

**APPROVED  
ZONING BOARD OF APPEALS  
MINUTES OF MEETING  
July 14, 2025**

The Regular Meeting of the Zoning Board of Appeals of the Town of Clay, County of Onondaga, State of New York, was held at the Clay Town Hall, 4401 New York State Route 31, Clay, New York on July 14, 2025. Chairperson Mason called the meeting to order at 6:00 P.M. and upon the roll being called the following were:

PRESENT:	Vivian Mason	Chairperson
	Ryan Frantzis	Member
	David Porter	Member

ABSENT:	Karen Liebi	Member
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**OTHERS**

PRESENT:	Robert Germain	Attorney
	Chelsea Clark	Secretary
	Joseph Grispino	Code Enforcement Commissioner
	Russ Mithcell	Clay Planning Board Chair
	Karen Guinup	Clay Planning Board Co-Chair
	Michelle Borton	Clay Planning Board Member

All present participated in the Pledge of Allegiance.

**MOTION** made by Chairperson Mason that the Minutes of the meeting of June 9, 2025, be accepted as submitted. Motion was seconded by Mr. Frantzis. *Unanimously carried.*

**MOTION** made by Chairperson Mason for the purpose of the New York State Environmental Quality Review (SEQR) all new actions tonight will be determined to be a Type II, and will be given a negative declaration, unless otherwise advised by our attorney. Motion was seconded by Mr. Porter. *Unanimously carried.*

**OLD BUSINESS:**

None.

**NEW BUSINESS:**

**Case #1975 – Rotem Evron/Pinecrest Apartments, 7300 Cedar Post Road, Tax Map #107.-20-04.0.:**

The applicant is seeking Area Variance pursuant to Section 230-13 H.(4)(a) – R-APT Residential Lot and Structure Dimensional Requirements – for a reduction in the minimum land area from 56.74/acres to 23.09/acres to allow for (4) four extra dwelling units and parking places. The property location is in the R-APT Apartment Zoning District.

The proof of publication was read by the secretary.

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Melissa Waters, Property Manager, was present on behalf of the applicant.

Chairperson Mason asked Ms. Waters to explain the request for an Area Variance.

Ms. Waters explained they are looking to convert existing office space and storage units to four (4) apartments to rent out and bring the property up to code.

Chairperson Mason asked Ms. Waters to address the Standards of Proof.

Ms. Waters addressed the Standards of Proof:

1. The applicant does not believe the requested Area Variance will create an undesirable change to the character of the neighborhood as the building already exists and there will be no external changes to the property.
2. The applicant does not believe there is any feasible method other than the requested Area Variance.
3. The applicant does not believe the requested Area Variance to be substantial as the building already exists and there will be no physical changes to the property.
4. The applicant does not believe there will be any adverse effect to the neighborhood.
5. Yes and No. The need for Area Variance is self-created as it is wanted, however the building was built over 43 years ago and presented to the Zoning Board before Pinecrest purchased the property.

Chairperson Mason asked if there were any further comments or questions from the Board and there were none.

Chairperson Mason asked Code Enforcement Commissioner Grispino if he had any questions or comments, and he had none.

Chairperson Mason asked if anyone in the audience had any questions or comments.

Jeff Isabell, resident, asked if there were any proposals for updating the green space.

Chairperson Mason informed Mr. Isabell that she believes the green space is Town owned, and the Planning Board would oversee green space plans.

Commissioner Grispino added that the applicant is seeking to convert existing rental offices to apartments to rent instead of office space.

Mr. Isabell asked if the existing building footprint would remain as-is.

Commissioner Grispino confirmed.

Janet Rathburn, 4760 Freestone Road, asked how many apartments units would be added to the building.

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Ms. Waters explained they would be going from 382 units to 390 units, so 8 units' total.

Tammy Isabell, resident, stated that the previous property owner came before the Zoning Board in approximately 2012 for a similar request and shared concerns about the existing tree line not being maintained.

