

**Town of Clarence**  
 One Town Place, Clarence, NY  
**Zoning Board of Appeals Minutes**  
 October 12, 2021

Chairman Daniel Michnik called the meeting to order at 5:01 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Vice-Chairman Ryan Mills
Patricia Burkard	Richard McNamara
Raymond Skaine	Patrick Krey

Town Officials present:

Director of Community Development Jonathan Bleuer  
 Deputy Town Attorney Steven Bengart

Other interested parties present:

Frank Dec	Tim MacVittie	Jim Purcell	Chris Carollo
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Motion by Raymond Skaine, second by Ryan Mills, to **approve** the minutes of the meeting held on September 14, 2021.

Raymond Skaine	Aye	Patrick Krey	Aye	Ryan Mills	Aye
Richard McNamara	Aye	Patricia Burkard	Aye		
Daniel Michnik	Aye				

**MOTION CARRIED**

The Zoning Board of Appeals Committee entered in to Attorney / Client Privilege session at 5:03 p.m. The session ended at 5:19 p.m. and the Zoning Board of Appeals meeting opened.

Mr. Michnik stated that the board has the ability to approve, deny, or table a request.

**Appeal No. 1**

Andy D'Aloisio  
 Residential Single-Family

Applicant requests a variance;  
 1) to allow a secondary detached garage; and  
 2) of 760 sq. ft. to allow a 960 sq. ft.  
 secondary detached garage;  
 Located at 8710 Clarence Center Road

Town Code Reference;

- 1) §229-55 (H)
- 2) §229-55 (H)

**DISCUSSION:**

Dave Sutton from Sutton Architecture was present, as well as the applicant and property owner, Andy D'Aloisio. Mr. Sutton further explained the project, and the need for the two variances. Per code, the only accessory structure allowed cannot exceed 200 sq. ft., which is similar to the size of a shed. Mr. Sutton distributed photos, which he then used as reference.

Mr. Sutton explained that the proposed structure will be 24x40 sq. ft., and will be located near the end of the driveway, the east side of the house.

The existing house has a two-car garage, and what they are proposing is an accessory structure that will house assorted hobby cars as well as provide additional storage.

Mr. Sutton stated that they are aware that this is a common type of variance request of this board, and also that it is often determined based on the specific needs of the property. The property itself is rather large, and they are attempting to be respectful of all neighbors and the community in general.

The proposed structure will be behind the house, which is the primary structure, and placed just short of 100 ft. from the rear property line. They re-designed the plans based on the original application, as there was an additional concern for height restriction. One of the other options that they looked at was taking the proposed garage and reducing the size of it, but including a loft storage above it. This would not be desirable for his client, and based on conversations with the neighbors, it would be desirable for them either.

Mr. Sutton stated that they are aware of the concerns that the neighbor to the rear of the property has in regards to the proposed structure, and the change of scenery and visibility it will cause. Mr. Sutton also explained that they do not intend to remove any of the vegetation which is currently on site.

Mr. Sutton acknowledged the neighbor to the east of the applicant's property, and his concerns this proposed structure will have to his property. There is also a driveway of the neighbor to the east that goes along where this structure is being proposed, and out of respect for him and his concerns, they are prepared to putting in additional landscaping to help with buffering.

Mr. Sutton added that they are putting architectural features including residential windows along the east elevation, all materials and roofing structure on the proposed structure will match the house, it will be as compatible with the residential structure currently on the property as possible.

Mr. Sutton understands that the board is required to follow specific conditions when considering variance requests, one is which the request would cause an undesirable change in the neighborhood. Mr. Sutton stated that they feel that based on applications previously approved which are very similar to this request, those have been very successful. Additionally, it gives his client the opportunity to put items in to storage which would have otherwise been stored on the property.

Mr. Sutton stated that although the request may appear substantial because of the numbers, they do not feel that it is substantial, because the code as written with the 200 sq. ft. shed or accessory structure, they know that they could attach it to the primary structure, and with the attaching element, it would bring it in to compliance, but that is not the intent of his client, nor is it desirable for any of the adjacent properties.

Therefore Mr. Sutton stated that they feel this is a better proposal than attempting to force themselves in to compliance of the zoning ordinance.

Mr. Sutton stated that the request may be self-created, but they feel that the benefits of the variance outweigh any detriments that might be imposed on the neighborhood or surrounding neighbors.

Mr. Sutton acknowledged that Mr. Carollo, the neighbor to the east, has had some concerns and has offered some ideas as well. Mr. Sutton stated that they would be willing to remove the boulders and rocks that are currently along the property line, and replace them with some Colorado blue spruce trees, which might be a negative addition for Mr. Carollo, as he has voiced concerns about height and visual impact. Mr. Sutton stated that they would be willing to work with some additional landscaping which is very similar to the front of the building, and place it along that property line.

Mr. McNamara asked how far off of the property line the building is, Mr. Sutton responded that it is 10 ft. off of the property line.

Mr. McNamara asked whether there will be power to the bathroom, or any plans for a bathroom included inside. Mr. D'Aloisio responded that he has no intentions to include a bathroom, but he does plan to include power.

Mr. McNamara asked if the building will have materials to match the house, Mr. Sutton stated that they have adjusted their previous plans to give it a more residential appeal. They are offering to do landscaping which would match the front of the house as well.

Mr. Bengart pointed out that Mr. Sutton has referred to a sketch drawing labeled A1, it is being marked as Exhibit 1 for the record.

Mr. Skaine asked what kind of foliage is currently to the north of the driveway, Mr. Sutton responded that it has been left natural, as a natural buffer. Mr. Sutton stated that there is no intent to modify or diminish any of the screening which is currently there.

Mr. Michnik entered the landscape photo which was being referred to as Exhibit 2 in to the record.

Mr. Skaine asked what the distance is from the proposed building to Mr. Carollo's driveway. Mr. Sutton referred to an aerial photo which was included within the application package and supporting documents, noting that he believes it to be within approximately 100'.

This aerial view photo was marked Exhibit 3 for the record.

Mr. Krey asked how big the home is, Mr. Sutton responded that it is approximately 3400-3600 sq. ft.

Mr. Sutton stated that they are prepared to provide a landscape buffer, but they would like to have input from the board as well as Mr. Carollo in regards to what they would like to see as well, before proposing the landscaping.

