

APPROVED
ZONING BOARD OF APPEALS
MINUTES OF MEETING
July 13, 2015

The regular meeting of the Zoning Board of Appeals of the Town of Clay, County of Onondaga, state of New York, was held at the Clay Town Hall, 4401 New York State Route 31, Clay, New York on July 13, 2015. 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
	Mark Smith	Deputy Chairman
	Karen Liebi	Member
	Edward Wisnowski	Member
	Ryan Pleskach	Member
	Vivian Mason	Secretary
	Robert Germain	Attorney
	Mark Territo	Commissioner of Planning & Development

ABSENT: NONE

MOTION made by Mrs. Liebi that the Minutes of the meeting of June 8, 2015 be accepted as submitted. Motion was seconded by Deputy Chairman Smith. Chairman Mangan abstained as he was absent from the June meeting. *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 Mrs. Liebi. *Unanimously carried.*

OLD BUSINESS: None

NEW BUSINESS:

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

Case #1570 – AREA VARIANCES - Ryan G. Churchill, P.E./Sonic, 3808 Route 11, Tax Map #118.-01-10.0 and 118.-01-10.1:

The applicant is requesting Area Variances pursuant to Sections 230-19 A.(5); 230-16 C.(4)(a)[1][b]; and 230-22 C.(1) for a reduction in the highway overlay setback from 90 feet to 88.5 feet; reduction in the perimeter landscape strip from 30 feet to 1.8 feet; reduction in the perimeter landscape strip from 30 feet to 1.3 feet; reduction in the perimeter landscape strip from 30 feet to 7 feet; an increase in the number of wall signs from 2 allowed to 6; and to increase the allowable square footage of the two freestanding signs from 64 feet each, to 114 square feet each, to allow for setback reductions for accessory structures and to allow for additional signage. The property is located in the RC-1 Regional Commercial zoning district.

The Secretary read the proof of Publication.

Fran Desimone and Ryan Churchill were present.

Mr. Churchill explained that the old Citizen's Bank will be reconstructed into a Sonic restaurant. The small office building on the one parcel will be taken down. He further explained that there will be two canopy areas. They have been before the Town Board and have received approval for the Special Permit for a drive-thru. The two parcels will be joined together and they will be adding green space.

Mr. Churchill addressed the Standards of Proof:

1. They don't believe there will be any negative or undesirable change to the character of the neighborhood, as the site is currently home to a vacant bank and office building, and the land cover is predominantly asphalt and building area, with limited green space. The proposed Sonic restaurant site configuration will reduce the impervious area, which will lessen impacts with regard to storm water. The setback requests are generally for accessory structures (dumpster and canopies). The bank building will be reconstructed and the office building on the east of the site will be demolished, which opens up the site and lessens the impact on the neighborhood. As for the signage, they feel the density of commercial establishments is fairly high. They feel their signage will complement the commercial makeup of the area. The McDonald's monument sign is larger than those being requested and actually block the view of the site when traveling north on Route 11 and South Bay Road.
2. They don't believe there is any other feasible method than to obtain an Area Variance because they believe the setbacks on the site are unreasonable and the site is undevelopable if the variances are not granted. For instance, the side yard setback for this RC-1 parcel is 75 feet. The existing parcel is approximately 140 feet wide, making it impossible to meet this setback. With regard to signs, they believe there is no other method to attain what they need without the Area Variances. The minor signs are typical to Sonic's across the country and in line with other competing restaurants.
3. They don't believe the variance request is substantial, considering the constraints placed on the site by the zoning. The office structure being demolished and the joining of the parcels actually increases the required setbacks to the primary structure. They do not believe the sign request Area Variances are substantial either. The minor signs are standard for Sonic and the size for the pylon sign will be in keeping with competing signs in the area.
4. They believe there will be no physical or environmental impact to the neighborhood. It is a commercial area. There will be more green space and less storm water impact. With regard to signs they also believe there will be no adverse impact on the neighborhood.
5. They believe the difficulty in this situation is not self-created, as there is no way to satisfy the setback requirements for any proposed structure on the site. The sign requests are needed to remain competitive with other businesses.

The County Planning Board's comments were modification recommendations

Commissioner Territo commented that the internal configuration and the minor signs will be determined by the town Planning Board.

Mr. Pleskach asked to see where the wall signs would be placed and Mr. Churchill located them on their plan.

Deputy Chairman Smith asked what they planned to put on their small signs and Mr. Churchill said their specials.

Mrs. Liebi asked what a preview board was and Mr. Desimone explained that is a smaller menu sign.

Deputy Chairman Smith inquired about the welcome sign on the pylon sign and Mr. Desimone said that it potentially may be an LED sign. Deputy Chairman commented that less signs might be easier for the Board to swallow. Perhaps a larger sign and the small one at a later date.

