

Town of Boston

Zoning Board of Appeals



Town Hall
Phone: (716) 941-6113

8500 Boston State Road
Boston, New York 14025

Zoning Board of Appeals AGENDA Thursday, February 1, 2024 7:00 PM

1. Work Session – Planning Board Room
2. Call Meeting to Order – Town Court Room
3. Pledge of Allegiance
4. ZBA Responsibility Reading
5. Minutes
6. Public Hearing
7. New Business
8. Old Business
9. Motion to adjourn

The ZBA will meet at the Town of Boston Town Hall on **Thursday, February 1, 2024 at 7:00 PM** for the Work Session in the Planning Board Room followed by the Public Hearing in the Court Room to hear the following petition:

Petition #618 – Joseph & Nicole Winnicki, 6212 Rice Hill Rd, seeking an **AREA** variance of 15ft to construct a 40x62 pole barn, Town Code section 123-51 B (2).

PUBLIC NOTICE
TOWN OF BOSTON
ZONING BOARD OF APPEALS

The ZBA will meet at the Town of Boston Town Hall on **Thursday, February 1, 2024 at 7:00 PM** for the Work Session in the Planning Board Room followed by the Public Hearing in the Court Room to hear the following petitions:

Petition #618 – Joseph & Nicole Winnicki, 6212 Rice Hill Rd, seeking an **AREA** variance of 15ft to construct a 40x62 pole barn, Town Code section 123-51 B (2).

Jennifer Cavarelo, Clerk
Zoning Board of Appeals

Dated: January 4, 2024

Published:

An Equal Opportunity Provider & Employer

TO: ZBA Chairman and Board members
FROM: Sarah desJardins, Planning Consultant
RE: February 2024 ZBA petition

Chairman and Board members:

Regarding Petition # 618, Joseph & Nicole Winnicki, 6212 Rice Hill Road, they are requesting an area variance of 15 feet in order to construct a 40 x 62 pole barn.

The proposed Action is classified as a Type II Action and therefore is not subject to review under SEQR.

Respectfully submitted,
Sarah desJardins, Planning Consultant

APPLICATION FOR PERMIT

Town of Boston; New York

Single Family Dwellings, Farm Buildings,
Accessory Building, Additions

OFFICE USE ONLY

Approved () Disapproved ()
Permit No. _____
Address _____
Date Issued _____
Permit Fee _____
Issued By _____

Owner Joseph Winnicki
Address 6212 Rice Rd

Contractor self
Address _____

Petition
#618

_____ ve. _____

Day Phone _____ Eve. _____

CONSTRUCTED WITH:

- Application () Erect (X) Frame () Concrete Block
- is hereby () Alter () Brick () Concrete Reinforced
- made for () Repair () Brick Veneer () Steel
- permission () Addition () Tile () Other
- to: () Move () Stone
- To be used as: () Single Dwelling () Farm Building () Barn () Solid-Fuel Burning
- () Private Garage () Swimming Pool (X) Accessory Building

Address of Premises for Which Application is Made:

Section, Block, Lot 257.00-2-49.1 Current Zoning R-A

Tax I.D. Number _____

() North
(X) South Side of Rice Hill Road, Size of Lot 495.18, 881.74, 10 1/2
() East Street Name Frontage Dept Acreage
() West

Distance of Building from lot lines. Front 610', Rt. Side 15', Lt. Side 417', Rear 232'

Size of completed (X) Building, () Addition, feet wide 40, feet long 62, feet high 24

Sq. Ft. of: Basement _____, First Floor 2480, Second Floor _____, Garage _____, Other _____

The estimated value of Structure exclusive of land is \$ 50,000

Total Square Footage of Lot 436,590 Percentage of Lot Coverage (All Bldgs) 7-1%

Deed Restrictions NONE

Type of Sewage Disposal _____

Type of Water Supply _____

NOTE: Approval of proposed system by County Health Dept. must be presented with application.

NOTE: Permit for Driveway Culvert must be presented with this application before Driveway Culvert is installed. Permit must be obtained from the Highway Department having jurisdiction (Town)(County)(State)

Attach Survey bearing the stamp of a licensed survey or engineer showing the location of all buildings with references to said lot including both existing structures and proposed structures, giving dimensions in feet.

PLANS FOR THE BUILDING INSPECTOR MUST BE SUBMITTED WITH THIS APPLICATION. THEY MUST COMPLY WITH STATE UNIFORM BUILDING CONSTRUCTION CODE AND THE STATE ENERGY CONSERVATION CODE.

No person shall make any change in plans herewith submitted for specifications herein contained, or in the structural part of the building without written consent of the Building Inspector.

Sketch on reverse side of this application must be completed

The undersigned applicants do hereby affirm that the information herein supplied is true and correct.

Joseph Winnicki
Applicant/Owner

Michelle Winnicki
Applicant/Owner

11-18-23

11-18-23

Date

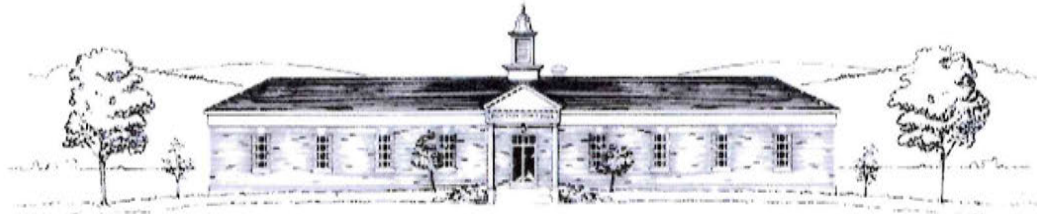
Date

() Approved () Disapproved

Date _____

Reason _____

Building Inspector
Town of Boston



TOWN OF BOSTON

November 29, 2023

PETITION #618

Distinguished Chairman Rood,
Honorable Board Members,

Joseph and Nicole Winnicki of 6212 Rice Hill Road would like to construct a 40' X 62' pole barn on their 10-acre residential agricultural parcel of sbl. 257.00-2-49.1. The size of the structure falls within the guidelines of the code at 2480 square feet, as do the front and rear setbacks at 610' and 232', respectively. However, to accommodate the required turn radius for vehicles using their attached garage they would like to place the barn so that the setback from the western property line is 15'.

