

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday, April 14, 2026

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

The Zoning Board led the pledge to the flag.

Zoning Board of Appeals members present:

Chairman Ryan Mills	Patrick Krey	Richard McNamara
Gerald Drinkard	Steven Dale	Forest Rung

Town Officials present:

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

Other Interested Parties:

Jennifer Karg	Mark Dunlap	Michael Metzger	Nicholas Lunetta
Brianne Zhang			

Motion by Gerald Drinkard, seconded by Steven Dale, to **approve** the minutes of the meeting held on March 10, 2026.

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

MOTION CARRIED

OLD BUSINESS

Appeal No. 5 – From the May 13, 2025

Meeting
Mark Dunlap
Residential Single-Family
Town Code Reference:
Relief from a previous Zoning Board of Appeals Condition of Approval.

Applicant requests relief from a previous condition of approval by the Zoning Board of Appeals, which required the utilization of brick on the front façade of a newly constructed garage located at 5331 Greenhurst Road.

DISCUSSION:

Mark Dunlap was present to represent his request, explaining that when the project was underway, they got estimates from their contractor. Three of the estimates came in at \$15,000 - \$20,000 to reuse the brick that was salvaged from the south side of the house, on to the front of the house.

Mr. Dunlap stated that it was purely an economic decision, their Heloc was up to 99.5% of what they had allocated for the project, and for a small fraction of that they extended the siding around the house. He simply failed to remember that it was in the discussion from the original Zoning Board meeting, his architect was at the meeting, he was not. They went ahead and put the siding all the way around, and the neighbors all love it, it looks really nice.

Mr. Dunlap stated that they still have items that are outstanding, they need to do landscaping along the side yard, and there are all kinds of subsidiary stuff that still needs to happen.

Chairman Mills asked Mr. Dunlap if his architect informed him of the condition to use brick.

Mr. Dunlap stated that he received the minutes, and he said that it was in the minutes that the brick was to be re-used. He did not realize that it was a condition of the approval.

Mr. Drinkard stated that he did visit the property, and noted that in the original variance request there was no mention of landscaping. As Mr. Dunlap has indicated, the landscaping will be approximately 3' along the side of the house where the new door was put in, to the heat pump.

Mr. Dunlap stated that he is receiving quotes for not only repairing both the neighbor's yard and his yard, but also adding the 3' landscaping bed to plant flowers and shrubs.

Mr. Drinkard stated that if this appeal is approved, would Mr. Dunlap agree to the 3' landscaping bed being made a condition.

Mr. Dunlap responded absolutely, yes.

Mr. Drinkard stated that they also discussed the open area leading to the back, at the original meeting for this variance request, Mr. Dunlap's architect managed to clarify some things, while other questions were left vague. He was unsure about the intended landscaping, and was unable to speak to it, specifically regarding a potential walkway leading to the back. Mr. Drinkard stated that Mr. Dunlap's architect responded "probably not". The rest of the land between Mr. Dunlap's and his neighbor's property currently has an unattractive shrub.

Mr. Dunlap explained that the tree that was destroyed will be removed, and grass seed will be planted.

Referring to the previous meeting minutes and conversations with Mr. Dunlap's architect, Mr. Drinkard asked Mr. Dunlap if he will be putting the solar panels back on his house.

Mr. Dunlap stated that they are back on already.

Mr. Drinkard stated that he checked around the neighborhood, and the house across the street from Mr. Dunlap has siding on the house, but all of the other houses on the street do have brick. He was concerned Mr. Dunlap's house would stand out, but it looks nice.

Mr. Krey asked how it was discovered that the condition had not been met, was it when the building inspector did the final inspection.

Mr. Dunlap responded yes.

In terms of landscaping, Mr. Krey asked Mr. Dunlap if he intends to do it both in the front of the house where the vinyl siding is, and also on the south side of the home. Mr. Krey asked how far back the landscape extends.

Mr. Dunlap stated that it will run from the front of the house to approximately $\frac{3}{4}$ of the way back, to where the heat pump is located.

Mr. Krey asked if this variance request is approved, would Mr. Dunlap be in agreement to a condition imposed for the landscaping that was just described.

Mr. Dunlap responded yes.

Mr. Dale asked if when doing the siding in the front, was the brick façade removed first.

Mr. Dunlap responded yes.

Mr. Dale asked if the siding was placed over the brick.

Mr. Dunlap responded no.

Mr. Dale asked how the hole over the door will be fixed, it appears there are a couple of bricks missing.

Mr. Dunlap responded yes; they will be replaced.

