

APPROVED
ZONING BOARD OF APPEALS
MINUTES OF MEETING
November 11, 2019

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 November 11, 2019. Chairman Wisnowski called the meeting to order at 7:30 P.M. and upon the roll being called the following were:

PRESENT:	Edward Wisnowski, Jr	Chairman
	Karen Liebi	Member
	Luella Miller-Allgaier	Member
	Deborah Margaro-Dolan	Member
	John Marzocchi	Attorney
	Vivian Mason	Secretary
	Mark V. Territo	Commissioner of Planning & Development

ABSENT: Nicholas Layou Member

MOTION made by Mrs. Liebi that the Minutes of the meeting of October 14, 2019 be accepted as submitted. Motion was seconded by Mrs. Miller-Allgaier. *Carried. (4-0)*

MOTION made by Chairman Wisnowski for the purpose of the New York State Environmental Quality Review (SEQR) all new actions tonight will be determined to be a Type II, and will be given a negative declaration, unless otherwise advised by our attorney. Motion was seconded by Mrs. Liebi. *Carried. (4-0)*

OLD BUSINESS:

Case #1764 – Giovanni Canzano, 5057 Bear Road, Tax Map #089.-01-11.3:

The applicant is seeking an Interpretation for the definition of an *accessory structure* compared to *portable storage unit* to clarify the requested building permits to be granted or denied. The property is located in the RA-100 Residential Agricultural Zoning District.

MOTION was made by Chairman Wisnowski in Case #1764 that the Board decides the proof submitted by the applicant regarding the use of the building clearly fits the definition of a “Portable Storage Unit”, which is not an allowable use in any residential district, including the RA-100 Zoning classification. We hold, therefore, the use is in fact not an allowable use of the property. (see attached Findings and Decesion)

Roll call:	Chairman Wisnowski, Jr.	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Layou	- absent	
	Mrs. Miller-Allgaier	- in favor	
	Mrs. Margaro-Dolan	- in favor	<i>Carried.</i>

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Roll call:	Chairman Wisnowski, Jr.	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Layou	- absent	
	Mrs. Miller-Allgaier	- in favor	
	Mrs. Margaro-Dolan	- in favor	<i>Carried.</i>

NEW BUSINESS:

Chairman Wisnowski asked if all the Board members had visited the sites, and all said that they had.

Case #1767 – TC Syracuse Development Associates, LLC, 7211 & 7219 Morgan Road, Tax Map #114.-01-02.3:

