

Clarence Board of Appeals Minutes  
Tuesday, February 14, 2006  
7:00 PM

Ronald Newton, Chairman, called the meeting to order at 7:00 PM.

Board of Appeals members present were:

Ronald Newton, Chairperson  
Daniel Michnik

Raymond Skaine, Vice-Chairperson  
Arthur Henning

Other Town officials present were:

James Callahan, Director of Community Development  
Phil Sgamma, Planning Board Member  
Councilman Scott Bylewski  
Steve Bengart, Town Attorney  
Councilman Bernard Kolber

Other Interested Parties Present:

Charles Kelkenberg  
Peter Tasca  
Laurie Wisniewski  
Andy Hunt  
Lynne Logan  
Jeff Palumbo  
Michael Maude  
Margaret M. Scott  
Nelsa Voight  
Ann Milks  
Norma J. Schwarzott  
Betty Earhart  
Dave Satola

Joseph Mannarino  
Brian Wisniewski  
Sean Hopkins  
James Cook  
Jerry Logan  
Frank Zolkowski  
Connie Fetes  
Jacqueline M. Steger  
Tom Voight  
Larry Vito  
Rudy Metzger  
Larry Hull  
Leonard Satola

Motion by Raymond Skaine, seconded by Arthur Henning, to APPROVE the minutes of the meeting held on January 10, 2006, as written.

Ronald Newton  
Daniel Michnik

AYE  
AYE

Raymond Skaine  
Arthur Henning

AYE  
AYE

**MOTION CARRIED.**

**Old Business:**

**Appeal No. 5**

Charles Kelkenberg  
Agricultural Rural Residential

Requests the Board of Appeals approve and grant two variances:

1. A 50' variance to allow the construction of a single-family home on a 100' wide lot at 10680 Croop Road.
2. A 25' variance to allow the construction of a single-family home on a 125' wide lot at 10716 Croop Road.

Appeal No. 5 is in variance of section 3.2.5 Lot Width.

**DISCUSSION:**

At the January 10, 2006 Zoning Board of Appeals meeting, it was requested of Charles Kelkenberg to obtain a copy of the deeds to the lots, in order to show when the lots were recorded with Erie County. Mr. Kelkenberg has forwarded the deeds to the Planning and Zoning Office.

Raymond Skaine asks if Mr. Kelkenberg has been able to purchase any more property surrounding the lots. Mr. Kelkenberg has not.

Raymond Skaine discusses the following reasons for granting Appeal No. 5, as written:

- It will not be a change to the neighborhood.
- The applicant has sought other ways of rectifying the situation and was not able to do so.
- The proposed variance is not substantial.
- The proposed variance will not have an adverse effect on the physical conditions of the neighborhood.
- The alleged difficulty was self-created, to a degree, but it was under the old rules.

**ACTION:**

Motion by Raymond Skaine, seconded by Arthur Henning, to APPROVE Appeal No. 5 as written.

Ronald Newton	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE	Arthur Henning	AYE

**MOTION CARRIED.**

**Appeal No. 6**

Charles Kelkenberg  
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 50' variance to allow a single-family home on a 100' wide lot at 7060 Salt Road.

Appeal No. 6 is in variance of section 3.2.5 Lot Width.

**DISCUSSION:**

Charles Kelkenberg advises this is a similar situation to Appeal No. 5. He purchased four lots that were deeded. Three of the lots were sold to one person who made one large lot of the three one-hundred foot lots. This left Mr. Kelkenberg with a single one-hundred foot lot.

The situation is such that it does not look like a house on a hundred foot lot because there is a three-hundred foot lot next door. The difference between this request and Appeal No. 5 is that the houses are already up at that location. Mr. Skaine does not feel the Zoning Board of Appeals can continually deny what the Town has worked on for the Master Plan. Mr. Kelkenberg believes the lots were sold in March of 2005.

Mr. Kelkenberg asks for clarification on the requirements. He asks if the concern is not necessarily the size of the lot but the frontage. Jim Callahan advises the frontage requirement in the zone is 150'. Mr. Kelkenberg asks what depth of frontage is required. Mr. Callahan advises the depth requirement is at the setback line.

**ACTION:**

Motion by Raymond Skaine, seconded by Daniel Michnik, to DENY Appeal No. 6, as written.

Ronald Newton	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE	Arthur Henning	AYE

**MOTION CARRIED.**

**New Business:**

**Appeal No. 1**

Joseph Mannarino  
Residential Single Family

Requests the Board of Appeals approve and grant three variances:

1. An 80' variance creating a 135' front yard setback.
2. A 1,485 sq. ft. variance to create a 2,205 sq. ft. garage.
3. A 1.5' variance to create a 36.5' high home.

All to allow for the construction of a new home at 5225 Donnington Road.

Appeal No. 1 is in variance to Chapter 229, Article VI, sections 52, 54 & 55.

**DISCUSSION:**

Joseph Mannarino advises he purchased the lot in 1999; it was one of the few fully treed lots in Clarence. Mr. Mannarino would like to retain as many of the trees as possible. Many of the trees on the site are between eighty and one-hundred ten years old. Mr. Mannarino would like to position the house 135' off the line; this would save as many trees as possible. Part of the shifting of the house to the back is to satisfy the Department of Health's requirement for the septic, which is approximately eighty feet long.

