

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday, February 10, 2026

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

Zoning Board of Appeals members present:

Chairman Ryan Mills	Patrick Krey	Gerald Drinkard
Steven Dale	Forest Rung	

Zoning Board of Appeals members absent: Richard McNamara

The Zoning Board led the Pledge to the flag.

Town Officials present:

Director of Community Development Jonathan Bleuer
Deputy Town Attorney David Donohue
Councilman Paul Shear

Other Interested Parties:

Jim Purcell	David Stang	Suzanne Stang	Karthigan Thavanesan
Sean Hopkins	Jeremy Bates	Adam Petri	Max Levin
Frank Dec	Andreas Russ	Sean Hopkins	Michelle Petri

Motion by Gerald Drinkard, seconded by Steven Dale, to **approve** the minutes of the meeting held on January 13, 2026.

Forest Rung	Aye	Gerald Drinkard	Aye	Ryan Mills	Aye
Patrick Krey	Abstain	Steven Dale	Aye		

MOTION CARRIED

Attorney-Client session was entered in to at 5:32 p.m.

Attorney-Client session ended at 5:51 p.m.

NEW BUSINESS

Appeal No. 1

Karthigan Thavanesan
Agricultural Rural Residential
Town Code Reference: §229-41

Applicant requests a variance to allow a 200' principal structure front yard setback located at 6571 Conner Road.

DISCUSSION:

Karthigan Thavanesan was present to represent his request, stating that he would like the setback to build a new house.

Mr. Rung asked about a fence that appears to be on the north abutting property, and whether it extends on to Mr. Thavanesan's property.

Mr. Thavanesan responded yes.

Mr. Rung asked if it was a historic pasture that extends to the east as well, and can be removed.

Mr. Thavanesan responded yes.

Mr. Rung asked Mr. Thavanesan if he is familiar with the neighbor to the north.

Mr. Thavanesan responded yes; the fence will be removed; they have started that process.

Mr. Rung asked Mr. Thavanesan if he has any consultants or wetland biologists look at the land, as it seems to be rather wet especially where the house is proposed to be built.

Mr. Thavanesan noted that they did the wetland delineation before they purchased the property, and everything is clear.

Mr. Rung confirmed that where they are proposing to put the house is not a delineated wetland.

Mr. Thavanesan responded that is correct.

Mr. Drinkard asked Mr. Thavanesan if he is aware of an easement at the back of the property.

Mr. Thavanesan responded yes.

Mr. Drinkard asked if it is built or not built, what condition is it in.

Mr. Thavanesan stated that his proposed house is closer to Conner Road, he has close to 600' from the easement. There is a 20-acre lot next to him, that is the lot that is touching the easement.

Mr. Drinkard asked Mr. Thavanesan if he owns his lot.

Mr. Thavanesan responded yes.

Mr. Drinkard asked if the other two lots on either side of his property sold yet.

Mr. Thavanesan responded yes; the lots are empty, but they have been sold.

Mr. Drinkard asked Mr. Thavanesan what the other lots planned setbacks are.
Mr. Thavanesan stated that he does not know.

Mr. Drinkard explained to Mr. Thavanesan that if his proposed house is set back at 200' and the other houses on the adjacent lots set back at what is legal, they will be much closer to the road, and basically be in his front yard.

Mr. Drinkard asked Mr. Thavanesan if he understands how that does not line up. The people that want to comply with the law, and everybody on the other side of the street appears to have done that as well as the houses down the street to the south, they have also complied with the law. While Mr. Thavanesan's house will be set back 200'. That does not sit well.

Mr. Drinkard noted that Mr. Thavanesan's reasoning is his children, but everyone has that problem at some time in their life.

Chairman Mills asked Mr. Thavanesan to explain the style of house that he plans to build.

Mr. Thavanesan stated that it will be a 2-story house, approximately 3,500-4,000 sq. ft., 3-car garage, 4 bedrooms.

Chairman Mills asked Mr. Thavanesan if there are any additional reasons he would like to add to the record for the requested setback.

Mr. Thavanesan confirmed that the main reason is for the safety of his children. Recently his car was stolen from his driveway at his current home, which is approximately 100' from the road. He decided then that he wanted more land and privacy.

Chairman Mills asked if when he purchased the land, if he was aware of the need for a variance to have a larger setback.

Mr. Thavanesan responded yes; he spoke to the realtor and the neighbors on all three sides, if he was able to get a variance, he would need their permission as well.

Chairman Mills asked if he had talked with anyone from the Town of Clarence.

Mr. Thavanesan responded no, he did not.

Chairman Mills asked Mr. Thavanesan if he was aware of the need for a variance.

Mr. Thavanesan responded that when he did a variance for his local landscaping business, he knew the process and is familiar with the process.

Chairman Mills asked if the variance is not granted, is Mr. Thavanesan's plan to build closer to the road.

Mr. Thavanesan stated that is something he is working with the architect and his wife to see what other plans are.

Mr. Krey noted that he thinks Mr. Thavanesan's situation with the way that the houses are laid out, there are a lot of similar size, and are all fairly uniformed in terms of their setbacks. It appears to him that the setback Mr. Thavanesan is requesting would double the setback compared to the neighbor's and the area, on both sides of the street.

Mr. Krey noted that his interpretation is that it appears Mr. Thavanesan is requesting to double the setback compared to the neighbor's and the area.

Mr. Krey asked Mr. Thavanesan if he has considered a smaller setback.

Mr. Thavanesan stated that he was planning to do about 150'-180' setback. If he did 150', he would need to have an area where he can turn his car around and leave, so he definitely needs 180'-200' setback. If he was going to apply for 150'-180' then it would just be better to have a 200' setback.

Mr. Thavanesan stated that he needs to build a small section of road and some plants on both sides.

Mr. Dale noted that the drawing shows Mr. Thavanesan's proposed house nicely centered, on the lot, with the driveway perfectly straight, and asked if that is what he actually plans to do.

Mr. Thavanesan responded yes.

