

APPROVED
ZONING BOARD OF APPEALS
MINUTES OF MEETING
April 10, 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 April 10, 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
	Cindy Beckhusen	Assistant Commissioner of Planning & Dev.

ABSENT: None

MOTION made by Mrs. Liebi that the Minutes of the meeting of March 13, 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 Mrs. Liebi. *Unanimously carried*

OLD BUSINESS:

Case #1575 - Verizon Wireless - Chairman Mangan noted that this one old case from July 5 2015, regarding Verizon Wireless, requesting Area Variances for construction of a cell tower near Route 31 was in litigation, but is now closed.

Case #1649 – INTERPRETATION - Filkins Acquisitions, LLC (America Stores It), 8370-8380 Oswego Road, Tax Map #053.-01-03.1:

The applicant is requesting an Interpretation pursuant to 1. Sections 230-16 C.(4)[1][c]; 230-12 A & B; 230-13; and 230-18; to allow development and use of the Subject Property without the requirement of an additional site perimeter landscape strip 50 feet, because the Subject Property abuts a Planned Development District and not a Residential District; and 2. Section 230-11; to allow for the inclusion of ponds within a Perimeter Landscape Strip. The property is in the RC-1 Regional Commercial zoning district.

Chairman Mangan explained that this case had originally been adjourned in February, and had been discussed in detail at the March 14, 2017 meeting.

No one had any further comments.

Deputy Chairman Wisnowski read the Findings and Decision:

Findings:

Interpretation 1: Site Perimeter Landscape Strip:

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)(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)(1)(c) is attached hereto and labeled "Exhibit A."
3. According to Section 230 A&B of the Town Code (as amended in 2010), the Town zoning designations are defined as conventional and Specialized Districts. Conventional zone districts are defined in Section 230 A as areas where lots, structures and uses are uniformly regulated to fulfill a common purpose. Section 230 B defines Specialized Districts to be districts that afford both greater flexibility for development and oversight by the Town. Such districts, when established by the Town, would be used as an alternative to a conventional district. A Planned Development District is a Specialized District. A copy of Section 230 A&B is attached hereto and labeled Exhibit B."
4. Section 230-13 defines various residential zones and requirements. A complete copy of this section may be found in the Town Code.
5. Planned Development Districts are defined in Section 230-18 of the Code. Section 230-18 B(1)(a) declares the intent of this district is to allow "for a variety of land uses and a flexible arrangement of lots, structures, and land uses in a well-planned and coordinated design. The flexibility of land uses and lots is achieved by the Town continuously participating in and approving stages of project planning and development. Any combination of land uses already permitted within the Town may be proposed for development on sites under this district. This district is also intended to accommodate land uses or scales of development that may be unique or require more consideration by the Town. This district may be applied anywhere in the Town, provided the project scale and design is found to further Town planning goals and to be compatible and coordinated with the environmental constraints and the existing and/or planned availability of public water, sewer, drainage, and transportation facilities. A copy of Section 230-18 is attached hereto and labeled "Exhibit C."
6. At the public hearing, the applicant addressed the interpretation requested. Among other issues raised, the applicant argued that because the subject property is adjacent to a PDD District, the buffer requirement would not apply because PDD is not residential in nature. See Minutes attached and labeled "Exhibit D."

7. However, we find residential uses and components are allowed in Planned Development Districts (“any combination of land uses already permitted within the Town may be proposed for development on sites under this district”) and several Planned Development Districts in Clay contain residential components.

8. According to the Town Planning Department and records, the original residential development located to the northeast of the Subject Property was zoned R-8 (Residential 8) under the old Code sections, and later changed to Planned Development District.

9. At the public hearing, a resident noted that in the Code, the term “residential district” is not capitalized nor are the actual zones referenced, and argued the intent of the Code Section is to protect adjoining residential areas. See Code Section 230-16C(4)(1)(c).

10. This body finds the neighborhood and properties located immediately adjacent to northeast of the Subject Property were originally and remain residential in nature. Though now included in a Planned Development District (PDD) zone, the property was originally zoned R-8 Residential, and is used as residential property.

11. Therefore, this Board finds Section 230-16C(4)(1)(c) applies to this applicant, and an Additional Perimeter Landscape Strip is required.

MOTION made by Deputy Chairman Wisnowski that this Board hereby decides that Section 230-16C(4)(1)(c) of the Code apply to the Applicant, and an Additional Perimeter Landscape Strip of fifty (50) feet is required. Motion seconded by Mr. Pleskach.

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

Interpretation 2: Ponds within the Perimeter Landscape Strip:

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 Code Section 320-11 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.”

3. The general purpose of a Perimeter Landscape Strip is to provide a buffer for residential or other properties located adjacent to a proposed development.

4. Nowhere in the Code does the language allow for the placement of water detention ponds within Perimeter Landscape Strips. However, we also find the language would not prevent ordinary, natural, or pre-existing overland drainage or directed water flow from occurring onto or within a perimeter landscape strip.

MOTION made by Deputy Chairman Wisnowski that this Board hereby decides Code Section 230-11 does not allow the placement of water detention ponds within a Perimeter Landscape Strip. 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>

NEW BUSINESS:

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

Case #1653 – AREA VARIANCES - Alyssa Deryke, 118 Ravenswood Dr, Tax Map #086.-04-10.0:

The applicant is requesting Area Variances pursuant to Section 230-13 E.(4)(c)[1] and 230-20 B.(2)(b) to allow for a reduction in the front yard setback from 25 feet to 4 feet and to increase the height of a fence in a front yard from the allowed 2.5 feet to 6 feet (corner lots have two front yards) to allow for construction of a 6 foot fence. The property is located in the R 7.5 One-Family Residential zoning district

Alyssa Deryke explained that she has a dog and wants to put up a fence. These Area Variances will make the deck legal as well, and the proposed fence will not cut off part of the deck.

