

APPROVED
ZONING BOARD OF APPEALS
MINUTES OF MEETING
June 10, 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 June 10, 2019. 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
	Edward Wisnowski, Jr	Deputy Chairman
	Karen Liebi	Member
	Nicholas Layou	Member
	Luella Miller-Allgaier	Member
	Vivian Mason	Secretary
	John Marzocchi	Attorney
	Mark V. Territo	Commissioner of Planning & Development

ABSENT: None

MOTION made by Deputy Chairman Wisnowski that the Minutes of the meeting of May 13, 2019 be accepted as submitted. Motion was seconded by Mr. Layou. *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 a Type II, and will be given a negative declaration, unless otherwise advised by our attorney. Motion was seconded by Mr. Layou. *Unanimously carried*

Chairman Mangan announced that he has tendered his resignation as member and chairman of the Zoning Board of Appeals, and this would be his last meeting.

OLD BUSINESS: None

NEW BUSINESS:

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

Case #1750 – North End Commons/Devin DelPos, 3820-3848 Route 31, Tax Map #053.-01-19.1:

The applicant is seeking an Area Variance per Section 230-21 E. for a reduction in the number of parking spaces from the required 282 spaces to 261 spaces. This is to allow for revision of a previously approved retail use to restaurant use, which requires additional parking. The property is located in the RC-1 Regional Commercial District.

The secretary read the proof of publication.

Lisa Wennberg of Keplinger Freeman Associates gave a brief overview of the reasons for an

adjustment in the parking spaces. They estimated the parking before they knew who all the tenants would be. Kay Jewelers was a potential one, but pulled out, so now they have a restaurant that wants to go in there. The new use changes the parking space requirements.

Deputy Chairman Wisnowski questioned the requirements for the parking spaces and Ms. Wennberg went into further detail.

Ms. Wennberg addressed the Standards of Proof:

1. No. The reduction in parking will help to maximize the usage of the proposed parking spaces on-site by allowing shared use of the spaces provided for all of the proposed businesses. The proposed businesses have sufficiently differing hours of operation, as well as differing peak hours of operation, to fully use the parking shown without the need to add unnecessary impervious surfacing and disturb additional wetlands. The proposed parking reduction should not have any adverse impacts to neighboring properties.
2. Yes. The applicant could limit the use for Building A2 to retail only or the applicant could add parking spaces to meet the Town's code for restaurant (packaged food) use. However, there is currently an interested tenant for Building A2, which is a restaurant (packaged food) facility. On October 9, 2017, during ZBA Case #1686, a parking variance of 25 spaces (from required 300 spaces to 275) was granted. This variance equates to an 8.33% reduction in parking. The current requested parking variance is for 21 spaces (from 282 required to 261) which equates to a 7.45% reduction in parking. The overall intent of the original parking variance has been adhered to with this request.
3. No. The requested variance of 21 spaces is only 7.45% of the total required parking spaces. In addition, this requested variance is less than the originally granted parking reduction variance, which was 8.33%.
4. No. Allowing the parking reduction variance will result in less wetland disturbance and less impervious surfacing within the proposed development, thus minimizing the impact to the neighborhood.
5. Yes. The originally approved site plan showed a tenant for building A2 (retail use), however, that tenant has since pulled out of the North End Commons development, thus leaving the developer to find a new tenant for building A2. The site could be developed without granting the 21 space parking reduction, however, expanding the proposed parking area by 21 spaces would require a wetland disturbance of more than half an acre. A Nationwide permit for disturbance less than 1/2 acre has already been granted for this site and additional wetland disturbance would require submitting a new application for a Special Permit for Wetland disturbance, adding significant time and expense to the project. In addition, shared parking is a preferable condition within a commercial development thus allowing the construction of less impervious surfacing, causing less impact to the environment and less cost for the project overall.

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 asked if they had all the tenants now and questioned if they had Site Plan approval in the parking configuration that is shown here tonight.

Devon DelPos of ABR Ventures Clay, LLC said yes, they had approval when the Site Plan was for different tentants, but when the tenant changed they needed to also get another Area Variance for the change in parking space requirements. They may or may not have to go before the Planning Board again.

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

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

Chairman Mangan closed the hearing.

MOTION was made by Deputy Chairman Wisnowski in Case #1750 to approve their request with the condition that it be in substantial compliance with Exhibit “A”, an Overall Plan dated 10/30/2017, last revised 5/1/2019. The motion was seconded by Mrs. Miller-Allgaier.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Wisnowski, Jr.	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Layou	- in favor	
	Mrs. Miller-Allgaier	- in favor	<i>Unanimously carried</i>

The Area Variance in Case #1750 is **approved**.

Case #1751 – Michael R. Cardinale, 4961 Marsh Pointe, Tax Map #089.-02-19.0:

The applicant is seeking Area Variances per Sections 230-13 E.(4)(b)[1] for a reduction in the front yard setback from 25 feet to 1 foot and Section 230-20 B.(2)(b) for an increase in the height of a fence from 2½ feet to 5 feet in a front yard. This is to allow for construction of a fence. The property is located in the R-7.5 One-Family Residential District.

The secretary read the proof of publication.

Michael Cardinale explained that he wants a fenced in yard for his children, where they can play safely. Two of his children are disabled and he wants the fence to keep them from going out into the street.