Mr. Rung noted the large gap in concrete at the front of the driveway, as well as a large gap in the siding. He asked Mr. Dunlap if those will be corrected.

Mr. Dunlap responded yes.

Neighbor Notifications are on file, no comments received.

In regard to Public Participation, no one spoke.

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

ACTION:

Motion by Patrick Krey, seconded by Gerald Drinkard to **approve** Appeal No. 5 under Old Business as written, with the following condition:

1. 3’ bed of landscaping along the south side of the home from the front of the home to the heat pump.

The applicant understands and agrees to this condition.

ON THE QUESTION:

Mr. Krey noted that as Mr. Drinkard pointed out, there is another home on the street that also has a mixture of brick and vinyl siding, so it is not entirely out of character with the neighborhood. The condition put in place should help to mitigate any issues with the view of the siding on the house.

Gerald Drinkard	Aye	Richard McNamara	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Steven Dale	Aye		

MOTION CARRIED

NEW BUSINESS

Appeal No. 1

Stephen Panaro & Jennifer Karg
 Residential Single-Family
 Town Code Reference:
 1) §101-3(C)(2)
 2) §229-55

Applicant requests variances:

- 1) of 2' to allow a 6' fence to be within the front yard setback; and
- 2) to allow a detached accessory structure (shed) to be located within the front yard setback;

located at 9437 Douglas Fir Court.

DISCUSSION:

Jennifer Karg was present to represent the request, adding that they would like to replace their fence that blew over with all the winds this past winter. They had a 6’ fence along the Pine Breeze side of their property, which because they are on a corner lot, is considered their front yard.

Ms. Karg stated that they did not find any variances for the previous fence that had been there since approximately the 1990’s.

Regarding the second prong of their request, Ms. Karg added that their shed was also damaged from a tree, and they would like to replace the shed as well. The shed is also located in the side yard, considered the front yard, so they are also requesting a variance for that as well.

Mr. McNamara asked if the proposed fence will be identical to the previous one.
Ms. Karg responded yes; it will be pressure treated, and they will stain it.

Mr. McNamara asked if the proposed fence will be in the exact same location.

Ms. Karg responded yes.

Mr. McNamara asked what size the proposed shed is.

Ms. Karg responded that they are hoping to get a 10' x 14' shed.

Mr. McNamara asked Mr. Bleuer if that is an allowable size.

Mr. Bleuer stated that from a zoning standpoint, 200 sq. ft. is maximum in a Residential Single-Family Zone.

Mr. McNamara confirmed with Ms. Karg that there was a shed there previously, in approximately the same location.

Ms. Karg responded yes.

Chairman Mills asked if the proposed shed was in the same location previously.

Ms. Karg stated that it used to be in a different location, but was moved because the original location is at a very low spot in the yard, which caused continuous flooding. It was then moved to the other corner of the yard on the Pine Breeze side, where it is now located. They want to restore it back to the Pine Breeze location.

Chairman Mills asked if there is another fence around the pool, or if this will be the only fence.

Ms. Karg stated that this is the only fence around the pool.

Chairman Mills asked Mr. Bleuer if this fence went up originally without a permit back in the '90's.

Mr. Bleuer stated there was no record found for a fence at this property.

Mr. Krey asked if the code has always mandated that a fence can not exceed 4' on a side yard that is recognized as a front yard.

Mr. Bleuer responded that he can only speak to 2005, it has existed since 2005.

Mr. Krey asked if all of the trees that are in close proximity to the fence will be disturbed when installing a new fence.

Ms. Karg stated that the trees are far enough away from the fence line that it should not be an issue.

Mr. Dale asked if the original shed was also 10'x14', or was it smaller.

Ms. Karg responded that she does not recall the size of the original shed, it was there when they moved in to the house.

Mr. Dale added that because of the way the new shed outline was staked, it will not have a 10' setback to where the fence is proposed to be located.

Mr. McNamara asked Mr. Bleuer what the setback is for the proposed shed.

Mr. Bleuer stated that there is no setback because sheds are not allowed in the front yard. From the backyard, the setback is 5'.

Mr. Rung asked Ms. Karg if she knows who the property owner is to the east.

Ms. Karg responded that she believes that it is Zang's property, it is a commercial business.

Neighbor Notifications are on file, no comments received.

Mr. Bleuer noted that correspondence was received from Joe Lancellotti, Assistant Municipal Engineer recommending that there be written approval granted by both National Fuel and NYSEG, since this proposal falls within their easements.

Ms. Karg stated that they have reached out to National Fuel, and are waiting for their written response.

In regard to Public Participation, no one spoke.

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

Mr. Drinkard asked if the location of the proposed shed is where the stakes are.