Ms. Waters was unsure of any application from the previous owner and stated they are working on cleaning up the existing tree line and greenery.

Chairperson Mason explained the applicant would be renting the space as apartment units and no new buildings would be built.

Chairperson Mason asked for those in favor of granting the Area Variance and there were none.

Chairperson Mason asked for those opposed to granting the Area Variance and there were none.

The hearing was closed.

**MOTION** was made by Mr. Frantzis in Case #1975 to **approve** the Area Variance as requested. Motion was seconded by Mr. Porter.

Roll Call:	Mr. Porter	- in favor	
	Mr. Frantzis	- in favor	
	Chairperson Mason	- in favor	<i>Unanimously carried.</i>

**Case #1977 – Marc Lebiezinski, 7985 Morgan Road, Tax Map #081.-29-06.0.:**

The applicant is seeking Area Variances pursuant to Section 230-19 A.(4)(b)[1] – Highway Overlay Zone District Requirements (Lot Area) – a reduction in the minimum lot area from 70,000 square feet to 56,817 square feet, and Section 230-19 A.(4)(b)[1] – Highway Overlay Zone District Requirements (Lot Frontage) – a reduction in the minimum lot width from 262.5 square feet to 181 square feet to allow subdivision of main parcel into two separate parcels. The property location is in the R-40 One-Family Residential Zoning District.

The proof of publication was read by the secretary.

Chairperson Mason made an announcement that there is a correction to the legal ad. Lots are measured in feet and the word “square” in the legal ad was a typo. The numbers are correct as feet.

Tim Coyer of Ianuzzi and Romans was present on behalf of the applicant.

Chairperson Mason asked Mr. Coyer to explain their request for Area Variances.

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Mr. Coyer explained the applicant was before the Town Board for a Zone Change from RA-100 to R-15 in March of 2025, without realizing R-15 requires public sewer. They now have an application in with the Town Board for a Zone Change from R-15 to R-40 to correct this, however they now require Area Variances for the lot. Mr. Coyer added that without the Highway Overlay, the Area Variances would not be required.

Chairperson Mason asked Mr. Coyer to address the Standards of Proof.

Mr. Coyer addressed the Standards of Proof:

1. The applicant does not believe the requested Area Variances will create an undesirable change to the character of the neighborhood.
2. The applicant does not believe there is any feasible method other than the requested Area Variances due to the Highway Overlay.
3. The applicant does believe the requested Area Variances to be substantial as they are requesting a 30% reduction.
4. The applicant does not believe there will be any adverse effect to the neighborhood as the lot is larger than surrounding lots.
5. Yes, the need for Area Variances is self-created.

Chairperson Mason asked if there were any further comments or questions from the Board and there were none.

Chairperson Mason asked Code Enforcement Commissioner Grispino if he had any questions or comments, and he had none.

Chairperson Mason asked if anyone in the audience had any questions or comments and there were none.

Chairperson Mason asked for those in favor of granting the Area Variances and there were none.

Chairperson Mason asked for those opposed to granting the Area Variances and there were none.

The hearing was closed.

**MOTION** was made by Mr. Porter in Case #1977 to **approve** the Area Variances as requested with the condition it be in substantial compliance with Exhibit “A”. Motion was seconded by Mr. Frantzis.

Roll Call:	Mr. Porter	- in favor	
	Mr. Frantzis	- in favor	
	Chairperson Mason	- in favor	<i>Unanimously carried.</i>

**Case #1979 – Russ Mitchell, Town of Clay Planning Board, Chairman, requesting an Interpretation of a definition pursuant to Section 230-16 B.(2) – Highway Commercial Uses Allowed and Interpretation of a definition pursuant to Section 230-11 C. – Definitions (Shopping Center). The Interpretation concerns use in an HC-1 Highway Commercial Zoning District.:**

The proof of publication was read by the secretary.

Russ Mithcell, Town of Clay Planning Board Chairman was present.

Karen Guinup and Michelle Borton of the Town of Clay Planning Board were also present.