Ms. Deryke addressed the Standards of Proof:

1. She doesn't believe there will be any negative or undesirable change to the character of the neighborhood.
2. She doesn't believe there is any other feasible method than to obtain Area Variances.
3. She doesn't believe the Area Variance requests are substantial.
4. She doesn't believe there will be any physical or environmental impact to the neighborhood.
5. She believes the Area Variances are self-created.

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

Chairman Mangan asked Assistant Commissioner Beckhusen if she had any comments and she had none.

Chairman Mangan asked if anyone in the audience had any 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 made by Mrs. Liebi in Case #1653 to **approve** the Area Variances as requested with the condition that they be in substantial compliance with Exhibit "A", a survey dated 1/17/2009. 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 Area Variances in Case #1653 are **approved**.

Case #1654 – SPECIAL PERMIT - Scott Thomas Duane, 7938 Davis Rd, Tax Map #079-06-22.0:

The applicant is requesting a Special Permit, pursuant to Section 230-13 D.(2)(d)[1], to allow for a home occupation to sell firearms. The property is located in the R-7.5 One-Family Residential zoning district.

The Secretary read the proof of Publication.

Scott Duane said he would like a Special Permit to sell firearms to friends, family and internet sales. He's been in the military and has taken the proper safety precautions including an alarm system and a safe.

Mr. Pleskach asked if he did his own background checks and Mr. Duane said yes.

Mr. Layout commented that Fed Ex would not be leaving firearms on his doorstep and Mr. Duane said no they would not.

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

Chairman Mangan asked Assistant Commissioner Beckhusen if she had any comments and she had none.

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

Chairman Mangan asked for those in favor and those opposed to granting the Special Permit request and there were none.

Chairman Mangan closed the hearing.

MOTION made by Mr. Layou in Case #165 to **approve** the Special Permit. Motion was seconded by Mr. Pleskach.

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 Case #1654 is **approved**.

Case #1655 – AREA VARIANCE - Greg Fishell/Allied Sign Company (Molina Healthcare) – 5232 Witz Drive– Tax Map #112.-06-13.5:

The applicant is requesting an Area Variance pursuant to Section 230-22 C.(1) to increase the number of allowed wall signs from one to two, allowing for an additional sign. The property is located in the O-2, Office district.

The Secretary read the proof of Publication.

Greg Fishell of Allied Sign Company explained that Molina Healthcare is changing their signs and that they also want an additional one.

Mr. Fishell 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 sign will be facing other commercial businesses in the lot, and they will be similar to other signage in the area.
2. They don't believe there is any other feasible method than to obtain an Area Variance. The signs are needed for business and entrance identification.
3. They don't believe the Area Variance request is substantial. The signs are proportionately to the size of the building and consistent with other business signage in area. It is actually a little smaller than the present signage.
4. They don't believe there will be any physical or environmental impact to the neighborhood

5. They believe the Area Variance is self-created.

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

Chairman Mangan asked Assistant Commissioner Beckhusen if she had any comments and she had commented that it will in fact clean up the site. There were three tenants and now there is only one..

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

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

Chairman Mangan closed the hearing.

MOTION made by Mr. Pleskach in Case #1655 to **approve** the Area Variance as requested with the condition that they be in substantial compliance with Exhibit "A" Sign Elevation dated 9/27/2016. 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 #1655 is **approved**.

**Case #1656 – INTERPRETATION - Kimbrook Route 31 Development, LLC. 3566 & 3578
NYS State Route 31, Tax Map #052.-02-11.1 & 11.2:**

The applicant is requesting an Interpretation pursuant to Sections 230-16 C.(4)(a) and 230-16 C.(5), to differentiate between a RC site, and an RC-1 individual lot. The property in question, if determined as an individual lot would not need to meet the minimum requirements of the RC site, and therefore, would not require variances for RC site minimums. This is to allow for the construction of a Rite-Aid Pharmacy. The property is located in the RC-1 Regional Commercial zoning district.

The Secretary read the proof of Publication.

Attorney Paul Curtin and Tim Coyer of Ianuzi and Romans represented the applicant.

Chairman Mangan noted that at the last meeting he had asked if this lot was part of the Kimbrook shopping center.

Attorney Curtin said yes the site is and that the access road is part of it too, and will be brought up to snuff, as it is part of the comprehensive plan.

Chairman Mangan noted that they will still have to maintain the buffers, and that will be submitted to the Planning Board under Site Plan review, and Attorney Curtin said yes.

Tim Coyer stated that they would be conforming the parking.

Mr. Layou commented that at a previous meeting they said the parking spaces would be smaller.

Attorney Curtin stated that the parking spaces will be modified but will not be smaller.

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

Chairman Mangan asked Assistant Commissioner Beckhusen if she had any comments and she voiced concern that this could trigger a bigger use in the future if sold. She explained that the Tractor supply store was an individual parcel on its own and met the required setbacks for that lot.

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

Chairman Mangan closed the hearing.

MOTION made by Deputy Chairman Wisnowski in Case #1656 to accept the Interpretation that the property in question is determined to be part of the overall RC-1 site and therefore would not need to meet minimum setbacks for an individual lot. 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>

Case #1657 – AREA VARIANCES - George Saba, 7434 Liffey Lane, Tax Map #106.-01-03.0:

The applicant is requesting Area Variances pursuant to Section 230-13 D.(4)(c)[1] and 230-20 B.(2)(b) to allow for a reduction in the front yard setback from 25 feet to 10 feet and to increase the height of a fence in a front yard from the allowed 2.5 feet to 6 feet (corner lots have two front yards) to allow for construction of a 6 foot fence. The property is located in the R-10 One-Family Residential zoning district.

The Secretary read the proof of Publication.

George Saba explained that they have a seven month old daughter who will be walking soon and they want a fence. They'd like the fence to go around their cherry tree. They wouldn't have much of a yard if avoiding its roots, so they are asking for Area Variances. They also want a 6 foot fence in their front yards to keep their daughter safe.