Mr. Mannarino explains the second variance request and refers to the plan that is on display. The plan shows an elevation to the front of the house. It is a center entrance Colonial house to a seven car attached garage. Mr. Mannarino owns four collector vehicles and would like to keep them in this garage. This garage would also house lawn equipment.

Mr. Mannarino explains the third variance request is to allow for nine foot ceilings on each floor, the ability to obtain daylight to the basement and allow egress from the basement.

Mr. Mannarino has cut down approximately thirty trees. The Town of Clarence Building Department advised Mr. Mannarino that he did not need a permit to cut down the trees. The lot is approximately 450 feet deep, so there is approximately 250 feet of wooded area that will be retained.

Peter Tasca, of 9835 Hollingson Road, speaks to the Board. Mr. Tasca voices his concern regarding the request for three variances. He thinks it would have been better for Mr. Mannarino to have his architect change the design to meet the Zoning Laws. Mr. Tasca does not know what the purpose of the Zoning Law is if there is only going to be complete disregard for it. As far as the setback of the house from the road, all the other houses are set back within the Zoning Law why should this one be set back more? If it is a matter of trees, thirty trees have already been cut down; Mr. Mannarino could have saved the trees in the back as opposed to the trees in the front if he wanted a continuous area of trees.

Arthur Henning asks Mr. Tasca where his house is located with regards to the site in question. Mr. Tasca advises it is the second house from the site. If the setback is granted it will affect Mr. Tasca's sight line in the back yard area.

Arthur Henning asks Mr. Mannarino if he is the owner of the property in question. Mr. Mannarino advises he is the owner. Since the purchase of the land was in 1999, Mr. Henning asks why it took so long to decide to build. Mr. Mannarino states he was saving money. Mr. Henning asks what Mr. Mannarino's alternative would be if this request is denied. Mr. Mannarino is not prepared to answer this question. Mr. Henning asks why the house can not come forward on the lot. Mr. Mannarino advises the septic design is driving a dimension that he needs to be able to achieve. It would be difficult to access the septic if it were put behind the house because it is only 130 feet wide. Ronald Newton indicates if the house was moved forward on the lot it may allow access to the septic because it would be at the wider part of the lot. Mr. Mannarino advises the lot is 138 feet wide all the way through. Mr. Newton asks if the septic could be moved to the other side of the lot. Mr. Mannarino advises the Department of Health wants the septic in front of the house not the garage; they do not want any lines coming across the driveway.

Daniel Michnik wonders why the septic field can't work when located in the back of the home and indicates that most of the homes in Clarence have septic fields in the back. Septic fields work properly in the back and can be leached to the front if a sand filter is put in. Mr. Mannarino advises the Health Department wants a gravity system not a sand filter. The back of the house which is out of the ground

five feet for the egress windows is now down a grade and in order to run a gravity system there is only about twenty inches of cover over the rock, whereas in the front of the house a gravity line can be run from the house. The percolation test indicated that the soil in this zone can handle percolating without excavating the rock to create, essentially, a "bathtub". This was another factor in putting the septic up front.

Daniel Michnik suggests "flipping" the house and the garage, and then the leach field could be on the left side of the lot. Mr. Mannarino states the majority of the nicer trees are in that area. Mr. Michnik suggests "flipping" the house, there will be an open area where the house can come forward and the septic field can still be put in the front. Mr. Mannarino advises the best views are south and east of the house, he has constructed his house so that the windows look out on woods that are located south and east as opposed to facing a three or four foot mound which is probably a leach field from the neighboring houses. Mr. Mannarino is shielding the mound with the proposed garage and creating the view for the trees on the south and east side of the house. Mr. Michnik states Mr. Mannarino is also shielding the neighbors view of the trees.

Raymond Skaine asks if the neighbors have been notified. Mr. Mannarino replies, "Yes."

Mr. Skaine provides an explanation as to how the Zoning Board of Appeals comes to a decision. He advises there are five factors the members take into consideration and he goes on to discuss each one. Mr. Skaine refers to the first factor: whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting of the area variance. Mr. Skaine states an eighty foot variance, which is more than a one-hundred percent variance, is out of character with the area. There have been other homes built in this area that have septic systems, they have maintained the character of the street and have kept the distance at fifty-five feet. The garage is a substantial variance request; it is fifty percent greater than other garages in the area. This variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, the applicant would be looking into the neighbor's backyard. The alleged difficulty was self-created. Based on this review, Mr. Skaine is opposed to granting the variance.

Mr. Mannarino advises there is a house on the other side of Donnington Road, whose garage is at least three thousand square feet. Mr. Skaine believes that was granted when the area was an Agricultural Zone. Jim Callahan advises the zone changed in March of 2005 to reflect Residential Single-Family. Mr. Skaine advises Mr. Mannarino that the Zoning Board of Appeals must refer to the Master Plan in making decisions.

