

Town of Clarence
 One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
 November 9, 2021

Chairman Daniel Michnik called the meeting to order at 5:00 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik
 Patricia Burkard

Patrick Krey
 Raymond Skaine

Zoning Board of Appeals members absent:

Vice Chairman Ryan Mills

Richard McNamara

Town Officials present:

Director of Community Development Jonathan Bleuer
 Deputy Town Attorney Steven Bengart
 Councilman Paul Shear

Motion by Raymond Skaine, seconded by Patrick Krey, to **approve** the minutes of the meeting held on September 14, 2021.

Raymond Skaine	Aye	Patrick Krey	Aye	Patricia Burkard	Aye
Daniel Michnik	Aye				

MOTION CARRIED

OLD BUSINESS

Appeal No. 2 (from the October, 2021 meeting)

Davmicor, Inc
 Residential Single-Family

Applicant requests a variance of 588' to allow a 753' front yard setback for the construction of a single family home located at 5695 Shimerville Road.

Town Code Reference;
 §229-52 (A)

DISCUSSION:

Frank Dec, one of the owners of the applicant Davmicor, Inc. was present, and added that based on the requests of the board at the October 12, 2021 meeting, he has submitted the following items:

1. proposed floor plan
2. rendering of the house
3. plans from the architect for the placement of the house on the property

4. examples of landscaping

The plans are for a one-story ranch home with two accessory buildings, one which will be closer to the home, and the other further back on the property.

Mr. Dec stated that they have attempted to show how they plan to maintain the blueberry bushes that won't be affected by building the house.

Mr. Skaine noted that Mr. Dec's request is only for one building, not three. Mr. Bleuer stated that the variance request is for the front yard setback of a single family home, and any accessory structures proposed would be subject to the zoning code. As long as they are at or behind the front foundation line of the house, they would be acceptable from a zoning perspective. The two accessory structures are not before the board for any variance action tonight.

Mr. Krey asked about the minimum amount of acreage of the blueberry bushes that Mr. Dec will maintain, Mr. Dec referred to the photos that he has submitted, and stated that they will remove 2 acres of blueberries for the house and water. Until everything is engineered, he does not have an exact acreage just yet, but his goal is to maintain as much as possible of what is there now.

Mr. Dec noted that at the previous meeting there were suggestions that he was going to eventually subdivide the property. His plan is that this will become an estate for him and his wife, and his family.

Mrs. Burkard referenced the neighbor who voiced his concern regarding the distance from Mr. Dec's proposed house to his neighbor's home, and asked what the actual distance is from the back of his house to Mr. Dec's house. Mr. Dec responded that it is 550 ft.

Mrs. Burkard asked Mr. Dec if he plans on building additional home for his children on this property, Mr. Dec replied that he has not given any thought to that, the idea right now is that their home will be the gathering place for everyone.

Mrs. Burkard asked if the blueberries don't rehabilitate, will Mr. Dec take them out. Mr. Dec responded that whatever they are unable to salvage will be removed. Mrs. Burkard asked if that happens, what Mr. Dec will replace the bushes with. Mr. Dec replied that he is not sure on specifics, but it would be something to continue agricultural aesthetics. Mrs. Burkard asked if he would be willing to put up tall pine trees, Mr. Dec responded that the problem with planting trees at this point, is that he would need to remove blueberries. The area is already wet, and planting trees would cause additional water to collect in that area.

Mrs. Burkard asked if there will be landscaping along the side of the proposed house, Mr. Dec responded yes there will be. The photo of the house indicates shows landscaping around it.

Mr. Michnik asked Mr. Dec if his neighbor in front of him asked to purchase some property, would he be willing to sell it. Mr. Dec responded probably not.

In regards to Public Participation, the following spoke:

Michelle Petri, currently residing at 392 Cleveland Drive in Tonawanda, is building the home located at 5665 Shimerville Road. It is the new build between the two existing homes at the end of the private drive.

They broke ground on June 22, 2021 and since the time that the Dec's have owned the property and successfully purchased it in to their name, she has had many long conversations with them. Mrs. Petri and her husband own .5 acres of the blueberries in the northeast corner of the blueberry lot is in front of her house.

Mrs. Petri stated that many of her conversations with the Dec's have revolved around how they can work together to bring the blueberries back to life, as they have not been maintained in many years. Mrs. Petri stated that she and her husband would have liked to have more of the blueberry farm, and although they are unable to, she is happy that someone else has taken on the task of rehabilitating them, and shares a passion for the blueberry farm.

