

**APPROVED
ZONING BOARD OF APPEALS
MINUTES OF MEETING
October 13, 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 October 13, 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
	Karen Liebi	Deputy Chairperson
	Ryan Frantzis	Member
	David Porter	Member
	Mary Lou DesRosier	Member
	Michael Becker	Alternate Member

ABSENT: None

OTHERS

PRESENT:	Robert Germain	Zoning Board Attorney
	Chelsea Clark	Zoning Board Secretary
	Brian Bender	Planning & Development Commissioner
	Terry Karousos	Code Enforcement Officer
	Russel Mithcell	Planning Board Chairman
	Michelle Borton	Planning Board Deputy Chair
	Karen Guinup	Planning Board Member
	Hal Henty	Planning Board Member
	Marie Giannone	Planning Board Secretary

All present participated in the Pledge of Allegiance.

MOTION made by Deputy Chairperson Liebi that the Minutes of the meeting of September 8, 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:

Case: #1986 – David Meleski, 4764 Norstar Blvd., Apt. 228, Tax Map #096.-01-01.0.:

The applicant is seeking a Special Permit pursuant to Section 230-13 H.(2)(d)[1] – Home Occupation, and Section 230-27 I.(2)(a) – Standards of Review, to allow the transfer of ammo and firearms to purchasers of on-line firearm items. The property location is in R-APT Apartment Zoning District.

Chairperson Mason stated the applicant requested to withdraw the Special Permit application.

NEW BUSINESS:

Chairperson Mason advised that the board would be hearing the three residential applications first (Cases: 1992, 1993 & 1994)

Case #1992 – Richard H. Metz, 4907 Joyce Place, Tax Map #088.-13-11.0.:

The applicant is seeking Area Variances pursuant to Section 230-13 E.(4)(b)[1] – Lot and Structure Dimensional Requirements, a reduction of the front yard setback from 25 feet to 10 feet; Section 230-20 B.(2)(b) – Fences, for an increase in height of fence in a front yard from the maximum of 2.5 feet to 7 feet to allow installation of a fence. The property location is in the R-7.5 One-Family Residential 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. Metz explained that he built an addition, and his property is located on a corner lot. The existing fence went to the addition, now he would like to pull the fence out ten (10) feet, perpendicular to the addition. Mr. Metz provided the board with a photo for the case file.

Chairperson Mason asked the applicant to address the Standards of Proof.

Mr. Metz 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.
3. The applicant does not believe the requested Area Variances to be substantial.
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.

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

Deputy Chairperson Liebi thanked the applicant for staking out the proposed fence line.

Chairperson Mason asked Planning Commissioner Bender if he had any questions or comments, and he had none.

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

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

Chairperson Mason asked for those who would like to speak in favor of granting the Area Variances and there were none.

Chairperson Mason asked for those who would like to speak against granting the Area Variances and there were none.

The hearing was closed.

MOTION was made by Deputy Chairperson Liebi in Case #1992 to **approve** the Area Variances as requested with the condition they be in substantial compliance with Exhibit “A”. Motion was seconded by Mr. Frantzis.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Porter	- in favor	
	Mr. Frantzis	- in favor	
	Deputy Chairperson Liebi	- in favor	
	Chairperson Mason	- in favor	<i>Unanimously Carried.</i>

Case #1993 – Matthew Caves, 4608 Ver Plank, Tax Map #044.-01-10.0.:

The applicant is seeking Area Variances pursuant to Section 230-13 A.(4) – Lot and Structure Dimensional Requirements, for the reduction in the required front yard setback from 75 feet to 33 feet; a reduction in the side yard setback from 25 feet to 17 feet, and a reduction in the rear yard setback from 25 feet to 13 feet; Section 230-19 A.(5) – Designated Highway Setback (Accessory Structure), a reduction in the Designated Highway setback from 65 feet to 57 feet to accommodate additions to existing home and pole barn. 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. Caves explained he is looking to add an addition to his existing home, close to the property line and do the same with a pole barn.

Chairperson Mason asked the applicant to address the Standards of Proof.

Mr. Caves addressed the Standards of Proof:

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1. The applicant does not believe the requested Area Variances will create an undesirable change to the character of the neighborhood and believes it will make the property more desirable.
2. The applicant does not believe there is any feasible method other than the requested Area Variances.
3. The applicant does believe the requested Area Variances to be substantial.
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.

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

Deputy Chairperson Liebi asked the applicant if the pole barn would also be closer to the property line.

Mr. Caves confirmed, the pole barn and addition would both be closer to the property line.

Deputy Chairperson Liebi asked the applicant why he cut down so many trees.

Mr. Caves explained they cut trees to create more useable yard space.

Chairperson Mason asked Planning Commissioner Bender if he had any questions or comments, and he had none.

Chairperson Mason asked Code Enforcement Officer Karousos 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 who would like to speak in favor of granting the Area Variances and there were none.

Chairperson Mason asked for those who would like to speak against granting the Area Variances and there were none.

The hearing was closed.

MOTION was made by Mr. Porter in Case #1993 to **approve** the Area Variances as requested with the condition they be in substantial compliance with Exhibit “A”. Motion was seconded by Mr. Frantzis.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Porter	- in favor	
	Mr. Frantzis	- in favor	
	Deputy Chairperson Liebi	- in favor	
	Chairperson Mason	- in favor	<i>Unanimously Carried.</i>

Case #1994 – Sam Ziparo, 4861 West Taft Road, Tax Map #107.-18-08.0.:

The applicant is seeking Area Variance pursuant to Section 230-19 A.(5) – Designated Highway Setback, a reduction in the designated highway setback from 140 feet to 95 feet to allow for the construction of a wrap-around deck with a roof system over it on the front/west facade of the residence. The property location is in the R-10 One-Family Residential 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 an Area Variance.

Mr. Ziparo explained he would like to build a deck around the front and west side of his home with a roof.

Chairperson Mason asked the applicant to address the Standards of Proof.

Mr. Ziparo 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.
2. The applicant does not believe there is any feasible method other than the requested Area Variance.
3. The applicant does believe the requested Area Variance to be substantial.
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.

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

Deputy Chairperson Liebi asked the applicant if the deck would interfere with the business at the pole barn.

Mr. Ziparo confirmed it would not interfere.

Chairperson Mason asked Planning Commissioner Bender if he had any questions or comments, and he had none.

Chairperson Mason asked Code Enforcement Officer Karousos 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 who would like to speak in favor of granting the Area Variance and there were none.

Chairperson Mason asked for those who would like to speak against granting the Area Variance and there were none.

The hearing was closed.

MOTION was made by Mr. Frantzis in Case #1994 to **approve** the Area Variance as requested with the condition they be in substantial compliance with Exhibit “A”. Motion was seconded by Mr. Porter.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Porter	- in favor	
	Mr. Frantzis	- in favor	
	Deputy Chairperson Liebi	- in favor	
	Chairperson Mason	- in favor	<i>Unanimously Carried.</i>

Case #1991 – 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.

Kathleen Bennett, Attorney for the Town of Clay Planning Board, was present on behalf of the applicant.

Attorney Bennett presented the Planning Board’s request for interpretation as shown in ZBA Case 1979/1991: Exhibit 1 (attached). Attorney Bennett noted that

Corey Auerbach of Barclay Damon, was present on behalf of Mirabito.

Mr. Auerback presented opposition to the Planning Board’s second interpretation appeal as shown in ZBA Case 1979/1991: Exhibit 2 (attached).

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

Chairperson Mason asked Planning Commissioner Bender if he had any questions or comments, and he had none.

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

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

Scott Arnold, 5568 Wyandra Drive, stated that the proposed Mirabito would border his property in the HC-1 Zoning District. He added that he agreed with Attorney Bennett, adding that if this use is allowed, it would bring neighborhood concerns, including traffic, safety and environmental. He also believes it would decrease his property value.

Yvonne Arnold, 5568 Wyandra Drive, presented a PowerPoint (Exhibit 3) that included Town Code, Definitions in Town Code, Mirabito franchise information from their business webpage. Mrs. Arnold does not believe that Mirabito should be defined as a Shopping Center but believes it is a Convenience Store, asking the question if the proposed Dunkin' and Bank would be able to operate independently or if they would close when the convince store closed. She also brought forward the below concerns:

- Increased congestion on Barcaldine, Lawton and Crabtree Roads
- Safety risks for pedestrians, school buses and neighborhood access
- Lawton Road is unreasonably narrow for the intensity of traffic this proposal would generate. Its limited width cannot safely accommodate two-way traffic when passenger cars are parked or maneuvering, let alone the turning radius of a full fuel tanker.
- Cars often drive onto the wrong side of Lawton Road due to its narrow width and disrepair, creating daily safety hazards for residents and compounding risks from tanker deliveries and overflow traffic.
- Lawton Road is already in a state of disrepair, with uneven pavement, deteriorating surfaces, and inadequate maintenance. These conditions make it difficult for existing neighborhood traffic to navigate safely and amplify the risks posed by overflow vehicles from the proposed development.
- Heavy delivery trucks and fuel tankers would accelerate the road's deterioration, compounding safety hazards for residents, pedestrians, and local drivers.
- The plan does not illustrate the required 38 parking spaces (6,900 sq. ft. x 5.5 per 1,000 sq. ft.).
- Two existing residences within HC-1 underscore its residential nature
- Fueling Stations, noise, lighting, and 24-hour operations incompatible with residential communities
- Increased emissions and noise from fueling/traffic
- Light pollution affecting nearby residences
- Loss of residential tranquility and property value concerns
- I cited "**230-16 B (1) Intent (a)** It is the intent to maintain in this district the quality of environment that is usually found in areas of commercial use often located near, **but generally not immediately adjacent to, residential neighborhoods**. The intensity and scale of the uses, lots and structures are intended to be commensurate to moderately concentrated business areas." and that classifying a convenience store with 'fueling stations' as a 'shopping center' is not in the best interest of the residential community and **should not move forward**.

Mr. Auerback stated they would operate independently.

Erika Rossman, 5515 Tobin Path asked if the proposed bank would be full-service.

The applicant advised yes, the bank would be full-service with the option to walk in or use a drive-thru, but the bank will determine hours of operation.

Sara Villnave, 5556 Wyandra Drive, presented the board a petition with +/-300 signatures opposed to the proposed Mirabito Gas Station. Petition was given to Attorney Germain for the record.

Resident from Bingley Drive, stated that the project has been disguised through the whole application and stated he would not invest the \$150k improvements to his home if this is allowed.

Attorney Germain advised the public that the questions and concerns presented would be addressed by the Planning Board as the Zoning Board of Appeals case is simply to interpret the Town Code.

The hearing was closed.

MOTION was made by Mr. Frantzis, whereas the Town of Clay Planning Board requested an interpretation of the Town Code to determine if, according to the Clay Town Code, a gasoline service center is an allowed use in the HC-1 Zone Classification if it is part of a proposed Shopping Center, and,

Whereas we heard from representatives of the Town Planning Board and Mirabito Energy on July 14th, 2025, and again on October 13, 2025, and considered written materials presented by the Town Planning Board and Mirabito, and we **HEREBY FIND AND RULE AS FOLLOWS:**

1. Section 230-16 B(2)(b)(6) of the Code states Highway Commercial-Uses Allowed include a “Shopping Center.” The Code then refers to the Definition section of the Town Code to determine how a Shopping Center is defined.
2. The relevant portion of the definition of a Shopping Center contained in the Code is “Land planned, improved and managed to accommodate a grouping of two or more commercial uses in one or more buildings designed to share parking, access, signage and other site services: uses commonly included within a shopping center are: retail stores, restaurants, drive-in services, gasoline service stations, indoor recreation and office.”
3. The plain language of the definition of a Shopping Center contained in the Code lists “gasoline service stations” as a use commonly included within a shopping center.
4. Applying the rules of strict construction and ambiguity interpretation against the drafter, we find a gasoline service center is an allowed use in the HC-1 zone if it is part of a Shopping Center.

If the Town Board wishes to change or amend the Code to remove any ambiguity or allowed use change, it is encouraged to do so.

MOTION was seconded by Mr. Porter.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Porter	- in favor	
	Mr. Frantzis	- in favor	
	Deputy Chairperson Liebi	- opposed	
	Chairperson Mason	- in favor	<i>Unanimously Carried.</i>

Case: #1988 – Micron New York Semiconductor Manufacturing, LLC, 5171 State Route 31, Tax Map #046.-02-05.2.:

The applicant is seeking Area Variances pursuant to Section 230-17 D.(4)(b)[1][a] – Front Yard Minimum, for a reduction in the front yard setback from 200 feet to 125 feet to allow for the placement of a monument sign; and a reduction in the front yard setback from 200 feet to 61 feet to install security fencing; Section 230-20 B.(2)(b) – Fences, for a height increase of the said fence from 2.5 feet to 8.5 feet in the required front yard; Section 230-19 A.(4)(b)[1] – Highway Overlay Zone District Requirements, for a reduction in the lot frontage from two times minimum frontage to one time the minimum frontage; Section 230-21 E. – Parking and Loading Spaces, for a reduction from the required minimum of 29,568 parking spaces (per fab) to 2,900 spaces with 2,400 of these to be contained in a parking garage; and a reduction from the required minimum of 252 loading spaces per fab to 36 loading spaces (docks) to accommodate development (Micron Semiconductor Manufacturing Project) at the White Pine Commerce Park. The property location is in the I-2 Industrial 2 Zoning District.

The proof of publication was read by the secretary.

Jeffrey Maidment from Micron Technology was present as well as Micron Attorney, Katie Birchenough and Jacob Raketich of Jacobs Engineering were present on behalf of the applicant.

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

The applicant presented a PowerPoint slideshow, shown below as “**ZBA Case 1988: Exhibit 1,**” providing details regarding the applicants’ requests.

Chairperson Mason asked the applicant to address the Standards of Proof for each Variance.

The applicant addressed the Standards of Proof, and the responses were the same for all requested Area Variances:

1. The applicant does not believe the requested Area Variances will create an undesirable change to the character of the neighborhood as they are requesting a reduction.
2. The applicant does not believe there is any feasible method other than the requested Area Variances.
3. The applicant does not believe the requested Area Variances to be substantial as they will be reducing the footprint.
4. The applicant does not believe there will be any adverse effect to the neighborhood as they will be creating more greenspace.
5. Yes, the need for the 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 Planning Commissioner Bender if he had any questions or comments, and he had none.

Chairperson Mason asked Code Enforcement Officer Karousos 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 who would like to speak in favor of granting the Area Variances and there were none.

Chairperson Mason asked for those who would like to speak against granting the Area Variances and there were none.

The hearing was closed.

MOTION was made by Mr. Frantzis in Case #1988 to **approve** the Area Variances as requested with the condition they be in substantial compliance with Exhibit “A”. Motion was seconded by Mr. Porter.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Porter	- in favor	
	Mr. Frantzis	-in favor	
	Deputy Chairperson Liebi	- in favor	
	Chairperson Mason	- in favor	<i>Unanimously Carried.</i>

Case: #1989 – RailWorks Track Services, LLC, 8625 Caughdenoy Road, Tax Map #046.-02-03.2 and 046.-01-19.1.:

The applicant is seeking Area Variances pursuant to Section 230-17 D.(4)(b)[1][a] – Front Yard Minimum, for a reduction in the required front yard setback from the Caughdenoy Road right-of-way from 200 feet to 18 feet to install seven (7) structural supports for a raised conveyor, and a reduction in the required front yard setback from the Caughdenoy Road right-of-way from 200 feet to 8 feet to install a chain-link fence; Section 230-20 B.(2)(b) – Fences, for a height increase of the said fence in the front yard from the allowed 2.5 feet to 10 feet to accommodate the placement of a Rail Spur and supporting components at the White Pine Commerce Park. The property location is in the I-2 Industrial 2 Zoning District.

The proof of publication was read by the secretary.

Gary Hurta of B&B Engineers and Geologists was present on behalf of the applicant.

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

Mr. Hurta explained that RailWorks is requesting three (3) Area Variances to allow for construction and operation of a rail spur for material for the Micron Campus adjacent to the CSX Railroad line.

Chairperson Mason asked the applicant to address the Standards of Proof.

Mr. Hurta 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 is in an Industrial Zoning district.
2. The applicant does not believe there is any feasible method other than the requested Area Variances.
3. The applicant does believe the requested Area Variances to be substantial.
4. The applicant does not believe there will be any adverse effect to the neighborhood but rather have a positive impact allowing preservation of three (3) acres of wooded area providing both a visual and noise buffer and would maintain natural habitat for local wildlife.
5. Yes, the need for Area Variances is self-created.

Chairperson Mason asked if the rail spur would go over the road.

Mr. Hurta confirmed it would go over the road and have concrete pillars on each side of the road with concrete foundations to support the structure. They would also have a chain-link fence to prevent vandalization.

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

Deputy Chairperson Liebi asked if they would be hauling material 24/7, 12-hours, or off-hours.

Mr. Hurta stated the operating hours would be from 6 A.M. to 10 P.M., then weekly off hour maintenance from 10 P.M. to 6 A.M.

Deputy Chairperson Liebi asked if the off-hour maintenance would be quieter than the daily material transportation.

Mr. Hurta confirmed it would be quieter.

