

APPROVED
ZONING BOARD OF APPEALS
MINUTES OF MEETING
July 11, 2011

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, Clay, New York on July 11, 2011.

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
	Eugene Young	Member
	Karen Liebi	Member
	Mark Smith	Member
	Vivian Mason	Secretary
	John Marzocchi	Acting Attorney

ABSENT: Arthur Fennhahn Deputy Chairman

MOTION made by Mr. Young that the Minutes of the meeting of June 13, 2011 be accepted. Motion was seconded by Ms. Liebi. *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 Mr. Young. *Carried.*

OLD BUSINESS:

Case #1410 - USE VARIANCE – Jim Nichols, 7240 Oswego Road (Tax map #114.-01-32.0):

The applicant is requesting a Use Variance pursuant to Sections 230-16 B.(2) and 230-25 D.(2)(a)[2] to allow volleyball court/parking. The Use Variance is required when proposed land use activity is not permitted in the zone district. The zoning district is an HC-1, Highway Commercial.

Neither the applicant nor representatives were present.

Chairman Mangan explained that the attorney had withdrawn from representing this applicant. He asked Commissioner Territo to contact the applicant as to their intent to pursue or withdraw their application for a use variance request.

Chairman Mangan adjourned this case to August 8, 2011.

NEW BUSINESS:

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

Case #1417 - INTERPRETATION – Sciuga Builders, 4981 Astilbe Path, (Tax Map #116.1-03-01.0); and

Case #1416 – AREA VARIANCE – Sciuga Builders, 4981 Astilbe Path (Tax Map #116.1-03-01.0):

(Case #1417) The applicant is requesting an Interpretation, pursuant to Section 230-11, of the definition of front yard permissible intrusions. The property is located in the PDD zoning district.

(Case #1416) The applicant is requesting an Area Variance pursuant to Section 230-18 I. to allow for a reduction in the front yard setback of a three sided lot from 25 feet to 24 feet to allow for an emergency escape and rescue opening well. The property is located in the PDD zoning district.

The secretary read the proofs of publications.

Sam Sciuga explained that this house is on a corner lot, so the front yard is actually the side yard. The house is within its setbacks, but the rescue well would extend into the setback. It will be a full sized window where you could escape from the basement in an emergency.

Mr. Young asked how deep the well was and Mr. Sciuga said four and one half feet. It is constructed of galvanized steel and bolts onto the house. There is a ladder that hooks onto the side. There will be a cover over it that can be pushed open. They feel it is necessary for egress and fits in the category as a permissible intrusion. He pointed out that they could lay a sidewalk right there without violating any setbacks.

Mrs. Liebi asked what the egress was for and Mr. Sciuga said it will be for a bedroom, living room, and family room.

Chairman Mangan asked Commissioner Territo if he had any comments, and he pointed out that the house is part of the *Parade of Homes*.

Chairman Mangan asked if there were any questions and there were none. Chairman Mangan asked for those in favor and those opposed to the request and there were none.

Chairman Mangan closed the hearings.

MOTION was made by Mr. Young in Case #1417 that an emergency escape and rescue opening well (escape well) is allowable under the definition of *yard, front* as a permissible intrusion. Motion was seconded by Mr. Smith.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- absent	
	Mr. Young	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	<i>Carried.</i>

Chairman Mangan noted with regard to Case #1416, that the request for an Area Variance, would not be needed, because the Board's determination is that an emergency escape well is a permissible intrusion.

Case #1418 – AREA VARIANCE – Michael & Tania Scully, 8141 Toscano Drive, (Tax Map #075.-14-13.0):

The applicant is requesting an Area Variance, pursuant to Sections 230-13 E.(4) and 230-20-20 B.(2)(b), to reduce the front yard setback from 25 feet to 17 feet, and to allow for an increase in the allowable height of a fence from 2.5 to 6 feet in a front yard. The property is located in the R-7.5 zoning district.

The secretary read the proof of publication.

Chairman Mangan explained that in this case because it is a corner lot the side yard is also considered a front yard. (Fences in a front yard are limited to a height of two and one-half feet between the street line and setback line.)

Mr. Scully said the fence originally was a four foot picket one. They would like a taller fence for privacy around their house, and to also deter the vandalism. They have fruit trees and people have picked the fruit without permission.

