

Town of Clarence
 One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
 February 8, 2022

This meeting was not an in-person meeting, it was strictly virtual.
 The Zoom meeting link may always be found on the published agenda, which is accessible
 on the Town of Clarence’s website

The Zoning Board of Appeals Committee entered in to Attorney-Client privileged discussion at 5:15 p.m.

Chairman Ryan Mills called the meeting to order at 5:30 p.m.

Zoning Board of Appeals members present:

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

Town Officials present:

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

Other interested parties present:

Jim Purcell	Robert E. Knoer	Decker	Colin Knoer	J Palumbo
Michelle Krenzer	Schaefer	Courtney Dec	*Mom*	Adam
Ari Goldberg	Steven Leising	Kevin	Steve Dale	John Ponicki
Joshua’s iPhone	SKinnan	Camryn	Gaye Ruff	dam’s iPhone
Richard Forrestel	*iPad (2)*	Tim Creenan	Joshua’s iPhone	* - 3233*

Motion by Patrick Krey, seconded by Raymond Skaine to **approve** the minutes from the January 11, 2022 meeting.

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

MOTION CARRIED

OLD BUSINESS**Appeal No. 2** (from the October and November, 2021 meetings)

Davmicor, Inc
Residential Single-Family

Rehearing

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)

Chairman Mills explained that this is a rehearing, and that upon a rehearing the Zoning Board may reverse, modify, or annul its original order of decision or determination upon a unanimous vote of all members present.

DISCUSSION:

Colin Knoer, representing Davmicor, Inc was present virtually to explain this request. Davmicor has also submitted a formal written statement addressing their request which will track what is said tonight.

Mr. Knoer stated the property is located at 5695 Shimerville Road, and has been operated as a blueberry farm since 2008. Davmicor acquired the property in the summer of 2021 with the intent of building a home and revitalizing the blueberry fields, which have fallen in to disrepair.

Davmicor is requesting a setback variance. The relevant ordinance setback is 165 ft., and they are asking for a variance to allow a setback of 753 ft. which will allow Davmicor to construct this home towards the rear of the parcel with access off a private road that comes off of Shimerville Road.

This location would join several other houses already far off of Shimerville Road, with access via the private road. There are additional houses with deeper setbacks which are not accessible through the private road.

Davmicor is requesting this variance in order to protect the portions of the blueberry field that are located closer to Shimerville Road, which are also the sections that the public is able to see and enjoy from the public thoroughfare. Davmicor believes that it is important for the community to retain these views of an open agricultural field, especially in the times of receding agricultural land. This belief is supported by the Town of Clarence, as the Town Code, Clarence 2030 Master Plan, as well as the Green Print Program all emphasize the importance of maintaining these agricultural spaces. Maintaining them in such a way that it contributes to the aesthetic of the Town of Clarence, while also making these spaces accessible to the public. Mr. Knoer quoted the Town of Clarence 2030 Master Plan by stating “these scenic vistas and open space that they provide is a defining attribute of Clarence’s landscape”

Mr. Knoer stated that they have some photos to share, which illustrate the \$27,000 investment that Davmicor has already made to repair and maintain these blueberry fields. They have begun with the front 1 acre of the property, which as the photos illustrate, has made a significant improvement already.

Mr. Bengart asked Mr. Knoer if these photos have already been sent to the Planning Office, Mr. Knoer responded that this PowerPoint presentation is comprised from photos he selected today.

Mr. Bengart requested that Mr. Knoer submit the photos to the Planning Office at the conclusion of this meeting, so that they are made part of the file.

Chairman Mills asked Mr. Knoer to identify the photos and slides that he is showing. Mr. Knoer stated that there are 17 slides total, which he will send to Mr. Bleuer via email.

Mr. Knoer identified the slides as he explained each one;

- Slide no. 3 is a photo of the blueberry farm taken from the center of the property, the house located at 5745 Shimerville Rd. is visible in the background.
- Slide no. 4 is a photo of the blueberry fields similar to slide 3, but taken from further back on the parcel, and shows the full extent of the fields. It also shows most of the overgrowth of the field, which is a problem for the fields themselves.
- Slide no 5. is a photo taken in the fall, when the fields are more dormant with overgrown and the dead crop more obvious.
- Slide no. 6 is a more recent photo, showing the overgrown fields again.

Mr. Knoer reiterated that Davmicor is working to revitalize the field, with the purchase of equipment as well as labor.

- Slide no. 7 is a photo of the freshly trimmed bushes. They have been trimmed, pruned and are ready for the spring. Davmicor is hopeful that, due to this work, the bushes will be able to rebound in the growing season.
- Slide no. 8 is another before photo of dead and overgrown bushes. This is the important section of the field, which is up closest to Shimerville Road. Shown in the rear left is 5715 Shimerville Road as well as some of the other houses that are set back further off of the road.
- Slide no. 9 shows that same portion of the field with the significant amount of work that has been put in to it thus far.
- Slide no. 10 shows more overgrowth of the fields.
- Slide no. 11 again shows the significant improvement that has been performed by the investment.
- Slide no. 12 is a phot that they received from the FaceBook page of the prior owner, which illustrates what the fields are supposed to look like.
- Slide no. 13 is another photo from the FaceBook page of the prior owner which shows the section that fronts the road, when it was in its prime.
- Slide 14-16 are close ups of the blueberries that were taken from the prior owner's photos on Facebook, dated 2016.

