

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
January 27, 2011**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero

Norma Dolan
Frank Kealty

Arthur Weiland

Arlene Campbell, Secretary

MEMBERS ABSENT

Charles Canham

Macy Sherow III

ALSO PRESENT

Bob Fennel, ZEO

Chairman Malcarne called the meeting to order at 7:36 pm. He introduced the new member of the board, Frank Kealty.

Chairman Malcarne asked the secretary if all the applications on the agenda were properly advertised and adjoining neighbors were notified. Ms. Campbell responded positively.

Public hearing for Botbol's case is still open.

Chairman Malcarne informed the public that the meeting was being recorded.

AREA VARIANCE APPLICATION:

Jacques and Catherine Luiggi – property located at 92 Longview Road, **Tax Grid No. 6469-00-990046.**

Applicants propose an area variance to Sec. 250 Attachment 2 of the Town of Clinton Zoning Law to reduce a side yard setback from 50 feet to 10 feet in order to put up a 12 x 14 shed.

Mr. and Mrs. Luiggi appeared for their application. Ms. Luiggi explained that they want to put up an Amish and nonpermanent shed next to the garage on their property. The proposed shed will sit on the black top and will be used for storage. She noted that this is the only viable site that they can put this proposed shed.

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Mr. Weiland read the Planning Board recommendation letter dated 12-07-10 which is positive. One letter was received from the adjoining property owners, David and Ellaine Tellerday of 84 Longview Road, expressing no objection about this project.

Chairman Malcarne solicited questions from the board.

Mr. Weiland asked about the existing shed on the property. Ms. Luiggi responded that there is a small shed that is sitting next to the garage. The proposed shed will be situated on the other side of the garage right on the black top. She presented pictures of the property showing the exact location of the proposed shed.

Mr. Weiland expressed his concern about sheds sitting on the side setback of the property. People tend to hang things, lean stuff such as ladder, tools, shovel, etc. outside the shed without realizing that these items are sitting in the setback. Property owners should leave this setback free of storage. Mr. Weiland expressed his concern about a potential increasing the piles of stuff on this area in the future.

Ms. Luiggi noted that the purpose of this shed is to clean up the property and store the clutter inside the shed.

Mr. Weiland stated that this shed might not be a problem to the next door neighbor right now. He asked, "What if the future next door neighbor has a problem with it?" Mr. Weiland asked the applicants if they are willing to move the proposed shed.

Ms. Luiggi responded that they are well-organized people. They don't like mess or clutter. This is not a permanent shed. Ms. Luiggi noted that they can move this shed in the future.

Chairman Malcarne asked the ZEO if he has any concern about this proposal. Mr. Fennel responded negatively.

Chairman motioned to open the public hearing, seconded by Ms. Dolan, all Aye, Motion carried, 5-0.

Hearing no comments from the public, Chairman motioned to close the public hearing, seconded by Mr. Kealty, All Aye, Motion carried, 5-0.

After all the reviews and discussion, the board passed a resolution, to wit:

Mr. Malcarne motioned that the Zoning Board of Appeals grants the requested area variance to Sec. 250 Attachment 2 of the Town of Clinton Zoning Law to reduce a side setback from 50 feet to 10 feet for a construction of shed as requested by **Jacques and Catherine Luiggi** on property located at 92 Longview Road, **Tax Grid No. 6469-00-990046** in the AR3 District.

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FACTORS:

1. The applicants are requesting a reduction of the sideyard setback from 50 feet to 10 feet to allow for a non-permanent 12 x 14 shed with a natural wood finish.
2. The requested area variance will not produce an undesirable effect on the neighborhood because the shed will be located at the rear of the blacktop drive in front of a fence and tree line. The shed will not be visible from the road.
3. The lot is 4.3 acres in size in the AR 3 District and is not within the Ridgeline, Scenic and Historic Protection Overlay District.
4. The location of the shed, while close to the property line appears to be the appropriate location due to current landscaping, water runoff and accessibility.
5. The alleged hardship is self-created, but the benefit to the applicant can be achieved without significant detriment to the community.
6. The property is not located in a Critical Environmental Area or in the Scenic Ridgeline Overlay District.
7. Since the request is for an area variance, an Agricultural Data Statement is not required.
8. The property is a single-family residence. The New York State Environmental Quality Review Act has determined that the granting of an area variance for single family residence is a Type II action and therefore this action is not subject to further review.

