

BOARD OF APPEALS MINUTES

APRIL 12, 2005

On Tuesday April 12, 2005 at 7 p.m. the Town of Clarence Zoning Board of Appeals will hear the following requests for variances:

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| APPEAL NO I Ken Fetter Agricultural Flood Zone | Requests the Board of Appeals approve and grant a twenty five foot (25') variance creating a two hundred twenty five foot (225') front lot line setback for a new home at 9229 Sesh Road. |
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APPEAL NO I is in variance to section 3.1.6 setbacks.

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| APPEAL NO II Michael Drescher Agricultural Rural Residential | Requests the Board of Appeals approve and grant a five hundred twenty foot (520') variance creating a five hundred seventy foot (570') front yard setback for the construction of a new home and barn at 7060 Goodrich Road. |
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APPEAL NO II is in variance to section 3.2.6 setbacks.

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| APPEAL NO III Harris Hill Animal Hospital Traditional Neighborhood District | Requests the Board of Appeals approve and grant a variance to the parking lot design standards to allow parking in the front yard of a new animal hospital at 8470 Main Street. |
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APPEAL NO III is in variance to section 3.4.11 parking lot design standards.

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| APPEAL NO IV Cimato Enterprises Residential Single Family | Requests the Board of Appeals approve and grant two variances from section 3.3.4 & 3.3.5 to allow the previously designed subdivision plan for 16 residential lots at Highland Park be approved. (See attached plan) |
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APPEALS NO IV & V are in variance to section 3.3.4 lot area provisions and section 3.3.5 lot width.

**APPEAL NO V
Cimato Enterprises
Residential Single Family**

Requests the Board of Appeals approve and grant two variances from section 3.3.4 & 3.3.5 to allow the previously designed subdivision plan for 77 residential lots at Woodland Hills be approved. (See attached plan)

**APPEAL NO VI
Susan Aronica/Elizabeth Hansen
Major Arterial**

Requests the Board of Appeals approve and grant a forty foot (40') variance creating a zero foot (0') front lot line for the placement of a business sign at 6241 Transit Road

APPEAL NO VI is in variance to L.L. 181-4A, Major Arterial District sign specifications.

**APPEAL NO VII
David/Jacqueline Bowman
Agricultural Flood zone**

Requests the Board of Appeals approve and grant a fifty five foot (55') variance creating a two hundred fifty five foot (255') front yard setback for the construction of a new single family home at 8165 Goodrich Road.

APPEAL NO VII is in variance to section 3.1.6 setbacks.

**APPEAL NO VIII
People Inc - Pat Bittar
Commercial**

Requests the Board of Appeals approve and grant two variances:
1. A sixty square foot (60 sq ft) variance allowing a minimum five hundred forty square foot (540 sq ft) living unit.
2. A four units (4) per acre variance allowing twelve (12) units per acre for proposed efficiency apartment project at 4725 Transit Road. (Property is on the east side of the entrance to Eastern Hills Mall on Sheridan Drive)

APPEAL NO VIII is in variance to section 3.7.5 development & design provisions and section 6.2.10 (b) multi-family developments.

**ATTENDING: Ron Newton
 John Brady
 Arthur Henning
 Eric Heuser
 Raymond Skaine**

**INTERESTED
PERSONS:**

**Michael Dwyne
Christina Biloh
Bill Conwall
Margaret Kiesel
Bernard Orzel
Rob Pidanick
David Weber
Charles Weber
Arden Bender
Jay Wopperer
J. Eldon Owens
Elizabeth Hansen
Susan Aronica
David Bowman
Patricia Bittar
Attorney Steven Bengart
Kelly Fetter
Shelly Scott
Jessica Bosch**

**Michael Drescher
J R Tripi
Paul Thoms
Albert Scheifla
Fred Cimato
William Schutt
Michael Collura
Jeff Langenfeld
Carmelo Cimato
David Chiarolanza
Vic Martucci
Timothy Toole
William Long
Ken Franasiak
Rhonda Frederick**

MINUTES

Ray Skaine said he had a correction to the minutes of the meeting held on March 8, 2005. On Appeal No I under discussion it says "Mr. Skaine stated he feels Mr. Forrestal's business has increased during the three years of operation, so a larger sign would not be beneficial. That should read that Mr. Skaine asked Mr. Forrestal if the business has increased with the existing sign. And which Mr. Forrestal I believe, responded yes my business has increased, and that was one of the reasons why I declined. I would like to have that corrected in future minutes."

Motion by Raymond Skaine, seconded by John Brady to approve the minutes of the meeting held on March 8, 2005 with the correction above.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO I
Ken Fetter
Agricultural Flood Zone

Requests the Board of Appeals approve and grant a twenty five foot (25') variance creating a two hundred twenty five foot (225') front lot line setback for a new home at 9229 Sesh Rd.