This violates Town of Boston code section 123-51 B.(2) which states: "...accessory buildings in a residential agricultural district shall be provided with two side yards of 30' each".

To accomplish their goal, they require a 15' area variance from your board. It may be of note that they also own the vacant 10-acre parcel to the west of their property.

Code: 30 feet
Actual: 15 feet
Variance: 15 feet

Respectfully,

Thomas C. Murphy
Town of Boston
Code Enforcement Department
Zoning Officer
NYS0360547

TOWN HALL
(716) 941-6113
Fax (716) 941-6116

TOWN SUPERVISOR
(716) 941-6518
Fax (716) 941-9264

TOWN COURT
(716) 941-6115
Fax (716) 941-5169

HIGHWAY GARAGE
(716) 941-5869
Fax (716) 941-3677

NUTRITION PROGRAM
(716) 941-5773

8500 Boston State Road Boston, New York 14025-9848

The Town of Boston is an equal opportunity provider and employer.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call 1-866-632-9992 to request the form. You may also write a letter containing all the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or fax 202-690-7442 or e-mail at program.intake@usda.gov.

Chapter 123. ZONING

Article XI. R-A Residential-Agricultural District

§ 123-51. Required yards.

Unless otherwise provided, the minimum required yards and other open spaces in the R-A District shall be as specified in this section.

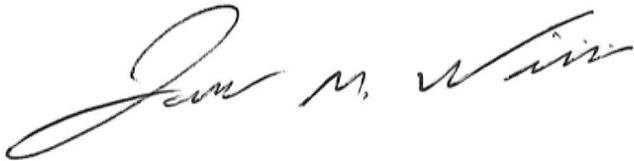
- A. Front yard: 50 feet.
- B. Side yards: two required.
 - (1) The minimum width of any side yard shall be 10 feet.
 - (2) Other principal buildings, accessory buildings and farm buildings: Except as otherwise provided, each side yard shall equal 30 feet or a distance equal to the height of the principal building, whichever is greater; provided, however, that when a side yard adjoins a lot in any district other than an R District, such side yard shall equal 15 feet or a distance equal to 1/2 the height of the principal building, whichever is greater.
- C. Rear yard. No rear yard shall have a depth of less than 30 feet or a distance equal to the height of the principal building, whichever is greater.
- D. Maximum lot coverage: 7%.

11-18-2023

To Town of Boston:

We (Joseph and Nicole Winnicki) would like to build a 40x62 storage building adjacent to our home at 6212 Rice Road. The storage building will be under 2500 SF and be on a 10 acre parcel along with our home. The building will be used for storage of yard equipment and personal recreation vehicles. Currently all our equipment is sitting outside. We are requesting a variance for the side lot line setback to be reduced to 15'. The Reason for the reduction in the side lot line setback is to provide enough room in front of the building to park a vehicle without it protruding into our driveway. The proposed building would sit approximately 610' back off the road and in our opinion would have minimal to no effect on any neighbors. We also own the adjacent 10 acre parcel on the other side of the side lot line in question.

Thank you for your consideration.

