

DRAFT
ZONING BOARD OF APPEALS
MINUTES OF MEETING
October 13, 2025

The Regular Meeting of the Zoning Board of Appeals of the Town of Clay, County of Onondaga, State of New York, was held at the Clay Town Hall, 4401 New York State Route 31, Clay, New York on October 13, 2025. Chairperson Mason called the meeting to order at 6:00 P.M. and upon the roll being called the following were:

PRESENT:	Vivian Mason	Chairperson
	Karen Liebi	Deputy Chairperson
	Ryan Frantzis	Member
	David Porter	Member
	Mary Lou DesRosier	Member
	Michael Becker	Alternate Member

ABSENT: None

OTHERS

PRESENT:	Robert Germain	Zoning Board Attorney
	Chelsea Clark	Zoning Board Secretary
	Brian Bender	Planning & Development Commissioner
	Terry Karousos	Code Enforcement Officer
	Russel Mithcell	Planning Board Chairman
	Michelle Borton	Planning Board Deputy Chair
	Karen Guinup	Planning Board Member
	Hal Henty	Planning Board Member
	Marie Giannone	Planning Board Secretary

All present participated in the Pledge of Allegiance.

MOTION made by Deputy Chairperson Liebi that the Minutes of the meeting of September 8, 2025, be accepted as submitted. Motion was seconded by Mr. Frantzis. *Unanimously carried.*

MOTION made by Chairperson Mason for the purpose of the New York State Environmental Quality Review (SEQR) all new actions tonight will be determined to be a Type II, and will be given a negative declaration, unless otherwise advised by our attorney. Motion was seconded by Mr. Porter. *Unanimously carried.*

OLD BUSINESS:

Case: #1986 – David Meleski, 4764 Norstar Blvd., Apt. 228, Tax Map #096.-01-01.0.:

The applicant is seeking a Special Permit pursuant to Section 230-13 H.(2)(d)[1] – Home Occupation, and Section 230-27 I.(2)(a) – Standards of Review, to allow the transfer of ammo and firearms to purchasers of on-line firearm items. The property location is in R-APT Apartment Zoning District.

Chairperson Mason stated the applicant requested to withdraw the Special Permit application.

NEW BUSINESS:

Chairperson Mason advised that the board would be hearing the three residential applications first (Cases: 1992, 1993 & 1994)

Case #1992 – Richard H. Metz, 4907 Joyce Place, Tax Map #088.-13-11.0.:

The applicant is seeking Area Variances pursuant to Section 230-13 E.(4)(b)[1] – Lot and Structure Dimensional Requirements, a reduction of the front yard setback from 25 feet to 10 feet; Section 230-20 B.(2)(b) – Fences, for an increase in height of fence in a front yard from the maximum of 2.5 feet to 7 feet to allow installation of a fence. The property location is in the R-7.5 One-Family Residential Zoning District.

The proof of publication was read by the secretary.

The applicant was present.

Chairperson Mason asked the applicant to explain his request for Area Variances.

Mr. Metz explained that he built an addition, and his property is located on a corner lot. The existing fence went to the addition, now he would like to pull the fence out ten (10) feet, perpendicular to the addition. Mr. Metz provided the board with a photo for the case file.

Chairperson Mason asked the applicant to address the Standards of Proof.

Mr. Metz addressed the Standards of Proof:

1. The applicant does not believe the requested Area Variances will create an undesirable change to the character of the neighborhood.
2. The applicant does not believe there is any feasible method other than the requested Area Variances.
3. The applicant does not believe the requested Area Variances to be substantial.
4. The applicant does not believe there will be any adverse effect to the neighborhood.
5. Yes, the need for Area Variances is self-created.

Chairperson Mason asked if there were any further comments or questions from the Board.

Mrs. Liebi thanked the applicant for staking out the proposed fence line.

Chairperson Mason asked Planning Commissioner Bender if he had any questions or comments, and he had none.

Chairperson Mason asked Code Enforcement Officer Karousos if he had any questions or comments, and he had none.

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Chairperson Mason asked if anyone in the audience had any questions or comments and there were none.

Chairperson Mason asked for those who would like to speak in favor of granting the Area Variances and there were none.

Chairperson Mason asked for those who would like to speak against granting the Area Variances and there were none.

The hearing was closed.

MOTION was made by Mrs. Liebi in Case #1992 to **approve** the Area Variances as requested with the condition they be in substantial compliance with Exhibit “A”. Motion was seconded by Mr. Frantzis.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Porter	- in favor	
	Mr. Frantzis	- in favor	
	Deputy Chairperson Liebi	- in favor	
	Chairperson Mason	- in favor	<i>Unanimously Carried.</i>

Case #1993 – Matthew Caves, 4608 Ver Plank, Tax Map #044.-01-10.0.:

The applicant is seeking Area Variances pursuant to Section 230-13 A.(4) – Lot and Structure Dimensional Requirements, for the reduction in the required front yard setback from 75 feet to 33 feet; a reduction in the side yard setback from 25 feet to 17 feet, and a reduction in the rear yard setback from 25 feet to 13 feet; Section 230-19 A.(5) – Designated Highway Setback (Accessory Structure), a reduction in the Designated Highway setback from 65 feet to 57 feet to accommodate additions to existing home and pole barn. The property location is in the RA-100 Residential Agricultural Zoning District.

The proof of publication was read by the secretary.

The applicant was present.

Chairperson Mason asked the applicant to explain his request for Area Variances.

Mr. Caves explained he is looking to add an addition to his existing home, close to the property line and do the same with a pole barn.

Chairperson Mason asked the applicant to address the Standards of Proof.

Mr. Caves addressed the Standards of Proof:

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1. The applicant does not believe the requested Area Variances will create an undesirable change to the character of the neighborhood and believes it will make the property more desirable.
2. The applicant does not believe there is any feasible method other than the requested Area Variances.
3. The applicant does believe the requested Area Variances to be substantial.
4. The applicant does not believe there will be any adverse effect to the neighborhood.
5. Yes, the need for Area Variances is self-created.

Chairperson Mason asked if there were any further comments or questions from the Board.

Mrs. Liebi asked the applicant if the pole barn would also be closer to the property line.

Mr. Caves confirmed, the pole barn and addition would both be closer to the property line.

Mrs. Liebi asked the applicant why he cut down so many trees.

Mr. Caves explained they cut trees to create more useable yard space.

Chairperson Mason asked Planning Commissioner Bender if he had any questions or comments, and he had none.

Chairperson Mason asked Code Enforcement Officer Karousos if he had any questions or comments, and he had none.

Chairperson Mason asked if anyone in the audience had any questions or comments and there were none.

Chairperson Mason asked for those who would like to speak in favor of granting the Area Variances and there were none.

Chairperson Mason asked for those who would like to speak against granting the Area Variances and there were none.

The hearing was closed.

MOTION was made by Mr. Porter in Case #1993 to **approve** the Area Variances as requested with the condition they be in substantial compliance with Exhibit “A”. Motion was seconded by Mr. Frantzis.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Porter	- in favor	
	Mr. Frantzis	- in favor	
	Deputy Chairperson Liebi	- in favor	
	Chairperson Mason	- in favor	<i>Unanimously Carried.</i>

Case #1994 – Sam Ziparo, 4861 West Taft Road, Tax Map #107.-18-08.0.:

The applicant is seeking Area Variance pursuant to Section 230-19 A.(5) – Designated Highway Setback, a reduction in the designated highway setback from 140 feet to 95 feet to allow for the construction of a wrap-around deck with a roof system over it on the front/west facade of the residence. The property location is in the R-10 One-Family Residential Zoning District.

The proof of publication was read by the secretary.

The applicant was present.

Chairperson Mason asked the applicant to explain his request for an Area Variance.

Mr. Ziparo explained he would like to build a deck around the front and west side of his home with a roof.

Chairperson Mason asked the applicant to address the Standards of Proof.

Mr. Ziparo addressed the Standards of Proof:

1. The applicant does not believe the requested Area Variance will create an undesirable change to the character of the neighborhood.
2. The applicant does not believe there is any feasible method other than the requested Area Variance.
3. The applicant does believe the requested Area Variance to be substantial.
4. The applicant does not believe there will be any adverse effect to the neighborhood.
5. Yes, the need for Area Variances is self-created.

Chairperson Mason asked if there were any further comments or questions from the Board.

Mrs. Liebi asked the applicant if the deck would interfere with the business at the pole barn.

Mr. Ziparo confirmed it would not interfere.

Chairperson Mason asked Planning Commissioner Bender if he had any questions or comments, and he had none.

Chairperson Mason asked Code Enforcement Officer Karousos if he had any questions or comments, and he had none.

Chairperson Mason asked if anyone in the audience had any questions or comments and there were none.

Chairperson Mason asked for those who would like to speak in favor of granting the Area Variance and there were none.

Chairperson Mason asked for those who would like to speak against granting the Area Variance and there were none.

The hearing was closed.

MOTION was made by Mr. Frantzis in Case #1994 to **approve** the Area Variance as requested with the condition they be in substantial compliance with Exhibit “A”. Motion was seconded by Mr. Porter.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Porter	- in favor	
	Mr. Frantzis	- in favor	
	Deputy Chairperson Liebi	- in favor	
	Chairperson Mason	- in favor	<i>Unanimously Carried.</i>

Case #1991 – Russ Mitchell, Town of Clay Planning Board, Chairman, requesting an Interpretation of a definition pursuant to Section 230-16 B.(2) – Highway Commercial Uses Allowed and Interpretation of a definition pursuant to Section 230-11 C. – Definitions (Shopping Center). The Interpretation concerns use in an HC-1 Highway Commercial Zoning District.:

The proof of publication was read by the secretary.

Kathleen Bennett, Attorney for the Town of Clay Planning Board, was present on behalf of the applicant.

Attorney Bennet presented the Planning Board’s request for interpretation as shown in ZBA Case 1979/1991: Exhibit 1 (attached).

Corey Auerbach of Barclay Damon, was present on behalf of Mirabito.

Mr. Auerback presented opposition to the Planning Board’s second interpretation appeal as shown in ZBA Case 1979/1991: Exhibit 2 (attached).

Chairperson Mason asked if there were any further comments or questions from the Board and there were none.

Chairperson Mason asked Planning Commissioner Bender if he had any questions or comments, and he had none.

Chairperson Mason asked Code Enforcement Officer Karousos if he had any questions or comments, and he had none.

Chairperson Mason asked if anyone in the audience had any questions or comments.

Scott Arnold, 5568 Wyandra Drive, stated that the proposed Mirabito would border his property in the HC-1 Zoning District. He added that he agreed with Attorney Bennett, adding that if this use is allowed, it would bring neighborhood concerns, including traffic, safety and environmental. He also believes it would decrease his property value.

Yvonne Arnold, 5568 Wyandra Drive, presented a PowerPoint that included Town Code, Definitions in Town Code, Mirabito franchise information from their business webpage. Mrs. Arnold does not believe that Mirabito should be defined as a Shopping Center but believes it is a Convenience Store, asking the question if the proposed Dunkin' and Bank would be able to operate independently or if they would close when the convince store closed.

Mr. Auerback stated they would operate independently.

Erika Rossman, 5515 Tobin Path asked if the proposed bank would be full-service.

The applicant advised yes, the bank would be full-service with the option to walk in or use a drive-thru, but the bank will determine hours of operation.

Sara Villnave, 5556 Wyandra Drive, presented the board a petition with +/-300 signatures opposed to the proposed Mirabito Gas Station. Petition was given to Attorney Germain for the record.

Garrett Arnold, 5568 Wyandra Drive, stated that the project has been disguised through the whole application and stated he would not invest the \$150k improvements to his home if this is allowed.

Attorney Germain advised the public that the questions and concerns presented would be addressed by the Planning Board as the Zoning Board of Appeals case is simply to interpret the Town Code.

The hearing was closed.

MOTION was made by Mr. Frantzis, whereas the Town of Clay Planning Board requested an interpretation of the Town Code to determine if, according to the Clay Town Code, a gasoline service center is an allowed use in the HC-1 Zone Classification if it is part of a proposed Shopping Center, and,

Whereas we heard from representatives of the Town Planning Board and Mirabito Energy on July 14th, 2025, and again on October 13, 2025, and considered written materials presented by the Town Planning Board and Mirabito, and we **HEREBY FIND AND RULE AS FOLLOWS:**

1. Section 230-16 B(2)(b)(6) of the Code states Highway Commercial-Uses Allowed include a "Shopping Center." The Code then refers to the Definition section of the Town Code to determine how a Shopping Center is defined.

2. The relevant portion of the definition of a Shopping Center contained in the Code is “Land planned, improved and managed to accommodate a grouping of two or more commercial uses in one or more buildings designed to share parking, access, signage and other site services: uses commonly included within a shopping center are: retail stores, restaurants, drive-in services, gasoline service stations, indoor recreation and office.”

3. The plain language of the definition of a Shopping Center contained in the Code lists “gasoline service stations” as a use commonly included within a shopping center.

4. Applying the rules of strict construction and ambiguity interpretation against the drafter, we find a gasoline service center is an allowed use in the HC-1 zone if it is part of a Shopping Center.

If the Town Board wishes to change or amend the Code to remove any ambiguity or allowed use change, it is encouraged to do so.

MOTION was seconded by Mr. Porter.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Porter	- in favor	
	Mr. Frantzis	- in favor	
	Deputy Chairperson Liebi	- opposed	
	Chairperson Mason	- in favor	<i>Unanimously Carried.</i>

Case: #1988 – Micron New York Semiconductor Manufacturing, LLC, 5171 State Route 31, Tax Map #046.-02-05.2.:

The applicant is seeking Area Variances pursuant to Section 230-17 D.(4)(b)[1][a] – Front Yard Minimum, for a reduction in the front yard setback from 200 feet to 125 feet to allow for the placement of a monument sign; and a reduction in the front yard setback from 200 feet to 61 feet to install security fencing; Section 230-20 B.(2)(b) – Fences, for a height increase of the said fence from 2.5 feet to 8.5 feet in the required front yard; Section 230-19 A.(4)(b)[1] – Highway Overlay Zone District Requirements, for a reduction in the lot frontage from two times minimum frontage to one time the minimum frontage; Section 230-21 E. – Parking and Loading Spaces, for a reduction from the required minimum of 29,568 parking spaces (per fab) to 2,900 spaces with 2,400 of these to be contained in a parking garage; and a reduction from the required minimum of 252 loading spaces per fab to 36 loading spaces (docks) to accommodate development (Micron Semiconductor Manufacturing Project) at the White Pine Commerce Park. The property location is in the I-2 Industrial 2 Zoning District.