Mr. Mannarino refers to the septic systems for the houses on the street and advises the tanks, for most houses, are located in the front of the house. Mr. Skaine suggests Mr. Mannarino discuss the situation with the Health Department to come up with a feasible solution. Daniel Michnik suggests rerouting the driveway using a different pattern.

Mr. Mannarino indicates the biggest concern is being able to maintain egress from the rear of the house; the gravity line would come out two or three feet above the window. Mr. Skaine reiterates this is one of the factors: it is a self-created difficulty. Mr. Mannarino does not want to build a five foot berm in the back of the house. The lot currently slopes off and will drain naturally without creating a berm to make it drain. Mr. Skaine believes the architectural firms today can provide another design that would be workable.

Mr. Mannarino states that one of his neighbors, Mr. Randazzo of 5195 Donnington Road, could not be present at this meeting, but advised that he preferred the house be set back because Mr. Randazzo's view from his kitchen looks across Mr. Mannarino's lot. Mr. Randazzo would rather look at the trees than the side of a house. There is nothing in writing to this effect, but Mr. Mannarino can obtain documentation.

Ronald Newton advises that, generally, it is the Zoning Board of Appeals opinion to protect backyard privacy. This project will take backyard privacy away from neighbors.

**ACTION:**

Motion by Raymond Skaine, seconded by Daniel Michnik, to DENY Appeal No. 1, as written, per previous statements and the results of the Review Sheet for ZBA Members on file.

**ON THE QUESTION:**

Mr. Mannarino asks what his next step should be. Ronald Newton advises he has the right to file a claim in the Court of Claims under Article Seventy-Eight (78). Mr. Mannarino says he is not looking for legal advice. There are many large garages in the area and he wants to know what the limitation is for an acceptable size. Raymond Skaine indicates Mr. Mannarino knows what the law is and he is free to bring in another variance at a future date if he chooses.

Ronald Newton	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE	Arthur Henning	AYE

**MOTION CARRIED.**

Raymond Skaine asks for clarification regarding the legal role of the Zoning Board of Appeals liaison, Councilman Bernard Kolber. Town Attorney Steven Bengart advises Councilman Kolber can give his opinion. Ronald Newton considers the liaison as part of the public and these meetings are open to the public. However, Mr. Newton advises these meetings are not "question and answer" meetings between the applicant and the public, but Councilman Kolber can ask the Chairperson a question and the Chairperson can obtain the answer from the applicant.

Town Attorney Steven Bengart recommends the Zoning Board of Appeals take each request on large appeals, specifically Appeal No. 4 from this agenda, on an individual basis. The rationale on each request needs to be provided.

**Appeal No. 2**

Brian and Laurie Wisniewski  
Residential Single-Family

Requests the Board of Appeals approve and grant two variances:

1. A 3' variance creating a 32' front yard setback.
2. A 2' variance creating an 8' side yard setback.

All to allow the construction of an addition to the existing home at 8600 Nottingham Terrace.

Appeal No. 2 is in variance of Chapter 229, Article VI, section 52, (Setbacks).

**DISCUSSION:**

Brian and Laurie Wisniewski are present. Mr. Wisniewski speaks to the Board and indicates the reason for the request is to add living space. They have two daughters and would like to add another bathroom and additional living space to the home, including a larger garage. There is no basement so the storage space is currently limited. The neighbors have been notified and the property was staked.

Raymond Skaine states the variance is not substantial and thinks the neighbors will have no opposition to it.

Daniel Michnik has no concerns with the request thinks it will be a nice improvement.

Arthur Henning asks who will do the construction. Mr. Wisniewski advises his uncle will do the construction; he is a contractor and has been remodeling homes for almost thirty years. It will blend in with the house. Mr. Wisniewski hopes to start construction in the spring of 2006.

**ACTION:**

Motion by Daniel Michnik, seconded by Raymond Skaine, to APPROVE Appeal No. 2, as written.

Ronald Newton	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE	Arthur Henning	AYE

**MOTION CARRIED.**

**Appeal No. 3**

Walgreen's  
Traditional Neighborhood

Requests the Board of Appeals approve and grant a 30' variance to create a 10' front yard setback to erect a new free-standing sign at 6785 Transit Road.

Appeal No. 3 is in variance of Chapter 181, section 3.C.1.

**DISCUSSION:**

Sean Hopkins of Hopkins, Garas & Sorgi, PLLC and Andy Hunt, developer, are present.

Raymond Skaine did not see any staking at the site to indicate what the appeal involves. Mr. Skaine indicates the site must be staked, showing exactly where the proposed sign will be. Sean Hopkins and Andy Hunt both advise this will be done and are asked to be placed on the next Zoning Board of Appeals agenda.

**ACTION:**

Motion by Raymond Skaine, seconded by Daniel Michnik, to TABLE Appeal No. 3, until the property is staked.

Ronald Newton	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE	Arthur Henning	AYE

**MOTION CARRIED.**

Sean Hopkins will send a letter to the Planning and Zoning office once the property is staked.

