

APPROVED
ZONING BOARD OF APPEALS
MINUTES OF MEETING
November 13, 2017

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 13, 2017.

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
	Ryan Pleskach	Member
	Nicholas Layou	Member
	Luella Miller-Allgaier	Alternate Member
	Vivian Mason	Secretary
	Robert Germain	Attorney
	Mark V. Territo	Commissioner of Planning & Development

ABSENT: None

MOTION made by Mrs. Liebi that the Minutes of the meeting of October 9, 2017 be accepted as submitted. Motion was seconded by Deputy Chairman Wisnowski. *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 Unlisted actions, and will be given a negative declaration, unless otherwise advised by our attorney. Motion was seconded by Mrs. Liebi . *Unanimously carried.*

OLD BUSINESS:

Case #1684 – INTERPRETATION – Kurt Filkins/America Stores It, Oswego Road, Tax Map #053.-01-02.0, #053.-01-03.1 and #053.-01-04.0:

The applicant is requesting an Interpretation, pursuant to Section #230-11, under the definition for Perimeter Landscape Strip the applicant is requesting the Zoning Board of Appeals to explicitly define the meaning of the following sentence “Driveways and walks are permitted to transverse a perimeter strip to allow for necessary vehicle and pedestrian movements.” The property is located in the RC-1 Regional Commercial District.

(Proof of publication was read at the September 11, 2017 meeting.)

Michael Fogel of Brown Sharlow Duke & Fogel, P.C. presented their opinions with regard to the Interpretation. He explained that at the August 9th Planning Board meeting they presented a Site Plan with a 24 foot wide access drive located on a portion of the rear landscape perimeter strip.

Commissioner Territo questioned it being allowed there and said they would need an Interpretation from the Zoning Board of Appeals. Attorney Fogel proposed that in their opinion it should be allowed, stating the Code is ambiguous and the access drive should be allowed. According to case law ambiguity in the language has to be in the favor of the applicant. He argued that the language in the Code allows one to “transverse” a perimeter landscape strip and it is not clear what the Town intended by that term. Webster’s dictionary defines it as (1) acting, lying or being across: set crosswise; or (2) made at right angles to the long access of the body. Therefore he argues that “transverse” is inherently ambiguous, because it is not clear which of the two possible definitions is intended to use in the definition of perimeter landscape strip. He further stated that the rear yard is located “within the same space” as the perimeter landscape strip and specifically allows for “paved areas” and does not define what can be in a “paved area”. Since a driveway is a paved area, they believe it can be a road and located as proposed. It is clear that driveways and walks are allowed to “transverse” and the Code doesn’t say just egress and ingress. They feel the Code should have been more definitive. The term “transverse” is not defined in the definitions. He argued that “transvers” is an adjective. (Attorney Fogel’s complete presentation can be found in the case file.)

Chairman Mangan noted that it is also a verb.

Attorney Fogel stated they felt the word was used wrong. The Town should have used “traverse” which defines an action and is a verb.

Chairman Mangan questioned the necessity of the road. Moving the storage units or shortening them can be done without having to use the perimeter landscape strip as a driveway.

Attorney Fogel stated they felt the road is necessary for the operation of the business.

Mr. Pleskach questioned the applicant’s statement that the Code is ambiguous in this case. To his knowledge this is the first time the Board has been asked to interpret this particular phrase. He does not believe that the first time a question is raised inherently means the Code is ambiguous. He believes the origin of the word “transverse” has mathematical and geometry roots. To his knowledge “transverse lines” or a “transversal” means intersecting lines. From Euclid’s parallel postulate, a transversal line is used to determine if two additional lines are parallel by examining and comparing the angles created by the intersecting lines. The applicant’s Exhibit “B”, definitions of transverse from the Merriam Websters dictionary supports this statement. The first definition specifically refers to “set crosswise”; the second definition in Exhibit B refers to “made at right angles to the long axis of the body” further supporting the words’ origins in mathematics and geometry. He noted the applicant’s claim that the Town misused “transverse” in the Code, and the word should be “traverse” and they support their claim with Exhibits B and C. Mr. Pleskach said he supports the fact that “transverse” is an adjective, meant to describe a noun, a transversal. Applied to this case, a transversal would be a pedestrian walkway or a driveway, intersecting and overlaid directly on the entirety of the perimeter landscape strip. This clause and verbiage permits the driveway from Route 57/Oswego Road into the subject property. In his opinion the word “transverse” is exactly why the code is unambiguous. If the applicant was proposing a walkway from the storage units through the rear perimeter landscape strip to the residents behind (north) of the subject property, this would be acceptable under Code. As submitted in the applicant’s updated site plan, the proposed road is designed to run parallel with the perimeter landscape strip and not serving as a transversal, cutting

across the entirety of the perimeter landscape strip.

Chairman Mangan commented that this is a tight site and the applicant has asked for eight Area Variances. The Board has to look at “necessity”.

Attorney Fogel stated that is is necessary for vehicle movement which is tied to the operation of the business.

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 Nancy Plotz who lives on Black Brant reiterated that the site’s back portion is their front yard, and that the Board has said they will keep it a perimeter.

Chairman Mangan announced that there will be no decision tonight, the Board needs to review the information given to them.