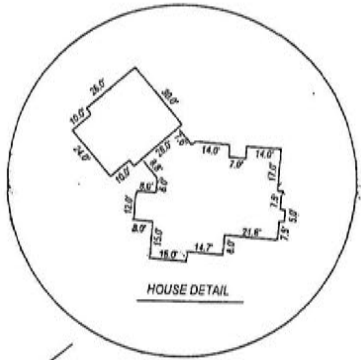
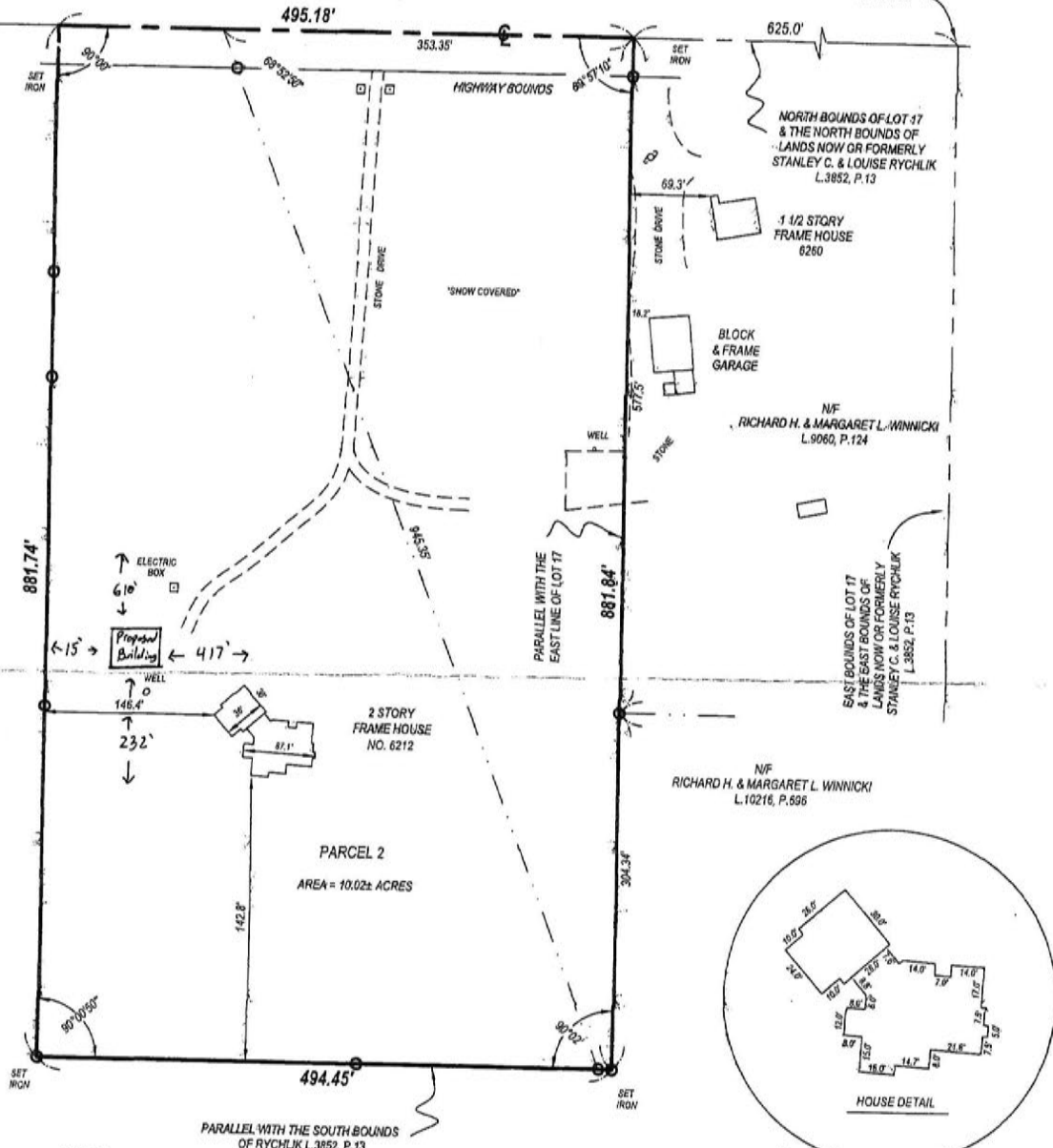
A handwritten signature in cursive script, appearing to read "Joseph M. Winnicki". The signature is written in black ink and is positioned below the text "Thank you for your consideration."



NOTE:
This survey was prepared without the benefit of an up to date abstract of title and is subject to any state of facts that may be revealed by an examination of such.
Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of section 7209, sub-division 2, of the New York State Education Law.

RICE HILL (66' WIDE) ROAD

NORTHEAST CORNER OF LOT 17



NOTES:

- 1.) This survey was prepared without the benefit of an up to date abstract of title and is subject to any state of facts that may be revealed by an examination of such.
- 2.) All features indicating easements, agreements, reservations & rights, in premises are not shown on this map & is subject to the following deeds of record:



SURVEY OF:
PART OF LOT 17, T.8 - R.7, H.L.C.S.
TOWN OF BOSTON, ERIE COUNTY, NEW YORK

SCALE: 1" = 100' DATE: FEBRUARY 2, 2021
MARCH 8, 2023 HOUSE LOCATION

RICHARD J. ARONICA
LAND SURVEYOR, NYS 49799
10569 ROCKY MOUNTAIN ROAD
P.O. BOX 339
NORTH COLLINS, NEW YORK 14111
PHONE: 716-337-3420

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
Name of Action or Project:			
Project Location (describe, and attach a location map): 6212 Rice Road Boston NY 14025			
Brief Description of Proposed Action: Storage Building			
Name of Applicant or Sponsor: Joseph + Nicole Winnicki			
Address: 6212 Rice Road			
City/PO: Boston	State: NY	Zip Code: 14025	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	NO	YES	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval:	NO	YES	
Town of Boston NY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
3. a. Total acreage of the site of the proposed action?	0.1	acres	
b. Total acreage to be physically disturbed?	0.1	acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?	20	acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input checked="" type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):			
<input type="checkbox"/> Parkland			

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/>	

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input checked="" type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
a. Will storm water discharges flow to adjacent properties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____ _____		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO	YES
_____ _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO	YES
_____ _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO	YES
_____ _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor/name: <u>Joseph + Nicole Winnicki</u> Date: <u>11-18-23</u>		
Signature: <u>Jan M. Winn</u> Title: <u>Land Owners</u>		

Box 301

THIS INDENTURE

Made the 5th day of May, 2022

Between

JOSEPH M. WINNICKI
6260 Rice Road
Boston, New York 14025 Grantor(s), and

JOSEPH M. WINNICKI and NICOLE M. WINNICKI, husband & wife
6260 Rice Road
Boston, New York 14025 Grantee(s)

Witnesseth, that the Grantor(s) in consideration of **One and No More Dollars (\$1.00 and no more)** lawful money of the United States, paid by the Grantee(s) do hereby grant and release unto the Grantee(s), their heirs and assigns forever,

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Boston, County of Erie and State of New York, being part of Lot No. 17, Township 8, Range 7 of the Holland Land Company's Survey, described as follows:

