

Clarence Board of Appeals Minutes  
Tuesday, November 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  
Ryan Mills

Raymond Skaine, Vice-Chairperson  
Arthur Henning

Other Town officials present were:

James Callahan, Director of Community Development  
Councilman Bernie Kolber  
Steve Bengart, Town Attorney

Other Interested Parties Present:

Mark Zygaj  
Jean Schaefer  
Steve Capuson  
David Galbo  
Helen Cuoco  
Denise Santora  
Kim Fiedlon  
Len Satola  
David Campbell  
Robert Friedman  
Richard Mysliwicz  
Duane Chaffee  
Jim Rumsey

Richard Sowinski  
Chuck Gorino  
Jim Incorvaia  
Len Berkowicz  
Albert Cuoco  
Chris Santora  
Jeff Palumbo  
Angelo Natale  
David Teribury  
Ralph Zangara  
Linda Chaffee  
Brad Davidzik  
Kim Fiddler

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

Ronald Newton     Aye  
Daniel Michnik     Aye  
Ryan Mills         Aye

Raymond Skaine     Aye  
Arthur Henning     Aye

MOTION CARRIED.

**Old Business**

**Appeal No. 7**

Mark Zygaj  
Residential Single-Family

Requests the Board of Appeals approve and grant two (2) variances:

1. A second garage at 6742 Westminster Drive.
2. A 424 square foot variance to allow the construction of a 24' x 26' (624 square foot) garage at 6742 Westminster Drive

Appeal No. 7 is in variance to Section 229-55 (H) Accessory Structures.

**DISCUSSION:**

Mr. Zygaj explains that he has taken the neighbors concerns into consideration with regards to this project. The property was properly staked. He will bring in fill to make the garage even. The height of the structure is 22'.

**ACTION:**

Motion by Raymond Skaine, seconded by Arthur Henning, to **approve** Appeal No. 7 under Old Business, as written.

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

MOTION CARRIED.

**New Business**

**Appeal No. 1**

Richard Sowinski  
Agricultural Flood Zone

Requests the Board of Appeals approve and grant 110' variance creating a 250' front yard setback for the construction of a new single family home at 8600 Northfield.

Appeal No. 1 is in variance to Section 229-31 Setbacks.

**DISCUSSION:**

Richard Sowinski explains that the correct address is 8600 Northfield, the file has been changed to reflect the correction. He has had a soil analysis done. The height of the house would have to be such so that it is over the road; this puts the setback closer to 200'. There are fruit trees in the front of the property that Mr. Sowinski would like to preserve. He thinks the house would look nice set back. He currently owns the property. He explains the house would be a 2,410 square foot ranch, Bissell and Stone are currently working on a site plan. There is only one neighbor and the notification is on file.

Dan Michnik walked the property and asks Mr. Sowinski where the fruit trees are. Mr. Sowinski said they are on the right side and go back 150'.

Raymond Skaine did not see stakes at the property. He voices his concern with the backyard privacy for 8590 Norhtfield. Mr. Sowinski said there are plenty of trees and brush all along that side. The house next to the applicant is setback 140' according to the Assessor's office. Mr. Sowinski does not think he will see his neighbor's backyard at all. Ronald Newton agrees with the backyard privacy concern.

Arthur Henning asks why Mr. Sowinski can't be next to his neighbor's house. Mr. Sowinski said there is a big pine tree he would have to take out if he built even with his neighbor's house. The ground is higher at the requested setback, this would help with the water problems. He would be happy with the setback at 200'. The property is currently staked at 250'. He plans to build the house in May 2007. Raymond Skaine would like to see the property staked at 200'. Mr. Sowinski agrees.

Mr. Sowinski did not know what the setback requirement was when he purchased the land. He saw the surrounding houses with various setbacks and thought he had enough land to accommodate.

### **ACTION:**

Motion by Raymond Skaine, seconded by Arthur Henning, to **table** Appeal No. 1 to allow the applicant time to re-stake the property at 200', making sure to use identifiable stakes. The request will be placed on the December 12, 2006 Zoning Board of Appeals meeting.