**Appeal No. 4** will be delayed to allow more time for Jeffrey Palumbo, Attorney, to arrive.

**Appeal No. 5**

James Cook  
Agricultural Flood zone

Requests the Board of Appeals approve and grant a 92' variance creating a 98' front yard (along Kenfield Road) to allow the construction of a pole barn at 8649 Wolcott Road.

Appeal No. 5 is in variance of Chapter 229, Article IV, section 31.

**DISCUSSION:**

James Cook explains his request. Mr. Cook needs more room, he has several restored cars and there is not enough room in the garage now. The proposed pole barn will provide some privacy as well.

Arthur Henning asks if the pole barn will be free standing or connected to the house. Mr. Cook advises it will be free standing. Mr. Henning asks why the pole barn can not be in the back of the house. Mr. Cook advises there is a small shed behind the house and the septic system is next to the shed.

Raymond Skaine asks Jim Callahan what impact this building will have on the Agricultural Flood Zone, should the Town Engineer look at this. Mr. Cook advises it is in the 100-year flood zone and he knows he has to bring it up to elevation. Mr. Callahan advises the whole property has to be in compliance with the flood zone regulations.

Jim Callahan asks where the door access will be. Mr. Cook advises he will have a 10' by 10' center door on the building and a man door off to the side of the center door. There will not be a



driveway installed; it will be stone for now. This will be a steel building. Mr. Cook provides a picture of the steel building for the Zoning Board of Appeals members to view.

Ronald Newton voices his concern regarding the location of the building. He wonders why it has to be slanted and suggests pivoting it so it will not be so obtrusive.

Mr. Cook owns the whole corner lot. He would like the building slanted so when the garage doors are open he will have more privacy from the road.

**ACTION:**

Motion by Raymond Skaine, seconded by Arthur Henning, to APPROVE Appeal No. 5, as written, with the stipulation that the applicant follows and adheres to the Town Engineering Department recommendations regarding the building and the flood zone.

Ronald Newton	NAY	Raymond Skaine	AYE
Daniel Michnik	AYE	Arthur Henning	AYE

**MOTION CARRIED.**

**Appeal No. 6**

Jerry Logan  
Residential Single Family

Requests the Board of Appeals approve and grant a 25’ variance creating an 80’ front yard setback to allow for the construction of a single-family home at 9285 Greiner Road.

Appeal No. 6 is in variance of Chapter 229, Article VI, section 52 (setbacks).

**DISCUSSION:**

Jerry and Lynne Logan are present. Mr. Logan suggests a compromise to the previous variance that he requested, which was 100 feet. He is now requesting an 80 foot setback, which is only a 25 foot variance. Mr. Logan refers to the factors that are listed on the Review Sheet for ZBA Members and advises he is trying to maintain the character of the neighborhood and achieve a setback of the times. The setback is really the only answer to this issue. Mr. Logan does not think this variance is substantial. He is going to try NOT to significantly change the area. Mr. Logan advises the fifth factor on the review sheet is not applicable. Raymond Skaine advises the request to go back 25’ is self-created, so the fifth factor does apply. Mr. Logan thought the fifth factor meant he made a mistake and he has not, therefore he thought the fifth factor did not apply.

Lynne Logan advises she was and is willing to work with the neighbors. She has had discussions with the neighbors letting them know what the plan was and asking if they had any opposition to it. She did not hear from them until the last Zoning Board of Appeals meeting where neighbors opposed the request. Ms. Logan refers to the word “neighborhood” and says that the area in question is not a neighborhood. Daniel Michnik advises the area is someone’s neighborhood, if there are two houses there it constitutes a neighborhood.

The second house from this site has a 75 foot setback; therefore, Mr. Logan thinks his request will be in line with the character of the neighborhood.

Daniel Michnik indicates that when Mr. Logan bought the lot, he knew what the limitations for the lot were and he knew what the site lines were for surrounding properties.

Arthur Henning asks if Mr. & Mrs. Logan were aware of the letter that was sent in by two of the neighbors. Mr. & Mrs. Logan were not aware of this letter and go on to read it. Mrs. Logan advises in the previous Zoning Board of Appeals meeting Mr. Ryszkiewicz suggested a setback of 75 feet and now he has signed a letter opposing any variance.

Raymond Skaine advises the applicants, if this request is denied; they can file an Article Seventy-Eight (78) and take it to the Supreme Court.

Raymond Skaine asks that a part of the minutes from the January 10, 2006 meeting be read into this meeting's minutes because he feels they pertain to this request as well. Ronald Newton reads the minutes as follows:

“Appeal No. 2, Raymond Skaine voices his concern regarding the neighbor privacy. Raymond Skaine and Daniel Michnik refer to the Review Sheet for ZBA Members that has been completed and is in the file. The review sheet reflects the following:

- An undesirable change will be produced.
- The applicant can achieve the same benefit by some other method.
- The requested variance is substantial.
- The request will have an adverse effect on the physical conditions of the neighborhood.”

**ACTION:**

Motion by Raymond Skaine, seconded by Daniel Michnik, to DENY Appeal No. 6, based on the above mentioned criteria.

