

APPROVED  
**ZONING BOARD OF APPEALS**  
**MINUTES OF MEETING**  
**April 8, 2013**

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 April 8, 2013.

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
	Arthur Fennhahn	Deputy Chairman
	Karen Liebi	Member
	Mark Smith	Member
	Brian Hall	Member
	Anne Stenham	Alternate Member
	Vivian Mason	Secretary
	Robert Germain	Attorney
	Mark V. Territo	Commissioner of Planning & Development

ABSENT: None.

**MOTION** made by Deputy Chairman Fennhahn that the Minutes of the meeting of January 12, 2013 be accepted as submitted. Motion was seconded by Ms. Liebi. *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 Type II actions, and will be given a negative declaration, unless otherwise advised by our attorney. Motion was seconded by Ms. Liebi. *Unanimously carried.*

**OLD BUSINESS:**

None.

**NEW BUSINESS:**

Chairman Mangan asked the board members if they all visited the sites and all stated that they had.

Chairman Mangan explained Case #1479, the second case to be heard tonight, was not heard last month as it was referred to the Planning Board before bringing it before the Zoning Board of Appeals.

**Case #1478 - AREA VARIANCE – Eric Kammer, 8598 Morgan Road, Tax map #029.-01-24.0:**

The applicant is requesting an Area Variance pursuant to Section 230-22 C. (1) to increase the allowable square footage from 16 square feet to 32 square feet for a sign. This property is located in the RA-100 Residential Agricultural zoning district.

The secretary read the proof of publication.

Eric Kammer explained that he has removed the existing 5 foot by 10 sign and has replaced it with an 8 foot by 4 foot sign.

Chairman Mangan commented that what Mr. Kammer is doing is replacing a sign that was out of compliance with a smaller one than what was there.

Mr. Kammer addressed the Standards of Proof:

1. He doesn't believe there will be any change to the character of the neighborhood. Neighboring businesses have larger signs.
2. He believes the Area Variance request is the most feasible method, because to have another sign made would cost money.
3. He does not believe the variance request is substantial, since he has replaced the sign with one that is smaller than what was there.
4. He believes there will be no environmental impact on the neighborhood.
5. The need for the variance is self-created.

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

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

Chairman Mangan asked for those in favor and those opposed to granting the variances, and there were none.

Chairman Mangan closed the hearing.

**MOTION** made by Mr. Smith in Case #1478 to grant the Area Variance as requested with the condition that it be in substantial compliance with Exhibit "A". Motion was seconded by Mr. Hall.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	
	Mr. Hall	- in favor	<i>Unanimously carried.</i>

The Area Variance in Case #1478 is granted.

**Case #1479 – AREA VARIANCES – COR Route 31 Company, LLC, 3815 State Route 31, Tax map #021.-01-12.1:**

The applicant is requesting an Area Variance pursuant to Section 230-22 H.(4) to alter an existing non-conforming sign to increase the degree of non-conformity to allow for the addition of six new panels to the existing freestanding sign. This property is located in the RC-1 Regional Commercial zoning district.

The secretary read the proof of publication.

Attorney Kate Johnson was present to represent COR Route 31 Company, LLC.

Chairman Mangan commented that they had come before this board some time before about the size of the sign and had agreed at that time to not come in again for modification to the size of the sign.

Attorney Johnson stated that he was correct, and they thought so at the time, but this is 10 years later and things have changed. There is now a strip plaza that went in width-wise across the front, and the stores hidden behind it cannot be seen from the highway.

Chairman Mangan asked how that relates to their request.

Attorney Johnson explained that they just got a lease for a tenant and they want to be on the sign. The same is true for other small tenants there. If they cannot be on the sign, they won't sign leases. The larger stores are on the sign already. Their fear is that tenants won't stay or sign on because no one can see that they are there. That's why they are requesting additional panels.

Attorney Johnson addressed the Standards of Proof:

1. They don't believe there will be any change to the character of the neighborhood. It is a heavy commercial district.
2. They believe the Area Variance request is the most feasible method. They cannot reconfigure the existing freestanding sign as the lease agreements with the anchor tenants do not permit a reduction of their existing panels. To remain fully leased they need to add smaller tenants to the sign.
3. They weighed out the square footage. They could have a total of 384 square feet of signage, with three signs, and instead are asking for 442.5 square feet in one sign, so they do not believe the variance request is substantial.