Mr. Knoer stated that it comes down to the various factors and the balancing test that the Zoning Board of Appeals needs to look at when addressing a request of this type.

These factors look to the benefit that the applicant will receive, which is the preservation of the blueberry fields that is not only a benefit to Davmicor, but also to the Town of Clarence as it promotes the goals of the 2030 Master Plan.

Mr. Knoer reviewed the following points when hearing a variance request:

Whether an undesirable change will be produced in the character of the neighborhood. The answer to this is no. As you can see in the overhead view that they submitted in their written papers, the proposal for the location of the home fits well with the location of the other homes around it along that stretch of Shimerville Rd. There is no geometric pattern, and there are actually more homes in this stretch of road that are set further back from Shimerville Rd. than within 165'. Mr. Knoer added that granting the variance would avoid the undesirable destruction of visible portions of the blueberry field.

In regards to the question as to whether granting the appeal would be a detriment to nearby properties, Mr. Knoer noted that it would not, as the home would be in the view of the homes that are built along Shimerville Road, but it certainly will not be the only one, as there are several other houses back there. There will not be a sudden change from undisrupted greenery to suddenly a building. There is no specific landmark that would be blocked from view, and no concerns about light, air quality, or noise. These factors all help to mitigate and minimize any direct impact of the proposed home.

Mr. Knoer stated that the variance would actually be a benefit to the other properties, because the Town of Clarence 2030 Master Plan found that properties adjacent to this type of preserved green space see an increase in property values.

Mr. Knoer stated that regarding the question as to whether there is a feasible alternative for the applicant, the answer is no. Without a variance the only way to build a home would be by removing the most visible portion of the blueberries that Davmicor thinks is the most important to protect.

Mr. Knoer remarked that while the variance is numerically substantial, the impact of the variance would not be, because of the other homes in the vicinity and the imposed construction would not seem out of place.

In regards to whether granting the variance would cause an adverse physical impact, the answer is no, because the impact of the house is the same regardless of where it is built. The variance would prevent crowding that stretch of Shimerville with another house. The driveway may be longer, but even if the house was built with 165' of frontage, a longer driveway may be necessary for the farming operations. Mr. Knoer reiterated his statement that this variance avoids any adverse impact on the neighborhood and the Town of Clarence by allowing Davmicor to retain the existing blueberry fields.

Mr. Knoer responded to the final directive, as to whether the difficulty was self-created, stating that it was not. Davmicor purchased the property with the blueberries already there, and are attempting to retain them to the best of their abilities. It is not a scenario where Davmicor has done something at the property that has forced them in to a corner.

Looking at the balance of the benefit of Davmicor against the health, safety, and welfare of the community at large, the benefit is to the whole town, by protecting the greenspace, and there is no real detriment to the health, safety, and welfare of the community at large. The balance is between the public's view of these fields and the view of the home in the rear by other neighbors.

Mr. Knoer stated that he is aware of an issue that has been raised regarding a curb-cut, and this proposed construction would make the house accessible from the already existing private drive and also avoid making any new curb cuts on Shimerville Road.

Mr. McNamara asked if there is a reason that they are not cutting in to the driveway to the east, rather than cutting more of the blueberries down. Mr. Knoer responded that the proposed driveway is coming from an already existing private drive, past the blueberries. If the driveway was coming from Shimerville Road then they would need to remove and destroy the blueberry bushes closest to the road that they are attempting to preserve.

Mr. McNamara clarified that he is referring to the existing black top driveway located to the east, which would be a much shorter driveway and less disturbing of the blueberries. Chairman Mills noted that Mr. McNamara is referring to the east drive closest to the second accessory structure, where there is already existing pavement. Chairman Mills pointed out the location on a site plan that was included by Mr. Knoer for this meeting, Chairman Mills labeled this diagram Exhibit A.

Mr. Knoer looked to Mr. Dec for clarification on this question. Mr. Dec responded that the front of the house on the site plan is facing south. When they were looking at which way to bring the driveway in, they chose to have it come in to the front of their house and not in from the side.

Chairman Mills noted that perhaps from a visual, aesthetic standpoint Mr. Dec prefers the long driveway, which is accomplished to a certain extent by the easement long drive. Chairman Mills asked Mr. Dec if he'd consider bringing the driveway in halfway from the eastern driveway, and eliminate the full long winding driveway. Mr. Dec stated that they liked the aesthetics of the long winding drive, as he said previously in the November meeting. They view this as a family estate so they planned some of their landscaping plan around the driveway, appreciating how nice it would look. Mr. Dec stated that they are still keeping the blueberries along the east side of the driveway by cutting a path through, not eliminating acreage of blueberries.

Chairman Mills asked what the contemplated width of the driveway is, Mr. Dec responded that he does not know right now, it would need to be engineered.

Chairman Mills asked Mr. Dec whether he has given any consideration to a berm along the western side of his new structure. Mr. Dec responded that they cannot put a berm in there, as was supported by the Cornell Cooperative Extension from their survey of the property. Mr. Dec stated that Cornell stated that it would cause drainage issues for the blueberries and it would be untenable to place a berm there. Chairman Mills affirmed that would also be along the west side, adjacent to the house and Mr. Dec responded yes that is correct.

In Regards to Public Participation, the following spoke:

1. Jeff Palumbo from Barclay Damon representing the adjacent property owner, Mr. and Mrs. Purcell of 5745 Shimerville Rd.