Seconded by Mr. Weiland.

Discussion. Mr. Weiland indicated the request from the Planning Board about maintaining the tree lines. The Luiggis remarked that these tree lines belong to the next door neighbor.

All Aye, Motion carried, 5-0.

Joseph and Susan 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 construct a 12 x 40 garage on a .46 acre lot which is located in the C District, to wit:

- a) Side yard setback reduction from 50 feet to 10 feet.

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- b) Rear Yard setback reduction from 75 feet to 64 feet.
- c) Increase of maximum lot coverage from 7% to 13.7%.

Mr. and Mrs. Aiello were both present for their proposition. Mr. Aiello explained their project. They are from New York City who recently bought this property (end of August of 2010). They have a vintage car that they want to store inside the garage. This garage will be standing at the end of the driveway since there's really no place to put up a garage on this property. Mr. Aiello presented a brochure from Brad's Barn in Kingston showing the layouts and aspects of the proposed garage. He also submitted a sample of the siding which matches the color of their house. He noted that there is a tree line that would block the neighbor's view.

Ms. Dolan read the Planning Board recommendation letter dated 1-4-11 which is a conditional positive recommendation. One of the conditions to the positive recommendation was about elimination of one variance (rear yard setback).

Chairman Malcarne opened questions to the board.

Mr. Weiland commented that he doesn't think that there is a need to eliminate the rear yard setback variance. He asked the applicant the reason why PB recommended the elimination of the said variance. Mr. Aiello responded that Planning Board opined that moving the proposed shed 11 feet forward would make it closer to the steps of the porch plus it will eliminate the need of another variance.

Mr. Weiland stated that he preferred the original location of the proposed garage. He indicated his concern about the right of way. He asked the Aiellos if they would use the right of way to access the garage. Mr. Aiello replied negatively.

Mr. Weiland expressed his concern about the lighting. He asked about the details and orientation of the proposed garage. Is the garage door facing the neighbor's property? Will the garage have windows?

Mr. Aiello responded that the garage door will be facing towards 3rd Avenue and the windows will be facing his house.

Mr. Weiland shared his concern about potential storage outside the garage. The Aiellos responded that all storage will be inside the garage.

Ms. Dolan asked the applicants if there were any other more discussions at the Planning Board meeting about moving the garage 11 feet forward. Mr. Aiello responded none.

Mr. Calogero asked the Aiellos about their logic of the original sketch. Mr. Aiello responded that they really don't want to overlap that area (front porch steps). They don't want anything that would impede the porch entrance as much as possible. They want to

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keep this area clear to avoid difficulty in getting thru the house especially if you're carrying groceries and other big items.

Mr. Calogero indicated his preference to the original sketch that was submitted by the applicants.

Ms. Dolan shared the same thoughts as Mr. Weiland and Mr. Calogero.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Calogero, All Aye, Motion carried, 5-0.

Hearing no comments from the public, Chairman Malcarne motioned to close the public hearing, seconded by Mr. Kealty, All Aye, Motion carried, 5-0.

The board agreed to pass a resolution, to wit:

Ms. Dolan motioned that the Zoning Board of Appeals grants the following area variances to Sec. 250 Attachment 2 of the Town of Clinton Zoning Law in order to construct a 12 x 40 garage, property owned by Susan and Joseph Aiello located at 9 Third Ave, **Tax Grid No. 6469-090243615**, to wit:

1. Side yard setback reduction from 50 feet to 10 feet
2. Rear Yard Setback reduction from 75 feet to 64 feet
3. Expand maximum lot coverage from 7% to 13.7%

Factors:

1. This project would not produce an undesirable change in the character of the neighborhood or become a detriment to nearby properties.
2. The benefit sought by the applicant cannot be achieved by a feasible alternative to this variance since the structure is already in the front set back and any additions to entrance way will further extend into the front setback area.
3. The requested variances are substantial.
4. The variances will not have an adverse impact on the physical or environmental conditions in the neighborhood as other homes in the area have similar circumstances. In fact, in an area of small lots, the garage will enhance the Aiello's and the adjoining neighbor's privacy.
5. The difficulty was self-created.
6. The property is not in the ridgeline, scenic and historic protection overlay district.
7. The NYS SEQRA Act has determined that an area variance for a single family residence is a Type II action and therefore not subject to further review.
8. An AG Data statement is not required for an area variance.
9. The property is located in an a C Zoning District of the Town of Clinton.
10. The property is not located in a Critical Environment Area.