The proof of publication was read by the secretary.

Jeffrey Maidment from Micron Technology was present as well as Micron Attorney, Katie Birchenough and Jacob Raketich of Jacobs Engineering were present on behalf of the applicant.

Chairperson Mason asked the applicant to explain their request for Area Variances.

The applicant presented a PowerPoint slideshow, shown below as **“ZBA Case 1988: Exhibit 1,”** providing details regarding the applicants’ requests.

Chairperson Mason asked the applicant to address the Standards of Proof for each Variance.

The applicant addressed the Standards of Proof, and the responses were the same for all requested Area Variances:

1. The applicant does not believe the requested Area Variances will create an undesirable change to the character of the neighborhood as they are requesting a reduction.
2. The applicant does not believe there is any feasible method other than the requested Area Variances.
3. The applicant does not believe the requested Area Variances to be substantial as they will be reducing the footprint.
4. The applicant does not believe there will be any adverse effect to the neighborhood as they will be creating more greenspace.
5. Yes, the need for the Area Variances is self-created.

Chairperson Mason asked if there were any further comments or questions from the Board and there were none.

Chairperson Mason asked Planning Commissioner Bender if he had any questions or comments, and he had none.

Chairperson Mason asked Code Enforcement Officer Karousos if he had any questions or comments, and he had none.

Chairperson Mason asked if anyone in the audience had any questions or comments and there were none.

Chairperson Mason asked for those who would like to speak in favor of granting the Area Variances and there were none.

Chairperson Mason asked for those who would like to speak against granting the Area Variances and there were none.

The hearing was closed.

MOTION was made by Mr. Frantzis in Case #1988 to **approve** the Area Variances as requested with the condition they be in substantial compliance with Exhibit “A”. Motion was seconded by Mr. Porter.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Porter	- in favor	
	Mr. Frantzis	-in favor	
	Deputy Chairperson Liebi	- in favor	
	Chairperson Mason	- in favor	<i>Unanimously Carried.</i>

Case: #1989 – RailWorks Track Services, LLC, 8625 Caughdenoy Road, Tax Map #046.-02-03.2 and 046.-01-19.1.:

The applicant is seeking Area Variances pursuant to Section 230-17 D.(4)(b)[1][a] – Front Yard Minimum, for a reduction in the required front yard setback from the Caughdenoy Road right-of-way from 200 feet to 18 feet to install seven (7) structural supports for a raised conveyor, and a reduction in the required front yard setback from the Caughdenoy Road right-of-way from 200 feet to 8 feet to install a chain-link fence; Section 230-20 B.(2)(b) – Fences, for a height increase of the said fence in the front yard from the allowed 2.5 feet to 10 feet to accommodate the placement of a Rail Spur and supporting components at the White Pine Commerce Park. The property location is in the I-2 Industrial 2 Zoning District.

The proof of publication was read by the secretary.

Gary Hurta of B&B Engineers and Geologists was present on behalf of the applicant.

Chairperson Mason asked the applicant to explain their request for Area Variances.

Mr. Hurta explained that RailWorks is requesting three (3) Area Variances to allow for construction and operation of a rail spur for material for the Micron Campus adjacent to the CSX Railroad line.

Chairperson Mason asked the applicant to address the Standards of Proof.

Mr. Hurta addressed the Standards of Proof:

1. The applicant does not believe the requested Area Variances will create an undesirable change to the character of the neighborhood as it is in an Industrial Zoning district.
2. The applicant does not believe there is any feasible method other than the requested Area Variances.
3. The applicant does believe the requested Area Variances to be substantial.
4. The applicant does not believe there will be any adverse effect to the neighborhood but rather have a positive impact allowing preservation of three (3) acres of wooded area providing both a visual and noise buffer and would maintain natural habitat for local wildlife.
5. Yes, the need for Area Variances is self-created.

Chairperson Mason asked if the rail spur would go over the road.

Mr. Hurta confirmed it would go over the road and have concrete pillars on each side of the road with concrete foundations to support the structure. They would also have a chain-link fence to prevent vandalization.

Chairperson Mason asked if there were any further comments or questions from the Board.

Mrs. Liebi asked if they would be hauling material 24/7, 12-hours, or off-hours.

Mr. Hurta stated the operating hours would be from 6 A.M. to 10 P.M., then weekly off hour maintenance from 10 P.M. to 6 A.M.

Mrs. Liebi asked if the off-hour maintenance would be quieter than the daily material transportation.

Mr. Hurta confirmed it would be quieter.

Mrs. DesRosier asked if Caughdenoy Road would remain open.

Mr. Hurta stated Caughdenoy Road would be temporarily closed for construction of the rail spur but remain open once construction was complete and the rail spur is operating.

Mrs. DesRosiers asked if the traffic would through the area normally, without disruption.

Katie Birchenough, Micron Attorney, confirmed traffic would flow normally with no disruptions and added that there would only be one additional train going through the area per day.

Chairperson Mason asked Planning Commissioner Bender if he had any questions or comments.

Commissioner Bender added that the rail spur and Main Campus are concurrent with the planning board and is applicable to site plan review.

Chairperson Mason asked Code Enforcement Officer Karousos if he had any questions or comments, and he had none.

Chairperson Mason asked if anyone in the audience had any questions or comments.

Janet Rathburn, 4760 Freestone Road, asked if the Area Variance would stay with the property if/once the rail spur is no longer used or needed.

Chairperson Mason confirmed, Area Variances stay with the parcel.

Chairperson Mason asked for those who would like to speak in favor of granting the Area Variances and there were none.

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Chairperson Mason asked for those who would like to speak against granting the Area Variances and there were none.

The hearing was closed.

MOTION was made by Mr. Frantzis in Case #1989 to **approve** the Area Variances as requested with the condition they be in substantial compliance with Exhibit “A”. Motion was seconded by Deputy Chairperson Liebi.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Porter	- in favor	
	Mr. Frantzis	-in favor	
	Deputy Chairperson Liebi	- in favor	
	Chairperson Mason	- in favor	<i>Unanimously Carried.</i>

There being no further business, Chairperson Mason adjourned the meeting at 7:32 P.M.

Chelsea Clark, Secretary
Zoning Board of Appeals
Town of Clay

A close-up photograph of a pine branch with many long, thin, green needles. The needles are densely packed and radiate from the branch. The background is a soft, out-of-focus green.

ZBA CASE 1988: EXHIBIT 1

MICRON NEW YORK SEMICONDUCTOR
MANUFACTURING FACILITY
ZONING BOARD HEARING PRESENTATION
OCTOBER 13, 2025

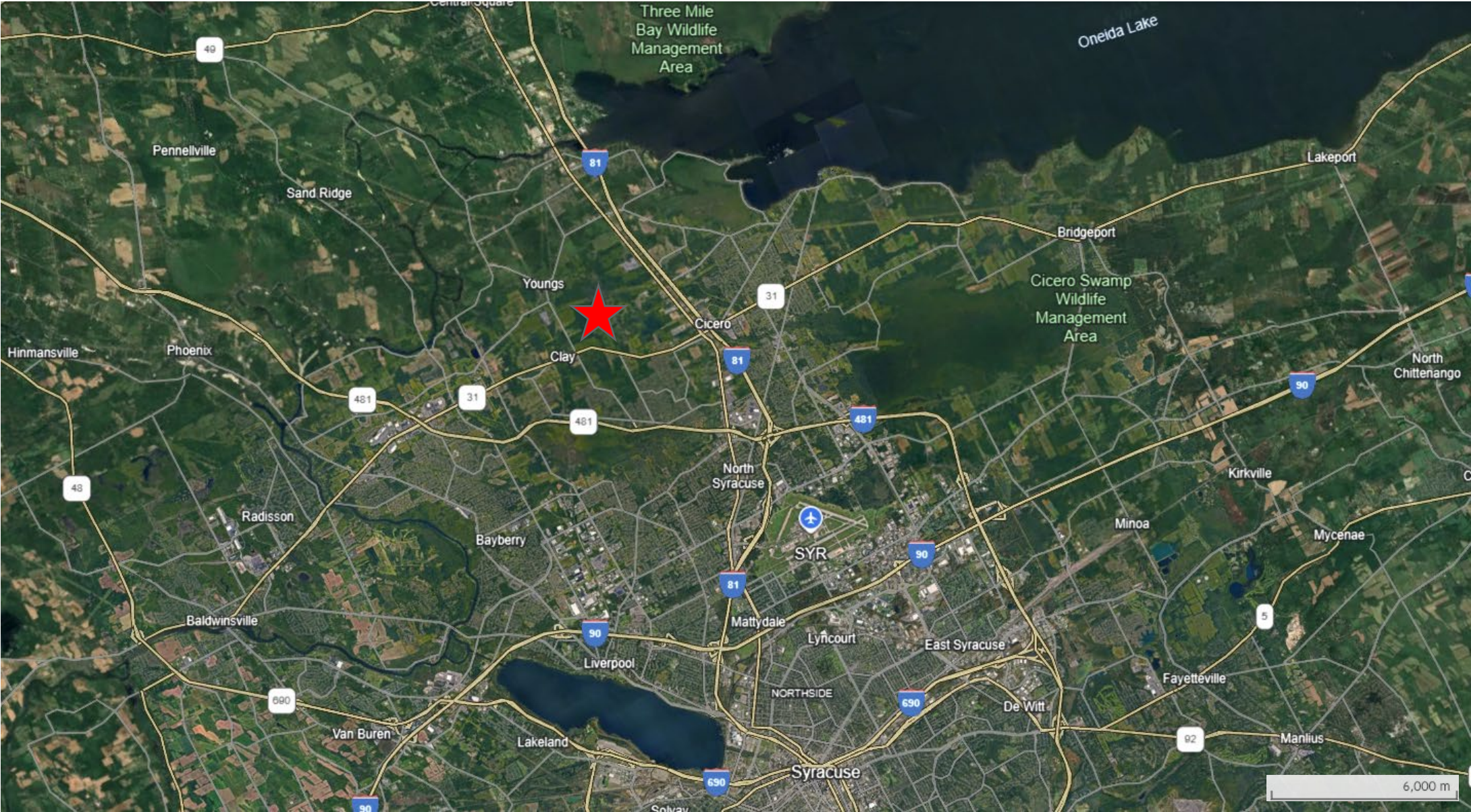


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PROJECT SITE LOCATION

MICRON NEW YORK SEMICONDUCTOR MANUFACTURING SITE - CLAY, NEW YORK



ZBA STANDARD OF PROOF

ZBA STANDARD OF PROOF - CRITERIA FOR ASSESSING VARIANCE REQUESTS

EXCERPT FROM ZONING BOARD OF APPEALS NARRATIVE - SECTION II

II. Standard of Proof

The ZBA is empowered to grant area variances in accordance with Town Law Section 267-b(3) and the Town of Clay Zoning Code (the "Zoning Code"). In deciding whether to grant an area variance, the ZBA must take into consideration "the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant." Town L. § 267-b(3)(b). Further, "[i]n making such determination, the [ZBA] shall consider whether:

- (1) an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- (2) the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, or other area variance;
- (3) the requested area variance is substantial;
- (4) the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (5) the alleged difficulty was self-created, which consideration shall be relevant to the decision of the [ZBA], but shall not necessarily preclude the granting of the area variance.

The five factors set forth above provide guidance for consideration of the issues that must be considered by the ZBA. Importantly, no one factor is dispositive, but rather the ZBA must balance these considerations to weigh the benefit of granting the variance against the detriment to the health, safety and welfare of the surrounding neighborhood or community that would result from such grant.

VARIANCE REQUESTS

(ZBA CASE #1988)

- NUMBER OF REQUIRED LOADING SPACES
- NUMBER OF REQUIRED PARKING SPACES
- FENCE HEIGHT RESTRICTIONS
- SITE SETBACK REQUIREMENTS
- ACCESSORY STRUCTURE REQUIREMENTS

VARIANCE REQUEST #1- RELIEF FROM NUMBER OF REQUIRED LOADING SPACES

TOWN OF CLAY ZONING CODE § 230-21(E)

E. Required parking and loading spaces. The following parking and loading spaces shall be provided and satisfactorily maintained by the owner-occupant of the property for each land use on the property.

<u>Group Name</u>	<u>Minimum Required Parking Spaces</u>	<u>Minimum Required Loading Spaces</u>
Production site (manufacturing)	4/1,000 sq. ft.	1/30,000 sq. ft.

EXCERPT FROM ZONING BOARD OF APPEALS NARRATIVE - SECTION II-A

The Zoning Code requires a minimum of 1 loading space per 30,000 sq. ft. [Zoning Code § 230-21 E.]. Because of the sheer size of Micron’s proposed Fab and ancillary building, culminating in a total square footage of 1.2M sq. ft., Micron would be required to provide a minimum of 252 loading spaces per Fab. Micron’s proposed site plan application² provides for 36 loading docks for the first Fab, which will meet its operation requirements.

Because the number of loading spaces is directly tied to the square footage of Micron’s buildings, Micron cannot achieve a reduction in the minimum loading space requirements without reducing the square footage of its buildings. The square footage of each of Micron’s buildings is carefully designed to align with the production needs of the company, which allows it to maintain its market share in a highly competitive industry.

STANDARD OF PROOF CRITERIA COMPLIANCE

1. No undesirable change will be produced in the character of the neighborhood, nor will a detriment be created to nearby properties through granting this variance. Reducing the number of loading spaces allows the site to be designed to preserve as much green space as possible for its workers, visitors, and the community.
2. The number of loading spaces cannot be reduced without reducing the square footage of the buildings. The square footage of each of Micron’s buildings cannot be feasibly changed because they are carefully designed to align with the production needs of the company.
3. The request is not substantial because it seeks to reduce the overall footprint of the site and align the number of loading spaces with the needs of the business, including its projected daily deliveries.
4. The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Reducing the number of loading spaces reduces the impervious surfaces on site and allows more efficient site utilization. This approach preserves more of the remaining wetlands and habitats on site.
5. The difficulty of meeting the minimum number of loading spaces was not self created. The square footage and footprint of Micron’s Fabs and ancillary buildings are carefully aligned with its production goals to maintain a competitive position in a strategically important industry.



