

APPROVED
ZONING BOARD OF APPEALS
MINUTES OF MEETING
May 13, 2013

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 Town Hall of Clay, 4401 State Route 31, New York on May 13, 2013.

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
	Arthur Fennhahn	Deputy Chairman
	Karen Liebi	Member
	Mark Smith	Member
	Brian Hall	Member
	Anne Stenham	Alternate Member
	Vivian Mason	Secretary
	Robert Germain	Attorney
	Mark V. Territo	Commissioner of Planning & Development

ABSENT: None.

MOTION made by Deputy Chairman Fennhahn that the Minutes of the meeting of April 8, 2013 be accepted as submitted. Motion was seconded by Ms. Liebi. *Unanimously 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 Type II actions, and will be given a negative declaration, unless otherwise advised by our attorney. Motion was seconded by M. Smith. *Unanimously carried.*

OLD BUSINESS:

Case #1481 – AREA VARIANCES - Joseph Topolski, 8013 Trina Circle, Tax map #078.-04-39.0:

The applicant is requesting Area Variances, pursuant to Sections 230-13 D.(4)(c)[2]; 230-13 D.(4)(c)[3]; 230-13 D.(4)(c)[4]; and 230-20 A.(1)(e) to reduce the side yard setback from 7.5 feet to 3 feet; to reduce the rear yard setback from 10 feet to 8 feet, for two sheds, and to increase the allowed height for a Gazebo from 12 feet to 18.5 feet, and to increase the allowed height for a play house from 12 feet to 13 feet. This property is located in the R-10 One-family Residential zoning district.

(This hearing was adjourned from the April 8, 2013 meeting, and the proof of publication was read at that meeting.)

Chairman Mangan commented that the Board has received a letter from Mr. Kombloski in opposition to the variances, and anonymous letters which will not be acknowledged.

Chairman Mangan closed the hearing.

MOTION made by Mr. Smith in Case #1481 to **deny** the Area Variance for reduction to the side yard setback from 7.5 feet to 3 feet, for two sheds. Motion was seconded by Ms. Liebi.

Roll call: Chairman Mangan - in favor
Deputy Chairman Fennhahn - in favor
Mrs. Liebi - in favor
Mr. Smith - in favor
Mr. Hall - in favor *Unanimously carried.*

MOTION made by Mr. Smith in Case #1481 to **deny** the Area Variance for reduction to the rear yard setback from 10 feet to 8 feet, for two sheds. Motion was seconded by Mr. Hall.

Roll call: Chairman Mangan - in favor
Deputy Chairman Fennhahn - in favor
Mrs. Liebi - in favor
Mr. Smith - in favor
Mr. Hall - in favor *Unanimously carried.*

MOTION made by Mr. Smith in Case #1481 to **grant** the Area Variance to increase the allowed height for a Gazebo from 12 feet to 18.5 feet. Motion was seconded by Ms. Liebi.

Roll call: Chairman Mangan - in favor
Deputy Chairman Fennhahn - in favor
Mrs. Liebi - in favor
Mr. Smith - in favor
Mr. Hall - in favor *Unanimously carried.*

MOTION made by Mr. Smith in Case #1481 to **deny** the Area Variance to increase the allowed height for a play house from 12 feet to 13 feet. Motion was seconded by Deputy Chairman Fennhahn.

Roll call: Chairman Mangan - in favor
Deputy Chairman Fennhahn - in favor
Mrs. Liebi - in favor
Mr. Smith - in favor
Mr. Hall - against *Carried.*

The Area Variances in Case #1481, tree were **denied** and one was **granted**.

NEW BUSINESS:

Chairman Mangan asked the board members if they all visited the sites and all stated that they had.

Case #1483 - AREA VARIANCE – Robert J. Trybulski (Moe’s Restaurant), 7558 Oswego Road, Tax map #094.-21-15.1:

The applicant is requesting Area Variances pursuant to Sections 230-16 E.(5)(a) and 230-21 A.(1) to allow for the reduction of the perimeter landscape strip from 15 feet to 12.16 feet, and to allow for the reduction of the required 20 foot wide driving aisle to 10 feet to allow for the

construction of a new restaurant. This property is located in the LuC-2 Limited Use, Restaurant zoning district.

The secretary read the proof of publication.