The applicant is requesting Area Variances per Sections 230-17 C.(4)(c)[2] & 230-17 C.(5)(b) for a reduction in the side yard setback from 75 feet to 26.0 feet for a 5 foot Split Rail fence; Section 230-17C.(4)(b)[1][a] for a reduction in the front yard setback from 200 feet to 67.3 feet for an 8 foot Chain Link fence; Sections 230-17 C.(4)(c)[2] & 230-17 C.(5)(b) for a reduction in the side yard setback from 75 feet to 57.0 feet for an 8 foot Chain Link fence; Section 230-20 B.(2)(b) for an increase in the height of a fence from the allowed 7 feet to 8 feet for a Chain Link fence; Section 230-17 C.(4)(b)[1][a] for a reduction in the front yard setback from 200 feet to 90.3 feet for an 12 foot Plywall fence; Section 230-20 B.(2)(a) for an increase in the height of a fence from the allowed 7 feet to 12 feet for a Plywall fence; Section 230-17 C.(4)(b)[1][a] for a reduction in the front yard setback from 200 feet to 21.2 feet for a Split Rail fence; Section 230-17 C.(4)(b)[1][a] for a reduction in the front yard setback from 200 feet to 128.7 feet for a 7 foot PVC fence; Sections 230-17 C.(4)(c)[2] & 230-17C.(5)(b) for a reduction in the side yard setback from 75 feet to 8.3 feet for a 7 foot PVC fence; Section 230-17 C.(4)(b)[1][a] for a reduction in the front yard setback from 200 feet to 44.2 feet for a 7 foot PVC fence; Sections 230-17 C.(4)(c)[2] & 230-17 C.(5)(b) for a reduction in the side yard setback from 75 feet to 11.8 feet for a 7 foot PVC fence; Section 230-17 C.(4)(b)[1][a] for a reduction in the front yard setback from 200 feet to 43.1 feet for a 7 foot PVC fence; Sections 230-17 C.(4)(c)[2] & 230-17 C.(5)(b) for a reduction in the side yard setback from 75 feet to 7.2 feet for a 7 foot PVC fence; Sections 230-17 C.(4)(c)[2] & 230-17 C.(5)(b) for a reduction in the side yard setback from 75 feet to 21.0 feet for a 7 foot PVC fence; Section 230-17 C.(4)(b)[1][a] for a reduction in the front yard setback from 200 feet to 42.7 feet for a 7 foot PVC fence; Section 230-17 C.(4)(c)[2] & 230-17 C.(5)(b) for a reduction in the side yard setback from 75 feet to 5.3 feet for a 7 foot PVC fence; Section 230-17 C.(4)(b)[1][a] for a reduction in the front yard setback from 200 feet to 40.8 feet for a 8 foot Plywall fence; Sections 230-17 C.(4)(c)[2] & 230-17 C.(5)(b) for a reduction in the side yard setback from 75 feet to 25.3 feet for an 8 foot Plywall fence; Section 230-20 B.(2)(a) for an increase in the height of a fence from the allowed 7 feet to 8 feet for a Plywall fence; and Section 230-17 C. (4)(b)[1][a] & 230-17 C.(5)(a) for a reduction in the front perimeter landscape strip from 100 to 40 feet for parking, which will allow for fencing and parking for construction of a distribution facility. (The property is located in the former Rec-1 Recreation District. However, the applicant was granted a change of zone to I-1 Industrial District by the Town Board at their November 6, 2019 meeting.)

The Secretary read the proof of publication.

Attorney Frank Pavia of Harris Beach PLLC, George Laigaie, Principal of Trammell Crow Company, and Richard Burrow, PE, LEED AP, Senior Principal of Langan represented the applicant.

Attorney Pavia explained the Area Variance for the perimeter landscape strip is for parking and a better travel pattern. The other Area Variances are for fencing and their height for the purpose of sound reduction, for visual barriers, and for safety around the detention pond.

Richard Burrows of Langan Engineering, gave a detailed overview of the project presenting site plan and pictures of what and where the Area Variances are needed. The design is limited by the stream and wetlands that exist on the parcel. He noted that there are Industrial uses across Morgan Road. The fencing will create a sound barrier, a visual barrier and fencing for safety purposes around retention basins. These barriers are for the benefit of the neighbors. There will also be many planting done for landscaping.

Attorney Pavia added that the Area Variances are only for offsite properties, so there will be no adverse impact. There are a variety of uses of other properties in the vicinity.

Attorney Pavia addressed the Standards of Proof (see attached Exhibit #1 for a more detailed explanation of the Standards of Proof):

1. They believe there will not be any negative or undesirable change to the character of the neighborhood, as there are other Industrial uses in the vicinity. They plan on planting 1400 trees that should grow to a nice height in five years.
2. They believe there is not any other feasible method to build than to obtain Area Variances because they need to avoid noise and visibility to offsite properties. They tried reconfiguring the warehouse, but the stream, storm sewer and wetlands limited their configuration, so there was no other method.
3. They believe the Area Variance requests are not substantial. It's 8151 feet of fencing and their setbacks will be similar to other properties in the area.
4. They believe there will be offsite benefits. When the Town Board granted the change of zone, they acknowledged the benefits and the improved onsite parking. They feel there won't be any physical or environmental impact to the neighborhood.
5. They believe the need for the Area Variances is self-created.

Chairman Wisnowski asked if there were any comments or questions and there were none.

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

Chairman Wisnowski asked if anyone in the audience had any questions and several residents spoke.

David Chmielewski of 1208 Oswego Street said he had a major issue with diesel trucks and the gear shifting. How would that be mitigated?

Cody Ziparo of 7307 Morgan Road inquired about his house and the inadequate fencing.