DISCUSSION:

Kelly Fetter stated that they wanted to go twenty five feet further because there is a clearing there. It is a heavily treed area, and they don't want to take any trees out that aren't absolutely necessary. Ray Skaine said he didn't think an additional twenty five feet is unreasonable. Ron Newton said he wanted to go back and look, but there wasn't any path to get back there. They have purchased 34 acres, so there won't be any neighbors for quite a while.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No I as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO II
Michael Drescher
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a five hundred twenty foot (520") variance creating a five hundred seventy foot (570') front yard setback for the construction of a new home and barn at 7060 Goodrich Road.

DISCUSSION:

Ron Newton said he noticed there weren't any neighbor notifications in the folder. Mr. Drescher said he didn't know he was supposed to. Mr. Newton asked if the property was staked, he said he didn't see the stakes. Mr. Newton asked why he couldn't build according to the Town regulations. Mr. Drescher said he has horses, and he bought this property so he could have privacy for himself and the horses. Mr. Newton asked how big is the entry way for this property? It is 200 feet. Mr. Drescher said he has three entry ways. Ray Skaine said "When the board reviews a request for a variance there are five issues that the board members look at. Number one whether there will be undesirable change in the neighborhood. Mr. Skaine said "I think it will produce an undesirable change in the neighborhood, because you will be putting your home directly in the backyards of the existing homes on Goodrich. They will lose their backyard privacy. Second, whether the benefit sought by the applicant may be achieved by some method feasible for the applicant to

pursue other than the area variance. Yes, you could bring it into compliance with what has been on the books for years for Goodrich Road. You are in Clarence, you know the rules and regulations, and the setbacks for Goodrich Road where it stands right now. Three, whether the requested area variance is substantial. Again, yes this is a substantial request which is almost ten times of the existing zoning regulations to where you want to go back. Four, whether the proposed variance will have an adverse impact or environmental conditions in the neighborhood. Yes, this is significantly going to impact this neighborhood with you sitting back behind all those homes. Five, whether the alleged difficulty was self created. When you purchased this property did you investigate what the zoning laws were? Did you talk to anybody before you bought this?"

Norm Castine said " My name is Norm Castine, and I am a developer and a builder. Next to this there are going to be (5) five acre lots." Mr. Skaine said "Do you have approval for that?" Mr. Castine and Mr. Drescher said "Yes we do."

Jim Callahan said "It has been to the Planning Board twice, and the Town Board , but it is in concept." Ray Skaine said "This house is still going back behind the neighbors." Norm Castine said "You are going to have five acre lots all here. All these houses are going to be right here." Ray Skaine said "What does that have to do with this lot?" Norm Castine said "He is going to be next to him." Ray Skaine said "He is going to be in back of the existing homes that have been there, and looking into their backyards all the time." Mr. Castine said "Do you know how far we are? We are hundreds of feet away." Ray Skaine said "You are four hundred feet. Four hundred feet is not very far. Every day you drive that driveway, you are going to be looking in their backyards, they have lost their privacy." Norm Castine said "Let me ask you a question - we are going to have five, five acre lots with beautiful homes - would they rather we put 20 houses in there?"

Town Attorney Steve Bengart said "Gentleman you are allowed to present evidence to this board, asking them questions. It is their choice whether they wish to answer the question. A twenty house subdivision would be a Town Board decision, it would not be a decision of this board."

Arthur Henning said the only thing that bothers him is that the neighbors were not notified. Mr. Drescher said if he put the house and barn right next to the neighbors - it would be worse.

He will notify the neighbors. Attorney Bengart suggested tabling this item until the applicant notifies the neighbors.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to table Appeal No II until the applicant has notified the neighbors.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO III
Harris Hill Animal Hospital
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a variance to the parking lot design standards to allow parking in the front yard of a new animal hospital at 8470 Main Street.

DISCUSSION:

Phil Silvestri of Silvestri Architects said they are proposing a new building on the same site as the existing Harris Hill animal hospital. The intent is to remove the existing building and construct a new 4700 square foot one story building with a full basement. Where they have placed the building will allow the existing building to remain in operation which is very critical for the financial feasibility of this project to happen. This project will take 6 to 7 months of construction time. They have the building pushed back, and the parking is in front. It will be nicely landscaped. The building will be residential looking in character. While they were in the process of getting approval for the project, the new law came into effect where the parking would not be allowed in the front. That is why they are here tonight. The septic system will be in the rear of the property. They attempted to put the parking in the back of the building as requested by the Planning Board. Under the current size of the building they will require 21 parking spaces which they can achieve with parking in the front. If they have to put parking in the back, they can only get 17 spaces. Trying to get the building, the parking in the back, and the septic then would have to come to the front - it doesn't fit on this parcel of land. It fits if we put the building, the parking in the front, and the septic in the back. Ray Skaine said he didn't feel this was a self created hardship, they missed approval with the change in the law by a few days, but they did due process. This will not produce an undesirable change, it will actually enhance the neighborhood. Ron Newton said he didn't think enough effort has been made to satisfy, or at