Mr. Saba addressed the Standards of Proof:

1. He doesn't believe there will be any negative or undesirable change to the character of the neighborhood. They think the fence will make the area more attractive and desirable.
2. He doesn't believe there is any other feasible method than to obtain an Area Variance.
3. He believes the Area Variance requests are not substantial. They feel they are asking for the bare minimum to navigate around a forty six year old cherry tree.
4. He doesn't believe there will be any physical or environmental impact to the neighborhood, and that it will only enhance the integrity of the property and the area.
5. He believes the Area Variance is self-created.

Mr. Pleskach advised the applicant to stay on the 10 foot line so there is no obstruction of view on Bear Road, as it is a busy road.

Mr. Saba assured him that he would do that.

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

Chairman Mangan asked Assistant Commissioner Beckhusen if she had any comments and she cautioned Mr. Saba to stay out of any easements.

Chairman Mangan asked if anyone in the audience had any 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 made by Mrs. Liebi in Case #1657 to **approve** the Area Variances as requested with the condition that they be in substantial compliance with Exhibit "A" a survey dated 6/2/2009. Motion was seconded by Mr. Pleskach.

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 Variances in Case #1657 are **approved**.

Case #1658 – AREA VARIANCES - Fox Automotive Group, 3687 NYS Route 31, Tax Map #020.-01-05.3 & 020.-01-06.1:

The applicant is requesting Area Variances pursuant to Section 230-16 B.(5)(a) to allow for a reduction of the perimeter landscape strip on the eastern property line from 20 feet to 5 feet, and a reduction of the perimeter landscape strip on the western property line from 20 feet to 5 feet to allow for site improvements for the new automobile dealership. The property is located in the HC-1 Highway Commercial zoning district.

The Secretary read the proof of Publication.

Joe Durand of TDK Engineering Associates, P.C. represented the applicant.

Chairman Mangan asked what the zoning was for the property that bordered them to the east, and Mr. Durand said Commercial. Chairman Mangan asked what the zoning was for the property that bordered them to the west, and Mr. Durand said agricultural.

Mr. Durand explained that the Fox Dealership has been in the works. The DOT drainage dumps on this site. Fox Automotive Group plans to have a conveyance system for water which includes a culvert/pipe and swales. They have permits from the DEC and the Army Corp. of Engineers. Due to the Interpretation made by the Zoning Board regarding permanent ponds in landscape perimeter strips they have concerns. Drainage is to discharge to the wetlands.

Chairman Mangan noted that the western border is also residential.

Mr. Durand 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 overall proposed development is consistent with nearby properties within the commercial corridor and will improve perimeter aesthetics.
2. They don't believe there is any other feasible method than to obtain an Area Variance. The Area Variances are needed to allow for drainage conveyance features to be constructed along the perimeter of the parking lot. No changes to green area improvements within 50 feet side yard setbacks are proposed.
3. They don't believe the Area Variance request is substantial. The request is only a 15 feet reduction in the width of the Perimeter Landscape Strip, with no actual changes to green space improvements within side yard setbacks.
4. They don't believe there will be any physical or environmental impact to the neighborhood.
5. They believe the Area Variance is self-created. The adjustment is necessary for compliance with ZBA Case Decision #1645, dated January 9, 2017 and DEC stormwater management regulations.

Chairman Mangan questioned the 5 foot reduction and Mr. Durand stated that the 50 foot buffer is still there, but the DEC requires conveyance of water they would store in swales and would drain in

40 hours. Mr. Durand further explained that there would not be a detention pond, just dry drainage swales.

Attorney Joe Pozzi who represents Filkins Acquisitions, LLC asked how the water would be treated.


Chairman Mangan stated that he felt the Board needed to take a closer look at this case and suggested adjournment.

MOTION made by Chairman Mangan to adjourn Case #1658 to the May 8, 2017 meeting. Motion was seconded by Mr. Ryan.

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>

Case #1658 is **adjourned** to May 8, 2017.

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

TOWN OF CLAY
ZONING BOARD OF APPEALS

Case No: 1649
Applicant: Filkins Acquisitions, LLC
Address: 8370-8380 Oswego Road
Type: Interpretation

Issue Summary: Filkins Acquisitions, LLC applied to the Zoning Board of Appeals for an interpretation of the existing Town of Clay Zoning Code Sections 230-16 C(4)(1)(c); 230-12A&B; 230-13; and 230-18 to allow for the development and use of the Subject Property without the requirement of an additional site perimeter landscape strip of fifty (50) feet as required by the Code and to allow the inclusion of water detention ponds within a Perimeter Landscape Strip.

1. The fifty (50) foot perimeter landscape buffer strip is required by code when adjacent to residential zones. The Applicant takes the position that because the Subject Property abuts a Planned Development District (PDD) and not a Residential District, the rule should not apply. The Applicant asks this Board for an interpretation/decision on point.
2. The Applicant also asks this Board for an interpretation of Code Section 230-11. The Applicant takes the position that water detention ponds should be allowed to be located within Perimeter Landscape Strips under the Code, and asks this Board for an interpretation/decision on point.

FINDINGS AND DECISION

Findings:

Interpretation 1: Site Perimeter Landscape Strip:

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)(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)(1)(c) is attached hereto and labeled "Exhibit A."
3. According to Section 230 A&B of the Town Code (as amended in 2010), the Town zoning designations are defined as conventional and Specialized Districts. Conventional zone districts are defined in Section 230 A as areas where lots, structures and uses are uniformly regulated to fulfill a common purpose. Section 230 B defines Specialized Districts to be districts that afford both greater flexibility for development and oversight by the Town. Such districts, when established by the Town, would be used as an alternative to a conventional district. A Planned Development District is a Specialized District. A copy of Section 230 A&B is attached hereto and labeled Exhibit B."

