

APPROVED
ZONING BOARD OF APPEALS
MINUTES OF MEETING
October 9, 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 October 9, 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
	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: Karen Liebi Member

MOTION made by Mr. Pleskach that the Minutes of the meeting of September 11, 2017 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 Unlisted actions, and will be given a negative declaration, unless otherwise advised by our attorney. Motion was seconded by Mr. Layou. *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.

The secretary read the proof of publication.

Chairman Mangan explained that the applicant has requested that this hearing be adjourned to the November 13, 2017 meeting.

NEW BUSINESS:

Chairman Mangan announced that Case #1686 for Laker Development Group, LLC will be heard last.

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

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.

The secretary read the proof of publication.

Chairman Mangan informed the applicant that there is a neighbor who is opposed to his request and gave Mr. Whiting a copy of the Onondaga County Planning Board's input.

Mr. Whiting explained that he has a full time job teaching in Seneca Falls but would like to provide chiropractic services in his home to a few people one to six hours a week. Each session is ½ to one hour.

Chairman Mangan noted that the residence doesn't have an entrance on Allen Road, just on Homeland Road.

Mr. Pleskach said he was afraid that there might be growth in his business.

Mr. Whiting assured the Board that he only intended to work part time not full time. He only plans on a few patients. If there was too much growth he would move to another location. Using his home gives him low overhead.

Chairman Mangan said he was concerned about parking on Allen Road and snow conditions. He added that he would schedule so that there would be no overlapping of patients. He reiterated that they have 4 parking slots and he would tell his customers to not park on the street, and would direct them to park in the driveway.

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 Ms. Ogrodoski said she has lived on Allen Road for 19 years and hasn't seen anyone parking on the street. She added that the Whitings are lovely neighbors.

Chairman Mangan asked for those in favor and those opposed to granting the Area Variance requests and there was one in favor (Mr. Ogrodoski) and none opposed.

Mr. Whiting said he would make a commitment that there would be no parking on Allen Road.

Chairman Mangan closed the hearing.

MOTION was made by Mr. Pleskach to adjourn Case #1685 to the November 13, 2017 meeting. Motion was seconded by Mr. Layou.

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

Case #1685 is adjourned.

Case #1687 – AREA VARIANCES – Colleen Adams-Ryan, 5343 Amalfi Drive. Tax Map #078.-05-13.0:

The applicant is requesting Area Variances pursuant to Section 230-13 E.(4)(b)[1] for a reduction in the front yard setback from 25 feet to 10 feet and Section 230-20 B.(2)(b) for an increase in the height of a fence in a front yard from the allowed 2 ½ feet to 6 feet (corner lots have two front yards) 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.

Ms. Adams-Ryan said she would like to fence her yard.

Ms. Adams-Ryan addressed the Standards of Proof:

1. She doesn't believe there will be any negative or undesirable change to the character of the neighborhood. It will be more pleasing than what is there.
2. She doesn't believe there is any other feasible method than to obtain Area Variances.
3. She doesn't feel the Area Variance requests are substantial. She is only asking for 15 feet.
4. She doesn't believe there will be any physical or environmental impact to the neighborhood, as it the fence will be aesthetically pleasing.
5. The need for the variances 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.

MOTION was made by Deputy Chairman Wisnowski in Case #1687 to approve the Area Variance requests with the condition they be in substantial compliance with Exhibit "A". Motion was seconded by Mrs. Miller-Allgaier.

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

The Area Variance in Case #1687 was approved.

Case #1686 – AREA VARIANCES – Laker Development Group, LLC/Devin DalPos, (3820-3848) NYS Route 31, Tax Map #053.-01-19.1:

The applicant is requesting Area Variances pursuant to Section 230-19 A.(4)(b)[1] for a reduction in the required minimum lot size from 10 acres to 6 acres; Section 230-16 C.(4)(a)[1][b] for a reduction of the required minimum perimeter landscape strip along the west and east property lines from 30 feet to 15 feet; Section 230-16 C.(4)(a)[1][c] for a reduction of the required minimum perimeter landscape strip abutting a residential district along the southwest property line from 80 feet to 30 feet; and Section 230-21 E. for a reduction of the number of parking spaces from the required 300 spaces to 275 spaces. The property is located in the RA-100 Residential Agricultural District. (The applicant is seeking a zone change to RC-1 Regional Commercial District.)

The secretary read the proof of publication.

Ed Keplinger and Lisa Wennberg from Keplinger Freeman Associates and Devon DelPos represented the applicant.

