TOWN OF LOCKPORT
ZONING BOARD OF APPEALS
April 26, 2011

PRESENT: Charles Dahlquist
Donald Jablonski
Tim Lederhaus, Chairman
Michael Bartus
Frank Loiars
Kevin Roth, Alternate

ALSO PRESENT: Brian Belson, Senior Building Inspector
Jane Trombley, Secretary
Daniel Seaman, Town Attorney

The April 26, 2011 Zoning Board of Appeals meeting was called to order at 7:00 pm by Chairman Lederhaus, who then led the Pledge of Allegiance.

MOTION made by Member Loiars, seconded by Member Jablonski to approve the February 22, 2011 minutes. 5 Ayes, 0 Nays, Carried.

CASE #1 **1050 Johnson Road – SBL #80.03-2-27.1 – James Covell/Lisa Cebulski & Norm Izard –** Requesting an area/use variance to build a single family home. The required frontage is 150', and the single family residence is not a permitted use in an agricultural district.

Chairman Lederhaus opened the Public Hearing.

Ms. Cebulski stated they would like to build a 1700 to 1800 square foot home that will be 50' wide on the 125' wide lot and possibly have a 30' garage.

Member Loiars asked if anything is growing there. Ms. Cebulski stated not that they know of, but they do grow on the lot behind them.

Member Loiars stated their lot is higher than the neighbors and asked what they will do to alleviate water runoff onto the neighbor's property. Mr. Izard stated they will have a professional architect build it and he's sure it will be taken care of. Ms. Cebulski stated they will possibly put a pond in back for the water. Ms. Cebulski stated they have an option to purchase 15 acres behind them as well as the 1 acre at the road that they are building on, that they may possibly rent out or plant.

Attorney Seaman asked if these are separate tax parcels and Senior Building Inspector Benson stated yes. Mr. Izard stated there is just brush behind them, he can still walk through it. Attorney Seaman asked if it is his intent to farm the property and Ms. Cebulski stated no, but possibly a garden and she didn't believe

it had been used in quite some time for farming. Ms. Cebulski stated that the property, even with the 15 acres, will not afford a reasonable return if used for any purpose allowed in an agricultural district.

Bob Elsess of 4903 Sunset Drive asked if it would interrupt the land behind and make it landlocked. Ms. Cebulski stated no, there is frontage on Ridge Road for the farmland behind.

Hearing no further comment, Chairman Lederhaus closed the Public Hearing.

MOTION made by Member Loiars, second by Member Bartus to grant an area and use variance to Lisa Cebulski & Norm Izard to construct a single family home on a 125' lot in an agricultural zone based on the following findings:

1. The variance will not create an undesirable change in the character of the neighborhood, because there are several residences in the area in close proximity to the property on Johnson Road;
2. The benefit sought by the applicant cannot be achieved by any other feasible method;
3. The requested area variance is not substantial;
4. The proposed variance will not have an adverse effect on the environmental conditions in the neighborhood because the area is residential above Johnson Road;
5. Based on evidence presented, the applicant will not be able to realize a reasonable return on an agricultural use of the property because the lot and the adjacent 15 acres is not used for farming and is not large enough to provide a reasonable return if used for agricultural purposes;
6. The hardship is unique to the property as it does not apply to a substantial number of properties because all other farms are larger in the area and because there are existing homes on the other road from large lots;
7. And the hardship has not been self-created.

5 Ayes, 0 Nays, Carried.

CASE #2 **4915 Sunset Drive – SBL #108.01-2-11 – Habitat for Humanity/John Duersteler –** Requesting an area variance to build a single family home. The required frontage in an R1 district is 100' and this lot is 80'. John Duersteler presenting.

Chairman Lederhaus opened the Public Hearing.

Mr. Duersteler stated he is a Board member for Habitat for Humanity and they would like to construct a single family ranch on property that was donated, that won't require a side or rear setback.

Member Jablonski asked if the home will be similar to the one that was recently constructed by Habitat for Humanity by Rapids Fire Hall. Mr. Duersteler stated yes.

Member Loiars asked if there is a pine tree on the property that will be in the way. Mr. Duersteler stated he couldn't picture it, but will keep the tree if possible.