Chairperson Mason asked Mr. Mitchell to explain his request for an interpretation.

Mr. Mitchell read the following:

**“Purpose of the request for interpretation:** Does the definition of “shopping center” described in the Clay Zoning Code allow for the use of gasoline service stations in the HC-1 Zoning district and is a gasoline service facility allowed in the HC-1 zoning district (see attachment #1).

Boards work with definitions and codes, two very distinct categories and described in the towns zoning code.

The Planning Board does not feel the definition gives shopping centers the right to have gasoline service stations. Gasoline service stations along with a handful of other types of businesses are used as examples of businesses you can commonly find in a shopping center.

Justification - is in the structure of the definition itself. The use of a semi colon after the words other site services; setting up the common uses found in a shopping center: (colon) then giving examples of those types of businesses not to be all inclusive. The colon is used before a long quotation, explanation, examples, series etc. At no time in this definition does it indicate businesses can go in a zoning code without restriction. There are other instances in the town definitions that use examples to show clarity (see Town code definitions - Shopping Center).

The Board then looked at the code for HC-1 and it does not allow gasoline service stations in that zone. It does allow for shopping center which shows a grouping of two or more commercial uses in one or more buildings. This is just one of 28 uses listed with varying restrictions - site plan approval, special permits, etc. There is no use listed that allows for the combining of multiple uses particularly eliminating restrictions that the code specifically calls for. (see Clay code 230-16 B HC-1)

Looking at the RC-1 code which is almost the mirror image of HC-1 with the exception of lot size, it does allow for Shopping Center with gas service stations requiring a special permit from the Town Board. The gas service station was left out of the HC-1 zone for a reason. In the Town of Clay there are no gas service stations in an HC-1 zone.

**Statute of Limitations:** There has been an issue with the statute of limitations running out and the Planning Board couldn't legally ask for an interpretation from the ZBA. Since we did not receive the application, and have it put on our agenda until recently we have asked for the interpretations within a 60-day limitation.

The first cases we heard and worked on were for the drive through service. This consisted of a drive thru for Dunkin Donuts and a drive thru for a bank on opposite sides of the building. The plan was presented as a shopping center and did have gas pumps on the drawing. Since we were concerned with the circulation internally, we needed to see what effect the gas pumps would have on the circulation and that is all we were concerned with. We do not look at site plans when other issues could change the dynamic of a project. Once our referral for the special permits was given, we were ready to visit the site plan. We received the site plan drawings for our May 28 meeting Case #2025-026 (see attachment #2; 3pgs, see additional correspondence)

Attachment #3 e-mail from previous Planning Commissioner

Attachment #4 letter from current acting Planning Commissioner

The Planning Board had decided to come to the ZBA because whatever the interpretation/determination we need to know how to proceed forward under the Town Codes. The previous Planning Commissioner had told us the lawyer for Mirabito found a "loophole", which was questionable, and we needed to go to the ZBA.

**Basic Question to ask yourself: Does a definition supersede a code?** No, a definition cannot supersede code. A code is a legal statute which defines the rules and behaviors of a system. A definition provides the meaning of a word or concept. While a definition can help clarify the intent or application of a code, it does not have the power to change the code itself. That is what is being asked of us as we consider this site plan."

Planning Board Co-Chair, Karen Guinup, and member, Michelle Borton, agreed with Planning Chairperson Mitchell's presentation.

Attorney Sarah Campbell of Hinman, Howard & Kattell, LLP., was present on behalf of Mirabito.

Mirabito submitted an application along with supporting documents.

Attorney Campbell read the following:

"We respectfully submit that the time within which to appeal the former Planning and Development Commissioner's determination by way of interpretation on this topic has expired.

Should the ZBA reach the merits, we believe that a plain reading of the relevant code sections together with the established rules of statutory construction clearly supports the conclusion that a shopping center is a permitted use in the HC-1 district and that gas pumps are permitted in a shopping center as of right.