Attorney Pavia explained that a study had been done regarding their proposed fencing, which should mitigate noise.

Darlyn Frass, 7175 Morgan Road voiced her opposition. Her father has dementia and fencing limits the area around their home and she is concerned about his mental health. She read a letter from her brother Craig Forgette, 66 Tillinghast Place, Buffalo, NY also in opposition.

Vincent Messina, 24 Ilex Lane, read a letter stating they feel the Area Variances will be a detriment

to the residents and requested that the Board wait 60 days to make a decision.

Sue Hammond, 101 Elaine Avenue, said she didn't want the Board to rubberstamp their approval and to give wait to make a decision. She referred to the transcript taken at the Town Board Meeting where Mr. Burrows referred to the Town's "unfortunate" noise ordinance. Mr. Burrows immediately spoke up and explained that that was not what he said. He further explained that he's from Scotland and due to his accent what he said was mistakenly transcribed. What he said was "enforcement" noise ordinance not "unfortunate".

Christine Mathews, 1208 Oswego Street was concerned with the stench of trucks.

Attorney Pavia stated there will be no tandem trailers.

Chairman Wisnowski asked for those in favor of granting the Area Variance requests and there were none. Chairman Wisnowski asked for those opposed to granting the Area Variance requests and there were ten in opposition.

Rosemary Merritt asked if the Board would be voting tonight and Chairman Wisnowski said he believed they would.

Chairman Wisnowski closed the hearing.

MOTION was made by Mrs. Miller-Allgaier in Case #1767 to approve the Area Variances as requested with the condition they be in substantial compliance with Exhibit "A" dated 10/11/2019. Motion was seconded by Mrs. Liebi.

Roll call:	Chairman Wisnowski, Jr.	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Layou	- absent	
	Mrs. Miller-Allgaier	- in favor	
	Mrs. Magaro-Dolan	- in favor	<i>Carried.</i>

The Area Variances in Case #1767 are **approved**.

Case #1769 – Gary Sibble, Jr., 8347 Falcon Drive, Tax Map #054.-08-45.0:

The applicant is requesting Area Variances per Section 230-18 I.(2)(b) for a reduction in the rear yard setback from 10 feet to 5 feet and Section 230-18 I.(2)(e) for an increase in the height of an accessory structure from the allowed 15 feet to 18 feet for construction of a 20 foot by 16 foot shed. The property is located in the PDD Planned Development District.

The Secretary read the proof of publication.

Gary Sibble, Jr. explained that they have no basement only a one car garage and three boys who need space for their things. They need the shed for storage

Mr. Sible addressed the Standards of Proof:

1. He believes there will not be any negative or undesirable change to the character of the neighborhood. Their backyard is sloped downhill so the added height will barely be noticeable, especially amongst the neighboring trees.
2. He believes there is not any other feasible method to build than to obtain Area Variance because unfortunately the lot size does not lend to increasing the footprint of the proposed structure..
3. He feels the Area Variance request is not substantial due to the building's relatively small size and the slope of the property.
4. He believes there won't be any physical or environmental impact to the neighborhood. He neighbors said they did not mind.
5. He believes the need for the Area Variances is self-created.

Mrs. Liebi asked if he had construction equipment and if he intended to put in a driveway.

Mr. Sible said he works in construction but doesn't do any but his own on his property. He does not plan on putting in a driveway.

Chairman Wisnowski asked why he needed the height and Mr. Sible explained that because of the square footage of the shed and to get the maximum storage space he wants the additional height. He wants to be able to stand up in the loft.

Chairman Wisnowski asked if there were any comments or questions and there were none.

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

Chairman Wisnowski asked if anyone in the audience had any questions and there were none.

Chairman Wisnowski asked for those in favor of granting the Area Variance requests and there was one. Chairman Wisnowski asked for those opposed to granting the Area Variance requests and there were none.

Chairman Wisnowski closed the hearing.

MOTION was made by Mrs. Liebi in Case #1769 to approve the Area Variances as requested with the condition they be in substantial compliance with Exhibit "A" dated 4/8/2010. Motion was seconded by Mrs. Miller-Allgaier.