Mr. Scully addressed the standards of proof:

1. They feel the shape and height of the fence will be consistent with other fences in the neighborhood and the portion of the fence which extends over the building line is not adjacent to any nearby properties.
2. They have tried no trespassing signs, security lighting and verbal requests to the neighbors and none of these measures have been effective, so they do not believe there is any other feasible and reasonable method without putting up the fence.
3. They do not believe the variance is substantial, since the fence will enclose the property's back yard on three sides. On two of the three sides, the fence will be within the building line, and on the third side the fence will be several feet outside the building line, but will still be well within their property and away from any easements.
4. They believe the location of the fence will not have any adverse or environmental impact on the neighborhood.
5. At the time the trees were planted they were behind the picket fence, which was existing when they purchased the house. The fence deteriorated over the years and needs to be replaced.

Chairman Mangan noted that he thinks the fence will stick out further, so it is different from the others in the neighborhood.

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

Chairman Mangan asked if there were any further questions and there were none. Chairman Mangan asked for those in favor and for those opposed to granting the Area Variance and there were none.

Chairman Mangan closed the hearing.

MOTION was made by Mrs. Liebi in Case #1418 to grant the Area Variance as requested with the condition that it be constructed in substantial compliance with Exhibit "A", lot #955 of the Coachman's Crossing, Section No. 3 subdivision dated January 6, 1993. The fence requested is shown in yellow highlighter. Motion was seconded by Mr. Young.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- absent	
	Mr. Young	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	<i>Carried.</i>

The Area Variance request in Case #1418 is granted.

Case #1419 – AREA VARIANCE – Julie D. Hilbert, 103 Butterfield Circle, Tax Map # 110.-01-22.0:

The applicant is requesting an Area Variance, pursuant to Sections 230-20 B.(2)(a,b) and 230-13 D.(4)(b)[1], to increase the height of a fence from 2 ½ feet to an 8 foot privacy fence, and reduce the front yard setback from 25 feet to 20 feet for a deck. The property is located in the R-10 zoning district.

The secretary read the proof of publication.

Chairman Mangan explained that because this house is also on a corner lot, the side yard is also considered a front yard. (Fences in a front yard are limited to a height of two and one-half feet between the street line and setback line.)

Ms. Hilbert said that the fence that was there had fallen down and they removed it. They would like to rebuild it following the line of the house.

Chairman Mangan pointed out that they could put it on the building line, but it would be crooked.

Mr. Young noted that her request is for an eight foot fence. The zoning code only allows seven feet for the height of a fence. Ms. Hilbert said six feet would be enough.

Mr. Young pointed out that the fence would also be over the building line on the south side, which was not advertised in the proof of publication.

Chairman Mangan explained that because of the omission, they would have to re-advertise to

include the fence. He asked the applicant to address the standards of proof.

Ms. Hilbert addressed the standards of proof:

1. Because the fence was there previously, and the neighbors do not object, she does not feel there will be any undesirable change to the character of the neighborhood.
2. The fence will provide safety for her young child (there are also dogs that run free) she does not believe there is any other feasible and reasonable method without obtaining a variance.
3. Due to the safety issue, she feels the variance is substantial.
4. Since she is just replacing the fence, she believes there will be no adverse or environmental impact on the neighborhood.
5. She believes that the need for the variance is self-created.

Chairman Mangan asked Ms. Hilbert if she had any problem with not being allowed an eight foot fence as she has requested, and she said seven or six feet would be fine.

Chairman Mangan asked if there were any further questions and there were none. Chairman Mangan asked for those in favor and for those opposed to granting the Area Variance and there were none.

Mr. Young commented that he will be voting yes for a seven foot fence at the future meeting.

Chairman Mangan stated that this request needs to be corrected and re-published. He adjourned Case #1419 to August 8, 2011.

Case #1420 – AREA VARIANCE – Stephen J. Marz, 66 Cherry Tree Circle, Tax Map # 086.-22-49.0:

The applicant is seeking an Area Variance pursuant to Section 230-13 E.(4)(b)[1], to reduce the front yard setback from 25 feet to 19 feet to allow a six foot overhang of roof to cover the front porch. The property is located in the R-7.5 zoning district.