Mr. Palumbo stated that the central question that he asks the Zoning Board to concentrate on is the same question that is concentrated on in every area variance. Simply put, what is the benefit to the applicant? Mr. Dec must prove that the benefit to him and having this variance granted outweighs any potential detriment to the health, safety, and welfare of the neighborhood. Mr. Palumbo asked what Mr. Dec has identified is the benefit to him? When Mr. Palumbo hears Mr. Dec's submittal along with what has been presented today, he only hears what a benefit to the public and having blueberries on the frontage.

Mr. Palumbo referred to page 2 of Mr. Dec's application where he clearly states it is "specifically important to maintain the portions of the blueberry field located closest to Shimerville Road and most visible to the public." Mr. Palumbo stated that is a benefit it is to the public, it is not a benefit to Mr. Dec.

Mr. Palumbo stated that Davmicor would like to preserve the public's view of these fields. The law is very clear, but this is a benefit to the public, it is to be a benefit to the applicant. Mr. Palumbo pointed out that Mr. Dec repeatedly states this within his application.

Mr. Palumbo specifically pointed out on page 4 of the application submittal, Mr. Dec states "Davmicor cannot achieve its stated goal of protecting the public's view of the blueberry fields without an area variance." Mr. Palumbo stated that is not the standard, and it is not necessary to get in to the factors, because clearly there is no benefit here. According to Mr. Palumbo, Mr. Dec admitted to the Zoning Board of Appeals at the last hearing, that he is going to remove approximately two acres of blueberries. Whether that is in the front or in the back, Mr. Dec will be removing blueberries.

Mr. Palumbo stated that Mr. Dec purchased this property knowing it is a blueberry field, and knowing what the setbacks are. He cannot come to this board now saying that he is protecting the public by placing his house that he wants to build with the setback from Shimerville Road, in direct view of Mr. Purcell's property.

Mr. Palumbo continued to address the multiple ways that Mr. Dec pointed out within his application how the variance would be a benefit to the public, but failed to mention how it would be a benefit to Mr. Dec.

Mr. Palumbo stated that if the factors are to be considered, given the fact that as Mr. Palumbo states, there is no benefit, then the undesirable change needs to be considered. Mr. Palumbo further stated that the applicant asking for a setback variance of 780 ft. for construction of his home has nothing to do with preserving the blueberry fields for the public. The blueberry farm is there whether the house is located in the front or in the back.

Mr. Palumbo stated that the proposed house is directly behind his client's house, and approximately 500+ ft. away from his client's house. Mr. Palumbo noted that as the board stated in a previous meeting, that nothing can be done to protect his applicant from the potential environmental impacts of this project. Mr. Palumbo stated that because someone told him that they cannot do it, there is no proof of that and Mr. Palumbo said to put it in evidence that there is no way to put a berm up.

Mr. Palumbo stated that one of the factors is whether there will be an environmental impact on the neighborhood by granting the variance. The board has stated that none of the conditions which are normally imposed to help mitigate a situation are not being granted. Mr. Palumbo stated that these are conditions that the board often grants in many other cases, but now it can't be done.

Mr. Palumbo stated that there is clearly an undesirable change to the neighborhood, to his client's property, as well as to neighbor's property on the opposite side of the street. He stated that this variance is enormous, which leads to the factor as to whether the request is substantial, which is an important factor, and one that this board has focused on multiple times in the past with other variance requests.

Mr. Palumbo noted that one of the other factors that he feels has been downplayed, is whether or not there are feasible alternatives. Mr. Palumbo stated that the applicant has indicated there are no feasible alternatives, citing the blueberries. Mr. Palumbo said that the feasible alternative is to place the house

165' back from the road, as is allowable by code. To use the excuse that placing the house in that location would distort the public's view of the blueberries is ridiculous.

Mr. Palumbo next stated that while he is not a blueberry expert, he understands that there was an issue of a bug infestation with the prior blueberry field. Mr. Palumbo commented that he isn't sure how that is remedied, whether by with pesticides that will be sprayed immediately adjacent to the existing homes. This issue hasn't been addressed, and could have an environmental impact on adjacent property owners.

Mr. Palumbo discussed the last factor, which is whether or not the variance is self-created, by noting that this is a perfect example of a variance being self-created. As Mr. Palumbo previously indicated, Mr. Dec purchased this property knowing that it was a blueberry field. The fact that Mr. Dec has spent \$27,000 is his issue, and has nothing to do with the variance. Mr. Palumbo reiterated that Mr. Dec purchased this property knowing that the setback was 165', not in the 700' category.

Mr. Palumbo stated that he doesn't feel the factors need to be considered, but if they do, that it is clear the health, safety, and welfare clearly outweighs any benefit that still hasn't been expressed by the applicant.

Chairman Mills asked Mr. Palumbo about his comments made regarding a berm, and inquired whether it is his client's position that he would like a berm to mitigate the visual effects of this variance, if it is granted.

Mr. Palumbo responded that if it is granted, they would absolutely like some mitigation for his client. Mr. Palumbo added that his first response is to not grant the variance, then there's no need to consider a berm.

Chairman Mills asked if aside from a denial of the variance, whether Mr. Palumbo's client would consider a berm or a fence, as some form of mitigation. Mr. Palumbo responded that a fence would not help, the only thing that could potentially help would be a berm with pine trees on top.

2. Adam Petri of 5665 Shimerville Rd. Mr. Petri stated that 5665 Shimerville Rd. is a new build off of the private drive that comes in off of Shimerville Rd.

