

**TOWN OF CLINTON
PLANNING BOARD MEETING
FINAL MINUTES
January 4, 2011**

MEMBERS PRESENT

Art DePasqua
Gerald Dolan
Tracie Ruzicka
Paul Thomas
Eliot Werner

MEMBERS ABSENT

Mike McCormack, Chairman

Arlene Campbell, Secretary

ALSO PRESENT

Michael Dean, Liaison Officer

Acting Chairman DePasqua called the meeting to order at 7:30 p.m.

AREA VARIANCE APPLICATION:

Susan and Joseph Aiello – property located at 9 Third Ave, **Tax Grid No. 6469-09-243615.**

Applicants propose the following area variances to Sec. 250 Attachment 2 of the Town of Clinton Zoning Law in order to put up a 12' x 40' garage on a .46 acre lot:

- Side Yard variance from 50 feet to 10 feet.
- Rear Yard variance from 75 feet to 64 feet.
- Increase in Maximum lot coverage from 7% to 13.7%

Mr. & Mrs. Aiello were both present for their proposal. Mr. Aiello explained that they want to put up a 12' x 40' garage at the end of the driveway. He presented a photo of the vintage car that he wants to park in the garage. He said that this seems to be the best location for the proposed garage since this will not block anybody's view.

Mr. DePasqua solicited questions from the board.

Mr. Werner asked the applicant about moving the proposed garage closer to the driveway entrance. The need of a setback variance to the rear will be eliminated if the proposed garaged is moved 11 feet closer to the front.

Mr. DePasqua concurred with Mr. Werner's suggestion. Moving the proposed garage 11 feet towards the front won't make it stick out to the front of the house nor come near the stairways.

The Aiellos agreed to eliminate the other variance.

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Mr. DePasqua asked about the aspect of the proposed garage. Mr. Aiello responded that they want the proposed garage to match their house. He noted that they're going to contract this structure with Brad's Barn over in Kingston. He stated that he thinks that this structure is going to be made up of wood. He stated that he will check with the contractor what kind of materials the barn is going to have.

Mr. Werner asked about the distance of the proposed garage to the house. Ms. Ruzicka responded that the distance of the proposed structure to the house is around 78.4 feet as indicated on the sketch plan.

Mr. Thomas verified the lot coverage of 11% as opposed to the zoning code of 7%. Mr. DePasqua replied that it is 11% now due to the addition of a pool and a deck.

Mr. Thomas asked if this property is grandfathered. Mr. Aiello indicated that they just bought this property in August of 2010. Mr. DePasqua noted that properties on this area are nonconforming lots and grandfathered because of the lot sizes.

The board reviewed the application. Mr. DePasqua stated that he doesn't have a problem granting this variance as long as the construction of the garage is done properly. Mr. DePasqua advised the applicants to get the construction specifications of the proposed garage (height and construction materials, etc) before going to ZBA. He added that there are no violations or any open permits on this property.

Mr. DePasqua stated that the application form wasn't filled out properly. He asked the applicants to complete the application form. The applicants agreed.

Mr. Thomas questioned the size of the structure. Mr. Dolan commented that there hasn't been a garage on this property before. If the applicant is just trying to accommodate a vintage car in this garage then he might get away with a single garage.

Mr. Aiello remarked that he wants to put 2 cars in this garage.

Mr. DePasqua discussed the screening on this property. He suggested monitoring the buffer (trees) on the property line. He commented that the ZBA might even ask for more landscaping on this area. He advised the Aiellos not to take any trees down as much as possible. The Aiellos also need a letter from the neighbor on the right side of the property stating their opinion about this project.

Hearing no more comments, the board agreed to pass a resolution, to wit:

Mr. DePasqua made a motion that the Town of Clinton Planning Board provide a **conditional positive** recommendation to the Zoning Board of Appeals on the requested area variances to Sec. 250 Attachment 2 for a side yard setback reduction from 50 feet to 10 feet, rear yard reduction from 75 feet to 64 feet and expand maximum coverage from

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7% to 13.7% property owned by **Susan and Joseph Aiello** of 9 3rd Ave, **Tax Grid No. 6469-09-243615**. The lot is .46 acre in the C District. The reason for the variance is to construct a 12 x 40 garage.