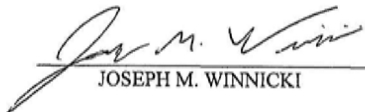
BEGINNING at a point in the center line of Rice Road and the north bounds of Lot No. 17 which is also the north bounds of lands owned by Stanley C. and Louise Rychlik as described in a deed recorded in Erie County Clerk's Office in Liber 3852 of Deeds at page 13, which point is 625.0 feet west of the northeast corner of said Lot No. 17; thence westerly along the said center line of Rice Road a distance of 495.18 feet to a point; thence southerly at an interior angle of 90° 00' a distance of 881.74 feet to the north line of lands conveyed to Eugene S. Rychlik by a deed recorded in the said Clerk's Office in Liber 10216 of Deeds at page 700; thence easterly along said Rychlik's north line at an interior angle of 89° 59' 10" a distance of 494.45 feet to the west boundary of lands conveyed to Richard H. and Margaret L. Winnicki by deed recorded in the said Clerk's Office in Liber 9060 of Deeds at page 124; thence northerly along a line parallel with the east bounds of said Lot No. 17 at an interior angle of 89° 58' a distance of 881.99 feet to the point or place of beginning.

THIS CONVEYANCE DOES NOT RENDER THE GRANTOR INSOLVENT NOR IS THIS CONVEYANCE INTENDED TO DEFRAUD OR HINDER CREDITORS.

Together with the appurtenances and the estate and rights of the Grantor(s) in and to the premises:

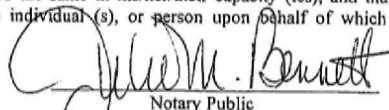
To have and to hold the above granted premises unto the Grantee(s); and the Grantor(s) covenant with the Grantee(s) that the Grantee(s) shall quietly enjoy the premises and that the Grantor(s) will forever warrant the title to the premises. This grant is made subject to the trust fund provisions of Section 13 of the Lien Law.

In Witness whereof the hand(s) and seal(s) of the undersigned are affixed as of the day and year first above written.


JOSEPH M. WINNICKI

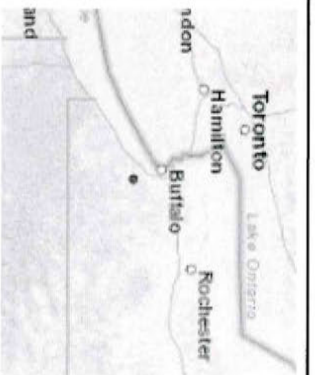
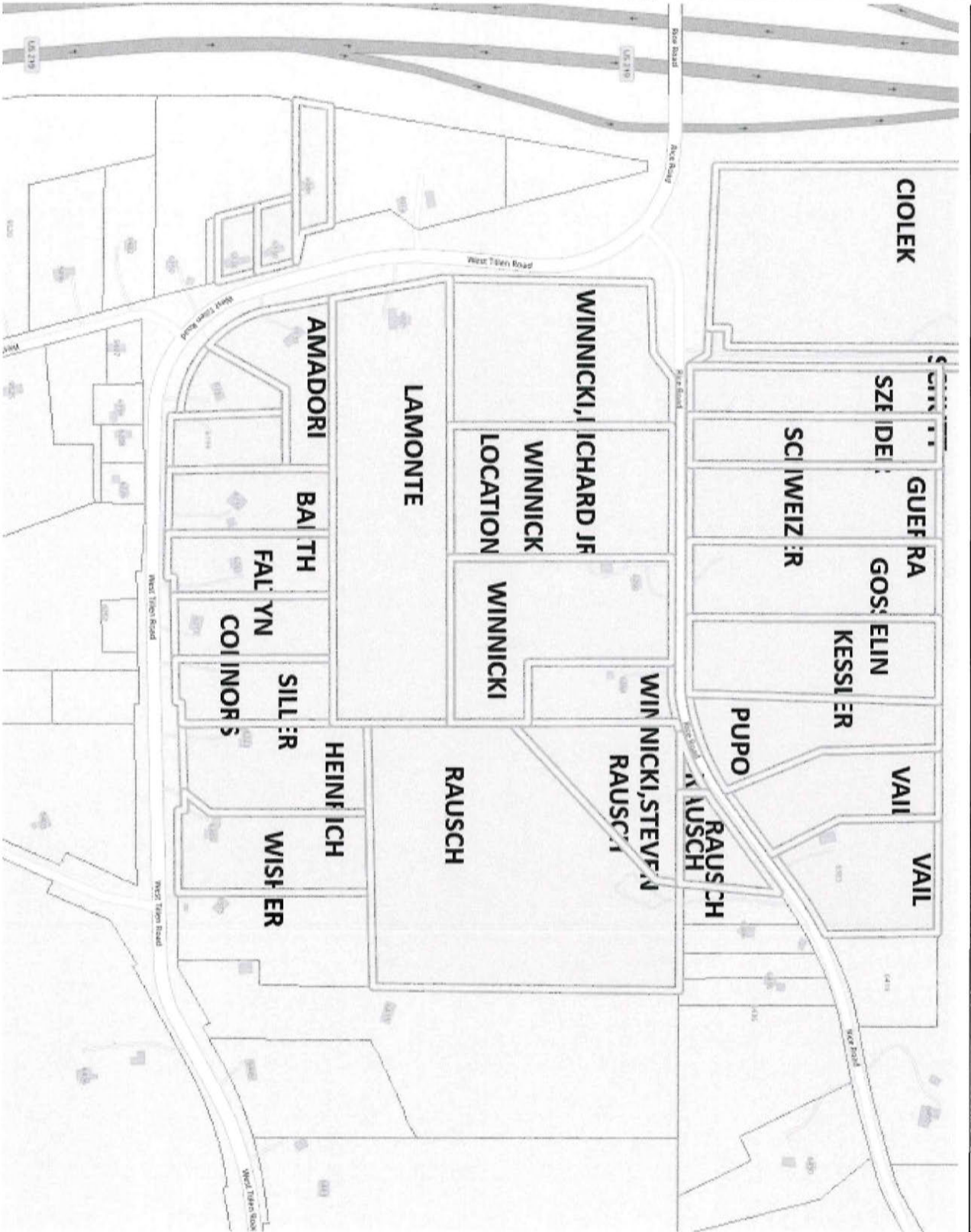
STATE OF NEW YORK)
COUNTY OF ERIE)

