

Clarence Zoning Board of Appeals Minutes
Tuesday, February 13, 2007
7:00 PM

At 7:00 p.m. the Zoning Board of Appeals entered into an Attorney/Client privilege session to discuss various legal matters.

Raymond Skaine, Chairman, called the regular meeting to order at 7:09 p.m.

Zoning Board of Appeals members present were:

Raymond Skaine, Chairperson
Arthur Henning

Daniel Michnik
Ryan Mills

Other Town officials present were:

James Callahan, Director of Community Development
Steven Bengart, Town Attorney
Councilman Bernie Kolber
Richard Bigler

Other Interested Parties Present:

Michael J. Wrobleski
Andy Hunt
Jim Paul
Rhonda Frederick
Michael Metzger
Samuel Agnello
Martha Zimmerman
Ed Zimmerman

Sean Hopkins
Richard S. Gajewski
Mr. Federmann
William Long
Donald J. Ehrenreich
Anthony Abbanro
Sharon Agnello
David A. Root

Raymond Skaine reads a letter from Steven Murtaugh dated February 7, 2007. The subject of the letter is Mandatory Filing of Transactional Disclosures Upon Recusing Oneself from Discussion and Action On A Matter and reads as follows:

“The purpose of this memo is to request that you remind the members of your board or committee of the necessity, under the Town Ethics Code, to properly and promptly file Transactional Disclosures whenever they recuse themselves from participating in an action contemplated by your board or committee. The procedure is described in the June 2006 Code of Ethics in section 19.14 (pages 20 and 21) and a copy of the Transactional Disclosure form is provided as attachment B to the Ethics Code. Copies of the form are available from the Town Clerk. Transactional Disclosures are to be submitted by the recuser before any final action is taken on the matter for which a recusal is declared. Signed copies are to be given to the group’s chairperson and to the Town Clerk. Thank you for your support in this matter.”

The letter will be part of the March 2007 agenda.

ACTION:

Motion by Arthur Henning, seconded by Daniel Michnik, to **approve** the minutes of the meeting held on December 12, 2006, as written.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Ryan Mills	Aye

MOTION CARRIED.

Old Business

Appeal No. 6

Susan Dubill
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 9’4” variance to allow a building permit to be issued to place a storage shed 8” from the house at 9430 Wehrle Drive.

Appeal No. 6 is in variance to Section 229-44 (D) Accessory Structures.

DISCUSSION:

Jim Callahan advises the Board that the applicant is not present. This item was tabled from the October 2006 meeting; the applicant was to obtain some information from the Town’s Building Department as well as the Fire Chief related to the installation. There is a letter from the Building Department on file. The applicant could not contact the Fire Chief and said he would not be at the meeting this evening.

Mr. Skaine suggests a copy of the letter from the Building Department is forwarded to the Dubill’s and to the members of the Zoning Board of Appeals.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **table** Appeal No. 6 under Old Business.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Ryan Mills	Aye

MOTION CARRIED.

New Business

Appeal No. 1

Michael J. Wroblewski
Residential Single Family

Requests the Board of Appeals approve and grant a 125’ variance to allow a 225’ front yard setback for the construction of a new home on the lot immediately south of 5405 Thompson Road.

Appeal No. 1 is in variance to Section 229-52 (D) (4) (a) Setbacks.

DISCUSSION:

Mr. Skaine recaps the meeting of December 12, 2006 in which the requested variance of 80' was denied.

Mr. Wroblewski explains his change in request is due to the concern for the surrounding neighbor's privacy and by going further back it will put more distance between the proposed home and the surrounding homes.

Sean Hopkins, of Hopkins, Garas & Sorgi, is representing the applicant and indicates that the neighbor notifications are on file. He explains that the project site is 2.9 acres in size. Mr. Hopkins said one of the goals is to maximize the preservation of the vegetation on the site, especially along the frontage where most of the mature trees are. Another goal is that the house will not be seen from Thompson Road, nor from any of the adjoining properties. The applicant plans to plant evergreen trees around the perimeter of the site to ensure privacy.

