

APPROVED
ZONING BOARD OF APPEALS
MINUTES OF MEETING
December 11, 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 December 11, 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
	John Marzocchi	Attorney
	Mark V. Territo	Commissioner of Planning & Development

ABSENT: None

MOTION made by Mrs. Liebi that the Minutes of the meeting of November 13, 2017 be accepted as submitted. Motion was seconded by Mr. Ryan. *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 Deputy Chairman Wisnowski. *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.)

Chairman Mangan explained that this case was adjourned at the November meeting to allow the Board to review the submitted handout.

Attorney Michael Fogel said he would like to address the Board. He stated that he felt that he needed to address the necessity of using a portion of the perimeter landscape strip for a road, that the definition should allow a broader use. It is difficult to meet “necessity”. They could shrink the planned placement of storage sheds, but feel the definition is ambiguous. The Board noted that the Interpretation has not been questioned before, but they don’t believe that matters. They feel the definition is ambiguous.

Deputy Chairman Wisnowski submitted the **Findings**:

1. The Board has determined these interpretation requests are Type II actions for the purpose of SEQRA compliance, and no further action is required.
2. The Subject Property is Zoned Regional Commercial-1 (RC-1). According to Code Section 230-16C.(4)(a)[1][c], an Additional Site Perimeter Landscape Strip of fifty (50) feet is required when a development takes place adjacent to a residential district. A copy of Code Section 16C.(4)(a)[1][c] is attached hereto and labeled “Exhibit C.”
3. The Code Section 230-11 defines a Perimeter Landscape Strip as:

The land adjacent to front, side and rear lot lines, included within the same space for required setbacks but solely designed and used for buffering and transition between lots. Irrespective of allowable structures or uses within such required setbacks, the perimeter strip shall not be used for parking. Driveways and walks are permitted to transverse a perimeter strip to allow for necessary vehicle and pedestrian movements. It is intended that such perimeter strip be used for planting of trees, shrubs, flowers, and evergreens to provide neighborhood beautification.”

4. The general purpose of a Perimeter Landscape Strip is to provide a buffer for residential or other properties located adjacent to a proposed development. The Code clearly requires the planting of trees, shrubs, flowers and evergreens in the strip to facilitate buffering of the use from neighboring properties.
5. We further find the Code clearly calls for the strip to “buffer” adjacent properties and that the definition of buffering does not include an interior roadway running parallel to a property line. Nowhere does the Code state construction and maintenance of a roadway within the buffering strip parallel to the neighboring properties is allowed.
6. The language contained in the Code stating “Driveways and walks are permitted to transverse a perimeter landscape strip to allow for necessary vehicle and pedestrian movements” is not ambiguous as claimed by the applicant. This language is intended to allow only for necessary ingress and egress of vehicles and traffic across the strip for travel in and out of the property.
7. The “Webster’s” definition of the word “transverse” means: “acting, lying or being across: set cross-wise; or (2) made at right angles to the long axis of the body.”

8. We believe the term “transverse” was purposely and specifically used in the Code to allow vehicle and pedestrian entrances and exits **across** (generally perpendicular to the property line) a perimeter landscape strip as opposed to **through** (generally parallel to the property line) the length of a landscape strip.

9. We find the alternate definition referring to “right angles to the long axis of the body” to be additional evidence of the intent of the language in the Code. The code does not state “parallel” driveways are permitted, nor does it state a driveway is allowed along the length (long axis) of neighboring properties. Instead, the Code states driveways are allowed to “transverse” the perimeter strip to allow for necessary vehicle and pedestrian movements.

10. There has been no evidentiary showing the proposed roadway to be located inside of the perimeter landscape strip and parallel with the neighboring property line is in any way necessary. The applicant could place the roadway depicted outside the perimeter landscape strip if the location of the proposed buildings was moved forward on the site.

11. We note that although there are many perimeter landscape strips in the Town, this is the first and only time this Board has been asked to interpret the language pertaining to the term “transverse” in the Code. The fact the language has not been challenged prior to this request is evidence of a lack of ambiguity with regard to the word use.

12. Simply because Webster’s Dictionary provides alternate definitions of a word or term does not make inclusion of that word in the Code “inherently ambiguous” as argued by the applicant in its Brief. In fact, almost every word defined in Webster’s Dictionary contains alternate definitions of words. If every word with alternate definitions is “inherently ambiguous” as claimed, every Zoning Code, Law or Statute in every State would also therefore be ambiguous. We find this is clearly not the case.

MOTION was made by Deputy Chairman Wisnowski that this Board hereby decides and interprets Code Section 230-11 as follows: “Driveways and walks are permitted to transverse a perimeter strip to allow for necessary vehicle and pedestrian movements” means driveways and walks are allowed for necessary movement **across** a perimeter landscape strip in a generally right-angle fashion. A driveway wholly within the perimeter strip parallel to the property line (like the roadway proposed) is not “transverse,” and therefore is not permitted. 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>

In Case #1684, the Board approved the Findings that the roadway is not permitted.

NEW BUSINESS:

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

Case #1690 – AREA VARIANCE - ALDI, Inc. - 3942 NYS Route 31, Tax Map #055.-01-18.0:

The applicant requesting an Area Variance pursuant to Section 230-16 C.(4)(a)[2][a] for a reduction in the front yard setback from 100 feet to 65.6 feet (an Area Variance was received in 2003, Case #1123 for a reduction in the front yard setback from 100 feet to 84 feet). This is for an expansion of the existing store. The property is located in the RC-1 Regional Commercial zoning district.

The secretary read the proof of publication.

Amanda Brewer, Project Engineer with ADP Engineering and Architecture said ALDI's would like to construct a 3600 square foot expansion to their store.