*Chairman Mangan asked "isn't it substantial?"*

*Attorney Johnson explained that this shopping center is larger than others, but still is only allowed the same amount of signage as smaller ones. Based on the size of their center, they believe the request is not substantial.*

4. They believe there will be no environmental impact on the neighborhood. The sign is in a very intense commercial corridor.
5. The need for the variance is self-created.

Ms. Liebi asked why they didn't purchase the land in front so that a strip plaza would not have been able to be built.

Attorney Johnson stated that they had tried to purchase it but couldn't obtain ownership.

Ms. Liebi questioned the fact that not all the tenants would fit on the sign anyway.

Attorney Johnson reiterated that they need more signage because of vacancies. Smaller tenants won't lease as they feel people will not know they are there, so they want signage.

Chairman Mangan commented that coming from the west or the east the lower portion of the sign is not very visible. Putting other tenants on the six panels may placate them, but he couldn't see that it would help them if it's not very visible from the road.

Attorney Johnson explained that drivers sitting at the traffic light could see it.

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 for those in favor and those opposed to granting the variances, and there were none.

Chairman Mangan closed the hearing.

**MOTION** made by Ms. Liebi in Case #1479 to **deny** the Area Variance request. Motion was seconded by Deputy Chairman Fennhahn.

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

The Area Variance in Case #1479 is **denied**.

**Case #1480 – AREA VARIANCES - Timothy Andersen, 5268 Medasano Circle, Tax map #075.-02-10.0:**

The applicant is requesting Area Variances to pursuant to Section 230-13 E.(4)(c) and 230-20 B.(2)(b) to reduce the front yard setback from 25 feet to 10 feet, and to increase the height of a front yard fence from 2.5 feet to 6 feet, for the purpose of constructing a swimming pool and fence. This property is located in the R-7.5 One-Family Residential zoning district.

*(This is a corner lot, so it legally has two front yards.)*

The secretary read the proof of publication.

Timothy Anderson addressed the Standards of Proof:

1. He doesn't believe there will be any change to the character of the neighborhood. The fence will not block any vision with regard to traffic.
2. Because of the size of the lot, he believes the Area Variance request is the most feasible method.
3. They do not believe the variance request is substantial, as they are only asking for 15 feet.
4. They believe there will be no environmental impact on the neighborhood.
5. The need for the variance is self-created.

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

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

Chairman Mangan asked for those in favor of granting the variances and there were none. Chairman Mangan asked for those opposed to granting the variances, and there was one who was opposed, Jerome Kembrowski, of Carina Circle. He said he was opposed to granting any variances as the code was written and that's what everyone should abide by.

Deputy Chairman Fennhahn tried to explain that the Zoning Board is a mandate of the state, its purpose is to be able to grant relief for situations such as this.

Chairman Mangan closed the hearing.

**MOTION** made by Mr. Hall in Case #1480 to grant the Area Variance as requested with the condition that it be in substantial compliance with the survey dated March 27, 2012. Motion was seconded by Ms. Liebi.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	
	Mr. Hall	- in favor	<i>Unanimously carried.</i>

The Area Variance in Case #1480 is granted.

**Case #1481 – AREA VARIANCES - Joseph Topolski, 8013 Trina Circle, Tax map #078.-04-39.0:**

The applicant is requesting Area Variances, pursuant to Sections 230-13 D.(4)(c)[2]; 230-13 D.(4)(c)[3]; 230-13 D.(4)(c)[4]; and 230-20 A.(1)(e) to reduce the side yard setback from 7.5 feet to 3

feet; to reduce the rear yard setback from 10 feet to 8 feet, for two sheds, and to increase the allowed height for a Gazebo from 12 feet to 18.5 feet, and to increase the allowed height for a play house from 12 feet to 13 feet. This property is located in the R-10 One-family Residential zoning district.

The secretary read the proof of publication.

Chairman Mangan noted that all the structures have already been installed.

Attorney John Crisafulli, representing Mr. Topolski explained that his client met with the Town of Clay Code Enforcement officer after they were built. One shed was on Town property and Mr. Topolski moved it, plus he also moved the second shed. Both of the sheds are on gravel. The enforcement officer classified the structure on the deck as a Gazebo and when his client built the structure he thought he was in compliance because he measured its height from the deck up, not from the ground up, therefore its height was not within the requirements of the building code. The other structure, the playhouse, he built that for his son in what he believes was in a tasteful manner. The playhouse is also not in compliance with the building code for height.

Attorney Crisafulli addressed the Standards of Proof:

1. They don't believe there will be any change to the character of the neighborhood. They feel the structures are tastefully constructed.
2. Mr. Topolski believes the Area Variance requests are the most feasible method. He uses the shed for his employment.