Mr. Dale explained that the Zoning Board has given variances for two other houses on Conner Road, closer to County Road. In both cases, 180' was granted, not 200', and in both cases they established berms to provide privacy. If there are no houses, it is difficult to provide privacy; but Mr. Dale asked Mr. Thavanesan if it is something he would consider doing.

Mr. Thavanesan responded yes; as a landscaping business owner he would be willing to put privacy plants on both sides, so that neighbors will be unable to see his front yard.

Neighbor Notifications are on file, no comments were received.

In regard to Public Participation, no one spoke.

Mr. Drinkard stated that when the lady that split these lots, and demolished an agricultural building (barn), at the Planning Board meeting on May 13, 2023, both she and Mr. Sutton were asked about expected setbacks.

Mr. Sutton then responded that he expects setbacks to coincide with existing setbacks on the street. If Mr. Thavanesan had plans to purchase this lot back then, the 200' setback was not stated at that time.

Mr. Thavanesan stated that he had no idea about that meeting or that conversation; he purchased the lot from the realtor, a lady that owned the lot and split it in to 3 lots to sell. His lot was the last one to be sold.

Mr. Drinkard noted that this is a big variance, and he is concerned about the precedent that will be set for the other two neighbors that eventually build their houses on the neighboring lots legally, the way they should be. It either forces them the need to apply for a variance to be equal to this lot, and mess up the whole road.

Mr. Drinkard asked Mr. Thavanesan if there is any way he could compromise and reduce the setback request.

Mr. Thavanesan stated that he would be willing to do 170'- 180'. That is the lowest he can do.

Mr. Drinkard asked Mr. Thavanesan if he would be agreeable to 175'.

Mr. Thavanesan responded yes.

Chairman Mills explained that Mr. Drinkard discussed a condition of 175', which would definitely help. They have concerns, and they need to consider a variety of factors when granting variances. One of those factors is the character of the neighborhood, and environmental conditions.

Chairman Mills added that Mr. Thavanesan mentioned planting some trees to help mitigate the views for motorists traveling down the road, as well as neighbors.

Chairman Mills asked Mr. Thavanesan if he would be willing to plant trees along the north and south sides of his property.

Mr. Thavanesan responded yes; on both sides he will do it.

Chairman Mills confirmed that if a condition was made that trees are to be planted along the north and south side, would Mr. Thavanesan agree to that.

Mr. Thavanesan responded yes.

Chairman Mills asked what species Mr. Thavanesan had in mind; pine trees or similar.

Mr. Thavanesan responded yes; pine trees would be good.

Mr. Thavanesan noted that for his business, he was required to put spruce or pine trees in for privacy. He would be happy to do similar here.

Reiterating spruce or pine trees or similar along the north and south sides, Chairman Mills asked how many feet.

Mr. Thavanesan stated that 8'- 10' would be a good distance.

Mr. Dale asked Mr. Thavanesan if he could do a staggered row.

Mr. Thavanesan stated that it would be a straight line.

Mr. Dale stated that if he is trying to establish a screen, he will want to alternate them back and forth.

Mr. Thavansen stated that if he was going to stagger them, he would need 20'-30' because pine trees are 10' wider. That is why he prefers to do one straight line. It is like a privacy landscaping fence.

Chairman Mills confirmed that spruce, pine, or similar, approximately 10' apart, and along the span of the house, would Mr. Thavanesan agree to that.

Mr. Thavanesan responded yes.

ACTION:

Motion by Gerald Drinkard, seconded by Steven Dale to **approve** a 175' front yard setback with the following conditions:

1. plant spruce / pine or similar trees planted on the north and south property lines from the front foundation line to the rear foundation line
2. center the driveway and house on the lot

ON THE QUESTION:

In regard to the Spruce / Pine tree shielding, Mr. Donohue asked if that is intended to be the entire length of the lot.

Mr. Drinkard responded no; only the length of the house along the north and south line.

Mr. Bleuer asked if by the length of the house, do they mean from the 175' to the established setback line, or merely the depth of the house on either side.

Mr. Drinkard stated on both sides of the house, starting at the front corner, and extending back to the rear corner. The trees will be next to the house.

Chairman Mills added that the applicant can add more trees, but this condition is the requirement set by this Board.

Mr. Bleuer asked for clarification on the centering of the driveway; within reason, the board asks that primarily the driveway should be in the middle of the lot.

Chairman Mills responded yes.

Mr. Bleuer confirmed that the curb cut will be centered on the lot, how it gets to the house is not the concern.

Mr. Dale stated that he is trying to keep it away from the property line, which is going to be more difficult. If the driveway is centered on the lot, that will give more space for the neighbors when they move in.

Mr. Bleuer asked if the intent is for the house to be centered on the lot, or the driveway.

Mr. Dale stated that they are both shown that way; he is just asking if that is what they plan to do.

Mr. Bleuer confirmed that the house and driveway are to be primarily centered on the lot.

Mr. Dale responded yes.

Chairman Mills asked the applicant if he agrees to the conditions.

Mr. Thavanesan stated that there is a fire hydrant located on the lot, he may need to move 5'-10' away from that, but he will try his best to get it as centered on the lot as he is able to.

Chairman Mills stated that the applicant is seeking a setback variance, he has a rather unique parcel. One lot over is an open land development where houses are set back, the applicant has a larger parcel than some of the neighboring parcels. There are varying setbacks along Conner Road, he does not feel that at 175' it will adversely impact the character and environmental conditions of the neighborhood.

Chairman Mills added that the applicant has agreed to mitigate the views of future neighbors along the north and south sides by planting some trees along each side of the home.

Mr. Drinkard asked the applicant if he is in landscape business.

Mr. Thavanesan responded yes.

Mr. Drinkard asked if he will run the business out of this proposed house.

Mr. Thavanesan responded no; the business is on County Road.

Mr. Drinkard confirmed that there will be no equipment on the property.

Mr. Thavanesan responded no; there will not.