The secretary read the proof of publication.

Stephen Marz explained that the overhang is already built. In 1995 he removed the overhang and rebuilt the porch. He didn't do the overhang until later. He said he was told if he used the same footprint he didn't need a building permit.

Mr. Young asked for the size of the porch and whether he intended to enclose it. Mr. Marz said that the porch is eight feet by ten feet and that he has no intention of enclosing it. He wants the overhang so his wife won't have to shovel.

Mr. Marz addressed the standards of proof:

1. He does not feel there will be any undesirable change to the character of the neighborhood.
2. He sees no other way to keep the weather off the porch
3. He does not feel the variance is substantial, since the overhang will only cover the porch area.
4. He believes there will be no adverse or environmental impact on the neighborhood.
5. He believes that the need for the variance is self-created, but that the cause (weather) is not his doing.

Code Enforcement Officer Joe Grispino, commented in defense of the Planning Department, all structural repairs and or replacements require building permits and that the applicant shouldn't say that he was told if he was using the original footprint for the porch and overhang that no permit is needed, because the Planning Department would have told him differently.

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

Chairman Mangan asked for those in favor and for those opposed to granting the Area Variance and there were none.

Chairman Mangan closed the hearing.

MOTION was made by Mr. Smith in Case #1420 to grant the Area Variance with the condition that construction be in substantial compliance with the as built survey, Exhibit "A" and that the porch not be enclosed. Motion was seconded by Mrs. Liebi.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- absent	
	Mr. Young	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	<i>Carried.</i>

The Area Variance request in Case #1420 is granted.

Case #1421 – AREA VARIANCE – Ronald Reese, 7592 Iris Lane (Tax Map # 096.-12-48.0).

The applicant is seeking an Area Variance pursuant to Section 230-13 E.(4)(b)[1], for a reduction in the front yard setback from 25 feet to 21 feet to allow for a covered porch. The property is located in the R-7.5 zoning district.

The secretary read the proof of publication.

Ronald Reese stated that he would like four more feet in the front. The porch would be twenty-two feet to the garage roof.

Mr. Young commented that uncovered, the porch could come out six feet without a variance.

Mr. Reese said he was asking for the roof line really. He wants the roof over the porch.

Mr. Young asked why he needed the whole front for the porch and Mr. Reese said he wanted the same roof for the front of the house as he had in the back of the house.

Mr. Reese addressed the standards of proof:

1. Because he feels it will be an improvement, he does not feel there will be any undesirable change to the character of the neighborhood.
2. He gets soaked when opening a door and snow builds up so he wants a roof, so he does not believe there is any other feasible method without obtaining a variance.
3. He does not feel the variance is substantial.
4. He believes there will be no adverse or environmental impact on the neighborhood.
5. He believes that the need for the variance is self-created.

Chairman Mangan asked Commissioner Territo if he had any comments and he advised the Board that they not approve the plans, just Exhibit "A", because the submitted plans still need approval by a code enforcement official.

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

Chairman Mangan asked for those in favor and for those opposed to granting the Area Variance and there were none.

Chairman Mangan closed the hearing.

MOTION was made by Mr. Young in Case #1421 to grant the Area Variance with the condition that construction be in substantial compliance with Exhibit "A" (six pages), and such plans shall be approved by a Code Enforcement Official. Motion was seconded by Mrs. Liebi.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- absent	
	Mr. Young	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	<i>Carried.</i>

The Area Variance request in Case #1421 is granted.

Oswego Road, Tax Map #081.-04-27.1:

The applicant is requesting an Area Variance, pursuant to Section 230-25 D.(2)(d), to reduce the side yard setbacks from 27 feet to 26 feet. The applicant was granted an Area Variance to 27 feet for side yard setbacks with the condition of being built in “substantial compliance with Exhibit ‘A’” and it was built beyond the approved. The property is located in the O-1 zoning district.

The secretary read the proof of publication.

Julian Clark of Plumley Engineering was present to represent the applicant.

Chairman Mangan noted that construction has not started at the site and that the Board had a well attended hearing previously, when a variance was granted for the 27 feet. He said he felt a bit put out that now they need more room. They could build farther out to the back if more building room is needed.