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To assist the ZBA in analyzing this matter, we provide the following: Notwithstanding the care to which the Legislative body attempts to craft their Zoning Regulations, it is fairly common that property owners, applicants or other municipal officials will from time to time disagree with the meaning a Code officer gives to a particular section, or even word, in a zoning regulation. In response to these situations, the State Legislature (pursuant to NYS Town Law section 267-a and the Town of Clay code section 230-25 B.(3), have given the ZBA the power and duty of interpreting the zoning regulations on appeal of a decision of the Code officer. The ZBA acts as a "safety valve" in adjudicating and resolving those conflicts pursuant to its quasi-judicial powers. The courts of the State of New York have set down rules for zoning boards to follow in going about their duties of interpreting local zoning regulations.

These general rules of construction are set forth below together with citations to the leading cases.

1. Zoning laws, by their very nature, are in derogation of common law property rights and require strict construction and must be interpreted in their plain meaning.
2. Zoning regulations must be strictly construed against the municipality which has enacted and seeks to enforce them and any ambiguity in the language used in such regulations must be resolved in favor of the property owner.
3. Courts in the Fourth Department (in which the Town is located) apply a twostep approach to statutory construction inquiries.

### **BACKGROUND & PROCEDURAL HISTORY**

**June 17, 2024:** At a Town Board Work Session, the project was presented by the applicant team and the review approach, and the zoning interpretation was initially discussed. A "Conceptual Development Plan" was shown and discussed. The Town Board directed the applicant to proceed with design and development applications.

**June 20- July 19, 2024:** E-mail exchange between Planning Commissioner Mark Territo and project team regarding approval path and analysis of Town Code.

**July 31, 2024:** Applicant team met with Planning Commissioner Mark Territo to discuss procedural steps to move the project forward. During the meeting the Planning Commissioner directed the Applicant to pursue the Special Permits needed for the 'Drive In' Services first- before making application for Site Plan Approval.

**September 12, 2024:** Special Permit applications were submitted to the Town. This packet included separate applications for each of the proposed drive-thrus. The packets were labeled as "Proposed shopping center, drive-thru on east and west side of building". The plans included a canopy with gas pumps and the Full EAF description indicates "gas fueling island".

**October 21, 2024:** First formal/public hearing with the Town Board. During this meeting about 20 neighbors were present. Planning Board Chairman Mitchell and Planning Board member Henty were also present.

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**Dec 16, 2024:** Second formal meetings with Town Board to discuss the internal traffic circulation in and around the site. At the conclusion of this meeting the Town Board referred the Special Permit applications to the Town Planning Board for their recommendation pursuant to Town Code section 230-16 B 2 (e) [7].

**January 29, 2025:** Planning Board Meeting: The project was presented as a "Shopping Center" including a Dunkin with drive-thru, NBT Bank with drive-thru, convenience store, Subway and gas pumps. The special use permit recommendations were discussed with the planning board. Several slides were shown. A slide titled "Zoning Analysis Summary" showed the zoning path set forth by the Commissioner of Planning - the site is in the HC-1 Zone and the HC-1 zone includes 'Shopping Center' as an allowed use with site plan approval. Note also site rendering showing project with canopy and gas pumps. The proposed gas pumps were mentioned no less than five times with Chairman Mitchell and member Guinup specifically mentioning gas pumps. The Planning Board did not make a recommendation in favor of or against the drive-in special permit services but voted to forward the meeting minutes to the Town Board for review.

**February 13, 2025:** The applicant team made adjustments to the internal site circulation routes and submitted updated plans to the Town.

**March 3, 2025:** At the March meeting with the Town Board, the applicant reviewed and discussed these adjustments as well as the fully detailed internal circulation routes of drive thru access and egress for both the Dunkin and NBT bank drive thru's. The plan package entitled "Proposed shopping center with fuel and Drive-In Service" was presented. At this meeting, the Town Board closed the public hearings.

**March 17, 2025:** Town Board meeting where each separate Special Permit (one for Dunkin DT and one for the NBT Bank DT) were brought to vote. Both Special Permits passed 6 in favor 1 opposed.

