

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
June 26, 2008**

MEMBERS PRESENT

Joseph Malcarne, Chairman
John Calogero
Norma Dolan
William Gannon
Paul Trusz

Arlene Campbell, Secretary

MEMBERS ABSENT

Arthur Weiland

ALSO PRESENT

Bob Fennel, ZEO

Chairman Malcarne opened the meeting at 7:36 pm.

Public hearing for the **McNulty Subdivision** is still open.

The chairman began by asking the board secretary if the all the applications on the agenda were advertised and adjoining neighbors were notified. Ms. Campbell responded positive and showed the copy of the ad to the board.

VARIANCE APPLICATIONS:

1. **Danielle Suter** – property located at 1577 Centre Road, **Tax Grid No. 6469-00-398480.**

The applicant is asking a variance to Section 4.1 (District Schedule of Area and Bulk Regulations) which requires a side yard building setback of 50 feet in the C zone in order to construct a 12' x 16' shed nine (9) feet from the side of the property line.

Mr. & Ms. Suter were present for this application.

Mr. Suter explained their proposition. They want to build a 12 x16 shed on the side of their house for storage purposes. He noted that this is the only viable location for the shed. He apologized to the board for starting the construction. He indicated that he is a contractor and his understanding was the structure is 15 feet from the property line. He noted the he ceased the construction immediately after learning from the Building inspector that they need a variance.

Mr. Malcarne verified the distance of the proposed shed from the property line. Mr. Suter responded that the proposed shed will be 9 feet from the property line.

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Mr. Malcarne read the Planning Board recommendation to the Zoning Board of Appeals which is positive.

Mr. Trusz asked about the existing shed. The applicant replied that they want to replace the 6 x 6, plastic shed that they currently have on the property. Mr. Suter indicated that they're putting up a fence where the shed is going to be.

Mr. Trusz asked the exact location of the proposed shed. The applicant responded that it is going to be in between the existing shed and the side of the house.

Chairman Malcarne read one (1) letter from the neighbors who requested not to be identified opposing the Suter's proposal.

Chairman Malcarne asked for comments from the board before opening the public hearing.

Ms. Dolan wanted to know the color of the proposed shed. Mr. Suter replied that it is going to be the same color as the primary dwelling. They wanted the shed to replicate the house.

Ms. Dolan asked for the color of the fence. The applicant responded that it will be stained color.

Mr. Calogero asked about the time frame to conclude the fence. Mr. Suter gave the board an estimate of 2 months to finish the fence. He indicated that the fence will actually cost more than the shed because of the amount of excavation on the ground.

Mr. Suter indicated that they originally wanted to build a shed before the fence. He stated that one of the reasons why they wanted to put up a fence is because of the amount of activity on the road. He added that there is a construction in the backyard and a huge amount of excavation going on.

Ms. Suter indicated that the neighbor's driveway touches their property and the fence will give them privacy. The couple indicated that they had previous arguments with their adjoining neighbor and stated the reason why the said neighbor disapproved their proposal.

Ms. Dolan stated that she doesn't have a record of the sender's name. She indicated that the neighbor's concern is normally legitimate which is storing outside or along the garage house or shed. She noted that the Suter's yard is currently unsightly.

Ms. Suter stated that the reason why they wanted to build a shed is to make their yard not unsightly. They wanted to store all their equipments and toys (4-wheeler, scooter, tractor, bicycle, etc) inside the shed nice and neat.

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Mr. Gannon asked the applicant why can't they put the shed closer to the house since the house is 55 feet from the property line. Mr. Suter explained why the side of the house is the only feasible location of the shed. He indicated that the closer area to the house is the driveway. He added that the shed can be placed in the driveway but this will take up spaces of the driveway.

Mr. Trusz stated that it is not uncommon for the board to give variances to sheds that are closer to the property line within 50 feet buffer zone. He added that this is normally true in the case of topography reasoning such as pre-existing or narrow lots. In this situation, looking from the pictures submitted by the applicants, the topography doesn't drop off. He noted that it is not impossible to put the shed outside the buffer zone.

Ms. Suter indicated that it is very hard for her and the kids to get the snow blower from that location to clean up the driveway. Mr. Suter noted that this location slopes down very heavy. He indicated that it gets extremely muddy every time it rains. He noted that this area is completely clay and steep slope. He added that his tractor got stuck in there one time because of the mud. Ms. Suter also stated that they wanted to put the shed where it is accessible to the kids like storing their bicycles, etc.