Nicholas Hinds of 4918 Sunset Drive stated the lot has been empty for a long time and it couldn't be sold because of its size. He showed an aerial view, received as Exhibit "A". He stated he feels the house will be too close to the property line. Mr. Hinds stated there are 5 houses on each side of the road and they are all on larger lots. Mr. Hinds stated he feels this will alter the character of the neighborhood to add another driveway and stated he moved out to the Town, to not be on top of each other.

Holly Monroe of 4917 Sunset Drive stated she had called the realtor when the property was listed and was told no one could build on the lot as it was not large enough.

Attorney Seaman reviewed the criteria for the variance and asked what the side setbacks are. Mr. Duersteler stated 10' on one side, 26.5' on the other side. Attorney Seaman stated the required setback is 30' total and one side may be 10'.

Mr. Hinds asked if this is going to be considered low income property. Mr. Duersteler stated no, it is for people who probably wouldn't be able to get a mortgage on their own. Senior Building Inspector Belson stated the property value will be based on properties in the area and that will be done by the assessing department.

Michael DeLucas of 4910 Sunset Drive stated he feels the home will have an impact on the neighborhood. Mr. DeLucas asked how long of a process this will be and if the driveway will line up with his across the street. Senior Building Inspector Belson stated no, the driveway will be on the side of the home and a building permit is good for one year. Mr. DeLucas stated he feels there will be an impact with the trucks in the neighborhood during the construction and opined that the construction and the proposed house will drop the other homes values and will be an inconvenience.

Member Dahlquist asked if the driveway will be on the north side of the home and Mr. Duersteler stated no, south.

Mr. Elsess asked how large the home will be and the location of the other recently built Habitat for Humanity home. Mr. Duersteler stated 1040 square feet and he believes the address of the other home is 6102 Old Beattie Road.

Ms. Monroe stated this home will affect her privacy and her children's. Ms. Monroe stated she is very upset, doesn't want this, it is too close to her home and will affect her children.

Peggy Mead of 4907 Sunset Drive stated she contributes to Habitat for Humanity, it's a fine organization, but feels this is too close to her property and the driveway will have to go on the other side because of the location of the fire hydrant. Member Loiars asked Ms. Mead if she considered buying the lot and she stated yes, but it was too expensive. Ms. Monroe stated she also wanted to purchase it, but the owner was asking too much and she couldn't afford it at the time and was told it couldn't be built on, so she wasn't too concerned. Mr. Duersteler stated whoever told her that, didn't ask the Town about it. Mr. Duersteler stated he asked the donor what her wishes would be and she stated that her mother, from whom she inherited the property, would prefer to have a family have it.

Chairman Lederhaus asked if this property was ever combined with another and Senior Building Inspector Belson stated no.

Attorney Seaman asked if the properties are quite deep and Senior Building Inspector Belson stated yes, 345' deep.

Member Loiars asked if approximately 1100 square feet, 3 bedroom, 1 bath is what they typically build and Mr. Duersteler stated yes. Mr. Duersteler stated before they accepted the donation, he made sure it fit with the Town, discussed it with the building inspector and with his experience, he thought the chances for a variance were good.

Several people referenced an enlarged tax map which showed nearby properties having frontage ranging from 80' to 100'. Building Inspector Belson noted that prior to rezoning, the lot conformed to zoning requirements for width.

Hearing no further comment, Chairman Lederhaus closed the Public Hearing.

MOTION made by Member Bartus, 2nd by Member Jablonski to grant an area variance to Habitat for Humanity to construct a single family home at 4915 Sunset Drive on an 80' lot based upon the following findings:

1. The requested variance will not create and undesirable change in the character of the neighborhood as the proposed home will be located on a lot which, like other existing homes, is undersized for frontage;
2. The benefit sought by the applicant cannot be achieved by any other feasible method as this is an existing lot with no other frontage available;
3. The requested area variance is not substantial because it conforms with other homes in this area;
4. The proposed variance will not have an adverse effect on the physical or environmental conditions in the neighborhood because it allows construction on the only vacant lot in the neighborhood, with all other lots having single family residences; and
5. The difficulty was not self-created as the lot is part of a development.