4. Section 230-13 defines various residential zones and requirements. A complete copy of this section may be found in the Town Code.
5. Planned Development Districts are defined in Section 230-18 of the Code. Section 230-18 B(1)(a) declares the intent of this district is to allow “for a variety of land uses and a flexible arrangement of lots, structures, and land uses in a well-planned and coordinated design. The flexibility of land uses and lots is achieved by the Town continuously participating in and approving stages of project planning and development. Any combination of land uses already permitted within the Town may be proposed for development on sites under this district. This district is also intended to accommodate land uses or scales of development that may be unique or require more consideration by the Town. This district may be applied anywhere in the Town, provided the project scale and design is found to further Town planning goals and to be compatible and coordinated with the environmental constraints and the existing and/or planned availability of public water, sewer, drainage, and transportation facilities. A copy of Section 230-18 is attached hereto and labeled “Exhibit C.”
6. At the public hearing, the applicant addressed the interpretation requested. Among other issues raised, the applicant argued that because the subject property is adjacent to a PDD District, the buffer requirement would not apply because PDD is not residential in nature. See Minutes attached and labeled “Exhibit D.”
7. However, we find residential uses and components are allowed in Planned Development Districts (“any combination of land uses already permitted within the Town may be proposed for development on sites under this district”) and several Planned Development Districts in Clay contain residential components.
8. According to the Town Planning Department and records, the original residential development located to the northeast of the Subject Property was zoned R-8 (Residential 8) under the old Code sections, and later changed to Planned Development District.
9. At the public hearing, a resident noted that in the Code, the term “residential district” is not capitalized nor are the actual zones referenced, and argued the intent of the Code Section is to protect adjoining residential areas. See Code Section 230-16C(4)(1)(c).
10. This body finds the neighborhood and properties located immediately adjacent to northeast of the Subject Property were originally and remain residential in nature. Though now included in a Planned Development District (PDD) zone, the property was originally zoned R-8 Residential, and is used as residential property.
11. Therefore, this Board finds Section 230-16C(4)(1)(c) applies to this applicant, and an Additional Perimeter Landscape Strip is required.

Decision: This Board hereby decides that Section 230-16C(4)(1)(c) of the Code apply to the Applicant, and an Additional Perimeter Landscape Strip of fifty (50) feet is required.

Interpretation 2: Ponds within the Perimeter Landscape Strip:

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 Code Section 320-11 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.”

3. The general purpose of a Perimeter Landscape Strip is to provide a buffer for residential or other properties located adjacent to a proposed development.
4. Nowhere in the Code does the language allow for the placement of water detention ponds within Perimeter Landscape Strips. However, we also find the language would not prevent ordinary, natural, or pre-existing overland drainage or directed water flow from occurring onto or within a perimeter landscape strip.

Decision: This Board hereby decides Code Section 230-11 does not allow the placement of water detention ponds within a Perimeter Landscape Strip.

EXHIBIT A

230-16C

(4) RC-1 lot and structure dimensional requirements.

(a) RC site.

(1) The following site requirements shall supersede and override any of the following individual lot or structure requirements and shall collectively apply to all lots within the complex:

(a) Minimum site area: five acres.

(b) Site perimeter landscape strip: 30 feet.

(c) Additional site perimeter landscape strip abutting residential districts: 50 feet.

(d) Cumulative coverage structure and pavement: 75%.

EXHIBIT B

§ 230-12 Establishment; Zoning Map; boundaries.

A.

Conventional zone districts. For the purposes of this code, the Town of Clay is divided into the following conventional zoning districts (an area where lots, structures and uses are uniformly regulated to fulfill a common purpose):

[Amended 3-1-2010 by L.L. No. 1-2010]

Section 230-13, Residential Districts

RA-100 Residential Agricultural

R-40 One-Family Residential

R-15 One-Family Residential

R-10 One-Family Residential

R-7.5 One-Family Residential

R-2F Two-Family Residential

R-TH Townhouse

R-Apt Apartment

R-MHC Mobile Home Court

LuR Limited Use for Riverfront

R-SR Senior Residence District

Section 230-14, Recreation Districts

Rec-1 Recreation

Section 230-15, Office Districts

O-1 Neighborhood Office

O-2 Office

Section 230-16, Commercial Districts

NC-1 Neighborhood Commercial

HC-1 Highway Commercial

RC-1 Regional Commercial

LuC-1 Limited Use for Gasoline Services

LuC-2 Limited Use for Restaurants

Section 230-17, Industrial Districts

I-1 Industrial 1

I-2 Industrial 2

S-1 Special Use

B.

Specialized districts. This code provides for a district(s) that afford both greater flexibility for development and oversight by the Town. Such districts, when established by the Town, would be used as an alternative to a conventional district.

Section 230-18, Special Districts

PDD Planned Development District

GOV Government Controlled Land (indicated on Zoning Map for information - zone district is RA-100)

EXHIBIT C

B.

Planned Development District (PDD).

(1)

Intent.

(a)

This district allows for a variety of land uses and a flexible arrangements of lots, structures, and land uses in a well-planned and coordinated design. The flexibility of land uses and lots is achieved by the Town continuously participating in and approving stages of project planning and development. Any combination of land uses already permitted within the Town may be proposed for development on sites under this district. This district is also intended to accommodate land uses or scales of development that may be unique or require more consideration by the Town. This district may be applied anywhere in the Town, provided the project scale and design is found to further Town planning goals and to be compatible and coordinated with the environmental constraints and the existing and/or planned availability of public water, sewer, drainage, and transportation facilities.

(b)

Substantively and procedurally, the PDD is intended to promote and maintain a dialogue between the applicant and the Town. The PDD enables both the applicant and the Town to customize the development of a site in ways that are not feasible in conventional zone districts. The development standards are not predetermined, but are created jointly by the applicant and the Town via the procedures set forth in this section.

(2)

Procedure overview. The classification of any property within the Planned Development District (PDD) requires the undertaking of a three-step process involving the approvals from both the Town Board and the Planning Board.

(a)

In the first step, concept plan review, the Town Board, in its legislative capacity, establishes the boundaries of the proposed PDD and sets the limits on the nature and range of uses, geometric and site controls and overall project planning. The Town Board's action is in response to the applicant's submission of a general outline that sets forth the contemplated development for the proposed PDD. This step begins a dialogue between the applicant and the Town, and, it does not commit the Town Board to adopt a PDD zone change in the final step of this process.