Mrs. Petri stated that she has been in continuous communication with the original owner of the blueberry farm, the owner that planted the 18,000 blueberry bushes, as well as any other person connected to the success of the blueberry farm. She is not opposed to where the Dec's are requesting to have their home placed, she does not feel it will cause any issues. She believes that many of the blueberries located in the area that Mr. Dec is requesting to place his home are more damaged than the ones closer to the road.

Mr. Petri noted that their house will be located closest to where Mr. Dec is requesting to build his house, much closer than 550 ft. and he has no objections to the request or plans. Mr. Petri stated that if for some reason he does not like something with Mr. Dec's home, he will plant trees himself to create a buffer.

It was well known that the lot had been for sale for many years, anyone that has an issue with where Mr. Dec is requesting to place his house, had equal opportunity to purchase the property in order to prevent that.

Mr. Bleuer stated for the record that a letter has been received from Jim Purcell of 5745 Shimerville Road and has been sent to the full Zoning Board of Appeals for their review. Additional correspondence was received from Mr. Purcell today as well, with a number of items that he has reiterated from the previous meeting. He specifically notes a concern regarding neighbor notifications, as well as his belief that the matter should receive a procedural denial.

Mr. Bleuer stated that the Planning Office sent out Neighbor Notifications to all adjacent neighbors, and have received correspondence from Jaweed Shariff located at 5715 Shimerville Road which has also been provided to the full board, and are on file.

Both of those comments are in opposition to the variance.

Mr. Krey asked where Mr. Purcell lives, Mr. Bleuer confirmed Mr. Purcell lives at 5745 Shimerville Road.

Mr. Michnik confirmed that both of the properties are located in front of Mr. Dec's property, Mr. Dec responded yes, they are located on Shimerville Road.

Mr. Dec stated that he is eager to get started on the revitalization of the blueberry bushes, making every effort to preserve as many bushes that he can.

Mr. Skaine commented that Mr. Purcell suggests in his letter that the board takes in to consideration drainage, as well as the location of flood plain. Mr. Skaine noted that this is not within the Zoning

Board’s jurisdiction, and is handled through the Engineering and Building Departments. This board is looking solely at the setback variance request brought forth by Davmicor, Inc.

ACTION:

Motion by Raymond Skaine seconded by Daniel Michnik to **approve** Appeal No. 2 under Old Business, as written.

ON THE QUESTION:

Patrick Krey commented that in terms of some of the concerns from the neighbors, and as witnesses present at the meeting stated, the neighbors located at 5745 and 5715 Shimerville Rd. can put up berms and trees in their own backyards to shield their views. They currently have a structure behind their homes, so there is not any change in terms of what they are going to see, aside from an additional home.

Mr. Krey stated that he does not believe it will change the character of the neighborhood, nor is it a detriment to any of the nearby properties by granting the variance.

Ultimately, all this board is doing is granting a setback variance.

Raymond Skaine	Aye	Patrick Krey	Aye	Patricia Burkard	Aye
Daniel Michnik	Aye				

MOTION CARRIED

Appeal No. 1

Sandra Fazekas
Residential Single-Family

Applicant requests a variance of 0.5’ to allow a 4.5’ fence to be located in the front yard setback of 9007 Roberts Grove.

Town Code Reference;

§101-3 (C) (2)

*A corner lot shall be considered to have two front yards from the public road right-of-way to the closest point of the principal structure.

DISCUSSION:

Sandra Fazekas, co-owner of 9007 Roberts Grove was present, adding that she was looking to place a fence along the backyard, as her primary living space is in the backyard. In order to separate the property behind her from her planting bed, she wanted a barrier. She looked at what the neighbors have installed, contacted the fence installer, and asked to match with her neighbor’s, in order to remain consistent.

Ms. Fazekas added that she received her fence permit, and received permission from the Homeowner’s Association, she then proceeded to have the fence installed.

Upon fence inspection, she was informed the fence was 6 in. too high in the one area. She then asked what the cost would be to change it, and received an estimate of \$1,500.00 to remove and then replace the portion in question.

She would like to state that it is an unnecessary hardship, therefore requests a variance to allow the fence to stay as it is.

Additionally, Mrs. Fazekas stated that all three of the other houses on Roberts Grove to Will Youngs have side yards, so she is not changing a front yard scenario on the street.

The current fence does not alter the character of the neighborhood.

It does not pose any health or safety issues, as it sits far enough back that it is out of the site lines.

Mrs. Burkard noted that the fence is attractive, and personally would not know the difference between 4 ft. and 4.5 ft., as it is a very minor change. Mrs. Burkard stated that she does not feel it is necessary to spend more money to change the height.