Ronald Newton	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE	Arthur Henning	AYE

**MOTION CARRIED.**

**Appeal No. 4**

Walgreen's  
Commercial

Requests the Board of Appeals approve and grant  
nine variances:

1. Parking in the front yard setback area.
2. A 30' variance to allow a 50' front yard setback.
3. A 29 parking stall variance to allow 69 parking stalls.
4. A 130' variance to allow a manufactured home park 20' from an existing public road.
5. A 27' variance to allow a 3' setback from

- an internal roadway centerline to a manufactured home.
6. A 20' variance to allow a 5' setback between manufactured homes.
  7. A 48' variance to allow a 2' greenbelt between the manufactured home park and other properties.
  8. A 5,400 sq. ft. variance to allow for 2,100 sq. ft. manufactured home sites.
  9. A 15-home variance to allow for the existence of the manufactured home park with only 35 home sites.

All to allow for the construction of a 14,750 sq. ft. retail store at 9200 Sheridan Drive.

Appeal No. 4 is in variance of Chapter 229, Article X, sections 87-88, and Chapter 135, section 3.

## **DISCUSSION:**

Jeff Palumbo, of Renaldo & Palumbo, representing Maude Developers, is present and speaks to the members of the Zoning Board of Appeals. Zaxis Architectural firm prepared the concept plan. Mr. Palumbo states that this application is not a rezoning application. Both properties are zoned Commercial and allow this type of development. This request is not a site plan review. The applicant is here for a request pursuant to New York State Town Law and the Town's own Zoning Ordinance. The standard to be applied for any area variance is a balancing test: what is the benefit to the applicant, if the variances are granted, versus the potential detriment to the health, safety and welfare of the neighborhood and the community. There are important factors that the Board is required to consider which Mr. Palumbo will discuss later. There has been an application submitted that included a full discussion of each of the factors listed in section 267(b)(3) of the New York State Town Law as well as the Town's Zoning Ordinance. There is a summary and description of the development.

Mr. Palumbo indicates that three of the variances are related to the Walgreen's site itself. The remainder of the variances has to do with the Manufactured Housing Park. This request is unique as it involves variances on both parcels. The Walgreen's site is approximately 1.73 acres.

Mr. Palumbo refers to the first variance request and advises this is a variance for parking. The Town Ordinance prohibits parking in front of these buildings without permission from the Zoning Board of Appeals. In asking for this variance the applicant hopes to provide safety for the customers, minimize walking distance and provide convenience.

The second parking related variance has to do with the number of spaces. The Town's Ordinance requires 98 parking spaces for this site. The proposal is for 69 parking spaces. Walgreen's believes this is more than sufficient parking for their customers. Studies have shown that the maximum number of people at one given time is 25. A benefit to the reduction in parking spaces is it allows for more green space.

The third variance, related to the Walgreen's site, is the building itself. There is an 80' setback requirement, from the roadway. There is a small portion of the building that is not in compliance with this requirement; this portion of the building is 50 feet from the road.

If the plan is approved, as is, it would require the relocation of fourteen Manufactured Housing homes. The owner of this Manufactured Park owns another park across the street. There are eight residents that would be displaced out of the fourteen units. The owner has the ability to relocate six of them on site; the remaining two would be relocated across the street. The applicant is trying to minimize the disruption that the project will bring to the residents in the park.

Mr. Palumbo refers to the variances for the Manufactured Housing Park and questions whether or not the ordinance applies to this situation. Mr. Palumbo refers to the Town Ordinance 135-3.(C)(2): Any enlargement to a manufactured home park must meet all current standards, as herein described, at the time of its enlargement. Mr. Palumbo does not have a problem with this statement, however he goes on to read the next paragraph 135-3.(C)(3): If the existing areas of a manufactured home park are redesigned, or more than fifteen percent (15%) of the mobile home sites are redesigned, the existing portion of the manufactured home park must be modified to meet current standards. Mr. Palumbo says this sentence is unclear, he does not think that "redesign" meant "reduction", if it did, why wouldn't the sentence read "the remaining portion of the park must meet current standards". The next paragraph in the Town Ordinance states new standards do not apply to existing parks but do apply to an expansion for any such park.

Mr. Palumbo refers to the five factors that the Zoning Board of Appeals members review for each appeal. The first factor is whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. Mr. Palumbo advises the neighborhood will change. The auto sales building, that is currently at the site, is a traffic hazard. The granting of the requested variance would eliminate the hazardous location of cars all over the site, allow for more green space and injects new life and activity into the area.

The second factor Mr. Palumbo refers to is whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than the area variance. The only way to accomplish this is to remove the vast majority of the existing units; one variance could then be eliminated. However, there would still be the issue of parking in the front and the number of parking spaces.

Mr. Palumbo refers to the third factor which is whether the requested area variance is substantial. He suggests to the Zoning Board of Appeals that this request is not substantial given what is taking place now at the site and what is being proposed.

The fourth factor is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Mr. Palumbo does not think this project will have a negative impact at all; it will be just the opposite.

The fifth and final factor that Mr. Palumbo addresses is whether the alleged difficulty was self-created. Mr. Palumbo does not think that this was self-created. The only self-creation is that the applicant bought the land knowing that variances are needed.