(b)

In the second step, project plan review, the Planning Board is delegated by the Town Board to be responsible for ensuring that the general concept outline approved by the Town Board will

be properly implemented. The Planning Board achieves compliance by reviewing and approving the project plan submitted by the applicant. The project plan is the detailed narrative and graphic documentation for the development of the entire PDD.

(c)

The final steps, implementation and enforcement, are through a formal zone change by the Town Board and site plan and/or subdivision reviews of individual sites or portions of the PDD by the Planning Board that ensure the actual construction and development fully implement the concept and project plans adopted in the formation of the PDD.

C.

Authorization for a PDD.

(1)

Type of action. Establishment of a Planned Development District (PDD) is a zone change to the Zoning Map made by the Town Board, pursuant to the requirements of the NYS Town Law, governing the formation and modifications of zone districts, the local requirements of the Town of Clay and the procedures of this section.

(2)

Application to specific lands.

(a)

The PDD regulations are applied and effective to only a specific area that may include more than one property. The Zoning Map is amended upon adoption of an approval resolution by the Town Board of a PDD project plan, pursuant to the requirements of this section. No permits or other approvals are issued until the zone change has been approved by the Town Board, as stipulated in PDD adoption (Step 3).

(b)

Land uses permitted.

[1]

Generally. The Town Board shall specify the land uses permitted within the PDD when the concept plan for such district is accepted and may identify specific uses for lots or subareas within the PDD. The Town Board may establish the unit densities and other dimensional and performance standards for all uses. If the Town Board chooses not to establish such standards, then the provisions of PDD default dimensional and performance standards of this section shall apply.

[2]

Preassigned land uses. The PDD shall also be used to address uses, which, due to their size or character, have potentially significant impacts and require maximum review of location, scale and design. The following uses shall be permitted only in a PDD upon specific approval of the Town Board:

[a]

Public or private airport.

[b]

Theme/amusement park.

[c]

Resort complex/conference center.

[3]

Minimum PDD area.

(a)

Minimum area. No PDD shall have a gross land area of less than 25 acres, exclusive of existing public rights-of-way, unless otherwise specified by the Town Board.

(b)

Adding area. Once established, a PDD may be enlarged to include other contiguous areas regardless of their size. Such areas, if separated by a public right-of-way, may be considered contiguous, if, in the opinion of the Town Board, the continuity of the original PDD is maintained or enhanced.

(3)

Phased development.

(a)

PDD subareas. The Town Board may identify portions of a PDD as discrete geographic subareas of the project. Such designated subareas (sections or phases) may have land uses or standards different from the balance of the PDD, provided that such designated subareas are fully integrated in the overall development for the entire PDD.

(b)

Project staging. The Town Board may establish the sequence in which development of a PDD shall proceed by specifying the order in which subareas, sections or phases of a PDD are to be developed. If not specified by the Town Board, the Planning Board may, on its own initiative during the project plan review, establish a sequence of project staging or approve a proposed sequence by the applicant.

(c)

Review of project phases. If a proposed PDD is to be undertaken in a staged development, the Town Board, during concept review, may phase the schedule of the Planning Board's project plan approval to correspond with the approved project staging. The first phase shall consist of a minimum of 25% of the total PDD area.

D.

PDD concept plan review (Step 1). In the first step, concept plan review, the Town Board, in its legislative capacity, establishes the boundaries of the proposed PDD and sets the limits on the nature and range of uses, geometric and site controls and overall project planning. The Town Board's action is in response to the applicant's submission of a general outline that sets forth the contemplated development for the proposed PDD. This step begins a dialogue between the applicant and the Town; and it does not commit the Town Board to adopt a PDD zone change in the final step of this process.

(1)

Concept plan review procedures.

(a)

Receipt and referral. An applicant wishing to propose a PDD shall prepare and submit documents (see concept plan submissions) to the Town Board. Upon receipt of a PDD proposal, the Town Board can accept or refuse to consider the proposal for further action. If the Town Board accepts the PDD proposal for consideration it shall refer the PDD submission documents to the Planning Board for its advisory opinion on the formation of the PDD. The Planning Board shall respond to the Town Board with a written report of its findings and recommendations

within a time period established by the Town Board, to be not less than 30 days and not more than 90 days, unless modified by mutual agreement of the Town Board and Planning Board.

(b)

SEQRA. The Town Board shall declare itself lead agency for purposes of the NYS Environmental Quality Review Act and shall determine if the proposed PDD is a Type 1 or unlisted action and make the appropriate notification or referrals to the applicable municipalities, involved or interested agencies or other levels of government.

(c)

Review and discussion. Prior to any informational or public hearing, the Town Board may meet with the applicant, the Planning Board or other interested parties to discuss the PDD proposal.

(d)

Informational hearings. The Town Board may hold an informational hearing; after which, and upon the consideration of the recommendations by the Planning Board and other agencies, it may proceed to act on the proposed PDD concept plan.

(e)

Concept plan acceptance. The Town Board shall consider the proposal and vote to accept, modify or reject the PDD concept. If the Town Board accepts or modifies the PDD concept, it shall prepare a written resolution indicating its findings and its willingness to entertain a zone change upon completion of a PDD project plan. It shall also authorize the Planning Board to engage in the review and possible approval of a PDD project plan. It may instruct the Planning Board of the specific land uses, nature of buildings, minimum area and geometric controls to be maintained in the PDD or in designated subareas, project phasing and a timetable of Planning Board review. The resolution shall include a copy of the accepted written and graphic PDD concept plans, any SEQRA-related materials, and other relevant information.

(f)

Concept plan acceptance date. The date of Town Board acceptance only initiates the second review phase of the PDD procedures. Upon concept acceptance, the PDD is not in effect and the applicant does not obtain vested rights for development.

(2)

Concept plan review criteria. The Town Board shall find that approval of a PDD concept is reasonable and appropriate in furthering the overall land development policies and goals of the Town. In making this determination, the Town Board shall consider and record in its resolution of acceptance how the proposed PDD addresses the following:

(a)

Comprehensive planning activities of the Town of Clay.