Robert Trybulski, of 44 Lafayette Parkway, Rochester, NY of Real Estate Development Services, LLC stated that they would like to replace Friendly's with a Moe's Southwest Grill. The restaurant will be slightly wider than the present restaurant.

Mr. Trybulski addressed the Standards of Proof:

1. They don't believe there will be any change to the character of the neighborhood, just a slight reduction to the perimeter strip for a 20 foot wide driving lane to accommodate traffic and a slightly wider restaurant.
2. With the footprint of Moe's Southwest Grill and the confines of the zoning code, they believe the Area Variance request is the most feasible method.
3. They do not believe the variance request is substantial.
4. They believe there will be no environmental impact of the neighborhood.
5. The need for the variance is self-created.

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 for those in favor and those opposed to granting the variances, and there were none.

Chairman Mangan closed the hearing.

MOTION made by Deputy Chairman Fennhahn in Case #1483 to **grant** the Area Variance as requested, with the condition that it be in substantial compliance with Exhibit "A", drawing SK-

1. Motion was seconded by Mr. Hall.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	
	Mr. Hall	- in favor	<i>Unanimously carried.</i>

The Area Variance in Case #1483 is **granted**.

Case #1484 – AREA VARIANCE – David Layton, 8221 Gaskin Road, Tax map #017.-01-15.5:

The applicant is requesting an Area Variance pursuant to Section 230-13 D.(4)(c)[4] to allow for an increase in maximum allowable height from 12 feet to 21 feet to allow for the construction of a garage. This property is located in the R-10, One-Family Residential zoning district.

The secretary read the proof of publication.

David Layton said he would like to put an extension, 24 feet by 30 feet, on the front of his present garage for storage. He needs additional height for the roof, to accommodate snow load.

Mr. Layton addressed the Standards of Proof:

1. He doesn't believe there will be any change to the character of the neighborhood. It will not be very visible.
2. Because of the width of the garage, the height is needed for snow load, and there will be a nine foot garage door, he believes the Area Variance request is the most feasible method. The attic will be used for light storage.
3. He does not believe the variance request is substantial, as they have a 30,000 square foot lot.
4. He believes there will be no impact to the grade or drainage.
5. The need for the variance is self-created.

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 for those in favor and those opposed to granting the variances, and there were none.

Chairman Mangan closed the hearing.

MOTION made by Mr. Hall in Case #1484 to **grant** the Area Variance as requested. Motion was seconded by Mr. Smith.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	
	Mr. Hall	- in favor	<i>Unanimously carried.</i>

The Area Variance in Case #1484 is **granted**.

Case #1485 – INTERPRETATION - Matthew Rahalski, 7459 Morgan Road, Tax map #104.-03-14.0:

The applicant is requesting an Interpretation of the Zoning Code section that states a nonconforming use was legally pre-existing on this site and written notification was not given that legal nonconforming use ceased to exist, for the purpose of establishing an automobile repair and body shop at 7459 Morgan Road. The property is located in the LuC-1 Limited Use for Gasoline Services zoning district.

The secretary read the proof of publication.

Attorney Dirk Oudemool representing the applicant, explained that Jim Falsy's property is kitty corner to Mr. Rahalski's property and is prepared to say that 7459 Morgan Road has been used as an auto body repair place, he owned and conducted business there between 1984 and 2010, and did body work on his own vehicles. Mr. Falsy stated that when someone discontinues a non-conforming use, the Town is supposed to send a letter saying that if the use is not continued for six months, the non-conforming use ceases, and the Town did not notify him.

Chairman Mangan asked how the Town would know he was doing suto body work?

Mr. Falsy replied that he was never told he couldn't do auto body work.

Attorney Oudemool stated that he had been doing auto body work from 2004 to 2010.

Chairman Mangan asked him if they were claiming that they did legal non-conforming work?

Attorney Oudemool said yes, that both engine repair and auto body work were allowed in a C-4 zoning district. In 2005 the zone was changed to LuC-1 Limited Use for Gasoline Services, which allowed only engine repair.

Mr. Smith asked Mr. Falsy, if he currently does both engine repair and auto body work, and Mr. Falsy said yes, that he does scratch and dent to his own vehicles.

Chairman Mangan asked if he was doing legal non-conforming work, and Mr. Oudemool said yes, between 2005 and 2010, but the Town did not notify them they could not do auto body work.