In response to Mr. Mills' question, Mr. Wroblewski said he was aware of the setback requirement. He explains the two points from the December 2006 meeting as making sure the new owner of 5405 Thompson Road was aware and supportive of the variance request, and also making sure the proposed site became a legal entity. Mr. Wroblewski said if these two criteria were addressed appropriately, it appeared that it would not be a major issue in approving the variance itself. Mr. Mills said the setbacks were also discussed at the December 2006 meeting and how the variance request would not be in conformity with the surrounding properties; there are not many houses on Thompson Road between Greiner Road and Roll Road with a similar setback as to what is being requested. Mr. Wroblewski sites surrounding houses on Thompson Road that have similar setbacks.

Mr. Hopkins explains that by granting this variance it will have a positive impact on the character of the neighborhood as compared to building a house in strict compliance with the Zoning Code, which would require much of the existing mature vegetation to be removed and may not be as beneficial from an adjoining property owner's perspective. The proposed placement of the house would leave several hundred feet between the back of the home and the closest house on Old Goodrich Road.

Mr. Mills asks about the parcel to the south of Mr. Wroblewski's lot. Mr. Wroblewski explains that it is an open parcel with no "For Sale" sign on it. Mr. Callahan explains that it is potentially a 2-lot project; Mr. Czarnecki is the owner of the lot and has not signed off on being made aware of Mr. Wroblewski's requested variance. Mr. Wroblewski explains that in previous meetings it was discussed that the nearest inhabiting neighbor would need to be contacted and they have been. While there is no written verification in the file, Mr. Callahan has talked with Mr. Czarnecki and his agent and they are aware of the situation.

Mr. Hopkins said there are no future plans for subdividing this lot; the applicant wants to build a house approximately 2,500-3,000 square feet on a lot that is almost 150,000 square feet in size, that's it.

Mr. Henning asks Mr. Wroblewski why the plan has changed. Mr. Wroblewski explains the reason for the change is due to the major concern of the privacy of the surrounding neighbors; by putting more distance between his proposed house and the surrounding neighbors it maximizes the privacy.

Town Attorney, Steve Bengart, explains that Mr. Wroblewski met with him, Mr. Callahan and Supervisor Kathleen Hallock shortly after the December 2006 meeting. It was Mr. Bengart's suggestion

that Mr. Wrobleski make this request and provide the additional information such as the number of residents that have received a variance to the standard setbacks on the road, it is a significant number. Mr. Bengart questions whether or not a decision to turn the request down would hold up in a lawsuit. Mr. Hopkins read a list of the addresses on Thompson Road where it appears that the setback is greater than the standard, Mr. Skaine said most of those addresses are on the west side of the road.

Mr. Michnik refers to the applicant's intention of saving the trees that are at the site and said some trees will be removed because the applicant will have to bring in equipment to work the land, other trees will be removed because they are not worth saving, they may be old and cracked or scrub trees, other trees will probably be removed in the future once the home is built. The applicant's argument on saving the trees does not stand with Mr. Michnik. He walked the site and is concerned with the privacy for the current and future neighbors. The requested variance is substantial and is self-created.

Mr. Wrobleski said the frontage is 200' and the depth is 665'.

Mr. Callahan explains how the Zoning Law is written; a large agricultural lot as a former Agricultural Zone could receive the benefits of Agricultural Zoning Classification, which would allow the 45'-200' setback. The Zoning Law "grandfathers" agricultural rights to parcels over 2 acres.

In response to Mr. Skaine's question regarding the planting of trees on the north and south side of the property, Mr. Wrobleski said he intends to plant them as soon as possible so they can grow and create privacy; the trees would probably be Norway Spruce and Blue Spruce. Mr. Wrobleski would accept the planting of trees as a condition on a decision. The size and height of the trees must be part of the condition as well. Mr. Skaine suggests a tree height of 4'-5' for the buffer area. Mr. Mills asks what distance on center the applicant intended for the planting of the trees. Mr. Wrobleski has no numbers in mind but will consult a tree expert.