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

MOTION CARRIED.

### **Appeal No. 2**

Shirley Ann Boller  
Agricultural Flood Zone

Requests the Board of Appeals approve and grant a 600' variance to allow a 700' front yard setback for the construction of a new home at 7615 Goodrich Road.

Appeal No. 2 is in variance to Section 229-31 Setbacks.

### **DISCUSSION:**

Steve Capuson is representing the Boller's. He explains that the property is in a floodplain, he has proposed to remove an area of the land from the 100-year floodplain. The elevations in the front yard make it very costly to put a flood pad before excavation and fill it. He is hoping the Zoning Board of Appeals members would consider a driveway that is out of the floodplain, to get back to the house. The neighbors have been notified, however, this information is not on the standard form and is unacceptable.

Jim Callahan spoke with Mr. Boller who was unable to attend this meeting. Mr. Boller said if there are any questions that Mr. Capuson could not answer he would most likely be available for the next Zoning Board of Appeals meeting and would accept a tabling of the request at this evening's meeting.

Ron Newton points out that the parcel is large and wonders why the house can't be built in another spot on the parcel. He also suggests moving dirt, Mr. Capuson said FEMA will not let you move dirt.

Jean Schaefer, of 7575 Goodrich Road, is concerned with the privacy issue; this house would be very close to her rear property line. She is also concerned with the drainage; her property is wet and she is concerned with what the impact would be with any construction that takes place around her property. There is a drainage ditch along the side of her property, but on the applicant's property. She wonders how this ditch will be maintained as she maintains it now. Jean Schaefer's final concern is with regards to the egress. Looking at the proposal, she asks if the fire company will need access through her property in order to get to the proposed house in case of an emergency. She does not have a problem with the applicant using his property and building a house back there, but feels the previous concerns need to be addressed.

Jim Callahan explains that a floodplain development permit is required if the applicant wants to bring in dirt. Ronald Newton explains that once a permit is approved dirt can be brought in to build up another spot on the parcel. The Town Engineer would have to be consulted on where the applicant can and can not put fill on the parcel.

Mr. Boller has owned this lot for many years.

Mr. Skaine asks what benefit it is to the Town of Clarence to grant this request. Mr. Capuson is unable to provide a response.

Mr. & Mrs. Boller plan on living at the proposed house. Mr. Capuson said if a building lot is not approved, Mr. Boller's next plan would be for an Open Development Area. Raymond Skaine asks how an Open Development Area would be approved in the floodplain if a one house can't be approved. Jim Callahan said, again, he would have to comply with regulations and meet the requirements of the floodplain.

Mr. Capuson said if this request is denied, Mr. Boller will have a house built at 10420 Clarence Center Road, then hire GPI to work on the Open Development Area plan for 7615 Goodrich Road. Jim Callahan points out that an Open Development Area is not an "as of right" use, it must be approved by the Town Board, there is a chance it could be denied.

Raymond Skaine voices his concern with the privacy issue and said it invades the backyard privacy of the neighbor(s).

Mr. Capuson said a five foot (5') fill pad would be needed at the site. He also said that Mr. Boller feels he has been a resident of Clarence for many years, owns many properties, pays taxes and would like to just build on his property.

Mr. Capuson said the proposal is for a 2,377 square foot house, style similar to a cape. The back elevation of the house has dormers on it and a side load garage.

Ryan Mills asks Mr. Capuson if this Board granted this request, would Mr. Boller agree not to put an Open Development Area at the site. Mr. Capuson said that is something that would need to be discussed with Mr. Boller.

Arthur Henning has concerns with the neighbors and the Open Development plan. He thinks a re-submission, showing a new location of the house, is in order.

Ryan Mills questions the plan which shows a walk-out basement. Mr. Capuson said the reason the plan shows the walk-out basement is because Mr. Boller thought this request was going to be denied, in which case he would build a house on Clarence Center Road and go forward with the Open Development plan for this location.