VARIANCE REQUEST #1- RELIEF FROM NUMBER OF REQUIRED LOADING SPACES



LOADING DOCK SUMMARY

	REQUIRED	PROVIDED
ADMIN/PROBE	32	9
FAB	130	19
CUB (MOD 1 & 2)	25	1
HPM1-S	8	3
BSGS1-S	2	0
HPM1-N	8	3
BSGS1-N	2	0
WWT (MOD 1 & 2)	45	1
TOTAL	252	36

LEGEND

- PROPOSED BUILDING FOOTPRINT
- BUILDING FOOTPRINT - FUTURE
- PROPOSED ENCLOSED TRESTLE
- PROPOSED TRUCK OFFLOADING AREA
- PROPOSED DETENTION AREA
- TEMPORARY DETENTION AREA
- PROPOSED ROAD

 LIMIT OF DISTURBANCE PROPERTY LINE SETBACK LINE PROPOSED FENCELINE SECURITY GATE

VARIANCE REQUEST #2- RELIEF FROM NUMBER OF REQUIRED PARKING SPACES

TOWN OF CLAY ZONING CODE § 230-21(E)

E. Required parking and loading spaces. The following parking and loading spaces shall be provided and satisfactorily maintained by the owner-occupant of the property for each land use on the property.

<u>Group Name</u>	<u>Minimum Required Parking Spaces</u>	<u>Minimum Required Loading Spaces</u>
Production site (manufacturing)	4/1,000 sq. ft.	1/30,000 sq. ft.

EXCERPT FROM ZONING BOARD OF APPEALS NARRATIVE - SECTION II-B

The Zoning Code requires a minimum of 4 parking spaces per 1,000 sq. ft. [Zoning Code § 230-21 E]. Because of the sheer size of Micron’s proposed Fab and ancillary building, culminating in a total square footage of 1.2M sq. ft., Micron would be required to provide a minimum of 29,568 parking spaces per Fab. Micron’s proposed site plan application provides for 500 surface parking spaces and 2,400 parking garage spaces for the first Fab. Therefore, Micron is seeking a variance to reduce the number of parking spaces required for its first Fab.

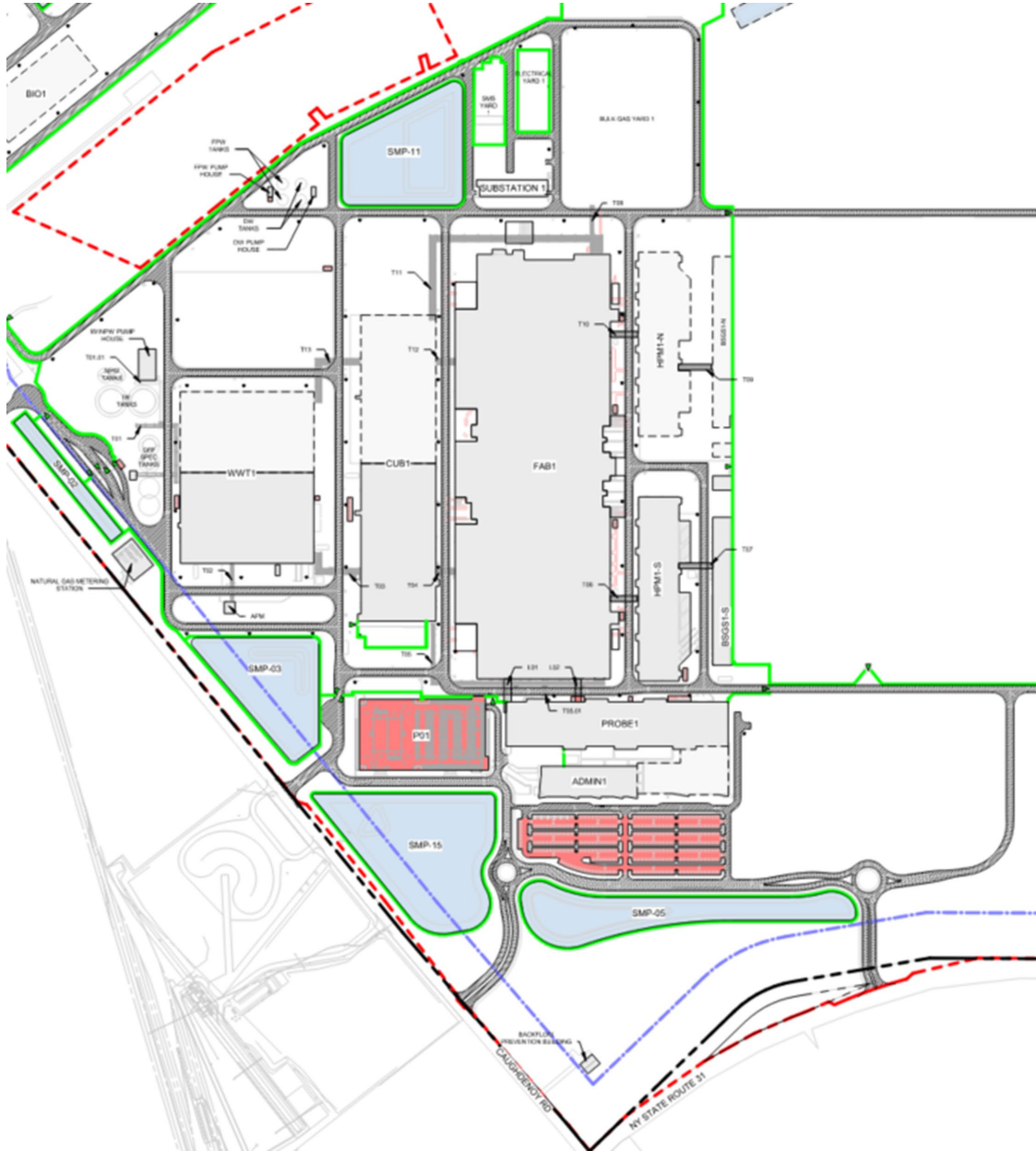
Micron values the importance of green space on its campuses and seeks to maintain as much as practicable for its employees, visitors, and neighbors. Allowing a reduction in parking spaces allows Micron to reduce the number of surface area parking lots in order to maintain this green space. Therefore, allowing Micron to reduce the number of required parking spaces does not result in an undesirable change to the character of the neighborhood or detriment to nearby properties, but rather allows the area to maintain some natural vegetation and green space.

STANDARD OF PROOF CRITERIA COMPLIANCE

1. No undesirable change will be produced in the character of the neighborhood, nor will a detriment be created to nearby properties through granting this variance. Reducing the number of parking spaces allows the area to maintain as much natural vegetation and green space as practicable for its workers, visitors, and neighbors.
2. The number of parking spaces cannot be reduced without reducing the square footage of the buildings. The square footage of each of Micron’s buildings cannot be feasibly changed because they are carefully designed to align with the production needs of the company.
3. The request is not substantial because it seeks to reduce the overall footprint of the site and align the number of loading spaces with the needs of the business, including its projected workforce and visitors.
4. The request will have beneficial effects rather than adverse effects or impact on the physical or environmental conditions in the neighborhood or district. The U.S. Army Corps. of Engineers and the NYS Department of Environmental Conservation have requested that Micron reduce the number of parking spaces to reduce impacts on wetlands and habitat areas. The number of parking spaces in the site plan reflects this request and preserves as much green space, wetland, and habitats as possible.
5. The difficulty of meeting the minimum number of loading spaces was not self created. The square footage and footprint of Micron’s Fabs and ancillary buildings are carefully aligned with its production goals to maintain a competitive position in a strategically important industry.



VARIANCE REQUEST #2- RELIEF FROM NUMBER OF REQUIRED PARKING SPACES

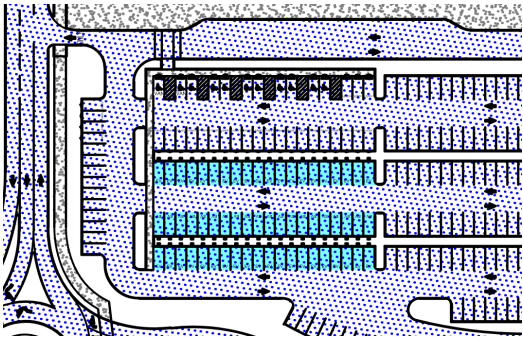


PARKING SUMMARY

	REQUIRED	PROVIDED
ADMIN/PROBE	3,852	
FAB	15,698	
CUB (MOD 1 & 2)	2,498	
HPM1-S	856	
BSGS1-S	208	
HPM1-N	856	
BSGS1-N	208	
WWT (MOD 1 & 2)	5,392	
TOTAL	29,568	3,005 (19 MOTORCYCLE, 10 GOLF CART)

EV PARKING SPACES

The project has 60 designated EV spots in the surface parking lot (shown in blue).



LEGEND

- PROPOSED BUILDING FOOTPRINT
- BUILDING FOOTPRINT - FUTURE
- PROPOSED ENCLOSED TRESTLE
- PROPOSED PARKING
- PROPOSED DETENTION AREA
- TEMPORARY DETENTION AREA
- PROPOSED ROAD

LIMIT OF DISTURBANCEPROPERTY LINESETBACK LINEPROPOSED FENCELINESECURITY GATE

VARIANCE REQUEST #3- RELIEF FROM FENCE HEIGHT RESTRICTIONS

TOWN OF CLAY ZONING CODE § 230-17(D)(5)(c)(2)

[2] Any open storage of materials or waste shall be screened from view from all property lines with a seven-foot-high fence, hedge or similar opaque barrier. Such screening shall comply with applicable setbacks.

EXCERPT FROM ZONING BOARD OF APPEALS NARRATIVE - SECTION II-C

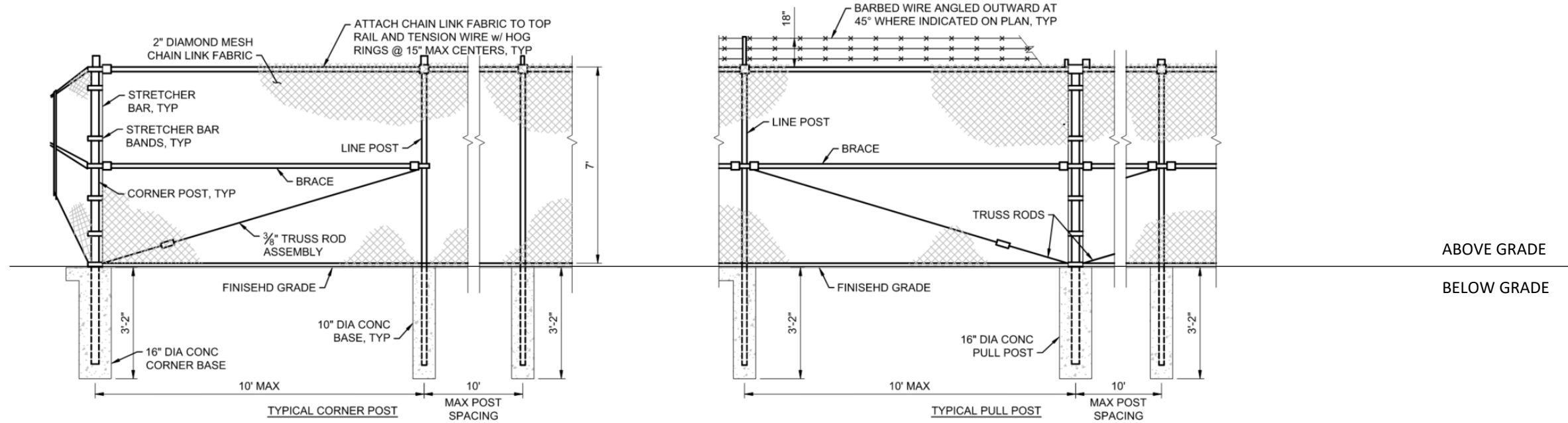
The Zoning Code requires 7-foot high fences [Zoning Code § 230-17(D)(5)]. Micron’s site plan application provides an 8.5-foot-high perimeter fence which includes a 7-foot fence with 18 inches of barbed wire on top. Semiconductor manufacturing requires strict protocols for the security and safety of the site. Micron’s top priority is the health and safety of its workforce, site visitors, and the general public. This requires robust security measures including limited site access, credential badging, and other measures to ensure that certain areas of the site, including areas like the bulk gas yards, the HPM buildings, and substations, are accessed only by those who are specialty trained to access these areas of the site. In addition to safety, Micron must also ensure security of its facilities and its products. The semiconductor industry is highly competitive and can often be a target of unauthorized removal of data or hardware. In order to protect its intellectual property, products, and its manufacturing process, Micron requires a multi-layered security protocol which includes perimeter barriers, 24/7 surveillance, security monitoring stations, badging and full-body metal detectors. An 8.5-foot fence is an integral part of this multi-layered security protocol.

STANDARD OF PROOF CRITERIA COMPLIANCE

1. No undesirable change will be produced in the character of the neighborhood, nor will a detriment be created to nearby properties because the property is located in an industrial zone, where similar security measures are common and expected. The fencing will be professionally installed and maintained to ensure visual compatibility with the area.
2. Micron’s security standard cannot be met by other means because a shorter fence does not provide sufficient deterrence against unauthorized access to the site. A taller perimeter fence must be used in addition to other security measures as the first line of protection for Micron’s workers, guests, and the public.
3. The request is not substantial within the I-2 zone, where it is common to have taller perimeter fencing, proportionate to the industrial use and operational security of manufacturing and other industrial businesses.
4. The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The fence will be professionally installed and will not impact drainage or other onsite environmental considerations such as wetlands.
5. The taller fence requirement is caused by the sensitivity and safety needs of Micron’s operations but is consistent with other industrial manufacturing operations in the I-2 zone. This should not preclude the granting of this request because it does not negatively affect the surrounding area and provides safety benefits to Micron’s workers, guests, and the public.



VARIANCE REQUEST #3- RELIEF FROM FENCE HEIGHT RESTRICTIONS



Visualization of fencing at campus perimeter



13 CHAIN LINK FENCE
NTS

VARIANCE REQUEST #4- RELIEF FROM SETBACK REQUIREMENTS FOR CERTAIN STRUCTURES

EXCERPT FROM ZONING BOARD OF APPEALS NARRATIVE - SECTION II-D

The Zoning Code provides that in the I-2 zone, properties must have a minimum front yard setback of 200 feet from a state or county highway and 50 feet from a town or private highway. Additionally, the Zoning Code provides a minimum setback of 25 feet for side and rear yards [Zoning Code § 230-17 D(4)(b)].

