

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday June 13, 2017
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
Richard McNamara	Jonathan Hickey	

Zoning Board of Appeals members absent: Patricia Burkard

Town Officials present:

Director of Community Development James Callahan
Deputy Town Attorney Steven Bengart
Councilman Paul Shear

Motion by David D'Amato, seconded by Richard McNamara, to **approve** the minutes of the meeting held on May 9, 2017, as written.

Jonathan Hickey	Aye	Richard McNamara	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Other interested parties present:

John Braddell	Tyler Palmer	Michael Braddell	Frank Budelewski
Ray Thompson	Jackie Thompson	Mark Kulbago	Ron Mohr
Nancy Mohr	David Clark	Jennifer Nadler	Sandra Baker
Bob Baker			

The Zoning Board of Appeals Committee entered into executive session and Attorney/Client Privilege session at 7:01 p.m. The session ended at 7:19 p.m. and the Zoning Board of Appeals meeting opened.

Old Business

Appeal No. 1(from Sept 2016 Meeting)

John Braddell/Lakeside Sod
Industrial Business Park

Requests the Board of Appeals approve and grant a 93'8" variance to allow for a 153'8" tall wind turbine located at 6660 Goodrich Road.

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

DISCUSSION:

John Braddell, of Lakeside Sod, is present.

Deputy Town Attorney Steven Bengart said the reason this matter has been brought back from the decision that was previously made because Mr. Bengart was not at that meeting but was at a subsequent meeting and advised the Board that they do not have the authority to approve something that is not on the applicant's land and therefore he suggested the matter be brought back and the Board chose to do just that.

Mr. Braddell explained that he is looking to put up a windmill for electricity to help defer some of his electrical costs. There has been a windmill on the property for 25 years, installed by Walt Plaistead. Tyler Palmer, of United Wind, said the variance request is the same as it was last time they were before the Board.

Frank Budelewski, 6594 Goodrich Road, wants to know what safeguards are going to be put on this thing when this man goes home. Mr. Budelewski is there all day. Chairman Michnik asked what type of safeguards Mr. Budelewski wants to see. Mr. Budelewski wants to know what happens if the turbine comes flying towards his house, it will take his house out. Nobody is at Lakeside Sod at night, will this thing run all night?

Mr. Palmer said there is a monitoring system, they can tell when it is down, they will get a notification and send repairmen out right away. There are ratings for the tower and the turbine system. An explanation on the safeguard systems were submitted with the application. Mr. Palmer went on to explain that when the wind is too high it governs up and out and the tail will move over and push itself out of the wind. The wind tower is designed to withstand 140 miles per hour winds or greater, as well as the turbine itself. There will be routine checks on maintenance every year. When the turbine is first installed they will perform a maintenance check at 30 days, 180 days, then at a half year. After that it will be every 1-2 years for a maintenance check. Mr. Hickey asked if there is anything different from the extensive hearing on March 14, 2017. Mr. Palmer said everything is the same.

Mr. D'Amato asked how high the ladders will be up the tower. Mr. Palmer said the ladders will be up 12' or so, this way the neighborhood kids can't climb on the tower. Mr. D'Amato asked if, in the past, a tip has flown off any turbines. Mr. Palmer said no and went on to explain that they have technicians who have done this for years. If the tower were to break it would fall from that area of the tower, due to the fall zone measurement it would not hit anything even if it broke at the base. He confirmed that the safety record is good on these towers.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **approve** Appeal No. 1 under Old Business, all prior meeting minutes, information, testimony is incorporated into the record. There has been extensive testimony since August 2016.

Jonathan Hickey	Nay	Richard McNamara	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

New Business

Appeal No. 1

Ray & Jackie Thompson
Residential Single Family

Requests the Board of Appeals approve and grant a 2' variance to allow an 8' side yard setback for the placement of an emergency generator (accessory structure) located at 6182 Clarence Lane North.

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

DISCUSSION:

Richard McNamara recused himself from the discussion and vote on this agenda item and left the dais.

There is one (1) neighbor notification form on file along with two (2) certified mail receipts.

Mr. Mills noted that a letter was received by the Town on June 12, 2017 addressed to Mr. James Callahan from the Galbo Family/Catherine Galbo-Tocha. The letter sites a variety of reasons that the Galbo's are not in favor of the variance request, one is undue stress to the neighbor that it sits next to because of noise levels. They are concerned about disturbance and it being unreasonably loud, and also concerned about inhibiting them from selling their mother's house which is located at 6172 Clarence Lane North. The letter is entered into the record as exhibit A.