Ms. Karg responded yes.

Mr. Drinkard noted that the stakes are located approximately 1' away from a black chain link fence.

Ms. Karg stated that it is their fence.

Mr. Drinkard confirmed that the black chain-link fence that is there currently, is the applicant's fence.

Ms. Karg responded yes.

Mr. Drinkard asked if that is the fence that was installed originally because of the pool.

Ms. Karg stated that she assumes so, the fence was there when they purchased the house.

ACTION:

Motion by Patrick Krey, seconded by Richard McNamara to approve Appeal No. 1 as written, with the following condition:

- 1. written documentation from National Fuel and New York State Electric and Gas (NYSEG) shall be provided to the Building and Planning Departments before permits are issued.

ON THE QUESTION:

Mr. Krey noted that this request is unique and distinguished from other similar appeals before the board. The fence that is proposed is replacing a fence that is already there, with the same dimensions, materials, and very similar overall appearance. It will be an improvement in the appearance, as the current fence is dilapidated.

In terms of the shed, Mr. Krey added that this request is also unique in that the property closest to the shed is a commercial property, and both the fence and the shed are going to be almost completely obstructed by all of the trees in terms of views from the street.

Chairman Mills added that because this fence was pre-existing and in a deteriorated state, the new fence will not in any way impact the environmental or aesthetic conditions of the neighborhood.

The applicant understands and agrees to the condition.

Gerald Drinkard	Aye	Richard McNamara	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Steven Dale	Aye		

MOTION CARRIED

Appeal No. 2

Matthew Kulhanek
Residential Single-Family
Town Code Reference: §101-3(C)(2)

Applicant requests a variance of 2' to allow a 6' fence to be within the front yard setback located at 8135 Clarherst Drive and SBL: 43.09-1-17

DISCUSSION:

Present on behalf of the applicant is his realtor, Nicholas Lunetta.

Chairman Mills asked who the legal owner of the property is.

Mr. Lunetta stated that the seller is Gerald Dewes, with Mr. Kulhanek being the prospective purchaser.

Mr. Lunetta has written permission by way of an authorization form signed by the legal owner to represent him at this meeting.

Mr. Lunetta explained that they are seeking a variance for a fence located on the east side of the property. Practically this is the side yard of the property, but technically it has frontage on Poplar Hill, making it a front yard.

Mr. Lunetta stated that the reasoning for the desire to have the fence at 6' is to disassociate the property from Poplar Hill Road. It is a busy intersection; they would like to provide additional safety for both dogs and children.

Chairman Mills confirmed with Mr. Lunetta that his client is under contract to purchase the property, contingent upon this fence variance being granted.

Chairman Mills asked if the fence across the street on Poplar Hill has a fence located along the same area.

Mr. Lunetta stated that he is not sure; there is a fence along the north side of the property facing Clareherst Drive, and a lot of greenery on the opposite side, there may be a small fence.

Chairman Mills asked if the seller owns two parcels.

Mr. Lunetta responded yes; he does – the parcel located directly south is also owned by the seller, and it will convey with the sale to be owned by Matthew Kulhanek.

Regarding the home itself, Mr. Krey noted the different tones coloring on the house, and asked if there was an addition put on to the house.

Mr. Lunetta responded yes; there was a house fire a few years ago that caused a full remodel of the house.

Mr. Krey confirmed that from the house line back it could legally be a 6' fence, but the portion that is coming off of the house that prompts the need for a variance.

Mr. Bleuer stated that is correct; the front foundation line of Poplar Hill Lane is what establishes the front yard. The fence could run perpendicular from that point without getting closer to Poplar Hill Lane without a variance.

Mr. Krey asked if the prospective buyer is conditioning the sale on this variance being granted.

Mr. Kulhanek stated yes; they have conditioned the sale on the variance being granted. Mr. Kulhanek has two well-trained, athletic larger dogs who have proven that a 4' fence is not quite enough to keep them contained, but they will not get over a 6'.

Mr. Krey asked if there has been any discussion of what material and color the fence will be.

Mr. Lunetta stated that ideally, he would like to use white vinyl fencing.

Mr. Dale noted that the dogs need a 6' fence, he was curious why there was a need for privacy on a dead-end street.

Mr. Lunetta noted that the intersection is busy, with a substantial amount of traffic coming in from Transit Road and Miles Road with a lot of headlights and activity. It is a fairly serene setting; they would like to keep the property a bit more contained and structured, away from the hustle and bustle of the intersection.

Mr. Dale asked if any of the trees on the lot will be removed with the installation of the fence.

Mr. Lunetta responded no; it will not be necessary.