Mrs. DesRosier asked if Caughdenoy Road would remain open.

Mr. Hurta stated Caughdenoy Road would be temporarily closed for construction of the rail spur but remain open once construction was complete and the rail spur is operating.

Mrs. DesRosiers asked if the traffic would through the area normally, without disruption.

Katie Birchenough, Micron Attorney, confirmed traffic would flow normally with no disruptions and added that there would only be one additional train going through the area per day.

Chairperson Mason asked Planning Commissioner Bender if he had any questions or comments.

Commissioner Bender added that the rail spur and Main Campus are concurrent with the Planning Board and is applicable to site plan review.

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

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

Janet Rathburn, 4760 Freestone Road, asked if the Area Variance would stay with the property if/once the rail spur is no longer used or needed.

Chairperson Mason confirmed, Area Variances stay with the parcel.

Chairperson Mason asked for those who would like to speak in favor of granting the Area Variances and there were none.

Chairperson Mason asked for those who would like to speak against granting the Area Variances and there were none.

The hearing was closed.

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MOTION was made by Mr. Frantzis in Case #1989 to **approve** the Area Variances as requested with the condition they be in substantial compliance with Exhibit “A”. Motion was seconded by Deputy Chairperson Liebi.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Porter	- in favor	
	Mr. Frantzis	-in favor	
	Deputy Chairperson Liebi	- in favor	
	Chairperson Mason	- in favor	<i>Unanimously Carried.</i>

There being no further business, Chairperson Mason adjourned the meeting at 7:32 P.M.



Chelsea Clark, Secretary
Zoning Board of Appeals
Town of Clay



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KATHLEEN M. BENNETT, ESQ.
kbennett@bsk.com
P: 315.218.8631
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September 24, 2025

VIA HAND DELIVERY

Re: *Planning Board Request for Interpretation*

Dear ZBA Members:

Kelly Tobin Development Corp. (the "Owner") owns a parcel of real property located at Route 31 and Lawton Road, identified as Tax Map Parcel No. 077.-34-17.1 (the "Property"). The Owner, together with Mirabito Energy Projects ("Mirabito"), is seeking to develop the Property with a proposed shopping center with fuel and drive-in services (the "Project"). During initial discussions with the Town Planning Department, former Planning Commissioner Mark Territo indicated that the proposed drive-thru's would require special use permits, but the proposed fueling service did not require a special use permit. See Exhibit A.

Upon obtaining the required special use permits for the proposed drive-thru uses, the Owner/Mirabito submitted an application for site plan approval for the proposed shopping center. Following review of the site plan application, Town Code Enforcement Officer Joe Grispino issued the following email:

- 1 Section 230-11, Terms Defined, Shopping Center. The phrase "uses commonly included" does not mean that they are always allowed
- 2 The extant zone is HC-1, Highway Commercial. Gasoline service station is not listed as an allowed use.
- 3 RC-1, Regional Commercial. Gasoline service station is listed as an allowed use by Town Board Special Permit.
- 4 Section 230-10, Applicability, D. "Uses not permitted. All uses not specifically permitted in a district by right or permitted upon issuance of a site plan or special permit approval shall be deemed prohibited in that district."
- 5 Therefore, the interpretation of the CEO is that gasoline service stations are not allowed in HC-1 zoning districts. The acting Commissioner of Planning agrees with this interpretation.
- 6 In the instance of a disagreement with the interpretation of the CEO, an aggrieved party (applicant, Planning Board, etc.), can apply to the Town Zoning Board of Appeals for their interpretation, which would be final.
- 7 The applicant could apply to the Town Board for a change of Zone from HC-1 to RC-1. Russ Mitchell and I agree that this would be the best action for all concerned.
- 8 Upon recent research, we have not found any existing gasoline service stations in an HC-1 district. They all appear to be in RC-1 or LuC-1 districts.
- 9 If the Town were to allow this gasoline service station to be the first and only one to be allowed in an HC-1 district, we would be open to public criticism or lawsuits for not continuing to follow the Town Zoning Code.

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Former Planning Commissioner David Tessier agreed with the email as indicated in an email to Town Supervisor Damian Ulatowski dated June 3, 2025. See Exhibit B.

In light of the comments provided by the Town's Code Enforcement Officer, the Town of Clay Planning Board requested an interpretation of the Town of Clay Code to determine if a gasoline service center is an allowed use in the HC-1 zoning district on the basis that it is included as an example of uses found in the definition of shopping center. The ZBA held a public hearing on the interpretation request on July 14, 2025 and considered a resolution on the interpretation request at its August 11, 2025 meeting. However, it is my understanding that the ZBA vote at its August 11, 2025 meeting was 2-1, and as such, is a nullity. The Planning Board was advised to resubmit its application because one ZBA member was missing at the July 14, 2025 meeting and a new member has been recently appointed.

Accordingly, the Planning Board is requesting that the ZBA determine whether a gasoline service station is a permitted use in an HC-1 zoning district because the definition of shopping center includes gasoline service station as one type of use that is commonly included in a shopping center? In addition, does the Project satisfy the definition of shopping center?

The Planning Board is concerned that the Zoning Code is inconsistent, and without an interpretation from the ZBA that further consideration of the Mirabito site plan application would be improper.

Specifically, the proposed Mirabito is located in an HC-1 zoning district. The intent of the HC-1 District is "to maintain in this district the quality of environment that is usually found in areas of commercial use often located near, but generally not immediately adjacent to, residential neighborhoods." Moreover, "[d]evelopment in these districts should be designed so as to be compatible with the general characteristics which exist or are to be expected in the nearby neighborhoods, such as open space, green areas, landscaping and architecture." See Town Code 230-16(B). Shopping Centers are permitted in an HC-1 Zoning District upon the issuance of site plan approval. See Town Code Section 230-16. Shopping Centers are defined as "[I]and planned, improved and managed to accommodate a grouping of two or more commercial uses in one or more buildings designed to share parking, access, signage and other site services". See Town Code Section 230-10.

Given their proximity to residential districts, gasoline service stations are not listed as a permitted use in HC-1 zoning districts. See Town Code Section 230-16(B). Uses not specifically permitted in a zoning district are deemed prohibited. See Town Code Section 230-10(D). Accordingly, gasoline service stations are prohibited in HC-1

Districts. In fact, there are NO gasoline service stations located in any HC-1 District anywhere in the Town of Clay.

Contrasting the provisions of the HC-1 zoning district and the RC-1 zoning district provides further support that a gasoline service station is not a shopping center. Specifically, in the RC-1 District, which is less restrictive than the HC-1 zoning district, shopping centers are permitted following site plan review and gasoline service stations are permitted upon the issuance of a special use permit. It is illogical to conclude that gasoline service stations would be required to obtain a special use permit in a less restrictive zoning district, but be permitted as a shopping center requiring site plan review in a zoning district intended to protect nearby residential districts.

Accordingly, do the examples of common uses found in a shopping center provided in the definition of shopping center, supercede the list of permissible uses set forth in the HC-1 zoning district, especially considering the specific rule of interpretation that uses not specifically permitted in a zoning district are prohibited. In fact, a review of the photo renderings provided in connection with the site plan application demonstrate that the proposed use is a typical gasoline service station, with 8 pumps, and a convenience store – just like every other gasoline service station in the Town of Clay. See photo renderings below. Every other gasoline service station in the Town of Clay is located in an RC-1 zoning district or a LuC zoning district and has been subject to a special permit review in addition to site plan review. The proposed Project should not be treated any differently.



Mirabito **DELTA** PROPOSED SHOPPING CENTER
WITH FUEL AND DRIVE-IN SERVICES

01/06/2025

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Please contact me with any questions.

Sincerely,

BOND, SCHOENECK & KING, PLLC

A handwritten signature in blue ink, appearing to read 'Kathleen M. Bennett'.

Kathleen M. Bennett

KB/kb

Exhibit A

Joe Grispio

From: Mark Territo <Mark.Territo@YonkersNY.gov>
Sent: Wednesday, June 11, 2025 2:41 PM
To: Joe Grispio
Subject: Mirabito NYS 31 and Lawton Project

Good afternoon Joe,

I am writing to shed some light on the current issue of the Mirabito gas station / shopping center.

In referencing some email correspondence from July of 2024 between myself and the Engineer for the applicant, at the time I believed that the proposal was for a gas station, similar to a request that had been made previously on this same site for a zone change to RC-1. That request was controversial and did not advance.

When discussions began about a similar proposal with a different brand gas station, I initially would not entertain the same zone change proposal that was previously made unless something was going to be different about this application. The new idea was presented as a 'Shopping Center' and it was pointed out to me that shopping centers allow for gas stations. Gas stations in shopping centers seem to not have the special permit requirements that are found when a gas station by itself is proposed. I feel this is a flaw in the code that should be addressed because it is inconsistent. The code seems to state that when a gas station is part of a shopping center it is approvable with site plan review.

At the time the applicant's discussions involved 2 special permits for drive-thru's. This is the proposal that was in front of me. Should this be approved, a site plan application could be submitted, reviewed for completeness and then scheduled on the Planning Board agenda. That application specifically should have been reviewed by the code officer appointed at that time. By the time the site plan application was legally allowed to be submitted, and scheduled, I was no longer with the town therefore my email from July 2024 did not pertain to that site plan, and the 'shopping center' it proposed; my email was only in reference to special permits for the drive-thru's and not needing a special permit for a gas station as part of a shopping center. I would not have been able to accurately assess the shopping center site plan at that time because it did not exist. I believe the Planning Board now has the right to send the issue to the zoning board for an interpretation because they have a site plan in front of them that shows a shopping center that they may or may not feel meets the definition of a shopping center.

If you need any further clarification please feel free to reach out to me.

Sincerely,

Mark V. Territo

Deputy Commissioner

City of Yonkers

Department of Planning & Development

20 South Broadway, Suite 923

Yonkers, NY 10701

914.377.6650

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Exhibit B

Joe Grispino

From: Dave Tessier
Sent: Tuesday, June 3, 2025 3:48 PM
To: Damian Ulatowski
Cc: Joe Grispino
Subject: Mirabito Shopping Center gasoline service station.

Damian,

Notes regarding the proposed Mirabito Shopping Center at 5566 Route 31, in reference to the proposed gasoline service station.

The Code Enforcement Officer, Joe Grispino, Commissioner of Codes, is the first interpreter of the Town of Clay Zoning Code.

The CEO,s interpretation of the pertinent sections of the Town of Clay Zoning Code are listed as follows:

- 1 Section 230-11, Terms Defined, Shopping Center. The phrase "uses commonly included" does not mean that they are always allowed
- 2 The extant zone is HC-1, Highway Commercial. Gasoline service station is not listed as an allowed use.
- 3 RC-1, Regional Commercial. Gasoline service station is listed as an allowed use by Town Board Special Permit.
- 4 Section 230-10, Applicability, D. "Uses not permitted. All uses not specifically permitted in a district by right or permitted upon issuance of a site plan or special permit approval shall be deemed prohibited in that district."
- 5 Therefore, the interpretation of the CEO is that gasoline service stations are not allowed in HC-1 zoning districts. The acting Commissioner of Planning agrees with this interpretation.
- 6 In the instance of a disagreement with the interpretation of the CEO, an aggrieved party (applicant, Planning Board, etc.), can apply to the Town Zoning Board of Appeals for their interpretation, which would be final.
- 7 The applicant could apply to the Town Board for a change of Zone from HC-1 to RC-1. Russ Mitchell and I agree that this would be the best action for all concerned.
- 8 Upon recent research, we have not found any existing gasoline service stations in an HC-1 district. They all appear to be in RC-1 or LuC-1 districts.
- 9 If the Town were to allow this gasoline service station to be the first and only one to be allowed in an HC-1 district, we would be open to public criticism or lawsuits for not continuing to follow the Town Zoning Code.

I agree with and support all of the above, and I hope these comments help to resolve this issue.

David Tessier
Planning Commissioner

Tel: (315) 652-3800 x 134

ZBA CASE 1979/1991: EXHIBIT 2

BARCLAY DAMON^{LLP}

Corey A. Auerbach

Partner

October 11, 2025

VIA ELECTRONIC MAIL

Zoning Board of Appeals

Town of Clay

4401 State Route 31

Clay, New York 13041

Re: Mirabito Holdings, Inc. / Kelly-Tobin Development Corp.
Tax Map Parcel No. 077.-34-17.1
Opposition to the Planning Board's Second Interpretation Appeal

Dear Chairperson Mason and Members of the Zoning Board of Appeals:

I am writing on behalf of Mirabito Holdings, Inc. and Kelly-Tobin Development Corp., whom our firm now represents in connection with the above-referenced appeal.

We hereby incorporate by reference, and make a part of this submission, all prior submittals, correspondence, and supporting materials previously provided to the Zoning Board of Appeals in connection with this matter, including but not limited to the July 9, 2025 letter prepared and submitted by Hinman, Howard & Kattell in opposition to the Planning Board's first appeal, together with all attachments thereto.

Background and Context

The issue has been framed as a debate over whether a "gasoline service station" is allowed in the HC-1 Highway Commercial District. In truth, the question before the Board is simpler and more precise.

Mirabito is not proposing a stand-alone gas station. It is proposing a Shopping Center, a principal use expressly permitted in the HC-1 District under § 230-16(B)(2)(b)(6). The question, therefore, is whether gasoline service is a permitted component of a Shopping Center in the HC-1 District, subject only to site plan approval. It is.

The Code defines a Shopping Center as land improved and managed for a grouping of two or more commercial uses, and specifically lists the types of uses commonly included within one:

"Retail stores, restaurants, drive-in services, **gasoline service stations**, indoor recreation, and offices."

When a principal use is permitted, the component uses described in its definition are likewise permitted as part of that use, subject only to site plan review. That is the plain reading of the Code, and it is precisely how this Board correctly interpreted it in its August 11, 2025 decision.

Procedural History

Section 230-25(B)(3) of the Town Code, incorporating Town Law § 267-b, authorizes the ZBA to “review, interpret and make final determinations regarding the actions of Town administrative or enforcement officials.” This establishes the Board’s appellate authority. The Code also explains how that process begins. Section 230-10(D) (“Uses not permitted”) provides in relevant part:

“A use not clearly addressed by this code may have its status determined by an interpretation of the Commissioner of Planning and Development, subject to appeal to the Zoning Board of Appeals.”

This provision confirms that the Commissioner of Planning and Development is expressly empowered to make such determinations, which are then subject to appeal to this Board. Commissioner Territo, acting squarely within that role, issued exactly the interpretation contemplated by this provision. The Planning Board’s filing was therefore not a new inquiry but an appeal from the Commissioner’s determination, falling squarely within the ZBA’s appellate jurisdiction under § 230-10(D) and Town Law § 267-b.

The contemporaneous correspondence confirms that Commissioner Territo made a final and appealable determination under § 230-10(D). On May 9, 2024, he initially advised that the project “would require a zone change” and directed the applicant to appear before the Town Board. (See Email from M. Territo to M. Napierala, May 9, 2024, attached as Exhibit A.) After further review, and upon consultation with Town Attorney Robert Germain, the Commissioner reconsidered and issued a clear interpretation that no zone change or special permit was required. In his June 20, 2024 email to Brett Hughes, he wrote: “I have discussed this with Robert and he pointed out this path to gas station that I wasn’t aware of. No zone changes or special permits needed, except for any drive-thru’s. Just submit site plan following regular instructions.” (See Email from M. Territo to B. Hughes, June 20, 2024, attached as Exhibit B.) That communication constituted the Commissioner’s definitive interpretation, concluding that fuel pumps are permitted as part of a Shopping Center subject only to site plan review. Commissioner Territo subsequently reaffirmed that determination in a separate e-mail to Code Enforcement Officer Joe Grispino, which is included as Exhibit A to the Planning Board’s September 24, 2025 Request for Interpretation, submitted by Planning Board Attorney Kathleen Bennett. As such, any challenge to that determination was required to be taken within sixty days under Town Law § 267-a(5)(b).

Additional detail regarding the June 2024 determination and the applicant’s reliance thereon is set forth in the accompanying affidavits of Brett Hughes and Matthew R. Napierala, P.E. (attached as Exhibits C and D, respectively). These affidavits document the sequence of communications and meetings with Commissioner Territo, the Town Supervisor, and other officials, confirming that the Town expressly acknowledged the project’s classification and directed the applicant to proceed through the normal site plan and special permit review process. They are submitted to clarify the administrative record and demonstrate the contemporaneous understanding on which the applicant relied.

The Planning Board was aware of that determination for many months before it filed its appeal in June 2025. Its Chairman personally attended multiple meetings where the project was presented and discussed in detail, including specific references to the fueling component.

Unless specifically delegated by the Town Board, the jurisdiction of the Zoning Board of Appeals is appellate only. Its role is limited to reviewing determinations already made by an administrative officer; it is not empowered to issue advisory opinions or to render new interpretations on hypothetical or previously decided matters. The ZBA does not possess original jurisdiction to interpret the Code. New York courts have consistently held that a zoning board may act only upon an appeal from an actual decision of an enforcement official, and may not issue general guidance or clarification in the abstract. No provision in § 230-25, or elsewhere in the Town Code, grants the Board original jurisdiction to entertain a new interpretation request. The only authority conferred upon the ZBA in this context is to review determinations already made by the Commissioner of Planning and Development.

