

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday October 14, 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
Deputy Town Attorney Steven Bengart

Other interested parties present:

Michael Dunn	Julie Ludtka	Melissa Hinman
Ken Thompson	Dawn Trippie	Ryan Storke
Pam Armstrong	Sara McEvoy	Kathy McEvoy
Marie Menza	Frank Menza	Tom Klebes
Thom Palmer	Jean Marquart	Robert Marquart
Tom Goebel	Dierdre D. Booth	Thurza W. Capozzi
Tressa Romanowski	Beverly Tate	William Tate
Lisa Haney	Dave Haney	Marc Romanowski
Jim Romanowski	John Karpie	Edward Majchrzak
Jim Campbell	Leonard Janiga	Patrick Spoth
Hans J. Mobius	Chris Carollo	Brent Dewitt
Kara Woeppel	Elaine Nuara	Joseph Nuara
Robert Vanderbles	Terry Lounsbury	Lucy Duff
Virginia Rubinstein	John Rubinstein	Paula Nenni
Paul Nenni	Nicolette Shanley	Kevin Shanley
Sharon Roberts	Michael McLaughlin	Patricia McLaughlin
Terry Grolemond	Thomas Grolemond	David Warner
Ray August	Joe Haller	Larry Higley
Lindsay Haller	Donna Baia	Susan Wickenhiser
Al Coffield	Donna Coffield	George Berger
Dan Rossi	Kelly Rossi	Marc Wasserman
Marcia Mitchell	Fred Mitchell	Alan Kurtzman
William R. Hoppe	Rose Sickler	Charles A. Sickler
Patricia Hoppe	John V. Akiki	Craig Roesch
Amanda Roesch	Lois Thompson	Steve Dale
Robert Sackett	Todd Kendzierski	Beth Kendzierski

Ed Bockstahler
Patrick Sheedy
Richard Klenk

Jeanette Bockstahler
Judith Horvatits

John Lopez
Gary Horvatits

The Zoning Board of Appeals Members and Deputy Town Attorney Steve Bengart entered into Executive Session to discuss an Attorney-Client matter. The meeting resumed at 7:07pm.

Old Business

Appeal No. 6 (from August 2014)

Gary and Judy Horvatits
Residential Single Family Zone

Requests the Board of Appeals clarify the rear yard setbacks relating to a previously approved variance of 240 square foot to allow for the construction of a 440 square foot detached garage located at 4920 Cliffside Drive West.

Appeal No. 6 is in variance to §229-55(H).

DISCUSSION:

Gary and Judy Horvatits are present.

The project was tabled at the August 2014 meeting because it was unclear as to whether the locations of the structure would be at the back of the property or in the middle of the property. Mr. Horvatits said the location of the structure will be in the middle-rear of the property. He thinks he is back before the Board because when his contractor submitted the paperwork the location of the structure was depicted as 5'-10' off his neighbor's property line. This is not true, the proposed location is 38'-40' from both neighbor's property lines and will be at the back of his property placed right before the 20'-30' of woods that he owns.

Mr. Mills clarified that there is no need for any side or rear yard setbacks, it is a variance request for the size of the structure which was already granted. Mr. Horvatits confirmed that nothing has changed since the last meeting.

ACTION:

Motion by Ryan Mills, seconded by Gregory Thrun, to **approve** Appeal No. 6 under Old Business, as written.

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

MOTION CARRIED.

Due to the volume of residents in attendance, the meeting is moved to the Town Hall Auditorium. Chairman Michnik noted that anyone from the public is welcome to speak on the proposal, however they will be limited to three (3) minutes. Their questions and comments must be directed to the Board, not the applicant. The applicant will have unlimited time to present the project to the Board.

Appeal No. 7 (from September 2014)

Regent Development
Commercial

Requests the Board of Appeals approve and grant an area variance for the proposed density of 124 apartments for the multi-family component of the proposed project at 8230 Wehrle Drive.

Appeal No. 7 is in variance to §229-126(D)(1)(c). Per the amendment to the Town's Multi-Family Law, adopted by the Town Board July 23, 2014, the allowable density for this proposed project is 93 units.

DISCUSSION:

Deputy Town Attorney Steve Bengart noted that he had discussions with both counsel for the petitioner and counsel for the numerous people who are in opposition to the proposal and it was understood that this matter would be tabled because this Board needs the opportunity to receive and review the SEQRA information. The matter will remain tabled unless someone is in attendance to speak on this agenda item. It appears that there is no one to speak on the matter, so Deputy Town Attorney Steve Bengart suggested the item remain tabled.

New Business**Appeal No. 1**

CEC-Energy/Ryan Storke
Residential Single Family Zone

Requests the Board of Appeals approve and grant a 73.5' variance to allow for the construction of a 133.5' wind turbine located at 8850 Clarence Center Road.

Appeal No. 1 is in variance to §173-4(C).