**ACTION:**

Motion by Arthur Henning to **table** Appeal No. 2, to allow the applicant time to resubmit the request showing the proposed house at a different location on the parcel. There is no second.

**ACTION:**

Motion by Raymond Skaine to **deny** Appeal No. 2 for the following reasons:

- By granting the variance it would drastically change the character of the neighborhood.
- There are other areas in which this house can be built and not be an impact on the neighbors.
- This is a 600' deviation and is a substantial request.

Further discussion ensued concerning the applicant's presence at the meeting and that Mr. Boller should have the chance to be present to explain his request. There were extenuating circumstances that kept him from this meeting.

Raymond Skaine rescinds the above action.

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **table** Appeal No. 2 until further notice, with no set date for a re-hearing.

**ON THE QUESTION:**

Arthur Henning wants to convey to the applicant, the concerns that the Board has with the location of the house. He thinks it is a waste of Mr. Boller's time to come back to the Board if the request is going to be denied as written. Mr. Boller should come back with a new location for the house. Ryan Mills strongly urges Mr. Boller to review these minutes prior to coming back to the Board so he will be aware of the concerns and can address them.

Ronald Newton notes that the pleasure of the Zoning Board of Appeals members in tabling this request is only out of consideration for Mr. Boller's long standing service to the Town.

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

**MOTION CARRIED.**

**Appeal No. 3**  
 Jim's Steak Out  
 Major Arterial

Requests the Board of Appeals approve and grant a 40' variance to allow a 0' front yard setback for the placement of a permanent sign at 5651 Transit Road.

Appeal No. 3 is in variance to Section 181.3 Regulations, Item (C) (1) Location of Signs.

**DISCUSSION:**

Jim Incorvaia, owner of Jim's Steakout, and David Galbo, architect, are present. Mr. Incorvaia explains that he wants to move the existing pole sign about 10' closer to Transit Road. He wants to move the sign because it is much farther back than the neighboring signs.

Ronald Newton asks if the applicant was at the Zoning Board of Appeals meetings when the neighbors asked to locate their signs where they are today. Mr. Incorvaia said was not at the meetings; he did not own the property at that time. Mr. Newton said every one of those neighboring signs had to go through the same procedure that Mr. Incorvaia is going through. There were trees in the way of the sign, however, after the October 2006 storm those trees are gone. Mr. Newton does not see a reason to move the sign since the trees are no longer a factor. Mr. Incorvaia has made such a huge investment in this restaurant he said he really needs all the visibility he can get. There are seven (7) other Jim's Steakout locations, the first five (5) locations are located in the City of Buffalo, the other two (2) are on Sheridan Drive. Mr. Incorvaia lives in Clarence. Five of the seven locations are profitable.

Raymond Skaine said he did not see the property staked. Mr. Incorvaia said the property was staked but he thinks the October storm may have destroyed the stakes. Jim Callahan confirms that there was a stake at the property. The Sign Law states the maximum height of this sign can not exceed 20'.

Mr. Newton suggests keeping the sign in the same location but elevating it. It is confirmed that the sign is currently at the maximum height of 20'.

Ryan Mills asks what materials the sign will be made of. Mr. Incorvaia said it will be a steal pole with a plastic illuminated face, just like Raymondo's was. Mr. Mills asks the applicant if the Board allowed the pole to be placed closer to Transit Road would he consider less height for the sign, perhaps decreasing the height to 15' or so. Mr. Incorvaia said he can not answer that without looking at the site.

Mr. Incorvaia currently owns the property. The existing building will not be moved. Neighbor notifications are in the file.

Daniel Michnik agrees with Mr. Mills's suggestion with regards to decreasing the height of the sign and would be more inclined to approve this request if there was some way this sign could be similar in size and height as that of Summit Federal Credit Union. Mr. Incorvaia does not know of many restaurants that have such low ground signs. Mr. Mills said the sign does not have to necessarily be on the ground, but the applicant should consider a shorter height and maybe something other than a just a pole for the base.