Roll call:	Chairman Wisnowski, Jr.	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Layou	- absent	
	Mrs. Miller-Allgaier	- in favor	
	Mrs. Magaro-Dolan	- in favor	<i>Carried.</i>

The Area Variances in Case #1769 are **approved**.

There being no further business, Chairman Wisnowski adjourned the meeting at 8:50 P.M.



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

HARRIS BEACH PLC
ATTORNEYS AT LAW

October 4, 2019

99 GARNSEY ROAD
PITTSFORD, NEW YORK 14534
585.419.8800

FRANK C. PAVIA
MEMBER
DIRECT: 585.419.8709
FAX: 585.419.8801
FPAVIA@HARRISBEACH.COM

Chairman Edward Wisnowski
Town of Clay Zoning Board of Appeals
Town of Clay Town Hall
4401 State Route 31
Clay, New York 13041

RE: Area Variances Application 7211 and 7219 Morgan Road, Town of Clay

Dear Mr. Chairman Wisnowski:

We are counsel to TC Syracuse Development Associates, LLC (the "Applicant"), and write in support of the above-referenced application for area variances in connection with the development of a warehouse distribution facility at 7211 and 7219 Morgan Road in the Town of Clay (the "Project").

The property comprises approximately 110 acres located along the western side of Morgan Road (the "Site"). An existing I-1 Industrial District is located across Morgan Road to the east; an O-1 Neighborhood Office District is located within the northeast corner of the Site; a REC-1 Recreational District is located adjacent to the Site to the west; a R-2F Residential Two Family District is located adjacent to the Site to the northeast; a LuC-2 Limited Use/Restaurant District is located adjacent to the Site to the west; and a R-10 Residential One Family District is located adjacent to the Site to the south.

The Applicant is seeking from the Town Board of the Town of Clay a re-zoning of the Site to the I-1 Industrial District, as well as site plan approval from the Town of Clay Planning Board. Please note that while the Applicant has made every effort to limit the dimensions of the Project so as to fall entirely within the zoning parameters of the Town's I-1 Industrial District as set forth in Section 230-17(C) of the Town of Clay Zoning Code (the "Zoning Code"), critical modifications to the site plan are necessary to improve internal, on-site traffic patterns, as well as to reduce sound levels at the Site's property boundaries. These improvements require area variances including a setback reduction of the front yard landscaping perimeter from 100 feet to 40 feet, as well as setback variances to locate sound reduction fencing within the front and side yard areas. We have enclosed a proposed site plan showing the specific locations of the sound reduction fencing associated with the front yard landscaping setback variance request.

This letter addresses the analysis of the Standards of Proof required by the Town of Clay Zoning Board of Appeals (the "ZBA") as part of the area variance review. We respectfully submit that, in conformance with the requirements of Section 230-25(D)(2) of the Zoning Code and Section 267-b of the New York State Town Law, the following factual submissions support the granting of the requested area variances:

Exhibit 1

HARRIS BEACH ^{PLLC}
ATTORNEYS AT LAW

October 4, 2019
Page 2

(1) Will the granting of the variance produce an undesirable change in the character of the neighborhood or a detriment to nearby properties? And if not, please explain why.

The granting of the area variances will not produce an undesirable change in the character of the neighborhood, nor will the proposed variances cause detriment to nearby properties. To the contrary, the area variances sought here are not to expand the use of the Site, but rather to avoid potential adverse impacts to neighboring properties. The proposed warehouse distribution facility is permitted as-of-right in an I-1 Industrial District. The variance seeking a reduction of the front yard landscaping setback from 100 feet to 40 feet is needed to improve the existing site plan's design by employing measures that will aid in avoiding off-site queuing of vehicles during Site operations by shifting the on-site internal driveway system toward the middle of the Site. Moreover, the front yard landscape setback variance will allow for more usable, on-site acreage for improved internal traffic patterns which will decrease traffic impacts to the surrounding area. We respectfully refer the ZBA to the Traffic Impact Study, which is attached to the FEAF, for a more in-depth discussion of the internal traffic patterns of the Project.