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Condition:

No storage outside the garage, any lighting must be “downward”

Seconded by Mr. Calogero.

Discussion. Mr. Weiland suggested including “down lighting and no outside storage” in the condition to the approval. The board agreed.

All Aye, Motion carried, 5-0.

Genie Polower Area Variance – property located at 167-169 Allen Road, **Tax Grid No. 6465-00-455464.**

Applicant is seeking an area variance to Sec. 250 -29 B of the Town of Clinton Zoning Law to allow an Accessory apartment with nonconforming two family dwelling.

Richard Olson from McCabe and Mack LLP, together with Mr. Ayer, property representative appeared on behalf of Ms. Polower.

Jeff Rothschild of Cappillino and Rothschild LLP (town attorney) was also present for this case.

Mr. Olson gave a brief history of this property.

In 1976, Andrew Strupp acquired this property. There was an interpretation made by this board in January of 2010 that this is a legal, nonconforming, two family units with two boarders. Currently, the existing structure has 4 independent units. Mr. Olson explained that in order to make this structure a legal nonconforming, two family dwelling units with two boarders, they need to remove 2 kitchens. Mr. Olson quoted that according to the ZEO, they can have 2 boarders if they remove 2 kitchens. This will reduce the number of dwelling units from 4 down to 2.

Mr. Olson stated that they have been trying to resolve the issues on this property which have developed over the past 30 years. He indicated that Ms. Polower, the surviving spouse of Mr. Strupp, lost the front property on adjacent parcel and the rest of her property in New Jersey through foreclosure.

Mr. Olson stated that they want to bring this structure into conformity. Ms. Polower lives here and this is her sole source of income. The applicant’s counsel stated that they are now back before the board to seek the criteria of an Accessory Apartment statue which permit an Accessory Apartment within a single family dwelling (Mr. Olson commented, “this is not”), a nonconforming lot where there are no two uses on the same lot allowed (Mr. Olson stated that he is seeking a variance on this regulations).

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In addition to this proposal, Mr. Olson stated they are also proposing to merge an extra 5 acre parcel (which is also a separate buildable lot) with this lot. Essentially, there will be no physical changes on this property. The four dwelling units will be reduced to three units (after special permit is granted). Mr. Olson indicated that the two family dwelling units with an accessory apartment will allow them to do less work and bring this structure up to code. He added that this will also allow Ms. Polower to still have a reasonable amount of income.

Ms. Dolan asked which property is under foreclosure. Mr. Olson pointed out on the map the properties that are currently under foreclosures.

Mr. Weiland asked about the building in question. Mr. Olson responded that they are before the board to address the brown house. This is the structure where Ms. Polower lives. They need to bring this structure up to building code. He reminded the board that ZBA made a determination a year ago that this is a two-family dwelling units with 2 boarders. He noted that the red house has a determination from the ZBA in 1983 making this structure a legal four-family dwelling units.

The Zoning Officer concurred with the applicant's lawyer. ZBA granted that approval. The red house building became legal in 1983. He noted that there are 4 one-bedroom apartments (with 4 kitchens) in this building.

Mr. Olson discussed the Brown house's issue. Based on the determination made, they are allowed to have 4 bedrooms in this building. They can keep 2 kitchens and make the other kitchens into boarders.

The panel discussed the Planning Board's condition about owner occupancy. Mr. Olson indicated that once this property is sold, the accessory apartment and the 2nd dwelling unit will be reverted back into one dwelling unit (legal, two-family nonconforming unit). He noted that the variance will not go with the land. He added that Ms. Polower is aware of and agreed to this restriction.

Chairman Malcarne questioned the enforcement of this restriction once the property is sold. Mr. Olson responded that the board can include a condition to the variance that this property has limited use. A research will be made on this property and would reveal that the accessory apartment and the 2nd dwelling unit will need to be reconverted back into one unit.

Chairman Malcarne verified how many units are currently on this property. Mr. Olson responded that there are 4 units in the red house and 4 units in the brown house (for a total of 8 units). The number of units will be reduced down to 6 once Ms. Polower leaves this property. If the variance and special permit applications are granted, this property will going to have 7 units (4 units in the red house and 2 units with accessory apartment in the brown house).

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Mr. Fennel noted that 6 units are currently permitted on this property.

Chairman Malcarne motioned to open the public hearing, seconded by Ms. Dolan, all Aye, Motion carried, 5-0.