least message the new law that you find yourself under. Ron Newton said "I am looking at the west side of the building, and there is nothing there. It might be green space or whatever." Jim Callahan said "It is for kennels." Ron Newton said kennels can sit on top of the septic system. He suggested moving eight parking spaces in front after the building is completed down to the side, re-grooming the front area, then you are going to meet the basic intent of the law. Phil Silvestri said they do not have the room to move the parking. There is only 20 some feet between the building and the property line. It doesn't give you enough room for a parking aisle and parking spaces.

ACTION:

Motion by Raymond Skaine, seconded by John Brady to approve Appeal No III because it was not a self created hardship, and it will not be an undesirable change in the neighborhood.

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| Eric Heuser | AYE |
| Arthur Henning | AYE |
| John Brady | AYE |
| Raymond Skaine | AYE |
| Ronald Newton | NAY because some compromise could be made |

MOTION CARRIED.

APPEAL NO IV
Cimato Enterprises
Residential Single Family

Requests the Board of Appeals approve and grant two variances from section 3.3.4 & 3.3.5 to allow the previously designed subdivision plan for 16 residential lots at Highland Park Subdivision be approved.

DISCUSSION:

Chairman Ronald Newton stated that the Board of Appeals will be dealing with the issues of lot area and lot width only. Attorney Jeff Palumbo, Engineer Bill Schutt, Attorney Sean Hopkins and developer Fred Cimato were in attendance on behalf of the variance. Jeff Palumbo prepared a summary of the project and presented a copy to each member of the Board of Appeals. He gave a history of the project and stated that this project has been in the process since February of 2002. Mr. Palumbo stated it is important to remember that the 16 lot subdivision has received concept plan approval from both the Planning Board and the Town Board, development plan

approval from the Planning Board, re-zoning approval and a Negative Declaration pursuant to the State Environmental Quality Review Act. (SEQRA) This project was on the Town Board agenda for development plan approval on March 9, 2005 item number 15. Item number 14 was to consider adoption of the proposed Zoning Local Law and Map. The Town Board tabled this project because the project was no longer in compliance. Jeff read the standards for area variances. One, whether the requested variance will result in an undesirable change. Highland Park is a 16 lot extension to the existing subdivision known as Highland Farms. The original Highland Farms Subdivision to the west was designed under the old requirements of 100' minimum width and 15,000 minimum lot area. In addition, a portion of the original lots in Highland Farms were Residential B lots which had a minimum lot width of 85 feet. They are asking essentially for the same as what is already there now, so there will not be a detriment to the character of the neighborhood. The second standard is whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance. The benefit to the applicant is developing the subdivision in the same manner that was originally contemplated. Realizing a financial return is obviously a benefit to the developer, that is what he is in business to do. The third thing that we think is a benefit is to provide the Town with somewhat affordable lots. I can't even use the term affordable - I am not sure what it means anymore. But with the way the price of lots have gone up in the last 12 to 18 months, I am not sure that anything is affordable, but these lots are less expensive than if we had to increase the size to 125 feet. The expenses to date are just the bare necessities coming to a total of over \$63,000.00 to date. There is no zoning classification anymore that would allow even a 100 foot lot. No more 85 foot wide lots, or 100 foot wide lots, there is nothing in the ordinance that would allow this type of development that was originally contemplated since 2002. The third factor is whether the area variance is substantial. In terms of the lot area, the five lots that would not be in compliance are 3500 square feet for the smallest lot, and 1176 square feet for the largest lots. The remainder of the lots are far in excess of the required square footage. As for lot width virtually all our lots are at the 100 foot number, and the new requirement is 125 feet. The law

does not apply a mathematical formula they essentially consider if the impact of the variance is substantial. Is there a substantial result in reducing the 125 feet to 100 feet allowing that to take place? In terms of the impacts, there really are none. The fourth factor is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood. Again, that sounds a lot like the first factor.

When we talk about environmental impacts we talk about traffic, run off, rain, drainage, vegetation and those issues. Each of those issues has been addressed by the Town through all of the reviews that have taken place since the initial filing in 2002. We have a Negative Declaration that the board has taken into consideration all of the environmental factors and made a determination that all those factors will not have a significant impact on the environment. The difference in the number of lots would be three fewer lots, and in terms of drainage, traffic, and all the other issues, it would not have a significant impact. The fifth and final factor is whether the alleged difficulty was self created. The is not a difficulty that the applicant could have anticipated.