Mr. Suter noted that they need to build up the backyard with fill. He added that they will have to move the shed when they do the filling.

Mr. Trusz asked Mr. Calogero if he concurs with the Suter about the condition of the backyard. Mr. Calogero replied positive and indicated the roughness of the backyard. He noted that the backyard needs fill.

Mr. Suter stated that they want to keep the lawn tractor, fuel, etc. away from the house.

The chairman motioned to open the public hearing. Mr. Trusz seconded. All aye, motion carried, 5-0.

Hearing no comments from the public, the chairman moved to close the public hearing. Ms. Dolan seconded. All aye, motion carried, 5-0.

The board discussed the conditions before passing the resolution.

Mr. Trusz stated that the shed cannot be installed in the rear yard because of the topography and soil type. He added that since the shed is too close to the property line, fence should be installed and be painted to blend in with the area. There should be no windows installed on the rear of the shed. External lights should not be illuminated outward. Storage outside the shed and in the setback is not permitted. Mr. Trusz indicated that the fence needs to be maintained.

Mr. Calogero asked about the height of the fence. Mr. Suter responded that it is currently 6 feet. The fence is off the ground. It steps up a little bit off the ground.

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Mr. Calogero asked the applicant about the height of the proposed shed. The applicant replied that the shed is going to be a little higher than the fence. He indicated that the fence is 8 feet tall from the grade. He stated that the shed is approximately 15 feet high. He noted that the roof of the shed is probably the only part of the shed that is going to be visible from the road. Mr. Suter stated that he prefers steep roof on the shed to match his house.

Mr. Trusz asked the ZEO if there is a guideline on the height restriction on the shed and fence.

Mr. Fennel responded that there is a restriction on the height of the Accessory Building which is 24 feet.

Mr. Trusz asked the board if they need to restrict the height of the shed without being intrusive to adjoining properties.

Mr. Calogero indicated that he was more concerned with the height of the fence since the fence is going to block substantial part of the shed.

Mr. Suter indicated that there is a pine tree by the driveway that blocks the view of the shed. He noted that the pine tree is not in his property. It was noted that there is a common driveway that is being shared by three houses.

After all the discussions have been made, the board passed a resolution.

Mr. Malcarne made a motion that the Town of Clinton Zoning Board of Appeals approves the requested area variance to Section 4.1 (District Schedule of Area and Bulk Regulations) to allow the construction of a 12 x 16 shed which will have a side yard setback of nine (9) feet where 50 feet is required. The requested area variance is on a 3.09 acre site located at 1577 Centre Road, **Tax Grid No. 6469-00-398480** which is located in the C Zoning District in the Town of Clinton.

WHEREAS:

1. The applicant requests a variance to allow the construction of a 12' x 16' (192 S.F.) shed.
2. The proposed location of the shed would not disrupt the quality and quantity of surface and groundwater in the Conservation District.
3. The shed will be a traditional style and will not be a detriment to the character of the neighborhood.

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4. The property is not in the Ridgeline, Scenic and Historic Protection Overlay district
5. An area variance does not require an Ag Data Statement.
6. The site is not in a NYSDEC Wetland.
7. The site is on a designated Scenic or Historic road, that being Centre road.
8. There are not any known outstanding zoning violations.
9. The property is not in a CEA district.
10. The proposed variance is substantial but this should not preclude its granting.
11. It is noted that an area variance is a type II action under SEQRA and requires no further action.
12. The proposed variance will not have an adverse effect on the physical or environmental conditions in the neighborhood.
13. The impact of the additional building is minimal.
14. The alleged difficulty is self created.
15. The Shed cannot be installed in the rear of the property due to topography and soil conditions

NOW THEREFORE, BE IT RESOLVED, the Town on Clinton Zoning Board of Appeals grants the requested area variance with the following **conditions**:

1. A 6' high stockade type fence is to be installed by the end of September, 2008, and painted to blend in with the surroundings.
2. No lights are to be installed on the east, south & west exterior sides of the shed.
3. No windows are to be installed on the rear (south) of the shed.
4. The shed will not be constructed higher than 14' from the shed floor.
5. No storage of any kind in the set back and on the exterior of the shed.

Seconded by Mr. Trusz.

Discussion.

Mr. Trusz reminded the board about storing outside.

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The board had discussion about the tree shrubs. The Suter indicated that you cannot see their house from the road because of the trees. Mr. Suter added that they want to put summer screen on the property.

Ms. Dolan wanted to propose the height of the fence. The board agreed to restrict the height of the fence to 6 foot stocky since the shed is close to the setback.