Jurisdictional Defects in the Second Appeal

As a threshold matter, the Planning Board's second appeal suffers from fundamental procedural defects. Under Town Law § 267-a(5)(b), an appeal from an administrative official's decision must be taken within sixty days from the date the appellant knew or reasonably should have known of that decision. That deadline had long since passed when the Planning Board acted. During the ZBA's consideration of the first appeal in July and August 2025, the Board properly recognized that the question of timeliness had been raised and made sure it was part of the record, while choosing not to render a legal determination on that point. It remains, however, undisputed that the Planning Board's filing occurred well more than sixty days after the Commissioner's decision and therefore outside the period allowed by Town Law § 267-a(5)(b).

When, as here, the ZBA acts in its appellate capacity, Town Law § 267-a(13)(b) provides that if an affirmative majority is not attained, "the appeal is denied." The Planning Board's contrary claim that the vote was a "nullity" is legally incorrect. The statute is explicit: a failed motion in appellate jurisdiction equals a denial.

Town Law § 267-a(12) further provides that a rehearing by the ZBA may occur only upon unanimous consent of the members present, followed by a unanimous vote to reverse. No such vote occurred. The same appeal cannot be revived simply by submitting it again in a new form. For these reasons, the Planning Board's September 24, 2025 resubmittal is outside the ZBA's jurisdiction and should be dismissed.

The Code Resolves the Substantive Question

On the merits, the Code itself resolves the issue. Section 230-16(B)(2)(b)(6) lists "Shopping Center" as a permitted use upon site plan approval. The definition in § 230-11 is not merely descriptive; it defines the scope of the permitted use. Courts routinely apply such definitions to determine the scope of permitted uses. Here, the definition expressly includes "gasoline service stations" among the uses commonly included within a Shopping Center. Nothing in the Code conditions or limits that inclusion.

Contrary to the Planning Board's claim, definitions are not separate from or subordinate to the Code, they are part of it. Section 230-11 carries the same legislative force as § 230-16 and must be read in conjunction with it. When the use table authorizes a "Shopping Center," the definition of that term controls what that use encompasses. Reading the Code as a whole gives meaning to both provisions and avoids rendering § 230-11 superfluous. The suggestion that a definition cannot inform the scope of a permitted use misstates basic rules of statutory construction.

The Town employs this same definitional framework elsewhere in its Zoning Code. For example, § 230-14(A)(2) allows "Marina, public" in the REC-1 district with site plan approval. The definition of *Marina, public* provides:

"The use of land, structures, and adjacent water bodies for the storage, docking, and/or servicing of boats for compensation or as nonprofit operation. It may include other business activities, such as **retail fuel sales** and **restaurants**, and similar services."

Retail fuel sales and restaurants are not separately listed as permitted uses in REC-1, yet they are allowed as part of a Marina. This example demonstrates that the Code intentionally defines broad use categories that encompass component activities not separately enumerated in district use tables. The same logic applies here. Just as fuel sales and restaurants are permitted as part of a Marina in REC-1, fuel pumps are permitted as part of a Shopping Center in HC-1. The Planning Board's contrary interpretation would require every sub-use listed in a definition to be repeated in each district's use table to be effective, an approach that would nullify the purpose of having definitions at all and create inconsistencies throughout the Code.

The ZBA's Prior Decision Was Correct

The ZBA's August 11 findings of fact and sound conclusions were entirely consistent with the Code and with well-settled rules of construction. Because zoning ordinances limit the use of private property, they must be strictly construed against the municipality that enacted them. Ambiguity must be resolved in favor of the property owner, and the plain meaning of the words governs.

Commissioner Territo's original interpretation was likewise correct, based on the same clear reading of the Code that this Board later adopted. His determination accurately recognized that no zone change or special permit is required when fuel pumps are part of a permitted Shopping Center use in the HC-1 District.

Your Board applied those principles faithfully, concluding that gasoline pumps are permitted as part of a Shopping Center in HC-1. That interpretation was correct then, and it remains correct now. The record reflects a careful, thoughtful application of the Code's text and purpose, and there is every reason for the Board to reaffirm that determination with confidence. In doing so, the Board will again demonstrate the independence and integrity that define its role, deciding matters on the law and the facts, not on the pressures that sometimes accompany them.

Zoning Board of Appeals
October 11, 2025
Page 5

Requested Action

For all of these reasons, Mirabito respectfully requests that the Zoning Board of Appeals dismiss the Planning Board's second appeal for lack of jurisdiction and reaffirm its prior interpretation recognizing that gasoline pumps are permitted within a Shopping Center in HC-1 under §§ 230-16(B)(2)(b)(6) and 230-11.

Thank you for your careful attention and continued service to the Town.

Very truly yours,

A handwritten signature in black ink, appearing to read "Corey Auerbach", with a stylized, cursive script.

Corey A. Auerbach

cc: Robert Germain, Esq.
Kathleen Bennett, Esq.

Exhibit A

From: Chelsea Clark <cclark@townofclay.org>

Sent: Thursday, May 9, 2024 4:19 PM

To: Matt Napierala <mnap@napcon.com>; Mark Territo <mterrito@townofclay.org>

Cc: Town of Clay Supervisor <supervisor@townofclay.org>; Brett Hughes <brett.hughes@mirabito.com>

Subject: RE: Proposed Mirabito Development NYS Rte 31 & Lawton Rd.

Hi Matt,

I will run this by the Supervisor when he returns from his conference and touch base after.

Thanks,

Chelsea Clark

Information Aide, Executive Office



TOWN of CLAY

Supervisor Damian M. Ulatowski

4401 State Route 31

Clay, NY 13041

Tel: (315) 652-3800 x 162

Email: cclark@townofclay.org

Website: www.townofclay.org

From: Matt Napierala <mnap@napcon.com>

Sent: Thursday, May 9, 2024 4:01 PM

To: Mark Territo <mterrito@townofclay.org>

Cc: Town of Clay Supervisor <supervisor@townofclay.org>; Brett Hughes <brett.hughes@mirabito.com>

Subject: RE: Proposed Mirabito Development NYS Rte 31 & Lawton Rd.

Mark,

Understood. I have discussed this with both the owner and Mirabito representatives and we would like to take that step and review the proposal with the Town Board.

Can you let me know the process and steps to get before the board at an upcoming work session?

Thank you.

Matt



Matthew R. Napierala, P.E.
Managing Engineer / President

Ph: (315) 682-5580

Email: mnap@napcon.com

Web: www.napcon.com

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From: Mark Territo <mterrito@townofclay.org>
Sent: Thursday, May 9, 2024 2:52 PM
To: Matt Napierala <mnap@napcon.com>
Cc: Town of Clay Supervisor <supervisor@townofclay.org>
Subject: RE: Proposed Mirabito Development NYS Rte 31 & Lawton Rd.

Hi Matt,

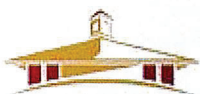
I would suggest you come to a Town Board work session, as I do not believe a gas station would go over to well on this property. It is surrounded by residences, and they were not in favor of the last proposal for a gas station / car wash (they did not like either aspect). This would require a zone change, so see what the Town Board thinks before you get too deep into the details of the project.

Mark Territo
Planning Commissioner

Tel: (315) 652-3800 x 134

Email: mterrito@townofclay.org

Website: www.townofclay.org



TOWN of CLAY

Supervisor Damian M. Ulatowski
4401 State Route 31
Clay, NY 13041

From: Matt Napierala <mnap@napcon.com>
Sent: Thursday, May 9, 2024 1:58 PM
To: Planning <planning@townofclay.org>; Lisa Vincitore <lvincitore@townofclay.org>
Cc: Brett Hughes <brett.hughes@mirabito.com>; jmueller@jktobin.com
Subject: Proposed Mirabito Development NYS Rte 31 & Lawton Rd.

(For Mark Territo & Attorney Robert Germain)

Mark,

The owners (Kelly Tobin Development Corp) of the 9.5 acre parcel at the southwest corner of Rte 31 and Lawton Road are working with Mirabito Energy on a proposed Convenience Store development with an co-tenancy of a coffee shop and small drive-thru bank. See attached graphic.

We have made the development team aware that the current zoning of the property does not allow the fuel sales by right and a zone change will be required for the development as proposed.

We would like to set up a discussion with yourself and other town members 1st your thoughts on the zone change at this location and 2ndly, to review the proposal, provide comments and next steps / path moving through the town processes.

If you could review all and let us know your availability to meet and discuss that would be great.

Reply or give me a call.

Thank you in advance and look forward to hearing from you.

Matt



Matthew R. Napierala, P.E.
Managing Engineer / President

Ph: (315) 682-5580
Email: mnap@napcon.com
Web: www.napcon.com

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Exhibit B

From: Mark Territo <mterrito@townofclay.org>
Date: June 21, 2024 at 9:39:01 AM EDT
To: Brett Hughes
Subject: RE: Mirabito Application | Site Plan Review | Rte. 31 and Lawton Rd.

Brett,

The shopping center definition allows for these things as long as they are part of a shopping center with site plan approval, however drive-thru's still need a special permit from the town board as highlighted in the page from the code below. These approvals usually run concurrently with the various boards as needed. We've been consistent about following this process, so if you don't agree with that then you would first go to the Zoning Board for an Interpretation and then proceed from there after they have made a determination.

[image001.jpg]

Mark Territo
Planning Commissioner

Tel: (315) 652-3800 x 134
Email: mterrito@townofclay.org<mailto:mterrito@townofclay.org>

Supervisor Damian M. Ulatowski
4401 State Route 31
Clay, NY 13041

From: Brett Hughes
Sent: Thursday, June 20, 2024 9:08 AM
To: Mark Territo <mterrito@townofclay.org>
Subject: RE: Mirabito Application | Site Plan Review | Rte. 31 and Lawton Rd.

Thanks for the email and feedback Mark. We look forward to making our submittals.

One question as it relates to your comment about restaurant, drive-in-thru services requiring special permit.

As I read through the shopping center designation it makes specific mention of restaurants and drive-in services as an allowed use in which we have planned as part of this development (Dunkin).

I have provided an excerpt below referencing this language.

Town of Clay Code

Definitions (page 230:22)

SHOPPING CENTER -- Land planned, improved and managed to accommodate a grouping of two or more commercial uses in one or more buildings designed to share parking, access, signage and other site services; uses commonly included within a shopping center are: retail stores, restaurants, drive-in services, gasoline service stations, indoor recreation and offices. Two or more separately owned commercial units shall not be deemed a shopping center solely by virtue of the fact that they share a common access to adjoining highways and/or parking facilities.

Brett Hughes
Director of Real Estate Development
[image005.jpg]
The Metro Center - 49 Court Street
P.O. Box 5306

Binghamton, N.Y. 13902
Cell (315) 725-3781
E-Mail Brett.Hughes@Mirabito.com<mailto:Brett.Hughes@Mirabito.com>

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From: Mark Territo <mterrito@townofclay.org<mailto:mterrito@townofclay.org>>
Sent: Thursday, June 20, 2024 8:29 AM
To: Brett Hughes
Subject: RE: Mirabito Application | Site Plan Review | Rte. 31 and Lawton Rd.

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Hi Brett,

I have discussed this Robert and he pointed out this path to gas station that I wasn't aware of.

No zone changes or special permits needed, except for any drive-thru's. Just submit site plan following regular instructions.

I am out of the office through Monday but can look at anything you have through email as well as answer any additional questions.

Thank you,

Mark Territo
Planning Commissioner

Tel: (315) 652-3800 x 134
Email: mterrito@townofclay.org<mailto:mterrito@townofclay.org>

Supervisor Damian M. Ulatowski
4401 State Route 31
Clay, NY 13041

From: Brett Hughes
Sent: Wednesday, June 19, 2024 1:04 PM
To: Mark Territo <mterrito@townofclay.org<mailto:mterrito@townofclay.org>>
Subject: Mirabito Application | Site Plan Review | Rte. 31 and Lawton Rd.

Hi Mark,

Hope you are doing well. Sorry we missed you at the Town Board work session earlier in the week. Overall, we feel the project was well received by the board and the conversation was positive. They advised us to get with your department on next steps with our application to the planning board for site plan approval.

Below, please see the overview and highlights of what we would like to put forward for site plan approval in order to develop lands located at the SW corner of Rte. 31 and Lawton Rd. Our civil engineer is finalizing a site plan and I will forward that on to you as well once completed.

We are proposing to construct a shopping center consisting of Mirabito convenience w/ fuel, NBT Bank, Dunkin & New York Power Authority EV charging facility as tenants within.

Our read and understanding of the code is that a Shopping Center is an allowed use by right and within the definition of Shopping Center is gasoline service station. I have provided some excerpts from the Town of Clay code below we would like to reference when conducting our review and due diligence.

When able, please let us know if you would like to hop on a call and/or meet to review our application prior to us making submittal. Thank you and we look forward to hearing from you.

Town of Clay Code

Definitions (page 230:22)

SHOPPING CENTER -- Land planned, improved and managed to accommodate a grouping of two or more commercial uses in one or more buildings designed to share parking, access, signage and other site services; uses commonly included within a shopping center are: retail stores, restaurants, drive-in services, gasoline service stations, indoor recreation and offices. Two or more separately owned commercial units shall not be deemed a shopping center solely by virtue of the fact that they share a common access to adjoining highways and/or parking facilities.

HC-1 allowable uses §230-16-B.

B. HC-1 Highway Commercial (based on C-2).

(1) Intent.

(a) It is the intent to maintain in this district the quality of environment that is usually found in areas of commercial use often located near, but generally not immediately adjacent to, residential neighborhoods. The intensity and scale of the uses, lots and structures are intended to be commensurate to moderately concentrated business areas.

(b) Development in these districts should be designed so as to be compatible with the general characteristics which exist or are to be expected in the nearby neighborhoods, such as open space, green areas, landscaping and architecture.

(2) Uses allowed:

(a) Office of Planning and Development issuing a building permit: (reserved)

(b) Planning Board site plan approval:

[1] Retail use

[2] Personal service use

[3] Office building

[4] Bank/credit union

[5] Theater, indoor

[6] Shopping center

[7] Public self-storage facility

[8] Medical office

[9] Outdoor retail sales and service

[10] Day-care center

[11] Instructional Facility

(c) Planning Board special permit approval:

[1] Hospital/clinic.

[2] Nursing home/assisted-living facility.

[3] Secondary use

Brett Hughes
Director of Real Estate Development
The Metro Center - 49 Court Street
P.O. Box 5306
Binghamton, N.Y. 13902
Cell (315) 725-3781
E-Mail Brett.Hughes@Mirabito.com<mailto:Brett.Hughes@Mirabito.com>

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Exhibit C

Affidavit of Brett Hughes

STATE OF North Carolina

COUNTY OF Union

I, Brett Hughes, being duly sworn, depose and state as follows:

Position and Role

I am the Director of Real Estate and Business Development for Mirabito Energy Products ("Mirabito"). I have personal knowledge of the matters set forth herein. This affidavit is submitted in connection with the proposed Mirabito development project located at Route 31 and Lawton Road in the Town of Clay, New York.

Meeting with the Town Supervisor

On or about June 2024, I attended a meeting at the Town offices with the Town Supervisor and other Town representatives regarding the proposed project. At this meeting, we discussed the proposed site plan, which included a convenience store and gasoline fueling facilities. The Town Supervisor indicated that zoning matters were to be addressed by the Commissioner of Planning and Development, Mark Territo, and deferred to him to make determinations regarding zoning compliance.

Interactions with Commissioner, Mark Territo

In June 2024, I communicated directly with Commissioner Territo concerning whether gasoline sales were permitted as part of a Shopping Center development, as that term is defined in the Town Code.

On June 20, 2024, Commissioner Territo confirmed in writing that gasoline sales were permitted with in a Shopping Center use under the Code. He further explained that the project did not require a zoning amendment or special permit other than a special permit for the drive-thru use. He advised that Mirabito should proceed through the normal site plan review process.

Reliance on Determination

Based on Commissioner Territo's written interpretation and direction, Mirabito and its consultants prepared and submitted site plans and application materials for review by the Town, relying on his representation that the project complied with the zoning code as proposed. Our proposal was expressly

presented as a Shopping Center development in accordance with the Town Code definition, and all plans and materials were prepared consistent with that classification.

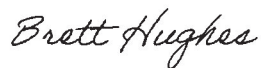
Town's Subsequent Position

Despite Commissioner Territo's clear interpretation and written confirmation, the Town later refused to acknowledge his determination as binding and has taken the position that no zoning decision was ever made. This reversal has delayed the project and caused uncertainty for Mirabito's design team, notwithstanding the fact that Commissioner Territo was the authorized official responsible for interpreting and directing zoning matters for the Town.

Conclusion

My interactions with Commissioner Territo and the Town Supervisor made clear that Commissioner Territo was acting in his capacity as the Town's Commissioner of Planning and Development, that he had authority to determine the status of a use by an interpretation of the zoning code under § 230-10(D) of the Town Code, and that his June 2024 interpretation constituted the Town's official determination on the matter.

I affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

A handwritten signature in cursive script that reads "Brett Hughes". The signature is written in dark ink and is positioned above a horizontal line.