Mr. Thompson said he is looking for a variance so they can put in a whole-house generator. It is a small generator and would run a portion of their home. He has an electric oxygen concentrator and is on oxygen 24 hours a day. He is also concerned about the sump pump, if power is lost and it rains. Mr. Thompson referred to the letter written by the Galbo's. He said the woman who owned the house was a good friend of his and she passed away, if she was alive he wouldn't be here, it would be rubber-stamped. Ms. Galbo-Tocha does not live anywhere near the house, they are selling it without a realtor, which is tough to do. She is claiming things she does not know about, she does not know how loud it is. Mr. Thompson said it will only run twelve (12) minutes every two (2) weeks. Thomas Gerstner of Anderson Water Systems is present and confirmed the run time of the generator. He went on to say the owner can pick the day of the week and the time of day it will run. Mr. Hickey asked when the applicant plans on running the generator. Mr. Thompson said the least bothersome time, he is not trying to jerk her around he just wants the house taken care of. They have a daughter that lives in the south that they visit and this will help when they are gone. Mr. Gerstner said the device is 4' long, 2' wide and 2 ½' tall; it runs at 62 decibels which is really quiet. It is comparable to a vehicle that is running at 25 rpms.

Mr. Hickey asked why the generator can't be installed at the 10' setback requirement. Mr. Thompson said they have a deck on the back of the house and the garage is on the other side of the property. He called Mr. Gerstner because he wanted to see if there was another location that would work and would not be bothersome, there isn't one, if there was he would select that location. The cost of the generator is approximately \$5,900, it is a very dependable type of generator.

Mr. Gerstner said there are fire codes that have to be followed, in this case there is no place at the back of the property that will fit and conform to the fire code.

Mr. Thompson said the generator will face the garage.

Chairman Michnik asked if the applicant explored moving the generator to the other side of the house. Mr. Gerstner said it is impossible due to the fire code reasons, some of which include the restriction that the generator must be at least 18" away from combustible structures, 5' or more from a window and 5' or more from a vent or air conditioning unit. As a result of the fire code if it is put on the other side of the house or garage it will stick way out in the yard.

Jackie Thompson said there is a vent on the side of the house where the garage is.

Chairman Michnik asked what type of piping is used from the gas meter to the generator. Mr. Gerstner said on the inside of the house it will be corrugated stainless steel, on the outside it has to be black pipe. He does not use plastic piping because it is not flexible and they need to go around corners with the piping. Chairman Michnik then asked how the generator will be protected from the neighbor's snow plowing service. Mr. Gerstner said they recommend the customer stays away from any areas that a snow plow will go through. Mr. Thompson said he and the neighbor had the same plow service. On his neighbor's property the snow was plowed straight back, it never came onto his property. Chairman Michnik asked Mr. Gerstner what he suggests to protect the generator from snow plow damage. Mr. Gerstner said in commercial applications they put stanchions in but they rarely put them in a residential applications. People install small poles to let the snow plow guy know that a generator is there and customers have conversations with their neighbors to make sure the snow plow guy knows where the generator is. He has 48,000 generators in the field and he has never had one touched by a snow plow. Chairman Michnik is concerned with someone bumping into it and with it being covered up by snow. He asked what Mr. Gerstner would suggest to protect this generator. He suggested a couple of metal posts but he thinks it would be ugly in a residential setting. Customers have been known to put arborvitae around their generator, any plant must be 4' from the intake of the generator. Other people have put a privacy fence around their generator.

ACTION:

Motion by Jonathan Hickey, seconded by David D'Amato, to **approve** Appeal No. 1, as written.

Jonathan Hickey	Aye	Richard McNamara	Recuse
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Nay		

MOTION CARRIED.

Richard McNamara returns to the dais.

Appeal No. 2

Mark Kulbago
Residential Single Family

Requests the Board of Appeals approve and grant a 6" variance to allow a 54" tall fence located within the front yard setback at 10455 Greiner Road.

Appeal No. 2 is in variance to §101-3(C)(2).

DISCUSSION:

There are two (2) neighbor notification forms on file.

Mark Kulbago is present and explained that they have an aging cedar fence that needs to be replaced that encloses a pool. They want to go out further with the fence so it won't divide up their back yard so much but to comply with pool code they have to have a 54" fence. He lives on a corner lot so he has two (2) front yards and the maximum height for a fence in a front yard is 48", so he needs a variance.