In summarizing, Mr. Palumbo indicates that the benefits of this project, for the Town and the applicant outweigh any potential detriment to the health, safety and welfare of the neighborhood. The benefit to Walgreen's is obvious; they get to build another store. The benefits to the Town are the tax revenue increases and the property sales tax increases. The gateway to the Town Of Clarence will be improved by this project. The company is willing to invest a tremendous amount of money in the town

and commit to a twenty-five year lease. Another benefit is the creation of jobs that will result from this project.

Andre Pigeon, Town of Clarence resident, speaks to the Board. Mr. Pigeon is not directly affected by the site and the proposed plan; however, he will be affected by the additional traffic. His concern is the congestion that will result if the project is approved and feels the Zoning Board of Appeals should deny this request and the applicant should look for another site, perhaps on Main Street.

Norma Schwarzott, of 9170 Sheridan Drive, wonders how many mobile homes will be removed. Ms. Schwarzott has lived in the mobile home park for more than twenty years. The situation does not affect her as she lives on the other side of the mobile home park. Ms. Schwarzott also wonders who will pay for the mobile homes, what are they worth and what will Walgreen's provide for these people who will be asked to relocate? She is concerned for her neighbors.

Mr. Palumbo advises there are fourteen units that would be removed, at no cost to the residents, as a result of this development. Mr. Satola, owner, advises eight people would be relocated and between the 2 mobile home parks there are eight vacant mobile homes currently available.

Janet Vito, of 8617 Bonview Terrace, speaks to the Board. Ms. Vito asks why there is a need for a Walgreen's at this location when there is one on the corner of Greiner Road and Transit Road. She is concerned for the additional traffic this project will create. She is also concerned for the seniors who live in the mobile home park.

Mr. Palumbo advises Walgreen's has done a detailed market study to show that the Town of Clarence needs another pharmacy. This site is at a very desirable location with easy egress and ingress.

Larry Vito, of 8617 Bonview Terrace, speaks to the Board. Mr. Vito states that there is a nice pharmacy across the street, why create the competition? If Walgreen's puts Rite-Aid out of business, that leaves an empty building, what will be done about that? Mr. Palumbo replies that competition brings people to the area; the one who benefits from the competition is the consumer.

Andre Pigeon speaks to the Board again, and asks if this project falls within the perimeters of the Master Plan. Mr. Pigeon does not feel this is a viable plan.

Margaret Scott, of 9170 Sheridan Drive #33A, speaks to the Board and asks for clarification on the number of mobile homes that will be removed. Mr. Palumbo indicates there are eight residents within the fourteen mobile homes that need to be relocated, there are actually fourteen units. Ms. Scott states that she has been insulted. Her house is for sale so it was not taken into consideration. Ms. Scott wonders if the applicant has talked to someone who knows about moving older homes. Mr. Palumbo assures her that the applicant has.

Larry Vito wonders what will happen to the Sheridan Sales Garage. Mr. Palumbo does not know what will happen to the garage, they may relocate or retire. The business is being bought and the building will be taken down. Mr. Palumbo does not know at what price the building was purchased for.

Ann Milks, of 9170 Sheridan Drive #25, speaks to the Board. Ms. Milks is concerned for the elderly people who reside in the mobile home park; they should be first when it comes to relocating. Ms. Milks would like to move across the street, she found a mobile home that she was very pleased with. She is willing to move.

Betty Earhart, of 9170 Sheridan Drive, speaks to the Board. Ms. Earhart wonders how much will be offered to those people who will give up their homes. Mr. Palumbo is unable to provide these details, what he can say is that the relocation will be at no expense to those who are being relocated. The residents will be made whole and will not be financially injured in any way.

Leonard Satola, owner of the mobile home parks, speaks to the Board. There are plenty of vacant mobile homes in the parks for anyone who wants to stay. The relocation will be paid for by the company and the cost for what needs to be done with their old home will be taken care of by the company as well.

Betty Earhart asks if someone has already picked out a place on the other side, does that mean the house will be paid for by Walgreen's or Satola or will the individual have to buy the home. Mr. Palumbo can not answer that at this point. He does not know the mechanics of how everyone will be treated.

Jacqueline Steger, of 9170 Sheridan Drive #16, speaks to the Board and asks for clarification on what rows of mobile homes will be effected. Mr. Palumbo clarifies: there will be two rows of mobile homes that will be impacted. It appears that Ms. Steger's home will not be affected.

Janet Vito asks what the time frame is. Mr. Palumbo advises if the Zoning Board of Appeals approves the variances this evening, it would still be month's away due to the approvals that need to be obtained for various steps in the process. Mr. Palumbo estimates eight months or more. Ms. Vito asks if environmental studies have been done. Mr. Palumbo advises there have not been any environmental studies done yet, because, unless this request is granted, the project goes no further. Ms. Vito asks what happens if this request is not approved. Mr. Palumbo advises that Walgreen's would then have to make a decision as to whether or not there is an opportunity to purchase more of the property to eliminate some of the variances. It would then require additional relocation of residents and Walgreen's was trying to minimize the amount of residents that had to be relocated. Ms. Vito asks if Mr. Palumbo is saying whether the Town agrees or not Walgreen's is going in. Mr. Palumbo is not saying that at all.