Mr. Krey complimented the landscaping that Mrs. Fazekas has done around the fence.

Mr. Krey asked if the Homeowner's Association has stated that all fencing must be the same, Mrs. Fazekas responded yes, it must be see-through fencing.

Mr. Skaine stated that he has issue with the Homeowner's Association, as they failed to do their homework if they gave permission to install a 4.5 ft. fence.

Mr. Michnik asked Mr. Bleuer if he is able to contact the Homeowner's Association to give them the rules and regulations regarding fencing, to alleviate any future similar problems.

Mr. Bleuer responded that there are many Homeowner's Associations within the Town of Clarence, and they come and go. The Planning Office has no record of them, therefore they do not have any contact information. Residents are always encouraged to check Town Code, as Homeowner's Associations can be challenging, Town Code is what we rely on for permitting.

Mr. Bengart noted that Northwood's Homeowner's Association made a comment in their letter which was dated September 3, 2021 that Mrs. Fazekas needed to gain permission from the Town of Clarence for placement of the fence within the drainage easement. Mr. Bengart asked if it is a drainage easement, Mrs. Fazekas responded no, it is not and that the drainage easement goes the other way. It begins at the corner of the property where all of the fences meet and goes the other way.

Mr. Bengart stated that if it is on a drainage easement and the town ever needed to go in and do any work. They could remove the fence if it was necessary, and it would be Mrs. Fazekas's responsibility to replace it.

ACTION:

Motion by Patrick Krey, seconded by Patricia Burkard to **approve** Appeal No. 1 as written.

ON THE QUESTION:

The fence does not create an undesirable change in the neighborhood, as it is barely noticeable.

Mr. Michnik added that the cost of removing and replacing the fence does not warrant the homeowner having to go through all of that additional process.

Mr. Bengart asked the owner if she understands that if the fence is on a drainage easement, she has the responsibility of replacing it and reinstalling it if the Town of Clarence ever needed to access the drainage easement.

Mrs. Fazekas responded yes, she understands.

Patricia Burkard	Aye	Raymond Skaine	Aye	Patrick Krey	Aye
Daniel Michnik	Aye				

MOTION CARRIED**Appeal No. 2**

Mike Manfredo
Residential Single-Family

Applicant requests a variance of 80 sq. ft. to allow a 280 sq. ft. detached accessory structure (shed) located at 5373 Marguerites Way.

Town Code Reference;
§229-55 (H)

DISCUSSION:

Mike Manfredo of 5373 Marguerites Way was present to discuss his request, stating that he would like to construct a 14' by 20' shed on a concrete pad. Built on site next to the existing home.

Mr. Skaine stated that he sees multiple other sheds of similar size and style in the same area.

Mr. Krey noted that the application shows the siding of the shed will match the house, Mr. Manfredo responded yes.

Mrs. Burkard commented that the proposed structure is very close to the other property, and asked if Mr. Manfredo has permission from the Homeowner's Association and any other involved parties.

Mr. Manfredo stated that all of the other neighbors have sheds, though he doesn't know how many others have concrete foundations, many are dropped on site. He doesn't believe the shed itself is an issue.

Mrs. Burkard asked if there are any restrictions placed on sheds, Mr. Manfredo responded no, not that he is aware of. Mr. Manfredo stated that the only requirement he is aware of was that the shed needed to match the house.

Mr. Michnik asked Mr. Bengart if the board required any permission or notification from the Homeowner's Association, Mr. Bengart responded no. The board can grant approval based on the Town

of Clarence code, but if there are issues between the homeowner and the Homeowner's Association, then that remains between them.

Mr. Michnik asked Mr. Manfredo if he would be willing to erect a smaller shed, Mr. Manfredo responded that he would like to maximize the space as much as he is able to, as he has a lot of equipment and items he would like to store.

Mr. Michnik asked Mr. Bleuer whether any neighbor notifications were received, Mr. Bleuer responded that neighbor notifications were mailed out, with no comments received back.

Mr. Michnik stated that he is concerned with the size of the proposed shed, and asked Mr. Manfredo if there are any similar sized structures in his neighborhood. Mr. Manfredo responded that he does not know for sure, and that there is one larger one off one of the nearby courts, but he cannot say for sure.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Raymond Skaine, seconded by Patricia Burkard to **approve** Appeal No. 2 as written

Patricia Burkard	Aye	Patrick Krey	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye				

MOTION CARRIED

Meeting adjourned at 5:34 p.m. with a motion by Patricia Burkard.

Amy Major
Senior Clerk Typist