DISCUSSION:

Ryan Storke is present and asked the Board if the Thompson farm is zoned agriculturally. Deputy Town Attorney Steve Bengart said this is a public hearing in which information is to be provided by the applicant to the Board, not to ask questions of the Board. The Board can ask questions of the applicant. The applicant can pose his question but the Board is not to answer it. Mr. Storke referred to the decibel readings in the information that was sent to the Board members. He noted that the reading at the new proposed height from 500' away will be less than 42.4 decibels, if this is compared to a lawnmower, the lawnmowers decibel reading from 500' away is 80. He understands that from a previous meeting there was a noise complaint, he said that if the turbine were to be placed lower, it would be louder. There are documents available for third party testing on this turbine and the decibel reading which are being presented to the Attorney right now. It is a bergey, it is a 10kw machine, the applicant is willing to take a 5% decrease in production and agreed to lower the height as presented. The lower the machine the less power you get. Ms. Trippie has also agreed to re-evaluate and install a more aesthetically appealing tower, which will increase the cost of the project. She hopes it will mitigate some of the issues brought forth. The wind turbine has already received FAA approval, so they are aware of the possibility of any structure in the area. Ms. Trippie is willing to take random decibel readings at her property location. When a plane is flying overhead it is anywhere from 73-78 decibels. These wind turbines are small and are not loud. The documented OA standard for backdrop noise is 52.1 decibels. That's what the average backdrop noise is at 120'. The bergey at the height one meter away is 58 decibels.

Dawn Trippie said the property is a family farm that has been in her husband's family since the 1850's, it has always been used as agriculture. In 2005 during a master zone change, without their knowledge, the

zoning was changed to single family homes. She referred to attachment #3 of the binder she submitted that references the Town Code and said permitted uses are pre-existing agricultural operations, she said since they have been there since 1850 she thinks they are pre-existing. She goes on to read from the code, "Customary agricultural uses within the Residential Single-Family District shall be permitted only on lots that measure over 5 acres in size." Her lot is 18.9 acres that is zoned for use as Agricultural. They are certified by NYS and Erie County as an agricultural district which affords them all the right-to-farm laws. Everyone knows that Clarence is a right-to-farm community. The Department of Agriculture and Markets which regulates her farm because they are in an agricultural district has determined that wind turbines are part of essential farm equipment and if the agriculture and the right-to-farm laws are referred to in place by both Erie County and the Town of Clarence, it grants her the right for farm equipment and regular uses. Wind turbines are fairly new so the Department of Agriculture and Markets has come forward to say they now consider them part of farm equipment. When you are buying a home in the Town of Clarence or in any town that has a right-to-farm law there are stipulations that if you are buying within one mile of a working farm that you should be aware of agriculture practices. They are making improvements on their greenhouses every year spending a minimum of \$30,000 a year to become energy efficient and to make other improvements. On the outside the property looks old, but it is maintained. They have been granted \$40,000 that is on the table waiting for this project. Now the grant is going to go down because the output is going to go down. She said she is protected by all the right-to-farm laws.

Mr. Storke said there was a recent article written by a mortgage company in NYS stating that with this new United Wind Leasing Financial Firm; the wind turbines on your property actually increases the property value once it assessed. There is no decrease in value of the surrounding property or the property itself. Out of the 15 wind turbines they installed those properties were re-assessed and the value did not decrease, nor did the surrounding properties value decrease.

Mr. Thrun asked if the applicant has an updated site map to reflect the new variance request. Mr. Storke referenced the wind quote page 1-5, it is entered into the record as Exhibit 6. Mr. Storke said the picture shown in that exhibit is a self-supporting lattice structure. Mr. Thrun asked about wetlands and flight patterns in the area. Mr. Storke said studies show the migratory bird path will not be impacted by this structure.

Mr. D'Amato recapped: originally the request was for a 155' turbine, it has been changed to 133.5'. Mr. Storke said solar energy could be used too but dollar for dollar the wind in the Clarence area will be more productive than the sun. The wind turbine comes with a 20 year warranty. Ms. Trippie said she will not be selling any excess energy back to the grid. The top of the structure was changed due to aesthetics; it is an increase in cost for this type of turbine. The guide tower is a 6' deep, 3' wide at the base pier. The safety features are the same as described in the first meeting on this variance and a fence can be incorporated if the Towns desires.

United Wind incorporates the production guarantee so they choose the location of the tower. If the turbine where to malfunction at the tower base it will not collapse vertically, it will fall horizontally.

Mrs. Burkard asked if the solar energy is subsidized by the government, Mr. Storke said yes. Solar energy is more expensive than wind power, Mr. Storke guesses at 5%-10% more. Mrs. Burkard asked if the report Mr. Storke spoke of, where the property values did not decrease when a turbine was installed, was done in a residential neighborhood with homes surrounding the property where the turbine was installed. Mr. Storke said yes in the Town of Otisco, NY. Mrs. Burkard asked if these turbines are located in neighborhoods with single family homes/developments surrounding the property. Mr. Storke said no. Mrs. Burkard referred to the noise level in which Mr. Storke compared it to a plane at 73 decibels, she noted that a plane

is just a temporary noise, then asked if the turbine noise is constant at 42 decibels. Mr. Storke said yes it is constant. He described it as a background noise comparable to a washing machine. Ms. Trippie submitted a report showing the current decibel sounds from different locations on her property, this report is on file as Exhibit 7. Ms. Trippie also recorded two windmills in motion on her iPad, the recording was taken this past Sunday in the Town of Royalton, the windmills are the same size as what she is asking for.