Mr. Incorvaia said, "If it will make everybody happy to go fifteen feet (15'), that's a good trade off for me I guess." He agrees to fifteen feet (15').

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 3 with the following conditions:

- the height of the sign shall not exceed fifteen feet (15’).
- the sign be structurally composed of two (2) pillars, square or round and the material and/or color to match the front façade of the building.

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

MOTION CARRIED.

**Appeal No. 4**

Albert & Helen Cuoco  
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 15,494 sq. ft. variance to allow two (2) buildable lots with 42,441 sq. ft. (.97 acre) of area on Lapp Road.

Appeal No. 4 is in variance to Section 229-39 Lot Provisions.

**DISCUSSION:**

Len Berkowitz is an attorney representing Mr. & Mrs. Cuoco. He provides a tax map to become part of the file. Mr. Berkowitz explains that there was a large area of frontage that has already been developed. There are three (3) lots split to show 100’, 150’ and 150’ with the same depth. There are two (2) more lots each at 141.5’. He said without granting the variance there would be a substantial change in the character of the neighborhood; there would be a 300’ lot in the middle of many 150’ lots. A letter has been submitted to the Zoning Board of Appeals from TVGA Engineers explaining that the development of the entire parcel had already begun. So the development of the 150’ lot would not create an undesirable change to the neighborhood; the character would be consistent. The neighbors have no objections and notifications are on file. Mr. Berkowitz said it is not a substantial variance. He also said the variance is not self-created because at the time the ordinance allowed it, this would not impact the environmental conditions of the neighborhood.

It is the intent of the applicant to sell the lots.

The applicant may be asked to provide neighbor notifications to the adjoining neighbors on Heise Road.

**ACTION:**

Motion by Raymond Skaine, seconded by Arthur Henning, to **approve** Appeal No. 4, as written.

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

MOTION CARRIED.

**Appeal No. 5**  
 Chris Santora  
 Residential Single Family

Requests the Board of Appeals approve and grant the construction of a second garage at 5735 Newhouse Road.

Appeal No. 5 is in variance to Section 229-55 Accessory Structures, Item (H).

**DISCUSSION:**

Mr. Santora explains there will actually be a total of four (4) garages. On the left side of the house there is currently an attached garage, upper and lower. On the right side of the house the garage will be attached on the top and there will be a breezeway and a porch on the bottom. You will not be able to get to the house from the proposed garage. Mr. Skaine suggests attaching the garage. Mr. Santora explains if the garage was attached it would not leave enough windows in their family room. The breezeway would be attached to the house. The extra garage will be used for storage of various items such as children’s toys, vehicles and snowmobiles. There are neighbor notifications in the file. The top space of the proposed garage may become functional at some point in the future. All the materials are consistent and it will be perfectly symmetrical. The applicant has lived at this location since February 2001.

**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
Ryan Mills	Aye		

MOTION CARRIED.

**Appeal No. 6**  
 Walgreen’s/Benderson Development  
 Commercial

Requests the Board of Appeals approve and grant a 50’ variance to allow parking within the front yard setback of a proposed commercial building at 9217 Main Street.

Appeal No. 6 is in variance to Section 229-88 (B) Additional Parking Requirements.

**DISCUSSION:**

Jeff Palumbo and Brad Davidzik, of Renaldo & Palumbo, are representing the applicant. Jim Rumsey, architect, and Kim Fiddler of Benderson Development are also present. Mr. Palumbo stated the reason he is here is because the new Zoning Ordinance requires an 80’ front yard setback for front yard parking. He explained that if they were to comply with the ordinance and setback their parking lot 80’, the building would be setback another 70’, which means they would be 150’ from the right-of-way. Mr. Newton suggests pulling the building forward, this would make it more visible from the street. Mr. Palumbo also explained that visibility from the road and parking in the front are two concerns and that by pulling the building forward would be in conflict to front yard parking which Walgreen’s requires.

