mr. McNamara referred to the aerial photo and pointed out the house that is behind the others. Ms. Schneider feels bad for these people because if they build a house there they will not have any friends in the neighborhood because they are building in everyone's backyard. She said he cleared all the trees and shrubbery out so there is no buffer. Chairman Michnik said he walked the property and there are still a lot of existing trees and shrubbery that remain. Mr. D'Amato asked if it is acceptable for 8160 Westphalinger to be in Ms. Schneider's back yard why isn't it ok for the applicant. She said because she can't see 8160 and the road goes back there. Mr. McNamara said he lives in a house 600' off the road behind other people. Ms. Schneider said she just doesn't want anyone living in her back yard. Mr. McNamara said his neighbors are his best friends now because after he built his house behind them he did what it took to be a good neighbor. Hopefully the applicant will do what it takes too, perhaps planting trees and installing berms. Mr. McNamara noted that it is Mr. Dowse's property, not Ms. Schneider's. He has a development going in behind him and there is nothing he can do

about it because he does not own the property. Mr. McNamara said Mr. Dowse could build an open development with four (4) homes. Ms. Schneider said that's what she is afraid of. Chairman Michnik explained that if the variance is granted, Mr. Dowse is asking for one (1) house, not multiple homes. Mr. Callahan said as a condition of an approval it can be limited to one (1) house. That is the safeguard for the Board and the neighbors.

Mr. Thrun explained that if this was a developer, instead of Mr. Dowse, he could go before the Town Board and ask for approval of an Open Development and put four (4) houses there. At least Mr. Dowse is coming before this Board who can restrict him to one (1) house, this is a benefit to the neighbors. Mr. Thrun said not that it can't happen in the future but at this point it would be restricted. Deputy Town Attorney clarified that if this Board granted an approval with the condition of only one (1) home to be built that approval runs with the land forever. However if it gets denied, someone else could come in and apply to the Town Board for an open development for up to four (4) homes/lots.

Mr. Feigl said if the house is built on the 75' than that blocks any future development on the back larger piece. He will sign something to let the Town use his property to get back on the property to maintain the ditch. He said the Town hasn't cleaned the ditch in 15 years. Deputy Town Attorney said he should contact the highway department if he and his neighbors are having drainage issues with the ditch.

Mr. Mills asked the applicant if he is willing to agree to a condition, if the variance was granted, of a restriction for only one (1) single family home to be built on the property. Mr. and Mrs. Dowse agreed. Mr. Mills asked if the applicant would also agree to a permanent easement provided to the Town to be able to clean out the ditches. Mr. Dowse said yes he would be agreeable to that once they work with the Highway and Engineering Department, they have already discussed a pond on site and reworking some of the ditches.

Maximum height of the house would be within building code, it would be a two-story house. The setback variance is the only variance they will be seeking. There will be an attached garage. Additional structures may be built on the property but only what is allowed by code.

A resident said the septic could be put out the back of the house.

Roy Schneiderman said his bedroom window looks out onto nothing now, if this house is built that is what he will see when he looks out his window. Because it says "proposed" in the request could the house be even closer to Mr. Schneiderman's house than shown? Chairman Michnik said it is possible because we don't know the lay of the land at this point.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara, to **approve** Appeal No. 4 under New Business subject to the following conditions:

- 1.) Only one (1) home/residence be built on the property. The applicant has agreed to this.
- 2.) If the applicant desires to alter/modify the drainage plan that currently exists on the property it is to be approved by the Town Engineer. Once the system is consistent with how it is now or altered, the applicant agrees to allow a permanent easement to the Town for endless access and said agreement is to be provided to the Town Attorney's Office for review and approval by the Town Attorney's office.

- 3.) The applicant shall provide an evergreen buffer along each side of the property where neighbors would have a view shed.

ON THE QUESTION:

The applicant advised that he plans on adding an additional hedgerow of evergreens will be planted behind the existing hedgerow to block it year round.

Condition #3 leaves a lot of discretion for the application to work with the neighbors.

This is a unique piece of property. There is evidence and testimony that this was a pre-existing conforming lot at 75' width. The conditions of the site, the buffers of the site and the size of the parcel are all factored into the decision making of this request.

Richard McNamara	Aye	Gregory Thrun	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 5

David Thompson
Residential Single Family

Requests the Board of Appeals approve and grant an 840 square foot variance to allow for the construction of a 1,040 square foot detached accessory structure located in the rear yard of 9265 Roll Road.

Appeal No. 5 is in variance to §229-55(H).

DISCUSSION:

Five (5) neighbor notification forms are on file.