The fence will be an aluminum product and will cover the whole yard, not just the variance portion.

Mr. Hickey clarified that the variance is for the 120' of fence that runs along the Hillcrest side of the property. Mr. Kulbago has lived there for five (5) years. Mr. Hickey asked if there is any other way to accomplish the joint goals of the pool code and the fence code. Mr. Kulbago said they worked with their fence contractor and there was not another option without removing some trees. The proposed request would not remove any trees.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 2, as written.

ON THE QUESTION:

The applicant has provided testimony that the purpose for the variance is to comply with pool code. If the variance was not granted it would force the applicant to have a secondary fence inside. He is using a higher quality fencing material that fits in with the character of the neighborhood.

Jonathan Hickey	Aye	Richard McNamara	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 3

Ronald Mohr
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 2' variance to allow for the construction of an 8' tall fence located within the rear yard setback at 8431 County Road.

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

DISCUSSION:

Two (2) neighbor notification forms are on file.

Ronald Mohr is present and explained he would like to put up an 8' fence because of the business next to him. There is a parking lot next to him and he has no privacy. He submitted four (4) photos of his property, they are on file.

Mr. Mohr said his fence will be between the two (2) segments of fence that is his neighbors. He has a chain link fence currently and will take that out to the point where his neighbor's fence ends. The new fence will be either wooden or vinyl, it will depend on the cost. It is about 111' back from the corner to as far as he wants to go back.

Mr. Mills asked if the applicant explored natural barriers with foliage. Mr. Mohr said he spoke to someone about that but there is a lot of deer in the area. Another concern is that Mr. Mohr's septic system is in that area and if he plants trees and shrubs it will affect his septic system. The septic is in the back corner of the house on the west side. Mr. Mohr said the property next to him is built up higher than his so a 6' fence would not be tall enough for privacy.

Mr. McNamara said if the applicant is looking for an 8' fence why doesn't he want that height in the back of the property where he can still see the business' green house. Mr. Mohr said the neighbor has an existing 8' fence there already, it would be a waste of his money to put up another fence in that same area.

Chairman Michnik asked why the applicant isn't asking for a fence taller than 4' at the front of his property. Mr. Mohr said because that is not the privacy part of the fence. Chairman Michnik asked if Mr. Mohr has noticed vehicles from the business parking in front of his house during the busy season. Mr. Mohr said he hasn't yet.

ACTION:

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve** Appeal No. 3, as written.

ON THE QUESTION:

The applicant has provided testimony that due to the location of a septic system natural barriers can't be utilized. There is a commercial property next door and an existing 8' fence along the rear end of the parcel that this fence would be adjoining. These reasons help differentiate this request from other similar requests.

Jonathan Hickey	Aye	Richard McNamara	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 4

David Clark
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) The non-climbable side of an existing fence to face inward.
- 2.) A 2' variance to allow for an 8' tall fence.

Both requests relate to 6080 Railroad Street.

Appeal No. 4 is in variance to §101-3(I) and §101-3(B).

DISCUSSION:

Mr. Clark is present and submitted neighbor notification forms. He explained that he is looking for a 2' addition to the top of his fence. He would like to leave the railings where they are. On August 6, 2013 he applied to the Town of Clarence for a fence permit, it was granted by Jim Callahan. Mr. Clark's neighbor had cut down a 6' hedgerow exposing 30' of carports, tarps and junk. The pictures that he submitted for the record show what is on the property next to him. He waited ten (10) months before he started the fence. He installed string lines three (3) time to mark the property area, so he could call NY State to dig. His string lines were vandalized three (3) times. He did not call the police. He painted the area and called NY State to dig. Ten (10) months later he started the fence, nothing was resolved, nothing was changed. Two (2)