Ron Newton asked if anyone had anything to say. Michael Dwyer of 5797 Forest Creek Drive said we have been dealing with Mr. Cimato and Mr. Palumbo about some quality of life issues. We are in support of their variance request. They are in the process of negotiating purchasing the entire lot number one, which will provide the buffer zone that each of us seeks. If this property is not sold to us, it would greatly impact any of the properties that abut it. Christina Biloh of 5791 Forest Creek said she lives next door to Mr. Dwyer and agrees it would be in the best interest of the good faith negotiations with the neighbors and Mr. Cimato.

The front yard, side yard, and rear yard requirements will be the same as the old law. Timothy Toole of 5779 Forest Creek Drive asked about the homes on the 125 foot width lots. Theoretically, you can build a larger home on a larger lot. The developer is comfortable with the size of the homes that can be built on a 100 foot wide lot.

Ron Newton asked if these lots have sewers. Yes, they are on sewers. Ron Newton asked if there is capacity in that

sewer district. Mr. Cimato said yes there is, we have done work outside of this area, to make capacity for this project. Mr. Schutt said "We have full engineering approval.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No IV as submitted. Ray Skaine said "As an addendum I would like to have the report prepared by Renaldo & Palumbo dated April 12, 2005 made part of this motion and kept with the records."

ALL VOTING AYE. MOTION CARRIED.

**APPEAL NO V
Cimato Enterprises
Residential Single Family**

Requests the Board of Appeals approve and grant two variances from section 3.3.4 & 3.3.5 to allow the previously designed subdivision plan for 77 residential lots at Woodland Hills Subdivision be approved.

DISCUSSION:

Sean Hopkins and Jeff Palumbo, Rob Pidanic, Fred Cimato and Vic Martucci of Marrano Homes were present to represent the project. Sean gave each member of the board the summary booklet for the project. Sean said this project started in the late 90's and it was resurrected in 2003. Since that time they have been attempting to obtain the required land use approvals. There have been more than 25 meetings with the various boards and the neighbors. They are here this evening for area variances - the minimum lot width and the minimum lot area. The new zoning code requires 125 feet of lot width where it was 100 feet, and the new lot area requires a minimum of 20,000 square feet as opposed to 15,000 square feet. The smallest lot we show on the layout is 15,400 square feet. This project originally consisted of 92 lots, they are now showing 77 lots which is a 20% reduction. They have a public park land in the middle of the site, so it is accessible to the public. Sean said he will walk through the five criteria that the Zoning Board of Appeals is required to consider when granting a variance. The first one is whether an undesirable change will be produced in the neighborhood or a detriment to nearby properties will be created by the granting of this area variance. Our position is no, this is the exact layout that was approved by the Town Board in June of 2004. It is important to know that at that time the new zoning code was under review. At no time

were we advised that we needed to go back to the drawing board and take into consideration the new zoning codes. The Town Board did start during the last few months to tell people beware of the fact that we are changing the zoning codes, and if we change the zoning code while your project is under review, you will need to comply with the more stringent requirements. That is not the case with respect to this project. We have shown the adjacent lots on Meadowbrook, this is misleading because some of the people do have double lots. If you look at the size of those lots, versus the size of the proposed lots on our subdivision, they are clearly compatible. In many cases the lots on our side will be larger. The second criteria is whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, that would allow the applicant to realize the same benefit. The new single family residential zoning classification is the most intense residential zoning classification. What that means is that in the absence of area variances from this board, there is absolutely no way that we can develop the project site in accordance with the approved subdivision plan. In addition, there is an economic hardship here, that you have to consider. In the past three years Cimato Enterprises Inc. has incurred more than \$150,000.00 worth of expenses directly attributable to this project. The third criteria is whether the requested area variance is substantial. The layout does comply with the Town's then existing Residential A zoning classification that was in effect as of June 2003, when the Town Board approved the concept plan, and the re-zoning of the project site. It is a timing issue unfortunately. The Town Board enacted the new zoning code last month while this project was under review for development plan approval, and we are not able to comply with the zoning codes. We do not believe that these variances are substantial. It is also important to keep in mind that the average lot size as shown on the approved concept plan is nearly 25,000 square feet. There are some lots that are smaller, but there are a large number of lots that are significantly larger than what the new zoning code would require. The final criteria is whether the requested variance is the result of a self created hardship. This hardship was not self created. We have been working on this project for several years. So basically I would ask that you consider those five criteria, consider the evidence that has been submitted, including the lengthy project history.