Mr. Dale stated that correspondence was received from a neighbor with no objection to a fence, but requesting that the color not be white.

Mr. Lunetta explained that the project is pricey to begin with, and white vinyl is a base color therefore the least expensive. They have not received quotes for any other colors, white would be preferred at this time. Mr. Lunetta stated that he did see the email, there is a mature brush path between the properties with trees, bushes, and ground cover. When the neighbor is outside in her yard it will most likely be the time of year when the brush path is in full bloom and the site line to this proposed fence will be diminished.

Mr. Rung asked if the proposed fence will be outside of the existing tree line.

Mr. Lunetta stated that it would be just inside the line of trees. When they planted the stakes, they were approximately a foot inside of the trees along the path.

Mr. Rung noted that the trees would provide a visual buffer between the fence and the neighbor.

Mr. Rung asked if there is any landscaping planned along the outside of the proposed fence.

Mr. Lunetta responded currently no, there is not.

Mr. McNamara asked if the fence is off of the property line along the west side, and asked approximately how many feet it is off.

Mr. Lunetta stated that the set-in from the west side property line would be roughly 8'.

Mr. McNamara asked why they leave 8' rather than go right to the property line.

Mr. Lunetta responded that there is no particular reason.

Mr. McNamara asked if there are any trees in the way.
Mr. Lunetta stated no; there are no trees.

Mr. McNamara is concerned with the area outside of the fence, inside of the property line and whether it would be maintained.

Mr. McNamara understands the neighbor's concern with a white fence. It is a very mature neighborhood, and to have a white vinyl fence would be a stark contrast. Colors such as tan, light brown, or dark brown should be considered.

Mr. Drinkard stated that Mr. Lunetta alluded to another lot, it shows that the fence would extend back to a rural area.

Mr. Donohue stated that the property Mr. Drinkard is referring to is owned by the current seller and is being sold with the property that has the primary structure.

Mr. Drinkard asked if the accessory structure is on the adjacent lot.

Mr. Lunetta stated that the accessory structure is completely within the boundary of the lot with the principal structure.

Mr. Drinkard stated that he echoes Mr. McNamara's concerns regarding the 10'-12' of property between the fence line and the property line. The property is basically being abandoned.

Mr. Lunetta acknowledged that they could extend the fence to the property line; there are no encumbrances preventing them from doing so.

Mr. Drinkard also stated that he does not like the fence white, and asked Mr. Lunetta if there is an option to table this request tonight, and come back with a different proposal. Otherwise, they could make a motion with a condition that the fence installed shall not be white.

Mr. Drinkard explained that white is a very stark color, and this is a very mature neighborhood with an abundance of color. One of the criteria that the Zoning Board looks at is the effect on the character of the neighborhood. A white fence in a neighborhood like this will have a negative impact on the character of the neighborhood.

Chairman Mills explained to Mr. Lunetta that as he has heard, the general sentiment of this board is that they are not in favor of a large span of white vinyl fence. Mr. Lunetta can ask the board to vote on this request, or table it and return potentially next month.

After consulting with his client, Mr. Lunetta stated that Mr. Kulhanek has agreed to a condition stating that a vinyl fence in more of an earth tone is acceptable. After some research, there is a company called Catalyst Fencing Solutions that have a color called "Clay Tone" that he would consider.

Mr. Lunetta shared the photos from his phone with the board for their review.

Neighbor Notifications are on file, as previously noted there was one comment received from Kelly Skidmore requesting that if a fence is approved, that it not be white.

Mr. Bleuer noted that if the applicant were to not pursue this variance at any point, they would have the right to put a code compliant fence up, and we would not dictate the color. The neighbor that has the concern appears to live on the side that a variance is not required.

Chairman Mills acknowledged Mr. Bleuer’s statement.

ACTION:

Motion by Gerald Drinkard, seconded by Steven Dale to approve Appeal No. 2 as written, with the following condition:

- 1. color not be white (clay, tan, brown, grey, or similar earth tones are acceptable)

Chairman Mills stated that this is a very mature neighborhood filled with dense foliage. Having the fence be a color that fits in with the environmental conditions and character of the neighborhood is important, particularly due to the fact that it is a larger span of fence extending past the lot in to the additional rear parcel. Fitting in with the environmental condition and characteristics of the neighborhood. The applicant has worked and agreed to do that with the condition placed on the motion.

Mr. Krey stated that another unique factor that distinguishes this from other variance requests is that it is a dead-end street with no thru-traffic. The property backs up to a wooded area, which makes this unique from other similar variance requests.