- Mr. Petri has one of the closest views of the applicant's property and the potential new build that would go up on the property.
- Doesn't feel it will have an impact on his view or property, but if it did he would put up a berm and some trees on his own property in order to provide himself the privacy that he was seeking.
- In regards to the aesthetics of the road, Mr. Petri stated that in his opinion, he would prefer to be set back further off of the road also.
- As a close neighbor to the applicant and in the neighborhood, Mr. Petri does not have any issues with the variance request.

Public Participation for this item was closed.

Chairman Mills asked Mr. Dec or his attorney, in regards to the comment that Cornell Extension had stated that it would be detrimental to the blueberries to put in a berm, would they elaborate on that. Mr. Dec responded that it is already significantly wet on the property, and water affects blueberry growth significantly. Putting a berm up on their west side of the property would create a larger drainage issue in to the blueberries. Mr. Dec stated that they are happy to plant pine trees on the west property line. They grow tall and provide a great obstruction of view.

Chairman Mills noted that Mr. Dec identified a berm as a problem due to the water, but that he would be willing to plant pine trees to mitigate a visual buffer.

Mr. McNamara spoke in regards to the berm and drainage, as he is facing a similar situation, which he has had to mitigate with drainage. Mr. McNamara stated that when building a new home, it is often necessary to run some type of drainage for all of the down spouts, running it to some location whether it is a street curb or an on-property pond. Mr. McNamara stated that installing the drainage to help mitigate the berm, may also help the blueberries.

Chairman Mills asked Mr. Dec if he has considered some kind of drainage for the berm. Mr. Dec responded that he knows they'll have to have drainage at the house, but locating a berm that far from the west property line which would end up needing to be two separate drainage plans. Mr. McNamara pointed out that it can be done, to which Mr. Dec responded that if they were able to plant pine trees without a berm, they would not have a drainage issue.

Chairman Mills asked Mr. Dec about placing a berm with pine trees closer to their house, Mr. Dec replied that it would cause them to have to remove more blueberries. Chairman Mills noted that while he understands that, there is greenspace around Mr. Dec's proposed house, and perhaps a berm can be built with some pine trees. This will block the visual aspect of the proposed home from Shimerville Road.

Mr. Dec stated that if the main goal is height of the obstruction, he doesn't understand why pine trees on their own wouldn't be substantial mitigation. Mr. Dec also stated that he would be happy to plant mature pine trees, so that they are already at an adequate height. Mr. Dec stated that he has no interest in putting in a berm that requires that much more drain work, and would be more of a detriment to the existing agricultural field.

Chairman Mills asked Mr. Palumbo what his client's thoughts are in regards to mature pine trees without a berm to provide a visual buffer. Mr. Palumbo stated that while future generations may benefit from pine trees, there is no benefit to his client or the adjacent property owner. Mr. Palumbo doesn't believe that trees alone at this point will be of any benefit as a buffer.

Mr. Palumbo stated that looking at the drawings, he notes that there are two different sizes of buildings, there is a barn and a garage and wondered if the board is aware of the size of any of these structures.

Chairman Mills noted that a site plan was submitted, without dimensions of any of the structures. The site plan was dated 10/20/2021.

Chairman Mills asked Mr. Dec what the anticipated size of his primary structure will be, Mr. Dec responded that it will be approximately 4,000-5,000 sq. ft. Mr. Dec stated that he doesn't believe the accessory structures are an issue of this variance request.

Chairman Mills responded, stating an understanding the accessory structures are not a matter of the variance, they are relevant due to their size. The tentative contemplated sizes are 50' by 30' and 50' by 40', but those sizes are not confirmed yet.

Mr. Palumbo stated that another question to ask is what happens two years from now when there is no blueberry field because of infestation, or anything else. There will not be a blueberry field for the public to enjoy looking at, but there will still be a giant structure placed in the backyard of his client's property.

Chairman Mills asked Mr. McNamara what is reasonable in terms of the height of mature pine trees from a cost perspective as well as the feasibility of acquiring them.

Mr. McNamara responded that the feasibility of planting trees is basically maxed out at approximately 8 ft. high. From there it takes around 2 years before they start to grow, at which point they will then continue to grow roughly a foot per year.

Mrs. Burkard commented that there was a house built behind her property and they did plant evergreen trees to create a buffer. Mrs. Burkard stated that once the trees were planted, they were not able to see the neighboring house at all, which is only approximately 150-200 ft. from her home. It blocked their view immediately.

Mr. Palumbo stated that there is a big difference between 150' and 500'.

Mr. Dec reminded the board that they are building a single story residence, so 10' trees should block a majority of the house.

Mr. McNamara asked Mr. Dec about the acreage in the front of the proposed location for his home reaching out to Shimerville Road, will Mr. Dec subdivide and build additional houses on the property. Mr. Dec responded that they have no plans to sub-divide the property at all. One area of the property is only 100' wide between the two houses, which according to zoning code is too narrow to build a house on. The other piece of the parcel is the portion that they are revitalizing first, and intend to keep blueberries on. Mr. McNamara asked Mr. Dec what would happen in two years if the blueberries all die, what will happen then. Mr. McNamara asked Mr. Dec if he would be willing to state that they would never subdivide the property at all, keeping it as a single lot.

Mr. Dec responded, as has been discussed at previous meetings they view this lot as a family estate and he cannot say that in the future he wouldn't want one of his children to build a home somewhere on the property. Additionally, agreeing to a restriction that runs with the land would hinder the ability of someone to potentially sell the property.