Chairman Mangan adjourned the meeting to December 11, 2017.

Case #1685 – SPECIAL PERMIT – Timothy Whiting, 402 Allen Road, Tax Map #111.-05-13.0:

The applicant is requesting a Special Permit pursuant to Sections 230-27 I.(2)(a) and 230-13 D.(2)(d)[1] for a Home Occupation for Chiropractic Services. The property is located in the R-10 One-Family Residential district.

(This case was adjourned at the October 9, 2017 meeting.)

Chairman Mangan noted that they have discussed the conditions. They were read and Mr. Whiting agreed to them.

MOTION was made by Mr. Pleskach to approve the request for a Special Permit with the following conditions: 1] the applicant will provide reasonable notice to all patients there can be no parking on Allen Road; 2] the applicant will make best efforts to schedule appointments to avoid parking issues; 3] no parking will be permitted on Allen Road; and 4] if there is persistent parking on Allen Road, it may be considered grounds for a finding of a violation of this Special Permit, and the Special Permit may be revoked by this Board upon application by the Town Planning Department and a hearing on the matter. Motion was seconded by Mr. Layou.

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

The Special Permit in Case #1685 is approved.

NEW BUSINESS:

Chairman Mangan asked the Board members if they all visited the sites and they said yes.

Case #1688 – AREA VARIANCE - Nicholas Chervinsky, 5121 Comstock Road, Tax Map #041.1-02-39.1:

The applicant is requesting an Area Variance pursuant to Section 230-13 J.(2)(c) for a 575 square foot addition to an existing structure bringing the total to 2207 square feet when 100 square feet maximum is allowed, to construct a garage. The property is located in the LuR Limited Use for Riverfront zoning district.

The secretary read the proof of publication.

Nicholas Chervinsky explained that the LuR zoning district was designed for small river front lots, but his is a large lot and he would like to construct a garage.

Mr. Chevinsky addressed the Standards of Proof:

1. He doesn't believe there will be any negative or undesirable change to the character of the neighborhood. The next door neighbor has a smaller lot with the same size boathouse and much larger accessory structures.
2. He doesn't believe there is any other feasible method than to obtain an Area Variance. The dwelling has no basement. He needs extra storage for vehicles, etc.
3. He doesn't feel the Area Variance request is substantial.
4. He doesn't believe there will be any physical or environmental impact to the neighborhood. It won't be seen, as his home is at the end of the road.
5. The need for the Area Variance is not self-created since the zoning classification was changed by the Town to address small narrow river front lots. His is large.

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.

MOTION was made by Mrs. Liebi in Case #1688 to approve the Area Variance requests with the condition they be in substantial compliance with Exhibit "A". Motion was seconded by Deputy Chairman Wisnowski.

Roll call: Chairman Mangan - in favor
Deputy Chairman Wisnowski, Jr. - in favor
Mrs. Liebi - in favor
Mr. Pleskach - in favor
Mr. Layou - in favor *Unanimously carried.*

The Area Variance in Case #1688 was approved.

Case #1689 – AREA VARIANCE - Mitchell Moss/Sunoco Gas Station, 7549 Oswego Road, Tax Map #093.-04-07.0:

The applicant is requesting an Area Variance pursuant to Section 230-16 D.(5)(a) for a reduction of the perimeter landscape strip from 20 feet to 5 feet for the installation of a temporary (1 to 2 years) remediation system trailer. The property is located in the LuC-1 Limited Use District for Gasoline Services.

The Secretary read the Proof of Publication.

Attorney Timothy Frateschi represented the applicant who is required to clean up the contamination on the site.

Attorney Frateschi addressed the Standards of Proof:

1. They don't believe there will be any negative or undesirable change to the character of the neighborhood. The enclosed trailer to be placed on the site is the size of a parking space, but will be situated on the grass next to existing parking spaces. Operation of the system will improve the property in terms of the environment and the adjacent properties. Further, the adjacent property to the rear is a drainage area for the Wegman's Store.
2. There is not any other feasible method than to obtain an Area Variance. No other method of remediation for the groundwater contamination has been accepted by the NYSDEC (New York State Department of Environmental Conservation). The monitoring trailer is necessary to satisfy NYSDEC remediation requirements.
3. They don't feel the Area Variance request is substantial. The gas station is already within 5 feet of the property line. As a result, the temporary trailer is not encroaching any further in the rear yard than the store. This remediation trailer is a box trailer approximately 7 feet by 16 feet that will be placed on site for 1 to 2 years.
4. The Area Variance is necessary to place a remediation trailer on the site to clean up an environmental problem. Because of the shape and small size of the site, the applicant is proposing the trailer in a place that will have the least impact on customers and the largely commercial neighbors.
5. The need for the Area Variance is not self-created. The contamination was identified prior to the ownership of the applicant and the NYS Department of Environmental Conservation is requiring this remediation trailer. This will be a significant benefit to the applicant and there will be no detrimental impact on the health, safety and welfare of the neighborhood.

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.

MOTION was made by Mr. Layou in Case #1689 to approve the Area Variance request with the condition it be in substantial compliance with Exhibit "A", a Site Plan dated 10-11-2017. Motion was seconded by Mrs. Liebi.

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

The Area Variance in Case #1689 was 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