Mr. Bengart asks if it is acceptable to send this project to the Landscape Committee for their approval, as a condition, if the motion is favorable. Mr. Callahan indicates this is an acceptable action. Mr. Hopkins said the applicant would consent to this condition.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 1, as written, with the condition that the project is reviewed and approved by the Landscape Committee for privacy screening on both the north and south sides of the property. The petitioner will adhere to and comply with any recommendation by the Landscape Committee. This is to include berming and/or trees as recommended by the Landscape Committee.

Raymond Skaine	Aye	Daniel Michnik	Nay
Arthur Henning	Aye	Ryan Mills	Aye

MOTION CARRIED.

Appeal No. 2

Walgreen's
Traditional Neighborhood

Requests the Board of Appeals approve and grant an area variance to allow more than one building sign facing each adjacent street (Transit Road and County Road) at 6785 Transit Road.

Appeal No. 2 is in variance to Section 181-3 Regulations applicable to all signs in all districts.

DISCUSSION:

Sean Hopkins and Andy Hunt are representing the applicant. Mr. Hopkins explains that the overall size of the sign is less than what would be allowed by the Sign Law. Mr. Callahan voices his concern with the different interpretations the Sign Law has had in the past.

Mr. Skaine said the surrounding businesses in the area have one sign.

In response to Mr. Henning's question regarding signage, Mr. Hopkins said there are two (2) signs on the store at Greiner Road and Transit Road. It is similar signage which is probably slightly bigger in size.

Mr. Hunt explains that the applicant understands that the issue is not two (2) signs but spreading the area of signage to multiple words on one side of a building.

Mr. Henning points out that the applicant's property is extremely visible from all directions; he does not see the necessity for two (2) signs.

Mr. Michnik points out that this location is the beginning of the Traditional Neighborhood District and the start of something that the Town hopes will work. He likes the building, but does not understand why there is not a sidewalk at the location on County Road. Mr. Hopkins said the neighbors did not want a sidewalk on County Road. Mr. Michnik said people in the area know what services are offered by Walgreen's; there is no need to be a sign advertising "pharmacy" or "photo". Mr. Hunt said the signs for "pharmacy" and "photo" are part of Walgreen's corporate identity and logo. Walgreen's specifies the materials that are to be used for the signs.

Mr. Callahan reads the appropriate section of the Sign Law 181-6 (F) (3): One wall sign per establishment shall be permitted unless that establishment has street frontage on more than one side, in which case one wall sign will be permitted for each side of the structure that has street frontage. Additional signs must meet secondary sign requirements as stated in section 181-3 (E).

Mr. Hopkins said identical situations have been approved in Clarence.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **deny** Appeal No. 2, based on the criteria that are reviewed by the Zoning Board of Appeals in rendering a decision. By granting this variance an undesirable change would be produced in the character of the area, the Board feels the existing signage is appropriate, the requested variance is substantial. Since the location is in a specialized district (the Traditional Neighborhood District), granting the variance would adversely effect the physical conditions of the neighborhood, the applicant was aware of the Sign Law.

Raymond Skaine Aye
Arthur Henning Aye

Daniel Michnik Aye
Ryan Mills Aye

MOTION CARRIED.

Appeal No. 3

(Richard) Scott Gajewski
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 6" (.5') variance to allow a new residential lot at 10625 County Road.

Appeal No. 3 is in variance to Section 229-40 Lot Width.

DISCUSSION:

Mr. Gajewski explains that he needs to build a house for his mother-in-law. In response to Mr. Mills' question regarding the frontage of the lot, Mr. Gajewski said he purchased the property knowing it had 300' of frontage.

Mr. Skaine refers to the house to the east of Mr. Gajewski's property, which is set back approximately 100'. Mr. Gajewski said he would build the proposed house in line with the other three houses that are east of his property on County Road.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 3, as written, with the codicil that the house be in line with the three houses that are within the area on County Road.