Mr. McNamara stated that it may be more of a reason to put a berm on the neighbor's land, in the case that they do subdivide, the problems for the future are eased.

Mr. Dec stated that right now he is concerned about the blueberries, Mr. McNamara responded that they are concerned about the future.

Mr. Bengart asked Mr. Dec whether he would consider if this variance was approved, agreeing to a condition that would restrict subdivision of the land limited to family members only. Mr. Dec confirmed he would agree to that condition.

Chairman Mills asked Mr. Dec in regards to the subdivision of land to family members, what he is contemplating as far as a maximum number. Mr. Dec responded that he would agree to a restriction of subdividing only to immediate family members.

Discussion continued regarding the number of building lots that could potentially be subdivided and to whom. Chairman Mills stated that a large component of Mr. Dec's argument is the preservation of the

aesthetics of the blueberries, and greenspace. If the future brings multiple additional houses, that is disruptive to Mr. Dec's argument. Mr. Dec responded that they have absolutely no plans to subdivide or build any additional houses on the property, but if hypothetically it were to happen, potentially one more house. Mr. Dec reiterated once again that they have no plans to subdivide or build any additional houses.

Chairman Mills asked Mr. McNamara what his recommendation would be in terms of the placement of pine trees distance apart.

Mr. McNamara responded that pine trees should be planted in a staggered row, approximately 15 ft. apart. That way when they reach a height of approximately 30-40 ft. they will not be touching, causing a lower depth die-off of branches.

Mr. Krey asked the applicant to speak on the benefits of the variance request to himself.

Mr. Dec responded, stating that the number one benefit to him is the ability to grow and sell blueberries. As it stands currently, the two acres directly on Shimerville Road which border the common driveway are the healthiest blueberry plants of the entire 8 ½ acres. Mr. Dec stated that they want to maintain those acreages first, which is why they have been focusing revitalization efforts on that section. Mr. Dec stated that the benefit of the variance for him, is that he is able to maintain the healthiest plants that are already there, to grow and operate an existing farm and sell the blueberries to the public.

Chairman Mills asked Mr. Palumbo what his additional comment is, Mr. Palumbo stated that it goes back to the question of not knowing what could happen with this property. They have neglected discussing the Planning Board's decision from 2018, which in reaching their determination under the State Environmental Quality Review Act and the issuance of a Negative Declaration with conditions that included no additional curb cuts beyond those identified on approved site plans dated May 1, 2018. Mr. Palumbo said he doesn't know if they have complied with that, or if any future development of this property whether it's one child or two or three children complies with that condition. Mr. Palumbo noted that others in the Planning Department could comment on that better than he can.

Mr. Palumbo stated that it goes to the point of not knowing what will happen with this property, and this is only the beginning. The benefit that has now been expressed for the very first time by Mr. Dec, is that the healthiest of the blueberries are located in the front of the property, which as Mr. Palumbo states, is because that is where he has been rehabilitating them. Obviously he will rehabilitate all of them, because that is what he has told us that they are going to turn this in to a thriving blueberry farm. Mr. Palumbo commented that whether the front, back, or side is completed first, ultimately they will all be rehabilitated according to Mr. Dec's testimony.

Mr. Palumbo stated that benefit still does not outweigh the benefit to the health, safety, and welfare of the neighborhood.

Chairman Mills asked Mr. McNamara how far off the house is practical to plant pine trees off of the western side of the house. Mr. McNamara responded that there will be concerns with a septic system and where that will be placed, so at least 40-50 ft. away from the house. Mr. McNamara added that the further away from the house, the better it will be for shadowing from the sun in the evening.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara to approve Old Business Appeal No. 2 with the following conditions;

1. Maximum subdivision of two lots, and only for immediate family members;
2. Along the west area of the property, approximately 50 ft. off of the house line, pine trees to be staggered on a berm with appropriate water controlled engineering. The pine trees are to be at least 6 ft. high, and staggered approximately 15 ft. apart. Subject to referral to the Landscape Committee who may deviate from these suggestions, but should attempt to substantially comply with the same suggestions.

ON THE QUESTION:

Mr. Bengart asked for clarification, as to whether Chairman Mills meant the western most portion which is behind the houses on Shimerville, or the western most portion off of where Mr. Dec intends to put his home.

Chairman Mills confirmed that he means 50 ft. off of the west side of Mr. Dec's home.

Chairman Mills stated that the Landscape Committee will sort it out in more detail as appropriate. He believes that the record reflects what they are looking for in terms of visual privacy buffer for Shimerville Road.

Mr. Krey asked whether the applicant should be asked if he is in agreement of these conditions.

Mr. Dec responded that if he is going to agree to put a berm in, he would prefer that it be on the eastern line of the neighbor's lots as opposed to closer to his house. Because they plan to operate this as an ongoing farm, if he puts a berm and trees close to his house it will obstruct his ability to maintain the blueberry rows as they currently exist. In addition, it will obstruct his view of the fields, which is a large part of why he wants his house where they'd like it placed. He would be more interested in putting the berm and trees on or close to the lot line.

Mr. Dec stated that this location would not only be in agreement with what the board is requesting, but also provide coverage for the neighbors to view the property.

Chairman Mills asked Mr. Palumbo and his client what their thoughts are regarding a berm or pine trees along the rear of Mr. Palumbo's client's parcel.