Hearing no comments from the public, Chairman Malcarne motioned to close the public hearing, seconded by Mr. Calogero, all Aye, Motion carried, 5-0.

Mr. Calogero read the Planning Board recommendation to Zoning Board of Appeals which is a conditional positive recommendation.

After all the discussions and reviews were made, the board passed a resolution, to wit:

Mr. Calogero motioned that the Zoning Board of Appeals grants an area variance to Section 250-29B of the Town of Clinton Zoning Law to allow an accessory apartment with a non-conforming two family dwelling on properties owned by **Genie Polower** located at 167-169 Allen Road, **Tax Grid No. 6465-00-455464.**

FACTORS:

1. The applicant has proposed merging the lot with the non-conforming two family dwelling with another lot of five acres as part of this application.
2. The existing flag lot is 5.53 acres, or roughly half of the requirement for a two-family dwelling in an **AR5** district.
3. The benefit to the applicant is substantial as the rental units on this property are prohibited and a variance will allow this non-conformity to continue.
4. The difficulty is self-created.
5. The current proposal will immediately reduce the number of units by one.
6. **The Planning Board** has recommended the granting of this variance “only for Ms. Polower and only on the condition of owner occupancy.” Thus the variance would not run with the land and will expire upon transfer of ownership or the demise of Ms. Polower. The effect would be to bring the property into compliance while considering the current economic situation of the applicant.
7. The proposed variance is substantial but will not have an adverse effect on the community as the physical configuration of the property will not change outwardly, and will result in moving the property toward compliance.
8. This is a type II action under **SEQRA** and requires no further action.
9. The property is not in a Critical Environmental Area and no AG statement is required.
10. All appropriate fees have been paid.

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CONDITIONS:

1. As per **The Planning Board**, a lot line adjustment must be pursued prior to Special Permit Application.
2. The applicant's attorney must provide adequate language in the new deed to satisfy the town attorney that the permitted use provided by this variance ends upon deed transfer or Ms. Polower's demise and does not run with the land.
3. The applicant must produce verification that the septic system meets **BOH** standards for the proposed occupancy.

Seconded by Mr. Weiland.

Discussion. Mr. Weiland asked about item #6 (original motion item #6 states that "The Planning Board has recommended the granting of this variance "only for Ms. Polower and only on the condition of owner occupancy." Thus the variance would not run with the land and the ten acre parcel would upon transfer of ownership or the demise of Ms. Polower revert to a two family dwelling with owner in residence or a single family residence with an accessory use apartment, not both. The effect would be to bring the property into compliance while considering the current economic situation of the applicant."

Mr. Weiland commented that it seems that this paragraph means that there are 2 options once this property is sold (1) the structure will be reverted back to a two family dwelling ...and (2)single family dwelling with accessory apartment. Mr. Weiland noted that there was no mention of owner occupy on item #2.

Mr. Olson noted that you need to have an "owner occupant" in an Accessory Apartment.

The board discussed the issue. Mr. Fennel noted that according to the provision of the law both two (2) family dwelling and Accessory Apartment need to be owner occupy.

Chairman Malcarne asked, "What about a 4-family dwelling unit? Does this need to be owner occupy also?"

Mr. Olson and Mr. Fennel responded that the 4 family dwelling units (red house) got a variance in 1983.

The panel reviewed the language of item #6. Mr. Olson suggested to state "...upon transfer of this property or demise of Ms. Polower, the variance would lapsed and then they will have to bring this structure into conformity which is a legal, 2 family nonconforming units."

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Mr. Weiland asked clarity about the word “demise” on the said paragraph. He asked, “what about the estate or heir? Mr. Olson responded that the structure will be given to the estate or heir as 2 family nonconforming dwelling.

The board agreed to amend item #6.

After consulting the language of item #6 (as indicated in the above resolution) with the town attorney, the board passed the resolution.

All Aye, Motion carried, 5-0.

APPROVAL OF MINUTES:

1. Chairman Malcarne motioned to accept the amended minutes of October 28, 2010, seconded by Mr. Calogero, All Aye, Motion carried, 5-0.
2. Chairman Malcarne motioned to accept the minutes of December 2, 2010, as amended, seconded by Mr. Weiland, All Aye, Motion carried, 5-0.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 9:40 pm. Seconded by Mr. Calogero, All Aye Motion carried, 5-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary