

APPROVED  
ZONING BOARD OF APPEALS  
MINUTES OF MEETING  
September 13, 2010

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 Town Hall of Clay, 4401 State Route 31, New York on September 13, 2010.

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
	Eugene Young	Member
	Karen Liebi	Member
	Mark Smith	Member
	Vivian Mason	Secretary
	Robert Germain	Attorney
	David Balcer	Town Planner

ABSENT: Arthur Fennhahn Deputy Chairman

**MOTION** made by Mr. Young that the Minutes of the meeting of August 9, 2010 be accepted. Motion was seconded by Mrs. Liebi. *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 Type II actions, and will be given a negative declaration, unless otherwise advised by our attorney. Motion was seconded by Mr. Smith. *Carried.*

**OLD BUSINESS:**

None.

**NEW BUSINESS:**

Chairman Mangan asked all the members if they had seen the properties and all present said yes.

**Case #1380 - VARIANCE - Woodford Brothers, Inc. 1 Juniper Lane (Tax map #098.-06-01.0):**

The applicant is seeking an area variance to install a proposed roof and screen in an existing deck, reducing the front yard setback from 25 feet to 20 feet.

The secretary read the proof of publication.

David Kotash explained that the owners of the property would like to enclose and screen the deck that is on the front of the house.

Chairman Mangan asked where there were any other homes on the street that had enclosed porches.

David Lamacchia presented a letter from a neighbor who said they had no objection to them enclosing the deck.

Mr. Kotash addressed the standards of proof:

1. They believe there will no change in the character of the neighborhood.
2. There is no other feasible method, as the deck is already on the front of the house.
3. They do not feel the variance is substantial.
4. They believe there will be no adverse or environmental impact on the neighborhood.
5. He stated that the need for the variance is self-created.

Chairman Mangan asked Mr. Balcer, Town Planner, if he had any comments and he had none.

Chairman Mangan asked if there were any further questions and there were none. Chairman Mangan asked for those in favor and two neighbors said they were in favor of granting the variance (Cindy Lancette and Cathy Sachran of Juniper Lane). The Chairman asked for those opposed to granting the variance and there were none.

Chairman Mangan closed the hearing.

Mr. Young commented that enclosing the deck was in actuality creating an addition, and that there were no other houses with porches on the street. He feels enclosing it changes the character of the neighborhood.

**MOTION** was made by Mr. Young in Case #1380 to deny the variance. Motion was seconded by Mr. Smith.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- absent	
	Mr. Young	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	<i>Carried.</i>

The request for the variance is **denied**.

**Case #1381 - USE VARIANCE - Mark Weiss, 4913 New York State Route 31, (Tax map #046.-01-25.0 & 046.-01-27.0) :**

The applicant is seeking a use variance to allow a “Nursery” for the growing and seasonal retail of perennial plants.

The secretary read the proof of publication.

Mark Weiss explained that his wife and daughter are raising perennial plants. They have a small farm stand and they thought to expand it. They were under the belief that the 28 acre parcel is

cropland and it is okay to raise the plants in the I-2 Industrial District. The assumption was that the plants would be okay. His own business is 75% down due to the economy so his wife and daughter's business income from the sale of plants helps out. They also wholesale the plants, so the business is a financial benefit.

Mr. Weiss addressed the standards of proof required for a use variance, the first being that they can't realize a reasonable return and show competent financial evidence. He said they believe the cropland produce is an allowable use and financially they need the revenue from the sale of the plants.

Chairman Mangan explained that actual proof is needed. Mr. Young reiterated that the Board needs evidence. Chairman Mangan defined it further by stating they need to prove it in dollars and cents.

Mr. Weiss said originally it was a farm stand. Afterwards the Town considered it a nursery business. He explained that his neighbors have no problem with the operation of their business.

Chairman Mangan asked Mr. Weiss if he was aware that the property is in an Industrial zone and he said yes, but they thought they could use it as cropland.

Chairman Mangan explained that the problem is the retail sales. Financial hardship is one of the requirements under the standards of proof and use variances are nearly impossible to obtain as all the requirements are so stringent and difficult to prove. He suggested that perhaps Mr. Weiss would like an adjournment to obtain evidence of financial hardship.

Chairman Mangan adjourned the hearing to October 11, 2010.

**Case #1382 - VARIANCE - Syracuse Signage (Panera Bread), 3815 New York State Route 31, (Tax map #021.-01-12.1) :**

The applicant is seeking a variance to increase the allowable signage area on the south side wall from 61.27 square feet to 73.85 square feet and north side wall from 60.07 square feet to 73.85 square feet. Also, to increase the quantity of allowable signage by adding a third sign on the west side wall.

The secretary read the proof of publication.

Rich Hubeny of Syracuse Signage, explained that Panera Bread has obtained approval from the Town to operate a drive through. Now they need a sign to let people know there is one.

Mr. Hubeny addressed the standards of proof:

1. They believe there will no change in the character of the neighborhood. The surrounding parcels are all commercial.
2. Since a free standing sign is not allowed, there is no other feasible method.
3. Considering the other sign on the building, they do not feel this variance is substantial.
4. The believe there will be no environmental or adverse impact on the neighborhood.