The WPCP is located along NYS Route 31 between NYS Route 11 and Caughdenoy Road. Burnet Road runs north and south in the middle of the WPCP. The location of the WPCP along these roadways places the proposed project in a highway overlay district. The highway overlay district applies to lots adjacent to or abutting designated highways and imposes dimensional controls in addition to underlying zone district requirements [Zoning Code §230-19(A)(2)].

Therefore, additional considerations related to the standard setback requirements for the I-2 zone are required for the proposed project. Specifically, pursuant to the Zoning Code, Route 31 is considered a Type A highway requiring two times the minimum frontage. This would typically require a front yard setback of 400 feet. [Zoning Code §§230-19(3)(b) and (4)(b)(1)]. Additionally, Caughdenoy Road is listed as a Type C highway typically requiring 1.5 times the minimum frontage resulting in a front yard setback of 300 feet. [Zoning Code §§230-19(3)(b) and (4)(b)(1)]. However, the WPCP is considered a corner lot, and therefore pursuant to the highway overlay district corner lot requirements, the WPCP must have a 250-foot setback requirement along Route 31 and Caughdenoy Road, measured from the road's right-of-way edge [Zoning Code § 230-19(A)(6)(a)].

EXCERPT FROM ZONING BOARD OF APPEALS NARRATIVE - SECTION II-D

Request Summary

For the purposes of this application, which seeks variances for construction and operation of Micron's first Fab, Micron is seeking relief from the minimum setback requirements along Route 31 and Caughdenoy Road.³ Additionally, Micron seeks relief from the 50-foot setback required for Burnet Road. Importantly, Micron's design and request for a variance to the setback requirements takes into consideration potential future expansions of Route 31 and Caughdenoy Road and maintains space for any future expansion of these roadways. [Zoning Code § 230-19(A)(1)]. Within the setback requirement, Micron will propose the following accessory structures:

PROPOSED ACCESSORY STRUCTURES WITHIN SETBACK

1. Safety and Security Needs (Fencing, Lighting, Landscaping)

Micron is seeking relief from the setback requirements to allow for an 8.5-foot perimeter fence, landscaping, and lighting within the setback areas along Route 31, Caughdenoy Road and Burnet Road as well as relief to erect fences around the stormwater retention ponds that are within setbacks.

2. Other Structures (Monument Sign and Rail Spur Conveyance Footings)

Micron anticipates a monument sign and structural foundations for the adjacent rail spur conveyance system will need to be located within the setback limitations. The monument sign is proposed to be located near the main entrance of the campus along Caughdenoy Road. Micron seeks relief to place structural foundations for the conveyance system associated with the adjacent rail spur site within the setback on Caughdenoy Road.

VARIANCE REQUEST #4- RELIEF FROM SETBACK REQUIREMENTS FOR CERTAIN STRUCTURES

STANDARD OF PROOF CRITERIA COMPLIANCE

Safety and Security Needs (Fencing, Lighting, Landscaping)

1. No undesirable change will be produced in the character of the neighborhood, nor will a detriment be created to nearby properties because the property is located in an industrial zone, where similar security measures are common and expected. The fencing, landscaping, and lighting would not impact traffic along Route 31 and Caughdenoy Road and would provide a natural visual barrier to the site.
2. Micron's security standard cannot be met by other means because a fence outside of the setback areas constrains the design of the critical buildings necessary for semiconductor manufacturing.
3. The request is not substantial within the I-2 zone, where it is common to have perimeter fencing, landscaping buffers, lighting, and fences around secure locations where the design is proportionate to the industrial use and operational security of manufacturing and industrial businesses.
4. The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The fences will be professionally installed and will not impact drainage or other onsite environmental considerations such as wetlands. Environmental impacts are minimized to stay within the "limits of disturbance" (LOD) as shown on the Site Master Plan.
5. The need for perimeter fencing, landscaping, lighting and stormwater pond fencing is caused by the sensitivity and safety needs of Micron's operations as well as Micron's desire to provide green space on its campuses for its employees, visitors, and neighbors. These features are consistent with other industrial manufacturing operations in the I-2 zone.

STANDARD OF PROOF CRITERIA COMPLIANCE

Other Structures (Monument Sign and Rail Spur Conveyance Footings)

1. No undesirable change will be produced in the character of the neighborhood, nor will a detriment be created to nearby properties by the proposed monument sign because it is typical for industrial businesses in the area. Additionally, the rail spur conveyance system footings specifically, which are the subject of this request, would not impact the character of the neighborhood.
2. The ability for Micron to designate its main entrance, especially for visitors who may be unfamiliar with the campus, cannot be achieved by other means outside of the setback area. The benefits of the rail spur cannot be achieved without the footings located within the setback because the alternative would be trucking aggregate materials from the rail spur across Caughdenoy Road during peak construction of the project and increase truck traffic, which would defeat the intention of the rail spur site.
3. The request to locate a monument sign at the main entrance is not substantial because it is typical for industrial facilities and assists the public in identifying the proper entrance to the site. While the rail spur system would be a change to the area, the footings specifically, which are the subject of this request, are not a substantial change to the area.
4. The placement of a monument sign will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district but would provide a benefit to drivers allowing quick identification of the campus entrance. Additionally, the rail spur footings would not create an undesirable change to the character of the neighborhood.
5. The need for a monument entrance sign is a hardship that is self-created but should not preclude the granting of a variance because it is not substantial, there is no alternative, and would not change the character of the neighborhood nor cause environmental impact. Similarly for the rail spur footings, the only alternative is to eliminate the rail spur site, which would increase the environmental impacts to the region and significantly delay the project.

VARIANCE REQUEST #4- RELIEF FROM SETBACK REQUIREMENTS FOR CERTAIN STRUCTURES

TOWN OF CLAY ZONING CODE § 230-17 D(4)(b)

- (4) Industrial 2 lot and structure dimensional requirements. [Note: When a lot is surrounded on all sides (including across a highway ROW) by other industrial zones, the standards with the asterisk (*) apply.]
- (b) Principal structures and attached accessory structures.

[1] Front yard minimum:

[a] NYS or county highway:200 feet.

[b] Town or private highway:50 feet.

[2] Side yard minimum:25 feet.

[3] Rear yard minimum:25 feet.

[4] Maximum height:n/a.

[5] Maximum gross floor area:n/a.

[6] Maximum number of floors:n/a.

TOWN OF CLAY ZONING CODE § 230-19 A(2)

- (2) **Application.** The Highway Overlay Zone District applies to lots adjacent to or abutting designated highways. This overlay district imposes dimensional controls in addition to the conventional underlying zone district requirements. In the event that there is a difference or conflict with other sections of this code, then the more restrictive or largest minimum requirements shall apply.

TOWN OF CLAY ZONING CODE § 230-19 A(3)(b)

Type A	Type B	Type C
NYS Route 31	Morgan Road	Bear Road
	Route 11	Buckley Road
	Route 57 (Oswego Road)	Caughdenoy Road
	I-481	VerPlank Road
	South Bay Road	Vine Street
	East and West Taft Roads	Wetzel Road (Buckley Road
	Henry Clay Boulevard	to Route 57)
	(Route 31 to south Town line)	Henry Clay Boulevard (Route 31 north
		to Oak Orchard Road)

TOWN OF CLAY ZONING CODE § 230-19 A(4)(b)(1)

- (b) Requirements.

- [1] Schedule.

<u>Lot Area and Frontage</u>	<u>Lots with Access</u>	<u>Lots without Access</u>
Lot area, minimum		
Type A	2 times minimum area	Conventional zone district
Type B	1.75 times minimum area	Conventional zone district
Type C	1.5 times minimum area	Conventional zone district
Minor highway	1.25 times minimum area	Conventional zone district
Lot frontage, minimum		
Type A	2 times minimum frontage	Conventional zone district
Type B	1.75 times minimum frontage	Conventional zone district
Type C	1.5 times minimum frontage	Conventional zone district
Minor highway	1.25 times minimum frontage	



VARIANCE REQUEST #4- RELIEF FROM SETBACK REQUIREMENTS FOR CERTAIN STRUCTURES

TOWN OF CLAY ZONING CODE § 230-19 A(6)(a)

(6) Highway Overlay District corner lot requirements.

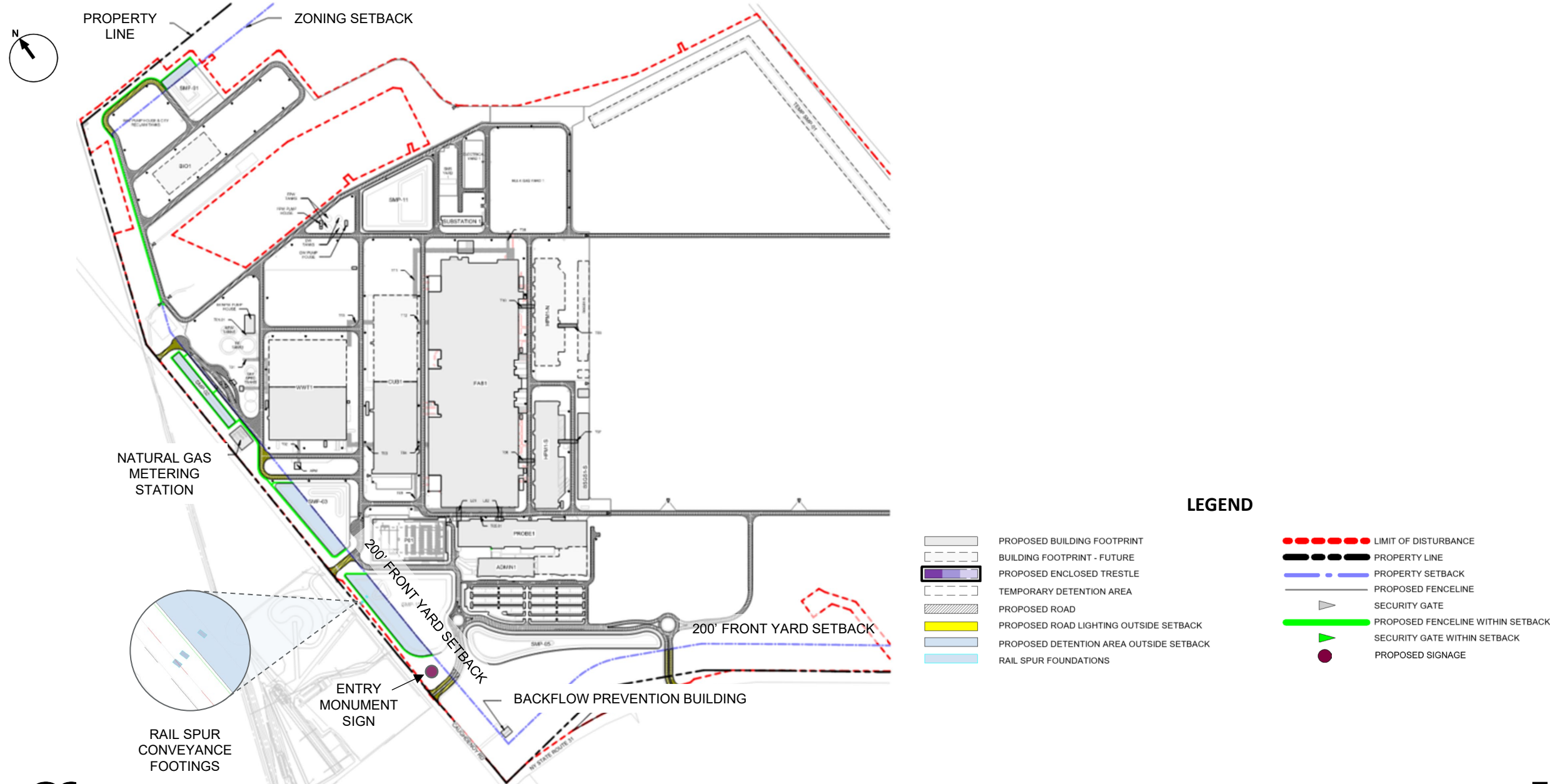
- (a) Lots situated at the intersection of a Type A, B, or C highway and a minor highway or a nondesignated highway shall have a minimum depth, measured along the nondesignated ROW, of 250 feet from the Type A, B, or C highway right-of-way edge.

TOWN OF CLAY ZONING CODE § 230-19 A(4)(b)(1)

A. Highway Overlay Zone District.

- (1) *Intent. The purpose of this overlay district is to foster and maintain a balance between major highways or roads within the Town and private development on lands abutting these roads. These major routes are identified, from time to time, based on variety of factors. These factors include traffic volume, highway functional classification, portion and extent of the Town served by that route. The balance between road and development sought is to protect the proper function of the highway by minimizing adverse effects of development on highway safety or efficiency; to preserve the long-term ability for a highway to improve and expand; and to protect abutting development from adverse effects of the highway. This overlay district attempts to achieve this balance by superimposing on the conventional underlying zone districts additional standards upon vehicular access points, and lot width, depth and setbacks. This district will not alter the allowable land uses permitted within any district affected.*

VARIANCE REQUEST #4- RELIEF FROM SETBACK REQUIREMENTS FOR CERTAIN STRUCTURES



VARIANCE REQUEST #5- ACCESSORY STRUCTURE REQUIREMENTS

EXCERPT FROM ZONING BOARD OF APPEALS NARRATIVE - SECTION II-E

As discussed above, the Zoning Code provides that in the I-2 zone with a highway overlay district, properties must have a minimum front yard setback of 250 feet from Route 31 and Caughdenoy Road. The Zoning Code I-2 district also requires a minimum setback of 25 feet for side and rear yards. [Zoning Code §230-17 D(4)(b)-(c)].⁶ The Zoning Code's Supplemental Regulations further require accessory buildings to be located behind the principal building and comply with any applicable corner lot requirements. [Zoning Code §230-20(a)]. A principal structure is defined as "a building, structure or mechanical equipment designed, built, occupied, or used by the principal land use activity allowed on the lot." [Zoning Code §230-11]. In contrast, an accessory structure is defined as:

TOWN OF CLAY ZONING CODE § 230-11

STRUCTURE, ACCESSORY -- A building, structure or mechanical equipment or decorative device attached to or detached from a principal structure, located on the same lot or property and is subordinate and incidental to the use of the principal structure. The term includes improvements such as: mailboxes, fences, garages, storage sheds, waste disposal equipment, antennas, swimming pools, parking/loading areas and signs. [Added 12-15-2014 by L.L. 1-2015]

To comply with the Zoning Code, all of the indicated Accessory Structures would have to be to the rear (north) of the Bulk Gas Yard. Placing the accessory structures in this location would have significant impacts on the functionality and efficiency of manufacturing.