Mr. Mills asked if it is possible to reduce the size of the proposed building, Mr. Sutton responded that because Mr. D'Aloisio is an antique car collector, the current size proposed is to store 4 cars. The other option would cause the building to be much higher, which neither the applicant nor the neighbors would want.

Mr. Mills stated that the garage doors as depicted in Exhibit 1 do not show any glass features, and asked if they have anticipated having any glass windows included. Mr. Sutton replied that they did not anticipate that due to security reasons, however if the board feels that it is necessary in order to obtain the architectural integrity, his client would be willing to accommodate that condition.

Regarding the landscaping on the east side, Mr. Mills inquired whether anything is planned for the north side, or if they feel that there is an adequate buffer already. Mr. Sutton responded that he doesn't believe any landscaping that could be added, would provide any additional value to what already exists. Mr. Sutton believes it is more important that they are willing to preserve what is currently there.

Mr. Michnik asked about the overhead doors, Mr. Sutton explained that there will be two at the front of the building, and one facing the west which is the backyard of the applicant. Mr. Sutton confirmed that there are no plans of putting in a driveway or black top.

Mr. Michnik stated that he does not have any issues with the height or size of the building, but he does have concerns about dressing it up some more, make it a bit more presentable.

Mr. Mills asked if there is any intention of operating any type of business out of the building, and if it was made a condition of approval would that be agreeable. Mr. D'Aloisio confirmed that he will not be running any type of business from the building, and he would agree if that was made a condition of approval.

Regarding Public Participation, the following guests spoke:

- Christopher Carollo of 8720 Clarence Center Road  
Asked why public input is limited to 3 minutes, Mr. Michnik responded that upon guidance from the Town Attorney, due to the number of applicants he advised the board that public participation shall be limited.

He is not opposed to having a garage on Mr. D'Aloisio's property, he doesn't agree with the position, location or size of the proposed structure.

When they purchased their property and built their home, they positioned it on both of their lots in a way that it was visually appealing, as well as having their neighbor's approval.

This is the third time an accessory structure or garage has been requested for this address.

Mr. Carollo submitted eight pieces of paper explaining why he doesn't feel it is an appropriate request.

He would like the structure moved west so that it doesn't impede the visual of 8720 Clarence Center Road. He does not feel anyone should hinder their neighbor, and by placing the proposed structure where they are requesting to, it effects the open area and view from his home.

Mr. Michnik noted that they have the minutes from the previous requests which Mr. Carollo had referred to, the board is familiar with it.

Mr. Bengart submitted Mr. Carollo's paperwork that he provided, and it was placed in to the file for the record.

Mr. Krey asked Mr. Carollo which of his views he is referring to in terms of being hindered. Mr. Carollo referred Mr. Krey to the photo of the survey that he just submitted, stating that from his front door he'll basically be looking at a 24 x 16 ft. tall sheet. Mr. Carollo agreed that the vegetation is the best buffer, but when you put up a building it is certainly different than vegetation.

Mr. Carollo noted that he feels his property line is beginning to be encroached upon, and that although it meets code, he feels it negatively impacts the parcels and properties that he owns, which at one time was all of them.

Mr. Mills asked Mr. Carollo how he would ideally like the proposed structure to be positioned. Mr. Carollo responded that he feels it would be more beneficial to him if the proposed garages were parallel with the house, and the roof line was continuous from the house itself. It would give Mr. D'Aloisio the ability to have the garage, and would not impede Mr. Carollo.

Mr. Mills noted that per Mr. Sutton's testimony that if they were to attach the structure with a breezeway to the house, they would not theoretically have the height restriction. Mr. Carollo noted that the proposed structure is excessive for that area.

Mr. Carollo further explained his reasoning as to why he doesn't agree with this request.

Mr. Mills asked Mr. Bleuer if the structure was attached via a breezeway, would the size be within code or would a variance still be needed. Mr. Bleuer responded stating they would need to do the calculation, that it would be allowed to be larger, and there is a limit of 960 sq. ft. for attached garage space as well.

Mr. Michnik noted that his concern is with Mr. Carollo's request that the applicant add two more garage bays to the two that he already has, which would make the house look even longer.

Mr. Michnik acknowledged Mr. Carollo's concerns regarding the size of the proposed structure, and that the applicant has stated he is willing to work with Mr. Carollo to work through some of his concerns.

Mr. Michnik stated that from his point of view, he does not see that the vegetation would be an issue, if Mr. Carollo spoke with me D'Aloisio. Mr. Carollo responded that he is not concerned with the vegetation, but rather the view he will have from his second story, which will be that of Mr. D'Aloisio's proposed garage. Mr. Carollo stated that he is not opposing the proposed garage, but rather the location of the garage and how it will affect his house.

The Public Participation portion of the Appeal was closed, as there was no additional public comment.

Mr. Sutton responded to Mr. Carollo's concerns, noting that Mr. Carollo has stated that he would prefer the proposed building be a continuation of the existing garage, with all of the doors facing east. Mr. Sutton noted that the inability to appropriately screen the view from Mr. Carollo's driveway would be more of a negative than what they are currently proposing. Mr. Sutton emphasized that his client is very respectful of his neighbor's vantage point coming down the street as well as from the house.

Mr. McNamara noted that if the proposed four car garage structure is positioned the way Mr. Carollo has suggested, it would be unappealing, Mr. Sutton agreed that visually it would not be appealing for the neighbors, as well as the view from the street.

Discussion continued regarding the positioning, vegetation, and the potential for additional buffering.

**ACTION:**

Motion by Patrick Krey, seconded by Richard McNamara to **approve** Appeal No. 1 with the following conditions:

1. the siding and roofing on the accessory structure matches the house;
2. no business to be operated out of the accessory structure;
3. landscaping along the east side of the addition;
4. existing vegetation buffer to the rear / north is to be maintained / preserved.

**ON THE QUESTION:**

Mr. Krey stated that he voted for this request, based on the size of the home and the garage, he does not feel that it will cause an undesirable feature within the neighborhood.

Respectfully, in regards to the neighbor’s view from his home, he believes that maintaining the greenspace and vegetation which already exists, will help to mitigate that.

Mr. D’Aloisio heard, understands, and agrees to the conditions as stated.