Chairman Mangan asked if they had seen the Onondaga County Planning Board comments and Mr. Keplinger said they had seen them.

Chairman Mangan explained that the applicant is also before the Town Board requesting a zone change and need the Area Variances in order to obtain it.

Mr. Keplinger explained that the parcel consists of 6 acres that also has wetlands. In order to develop the lot they need Area Variances. An 80 foot setback is required when abutting residential zoning, however they feel the railroad tracks are a separation of sorts. They can't purchase any land from the property owners abutting them, so they are limited to the 6 acres for their development.

There are other RC-1 parcels nearby and across the street.

Mr. Keplinger addressed the Standards of Proof regarding:

Area Variance for Section 230-19 A (4) (b) [1] reducing the Lot area from 10 Acres to 6 Acres

1. No. The proposed uses for the site are commercial and retail development. In the event the property is rezoned from RA-100 to RC-1, the proposed uses on the site would be consistent with the adjacent properties. These properties contain commercial and retail developments consisting of Lowes, Chipotle, Verizon, Hobby Lobby and a Bank of America ATM which are consistent with the pattern of development in the Route 31 corridor. For this reason, the requested area variance will not be a detriment to nearby properties.
2. No. The properties adjacent to this site have already been developed and there is no other property available to combine with the site to achieve the minimum 10-acre requirement which is required per code for RC-1 zoned properties that have direct access to Route 31. The project cannot be redesigned in a feasible manner that does not require a variance.
3. No. Although a 4-acre variance is requested from the 10-acre lot size requirement, this is due to the Highway Overlay Zone District multiplier, which doubles the minimum lot acreage requirement. Otherwise, the minimum lot acreage requirement in the RC-1 Commercial District is 5 acres, which is less than the size of the site. Regardless, the variance is not substantial because it represents a 40% deviation from the lot size requirement contained in the Town Zoning Law and development of the site will be similar to surrounding commercial development. This site is the last remaining undeveloped property along the south side of Route 31 between Route 57 and Morgan Road that is not already commercially zoned.
4. No. Granting of the variance will allow development similar to the adjacent properties and other properties within the Route 31 corridor. Granting of the variance will not have an appreciable impact on the physical or environmental conditions of the area, and, for example, will not impact environmental features such as drainage, flooding, runoff, or traffic. In fact, without the variance, the applicant will need to redesign the project which would further impact the wetland areas on the site.
5. No. The difficulty was created as a result of the expanding development along Route 31 and the addition of the Highway Overlay Zone District. This overlay district requires 2 times the required minimum lot acreage in an RC-1 district.

Chairman Mangan questioned the no in number 5, stating he felt it is self-created as they knew the parcel consisted of 6 acres.

Ed Keplinger agree that it is should be yes.

Area Variances for Section 230-16 C (4) (a) [1] [b] reducing the perimeter landscape strip from 30 feet to 15 feet along the west and east property lines and Section 230-16 C (4) (a) [1] [c] for a reduction of the perimeter landscape strip abutting residential districts along southwest property line from 80 feet to 30 feet:

1. No. The lots to the east and west of the subject property are both commercial properties. The property line to the southwest abuts a rail road right-of-way which is 80 feet wide, providing a buffer in and of itself. There are residential properties to the west of the railroad tracks, however no residential property is physically adjacent to the subject site. The residential property is also bordered along its east side by a buffer of trees approximately 60 feet wide. In total, the nearest residential structure would be more than 170 feet from any proposed improvements on the subject site.
2. No, although, the benefit sought could be achieved by disturbing the onsite wetland areas through obtaining a USACoE Wetland Permit for over a half an acre. This is not feasible because the applicant is looking to reduce impacts to the wetland areas. Minimizing impacts to the wetland areas, which are located within the central portion of the property, can be achieved by reducing the perimeter landscape strips along the east / west property lines as they extend from the northern property line to the southern property line. With a 15 ft. perimeter landscape buffer, screening can still be achieved, and the site would still be compatible with the adjacent properties, Lowes and Chiptotle, who have 30 ft. perimeter landscape buffers already in place. The developer could also choose not to develop one of the proposed lots, however, economic factors would then render the project unfeasible.
3. No. The east and west variances are a 50% reduction in the required perimeter landscape strip, however, the variance is not substantial because there is still sufficient buffer area for screening and landscaping to carry out the overall intent of the perimeter landscape strip between the existing commercial properties. While the southwest variance request is a 62.5% reduction, the reality is that this property line abuts the railroad track property, which is 80 feet in width. The overall buffer zone along this property line would be 80 feet plus 30 feet (the requested perimeter landscape strip width) totaling 110 feet between the North End Commons developed site and the existing residential property boundary.
4. No. The variance, if granted, will result in similar conditions and permit development of the site similar to those that exist along the Route 31 corridor already. In fact, the variance will lessen the potential environmental effects because wetland impacts will also be minimized by allowing the landscape perimeter strips to be reduced in size.
5. Yes. The site could be developed without the granting of the reduction in the required perimeter landscape strip. However, this would cause a wetland disturbance of more than half an acre, which cannot be handled under a Nationwide permit and would require a special wetland permit, adding significant time and expense to the project, which would render the project unfeasible.