Note: For this project, Micron has delineated the principal and secondary structures, diagramed on slide 21. See sheet PMT_B000_A0_0303 for full size drawing.

STANDARD OF PROOF CRITERIA COMPLIANCE

1. No undesirable change will be produced in the character of the neighborhood, nor will a detriment be created to nearby properties. The accessory structures that can be seen from the roadways have been intentionally designed with appealing facades, landscaped entrances and courtyards, and screening of unsightly equipment.
2. The benefits sought by this request cannot be achieved by other methods. The needs of the fab and supporting structures have been engineered and designed in a highly technical manner that allows for the optimization of operations for this complex facility.
3. While the request may seem substantial, the alternate of placing the accessory structures behind the principal use causes other more substantial issues to the operational needs of the site, the impact to community character, and the environment. The site is constrained by wetland habitats to the north, making it virtually impossible to rearrange the buildings on the site.
4. The proposed placement of the accessory structures takes into consideration the least environmentally consequential locations and layout for the site as discussed with regulatory agencies USACE and NYSDEC throughout the permitting process.
5. The hardship is not self-created but is a result of the operational needs of the industry, the scale of the campus which impacts pedestrian walking distance considerations, and the site constraints that exist, including the federal and state-regulated wetlands in the north of the property which this site plan intentionally preserves.

VARIANCE REQUEST #5- ACCESSORY STRUCTURE REQUIREMENTS

TOWN OF CLAY ZONING CODE § 230-17 D(4)(b-c)

- (4)

Industrial 2 lot and structure dimensional requirements. [Note: When a lot is surrounded on all sides (including across a highway ROW) by other industrial zones, the standards with the asterisk (*) apply.]
- (a)

Lot.

[1] Area, minimum:

n/a.

[2] Width, minimum:

n/a.

[3] Depth, minimum:

n/a.

[4] Coverage, maximum building:

60% ; *75%.

[5] Coverage, maximum total:

80%; *90%.
- (b)

Principal structures and attached accessory structures.

[1] Front yard minimum:

[a] NYS or county highway:

200 feet.

[b] Town or private highway:

50 feet.

[2] Side yard minimum:

25 feet.

[3] Rear yard minimum:

25 feet.

[4] Maximum height:

n/a.

[5] Maximum gross floor area:

n/a.

[6] Maximum number of floors:

n/a.
- (c)

Accessory structures, detached.

[1] Front yard minimum:

existing principal structure rear line.

[2] Side yard setback:

25 feet.

[3] Rear yard setback:

25 feet.

[4] Maximum height:

same as principal structure.

VARIANCE REQUEST #5- ACCESSORY STRUCTURE REQUIREMENTS



Accessory Structure: A structure or mechanical equipment or decorative device attached or detached from the principal structure.

PRIMARY AND ACCESSORY STRUCTURES

PRIMARY STRUCTURES	ACCESSORY STRUCTURES
FAB BUILDING	PARKING GARAGE 1
CUB BUILDING	SURFACE PARKING LOT 2
PROBE BUILDING	GUARD HOUSE 3
ADMIN BUILDING	ELECTRICAL YARD 4
WWT BUILDING	PUMP HOUSES 5
HMP BUILDING	TANK YARD 6
BSGS YARD	SUBSTATION 7
BULK GAS YARD	SECURITY FENCE 8
	MONUMENT SIGN 9
	RAIL SPUR FOUNDATIONS 10

LEGEND

- PROPOSED PRIMARY STRUCTURES
- PROPOSED ACCESSORY STRUCTURES
- PROPOSED DETENTION AREA
- TEMPORARY DETENTION AREA
- PROPOSED ROAD
- MONUMENT SIGN
- RAIL SPUR FOUNDATIONS
- LIMIT OF DISTURBANCE
- PROPERTY LINE
- SETBACK LINE
- PROPOSED FENCELINE BEHIND SETBACK LINE
- PROPOSED FENCELINE WITHIN SETBACK

PERMITTING DRAWING LIST

PERMITTING DRAWING LIST

- Full size Project Permitting Drawings are on file with the Town of Clay, New York.
- Issued for Permit – August 28th, 2025

DRAWING	DRAWING TITLE
Site Plan Application & Exist. Conditions	
SITE PLAN APPLICATION AND DISCLOSURE AFFIDAVIT	
REFERENCE SPREADSHEET - OUTLINES SPA SUBMITTAL REQUIREMENTS AND CORRESPONDING REFERENCE MATERIAL	
COPY OF CURRENT DEED WITH LEGAL DESCRIPTION	
EXISTING EASEMENT DOCUMENT - SITE SURVEY	
PMT_B000_A0_0100	000 - SITE - ARCHITECTURAL SITE PLAN APPROVAL OVERALL PLAN EXISTING SITE AND SCOPE OF WORK
0	08/28/2025

DRAWING	DRAWING TITLE
Site Master Plan	
PMT_B000_A0_0110	000 - SITE - ARCHITECTURE SITE PLAN APPROVAL OVERALL PLAN ALL PHASES
0	08/28/2025
PMT_B000_A0_0111	000 - SITE - ARCHITECTURE SITE PLAN APPROVAL OVERALL PLAN ALL PHASES
0	08/28/2025
PMT_B000_A0_0112	000 - SITE - ARCHITECTURE SITE PLAN APPROVAL OVERALL PLAN PHASE 1
0	08/28/2025

DRAWING	DRAWING TITLE
Project Visualization	
PMT_B000_A0_0150	000 - SITE - ARCHITECTURAL SITE PLAN APPROVAL OVERALL SITE VIEW
0	08/28/2025
PMT_B000_A0_0151	000 - SITE - ARCHITECTURAL PROJECT VISUALIZATION OVERALL PLAN VIEW
0	08/28/2025
PMT_B000_A0_0152	000 - SITE - ARCHITECTURAL PROJECT VISUALIZATION OVERALL LOOKING NORTHEAST
0	08/28/2025
PMT_B000_A0_0153	000 - SITE - ARCHITECTURAL PROJECT VISUALIZATION OVERALL LOOKING SOUTHWEST
0	08/28/2025
PMT_B000_A0_0154	000 - SITE - ARCHITECTURAL PROJECT VISUALIZATION PERSPECTIVE FRONT OF HOUSE (OFFICE)
0	08/28/2025
PMT_B000_A0_0155	000 - SITE - ARCHITECTURAL PROJECT VISUALIZATION PERSPECTIVE GROUND VIEW OF WW11 LOOKING NORTH
0	08/28/2025
PMT_B000_A0_0156	000 - SITE - ARCHITECTURAL PROJECT VISUALIZATION PERSPECTIVE GROUND VIEW OF FAB1 LOOKING SOUTH
0	08/28/2025
PMT_B000_A0_0157	000 - SITE - ARCHITECTURAL PROJECT VISUALIZATION PERSPECTIVE STREET VIEW FROM XX
0	08/28/2025
PMT_B000_A0_0158	000 - SITE - ARCHITECTURAL PROJECT VISUALIZATION PERSPECTIVE STREET VIEW FROM XX
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PMT_B000_A0_0160	000 - SITE - ARCHITECTURAL PROJECT VISUALIZATION PERSPECTIVE STREET VIEW FROM XX
0	08/28/2025
PMT_B000_A0_0161	000 - SITE - ARCHITECTURAL PROJECT VISUALIZATION PERSPECTIVE STREET VIEW FROM XX
0	08/28/2025

DRAWING	DRAWING TITLE
Site Plan and Project Elements	
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0	08/28/2025
PMT_B000_A0_0201	000 - SITE - ARCHITECTURE STORM DRAINAGE OVERALL PLAN COWARDIN WETLANDS
0	08/28/2025
PMT_B000_A0_0202	000 - SITE - ARCHITECTURE SITE PLAN APPROVAL OVERALL PLAN UTILITY CORRIDORS
0	08/28/2025
PMT_B000_A0_0203	000 - SITE - ARCHITECTURE SITE PLAN APPROVAL OVERALL PLAN CIRCULATION
0	08/28/2025
PMT_B000_A0_0204	000 - SITE - ARCHITECTURE SITE PLAN APPROVAL OVERALL PLAN DUMPSTERS
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PMT_B000_A0_0205	000 - SITE - ARCHITECTURE SITE PLAN APPROVAL OVERALL PLAN FIRE RESPONSE
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PMT_B000_A0_0206	000 - SITE - ARCHITECTURE SITE PLAN APPROVAL OVERALL PLAN WATER MANAGEMENT
0	08/28/2025
PMT_B000_A0_0207	000 - SITE - ARCHITECTURE SITE PLAN APPROVAL OVERALL PLAN LIGHTING
0	08/28/2025
PMT_B000_A0_0208	000 - SITE - ARCHITECTURE SITE PLAN APPROVAL OVERALL PLAN CONSTRUCTION LOGISTICS
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PMT_B000_A0_0250	000 - SITE - ARCHITECTURAL SITE PLAN APPROVAL OVERALL PLAN SIGNAGE
0	08/28/2025
PMT_B000_A0_0251	000 - SITE - ARCHITECTURAL SITE PLAN APPROVAL ELEVATIONS AND DETAILS SIGNAGE
0	08/28/2025

DRAWING	DRAWING TITLE
Overall Building Elevs.	
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0	08/28/2025
111_B000_A0_7401	111 - FAB - ARCHITECTURAL
0	08/28/2025
111_B000_A0_7402	111 - FAB - ARCHITECTURAL
0	08/28/2025
121_B000_A0_7400	121 - CUB - ARCHITECTURAL
0	08/28/2025
121_B000_A0_7401	121 - CUB - ARCHITECTURAL
0	08/28/2025
131_B000_A0_7400	131 - RPM - ARCHITECTURAL
0	08/28/2025
141_B000_A0_7401	141 - ADMIN - ARCHITECTURAL
0	08/28/2025
151_B000_A0_7400	151 - PROBE - ARCHITECTURAL
0	08/28/2025
161_B000_A0_7400	161 - WW1 - ARCHITECTURAL
0	08/28/2025
161_B000_A0_7401	161 - WW1 - ARCHITECTURAL
0	08/28/2025

DRAWING	DRAWING TITLE
Proposed Variances	
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0	08/28/2025
PMT_B000_A0_0301	000 - SITE - ARCHITECTURAL SITE PLAN APPROVAL OVERALL PLAN VARIANCE - PARKING
0	08/28/2025
PMT_B000_A0_0302	000 - SITE - ARCHITECTURAL SITE PLAN APPROVAL OVERALL PLAN VARIANCE - SITE SETBACK
0	08/28/2025
PMT_B000_A0_0303	000 - SITE - ARCHITECTURAL SITE PLAN APPROVAL OVERALL PLAN VARIANCE - PRIMARY AND ACCESSORY STRUCTURES
0	08/28/2025

DRAWING	DRAWING TITLE
Landscape Concept and Elements	
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0	08/28/2025
PMT_B000_L0_0201	000 - SITE - LANDSCAPE SITE PLAN APPROVAL ENLARGEMENT PLANS 1
0	08/28/2025
PMT_B000_L0_0202	000 - SITE - LANDSCAPE SITE PLAN APPROVAL ENLARGEMENT PLANS 2
0	08/28/2025
PMT_B000_L0_0203	000 - SITE - LANDSCAPE SITE PLAN APPROVAL ENLARGEMENT PLANS 3
0	08/28/2025
PMT_B000_L0_0204	000 - SITE - LANDSCAPE SITE PLAN APPROVAL PLANTING DETAILS
0	08/28/2025
PMT_B000_L0_0205	000 - SITE - LANDSCAPE SITE PLAN APPROVAL NOTES & SCHEDULES
0	08/28/2025

END OF ZBA CASE 1988: EXHIBIT 1





One Lincoln Center | Syracuse, NY 13202-1355 | bsk.com

KATHLEEN M. BENNETT, ESQ.
kbennett@bsk.com
P: 315.218.8631
F: 315.218.8741

September 24, 2025

VIA HAND DELIVERY

Re: *Planning Board Request for Interpretation*

Dear ZBA Members:

Kelly Tobin Development Corp. (the "Owner") owns a parcel of real property located at Route 31 and Lawton Road, identified as Tax Map Parcel No. 077.-34-17.1 (the "Property"). The Owner, together with Mirabito Energy Projects ("Mirabito"), is seeking to develop the Property with a proposed shopping center with fuel and drive-in services (the "Project"). During initial discussions with the Town Planning Department, former Planning Commissioner Mark Territo indicated that the proposed drive-thru's would require special use permits, but the proposed fueling service did not require a special use permit. See Exhibit A.

Upon obtaining the required special use permits for the proposed drive-thru uses, the Owner/Mirabito submitted an application for site plan approval for the proposed shopping center. Following review of the site plan application, Town Code Enforcement Officer Joe Grispino issued the following email:

- 1 Section 230-11, Terms Defined, Shopping Center. The phrase "uses commonly included" does not mean that they are always allowed
- 2 The extant zone is HC-1, Highway Commercial. Gasoline service station is not listed as an allowed use.
- 3 RC-1, Regional Commercial. Gasoline service station is listed as an allowed use by Town Board Special Permit.
- 4 Section 230-10, Applicability, D. "Uses not permitted. All uses not specifically permitted in a district by right or permitted upon issuance of a site plan or special permit approval shall be deemed prohibited in that district."
- 5 Therefore, the interpretation of the CEO is that gasoline service stations are not allowed in HC-1 zoning districts. The acting Commissioner of Planning agrees with this interpretation.
- 6 In the instance of a disagreement with the interpretation of the CEO, an aggrieved party (applicant, Planning Board, etc.), can apply to the Town Zoning Board of Appeals for their interpretation, which would be final.
- 7 The applicant could apply to the Town Board for a change of Zone from HC-1 to RC-1. Russ Mitchell and I agree that this would be the best action for all concerned.
- 8 Upon recent research, we have not found any existing gasoline service stations in an HC-1 district. They all appear to be in RC-1 or LuC-1 districts.
- 9 If the Town were to allow this gasoline service station to be the first and only one to be allowed in an HC-1 district, we would be open to public criticism or lawsuits for not continuing to follow the Town Zoning Code.

August 19, 2025
Page 2

Former Planning Commissioner David Tessier agreed with the email as indicated in an email to Town Supervisor Damian Ulatowski dated June 3, 2025. See Exhibit B.