Patrick Krey	Aye	Raymond Skaine	Aye	Richard McNamara	Aye
Ryan Mills	Aye	Daniel Michnik	Aye		

**MOTION CARRIED**

**Appeal No. 2**

Marc & Amy Martis  
Planned Unit Residential Development

Applicants requests a variance;

- 1) of 544 sq. ft. to allow a 884 sq. ft. attached garage as part of a proposed addition; and
- 2) of 24’ to allow a 21’ front yard setback along Golden Oak Circle for an addition (attached garage) to the principle structure; and
- 3) of 6% to allow 19% lot coverage;

Town Code Reference;

- 1) §229-55 (D)
- 2) §229-52 (A) – Established front yard setback along Golden Oak Circle of 45’
- 3) §229-56

Located at 8145 Driftwood Court

Note: Proposed breezeway and second story not included within garage sq. ft. calculation.

**DISCUSSION:**

Dave Sutton from Sutton Architecture, as well as the applicant, Marc Martis were present.

Mr. Sutton explained that they have made adjustments to the original plan, which has resulted in a reduced variance request than what is published and read. Mr. Sutton produced updated plans as well as a revised Request for Action with the reduced variance size, using the minimalist size, while still achieving the same effect.

Mr. Sutton stated that the first part of the original variance request of 544 sq. ft. to allow an 884 sq. ft. attached garage as part of a proposed addition, is being eliminated entirely. They are able to do this because they took the garage plans and made them substantially smaller.

Mr. Sutton submitted the paperwork, and referred to Item A1 as well as the survey labeled SK1.

Mr. Sutton noted that they took a bay off of the original garage plans, which then brought it within code.

The second impact of the adjustments for the request brought the front yard setback from 21' from the property line to 30' from the property line. This is a substantial adjustment, and keeps it with the character of the surrounding neighborhood.

Mr. Sutton made note that the front line of the adjacent properties is in line with the applicant's variance request. Mr. Sutton feels that this is important to point out, because it stays within the intent of the code.

Mr. Sutton stated that in regards to the request for lot coverage, adjustments have been made to that as well. By eliminating a bay from the proposed garage, it also substantially reduced the request from 19% lot coverage, to 15.8%. The Town of Clarence requires no more than 13% lot coverage for primary and accessory structures.

Mr. Sutton explained the applicant's need for the additional garage space, stating that they need the room for storage, as well as utilizing the top space for a home office, which has become a permanent need for Mr. Martis per his employer, due to COVID.

Mr. Bleuer asked Mr. Sutton for clarification on the lot coverage, confirming that the request went from 6% to allow 19% lot coverage down to 2.8% to allow 15.8% lot coverage, which is accurate.

Mr. Sutton believes that with the adjustments that they have made, they feel that they have been very respectful to the adjoining neighborhood. They are more than willing to put on record that the applicant plans to landscape the front of the proposed structure to match the landscaping in front of the house.

Mr. McNamara asked about the side of the garage where there is a second floor window, the first floor looks plain. Mr. McNamara asked whether they would be willing to be put any windows on the first floor as well.

Mr. Martis responded that he and his wife have surveyed the neighborhood to see what their neighbors have done, and they feel that putting in some beautiful landscaping, as Mr. Sutton explained, would be the best choice.

Mr. Martis stated that they have chosen to heavily landscape which they have found completes the stone, which is at the bottom three feet. They would prefer to put the money in to landscaping.

The proposed garage would serve a primary purpose of storing the kid's sports equipment and other items. Additionally, the proposed bathroom would have two purposes, those being a place for the kids to clean up when they return from outside and their various sports, as well as the pool and patio area in the backyard.

Mr. Mills would like to include some type of additional window feature, to assist the visual portion in conjunction with the landscaping.

Mr. Mills read in to record an email from a neighbor to the west, stating his concern regarding fencing, which he and Mr. Martis have agreed upon. Additional concern with water runoff toward the property located at 8431 Leah Court.

Mr. Bleuer stated that the updates which have been provided by the applicant have been included.

Mr. Martis stated that he would be willing to make the neighborly agreement, a condition of approval.

Mr. Bleuer clarified that the office space on the second floor of the proposed garage would be considered part of the primary living space, similar to a home office and the guidelines of the Customary Home Occupation are to be followed.

#### **ACTION:**

Motion by Raymond Skaine, seconded by Ryan Mills to **approve** Appeal No. 2 with the following conditions:

1. number one (1) as listed for the variance is no longer relevant and should be disregarded, as the request is now reduced, and within code;
2. number two (2) as listed for the variance is amended (from 24') to 15' to allow a 30' (from 21') front yard setback;
3. number three (3) is changed (from 6%) to 2.89% to allow 15.8% (from 19') coverage;
4. landscaping as discussed and agreed to with neighbor;
5. decorative metal or aluminum type fence that is set approximately 8' off of the property line per neighbor request;
6. agrees to not run any type of formal business out of the new structure, other than the current work from home business.

The applicant heard, understands, and agrees to these conditions.

Richard McNamara	Aye	Ryan Mills	Aye	Patrick Krey	Aye
Raymond Skaine	Aye	Daniel Michnik	Aye		

**MOTION CARRIED**



**Appeal No. 3**

Eric Marciano  
Residential Single-Family

Applicant requests a variance;

- 1) of 5' to allow a 21' tall detached accessory structure (garage); and
- 2) of 880 sq. ft. to allow a 1,600 sq. ft. detached accessory structure (garage);

Town Code Reference;

- 1) §229-55 (E) (2)
- 2) §229-55 (D)

Located at 6080 Long Street

Note: Proposed detached accessory structure (garage) to match the preexisting side yard setback for the northern property line.

**DISCUSSION:**

Eric Marciano was present to further explain his request, stating that his previous garage burnt down, and he would like to rebuild it, in the same spot and the same size. This proposed structure will have a second floor, with a patio and the balcony.

Mr. Krey asked if Mr. Marciano has any plans to landscape, Mr. Marciano responded yes, but they haven't come up with an official landscape plan yet.

Mr. Krey questioned Mr. Marciano why they are building this garage twice the size as the previous one. Mr. Marciano answered that they would like to use the second floor for storage.

Mr. Skaine stated that he is not pleased with the height of the proposed garage, he feels it will be out of character with the rest of the neighborhood.

