

APPROVED
ZONING BOARD OF APPEALS
MINUTES OF MEETING
February 13, 2017

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 February 13, 2017. Chairman Mangan called the meeting to order at 7:30 P.M. and upon the roll being called the following were:

PRESENT:	Charles V. Mangan	Chairman
	Edward Wisnowski, Jr	Deputy Chairman
	Ryan Pleskach	Member
	Nicholas Layou	Member
	Luella Miller-Allgaier	Alternate Member
	Vivian Mason	Secretary
	Robert Germain	Attorney
	Mark V. Territo	Commissioner of Planning & Development

ABSENT: Karen Liebi Member

MOTION made by Mr. Pleskach that the Minutes of the meeting of January 9, 2017 be accepted as submitted. Motion was seconded by Mr. Layou. *Carried*

MOTION made by Chairman Mangan for the purpose of the New York State Environmental Quality Review (SEQR) all new actions tonight will be determined to be Unlisted actions, and will be given a negative declaration, unless otherwise advised by our attorney. Motion was seconded by Mr. Layou. *Carried*

OLD BUSINESS:

Case #1575 - Verizon Wireless

Chairman Mangan noted that this one old case from July 5, 2015, regarding Verizon Wireless, requesting Area Variances for construction of a cell tower near Route 31 is still open and will be addressed at a future meeting. At this time it is in litigation.

NEW BUSINESS:

Chairman Mangan asked if all the members had visited the sites and all said they had.

Chairman Mangan explained that Case #1649, America Stores It, will be adjourned as it needs to be re-advertised. The applicant's attorney did not like the wording of the legal ad, so the case will be adjourned.

Case #1646 – AREA VARIANCE - Side Track Enterprises, LLC, 4975 State Route 31, Tax Map #046.-01-16.1:

The applicant is requesting Area Variances pursuant to Sections 230-16 B.(4)(a)[1]: a reduction of the lot area from the required 80,000 square feet to 64,198 square feet; 230-19 B.(4)(b)[1]: a reduction of the front yard setback from the required 75 feet to 13.3 feet; 230-19 A.(4)(b): a reduction in the lot requirement in the highway overlay from 160,000 square feet to 64,198 square feet; 230-19 A.(4)(b): a reduction in the lot frontage in the highway overlay from 400 feet to 284.5 feet; 230-22 C.(1): to increase the allowable number of freestanding signs from one to two; and 230-22 C.(1): a reduction in the minimum front yard setback for the freestanding signs from 25 feet to 13.3 feet, to allow for a zone change to HC-1 to allow for more flexibility of use for the building currently on the site and for two freestanding signs. The property is currently located in the I-2 Industrial 2 zoning district. *(The Onondaga County Planning Board has recommended denial, so approval requires a super majority vote, four or more.)*

The Secretary read the proof of Publication.

Hilary Donohue of Group 1 Design represented the applicant. She explained that they are going to renovate the building, and use the upstairs for storage and office space. Freight Yard Brewing makes craft beer off site and will rent space and sell it at this site.

Ms. Donohue addressed the Standards of Proof:

1. They don't believe there will be any negative or undesirable change to the character of the neighborhood. It will be a more productive use.
2. They don't believe there is any other feasible method than to obtain an Area Variance. The building already exists.
3. They believe the Area Variance request is substantial. The building already exists
4. They don't believe there will be any physical or environmental impact to the neighborhood
5. They don't believe the Area Variance is self-created.

Chairman Mangan said he disagreed.

Mrs. Miller-Allgaier asked if they were going to continue with the Farmers Market and Ms. Donohue said yes.

Mr. Pleskach asked why they were asking for two signs and why so close together and Ms. Donohue explained that one is there and the other is for the Farmers Market.

Chairman Mangan asked if there were any further comments or questions and there were none.

Chairman Mangan asked Commissioner Territo if he had any comments and he had none.

Chairman Mangan asked if anyone in the audience had any questions and there were none.

Chairman Mangan asked for those in favor granting the Area Variance requests and Dorothy Heller, the Town Historian, said she was in favor, that this area has a lot of local history. Chairman Mangan asked for those opposed to granting the Area Variance requests and there were none.

Chairman Mangan closed the hearing.

Mr. Layou announced that he was recusing himself from voting as he owns property in the 200 foot vicinity of this parcel.

MOTION made by Mr. Pleskach in Case #1646 to **approve** the Area Variance for a reduction of the lot area from the required 80,000 square feet to 64,198 square feet. Motion was seconded by Deputy Chairman Wisnowski.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Wisnowski, Jr.	- in favor	
	Mrs. Liebi	- absent	
	Mr. Pleskach	- in favor	
	Mr. Layou	- recused	
	Mrs. Miller-Allgaier.	- in favor	<i>Carried</i>

MOTION made by Mr. Pleskach in Case #1646 to **approve** the Area Variance a reduction of the front yard setback from the required 75 feet to 13.3 feet. Motion was seconded by Mrs. Miller-Allgaier.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Wisnowski, Jr.	- in favor	
	Mrs. Liebi	- absent	
	Mr. Pleskach	- in favor	
	Mr. Layou	- recused	
	Mrs. Miller-Allgaier.	- in favor	<i>Carried</i>

MOTION made by Mr. Pleskach in Case #1646 to **approve** the Area Variance a reduction in the lot requirement in the highway overlay from 160,000 square feet to 64,198 square feet. Motion was seconded by Mrs. Miller-Allgaier.