Gerald Drinkard	Aye	Richard McNamara	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Steven Dale	Aye		

MOTION CARRIED

Appeal No. 3

L Visone Development, LLC.

Commercial

Town Code Reference:

- 1) §229-87(C)(2)
- 2) §229-87(C)(3)

Applicant requests variances:

- 1) of 15' to allow 10' principal structure side yard setbacks; and
- 2) of 14'9" to allow a 10'3" principal structure rear yard setback; located at 10151 Main Street.

Mr. McNamara recused himself from Appeal No. 3. The proper paperwork will be filed.

DISCUSSION:

Michael Metzger with Metzger Civil Engineering was present to represent this request, as well as Brianne Zhang, Director of Real Estate with VisoneCo Development

Mr. Metzger explained that the property is just over 2 acres, with approximately 15,600 sq. ft. of buildings currently on the site. They are proposing to remove a couple of the smaller buildings to the rear of the site, and adding a building.

Mr. Metzger stated that they have been working with the Planning Board Executive Committee for quite some time, and are pleased with where they stand with this proposed project at the current time.

Mr. Metzger stated that the proposed building would be several hundred feet back from Main Street, and mostly blocked by the buildings in the front of it that are there now.

Mr. Metzger explained that they appeared in front of the Planning Board on March 18, 2026 to present this project at which point, a Negative Declaration was issued. The Concept Plan was denied due to the need for a variance for both side yard and rear yard setbacks.

Mr. Metzger stated that they are proposing to put the building with the side yard at 10' on one side, and 10.3' on the other side. At the closest point in the rear, the building will be 10.3', and because of the slight orientation of the property line, at the furthest point of the building would be at 21' 6" from the rear property line as opposed to the required 25'.

Mr. Metzger stated that they provided within their application packet, an assessment of the 5 criteria that are considered in an area variance. They feel that upon review of those, that the board will come to the conclusion that the benefit derived by the applicant would exceed the detriment to the community and neighborhood.

Mr. Drinkard asked Mr. Metzger to explain how vehicles would access the property, and back to this proposed structure.

Mr. Metzger explained that there are 2 lanes that come in from Main Street, one on either side of the buildings.

Mr. Drinkard stated that looking at the plan and taking in to consideration the points that Mr. Metzger made in the application submittal, specifically where Mr. Metzger stated "the applicant's desire to construct a building with ample room on the sides and rear will allow maintenance and emergency access". Mr. Drinkard stated that he is concerned about emergency access and safety. A 25' setback is a reasonable setback, so in the context of taking away a significant portion of the setback.

Referring to the elevations for the proposed building, Mr. Drinkard noted that there are no windows, no doors, nothing at the rear of the building. Mr. Drinkard stated that they are basically abandoning the 25' where junk can potentially pile up, and other garbage can be accumulated.

Mr. Drinkard is concerned about the request for a decreased setback. If there is no way to look out from the proposed building out to the setback area, the applicant will be almost blind to that area.

Responding to Mr. Drinkard's concerns, Mr. Metzger stated that in regard to safety, this plan as presented is in complete compliance with the fire code as far as hose length and access from emergency access lanes. Mr. Metzger also stated that the proposed building is only one story, should access be necessary utilizing a ladder, 10' is more than enough space to be able to access a ladder in the event of an emergency.

Mr. Metzger stated that as far as Mr. Drinkard's concerns with junk and garbage accumulating in the rear of the property, they are not proposing a fence at the rear of the property.

Mr. Drinkard stated that there is an existing fence located on the property.

Mr. Metzger noted that the intent is to not accumulate junk, and quite frankly, considering some of the things that are parked back there currently, it is their opinion that this building will be a lot more attractive to the site than what is currently there.

Mr. Metzger added that the back of the building could be viewed as a solid fence line itself.

Mr. Drinkard added that he has no issues with the front of the building, and that the side of the building will have two existing buildings removed from it, which will clean up the site. It is the back of the building and what could accumulate if left unattended. Anyone renting the building will not walk around the building to access the rear when they do not need to.

Mr. Metzger stated that as is with any property there can be maintenance issues, and there are codes in place to make sure that people do take care of their property. With a brand-new building proposed, and trying to attract new tenants, Mr. Metzger is confident that the property will be well maintained.

Chairman Mills asked if this will be a metal pole barn style of construction.

Mr. Metzger responded yes, metal side barn. He's unsure if it is a pole barn.

Chairman Mills asked if there will be garage bays.

Mr. Metzger explained that they would like to have garage doors for each of the tenants. He does a lot of these types of projects and what happens often is that people end up taking multiple bays. Sometimes they have a need for a garage door, and other times they do not. If they do not, the doors are attractive and they remain closed and not used.