Mr. Marciano replied that one of his neighbors has a large barn in the back yard, it does not look out of character despite the size. Mr. Marciano stated that he has spoken with his neighbors and they do not have any objections.

Mr. McNamara confirmed that the second floor will be used for storage only, no business, to which Mr. Marciano agreed.

Mr. McNamara asked if the second floor is intended for storage only, why is there a need for a second floor patio. Mr. Marciano responded that the intent is to be able to open the door to let fresh air in.

Mr. McNamara asked Mr. Marciano if he plans to pour the foundation, and if Mr. Marciano would consider pouring it a bit deeper, in order to bring the height of the structure down a bit. Mr. Marciano stated no, because the pitch from the street is what created the problem twice. The last time the water main broke, they were told that the garage burnt down due to the power washer causing a combustion. They would like to keep everything valuable on the second level, and going further down would create a larger pitch.

Mr. Mills stated that the height is a concern, and would like to look at ways to alleviate that, and asked if there is a way architecturally that it can be reduced and still keep the area for storage.

Mr. Marciano stated that they could eliminate the peaked roof and instead make it flat, reducing possibly two feet from the height. Mr. Mills noted that it would be helpful with the overall aesthetics of the structure within the neighborhood.

Mr. Mills asked Mr. Bleuer if the covered porch is included in the overall square footage of the request, Mr. Bleuer confirmed that yes it is. The area underneath the overhang on the first floor, counts as the overall square footage, as well as the second story porch. Mr. Mills noted that if we back out the covered porch and rear porch, it greatly reduces the overall size. Mr. Bleuer stated that from a footprint perspective, this is the same proposed footprint as what existed, when you add in the second story, the overhang, and the second story porch, that makes the number appear so large.

Mr. Mills asked about the materials, Mr. Marciano responded that he will use the same materials that was just used when they had their house re-sided, including the shutters.

Mr. Mills asked whether there are any other architectural features on the front of the structure, Mr. Marciano responded that there will be a two-door garage door with glass. Mr. Mills noted that drawing A1 depicts it as one single bay, Mr. Marciano clarified that there is only one bay, with glass in one of the panels.

Mr. Mills asked about shutters, Mr. Marciano responded that they would like to match all the trim and shutters to the house.

Mr. Michnik asked Mr. Bleuer what the building is that was recently approved on Long Street, Mr. Bleuer responded that he does not recall what that building details are. Mr. Michnik stated that it is probably no higher than what is being proposed here, Mr. Bleuer responded that he does not know.

Mr. Michnik stated that he is not opposed to the height of the building, nor is he opposed to the building at all. He agrees with Mr. Mills suggestion of installing landscaping as well, in order to create a nicer view for those traveling along Long Street, rather than just a long plain building.

Mr. Marciano added that they live on a close knit street, and that he has shared with his neighbors what his plans are. He is confident that if anyone had an issue, they would have voiced their concerns.

Mrs. Burkard asked if the peak will be removed and make the roof flat, and install a double window rather than a single window.

Mr. Mills stated that they will adjust the numbers to reflect a 19' overall height with the flat roof rather than peaked.

In regards to Public Participation, no one spoke.

#### **ACTION:**

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

1. 3 ft. variance to allow a 19 ft. tall attached accessory structure
2. 880 sq. ft. to allow a 1600 sq. ft. accessory structure.

3. Applicant agrees to add glass feature on the garage door
4. Applicant agrees that not operate a business out of the structure.

**ON THE QUESTION:**

Mr. Mills stated that due to all efforts, as well as a similar structure also located on the street, as well as testimony from the applicant that there was a garage structure previously existing on the parcel that was the same size, as well as backing out of the covered porch area as well as the rear porch area.

Mr. Marciano heard, understands, and agrees to the conditions as stated.

Raymond Skaine	Aye	Patrick Krey	Aye	Ryan Mills	Aye
Richard McNamara	Aye	Daniel Michnik	Aye		

**MOTION CARRIED**

**Appeal No. 4**

Life Storage, Inc.  
Commercial

Applicant requests a variance to allow for the expansion of a pre-existing non-conforming use (self – storage facility);  
Located at 8161 Main Street

Town Code Reference;  
1) §229-84 Permitted Uses

**DISCUSSION:**

Mr. McNamara recused himself from Appeal No. 4, moving Mrs. Burkard in to a voting position. John Reddington with Greenman Peterson Inc., and Tim MacVittie with Life Storage were present to further explain the request.

Life Storage has been operating at 8161 Main Street since 1995, they do understand that this is a pre-existing, non-conforming use in the Commercial District. They are requesting relief so that they are able to expand one of the buildings on the rear of the property from a single-story free standing unit, to a two-story controlled climate unit.

Mr. Reddington explained that they plan to demolish the existing single-story building, to erect the two-story building. They do not anticipate needing any additional variances, other than the pre-existing non-conforming use.

In regards to drainage calculations and impervious vs. pervious, they would see no increase of drainage stormwater runoff as the facility is impermeable as it is.

They have received comments from the Town of Clarence Fire Inspector, and have provided him with a short-term analysis and have been able to accommodate a few of his requests.

Currently they anticipate no improvements within the Main Street right-of-way. Issues like site-lighting will be addressed with full cut-off fixtures so that no property encroachment. They have included proposed lighting which is intended for security reasons.

One of the suggestions that the Planning Board had is addition of landscaping at the main entry, which is where the office is located.

Mr. MacVittie explained that any time they do a project similar to this, they do a full analysis and feasibility study. National studies indicate that 7 sq. ft. of storage should be available per person for that area. They cover a 5 mile radius at this location, even with the proposed development as well as many other proposed developments in the surrounding area, they currently are only able to provide 5.32 sq. ft. available per person. Even with the expansion, they will still technically be under the national average of storage space per person.

Mr. Mills asked if the new structure will be metal clad, Mr. MacVittie confirmed yes, with approximately 3 ft. of Wainscoting along the bottom, as well as a metal roof.

Mr. Mills noted that the reason for this request is basically to break it down for more interior storage, Mr. MacVittie responded yes, most locations are filling up before the three year average.

Mr. Bleuer stated that no neighbor correspondence has been received.

Mr. Mills asked Mr. MacVittie whether they have heard any feedback from any of the neighbors as to whether they are in favor or not of the request, Mr. MacVittie responded that they have not heard anything.