Brett Hughes

10/10/25

Exhibit D

Affidavit of Matthew R. Napierala, P.E.

STATE OF NEW YORK

COUNTY OF ONONDAGA

I, Matthew R. Napierala, being duly sworn, depose and state as follows:

Position and Role

I am a civil engineer and consultant specializing in site design and land development permitting projects. I have over forty (40) years of experience in site design and land use permitting throughout New York State and New England. I am the Managing Engineer and President of Napierala Consulting, Professional Engineer, P.C. I am the lead design engineer and project manager working with Mirabito Energy Products ("Mirabito") on the proposed development project located at Route 31 and Lawton Road in the Town of Clay, New York. I have personal knowledge of the matters set forth in this affidavit.

The Project

At the direction and request of Mirabito Energy Products, the project involves the development of a multi-tenant commercial facility on a vacant commercial lot at the southwest corner of NYS Route 31 and Lawton Road in the Town of Clay. The commercial facility is proposed to include a drive-thru bank, a coffee and donut shop with drive-thru, a convenience retail store, a sandwich shop, and gasoline fuel service. The commercial building was to be approximately 6,900 square feet, with the overall project area being approximately 3.5 acres on a 9.5 acre parcel.

Role in the Project

My responsibilities included preparing and presenting site plans, coordinating with Town officials, and managing submissions for the Town's review process. I attended meetings with Town representatives and was directly involved in communications regarding zoning, site plan requirements, and procedural steps.

Initial Coordination and Submission Steps

From our prior experience working in the Town of Clay, I understood that the first step in the process is to contact the Town's Commissioner of Planning and Development, who reviews the site zoning, provides interpretations of allowed uses, and identifies the appropriate permitting path through the town's various boards.

In May 2024, our team (myself, senior design engineer Neal Zinsmeyer, PE and design engineer Jim Ballantyne) began coordinating with Mark Territo, Town of Clay Commissioner of Planning and Development. Commissioner Territo advised us to meet with the Town Supervisor and Town Board during a work session to discuss the project, as he anticipated potential neighborhood opposition.

On June 17, 2024, Neal Zinsmeyer, PE joined Brett Hughes and Joe Mirabito of Mirabito Energy, along with Joe Mueller, the property owner, in a meeting with Town Supervisor Damian Ulatowski, members of the Town Board and Town Attorney Robert Germain to discuss the project at a Town Board work session. During this meeting, it was noted that the project site is within the HC-1 Highway Commercial Zone which allows "Shopping Center" uses subject to site plan review. The town code definition of "Shopping Center" describes a grouping of two or more commercial uses, including retail stores, restaurants drive-in services, and gasoline service stations.

At the conclusion of the work session, the Supervisor and the Town Attorney agreed that the proposed development fit within the classification and directed us to continue working with the Commission of Planning and Development to prepare the necessary applications.

Following this work session meeting, Mr. Zinsmeyer and Mr. Ballantyne met with Commissioner Territo to discuss the project and the permitting path moving forward. Commissioner Territo confirmed that the multiple commercial uses proposed met the Town's definition of "Shopping Center" and that gasoline service stations are expressly included within that definition. He further indicated that the first permitting step would be to apply for special permits for the "drive-in services", as all drive-thrus require Town Board approval under the Code.

June 2024 Determination by Commissioner of Planning and Development Mark Territo

Following that meeting, I was made aware of written communications between Mirabito (Brett Hughes) and Commissioner Territo, confirming that, in his capacity as Commissioner of Planning and Development, and with the support of the Town Supervisor and Town Attorney, he determined that gasoline service is permitted within a Shopping Center use, and that a Shopping Center is an allowed use upon site plan approval in the HC-1 District.

Based on this determination, Napierala Consulting prepared applications for the two special permits for the drive-in services (bank and coffee/donut shop). These applications included full site plans showing the 6,900 SF Shopping Center building, fuel dispensers, both drive-thrus, parking, and circulation patterns. Consistent with Commissioner Territo's direction, we finalized and submitted the plans and materials for review on September 12, 2024.

Following Commissioner Territo's interpretation, which was reinforced by the Town Supervisor and Town Attorney during the June 17, 2024 work session, I organized plan sets for Planning and Zoning meetings. My understanding was that the Town had accepted the project's classification and permitted use within the HC-1 District and that we were to proceed through the normal approval process.

Following our Special Permit Applications, the project was placed on the Town Board meeting agenda for October 21, 2024. At this meeting, I was the lead presenter representing the project. The presentation included a hard copy site plan mounted on a board and placed on a presentation easel.

This was the same plan that was a part of our application package and that each Board member and town staff had a copy of. The first part of my presentation addressed the zoning classification and the determination that the proposed project is classified as a shopping center by the Town Code definition and that, within a Shopping Center, a gasoline service station is allowed. The presentation then reviewed the drive-in services (drive-thrus) and vehicle circulation in and around the site. This was a public hearing and approximately twenty neighbors were present and spoke against the project and asked how a gas station is an allowed use at this site. Upon the public questioning, the Supervisor indicated that this was the first he had heard of this project and would have to have the planning staff look into it. Commissioner Territo was present at the meeting and responded that he would review the project. The Town Attorney, Robert Germain, was also present at this meeting but did not provide any input or feedback to the Town Board. The board members also discussed site circulation and requested a traffic impact report to further define and clarify vehicle movements in and around the development.

Following this meeting, I reached out to Commissioner Territo to once again confirm his understanding of the use and the permitting path we were on. He indicated that we should make plan adjustments regarding the vehicle circulation and get a traffic study. He once again verbally indicated that the gasoline fuel use was allowed based on the previous interpretation.

Napierala Consulting brought in GTS Consulting to perform a traffic study and made appropriate plan adjustments to improve site circulation and resubmitted plan sets for review. The project was put on the December 16, 2024 town board meeting agenda (as a further confirmation that the project use as a Shopping Center with gasoline service was allowed).

Upon submittal, we learned that Commissioner Territo had resigned from his position and the Town no longer had a Commissioner of Planning and Development. The Town's Consulting Engineer, Ron Detota of C&S Engineers, filled the role in the immediate interim, and in January the Town brought in David Tessier as interim Commissioner of Planning and Development.

At the December 16 Town Board hearing, once again, I was the lead presenter. For this presentation we prepared a PowerPoint to be displayed on the meeting room large screen monitor for all to review the project and to allow all present to follow along with the discussion. One of the early slides in this presentation addressed the subject site zoning and the town's definition of "Shopping Center" and the allowed use of gasoline service within a Shopping Center. Town Board members did not raise questions or concerns with the project use or zoning interpretation. The discussion focused on the drive-in services and site circulation. The board requested further clarification on internal circulation patterns in and around the site.

The site plans were further modified and new graphics were prepared to better show the vehicle routes through the site. The project was put on the January 8, 2025 Town Board hearing. Upon satisfying the board with internal circulation routes, the Town Board moved a resolution to send the project to the Planning Board as a referral on the special permit request.

The project was put on the Town Planning Board's January 29, 2025 meeting agenda. At the January 29 Town Planning Board hearing, we prepared and presented the project and special permit request to the Planning Board. The first slide of the presentation set forth the zoning premise that the site is in the HC-1 District and the HC-1 District includes an allowed use by site plan approval, "Shopping Center," and the Town Code definition of "Shopping Center" states a "Shopping Center is two or more commercial uses in

one or more buildings,” and uses commonly included within a shopping center as retail stores, restaurants, drive-in services, gasoline service stations, indoor recreation and offices. Therefore, the Planning Board and the Town Board were well aware of the project use and how it is applicable to the HC-1 zone. No comments were received or discussed regarding this approach or applicability during the planning board discussions. Regarding the board review of the drive-in services, the Planning Board Chair allowed each planning board member to provide input on the project. All but one planning board member indicated that they were opposed to both drive-thru services at a convenience store site. The other member was okay with one drive-thru but not two. The Planning Board members indicated that they have never seen drive-thrus on a convenience store, did not know how it would work, and felt it added to site circulation issues, and as such did not support it. The Planning Board resolution on the special permit referral was for the Town Board to receive and review their minutes regarding each member’s concerns. The referral did not deny the request, nor was it favorable for the drive-in services.

Following the planning board referral meeting, we made additional internal adjustments to the circulation routes and resubmitted plan sets to the Town Board. Napierala Consulting resubmitted modified plans to the Town Board and the matter was put on the Town Board agenda for March 3, 2025.

At the March 3, 2025 hearing, I once again presented to the Town Board and reviewed the drive-in services and circulation routes. The Town Board then closed the public hearing.

The project was put on the March 17, 2025 Town Board meeting agenda.

At the March 17, 2025 Town Board meeting, each separate Special Permit application (one for the bank drive-thru and one for the coffee/ donut shop drive-thru) was brought to vote. Both Special Permits passed six in favor and one opposed.

With the success of the Special Permits, the design team worked toward making a thorough and complete Site Plan Application to the Town Planning Board.

A Site Plan Application was made on April 29, 2025. The Town requires approximately thirty days between submittal and the first site plan review meeting with the Planning Board.

The project was advertised and listed as an agenda item for a Public Hearing for the May 28, 2025 Planning Board meeting.

At the May 28, 2025 Planning Board meeting, when the project was called, I stepped up to the presentation podium and my colleague loaded our PowerPoint presentation on the video monitor in the meeting room. After the chair read the notice, he looked at me and I was met with a bold statement from the planning board chair “You are not to say a word. It is my turn to talk tonight,” and the Chair went on to read the definition of “Shopping Center” and then the allowed uses for the HC-1 zone and indicated that he needed clarification from the ZBA on the interpretation of the allowed use. After his statement, I politely asked to say one thing, the chair responded, “I’ll give you one word, that’s it.” I indicated that the zone interpretation was made by former Commissioner of Planning and Development, Mark Territo, back in June of 2024. At that time Code Officer Joe Grispino spoke and indicated that Mark Territo is no longer with the Town and he disagreed with that interpretation.

I then packed up my presentation and left the room.

To my knowledge, Mirabito Energy retained outside counsel, Sarah Campbell of Hinman Howard & Kattel of Binghamton, to prepare a legal submission to the Town of Clay Zoning Board of Appeals regarding the proceedings from June 2024 through May 28, 2025.

The project was put on the Town of Clay's Zoning Board of Appeals agenda for a discussion on July 14, 2025.

I was present at the July 14, 2025 ZBA meeting for the requested interpretation. The discussion started with planning board chair, Russ Mitchell, reviewing the matter and expressing his concerns with the project and the permitted use of a gasoline station in the HC-1 zoning district. Mr. Mitchell then went further and set forth his interpretation. In my view, he did not ask for the Board's interpretation but instead was asking the ZBA to agree with his interpretation, which was that the proposed project was not a shopping center and that because there are no gasoline stations in a HC-1 district in the town there should not be one here. In my objective view of Mr. Mitchell's presentation, he appeared biased against the proposed project as expressed by his actions and words during his presentation to the ZBA.

Following Mr. Mitchell's presentation, the ZBA Chair opened the floor to public comments. During this time Attorney Campbell presented her legal summary and brief on the matter, indicating the ZBA and Town Attorney had a complete copy of her findings and she read summary points for the public record.

The ZBA Chair closed the public hearing and indicated that the board would have to review all and would make a decision at the next ZBA meeting.

To my knowledge, a resolution and vote on the matter occurred at the August 11, 2025 ZBA hearing.

Following the ZBA hearing, the project was put on the Town Planning Board meeting agenda for September 10, 2025.

At the September 10 Planning Board meeting, when the project was called, I stepped up to the presentation podium and prepared to present the project. Before I started, the Chair indicated that the board had some business first. At that time, Vice Chair Michelle Borton read a prepared resolution asking once again for a ZBA interpretation on the zoning use within the HC-1 district. The Chair indicated that the previous decision by the ZBA was a "nullity" because only three of the five members of the ZBA voted and a three-vote majority was not obtained.

Following that, the Chair indicated that since it is a public hearing we would be allowed to make our presentation to the Board. As such, we presented the application package and the site plans and listened to board comments.

Reliance on Town Direction

Over the course of many land development actions in which Napierala Consulting has represented various projects over the years, the zoning decisions and permitting path have always been established by the Commissioner of Planning and Development. In this case, by Mark Territo. All plans, labeling, and submissions were prepared based on Commissioner Territo's statements and his role as the official responsible for directing zoning decisions. At no time during or immediately after his June 2024 determination were we told that his interpretation was tentative or unauthorized.

Town's Later Shift in Position

Later communications from the Town indicated that they would not honor or acknowledge the determination made by Mr. Territo. This directly contradicted the guidance we had received and the basis on which our submissions and planning had proceeded.

Conclusion

At all relevant times, I understood and relied on Mr. Territo's authority to interpret the Town Code and direct the process. His June 2024 determination guided our actions and submission timeline.

I affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Matthew R. Napierala, P.E.

Digitally signed by Matthew R. Napierala, P.E.
DN: cn=M. R. Napierala, o=Napierala Consulting,
ou=Professional Engineer, P.E., c=United States of America
Reason: I am approving this document.
Created: 2025.10.10 16:19:25-0400

Matthew R. Napierala, P.E.

END OF ZBA CASE 1979/1991: EXHIBIT 2

Presented by: Yvonne Arnold, Homeowner and Concerned Resident
Submitted on behalf of myself and fellow concerned residents of the Lawton Valley Community

ZBA CASE #1979/1991: EXHIBIT 3

HC-1 Parcel Reality: Protecting Residential Character in Lawton Valley Hunt

Community Presentation to the Town of Clay Planning Board & Zoning Board of Appeals (ZBA)

- October 13, 2025 (ZBA) (6:00 PM ET)
- October 22, 2025 (Planning Board) Case #2025-026 – Mirabito Shopping Center

Date: October 22, 2025

Introduction: Lawton Valley Hunt Community Concerns

We are here to ensure zoning accuracy and protect the residential character of our neighborhood.



- **Who we are:** Homeowners and residents of the Lawton Valley Hunt Community.
- **Why we're here:** To present evidence of zoning misclassification and its impacts.
- **What we bring:** Factual analysis and petition signatures.
- **Our request:** That the Planning Board and ZBA board members uphold zoning intent and protect residential integrity for our community.