In light of the comments provided by the Town's Code Enforcement Officer, the Town of Clay Planning Board requested an interpretation of the Town of Clay Code to determine if a gasoline service center is an allowed use in the HC-1 zoning district on the basis that it is included as an example of uses found in the definition of shopping center. The ZBA held a public hearing on the interpretation request on July 14, 2025 and considered a resolution on the interpretation request at its August 11, 2025 meeting. However, it is my understanding that the ZBA vote at its August 11, 2025 meeting was 2-1, and as such, is a nullity. The Planning Board was advised to resubmit its application because one ZBA member was missing at the July 14, 2025 meeting and a new member has been recently appointed.

Accordingly, the Planning Board is requesting that the ZBA determine whether a gasoline service station is a permitted use in an HC-1 zoning district because the definition of shopping center includes gasoline service station as one type of use that is commonly included in a shopping center? In addition, does the Project satisfy the definition of shopping center?

The Planning Board is concerned that the Zoning Code is inconsistent, and without an interpretation from the ZBA that further consideration of the Mirabito site plan application would be improper.

Specifically, the proposed Mirabito is located in an HC-1 zoning district. The intent of the HC-1 District is "to maintain in this district the quality of environment that is usually found in areas of commercial use often located near, but generally not immediately adjacent to, residential neighborhoods." Moreover, "[d]evelopment in these districts should be designed so as to be compatible with the general characteristics which exist or are to be expected in the nearby neighborhoods, such as open space, green areas, landscaping and architecture." See Town Code 230-16(B). Shopping Centers are permitted in an HC-1 Zoning District upon the issuance of site plan approval. See Town Code Section 230-16. Shopping Centers are defined as "[I]and planned, improved and managed to accommodate a grouping of two or more commercial uses in one or more buildings designed to share parking, access, signage and other site services". See Town Code Section 230-10.

Given their proximity to residential districts, gasoline service stations are not listed as a permitted use in HC-1 zoning districts. See Town Code Section 230-16(B). Uses not specifically permitted in a zoning district are deemed prohibited. See Town Code Section 230-10(D). Accordingly, gasoline service stations are prohibited in HC-1

Districts. In fact, there are NO gasoline service stations located in any HC-1 District anywhere in the Town of Clay.

Contrasting the provisions of the HC-1 zoning district and the RC-1 zoning district provides further support that a gasoline service station is not a shopping center. Specifically, in the RC-1 District, which is less restrictive than the HC-1 zoning district, shopping centers are permitted following site plan review and gasoline service stations are permitted upon the issuance of a special use permit. It is illogical to conclude that gasoline service stations would be required to obtain a special use permit in a less restrictive zoning district, but be permitted as a shopping center requiring site plan review in a zoning district intended to protect nearby residential districts.

Accordingly, do the examples of common uses found in a shopping center provided in the definition of shopping center, supercede the list of permissible uses set forth in the HC-1 zoning district, especially considering the specific rule of interpretation that uses not specifically permitted in a zoning district are prohibited. In fact, a review of the photo renderings provided in connection with the site plan application demonstrate that the proposed use is a typical gasoline service station, with 8 pumps, and a convenience store – just like every other gasoline service station in the Town of Clay. See photo renderings below. Every other gasoline service station in the Town of Clay is located in an RC-1 zoning district or a LuC zoning district and has been subject to a special permit review in addition to site plan review. The proposed Project should not be treated any differently.



Mirabito **DELTA** PROPOSED SHOPPING CENTER
WITH FUEL AND DRIVE-IN SERVICES

01/06/2025

A-100

August 19, 2025
Page 4



Please contact me with any questions.

Sincerely,

BOND, SCHOENECK & KING, PLLC

A handwritten signature in blue ink, appearing to read 'Kathleen M. Bennett'.

Kathleen M. Bennett

KB/kb

Exhibit A

Joe Grispio

From: Mark Territo <Mark.Territo@YonkersNY.gov>
Sent: Wednesday, June 11, 2025 2:41 PM
To: Joe Grispio
Subject: Mirabito NYS 31 and Lawton Project

Good afternoon Joe,

I am writing to shed some light on the current issue of the Mirabito gas station / shopping center.

In referencing some email correspondence from July of 2024 between myself and the Engineer for the applicant, at the time I believed that the proposal was for a gas station, similar to a request that had been made previously on this same site for a zone change to RC-1. That request was controversial and did not advance.

When discussions began about a similar proposal with a different brand gas station, I initially would not entertain the same zone change proposal that was previously made unless something was going to be different about this application. The new idea was presented as a 'Shopping Center' and it was pointed out to me that shopping centers allow for gas stations. Gas stations in shopping centers seem to not have the special permit requirements that are found when a gas station by itself is proposed. I feel this is a flaw in the code that should be addressed because it is inconsistent. The code seems to state that when a gas station is part of a shopping center it is approvable with site plan review.

At the time the applicant's discussions involved 2 special permits for drive-thru's. This is the proposal that was in front of me. Should this be approved, a site plan application could be submitted, reviewed for completeness and then scheduled on the Planning Board agenda. That application specifically should have been reviewed by the code officer appointed at that time. By the time the site plan application was legally allowed to be submitted, and scheduled, I was no longer with the town therefore my email from July 2024 did not pertain to that site plan, and the 'shopping center' it proposed; my email was only in reference to special permits for the drive-thru's and not needing a special permit for a gas station as part of a shopping center. I would not have been able to accurately assess the shopping center site plan at that time because it did not exist. I believe the Planning Board now has the right to send the issue to the zoning board for an interpretation because they have a site plan in front of them that shows a shopping center that they may or may not feel meets the definition of a shopping center.

If you need any further clarification please feel free to reach out to me.

Sincerely,

Mark V. Territo

Deputy Commissioner

City of Yonkers

Department of Planning & Development

20 South Broadway, Suite 923

Yonkers, NY 10701

914.377.6650

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Exhibit B

Joe Grispino

From: Dave Tessier
Sent: Tuesday, June 3, 2025 3:48 PM
To: Damian Ulatowski
Cc: Joe Grispino
Subject: Mirabito Shopping Center gasoline service station.

Damian,

Notes regarding the proposed Mirabito Shopping Center at 5566 Route 31, in reference to the proposed gasoline service station.

The Code Enforcement Officer, Joe Grispino, Commissioner of Codes, is the first interpreter of the Town of Clay Zoning Code.

The CEO,s interpretation of the pertinent sections of the Town of Clay Zoning Code are listed as follows:

- 1 Section 230-11, Terms Defined, Shopping Center. The phrase "uses commonly included" does not mean that they are always allowed
- 2 The extant zone is HC-1, Highway Commercial. Gasoline service station is not listed as an allowed use.
- 3 RC-1, Regional Commercial. Gasoline service station is listed as an allowed use by Town Board Special Permit.
- 4 Section 230-10, Applicability, D. "Uses not permitted. All uses not specifically permitted in a district by right or permitted upon issuance of a site plan or special permit approval shall be deemed prohibited in that district."
- 5 Therefore, the interpretation of the CEO is that gasoline service stations are not allowed in HC-1 zoning districts. The acting Commissioner of Planning agrees with this interpretation.
- 6 In the instance of a disagreement with the interpretation of the CEO, an aggrieved party (applicant, Planning Board, etc.), can apply to the Town Zoning Board of Appeals for their interpretation, which would be final.
- 7 The applicant could apply to the Town Board for a change of Zone from HC-1 to RC-1. Russ Mitchell and I agree that this would be the best action for all concerned.
- 8 Upon recent research, we have not found any existing gasoline service stations in an HC-1 district. They all appear to be in RC-1 or LuC-1 districts.
- 9 If the Town were to allow this gasoline service station to be the first and only one to be allowed in an HC-1 district, we would be open to public criticism or lawsuits for not continuing to follow the Town Zoning Code.

I agree with and support all of the above, and I hope these comments help to resolve this issue.

David Tessier
Planning Commissioner

Tel: (315) 652-3800 x 134

ZBA CASE 1979/1991: EXHIBIT 2

BARCLAY DAMON ^{LLP}

Corey A. Auerbach

Partner

October 11, 2025

VIA ELECTRONIC MAIL

Zoning Board of Appeals

Town of Clay

4401 State Route 31

Clay, New York 13041

Re: Mirabito Holdings, Inc. / Kelly-Tobin Development Corp.
Tax Map Parcel No. 077.-34-17.1
Opposition to the Planning Board's Second Interpretation Appeal

Dear Chairperson Mason and Members of the Zoning Board of Appeals:

I am writing on behalf of Mirabito Holdings, Inc. and Kelly-Tobin Development Corp., whom our firm now represents in connection with the above-referenced appeal.

We hereby incorporate by reference, and make a part of this submission, all prior submittals, correspondence, and supporting materials previously provided to the Zoning Board of Appeals in connection with this matter, including but not limited to the July 9, 2025 letter prepared and submitted by Hinman, Howard & Kattell in opposition to the Planning Board's first appeal, together with all attachments thereto.

Background and Context

The issue has been framed as a debate over whether a "gasoline service station" is allowed in the HC-1 Highway Commercial District. In truth, the question before the Board is simpler and more precise.

Mirabito is not proposing a stand-alone gas station. It is proposing a Shopping Center, a principal use expressly permitted in the HC-1 District under § 230-16(B)(2)(b)(6). The question, therefore, is whether gasoline service is a permitted component of a Shopping Center in the HC-1 District, subject only to site plan approval. It is.

The Code defines a Shopping Center as land improved and managed for a grouping of two or more commercial uses, and specifically lists the types of uses commonly included within one:

"Retail stores, restaurants, drive-in services, **gasoline service stations**, indoor recreation, and offices."

When a principal use is permitted, the component uses described in its definition are likewise permitted as part of that use, subject only to site plan review. That is the plain reading of the Code, and it is precisely how this Board correctly interpreted it in its August 11, 2025 decision.

Procedural History

Section 230-25(B)(3) of the Town Code, incorporating Town Law § 267-b, authorizes the ZBA to “review, interpret and make final determinations regarding the actions of Town administrative or enforcement officials.” This establishes the Board’s appellate authority. The Code also explains how that process begins. Section 230-10(D) (“Uses not permitted”) provides in relevant part:

“A use not clearly addressed by this code may have its status determined by an interpretation of the Commissioner of Planning and Development, subject to appeal to the Zoning Board of Appeals.”

This provision confirms that the Commissioner of Planning and Development is expressly empowered to make such determinations, which are then subject to appeal to this Board. Commissioner Territo, acting squarely within that role, issued exactly the interpretation contemplated by this provision. The Planning Board’s filing was therefore not a new inquiry but an appeal from the Commissioner’s determination, falling squarely within the ZBA’s appellate jurisdiction under § 230-10(D) and Town Law § 267-b.

The contemporaneous correspondence confirms that Commissioner Territo made a final and appealable determination under § 230-10(D). On May 9, 2024, he initially advised that the project “would require a zone change” and directed the applicant to appear before the Town Board. (See Email from M. Territo to M. Napierala, May 9, 2024, attached as Exhibit A.) After further review, and upon consultation with Town Attorney Robert Germain, the Commissioner reconsidered and issued a clear interpretation that no zone change or special permit was required. In his June 20, 2024 email to Brett Hughes, he wrote: “I have discussed this with Robert and he pointed out this path to gas station that I wasn’t aware of. No zone changes or special permits needed, except for any drive-thru’s. Just submit site plan following regular instructions.” (See Email from M. Territo to B. Hughes, June 20, 2024, attached as Exhibit B.) That communication constituted the Commissioner’s definitive interpretation, concluding that fuel pumps are permitted as part of a Shopping Center subject only to site plan review. Commissioner Territo subsequently reaffirmed that determination in a separate e-mail to Code Enforcement Officer Joe Grispino, which is included as Exhibit A to the Planning Board’s September 24, 2025 Request for Interpretation, submitted by Planning Board Attorney Kathleen Bennett. As such, any challenge to that determination was required to be taken within sixty days under Town Law § 267-a(5)(b).

Additional detail regarding the June 2024 determination and the applicant’s reliance thereon is set forth in the accompanying affidavits of Brett Hughes and Matthew R. Napierala, P.E. (attached as Exhibits C and D, respectively). These affidavits document the sequence of communications and meetings with Commissioner Territo, the Town Supervisor, and other officials, confirming that the Town expressly acknowledged the project’s classification and directed the applicant to proceed through the normal site plan and special permit review process. They are submitted to clarify the administrative record and demonstrate the contemporaneous understanding on which the applicant relied.

The Planning Board was aware of that determination for many months before it filed its appeal in June 2025. Its Chairman personally attended multiple meetings where the project was presented and discussed in detail, including specific references to the fueling component.

Unless specifically delegated by the Town Board, the jurisdiction of the Zoning Board of Appeals is appellate only. Its role is limited to reviewing determinations already made by an administrative officer; it is not empowered to issue advisory opinions or to render new interpretations on hypothetical or previously decided matters. The ZBA does not possess original jurisdiction to interpret the Code. New York courts have consistently held that a zoning board may act only upon an appeal from an actual decision of an enforcement official, and may not issue general guidance or clarification in the abstract. No provision in § 230-25, or elsewhere in the Town Code, grants the Board original jurisdiction to entertain a new interpretation request. The only authority conferred upon the ZBA in this context is to review determinations already made by the Commissioner of Planning and Development.

Jurisdictional Defects in the Second Appeal

As a threshold matter, the Planning Board's second appeal suffers from fundamental procedural defects. Under Town Law § 267-a(5)(b), an appeal from an administrative official's decision must be taken within sixty days from the date the appellant knew or reasonably should have known of that decision. That deadline had long since passed when the Planning Board acted. During the ZBA's consideration of the first appeal in July and August 2025, the Board properly recognized that the question of timeliness had been raised and made sure it was part of the record, while choosing not to render a legal determination on that point. It remains, however, undisputed that the Planning Board's filing occurred well more than sixty days after the Commissioner's decision and therefore outside the period allowed by Town Law § 267-a(5)(b).

When, as here, the ZBA acts in its appellate capacity, Town Law § 267-a(13)(b) provides that if an affirmative majority is not attained, "the appeal is denied." The Planning Board's contrary claim that the vote was a "nullity" is legally incorrect. The statute is explicit: a failed motion in appellate jurisdiction equals a denial.

Town Law § 267-a(12) further provides that a rehearing by the ZBA may occur only upon unanimous consent of the members present, followed by a unanimous vote to reverse. No such vote occurred. The same appeal cannot be revived simply by submitting it again in a new form. For these reasons, the Planning Board's September 24, 2025 resubmittal is outside the ZBA's jurisdiction and should be dismissed.