Mr. Mills asked if weather conditions might impact the sound the windmill emits. Mr. Storke said the windmill will go as fast as the wind blows and when it reaches a point that it is no longer safe to operate it goes into a dumb mode which slows the machine down. At peak power of production at 500' away the total decibel reading is going to be 70.02 decibels. Mr. Mills asked what the miles per hour is at that point. Mr. Storke said it is at 16.5 meters per second, multiply that number by 2.23 and that will give you miles per hour. Mr. Mills said if the weather conditions are evolving and it is windier outside the noise level is going to go up. Mr. Storke agreed and said the fact is that the increased wind will increase the decibel level. Mr. Mills asked if Mr. Storke thinks it is a benefit to the applicant to install a windmill at 60'. Mr. Storke said no, there would be no power savings benefit. Mr. Mills asked at what height the windmill would be a benefit to the applicant. Mr. Storke said 120', anything less would generate more out-of-pocket costs for the applicant. Mr. Mills said a 60' windmill would still realize some savings, Mr. Storke agreed but he is not sure of the capability of that machine. Mr. Mills is confused by the fact that American Energy Wind Association indicates the average height of a small wind turbine is about 8'. Mr. Storke said they don't work for a farm application, somebody that uses electricity. It is turbulence intensity driven, the more turbulent air, the more inefficient the windmill will be. Mr. Storke said turbines have to be 30' above the tree line according to the rule of thumb. Mr. Mills asked if there is anything else that can be done to mitigate the aesthetics of the visual characteristics of the structure. Are there any transparent self-supporting lattice systems? Mr. Storke said there are a myriad of things that can be done, however there would be an additional cost to the customer. A mono-pole structure can be used. Mr. Storke said the self-supporting lattices have the least visual impact for the neighbors in this area. Mr. Mills asked if Mr. Storke has been involved in the applications of a turbine in an area that is as dense with residential single family homes as this area is. Mr. Storke said yes, in Newstead, but not with the same size turbine. Mr. Mills asked for the author of the article that Mr. Storke referred to that indicated surrounding property values would not decrease with the installation of a turbine in the area. Mr. Storke did not have that information. Mr. Mills said Mr. Storke said this is a small scale turbine, he asked what Mr. Storke considers a large scale turbine. Mr. Storke said anything less than 100kw is considered residential and small scale. Mr. Mills asked about height, Mr. Storke said they don't distinguish by height. The largest windmill his company sells is 500' high. Mr. Storke confirmed that there is no exterior lighting required for the proposed turbine.

Ms. Trippie said she has three studies that were conducted with the support and funding from the United States Wind Energy Conservation, she submitted the studies plus they are on her iPad. The studies were done in the last six months and show no decrease in homes in the area of the turbine. The studies are on file as Exhibit 8.

Chairman Michnik referred to Exhibit 7 which speaks to the decibels. He asked if the meter that was used is approved. Ms. Trippie said yes, it came pre-calibrated. Chairman Michnik asked if there was anyone with her that can verify her findings. She has pictures to go with her findings. Chairman Michnik said her paperwork referenced 6083 Samantha Lane, he asked where that is in reference to her property. Ms. Trippie said it is across the street, their backyard faces her parking lot. Chairman Michnik reference the information regarding the generator and said that runs for four or five minutes, it is not constant. Ms. Trippie said yes. Chairman Michnik asked Mr. Storke to provide details on his Newstead projects. Mr. Storke said there are three (3) and they are all 140' high, the foundations are currently being installed. Chairman Michnik asked

for details on the surrounding properties. Mr. Storke said there are no comparable density populations as there are for this request.

Mr. Thrun asked if the decibels are on a time-weighted average or on the point of incident. Ms. Trippie set the meter on slow which means it will change every couple of seconds. The turbine is average in over time because it is a constant sound. Mr. Thrun said you should take the time-weighted average over 8 hours of the car's noise in order to compare it accurately. There will also be other noises in the environment that need to be taken into consideration, because it is cumulative not just a point in time. Mr. Storke said the turbine will not carry the same decibel reading because it is high in the air. The report shows the additive difference of 8 decibels. He referred to Exhibit 3 page 3 in which the details are shown. The table shows a 24-hour period.

Chairman Michnik asked if the blades will be damaged or pitted over a period of time. Mr. Storke said yes. Chairman Michnik asked if the pitting causes an increase in noise. Mr. Storke said after 10 or 12 years yes, the blades are replaced every 10 years. They are maintained every year. Chairman Michnik asked if the applicant is looking at any other design, is he looking at a traditional blade model. Mr. Storke said yes a traditional blade is what they are looking at, other designs have not been approved yet.