**April 29, 2025:** Site Plan Application submitted to Town. This packet included complete site/civil engineering design development drawings.

**May 28, 2025:** The project was listed on the agenda for a Public Hearing for the Planning Board meeting. Team representative (engineer) was denied permission to speak at this advertised public hearing. The Planning Board chairperson read the definition of shopping center and the allowed uses for the HC-1 zone and indicated that he needed clarification from ZBA on the interpretation of the allowed uses.

**June 11, 2025:** ZBA interpretation request made by Town Planning Board and Memo from Dave Tessier to Planning Board Chair dated 6/3/25. E-mail from Mark Territo to Joe Grispingo - 6/11/25.

**THE INTERPRETATION REQUEST IS UNTIMELY.** The Commissioner of Planning and Development made a formal determination on June 20, 2024, that gasoline pumps are a permitted component of a shopping center in the HC-1 District. Pursuant to NYS Town Law section 267-a 5 (b), any appeal of a determination, decision or interpretation of an administrative official charged with the enforcement of the zoning law must be made within 60 days.



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The Planning Board's time to request an interpretation of this issue has passed.

The Town of Clay Planning Board has requested this interpretation by application dated June 11, 2025. Certainly, the Planning Board Chairman was aware of this project as early as the October 21, 2024, Town Board meeting at which he was present and the Planning Board as a whole were aware of it at their January 29, 2025 meeting wherein the project, which clearly included gasoline pumps, was presented to them. Both timeframes are well beyond the sixty-day statute of limitations prescribed by NYS Town Law section 267-a 5 (b). It is simply disingenuous to suggest that the Planning Board or their individual members were not aware that gasoline pumps were part of this project given the submission of plans to them, presentations before them (including slides showing the zoning path decided upon by the former Planning Commissioner), Planning Board members attendance at Town Board meetings where this issue was specifically discussed and the members references to gas pumps at their January 29, 2025 meeting.

The purpose of a statute of limitations is to avoid exactly this situation that the Applicant finds themselves in - where decisions have been made and relied upon and money spent to pursue a project only to have a question raised many months or years after which questions the legitimacy of the project altogether. Statutes of limitations serve the important purpose of promoting finality and protecting parties who have relied on agency determinations. Here, the applicant has invested significant time and resources in good faith reliance on the Planning Commissioner's determination. There is no question that the Applicant has proceeded in good faith for more than eighteen months in the pursuit of this project. They have done everything possible to interact with the Town officials regarding the project and process and have been completely transparent throughout. They should not be punished for the turnover of personnel within the Town or for a lack of coordination paid to this matter at this late date. It is clear that under either analysis, both the determinations of the Commissioner or Planning and Development in 2024 and the inaction of

the Planning Board from January 2025 to June 2025 fall well beyond the sixty-day statute of limitations prescribed by Town Law. Their failure to act in a timely manner does not entitle them to revive the issue now. Therefore, this interpretation request should be denied as untimely.

Chairperson Mason asked if there were any further comments or questions from the Board.

Mr. Frantzis noted that the definition in the Town of Clay Code Book is meant to clarify what the Code says.

Mr. Mitchell agreed to some extent, adding that the definition is one thing and the code is another. He stated the examples mention 28 different uses for a Shopping Center, Gasoline Service Station is not one of them.

Chairperson Mason asked Code Enforcement Commissioner Grispino if he had any questions or comments.

Mr. Grispino added that the Code Book uses the word "shall," so he does not believe gas stations are included in the allowed uses.

Mrs. Guinup asked what zones allow for a Shopping Center with a gas station.

Mr. Grispingo advised that RC-1 Regional Commercial District allows for a Gas Station with a Special Permit.

Chairperson Mason asked if anyone in the audience had any questions or comments.

Jeff Isabell stated that the Code does not list Gas Service Station, posing the question of why it would mention other uses but exclude that one if allowed.