The variances seeking side and front yard setback reductions of 69.7 and 159.2 feet, respectively, are necessary for the placement of sound reduction fencing to further ensure that the Project complies with the noise avoidance requirements set forth in Section 230-17(A)(1) of the Zoning Code. These variances are not being requested for mere convenience of the Applicant, but rather are requested to reduce the impacts to the surrounding neighborhood resulting from the Site's as-of-right use. The sound fences will reduce the acoustical impact of the Site at nearby receptors and also act as a visual barrier for on-site activity. All sound fences have been optimized for height and length to maximize the sound reduction provided while also minimizing the extent of these features. The sound fencing (combined with the proposed landscaping berms which are not subject to the area variance application) will block elevated sounds from traveling beyond the Site's property boundaries, thus keeping sound levels in compliance with the Zoning Code. In light of these requirements, the sound reduction fencing and berms are designed so that sounds do not exceed the Zoning Code requirements at the Site's property boundaries. We again respectfully refer the ZBA to the Noise Study attached to the FEAF for a more detailed analysis of the noise reduction measures proposed for the Project.

The requested variances are also in keeping with the character of the community. The Site is located on Morgan Road across from an existing I-1 Industrial District that encompasses approximately 2,000 acres. The existing I-1 Industrial District contains numerous warehousing and industrial uses with varying setbacks and landscape perimeters, some of which do not appear to comply with current Zoning Code requirements. As a result, the Applicant's requested area variances are compatible with the nearby properties and uses as the setbacks on those properties do not uniformly comply with the Zoning Code.

The Site is surrounded by a variety of land uses, including properties zoned O-1 Neighborhood Office, REC-1 Recreational, R-2F Residential Two Family, R-APT Apartments,

R-10 Residential One Family, and LuC-1 Limited Use Restaurants. In addition, other nearby properties are zoned NC-1 Neighborhood Commercial, R-TH Townhouses, RC-1 Regional Commercial, LuC-1 Limited Use Gasoline Service, HC-1 Highway Commercial, and O-2 Office. These various uses are present within a relatively small geographic footprint resulting in the lack of a cohesive neighborhood aesthetic. The adjacent and nearby properties also range in acreage and have differing construction styles for the structures and improvements located on them. In sum, granting the requested area variances will not detract from the dynamic and varied character of the neighborhood.

The ZBA has previously granted area variance applications under similar circumstances. The following list of approved area variances demonstrates that the ZBA has previously determined that similar situations warranted reductions in the front and side yard setback requirements:

- March 2017 (Case #1652), the ZBA granted a variance to allow for reduction in a front yard setback from 200 to 70 feet and a front perimeter landscape strip from 100 to 70 feet for construction of a single storage building in an I-1 District (7339 Henry Clay Boulevard).
- November 2013 (Case #1507), the ZBA granted a variance to allow for a reduction in a side yard setback in an I-1 district (4533 Wetzel Road) from 25 to 9.9 feet to allow for construction of a 1600+/- square foot addition to a cold storage warehouse.
- April 2016 (Case #1603), the ZBA granted a variance to allow for reduction of a front yard setback from 200 to 150 feet; reduction of an east side yard setback from 25 to 19 feet; reduction of a west side yard setback from 25 to 19 feet to allow for construction of a pole barn in an I-1 District (4515 Wetzel Road).
- July 2014 (Case #1499), the ZBA granted a variance to allow for reduction of the rear yard setback from 80 to 25 feet and to reduce an additional setback where abutting a residential district for the installation of a generator in the HC-1 District (7251 Janus Park Drive).
- September 2014 (Case #1537), the ZBA granted a variance to allow for reduction in a side yard setback from 25 to 10 feet to allow for a principal structure and for reduction in side yard setback from 25 to 12.5 feet to allow for a dumpster in the NC-1 District where a restaurant was demolished to build an Advance Auto store (7386 Oswego Road).
- October 2014 (Case #1543), the ZBA granted a variance to allow for reduction in a side yard setback from 80 to 20 feet; reduction in a rear yard setback from 80 to 52 feet; reduction in perimeter landscape from 20 to 17.5 feet; and to allow a fence taller than

two and one half (2.5) feet in a front yard between the street and a setback line to allow for a self-storage facility in an HC-1 District (4356 State Route 31).