Forest Rung	Aye	Gerald Drinkard	Aye	Ryan Mills	Aye
Patrick Krey	Nay	Steven Dale	Aye		

MOTION APPROVED

Appeal No. 2

Andreas Russ
Industrial Business Park
Town Code Reference: §229-100

Applicant requests a variance to construct a residential single-family home located at 9300 Wehrle Drive.

DISCUSSION:

Andreas Russ was present to represent his request, explaining that he is currently under contract to purchase the property at 9300 Wehrle Drive, contingent on obtaining a use variance to put a single-family house on the property,

Explaining that the plans call for an approximately 1,700 sq. ft. single-story, cape style home with a 2.5 attached car garage. Mr. Russ added that they plan to match the character of the neighborhood, and will be a good caretaker of the woods behind them.

Mr. Dale noted that the photo provided with the submission shows the proposed house very close to Wehrle Drive, approximately 40 ft.

Mr. Russ stated that it is closer to 100', they eventually plan to follow the standard setback regulations for that area.

Mr. Dale asked Mr. Russ if he is aware that he would be moving in to an industrial property next to him, with all of the noises.

Mr. Russ responded yes; they are aware. He and his wife and daughter took a ride on the bike path behind the business and property to investigate, and have determined that is nothing extraordinary that will bother them.

Mr. Dale commented that today it does not bother him, tomorrow is a different story. The Board will not be able to help him because it is an industrial property.

Mr. Russ stated that they understand.

Mr. Dale noted that the three lots next to Mr. Russ's are also built on industrial property.

Mr. Russ responded yes.

Mr. Krey asked Mr. Russ if he has any plans for the portion of the property that extends back towards the bike path.

Mr. Russ stated that they plan to keep it wooded, understanding that there are wetlands back there that would limit them in what they would be able to do.

Mr. Krey added that he thinks it is a beautiful lot, a home would look nice there, especially considering from this lot extending east to Gunnville Road, it is all residential houses. He does not feel that it would be out of character.

Chairman Mills echoed Mr. Krey's comments, adding that there is a good portion of residential homes along that side, it is a nice lot that has been around for a while.

Referring to the home that Mr. Russ plans to build, Chairman Mills asked if there are any elevation drawings yet.

Mr. Russ responded no; not yet. It would be premature until they know if they are able to build the house on the property.

Chairman Mills asked how far back Mr. Russ plans to put the home.

Mr. Russ reiterated that they plan to match the existing setbacks.

Mr. Drinkard stated that he upholds the Town of Clarence zones the way that they have been established; especially for properties that are not populated. They do that for the reason of setting up an area that could be an industrial zone as Mr. Russ is looking for. In this case, the houses next door are also in the Industrial Zone. Mr. Russ could have an in-trouble company next door, or any kind of company.

Mr. Drinkard added that the travesty is that Mr. Russ would be taking away a lot that could otherwise be populated by a business. He is not in favor of approving a use variance, and this is a use variance very seldom given.

Acknowledging the other homes that are on the street, Mr. Drinkard noted that 3-houses down are in an agricultural-rural zone, which allows for the houses there. The border the industrial zone across the street and behind them, and have probably been there for quite some time.

Mr. Drinkard does not feel this request is a good use of the property.

Referring to the house layout that was provided, Mr. Rung noticed that there are no windows on the south facing wall of the proposed garage. Mr. Rung asked if there is a reason to not have windows there that would match the rest of the house.

Mr. Russ stated that they just had an updated view printed off that includes two windows.

Mr. Rung stated that he also viewed this from a zoning standpoint, and there does seem to be a large area of industrial space behind the rural-residential properties. The thought that there could potentially be industrial businesses come in and develop the land, but he does not see how that could be accomplished unless they had access from the bike path. It appears that it may already be cutoff for development, with the exception of this lot.

Chairman Mills asked Mr. Russ if he knows how long this property has been on the market.

Mr. Russ stated that they first saw it listed in May, 2025.

Chairman Mills asked Mr. Russ if he knows whether it was listed before that.

Mr. Russ noted that all he was able to see is when he saw it listed in May, 2025.

Neighbor Notifications are on file, no comments were received.

Mr. Bleuer noted that correspondence was received by the Town of Clarence Assistant Municipal Engineer Joe Lancelotti stating that there is a concern there may be wetlands present on this parcel. That would be up to the owner/applicant to ensure that there are no wetlands present should there be a permit issued.

Chairman Mills asked Mr. Russ if he understands that.

Mr. Russ responded yes, he does.

In regard to Public Participation, the following resident spoke:

1. Suzanne Stang of 9285 Wehrle Drive:
 - located across the street from this property for 40 years
 - this property has been for sale on and off for many years, with many ideas coming through, but nothing able to be done
 - the reason it hasn't been able to be sold is because it is 13.9 acres of wetlands
 - the proposed house is small enough to take up the area that is not wetlands, with everything else behind it being federal wetlands
 - that is why there is no room for any other type of business, parking, etc.
 - it is also very dangerous for a business or senior housing with 2 blind curves
 - as far as noise, they do not hear that much aside from the occasional trucks beeping
 - cannot see anything industrial going in on the property

Chairman Mills asked Mrs. Stang if she has witnessed this property on the market for quite some time.

Mrs. Stang responded absolutely; and she has seen the 3 parcels sell-off which are the 3 houses that are there currently. Aside from a couple of acres, the rest are all wetlands.

With no one else wishing to speak, Public Participation was closed for this item.

Chairman Mills asked Mr. Bleuer if he is able to confirm that this property has had several potential plans through the years.

Mr. Bleuer stated that they have taken some calls of inquiry, but in his recollection, there has never been a formal submittal made for review.

Mr. Drinkard asked Mr. Russ if he is under contract to purchase the property.

Mr. Russ responded yes.

Mr. Drinkard asked Mr. Russ if he will be out money if he does not receive approval for a variance.

Mr. Russ responded only the \$50.00 variance fee.