On the 5th day of May in the year 2022, before me, the undersigned, a notary public in and for said state, personally appeared **JOSEPH M. WINNICKI** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature (s) on the instrument, the individual (s), or person upon behalf of which the individual (s) acted, executed the instrument.


Notary Public



Erie County On-Line Mapping Application



Legend
 Parcels

*Section #618
Winnicki*

0 0.14 0.3 Miles
WGS_1984_Web_Mercator_Auxiliary_Sphere
THIS MAP IS NOT TO BE USED FOR NAVIGATION

ERIE COUNTY
DEPARTMENT OF ENVIRONMENT & PLANNING
OFFICE OF GIS

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

1 : 9,028



Petition #618 - Winnicki

Parcel Owner Mailing Addresses

Report generated: 1/21/2024 1:28:54 PM

~~DEVESO JAY R~~
6138 WEST TILLEN RD
BOSTON NY, 14025

~~LAWRENCE MARK A~~
6191 WEST TILLEN RD
BOSTON NY, 14025

~~DIPALMA ERIC A~~
6199 WEST TILLEN RD
BOSTON NY, 14025

~~DEVESO JAY R~~
6130 WEST TILLEN RD
BOSTON NY, 14025

~~GRAY THOMAS & VICKY~~
6088 W TILLEN RD
BOSTON NY, 14025

~~AMADORI MICHAEL & NANCY~~
6133 WEST TILLEN
BOSTON NY, 14025 9720

~~BARTH JONATHAN & DONNA~~
6231 WEST TILLEN RD
BOSTON NY, 14025

~~FALTYN JOSEPH J & KELLY A~~
6261 WEST TILLEN
BOSTON NY, 14025

~~CONNORS LINDA M~~
6271 WEST TILLEN RD
BOSTON NY, 14025

~~HEINRICH BENJAMIN H LIFE USE~~
6323 WEST TILLEN RD
BOSTON NY, 14025 9720

~~WISHER MARK & SYLVIA~~
6345 WEST TILLEN RD
BOSTON NY, 14025 9720

~~WINNICKI STEVEN~~
6264 RICE RD
BOSTON NY, 14025 9716

~~RAUSCH ROBERT~~
6374 RICE RD
BOSTON NY, 14025

~~RAUSCH ROBERT~~
6374 RICE RD
BOSTON NY, 14025

~~RAUSCH ROBERT~~
6374 RICE RD
BOSTON NY, 14025

~~RAUSCH ROBERT~~
6374 RICE RD
BOSTON NY, 14025

~~VAIL DONALD C TRUSTEE FO~~
6383 RICE RD
BOSTON NY, 14025 9716

~~SCHUTT DONALD J~~
6181 RICE RD
BOSTON NY, 14025

~~CIOLEK JULIE~~
4475 TRANSIT RD
ORCHARD PARK NY, 14127

~~SILLER JEFFREY A & RENEE~~
6295 WEST TILLEN
BOSTON NY, 14025

~~VAIL DONALD C~~
6383 RICE RD
BOSTON NY, 14025

~~PUPO JAMES VINCENT~~
6291 RICE RD
BOSTON NY, 14025

~~GUERRA MICHAEL R~~
28 COLORADO AVE
WHITEFISH MT, 59937

~~GOSSELIN LUC~~
6223 RICE RD
BOSTON NY, 14025

~~KESSLER NICHOLAS~~
6255 RICE RD

Boston 14025

116

Parcel Owner Mailing Addresses

Report generated: 1/21/2024 1:28:54 PM

~~BOSTON NY, 14025~~

SZEIDER PETER JAMES
6185 RICE RD ✓
BOSTON NY, 14025

SCHWEIZER HOPE ✓
6197 RICE RD
BOSTON NY, 14025

WINNICKI RICHARD H JR ✓
6260 RICE RD
BOSTON NY, 14025

LAMONTE MICHAEL A ✓
6025 WEST TILLEN RD
BOSTON NY, 14025

WINNICKI JOSEPH M ✓
6212 RICE RD
BOSTON NY, 14025

Applicant

WINNICKI RICHARD H LIFE USE
6260 RICE RD *
BOSTON NY, 14025 9716

5

Zoning Board of Appeals
Meeting minutes – 11.02.2023

Attendees: Lisa Rood, Beth Pryor, Dave May, Robert Ballard, Tony Rosati

Absent: Kelly Martin/Town Liaison, Attorney Laurie Baker, Mike Flattery, COE Tom Murphy

1. Work Session – Planning Board Room – 7pm

2. Call Meeting to Order

Meeting called to order by Ms. Rood at 729pm

ROLL CALL

Ms. Pryor

Mr. May

Mr. Ballard

Ms. Rood

Mr. Rosati – full voting privilege

3. Pledge of Allegiance – Not read

4. ZBA Responsibility Reading – not read

5. Minutes – reviewed after public hearing

Motion to accept October 2023 minutes, with amendments, made by Ms. Rood

2nd by Ms. Pryor

ROLL CALL

Ms. Pryor

Mr. May

Mr. Ballard

Mr. Rosati

Ms. Rood

APPROVED

6. Public hearings

Ms. Rood re-opened the public hearing for the Zoning Board of Appeals. Petition #617 – Brian Papaj Applicant seeking a variance for a piece of property on Crestwood. It is a 75ft area variance on a lot with no frontage on a street. This petition was closed at the last meeting. Existing Public Hearing. Open the public hearing to the parents representing Brian Papaj with any new developments. Also the board had time to read a lot of information from prior zoning board meeting and reference the rules and regulations of this type of application. Anyone speaking was asked to speak into the mic with their name and address.