5. They feel it is not self-created as the sign is needed for the drive thru.

Town Planner David Balcer, Town Planner, noted that it *is* self created since they decided to add a drive thru. He added that he did not see the need for the third sign on the west sidewall, noting that that wall does not have a sign that says Panera Bread on it.

Russ Mitchell asked why they need the third sign on the drive thru side, since you won't see it until you're on top of it. He felt it wasn't needed.

Chairman Mangan asked if there were any further questions and there were none. Chairman Mangan asked for those in favor and those opposed to granting the variance and there was none.

Chairman Mangan closed the hearing.

**MOTION** was made by Mrs. Liebi in Case #1382 to grant the variance with the condition that the signs be in substantial compliance with the submitted plans dated July 29, 2009. Motion was seconded by Mr. Young.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- absent	
	Mr. Young	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	<i>Carried.</i>

The variance request in Case #1382 is granted.

**Case #1383 - VARIANCE - Maureen Murphy, 8510 Fathom Drive, (Tax map #052.1-26-11.4):**

The applicant is seeking a variance to decrease the front yard setback for a shed on the Fathom Drive side from 20 feet to 17 feet and on the Theodolite Drive side from 25 feet to 15 feet.

The secretary read the proof of publication.

Neither the applicant or a representative was present.

Chairman Mangan adjourned the hearing to October 11, 2010.

**Case #1384 - VARIANCE - Rachel Deckman, 5144 Bear Road, (Tax map #098.-06-01.0) :**

The applicant is seeking a variance to construct a front deck on an existing residence that is an existing non-conforming to the front Highway Overlay Zone District front yard setback at 74.3 feet. The applicant now proposes to reduce it from the required 115 feet to 69.62 for the proposed deck.

The secretary read the proof of publication.

Joseph Deckman explained that the deck is partially installed. They had a concrete slab and it was hard to maneuver, so they built a deck and added stairs. They built it over the existing slab and

expanded it 5 and ½ inches closer to the street.

Mr. Young asked Mr. Deckman if he would go any closer than that and Mr. Deckman said no.

Mr. Deckman addressed the standards of proof:

1. They feel there will no change in the character of the neighborhood.
2. They feel there is no other feasible method.
3. They do not feel the variance is substantial.
4. They believe there will be no adverse impact on the neighborhood.
5. He stated that the need for the variance is self-created.

Chairman Mangan asked Mr. Balcer, Town Planner, if he had any comments and he said he had none.

Chairman Mangan asked if there were any further questions and there were none. Chairman Mangan asked for those in favor and Steve Michaels and Joanna Mill were in favor. Chairman Mangan asked for those opposed to granting the variance and there were none.

Chairman Mangan closed the hearing.

**MOTION** was made by Mr. Young in Case #1384 to grant the variance with the condition that construction be in substantial compliance with Exhibit “A”. Motion was seconded by Mr. Smith.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- absent	
	Mr. Young	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	<i>Carried.</i>

The variance request in Case #1384 is granted.

**Case #1385 - VARIANCE - Nick Johnson (Fastrac), 8467 Oswego Road (Tax map #019.-02.23.1) :**

The applicant is seeking an area variance for a proposed new sign to be constructed within the required setback of 25 feet to 8 feet 0 inches off the property line and to increase the allowable square foot area from 32 square feet to 63.975 square feet.

The secretary read the proof of publication.

Chairman Mangan asked Nick Johnson if they presently had a sign and he said yes and that it is currently non-conforming, and the new one will be the same size and the same setback.

Mr. Balcer, Town Planner, commented that the applicant is actually increasing the size of the sign, because the base had nothing on it before, so it was not used in the calculation.

Mr. Young asked if the variance was granted, would they accept a condition that the sign be no higher than the plans submitted.

Mr. Johnson said they would accept that condition.

Mr. Johnson addressed the standards of proof:

1. They believe there will no change in the character of the neighborhood and that the new sign will be an improvement.
2. They don't believe there is any other solution, so there is no other feasible method.
3. He believes the variance could be substantial, but not in size.
4. They believe there will be no adverse or environmental impact on the neighborhood.
5. He stated that the need for the variance is self-created.

Chairman Mangan asked Mr. Balcer if he had any further comments and he said the Planning Office sees no problem. The overall appearance will be the same, but he would like the banners off the building.

Chairman Mangan asked if there were any further questions and there were none. Chairman Mangan asked for those in favor and those opposed to granting the variance and there was none.

Chairman Mangan closed the hearing.

**MOTION** was made by Mr. Smith in Case #1385 to grant the variance with the condition that the sign be constructed in substantial compliance with Exhibit "A", revised September 3, 2010, with the dimensions shown. Motion was seconded by Mrs. Liebi.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- absent	
	Mr. Young	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	<i>Carried.</i>

The variance request in Case #1385 is granted.

There being no further business, Chairman Mangan adjourned the meeting at 8:34 P.M.

---

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