Roll call: Chairman Mangan - in favor
Deputy Chairman Wisnowski, Jr. - in favor
Mrs. Liebi - absent
Mr. Pleskach - in favor
Mr. Layou - recused
Mrs. Miller-Allgaier. - in favor *Carried*

MOTION made by Mr. Pleskach in Case #1646 to **approve** the Area Variance a reduction in the lot frontage in the highway overlay from 400 feet to 284.5 feet. Motion was seconded by Mrs. Miller-Allgaier.

Roll call: Chairman Mangan - in favor
Deputy Chairman Wisnowski, Jr. - in favor
Mrs. Liebi - absent
Mr. Pleskach - in favor
Mr. Layou - recused
Mrs. Miller-Allgaier. - in favor *Carried*

MOTION made by Mr. Pleskach in Case #1646 to **approve** the Area Variance to increase the allowable number of freestanding signs from one to two. Motion was seconded by Mrs. Miller-Allgaier.

Roll call: Chairman Mangan - in favor
Deputy Chairman Wisnowski, Jr. - in favor
Mrs. Liebi - absent
Mr. Pleskach - in favor
Mr. Layou - recused
Mrs. Miller-Allgaier. - in favor *Carried*

MOTION made by Mr. Pleskach in Case #1646 to **approve** the Area Variance a reduction in the minimum front yard setback for the freestanding signs from 25 feet to 13.3 feet.. Motion was seconded by Mrs. Miller-Allgaier.

Roll call: Chairman Mangan - in favor
Deputy Chairman Wisnowski, Jr. - in favor
Mrs. Liebi - absent
Mr. Pleskach - in favor
Mr. Layou - recused
Mrs. Miller-Allgaier. - in favor *Carried*

The Area Variances in Case #1646 are **approved** with the condition that they all be in substantial compliance with Exhibit "A".

Case #1648 – AREA VARIANCES - Rite Aid Pharmacy/Kimbrook Route 31 Development, LLC, 3566 & 3578 NYS Route 31, Tax Map #052.-02-11.1 and #052.-02-11.2:

The applicant is requesting Area Variances pursuant to Sections 230-16 C.(4)(a)[2][b] - reduction of the side yard setback from 75 feet to 25 feet to allow for an accessory structure (dumpster enclosure/fence); 230-16 C.(4)(a)[2][c] - reduction of the rear yard setback from 75 feet to 9.3 feet to allow for a principal and accessory structure; 230-16 C.(4)(a)[1][a] - reduction of the minimum required lot area from 5 acres to 1.6 acres (69,913.8 square feet) to allow for a zone change to RC-1; 230-21 E. - reduction of the required minimum parking spaces from 67 to 53; 230-21 A.(1) - reduction of the required minimum parking space size from 9 1/2 feet by 20 feet to 9 feet by 18 feet; and 230-16 C.(4)(a)[1][b] - reduction of the perimeter landscape strip from 30 feet to 9.3 feet for the purpose of development of a Rite-Aid Pharmacy with a single lane drive thru. The property is currently located in the RA-100 Residential Agricultural zoning district, with a pending change of zone to RC-1 Regional Commercial zoning district.

The Secretary read the proof of Publication.

Attorney Paul Curtin represented the applicant and explained that this is a split zone, an RA-100 (Residential Agricultural) and an RC-1 (Regional Commercial), They have been before the Planning Board and they have recommended approval of a zone change to the RC-1 to the Town Board, who will make the final decision.

Attorney Curtin addressed the Standards of Proof: *(See attached Schedule "A" for applicant's complete response to the Standards of Proof.)*

1. They don't believe there will be any negative or undesirable change to the character of the neighborhood.
2. They don't believe there is any other feasible method than to obtain an Area Variance. They are constricted by the size of the lot.
3. They do not believe the Area Variance requests are substantial.

Chairman Mangan noted that he felt it is substantial due to the reduced parking and the reduced size of the spaces. Perhaps if they obtained the lot next to this parcel it could be used for parking.

Mr. Layout also felt the requests are substantial and is also concerned about the reduction of size and number of parking spaces.

Mr. Pleskach commented on snow removal and the potential problem due to the size of the parcels. Attorney Curtin said there was room for snow storage and if need be the snow could be carted away. He also commented that cars are smaller now than in other years so not as much space was needed.

Chairman Mangan added that vans and trucks are popular and take up more space. The smaller spaces would create a difficulty for parking. Attorney Curtin stated that there is also room in the Kimbrook Plaza for parking. Chairman Mangan asked if this parcel was part of the plaza and Attorney Curtin said no it was separate.

