DRAFT/UNAPPROVED

ZONING BOARD OF APPEALS
MINUTES OF MEETING
November 9, 2026

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 November 9, 2026. 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
	David Porter	Member
	Michael Becker	Member
	Mary Lou DesRosier	Alternate Member
ABSENT:	Ryan Frantzis	Member
OTHERS PRESENT:	Robert Germain	Attorney
	Brian Bender	Planning & Development Commissioner
	Chelsea Clark	Zoning Board Secretary

All present participated in the Pledge of Allegiance.

MOTION made by Deputy Chairperson Liebi that the Minutes of the meeting of October 12, 2026, be accepted as submitted. Motion was seconded by Mrs. DesRosier. 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. Deputy Chairperson Liebi seconded motion. Unanimously carried.

OLD BUSINESS:

Case #2022- David Elbert/Craig Gould, 4831 Lepinske Farm Place, Tax Map ID #063.-11-02.0.:

The applicant is seeking an Area Variance pursuant to Section 230-13C(4)(c)[4] - Lot and Structure Dimensional Requirements, for an increase in maximum height of an accessory structure from 12 feet to 15.4 feet. The property is the One-Family Residential (R-15) Zoning District.

The secretary read the proof of publication at the October 12, 2026, meeting.

Contractor, Craig Gould, was present on behalf of the applicant.

Chairperson Mason asked Mr. Gould to explain the request for an Area Variance.

Mr. Gould explained he is asking for an Area Variance to allow for a height increase from 12 feet to 14.2 feet for a barn.

Chairperson Mason asked Mr. Gould to address the Standards of Proof.

Mr. Gould offered the following responses:

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 are other feasible methods other than the requested Area Variance as the structure is mostly built, noting the architect failed to put the height on the drawings.
3. The applicant does not believe the requested Area Variance is substantial.
4. The applicant does not believe there will be any adverse effect to the neighborhood.
5. The need for the Variance is self-created.

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

Deputy Chairperson Liebi asked if the barn was built now.

Mr. Gould stated, yes, it is mostly built and in the framing inspection stage. The drawing from the architect was vague resulting in the need for a Variance.

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

Commissioner Bender stated the discrepancy was identified during the permit process, and he sees no issue with granting of the Variance.

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

Janet Rathburn, 4760 Freestone Road, asked if the applicant was requesting 14 foot or 15 foot Variance, as it was advertised for 15 feet.

Mr. Gould stated they are asking for 14.2 feet.

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.

Chairperson Mason closed the hearing.

MOTION was made by Mr. Porter in Case #2022 to approve the Area Variance as requested with the condition they be in substantial compliance with Exhibit "A". Motion was seconded by Mrs. DesRosier.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Becker	- in favor	
	Mr. Porter	- in favor	
	Mrs. Liebi	- in favor	
	Chairperson Mason	- in favor	*Unanimously Carried*.

Case #2023- Todd Fritzen/Wetzel Storage LLC, 4664 Wetzel Road, Tax Map ID #087.-01-12.0.:

The applicant is seeking four Area Variances pursuant to Section 230-17C(4)(b)[1][a], Section 230-17C(4)(b)[1][b], and Section 230-17C(4)(b)[2]—Lot and Structure Dimensional Requirements. The requested variances would allow for a reduction in the front yard setback along Wetzel Road from 200 feet to 10.3 feet; a reduction in the front yard setback along Maltage Drive from 50 feet to 20 feet; and a reduction in the side yard setback from 25 feet to 19.1 feet; and pursuant to Section 230-19A—Highway Overlay Type C, to reduce the required setback from 115 feet to 10.3 feet for the development of BESS equipment. The property is located within the Industrial 1 (I-1) Zoning District.

The secretary read the proof of publication at the October 12, 2026, meeting.

MOTION was made by Mr. Becker in Case #2023 to adopt the findings and decision as follows:

The Applicant has requested four area variances pursuant to Sections 230-17C(4)(b)[1][a], 230-17C(4)(b)[1][b], and 230-17C(4)(b)[2] of the Town of Clay Zoning Ordinance, governing lot and structure dimensional requirements, and Section 230-19A(5), governing the Highway Overlay Zone District.

The requested relief would permit the following reductions:
1. Wetzel Road front yard setback: from 200 feet to 10.3 feet;
2. Maltlage Drive front yard setback: from 25 feet to 20 feet;
3. Side yard setback: from 25 feet to 20 feet; and
4. Highway Overlay Type C setback: from 115 feet to 10.3 feet.