David Thompson is present and explained that he is building a new house and is looking at moving into it in March 2016 and would like to build a pole barn style, second garage for storage as well. He would store his garden tractors and collector cars in the structure. The house is currently being built and the property was staked for the proposed structure.

Mr. Mills asked if the applicant can accomplish what he wants with any less size structure. Mr. Thompson said he measured his vehicles and the proposed size is what he needs. Mr. Mills referred to the document entitled "heritagebuildingspa.com" and asked if the applicant contemplated doing anything more aesthetically pleasing based upon the size of the structure. Mr. Thompson said he has not but he is open to suggestions. Mr. Mills suggested matching the materials of the structure to the house. Mr. Thompson said he was going to do a two-tone metal siding, his house will have brick on the bottom and siding on top so the two-tone would match, but he only priced the material is steel, not vinyl. Mr. Mills suggested doing something with the front of the structure that would match the home, Mr. Thompson said he is willing to look into it and obtain price comparisons to see if it fits his budget.

Mr. Thompson owns just under three (3) acres. Chairman Michnik asked why he wouldn't locate the structure further back on the property. Mr. Thompson said if he did that he would have to extend the driveway, he would have to extend the roof drains, he wants to place it in the proposed location for simplicity reasons. Chairman Michnik voiced his concern with the placement of the structure saying it is not advantageous to his neighbors, if the applicant wants something this large it should be moved to the back of the property which would give him more room and it would be behind the existing neighbor's home. He feels this is a large request.

Mr. Thrun said it is a large parcel and the structure could be located at a distance further back than what is proposed.

Mr. D'Amato agreed with Chairman Michnik.

Mr. Thompson said the house is approximately 90' off the road.

Jane Yousey, of 9255 Roll Road, voiced her concern about the size of the structure. She restored an old barn and made it her home, it has a lot of character. Right now she has no view because of the house, and now they want to put another building there. It is right outside her home, it has affected the value of her property. She asked if there was a drainage survey done for this proposed building. That location has always been a low spot, she is not sure what the applicant could accomplish in the back of the property because it is swamp land.

Matthew Richards, of 9275 Roll Road, voiced his concern regarding the drainage. If the applicant is forced to move the structure where would it be moved to? If it is pushed to the other side of the lot he wants to make sure there is proper drainage and that the water is not pushed onto his property.

The front of Ms. Yousey's house is approximately 150'-160' off the road.

Mr. Callahan noted that the applicant has to show that the property will drain properly as part of the building permit. If the structure is wholly in the rear yard the setback requirement is 5'.

Ms. Yousey said if the applicant moved the structure further back that will be an issue too because she does not want him staring at her back either. Some of the property is a floodzone. Chairman Michnik said the structure would have to meet certain drainage requirements so everyone is protected.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **table** Appeal No. 5 under New Business so more information can be gathered. The homeowner should re-stake the property showing the location discussed, which was passed the back of the existing neighbor's home.

ON THE QUESTION:

Deputy Town Attorney Steve Bengart suggested the applicant talk to the neighbor's for their input as well. The applicant is to advise the Planning and Zoning Office by the end of January if he wants to be placed on the February 9, 2016 Zoning Board of Appeals Agenda.

Richard McNamara	Aye	Gregory Thrun	Aye
David D’Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 6

John Miosi
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a 1’ variance to raise the top of foundation wall from 758.50 to 759.50 for the proposed single family residence located at 9743 Cobblestone Drive.

Appeal No. 6 is in variance to §229-23(A) and (C).

DISCUSSION:

One Neighbor notification form is on file, the applicant’s representative said he texted with the other neighbor who said she does not have a problem as long as it does not affect her lot. The representative said the 1’ raising of the building will not affect her property. Mr. Miosi wants to hold it up a foot because on either side of this lot the houses that were built had to be rocked out with a rock hammer. They hit such hard rock that it took a lot of extra time and money. They broke a hammer on each site. It will be a daylight basement so that will help drainage in the back. It won’t affect the elevation of the other houses because it is a ranch home, the homes on either side are 2-story homes. The proposed square footage of the home is 3,000, three bedroom, three car garage.

ACTION:

Motion by David D’Amato, seconded by Ryan Mills, to **approve** Appeal No. 6 under New Business, as written.

ON THE QUESTION:

Mr. Mills said the additional one foot (1’) height seems to be mitigated with the fact that this is a ranch style house and will not affect any height differentials between this house and nearby homes as a result of it being a ranch and not a two-story house.

Richard McNamara	Aye	Gregory Thrun	Aye
David D’Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Meeting adjourned at 9:28 p.m.

Carolyn Delgato
Senior Clerk Typist