Mr. Layou asked what assurances they could give for snow removal. Attorney Curtin said that this would be an issue for Site Plan review before the Planning Board.

4. They don't believe there will be any physical or environmental impact to the neighborhood.
5. They don't believe the Area Variance is self-created because the present vacant residential use is an indication that that use is no longer viable.

Chairman Mangan said he was concerned that there are so many variances requests and reiterated his concerns with less parking spaces and smaller spaces.

Attorney Curtin suggested a lesser number but bigger?

Chairman Mangan noted that the size of the parcels makes it impossible to meet the code, but the lot next to them could give them additional room.

Robert May of Nelson Associates owns that lot next to these two parcels and he doesn't think it could work.

Mr. Burnham inquired about the access road, the one to Theodolite, and who takes care of it, as it is a disaster. Attorney Curtin said his client owns it and will completely redo it.

Ms Burnham said she felt the current Rite Aid Pharmacy was enough, and didn't feel it was necessary to build a new one just to have a drive-thru.

Chairman Mangan asked if there were any further comments or questions and there were none.

Chairman Mangan asked Commissioner Territo if he had any comments and he had none.

Chairman Mangan asked if anyone in the audience had any questions and there were none.

Chairman Mangan asked for those in favor of granting the Area Variance requests and there were none. Chairman Mangan asked for and those opposed to granting the Area Variance requests and there were two, the Burnhams.

Chairman Mangan closed the hearing.

MOTION made by Mr. Pleskach in Case #1648 to **deny** the Area Variance Motion was seconded by Mr. Layout.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Wisnowski, Jr.	- in favor	
	Mrs. Liebi	- absent	
	Mr. Pleskach	- in favor	
	Mr. Layout	- in favor	
	Mrs. Miller-Allgaier.	- in favor	<i>Carried</i>

MOTION made by Mr. Pleskach in Case #1648 to **deny** the Area Variance Motion was seconded by Mr. Layout.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Wisnowski, Jr.	- in favor	
	Mrs. Liebi	- absent	
	Mr. Pleskach	- in favor	
	Mr. Layout	- in favor	
	Mrs. Miller-Allgaier.	- in favor	<i>Carried</i>

MOTION made by Mr. Pleskach in Case #1648 to **deny** the Area Variance Motion was seconded by Mr. Layout.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Wisnowski, Jr.	- in favor	
	Mrs. Liebi	- absent	
	Mr. Pleskach	- in favor	
	Mr. Layout	- in favor	
	Mrs. Miller-Allgaier.	- in favor	<i>Carried</i>

MOTION made by Mr. Pleskach in Case #1648 to **deny** the Area Variance Motion was seconded by Mr. Layout.

Roll call: Chairman Mangan - in favor
Deputy Chairman Wisnowski, Jr. - in favor
Mrs. Liebi - absent
Mr. Pleskach - in favor
Mr. Layout - in favor
Mrs. Miller-Allgaier. - in favor *Carried*

MOTION made by Mr. Pleskach in Case #1648 to **deny** the Area Variance Motion was seconded by Mr. Layout.

Roll call: Chairman Mangan - in favor
Deputy Chairman Wisnowski, Jr. - in favor
Mrs. Liebi - absent
Mr. Pleskach - in favor
Mr. Layout - in favor
Mrs. Miller-Allgaier. - in favor *Carried*

MOTION made by Mr. Pleskach in Case #1648 to **deny** the Area Variance Motion was seconded by Mr. Layout.

Roll call: Chairman Mangan - in favor
Deputy Chairman Wisnowski, Jr. - in favor
Mrs. Liebi - absent
Mr. Pleskach - in favor
Mr. Layout - in favor
Mrs. Miller-Allgaier. - in favor *Carried*

MOTION made by Mr. Pleskach in Case #1648 to **deny** the Area Variance Motion was seconded by Mr. Layout.

Roll call: Chairman Mangan - in favor
Deputy Chairman Wisnowski, Jr. - in favor
Mrs. Liebi - absent
Mr. Pleskach - in favor
Mr. Layout - in favor
Mrs. Miller-Allgaier. - in favor *Carried*

The Area Variances in Case #1648 are **denied**.

Case #1649 – INTERPRETATION - America Stores It/Filkins Acquisitions, LLC, Oswego Road, North of Canvasback Drive, Tax Map #053.-01-03.1 #053.-01-02.0; and #053.-01-04.0:

The applicant is requesting an Interpretation, pursuant to Section 230-16 C.(6)(b), of the term “additional setback where abutting residential district” because the subject property abuts a Planned Development District and not a Residential District to allow for the inclusion of ponds within a Perimeter Landscape Strip. The property is in the RC-1 Regional Commercial zoning district.

Chairman Mangan adjourned Case #1649 to March 13, 2017 as it needs to be re-advertised.

There being no further business, Chairman Mangan adjourned the meeting at 8:15 P.M.



Vivian I. Mason, Secretary
Zoning Board of Appeals
Town of Clay