Regarding the requested setbacks, Chairman Mills asked how it would impact the overall geometric layout if the setbacks were altered.

Mr. Metzger asked if by altering them, Chairman Mills means by making them larger.

Chairman Mills responded yes.

Mr. Metzger explained that it would obviously make the proposed building smaller, and they are trying to offer as many opportunities as possible for new businesses within the town.

Mr. Metzger stated that often times before they make it to the Zoning Board, a lot has already gone on with the proposed project. Originally, they had proposed a much larger building, and through working with the Planning Board Executive Committee, they have worked the plan from an aesthetics standpoint and a use standpoint, it has evolved to this current proposed plan.

Mr. Metzger acknowledged that the proposed building is a bit larger than it could be if they had complied with the setbacks, but it is much smaller than their original plans. They feel that it is more appealing to those that will be approving the overall project.

Chairman Mills asked if it is economically feasible to make the proposed building any smaller.

Mr. Metzger stated that it is a tough question; it most likely is, but not preferred.

Chairman Mills asked Mr. Metzger is moving the proposed building forward would be possible.

Mr. Metzger explained that they want to leave as much space in the front as possible, for maneuverability.

Mr. Metzger stated that the proposed project is located in a pretty heavy commercial, manufacturing area so from an aesthetic standpoint, they feel that this is reasonable.

Mr. Krey explained that even in commercially zoned areas, they do not like when a building fills up the entire footprint of the property. For two of the requested variances, it seems that they are asking for a lot. He understands the requests for the side yard setbacks, but the one for the rear of the lot; if you move the building forward, with only the sides requested, that would be more reasonable.

Mr. Krey stated that he is unsure if that impacts the parking as much, it is difficult to tell without a rendering showing these things.

Mr. Metzger noted that unfortunately in Clarence, we do not have sanitary sewers, so there is a septic system on site, and they will need space for a septic system to serve this building as well.

Discussion continued regarding the location of the proposed septic system.

Addressing the applicant's request to reduce the rear setback from 25' to 10.3' of a new building, Mr. Dale noted that while he commends the wishes to expand commerce in the Town of Clarence, the businesses adjacent to the rear property line need to be considered. Mr. Dale specifically mentioned the front entrance of the Dimar manufacturing building which during working hours, is typically full of employee and visitor's vehicles.

Mr. Dale stated that the request for the reduced rear yard setback will allow for more parking, but noted that the applicant has not indicated how much parking they need for the new anticipated tenants.

Mr. Dale noted that if given the chance to reduce the visual congestion to an established manufacturing plant, approving this variance request and holding firm to the 25' code setback is what he may need to do. However, he would be willing to offer a compromise setback variance of 19.4', which would give the western half of the proposed building a rear setback dimension of 25' minimum which is currently specified by code. It is also his primary concern to alleviate the previously mentioned around Dimar, while also supplying the applicant with some additional area for parking.

Mr. Dale stated that regardless as to whether this request moves forward, he would like to make a supplemental motion to add two windows to each of the 6 rental units for a total of 12 windows along the back side. This will serve to break up the 168' bare metal-sided wall facing the Dimar property.

Mr. Metzger addressed the parking, noting that if you take a closer look at the site plan, there is a parking analysis.

Mr. Dale said yes; 26 cars he sees that.

Mr. Metzger responded no, parking as presented for this building would be 42 spaces, and what they are showing is 38 spaces.

Mr. Dale stated that he could not see 38 spaces on any of the documents that he received in his board packet, but he did find one that showed 26 parking spaces.

Discussion continued regarding locations of parking spaces.

Mr. Dale reiterated his concern for the reduced setback on the side of the building facing Dimar.

Mr. Metzger stated that with the proposed garage doors on the front of the building, they want to make sure that there is ample maneuverability for anyone that may be utilizing that to access the inside of their building space. Mr. Metzger noted a 24' access lane to serve the parking area, but the area that serves the parking area on the opposite side plus access to the doors has closer to 30'.

Chairman Mills noted that they are referring to the Concept Plan labeled CP-1.

Mr. Metzger stated that it is another reason why it is important for them to have that space in the front of the building as opposed to the back of the building.

In regard to Dimar and the aesthetic of this proposed building as it relates to Dimar, Mr. Metzger noted that they did reach out to Dimar, and are waiting to see if there are any comments received from them. They are required to submit a full application packet to adjacent properties, which they did do.

He has received feedback from ICE, which is one of the larger neighboring companies who stated that they have no issue with what the applicant is proposing.

Mr. Rung asked which address was used to notify Dimar, as he is concerned it could go to someone at the front desk and end up getting lost.