days after the fence was up it was vandalized, a section of the fence was cut off and disappeared. A fence that was on the back property line which had been there twenty (20) years was also cut off and disappeared, this piece showed up later after a meeting with Jim Callahan. This was the start of the Baker's calling the police on him no less than seven (7) times, these accusations ranged from Mr. Clark had dirt on the Baker's mud to high cut 4" of grass and a trespassing charge filed against Mr. Clark. The Town of Clarence recused themselves off the case and sent Mr. Clark to Lancaster Courts. The Baker's operate under a Temporary Conditional Permit since 1985, which Mr. Clark pulled, an antique and boutique shop out of said barn. Under the action of the Board, Mr. Clark said the last line states, "all sales and storage will be wholly enclosed in the area." He explained nothing outside, but in the barn. According to the Baker's the good antiques are in the house. He submitted photos that he and his neighbor to the west took. The photos are on file. He went on to say that at any point in time there will be four (4) to eight (8) boxers on the property. The dog warden has been called several times. With the removal of the hedgerow the natural barrier enclosing his yard was gone. His garage was broken into and his tools stolen. His insurance company said his insurance will be cancelled because he no longer has a natural barrier for his pool. He referred to the enlarged photos, which are on file, and said those were taken by his neighbor Donna. Per those pictures the very thing the Baker's are complaining about Mr. Clark's fence is the same thing they have on their fence. The Baker's have an in-ground pool in their backyard, kids can climb over what is there and get into the pool. Mr. Clark's neighbor has had the very same concern for the past 10 years. Most fences in the neighborhood are rail-side out to the neighbors, he never complained, he just accepted it, he gets along with all his neighbors. He asked the Board to grant his request for security, privacy and peace of mind for his family.

Sandra Baker, of 6070 Railroad Street, is present and said the dog warden has never come to her house. They have three (3) dogs and an invisible fence. The pool fence is being replaced as it blew down in the wind. The two (2) pieces of that fence that are up have the climbable side on the inside. She does not object to Mr. Clark having a fence, on his own property would be great. He got his permit and said he was going to have a stockade fence east and west on the south property line on top of a 10" berm. Berm in the dictionary is soil. What's there is a 10" board. Mrs. Baker said she read and agreed with the fence regulations. Her old survey was on the back, altered, of Mr. Clark's application. Mr. Clark did not have a survey. When Mr. Clark was erecting the fence, Mr. Baker told him he was putting the fence on the Baker's property. The fence went up. Mr. Clark drains his property on to his neighbor's property. Mr. Clark has bullied the Baker's, he has pushed Mr. Baker, and has pushed their son away from her porch, he has grabbed things out of Mr. Baker's hands. Mr. Clark has a pool that does not have removable steps. He has not painted his house since he has lived there. His trees are encroaching on the Baker's property. Mrs. Baker went on to say she called GPI to survey her property, it cost \$420. Mr. Clark's fence is 15" on the Baker's property. After meeting with various representatives of the Town, they tried to reach an agreement but Mrs. Baker was advised to not sign any agreement for various reasons. Her stakes and her rebar disappeared. GPI re-staked the property for \$150. The stake disappeared again. Since the rebar was still there, she parked her Jeep in the street and put a camera on the rebar and on the vehicle to see who was taking her stakes. The memory cards were a fortune so she had to quit and now her rebar is gone. But since she took pictures of when GPI staked the property she can put the stakes back where they belong. She apologized if the back of her house is messy. All four (4) corners of her property are staked except for Mr. Clark's side. She refers to the photos that are on file.

Mr. Hickey asked if Mrs. Baker cares how tall the fence is. Mrs. Baker said she does not care if Mr. Clark puts up an eight (8) foot fence, if it is on his property. There are nine (9) sections to this fence, three (3) of them are on Mr. Clark's property, the rest are on the Baker's property. Mr. Clark has all kinds of debris leaning against the Baker's barn. She said nothing of hers is on Mr. Clark's property. Mrs. Baker explained

that the previous owners deeded 28' to the property next door because Mr. Hartwig had moved that house onto that property, it was not a lot. The brick house on the other side took 20+' from the Baker's property and deeded it to Mrs. Stahl. Mr. Clark is saying that the Bakers eaves are on his land. Mrs. Baker said these past three (3) to four (4) years have been horrible. If the back of her property is a mess at times, well she is a taxpayer, if people don't like it they have fences. She doesn't care what her neighbor's property looks like, she is not in her neighbors business all the time. The Baker's took down the stretch of arborvitae because it was overgrown. She wanted to put her 20 cords of wood there so they could get their driveway back. She is also concerned with her new grandson climbing over the fence and falling into Mr. Clark's pool and drowning. She has addressed this issue to Mr. Callahan, Mr. Bengart and Mr. Shear. If it gets to this point she will cut down the fence and go to jail. She is protecting her property and she is asking for the right thing to be done.