Mr. Palumbo explains that this applicant has been before the Planning Board and there was one major issue. The issue was in regards to the requirement of a 45’ greenbelt at the east property line, separating the applicant’s property from the residents in the mobilehome park next to it. Mr. Palumbo’s



interpretation of the requirement is that the buffer was not required because both parcels are zoned commercial, this is also the opinion of Steve Bengart, Town Attorney. The Planning Board thought the 45' buffer requirement should apply. The applicant has come up with another plan, which is before the Zoning Board of Appeals this evening. The new plan has reduced the number of parking spots in the front of the building to seventeen (17), rather than the original twenty-seven (27). The landscape area has also been increased from 11.2 acres to 12.5 acres. The office building has been reduced from 10,000 sq. ft. to 8,000 sq. ft. The total number of parking spaces has been reduced from 164 to 138. The building was originally parallel with the street, the new plan shows the building parallel with the property lines.

Ryan Mills asks the applicant if five (5) or six (6) more spaces can be taken out of the front of the building, to achieve more greenspace in the façade area. Jim Rumsey said the DOT's requirement for lining up the entrance has been met, therefore, the entrance can not be moved, everything is based on the curb cuts.

Mr. Palumbo explains that the driveway to the west is "right in" and "right out" only, there is no left turn.

Mr. Palumbo said there will be two (2) to three (3) pharmacists, fourteen (14) other employees and three (3) to five (5) technicians. The store will generate approximately \$700,000 a year in sales tax. Mr. Palumbo compares this plan with the Walgreen's that is on Transit Road and County Road; there are sixty (60) parking spaces in front of the building at Transit and County, this proposal is for only seventeen (17) spaces in the front yard.

Len Satola, owner of the Woodside Village which is located next to the proposed site, said he would like a berm between Walgreen's and his property to shield the noise and traffic. Otherwise Mr. Satola said he does not have an objection to the new store. Mr. Palumbo said his client is happy to work with the Town's Landscape Committee to achieve whatever is appropriate. He also points out that the applicant is not 100% sure about the drainage, there may need to be some swales in the area.

Angelo Natale, who owns a few buildings on Main Street, said that the ordinance that requires parking in the back of a building has forced him to do the back side of the building a little nicer so that his tenants come into a nice façade. He doesn't know that the ordinance of having parking in the back is doing what the Town is looking for; beautifying the area. He would like to see this issue looked at closely. He is in favor of the proposed project.

Mr. Henning asks if a traffic study has been done. Mr. Palumbo said the applicant is in the process of having a traffic study completed. Steve Bengart said once the traffic study is complete it will go to the Town Environmental Quality Review (TEQR) Committee for a hard look. If the traffic study does not pass the TEQR Committee the project could not be done.

Mr. Palumbo said if the variance request was denied, there would not be a Walgreen's development at this site.

Jim Rumsey explains that this is a high security building due to the nature of the business. The entrance will be on the northeast corner. Mr. Skaine suggests taking the front parking down to one (1) row of handicapped parking.

Mr. Skaine asks where the signage will be. Mr. Rumsey thinks the project will meet the signage requirements.

Kim Fiddler explains that Walgreen’s knows that it is important to have parking in front of the building to support the store. The majority of customers are elderly and there should be parking available in front of the store for their convenience.

Mr. Skaine asked Mr. Satola if the 45’ buffer helps with his concerns. Mr. Satola said, “Yes.”

Mr. Henning asks for details on the proposed office building. Mr. Fiddler explains that Walgreen’s did not want to stand alone at this site. They did not want to be responsible for 100% of the real estate taxes and the other costs associated with the property. There are no tenants as of yet for the office building. The tenant would not be in the medical field. Mr. Fiddler said the two (2) buildings will be in harmony with each other.

Mr. Michnik agrees with the concern of parking in front of the building, however, he can also see the reasoning for Walgreen’s parking requirement in front of the building.

