

APPROVED
ZONING BOARD OF APPEALS
MINUTES OF MEETING
March 14, 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, New York on March 14, 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 |
| | Arthur Fennhahn | Deputy Chairman |
| | Eugene Young | Member |
| | Mark Smith | Member |
| | Vivian Mason | Secretary |
| | Robert Germain | Attorney |

ABSENT: Karen Liebi Member

MOTION made by Deputy Chairman Fennhahn that the Minutes of the meeting of February 14, 2011 be accepted. Motion was seconded by Mr. Smith. *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. Deputy Chairman Fennhahn. *Carried.*

OLD BUSINESS:

Case #1395 - VARIANCE - Deborah Gebhardt, 8405A Bramble Bush Circle (Tax map #057.-03-07.0) :

The applicant is seeking a reduction in the front yard setback and an increase in height requirement to allow for the installation of a fence.

(This case was adjourned at the February 14, 2011 meeting. The proof of publication were read at that meeting and standards of proof were covered at that time.)

Chairman Mangan explained that the applicant had given them further information to consider at the previous meeting, so the case had been adjourned in February.

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

Chairman Mangan closed the hearing.

MOTION was made by Mr. Smith in Case #1395 to grant the variance with the condition that the variance is limited to what is currently constructed to the plans submitted. Motion was seconded by Deputy Chairman Fennhahn.

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

The variance request in Case #1395 is granted.

Case #1399 - INTERPRETATION - NOCO Distribution, LLC, 4480 Steelway Boulevard (Tax map #105.-01-06) :

The applicant is seeking an interpretation of Section 230-17 C(2) of the Zoning Code; the applicant is requesting a quantitative definition of "large quantities of material".

(The proof of publication was read at the February 14, 2011 meeting.)

Chairman Mangan explained that his case was adjourned at the February 14, 2011 meeting as neither the applicant nor the representative were present.

Lori Riker of Benchmark Environmental, 2558 Hamburg Turnpike, Buffalo, New York 14218 represented the applicant. She explained that they would like to expand the current storage area and store cylinders. They were denied it as an accessory use for bulk storage by the Town of Clay.

Mr. Young noted that usually the applicant offers what they feel the definition of "large quantities of material" would be.

Ms. Riker submitted paperwork and stated that this is what they believe is the definition.

Mr. Young stated that once the Board makes a definition it stands for future interpretations also.

Tim Mann of Buffalo Welding stated that they consider bulk as a liquid form, whereas they will be storing gases only, not liquid.

Mr. Smith asked Mr. Mann if they would put that on paper and present it to the Board and Mr. Mann said that they would do that.

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

Chairman Mangan adjourned this case #1399 to the April 11, 2011 meeting.

NEW BUSINESS:

Case #1398 - AREA VARIANCE - Victory Sign, Inc. (Applebee's Restaruant), 3975 State Route 31 (Tax map #021.-01-05.1):

The applicant is seeking an area variance to allow an increase in the quantity of allowable signage to a total of 9 wall signs, when only 2 are allowed.

The secretary read the proof of publication.

Anthony DePerno, of Victory Signs, was representing this request for Applebee's Restaurant. He explained that they would like to update their signage, neon to LED.

Chairman Mangan asked if they would be adding any signs and Mr. DePerno said no. He was not sure how David Balcer, the former Town Planner came up with that number, but they are not changing the square footage of the signs, they are merely changing the logo a little. They feel the new signs will be less intrusive. There will be no new signs or increase in signs.

Mr. DePerno addressed the standards of proof:

1. It's a commercial setting, so they feel it will not affect the character of the neighborhood.
2. They are merely changing the existing signs so there is no other feasible method.
3. They do not feel the variance is substantial; they are merely replacing existing signage.
4. They believe there will be no adverse impact on the neighborhood.
5. Yes, the need for the variance is self-created, but they feel the updating must be done to assure that the company survives.

Deputy Chairman Fennhahn asked if the signs would be constantly lit and Mr. DePerno said only during store hours.

Mr. Young asked if any of the wording would be changing and Mr. DePerno said no.