Raymond Skaine Aye
Arthur Henning Aye

Daniel Michnik Aye
Ryan Mills Aye

MOTION CARRIED.

Appeal No. 4

Jon Grande
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a variance to allow an additional accessory structure at 5401 Center Pine Lane.

Appeal No. 4 is in variance to Section 229-55 Accessory Structures.

DISCUSSION:

Jim Pauly, of Pauly Construction, is representing the applicant and explains that the applicant needs additional storage. The applicant's son wants to park his car in the garage. He would also like to use the back end of the garage for his pool equipment.

Neighbor notifications are on file.

Mr. Michnik drove through the area on Saturday and noticed the area was not staked, Mr. Pauly said the stakes went in on Monday morning. Mr. Michnik voices his concern with adding a single garage in the neighborhood, there are three car garages in the area that are attached and incorporated into the building.

Mr. Skaine drove through the area and did not see another detached garage. Mr. Pauly said he built similar structures on Via Marina and on Via Del Sole. He explains that the materials will match the house, but there was not a good way to attach it.

Mr. Henning drove through the neighborhood and did not see any detached garages either. He does not want to see this request approved; however he would like to see the applicant come up with another plan to attach the garage, maybe through a breezeway. Mr. Pauly said it is simple enough to put a roof between the garage and the house.

Mr. Mills asks for confirmation that it is structurally impossible to build an attached garage at this location. Mr. Pauly confirms saying it would be very difficult and very costly to build an attached garage on to this house. The front façade will be brick and match the house.

Mr. Skaine asks, if by putting a breezeway in, does the structure now become a three care garage. Mr. Callahan explains that the Boards actions were they have identified a breezeway connection constitutes an acceptable means of creating an addition to the garage without creating an accessory structure.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **table** Appeal No. 4, to allow the applicant time to prepare plans showing how the garage, breezeway and house will be connected together. Mr. Pauly is to bring in photos of freestanding units in the area.

ON THE QUESTION:

Mr. Bengart suggests Mr. Pauly come back with photos showing other houses in the neighborhood that have separate structures, this request is added to the above action.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Ryan Mills	Aye

MOTION CARRIED.

Appeal No. 5

William Chiodo/Federmann Builders
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a 310 sq. ft. variance to allow for a garage addition at 5268 Mallard Roost.

Appeal No. 5 is in variance to Section 229-55 Accessory Structures.

DISCUSSION:

Mr. Federmann, of Federmann Builders, is representing William Chiodo. He explains that the applicant is looking to add a fourth car garage and incorporate a utility room for some pool equipment. Mr. Federmann refers to the plan and explains that the existing garage is to the right of the main door, the addition will be of the same material as that of the house and will blend together with the house. The current garage is very narrow and undersized; the applicant is looking for additional space to park a car and open the car door correctly. The applicants do not have four cars at this point; however, they do have four children.

Neighbor notifications are on file.

Mr. Henning drove through the neighborhood and did not see any four-car garages; however, looking at the plan, it does not look like a four car garage.

Mr. Michnik voices his concern regarding the appearance of the addition; it should not look like an extension of the building but part of the building when it was originally built. The building materials should match the existing building; Mr. Federmann confirms the materials will match.

Mr. Mills asks for confirmation on the function of the second floor of the addition. Mr. Federmann confirms that it will be a sitting room. Mr. Mills asks if the clients could decrease the square footage of the proposed second garage. Mr. Federmann explains that the existing garage is very narrow and this was taken into consideration when the plans were drawn. Mr. Mills is concerned with the side elevation, he thinks it is a little close to the neighbor and a little long, he asks Mr. Federmann if his clients would consider taking in the back wall and line up the utility room wall. Mr. Federmann thinks this change would make the roof line look odd.

ACTION:

Motion by Arthur Henning, seconded by Daniel Michnik, to **approve** Appeal No. 5, as written.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Ryan Mills	Aye

MOTION CARRIED.

Appeal No. 6

People Inc./Oak Housing/Rhonda Frederick
Restricted Business

Requests the Board of Appeals approve and grant a variance to allow the non-climbable side of a proposed fence to face the applicant's property at 8099 Sheridan Drive.