**ACTION:**

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

**ON THE QUESTION:**

Mr. Michnik explains that Appeal No. 6 needs to read “according to the new plan submitted” this evening, the applicant agrees. Mr. Skaine amends the motion.

**ACTION:**

Motion by Raymond Skaine, seconded by Daniel Michnik, to **approve** Appeal No. 6, according to the new plan submitted.

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

MOTION CARRIED.

**Appeal No. 7**  
BJ’s Wholesale Club  
Major Arterial

Requests the Board of Appeals approve and grant two (2) variances:  
1. To allow a second freestanding sign to be erected at the Eastgate Plaza (5105 Transit Rd.)  
2. A 21’ variance to allow the new sign to be 19’ from front property line.

Appeal No. 7 is in variance to Section 181-3 (L) Number of Signs and Section 181-4 (A) (3) Sign District Specifications.

**DISCUSSION:**

David Campbell is representing the applicant. David Teribury is the store manager and is present as well. The request is for the property at the extreme left of the site as you enter the Eastgate Plaza. The request is for a small monument sign to be placed at the second entrance, at this time there is no sign at this entrance. Mr. Campbell explains that there is no visibility for the gas station from Transit Road. Monroe Muffler, which is in the same area of the plaza, has no visibility from Transit road either. The base of the sign is one (1) foot, six (6) inches tall. The over all height is eight (8) feet, each of the two (2) cabinets is 3'2" by 5'4". There are other signs similar to this across the country. When exiting the plaza at this entrance the first two (2) cars completely clear the sign.

Mr. Campbell said the leading edge of the sign as staked. The sign will be lit internally.

Mr. Henning said he was at the site on Saturday and the gas station was very busy, he wonders about the necessity of the sign. Mr. Campbell said this site is not as busy as it should be. The Monroe Muffler shop is slightly suffering compared to other locations and have asked for a sign in the past.

Mr. Mills agrees with the height and location of the sign, however, would like to see different materials used. He would condition the approval with two (2) brick pillars on the side, a brick base and nice landscaping. The applicant agrees there will be no flashing lights. He also agrees to submit the sign permit application with the material change as discussed showing brick columns and a brick base.

**ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 7, as written with the condition that the base of the sign be brick, two side columns must also consist of brick and go up the length of the sides.

**ON THE QUESTION:**

Steve Bengart suggests the motion include the condition that the sign be similar to the character of the surrounding buildings. Mr. Mills amends the motion.

**ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 7, as written with the condition that the base of the sign be brick, two side columns must also consist of brick and go up the length of the sides. The brick shall match the existing adjoining structures.

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

MOTION CARRIED.

**Appeal No. 8**

Ralph Zangara III  
Agricultural Rural Residential

Requests the Board of Appeals approve and grant two (2) variances:

1. A 40' variance creating a 110' front lot line.
2. A .33 acre variance creating a buildable lot on one (1) acre of land.

Both variances are required to create a buildable lot at 10339 Tillman Road.

Appeal No. 8 is in variance to Section 229-39 (B) Lot Provisions and Section 229-40 Lot Width.

**DISCUSSION:**

Robert Friedman is the attorney for Mr. Zangara. Ralph Zangara is present. Mr. Friedman explains that Mr. Zangara originally bought the lot in 1988 as a double lot. There is only one (1) neighbor and the neighbor notification is in file. There is state land on two (2) sides of Mr. Zangara's property so he can not sell to or purchase additional land from the adjoining owners. Mr. Friedman has a listing of additional homes on Tillman, six (6) of those have 100' frontages and three (3) of them have frontages under 150', so this request fits in with the surrounding houses in the neighborhood. The previous owners told Mr. Zangara that they fought hard to maintain this one (1) building lot from the state, the state gave the lot to the previous owners knowing that the intent for future use may be to build a house on the lot for one of the owners sons; a fire hydrant was put on the lot for this reason. The fire hydrant goes to the center of the second lot. The water and the telephone pole are placed so that the second lot can have access. Mr. Zangara has maintained the lot for many years. He was going to sell the lot a few years back, but did not. He was not aware of the Zoning Law Change that took place in March 2005. The measurements of the lots that Mr. Zangara wants split are 109' and 110'.