Mrs. Burkard asked for details on the 20 year maintenance that Mr. Storke spoke of. Mr. Storke said there is a 20 year maintenance agreement with a 20 year guarantee, after that the maintenance falls to the client if the wish to purchase the turbine from the company. If the client does not want the turbine after 20 years, the company will tear it down. The wires have been eliminated on the new design of the windmill. Chairman Michnik asked what happens if Mr. Storke's company is not around in 20 years. Mr. Storke explained that Pacific Rim holds the lease contract on the machine. If for any reason United Wind goes out of business the contract would fall on Pacific Rim. There is not a written guarantee with the lease owner that after 20 years they are going to maintain the windmill if they don't own it anymore. Ms. Trippie said when the gas well on the property was put in, NYS required them to carry a bond, which is held at the Bank of Akron, so if something happens and they don't want the gas well anymore that bond would be used for the deconstruction of that well. Ms. Trippie said they would be willing to do the same for the turbine.

Joe Haller, of 8831 Millcreek Drive, encourages the Board to look at other sources regarding the value of surrounding properties where a turbine is installed. There are other sources that say the opposite of what has been submitted by the applicant. Mr. Haller referred to a statement made by CEC Energy saying they maintain a 1.5 fall radius, that's good if the windmill falls over perfectly. There is the possibility of leg breakage and if it breaks during high winds it is a projectile well over 1.5 radius. There is a bike path in the vicinity with people walking on it, there is Clarence Center Road with vehicles travelling on it. This is not only a safety issue but a huge liability issue for the Town of Clarence, CEC Energy and Thompson Farms. He encourages the Board to deny this request at 133' and anything lower because of the possible projectile issue.

Larry Higley, of 6223 Willow Run Court, referred to a study that was on Reality.org published 2012 that states that out of 11,331 property transactions over the last 9 years in northeastern New York State with respect to the effects on property values, they found that nearby wind facilities significantly reduce the value of properties in two out of the three counties studies. He shows the Board a video. He does not have the title or any other information on the video, but he will obtain it and forward it to the Board for the file. Mr. Higley said he would not want to hear a lawnmower going for 24 hours a day. He had no expectation of a wind mill being put up behind his \$400,000-\$450,000 home when he bought it. It is decreasing the

value of his home. He hopes the Board will disapprove this. Deputy Town Attorney Steve Bengart said the applicant should see the video as well so they can comment on it. Mr. Higley said sure.

Marc Romanowski, of Harter, Secrest and Emery, LLP, is present on behalf of Jim and Tressa Romanowski who live at 8865 Clarence Center Road. Mr. Romanowski said this request fails to meet many of the standards that are political for area variances, there are also some questions regarding a use variance that may be required for this request. This Board knows that a balancing test must be made by the Board, to balance the benefit of the applicant against the detriment to the neighborhood. He knows there is a hefty record already demonstrating the significant concerns by the neighborhood. The benefit to the applicant here is an economic return on a significant variance, this fails to meet the standard applicable to the area variance. The degree of variance sought is grossly in excess of what is required under code. The Town's code limits the height of these structures to 60', the request here is 133', which is a 220% exception to the standard. New York State Law is clear that at that level it goes outside the jurisdiction of the Zoning Board of Appeals and becomes a legislative act. It is simply too excessive for this Board to consider. He will present case law to the Town Attorney's Office to this effect. He is concerned with the use itself because of the intended purpose would require a use variance as well. Chapter 173 of the Code says specifically that it is meant to be an accessory to a residential use. The applicant is made it more than clear that she is operating a commercial farm on this property and this is intended to supplement that use. He has not heard any testimony tonight that points to the applicant satisfying the code requirement of Chapter 173 to demonstrate that the noise levels at the property line would be ambient. This is a rural community and in the evening the decibel level is probably 45. He has heard no testimony that in the evening when the wind is blowing the turbine noise will be at 45 decibels at the property line. The applicant talked about the Right-to-Farm Law and somehow was usurping some of the standards that are applicable here and that is not true. The Right-to-Farm Law talks about allowing farming as a use, not allowing you to simply trample over the local code. He and his clients appreciate the Board's consideration to deny the application.

Patrick Spoth, president of Erie County Farm Bureau, said the Bureau is a 700 member representation of farmers. He would like to go on record as in support of this project. He said it hasn't been brought up but wants it noted that this is an Ag-District property. There are different regulations that pertain to the Ag-District. This Board needs to clarify the fact that the property is in an Ag-District and what the laws are that pertain to farming practices in that district. He spoke with NYS Ag and Markets, it says in the law that wind turbines, used to supply farms with electrical needs not exceeding 100% of the farm's anticipated demand, are farm equipment allowing use on Agricultural District and protected by the New York State Ag & Markets Law. This needs to be addressed. He goes on to say the law indicates that there are other provisional local laws that could be considered unreasonable or restrictive including height restrictions and excessive setbacks to buildings and property lines. The property is a farm, it is producing horticultural products. There are 18 million dollars in greenhouse horticultural production in Erie County. The reason Ag districts are created is to protect farming. This property is in an Ag district and until Mr. Spoth hears the Board tell him differently, they (the Board) are misleading the people about this project.