ACTION:

Motion by Patrick Krey, seconded by Ryan Mills to **approve** Appeal No. 2 as written with the following condition:

1. use Agricultural Rural Residential Zone standards

ON THE QUESTION:

Chairman Mills noted that while this is a use variance, and the statutory criteria is different, based upon the history of this parcel as well as the size and the environmental condition, and the character of the neighborhood around it, it will not impact the essential character of the neighborhood around it.

Chairman Mills added that this property has been marketed and vacant for some time, and has been unable to realize a return in the current use, he feels that this use variance is appropriate in this instance.

Mr. Bleuer stated that this property is primarily zoned Industrial Business Park, which is the highest intensity commercial zone in the Town of Clarence. It will allow uses such as light manufacturing, warehousing, automotive uses, storage of hazardous materials, as well as other type uses. There is an adjacent industrial user that is operating, and the Town of Clarence Planning Office frequently receives complaints regarding uses that are very dissimilar in close proximity. To the future purchaser, owner of the property; be aware that there are uses that will not be consistent with your intended use.

Additionally, Mr. Bleuer requested should the Board choose to approve this, that they do allow the construction of the lot to be per the standards of the Agricultural Zone. The Industrial Zone does not have standards for the Residential development, therefore in order to issue a permit for setbacks and similar, it would be appreciated if we could be consistent with the nearby Agricultural Zone.

Chairman Mills asked the applicant if he understands what Mr. Bleuer has stated, and if he accepts the conditions of building a residential home in an industrial zone area and having nearby industrial zone properties.

Mr. Russ responded yes.

Mr. Krey reiterated that driving on Wehrle Drive from Gunnville Road toward the applicant's lot, there are residential homes all set back approximately the same distance, so he does not feel this will alter the character of the neighborhood.

Mr. Bleuer stated that should the adjacent industrial user propose expansion of the property, they would not be obligated to meet the residential zone setback requirements since this property is still legally zoned as Industrial Business Park.

Mr. Russ stated he understands and accepts what Mr. Bleuer has stated.

Forest Rung	Aye	Gerald Drinkard	Nay	Ryan Mills	Aye
Patrick Krey	Aye	Steven Dale	Aye		

MOTION APPROVED

Appeal No. 3

Davimicor, Inc.
Residential Single-Family
Town Code Reference: §229-52(A)

Applicant requests a variance to allow a 753' principal structure front yard setback located at 5695 Shimerville Road.

DISCUSSION:

Sean Hopkins with the law firm Hopkins Sorgi McCarthy was present to represent the applicant. Also present was the applicant, Frank Dec.

Mr. Hopkins went through a Power Point presentation, which Chairman Mills labeled Exhibit A. Also, a document titled: "Findings – Clarence Zoning Board of Appeals" as Exhibit B.

Mr. Hopkins noted that this property is 11.34 acres, they are proposing a single-family home approximately 5,000 sq. ft.

Mr. Hopkins continued, noting that an area variance is required for what they are proposing, which is a setback of 753 ft. 3 in.

Referring to the two houses along Shimerville Road, Mr. Hopkins noted that those are the existing houses that established the front yard setback.

Mr. Hopkins stated that this site has a private driveway that was installed in connection with other single-family homes that are located to the back of this property.

Mr. Hopkins stated that on February 8, 2022 the Zoning Board of Appeals granted this exact same variance. They are back before the board because the previous variance expired, and also because they are requesting two of the conditions be modified that were imposed by the Zoning Board at that time.

Reviewing the requested, modified conditions, Mr. Hopkins noted that that any future proposed lots would be limited to three lots. It is still Mr. Dec’s goal that the homes would be for immediate family members, but he feels that a condition limiting any future homes on this site to immediate family members is of questionable legality.

Mr. Hopkins added that they are going to agree to a condition stating a 6' tall solid fence shall be installed along the western property line that is contiguous with 5745 Shimerville Road. They feel that will provide more effective screening, and they do plan to install landscaping as well. They do not have specifics right now, but the best screen for that house would be a 6' tall solid fence.

Mr. Hopkins continued to review slides, color renderings that show the proposed layout of the house on the property.

There is an existing driveway that services existing houses. In regard to the existing driveway, Mr. Hopkins noted that one of the neighbors owns half while Mr. Dec owns the other half. There is an existing recorded access easement that provides perpetual legal rights to the parcel that they are presenting.

Mr. Hopkins explained that as is the case with any request for an area variance, this is governed by a balancing test of the 5 criteria set forth by New York State Town Law which requires the Zoning Board of Appeals to balance the benefits received by the applicant if the requested relief is granted, and weigh those against any resulting detriments to the health, safety, and welfare of the community.

Mr. Hopkins reiterated that this variance has previously been granted, but has since expired.

Mr. Hopkins stated that the benefits are quite clear; they will finally be able to proceed with this project, it is through no fault of the board that this home did not proceed previously.

In terms of whether there is a detriment to the health, safety, or welfare of the surrounding neighborhood or vicinity, Mr. Hopkins stated that the answer to that is no. It is a very large parcel, there will be a considerable distance between this house with a 753' setback and the existing two homes that are closer with setbacks of 165'.

Mr. Hopkins stated that as he has indicated, they are more than willing to install a 6' tall solid privacy fence along the shared property with the nearest property on Shimerville Road.

Regarding the 5 criteria to be considered, Mr. Hopkins noted that they believe the answer to whether the request will cause an undesirable change in the neighborhood character or to nearby properties, they believe the answer is no. While they do require a rather substantial setback, if you drive down that section of Shimerville Road you will see there are various uses, lot sizes, and setbacks. This is not a road within the Town of Clarence that has a relatively uniform front yard setback.

The second criteria as to whether the benefits they are seeking can be achieved by other means feasible for them to pursue other than the variance; Mr. Hopkins stated that the answer to that is not. That determination has already been made by the previous Zoning Board on February 8, 2022. This is the location that allows the applicant to accomplish his objectives for this project, and considering this has already been approved, there is no need to consider other locations.

Mr. Hopkins reiterated that they are developing this so that they could allow for one or two additional single-family homes in the future. If they do choose to pursue that in the future, there is a completely different review process that must be done and approved.