Mr. Hickey said it sounds like the only issue the neighbor has is the first request of the variance in which it refers to the non-climbable side of the fence facing inward. He asked the applicant to explain why the fence is not presently to code and what would prevent him from having that piece come into conformance with the code. Mr. Clark said what is preventing him from bringing the fence to code is if he steps on that side of the fence to correct it he will be arrested. There was an agreement in place that he would put pickets on the back side of the fence but the Baker's didn't like pressure-treated pickets, the Baker's don't like the color of his fence, the Baker's don't like the 10" berm which was approved by the Town. The berm needs to be backfilled with dirt which will prevent water from leaking on his property, the water that the arborvitae sucked up. This has cost him more in legal fees than the actual fence itself. The climbable side of the fence that is facing outward is about 65' long, being about 9' off the street. Since there is a business next to him, he believes he is allowed to have an 8' fence.

Mrs. Baker said the fence permit has been continuous for three (3) years and she wondered why. Her property was left in holes. This is a criminal trespass, he left her property in a void, it's a mess. There were a lot of arborvitae that were removed because they ran all along the property line. The Baker's took out the back portion of the arborvitae and nothing was said, but when they took out the front section that's when Jennifer got hostile and they haven't spoken since.

The Baker's have lived there since 1971. Mr. Clark has lived at his property for 20 years. Mr. Hickey noted that the issue is the non-climbable side of the fence. There is further discussion regarding the safety of both pools. Ms. Nadler confirmed there are permanent stops at the pool but there is a gate that is padlocked at the top of the steps. She went on to say they also have a child.

Mrs. Baker said her pool area has two (2) new sections of fence, they still need two (2) more new sections and the non-climbable side is going out.

Mr. Baker asked what the code of the Town of Clarence calls for when a fence is put in. Chairman Michnik said there is a regulation in the Code, it is section 101 and it pertains to all people. He reminds everyone that, at this point, the Board is looking at the existing fence at the applicant's property, not other fences in the Town of Clarence.

Mrs. Baker voiced her concern noting that Mr. Clark signed a paper saying he read the fence conditions.

Deputy Town Attorney Steve Bengart said there were numerous discussions, including one he had with Mr. Clark's attorney in which he suggested some changes to the agreement, those changes were made but Mrs. Baker did not want to sign the agreement.

Jennifer Nadler said they agreed to picket the other side of the fence, however the police were called numerous times. How can Mr. Clark picket the other side of the fence when the troopers are called on him all the time? Mrs. Baker said Ms. Nadler was not present at any of the meetings for the agreements. Ms. Nadler said that is correct, however it is in writing.

Mrs. Baker said she talked to four (4) different lawyers about this fence. She was told it would cost her \$10,000 to take it to Supreme Court to have the fence removed. She was told that if she cut the fence down she will go to jail. She went on to say that if the fence remains the way it is and her grandchild is around, she will go to jail. It is not to code and there is a liability on her property and she does not want that liability.

Mr. D'Amato asked Mrs. Baker if she has a strong issue with Mr. Clark coming on her property to correct the fence. Mrs. Baker said Mr. Clark can come on her property to remove his fence. Mr. D'Amato said the next step is that the fence needs to be brought into code. The parties involved should sit down and come to an agreement, this is a waste of the Board's time.

Mr. Mills asked about the 2' height variance. Mr. Clark said he would like to put up 2' decorative lattice for aesthetics. Mr. Mills asked if Mr. Clark observed anyone going in and out of the property purchasing items from the business portion of the property. Mr. Clark said he works all day, he is not home during that time and he has not asked anyone if they have seen this type of activity. He has not seen anything on the weekend either. There is no signage at the property.

Chairman Michnik asked Mr. Clark if he is willing to picket the other side of the fence. Mr. Clark said if it resolves this problem, yes. He agreed that he could accomplish this within 60 days. Chairman Michnik asked Mrs. Baker if she would allow Mr. Clark on her property to picket the other side of the fence. She said no, she wants no more encroachment on her property. Mr. Baker said they talked about this before and they were ready to let him do that but nothing was said about putting the fence on his own property. Mr. Baker said he would absolutely not allow Mr. Clark on his property. Mr. Clark should move his fence to his property.

Mr. Mills asked if Mr. Clark has the survey of his property. Mrs. Baker said she has a survey of Mr. Clark's property, it was done last year. Mr. Mills asked for confirmation that the surveys are not in conformity with each other. Mrs. Baker said Mr. Clark's survey shows 14" on her property, hers shows 15". Chairman Michnik said there is no survey on file. Deputy Town Attorney Steve Bengart said the difference between this and other approvals is that this is on someone else's property.