John Rubinstein, of 6074 Jessica Place, said he likes the Thompsons and buys his Mums from them. Mr. Rubinstein does not think the applicant is being denied any rights. They have the right to build a 60' structure. They are looking for a variance that impinges on the rights of all the neighbors. It is visual pollution. The CEC representative said with the winds at 32mph you get 72 decibels and he said 80 decibels from an airplane is harmful to your ear. No one knows how long the winds going to blow for 32mph, it could be for hours, does anyone really want to be subjected to a jet plane overhead for hours? He understands their desire for cheaper energy but the neighbors have rights too, which include not having

visual pollution, not having the sounds of rotating blades, not having shadows come across his lawn and his home. He encouraged the Board to deny the request.

Donna Baia, of 8841 Millcreek Drive, said the windmill is basically in her backyard. It is three doors away from her, she is a family with young children who use the yard and outdoors continuously. The last thing they want is continuous noise. They moved to Clarence for the peacefulness, beauty and serenity of this area, with a wind turbine in her back yard that is certainly compromised. She submitted articles that addressed the issue of wind turbines causing health problems. There have been varied studies done and show that there are adverse health effects that are seen with living in close proximity to a wind turbine. She reads from the article, "The latest argument states that wind power endangers the health of people who live near windmills. Some people call this theory 'wind-turbine syndrome'. Infrasound is the primary issue for those concerned about wind-turbine syndrome. They also say that audible sound and vibrations contribute to the health problems reported by some people who live close to wind farms. Symptoms of wind-turbine syndrome might include: headaches, sleep problems, night terrors or learning disabilities in children, ringing in the ears (tinnitus), mood problems (irritability, anxiety), concentration and memory problems, issues with equilibrium, dizziness and nausea. Researchers studying wind-turbine syndrome also recommend a larger buffer zone around wind farms to protect people from any ill effects. Some people say the distance should be at least 1.2 miles. Others suggest at least 2 miles." Ms. Baia said she does not live 2 miles from this wind turbine. The question the Board needs to ask themselves is do the needs and wants of one particular business outweigh those of an entire community. The articles are submitted as Exhibit 9.

Thom Palmer, of 6024 Jessica Place, said the 60' height restriction was established after due research by the Town Counsel, he asked what the benefit is that would be so great as to cause these limits that were researched and established to be overturned. Mr. Palmer said all the people in Amber Meadows and behind the bike path understood when they purchased in this area that it was an Ag District, but they also understood when they placed their money down and planned their futures here that the height restriction on anything was 60'. He knows nothing of anything that is greater than that. He asked the Board where the benefit is that the neighbors would see. It is difficult to conceive 120' high, he suggested that the Town put up some type of guide-like balloon to see what 120' looks like and then see if it is not a distraction to look at in anyone's backyard.

Susan Wickenhiser, of 8710 Clarence Center Road, said her concern regarding the tower is the aesthetics of it. Her driveway is a visual to this tower. Having a lattice tower there, she is concerned about the safety of the kids. Her son plays outside all year round. She is also concerned about having constant noise of a washing machine going, then add the wind factor to that. That's why her driveway is on that side, because the wind goes in that direction. If something malfunctioned with those blades, between the people on the bike path, her son in the yard all the time, she is very concerned about this. There are kids that roam around in the area at night and they will easily get to that tower especially if it not lit up.

Deirdre Booth, of 6075 Samantha Lane, spoke of the environmental impact statement and said it continues to be a concern whether it's 60' or higher. She referred to variable turbine source levels and said the CEC representative has referred to this with regard to project specific contour maps and Mr. Thrun referenced the audiology aspect of it. She said it is important to know that all of those predictions are based on ideal conditions, there are not ideal conditions where they live. The predictions also refer to brand new equipment in beautiful condition, this is not the norm as we move forward.

Tressa Romanowski, of 8865 Clarence Center Road, said she and her husband love where they live and have known the Thompsons for years. They enjoy the seasonal displays. She is concerned that after a long day's work when they want to sit on their porch they will have a strobe light effect on their front lawn, on

themselves and on their windows. This will also happen to other people in the neighborhood. They also like peace and quiet at night, they like to sleep with the windows open, she does not want to hear this thing whirring all night long. She does not want the windmill across the street from her house.

Ben Baia, of 8841 Millcreek Drive, he asked the Board to deny the variance request. There are alternatives to wind energy. He thinks he heard the CEC Energy representative say the kilowatts would have to be increased to 15 instead of 10kw if they moved to solar energy. There is no hazard, there is no safety risk, it's low and the price, per his (CEC rep) statement, is only 10% more for solar energy. There would be no risk from an audiology standpoint. They systems that CEC Energy installs do not have blade pitch control systems. Mr. Baia works for a company called Moog, they do industrial wind energy and all the systems that are industrial have pitch control systems to avoid a situation where a gust of wind could snap the blades off.

Lucy Duff, of 6133 Blossom Court, she has lived there for 21 years and appreciate the Thompsons being in the community, she has purchased items from their greenhouse. Unfortunately, their needs are more excessive than what Ms. Duff believes they deserve. She has a young child and she is now concerned with his ability to sleep and to learn and to have issues. There is also an autistic child in the neighborhood that has sensory issues and she believes this product would cause concern for him. She is also concerned about the value of her property. Look at all the people that are in attendance at this meeting, they are concerned. If she knew there was a turbine going up near her house she would not buy it, she is not sure who would buy her house when she is ready to sell. The property values in the neighborhood will decrease. She hopes the Board will deny the request.