The requested relief is intended to accommodate BESS equipment on the subject property.

Findings

1. The Town Board recently adopted comprehensive regulations specifically addressing Battery Energy Storage Systems.

   The Town Board has recently undertaken a comprehensive review of the appropriate land-use standards governing BESS facilities and adopted a dedicated BESS Ordinance establishing specific requirements for the siting and operation of such facilities within the Town. The adoption of these regulations represents a deliberate policy determination by the Town Board concerning the appropriate location, design, buffering, and dimensional standards applicable to BESS facilities. The regulations were not adopted incidentally or as an application-specific response; rather, they establish a prospective framework intended to guide the development of BESS facilities throughout the Town.

2. The setbacks applicable to this application reflect a deliberate legislative determination by the Town Board.

   In developing the BESS regulations, the Town Board considered various setback dimensions and evaluated the appropriate separation between BESS facilities, public rights-of-way, neighboring properties, and surrounding land uses. Following that consideration, the Town Board elected to utilize the applicable setbacks established by the underlying zoning district as the principal dimensional standards for BESS facilities. The Town Board did not establish arbitrary or excessive setbacks, but instead determined that the dimensional requirements of the underlying zoning district provided an appropriate baseline for the siting of BESS facilities. The BESS regulations also provide additional setback protections where BESS facilities are located in proximity to residential uses, thereby recognizing the heightened need to buffer residential properties from the potential visual, operational, safety, and land-use impacts associated with BESS facilities.

3. The requested variances would substantially undermine the recently adopted BESS regulatory framework.

   The requested reductions are not minor dimensional adjustments to an otherwise compliant proposal. Most notably, the requested reduction of the Wetzel Road front yard setback from 200 feet to 10.3 feet would eliminate approximately 95 percent of the required setback. Likewise, the requested reduction of the Highway Overlay Type C setback from 115 feet to 10.3 feet would reduce the required separation by more than 90 percent. These requests therefore represent substantial deviations from the dimensional standards deliberately established by the Town Board. Granting such relief shortly after adoption of the BESS regulations would materially diminish the effectiveness and intent of the recently enacted standards.

4. The Town Board's adoption of the BESS regulations creates a strong expectation that the established setbacks will be observed.

   The Zoning Board recognizes that the statutory authority to grant area variances remains vested in the Zoning Board of Appeals. Nevertheless, the recently adopted BESS regulations provide important evidence of the Town's considered land-use policy concerning these facilities. The Town Board considered alternative setback approaches before determining that the underlying district setbacks, together with additional residential buffering provisions, represented an appropriate balance between allowing BESS development and protecting surrounding properties and the public. Accordingly, the Zoning Board finds that deviations from those standards should be reserved for special and unusual circumstances where the applicant demonstrates that strict compliance creates a genuine and unnecessary hardship that cannot reasonably be addressed through site design or other available alternatives. The circumstances presented by this application do not establish such a special situation.

5. The requested relief is not necessary merely because the proposed site plan is constrained.
   The fact that the applicant seeks to locate BESS equipment in a particular configuration does not, standing alone, establish a sufficient basis for disregarding recently adopted dimensional requirements. The Zoning Board must evaluate whether the requested deviations are justified by the particular circumstances of the property rather than whether the variances would make the applicant's preferred site plan easier or more efficient to construct. Where a proposed development can be redesigned, reconfigured, relocated, reduced in scale, or otherwise modified to comply more closely with applicable dimensional requirements, substantial variance relief is not warranted merely to accommodate the applicant's preferred layout.
6. The requested Wetzel Road setback presents a particularly substantial departure from the applicable standard.
   The proposed reduction from 200 feet to 10.3 feet is a dramatic departure from the required front yard setback. A setback of only 10.3 feet would place substantial BESS infrastructure immediately adjacent to the Wetzel Road frontage and would effectively negate the separation contemplated by the Town's regulations. The Zoning Board finds that such a substantial reduction is inconsistent with the purpose of the setback requirement and is not justified by the circumstances presented.
7. The requested Highway Overlay variance similarly represents a substantial departure from the Town's established land-use objectives.
   The Highway Overlay Type C setback is intended to preserve appropriate separation between development and designated highway corridors and to protect the appearance, functionality, safety, and long-term character of those corridors. Reducing the required 115-foot setback to 10.3 feet would substantially defeat that objective. The requested variance is therefore not a reasonable modification of the applicable standard but a fundamental departure from it.
8. The cumulative effect of the requested variances is significant.
   Although two of the requested reductions—Maltage Drive and the side yard setback—are comparatively smaller, the Zoning Board must consider the application as a whole. The applicant is not requesting a single modest dimensional adjustment. The application seeks four separate deviations from established dimensional standards, including two reductions that are exceptionally substantial. When considered cumulatively, the requested relief would materially alter the relationship between the proposed BESS facility and the surrounding roadways and properties and would significantly diminish the buffering and separation intended by the Town's regulations.
9. The requested variances would create an undesirable change in the character of the neighborhood and surrounding area.
   The required setbacks serve a legitimate land-use purpose by providing separation between substantial structures or facilities and adjoining roadways and properties. Permitting BESS equipment to be located as close as 10.3 feet from Wetzel Road and within the reduced Highway Overlay setback would alter the visual and physical relationship of the property to the surrounding transportation corridors. The Zoning Board finds that granting the requested relief could establish an undesirable precedent for similarly situated properties and could encourage future applicants to seek comparable deviations from the Town's recently adopted BESS standards.