Appeal No. 6 is in variance to Section 101-3 (I) Fence Regulations.

DISCUSSION:

Rhonda Frederick, Chief Operating Officer of People Inc., and Bill Long, of William Long Associates Architects, are both present. Ms. Frederick explains that originally there was no intention to have a fence in this area, but the property that is on that side of the site is filled with debris and is unsightly. They have tried to contact the owner, but were unsuccessful. If the variance is granted she does not feel there will be an impact on the neighbor because no one lives there.

Mr. Mills asks if the applicant has considered other fencing materials. Ms. Frederick indicates other materials are more expensive. Mr. Mills asks, if the climbable side of the fence faces the applicant's property, have other mitigating factors been thought of, perhaps planting trees or shrubbery. Mr. Long said the soil is only three inches deep.

Mr. Michnik asks if the applicant was aware of the adjacent property when they purchased their property. Ms. Frederick said the property was "treed" when they bought the property. They were aware of the Buck and Doe Shop. Mr. Michnik feels the resources should be available to meet the Town specifications, if the applicant is asking for a variance they need to provide an alternative.

Mr. Skaine asks the applicant if the variance was granted and the neighbor on the east side complained would they be willing to “face” that side as well, this could be made as part of the motion, if granted. Ms. Frederick said, “Absolutely”. Mr. Bengart questions this condition being enforceable at a later date. After further discussion it is decided not to make this a condition, if the variance is granted.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **deny** Appeal No. 6, as written.

ON THE QUESTION:

Mr. Mills explains this request is considered a use variance and, under State Law, the applicant must show all of the following:

- 1.) That the property is incapable of earning a reasonable return on the interest investment used for any of the allowed uses in the district. Actual dollars and cents proof must be submitted. This has not been shown.
- 2.) The property is being affected by unique or at least highly uncommon circumstances. This has not been shown by the applicant.
- 3.) The variance, if granted, will not alter the essential character of the neighborhood. This has not been shown.
- 4.) The hardship is not self-created. The applicant knew the situation prior to purchasing the land.

The denial is based upon the above mentioned reasons.

Raymond Skaine	Nay	Daniel Michnik	Aye
Arthur Henning	Nay	Ryan Mills	Aye

MOTION FAILED.

Ms. Frederick wonders what course of action to take regarding the neighbors unkempt property. Mr. Bengart advises her to write a letter regarding her complaint, address it to the Town of Clarence Planning and Zoning Office, the Building Department and the Town Attorney’s Office. Mr. Bengart said the Town will look into the complaint; however he does not promise action can be taken.

Appeal No. 7
 Nativity of the Blessed Virgin Mary Church
 Traditional Neighborhood

Requests the Board of Appeals approve and grant a variance to allow for a front yard parking lot per submitted design at 8550 Main Street.

Appeal No. 7 is in variance to Section 229-67 (B) Parking Lots.

DISCUSSION:

Paul Case and Michael Metzger, both with Metzger Civil Engineering, are present. Don Ehrenreich is present as well. Mr. Metzger explains that, since this is not a new site, the applicant has no control over the location of the building. Nor is there control over the dire need to add parking to the church. There is insufficient parking. The church currently has 199 parking spaces on site. With the recent closings of various churches, there is a strong possibility that this church will be taking in more

parishioners. Along with the parking proposal, Mr. Metzger would like to try and improve the drainage situation up and down Main Street in this area. He would also like to make some improvements to the exits on the site, as well. Mr. Metzger said it is a tremendous hazard to be parking on and across the street; he would like to keep as many people parking on site as possible for safety reasons. This project would add 52 parking spaces to the site. The proposal shows an approximate 25' setback and Mr. Metzger said this area would be landscaped to buffer Main Street from the new parking area. There are several large Spruces on the site that will be maintained as well. The grotto/shrine area, the sign and the flagpole will be maintained. Landscape islands will be put in. There is an existing sidewalk that comes out from the front doors of the school; this will be maintained over to the existing sidewalk on Main Street. The parking is proposed in the front of the school because the septic system and possible wetlands dominate the other portions of the property.