Mrs. Burkard asked Mr. MacVittie if there are any other storage facilities within a 5 mile radius, Mr. MacVittie responded that the 5 mile radius also includes parts of Williamsville as well as Lancaster, and there are approximately 9 facilities within that radius.

Mrs. Burkard asked why the proposed structure is two-stories, Mr. MacVittie responded that it is more feasible that way, in order to get more square footage for the cost, it basically doubles the capacity for the building.

Mr. Skaine noted that it is his understanding that the small building to the south of the building lot will be taken down.

Mr. Skaine noted that the stretch of building which runs along the fence line is not very attractive, Mr. MacVittie noted that with this project, all of the exterior parking storage will be eliminated. Mr. Macvittie stated that they are eliminating a drive up storage building as well as a parking area along that exterior western fence line, to all indoor storage.

Mr. Michnik confirmed with Mr. MacVittie that he has committed to remove one building to the south, which Mr. MacVittie confirmed, and added the small building directly behind it as well.

Mr. Michnik asked Mr. MacVittie if all of the area along the fence line will be cleaned up, which Mr. MacVittie responded that the parking along the east fence will be eliminated, the existing fence will be maintained, and all of the vegetation and existing landscaping on the east side with the fence line will remain also.

Mr. Michnik asked if they have any intentions of putting any storage units along the fence line on the east side, Mr. MacVittie responded no, because where they are replacing their building is right along the setback line.

Mr. Mills asked if there are any solar features planned for this new feature, Mr. MacVittie responded no, not with this project but down the line it may be a possibility.

Mr. Michnik asked if all of the storage units will be the same size, or there will be various sizes. Mr. MacVittie responded that there is a mix of sizes for the units.

Mr. Bleuer stated that the Environmental Review under State Environmental Quality Review Act has been completed by the Planning Board, and a Negative Declaration was issued on September 1, 2021 by the Planning Board. If this application receives approval by the Zoning Board, the applicant will be required to go back to the Planning Board for Site Plan and Architectural approval.

**ACTION:**

Motion by Raymond Skaine, seconded by Ryan Mills to **approve** Appeal No. 4 as written.

**ON THE QUESTION:**

Mr. Mills noted that there were previously two existing structures on this property that were single story, and are being replaced with a two-story structure. There does not appear to be any major visual impact on the neighbors or the nearby environment. It does not appear to alter the character or the neighborhood, and it help serve the neighborhood with the growing storage demand.

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

**MOTION CARRIED**

**Appeal No. 5**

Davmicor, Inc.  
Residential Single-Family

Town Code Reference;  
1) §229-52 (A)

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

Note: This request for this property supersedes the September 2021 variance request, which was tabled.

**DISCUSSION:**

Frank Dec, President of Davmicor, Inc. was present to explain the request, stating that the 588' variance request is off of two homes which currently exist on Shimerville Road, and the property in question is known as the "Blueberry Farm".

In 2018 there was an Open Development concept plan submitted, and at that time it was designated as a residential lot for a home to be built. At the time, it was void because the lot was only submitted with the plan because the acreage that was involved in the overall 34 acre development.

Mr. Dec referred to page 2 of the Planning Board minutes from the May 16, 2018 Planning Board meeting, states that the only reason the house is shown on the plan on that lot is because it is a building lot that someone could potentially build on in the future, it was not intended at that time for the house to actually be there, it was put on as part of the plan.

Also at that time, when the entire acreage was purchased, it was with the intent that the owner at that time was going to maintain the blueberry farm, and continue farming it. The blueberries are overgrown, and there is not currently a single blueberry growing within the 8.5 acres due to the amount of vegetation, overgrowth, and disrepair that the land is in. Mr. Dec stated that it is his intention to possibly rehabilitate the blueberry farm, and to revitalize the blueberry bushes that are there, and bring them in line with the Green Print program that Clarence is part of.

Mr. Dec stated that the Town is losing a lot of farm and farmland, they would actually like to revitalize and rehabilitate something. They would like to put a house on the back of the property, is because they would like to maintain the view of the blueberry fields from Shimerville Road for the public to enjoy. Directly across from Shimerville Road is a Co-op, which is part of the Green Print program, forever wild and forever green. They would like to maintain that similar aesthetic view for the public, from Shimerville Road.

Basically what they are hoping for on this property is a house, a barn, and a garage structure. Mr. Dec referred to the handouts which were included in the project file, noting that one of the barns is set further back on the property, while one is located closer to the house. If they plan to operate the property as a farm moving forward, a barn will be necessary for equipment and storage.

Mr. Mills read two letters on to record that were received in the Planning Office, both in opposition of the variance request. These letters will be placed in the project file, labeled Exhibit A and Exhibit B.

Mr. Dec responded, stating that he has not spoken with any member of the board, nor does he believe he is friends with any member of the Zoning Board, and that Mr. Bleuer is the only person that he has spoken to since he purchased the property that works for the Town of Clarence.

Mr. Dec stated that they are proposing a single-story home, not a multi-level home. He also indicated that in 2018, the previous owner indicated that he intended to revitalize the property, but he did not. Mr. Dec noted that they have begun to revitalize the bushes, and rehabilitate the blueberry farm.

Mr. Krey clarified with Mr. Dec that his intentions are to build a single family house for the sole purpose of maintaining the blueberry farm. Mr. Dec responded that he wants to live there, and that the purpose is to build a house for himself. Mr. Krey asked if he plans to live in the proposed house and maintain the blueberry farm, Mr. Dec responded yes. They have been researching the blueberry farm, including having the Cornell Extension out to help them develop a plan.

Mr. Dec stated that they are not looking to subdivide, Mr. Krey asked about the company which is named on the application, Mr. Dec replied that Davmicor, Inc. is his family holding company.

Mr. McNamara stated that on the lot line it shows that there is a driveway and an easement to access the driveway. Mr. Dec responded that there are actually two driveways, one that runs east – west from Shimerville Road, with a common easement of all property owners for the east-west common road. This road extends approximately 124 ft. north, making it just 124 ft. north-south from the east-west road. Mr. Dec owns the remainder of the road which runs north-south.