10. The requested variances would frustrate the Town Board's intent to provide appropriate buffering between BESS facilities and surrounding uses.
    The Town Board expressly considered the potential impacts associated with BESS facilities when establishing the current regulatory framework. The resulting standards reflect an effort to provide reasonable separation while permitting BESS facilities in appropriate zoning districts. The requested variances would substantially reduce the physical separation contemplated by that framework and would thereby diminish the buffering intended to protect neighboring properties, roadways, and the broader community.
11. The requested relief is not consistent with the Town's comprehensive approach to BESS siting.
    The recently enacted BESS regulations should be viewed as an integrated regulatory scheme rather than as a collection of isolated dimensional requirements. The setbacks, buffering requirements, and other applicable standards collectively establish the Town's expectations for the appropriate siting of BESS facilities . Granting significant deviations from those standards without extraordinary circumstances would undermine the Town's ability to implement that comprehensive approach consistently.
12. The benefit sought by the applicant can be achieved, at least in substantial part, through alternative site design.
    The Zoning Board finds that the applicant has not demonstrated that strict compliance with the applicable dimensional standards makes reasonable use of the property impossible. The requested variances are principally intended to facilitate the proposed placement and configuration of BESS equipment. The record does not establish that the property cannot reasonably be developed or that the BESS equipment cannot be redesigned, repositioned, reduced, or otherwise configured to better comply with the applicable requirements. The Zoning Board therefore finds that the requested relief is not necessary to preserve a reasonable use of the property.
13. The requested variances are substantial in nature.
    The magnitude of the requested reductions is a significant factor weighing against approval. The Wetzel Road setback would be reduced from 200 feet to 10.3 feet, and the Highway Overlay setback would be reduced from 115 feet to 10.3 feet. These are substantial departures from the applicable standards and cannot reasonably be characterized as minor modifications.
14. Granting the requested variances would establish an undesirable precedent.
    The Town has only recently established its dedicated BESS regulatory framework. Granting substantial deviations from those standards at this early stage would create uncertainty regarding the enforceability and practical significance of the standards for future BESS applications. Approval could reasonably be viewed as establishing a precedent that the recently adopted setbacks are negotiable whenever a proposed BESS layout cannot meet them, contrary to the Town Board's intent that those setbacks serve as the governing dimensional standards.

15. The requested variances would undermine the predictability of the Town's recently adopted BESS regulations.
    A principal purpose of adopting comprehensive land-use regulations is to establish predictable standards upon which municipalities, property owners, neighboring residents, and prospective applicants can rely. The Town Board recently completed the legislative process necessary to establish BESS-specific requirements after considering the appropriate dimensional standards. The Zoning Board finds that the requested deviations, particularly the exceptionally large reductions proposed along Wetzel Road and within the Highway Overlay, are inconsistent with that legislative determination absent extraordinary site-specific circumstances.
16. The benefit to the applicant does not outweigh the potential detriment to the health, safety, and welfare of the surrounding area.
    The Zoning Board recognizes the applicant's interest in developing the property and the potential economic benefits associated with the proposed BESS facility. However, the applicant's private benefit must be balanced against the Town's interest in maintaining appropriate setbacks, buffering, roadway corridors, land-use compatibility, and consistent application of its zoning regulations. Given the magnitude of the requested deviations and the availability of the recently adopted BESS standards as a governing framework, the Zoning Board finds that the benefit to the applicant does not outweigh the potential detriment associated with granting the requested relief.