(b)

Applicable infrastructure plans and policies.

(c)

Applicable environmental policies and programs.

(d)

Responds to conditions or issues not previously addressed by the Town of Clay.

(3)

Concept plan submission requirements. In order to obtain the conceptual approval of the Town Board for the establishment of a Planned Development District, a concept plan of the proposal shall be submitted, comprised of the following components:

(a)

Narrative component. a brief written narrative outlining the applicant's overall concept for the proposed PDD, including, but not limited to, the following: an explanation of how the proposed PDD conforms to concept plan review criteria, the range and mix of land uses, development density, building types, impact upon existing and provision for public facilities, points of access, parking, open space/recreation areas, project financing and phasing, and other applicable items.

(b)

Graphic component: a generalized graphic plan of the entire site, drawn to a scale that reasonably depicts the land use, development patterns, density and improvements addressed in the applicant's narrative statement.

(c)

Project schedule: an outline of the expected sequence and duration to fully implement and construct the entire PDD.

(d)

SEQRA: the long environmental assessment forms (LEAF), as determined by the Town, in accordance with the NY State Environmental Quality Review Act (SEQRA).

(e)

Survey: survey(s) or tax maps of the property or properties proposed for inclusion in the PDD as part of the graphic component.

(f)

Zone change application forms: forms, as required by the Town of Clay, available from the Department of Planning and Development.

E.

PDD project plan review (Step 2). In the second step, project plan review, the Planning Board is delegated by the Town Board to be responsible for ensuring that the general concept outline approved by the Town Board will be properly implemented. The Planning Board achieves compliance by reviewing and approving the project plan submitted by the applicant. The project plan is the detailed narrative and graphic documentation for the development of the entire PDD. This step begins with the following actions of the Planning Board and concludes with a recommendation to the Town Board.

(1)

Project plan review procedures.

(a)

Transfer to the Planning Board. Upon acceptance of a PDD concept plan by the Town Board, the Planning Board shall begin, with the applicant, the development of a PDD project plan.

(b)

Submittals. The project plan is a substantial elaboration of the concept plan accepted by the Town Board. It is a significantly more detailed narrative and graphic documentation for the development of the entire land area or of designated subareas within the PDD (see submission requirements). The applicant shall prepare and submit project plan materials to the Planning

Board. The applicant may submit materials immediately following PDD concept plan acceptance by the Town Board. All materials shall be prepared and completed to the satisfaction of the Planning Board.

(c)

Review schedule. Unless otherwise specified by the Town Board, the project plan shall be acted upon by the Planning Board within 180 days of the approval date of the PDD concept plan by the Town Board. Any time within this period, the Planning Board or the applicant may request or recommend to the Town Board a modification of this schedule. Failure to obtain project plan acceptance within the required time limits shall cause the concept plan authorization to lapse.

(d)

SEQRA. A thorough analysis of environmental issues shall commence during this stage of the PDD review process under the authority of the Town Board. The Town Board may retain oversight responsibility or it may direct the Planning Board to oversee the preparation and completion of any environmental analysis or DEIS. In either case, the Planning Board shall advise the Town Board on the scope and the necessity for a preparation of an environment analysis or a draft environmental impact statement (DEIS).

(e)

Analysis, review, discussion and referrals. During its review, the Planning Board shall engage in a substantive review of the project plan. It may meet with the applicant, government agencies or other interested parties to improve its understanding of the proposal. The Planning Board may refer the proposed project plans to appropriate governmental agencies for any advisory opinion or recommendation. The Planning Board shall direct the preparation of a written report of the Board's interim analysis, findings and progress.

(f)

Informational hearings. The Planning Board may hold informational hearings for fact-finding and to gather community input.

(g)

PDD project plan review completion. The Planning Board shall, when it concludes its analysis and review [Subsection **E(1)(a)** through **(f)** above], vote to recommend that the Town Board accept, accept with modifications or reject the PDD project plan. It shall base its recommendation upon finding that the proposed project plan is in accordance with the approved concept plan, the Town Subdivision Regulations,**[1]** and all applicable codes and regulations of Onondaga County and New York State.

[1]

Editor's Note: See Ch. **200**, Subdivision of Land.

(h)

Planning Board recommendation. The Planning Board shall, if it finds that all materials and information are acceptable, direct the preparation of a written report to the Town Board containing its findings and recommendations. The report shall include, if appropriate, the accepted written and graphic PDD project plans, a PDD construction and development schedule, recommended methods of implementation following final PDD adoption, a draft DEIS or recommended SEQRA findings, and any other relevant materials.

(2)

Project plan review criteria. The Planning Board shall determine that approval of a PDD project plan is reasonable and appropriate in meeting the objectives of the accepted concept plan, and that the project plan furthers the overall land development policies and goals of the Town. In making this determination, the Planning Board shall apply its collective experience and judgment to evaluate the appropriateness of the development proposed in the project plan. It shall also consider and record in its resolution of recommendation to the Town Board how the proposed PDD addresses the following:

(a)

Uses and structures. The variety and arrangement of land uses and structures throughout the proposed development are appropriate for the site. The Planning Board may not specifically prohibit nor permit uses or structures not similarly authorized by the Town Board.

(b)

Dimensional standards. The Planning Board shall ensure compliance of the project plan guided by the Town Board resolution conceptually accepting the PDD. It shall evaluate the project plan with respect to the minimum area and geometric controls and other standards set forth by the Town Board or the default standards of this section if not specifically modified by the Town Board. It shall evaluate the appropriateness of the proposed density of development and other factors it finds relevant, such as location, community needs, public infrastructure and relationship to surrounding development.

(c)

Subdivision review. In anticipation of PDD acceptance and potential subdivision action, the Planning Board may simultaneously review any proposed subdivision sketch plans to determine conformance to Town Subdivision Regulations.^[2]

[2]

Editor's Note: See Ch. 200, Subdivision of Land.

(d)

Other zoning reviews. The Planning Board shall specify recommended zoning review processes and permits that will control and monitor the implementation of the PDD.