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 and those opposed to granting the Area Variance requests and there were none.

Chairman Mangan closed the hearing.

MOTION made by Deputy Chairman Smith in Case #1570 to **approve** the Area Variance for a reduction in the highway overlay setback from 90 feet to 88.5 feet. Motion was seconded by Mr. Pleskach.

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

MOTION made by Deputy Chairman Smith in Case #1570 to **approve** the Area Variance for a reduction in the perimeter landscape strip from 30 feet to 1.8 feet. Motion was seconded by Mr. Wisnowski.

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

MOTION made by Deputy Chairman Smith in Case #1570 to **approve** the Area Variance for a reduction in the perimeter landscape strip from 30 feet to 1.3 feet. Motion was seconded by Mrs. Liebi.

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

MOTION made by Deputy Chairman Smith in Case #1570 to **approve** the Area Variance for a reduction in the perimeter landscape strip from 30 feet to 7 feet. Motion was seconded by Mr. Pleskach.

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

MOTION made by Deputy Chairman Smith in Case #1570 to **approve** the Area Variance for an increase in the number of wall signs from 2 allowed to 6. Motion was seconded by Mr. Wisnowski.

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

MOTION made by Deputy Chairman Smith in Case #1570 to **approve** the Area Variance for an increase in the allowable square footage of the two freestanding signs from 64 feet each, to 86 (*request modified*) square feet each. Motion was seconded by Mr. Wisnowski.

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

The Area Variances in Case #1570 **approved** with size modification regarding the square footage of the freestanding signs.

**Case #1573* – AREA VARIANCES - Kevin Cullen & Christine Allen, 8228 Renfrew Drive,
Tax Map #068.-28-08.0:**

The applicant is requesting Area Variances pursuant to Sections 230-13 E.(4)(b)[1] and 230-20 B.(2)(b) to allow for a reduction in the front yard setback from 25 feet to 9 feet, and to increase the allowable height of a fence in a front yard from 2 1/2 feet to 6 feet to allow for a fence in a front yard and a shed. The property is located in the R-7.5 One-Family Residential zoning district.

The Secretary read the proof of Publication.

Kevin and Christine Cullen explained they want to put up a fence and bring the shed into compliance, which was there when they bought their home.

Mr. Cullen 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's just a fence, and the fence will hid the trailers he uses for business.
2. They feel there is no other feasible method as the shed was already there.
3. When they applied for a fence permit they found the shed was a little over the building line. Moving it would be difficult. They need the fence, as they have a daughter who is hearing impaired and cars travel through there fast so they also need the fence for safety purposes. They also would like their dogs to be able to run free.
4. They believe there will be no physical or environmental impact to the neighborhood.
5. Yes, the need for the variance is self-created.

Mrs. Liebi inquired about the trailers and Mr. Cullen said they would be putting in a little gate, they would be empty, and there would be no driveway.

Mr. Wisnowski commented that the trailers may be an issue in the winter and Mr. Cullen said he has a two car garage he rents to put them in.

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 and those opposed to granting the Area Variance requests and there was one opposed to the request, a letter from Ms. Mansfield of Portobello Way.

Chairman Mangan closed the hearing.

MOTION made by Mr. Wisnowski in Case #1573* to **approve** the Area Variance as requested, with the condition it be in substantial compliance with Exhibit "A". Motion was seconded by Deputy Chairman Smith.

Roll call: Chairman Mangan - in favor
Deputy Chairman Smith - in favor
Mrs. Liebi - in favor
Mr. Wisnowski - in favor
Mr. Pleskach - in favor *Unanimously Carried.*

The Area Variance in Case #1573* is **approved**.

Case #1574 – AREA VARIANCE - John Hopp, 7770 Davis Road South, Tax Map #092.-02-01.0:

The applicant is requesting an Area Variance pursuant to Section 230-13 A.(4) for a reduction in the side yard setback from 25 feet to 11 feet to allow for an addition. The property is located in the RA-100 Residential Agricultural zoning district.

The Secretary read the Proof of Publication.

John Hopp stated that they would like to construct a 12 foot by 12 foot four season sun room extension off the rear of the house. As it is an Agriculture district the setbacks are different than the other homes near their house.

Mr. Hopp addressed the Standards of Proof:

1. He doesn't believe there will be any negative or undesirable change to the character of the neighborhood. The county owns the property to the north, and that land is used for pumping sanitary waste water.
2. He doesn't believe there is any other feasible method than to obtain an Area Variance. The only other location would be eastward, from the living room.
3. He doesn't believe the variance request is substantial. The space from the addition to the north side property is more than ample for maintenance of the structure.
4. He believes there will be no physical or environmental impact to the neighborhood.
5. The need for the variance is self-created, because they would like a sunroom, but if the parcel was an R-15 zoning like the other parcels nearby, the Area Variances would not be needed.