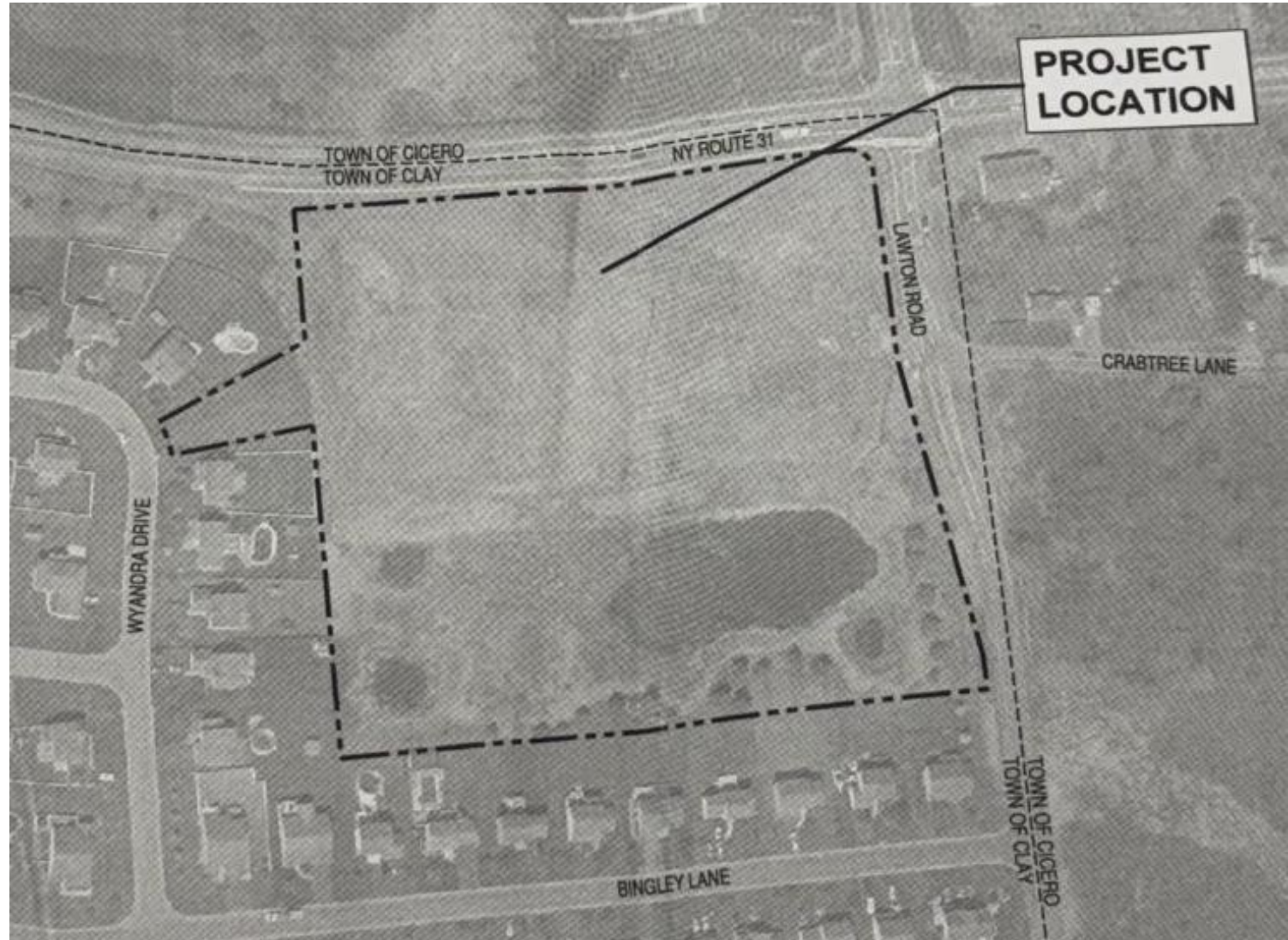
Context & Background

Parcel Location & Zoning

- **Tax Map ID:** 077.-34-17.1
NY Route-31 & Lawton Road in
Clay, NY 13041

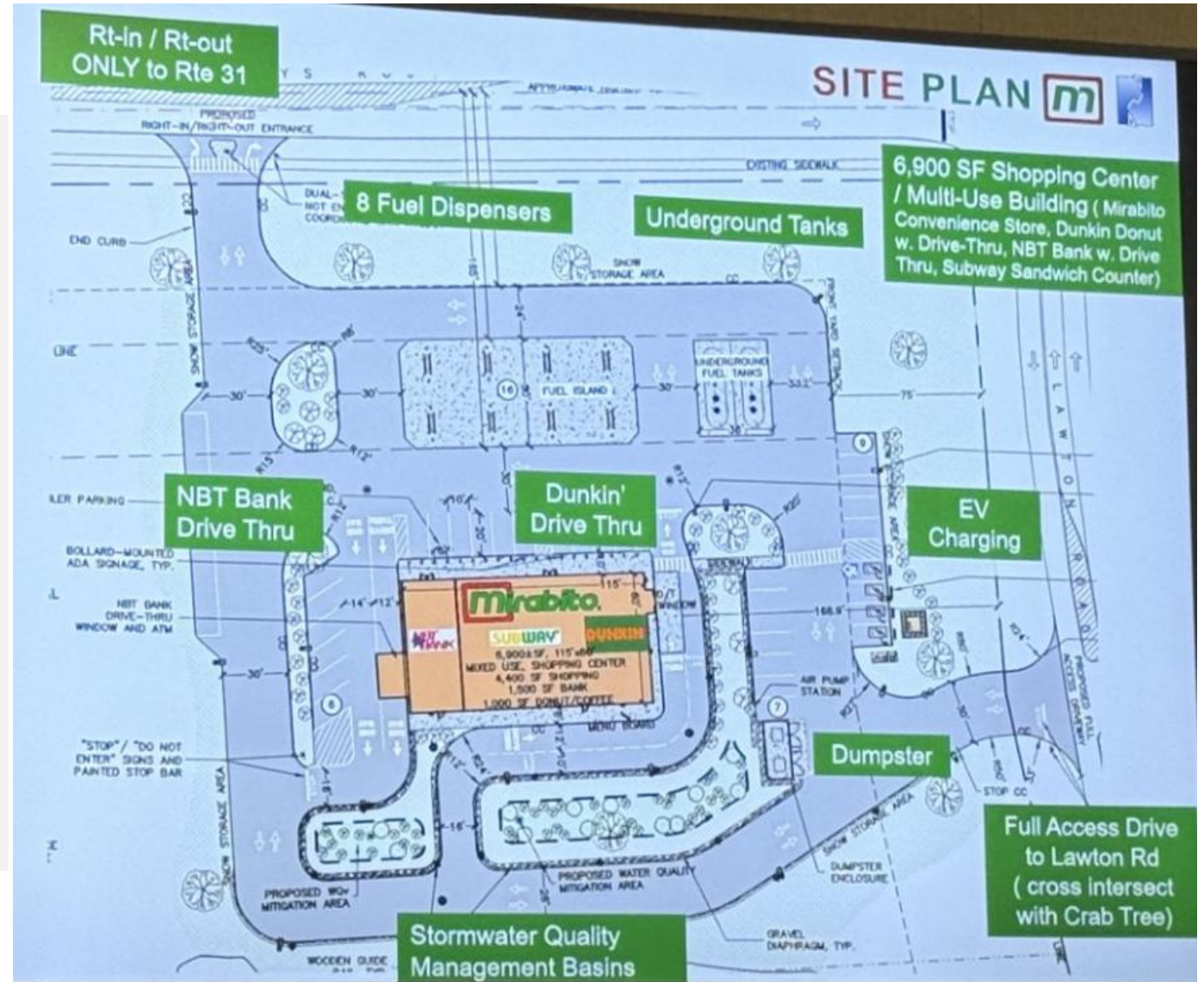
Applicant's Proposal

- Applicant depicts the site as a
9.57-acre **shopping center**



Applicants Proposal – Mirabito Development

- Includes:
 - **Fueling station**
 - **Convenience retail**
 - **Electric vehicle charging**
 - **Dunkin'** with drive thru
 - **Subway** counter
 - **NBT Bank** (full-service?) with drive thru
- Marketed as a “**shopping center**” classification under HC-1 zoning.
- Suggests site can accommodate **traffic, parking, and drive-through stacking.**



Mirabito's Business Model

- **Fueling Operations** – Gasoline & diesel sales as primary revenue driver
- **Convenience Retail** – In-store sales (food, beverages, household items)
- **Energy Services** – Heating oil, propane, natural gas, and energy distribution
- **Emerging Additions** – Electric vehicle charging stations and expanded service offerings



COMPANY HISTORY
FAMILY-OWNED AND OPERATED ENERGY PRODUCT PROVIDER, SINCE 1927

[LEARN MORE](#)

EMPLOYMENT WITH MIRABITO

105
CONVENIENCE STORES

17
ENERGY BRANCHES

13
OPEN CAREER FIELDS

[JOIN THE TEAM](#)



COMPANY HISTORY

FAMILY-OWNED AND OPERATED ENERGY PRODUCT PROVIDER

Since 1927, Mirabito has been family owned and operated. Mirabito provides energy products for families and businesses throughout upstate New York, Western Massachusetts, and Connecticut.

Mirabito Energy Products offers a variety of products including heating oil, propane, natural gas, coal, gasoline, diesel fuels, and kerosene.

In addition to being an energy provider, **Mirabito owns and operates 108 convenience stores** throughout Central New York, making Mirabito a convenient stop for customers and one of the largest convenience store chains in Central New York.

At Mirabito, we are proud of our history and of all our Mirabito family of companies. Our customers are the most important element to our success and we strive to understand and meet their needs. If we can be of service to you, whether it's for energy products or gas and groceries on the way home, we're there to help.

We also offer a complete line of home heating equipment, installation, and service.

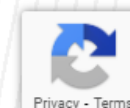
HISTORY OF MIRABITO ENERGY PRODUCTS

2002

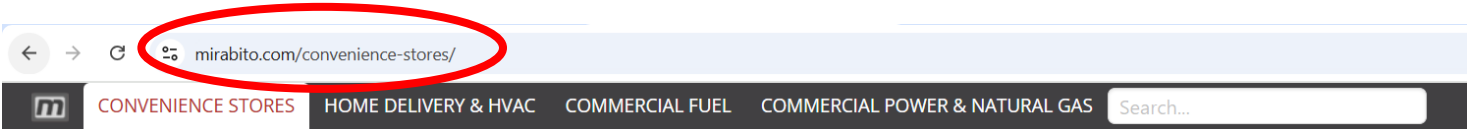
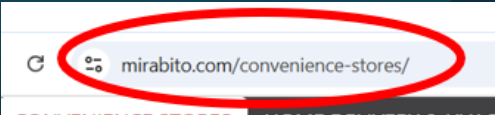
The company opens its first Subway franchise inside its Oxford, NY convenience store.

2024

In February, Mirabito Convenience Stores reopens our Parish, NY location as a travel center, featuring Dunkin' and Subway restaurants, Mirabito food offerings, lounge seating, a tech charging area, and multiple fuel options for the local community and travelers.



Source: Business Model



LOCATIONS ▾

PROMOTIONS ▾

ABITO FLEET CARD

REWARDS PLUS ▾

ABOUT ▾

Ethanol-Free Stations

Subway Locations

Dunkin' Locations

Mirabito Pizza Locations

Mirabito Car Wash Locator

Weis Redemption Locations

COMPANY HISTORY

FAMILY-OWNED AND OPERATED ENERGY PRODUCT PROVIDER, SINCE 1927

LEARN MORE

EMPLOYMENT WITH MIRABITO

105
CONVENIENCE STORES

17
ENERGY BRANCHES

13
OPEN CAREER FIELDS

JOIN THE TEAM



LOOKING FOR A CONVENIENCE STORE NEAR YOU?

Around the corner and along your journey, plan a route to get the quality gas and fresh food you depend on!

NEARBY LOCATIONS

ETHANOL-FREE STATIONS

DOWNLOAD APP

YOUR FAVORITE FOODS ON THE GO!



Convenience Stores – Maps

Columbus Day might affect these hours

* Prices updated 24+ hours ago

Mirabito ...
Convenienc...
Binghamton,...
Open · Close...
\$3.16/Regi

[WEBSITE](#)
[DIRECTIONS](#)

Mirabito ...
Convenienc...
Binghamton,...
Open · Close...
In-store shopping ·
In-store pickup

[WEBSITE](#)
[DIRECTIONS](#)

Mirabito ...

Map data ©2025 Google Terms

Convenience Stores – Hours & Services

MIRABITO #5 - 5 COMMONS



33 South Washington Street,
Binghamton, NY, 13903

Directions

Monday: 5:00 AM to 11:30 PM
Tuesday: 5:00 AM to 11:30 PM
Wednesday: 5:00 AM to 11:30 PM
Thursday: 5:00 AM to 11:30 PM
Friday: 5:00 AM to 11:30 PM
Saturday: 5:00 AM to 11:30 PM
Sunday: 5:00 AM to 11:30 PM

Phone Number: (607) 238-3788

Store Number: 5

Food Grocery: Y

Gasoline: Y

Ethanol Free: Y

Diesel: Y

Electric Charging Station: EV

MIRABITO #121 - BAINBRIDGE



1320 East River Rd Bainbridge, NY
13733

Directions

Monday: 24 Hours
Tuesday: 24 Hours
Wednesday: 24 Hours
Thursday: 24 Hours
Friday: 24 Hours
Saturday: 24 Hours
Sunday: 24 Hours

Phone Number: (607) 967-8488

Store Number: 121

Food Grocery: Y

Dunkin: Y

Subway: Y

24 Hours: Y

ATM: Y

Gasoline: Y

Diesel: Y

Kerosene: Y

Amazon Lockers: Amazon Lockers

MIRABITO #69 - ONEONTA



4968 State Highway 23 Oneonta, NY
13820

Directions

Monday: 24 Hours
Tuesday: 24 Hours
Wednesday: 24 Hours
Thursday: 24 Hours
Friday: 24 Hours
Saturday: 24 Hours
Sunday: 24 Hours

Phone Number: (607) 432-8880

Store Number: 69

Food Grocery: Y

Dunkin: Y

Subway: Y

24 Hours: Y

ATM: Y

Gasoline: Y

Diesel: Y

Bio-Diesel: Y

Electric Charging Station: EV Charging
Station

Convenience Store Mirabito #69 in Oneonta



Front view

MIRABITO #69 - ONEONTA



4968 State Highway 23 Oneonta, NY
13820

Convenience Store

- Front view
- Electric charging stations



**Electric charging
stations**



Side view

MIRABITO #69 - ONEONTA



4968 State Highway 23 Oneonta, NY
13820

Convenience Store

- **Side view**
- **Back view**



Back view

Mirabito Convenience Store #69

MIRABITO #69 - ONEONTA



4968 State Highway 23 Oneonta, NY 13820

TEMPORARILY CLOSED- MIRABITO #125 - HAWLEY

604 Rte 739 & I-84 Hawley, PA 18428

Directions

Monday: 24 Hours
Tuesday: 24 Hours
Wednesday: 24 Hours
Thursday: 24 Hours
Friday: 24 Hours
Saturday: 24 Hours
Sunday: 24 Hours
Phone Number: (570) 775-
Store Number: 125
Food Grocery: Y
Dunkin': Y
Subway: Y
24 Hours: Y
ATM: Y
Gasoline: Y
Diesel: Y

TEMPORARILY CLOSED - MIRABITO #61 - CENTRAL SQUARE

2926 State Route 49 Central Square, NY 13036

Directions

Monday: TEMPORARILY CLOSED
Tuesday: TEMPORARILY CLOSED
Wednesday: TEMPORARILY CLOSED
Thursday: TEMPORARILY CLOSED
Friday: TEMPORARILY CLOSED
Saturday: TEMPORARILY CLOSED
Sunday: TEMPORARILY CLOSED
Phone Number: (315) 676-2693
Store Number: 61
Food Grocery: Y
24 Hours: Y
ATM: Y
Gasoline: Y
Ethanol Free: Y
Diesel: Y
Kerosene: Y

• Inside views

Question: What happens to the Subway and Dunkin' Donuts when the convenience store portion is closed for maintenance, renovations, or even just overnight?



Inside view



Inside view

Convenience Stores

Convenience Stores

Circle K

8578 Henry Clay Blvd. Clay, NY 13041
(Across from Clay Marketplace)



CITGO

Provides a Cliff's Local Market & SUBWAY



Byrne Dairy – Fulton, NY

Shopping Centers

Shopping Centers



Clay Marketplace



Glenn Crossing Plaza

10/22/2025

Protecting Residential Character in Lawton Valley Hunt



COR Center - Clay NY · Follow

August 12, 2022 · 🌐

Sally Beauty is a supply store that sells brand-name products for haircare, skincare, and nails! **GNC Live Well** is a health and nutrition store that sells vitamins & supplements products for sports nutrition, weight management, Both stores are conveniently located at 3873 NYS Route 31, Liverpool, NY 13090 next to Dollar Tree!



COR Development Company, LLC is at COR Center - Clay NY. · Follow

April 27, 2022 · Liverpool · 🌐

We are excited to announce both **Sally Beauty** and **GNC Live Well** have renewed their leases at **COR Center - Clay NY!**

Sally Beauty is a supply store that sells brand-name products for haircare, skincare, and nails! GNC is a health and nutrition store that sells vitamins & supplements products for sports nutrition, weight management, Both stores are conveniently located at 3873 NYS Route 31, Liverpool, NY 13090 next to Dollar Tree!

17



10/22/2025

Protecting Residential Character in Lawton Valley Hunt

Loading Space

Impacts

Traffic & Safety Impacts



- Drive-through stacking exceeds site capacity
- Increased congestion on Barcaldine, Lawton and Crabtree Roads
- Safety risks for pedestrians, school buses and neighborhood access



“Where will overflow traffic go if Dunkin’ and NBT Bank drive-throughs peak at the same time?”

Lawton Road 'Conditions' taken October 2025

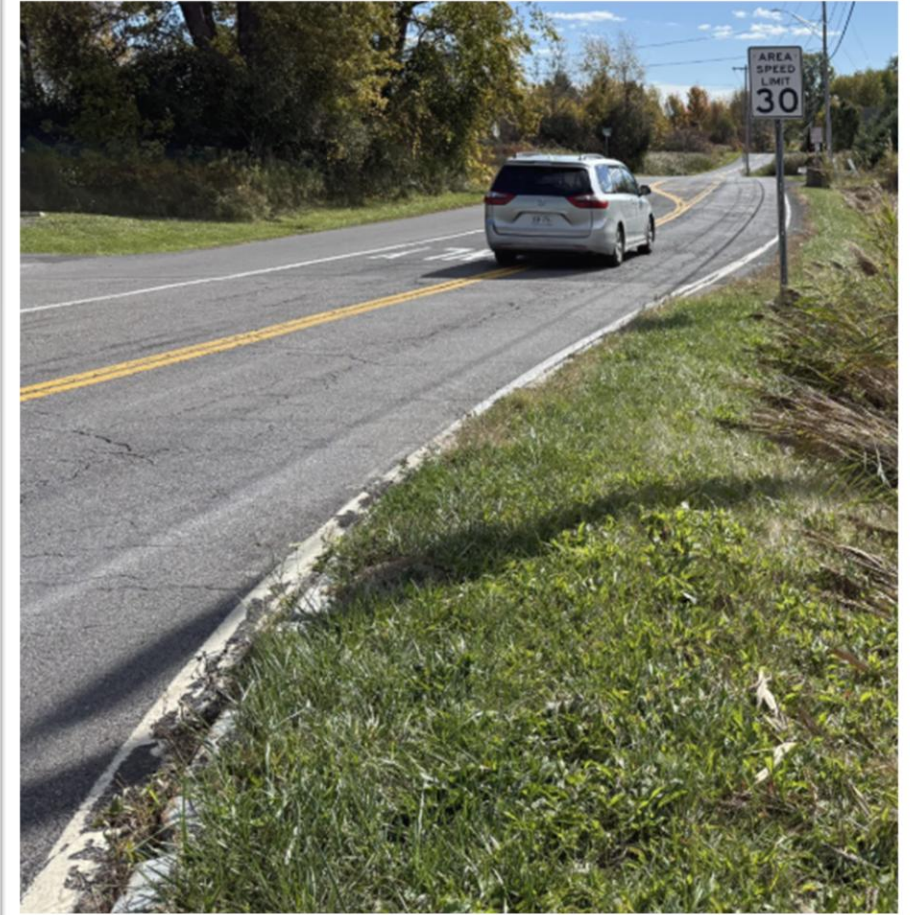
Approaching NY Route-31
from Lawton Road



Lawton Road 'Conditions' taken October 2025



Lawton Road is unreasonably narrow for the intensity of traffic this proposal would generate. Its limited width cannot safely accommodate two-way traffic when passenger cars are parked or maneuvering, let alone the turning radius of a full fuel tanker.