ROLL CALL

Ms. Pryor

Mr. May

Mr. Ballard

Mr. Rosati

Ms. Rood

Ms. Rood relayed that Tony Rosati was a full voting member for this meeting due to Mr. Flattery being absent.

Motion made by Ms. Rood to re-open this public hearing.

2nd by Ms. Pryor

ROLL CALL

Ms. Pryor

Mr. May

Mr. Ballard

Mr. Rosati

Ms. Rood

Mr. Allen Papaj/parent Brian Papaj spoke to the board. Since the last meeting, Bryan Papaj contacted the neighbors with a letter introducing himself and describing the situation. Asked if anyone was willing sell a strip of land and grant an easement. As of now, no-one has come forward. Bryan Papaj also contacted the other neighbors on the road and Mr. McGill and Mr. Tamaka about any agreements regarding taking care of the road. There are no written agreements between the neighbors. The neighbors just understand and take care of the road. This has been working fine for 20+ years. Need to disagree with one characterization made by Ms. Rood from the last meeting stating that Bryan created this hardship. Disagree. The hardship existed before Bryan got involved and they are looking for from the Zoning Board, with all the 'tools', to come up with a solution.

Mr. Jim Boguslawski spoke to the board. Former owner of the property. Bought in 1973 and had for 40+ years. Ever since the property was bought, the Town has given him a very difficult time. Dumped water from the hill onto the property and then came in with the Water Tower. Kennedy (Supervisor at the time) came in to take land for the Water Tower. Was given several promises. First, it is not a private road anymore, that the Town took it over. (had a document, but a copy was not provided to the board). It said, Jim, sell a piece of property, the Town will maintain the road and plow the road. The first two years the Water Tower was open, the road was plowed by the Town. At the same time, it be requested to get a building permit to build a double wide. Was given permission (had in writing, nothing provided to the board). Did not end up pursuing since Mrs. Boguslawski did not want to move to Boston. It seemed that he was given a hard time by the Town. Not fair to the owners of the property. The property was utilized to dump water from the upper hill towards the cabin that used to be there; was flooded out. When reaching out to the Town to clean the culvert, was told it could not be done since it was private property. Once the Water Tower was there, the culvert was cleaned out. But feel this owner should be given a variance to build whatever they want, within reason. Don't think the Town is being fair at all. Using the property for the Town's advantage. Advantage #1-dump the water. #2 Built a Water Tower. Now saying it is a private road. At the time of Kennedy, it was not a private road and it was the Town's responsibility to maintain. Consideration should be given. It is a nice piece of property. More tax dollars in the Town's pocket.

Ms. Rood: Clarification given to Mr. Boguslawski. This is the Zoning Board of Appeals. #1-Not the Town Board. 2nd-Board are all volunteers. None of this money is going in the pockets of the Zoning Board Members. Need to stay true to what is being talked about. Appreciated the history of the property but need to address the situation in front of the Board today and not something that happened 20+ years ago. Again, appreciate the history on the property.

Mr. Boguslawski: Question, why would the Town say one thing and then go back on their word?

RESPONSE from Ms. Rood: Cannot speak for that. Mr. Boguslawski responded – That's not right. Thank you.

Mr. Rosati: To Mr. Boguslawski - It would be helpful to have copies of the letters referenced.

Mr. Boguslawski: Have a lot of correspondence at home. Can provide documents. (nothing given at the meeting)

Mrs. Michelle Papaj/ parent of Bryan Papaj, live in Tonawanda, NY: As Mr. Boguslawski was suggesting that the tax dollars that the Town would get.

Ms. Rood: Understand about the tax dollars. Heard this last month. Don't want this to drag on with repeated information. It is understood what this could do for the Town with regards to tax revenue.

Mrs. Papaj: The Town does not plow the road so that is less revenue being used.