It is very clear that the significant benefits that will be realized by the applicant outweigh any detriment to the health, safety, and welfare of the neighborhood or surrounding vicinity.

Mr. Paul Thoms of 5035 Meadowbrook said he had attended most of the meetings, but was surprised to hear that there were 25 meetings. He also stated that he considers the expenses the cost of doing business, and taxes are structured so that this type of investment does get some consideration from the IRS and others.

Chairman Newton asked if that is part of sewer district #5. Jim Callahan said "Currently no." Rob Pidancik said "It is going to require a district extension or a new district." Ron Newton said "Which hasn't been granted yet." Ray Skaine said tonight our issue is the area variances.

With regard to the sewers, Mr. Hopkins said he would like to provide an update on the sewer issue. That issue was raised by the Town Board prior to the re-zoning. They provided the Town with a letter from Erie County indicating that at that point in time that yes, there was adequate sewer capacity available to service this site. What Erie County was not going to do, they were not willing to guarantee that at any point in the future that sewer capacity will be there. That burden now rests with Cimato Enterprises that when they move forward there has to be sewer capacity. If there is not sewer capacity all of this time and effort is wasted, this won't be developed. Ron Newton said "They are willing to set up a new sewer district?" Mr. Hopkins said "We are willing to do whatever we need to do to provide sewers." It would either be a new sewer district or it would be treated as an out of district customer."

Mr. Owen of 5050 Meadowbrook said "Could you make it clear please, when you talk sewers - would you mention on Meadowbrook Road or the new development so we can keep this straight?" Mr. Hopkins said "This is the new project." Ronald Newton said "They are not talking about doing anything with Meadowbrook as far as sewers go at this point." Mr. Cimato said "There is a program in front of the County, the Town of Amherst, and the Town of Clarence regarding making sewer capacity for this project.

The material is all ordered and ready to go.” Ron Newton said “I can’t even consider it, because your lots are nowhere near what is necessary if they turn you down for sewers.” Mr. Palumbo said “If they turn us down for sewers, the square footage of these lots is going to be zero. Because there aren’t going to be any. That is really the answer to the question isn’t it?” Vic Martucci 10040 Highview Court representing Marrano Homes said “The condition on the concept plan approval from the Town Board is that this project will not be developed without sewers, so we cannot go forward if we don’t get the sewer approval from the County.” Sean Hopkins read the letter from Chuck Alessi addressed to James Callahan. If they are not able to provide sewer capacity the variances would be withdrawn. It was agreed to put an addendum on that says if the sewer capacity is not there, the variances are withdrawn.

Mr. Larry Kraus said “In other words, as a resident of Meadowbrook Road, if this is granted tonight, as far as prospects of grand-fathered rights - sewers on Meadowbrook Road is down the tubes.” Vic Martucci said “No, not at all. Mr. Kraus if this project doesn’t go forward, it reduces the likelihood of ever getting sewers to Meadowbrook Road.”

Rob Pidanick said “What the Cimato’s have done with this proposal, and our design plans show, that are on file with Joe Latona (Town Engineer) currently, the sewer that currently ends west of Harris Hill would be brought up. We are proposing to put sanitary sewers up to this corner. Mr. Fred Cimato said “And then we are doing another opening between these two lots, because of the topography of the area, to be able to let them tie in with a forced main down here below. It would be both sides, they will need a lift station.”

Rob Pidanick said “We are setting up Meadowbrook though because we have discussed this on an overall scheme with the Town Engineer (Joe Latona) to set Meadowbrook up and bring service up here.”

Jay Wopperer of 5225 Meadowbrook said “Mr. Callahan can you speak to case law on this?” Mr. Callahan said “I can’t. The case law of what?” Mr. Wopperer said law of

denying this, the history behind this. When I came down and checked it out, I did some research, and was told about case law here, and how this could relate to it. Nobody seems to know about this?" Jim Callahan said "Case law in terms of what?" Mr. Wopperer said "In terms of denying this on the Town of Clarence. Somebody was telling me that in case law, they can do this with this because of the zoning change." Mr. Callahan said "I think the variance is a request of the applicant to vary the law. Steve?" Steven Bengart the Town Attorney said "I am not going to speak to case law. These are always fact related, every one is different. There are five points that have to be covered in every one of these, it is a factual issue, and it is for this board to make a determination one way or another. It is up to the citizens if they want to fight it, or the applicant to take it up to the next level." Jay Wopperer said "It is case law in Clarence, (inaudible). Mr. Bengart said "I am not saying that. I am not saying one way or another, I am saying it is a legal issue that I will take up with my Town Board and the Zoning Board if it becomes necessary to get involved in that."