All aye, motion carried, 5-0.

2. **Michael Neumann/John Heist** - property is situated at 256 E. Meadowbrook Lane, Tax Grid No. 6367-00-944370.

The applicants are seeking the following variances in order to convert the existing garage into an Accessory Dwelling Unit, to wit:

- Sec. 4.1 which requires setback of 100 feet from center of the road.
- Sec. 5.3 D1 requires that the Accessory Dwelling Structure meets all minimum setbacks.

Mr. Neumann and Mr. Heist were both present for their application.

The applicants explained their proposal. Mr. Heist indicated that they want to put a bathroom and kitchen in the existing 2 car garage. They started putting in a composting toilet but found out that they need to get a variance. They just installed heating and air-conditioning unit. Mr. Neumann noted that their intention is to finish the bathroom.

Mr. Malcarne asked if there was a previous variance granted before. The applicant responded negative since the previous owner did not finish the structure.

Mr. Gannon indicated that the said structure was built in 1982 but did not get the Certificate of Occupancy 'till 1999. It was noted that applicants bought this property in 1999.

Mr. Trusz read the Planning Board recommendation to the Zoning Board of Appeals which is positive.

There were no correspondences from the adjoining neighbors.

Mr. Fennel made a comment about the recommendation from the Planning Board. It was noted that the Planning Board made a recommendation to grant a 3rd variance to Sec. 4.7A3 which is to allow for the placement of an existing accessory structure in front of the principal structure.

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Sec. 4.7 A-3 of the Town of Clinton Zoning Law states that **“No such structure shall project closer to the fronting street than the principal dwelling on the lot, or the required front yard setback for the district, whichever shall be less restrictive.”**

He stated that Planning Board stated that accessory structures must comply with their footage in front of the street line. He noted that this is an existing structure standing in front of the street line and the variance to put it there presumably granted that. He indicated that it is much more sense to seek the variance to Sec. 5.3 D1. The applicant is creating an accessory dwelling unit and should comply with Sec. 5.3 D1.

Sec. 5.3 D1 of the Town of Clinton Zoning Law states that **“The accessory structure must meet the minimum setback requirements established for the construction of a principal structure in the zoning district as prescribed in Section 4.1 (Schedule of Area and Bulk Regulations).”**

Mr. Trusz agreed with Mr. Fennel. He stated that the original variance was for the structure and the board is only hearing a variance of what is going to happen inside the structure.

Mr. Trusz asked if the property is in the Hamlet or R3 District. He stated that the application form stated that this is in the AR 3 Zoning but the assessor’s card stated hamlet.

Mr. Fennel stated that this is in the R3 District. Ms. Dolan noted that the assessor’s record needs to be corrected.

Mr. Trusz made a remark about the applicants’ property. He stated that this is one of the most scenic areas in town. The houses to the north and east of the property are close to the road. He noted that the applicant’s house and having a cottage close to the road blended very nicely with the hamlet even though their house is just outside the hamlet.

Mr. Trusz noted that he is normally not in favor of an accessory dwelling this close to the road. Looking at the lifestyle of the hamlet and since the property is just right outside of the hamlet, the property blended very nicely with the hamlet.

Ms. Dolan agreed with Mr. Trusz. However, she noted her concern about this property whether it will stay the same in the future. She wanted to have some stipulations to preserve the property.

Mr. Heist noted that this is just one part of their properties. He indicated that they just recently bought 42 acre lot that is adjacent to their property from the neighbor. The said property runs from Meadowbrook Lane to School House Road. He noted that such property is in the Land Trust.

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The applicants noted their intentions in preserving this property. They agree with a no future subdivision but cannot commit since the property is in Winnikee Land Trust.

Ms. Dolan stated that the town does not have a record of a Land Trust and how it affects the property.

The board discussed where the Winnikee Land Trust on the map.

Mr. Neumann indicated that the proposed cottage is to be used as a studio office. Both of them are architects and they need the bathroom in the structure for convenience. He added that this is a potential second home.

Ms. Dolan stated that this is the reason why other applicants get denial from their applications. She noted that these citizens don't have the amount of property that Mr. Neumann and Mr. Heist have. Ms. Dolan is concerned about this property since it is in a 3 Acre Zoning. She asked Mr. Trusz opinion about this matter.

Mr. Trusz asked the Zoning Officer about the regulation on accessory dwelling when it comes to number of acreage.

Mr. Fennel noted that you need to double the acreage in order to have a detached accessory dwelling unit. In this case, applicants need to have a minimum of 6 acre-lot in order to keep the accessory dwelling unit. If the property is in the Hamlet Zoning, then the minimum is only 2 acres.