The Code Resolves the Substantive Question

On the merits, the Code itself resolves the issue. Section 230-16(B)(2)(b)(6) lists "Shopping Center" as a permitted use upon site plan approval. The definition in § 230-11 is not merely descriptive; it defines the scope of the permitted use. Courts routinely apply such definitions to determine the scope of permitted uses. Here, the definition expressly includes "gasoline service stations" among the uses commonly included within a Shopping Center. Nothing in the Code conditions or limits that inclusion.

Contrary to the Planning Board's claim, definitions are not separate from or subordinate to the Code, they are part of it. Section 230-11 carries the same legislative force as § 230-16 and must be read in conjunction with it. When the use table authorizes a "Shopping Center," the definition of that term controls what that use encompasses. Reading the Code as a whole gives meaning to both provisions and avoids rendering § 230-11 superfluous. The suggestion that a definition cannot inform the scope of a permitted use misstates basic rules of statutory construction.

The Town employs this same definitional framework elsewhere in its Zoning Code. For example, § 230-14(A)(2) allows "Marina, public" in the REC-1 district with site plan approval. The definition of *Marina, public* provides:

"The use of land, structures, and adjacent water bodies for the storage, docking, and/or servicing of boats for compensation or as nonprofit operation. It may include other business activities, such as **retail fuel sales** and **restaurants**, and similar services."

Retail fuel sales and restaurants are not separately listed as permitted uses in REC-1, yet they are allowed as part of a Marina. This example demonstrates that the Code intentionally defines broad use categories that encompass component activities not separately enumerated in district use tables. The same logic applies here. Just as fuel sales and restaurants are permitted as part of a Marina in REC-1, fuel pumps are permitted as part of a Shopping Center in HC-1. The Planning Board's contrary interpretation would require every sub-use listed in a definition to be repeated in each district's use table to be effective, an approach that would nullify the purpose of having definitions at all and create inconsistencies throughout the Code.

The ZBA's Prior Decision Was Correct

The ZBA's August 11 findings of fact and sound conclusions were entirely consistent with the Code and with well-settled rules of construction. Because zoning ordinances limit the use of private property, they must be strictly construed against the municipality that enacted them. Ambiguity must be resolved in favor of the property owner, and the plain meaning of the words governs.

Commissioner Territo's original interpretation was likewise correct, based on the same clear reading of the Code that this Board later adopted. His determination accurately recognized that no zone change or special permit is required when fuel pumps are part of a permitted Shopping Center use in the HC-1 District.

Your Board applied those principles faithfully, concluding that gasoline pumps are permitted as part of a Shopping Center in HC-1. That interpretation was correct then, and it remains correct now. The record reflects a careful, thoughtful application of the Code's text and purpose, and there is every reason for the Board to reaffirm that determination with confidence. In doing so, the Board will again demonstrate the independence and integrity that define its role, deciding matters on the law and the facts, not on the pressures that sometimes accompany them.

Zoning Board of Appeals
October 11, 2025
Page 5

Requested Action

For all of these reasons, Mirabito respectfully requests that the Zoning Board of Appeals dismiss the Planning Board's second appeal for lack of jurisdiction and reaffirm its prior interpretation recognizing that gasoline pumps are permitted within a Shopping Center in HC-1 under §§ 230-16(B)(2)(b)(6) and 230-11.

Thank you for your careful attention and continued service to the Town.

Very truly yours,

A handwritten signature in black ink, reading "Corey Auerbach". The signature is written in a cursive, flowing style.

Corey A. Auerbach

cc: Robert Germain, Esq.
Kathleen Bennett, Esq.

Exhibit A

From: Chelsea Clark <cclark@townofclay.org>
Sent: Thursday, May 9, 2024 4:19 PM
To: Matt Napierala <mnap@napcon.com>; Mark Territo <mterrito@townofclay.org>
Cc: Town of Clay Supervisor <supervisor@townofclay.org>; Brett Hughes <brett.hughes@mirabito.com>
Subject: RE: Proposed Mirabito Development NYS Rte 31 & Lawton Rd.

Hi Matt,

I will run this by the Supervisor when he returns from his conference and touch base after.

Thanks,

Chelsea Clark

Information Aide, Executive Office



TOWN of CLAY

Supervisor Damian M. Ulatowski

4401 State Route 31

Clay, NY 13041

Tel: (315) 652-3800 x 162

Email: cclark@townofclay.org

Website: www.townofclay.org

From: Matt Napierala <mnap@napcon.com>
Sent: Thursday, May 9, 2024 4:01 PM
To: Mark Territo <mterrito@townofclay.org>
Cc: Town of Clay Supervisor <supervisor@townofclay.org>; Brett Hughes <brett.hughes@mirabito.com>
Subject: RE: Proposed Mirabito Development NYS Rte 31 & Lawton Rd.

Mark,

Understood. I have discussed this with both the owner and Mirabito representatives and we would like to take that step and review the proposal with the Town Board.

Can you let me know the process and steps to get before the board at an upcoming work session?

Thank you.

Matt



Matthew R. Napierala, P.E.
Managing Engineer / President

Ph: (315) 682-5580
Email: mnap@napcon.com
Web: www.napcon.com

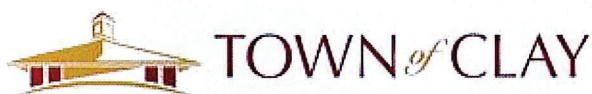
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From: Mark Territo <mterrito@townofclay.org>
Sent: Thursday, May 9, 2024 2:52 PM
To: Matt Napierala <mnap@napcon.com>
Cc: Town of Clay Supervisor <supervisor@townofclay.org>
Subject: RE: Proposed Mirabito Development NYS Rte 31 & Lawton Rd.

Hi Matt,
I would suggest you come to a Town Board work session, as I do not believe a gas station would go over to well on this property. It is surrounded by residences, and they were not in favor of the last proposal for a gas station / car wash (they did not like either aspect). This would require a zone change, so see what the Town Board thinks before you get too deep into the details of the project.

Mark Territo
Planning Commissioner

Tel: (315) 652-3800 x 134
Email: mterrito@townofclay.org
Website: www.townofclay.org



Supervisor Damian M. Ulatowski
4401 State Route 31
Clay, NY 13041

From: Matt Napierala <mnap@napcon.com>
Sent: Thursday, May 9, 2024 1:58 PM
To: Planning <planning@townofclay.org>; Lisa Vincitore <lvincitore@townofclay.org>
Cc: Brett Hughes <brett.hughes@mirabito.com>; jmueller@jktobin.com
Subject: Proposed Mirabito Development NYS Rte 31 & Lawton Rd.

(For Mark Territo & Attorney Robert Germain)

Mark,

The owners (Kelly Tobin Development Corp) of the 9.5 acre parcel at the southwest corner of Rte 31 and Lawton Road are working with Mirabito Energy on a proposed Convenience Store development with an co-tenancy of a coffee shop and small drive-thru bank. See attached graphic.

We have made the development team aware that the current zoning of the property does not allow the fuel sales by right and a zone change will be required for the development as proposed.

We would like to set up a discussion with yourself and other town members 1st your thoughts on the zone change at this location and 2ndly, to review the proposal, provide comments and next steps / path moving through the town processes.

If you could review all and let us know your availability to meet and discuss that would be great.

Reply or give me a call.

Thank you in advance and look forward to hearing from you.

Matt



Matthew R. Napierala, P.E.
Managing Engineer / President

Ph: (315) 682-5580
Email: mnap@napcon.com
Web: www.napcon.com

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Exhibit B

From: Mark Territo <mterrito@townofclay.org>
Date: June 21, 2024 at 9:39:01 AM EDT
To: Brett Hughes
Subject: RE: Mirabito Application | Site Plan Review | Rte. 31 and Lawton Rd.

Brett,

The shopping center definition allows for these things as long as they are part of a shopping center with site plan approval, however drive-thru's still need a special permit from the town board as highlighted in the page from the code below. These approvals usually run concurrently with the various boards as needed. We've been consistent about following this process, so if you don't agree with that then you would first go to the Zoning Board for an Interpretation and then proceed from there after they have made a determination.

[image001.jpg]

Mark Territo
Planning Commissioner

Tel: (315) 652-3800 x 134
Email: mterrito@townofclay.org<mailto:mterrito@townofclay.org>

Supervisor Damian M. Ulatowski
4401 State Route 31
Clay, NY 13041

From: Brett Hughes
Sent: Thursday, June 20, 2024 9:08 AM
To: Mark Territo <mterrito@townofclay.org>
Subject: RE: Mirabito Application | Site Plan Review | Rte. 31 and Lawton Rd.

Thanks for the email and feedback Mark. We look forward to making our submittals.

One question as it relates to your comment about restaurant, drive-in-thru services requiring special permit.

As I read through the shopping center designation it makes specific mention of restaurants and drive-in services as an allowed use in which we have planned as part of this development (Dunkin).

I have provided an excerpt below referencing this language.

Town of Clay Code

Definitions (page 230:22)

SHOPPING CENTER -- Land planned, improved and managed to accommodate a grouping of two or more commercial uses in one or more buildings designed to share parking, access, signage and other site services; uses commonly included within a shopping center are: retail stores, restaurants, drive-in services, gasoline service stations, indoor recreation and offices. Two or more separately owned commercial units shall not be deemed a shopping center solely by virtue of the fact that they share a common access to adjoining highways and/or parking facilities.

Brett Hughes
Director of Real Estate Development
[image005.jpg]
The Metro Center - 49 Court Street
P.O. Box 5306

Binghamton, N.Y. 13902
Cell (315) 725-3781
E-Mail Brett.Hughes@Mirabito.com<mailto:Brett.Hughes@Mirabito.com>

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From: Mark Territo <mterrito@townofclay.org<mailto:mterrito@townofclay.org>>
Sent: Thursday, June 20, 2024 8:29 AM
To: Brett Hughes
Subject: RE: Mirabito Application | Site Plan Review | Rte. 31 and Lawton Rd.

This message was sent from outside our company. Please do not click links or open attachments unless you recognize the source of this email and know the content is safe.

Hi Brett,

I have discussed this Robert and he pointed out this path to gas station that I wasn't aware of.

No zone changes or special permits needed, except for any drive-thru's. Just submit site plan following regular instructions.

I am out of the office through Monday but can look at anything you have through email as well as answer any additional questions.

Thank you,

Mark Territo
Planning Commissioner

Tel: (315) 652-3800 x 134
Email: mterrito@townofclay.org<mailto:mterrito@townofclay.org>

Supervisor Damian M. Ulatowski
4401 State Route 31
Clay, NY 13041

From: Brett Hughes
Sent: Wednesday, June 19, 2024 1:04 PM
To: Mark Territo <mterrito@townofclay.org<mailto:mterrito@townofclay.org>>
Subject: Mirabito Application | Site Plan Review | Rte. 31 and Lawton Rd.

Hi Mark,

Hope you are doing well. Sorry we missed you at the Town Board work session earlier in the week. Overall, we feel the project was well received by the board and the conversation was positive. They advised us to get with your department on next steps with our application to the planning board for site plan approval.

Below, please see the overview and highlights of what we would like to put forward for site plan approval in order to develop lands located at the SW corner of Rte. 31 and Lawton Rd. Our civil engineer is finalizing a site plan and I will forward that on to you as well once completed.

We are proposing to construct a shopping center consisting of Mirabito convenience w/ fuel, NBT Bank, Dunkin & New York Power Authority EV charging facility as tenants within.

Our read and understanding of the code is that a Shopping Center is an allowed use by right and within the definition of Shopping Center is gasoline service station. I have provided some excerpts from the Town of Clay code below we would like to reference when conducting our review and due diligence.

When able, please let us know if you would like to hop on a call and/or meet to review our application prior to us making submittal. Thank you and we look forward to hearing from you.

Town of Clay Code

Definitions (page 230:22)

SHOPPING CENTER -- Land planned, improved and managed to accommodate a grouping of two or more commercial uses in one or more buildings designed to share parking, access, signage and other site services; uses commonly included within a shopping center are: retail stores, restaurants, drive-in services, gasoline service stations, indoor recreation and offices. Two or more separately owned commercial units shall not be deemed a shopping center solely by virtue of the fact that they share a common access to adjoining highways and/or parking facilities.

HC-1 allowable uses §230-16-B.

B. HC-1 Highway Commercial (based on C-2).

(1) Intent.

(a) It is the intent to maintain in this district the quality of environment that is usually found in areas of commercial use often located near, but generally not immediately adjacent to, residential neighborhoods. The intensity and scale of the uses, lots and structures are intended to be commensurate to moderately concentrated business areas.

(b) Development in these districts should be designed so as to be compatible with the general characteristics which exist or are to be expected in the nearby neighborhoods, such as open space, green areas, landscaping and architecture.

(2) Uses allowed:

(a) Office of Planning and Development issuing a building permit: (reserved)

(b) Planning Board site plan approval:

[1] Retail use

[2] Personal service use

[3] Office building

[4] Bank/credit union

[5] Theater, indoor

[6] Shopping center

[7] Public self-storage facility

[8] Medical office

[9] Outdoor retail sales and service

[10] Day-care center

[11] Instructional Facility

(c) Planning Board special permit approval:

[1] Hospital/clinic.

[2] Nursing home/assisted-living facility.

[3] Secondary use

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Exhibit C

Affidavit of Brett Hughes

STATE OF North Carolina

COUNTY OF Union

I, Brett Hughes, being duly sworn, depose and state as follows:

Position and Role

I am the Director of Real Estate and Business Development for Mirabito Energy Products ("Mirabito"). I have personal knowledge of the matters set forth herein. This affidavit is submitted in connection with the proposed Mirabito development project located at Route 31 and Lawton Road in the Town of Clay, New York.

Meeting with the Town Supervisor

On or about June 2024, I attended a meeting at the Town offices with the Town Supervisor and other Town representatives regarding the proposed project. At this meeting, we discussed the proposed site plan, which included a convenience store and gasoline fueling facilities. The Town Supervisor indicated that zoning matters were to be addressed by the Commissioner of Planning and Development, Mark Territo, and deferred to him to make determinations regarding zoning compliance.

Interactions with Commissioner, Mark Territo

In June 2024, I communicated directly with Commissioner Territo concerning whether gasoline sales were permitted as part of a Shopping Center development, as that term is defined in the Town Code.

On June 20, 2024, Commissioner Territo confirmed in writing that gasoline sales were permitted with in a Shopping Center use under the Code. He further explained that the project did not require a zoning amendment or special permit other than a special permit for the drive-thru use. He advised that Mirabito should proceed through the normal site plan review process.