Mr. Palumbo stated that he doesn't agree with it either way, so it is ultimately up to the Zoning Board.

Chairman Mills stated that he would like to incorporate all prior hearings, their minutes and exhibits in to the record. All files, communications, everything of that neighbor which relates to this up to this point in time included in the board's decision as well as in the record. This also includes the evidence which has been presented this evening.

Chairman Mills noted that as a board they are asked to look at Town Law section 267 and the five criteria. They have heard a substantial amount of criteria from both sides in regards to those five components which are as follows:

- a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - Chairman Mills does not believe that there would be an undesirable change in the character of the neighborhood, or a detriment to nearby properties based up on the evidence that they have heard. Each variance is unique in its own right, and this is a very unique parcel in shape, size, and the fact that it is densely covered in blueberries. Based upon that, the placement of this home will help preserve a lot of the blueberries and taking in to account views from not just the neighbors on Shimerville, but all of the neighbors that surround this particular parcel.
- b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - Chairman Mills stated that while there are other possible placements on this parcel for the home, it appears from a strategic standpoint of preserving blueberries, as well as taking in to account all views from nearby neighbors as well as environmental conditions which they have heard and are in the record, this is an optimal location.
- c. Whether the requested area variance is substantial;
 - Chairman Mills noted that while this particular point is up for debate, whether it is substantial alone is not dispositive in a variance but rather is to be taken in to account. Again, due to the uniqueness of this parcel, being covered in blueberries as well as how the homes are situated around it, this does not appear to be substantial when weighing in all of those factors.
- d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - Chairman Mills responded that he does not believe the record indicates any adverse effects on the physical or environmental conditions with its placement as proposed. It would not be any different if it was placed up closer to Shimerville Road. Any home placement will have some impact on a lot.
- e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.
 - Chairman Mills stated that an argument could be made that this was self-created to a certain extent, however, the blueberry farm is unique in its nature. When taking in to consideration all of that work that was done as well as all of the views of nearby parcels, this appears to be a favorable location for the preservation of views from Shimerville as well as views and aesthetic considerations from all the nearby neighbors.

Mr. Bleuer stated that any future lot split or subdivision proposals would be subject to an environmental review through the State Environmental Quality Review Act, and taking in to account all code that is in place at that time.

Mr. Krey stated that he agrees with Chairman Mills, and also in his own opinion, looking at the property along the street, he does not believe that it will produce any undesirable changes by granting this area variance. There are other houses that are setback at different distances from the street as well as other houses set even further back.

Mr. Krey stated that in regards to the neighbors who feel they are being negatively impacted, he believes the conditions being imposed will mitigate that in terms of the view, because there will be natural screening which will alleviate their concerns about the view.

Mr. Krey also reiterated what Chairman Mills stated, that there will not be any adverse effect or impact on the physical environment or conditions of the neighborhood. If anything, it will maximize the usage of the blueberry farm, keeping the preexisting view of the farm mostly intact.

Mr. Bleuer added that the general practice of the Landscape Committee to review landscape plans that are submitted. Based on the condition on the table stating landscape review, Mr. Bleuer would expect that would include a landscape plan being submitted by the applicant for review by the Landscape Committee.

Mr. Bengart added that Mr. Bleuer will be able to explain what the applicant will need to provide for the Landscape Committee, Mr. Bleuer confirmed this.

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

MOTION CARRIED UNANIMOUSLY

Appeal No. 5 (from the January, 2022 meeting)

John Ponicki
Residential Single-Family

Town Code Reference;
1) §184-6 (B) (1)
2) §184-17

*Amended from the January, 2022 request.

Applicant requests a variance:
1) to allow a Ground-Mounted Solar Photovoltaic System on a parcel that is under 5 acres in size; and
2) of 1' to allow a 17' tall Ground-Mounted Solar Photovoltaic System;
located at 6420 Conner Road

DISCUSSION:

Chairman Mills reminded the applicant that the Zoning Board of Appeals can either deny, approve, or table the request.

Chairman Mills next asked Mr. Ponicki to update the board with the current state of his variance request. A representative was in front of the board at the January, 2022 meeting when the board requested additional information. Chairman Mill asked Mr. Ponicki to identify what he is seeking, why he is seeking it, and anything that has changed since the last time they met.

Mr. Ponicki deferred to his vendor, Kevin Wagner representing Solar by CIR to further explain and answer any questions.

Mr. Wagner started by stating that they have revised the plan, making the system longer versus taller, with six panels long and five panels high. Referring to the side elevation detail, the height is now 12'3" which meets zoning requirements.

Chairman Mills stated that the second component of this variance is no longer necessary, which Mr. Wagner confirmed, adding that Mr. Ponicki needs to be present for site mitigation.

Mr. Skaine noted that the last issue that the board had was an issue with the height, and if the applicant brought the height down to 12' 3", with a length of 43' 8".

Mr. McNamara stated that he likes what the applicant has done with this arrangement, and noted that if the system was placed on a motorized pedestal, it would be significantly smaller yet maintain the same efficiency, as it follows the sun. Mr. Wagner responded that is correct, but it also adds bells and whistles which tend to break down regularly.

Mrs. Burkard asked if the 43 ft. of the system will run perpendicular to the house, and whether you will be able to see any of the system from the front of the street. Mr. Wagner responded that Mr. Ponicki had commented that it can be seen from one direction coming down the street, but as proposed at the last meeting they will put up some sight mitigation.