In regard to whether the requested relief is substantial, Mr. Hopkins noted that the key here is not to quantify the deviation from the underlying code requirement, but it is really whether there will be any harm. It is their position as set forth in the application, the granting of this variance which was previously granted, will not result in any harm.

Mr. Hopkins stated that in regard to the criteria as to whether the request will have adverse effect or impact on the physical or environmental conditions in the neighborhood. Mr. Hopkins stated that given the minor nature of this project, this is what is known as a Type 2 Action pursuant to the State Environmental Quality Review Act (SEQRA). This means that it is categorically exempt from an environmental review, which supports their position that there are no protected environmental resources, wetlands, or mature trees where the proposed home will be located.

Mr. Hopkins stated that they do acknowledge this would require a building permit from the Town of Clarence Building Department. This will ensure compliance with the energy code, drainage requirements, fire access, installation of an additional fire hydrant, if necessary, etc.

Finally, as to whether the alleged difficulty is self-created, Mr. Hopkins stated that town code explicitly states that this cannot be the basis for the decision of the Zoning Board. They have knowledge of the zoning code, and do accept that that could be viewed as being a self-created difficulty. However, the overall balancing test and the remaining criteria provide more than ample justification for the granting of requested relief.

Mr. Hopkins stated that in regard to a letter from the owner of 5745 Shimerville Road, he believes it is that property owner that previously sued the Town of Clarence when the area variance was granted. Ultimately, the Town of Clarence and Mr. Hopkins's client prevailed in court.

Mr. Hopkins responded to some of the questions and concerns that were stated in the letter from the neighbor, starting with the question about firetruck turnaround. Mr. Hopkins stated that is already exists, and complies with the code. If an additional fire hydrant is required, they will do that, and acknowledge that fact.

Mr. Hopkins stated that the barn location is not subject to the variance application, noting that the conceptual plan shows some accessory structures none of which have been finalized, are currently proposed, or require any relief from the Zoning Board of Appeals. What has been presented is limited to the single-family home; the exact variance that was previously granted.

Mr. Hopkins added that additional building lots if and when they may occur in the future are not subject to this variance application, and as previously indicated, it is their position that this will not result in an undesirable change to the character of the neighborhood.

Mr. Hopkins stated that it is basically the same relief with modification of the conditions. Based on all of the information that has been presented, including all of the information previously considered by the Zoning Board of Appeals, that they request are incorporated in to the record for tonight's preceding that there is ample justification for granting the exact same relief as previously proposed, subject to the two proposed conditions that have been set forth.

Referring to Mr. Hopkins reference of a future subdivision, Mr. Donohue noted that is not an issue to be addressed at all at tonight's meeting. Tonight, is only about whether they will receive relief from the prior condition that a potential subdivided lot be for family only, and can only be one.

Mr. Donohue confirmed with Mr. Hopkins that it is the only condition they are requesting be removed.

Mr. Hopkins responded yes; but they are going to limit it to a potential of 3 lots at any point of time in the future, acknowledging that it is all subject to a separate review process. They ask that it not be limited to family members.

Mr. Donohue reiterated that that would all be subject to a future board and their determination. The offer of a limit of potentially 3 lots is appreciated, but all of those questions are better served for another day.

Mr. Hopkins stated that the reason he brings them up is because they are conditions that were previously imposed.

Mr. Drinkard stated that he has read all of the documents pertaining to this variance request and the previous request, with an extensive amount of testimony on the record. The testimony that Mr. Drinkard finds best to discuss because it almost resolves it in subject to meetings that are on the record previously. That dealt with the blueberry farm, Mr. Drinkard wondered why it was relevant. Within the previous testimony, Mr. Dec stated that his blueberry farm was dead. Mr. Drinkard noted that if you take the word "blueberry" out of the equation, it becomes a farm and you can grow anything that you want.

The discussion is regarding a parcel of land, and the situation of houses on that property. Mr. Drinkard stated that his personal opinion, he would place the house exactly where it is proposed, and as far away from the existing homes as possible.

Mr. Drinkard added that in subsequent discussion regarding future lots, the Planning Board will then take in to consideration the proximity of proposed houses to existing houses.

Mr. Drinkard sees the previous motion made was a good motion, and aside from making some adjustments, he has no issues with it.

Mr. Drinkard stated that he does not have any questions, they have all been answered.

Chairman Mills asked if the blueberry farming will still occur on this parcel.

Mr. Hopkins responded no; the blueberry farming has ceased. Mr. Dec made an attempt at it, but it did not work out as he had expected.

Regarding the fence that is being proposed as a potential condition, Chairman Mills asked if it will span the entire length of the west property line, or just the length of the proposed house.

Mr. Hopkins responded that it is for the entire westerly length of the property.

Chairman Mills asked if they contemplate it being a wood stockade fence, or a white vinyl.

Mr. Hopkins stated that they would agree to a condition of a 6' tall solid fence. It will not be chain-link; it will not be 4'.

Chairman Mills noted that the previously imposed landscape condition, Mr. Hopkins is requesting be removed. They are showing a variety of landscaping in the renderings that they have submitted, and asked if they have contemplated landscaping along the east property line.

Mr. Hopkins asked that the Board not make specific requests to the type of landscaping, and a time frame for the landscaping. Mr. Dec does plan to plant landscaping, but is unsure at this time exactly what types.

Chairman Mills asked Mr. Hopkins if the applicant has even a rough idea as to the planned plantings along the east property line.

Frank Dec, the applicant, addressed the Zoning Board with regard to the types of landscaping they have considered.

Mr. Dec stated that they have contemplated various types of landscaping, it is a large piece of property. He believes that once they finalize house plans and the exact location of the driveway in to their property, they will have a greater consideration given as to the landscaping. At this point, they have not finalized any of that because they need to get the variance and setback settled first.

Chairman Mills stated that while he understands what Mr. Dec is saying, he is here today seeking a larger variance, and this is the Board's chance to impose conditions that relate to the variance.