William Hoppe, of 6058 Samantha Lane, referred to the Ag Law that was brought up by Mr. Spoth, and Mr. Hoppe is looking at the overall intent of that law. He would interpret that law by saying the intent behind those windmills being allowed on farm property would be for farmland that would go for acres and acres. This makes perfect sense, if you look at Wyoming County you see the windmills that are on the farms that have quite substantial lots of farmland. The intent of the law is not to put something adjacent to a development area. He asked the Board to consider the overall intent of the Law if it comes to that point.

Kathy McEvoy, of 8845 Clarence Center Road, submitted the research report that supports the inner ear problems. She would like the Board to oppose this request. She asked that if the variance is granted for one of these and they decide they love it, what would stop them from having more than one installed.

Paul Nenni, of 8835 Clarence Center Road, referred to property values and said it needs to be taken into account if people are going to sell their property and were they appreciating as much as they should have, given the normal appreciation of property over time. The applicant did not talk about the wind noise through a lattice structure, there is noise involved there, too. There will be an oscillating sound, it will go up and down and will drive you crazy. This sets a dangerous precedent for other areas in the Town, if it is allowed.

Ms. Trippie said Ag and Markets is very clear on the size of farms, the minimum is 8 acres, they have 20 acres. This makes her an agricultural district and law is provided for her and her rights are protected.

Mr. Storke said it is not possible to do multiple windmills on this property because there is only one meter, they cannot connect to the home and they cannot interconnect to the meter so they can only have one turbine, this is per New York State standards. Mr. Storke referred to the video that was shown at the meeting, he said it is a utility scale turbine. Wind speed ration is 200mph, it is a large scale wind farm turbine with blades in excess of 200'. Mr. Storke said there is no pitch control on the turbine in question, all the control

mechanisms for this turbine is the dump load, it electrically brakes the machine and there is less prone to failure, there is no stress, there is no blade tip failures. He is willing to provide documentation for this manufactured bergey of the zero blade failure for the past years. He would appreciate the documents with the health concerns being forwarded to him so he can review them. He referenced the comment regarding the severity of the decibel noise and the actual frequencies. Based on wind farms, large scale wind turbines in excess of 300' output is in the 2 megawatt range, there is nothing in there concerning residential scale turbines, those blades are 10' long and the fiberglass has never been a failure. Safety is their number one concern, that is why there are setbacks and they are willing to put up fencing to keep children away from the tower. He has not yet heard a complaint of a resident who lives near a cell phone tower, in fact this turbine is not as tall as a cell phone tower. Mr. Storke said most of the concerns were based on studies that looked at wind farm turbines. He noted that there are research documents as opposed to peer review documents. He is willing to offer a decibel reading level. He is willing to offer site access to wind turbines of this scale to anyone who wants to hear it. He is also willing to put a long term decibel reading mechanism on site of a wind turbine that he installed, at his cost, to show the long term sound effect levels. He cannot stress enough that there have not been, in peer review, health related document sited at this meeting about health effects prone to distributed generation wind turbines.

Mr. Storke has been installing turbines for five (5) years. Mr. D'Amato asked if Mr. Storke has ever seen one of this units fail or heard any complaints or issues. He has only heard the complaint of the transformer, which is placed inside the home or business, because it has an electrical hum. Mr. D'Amato asked if he ever experienced a blade breaking off. Mr. Storke said there is a big difference in a utility scale turbine and a residential scale turbine, that is like comparing an orange to a watermelon. A residential turbine does not carry the same effects or mass as the utility scale turbine. The video being referred to can be viewed under the following yahoo site: search windmill breakage, windmill blade breakage, windmill turbine explosion.

Mr. Storke referred to solar production and said there is a land use side of this type of production that makes the wind production more efficient. He noted that he has the completed SEQRA Form for this project, he submitted it to the Board. This is the only document required for this industry and to support environmental impacts from the DEC. If you look at environmental impacts on an acre basis, he believes the sub-development causes a greater impact than a wind turbine. If he were to document the number of birds that were killed by structures under 200', the number is less than 100 across the United States.

Mr. Callahan explained that the property is currently zoned Residential Single Family. This zoning change took place in 2005 based on the 2001 Master Plan. There is a clause in the Residential Single Family Zoning Classification that identifies anything over 5 acres as having the rights of the Agricultural Zone.

Mr. Storke said anyone can contact him at any time with any questions or concerns they have.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to seek Lead Agency Status under the SEQRA process and initiate coordinated review to involved agencies.

ON THE QUESTION:

The applicant provided a Part I Environmental Assessment Form, it is on file.

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

MOTION CARRIED.

ACTION:

Motion by Ryan Mills, seconded by David D’Amato, to **table** Appeal No. 1 and keep the hearing open pending a SEQRA determination.

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

MOTION CARRIED.

Appeal No. 2

Double D Enterprise
Restricted Business

Requests the Board of Appeals approve and grant a variance to allow for the construction of a detached garage located within the front yard setback at 8630 Sheridan Drive.