Mr. Clark explained that when the survey was staked out they were 2 inches over on each side. They actually only need four more inches.

Chairman Mangan asked if the error was in design not construction and Mr. Clark said yes.

Ted Baldini explained that they build the modular panels off site, so that portion was done. The bump outs on the building are the problem, and they need two inches on each side, so the site plan is off four inches.

Chairman Mangan asked if the building is wider, and Mr. Clark further explained that the measurement was wrong because the computer design rounded up the setback to twenty-seven feet instead of twenty-six feet ten inches they actually needed.

Mr. Clark addressed the standards of proof:

1. They are tearing down the old building and constructing a new one, so they do not feel there will be any undesirable change to the character of the neighborhood.
2. They believe there is no other feasible and reasonable method without obtaining a variance since the building is already in production.
3. They do not feel the variance is substantial. It is only four inches, but just in case there might be any other miscalculation they would like the extra foot.
4. They believe there will be no adverse or environmental impact on the neighborhood.
5. The need for the variance is self-created.

Chairman Mangan commented that it’s the same lot, the same building, but a measurement error.

Chairman Mangan asked if there were any further questions or comments and Theresa Casale, Heather McMahan, and Mike Crosby of Lucan Road voiced concern for the project being so

close to their back yard. They would like a privacy fence.

Chairman Mangan advised them that what they were looking at is already approved. Although they would like a fence, trees were approved and a fence not required.

The residents said that they were not notified so they weren't aware of the site plan hearing.

Commissioner Territo explained notices are sent to people within 200 feet for a variance request, but a site plan is only in the newspaper.

Chairman Mangan asked for those in favor of granting the Area Variance and there were none.

Chairman Mangan asked for those opposed to granting the Area Variance and there were three, Ms. Casale, Ms. McMahon, and Mr. Crosby.

Chairman Mangan closed the hearing.

MOTION was made by Mrs. Liebi in Case #1422 to grant the Area Variance as requested with the condition that it be built in substantial compliance with the revised plan of July 11, 2011. Motion was seconded by Mr. Young.

Roll call:	Chairman Mangan	- against	
	Deputy Chairman Fennhahn	- absent	
	Mr. Young	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	<i>Carried.</i>

The Area Variance request in Case #1422 is granted.

Case #1423 – AREA VARIANCE – Stephanie Matthews, 8539 Oswego Road, Tax Map # 019.-02-18.1:

The applicant is requesting an Area Variance, pursuant to Section 230-13 A.(4) to reduce the minimum required lot area from 5 acres to 3.5 acres to maintain an animal care/boarding facility. The property is located in the RA-100 zoning district.

The secretary read the proof of publication.

Chairman Mangan noted that Ms. Liebi is Ms. Matthews' neighbor.

Stephanie Matthews explained that she has a large two car garage and she wants to convert it to an animal care facility.

Ms. Liebi asked if there would be dog runs and Ms. Matthews said there will be a gated area in back for them.

Ms. Matthews addressed the standards of proof:

1. She does not feel there will be any undesirable change to the character of the

neighborhood. The dogs will be supervised and there will be no after dark unsupervised animals.

2. An Area Variance is the only feasible method as the acreage requirement is five acres and she only has 3.5 acres.
3. She does not feel the variance is substantial.
4. She believes there will be no adverse or environmental impact on the neighborhood.

Chairman Mangan commented that there is commercial zoning on either side of the applicant's property.

5. She believes that the need for the variance is self-created.

Ms. Liebi asked if there will be overnight boarding, and Ms. Matthews said yes, but no animals will be outside at night. The hours of operation will be 7:00 A.M. to 7:00 P.M.

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

Chairman Mangan asked if there were any further questions and there were none. Chairman Mangan asked for those in favor of granting the Area Variance and there was one, Chris Tucciarone. Chairman Mangan asked for those opposed to granting the Area Variance and there were none.

Chairman Mangan closed the hearing.

MOTION was made by Mr. Smith in Case #1423 to the Area Variance as requested. Motion was seconded by Mr. Young.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- absent	
	Mr. Young	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	<i>Carried.</i>

The Area Variance request in Case #1423 is granted.

There being no further business, Chairman Mangan adjourned the meeting at 9:10 P.M.

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