Area Variance per Section 230-21 E. for a reduction in the number of parking spaces from required 300 spaces to 275 spaces:

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 by the proposed businesses.

These businesses have differing peak hours of operation. The proposed reduction should not have any adverse impacts to neighboring properties.

2. No, although the benefit sought could be achieved by adding parking spaces to the proposed project, this would involve developing additional onsite wetland areas. This would cause a disturbance of more than half an acre, which is not feasible because it cannot be handled under a Nationwide permit and would require a special wetland permit, adding significant time and expense to the project.

The developer could also choose not to develop one of the proposed lots, however, economic factors would then render the project unfeasible.

3. No. The requested parking reduction is 25 spaces, which is less than 10% of the total required. In addition, the proposed businesses will have differing peak hours of operation, allowing shared use of the spaces provided.
4. No. The variance will result in less wetland disturbance and less impervious surfacing.
5. Yes. The site could be developed without the granting of the reduced parking, however, this would cause a wetland disturbance of more than half an acre. A disturbance greater than half an acre cannot be handled under a Nationwide permit and would require a special wetland permit, adding significant time and expense to the project. Such additions would render the project unfeasible.

Chairman Mangan commented that the proposed businesses are busy and asked what would happen if the parking spaces filled up. Mr. Keplinger there should be more than enough spaces based on their experience, but that they could also park in the Lowes parking lot.

Devon DelPos commented that they are seeking an RC-1 rather than any other commercial zoning because it allows restaurants. Otherwise they would have to seek Special Permits.

Mr. Pleskach inquired about the wetlands and Mr. Keplinger said there would be a ½ acre disturbance.

Mr. Pleskach expressed concern with parking if the 5 Star Urgent Care fills up due to restaurant parking.

Mr. DelPos further explained that the Town requires more parking than the tenants use or really need. Texas Road Steakhouse is particular about their number of spaces and they will get what they require. Their hours will start at 4:00 P.M. whereas Urgent Care will be morning to evening hours.

Mr. Pleskach voiced concern for snow renewal and Mr. Keplinger said they had areas for snow.

Mr. Pleskach stated that he would like dedicated parking for the Urgent Care facility.

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. Pleskach in Case #1686 to approve the Area Variance request for a reduction in the required minimum lot size from 10 acres to 6 acres. Motion was seconded by Mr. Layout.

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

MOTION was made by Mr. Pleskach in Case #1686 to approve the Area Variance request for a reduction of the required minimum perimeter landscape strip along the west and east property lines from 30 feet to 15 feet. Motion was seconded by Mr. Layout.

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

MOTION was made by Mr. Pleskach in Case #1686 to approve the Area Variance request for a reduction of the required minimum perimeter landscape strip abutting a residential district along the southwest property line from 80 feet to 30 feet;. Motion was seconded by Mr. Layout.

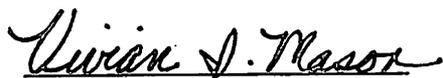
Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Wisnowski, Jr.	- in favor	
	Mr. Pleskach	- in favor	
	Mr. Layout	- in favor	
	Mrs. Miller-Allgaier	- in favor	<i>Unanimously carried.</i>

MOTION was made by Mr. Pleskach in Case #1686 to approve the Area Variance request for a reduction of the number of parking spaces from the required 300 spaces to 275 spaces, with the condition of special direction to the Planning Board that they consider dedicated parking spots for the 5 Star Urgent Care facility (labeled on the plan as D1). Motion was seconded by Mr. Layout.

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

The Area Variances in Case #1686 were approved.

There being no further business, Chairman Mangan adjourned the meeting at 8:33 P.M.



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