Conclusion

Based upon the foregoing Findings of Fact, the Zoning Board of Appeals finds that the applicant has not demonstrated the existence of the special circumstances necessary to justify substantial deviations from the dimensional standards applicable to BESS facilities.

The Town Board recently undertook a deliberate legislative process to establish a dedicated regulatory framework for BESS facilities. In doing so, it considered various setback alternatives and determined that the setbacks of the underlying zoning district, supplemented by additional buffering requirements for properties in proximity to residential uses, represented an appropriate and reasonable standard.

The Zoning Board finds that this regulatory framework reflects a considered balance between facilitating BESS development and protecting surrounding properties, roadways, neighborhoods, and the general welfare of the Town. The substantial deviations requested in this application—particularly the proposed reduction of the Wetzel Road setback from 200 feet to 10.3 feet and the Highway Overlay Type C setback from 115 feet to 10.3 feet—are inconsistent with that framework.

The Zoning Board further finds that granting the requested variances would undermine the intent and effectiveness of the recently adopted BESS regulations, create an undesirable precedent for future applications, and diminish the predictability of the Town's land-use standards.

Accordingly, the Zoning Board of Appeals finds that the requested area variances should be DENIED.

Statement Regarding the Basis for Denial

The Zoning Board's determination to deny the requested area variances is not based upon opposition to battery energy storage systems (BESS) as a land use or to the continued development of BESS facilities within the Town. Rather, the determination is based upon the applicant's failure to demonstrate sufficient site-specific justification for the substantial deviations requested from dimensional standards that the Town Board only recently and deliberately established for BESS facilities. The Town Board considered various setback dimensions in developing its dedicated BESS regulations and determined that the setbacks of the underlying zoning district, together with additional buffering requirements where BESS facilities are located near residential uses, provide an appropriate balance between accommodating BESS development and protecting surrounding properties and the public. The requested reductions—particularly the proposed reduction of the Wetzel Road front yard setback from 200 feet to 10.3 feet and the Highway Overlay Type C setback from 115 feet to 10.3 feet—constitute substantial departures from those recently adopted standards. The applicant has not demonstrated that the requested deviations are necessary to preserve a reasonable use of the property or that the circumstances of this particular site constitute the type of special situation that would warrant such significant relief. Accordingly, the denial is based on the application of the Town's established land-use standards and the absence of sufficient justification for deviating from them, rather than on the nature of the BESS use itself.

Adopted by the Town of Clay Zoning Board of Appeals.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Becker	- in favor	
	Mr. Porter	- in favor	
	Mrs. Liebi	- in favor	
	Chairperson Mason	- in favor	*Unanimously Carried*.

NEW BUSINESS:

Case #2026 – Cheryl White/Clay Equestrian Center, 9605 Black Creek Road, Tax Map ID #036.-02-04.1.:

The applicant is seeking an Area Variance pursuant to Section 230-20B (2)(b) – Land Uses and Structures- to permit a 6-foot fence to be maintained between the front yard and street line. The property is in the Residential Agricultural (RA-100) Zoning District.

The secretary read the proof of publication.

The applicant and Steve Calocerinos of Calocerinos Engineering were present.

Chairperson Mason asked Mr. Calocerinos to explain the request for an Area Variance.

Mr. Calocerinos explained the applicant is seeking an Area Variance to allow for construction of a 6 foot split rail/electric horse fence. The existing fence was installed with a grant from the Soil & Water Conservation Service. The fence would prevent horses from getting out of the yard and prevent unauthorized visitors from getting in.

Chairperson Mason asked Mr. Calocerinos to address the Standards of Proof.

Mr. Calocerinos offered the following responses:

1. The applicant does not believe the requested Area Variance will create an undesirable change to the character of the neighborhood as it is zoned Agricultural and would help secure the fields.
2. The applicant does not believe there are other feasible methods other than the requested Area Variance.
3. The applicant does believe the requested Area Variance is substantial compared to the maximum allowable height of 2.5 feet, however does not believe it to be substantial in comparison with the standard fence height for the facility type.
4. The applicant does not believe there will be any adverse effect to the neighborhood.
5. The need for the Variance is self-created.

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

Deputy Chairperson Liebi asked if the fence was electric.

The applicant, Ms. White, confirmed the fence has an embedded electric line; however, it is not wired for electric in front of the house and is not the traditional electric fence. It will be white vinyl.

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

Commissioner Bender stated the discrepancy was identified by the Planning Board and they are looking to bring the fence into compliance.