Mr. Krey asked how large the lot is, Mr. Ponicki responded that the lot is 1 acre in size, it is 100 ft. wide and very narrow which is why the house faces east and west, not north and south. Placing the stand-alone unit in the back of the lot, facing south will generate 20% more power and will be out of the way.

Chairman Mills noted that it is private back on Mr. Ponicki's lot, but there are some neighbor's views that will be accessible, those being at 6440 Conner Road and potentially 6410 Conner Road. Chairman Mills feels that it is important to protect those views with some Arborvitae or similar along the east end of the property line.

Mr. Ponicki stated that when he moved in to the house approximately 20 years ago there were about 20 Arborvitae already located on the property, which the deer enjoyed and destroyed within a year. Mr. Ponicki asked if he would be able to plant pine trees instead. Chairman Mills responded that pine trees or any other type of foliage which will protect the views from the neighbors is good with him. Chairman Mills stated that it is not necessarily current neighbors, as it is future neighbors and the view from Shimerville Road.

Mr. Ponicki commented that if he mitigates the east end it will protect it well.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Raymond Skaine, seconded by Ryan Mills to approve Appeal No. 5 under Old Business with the following conditions:

1. This approval is for request No. 1 only, as request No. 2 is no longer being sought by the applicant.
2. Maximum height of system to remain under 13 ft. tall.
3. Minimum of three, 6' tall Evergreens to be planted along the east line of the system.

ON THE QUESTION:

Mr. Mills stated that while this parcel is under 5 acres in size, the solar panels have been adjusted so that the height is less, and based on the physical characteristics of this site, there is a significant foliage which densely covers these solar panels. The only possible views from neighbors and the road would be the east line, which the applicant has agreed to mitigate with various foliage plantings.

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

MOTION CARRIED

NEW BUSINESS**Appeal No. 1**

Joshua Thomann
Residential Single-Family

Town Code Reference;

- 1) §229-55 (H)
- 2) §229-55 (I)
- 3) §229-55 (E) (2)

Applicant requests a variance:

- 1) of 1,230 sq. ft. to allow a 1,430 sq. ft. detached accessory structure; and
 - 2) of 1' to allow a 10' tall overhead door; and
 - 3) of 10' - 6" to allow a 26' - 6" tall detached accessory structure;
- located at 5040 Winding Lane

DISCUSSION:

Mr. Thomann was present to further explaining his request, in that the purpose of it is to build a recreational building. Half of the proposed building will be for the kids to use to play sports and recreational activities, with the other half being used for storage of lawn and garden equipment. Mr. Thomann added that they plan to remodel the other half of their house, in which they plan to continue to live in throughout the process, they will use the proposed building to store the contents of their home during the remodel.

Mr. Thomann stated that the reason for the height of the building is so the children are able to play basketball inside. They researched how high including tresses to build a structure so that basketball can be played, and came up with these dimensions.

Mr. Thomann continued, noting that in regards to the overhead door, he would have no objection to tabling that request. He believes the code is for 9 ft. and he would not have any issues with that.

Chairman Mills confirmed that item no. 2 can be removed from the applicant's variance request, Mr. Thomann responded yes.

Mr. Thomann commented that as far as the structure itself, they attempted to keep it in line with the neighborhood, giving it a stone and wood look to help give it residential appeal. It is not intended for any kind of commercial activity. Mr. Thomann stated they are not just putting up a pole barn, but are attempting to keep it with the character of the neighborhood.

Mr. Thomann added that he thinks his neighbor's house is on a stone barn foundation, so they wanted to add to that look throughout the neighborhood with the aesthetics of the structure.

Mr. Skaine stated that the proposed structure is completely out of character with the neighborhood, between the height and length it does not fit with the neighborhood. He added that he is not in favor of the proposed project at this time, because in his estimation it doesn't fit through the neighborhood.

Mr. McNamara asked if there will be a second floor included on this structure, Mr. Thomann responded that there will not be a second floor.

Mr. McNamara asked if there will be electric and gas for heat, Mr. Thomann confirmed yes.

Mr. McNamara commented that it is a great looking building, the plans look good, the character looks great, but between being situated on a hill, it is higher than Mr. Thomann's house, and with the neighbor's behind him, it will be the highest point in the neighborhood. Mr. McNamara added if it wasn't up on a hill it would not be as bad, but the hill puts it too high.

Mr. Thomann stated that they have bedrock on their property, they are up on the escarpment, so they can't bring it down lower off of the hill.

Mr. Thomann added that his neighbor to the rear on Winding Lane Farm has a barn of similar size on his property, Mr. McNamara responded that he drove back there, and that barn is of less height than Mr. Thomann's proposed structure.

Mrs. Burkard asked the applicant why the structure needs to be so big if it's intended for recreational purposes, and if it will include a basketball court inside. Mr. Thomann responded that they had hoped to put a basketball net up inside the building, and use it as a basketball court. In addition to basketball, they could play hockey, play catch, and assorted other sport activities.

Mr. Thomann explained again that half of the structure will be strictly for recreational activities and sports, while the other half will be used for storage.

Mrs. Burkard asked Mr. Thomann if he intends to run a business out of the structure, he replied definitely not, adding that if you look at the aesthetics of the structure, it is not anything that a commercial business would be run out of.

Mrs. Burkard asked what the timeline is for completion, start to finish. Mr. Thomann responded that if the variance is approved, then most likely within a year, hopefully starting in the spring with completion in the fall.