WHEREAS:

1. The applicants are requesting 3 variances in order to construct a 12 x 40 garage on a .46 acre lot located in the C District:
 - a) Sec. 250 Attachment 2 for a side yard setback reduction from 50 feet to 10 feet.
 - b) Sec. 250 Attachment 2 for a rear yard setback reduction from 75 feet to 64 feet.
 - c) Sec. 250 Attachment 2 for an increase of maximum lot coverage from 7% to 13.7%.
2. The lot (.46 acre) is located in the C District (Silver Lake) and not in an Ag District.
3. The lot is a pre-existing sub standard lot. As in the case of majority of lots in the area, variances are required for even the slightest change since these lots were created before zoning.
4. The alleged difficulty is self created.
5. The property is not in the Ridgeline, Scenic and Historic Protection Overlay District.
6. It is noted that an area variance is a Type II action under SEQRA and requires no further action.
7. The variances are substantial.
8. It is noted that the rear yard variance can be eliminated by moving the garage forward 11 feet.
9. Height, construction materials are a major concern since proposed construction is only 10 feet from the property line. A landscape buffer should be considered since the garage will be highly visible.
10. The issue of coverage is a frequent one since the lots were created pre-zoning and do not allow for expansion to accommodate changing needs.
11. Accommodations to construction materials and architectural style screening can make this action less of a change to the neighborhood.

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12. No known violations per ZEO.

13. All fees have been paid.

14. Page 3 of application also needs to be completed.

NOW THEREFORE, BE IT RESOLVED, the Planning Board is making a positive recommendation for approval to the Town on Clinton Zoning Board of Appeals when the following **conditions** are met:

- a. Rear yard variance be eliminated by moving garage forward 11 feet.
- b. Applicants provide ZBA with proposed construction materials, architectural style and height dimension.
- c. Applicants provide ZBA with landscaping plan i.e. buffer for garage.

Seconded by Mr. Werner.

Discussion. Mr. Werner suggested adding the word “architectural design” on the statement about construction materials. The board agreed.

Mr. Thomas indicated his concern about the maximum lot coverage. This is double the allowed coverage (7% to 13.7%). He also commented about the size of the proposed garage.

All Aye except Mr. Thomas who Nay, Motion carried, 4-1.

Genie Polower Area Variance – property located on 167-169 Allen Road, **Tax Grid No. 6466-00-455464.**

Applicant is seeking an area variance to Sec. 250-29 B of the Zoning Law (criteria for the special permit prohibiting the construction of an accessory apartment in a two family dwelling or on a nonconforming property with multiple dwellings). The property is in the AR 5 Zoning District.

Mr. Olson from McCabe and Mack LLP appeared on behalf of Ms. Polower. Also present for this case was the town attorney, Don Cappillino.

The applicant’s attorney recapped what had transpired at the last meeting (see PB minutes dated 11-16-10).

Ms. Polower has nonconforming uses and nonconforming lots. There are 8 dwelling units on this property (4 units on the red house and 4 units on brown house). ZBA made a determination on January 28, 2010 that the brown house contains pre-existing, nonconforming two family dwelling units with 2 boarders. In order to make this dwelling

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legal for 2 boarders, Mr. Olson stated that they need to remove 2 kitchens. Ms. Polower wants to accommodate 4 families/people on this dwelling as much as possible. In view of this, they are now proposing to have an Accessory apartment to be constructed within 2 family dwelling or on a lot with multiple nonconforming use.

Mr. Olson noted that there will be no changes on this property from the planning standpoint. They are also proposing to do a lot line adjustment which will eliminate a 5 acre lot that is currently a buildable lot. This proposal will also eliminate 1 dwelling unit (8 to 7 units).

A question was raised at the last meeting whether this is an Area Variance or Use Variance. The board agreed to seek the town attorney's opinion about the issue. The applicant is now back before the board for continuance of this case.

The town attorney expressed his comments about the issue (area or use variance). This property is currently a subject of an ongoing litigation. The applicant has eliminated number of issues on this property. Other issues are still being addressed and this is the only major issue left.

With regards to the question whether this is an Area or Use Variance, Mr. Cappillino stated that if the use now being sought is a multi-family use not otherwise permitted, one could argue that a Use Variance is being sought. On the other hand, if the dimensional requirements prevent the use from being permitted in the zone, the variance sought is an Area Variance.

Mr. Cappillino noted that this issue is one for the ZBA and not for the Planning Board. The board is only being asked for an area variance recommendation. It is up to the Zoning Board of Appeals to make that determination whether this is a use or area variance.

Chairman McCormack opened questions to the board.

Ms. Ruzicka questioned about the applicant's proposal. This proposal is to allow a two family dwelling plus an Accessory apartment on one building. Mr. Olson concurred about the objective of their proposition.

Ms. Ruzicka remarked that this is not the objective of our zoning law. Mr. Olson stated that they are allowed to have four people in this dwelling but they cannot have four kitchens.