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 and those opposed to granting the Area Variance requests and there were none.

Chairman Mangan closed the hearing.

MOTION made by Mr. Pleskach in Case #1574 to **approve** the Area Variance as requested. Motion was seconded by Deputy Chairman Smith.

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

The Area Variance in Case #1574 is **approved**.

Case #1575 – AREA VARIANCE - Syracuse SMSA, LP d/b/a Verizon Wireless – 3881 NYS Route 31 – Tax Map #021.-01-08.1:

The applicant is requesting an Area Variance pursuant to Section 230-16 C.(5)(c)(4) to increase the height of a cell tower from 35 feet to 54 feet. The property is located in the RC-1 Regional Commercial zoning district.

The Secretary read the Proof of Publication.

Jared Lusk, the attorney representing Verizon, Gene DiDomenico of Verizon, and Robert Wilson, the contractor were present.

Attorney Lusk explained that they would like to construct a 50 foot tower plus a four foot lightening rod in the parking area behind the Dunn Tire store. They have documented proof of why this height is needed to handle the coverage and need for wireless customers and is included in the exhibits.

Chairman Mangan noted the application was not complete. The Board did not receive the supporting materials and exhibits Attorney Lusk referred to in the description of the project and description of project need. The applications received from the applicant did not contain the exhibits and supporting documents Attorney Lusk continually attempted to refer the Board to. Although the applicant tried to explain the need for this location, they did not provide the supporting data, and therefore that data could not be considered.

Chairman Mangan asked if they could move it four miles away from this location, where it would be less visible and Attorney Lusk stated that page 9 of their geographic map would show why this coverage is needed. Chairman Mangan noted that the Board did not receive the materials with the Area Variance request that he was referring to and that he should explain the need for the cell tower to be located behind the Dunn Tire store. Attorney Lusk explained that the wireless network has interlocking grids/cells throughout the Town of Clay. The propagations show the needed coverage. They experience overload in the other towers and to get service there is a search ring that shows they need a tower at this location to handle the overload. Chairman Mangan asked how far they could move it to the north or the south. Attorney Lusk said that they explored 14 parcels as possible sites,

but feel this is the best one. They need to relieve the capacity from other cell towers.

Chairman Mangan suggested he go over the Standards of Proof and Attorney Lusk stated that wireless facilities do not have to comply with that. Chairman Mangan noted that it is required by all applicants when seeking an Area Variance.

Attorney Lusk addressed the Standards of Proof:

1. The applicant believes that the height of the tower will not result in an undesirable change in the neighborhood and will not be a detriment to nearby properties. They feel it will be in harmony with the orderly development of the area.
2. They feel this cell tower will provide the coverage that is needed and that they will be unable to provide reliable wireless telecommunications service in the Carling Pond coverage area without this telecommunication tower.
3. They believe that the requested Area Variance is not substantial. The height requested corresponds to the minimum height necessary to meet coverage/capacity needs. A lower tower height will prevent Verizon Wireless from providing reliable service to its "Carling Pond" coverage. He doesn't believe the variance request is substantial.
4. They feel their project will provide a more efficient system of wireless telecommunications service and will not have any environmental effect or impact.
5. They believe the hardship is not self-created, and that installation of a wireless telecommunication facility is an appropriate location and at an adequate height to meet coverage and capacity needs.

(The applicant's complete Standards of Proof is on file.)

Mr. Pleskach asked if they had any letters from the police, fire departments, etc. to support the need at this location. Attorney Lusk did not present any.

Attorney Lusk said the tower will enhance coverage and that at peak times calls do not get the best coverage from the already existing towers. Mr. Pleskach said he didn't see a sufficient difference.

Gene DiDomenico explained that the off load is needed and that is why they need the height for this cell tower.

Chairman Mangan asked if anyone in the audience had any questions or comments, and Joe Gerardi, Executive Vice President and Legal Counsel for COR said he would like to give a rebuttal to Attorney Lusk's Standards of Proof.

They feel the proposed cell tower at the height requested, in the middle of a parking lot of an existing shopping center, will be too visible to NYS Rout 31, the Riverpointe Apartments, the Harke Farms subdivision, the shopping center itself, and the adjacent car dealership. They feel that the Town has made sure that recently constructed development on Route 31 is architecturally enhanced and COR feels a 54 foot tower with large antennae is a visual detriment and will cause an undesirable change to the character of the neighborhood. They believe the applicant can achieve the same result (more

cell coverage) by locating multiple smaller cell towers or choose a different location. They believe that the Area Variance request *is* substantial as the cell tower will be taller than any building in the vicinity and is an eyesore. They also believe the need for an Area Variance is self-created. The site is used for a retail/service strip mall. *(COR's letter and complete rebuttal is also on file.)*

Attorney Lusk commented that the cell tower would only be 24 feet higher than the 30 foot building.