Mrs. Burkard asked if Mr. Thomann would be building the proposed structure himself, Mr. Thomann replied no, that he would be hiring a contractor.

Mrs. Burkard asked Mr. Thomann when he plans to build the addition on to his house, Mr. Thomann responded that his plan is to build this proposed structure, then re-do the other side of this house, because the structure would provide a place for him to move the items that are currently in his garage in to.

Mrs. Burkard asked Mr. Thomann whether he would reduce the size of the proposed structure, Mr. Thomann responded that yes, he would be willing to entertain that request. Mr. Thomann also added that this was their first attempt at plans for this proposed structure, and if the board has any recommendations he would be happy to take them in to consideration. Mr. Thomann commented that he would like to keep it as big as possible while also satisfying the board.

Mrs. Burkard asked Mr. Thomann how old his children are, Mr. Thomann responded that he has children ranging in age from 4 to 15 years of age. Mrs. Burkard asked what Mr. Thomann plans to do with the building once the children have grown, Mr. Thomann added that it would continue to have multiple uses, never to go unused.

Mrs. Burkard asked Mr. Thomann if he will be heating the building, Mr. Thomann responded yes, the plan is to run gas to the structure, and he doesn't think it would be continually heated but it would be insulated and have electric.

Mr. Krey asked Mr. Thomann what the square footage of his home is, Mr. Mills interjected to state that property records indicate the house is 3,581 sq. ft. Mr. Krey stated that the proposed structure is just less than half of the size of Mr. Thomann's existing home.

Mr. Krey stated that he echoes the concerns voiced by other board members, the structure is out of character for the neighborhood and is way too big.

Mr. Krey noted that any effort Mr. Thomann can give to reduce both the size as well as the height would be much more manageable. As it stands now, Mr. Krey stated that he would vote no if it comes to a vote.

Mr. Thomann responded that he would be able to do that, he would need to figure out a truss that would work with the minimum height needed for a basketball net.

Further discussion ensued regarding what a suitable height and size for a revised structure. Mr. Krey stated that Mr. Thomann will need to refigure, and then come back to the board with an updated request.

Chairman Mills stated that he feels the same concerns as most of the board members have voiced, this is a large variance request in terms of size as well as the height. Mr. Mills added that he is concerned with how it would integrate and fit in with the character of this neighborhood.

Mr. Mills suggested to Mr. Thomann that the prudent thing to do would be to devise an alternate proposal that is less severe in both square footage and height.

Mr. Mills directed Mr. Mills as an applicant, he can request that the board either votes to approve, deny, or table his request. Mr. Mills pointed out that judging by the overall feelings of the board, Mr. Thomann would be best suited asking the board to table the request.

Mr. Thomann responded that tabling the request would be fine.

In regards to Public Participation the following spoke:

Shannon Kinnan of 5050 Winding Lane;

Does not have anything additional to add, as most of the concerns that the board addressed have been the same as their concerns. Would ask that if the proposal is being redone, that the proposed structure is moved up so that it doesn't block the main portion of the backyard. Move it closer to the Thomann property, and lower the height making it a smaller footprint.

Concerned that it would set a precedence by approving such a large structure.

The size and current proposed location would block the sun from her backyard.

Mr. Bengart stated that the Planning Office received a number of correspondence regarding this appeal. Each piece has been shared with the board members, and placed in the project file.

Mr. Bleuer identified correspondence stating concerns were received from the following neighbors:

- Tim and Danielle Hardt of 10051 Pineledge Drive West
- Janis Morgante
- John and Shannon Kinnan of 5050 Winding Lane
- Lindy and Gay Ruff of 5006 Winding Lane
-

Additionally, a phone call from was also received from Paul Gibson stating that he was unable to take part in any technology but wanted to relay his concerns including:

- property value affect;
- the applicant's house being perpetually under construction for 6 years, making it difficult to maneuver through the neighborhood due to construction;
- size and visibility of the structure.

ACTION:

Motion by Richard McNamara, seconded by Patrick Krey to **table** Appeal No. 1

ON THE QUESTION:

Mrs. Burkard asked if it is a driveway that leads back towards the building, referring to the site plan. Mr. Thomann responded that the plan would be to connect the driveway to the overhead door. Mrs. Burkard stated that looking at the site plan, there appears to be a square going down from the driveway, Mr. Thomann answered that there are no plans put together for that as of yet, but he believes Mrs. Burkard is referring to the remodeled half of the house. Mrs. Burkard stated that what she is referring to is in front of the building.

Chairman Mills interjected, noting that he believes Mrs. Burkard is looking at Master Site Plan C1 dated 1/16/2021 and referring to the existing square delineation, asking if that is pavement for cars. Mr. Thomann answered that yes, it is the driveway.

Chairman Mills stated some of the things the board would like Mr. Thomann to explore before returning to the board are alternatives in terms of the size and height, as well as anything else that can be done to mitigate the impact on the neighborhood and the environmental conditions.

Mr. Thomann responded that he will go through things with his neighbors before returning to the board to be sure they are on the same page.

Raymond Skaine	No	Richard McNamara	Aye	Patrick Krey	Aye
Patricia Burkard	Aye	Ryan Mills	Aye		

MOTION CARRIED 4-1

Motion by Patrick Krey, seconded by Raymond Skaine to **adjourn** the meeting at 7:07 p.m.

MOTION CARRIED

Amy Major
Senior Clerk Typist