Mr. Grispingo added that Gas Service Station has never been allowed in the current zoning of the parcel in question.

There being no further comment or discussion Chairperson Mason closed the hearing.

**Case #1980 – Nicholas R. Grevelding, III, 9141 Riverside Road, Tax Map #035.-01-04.1.:**

The applicant is seeking Area Variances pursuant to Section 230-13 A.(4) – Lot and Structure Dimensional Requirements, for a reduction in front yard setback from minimum requirement of 75 feet to 40 feet, and reduction in side yard setback from minimum requirement of 25 feet to 10 feet to allow construction of a 30' x 50' garage. The property location is in the RA-100 Residential Agricultural Zoning District.

The proof of publication was read by the secretary.

The applicant was present.

Chairperson Mason asked the applicant to explain his request for Area Variances.

Mr. Grevelding explained he would like to build a 30'x50' garage on the right side of his property, a three-lot camp. The garage would be unattached with no water or heat.

Chairperson Mason asked Mr. Grevelding to address the Standards of Proof.

Mr. Grevelding addressed the Standards of Proof:

1. The applicant does not believe the requested Area Variances will create an undesirable change to the character of the neighborhood as it would be a new build and as out of the way as possible.
2. The applicant does not believe there is any feasible method other than the requested Area Variances due to the existing boat launch, septic and leach field.
3. The applicant does believe the requested Area Variances to be substantial due to the size of the property.
4. The applicant does not believe there will be any adverse effect to the neighborhood.
5. Yes, the need for Area Variances is self-created.

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Chairperson Mason asked if there were any further comments or questions from the Board and there were none.

Chairperson Mason asked Code Enforcement Commissioner Grispino if he had any questions or comments, and he had none.

Chairperson Mason asked if anyone in the audience had any questions or comments.

Kathy Brown, 7147 Riverside Road, stated she is concerned with the side yard setback request as it is close to her property and brings concerns of storm water displacement and drainage issues. She added that the build of the proposed garage would also block her view to the river as well as loss of light to her property and privacy which she feels would decrease the value of her property. She is not opposed to the front yard setback but is opposed to the side yard setback.

Mr. Grevelding stated that he would not cover one asset with another asset adding that if he moved the proposed garage where Ms. Brown is requesting, it would cover the boat launch. He added that it would then block the view of the neighbor across the street, either way, making a neighbor unhappy.

Janet Rathburn, 4760 Freestone Road, asked the applicant if he could make the garage smaller.

The applicant stated it would not be ideal for his needs.

Rick Brown, 7147 Riverside Road, stated he believes the applicant should abide by the setback established in the Code if possible.

Commissioner Grispino asked the applicant how big the lot was.

Mr. Grevelding stated the lot is 180' x 140'.

Commissioner Grispino stated that leaves approximately 125 feet of wiggle room and that the applicant should comply with the code, if possible. He added that water runoff could be substantial with a garage of that size.

Chairperson Mason asked for those in favor of granting the Area Variances and there were none.

Chairperson Mason asked for those opposed to granting the Area Variances and there were three.

The hearing was closed.

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**MOTION** was made by Mr. Porter in Case #1980 to **approve** the Area Variance for a reduction in front yard setback from minimum requirement of 75 feet to 40 feet as requested with the condition it be in substantial compliance with Exhibit “A” and to **deny** the Area Variance for a reduction in the side yard setback from minimum requirement of 25 feet to 10 feet. Motion was seconded by Mr. Frantzis.

Roll Call:	Mr. Porter	- in favor	
	Mr. Frantzis	- opposed	
	Chairperson Mason	- in favor	<i>Motion Failed.</i>

**MOTION** was made by Mr. Frantzis in Case #1980 to **approve** the Area Variances as requested with the condition it be in substantial compliance with Exhibit “A”. Motion was not seconded. *Motion Failed.*

There being no further business, Chairperson Mason adjourned the meeting at 7:15 P.M.



Chelsea Clark, Secretary  
Zoning Board of Appeals  
Town of Clay