

APPROVED
ZONING BOARD OF APPEALS
MINUTES OF MEETING
June 10, 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 June 10, 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 Ms. Liebi that the Minutes of the meeting of May 13, 2013 be accepted as submitted. Motion was seconded by Mr. Hall. *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 Mr. Smith. *Unanimously carried.*

OLD BUSINESS:

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.

(Proof of Publication was read at the previous meeting.)

Motion was made by Mr. Hall in Case #1485 that the Board's **Findings** are as follows:

1. Both the applicant and the Town Code Department agree that from approximately 1984 to 2010, the property in question located at 7459 Morgan Road was zoned pursuant to the previous Town of Clay Code Section 230-21 (and amended 11/4/1981, 4/6/1987 and 7/14/1997) as a C-4 Gasoline Service Facilities Districts zone.
2. The current Code was largely rewritten in 2005. It is undisputed the new code sections pertaining to gasoline service stations do not allow for body repairs to be carried out on the premises.
3. According to the regulations of the previous zone (C-4 Gasoline Service Facilities Districts) the primary "Uses Permitted" pursuant to Section 230-21(A) was the "Retail sales of automobile fuels. Although "Additional Uses" permitted under Section 230-21 (2)(a) included the "retail service of automobiles conducted inside the structure."
4. Performance of body work and repairs was not an allowed use in the C-4 classification from 1984 to 2005.
5. From 1984 to 2010 the property contained a business commonly known as "Jim's Service Station." Jim's sold gasoline and performed light duty automotive repairs.
6. The applicant provided record testimony from Mr. James Falsey. Mr. Falsey testified that from approximately 1984 to 2010, although he did not offer retail body shop repairs to customers, he testified he performed "body work" on his own vehicles from time to time on the premises.
7. This body finds that if the previous owner did in fact perform body work on the premises contrary to the C-4 Gasoline Services Facilities District regulations, the fact that specific use was not allowed cannot establish a legally non-conforming use. The illegal use of a property does not create legal conforming or non-conforming status.

Decision: This Board hereby decides that operation of a body shop on the premises in question is not a legally pre-existing use, and therefore not allowed. 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>

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.

(Adjourned to this date at the May 13, 2013 meeting. Also, the proof of publication was read at that time.)

Attorney Robert Ventre introduced Mohinder Kalsi of the Sikh Foundation, then proceeded to explain that he struggled with the methodology of this interpretation. It is a religious institution, but it is the learning part of their religion. In 1996 they sought a place to teach cultural values, art, architecture and living. They looked at this building on Wetzel Road. At that time, Attorney Ventre stated, the Town was aware of their intended use and they were permitted to use the warehouse as their educational institution. The building cost them \$120,000 and they did \$100,000 in improvements.

Attorney Germain commented that something in the old code may have fit for them to get a building permit.

Chairman Mangan asked what their intent of use was at the time, and Attorney Ventre said a center for teaching, not religious, but educational.

Mohinder Kalsi explained that it is a religious educational institution to help them learn to adopt our culture, sponsor camps, teach respect, provide scholarships to Liverpool students, etc. In 2004 they lost half of their building due to snow, and they want to replace it.

Attorney Ventre further explained that it is a gathering place, and they feel it falls under the zoning classification of "exhibit hall". They will hold meetings there, they have a kitchen to serve meals at the lectures; they also have a library. The lecture area is 30 feet by 40 feet. They feel they may have earned vested rights, investing money in it they will never be able to get back if they have to sell it.

Mr. Kalsi said that in 2004 they received a permit to replace the roof, then the kitchen and then a sign.

Commissioner Territo stated that they could not find any building permits from the 1990's and they will continue to research this before the next meeting.

Chairman Mangan said he was confused about the history and that the Board needed time to look into it further.

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

Chairman Mangan closed the hearing.

NEW BUSINESS:

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

Case #1489 - AREA VARIANCE – North Central Assembly of God, 7463 Buckley Road, Tax Map #096.-37-29.0:

The applicant is requesting an Area Variance pursuant to Section 230-22 C.(1) to allow for a reduction of the front yard setback from 25 feet to 8 feet for a new updated backlit road sign. This property is located in the R-7.5 One-Family Residential zoning district.

The secretary read the proof of publication.

Jonathan Valletta explained that they would like to replace their existing sign with a new one at the same location, which now requires a variance.

Chairman Mangan noted that it is presently non-conforming. Is that because the road has been widened? Mr. Valletta said yes.

Mr. Valletta addressed the Standards of Proof:

1. He doesn't believe there will be any change to the character of the neighborhood. They want to place the new one in the same location; they simply want to update it with a smaller one, 24 square feet in size.
2. They would have to reroute the electric, so he believes the Area Variance request is the most feasible method.

Chairman Mangan asked that if they put it back the 25 feet could it still be seen.

Mr. Valletta said yes, but it would not as visible.

3. They do not believe the variance request is substantial.
4. They believe there will be no environmental impact of the neighborhood. They will be conserving energy, and it will be more appealing.
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 Ms. Liebi in Case #1489 to grant the Area Variance with the condition that it be in substantial compliance with Exhibit “A”. 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 - in favor *Unanimously carried.*

The Area Variance in Case #1489 is granted.

Case #1490 – AREA VARIANCE – Michele Vigliotti, 5206 Orangeport Road, Tax Map #042.-01-26.0:

The applicant is requesting Area Variances to allow for the reduction of the front yard setback from 75 feet to 38 feet 1 inch; reduction of the side yard setback from 25 feet to 16 feet; reduction of the second side yard setback from 25 feet to 15 feet; and reduction of the third side yard setback from 25 feet to 24 feet for the construction of a garage, porch and an addition. The property is located in the RA-100 One-Family Residential zoning district.

The secretary read the proof of publication.

Mike Vigliotti said that they would like to build a larger garage, a front porch and an addition with a chimney.

Mr. Vigliotti addressed the Standards of Proof:

1. He doesn't believe there will be any change to the character of the neighborhood. He feels these additions will improve his property.
2. He believes 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 commented that a letter was received addressing no concerns with the applicant's request, but they have concerns about the potential of farm animals.

Commissioner Territo informed Mr. Vigliotti that you must have at least 5 acres in a RA-100 zoning for farm animals.

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. Smith in Case #1490 to grant the Area Variance with the condition that construction be in substantial compliance with the Survey dated August 5, 2011. 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 #1490 is granted.

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