4 Ayes, 1 Nay (Member Dahlquist), Carried.

CASE #3 **4057 Purdy Road – SBL #80.04-1-30.11 – Shawn & Jessica Bailey –** Requesting an area variance to construct a 30 x 52' pole barn with a 12 x 52' lean-to, 10' from the property line. The required setback is 20' in an Agricultural district. Mr. & Mrs. Bailey presenting. Mr. Bailey stated they would like to have a 30 x 52' pole barn professional constructed with possibly a lean-to on the south side. Mr. Bailey stated they would like to have a 15' setback on the driveway side and 10' in the rear to keep an easement for easy cutting and maintenance purposes and not to encroach on the neighbors. Mr. Bailey stated it will match his house and have 24' overhang as he has a boat and some equipment.

Chairman Lederhaus asked if he plans to keep his old sheds and Mr. Bailey stated yes, for lawn furniture and other things.

Chairman Lederhaus asked how much property Mr. Bailey has. Mr. Bailey stated just under an acre. Chairman Lederhaus asked why the building can't be moved over 10' to meet the required setback. Mr. Bailey stated because of the way the driveway comes in, and he is concerned with the way it sets up with the front, and to keep it off the driveway with it being 52' long.

Senior Building Inspector Belson stated he has a letter from the neighbors at 4055 Purdy Road, Almon Leach and Joanne Stanton, stating they feel this project will be an intrusion on their yard and will have a negative impact on their property. Letter received as Exhibit "A".

Member Bartus asked what would have to be done to meet the code. Senior Building Inspector Belson stated move it over 5' and then he would only need rear setback. Mr. Bailey stated he feels it would be over too far and wouldn't

look appealing. Mr. Bailey stated there is a fence in the back and he would put in more.

Member Jablonski asked if the lean-to wasn't there, if there would be an issue. Mr. Bailey stated sort of.

Member Jablonski asked how large the home is. Mr. Bailey stated 1986 square feet. Member Jablonski stated the pole barn would be almost as big as the home. Mr. Bailey stated he has many items to store such as a boat, snowmobile, etc., and there is not a limit on the size of outbuildings in an agricultural district.

Member Loiars asked if there will be electric. Mr. Bailey stated yes and a stone floor and eventually heat and water.

Mr. Elsess asked if there will be sewer also. Mr. Bailey stated no.

Almon Leach of 4055 Purdy Road stated they don't object to the back variance, but would like the 20' side variance maintained.

Joanne Stanton of 4055 Purdy Road stated the proposed pole barn will be almost as large as the home and he has trailers there that he uses for his business and two trucks. Mr. Bailey stated there are trailers there, but not trucks as he has several trailers for things like his snowmobile and boat.

Attorney Seaman asked if he wants the 15' side setback for convenience. Mr. Bailey stated more for the aesthetics. Attorney Seaman suggested he could conform and still put in what he would like. Mr. Bailey agreed. Mr. Bailey states he also wants to buy a camper that would go inside so it wouldn't be visible from the road.

Ms. Stanton stated she feels it is a problem if he doesn't stick with the 20' because it is so long and is close to their property, that it interferes with their enjoyment of their property.

Member Loiars asked if there will be combustible material in the pole barn. Mr. Bailey stated nothing other than gas. Member Loiars asked if there will be gutters. Mr. Bailey stated yes, and they drain to the side property, but he will put in drain tile and bury it, to take care of the issue.

Attorney Seaman asked if it is all farm land in back. Mr. Bailey stated there is a 30 to50' wide hedgerow, then a field, woods, that doesn't grow anything that he is aware of.

Member Loiars asked about the lean-to. Mr. Bailey stated it would come off the side of the building, with a matching roof and stone for entertaining, a picnic table, maybe a swing.

Ms. Stanton questioned if more business equipment will be stored in the lean-to. Town Attorney Seaman stated storing business equipment wouldn't be allowed in an Agricultural District and that it would become an enforcement issue if the code is violated.

Member Loiars questioned if he could move it. Mr. Bailey stated it wouldn't line up the way he would like. Mr. Bailey presented pictures, received as Exhibit "B", "C" and "D".