Mr. Metzger refers to the New York State Town Law section 267 in which he reads: "in making its determination the Zoning Board of Appeals shall take into consideration the benefit to the applicant, if the variance is granted, as it is weighed against the detriment of the health, safety and welfare of the neighborhood or community by such grant." Mr. Metzger said in this case the benefit is to the community.

Mr. Ehrenreich said the school has already been impacted with the recent closings of other Catholic schools in the area, he expects the church to be impacted as well. He explains that the fire lane will be maintained.

Mr. Michnik asks how the applicant knows that the proposed parking lot will be used. The big concern is people walking; everyone likes to be parked at the front door. In Mr. Michnik's opinion, putting the proposed parking lot in does not solve the parking problem; people will still park in the other parking lots at that intersection. Mr. Ehrenreich explains that he has used traffic control people in the past and may use them again in the future. Mr. Metzger suggests making people aware of the extra parking, if granted, through the church's bulletin or announcements during a service.

Mr. Michnik asks if the greenspace will be continued across the property, and perhaps to entrances/exits to help the flow of the traffic. The applicant indicates he is not currently considering this suggestion.

In response to Mr. Henning's question regarding the number of current parking spaces, Mr. Metzger confirms that there are 199 spaces. Mr. Henning asks if the 199 parking spaces are full at each service, Mr. Ehrenreich confirms this and lists the names of the surrounding parking lots and a street that are utilized when the church's parking lots are full.

Mr. Ehrenreich said he was told the area for the proposed parking lot was a leach field back in the 1950's and has since been abandoned. He said the proposed parking would be of primary use on the weekends but secondary use for the school during the week.

Mr. Mills asks if the applicant could decrease the amount of parking spaces requested. Mr. Ehrenreich said there was another proposal with 61 spaces, but that did not leave enough greenspace.

Mr. Metzger is willing to work with the Town's Landscape Review Committee on this project.

Mr. Skaine would like the Department of Transportation (DOT) to provide guidance on this project. He would also like to see the project reviewed by the Town's Landscape Review Committee. He also agrees with Mr. Michnik's comments.

ACTION:

Motion by Raymond Skaine, seconded by Daniel Michnik, to **table** Appeal No. 7, until the Zoning Board of Appeals receives a report from the Department of Transportation regarding the two (2) egress lanes coming off the easterly portion of the property. Clarification from the Town's Landscape Review Committee is required. Mr. Metzger is to look into resolving the current parking issues at the lot located between the church and the school.

ON THE QUESTION:

Mr. Metzger fully expected to be working with both the Landscape Committee and the DOT. He will also work with the Town Engineer. He asks if it would be appropriate to take action on the zoning matter. Mr. Skaine said the Board needs more information prior to taking action on this project; they need to review the reports that are requested.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Ryan Mills	Aye

MOTION CARRIED.

<u>Appeal No. 8</u> Samuel & Sharon Agnello Agricultural Rural Residential	Requests the Board of Appeals approve and grant a 75' variance to allow a 175' front yard setback at 6415 Strickler Road.
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Appeal No. 8 is in variance to the approved variance of July 11, 2006 at 6415 Strickler Road and Section 229-41 Setbacks.

DISCUSSION:

Anthony Abbanro, attorney, is representing the applicant. Mr. & Mrs. Agnello are present as well. He explains that it is better to locate the house further away from Strickler Road; it makes more sense for the use, adjoinment and value point of view. This property has a slow rise from front to back and levels off at around 140 feet, thus the requested setback is providing a better place to build. This would guard against the expansion of Strickler Road. This is not a treed lot and there would be much land behind the home. The plan is for a single-floor 1800 square feet home. Mr. Abbanro said by granting this variance it would be a benefit to the applicant, but would not be a detriment to the neighborhood. He does not think this creates security or privacy issues. He walked the property and said he could not see the neighboring house at 100' or 175' because of the trees that line the property. He understands that a concession has already been made where the driveway would be put on the opposite side of were the neighboring house is. Mr. & Mrs. Agnello chose this property for many reasons, one being they have family in this area; this is where they will retire.