- July 2015 (Case #1570), the ZBA granted a variance to allow for reduction in a highway overlay setback from 90 to 88.5 feet; reduction in a perimeter landscape strip from 30 to 1.8 feet; reduction in a perimeter landscape strip from 30 to 1.3 feet; and reduction in a perimeter landscape strip from 30 to 7 feet to allow for construction of accessory structures at a Sonic Restaurant in an RC-1 District (3808 State Route 11).
- December 2015 (Case #1591), the ZBA granted a variance to allow for reduction in perimeter landscape strip from 80 to 32.4 feet for realignment of a proposed internal driveway with an entrance to Route 31 in a the RC-1 District (3712 State Route 31).
- July 2016 (Case #1620), the ZBA granted a variance to allow for reduction of perimeter landscape strip from 80 to 51 feet for construction of a hotel in the RC-1 District (State Route 31/Pepperidge Way).
- March 2017 (Case #1650), the ZBA granted a variance to allow for the reduction of a perimeter landscape from 20 to 4.66 feet; reduction of the perimeter landscape from 20 to 2.6 feet; reduction of perimeter landscape from 30 to 3 feet; reduction of a perimeter landscape from 20 to 16.38 feet; reduction of a rear setback from 25 to 16.38; reduction of a building setback form 25 to 17.11 feet; reduction of a perimeter landscape for accessory structure from 20 to 2.6 feet; and sign setback reductions for construction of 6,697 square foot retail/repair auto building with paved parking in the LuC-1 District (7435 Oswego Road).
- March 2017 (Case #1651), the ZBA granted a variance to allow for reduction of the front perimeter landscape strip from 100 to 46 feet for construction of addition to existing building for café and parking expansion in an I-1 District (7641 and 7645 Henry Clay Boulevard).
- June 2018 (Case #1703), the ZBA granted a variance to allow for reduction of additional perimeter landscape when abutting a residential district from 35 to 0 feet in NC-1 District (8180 Oswego Road).
- March 2019 (Case #1742), the ZBA granted a variance to allow for reduction in side perimeter landscape strip from 30 to 8 feet for purpose of allowing stormwater management and water quality facilities in the strip in a RC-1 District (State Route 31, Tax Map #020.-01-05.1 and 020.-01-05.2).
- April 2019 (Case #1742), the ZBA granted a variance to allow for reduction in perimeter landscape strip from 45 to 15 feet for construction of pavilion in LuC-2 District (7240 Oswego Road).

(2) Could the benefit sought by the applicant be achieved by some other method, feasible for the applicant to pursue, other than an area variance?

The area variances sought are the only available mechanisms by which to achieve the critical benefits of the internal queuing design, as well as effectively reduce the noise level at the Site's property boundaries. Given that there are several on-site physical constraints, including a Class B stream bisecting the Site and the presence of several regulated wetland areas, encroachment into the perimeter landscape strip is necessary to provide adequate and improved on-site truck maneuvering and queuing. In addition, the placement of the sound reduction fencing at the locations within the side and front yard setbacks ensures the appropriate level of noise reduction. Specifically, Chapter 230 of the Zoning Code requires sound at the property lines to be at or below 70 dB(A) during the day and 60 dB(A) overnight.

The Applicant has considered several alternatives to seeking the area variances in order to achieve the benefits of the sound reduction fencing and reduced landscaping perimeter, including re-locating/configuring the building footprint and re-configuring the internal driveway system. However, because of the Class B stream and regulated wetlands, as well as the need to provide sufficient on-site stormwater detention infrastructure, these alternatives do not provide the critical benefits achieved through the front yard landscaping setback variance. As to the side and front yard setback variances for the sound reduction fencing, alternative locations do not provide the required reduction of sound at the Site's property lines as mandated by the Zoning Code. The exact locations of the sound reduction fencing have been carefully analyzed and selected by the Applicant's engineers to achieve maximum effectiveness.