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

Russ Mitchell commented on the number of signs and where they were. It was explained that there will actually be no additional signs.

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

Chairman Mangan closed the hearing.

MOTION was made by Mr. Young in Case #1398 to grant the variance with the condition that the signs be in substantial compliance with Exhibit "A"; that only existing signs be replaced; that existing illuminated signs be replaced with LED; and that there will be no new illuminated signs. Motion was seconded by Mr. Smith.

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

The variance request in Case #1398 is granted.

Case #1400 - AREA VARIANCE - Andrew Augustinos, 4976 Taft Road (Tax map #116.-01-15.0):

The applicant is seeking an area variance to allow for a reduction in the side yard setback to construct an addition in the rear of the property.

The secretary read the proof of publication.

Kerri Augustinos of 126 Stanwood Lane, Manlius, New York explained that they had a pre-existing porch and for safety reasons they enclosed it.

Ms. Augustinos addressed the standards of proof:

1. No one lives in close proximity to this house, there is only a development in back of it. She feels there will be no change in the character of the neighborhood.
2. She feels there is no other feasible method. The enclosure was done for safety reasons. Her parents sometimes use the house and they were concerned about snow buildup and she didn't want anyone hurt going up and down the stairs.
3. She does not feel the variance is substantial.
4. She believes there will be no adverse or environmental impact on the neighborhood.
5. She believes the need for the variance is self-created.

Ms. Augustinos added that the enclosure of the porch was done to code.

Mr. Young questioned the setback and Ms. Augustinos said the 140 feet to 82 feet was just to keep the porch covered.

Chairman Mangan pointed out that the house is in non-conformance, but the construction of the

porch is not bringing them any closer to the side yard that they are already.

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 those opposed to granting the variance and there was none.

Chairman Mangan closed the hearing.

MOTION was made by Mr. Young in Case #1400 to grant the variance with the condition that the variance be limited to what is currently constructed. Motion was seconded by Mr. Smith.

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

The variance request in Case #1400 is granted.

Case #1401 - AREA VARIANCE - Kelly Walrath, 217 Sheatree Lane (Tax map #108.-07-01.0):

The applicant is seeking an area variance to allow for a reduction in the front yard setback and increase in height requirement to allow for the installation of a fence.

The secretary read the proof of publication.

Chairman Mangan noted that the fence is already constructed, and the applicant actually has two front yards because it is a corner lot.

Kelly Walrath explained that she wants to keep the fence for privacy. They had gotten a building permit for it, but wasn't aware of where the building line was.

Ms. Walrath addressed the standards of proof:

1. She feels the fence is an improvement and does not change the character of the neighborhood. She presented a petition her neighbors had signed stating they were not opposed to the fence.
2. Other than removing the fence, there is no other feasible method without obtaining a variance.
3. She does not feel the variance is substantial.
4. She believes there will be no adverse impact on the neighborhood.
5. She believes that the need for the variance is self-created.

Ms. Walrath added that she drove around the neighborhood to make sure it didn't block anything.

Chairman Mangan agreed that the fence didn't obscure the view, but noted there was a tree which wasn't hers, that did.

Mr. Young inquired as to whether Ms. Walrath submitted a plan when she applied for the building permit. She answered that she spoke to the code enforcement officer and the fence was drawn on the survey, but she thought the building line was elsewhere.

Mr. Smith asked if the fence company looked at the drawing and Ms. Walrath said no.

Chairman Mangan asked if there were any further questions and there were none. Chairman Mangan asked for those in favor and Richard Gibson and Jeff Wolsley of David Drive spoke in favor of granting the variance. There was also a letter from Brian and Barbara Luke of David Drive who also do not object to the fence. Chairman Mangan asked those opposed to granting the variance and there was none.

Chairman Mangan closed the hearing.

MOTION was made by Mr. Smith in Case #1401 to grant the variance with the condition that the fence be limited to what is currently constructed. Motion was seconded by Mr. Young.

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

The variance request in Case #1401 is granted.

There being no further business, Chairman Mangan adjourned the meeting at 8:14 P.M.



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