Mr. Metzger stated that he can check the file to see for sure.

In regard to the parking spaces, Mr. Rung asked if there is consideration for that because there is not enough space. He stated reducing the size of the building to achieve the appropriate setback would provide some additional parking.

Mr. Metzger stated that the Planning Board has the ability to vary from parking requirements, so that is something they are working on with them. The only action that the Planning Board has taken at this point is to deny the project in order to send it to the Zoning Board for the two variances that are requesting tonight.

Mr. Metzger explained that they have worked closely with the Planning Board Executive Committee, and while the Committee does not speak on behalf of the Planning Board as a whole, they have come to a place of comfort with the proposed plans.

Mr. Rung noted that the existing fences will be removed, and asked if there are plans to re-install any sort of fencing to prevent pedestrian traffic between the front of this proposed building and the industrial facilities behind them.

Mr. Metzger stated that he is not sure they have worked through that yet at this point of the planning process.

Mr. Rung stated that he does like the idea of the windows, it would break up the long wall nicely.

Ms. Zhang with VisoneCo commented on this, stating that she thinks they are open to adding windows, but that adding 2 windows to each proposed building seems a bit excessive. They also want to leave it so that the potential tenants have the ability to build out bathrooms and offices, and windows can hamper the layout of those potential plans.

Mr. Dale stated that you are talking about a 16' wall, and to put the windows 12' feet up, then you do not have a privacy issue.

Ms. Zhang reiterated that they would like to have the ability to add mezzanines and similar additions.

Mr. Donohue stated that the Planning Board works very diligently on the concept plans for all of these projects, dealing with things such as materials, window placements, garbage, and many other items. If there are concerns regarding windows, Mr. Donohue suggested that the Zoning Board can recommend it, but they should not constrain the Planning Board from their duties and giving final concept approval.

Mr. Donohue would be reluctant for the Zoning Board to conditions things such as windows, when it is the domain of the Planning Board.

Mr. Krey revisited the comments regarding the Planning Board and their directions, noting that the applicant could do either a smaller building and conform to the code, are they able to make it a 2-story building, or does the Planning Board not want that.

Mr. Metzger stated that they originally had an L-shaped building planned, which is how it would have been bigger.

Mr. Krey asked Mr. Metzger if the Planning Board directed them towards this layout of the proposed building.

Mr. Metzger stated that through the process of working with the Planning Board Executive Committee, they presented various options for the building, and this is the one that was settled on with them.

Mr. Krey asked if there is anything in the code that prevents them from building up.

Mr. Metzger stated that is not the type of building that they want to put here. He refers to these buildings as “high bay lease space” because to the eve they are 16’ tall and usually 10’-12’ doors in the front. Tenants typically need that space on the inside for various reasons. Mr. Metzger explained that second stories get very costly because you have to plan for access, and elevators, and multiple other aspects. This is not the location for that kind of structure.

Mr. Krey noted that based on Mr. Metzger’s testimony, it is either a building the size of what they are proposing, or if the variance is not granted, they would have to look at the financial liability of having a smaller building.

Mr. Metzger added that they could also return to the Planning Board Executive Committee to put a larger building there, but of a different configuration, similar to their original proposal.

Mr. Krey asked Mr. Metzger if he recalls what the issues were with the ‘L’ shaped building.

Mr. Metzger responded no.

Ms. Zhang stated that they went through many variations.

Mr. Krey stated that he does not want to pinball the applicant back and forth between the Planning Board and Zoning Board, thus why he wonders what the issue was with the other variations.

Mr. Metzger stated that sometimes they do not know the reasons why they do not like something.

Mr. Bleuer explained that this proposed project was originally on the Town Board agenda, the Town Board declined to refer it to the Planning Board due to setbacks, which were even smaller at the original time. The applicant then increased the setbacks, the Town Board felt that they had done enough to at least advance to the Planning Board.

Continuing, Mr. Bleuer stated that the Planning Board focused on State Environmental Quality Review Act (SEQRA), not on Concept, knowing that it was a denial in place. Mr. Bleuer does not personally recall an 'L' shaped building, but does know that the Planning Board focused more on SEQRA than they did on Concept Plan.

Neighbor Notifications are on file, no comments received.

In regard to Public Participation, the following resident spoke.