Mr. McNamara asked Mr. Dec if he's given any consideration on moving the house closer to Shimerville Road, Mr. Dec responded that one of his main priorities is to maintain the agricultural look of the property, preserving as many of the blueberry bushes as possible. Additionally, there are already houses in the back area, and when they met with the architect, this area was the most appealing to them.

Mr. McNamara asked how much greenspace and blueberries will be removed around the house, Mr. Dec responded that in order to build the house, and garage, they only need to remove approximately an acre and a half of blueberries.

Mr. McNamara asked how big of a ranch home Mr. Dec plans to build, Mr. Dec responded approximately 4500 sq. ft.

Mr. Mills asked about Mr. Dec's comments that he has potential plans to rehabilitate the blueberry farm, and asked if Mr. Dec is prepared to state to the Zoning Board that he will preserve some portion of the blueberries.

Mr. Dec stated that he can make that commitment, but the problem with that is that there is currently not a single blueberry growing on the bushes, because it has been so ill maintained for so long. They won't know until the spring whether the plants will be healthy and able to be revitalized. If none of the plants are able to be rehabilitated, he does not plan on going out and purchasing 85,000 blueberry bushes in order to keep his word that he gives tonight. Mr. Mills asked if Mr. Dec's intentions are to revitalize and rehabilitate the bushes that are there, if possible. Mr. Mills asked Mr. Dec if he would be willing to accept it as a condition that some of the blueberries stay, Mr. Dec responded that yes, if that were to be made in to a condition that some of the blueberry bushes are to stay, he would accept that.

Mr. Mills asked Mr. Dec where he plans to tie in the driveway, Mr. Dec referred to the site plan that was submitted (Exhibit C) and stated that is where they are contemplating. Mr. Dec added that if the blueberries that are there currently are healthy, but there are unhealthy blueberries in another location, then they reserve the right to move the driveway in order to preserve as many blueberries as possible.

Mr. Mills asked if the blueberries survive, does Mr. Dec contemplate running any type of business from this parcel. Mr. Dec responded this is all part of the discussion, it depends on whether the blueberries survive, how many survive, if they have any neighbor support. Mr. Dec does not know the rights or details regarding running it as an ongoing farm, and currently it is zoned Residential.

Mr. Mills asked Mr. Dec if he'd be willing to agree to a condition of approval stating that no other structures are to be put on the property other than the two detached structures and the house. Mr. Dec responded that as long as he owns the property, yes. Mr. Mills asked Mr. Dec if he'd agree to not

subdivide the property, Mr. Dec responded yes as long as he owns it, he cannot be responsible for what anyone in the future may or may not want to do with the property.

Mr. Bengart stated that there could be a deed restriction put in to place which allows the applicant to agree to the condition, and would also apply to any future owners.

Mr. Mills asked Mr. Dec if he would agree to a deed restriction, Mr. Dec responded that his only issue with that is if they do end up running the property as an ongoing farm operation. Mr. Dec stated that he is not a farmer by trade, and he is learning this as he goes along. He is concerned that eventually down the line, he may need another structure, if it becomes another fully functional blueberry farm. He may need another structure for the public to come to visit, or other possible reasons that may arise from running a functional farm.

Mr. Mills asked Mr. Dec about any other future residential homes on this parcel, Mr. Dec stated that he does not know if he wants to commit to accepting that as a potential condition.

Mr. Michnik confirmed with Mr. Bengart and Mr. Bleuer, that if the board makes a decision on this, and any conditions they decide to attach, stays with the property despite the ownership, it stays with the property itself. Mr. Bengart stated that subject to Mr. Dec or someone else requesting another variance, until that decision, then yes that is correct.

Mr. Michnik asked Mr. Bleuer if it is correct that once the Zoning Board makes a decision, it remains with the property. Mr. Bengart responded that it is correct, until if at a time, another variance is requested and that board decides to change it.

Mr. Bleuer clarified further by stating that the variance would need to be enacted, meaning there would need to be construction on it before expiration, and also as Mr. Bengart stated, that an applicant in the future could request relief from previously imposed conditions.

Mr. Dec stated that he has children, and is trying to think of everyone and any future possibilities. He asked if they decided to run it as an operational farm, would the board be receptive to the condition that they would not erect another residential structure on the land unless it was for a family member.

Mr. Michnik asked Mr. Dec if he currently owns all of the property, Mr. Dec responded yes it is all finalized, and is hoping to start the projects as soon as possible.

Mr. Dec stated that the barn in the back, on the east side of the property, would be a regular barn. All of the structures would match one another, architecturally appear as related buildings, not random structures. The barn closest to the house will resemble a barn, but is actually a garage, utilized more towards the entertaining area of their home. It will not be an industrial barn, but more personal for entertainment purposes.

Mr. Michnik asked Mr. Dec what happens if the blueberry project dies on the vine, would he still need both of the proposed buildings. Mr. Dec responded that he needs that building now, for storage of his equipment that he currently has sitting out on the property. This equipment would be used in the revitalization process of the blueberries.



Mr. Dec stated that in 2018 when this issue was in front of the board, and there was concern with the blueberry farm being destroyed, nothing has happened with the blueberries since that time, so for all intents and purposes, they have already been destroyed from lack of attention and care.

Mr. Mills asked Mr. Dec about the two letters that have been submitted regarding this project, Mr. Dec stated that to his knowledge, they are the two neighbors on Shimerville. Mr. Mills asked if any adjacent parcels are in support of this proposed project, Mr. Dec responded that all of the other ones that he has spoken with are in full support.

Mr. Bleuer stated that in addition to the Neighbor Notifications that the applicant submits, the Planning and Zoning office also mailed out notifications to each adjacent neighbor.

Neighbor Notifications are on file for:

1. Vacant land on Roll Road
2. Vacant land on Roll Road
3. 5745 Shimerville Road
4. 5715 Shimerville Road
5. 5665 Shimerville Road
6. 5685 Shimerville Road

Mr. Mills asked Mr. Dec if he is open and receptive to putting in any type of berm as a form of visual mitigation, in response to the two neighbor objections that have been received. Mr. Dec responded yes, he would be open to accepting conditions if those were included, with the understanding that they would need to remove blueberry bushes in order to put a berm or other form of buffer in.