Mr. Cardinale addressed the Standards of Proof:

1. He believes raising the fence height limitation from 30 inches to no more than 60 inches will not produce an undesirable change in the character of the neighborhood. Nor will it cause a detriment to other properties.
2. He doesn't believe there is any other feasible method than to obtain Area Variances. The fence will ensure that our two disabled children will remain safely within the confines of our

property line. Moreover, it will protect the community from an unexpected unforeseen hazard. The fence is for safety and security purposes.

3. He doesn't feel the Area Variance requests are substantial. While the code permits a fence, it does not allow it to exceed 30 inches in height. The additional 30 inches will not be a substantial alteration.
4. He doesn't believe the fence will have an adverse effect or impact upon the physical and/or environment conditions in the neighborhood.
5. Yes, the need for the Area Variance is self-created. They have four children, two have syndrome (i.e. down-syndrome). Their respective disabilities necessitate additional safeguards to protect our family and community. The fence will also ensure their children are not harmed by a stray dog or animal. It will protect local drivers from "dart outs" and keep them from running into the road. They desire to provide a suitable play area or location that is not set up and directly against the pool area.

Mr. Layou voiced his concern about the one foot front yard setback when snow plows go through and snow going up against the fence and damaging it. Would Mr. Cardinale agree to a reduction in the front yard setback from twenty-five feet to five feet instead?

Mr. Cardinale said he was not concerned with the snow but would consider the change in his request to a reduction to five feet.

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 if anyone in the audience had any further questions and there were none.

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

Chairman Mangan closed the hearing.

MOTION was made by Mr. Layou in Case #1751 to approve the request, **amending** the reduction in the front yard setback from 25 feet to 5 feet, and with the condition that it be in substantial compliance with Exhibit "A", a survey dated 10/20/2017. The motion was seconded by Mrs. Miller-Alligaier.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Wisnowski, Jr.	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Layou	- in favor	
	Mrs. Miller-Alligaier	- in favor	<i>Unanimously carried</i>

The Area Variance in Case #1751 is **approved as amended**.

Case #1752 – Julie Leechalad, 5000 Alexis Drive. Tax Map #088.-20-01.0:

The applicant is seeking an Area Variance per Section 230-13 E.(4)(b)[1] for a reduction in the front yard setback from 25 feet to 10 feet to allow for repair of fence, shed and deck. The property is located in the R-7.5 One-Family Residential District.

The Secretary read the Proof of Publication.

Julie Leechalad explained that she wants to repair the fence which is already there. She is trying to replace it. There is also a treehouse near the fence and would like to keep that there also as it has electricity.

Ms. Leechalad addressed the Standards of Proof:

1. She believes there will not be any negative or undesirable change to the character of the neighborhood, and that the fence will be an improvement.
2. She believes there is not any other feasible method than to obtain an Area Variance as the treehouse is just inside the fence.
3. She doesn't feel the Area Variance request is substantial. She's simply repairing the fence.
4. She believes there will be any physical or environmental impact to the neighborhood
5. She believes the need for the Area 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 if anyone in the audience had any further questions and there were none.

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

Chairman Mangan closed the hearing.

MOTION was made by Mrs. Miller-Alligaier in Case #1752 to approve the request with the condition that it be in substantial compliance with Exhibit "A", a survey dated 2/1/1997. The motion was seconded by Mr. Layou.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Wisnowski, Jr.	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Layou	- in favor	
	Mrs. Miller-Alligaier	- in favor	<i>Unanimously carried</i>

The Area Variance in Case #1752 is **approved**.

Case #1753 – John E. Reymond, 5161 Lyle Drive, Tax Map #074.-16-07.0:

The applicant is seeking Area Variances per Sections 230-13 D.(4)(b)[1] for a reduction in the front yard setback from 25 feet to 20 feet and Section 230-20 B.(2)(b) for an increase in the height of a fence from the allowed 2 1/2 feet to 6 feet (a corner lot has two front yards). This is to allow vinyl privacy fencing. The property is located in the R-10 One-Family Residential District.

John Reymond explained that he would like a 6 foot vinyl privacy fence. He needs enough of an Area Variance to go around the tree in his yard, as he does not want to cut it down.

Mrs. Liebi commented that he is just moving the fence for that reason and Mr. Reymond said yes, he did not want to have to remove the tree.

Mr. Reymond addressed the Standards of Proof:

1. He doesn't believe there will be any negative or undesirable change to the character of the neighborhood. He is on a corner lot and due to the constant flow in and out of traffic and he would like more privacy.
2. He doesn't believe there is any other feasible method than to obtain an Area Variance because there is no reason to remove the tree. There are bird nests in it all day long and it is 11 years old.
3. He doesn't feel the Area Variance request is substantial. The posts are already set in 36 inches to 42 inches of concrete.
4. He doesn't believe there will be any physical or environmental impact to the neighborhood. There are many fences in the neighborhood.
5. The need for the Area 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 if anyone in the audience had any further questions and there were none.

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

Chairman Mangan closed the hearing.

MOTION was made by Mrs.Liebi in Case #1753 to approve their request with the condition that it be in substantial compliance with Exhibit "A" a survey dated 7/8/2008. The motion was seconded by Deputy Chairman Wisnowski.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Wisnowski, Jr.	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Layou	- in favor	
	Mrs. Miller-Alligaier	- in favor	<i>Unanimously carried</i>

The Area Variance in Case #1753 is **approved**.

There being no further business, Chairman Mangan adjourned the meeting at 8:25 P.M.



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