Any other questions? None

Ms. Rood: Talking to the audience/applicant. Mentioned the rules and guidelines that need to be followed. All the Board members put in a lot of time reading stacks of minutes that go back 20 years referencing Zoning books that are put out by the State. Digging into the minutes for other properties that have been up for discussion as well as this particular piece of property and there are many references to Mr. Boguslawski in the minutes. A lot work and time has been put in by this Board. Want everyone to be aware that the Board take their responsibilities very seriously. One of the things that Mr. Papaj mentioned needed to be addressed since it was highlighted as Ms. Rood was reading through the Zoning book that is put out by the State regarding self-created hardship. It says: (recording 21:00) Quote "In addressing self-created hardship, the courts should not be placed in the position of having to guarantee the investments of careless land buyers. The same advice should apply to the Zoning Board of Appeals". When referenced last month, that is exactly what was being taken into consideration, was what was written and the guidelines that need to be followed. The Board is supposed to do what is best for the Town and the Code. A zoning code is already in place that is supposed to be adhered to. The Board's place here is to give a variance against that code. But there are tests that need to be done for every single variance application. It is a set of five tests that the Board goes through. Also, regarding training attended, and it says: Applicants for an area variance should demonstrate that they have considered whether the desired result can be achieved without obtaining the variance. Failure to do so weighs against the applicant and the balancing test. In an effort to demonstrate consideration of alternatives, applicants may present efforts to purchase or sell substandard lots to adjoining property owners. Which, I don't think was mentioned to see if someone, one of the neighbors, which was brought up last month, would be interested in purchasing that piece of property to add to their own property to make it larger. Also, asking for easements or purchasing another strip of property so that you would maintain frontage on a dedicated Town road. There is more to think about other than if this is a good place to put a house. One of the things to consider is emergency vehicles. Not only can they get to where they need to go, but are they going to be putting themselves in jeopardy as well, in bad weather, muddy weather, snowy weather. That goes as well as for garbage and mail, emergency fire trucks, buses, etc. When a property is sold to someone else, the new owners, many times, have no idea that they are not going to get the amenities on that road. They think they are going to get that. Those don't happen if it is not a dedicated Town road. It creates problems down the road.

Questions from the Board?

Ms. Pryor: Question to the parents – You reached out to neighbors but never received any type of affirmative in selling any type of property back to you to get some frontage? Do you know who reached out to?

Mr. Papaj/parent: Was given a map of all the adjacent properties to Bryan's property and reached out to every single one of them. One neighbor did express an possible interest in buying Bryan's property.

Mr. Rosati: Were any efforts made to create an agreement for maintenance. Have the other property owners sign it and could be attached to a deed. This is so the new owner would understand what the requirements might be. RESPONSE from Mr. Papaj: No. As mentioned earlier, the two other owners that have been there for 20+ years just understand and take care of the road and it has been working very fine.

Ms. Rood: That was one of the things that was asked last month. Wanted to see something in writing that could go into the deed. RESPONSE from Mr. Papaj: Yes, as recalled. However, it has been working fine for 20+ years with the other two owners.

Mr. Ballard: Until they (current two owners) move away or something happens, then who does that burden fall on. what.

Ms. Rood: Any recorded easements for the utilities? From the Water Authority, National Fuel, NYSEG? RESPONSE from Mr. Papaj: Don't know.

Ms. Rood: With continuing with the five test taken into consideration is a balancing situation. State Law requires the Board to take these (five test) into consideration. First thing is the variance alternative. Which is: Can the benefit sought be achieved by feasible method that wouldn't require a variance. That would include having someone else purchase the property; an adjacent neighbor or purchasing a piece of property that you can use for frontage.

The size – asking if the variance is substantial and in this case, it is very substantial. It is 100%.

Is this Self-created? Ms. Rood still maintains that this is self-created hardship. It is unfortunate that Bryan bought the property, thinking it was a buildable lot and that the realtor was not upfront with him stating that if he did want to buy it, to build on it, that it would require a variance. That is where due diligence is needed. Apparently, not everybody is honest.

The other thing is that a variance is only good for six months. Honestly, that seems to be the bottom line in all of this. Again, a variance is good for six months. Cannot see how that would be beneficial to have a variance for six months.

Ms. Papaj: A variance for every town and every property is six months? RESPONSE from Ms. Rood: Yes The building has to start in six months. It is always explained to them after they are granted the variance.

Ms. Pryor: There is no buyer or builder? RESPONSE: No. Had two buyers last year but backed out because they could not build.

Ms. Rood: Interesting in a petition from 2018 for the Zoning Board, it was the same situation. Albert Author owned the property at the time and he was wanting to sell the property and he said: When I found out that I needed a variance because it was on a private road, I inquired about what the stipulation was regarding a variance and found out that it was only good for six months, if it was approved. At that point, I knew there was no point in going through trying to get a variance because by the time a buyer would be lined up for it, it likely would have lapsed for that six month. It was a vicious circle.

Mrs. Papaj: Question about the addresses on that road. Some are Crestwood, some are Lower Crestwood. RESPONSE from Ms. Rood: This has nothing to do with the addresses. That is handled by the Town Clerk. It is not a road.

Mrs. Papaj: Can we have a copy of the five balancing test? RESPONSE from Ms. Rood. Yes and you can find them anywhere online. NY State Zoning Board.

Ms. Pryor: Offered Ms. Papaj to take a photo of the document the Board had. TAKEN.

Mr. Rosati: One thing to keep in mind, when the Town of Boston converted to garbage totes, there has been a huge amount of effort and discussion into where the garbage trucks can and cannot go. These types of unincorporated roads became a major sticking point. The Town Board and the Town Clerk are both very sensitive to make sure they don't create more of these situations. It already has been a big

problem. It's not like it is a theoretical thing but that it is something that is very real to them. They have been dealing with this for the last 9 months.

Mrs. Papaj: What is the detriment of giving the variance? Because you (Ms. Rood) said it was said that it was a detriment to the Town if a variance was given. RESPONSE from Ms. Rood: I don't think I said that.

Mrs. Papaj: What are the affects if you give the variance or not? What is the positive and negative? RESPONSE from Ms. Rood: It is what we were just talking about. Down the road it creates problems because people who are not aware, just like what happened to our son. He bought property, thinking he could build on it. Then, say it was approved and a house is built on it, then that person goes to sell it, well now, there is no maintenance agreement with the neighbors about plowing. They assumed, like your son assumed, in the letter he wrote, he said he had discussed it with the neighbors and that they were going to continue to maintain it. This was not accurate. The original letter sent to the ZBA asking for a variance. Ms. Rood talked about a situation that her mother has in the Village of Hamburg with a shared driveway and it's a headache. (recording 22:38).