Ronald Newton points out that the site is commercially zoned so it is acceptable for a business to be at this location.

Ms. Vito asks if it is a possibility that the buyer could buy the mobile home park and displace all the residents. This is a possibility. Ms. Vito also voices her concern regarding the traffic congestion at this intersection.

Mr. Palumbo advises the Walgreen's may be a 24-hour store if the community uses it.

Ms. Vito wants to go on record opposing this project, it is not for the seniors nor is it for the Clarence community.

Raymond Skaine advises Rite-Aid has an address of Main Street; therefore, they do not have parking in the front portion of the lot.

Ronald Newton reads a letter from Stephen and Elizabeth Murtaugh:

"This letter is to express our disagreement with Appeal No. 4 requested by Walgreen's for consideration at your February 14, 2006 meeting. Judging by the variances requested, it is clear that the selected site is inadequate for a 15,000 sq. ft. retail store, considering the spaces required for parking, drive-in pharmacy plus driveways. This store is being squeezed in without regard to the mobile home

residents who will be displaced and/or crowded. Many of these residents are elderly and their homes have been at their sites for many years. It is questionable if their homes could be moved even short distances without severe damage. Moving to another location looks like a major and upsetting inconvenience to these elderly people for the convenience of Walgreen's. A second factor is the proposed location at the intersection of three increasingly heavy traffic highways. The presence of Tim Horton's and Rite-Aid, both of which often have insufficient parking space, has already made these corners quite busy. We encourage the ZBA to refuse this package of variances and that it be suggested to Walgreen's that they either select a larger location further east on Main Street or else reduce the store size to under 10,000 sq. ft. so it fits appropriately on the proposed site. Thank you for your consideration of these factors in making your decision."

Daniel Michnik voices his concerns regarding the parking. The variance to reduce the parking will benefit the applicant because they do not have the space anyway. Mr. Palumbo advises additional land can be purchased to provide for the additional parking spaces, however this would require displacement of additional residents. This is to no advantage to the Town because the residences would be replaced with parking spaces that will never be used. Mr. Michnik also voices his concern with the amount of traffic that comes through at this site.

Mr. Palumbo advises all the Walgreen's are approximately the same size, 14,700 sq. ft. Frank Zolkowski of Zaxis Architectural advises placement of this building would increase the lines of sight. The lines of sight are currently at 130 feet from the corner; this will improve to approximately 220 feet along Thompson Road and nearly 300 feet on Sheridan Drive.

Arthur Henning asks who owns the land. There are two owners, Sheridan Auto Sales owns a portion of the property and Leonard Satola owns the remaining property.

Mr. Palumbo represents Maude Development, the developer of the proposed site. Mr. Henning asks, if this were approved, would Walgreen's be in a lease situation with Maude Development? Mr. Palumbo replies, "Yes."

The owner of Sheridan Sales is present and will sell the property if it is approved by the Town; he is in favor of the Walgreen's project.

Arthur Henning asks if all nine variances need to be approved for the applicant to move forward. Mr. Palumbo confirms all nine variances would need to be approved for the project to move forward.

There are at least five lots at the Sheridan Park that are available for mobile homes. Leonard Satola owns Woodside Village and has five more lots available there. There are also some vacant homes available.

Ronald Newton wonders what will happen to the homes in row three if they need to be removed. The homes may need to be removed in order to cut down on the number of variances being requested. Mr. Palumbo advises if there are an additional eleven homes taken out; this only takes care of one variance, the building setback. Mr. Newton asks where the "front" of the site is. Mr. Palumbo advises the "front" has not been determined yet.

There are no sewers in this area therefore, there would have to be leach fields installed for the existing mobile home park, this may affect displacement as well.

David Satola advises the leach fields are in the center of the site and will not have any effect on the proposed project.

Raymond Skaine indicates the sign is non-compliant. Mr. Skaine refers to the Review Sheet for ZBA Members and addresses items 1, 2 and 3 from the agenda. This set back would alter the character of the area; current surrounding buildings are in compliance, the building to the east does not have parking in the front.

The benefit sought by the applicant can be achieved by another method, by purchasing existing land to the north.

The variance is substantial. There is 33% less parking spaces; it is 25% closer to the lot lines and parking in front of two major roads.

Granting the variance would have an adverse effect on this area. How do the residents of Clarence benefit from this proposal?

The alleged difficulty is self-created, designing such a large structure on the land has created the difficulty, the applicant knew the building was non-compliant.

Mr. Skaine addresses items 4, 5, 6, 7, 8, and 9 from the agenda. This would definitely altar the character of the neighborhood. The benefit could be sought by procuring additional property or removing the existing homes.

The variance is substantial. Mr. Skaine provides his calculations regarding the percentage of the variance request. Item number 4 is 87%, item number 5 is 90%, item number 6 is 80%, item number 7 is 96%, item number 8 is 72% and item number 9 is 70%.

This project will alter the environmental conditions within the park.

Trying to squeeze a major project into an existing neighborhood is a self-created difficulty.