Chairman Mangan commented that anyone in the area or new apartments would clearly be able to see it. He also stated that he agreed with COR that the request was substantial, as it would be about 1/3 taller than the code allows, and far taller than any other building around it.

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 Area Variance requests and there were none in favor and opposed to this was COR Development Company, LLC.

Chairman Mangan closed the hearing.

MOTION made by Mr. Wisnowski in Case #1575 to **deny** the Area Variance. Motion was seconded by Mrs. Liebi.

Roll call:	Chairman Mangan	- in favor
	Deputy Chairman Smith	- in favor
	Mrs. Liebi	- in favor
	Mr. Wisnowski	- in favor
	Mr. Pleskach	- abstained (the reason being lack of information)

Carried.

The Area Variance in Case #1575 is **denied**.

Case #1576 – AREA VARIANCE - Rik Flagg – 2506 Chancery Lane – Tax map #066.-01-44.0:

The applicant is requesting an Area Variance pursuant to Section 230-13 I.(4)(c) to increase the allowed size of a deck, 8 feet by 24 feet, to a proposed 16 feet by 32 feet. The property is located in the R-MHC Mobile Home Court zoning district.

The Secretary read the Proof of Publication.

Rik Flagg explained that he is building a deck on the back of his mobile home and is covering up a hill.

Mr. Flagg addressed the Standards of Proof:

1. He doesn't believe there will be any negative or undesirable change to the character of the neighborhood. He feels the deck will improve the property value.
2. He doesn't believe there is any other feasible method than to obtain an Area Variance because only an eight foot deck is allowed.
3. He believes the variance request is substantial.
4. He believes there will be no physical or environmental impact to the neighborhood.
5. The need for the variance is self-created, because he wants a larger deck.

Chairman Mangan commented that the work Mr. Flagg is doing in that area looks good and that the deck backs up to a creek and there are no neighbors behind it.

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 and those opposed to granting the Area Variance requests and there were none.

Chairman Mangan closed the hearing.

MOTION made by Mrs. Liebi in Case #1576 to **approve** the Area Variance as requested, in substantial compliance with Exhibit "A. Motion was seconded by Mr. Wisnowski.

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

The Area Variance in Case #1576 is **approved**.

Case #1577 – Cintas Corp./Martin Crume – 7655 Henry Clay Boulevard, Tax Map #095.-02-13.2:

The applicant is requesting an Area Variance pursuant to Section 230-17 C.(4)(b)[1][a] to reduce the front yard setback from 200 feet to 140 feet to allow for construction of a 56,000 square foot facility. The property is located in the I-1 Industrial 1 zoning district.

The Secretary read the Proof of Publication.

Brett Garrett with ARCO Murry Design Builders and Martin Crume were present to represent the applicant.

Mr. Garrett said they want to construct a 56,000 square foot cleaning, washing and drying industrial plant.

Chairman Mangan asked if they were aware of the Onondaga County Planning Board's comments and Mr. Garrett said that they saw them.

Mr. Garrett addressed the Standards of Proof:

1. They don't believe there will be any negative or undesirable change to the character of the neighborhood. The reduction in the front yard setback will coincide with adjacent properties based on observations.
2. They don't believe there is any other feasible method than to obtain an Area Variance as they are allowing for a future expansion.
3. They believe the variance request is substantial, as the impact on the future building addition directly relates to the growth of the business.
4. They believe there will be no physical or environmental impact to the neighborhood.
5. The need for the variance is self-created based on the facility function of production growth.

Mr. Pleskach commented that they are preempting future need and Mr. Garrett said yes, they are looking ahead, which will allow for growth. They taking out and combining business from Buffalo and Rochester.

Chairman Mangan asked if there were any further comments or questions and Chauncine Kennedy of Autumnal Lane voiced concern with traffic, and parking.

Mr. Garrett said they will do a traffic study, but feel there will be low impact, as trucks will be in and out on off peak hours.

Chairman Mangan noted that the Onondaga County Planning Board has asked for a traffic study and that this would be handled by the town Planning Board and that they should attend those meetings with their concerns.

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 and those opposed to granting the Area Variance requests and there were none.

Chairman Mangan closed the hearing.

MOTION made by Deputy Chairman Smith in Case #1577 to **approve** the Area Variance as requested, in substantial compliance with Exhibit "A". Motion was seconded by Mr. Wisnowski.

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

The Area Variance in Case #1577 is **approved**.

There being no further business, Chairman Mangan adjourned the meeting at 9:30 P.M.


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