*Chairman Mangan commented that the applicant could move the sheds, and Attorney Crisafulli said Mr. Topolski moved the rear shed as far in as possible, but because of the grade of the property and the tree he couldn't move them in any further.*

*Deputy Chairman Fennhahn noted that he felt there were alternatives.*

3. They do not believe the variance request is substantial.
4. They believe there will be no environmental impact of the neighborhood.
5. The need for the variance is self-created.

Chairman Mangan asked Mr. Topolski how long the tree house and the Gazebo have been there and he answered 2 years for the tree house and 12 years for the Gazebo.

Attorney Crisafulli noted that the structure on the deck is not really a Gazebo, but that's what the code enforcement officer called it.

Mr. Topolski commented that the play house has been there 10 years.

Mr. Hall asked if at the time Mr. Topolski moved the sheds, didn't he look at the proper placement within the setbacks, and the applicant said he moved one off the Town property as far

as he could, and likewise the other one. The problem is that there is a hill, a grade change, so he couldn't move them further inside the property.

Deputy Chairman Fennhahn asked if all the structures were on the survey and Attorney Crisafulli said yes.

Chairman Mangan stated that the applicant should have gotten building permits in the first place.

Commissioner Territo commented that if the shed is less than 100 square feet it doesn't need a permit. The playhouse only needs an Area Variance for height. The second shed and the Gazebo need building permits. Additionally, the Gazebo also needs an Area Variance for height.

Chairman Mangan asked for those in favor of granting the variances and there were none. Chairman Mangan asked for those opposed to granting the variances, and there was one who was opposed, Jerome Kembrowski, of Carina Circle. He said the applicant should have gotten permits. That's why the Town has a Planning Department. He's opposed to granting any variances.

Mr. Topolski explained that not getting building permits was out of pure ignorance. He cleans drains for a living and didn't know he needed permits. He added that countless neighbors have commented on the improvements to his property.

Chairman Mangan stated that he wants to take a second look and to check with the Planning Department to explore the options.

Chairman Mangan adjourned the meeting to May 13, 2013.

**Case #1482 – AREA VARIANCES - Samuel Werts, 5417 Carina Circle, Tax map #078.-02-49.0:**

The applicant is requesting Area Variances, pursuant to Section 230-13 E.(4)(c)[1] and 230-20 B.(2)(b) to reduce the front yard setback from 25 feet to 5 feet, and to increase the height of a front yard fence from 2.5 feet to 6 feet, for the purpose of constructing a fence. This property is located in the R-7.5 One-Family Residential zoning district.

The secretary read the proof of publication.

Mr. Werts explained that he wants to put up a fence. His property is limited due to an easement in the back of the house, so he wants to take advantage of his front yards and construct a fence there.

Chairman Mangan explained that this is a corner lot so basically it has two front yards.

Mr. Werts addressed the Standards of Proof:

1. He doesn't believe there will be any change to the character of the neighborhood. The fence design is common in the neighborhood and it's almost the same style as his neighbors.
2. He believes the Area Variance request is the most feasible method. The fenced area with the Area variances will be about 4130 square feet, but on 885 square feet without the Area Variances.
3. They believe the variance request is substantial for them. It will be an increase of yard space, as the drainage easement in the back limits them.
4. They believe there will be no environmental impact of the neighborhood. The fence will not obstruct views regarding traffic.
5. The need for the variance is self-created.

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

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

Chairman Mangan asked for those in favor of granting the variances and there were none. Chairman Mangan asked for those opposed to granting the variances, and there was one who was opposed, Jerome Kembrowski, of Carina Circle. He said he was opposed to granting any variances as the code was written and that's what everyone should follow. He also added that no one has a fence that close to the road; fences are for farmers.

Chairman Mangan explained that there isn't incentive for other homeowners to fence their front yards, but this is a corner lot.

Chairman Mangan closed the hearing.

**MOTION** made by Mr. Smith in Case #1482 to grant the Area Variances as requested, with the condition that construction be in substantial compliance with the survey dated 1972. Motion was seconded by Ms. Liebi.

Roll call:	Chairman Mangan	- in favor	
	Deputy Chairman Fennhahn	- in favor	
	Mrs. Liebi	- in favor	
	Mr. Smith	- in favor	
	Mr. Hall	- in favor	<i>Unanimously carried.</i>

The Area Variance in Case #1482 is granted.

There being no further business, Chairman Mangan adjourned the meeting at 8:45 P.M.

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