(3) Is the requested area variance substantial? If not, explain why it is not substantial.

The Applicant respectfully submits that the requested variances are not substantial. The total footage associated with the sound reduction fencing is approximately 1,851 feet. This represents less than 18% of the total footage along the Site's property lines. The Applicant is also seeking a reduction of the front yard landscaping setback from 100 feet to 40 feet, which given the total acreage and layout of the Site is not substantial, even less so when looking at the setbacks associated with several nearby properties. Moreover, the requested area variances total 7.6 acres, representing less than 4.5% of the total acreage of the Site. Thus, the requested variances are insubstantial by any objective criteria.

Similarly, the effects of the variances are insubstantial and entirely beneficial to the surrounding neighborhood. The variances do not result in a more substantial use of the Site as the warehousing and distribution function and scale remain unchanged. Nor do the variances result in increased traffic entering or leaving the Site. Lastly, because the area variances will result in positive benefits to the Site and neighboring properties through improved on-site traffic patterns and the avoidance of off-site noise, they will provide a significant benefit to the

community and neighboring properties, while representing a minor usage of the approximately 110 acres comprising the entirety of the Site.

(4) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

The variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or the I-1 Industrial District. As stated above, the requested variances are designed to significantly decrease or avoid potential adverse impacts to the environment and such impacts to neighboring properties, and implementation of the variances would be in keeping with the character of the neighboring community. The variance seeking a reduction of the front yard landscaping setback from 100 feet to 40 feet is requested in order to shift the on-site internal driveway system toward the middle of the Site to improve the site plan's design by avoiding off-site queuing of trucks during operations. This front yard setback variance will allow for more usable, on-site acreage for better internal traffic patterns, further avoiding any possibility of trucks queueing on Morgan Road.

The variances seeking side and front yard setback reductions of 69.7 feet and 159.2 feet, respectively, are necessary for the placement of sound reduction fencing to ensure that the Project complies with the noise avoidance requirements set forth in Section 230-17(A)(1) of the Zoning Code. The sound fencing (combined with the proposed landscaping berms which are not subject to the area variance application) will block elevated sounds from traveling beyond the Site's property boundaries, thus keeping sound levels in compliance with the Zoning Code.

(5) Is the alleged difficulty self-created? Consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The site benefits sought by the Applicant that would be attained by granting the requested area variances are "self-created." However, self-creation is not a bar to granting the requested area variances (*see North Country Citizens for Responsible Growth, Inc. v Town of Potsdam Planning Board*, 39 AD3d 1098 [3d Dept 2007]).

In the controlling Court of Appeals decision, *Sasso v Osgood*, 86 NY2d 374 [1995], the Court cited Section 267-b[3][b][5] of New York State Town Law which expressly states the fact that an applicant's self-created difficulty does not preclude the granting of an area variance. The Court of Appeals' decision also abolished the "practical difficulties" criteria previously required for area variance applications. In *Sasso*, the applicant purchased a small lot and thereafter requested an area variance to construct a structure larger than what was permitted under the zoning code. Because the lot was substandard at the time of purchase, the applicant's difficulty was self-created. However, the Court of Appeals determined the zoning board of appeals did not act arbitrarily in granting the area variance at issue, despite the applicant's self-created difficulty.

Here, like in *Sasso*, the difficulty may be viewed as self-created, but this fact does not preclude the granting of the requested area variances. Self-creation is just one of the factors the ZBA weighs when considering an area variance, and in this application, is outweighed by the overwhelming evidence in support of benefits of the Applicant's requested area variances.

In light of the foregoing, we respectfully submit that the granting of the requested area variances is warranted, and will result in a better site plan that benefits the neighboring properties and the community. A denial of the area variances will result in the site plan for the Project not achieving the benefits of improved on-site traffic patterns or the reduction of sound levels at the Site's property boundaries. Moreover, a denial will jeopardize the significant economic benefit to the community associated with the development of the facility.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frank C. Pavia". The signature is written in a cursive, flowing style.

Frank C. Pavia