

APPROVED
ZONING BOARD OF APPEALS
MINUTES OF MEETING
October 11, 2010

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 October 11, 2010.

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
	Karen Liebi	Member
	Mark Smith	Member
	Vivian Mason	Secretary
	Robert Germain	Attorney
	David Balcer	Town Planner

MOTION made by Mr. Young that the Minutes of the meeting of September 13, 2010 be accepted. Motion was seconded by Deputy Chairman Fennhahn. *Carried.*

Mr. Smith took his place on the Board.

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 Mrs. Leibi. *Unanimously carried.*

OLD BUSINESS:

Case #1381 - USE VARIANCE - Mark Weiss, 4913 New York State Route 31, (Tax map #046.-01-25.0 & 046.-01-27.0) :

The applicant is seeking a use variance to allow a "Nursery" for the growing and seasonal retail of perennial plants.

(The proof of publication was read at the September 13, 2010 meeting.)

Mr. Weiss explained that he was under the impression that he could grow and sell plants on his property. He feels that since his house is his existing residence that it should be allowed.

Chairman Mangan noted that the applicant knew his residence was in an Industrial zone when he purchased it. Unfortunately the Town code dictates that any approval of a use variance has to meet certain standards of proof, which are extremely difficult to prove.

Mr. Weiss asked if they could sell the plants wholesale and Chairman Mangan informed him that

commercial retail is not allowed in an Industrial zone.

Mrs. Liebi commented that she thought the applicant had a first class operation, but the Town code dictates the legal boundaries, and the Board must adhere to them.

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 were none.

Chairman Mangan closed the hearing.

MOTION was made by Mr. Young in Case #1382 to deny the use variance. Motion was seconded by Deputy Chairman Fennhahn.

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

The variance request in Case # is **denied**.

Case #1383 - VARIANCE - Maureen Murphy, 8510 Fathom Drive, (Tax map #052.1-26-11.4):

The applicant is seeking a variance to decrease the front yard setback for a shed on the Fathom Drive side from 20 feet to 17 feet and on the Theodolite Drive side from 25 feet to 15 feet.

(The proof of publication was read at the September 13, 2010 meeting.)

Richard Jarvis, the attorney representing the applicant, explained that the applicant bought the home in 2005. The shed was already on the premises and had been for some time, the construction of the structure approximately 20 years ago. Stone work and bushes exist around it. When Ms. Murphy bought the home the survey (dated November 2005) did not show an existing shed so they were not aware the structure was outside the building line and not in compliance with the Town code. The shed is also in a county sewer easement.

Deputy Chairman Fennhahn asked if the Planning office had located an original permit for it and Attorney Jarvis said there was none, and there was nothing in the sale contract to reflect a shed.

Attorney Jarvis addressed the standards of proof:

1. Since the shed has been there for 15 to 20 years, there will be no change in the character of the neighborhood.
2. It would be costly to move the shed and since the shed is old it would probably be destroyed in the process, so they believe there is no other feasible method.
3. They do not feel the variance is substantial since the shed has posed no problem thus far.

4. To date there have been no complaints so they believe there will be no adverse impact on the neighborhood.
5. They don't believe the need for the variance is self-created, since the survey did not show that it was on the property, and the shed had been put there by a previous owner.

Deputy Chairman Fennhahn commented that perhaps the shed wasn't on the survey because no permit for it had been obtained from the Town.

Attorney Jarvis noted that illegal or not it should have been on the survey.

Chairman Mangan asked Town Planner David Balcer what the Town code requirements were for a shed over ten years ago, and Mr. Balcer said the same. However, the county would be the authority concerning the issue of being constructed on their sanitary easement. He further stated that, the Planning Department would never release a Building Permit prior to the entity having jurisdiction writing a letter that states they are all right with something built on their easement. Therefore, if the variance was to be granted, it should be condition on receiving that release.

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 adding that the Board would like to give further thought to the applicant's request before making a decision.

NEW BUSINESS:

Chairman Mangan asked if all the members had visited the site and all answered in the affirmative.

Case #1386 - VARIANCE - Michael D. & Kelly L. Wells, 8187 Capricorn Drive - (Tax map #067.-09-05.0) :

The applicant is seeking a variance to reduce the front yard setback from 25 feet 0 inches to 21 feet 0 inches, to allow a proposed front porch with a roof.

The secretary read the proof of publication.

Michael Wells stated that he would like to build a six foot deep porch so he can have a covered walkway.

Mr. Wells addressed the standards of proof:

1. He believes there will no change in the character of the neighborhood.
2. He stated there is no other feasible method.
3. He does not feel the variance is substantial.
4. He believes there will be no adverse impact on the neighborhood.
5. He stated the need for the variance is self-created.

Chairman Mangan asked the applicant if he could live without a roof and Mr. Wells said yes.

Mr. Young pointed out that the applicant could extend a roof out three feet as long as there were no posts. He added that there would be an impact on the neighborhood however, if the porch had a full roof, as a porch affects the building site line along the street. The sight line appearance on the applicants side of the street would have his house sticking out further than the other homes and that is a problem according to the Town code.

Deputy Chairman Fennhahn commented that he didn't feel a three foot roof would look good and would be an undesirable change to the character of the neighborhood.

Mr. Wells stated that the house is plain and that he feels the porch would be an improvement.

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 were none.

Chairman Mangan closed the hearing.

MOTION was made by Mrs. Liebi in Case #1386 to deny the variance request. Motion was seconded by Mr. Young.

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

The variance request in Case #1386 is **denied**.

There being no further business, Chairman Mangan adjourned the meeting at 8:05 P.M.

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