1. Christopher Morgan of 10165 Main St:
 - has no objections, supports the proposed setback
 - pointed out the windows on Tractor Supply that are aesthetic only, and do not alter any of the interior of the building
 - this proposed project would greatly enhance his property, he would love to see this move forward
 - if they were to move the proposed building forward as suggested, it would be tough to access the parking lot because Mr. Morgan operates a landscape company from the property next door, and has trucks and trailers on site.
 - feels that the additional 10' plus in the back will make it obsolete, not as useful, and will be wasted space

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

Mr. Drinkard stated that there is a natural order to some things, and this might be one of them. When the applicant went to the Planning Board, because a variance was needed due to violating the setback, it was too early in the process which caused the Zoning Board to ask for things such as parking, talk about the space in the back of the building, and request multiple other things. Mr. Drinkard would like to know more information such as the types of businesses that will be in the proposed building and how much parking they will require.

Mr. Drinkard added that they were forced in to a question-and-answer dialogue that the applicant does not even have answers to yet. He would lean towards not granting a variance until they can iron out some of the concerns, and the applicant is able to put a monetary value on what a variance would give.

Mr. Metzger responded that in regard to uses, this is lease space, they do not know yet what potential tenants will be in the spaces. The best that they can do is provide accommodations for all reasonable possibilities. That is how they got to where they are currently. It is not that they are not far enough advanced with the plan, they just do not know who will be in the spaces yet. Mr. Drinkard noted that if the applicant had planned out this exact proposed project, but had met the setbacks, they would not need to be here at the Zoning Board, and the Planning Board would have started to work through the issues that they have discussed here tonight. Then the applicant would be able to refine the plans. They probably will not be able to have a drive-thru or a restaurant, those type of restrictions will help them refine their plan. Otherwise, it is a theoretical exercise.

Mr. Metzger stated that they do not want a drive-thru, and they definitely cannot have a restaurant because of the septic system.

ACTION:

Motion by Gerald Drinkard, seconded by Steven Dale, to **deny** Appeal No. 3 as written.

ON THE QUESTION:

Mr. Drinkard stated that his denial is based on the setback; there is only one point of consideration of many. He feels the plan should be more refined in order to be able to specifically determine what will happen or not happen with the variance.

Mr. Krey asked if they vote to deny the request, can the applicant return with a slightly modified appeal and re-initiate this process.

Mr. Bleuer responded yes; they would need to make a material change to the application and seek a new request.

Mr. Krey stated that he is not prepared to vote either yes or no, due to the fact that there is really not a lot to base an opinion on at this point. Normally they are at a point where they are able to instill some conditions, but they do not seem to be at that point.

Mr. Krey added that typically they are shown ways the proposed project could conform to the code which is often unsightly or other reasons why that is not the preferable option. It is more of an up or down vote on this block of a building there are always concerns and issues. He does not feel that it is insurmountable, but personally he feels that he cannot vote yes at this point. If it was to return to the Zoning Board, he would like to see more details. He understands that the details are ones to be worked out with the Planning Board, but for them to approve this variance without having any insight in to the details, puts them in a difficult position.

Mr. Metzger asked that the Board take a hard look at the 5 considerations that should be assessed before granting an area variance.

Mr. Drinkard stated yes, they have, that Mr. Metzger recapped them.

Chairman Mills stated that they are part of the record.

Mr. Metzger asked that the Board takes a look at the opportunity granted to the owner as compared to the detriment to the health, safety, and welfare of the neighborhood. Some of which we have heard from tonight, and the community as a whole.

Chairman Mills stated that it is noted for the record.

Mr. Donohue added that he hopes the Zoning Board did not misunderstand him that they could not make any conditions, he meant as to the aesthetics of the building. They can make recommendations, but because it is a commercial building, that is usually done through the final concept approval of the Planning Board.

Mr. Krey stated that he understands what Mr. Donohue is saying, but that normally they are able to impose conditions. He feels that it is so early in the stage of this process, that it is challenging to even try to come up with any conditions.

Mr. Metzger stated that they are at the point with the Planning Board that should the variances be granted, the next step before them would be for Concept Plan approval.

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

MOTION FAILED

Chairman Mills asked if there is another motion, or alternatively, would the applicant prefer to ask to have the request tabled.

Mr. Metzger stated that they would like to have a motion considered.

Mr. Donohue asked Mr. Metzger if he understands that if there is no motion, it is treated as a denial.

Mr. Metzger responded yes.

Mr. Metzger asked Mr. Donohue if a motion to grant the variance is made, do they have an opportunity to return with a plan that is substantially changed.

Mr. Donohue responded yes.

Mr. Metzger requested that a motion is considered.

Motion by Forest Rung to **approve** Appeal No. 3 as written.

With no second, the motion fails.

REQUEST FAILS

Meeting adjourned at 7:00 p.m. with a motion by Richard McNamara.

MOTION CARRIED

Amy Major
Senior Clerk Typist