Cars often drive onto the wrong side of Lawton Road due to its narrow width and disrepair, creating daily safety hazards for residents and compounding risks from tanker deliveries and overflow traffic.

Lawton Road Conditions taken 10/19/2025

Lawton Road is already in a state of disrepair, with uneven pavement, deteriorating surfaces, and inadequate maintenance. These conditions make it difficult for existing neighborhood traffic to navigate safely and amplify the risks posed by overflow vehicles from the proposed development.

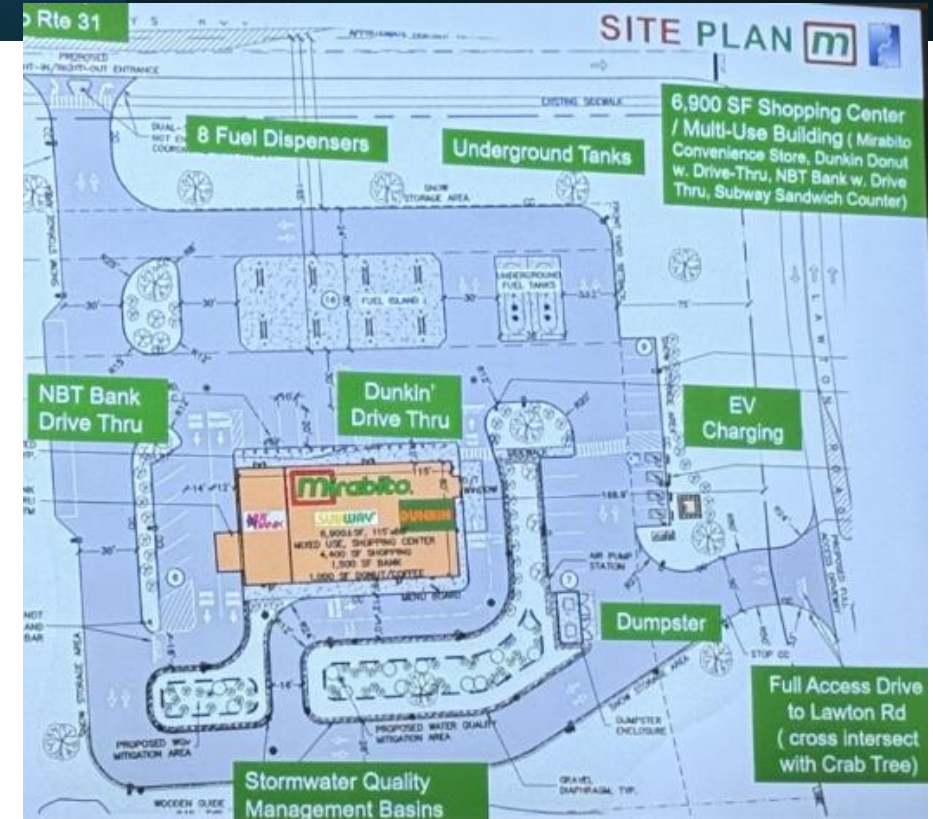


Heavy delivery trucks and fuel tankers would accelerate the road's deterioration, compounding safety hazards for residents, pedestrians, and local drivers.

Parking & Loading



- The plan does not illustrate the **required 38 parking spaces** (6,900 sq. ft. x 5.5 per 1,000 sq. ft.).
- **Overflow traffic will spill onto Lawton Road**, impacting adjacent residences, undermining zoning protections and degrading neighborhood character.
- Pedestrians may need to **cross the drive-through lane to reach the store entrance**, increasing the risk of collisions, especially when drivers are focused on the queue rather than foot traffic.



Mirabito's Business Model

Operates as a regional convenience store and fueling hub, requiring **high-volume deliveries** and **customer traffic**.

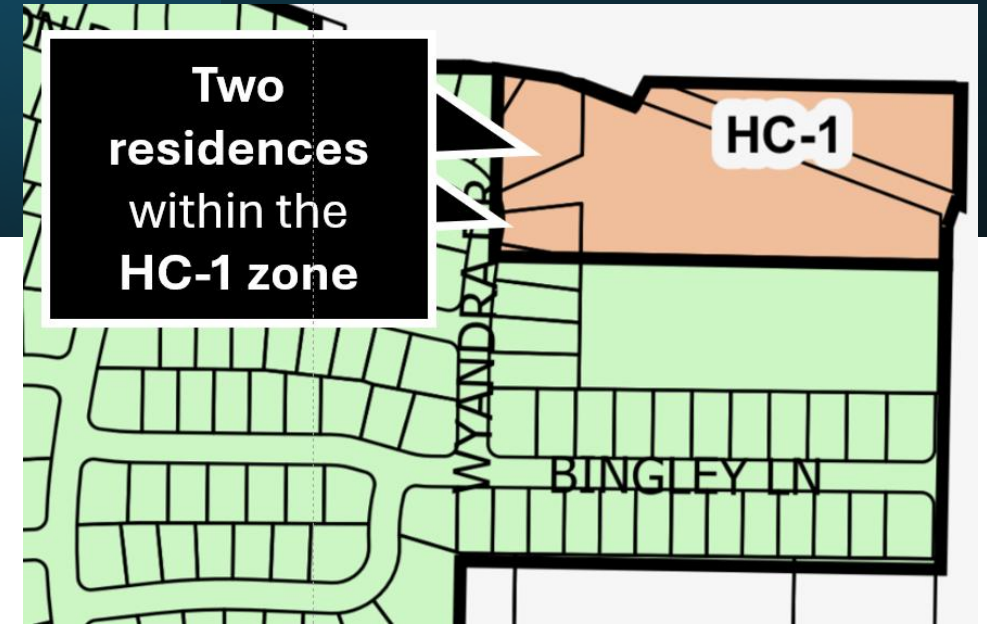
HC-1 Zone

Applies to **modest** parcels where intensity must not overwhelm adjacent uses.

Neighborhood Character



- Parcel is **adjacent to** homes in a **Residential R-7.5** zone where fueling stations are PROHIBITED
- Two **existing residences within HC-1** underscore its residential nature
- Fueling Stations, noise, lighting, and 24-hour operations **incompatible** with **residential communities**



Mirabito's Business Model

Operates extended hours e.g., 24-hours, with lighting and noise impacts.

HC-1 Zone

Envisions low-impact commercial activity that respects nearby residences.

Environmental & Quality of Life



- **Increased emissions** and **noise** from fueling/traffic



- **Light pollution** affecting nearby residences



- Loss of **residential tranquility** and **property value** concerns



Mirabito's Business Model

Seeks parcels to accommodate fueling, retail, and stacking.

HC-1 Zone

Applies to modest parcels where intensity must not overwhelm adjacent uses.

Alternate View



Picture (above): Perspective from the bedroom window of the residence within the HC-1 zone, illustrating its direct proximity to the proposed 'shopping center' with fueling stations.



Picture (above): Perspective from the deck at the rear of my residence, illustrating its direct proximity to the proposed 'shopping center' with fueling stations.

Community Voice

 **Irene Sigafoos** commented 1 month ago
“We are residential community and a gas station is a hazard in so many ways to all of us.”

 **John Thomson** commented 4 weeks ago
“Hello everyone, I hope you're all doing well. Someone should invest in a daycare center or something similar to benefit our neighborhood on that vacant land. If it remains unoccupied, we will continue to face this issue over and over again sometime in the future.”

change.org



Petition	# Signatures
Change.org	169+
Hardcopy	134
Total	303

Residents of Lawton Valley and the surrounding Clay neighborhood—including **seventeen homes** directly bordering the proposed site—will be disproportionately impacted by Mirabito Energy’s plan to build a gas station and convenience store disguised as a “shopping center.” Families living adjacent to the parcel face increased **traffic, noise, light pollution, and environmental risks** from **fuel storage** and **runoff**. These disruptions **threaten the safety, peace, and property values of a well-established residential area**.

If this project moves forward under the current zoning interpretation, it sets a dangerous precedent for future development across the **HC-1 district**. Reclassifying fueling services as part of a “shopping center” undermines the intent of **Town Code § 230-16-1a and b** and opens the door to incompatible commercial uses in residentially sensitive zones. Once approved, the character of this neighborhood—and others like it—may be permanently altered.

Now is the time to act. The **Town of Clay Zoning Board of Appeals** and **Planning Board** are actively reviewing this proposal. Public input is critical to ensure that zoning laws are applied fairly and transparently. We urge the boards to **reject** this misclassification and **deny** approval for fueling services at **5566 State Route 31 & Lawton Road**.

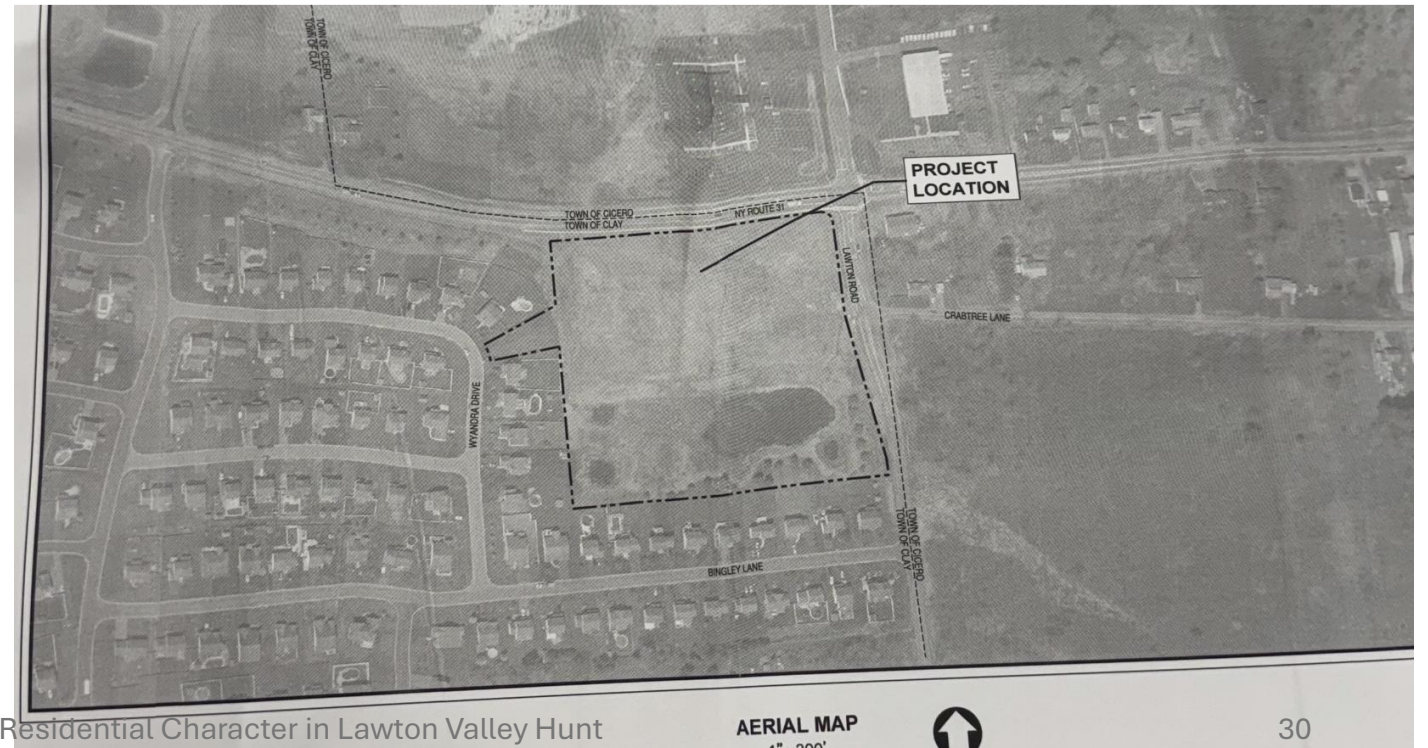
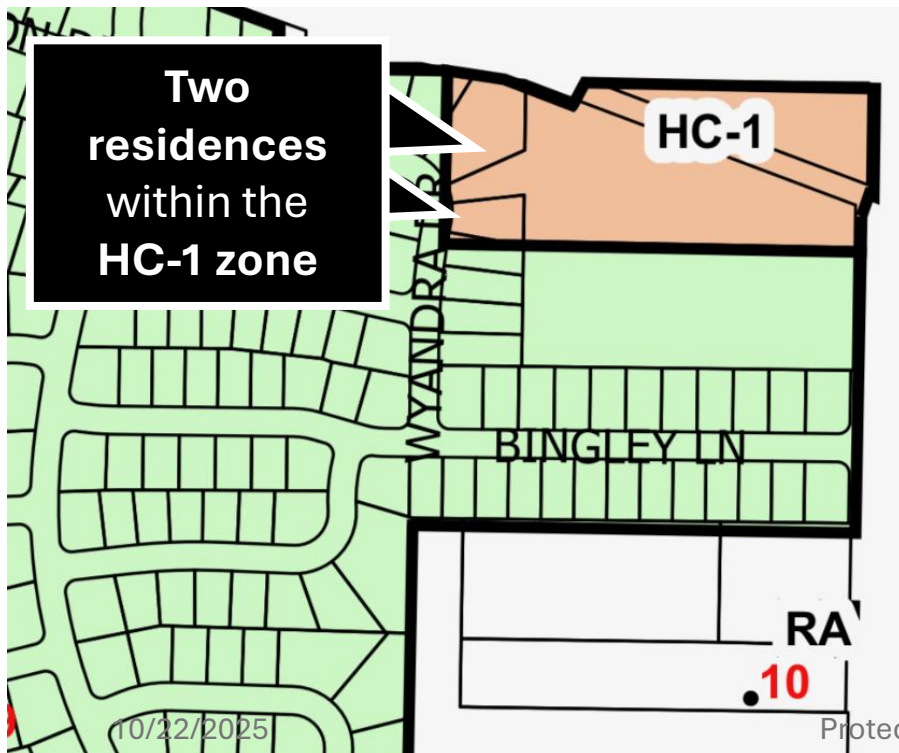
Evidence of Incompatible Use

230-16 B (1) (a)

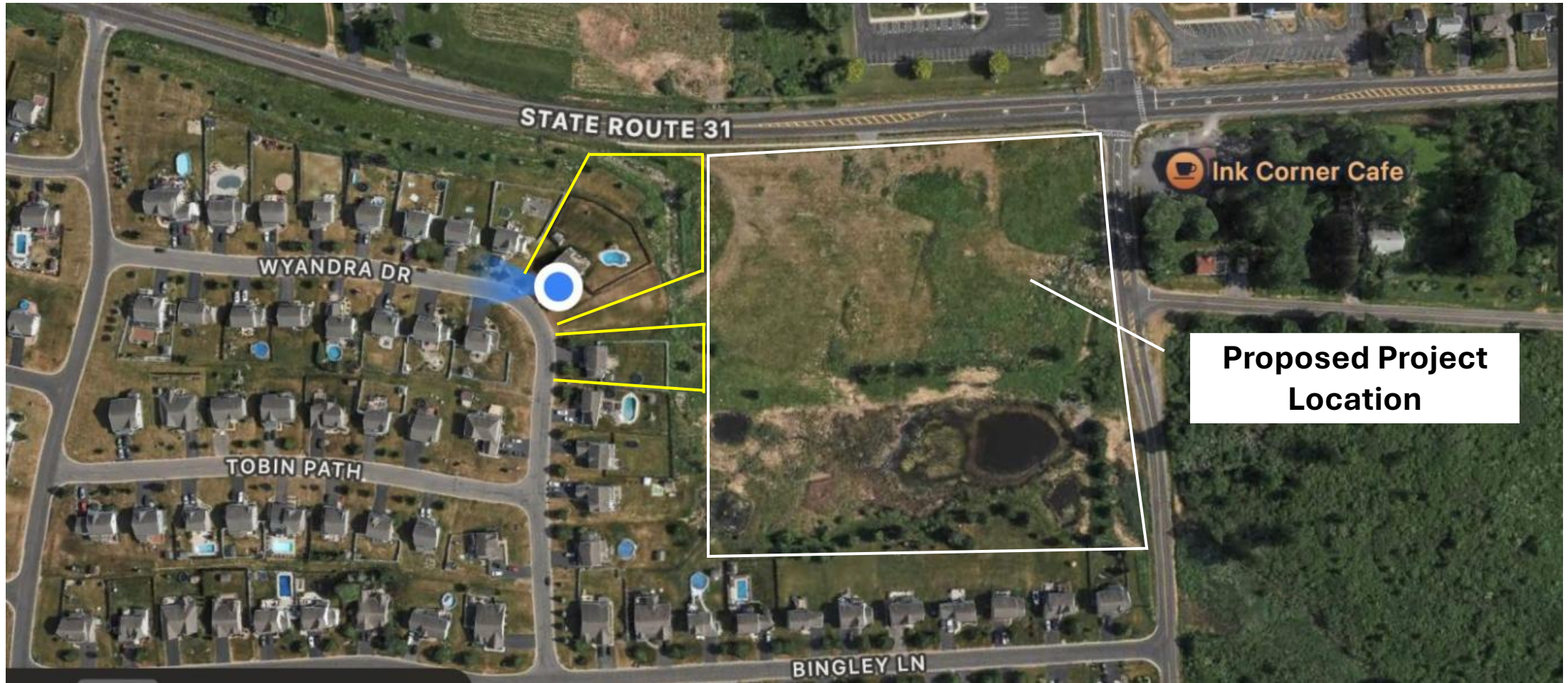
B. **HC-1** Highway Commercial (based on C-2).