(e)

Feasibility of completing the PDD. The Planning Board shall evaluate and comment whether the proposed sequence, staging and expected schedule for implementing the PDD can be achieved in the manner described. It shall seek to identify any public infrastructure or improvements that are related to or contingent upon the successful completion of the proposed PDD and set forth a preliminary schedule of PDD milestones that are to be achieved after adoption.

(3)

Project plan submission requirements.

(a)

Project plan submissions. The project plan of the entire site must include graphic documentation, maps, drawings and other materials that show at a sufficient scale and detail to allow the Planning Board to evaluate the feasibility and impacts of the proposed development.

[1]

Site plans for all construction areas preliminarily showing approximate size, height, and bulk of buildable areas.

[2]

Preliminary landscaping plans showing all open space, plazas, malls, courts, and pedestrian ways, ponds, waterways or similar landscaped features.

[3]

Preliminary grading plans showing existing and proposed topographic contours and any significant natural or sensitive environmental resources.

[4]

Improvement plans showing existing and proposed drainage, water and sewer facilities, and easements, if any, within or affected by the proposed development.

[5]

Vehicular and pedestrian circulation plans showing proposed streets, points of access, sidewalks and off-street parking and loading to serve any proposed building or facilities.

[6]

Proposed construction schedule, sequence of development, project financing and preliminary milestones to be achieved from time of adoption to completion.

[7]

Preliminary contract and filing documents between the applicant and Town for any public facilities, districts, enforcement and management of the PDD.

(b)

Supporting and explanatory material. The Planning Board may require the submission of additional material to explain and justify the project plan, which could include but is not limited to the following:

[1]

Information necessary to assure compatibility of the proposed project with adjoining existing uses and to Town planning objectives.

[2]

An explanation of the manner in which all requirements of the project plan and of other applicable regulations are to be met.

[3]

Expected treatments or project-wide strategies for issues such as: signs, lighting, snow storage, building and site aesthetics.

[4]

Impact and relationship to existing or proposed public services such as: public infrastructure; solid waste collection; emergency vehicle, police and fire protection.

F.

PDD adoption (Step 3). The final steps, implementation and enforcement, are through a formal zone change by the Town Board and site plan and/or subdivision reviews of individual sites or portions of the PDD by the Planning Board that ensure the actual construction and development fully implement the concept and project plans adopted in the formation of the PDD.

(1)

PDD adoption procedures. A PDD takes effect only upon the Town Board's approval or approval with modifications of a zone change incorporating the PDD project plan accepted by the Planning Board and according to the PDD criteria for adoption and submission requirements.

(a)

Recommendation to Town Board. The Planning Board completes and returns its written recommendation of the project plan to the Town Board. Upon receipt, the Town Board may proceed to considering a zone change for the proposal.

(b)

Hearings, referrals and SEQRA. The Town Board shall, pursuant to law and this code, conduct a public hearing(s), make all required referrals not previously completed, and finalize the SEQRA process.

(c)

Project plan action. The Town Board shall approve, approve with modification or disapprove the PDD project plan referred by the Planning Board. The Town Board resolution shall explicitly state that the proposed dimensional controls are accepted or the default dimensional and performance standards apply. It shall also explicitly state the accepted staging and schedule to implement and construct the proposed PDD.

(d)

Zone change action. Upon project plan adoption, the Town Board shall vote to grant the zone change and file its action pursuant to local and state requirements.

(e)

Filing of approvals. The PDD shall be effective upon proper execution and filing of all documents, contracts and plans as a supplement to the Zoning Map.

(2)

PDD criteria for final adoption.

(a)

The Town Board shall confirm or modify and restate its findings of Town goals addressed in the concept plan (Step 1) acceptance above.

(b)

The Town Board shall confirm that the PDD project plan (Step 2) fulfills the expectations established in the concept plan accepted or as subsequently modified.

(3)

PDD adoption submission requirements.

(a)

Forms and documentation: copies of materials approved by the Planning Board.

(b)

Reports, referrals and recommendations: any documents developed or received by the Planning Board during project plan review.

(c)

Survey(s) and legal descriptions of properties included in the entire PDD.

(d)

SEQRA documentation, DEIS and preliminary draft findings (if prepared).

(e)

Final drafts of all contracts, filing documents and plans and enforcement instructions.

G.

Implementing the PDD. This section identifies processes that are anticipated to be necessary following Town Board approving action on the PDD, and depending on the specifics of the proposal, to allow for actual construction and occupancy of a PDD proposal. These processes

will address development of PDD project details and potential project changes that are fully consistent with the approved project plan. These other permits and approvals may be obtained by the applicant pursuant to the requirements of those individual processes and/or the requirements specified in the resolution adopting the PDD.

(1)

Town permits.

(a)

Construction compliance. Any use or structure, open space, infrastructure improvement or regrading shall be established pursuant to the standards set forth in the adoption of the PDD.

(b)

Site plan and special permit. Subject to the instructions of the Town Board in final resolution of PDD adoption, the standards, procedures and submission requirements of a site plan and/or special permit are to be applied for those individual uses, structures, or improvements.

(c)

Subdivision review: the standards and procedures of the Town Subdivision Regulations^[3] for the establishment of any new lot configurations.

[3]

Editor's Note: See Ch. 200, Subdivision of Land.

(d)

All other Town permits. Building, highway access and similar permits are required to be obtained pursuant to their respective permit requirements.

(2)

Other permits. All other agency permits required from federal, state or county regulations shall be obtained prior to on-site development activity.

(3)

Failure to implement the PDD. The Town Board may consider, after notification to the developer-applicant, rezoning actions to alternative zone districts if the PDD construction of the entire project or of specified phases is not completed or if adopted PDD milestones are not achieved within 18 months of the approved PDD project schedule.

H.

Modifications and amendments to an existing PDD. This subsection describes how changes are addressed after a PDD has been adopted, constructed and/or occupied. All changes to an existing PDD will be regulated by the following provisions: changes that will affect individual lots that have been subsequently established after the PDD adoption will require approval by the Commissioner or the ZBA; changes that are directed to the entire PDD or to an identified stage of the PDD will require review by either the Planning Board or Town Board depending on the perceived effect.