Martha Zimmerman, of 6425 Strickler Road which is on the north side of the lot in question, explains that she was at the July 11, 2006 Zoning Board of Appeals meeting were she agreed to the 100' setback and the placement of the driveway, which would be on the south side of the lot. She advises the

Board that one of the trees along the lot line has died and the tops of some other trees have come off since the July 2006 meeting. She feels this request, if granted, would invade her privacy and effect the value of her home.

David Root, of 5510 Hallmark Lane, Lockport, NY, explains that the property Mrs. Zimmerman resides on has been in her family for over 70 years. The Zimmerman's built the home there over 30 years ago; it is their retirement home. They have been intruded upon by neighbors who have large setbacks and have unpleasant conditions in their backyard due to activity by the neighbor. He does not think Mr. Agnello has demonstrated a hardship; he purchased the property under the current conditions that were set forth at the July 2006 Zoning Board of Appeals meeting.

Mrs. Zimmerman shows the Board members a photograph of her backyard view and explains that there is noise from boom boxes and car stereos.

Mr. Abbanro points out that Mrs. Zimmerman's concerns are with regards to the neighbor on the other side of her property. He said that, in its current state, the property at 6145 Strickler Road provides all the privacy needed.

Mr. Skaine asked if Mr. Kelkenberg explained the variance that was granted with regards to the setback to the applicant at the time the property was purchased. Mr. Agnello said Mr. Kelkenberg did not tell him of the variance that was granted back in July 2006.

Mr. Mills asks what the applicant's understanding of the setback was after they purchased the property in November. Mr. Abbanro said it was an open issue at that time. Mr. Zimmerman thought the setback in Clarence was anywhere from 40' to 200' with a lot this size.

Mr. Henning asks if the applicant will build at the 100' setback if the request is denied. Mr. Zimmerman said, "No." and stated he would sell the property. Mr. Henning thinks by going back 175' is somewhat disruptive to the neighbors. Mr. Agnello said the land that parallels his property at the requested setback location is not owned by the Zimmerman's. The applicant was unable to obtain signatures from adjoining neighbors.

Mr. Michnik said if this variance was granted the house would be in someone's backyard. Mr. Agnello said he is not building in anyone's backyard and goes on to say if the variance is not granted it is a burden on him. Mr. Michnik suggests he get out of this contract and purchase the lot with the setback of 150', Mr. Agnello said nothing can be built on that lot for one year.

ACTION:

Motion by Arthur Henning, seconded by Daniel Michnik, to **deny** Appeal No. 8, as written. The denial is based on the following:

- 1.) By granting this variance it would be a detriment to the nearby properties.
- 2.) The benefit sought by the applicant can be achieved by a feasible alternative to the variance.
- 3.) The requested variance is substantial.
- 4.) The variance would have an adverse effect on the neighborhood.
- 5.) The alleged difficulty is self-created.

ON THE QUESTION:

Mr. Mills clarifies the factors that the Zoning Board of Appeals take into consideration when rendering a decision:

- 1.) The request does not conform with nearby setbacks.
- 2.) Construction can occur at the legal setback.
- 3.) The numbers stated are substantial.
- 4.) If granted, the request would adversely affect the neighbor's privacy.
- 5.) The applicant stated he knew the setback was between 40' and 200' but did not know for sure, the applicant should have looked into the legal setbacks prior to closing on the property.

Raymond Skaine Aye
Arthur Henning Aye

Daniel Michnik Aye
Ryan Mills Aye

MOTION CARRIED.

Mr. Skaine advises the Board that a training session entitled, "County Referrals" and "Zoning Board of Appeals" is available on March 1, 2007, and will count towards the New York State Mandatory training.

Meeting adjourned 9:30 p.m.

Chairperson, Raymond Skaine