Mr. Mills asked Mr. Dec what he would do if this variance is denied, who responded that he would most likely sell the property. If he keeps the property, he would like his house back where he is requesting within the variance, because he wants to be in the blueberries, and the ambiance of the farm. If he wanted to simply live on Shimerville, he would not move from his current neighborhood.

Mr. Dec stated that if they are able to resurrect the blueberries and the farm becomes operational once again, Mr. Dec would need to employ people to work on the farm, and there is currently no access for anyone other than the common ownership road. There would need to be some form of access to reach the property other than from Shimerville Road itself.

Mr. Dec stated that he would agree to re-planting 3 acres of blueberry bushes if it became necessary. Mr. Mills confirmed that Mr. Dec would agree to that if it were to be a deed restriction and condition of approval, Mr. Dec responded yes he would.

Mr. Krey asked what Mr. Dec would do with the remainder of the property if the blueberries don't survive and he replants the 3 acres. Mr. Dec stated that he is hopeful the blueberries will survive, he has not done any planning in any other direction aside from the blueberries. The expert from Cornell is confident that the bushes will rehabilitate, which gives Mr. Dec hope.

Mr. Mills asked Mr. Dec if he has any architectural drawings to submit, Mr. Dec responded that he has met with an architect, they have an idea of what the house will look like, but without having the variance, he did not want to spend all the money of designing a home if they weren't able to build it. Mr. Dec did

have a photo of draft plans for what they are hoping for, which Mr. Mills stated would be beneficial for everyone to see, to give an idea of what could potentially be built.

Mr. Bengart passed Mr. Dec's phone to the board, which is where the photos were for them to view.

Mr. Bengart asked Mr. Dec if he has looked at what will be needed for hydrating, Mr. Dec replied that there is a fire hydrant on the common road on the east side. There is existing irrigation pipeline already in place from a previous owner.

Mr. Bleuer added that there is on file a memo from Joe Saletta, Code Enforcement and Fire Inspector for the Town of Clarence. Stated in that memo is that the proposed single family dwelling would be required to be within 400 ft. of the nearest private fire hydrant. That would include the rear of the structure, this would be measured by hose length, not as the crow flies.

Mr. Michnik asked if there is any proof that there is a working fire hydrant on the property. Mr. Bengart stated that this has been included in previous discussions also, and although he has not seen it, he has no reason to believe Mr. Dec is falsifying the information. Though he is not sure of the distance or where it sits.

Mr. Dec stated that while he has seen the fire hydrant, he has not seen it open. He questioned the location that Mr. Saletta specified, because he is unsure where his site plan is in respect to the fire hydrant, and questioned whether there is an option to extend and install another fire hydrant at his expense. Mr. Bleuer stated that most likely it would not be an issue, but is something that needs to be taken up with the Building Department.

In regards to Public Participation, the following spoke:

- Jim Purcell, of 5745 Shimerville Road stated that he knows this property better than anyone else, and he installed half of the blueberries back in the day. Mr. Purcell stated that this entire issue was previously discussed in 2018 when a then board member very spiritedly stated "do not come back again, we are not discussing this again, there will not be a building on this parcel". Mr. Purcell asks that the Zoning Board rejects the request, as it is not a simple setback, as it ends up sitting right behind his home. This would greatly diminish his line of vision, as well as reduce his property value.

Mr. Purcell stated that all of the discussion about blueberries is completely irrelevant to what the issue actually is, as Mr. Dec could leave the meeting tonight promising he'd continue on with the blueberries, then rip them all out tomorrow. There is no contractual obligation or enforceable, because this discussion has happened previously, to no avail. He would like to not have this discussion again, the board should stand by the decision that was made in 2018.

Mr. Purcell further explained how the previous owner ran the farm, and his reasons why he is objecting to this request.

Mr. Michnik asked Mr. Purcell what his relationship was to the previous blueberry farmer, Mr. Purcell responded that the owner had asked him for his help, and from there he helped him with every aspect of the successful business.

Mr. Mills asked Mr. Purcell if in terms of the berms which seems like they would help from a visual standpoint, it would block the view of the proposed home, would that alleviate those concerns. Mr. Purcell stated that he has included a list of conditions, part of which has to do with the drainage. Mr. Purcell would like to see a 10 ft. berm along all property lines, his conditions which he has submitted are for the worst case scenario.

Mr. Purcell continued to express his disdain for the proposed project, as well as all of the work that the previous blueberry farm owner did and put in to the business.

The Public Participation portion of this appeal for this meeting was closed at this time.

Mr. Dec stated that he does understand Mr. Purcell's passion, as they have also fallen in love with the blueberry farm. The previous owner of the property, owned the entire property back there, all of the lots, therefore he did not have to worry about an easement or having workers coming in using a road he did not own.

Regarding the current irrigation system which is on site, is part of the easement that they have access to, therefore they have already handled the access to the water and irrigation.

As far as not needing a storage facility for the equipment, the equipment currently on site is weathered, and in need of being covered from the elements.

Mr. Dec reiterated that he wants to revitalize and maintain the property, restoring it to what it once was.

Mr. Mills asked Mr. Dec whether he'd consider situating the proposed home off to the right, where it would still be far back, but not as far as what is currently planned, and would be out of the neighbor's line of site. Mr. Dec responded that one of the issues is that they do not own the southeast corner of the property, as it was sold by the previous owner.

Mr. Dec stated that he would be willing to put up a berm on the back of Mr. Purcell's property, in between the two houses, but would not agree to put up a berm around the entire 11.7 acres of property.

Chairman Michnik stated that he is not comfortable with any of this, because they do not have any blueprints of what Mr. Dec is proposing. None for the house, or either of the accessory structures. He is not ready to move forward with this, because he does not have enough information to make an informed decision.

Mr. Mills agreed with Mr. Michnik, that they need more information including elevations for the structures, preliminary landscape drawings for the berms, draft site plans. Mr. Mills would like to have more data in order to make an informed decision.

Mr. Dec stated that because of the money that it will cost to get this information, he will cease the current efforts of rehabilitation on the bushes, as he does not want to spend money twice.

Mr. Michnik referred to Mr. Dec's statement that if this variance doesn't work out for him, that he will sell the property. He feels that either way, Mr. Dec will benefit from the property, because if he sells it, the work he has already started to put in on the blueberry bushes can be used as profit in the resale of the property.

Mr. Bengart clarified that this board is not saying either yay or nay at this point, he and Mr. Mills are requesting additional information.