Mr. Dec explained his concern with a condition regarding the east side of the property, stating that they own the private road on the east line and there is very limited room between that line and the neighbor's homes to the east of that road.

Mr. Dec noted that he thinks the road is the property line, mandating landscaping on the east side of the road would be to cut off their property to their own road which is the front yard.

Mr. Dec stated that he is willing to agree to doing a lot of landscaping, he is not sure what conditions he would accept for that property line. They are very friendly with the neighbors to

the east, and are happy to work with them and to be amenable to whatever landscaping they come up with.

Chairman Mills asked Mr. Bleuer if a referral to the Landscape Committee to address the east side would be something that should be done.

Mr. Bleuer stated it would be quite challenging.

Mr. Krey stated that he felt the presentation and material tonight to be very persuasive.

In line with the concept of landscaping, Mr. Dale asked what can be done with the dead blueberries. They do not look good.

Mr. Dec agreed, they do not look good. There has been discussion about keeping some of them, but most of them will be removed. They tried for two years to revitalize the blueberry farm, to no avail. It is not sustainable to run a blueberry farm in a residential neighborhood. They will probably keep some of them, but at this point he can not say how many or to what extent.

Mr. Dale stated that rather than adding landscaping, sometimes removing landscaping is a big improvement.

Mr. Hopkins stated that they will want to establish a yard.

Mr. Dale added that would be great.

Mr. Rung asked to clarify the location of the proposed fence, and if it is intended to go solely behind 5745 Shimerville Road.

Mr. Hopkins responded yes; that is what they are currently proposing due to the fact that the property owner has opposed this proposed project.

Referring to the rendering, Mr. Rung asked about the westerly swoop of the driveway, and if it is proposed to remain on the property.

Mr. Hopkins responded yes.

Mr. Drinkard noted that when they discuss the proposed fence, there is a lot of language that needs to be included pertaining to upkeep and care of the fence. Considering the beauty of the multiple lots and homesteads in that area, a white fence will be alien when making a pretention for staggered pine trees. He would also advocate that the pine trees not be on a berm, because trees at grade will survive much better than if on a berm if there is already wet soil on site.

Addressing Chairman Mills, Mr. Drinkard stated that he feels they should reconsider the proposal for any kind of 6' fence.

Mr. Hopkins stated that it is his understanding that there was a concern by the adjoining property owner previously that they did not want new trees to be planted too close to the property line. However, if it is the Board's preference that the applicant install a row of 5' - 6' tall, staggered every 15' of evergreen trees along the rear property line, they would be willing to do that. Per Mr. Drinkard's comments, if the Board feels that is preferable from a screening perspective, they will agree to that, close to the property line so that there is not an awkward row of pine trees across their front yard.

Discussion continued regarding how to plant trees, and the growth of the trees versus a 6' fence.

Neighbor Notifications are on file, email correspondence from 5715 Shimerville Road and 5745 Shimerville Road have been received, both have been passed on to the applicant as well as the Zoning Board, and placed in the project file. Both of the comment letters are in opposition of this variance request.

In regard to Public Participation, the following residents spoke:

1. Max Levin of 5685 Shimerville Rd.:

- owns the house directly behind the proposed house
- there is an easement between the driveways
- does not want additional homes being built, or a blueberry farm to be subdivided and sold off
- there is a quietness to the blueberry farm with constant wildlife that lives there
- does not want the lots divided, it will spoil the ambiance of the area
- ok with the applicant building his home, but no additional homes

Chairman Mills reiterated that tonight's request is only for one home on the parcel. In the future there could be more, but this applicant would have to return to either this board or potentially another board.

Mr. Bleuer confirmed Chairman Mills' statement.

2. Jim Purcell of 5745 Shimerville Rd:

- reviewed the process and project over the past years and how it has affected him and his family

Mr. Donohue interrupted Mr. Purcell to inform him that he must keep his comments to the matter at hand, which is tonight's variance request.

Mr. Purcell continued:

- concerns regarding curb cuts to Shimerville Rd.

Mr. Donohue reiterated that topic is not an issue here tonight, this board does not have the authority to grant curb cuts.

- referred to his correspondence which he listed the 5 criteria for an area variance, and why he believes them to be against reasonable conditions.
- stated that the applicant purchased a single-family home building lot on a private street with a big backyard
- it should be treated like any other property in a residential area in a cul-de-sac and a big backyard
- stated the applicant's proposed house is in a flood zone, and questioned septic/sewers, berms, utilities
- feels the proposed home should be along the driveway, not at a 165' setback

Referring to the proposal for a fence or pine trees, spruce or similar, Chairman Mills asked Mr. Purcell if he has a preference for behind his property line.

Mr. Purcell stated that there is an exorbitant amount of wildlife, he has several deer living behind his house. He can only assume that wildlife will be an issue here, and if this variance is granted, he would like to see two rows of staggered pine trees. Not just behind his home, but he is sure his neighbor would also appreciate it. This is an area of nature, he thinks having a whole lot of trees would be better than having a fence, but what happens if the deer eat all the trees.

Mr. Purcell stated that they do not want houses in the blueberry fields, and that happened with a previous owner of the property as well.

Mr. Purcell continued to state his concerns and thoughts for the blueberry farm property.

Chairman Mills asked Mr. Bleuer if a variance would be needed for the applicant's proposed barn.

Mr. Bleuer responded no; it is zoned Residential Single-Family, however a parcel that is 5 acres or greater in a residential zone has all the rights of an agricultural property, as long as he proposes accessory structures that meet town code, a building permit could be issued.

Chairman Mills reiterated that the only request in front of the Zoning Board at tonight's meeting is for a setback variance.

Mr. Purcell suggested a 500' setback along the private road, not the requested 753'.

Mr. Purcell continued to voice his concerns.

3. Max Levin of 5685 Shimerville Road returned to voice additional concerns:
 - referred to the plans, noting there is approximately 125' from the main private road, and asked why the home would not be built closer to Shimerville Road than to his home
 - concerns with the private driveway built off of the applicant's proposed home appears to be very close to the common driveway located behind the blueberry farm

Chairman Mills stated that there are no dimensions on the color renderings, that is something that would be on a Building Permit and be reviewed by the Building and Engineering Departments.