Chairman Mangan asked how the Planning Department could notify them, when the Town did not know they were doing a non-conforming use.

Commissioner Territo commented that the C-4 and the LuC-1 allow the same and did not change.

Attorney Oudemool noted that they were performing auto body work for 27 years and a new owner would also like to do both repairs and auto body work.

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

Chairman Mangan adjourned Case #1485 to June 10, 2013.

Case #1486 – INTERPRETATION - Sikh Foundation of Syracuse, 4632 Wetzel Road, Tax map #087.-01-10.0:

The applicant is requesting an Interpretation of the Definition of Religious Institution and Exhibit Hall, for the purpose of establishing if the 'Sikh Foundation' located at 4632 Wetzel Road is considered a Religious Institution or an Exhibit Hall. The property is located in the I-1 Industrial zoning district.

The secretary read the proof of publication.

Chairman Mangan announced that the applicant has asked for an adjournment. Chairman Mangan adjourned Case #1486 to June 10, 2013.

Case #1487 – AREA VARIANCES – Casey Scollo, 8497 Bubbling Springs, Tax map #052.1.-30-01.1:

The applicant is requesting Area Variance pursuant to Sections 230-20 B.(2)(b) and 230-18 H.(1) to allow for a 6 foot fence in a front yard when only 2.5 feet is allowed, and to allow for a reduction in the front yard setback from 25 feet to 10 feet to allow for a fence in a front yard. This property is located in the PDD, Planned Development zoning district.

The secretary read the proof of publication.

Chairman Mangan noted that the Board received correspondence from Ms. Wernick, owner of the property on 8427 Bubbling Springs, who is opposed to the construction of a fence.

(The residence is on a corner lot, consequently, the code defines the yard along the road as a front yard.)

Ms. Scollo explained that there is one piece of fence in back of her house and she would like to enclose the whole back yard for safety reasons.

Ms. Scollo addressed the Standards of Proof:

1. She doesn't believe there will be any change to the character of the neighborhood.
2. She believes the Area Variance request is the most feasible method.
3. She does not believe the variance request is substantial.
4. She believes there will be no environmental impact of the neighborhood.
5. The need for the variance is self-created.

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 for those in favor of granting the Area Variances and there was one. Chairman Mangan asked for those opposed to granting the Area Variances, and there were one (the correspondence from Ms. Wernick).

Chairman Mangan closed the hearing.

MOTION made by Ms. Liebi in Case #1487 to **grant** the Area Variances as requested, with the condition that construction be in substantial compliance with Exhibit "A". Motion was seconded by Mr. Smith.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	
	Mr. Hall	- in favor	<i>Unanimously carried.</i>

The Area Variances in Case #1487 are **granted**.

Case #1488 – USE VARIANCES - David Tillotson, 7315 Morgan Road, Tax Map Number 114.-01-04.0:

The applicant is requesting a Use Variance pursuant to Section 230-23 D(2). to allow a nonconforming use to occupy additional lot space for the construction of a residential garage on an office (O-1) zoned parcel. The Use Variance is required when proposed land use activity is not permitted in the zone district.

The secretary read the proof of publication.

Chairman Mangan explained that a Use Variance is very difficult to prove.

Tr Tillotson explained that he lives 150 feet from a golf course. He has a 780 square foot home and needs room for storage and a car. He is also 500 feet from an apartment building. He added that his neighbors do not object to a garage.

Mr. Tillotson addressed the Standards of Proof.

1. The house with a garage will be worth more, ensuring a more reasonable return on the property.
2. His residence is in a Office zone, so it creates a unique hardship for a residential use.
3. The garage will not alter the essential character of the neighborhood, as adjacent houses have garages.
4. He did not create the hardship as he did not created the Office zoning.

Mr. Smith asked what the height would be and Mr. Tillotson said 15 feet at the most.

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

(There was no audience to poll in favor or opposed to the granting the Use Variance.)

Chairman Mangan closed the hearing.

MOTION made by Mr. Hall in Case #1488 to **grant** the Use Variance as requested. Motion was seconded by Mrs. Liebi.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	
	Mr. Hall	- in favor	<i>Unanimously carried.</i>

The Use Variance in. Case #1488 is **granted**.

There being no further business, Chairman Mangan adjourned the meeting at 8:45 P.M.



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