So instead of creating problems, you are trying to minimize problems. Also putting other agencies in, maybe, danger (emergency trucks, garbage truck, etc). Not saying a variance is a detriment, but just trying to look at all the sides of the pros and cons. Honestly, all the Board members have put a lot of time into this trying to come up with reasons and scenarios, both ways. Understand. Would love to have taxes go down. Because if there is another house that comes on that is a half a million house up there on that nice piece of property, maybe our taxes would not go up as quickly. Understand, believe me. Was the Town Supervisor for four years; wrote budgets. Know how it works. Also know the headaches that can occur down the road from decisions that are made that seem to be in the folk's best interest, at one point. It is definately a balancing act. Just trying to weigh everything. Honestly.

Mr. Rosati: Zoning is created to make things more black and white and minimize conflicts between neighbors. Both immediate neighbors and people in the neighborhood. The Zoning Board of Appeals is here to act as a relief valve but there are things that have to be factored in and part of it is, again, history of why zoning might be there in the first place. And so to that extent, the Board does have a balancing act to try to say, we want to help people maximize their use of their property while at the same time be careful that five years down the road don't have some kind of major law suit. Whether it is because of a problem with an emergency vehicle or a problem with flooding that happens because a culvert is not cleaned out or some other issue, snowplowing, any kind of those issues. So that is what we are trying to do.

Mrs. Papaj: Confused on the shared driveway? Is it all the property owners for shared driveway? Is that what it means?

Ms. Rood: The Town right of way is currently maintained by Tamakas and McGills, I believe. They are maintaining it currently for their households. If the variance is granted and that person builds a house, they are going to have to chip in somehow. Don't think it would be very fair for them to expect the other families to maintain that roadway for them, for free.

Mr. Ballard: Especially when building goes on, and the trucks have to roll up, concrete trucks are heavy, it is going to damage the driveway. Now is the new owner going to pay for the damage that is not there now?

Ms. Rood: That is why it was said last month, wanted to see some kind of an agreement in writing between Papaj and the neighbors maintaining the property.

Mrs. Papaj: The current neighbors don't currently have one?

Ms. Rood: That's why it was said that the Board wanted to see one.

Mrs. Papaj: Why would you need one if they are doing what they are doing; then why would you need someone else to do it?

Ms. Rood: Why would you think you could build a house there? RESPONSE from Mrs. Papaj: because it is shared.

Ms. Pryor: Is this even on the docket? Are you even looking at the possibility of talking with the neighbor, putting anything on the deed? Is that even in the realm of a possibility? RESPONSE: Son has been talking with them.

Ms. Rood: That is what asked to see.

Mrs. Papaj: Do you have to have an agreement to plow?

Ms. Rood: That was one of the stipulations – yes.

Mrs. Papaj: The Board is comparing all these different properties and told me not to compare these properties, they are individual. What's the detriment?

Ms. Rood: Last month it was said, next month we would like to see an agreement between you and the neighbors who are maintaining the property so it could be put into the deed. This was said. It is in the minutes.

Mrs. Papaj: That is a stipulation? RESPONSE from Ms. Rood – Yes, that is a stipulation that can be asked for if the Board grants the variance.

Ms. Pryor: Are you working on that? RESPONSE: Not going to speak to that right now.

Ms. Rood: The Board can put in stipulations to the approval of a variance.

Mr. Ballard: It does not mean if they get that agreement that they would be approved, dependent on what they have going on. It ways towards their favor.

Ms. Rood talked about the worksheet used by the Board members when voting. At the bottom, there is section for stipulations and modifications and the Board can include whatever the Board thinks is going to be beneficial with the approval of the initial variance request. The Board can also make modifications to the request. The Board can make an approval of a 30ft road frontage. The Board can do that. By State Law, supposed to grant the minimum required if the Board decides to approve a variance. If someone comes in and wants a 100x100ft pole barn, the Board can approve a 60x40ft pole barn if the Board feels that is all that is necessary to give them that benefit.

Mr. Boguslawski spoke to the board again. Why is there a fire hydrant on the road?

Ms. Rood: Cannot answer that. Not in charge of the fire hydrants.

Motion made to close the public hearing by Ms. Rood

2nd by Mr. May

ROLL CALL

Ms. Pryor

Mr. May

Mr. Ballard

Mr. Rosati

Ms. Rood

Motion made by Ms. Pryor to deny the petition#617 – Bryan Papaj

Reasons/Conditions:

Approve ___ Deny X Reserve Decision _
Table _____ Time Frame _____

Conditions to approval:

(1) Does it create an **undesirable change to the character of the neighborhood?**

Yes [X] No []

(2) **Can the benefit** sought by the applicant **be achieved if the variance is not granted?**

Yes [X] No []

(3) Is the requested variance **substantial**? Yes [X] No []

(4) Will the variance have an **adverse effect on the physical impact or environmental conditions of the neighborhood**? Yes [X] No []

(5) Is the alleged difficulty **self-created**? Yes [X] No []

2nd by Mr. Ballard

ROLL CALL

Ms. Pryor

Mr. May

Mr. Ballard

Mr. Rosati

Ms. Rood

DENIED by all member

7. New business

none

8. Old business

none

9. Motion to Adjourn

Motion to adjourn made by Ms. Pryor

2nd by Mr. May

At 803pm

ROLL CALL

Ms. Pryor

Mr. May

Mr. Ballard

Mr. Rosati

Ms. Rood