(1) Intent.

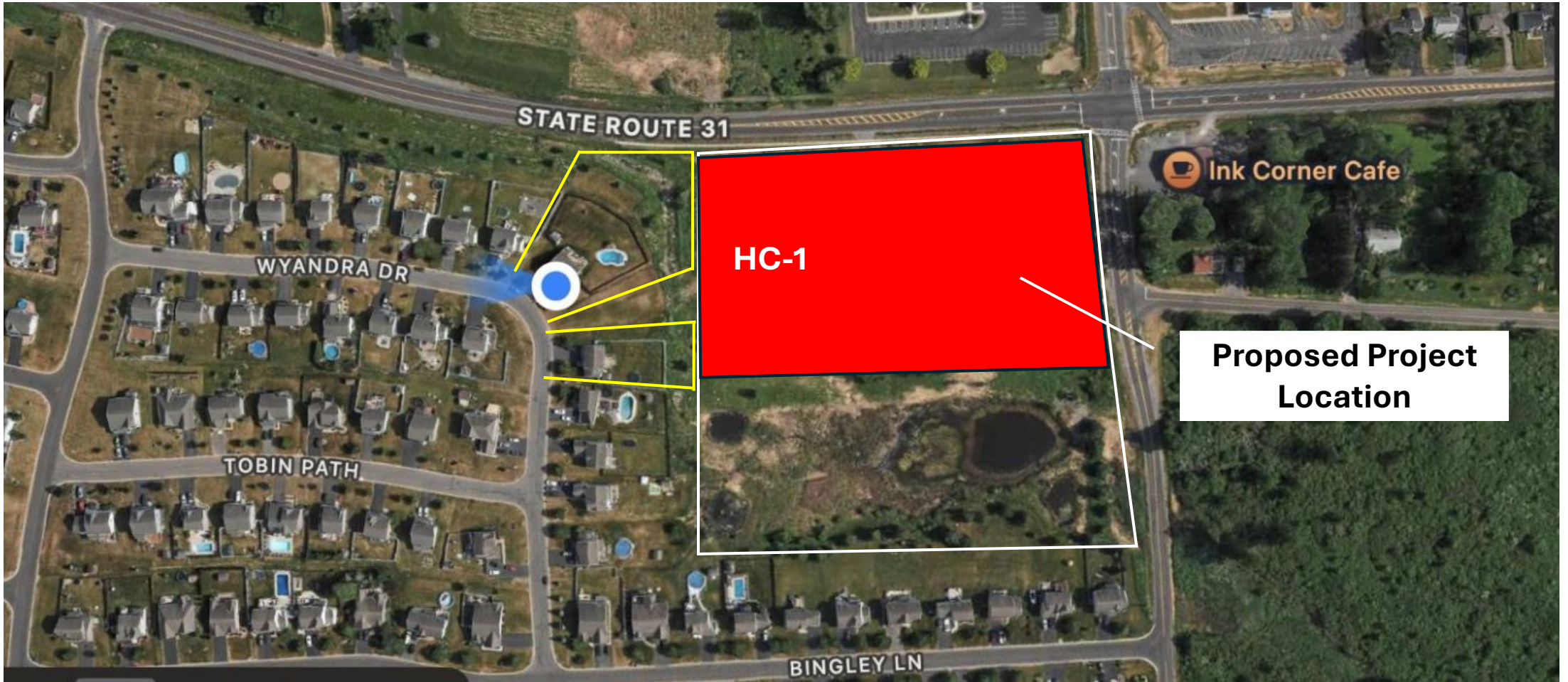
- (a) It is the intent to maintain in this district the quality of environment that is usually found in areas of commercial use often located near, but generally **not immediately adjacent to, residential neighborhoods.** The intensity and scale of the uses, lots and structures are intended to be commensurate to moderately concentrated business areas.
- (b) Development in these districts should be designed so as to be compatible with the general characteristics which exist or are to be expected in the nearby neighborhoods, such as open space, green areas, landscaping and architecture.



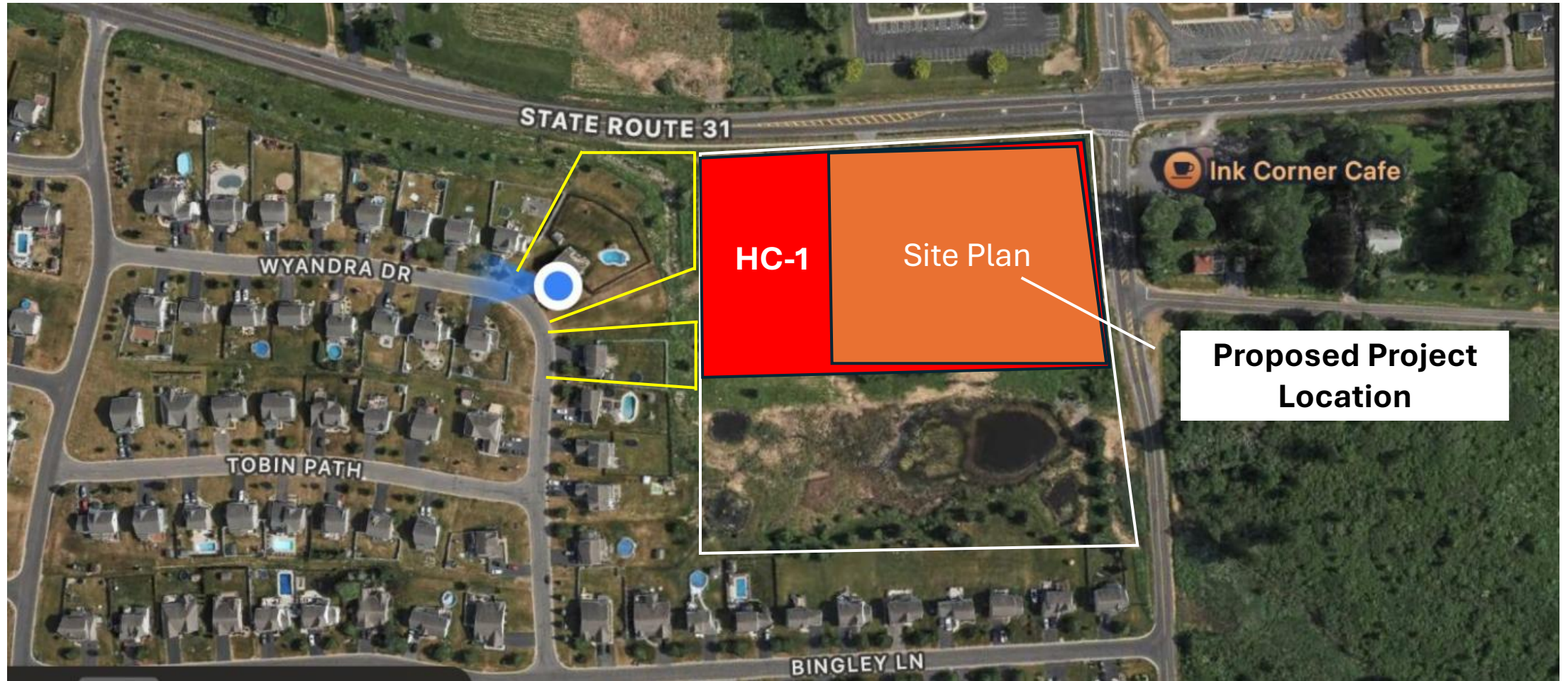
Aerial View: Source via Maps



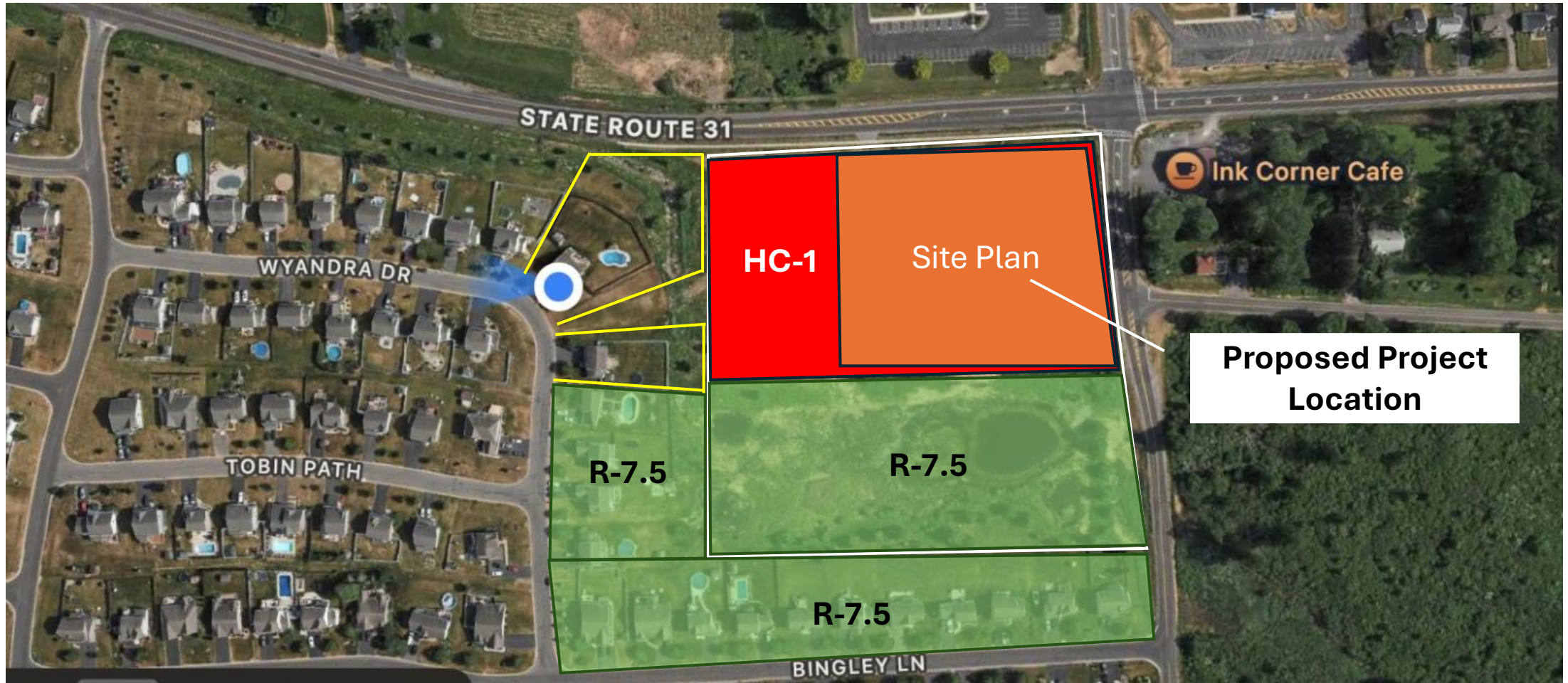
Aerial View: Source via Maps



Aerial View: Source via Maps



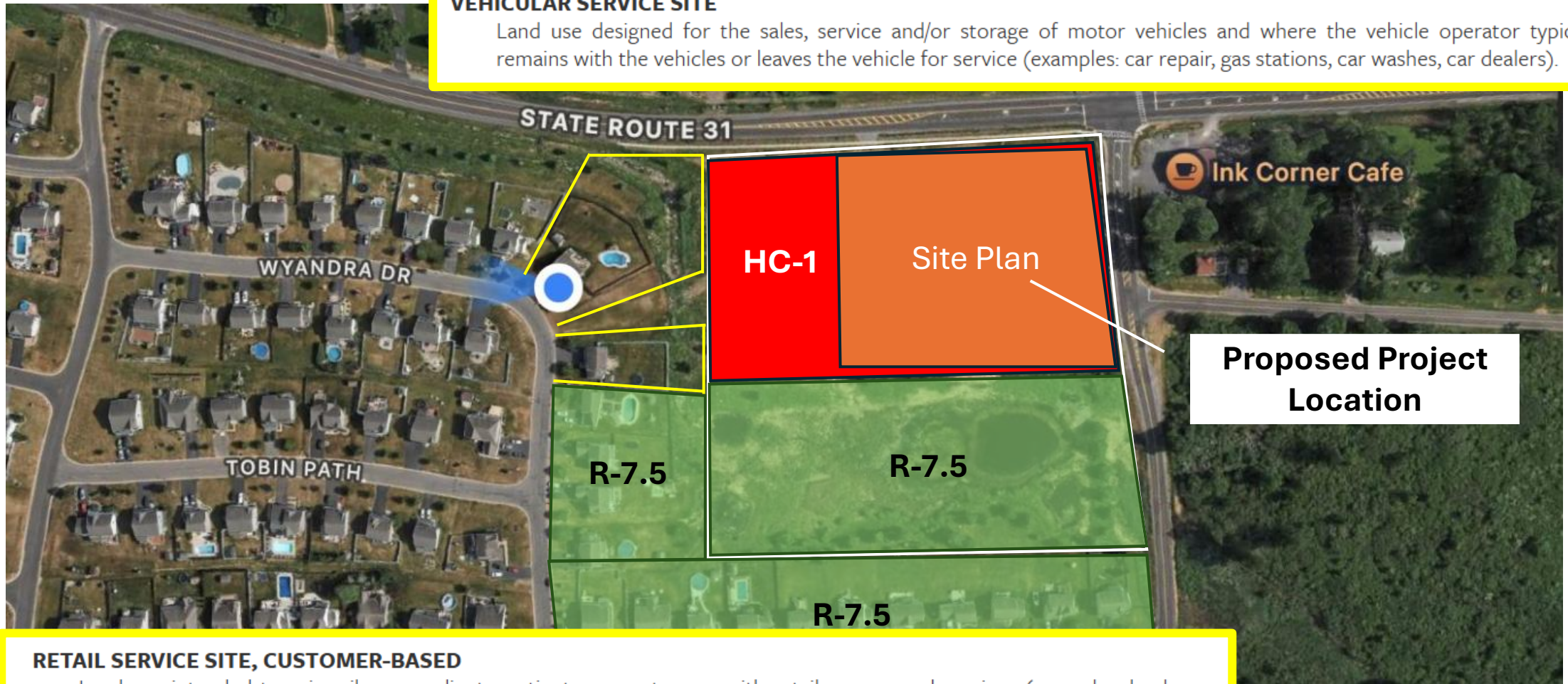
Aerial View: Source via Maps



Aerial View: Source via Maps

VEHICULAR SERVICE SITE

Land use designed for the sales, service and/or storage of motor vehicles and where the vehicle operator typically remains with the vehicles or leaves the vehicle for service (examples: car repair, gas stations, car washes, car dealers).