MOTION made by Member Bartus, seconded by Member Jablonski to grant the requested 10' rear variance to Shawn & Jessica Bailey at 4057 Purdy Road based on the following findings:

1. The requested variance will not produce an undesirable change in the character of the neighborhood as there are no nearby structures on the property to the rear;
2. The benefit sought by the applicant cannot be achieved by any other feasible method;
3. The requested area variance is not substantial;
4. The proposed variance will not have an adverse effect on the environmental conditions in the neighborhood; and
5. The difficulty was not self-created;

And to deny the requested side yard variance based on the following findings:

1. The requested variance will create an undesirable change in the neighborhood and be a detriment to nearby properties as evidenced by the testimony of the neighbors;
2. The benefit can be achieved by another feasible method such as moving the structure by 5';
3. The requested area variance is substantial because of the size of the structure and its proximity to the neighbor's residence;
4. The proposed variance will have an adverse effect by detracting from the aesthetic and enjoyment of the neighbor's property; and
5. The proposed difficulty is self-created as they have plenty of room to do what they want to do.

4 Ayes, 1 Nay (Member Dahlquist), Carried.

CASE #4 **4363 Day Road – SBL #96.00-1-49.1 – Trevor & Kathleen Brauen –** Requesting an area variance to erect a 34 x 40' metal pole barn in front of their

principle structure. Requirement is for structure to be placed behind principle. Member Dahlquist recused himself from this case.

Chairman Lederhaus opened the Public Hearing.

Mr. & Mrs. Brauen presenting. Mr. Brauen stated this will be an everyday garage to store his camper and lawnmower and he would like this location as it is a high spot on the property and slopes down on the east and is very wet in the back. Mr. Brauen stated it would drain to the road and there is a mature tree and shed in the back. Ms. Brauen stated the location would look decent and be practical, while keeping the maximum back yard usage for the children.

Chairman Lederhaus inquired why the building could not be moved over and then back. Mr. Brauen stated then they would have to remove the tree. Ms. Brauen stated the driveway will connect with the current driveway, so they will be able to drive out instead of backing out.

Hank and Sherrie Verwoldt of 4294 Day Road stated they live across the road and to the north and that they moved to the country to get away from the city and buildings. Mr. Verwoldt stated they have a nice view of the orchard and feel the pole barn should be in the back of the home and the proposed building is almost as big as the house. Mr. Verwoldt stated they already have a 2 car garage this will be a 3 car. Ms. Verwoldt stated there are others that have pole barns that are back and not as large as this and feels it will affect the value and enjoyment of their property. Mr. Verwoldt stated the letter he received makes it sound nice, but it's really for the homeowner's convenience and the heck with the neighbors. Senior Building Inspector Belson noted that if Mr. & Mrs. Brauen move the pole barn back 15' they can build it without a variance.

Ernest Way of 4357 Day Road stated he sees the applicants point as the back is wet and this will match with their driveway and feels the Brauen's have increased their property value and keep their property very neat.

Member Jablonski asked if they could put fill in to move the barn back the 15' and Mr. Brauen stated that this could be done, but it would be a significant added expense which they do not wish to incur. Mr. Brauen feels the view of the pole barn would be very limited as there are 18 to 20' tall pine trees there that will shield most of it and feels it can be made to look like it belongs there.

Member Jablonski asked if it will be steel and match the home. Ms. Brauen stated yes, it will have windows and doors that are residential looking with a 12' door for the camper.

Member Loiars asked since it is a steel building if it will have to be grounded and Mr. Brauen stated he is unsure as it is being done professionally. Mr. Brauen stated it will be 2 tone gray with seamless gutters.

Member Jablonski asked how large the existing house is and how large the pole barn will be. Mr. Brauen stated the home is 2200 square feet and the pole barn will be 1300 square feet.

Chairman Lederhaus closed the Public Hearing.