Mr. Henning asks the applicant what he would do if the Zoning Board of Appeals denied the request. Mr. Zangara said he would appeal it.

Mr. Michnik asks if the lot is going to be approved for Mr. Zangara to build a house on it or is he looking to create the lot and sell it. Mr. Zangara said he would prefer to build the house for himself, at this point.

Mr. Newton is not in favor of creating something out of nothing. He reiterates that the size of a buildable lot in Clarence is 150', the applicant is asking for the Board it, theoretically give him 40' that isn't there. Mr. Zangara hopes that the Board will take into consideration the length of time he has owned the land and if he had known of the Zoning Law change he would have split the land prior to the change.

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 8, as written.

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

MOTION CARRIED.

**Appeal No. 9**

Stephen Levandusky  
Residential Single Family

Requests the Board of Appeals approve and grant two (2) variances:

1. A 26' variance to create a new residential building lot with 99' of public road frontage.
2. A 5,000 sq. ft. variance creating a new residential building lot with 15,000 sq. ft. of area.

Both variances apply to 10830 Bodine Road.

Appeal No. 9 is in variance to Section 229-50 (A) Lot Width and Section 229-49 (A) Lot Area Provisions.

**DISCUSSION:**

Richard Mysliwec is representing his son-in-law, Steven Levandusky. Mr. Mysliwec explains that Mr. Levandusky wants to sell the lot in the back of his home, he feels it is large enough to sell. He wants to reinvest the money from selling this lot and improve the property he owns on Main Street.

Mr. Mysliwec does not think that Mr. Levandusky wants to build on the lot, he thinks he wants to sell the lot to someone who wants to build a home there, Mr. Levandusky wants to maintain the property to the front. He has owned the property for over a year. Mr. Mysliwec does not believe that Mr. Levandusky has tried to acquire adjoining land to meet the requirements.

Duane & Linda Chaffee, of 10838 Bodine Road, express their concerns regarding the size of the lot and if it can support a septic system. Linda Chaffee said they own a business at 10838 Bodine Road which has been grandfathered in, it has been there since 1963. The parking lot is very near the lot and she would have great concerns putting a house so close to the parking lot. They have truck deliveries and there are cars in and out all day long. The business is JP Ward Corp., steam cleaners and pressure washers.

Mr. Mysliwec said Mr. Levandusky said this lot is a separate lot of record. Jim Callahan does not believe this is a separate lot of record, it is a deep lot with frontages on Main Street and Bodine Road. Mr. Callahan explains that the Main Street frontage is in the Traditional Neighborhood District which allows a reduced lot size, however, the frontage on Bodine Road is Residential which requires the minimum of 125' in frontage and 20,000 sq. ft. area, if it is sewered. There is currently a house on the Main Street frontage.

Mr. Skaine suggests tabling the item to allow Mr. Levandusky the chance to explain his position.

Mr. Mysliwec explains that the property next to the lot in question has already been divided. Mr. Skaine explains those lots were divided long before the Zoning Law changed in March 2005.

Mr. Michnik said he would have a hard time approving this request and it is not fair to the Mr. Mysliwec that questions are asked of him that he is not sure of the answers.

**ACTION:**

Motion by Raymond Skaine, seconded by Daniel Michnik, to **table** Appeal No. 9 to be re-heard at the December 12, 2006 meeting provided the petitioner will be available and at his request.

Ronald Newton     Aye  
Daniel Michnik     Aye  
Ryan Mills           Aye

Raymond Skaine     Aye  
Arthur Henning      Aye

MOTION CARRIED.

Meeting adjourned at 9:42 p.m.

Ronald Newton, Chairman