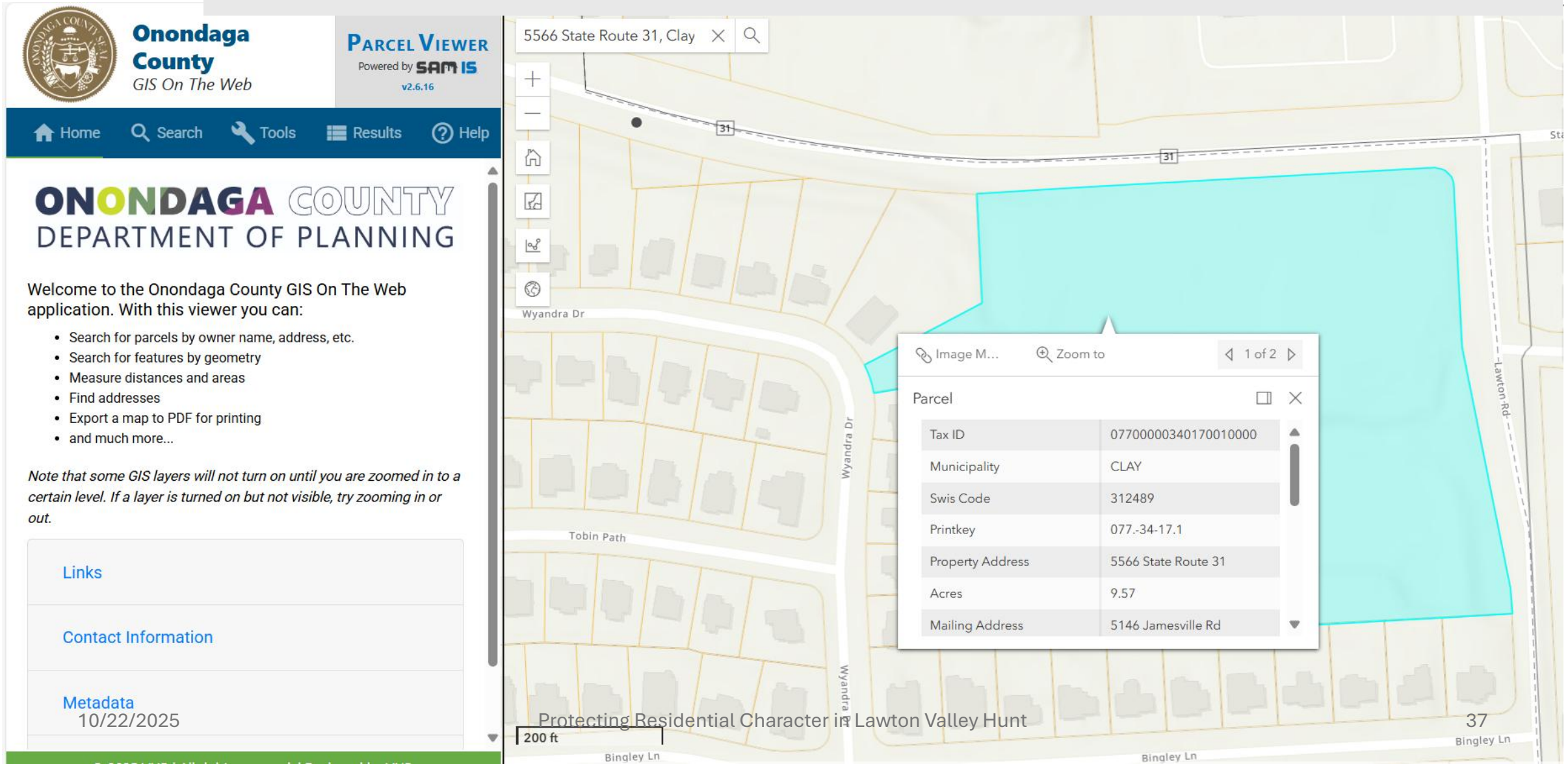
RETAIL SERVICE SITE, CUSTOMER-BASED

Land use intended to primarily serve clients, patients, or customers with retail or personal services (examples: banks, stores, repair shops, groceries, shopping centers).

SOURCE

Key Fact: Misrepresentation of Parcel Size

- Proposal depicts 9.57 acres by **combining HC-1 and Residential zones**



The screenshot displays the Onondaga County Parcel Viewer web application. The interface includes a header with the Onondaga County logo, the title "Onondaga County GIS On The Web", and the "PARCEL VIEWER" logo powered by SAM IS v2.6.16. A navigation bar contains links for Home, Search, Tools, Results, and Help. The main content area features the Onondaga County Department of Planning logo and a welcome message. A list of capabilities is provided, including searching for parcels, measuring distances, and exporting maps. A note mentions that some GIS layers require zooming in to be visible. On the left, there are sections for Links, Contact Information, and Metadata (dated 10/22/2025). The main map area shows a street map with a large cyan-colored parcel highlighted. A search bar at the top of the map displays "5566 State Route 31, Clay". A pop-up window titled "Parcel" provides details for the selected parcel, including Tax ID, Municipality, Swis Code, Printkey, Property Address, Acres, and Mailing Address. A scale bar at the bottom indicates 200 feet.

Onondaga County
GIS On The Web

PARCEL VIEWER
Powered by SAM IS
v2.6.16

Home Search Tools Results Help

ONONDAGA COUNTY
DEPARTMENT OF PLANNING

Welcome to the Onondaga County GIS On The Web application. With this viewer you can:

- Search for parcels by owner name, address, etc.
- Search for features by geometry
- Measure distances and areas
- Find addresses
- Export a map to PDF for printing
- and much more...

Note that some GIS layers will not turn on until you are zoomed in to a certain level. If a layer is turned on but not visible, try zooming in or out.

[Links](#)

[Contact Information](#)

[Metadata](#)
10/22/2025

5566 State Route 31, Clay

Wyandra Dr

Tobin Path

Wyandra Dr

Bingley Ln

Lawton Rd

37

200 ft

Protecting Residential Character in Lawton Valley Hunt

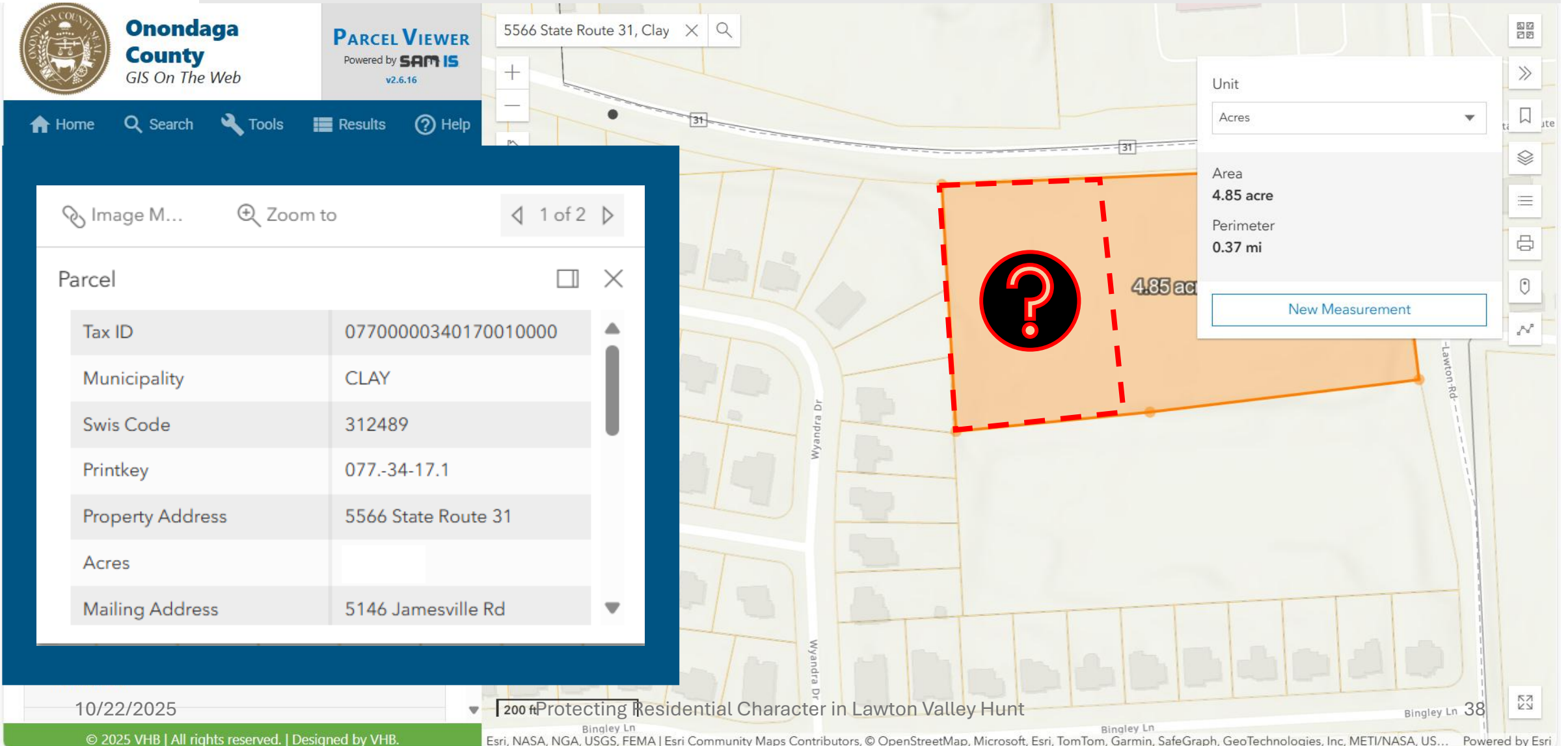
Parcel

Tax ID	07700000340170010000
Municipality	CLAY
Swis Code	312489
Printkey	077.-34-17.1
Property Address	5566 State Route 31
Acres	9.57
Mailing Address	5146 Jamesville Rd

SOURCE

Key Fact: Misrepresentation of Parcel Size

- Proposal depicts 9.57 acres by **combining HC-1 and Residential zones**
- Actual usable **HC-1 area is only 4.85 acres** for **the intended use**
- **Even within that, the proposed site plan covers only a portion of the HC-1 zone**



Onondaga County
GIS On The Web

PARCEL VIEWER
Powered by **SAMIS**
v2.6.16

5566 State Route 31, Clay

Unit: Acres

Area: 4.85 acre

Perimeter: 0.37 mi

New Measurement

Parcel

Tax ID	07700000340170010000
Municipality	CLAY
Swis Code	312489
Printkey	077.-34-17.1
Property Address	5566 State Route 31
Acres	
Mailing Address	5146 Jamesville Rd

10/22/2025

200 ft

Protecting Residential Character in Lawton Valley Hunt

Esri, NASA, NGA, USGS, FEMA | Esri Community Maps Contributors, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, US... Powered by Esri

Applicant Claim vs. Verified Fact

Applicant's Claim	Verified Fact
Parcel totals 9.57 usable acres	Misrepresentation of Parcel Size — Proposal combines HC-1 and residential zones. Only 4.85 acres are usable for commercial purposes, and the plan covers only a portion of that area.
Proposal is a “shopping center” consistent with HC-1	HC-1 zoning is for limited highway commercial uses; a shopping center classification is inconsistent with parcel size and context Applicant has yet to provide sufficient binding documentation for multiple independent businesses occupying alleged ‘shopping center’ 230-11 C: Two or more separately owned commercial units <i>shall not be deemed a shopping center</i> solely by virtue of the fact that they share a common access to adjoining highways and/or parking facilities
Site is suitable for full development	Parcel is 100% surrounded by residential zoned and developed properties and contains two residences with Certificates of Occupancy within the HC-1 zone.
Traffic, parking, and stacking can be accommodated	The plan does not illustrate the required 38 parking spaces under §230-21(B) . Overflow traffic will impact Lawton Road’s residential area.

Ask

A 1,500 SF bank addition does not reclassify a convenience store as a shopping center.

It remains a single retail use with an accessory service. To classify it otherwise would understate traffic and parking impacts, bypass the stricter standards that protect this community, and set a dangerous precedent.

We respectfully request that the Board **reject** the **misclassification** of this proposal as a shopping center, based on the statutory and factual distinctions we have presented.



This proposal is a convenience store + an accessory use, **not a shopping center**.



Appendix

230-11 C

SHOPPING CENTER

Land planned, improved and managed to accommodate a grouping of two or more commercial uses in one or more buildings designed to share parking, access, signage and other site services; uses commonly included within a shopping center are: retail stores, restaurants, drive-in services, gasoline service stations, indoor recreation and offices. Two or more separately owned commercial units shall not be deemed a shopping center solely by virtue of the fact that they share a common access to adjoining highways and/or parking facilities.

GASOLINE SERVICE STATION

A building, structure or area of land used primarily for the servicing of motor vehicles. It shall primarily include facilities for the retail sale and dispensing of motor fuels and petroleum products, goods and services generally required in the operation and maintenance of motor vehicles, sale and servicing of tires, batteries, automotive accessories and replacement items; lubrication services and the performance of routine automotive maintenance and repairs. It may include areas for the retail sale of items such as: prepared foods, groceries, magazines, household or personal care items.

GASOLINE STATION, LIMITED USE

A retail gasoline sales facility consisting solely of gasoline pumps, a shelter for station personnel, an overhead canopy, underground gasoline storage tank(s) and typical associated fire suppression and environmental protection equipment. Except for retail gasoline sales or vehicle washing, no other vehicle-related services shall be provided. It may include incidental sale of materials or merchandise, such as prepared food, magazines, household and personal items. A limited-use gasoline station may be considered, when found appropriate by a reviewing board, to be a secondary use.

230-16 B

B. HC-1 Highway Commercial (based on C-2).



(1) Intent.

- (a) It is the intent to maintain in this district the quality of environment that is usually found in areas of commercial use often located near, but generally not immediately adjacent to, residential neighborhoods. The intensity and scale of the uses, lots and structures are intended to be commensurate to moderately concentrated business areas.
- (b) Development in these districts should be designed so as to be compatible with the general characteristics which exist or are to be expected in the nearby neighborhoods, such as open space, green areas, landscaping and architecture.

(2) Uses allowed:

- (a) Office of Planning and Development issuing a building permit: (reserved)
- (b) Planning Board site plan approval:

[1] Retail use.

[2] Personal service use.

[3] Office building.

[4] Bank/credit union.

[5] Theater, indoor.

[6] Shopping center.

[7] Public self-storage facility.

[8] Medical office.

[9] Outdoor retail sales and service.

[10] Day-care center.
[Added 3-20-2006 by L.L. No. 3-2006]

[11] Instructional facility.
[Added 10-1-2007 by L.L. No. 6-2007]

230-21 Parking and loading A (1) (2) (3)

☐ § 230-21 Parking and loading.

[Amended 9-18-2006 by L.L. No. 7-2006]



This section addresses the land uses established in the Zoning Code and provides parking and loading standards and provisions for reserve and shared parking. Land uses are treated comprehensively through a concept of parking groups.

A. Size.

- (1) Parking space size. A parking space shall be 9 1/2 feet by 20 feet with a driving aisle 20 feet in width. Spaces are measured from centerline of stripe.
- (2) Handicap parking. Handicap parking shall follow the requirements of the Building Code of the State of New York. Medical office buildings may require more parking spaces as per site plan review.
- (3) Loading space size. A loading space shall be a minimum of 12 feet wide and 55 feet in length with a height clearance of 14 feet. It shall also provide sufficient adjacent maneuvering space for trucks and similar vehicles to safely enter, unload and depart the loading space. Loading space design, placement and configuration will be subject to approval during site plan or special permit reviews, as required by the respective zone district. The length of loading space may reduced by the reviewing board to 35 feet upon finding that it is appropriate for the site and structure and does not result in any interference with other vehicular or pedestrian movements.

B. Required parking and loading table. The following table establishes the minimum number of parking and loading spaces for each proposed or existing land use based upon parking groups. Parking groups are collections of land uses that are considered by the Town to have similar parking and loading needs. The parking groups are designed to use the familiar land use terminology used in this Code and do not after whether a land use is permitted or not within any district. The Commissioner of Planning and Development shall determine the appropriate parking group for any land use.

C. Parking groups defined.

10/22/2025



230-21 Parking and loading A (1) (2) (3) (cont'd)

Town of Clay, NY > 2025-01-22 > Part II General Legislation > Chapter 230 Zoning > Article IV Supplemental Regulations > § 230-21 Parking and loading.



▼ Art I General Provisions

- § 230-1 Title.
- § 230-2 Enacting clause.
- § 230-3 Purpose.
- § 230-4 Interpretation.
- § 230-5 Conformance with other codes.
- § 230-6 Severability.
- § 230-7 Repealer.
- § 230-8 When effective.
- § 230-9 Penalties for offenses; enforcement.
- § 230-10 Applicability.

▼ Art II Definitions

- § 230-11 Terms defined.

▼ Art III Zone Districts

- § 230-12 Establishment; Zoning Map; boundaries.
- § 230-13 Residential districts.
- § 230-14 Recreation districts.
- § 230-15 Office districts.
- § 230-16 Commercial districts.
- § 230-17 Industrial districts.
- § 230-18 PDD Planned Development District.
- § 230-19 Overlay districts.

▼ Art IV Supplemental Regulations

- § 230-20 Land uses and structures.
- § 230-21 Parking and loading.
- § 230-22 Signs.

10/22/2025

▼ Art V Administration

Group Name

Minimum Required Parking Spaces

Minimum Required Loading Spaces

Retail service site

Less than 15,000 sq. ft.	6/1,000 sq. ft.	0
15,000 to 30,000 sq. ft.	5/1,000 sq. ft.	0
Greater than 30,000 sq. ft.	4/1,000 sq. ft.	1/50,000 sq. ft.

Restaurant/entertainment site

Fixed seating: package food	15/1,000 sq. ft.	1/30,000 sq. ft.
Fixed seating: family dining	25/1,000 sq. ft.	1/30,000 sq. ft.
Open floor plan: flexible seating	35/1,000 sq. ft.	1/30,000 sq. ft.
Production site (manufacturing)	4/1,000 sq. ft.	1/30,000 sq. ft.
Storage site (warehousing)	0.5/1,000 sq. ft.	1/50,000 sq. ft.

Vehicular service site (see separate requirements for vehicle queuing, storage and display)

Entire site	5/acre	0
Incidental retail space (add parking)	6/1,000 sq. ft.	0

Open-space-related

Active area	10/acre	0
Passive area	2/acre	0

Community support site

Unstaffed site	1/lot	0
Staffed site	Subject to site plan review by Planning Board	

Mixed uses

Cumulative total of required parking for each primary use based on above 49 schedule

Thank You

END OF ZBA CASE #1979/1991: EXHIBIT 3