MOTION made by Member Loiars, seconded by Member Jablonski to deny the variance for Trevor & Kathleen Brauen at 4363 Day Road based on the following findings:

1. The requested area variance will produce an undesirable change in the character of the neighborhood because it will extend a pole barn to the front of the lot, which has not been done before in the neighborhood;
2. The benefit sought by the applicant can be achieved by another feasible method which is to bring in fill, or re-grade, and to build the barn in compliance with zoning regulations;
3. The requested area variance is substantial;
4. The proposed variance will have an adverse effect on the environmental conditions in the neighborhood as it will detract aesthetically from the neighborhood; and
5. The difficulty was self-created.

3 Ayes, 1 Nay (Member Bartus), Carried.

CASE #4 **5729 Locust St. Ext. – SBL #123.14-4-61 - Anthony & Heather Sauls –** Requesting an area variance to build a garage 32 x 26' after demolition of the existing structure. The proposed accessory structure (832 sq. ft.) exceeds 1/3 sq. ft. of the existing structure. Mr. Sauls presenting.

Chairman Lederhaus opened the Public Hearing.

Mr. Sauls stated he is looking to build a garage where the existing 20 x 22' garage is ready to fall down, and not feasible to fix. Mr. Sauls stated the existing garage has doors that are barely 7' wide and hard to get cars into. Mr. Sauls stated the garage will have a concrete floor and the back will be for lawnmowers, tools, etc.

Member Loiars asked Mr. Sauls if he will be imposing on the 10' existing setback and if the pine tree is coming out. Mr. Sauls stated no, they are going the other way and the pine tree to the left will give him 2 to 3' clearance, there will be gutters on the garage and it will be built to code, and will have heat and gas. Mr.

Sauls stated there is a furnace in the existing garage, there will not be plumbing and it will have a peak roof.

Mr. Elsess stated he feels the pine tree will cause problems in the future.

Member Loiars asked if Mr. Sauls will be doing the work himself. Mr. Sauls stated no, being done professionally including the trench drain so water won't get into the garage.

Hearing no further comments, Chairman Lederhaus closed the Public Hearing.

MOTION made by Member Dahlquist, seconded by Member Bartus to grant an area variance to Anthony & Heather Sauls at 5729 Locust Street Ext. to demolish an existing garage and erect a larger one on the same site based on:

1. The requested variance will not create an undesirable change in the character of the neighborhood;
2. The benefit sought by the applicant cannot be achieved by any other feasible method because the existing structure is dilapidated and is in need of replacement;
3. The requested area variance is not substantial;
4. The proposed variance will not have an adverse effect on the environmental conditions in the neighborhood; and
5. The difficulty was not self created.

5 Ayes, 0 Nays, Carried.

CASE #6 **5682 S. Transit Road – SBL #123.13-1-8 – Pine Partnership, LP/David Dombrowski** – Requesting an area variance for pre-existing non-conforming building with a 50'setback. The required setback in a B2 is 75'. Mr. Dombrowski presenting.

Chairman Lederhaus opened the Public Hearing.

Mr. Dombrowski stated this is a pre-existing building that they would like to reuse as much as possible for the new Kentucky Fried Chicken building.

Senior Building Inspector Belson stated this project has been approved by the Planning Board

Hearing no comments, Chairman Lederhaus closed the Public Hearing.

MOTION made by Member Loiars, seconded by Member Bartus to grant an area variance for Pine Partnership at 5682 S. Transit Road for re-use of an existing building based on:

1. The requested variance will not create an undesirable change in the character of the neighborhood,
2. The benefit sought by the applicant cannot be achieved by any other feasible method because the renovated structure is already in place;
3. The requested area variance is not substantial;
4. The proposed variance will not have an adverse effect on the physical or environmental conditions in the neighborhood because other structures have similar setbacks; and
5. The difficulty was not self-created.

5 Ayes, 0 Nays, Carried.

MOTION made by Member Bartus, seconded by Member Jablonski to accept tonight's decisions. 5 Ayes, 0 Nays, Carried.

The next Zoning Board of Appeals meeting will be May 24th at 7:00 pm.

MOTION made by Member Dahlquist, seconded by Member Loiars to adjourn. 5 Ayes, 0 Nays, Carried.

BY ORDER OF THE TOWN OF LOCKPORT

ZONING BOARD OF APPEALS