Ron Newton said the citizens have the right to appeal to the Supreme Court in Erie County.

Mr. Skaine said "Based on the report that was submitted by Cimato Enterprises on April 12, 2005. I think it was self explanatory and again, I went through my records, and I have come up with, except the second one, otherwise it is going to be no except the second one, and I see no problem with granting the variance."

Ron Newton said "Are you going to make an amendment on the sewers?"

Ray Skaine said "Well, its not a motion - you just asked me if I had any questions. Let me make the motion."

Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No V and because this may go further I am going to read in what my opinions are even though it has been stated again by Sean Hopkins

1) 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 this variance. I

said no. In my opinion granting this variance will not change the character of the neighborhood, since the surrounding properties are at least 100 feet or less.

2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. Again this is an alternative however, at this stage of the game after three years, it would be very expensive for the applicant.

3) Whether the requested area variance is substantial. The original plans had been approved, received concept plan approval from the Planning Board, and prior to the Town adopting, and it is not a substantial variance.

4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. I said no, the neighboring properties are going to be the same size or less than what the new property is going to be.

5) Whether the alleged difficulty was self created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. The applicant for the last couple of years was adhering to the existing zoning laws at that time.

For those reasons I am going to move approval with the stipulation that the letter from the Erie County Department of Environment and Planning be attached as a condition - that if the sewers are not granted for this property located at Woodland Hills Subdivision this motion is rescinded and there will be no variance granted to meet this criteria.

On the Question?

Town Attorney Steven Bengart said "I just want to clarify that the motion is to approve the application subject to the parties being able to obtain sewers. That is the basic motion."

Ray Skaine said "I would like to make one addendum to my motion, and that is to make the report done for the proposed Woodland Hills Subdivision, be made a part of the file."

Ron Newton said "I want it on the record that there was a petition filed by the neighbors to have the owners of Woodland Hills Subdivision to adhere to the new zoning code requiring 125 foot of frontage which has been in the works since 2001. The map received from Cimato Brothers shows their concept

for their frontage under the 125 foot long. Let's not be taken as fools....less frontage, more homes built, more congestion, more dollars in the builders pockets. Four pages of approximately 15 signatures per page. I have no further questions."

Steven Bengart said "You still need a second on adding the addendum to the motion. Arthur Henning seconded the addendum to the motion.

Ron Newton said "We will take a vote on the motion and the addendum to the motion."

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VI
Susan Aronica/Elizabeth Hansen
Major Arterial

Requests the Board of Appeals approve and grant a forty foot (40') variance creating a zero foot (0') front lot line for the placement of a business sign at 6241 Transit Road.

DISCUSSION:

Ron Newton said the neighbor notifications for 6221 and 6261 are in the file. They would like to put the sign where the property line starts. It was staked where the sign was to be located. Ray Skaine said he observed this sign would be in line with signs that previously were granted variances. They plan to open the middle of May, but the sign may go up later than the actual opening of the veterinarian clinic. The sign is comparable to the size of the signs in the area.

ACTION:

Motion by Eric Heuser, seconded by Raymond Skaine to approve Appeal No VI as presented.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VII
David / Jacqueline Bowman
Agricultural Flood Zone

Requests the Board of Appeals approve and grant a fifty five foot (55') variance creating a two hundred fifty five foot (255') front yard setback for the construction of a new single family home at 8165 Goodrich Road.

DISCUSSION:

Jim Callahan said "If I may just preface this one, you may recognize the location. This is the property that was split in the

north part of Town in equal parts, and this is the same setback or similar to the one that was granted. Ray Skaine said "Why do they even have to be here?" Jim Callahan said "It is an established line. What happened was if the applicant would have come in prior to the hearing at the last months meeting, it would have established the line. Technically there was no established setback line, so we took it from the 200 foot line. Mr. Bowman said their main goal was to keep even with his next door neighbor, so they weren't in his backyard, and he isn't in their backyard. There are neighbor notifications in the file from 8145 and 8185 Goodrich Road.

ACTION:

Motion by Raymond Skaine, seconded by Eric Heuser to approve Appeal No VII based on a previous appeal that set the setback at approximately the same distance.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VIII
People Inc - Patricia Bittar
Commercial

Requests the Board of Appeals approve and grant two variances:

1. A sixty square foot (60 sq ft) variance allowing a minimum five hundred forty square foot (540 sq ft) living unit.
2. A four units (4) per acre variance allowing twelve (12) units per acre for proposed efficiency apartment project at 4725 Transit Road. (Property is on the east side of the entrance to Eastern Hills Mall on Sheridan Drive.)