Mr. Mills asked Mr. Clark if he disputes the fact that some portion of the fence is on the Baker's property, Mr. Clark said he does not dispute that at all. He disputes the fact that their barn is on his property. If he zig-zagged the fence he believes the Town would issue him a warning for that. He believes about half the fence is on the Baker's property, Mrs. Baker said three-quarters. Mr. Clark said he was given his dimensions by the Town of Clarence from the 1905 Map Cover. Mr. Mills referred to Mr. Clark's survey done by Landesign dated May 29, 2015, then referred to the Baker's survey done by GPI, dated July 7, 2014 and passed them to the other Board members to review. Mrs. Baker said GPI marked four (4) sections of the fence from the barn forward that were on the lot line and the rest was on the Baker's property.

Mr. Baker said his barn has been there for 170 years, it didn't magically move.

Mr. Mills asked Mr. Clark what his next step is if this variance is denied. Mr. Clark said he is stuck. He is not going to hang over a fence with a circular saw, it is not safe. He does not know where to go from here.

Mr. D'Amato asked the Bakers if they can take the fence down from their side of the property. Mr. Baker said they would have to be on Mr. Clark's property to take the screws out.

Mr. Mills asked Mr. Clark if he would be amenable to the Board granting his relief but he would have to put the fence entirely on his parcel. Mr. Clark showed the Board the original paperwork that he received with his permit. He thought he stayed 6" on his property, per the map cover dimensions. Mr. McNamara asked if there was a reason Mr. Clark did not have a survey when he got his permit. Mr. Clark believes his survey should have been in the Town records. When he applied for his west fence, he assumed they went off that survey. He could not get a survey from his lawyer because he went out of business after he closed on the house. In response to Mr. Mills' question regarding moving the fence, Mr. Clark wants to know who is going to pay him to do that. He was issued a permit, he went on good faith and followed everything to the letter of the law. He was in constant communication with Mr. Callahan every step of the way.

Chairman Michnik suggested the Board deliberate. Deputy Town Attorney Steve Bengart said a deliberation is an open session in which the public is allowed to be in attendance.

ACTION:

Motion by Jonathan Hickey, seconded by Richard McNamara, to **approve** request number 2, which is a 2' variance to allow an 8' tall fence at 6080 Railroad Street.

ON THE QUESTION:

Mr. Hickey said with respect to the height, Mrs. Baker is the only neighbor present and has no objection to the height variance. Mr. Hickey said this is not an undesirable request, nor is it a substantial request. It does not have an adverse or physical impact on the environment or surrounding properties. It is not clear to him who, if anyone, has created these difficulties.

Jonathan Hickey	Aye	Richard McNamara	Aye
David D'Amato	Nay	Ryan Mills	Nay
Daniel Michnik	Aye		

MOTION CARRIED.

Per the previous discussion and testimony Mr. Hickey does not know how the Board can intervene with regards to the first request of the variance, thus he does not offer an additional motion on the remaining variance request. He is not comfortable making a motion because both parties have made valid points.

Deputy Town Attorney Steve Bengart clarified that there is no signed agreement. There were negotiations and discussions.

ACTION:

Motion by Jonathan Hickey, seconded by Daniel Michnik, to **table** request number 1, which is the non-climbable side of an existing fence to face inward at 6080 Railroad Street, for 30 days.

ON THE QUESTION:

Mr. Hickey said the reason for tabling the request is not to collect any additional background by way of fact as both parties made their points. His hope is that the neighbors will be able to figure out the best way to handle the non-climbable side. Chairman Michnik also hopes that the neighbors can work it out. His suggestion is to picket the side that faces the neighbor and be done with it.

Mr. D'Amato asked Mr. Clark if he has seen an attorney on this issue. Mr. Clark said yes but the lawyer has not seen the two (2) different surveys. Mr. D'Amato suggested Mr. Clark obtain a copy of both surveys and seek legal advice from a lawyer within the next 30 days, prior to the next meeting. Or he can remove the fence, or he can talk to his neighbor over the fence to resolve the issue.

Mrs. Baker said GPI told her Mr. Clark's map cover is not a map cover, it is an address cover, in Erie County it is not a legal map cover.

Chairman Michnik suggested both parties try to work it out within the next 30 days.

Jonathan Hickey	Aye	Richard McNamara	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Mrs. Baker asked for a copy of the meeting minutes. She was advised she is welcome to a copy once they are approved.

Meeting adjourned at 9:04 p.m.

Carolyn Delgato
Senior Clerk Typist