Appeal No. 2 is in variance to §229-78(B).

DISCUSSION:

Brent DeWitt of Double D Enterprise is present and explained he is looking for a variance to build a detached garage. They currently keep a van on the property, the purpose of the garage is to store the van. In the past there has been a lot of vandalism done to prior vans and they want to avoid this situation by storing the van inside a garage. Currently the truck is stored off-site in the winter and it costs over \$1,000 a year. The truck is not used year round. Mr. DeWitt said his grandfather built the building in the 1980’s; Mr. DeWitt is the third generation of the company.

Mrs. Burkard asked what the garage will look like, will it be similar to the existing building. Mr. DeWitt said yes it will be vinyl sided with a wood grain design and the gutters and door will match the color of the building. Mr. DeWitt submits a document showing what color the siding will be, the document is on file as Exhibit #1.

Mr. D’Amato asked how long the applicant has been at the property. Mr. DeWitt said he grandfather built the building in 1982 and they have been there since. There will be no electric or phone in the garage. Mr. Mills asked if the applicant explored any other locations for the garage or the option of an attached garage. Mr. DeWitt said there is a septic system on the property, so the proposed location is the only place the garage can be placed. The nature of the business being operated at the site is a food brokerage.

Chairman Michnik noted that the applicant is asking for a 16’ x 22’ building and asked what happens if the applicant obtains a second vehicle. Mr. DeWitt said they are a small company and will not need a second truck. Chairman Michnik said he would not want to see the applicant come back in three or four years to ask for an addition to this garage. Mr. DeWitt assured the Board that his company can only afford to have one vehicle.

ACTION:

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

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

MOTION CARRIED.

Appeal No. 3

James L. Warner
Residential Single Family Zone

Requests the Board of Appeals approve and grant a 40 square foot variance to allow for the construction of a 240 square foot detached accessory structure located at 6242 Cloverleaf Drive.

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

DISCUSSION:

James Warner is present and explained that he put a pool in it would be convenient to have a cabana next to the pool. If you are out at the pool and you have to use the bathroom you have to go to the opposite side of his house to use it, it is just not convenient. He is trying to get the contractor to put the concrete in next week around the pool so he wants to be able to lay the foundation for this structure at that time. He will build the structure himself. The structure would be used to store lounge chairs and pool floats, as well. He would not want a smaller structure because he wants to have a shower in it, too, as it is a salt water pool.

There are two (2) neighbor notification forms on file. Mr. Warner sent another notification form to 6254 Cloverleaf Drive, a certified receipt is on file.

Mr. Warner said the foundation will be 12' x 20', this does not account for the awnings that will be installed.

Mr. Mills asked if there is anyway the applicant can reduce the size of the structure, perhaps cut the storage area down a couple feet and still achieve the objective he is looking for. Mr. Warner said he chose 12' x 20' because it is mathematically best for ply wood and allows the shower. If he downsized to 10' x 20' he would not be able to have a shower. The structure would be vinyl sided to match his house. Mr. Warner does not have elevations at this point. The roof would be asphalt, the same as his house.

Mr. Thrun asked if the pool equipment will still be exposed. Mr. Warner asked if it would be helpful to have the pumps and the filters enclosed but he did not get a clear answer. He will probably build a wall to shield that equipment, but he does not foresee him putting a roof over it.

Mrs. Burkard asked if there will be a patio around the proposed structure. Mr. Warner said there will be about 10' of concrete from the pool to the structure. There will be concrete all around the pool. There will be a fence around the pool and the proposed structure.

Chairman Michnik asked if the applicant looked at moving the structure closer to the home where the pergola is. Mr. Warner said he did think of that but the problem is there would have to be two separate

gates and it would take away more of his yard and he has young children who like to play in the yard. This location is a more efficient use of his property.

Chairman Michnik voiced his concern with not having blueprints for the proposed structure. He is not sure what they are approving style-wise and quality-wise.

Mr. Warner said wouldn't the structure, other than the size, be determined by the building permit later.

Chairman Michnik asked why the applicant needs the concrete poured this week, can it be poured later? Mr. Warner said the three foot border has to be put around the pool now, there is issue with something icing underneath it and lifting it up so it has to be done now. His whole yard is dug up and he would like to get all the concrete done in one process. Chairman Michnik would like to see the applicant have his concrete poured around the pool now and come back to the Board with plans for the accessory structure, this will be a better perspective for the Board to approve for the applicant. This will give the applicant time to get things together and not make a mistake by rushing the job. Mr. Warner said it will cost a lot less to have the concrete all done at the same time, then to have a company come out a second time.

Mr. Mills asked if the additional concrete area makes this a larger variance, that pad is an additional 4' x 12'. Mr. Callahan said no. Mr. Bleuer said any wall that would be built would be classified as a fence and would be subject to a fence permit through the Planning and Zoning office. Mr. Mills asked Deputy Town Attorney Steve Bengart if there is some mechanism in terms of the Board allowing the pad to be poured. Deputy Town Attorney Steve Bengart said if that is a concern of the entire Board and it could affect your vote, then the applicant should think whether he wants that vote tonight. If there are one or two Board members who are concerned with the aesthetics, although what the building looks like is not in the Board's purview directly, but it is the sense that the Board needs to look at how the aesthetics will look to other people and if trees and shrubs may be required, then it could be a valid question. To say you have to have the blueprints alone without a valid reason, wouldn't make any sense.