DISCUSSION:

Pat Bittar explained that the living unit size is actually dictated by HUD. This project is funded under a HUD 202 grant for elderly housing. They are specifying the maximum is 540 square feet per unit. There are regulations that they have to meet. This is considered affordable senior housing - a one bedroom unit. Ron Newton said "It annoys me that you are willing to abide by one law and not the other. In other words if you went to 600 square feet they wouldn't give you any money. That is the deciding factor." Pat Bittar said the parcel is 4.12 acres, there is no other available land to purchase in the area around the site. Regarding the layout, they are trying to preserve the green space to the south, the structure is a three story structure prototype that People Inc. constructs. It has 50 units which works well for overall maintenance and the financial

part of it. We were looking at the fact that Coventry Green was granted a variance for the number of units per acre, and they have two and three bedroom units. These are efficiency units. Eric Heuser said “ There are five areas looked at by the board of appeals when considering granting an appeal. The first is the 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. Personally, I feel there would be an undesirable change to the neighborhood by adding an apartment complex into that particular area. The second criteria would be whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. I don’t know if there is another way to achieve what you want to achieve based on the size and density requirements that you are subject to. I don’t think that one really applies here for the existing parcel. If you were to go to a different parcel in another area, you may be able to achieve that. The third is whether the requested area variance is substantial. It is a pretty substantial variance. We are looking at a four unit per acre increase in the efficiency complex, that is very substantial. Fourth is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. It is not my feeling that it would have an adverse effect. Lastly, whether the alleged difficulty was self created. I guess I have a question on that. Was this the only location that suited your needs? Were there other locations in the area that were available? Did you purchase this property yet?” Rhonda Frederick said No, we have it under contract right now. We looked specifically in Clarence because there is no affordable housing for seniors. This would be on sewers. They had a marketing survey done that shows it would draw from Amherst, Clarence, and Newstead. Arthur Henning asked if they ran other senior housing projects in the area. Rhonda Frederick said “Yes, we run seven other senior housing projects in Western New York to date.” Arthur Henning said “You wouldn’t do this if it weren’t for HUD funding would you?” Rhonda Frederick said “Right. They grant us the money to build the project, and then there is also a subsidy to make it affordable for the tenants.” Arthur Henning said “Have you received this grant?” Rhonda Frederick said “Yes.” Arthur Henning said “If we

were to deny this, would you do anything else in this area? Or would you just walk away from it?" Rhonda Frederick said "I don't know at this point, if we would have enough time within the framework, to go and find another site. They like to see you in the ground within 18 months from the grant being funded." Ray Skaine said "I think it would change the character of the neighborhood. I just resent an agency saying that we are going to change our laws to fit what they think is necessary. It is a 10% reduction, and we are going to be whipsawed by other people coming in and saying you gave this density, I want it also. I think we are setting a nasty example. Granted, we did approve the density over in Coventry Green, but that was based on the size of the unit. It was a heck of a lot larger than 540 square foot. The variance is substantial, you are talking a 50% variance - from eight to twelve units. You are also looking at a three story building, we don't have many in Clarence." Jim Callahan said "We allow 45 feet." Ray Skaine said "But do we have any?" Jim Hartz said "The Eschelman Building." Ray said "That was a long time ago. I just think this would be out of character for the size of the property, and as much as I would like to see something like this go, I just don't think it is in the best interest of the Town of Clarence to approve this right now." Rhonda Frederick said "There are seniors who need affordable housing who live in your town and they have said they want this and need this. They can't afford to stay in their own homes, and can't maintain their own homes. The mall is there and it is easily accessible for transportation, and for families to come and visit. I think you would be missing an important opportunity. From a developers standpoint I would love to go 600 square feet, but the Federal government dictates that to us." Ray Skaine said "Can you give me a reason why I should penalize the people of Clarence down the road, that might be dealing with another situation coming in and looking for a greater density than what we are looking at right now? I am not saying another HUD development, I am talking about a private developer out there. They would jump at this, and build in Clarence. We can't stop them, because they would take us to court and sue us. We are looking at the protection of the entire population of Clarence. Again I resent HUD stepping in as a Federal agency telling the Town what they have to do. I can't see setting this precedent." They have had to get variances from other

Towns. Grand Island required 650 square feet. Ron Newton said "Why does it have to be so big? Why does it have to be three stories? Why does it have to have so many units? Would they grant you the money if you had fewer units?" Rhonda Frederick said "And correspondingly take your cost down, it becomes an economy of scale." Mr. Newton said "If you aren't going to violate the density, we may be willing to forego the sixty square feet for the units.