Ms. Ruzicka stated that the idea of our zoning is to prevent residential properties from becoming commercial properties. She cited that even Bed and Breakfast businesses have to be owner occupy.

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Mr. Olson remarked that this is an owner occupant property. He noted that Ms. Polower lives on the premises.

Ms. Ruzicka asked, "What happens if Ms. Polower dies, will the use of the property goes with her? Mr. Cappillino responded that they can include this in the condition.

The board discussed the lot line adjustment. After a brief discussion about the issue, the board agreed to include this as a condition to the resolution. The applicant needs to get a lot line adjustment before getting a Special Permit.

The board passed a resolution, to wit:

Ms. Ruzicka motioned that the Town of Clinton Planning Board approves the following resolution:

BE IT RESOLVED, the Town of Clinton Planning Board is making a positive conditional recommendation for approval to the Town of Clinton Zoning Board of Appeals on the requested area variance to Section 250-29B to allow Accessory Apartment with nonconforming two family dwelling on properties owned by Genie Polower located at 167-169 Allen Road, Tax Grid No. 6466-00-455464.

WHEREAS;

1. The applicant is requesting a variance to Section 250-29 B of the Town of Clinton Zoning Law to allow Accessory Apartment with non-conforming two family dwelling.
2. This is 5.53 acre flag lot located in a AR5 Zoning District.
3. The NYS Environmental Quality Review Act has determined that an area variance for a single family, two family, or three family residences is a type II action and therefore is not subject to further review.
4. An AG Data statement is not required for an area variance.
5. This property is not located in a Critical Environmental Area as per resolution of the Town Board 12/11/01.
6. The benefit to the applicant is substantial. The zoning code clearly prohibits all of the rental units on this property currently. A variance will allow this non-conformity to continue.
7. The requested variance is substantial and will still not bring the applicant into compliance.
8. The alleged difficulty is self created.
9. The proposed area variance will not have an adverse effect on the local community. Economic hardship does not allow applicant to circumvent the zoning law. A 10 acre parcel under current zoning should at most have a 2 family dwelling with the owner in residence or a single family residence plus an accessory use apartment, not both. The Planning Board recommends a variance, if granted, be in place only for Ms. Polower and only on the **condition of owner**

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occupancy.

10. All Appropriate fees have been paid.

NOW THEREFORE, BE IT RESOLVED, the Town of Clinton Planning Board **provides a positive recommendation for approval** to the Town of Clinton Zoning Board of Appeals with the following **condition**:

- a lot line adjustment must be pursued prior to Special Permit Application.

Seconded by Mr. Thomas.

Discussion. Mr. Werner asked if they need to mention anything about the issue whether this is an area or use variance application. Mr. Cappillino replied that it is up to the Zoning Board of Appeals to make that determination. Planning Board is only addressing the current application which is an area variance.

All in favor, Aye, Motion carried 5-0.

PUBLIC HEARING:

None

OTHER MATTERS:

Leslie Pearl Steep Slopes Permit – property located at 350 Schultz Hill Road, **tax grid #6268-00-960733-00.**

Mr. Werner brought out the issue about this property. He stated that this property is an archeological site. After a brief discussion about the issue, the board agreed to circulate this case to two more agencies.

Mr. Werner motioned that the Town of Clinton Planning Board approves the following resolution:

Be it Resolved, that the Town of Clinton Planning Board amends the resolution that was passed on December 7, 2010 in the matter of **Leslie Pearl Steep Slopes Permit Application** on property located at 350 Shultz Hill Road, **tax grid #132400-03-6268-00-960733-00**, to include the following as **Interested Agencies**:

1. Dutchess County Soil and Water
Farm and Home Center
2715 Rte 44 Ste 3
Millbrook NY 12545
2. NYS OPRHP (SHPO)

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Field Services Bureau
PO Box 189
Waterford NY 12188-0189

BE IT FURTHER RESOLVED, the Planning Board hereby directs the copies of Steep Slopes Special Permit Application, Short Form EAF and Site Plan be sent to the above interested agencies.

Seconded by Ms. Ruzicka, All Aye. Motion carried, 5-0.

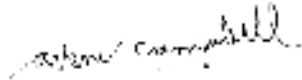
APPROVAL OF MINUTES:

Mr. Werner motioned to accept the minutes of December 21, 2010 minutes as amended, seconded by Mr. Dolan, all aye, Motion carried, 5-0..

ADJOURNMENT

Mr. Werner motioned to adjourn the meeting at 9:05 pm, seconded by Mr. Thomas, All Aye, Motion carried, 5-0.

Respectfully Submitted,



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

Cc: Carol Mackin, town clerk