Mrs. Burkard said she would like to see a picture of it.

Deputy Town Attorney Steve Bengart said if the Board denies the request, the Town will get sued. He would not recommend the Board say it's ok to put in a pad and then they decide they don't like what the applicant puts up and deny it.

Mr. Warner said if the concrete is done all at the same time there will be no shifting or gapping between pieces. Chairman Michnik said there is no guarantee that concrete won't shift a week after it is put in. Mr. Warner said the best time to pour concrete is between 50 and 60 degrees otherwise there will be pockets of ice forming in the concrete.

Mr. Thrun said the applicant can have the 3' of concrete poured around the pool and then foundation for his building could be petitioned later. He will have expansion lines in anything he puts in there.

Mr. Warner said he does not want to have to re-grass or re-level his backyard. He does not want to have to have his fence taken down so they can pour more concrete. He does not want an orange fence there all winter.

Mr. Warner went on to explain some details of the accessory structure, vinyl siding, sliding glass doors, man door for the bathroom. There will be one window in the storage area, and maybe a small one in the bathroom area.

Chairman Michnik asked if there is a requirement that when a building is put up there has to be so much light and so much glass within the building. Deputy Town Attorney said even if the Board approves this it has to go to the Building Department for those issues. This Board's issue is nothing more than the size and anything beyond that is to see how it would affect other neighbors in making the determination. Beyond that is beyond this Board's purview.

ACTION:

Motion by David D'Amato, seconded by Patricia Burkard, to **approve** Appeal No. 3, as written.

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

MOTION CARRIED.

Appeal No. 4

Craig Roesch
Residential Single Family Zone

Requests the Board of Appeals approve and grant a 21.5' variance to allow for a 28.5' front yard setback for a proposed addition to an existing single family residence located at 5030 Ledge Lane.

Appeal No. 4 is in variance to §229-52(A).

DISCUSSION:

Craig and Amanda Roesch are present. Mr. Roesch submitted a letter of explanation, it is on file as Exhibit #1. Mr. Roesch explained that he and his wife both had children before they were married to each other. Mrs. Roesch moved into Mr. Roesch's house with her child and together they have three children. They are trying to accommodate the extended family that they now have. They thought of putting an addition on to the back of the home but there are septic tank issues. If they built directly behind the garage they would have a jigsaw-type layout. There are many improvements that will go along with this addition, new windows, siding, the whole house will match, the electric will be updated. It is a ranch-style home in which they plan on staying in for the rest of their lives. Mr. Roesch submitted a set of photos that show a clearer image of what he is asking for. The photos are on file as Exhibit #2. He estimates his investment at \$120,000 by the time the addition is complete. He feels it will add to the value of the street. The neighbors on either side of Mr. Roesch have been notified and are in full support of Mr. Roesch's plans. Mr. Roesch said that when his engineer submitted the floor plan he had the mud room in the great room, an adjustment has been made to the plan and it has been submitted.

Neighbor notification forms are on file.

Mr. Thrun referred to the length of the garage and asked if the applicant can bring it any closer to the house. Mr. Roesch said he thought about that but they have five (5) bicycles, a snow blower, a work bench area and a large vehicle that cannot be accessed through the hatchback without opening the garage door. There is also a concern here for safety. The leach bed is more out towards the white shed in the back. By making the front room into the master bedroom the plumbing is at a much shorter distance and that is a big financial savings. They had early estimates with designs off the back that were at \$185,000, but with the proposed

design the applicant is saving at least \$50,000. They will use vinyl siding and the colors and materials will match the house. Marino construction will do the work. He was hoping to get the new windows done before the winter and then the construction of the addition would begin in the Spring.

Mr. Mills asked if the applicant is aware of anyone else in the neighborhood or nearby streets that have a front yard variance similar to what the applicant is asking for. Mr. Roesch said yes, on Clearview there is a house that juts out in both locations, just as he is proposing. There is also one on Ledge Lane. Mr. Roesch confirmed that this is the most economical way to get the addition done. He also found that they are near bedrock from the soil borings that were done. He spoke to contractors about building up and he was told the joists would all have to be replaced on the main floor under current Building Code. Mrs. Roesch said they plan on living in the home while the addition is under construction and building up would be more difficult on the family. They do not want to be walking upstairs 40 years from now.

ACTION:

Motion by Gregory Thrun, seconded by Daniel Michnik, to **approve** Appeal No. 4, as written.

ON THE QUESTION:

Mr. Mills said the character and design of the street make this a unique parcel and one that is more susceptible to a front yard setback than other locations.

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

MOTION CARRIED.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **approve** the minutes of the meeting held on September 9, 2014, as written.

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

MOTION CARRIED.

Chairman Michnik noted that the next Zoning Board of Appeals meeting will be held on Tuesday, November 18, 2014.

Meeting adjourned at 9:26 p.m.

Carolyn Delgato
Senior Clerk Typist