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.

Chairperson Mason closed the hearing.

MOTION was made by Deputy Chairperson Liebi in Case #2026 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. Becker	- in favor	
	Mr. Porter	- in favor	
	Mrs. Liebi	- in favor	
	Chairperson Mason	- in favor	*Unanimously Carried*.

Case #2027- Matthew Wilson, 4822 Lepinske Farm Place, Tax Map ID #063.-04-14.0.:

The applicant is seeking an Area Variance pursuant to Section 230-13C(4)(c)[3] - Lot and Structure Dimensional Requirements- for a reduction in the rear setback requirements from 10 feet to 3 feet for an accessory structure. The property is the One-Family Residential (R-15) Zoning District.

The secretary read the proof of publication.

The applicant was present.

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

Mr. Wilson stated he is looking to place a shed on the rear of his property to use for storage and would like to place it 3 feet from the property line. The shed will be painted to match the exterior of the home.

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

Mr. Wilson offered the following responses:

1. The applicant does not believe the requested Area Variance will create an undesirable change to the character of the neighborhood as sheds are common in the development. Mr. Wilson also met with the direct neighbors to his property, discussed and showed them the stake out of proposed shed to address any questions or concerns. Neighbors all signed a letter in support.
2. The applicant does believe there are other feasible methods other than the requested Area Variance, such as placing the shed in a different location, however it would then be more visible to neighbors.
3. The applicant does believe the requested Area Variance is substantial as he is asking for a 70% reduction, however, the impact is minimal.
4. The applicant does not believe there will be any adverse effect to the neighborhood, noting the drainage easement would be preserved.
5. The need for the Variance 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 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.

Chairperson Mason closed the hearing.

MOTION was made by Mr. Porter in Case #2027 to approve the Area Variance as requested with the condition they be in substantial compliance with Exhibit "A". Motion was seconded by Mrs. DesRosier.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Becker	- in favor	
	Mr. Porter	- in favor	
	Mrs. Liebi	- in favor	
	Chairperson Mason	- in favor	*Unanimously Carried*.

Case #2028- Pinecrest Apartments LLC/Rotem Evron, 7300 Cedar Post Road, Tax Map ID #107.-20-04.0.:

The applicant is seeking an Area Variance pursuant to Section 230-13H(4)(c)[4] – Lot and Structure Dimensional Requirements- for an increase in the maximum height of an accessory structure from 15 feet to 22 feet. The property is in the Apartment (R-APT) Zoning District.

The secretary read the proof of publication.

Howard Spivak, of Spivak Architects, was present on behalf of the applicant.

Chairperson Mason asked Mr. Spivak to explain the request for an Area Variance.

Mr. Spivak explained the applicant is looking to build a new amenity building on the Pinecrest Apartment property. The building has been designed to have minimal impact on the natural setting and will maintain most of the existing trees. The one-story building would be supported on concrete piers and will contain amenities that would add quality to the life of tenants. Amenities would include a gym, children's room, administrative offices and a conference room. There would be six parking spots with one handicap parking spot closest to the building.

Chairperson Mason asked Mr. Spivak to address the Standards of Proof.

Mr. Spivak offered the following responses:

1. The applicant does not believe the requested Area Variance will create an undesirable change to the character of the neighborhood as the building would not be visible to public streets.
2. The applicant does not believe there are other feasible methods other than the requested Area Variance as other options would not be harmonious with the surrounding nature.
3. The applicant does not believe the requested Area Variance is substantial.
4. The applicant does not believe there will be any adverse effect to the neighborhood, existing trees will remain.
5. The need for the Variance 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 if anyone in the audience had any questions or comments.

Mike Redhead, Town of Clay Fire Inspector, asked if there was fire apparatus access.

Mr. Spivak stated the parking spots and sidewalk would provide access, and they could widen the sidewalk and pathway to allow for access.

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.

Chairperson Mason closed the hearing.

MOTION was made by Deputy Chairperson Liebi in Case #2028 to approve the Area Variance as requested with the condition they be in substantial compliance with Exhibit "A". Motion was seconded by Mr. Becker.

Roll Call:	Mrs. DesRosier	- in favor	
	Mr. Becker	- in favor	
	Mr. Porter	- in favor	
	Mrs. Liebi	- in favor	
	Chairperson Mason	- in favor	*Unanimously Carried*.

There being no further business, Chairperson Mason adjourned the meeting at 6:49 P.M.

Chelsea Clark, Secretary
Zoning Board of Appeals
Town of Clay