Mr. Bleuer noted that in the Residential Single-Family zone, setbacks for driveways to property lines is just enough to accommodate drainage, as little as 3’.

Mr. Levin stated that it is a one-lane road, continuing to voice his concerns regarding the driveway. Requests that the board looks again at the distance of where the proposed home will be built so that it is not an obstruction to his home. Continued to discuss the location of the proposed home, including the location of the septic system.

Mr. Donohue reminded Mr. Levin that the Zoning Board has no authority with regard to septic systems, and the only issue on the table for tonight is the requested setback.

Mr. Levin stated that he objects to the variance from the common easement that he uses every day, and requests the house move closer to Shimerville Road, away from the common road.

Mr. Purcell returned to speak.

Chairman Mills asked him to limit his remarks to new information.

Mr. Purcell stated regarding this application for the variance; the property between his and Mr. Shariff is draining on to his property severely. Bad enough that the berm placed every spring and fall. Since the applicant’s property has not been cared for, he is flooded and it is washing out his driveway. He wants the drainage addressed on the piece of land between himself and Mr. Shariff’s property whether this variance is approved or not.

4. Adam Petri of 5665 Shimerville Road:

- indifferent as to where Mr. Dec places his proposed home on the property
- understands that it is not up for discussion at tonight’s meeting, but wants to go on the record stating he does not understand why multiple homes on the property is even being mentioned, it has never been an option
- easement agreement is set-up to allow one home on the property only
- previous requests for a minor subdivision on the applicant’s parcel were denied, therefore it should not even be a question that there will only be one home permitted on this lot

Chairman Mills stated that in terms of requested relief for tonight’s meeting, it applies to only one home on the property. The applicant could eventually return to seek additional homes, but it may not be in front of this board.

In regard to the previous condition that the applicant is attempting to modify, Mr. Petri asked if that impacts the board’s decision if and when it does go in front of a board.

Chairman Mills stated that if this variance is granted without any conditions in relation to other homes, this applicant will still need to return to this or another board before any additional homes are potentially built on the property.

Mr. Bleuer stated that it does not matter what is decided in terms of the number of homes at tonight’s meeting; it is a moot point until a time and place when a property owner seeks approval

to build more than one home. This board can come up with whatever they would like to tonight, but ultimately it does not matter until the applicant chooses to apply to build another home.

Mr. Bleuer stated that they are looking at the current code, the current law, current standards, and going through the entire process again.

Mr. Petri asked if there is any way of a condition of 0 additional homes.

Mr. Bleuer stated absolutely, the Zoning Board can choose to apply and condition that they wish, but it does not matter because a new request could propose to modify that condition.

Mrs. Petri asked why there was a condition placed to begin with.

Chairman Mills stated that as Mr. Bleuer explained, the Zoning Board can put conditions on, but when a there is a new application, the condition can then be removed or altered depending on the situation.

5. Michelle Petri of 5665 Shimerville Rd:

- stated that she does not want any additional houses to be built on the property.

With no one else wishing to speak, Public Participation was closed for this item.

Mr. Krey addressed the neighbors, stating that the applicant has been reasonable in stating different conditions that he would be willing to accept such as a 6' tall fence, or some trees. If the Zoning Board approves this request and places any conditions on it, he wants to be sure they address the concerns of the neighbors.

Mr. Purcell stated that if the variance is approved, stating again that he does not think it should be, that he would prefer two rows of trees to make as much of a wall as possible. With a condition that the trees are to be perpetually cared for.

Mr. Purcell added that not only his house, but Shariff's house should also have the wall of trees as well. Additionally, drainage is a nightmare.

Mr. Krey reiterated once again, that drainage is a separate issue that is not being addressed at tonight's meeting.

Discussion continued regarding the risks of planting trees versus a fence.

Mr. Krey told Mr. Purcell that understanding he does have legitimate, valid concerns about the impact on his property, he does not want to go unaddressed. If there are conditions imposed, Mr. Krey wants Mr. Purcell to feel that the board is remediating his concerns.

Mr. Purcell stated that he feels that generally, anyone would say the more trees the better.

Mr. Hopkins returned to address neighbor concerns, starting with Mr. Purcell, Mr. Hopkins noted that he did not really present anything pertaining to the variance criteria.

In regard to allegations that they can take seriously such as trespassing, criminal mischief, and others, Mr. Hopkins noted that his concerns regarding the viability and maintenance of landscaping, he believes the solution in this instance is a fence. Establishing a fence along the property line that clearly shows where the property line is, so that the property owners do not need to interact in terms of their properties.

Mr. Hopkins addressed Mr. Levin, stating that it is their goal to put the house as far back as they are able to from Shimerville. The driveway that they are showing on the rendering is for illustrative purposes only, it will not be only 3' away.

Circling back to the evidence that has been submitted, and the balancing act of the five criteria for an area variance, as well as the fact that the same relief has been previously granted, there is ample justification.

Regarding the conditions that the applicant is proposing, Mr. Hopkins stated that if the board states it is not in their prevue and to leave it for the future, they are ok with that.

Addressing Mr. and Mrs. Petri, Mr. Hopkins explained that they were not mentioning that so that in the future they could say that it was discussed with the Zoning Board of Appeals at tonight's meeting. Making that clear for the record, they were proposing that because of the condition that was previously approved.

Mr. Dec stated that a fence would be preferable to them, if a fence behind both neighboring properties on Shimerville Road would be preferred, he would be happy to do that.

Mr. Rung asked if a fence behind both properties would extend as a solid fence.

Mr. Dec responded no; because they own a piece of property between those two houses.

Mr. Drinkard asked Mr. Dec if he would describe the proposed fence. Would it be a 6' tall white vinyl fence.

Mr. Krey added that a fence application would be necessary also.

Mr. Hopkins addressed Mr. Drinkard, stating that they have not thought that far in to specifics just yet.