Ms. Brewer 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 expansion won't have any impact on storm water.
2. They don't own any additional land so there is no other feasible method than to obtain an Area Variance.
3. They don't feel the Area Variance request is substantial. The addition is in an impervious area.
4. They don't believe there will be any physical or environmental impact to the neighborhood. There will be no significant change to the green space.
5. The need for the Area Variance is self-created. They didn't anticipate the increase in business. The expansion will allow more sales per customer.

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 #1690 to approve the Area Variance request with the condition they be in substantial compliance with Exhibit "A", a site plan dated 10-9-2017. 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 #1690 was approved.

Case #1691 – USE VARIANCE - Steven Werner/Signarama (United Financial) – 4769 Buckley Road, Tax Map #088.-01-17.1:

The applicant is requesting a Use Variance pursuant to Section 230-15 B.(2) to use an electronic sign when it is prohibited in the Office O-2 zoning district, for the purpose of updating the current letter track sign due to age and losing letters.

The Secretary read the Proof of Publication.

Steven Werner with Signarama explained that United Financial is losing customers to other financial institutions and need an electronic sign to draw in customers.

Chairman Mangan informed Mr. Werner that if they couldn't prove the first standard, competent financial evidence, they would fail the test and the other standards would not need to be covered.

Mr. Werner told the Board that United Financial had not provided that information, and that they didn't know electronic signs were not allowed in the Office zoning district.

MOTION was made by Chairman Mangan to adjourn Case #1691 to January 8, 2018. Motion was seconded by Mr. Layout.

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

The Use Variance in Case #1691 was adjourned to January.

Case # 1692 – AREA VARIANCES - Humane CNY – 4915 ½ West Taft Road, Tax Map #107.-21-54.0:

The applicant is requesting Area Variances pursuant to Section 230-13 A.(4) & 230-19 A.(4)(b) for a reduction in the lot area from 381,150 square feet to 118,919 square feet; Section 230-13 A.(4) for a reduction in the east side yard setback from 50 feet to 19 feet; Section 230-13 A.(4) for a reduction in the west side yard setback from 50 feet to 19 feet; and Section 230-21 E. for a reduction in the number of parking spaces from the required 27 to 20. This is for renovations to the existing site and building facilities, an addition, demolition of one existing building, new parking lot, drainage and rework of the entrance from W. Taft Road. The property is located in the RA-100 Residential Agricultural zoning district.

The secretary read the proof of publication.

Cheryl Robinson, President of the Humane CNY Board, Clemente Toffolo, Landscape Architect with QPK and Kevin Riley the developer were present.

Ms. Robinson explained they bought the property in 1974 and there were already dogs being sheltered there. The building is 60 years old and the rear of the shelter is not worth renovating. They plan to demolish and reconstruct it. The building in the front of the property will be taken down and the functions will be moved to the renovated reconstructed building. They need to continue their operation and they requested and received a change of zone for this parcel. That change created the need for the Area Variances.

Ms. Robinson 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 renovation and construction will be an improvement, the curb appeal an improvement. The neighbors will be less impacted; they will be constructing sound absorbing fencing.
2. Due to the change of zone and code requirements, plus the narrow width of the lot, there is no other feasible method to improve the facility than to obtain Area Variances.
3. They don't feel the Area Variance requests are substantial. The setbacks are already not in compliance due to the change in zoning.
4. They don't believe there will be any physical or environmental impact to the neighborhood. The new façade will enhance the property.

Chairman Mangan expressed concern with the request for a decrease in the required number of parking spaces. He feels the parking is tight and there are problems getting out of the lot onto West Taft Road.

Ms. Robinson said they could offer auxiliary parking on the grass. They believe the facility doesn't normally need 27 parking spaces, that 20 are sufficient.

5. The need for the Area Variances is self-created because of the renovations and the zone change.

Mr. Pleskach asked about snow removal and Kristine McNealy from the Humane CNY facility said they have a snow plow company and that they plow into an area that would have no affect on parking.

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

Chairman Mangan asked if anyone had any further comments and Debra Eagers, who lives next door said she has lived there 27 years and that she see contradictions in their presentation, and they don't adhere to what they say they'll do. The dogs are noisy and she thinks the property use lowers the value of her property.

Tim Eagers asked if the fence was in jepordy and Ms. McNeely stated that the trees and fencing are staying.

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

Chairman Mangan closed the hearing.

MOTION was made by Mr. Pleskach in Case #1692 to approve the Area Variance for a reduction in the lot area from 381,150 square feet to 118,919 square feet with the condition that it be in substantial compliance with Exhibit "A", Survey dated 8/23/2017. 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 *Unanimously carried.*

MOTION was made by Mr. Pleskach in Case #1692 to approve the Area Variance for a reduction in the east side yard setback from 50 feet to 19 feet with the condition that it be in substantial compliance with Exhibit "A", Survey dated 8/23/2017. 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 *Unanimously carried.*

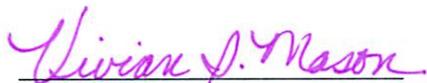
MOTION was made by Mr. Pleskach in Case #1692 to approve the Area Variance for a reduction in the west side yard setback from 50 feet to 19 feet with the condition that it be in substantial compliance with Exhibit "A", Survey dated 8/23/2017. Motion was seconded by Ms. Liebi.

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

MOTION was made by Mr. Pleskach in Case #1692 to approve the Area Variance for a reduction in the number of parking spaces from the required 27 to 20 with the condition that 1] it be in substantial compliance with Exhibit "A", a map dated 8/23/2017 and 2] a reserve area for overflow parking must be created on the east side of the lot. 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 - against *Carried.*

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



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