Mr. Dec stated that he is happy to walk the property with anyone that is interested, to show them firsthand how minimally invasive this ranch home actually is.

Mr. Krey asked Mr. Bleuer if this lot is able to be subdivided, Mr. Bleuer responded that currently it cannot, but an application can be made to the Town to seek subdivision of it, but currently there are no approvals to subdivide.

Mr. Dec stated that he would be willing to Table the request, if he is able to get clear direction of what the board would like.

Mr. Mills requested the following information be provided to the board, should this item be tabled:

- At least one elevation of the house
- One elevation of the barn that will be used for entertaining
- One elevation for the other barn
- Floor plan for house and barn
- Landscape plan for berming – where they will go, how they will mitigate site lines. Mr. Dec asked how tall the berms would be expected to be, because currently the blueberry bushes are approximately 5-6 ft. tall.

Mr. Bengart reminded the board that the bigger the berm, the more potential for drainage issues, which Mr. McNamara also stated would be a risk to the blueberry bushes as well.

Discussion continued regarding potential berms.

Mr. Mills continued with the requests of the board, should the item be tabled:

- Affirm that a 3 acre requirement of blueberry bushes would be acceptable for a condition
- Deed restriction for future sub development or homes, and if Mr. Dec is comfortable with it being family only.

Mr. Dec requested the board to table Appeal No. 5.

Mr. Bengart stated that while the next meeting is possible, the board needs to feel comfortable with the additional information that Mr. Dec provides, in order to be put back on an agenda.

Mr. Bleuer added that any berm proposals would be subject to the Engineering Dept. review for grading and drainage.

#### **ACTION:**

Motion by Ryan Mills, seconded by Richard McNamara to **table** Appeal No. 5

Raymond Skaine	Nay	Patrick Krey	Aye	Ryan Mills	Aye
Richard McNamara	Aye	Daniel Michnik	Aye		

## MOTION CARRIED

**Appeal No. 6**

Ryan Mills

Agricultural Rural-Residential

Applicant requests a variance:

- 1) of 72' to allow a 130' front yard setback for the construction of a single family home; and
- 2) of 0.16 acres to allow the reduction of a previously approved 0.96 acre parcel resulting in a 0.80 acre parcel;

Located at 5880 Strickler Road

Town Code Reference;

- 1) §229-41
- 2) §229-39

Mr. Mills recused himself from Appeal No. 6, Mrs. Burkard moved to a voting position.

**DISCUSSION:**

Mark Haines was present to represent the applicant.

Mr. Michnik asked for clarification on the building lots that are shown on the map, Mr. Bleuer stated that they are two building lots that were previously approved in 2004. The only lot on the agenda tonight for the appeal is the southernmost lot.

Mr. Michnik asked what the footage is on the north lot, Mr. Haines responded that it is 100 x 330 and the southernmost lot which is in discussion tonight, is 105x400.

Mr. Michnik asked Mr. Haines if he knows whether Mr. Mills has intentions of selling the north lot, Mr. Haines responded to the best of his knowledge, no he is not.

Mr. Haines stated that Mr. Mills is planning to build a single family ranch home, approximately 2500 sq. ft. Mr. Haines does not know if there are any future plans of building accessory structures on the property. He stated that the structure will include a three car garage, he does not think there is a need for an additional building, but he does not know that information for sure.

Mr. Krey asked what the setback is across the street, Mr. Haines responded that all of the new homes that are being built have setbacks of approximately 130 ft. The setbacks vary on Strickler Road.

Mrs. Burkard confirmed if the houses that currently surround this property, their lot lines are way back, Mr. Haines responded yes.

In regards to Public Participation, the following spoke:

Christ Sauls of 5850 Strickler Road stated that he is not opposed to the setback, but would like to know how this fits in to the Town of Clarence 2030 Master Plan, with subbing this little piece out.

Mr. Bleuer stated that at one point it was one lot, then in approximately 2004 it was approved for two additional lots. Since that time, code has changed so these are pre-existing non-conforming lots of record. They would not be able to be approved today in this current configuration, as they are too small and do not have the necessary frontage and acreage. From a Master Plan perspective, they are pre-existing non-conforming as well.

Mr. Sauls stated that the property line abuts up to his driveway, he is concerned about the drainage in that area. Mr. Michnik stated that the project would go to Building and Engineering where they will review it as well.

**ACTION:**

Motion by Patrick Krey, seconded by Daniel Michnik to **approve** Appeal No. 6 as written.

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

**MOTION CARRIED**

**Appeal No. 7**

Sarah Spoth  
Residential Single-Family

Applicant requests a variance of 2' to allow a 6' fence to be located in the front yard setback of 8503 Howard Drive.

Town Code Reference;

- 1) §101-3 (C) (2)

Note: 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:**

Sarah Spoth was present to further explain her request, stating that she recently purchased the house, and has two dogs which she would like to keep secure on her property. The large dog can easily jump fences, so a 4 ft. fence would not be beneficial.

Ms. Spoth stated that she does not plan to put the fence anywhere near the corner of Howard Drive and Harris Hill Road where it could impede the vision of drivers and pedestrians.

It would be from the deck in the backyard, inside the hedges that run along Howard Drive. The fence will remain solely on her property.

Mr. Skaine appreciated the marking of the property.

Mr. Krey noted that in her application, Ms. Spoth indicated that she would continue to maintain the shrubbery, would Ms. Spoth be in agreement if they made it a condition of approval that she continues to maintain the shrubs along Howard Drive.

Mr. Mills asked what the material of the fence is, Ms. Spoth responded it is white, board on board wood fence.

**ACTION:**

Motion by Raymond Skaine, seconded by Patrick Krey to **approve** Appeal No. 7 with the following condition:

1. Maintain the bushes along Howard Drive.

**ON THE QUESTION:**

Mr. Krey noted that this is a side lot parcel, the applicant has agreed to keep certain vegetation along the side of the parcel.

Richard McNamara	Aye	Ryan Mills	Aye	Patrick Krey	Aye
Raymond Skaine	Aye	Daniel Michnik	Aye		

**MOTION CARRIED**

Meeting adjourned at 7:56 p.m. motion by Richard McNamara, seconded by Patricia Burkard.

Amy Major  
Senior Clerk Typist