The density issue is something we have to live with. You are not the only one who has ever mentioned Coventry." Jim Callahan said "If I could just give a quick history of the rationale for that density. It is based upon septic systems, it is town wide on that density, 5000 square feet per unit, and it is based on septic systems. The reason the Coventry Green apartments were granted the variance was because they did have access to public sewers. They could identify that they could put in a higher density without having a significant environmental impact associated with septic systems. We carried it through from the old law to the new law just because most of the town is not sewerage, and this would not be an issue for most of the town. It is just going to be in those high density commercial zones where there is sewer capacity." Ron Newton said "So if they reduce the number of units, there will be less density, and they will be within the density that the town is looking for. Right?" Jim Callahan said "The issue is they have access to public sewer, that is the difference. That is why Coventry's - that was the whole rationale. More than half this site is green space, there is much more green space than at Coventry. Ron Newton said "Let me note for the record, there was no neighborhood notification in the file." Jim Callahan said "It is in the packet."

Pat Bittar showed the letter that was sent to the neighbors fully describing the project. Ray Skaine said "Can I ask Council a question? Is there a way that we can approve this to make it..?" Attorney Steven Bengart "I think you are going to want to lay out specifically why, if you are going to grant this one. Either way I am going to want you to lay it out. If you are going to deny this you I want you to lay out the reasons. If you are thinking you want to pass this, you should lay out what differentiates this from your normal situation, and why you would grant it " Jim Hartz said "If you are looking for another reason to approve it, or if you want to table it and think about it a little more. In the Town of Clarence, it could be argued in

a court of law that it is difficult to get affordable housing units built this Town. Even the smallest house allowed here, on a minimum parcel of land with a septic system, is not affordable for most people. When you have a HUD financed project, and our town says no, there may be a problem down the road. I am not saying you should or you shouldn't. If you have a site on Transit Road that is sewerred, and if there is a location to approve affordable housing, and that is a good location for that housing, you can use that for a reason to go forward." Ron Newton said "I thought that was why we let Rock Oaks expand." Jim Hartz said "Rock Oaks, you can argue is one area of affordable housing ." Ray Skaine said "Rock Oaks is not determined on income." Ray Skaine said "I am really torn, but I don't want to hurt the Town of Clarence." Steve Bengart said "I think the only way is to give your reasons and make clear why this is different than any other project that would be a for profit, non subsidized, non senior, housing kind of project." Ray Skaine said "I am not worried about a competitor of People Inc. I am worried about a developer who comes to you Bill Schutt, and wants 12 units per acre, and you say we granted it for them." Jim Callahan said "The reality is - if you are worried about other projects, what you are talking about is Transit Road, and not even all of Transit Road. There is no sewer on Main Street. I would argue Transit Road is exactly where you would want this type of housing at that density. If you have the sewers and that traffic corridor to handle that kind of volume, absolutely, that is the place where we have set it up in the Master Plan. It is the only place to accommodate it. The reason we left the density the way it was, is because most of the town is unsewerred, and there would be a good argument for increasing that density where there is sewer capacity, and where the traffic and the infrastructure can handle such a project."

Tim Pazda said "I am not here as a Planning Board member even though I am. I am not here as a candidate even though I am, I am here as a private citizen. What bothers me is that my assessment just went up \$32,000.00, and I am sure that most everyone else's went up considerably. The term affordable housing is going to be a buzz word that we are going to hear more and more of, especially after the folks who just left here from Woodland Hills. We asked them how much their houses were going to cost. They

mentioned 300,000 to 400,000 and they didn't bat an eye. I am just questioning where are people going to go and live, if we don't have some place for them to go that is affordable? I don't want to see Clarence chase out our natives."

ACTION:

Motion by Raymond Skaine, seconded by John Brady to approve Appeal No VIII based on the fact that this consideration for the change in variance of the size of the units from 600 to 540 square feet will be agreeable, because HUD has stated that it all they are going to pay for. This unit has a density change from 8 to 12 units per acre, based on the fact that it is on an existing sewer line on Transit Road, and the project will not have a change of character for that location for affordable housing for senior residents of Clarence.

On the Question?

Attorney Steven Bengart said "So I understand Mr. Skaine, if it didn't meet those criterion then, you wouldn't be making this motion, is that correct?"

Mr. Skaine said "That is correct."

On the Question?

Mr. Skaine said "I think I may have stated incorrectly that this is not only for the residents of Clarence, this is a senior project that will be located in the Town of Clarence, and for the good of the Town of Clarence."

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| Raymond Skaine | AYE |
| John Brady | AYE |
| Arthur Henning | AYE |
| Eric Heuser | AYE |
| Ronald Newton | NAY Mr. Newton said "It is too much. Too much. It is a very substantial variance, I can appreciate the fact that I think we need senior citizen housing out here, but the density and the size of the units are just too much for me to say yes." |

MOTION CARRIED.

Meeting adjourned at 9:30 p.m.
Ronald Newton, Chairman