Discussion regarding fencing continued.

Mr. Krey asked Mr. Purcell if a 6' tall solid privacy fence would be sufficient.

Mr. Purcell stated that a 6' tall solid privacy fence would be acceptable.

Mr. Purcell added once again that he submitted the 5 reasons why the variance should not be granted, and asked Mr. Krey if he received a copy.

Mr. Krey responded yes; he did.

Mr. Levin asked if he could return to the podium to address more concerns, stating that his biggest concern is that his home is on a higher elevation than the blueberry farm that is in front. Therefore, he does not want to have a privacy issue with the house being so close to his. Moving it closer just for the privacy issue, it is not a big distance from his home to Mr. Dec's.

Mr. Dec explained that the color picture rendering does not show distances well. The survey plan shows that the corner of the house is approximately 130' from the easement road, then the other side of the road, and then Mr. Levin's house is behind that. Mr. Levin's house is indeed higher, Mr. Dec stated that his house will probably be a single-story structure, so Mr. Levin's house will be well above Mr. Dec's house, with a couple hundred feet between the houses.

Mr. Levin continued to express his concerns with his privacy and requesting the applicant's house be moved closer to Shimerville Road.

Mr. Krey reminded Mr. Levin that they are only looking at the variance for the setback.

Mr. Levin stated that is what he is asking – that the house be moved closer to the main road, and away from his home.

Chairman Mills asked Mr. Levin if he is proposing perhaps a 653' setback rather than 753', which would be 100' closer to Shimerville.

Mr. Levin responded yes.

Chairman Mills asked Mr. Dec if he would consider that.

Mr. Dec responded unfortunately, with the neighborhood structure, he would not want to move closer to Shimerville Road.

Chairman Mills explained to Mr. Levin that his comments are on the record, and the board takes all public comments in to consideration.

Mr. Levin asked if a decision is made tonight.

Chairman Mills responded that it may be, yes.

Addressing Mr. Levin's concerns, Mr. Hopkins reiterated that Mr. Dec's proposed home is approximately 125' away from the private driveway, so it is still a considerable distance.

Mr. Hopkins stated that he would also have concerns with reducing the variance given the history of this litigation. Asking for the same relief that was previously granted from his perspective, puts them in a much better legal perspective.

Mr. Dale added that the backyards are not facing each other. Mr. Levin's backyard is facing away from the proposed new house.

Mr. Hopkins repeated their request that the variance request be granted with the 2 proposed conditions: 1. Maximum of 3 lots if the board deems it appropriate, and 2. A solid 6' privacy fence is installed along the rear (east) property line of the two houses along Shimerville Road.

Mr. Dec suggested the condition regarding multiple lots be dropped and not considered as a condition at tonight's meeting.

ACTION:

Motion by Patrick Krey, seconded by Steven Dale to approve Appeal No. 3 as written, with the following condition:

1. 6' tall solid privacy fence to be located along the western property line, which is the rear property lines of 5745 Shimerville Road and 5715 Shimerville Road, running the width of each lot

ON THE QUESTION:

Mr. Krey stated that looking at this property and the surrounding properties in an aerial photo, you can see that there are houses placed at various different setbacks. Earlier tonight there was an application that he voted against because the surrounding properties were all pretty uniformed as far as placement. That does not pertain with this property, as there are multiple houses set back at varying distances from the street. By granting this variance, the character of the neighborhood is not being altered at all due to the homes that are currently situated like that.

Mr. Krey added that granting this variance will not have any detriment to neighboring properties, and will not alter the character of the neighborhood. The lot itself is a very unique and irregular lot; it is not a rectangular lot similar to the adjacent lots.

Mr. Drinkard added:

- 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;
 - it is believed that there would not be an undesirable change in the character of the neighborhood, or a detriment to nearby properties based upon the evidence that they have heard. Each variance is unique in its own right, and this is a very unique parcel in shape and size. Based upon that, the placement of this home will help restrict 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;
 - it was stated that while there are other possible placements on this parcel for the home, 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;
 - it was noted that this particular point is up for debate. Due to the uniqueness of this parcel, and how the homes are situated around it, this does not appear to be substantial when weighing in all of those factors such as line of sight between all neighbors.
- d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - it was stated that the Board 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 the lots in the immediate area.
- 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.
 - it was stated that an argument could be made that this was self-created to some extent. When taking in to consideration the large size of the entire subdivision, and the 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.

Chairman Mills added that all of the minutes and exhibits from prior meetings relating to this particular application are being included and incorporated in to the record.

Mr. Donohue stated that the prior variance and all of the conditions have expired, as it has been longer than one year. That variance and all of those previous conditions are all null and void as of today. Only the conditions and granting that are made today are what the applicant has to abide by.

Mr. Donohue also added that this is a low-density use for this property, and a different applicant could have submitted a different plan that could have added many more houses than what is being proposed.

Mr. Hopkins added that as of today, the only conditions are those that the Zoning Board may impose tonight.

Mr. Bleuer stated that the applicant is required to meet all building and fire standards for the construction of this lot. By issuing this variance setback, this Board is not making any assumptions as to the feasibility of the home construction, therefore there will be access as well as fire protection considerations by the Building Department.

Additionally, Mr. Bleuer stated that the Town of Clarence will make no assumptions as to the feasibility of the splitable nature of this lot. Whether it is one, several, many or even none until such time that it is reviewed and proposed, we are making no assumptions that any additional lots are available.

Mr. Bleuer added that a fence permit is required before a fence is constructed, and can be issued through the Planning Department.

Mr. Krey stated to Mr. Purcell that when the fence is being installed, the workers will need to be on his property to assure that the fence is right on the property line, and confirmed that it is acceptable to him.

Mr. Purcell stated that anything that is standard is acceptable.

Forest Rung	Aye	Gerald Drinkard	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Steven Dale	Aye		

MOTION APPROVED

Meeting adjourned at 7:51 p.m. with a motion by Steven Dale.

MOTION CARRIED

Amy Major
Senior Clerk Typist