Ms. Dolan was satisfied about the 6 acre lot minimum requirement to subdivide. She indicated that 6 acres will preserve this property.

Mr. Neumann noted that there is really no way to subdivide the property because of the amount of steep slopes.

Mr. Calogero confirmed that the back of the property is in very steep slope.

Mr. Gannon asked about the septic system. He wanted to know if the building inspector checks the septic system.

The ZEO responded that the applicant has to come back before the Planning Board to get a Special Permit, then go to the Building Department for a building permit and then get a Board of Health Approval.

Mr. Gannon asked the applicants if the toilet is in already. Mr. Neumann responded that they started putting a composting toilet.

Mr. Gannon asked Mr. Trusz to include the septic system in the conditions. Mr. Trusz agreed.

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The chairman made a motion to open the public hearing. Mr. Trusz seconded. All Aye. Motion carried, 5-0.

Hearing no comment from the public, the chairman moved to close the public hearing. Ms. Dolan seconded. All Aye, motion carried, 5-0.

After all the reviews and discussions, the board passed the resolution.

Mr. Trusz motioned to grant the area variance to Michael Neumann & John B. Heist III of 256 E. Meadowbrook Lane **Tax Grid No. 6367-00-944370** which is located in the AR 3 Zoning District in the Town of Clinton, a relief from Section 5.3 D1 of Town of Clinton Zoning Law, to allow for the placement of an accessory dwelling unit on record within the minimum front yard setback requirement.

Factors:

1. The applicant is requesting a reduction of the front yard setback from 100 feet to 14.3 feet to allow for the placement of an accessory dwelling unit on record.
2. This is a 15.43 acre parcel located in an RD 3 Zoning District.
3. The NYS Environmental Quality Review Act has determined that an area variance for a single-family, two-family, or three-family residence is a type II action and, therefore, is not subject to further review.
4. Since the request is for an area variance, an Agricultural Data Statement is not required.
5. An undesirable change in the character of the neighborhood or a detriment to nearby properties will not be produced.

East Meadowbrook Lane enjoys a wonderful country setting of a hamlet life style finding homes situated closer together and nearer to the edge of the roadway. There are at least two occupied dwellings to the east and two to the west of the applicant's proposed guest dwelling unit that are situated close to the roadway. The proposed guest dwelling unit will fit nicely within the character of the area.

6. The benefit sought by the applicant CANNOT be achieved by any other feasible alternative to this variance because the proposed guest dwelling will be housed in an existing structure.
7. The requested variance is substantial in that the applicant is proposing a guest dwelling 14 feet from the roadway. However, there are at least 4 occupied dwelling units with similar setbacks from the road in close proximity.

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8. The alleged difficulty is self-created in that the applicant wishes to convert an existing structure into a guest dwelling unit.
9. The proposed variance will not have an adverse effect or impact on the physical or impact on the physical or environmental conditions in the neighborhood or district.

CONDITIONS:

1. The existing shrubs between the structure and the road be maintained.
2. The Sewage Disposal System (SDS) be updated to comply with current Dept. of Health codes to accept the additional volume from the guest dwelling.

Seconded by Ms. Dolan.

Discussion.

Ms. Dolan asked for the square footage of the accessory dwelling. Mr. Calogero stated that it is 747 square feet. The ZEO noted that 747 square feet is for the entire structure.

Mr. Trusz indicated that the garage is an existing dwelling and is already recorded at the assessor's office.

Ms. Dolan wanted the assessor's record be corrected about the zoning of the property. She stated that the assessor's card states that the property is in the Hamlet.

Mr. Trusz modified the 1st whereas motioned of the planning board. He indicated that the board was approving the variance to Sec. 5.3 D1. He noted to add the word on record at the existing garage.

All aye. Motion carried, 5-0.

APPROVAL OF MINUTES:

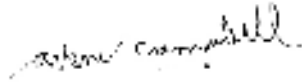
Mr. Trusz motioned to accept the amended May 22, 2008 minutes. Ms. Dolan seconded. Discussion. All in favor. Aye. Motion carried, 5-0.

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ADJOURNMENT

The meeting was adjourned at 9:39 pm. The next Zoning Board of Appeals meeting is scheduled on July 22, 2008 at 7:30 pm.

Respectfully submitted,



Arlene A. Campbell, Clerk
Planning & Zoning Board of Appeals

cc: Barbara Joyce, Town Clerk