Reliance on Determination

Based on Commissioner Territo's written interpretation and direction, Mirabito and its consultants prepared and submitted site plans and application materials for review by the Town, relying on his representation that the project complied with the zoning code as proposed. Our proposal was expressly

presented as a Shopping Center development in accordance with the Town Code definition, and all plans and materials were prepared consistent with that classification.

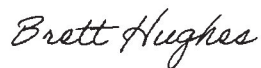
Town's Subsequent Position

Despite Commissioner Territo's clear interpretation and written confirmation, the Town later refused to acknowledge his determination as binding and has taken the position that no zoning decision was ever made. This reversal has delayed the project and caused uncertainty for Mirabito's design team, notwithstanding the fact that Commissioner Territo was the authorized official responsible for interpreting and directing zoning matters for the Town.

Conclusion

My interactions with Commissioner Territo and the Town Supervisor made clear that Commissioner Territo was acting in his capacity as the Town's Commissioner of Planning and Development, that he had authority to determine the status of a use by an interpretation of the zoning code under § 230-10(D) of the Town Code, and that his June 2024 interpretation constituted the Town's official determination on the matter.

I affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

A handwritten signature in cursive script that reads "Brett Hughes". The signature is written in dark ink and is positioned above a horizontal line.

Brett Hughes

10/10/25

Exhibit D

Affidavit of Matthew R. Napierala, P.E.

STATE OF NEW YORK

COUNTY OF ONONDAGA

I, Matthew R. Napierala, being duly sworn, depose and state as follows:

Position and Role

I am a civil engineer and consultant specializing in site design and land development permitting projects. I have over forty (40) years of experience in site design and land use permitting throughout New York State and New England. I am the Managing Engineer and President of Napierala Consulting, Professional Engineer, P.C. I am the lead design engineer and project manager working with Mirabito Energy Products ("Mirabito") on the proposed development project located at Route 31 and Lawton Road in the Town of Clay, New York. I have personal knowledge of the matters set forth in this affidavit.

The Project

At the direction and request of Mirabito Energy Products, the project involves the development of a multi-tenant commercial facility on a vacant commercial lot at the southwest corner of NYS Route 31 and Lawton Road in the Town of Clay. The commercial facility is proposed to include a drive-thru bank, a coffee and donut shop with drive-thru, a convenience retail store, a sandwich shop, and gasoline fuel service. The commercial building was to be approximately 6,900 square feet, with the overall project area being approximately 3.5 acres on a 9.5 acre parcel.

Role in the Project

My responsibilities included preparing and presenting site plans, coordinating with Town officials, and managing submissions for the Town's review process. I attended meetings with Town representatives and was directly involved in communications regarding zoning, site plan requirements, and procedural steps.

Initial Coordination and Submission Steps

From our prior experience working in the Town of Clay, I understood that the first step in the process is to contact the Town's Commissioner of Planning and Development, who reviews the site zoning, provides interpretations of allowed uses, and identifies the appropriate permitting path through the town's various boards.

In May 2024, our team (myself, senior design engineer Neal Zinsmeyer, PE and design engineer Jim Ballantyne) began coordinating with Mark Territo, Town of Clay Commissioner of Planning and Development. Commissioner Territo advised us to meet with the Town Supervisor and Town Board during a work session to discuss the project, as he anticipated potential neighborhood opposition.

On June 17, 2024, Neal Zinsmeyer, PE joined Brett Hughes and Joe Mirabito of Mirabito Energy, along with Joe Mueller, the property owner, in a meeting with Town Supervisor Damian Ulatowski, members of the Town Board and Town Attorney Robert Germain to discuss the project at a Town Board work session. During this meeting, it was noted that the project site is within the HC-1 Highway Commercial Zone which allows "Shopping Center" uses subject to site plan review. The town code definition of "Shopping Center" describes a grouping of two or more commercial uses, including retail stores, restaurants drive-in services, and gasoline service stations.

At the conclusion of the work session, the Supervisor and the Town Attorney agreed that the proposed development fit within the classification and directed us to continue working with the Commission of Planning and Development to prepare the necessary applications.

Following this work session meeting, Mr. Zinsmeyer and Mr. Ballantyne met with Commissioner Territo to discuss the project and the permitting path moving forward. Commissioner Territo confirmed that the multiple commercial uses proposed met the Town's definition of "Shopping Center" and that gasoline service stations are expressly included within that definition. He further indicated that the first permitting step would be to apply for special permits for the "drive-in services", as all drive-thrus require Town Board approval under the Code.

June 2024 Determination by Commissioner of Planning and Development Mark Territo

Following that meeting, I was made aware of written communications between Mirabito (Brett Hughes) and Commissioner Territo, confirming that, in his capacity as Commissioner of Planning and Development, and with the support of the Town Supervisor and Town Attorney, he determined that gasoline service is permitted within a Shopping Center use, and that a Shopping Center is an allowed use upon site plan approval in the HC-1 District.

Based on this determination, Napierala Consulting prepared applications for the two special permits for the drive-in services (bank and coffee/donut shop). These applications included full site plans showing the 6,900 SF Shopping Center building, fuel dispensers, both drive-thrus, parking, and circulation patterns. Consistent with Commissioner Territo's direction, we finalized and submitted the plans and materials for review on September 12, 2024.

Following Commissioner Territo's interpretation, which was reinforced by the Town Supervisor and Town Attorney during the June 17, 2024 work session, I organized plan sets for Planning and Zoning meetings. My understanding was that the Town had accepted the project's classification and permitted use within the HC-1 District and that we were to proceed through the normal approval process.

Following our Special Permit Applications, the project was placed on the Town Board meeting agenda for October 21, 2024. At this meeting, I was the lead presenter representing the project. The presentation included a hard copy site plan mounted on a board and placed on a presentation easel.

This was the same plan that was a part of our application package and that each Board member and town staff had a copy of. The first part of my presentation addressed the zoning classification and the determination that the proposed project is classified as a shopping center by the Town Code definition and that, within a Shopping Center, a gasoline service station is allowed. The presentation then reviewed the drive-in services (drive-thrus) and vehicle circulation in and around the site. This was a public hearing and approximately twenty neighbors were present and spoke against the project and asked how a gas station is an allowed use at this site. Upon the public questioning, the Supervisor indicated that this was the first he had heard of this project and would have to have the planning staff look into it. Commissioner Territo was present at the meeting and responded that he would review the project. The Town Attorney, Robert Germain, was also present at this meeting but did not provide any input or feedback to the Town Board. The board members also discussed site circulation and requested a traffic impact report to further define and clarify vehicle movements in and around the development.

Following this meeting, I reached out to Commissioner Territo to once again confirm his understanding of the use and the permitting path we were on. He indicated that we should make plan adjustments regarding the vehicle circulation and get a traffic study. He once again verbally indicated that the gasoline fuel use was allowed based on the previous interpretation.

Napierala Consulting brought in GTS Consulting to perform a traffic study and made appropriate plan adjustments to improve site circulation and resubmitted plan sets for review. The project was put on the December 16, 2024 town board meeting agenda (as a further confirmation that the project use as a Shopping Center with gasoline service was allowed).

Upon submittal, we learned that Commissioner Territo had resigned from his position and the Town no longer had a Commissioner of Planning and Development. The Town's Consulting Engineer, Ron Detota of C&S Engineers, filled the role in the immediate interim, and in January the Town brought in David Tessier as interim Commissioner of Planning and Development.

At the December 16 Town Board hearing, once again, I was the lead presenter. For this presentation we prepared a PowerPoint to be displayed on the meeting room large screen monitor for all to review the project and to allow all present to follow along with the discussion. One of the early slides in this presentation addressed the subject site zoning and the town's definition of "Shopping Center" and the allowed use of gasoline service within a Shopping Center. Town Board members did not raise questions or concerns with the project use or zoning interpretation. The discussion focused on the drive-in services and site circulation. The board requested further clarification on internal circulation patterns in and around the site.

The site plans were further modified and new graphics were prepared to better show the vehicle routes through the site. The project was put on the January 8, 2025 Town Board hearing. Upon satisfying the board with internal circulation routes, the Town Board moved a resolution to send the project to the Planning Board as a referral on the special permit request.

The project was put on the Town Planning Board's January 29, 2025 meeting agenda. At the January 29 Town Planning Board hearing, we prepared and presented the project and special permit request to the Planning Board. The first slide of the presentation set forth the zoning premise that the site is in the HC-1 District and the HC-1 District includes an allowed use by site plan approval, "Shopping Center," and the Town Code definition of "Shopping Center" states a "Shopping Center is two or more commercial uses in

one or more buildings,” and uses commonly included within a shopping center as retail stores, restaurants, drive-in services, gasoline service stations, indoor recreation and offices. Therefore, the Planning Board and the Town Board were well aware of the project use and how it is applicable to the HC-1 zone. No comments were received or discussed regarding this approach or applicability during the planning board discussions. Regarding the board review of the drive-in services, the Planning Board Chair allowed each planning board member to provide input on the project. All but one planning board member indicated that they were opposed to both drive-thru services at a convenience store site. The other member was okay with one drive-thru but not two. The Planning Board members indicated that they have never seen drive-thrus on a convenience store, did not know how it would work, and felt it added to site circulation issues, and as such did not support it. The Planning Board resolution on the special permit referral was for the Town Board to receive and review their minutes regarding each member’s concerns. The referral did not deny the request, nor was it favorable for the drive-in services.

Following the planning board referral meeting, we made additional internal adjustments to the circulation routes and resubmitted plan sets to the Town Board. Napierala Consulting resubmitted modified plans to the Town Board and the matter was put on the Town Board agenda for March 3, 2025.

At the March 3, 2025 hearing, I once again presented to the Town Board and reviewed the drive-in services and circulation routes. The Town Board then closed the public hearing.

The project was put on the March 17, 2025 Town Board meeting agenda.

At the March 17, 2025 Town Board meeting, each separate Special Permit application (one for the bank drive-thru and one for the coffee/ donut shop drive-thru) was brought to vote. Both Special Permits passed six in favor and one opposed.

With the success of the Special Permits, the design team worked toward making a thorough and complete Site Plan Application to the Town Planning Board.

A Site Plan Application was made on April 29, 2025. The Town requires approximately thirty days between submittal and the first site plan review meeting with the Planning Board.

The project was advertised and listed as an agenda item for a Public Hearing for the May 28, 2025 Planning Board meeting.

At the May 28, 2025 Planning Board meeting, when the project was called, I stepped up to the presentation podium and my colleague loaded our PowerPoint presentation on the video monitor in the meeting room. After the chair read the notice, he looked at me and I was met with a bold statement from the planning board chair “You are not to say a word. It is my turn to talk tonight,” and the Chair went on to read the definition of “Shopping Center” and then the allowed uses for the HC-1 zone and indicated that he needed clarification from the ZBA on the interpretation of the allowed use. After his statement, I politely asked to say one thing, the chair responded, “I’ll give you one word, that’s it.” I indicated that the zone interpretation was made by former Commissioner of Planning and Development, Mark Territo, back in June of 2024. At that time Code Officer Joe Grispino spoke and indicated that Mark Territo is no longer with the Town and he disagreed with that interpretation.

I then packed up my presentation and left the room.

To my knowledge, Mirabito Energy retained outside counsel, Sarah Campbell of Hinman Howard & Kattel of Binghamton, to prepare a legal submission to the Town of Clay Zoning Board of Appeals regarding the proceedings from June 2024 through May 28, 2025.

The project was put on the Town of Clay's Zoning Board of Appeals agenda for a discussion on July 14, 2025.

I was present at the July 14, 2025 ZBA meeting for the requested interpretation. The discussion started with planning board chair, Russ Mitchell, reviewing the matter and expressing his concerns with the project and the permitted use of a gasoline station in the HC-1 zoning district. Mr. Mitchell then went further and set forth his interpretation. In my view, he did not ask for the Board's interpretation but instead was asking the ZBA to agree with his interpretation, which was that the proposed project was not a shopping center and that because there are no gasoline stations in a HC-1 district in the town there should not be one here. In my objective view of Mr. Mitchell's presentation, he appeared biased against the proposed project as expressed by his actions and words during his presentation to the ZBA.

Following Mr. Mitchell's presentation, the ZBA Chair opened the floor to public comments. During this time Attorney Campbell presented her legal summary and brief on the matter, indicating the ZBA and Town Attorney had a complete copy of her findings and she read summary points for the public record.

The ZBA Chair closed the public hearing and indicated that the board would have to review all and would make a decision at the next ZBA meeting.

To my knowledge, a resolution and vote on the matter occurred at the August 11, 2025 ZBA hearing.

Following the ZBA hearing, the project was put on the Town Planning Board meeting agenda for September 10, 2025.

At the September 10 Planning Board meeting, when the project was called, I stepped up to the presentation podium and prepared to present the project. Before I started, the Chair indicated that the board had some business first. At that time, Vice Chair Michelle Borton read a prepared resolution asking once again for a ZBA interpretation on the zoning use within the HC-1 district. The Chair indicated that the previous decision by the ZBA was a "nullity" because only three of the five members of the ZBA voted and a three-vote majority was not obtained.

Following that, the Chair indicated that since it is a public hearing we would be allowed to make our presentation to the Board. As such, we presented the application package and the site plans and listened to board comments.

Reliance on Town Direction

Over the course of many land development actions in which Napierala Consulting has represented various projects over the years, the zoning decisions and permitting path have always been established by the Commissioner of Planning and Development. In this case, by Mark Territo. All plans, labeling, and submissions were prepared based on Commissioner Territo's statements and his role as the official responsible for directing zoning decisions. At no time during or immediately after his June 2024 determination were we told that his interpretation was tentative or unauthorized.

Town's Later Shift in Position

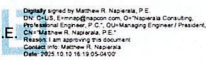
Later communications from the Town indicated that they would not honor or acknowledge the determination made by Mr. Territo. This directly contradicted the guidance we had received and the basis on which our submissions and planning had proceeded.

Conclusion

At all relevant times, I understood and relied on Mr. Territo's authority to interpret the Town Code and direct the process. His June 2024 determination guided our actions and submission timeline.

I affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Matthew R. Napierala, P.E.



Digitally signed by Matthew R. Napierala, P.E.
DN: cn=M. Napierala, o=Napierala Consulting,
ou=Professional Engineer, P.E., c=United States of America
Reason: I am approving this document.
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Matthew R. Napierala, P.E.

END OF ZBA CASE 1979/1991: EXHIBIT 2