(1)

Minor modifications affecting one property. The Commissioner of Planning and Development shall evaluate all modifications and may either refer the proposal for consideration of a variance by the ZBA or approve minor modifications for development with the PDD pursuant to the following:

(a)

Thresholds.

[1]

The proposed change is applicable to one property within the PDD.

[2]

The proposed change complies with the land use, dimensional and performance standards.

[3]

There is no change in the defined land use.

[4]

The basic physical relationship and function of buildings and improvements is maintained.

(b)

Criteria. The Commissioner can find that the proposed modification does not require any modification of applicable standards, substantially alter the property from the approved plan and does not change the relationship to surrounding properties or improvements.

(c)

Procedure. The Commissioner shall process and document the approval of such modifications in a manner consistent with the general procedural and enforcement provisions of this code. The Commissioner may issue a building permit, certificate of compliance or similar approvals (e.g., minor subdivision or site plan adjustments) when authorized by this code.

(d)

Waivers of PDD standards. The Commissioner finds that the change for a proposed development, improvement, or modification fails to comply with the land use, dimensional or performance standards adopted for the specific PDD and shall be subject to the procedures and standards for issuance of a use or area variance by the Zoning Board of Appeals.

(e)

Transfer to Planning Board or Town Board. The Commissioner may require any requested modification to be submitted for a PDD intermediate design and land use modification by the Planning Board, or, for a major modification, to the Town Board.

(2)

Intermediate modifications; project plan amendment. Existing or approved PDD land uses, structures and improvements may be altered or modified after the effective date of PDD adoption. Unless otherwise required by the Town Board or Planning Board, such modifications shall be subject to the issuance of a project plan amendment by the Planning Board, pursuant to the following:

(a)

Thresholds.

[1]

There are changes in type or location of approved land uses within the same general land use category (e.g., residential, commercial, industrial) and within the same PDD section identified in the approved project plan.

[2]

Increase in floor area in excess of 10% of a principal or accessory structure.

[3]

Demolition of a principal structure, except where mandated by an appropriate official in the interest of public safety.

[4]

Establishment or realignment of new streets or other public/common areas.

[5]

Any change, except routine replacement and maintenance, to landscaping, open space, parking, public facilities or other improvements addressed in the project plan.

(b)

Criteria. The Planning Board shall find that the proposed modification does not substantially alter any modification of applicable standards, maintains the basic relationship of the property to the approved project plan and maintains the basic relationship to surrounding properties or improvements.

(c)

Procedure. The Planning Board shall review and consider a project plan amendment under procedures set forth in this section for adoption of a project plan (Step 2), except that Town Board approval shall not be required.

(d)

Transfer to Town Board. The Planning Board may, at any time, find that the proposed modification substantially alters the project plan and require the requested modification to be submitted for a PDD major amendment by the Town Board.

(3)

Major modifications. Any modification not addressed by the minor or intermediate modifications above, exceeding the limits established at the inception of the district, or expanding or altering the PDD boundary shall be reviewed and approved by the Town Board, subject to the procedures for establishing a PDD (Steps 1, 2 and 3).

(4)

Nonconformities. It is the intent of the PDD that no nonconforming elements will exist within the PDD. The flexibility of the land use and geometric controls and review procedures should prevent the creation of any nonconforming element. In the event that a nonconformity does exist, any subsequent changes shall conform to the PDD controls and shall be subject to an issuance of a project plan amendment by the Planning Board [see Subsection **H(2)**, Intermediate modifications].

I.

PDD default dimensional and performance standards. The following standards are intended to assist the Town by avoiding any enforcement oversight or ambiguity. A PDD is intended to promote flexibility and creativity of design; therefore, the following will apply in the absence of specifically established standards by the Town Board. Unless the Town Board establishes other controls or standards at the inception of the district, the following shall apply uniformly, by default to the entire PDD or to designated portions.

(1)

Land uses. There are no default land uses in a PDD.

(2)

Dimensional controls. The following controls shall apply, unless specifically modified by the Town Board during the initial establishment of the PDD:

(a)

Distance between buildings on one lot.

[1]

Residential: front, rear and side yards for residential uses shall be designed so that a building is no closer than 20 feet to any other residential building and 50 feet to any nonresidential building.

[2]

Nonresidential: front, rear and side yards for nonresidential uses shall be designed so that a building is no closer than 30 feet to any other nonresidential building and 50 feet to any residential building.

[3]

For purposes of interpretation, a structure which contains both residential and nonresidential uses shall comply with the requirements of Subsection **[(2)(a)]2** above.

[4]

Accessory structures shall be no closer than 10 feet to the principal structure with which they are associated and no closer than 20 feet to any other principal structure, and five feet to any other accessory structure.

(b)

Distance from lot lines. The minimum distance between any point on a principal building and the lot line shall not be less 10 feet.

(c)

Density of development. Unless the Town Board has otherwise established a minimum density then all residential development shall provide an average density of 5,000 square feet per dwelling unit. Commercial and industrial uses shall maintain an average minimum density of 20,000 square feet per building.

(d)

Lot coverage. Maximum lot coverage for all development within a PDD shall not exceed 35% of the gross land area.

(e)

Height. The maximum height of all principal structures shall not exceed 35 feet for residential buildings and 40 feet for commercial or industrial buildings, and accessory structures shall not exceed 15 feet.

(f)

Parking/Loading. The parking and loading provisions of this Zoning Code shall apply to PDDs unless modified by the Town Board. Shared parking and storage may be included in the calculation of overall parking compliance.

(g)

Supplementary regulations and site plan standards. Unless modified by the Town Board when establishing the PDD, the supplementary regulations and site plan standards of this Zoning Code shall apply to all development within the PDD.

(3)

Performance standards. Unless modified by the Town Board when establishing the PDD, the performance standards applicable to all industrial districts shall apply.