Both Review Sheets for ZBA Members are on file.

**ACTION:**

Motion by Raymond Skaine, seconded by Arthur Henning, to DENY Appeal No. 4, as written in its entirety, based on Mr. Skaine’s summary provided in these minutes.

Ronald Newton	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE	Arthur Henning	AYE

**MOTION CARRIED.**



**Appeal No. 7**

Nancy Miller  
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 12,935 sq. ft. variance to create a 45,000 sq. ft. building lot (150' x 300') at 10120 Lapp Road.

Appeal No. 7 is in variance of Chapter 229, Article V, section 39 (lot provisions).

**DISCUSSION:**

The new address will be 10100 Lapp Road. When Nancy Miller and her deceased husband purchased the lot, years ago, it was a buildable lot and they were planning on building. At this point, Ms. Miller, out of necessity, would like to sell the lot. The required frontage is present, but the required depth is not. The total frontage is 450 feet. Ms. Miller's house is located further to the east of this lot. There is a buyer for the property and if the variance is approved the property will be purchased.

Daniel Michnik wonders how much Ms. Miller would have to take from her existing lot to accommodate the side yard setback. The side yard setback is 15 feet.

Ronald Newton asks why the applicant wants the tax payers of Clarence to create a buildable lot that can be sold, that is not there. This is almost an 80% variance.

There are smaller lots on the street. Looking behind the lot where the County owns land, it keeps within the rural character of the area.

The purchaser plans on building a 1,650 square foot ranch on the property, with an approximate cost of \$110,000.

Ronald Newton does not think the Zoning Board of Appeals should be put in the position of creating sellable land.

**ACTION:**

Motion by Raymond Skaine, seconded by Arthur Henning, to APPROVE Appeal No. 7.

Ronald Newton	NAY	Raymond Skaine	AYE
Daniel Michnik	NAY	Arthur Henning	AYE

**MOTION DENIED.**

If the applicant went with 194 feet frontage she would not have to come before the Zoning Board of Appeals for a variance. The applicant needs to go before the Town Board for a minor subdivision.

**Appeal No. 8**

Larry Hull  
Agricultural Flood zone

Requests the Board of Appeals approve and grant a variance to allow for the construction of an addition below the base flood elevation at 8110 Goodrich Road.

Appeal No. 8 is in variance of Chapter 107, section 5 (c).

**DISCUSSION:**

Larry Hull is present and advises the Board that he wants to build an addition. Mr. Hull had an Elevation Certificate done and it indicates that he needs to be so many feet above the benchmark floodplain and he is not. He wants to keep the elevations the same as the existing home. He has owned this home for approximately eight years and there has been no flooding. Mr. Hull has flood insurance. The Town Engineer advised Mr. Hill to obtain the Elevation Certificate and then see the Zoning Board of Appeals.

Arthur Henning wonders if there is any liability present. Ronald Newton suggests placing a condition when making a motion on this appeal. The condition would be to make sure all the requirements of the Floodplain Administration are met.

**ACTION:**

Motion by Raymond Skaine, seconded by Daniel Michnik, to APPROVE Appeal No. 8 based on the determination that the Floodplain Administrator signs off on this building. The applicant must meet the requirements of the Floodplain Administration.

**ON THE QUESTION:**

Arthur Henning asks if the requirement for flood insurance should be made part of the motion as well. Raymond Skaine advises this will be addressed under the requirements of the Floodplain Administrator. Flood insurance is mandatory at this location.

Ronald Newton	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE	Arthur Henning	AYE

**MOTION CARRIED.**

**DISCUSSION:**

Raymond Skaine suggests re-opening and re-addressing the variance request for Mark Ziembra at 8290 Stahley Road. Daniel Michnik was not part of the Zoning Board of Appeals when this appeal was reviewed; however he was at the Town Board meeting when the applicant was present to discuss the project.

**ACTION:**

Motion by Raymond Skaine, seconded by Daniel Michnik, to RE-OPEN the variance request for Mark Ziembra at 8290 Stahley Road. The applicant will be provided with two (2) months to prepare. This variance request will be placed on the May 2006 Zoning Board of Appeals Agenda.

Ronald Newton	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE	Arthur Henning	AYE

**MOTION CARRIED.**

**DISCUSSION:**

Ronald Newton advises the Zoning Board of Appeals previously granted a 15 foot setback for a sign at 6471-6507 Transit Road, Bevilacqua Development. The pillars that hold the sign are currently at the lot line. It appears the applicant measured the 15 feet from the back of the sign. Raymond Skaine states that the applicant said if the sign was not in compliance he would tear it down.

**ACTION:**

Motion by Raymond Skaine, seconded by Daniel Michnik, to RE-OPEN the variance request for a sign at 6471-6507 Transit Road, Bevilacqua Development. The applicant will be provided with two (2) months to prepare. This variance request will be placed on the May 2006 Zoning Board of Appeals Agenda.

Ronald Newton	AYE	Raymond Skaine	AYE
Daniel Michnik	AYE	Arthur Henning	AYE

**MOTION CARRIED.**

Meeting adjourned at 9:50 p.m.

Ronald Newton, Chairperson