

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
February 24, 2011**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham
Norma Dolan
Frank Kealty
Macy Sherow III
Arthur Weiland

MEMBERS ABSENT

ALSO PRESENT

Bob Fennel, ZEO

Arlene Campbell, Secretary

Chairman Malcarne called the meeting to order at 7:37 pm.

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:

Allan and Barbara Harper – property located at 264 Nine Partners Road, **Tax Grid No. 6568-00-046661.**

Applicants are seeking a renewal of an area variance to Sec. 250.59 B of the Town of Clinton Zoning Law that was granted in April 27, 2006 which requires that No kennel shall be located within 250 feet of any property line.

Mr. Harper appeared and explained his application. In 2006, he was granted a variance to operate a kennel that has a term of 5 years. There were no changes on this application. Mr. Harper expressed his hopes that he doesn't have to keep coming back before the board for a renewal of the variance and permit not unless there are changes on the application.

Chairman Malcarne solicited questions from the board.

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Ms. Dolan expressed her comments about this case. Mr. Harper has been vigorous in maintaining his property and caring for these dogs. Ms. Dolan indicated the comments that she's been hearing from various town residents and for people who boarded their dogs in this kennel. She quoted that people are saying "this kennel is an asset to the town".

Ms. Dolan read the Planning Board recommendation dated 2-15-11 which is positive.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Weiland, all aye, motion carried, 7-0.

Richard Coppedge of 284 Nine Partners Road and who lives right across the street spoke in support of this project. Mr. Coppedge stated that they boarded their dogs in this kennel and were very happy the way the Harpers take care of their dogs. He also noted that the Harpers are good neighbors.

Hearing no more comments from the public, Chairman Malcarne motioned to close the public hearing, seconded by Mr. Canham, All Aye, Motion carried 7-0.

Mr. Weiland discussed the additional recommendation from the Planning Board stating "No time limit on the variance".

Ms. Dolan apologized for missing out the last paragraph of the resolution. She stated that ZBA normally doesn't receive additional recommendation from the Planning Board.

Mr. Weiland expressed his concern about this recommendation. Although there are good words echoing in the town about this dog boarding house, putting a time limit on the variance will prevent this house/property from becoming a kennel in the future.

Ms. Dolan disagreed with Mr. Weiland. This is just a small operation. She opined that there's should not be a time limit set for small operation business.

Ms. Dolan brought out the issue about the kennel in Hollow Road wherein she suggested that the variance should go with the property owners. She noted that the Harpers do not have the same number of dogs as compared to the kennel in Hollow Road. The Harpers only have a small operation of dog boarding house.

Mr. Weiland stated that unless this property is grandfathered then the issue about this dog boarding house becoming a kennel is a concern.

Mr. Harper remarked that the variance granted stipulates that this variance expires upon change of ownership

Mr. Weiland stated that the variance is normally tied up to the property and not to the property owners.

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Chairman Malcarne asked the applicant about a reasonable time frame in running this operation. Mr. Harper responded that “maybe 30 years”. He’s already 62 years old and it’s causing him \$400.00 to go through the renewal process.

Mr. Weiland suggested putting a time frame of 15 years. The applicant can always extend the variance once it expires.

Ms. Dolan remarked that she had a problem putting a restriction on this variance since the applicant demonstrated good will and was in compliance of the regulations for the past 5 years. She suggested doing “extinguish of variance upon sale of the land”.

Mr. Canham shared the same thoughts with Mr. Weiland. He stated that he wishes to see some sort of protection to the neighborhood for future purposes.

Mr. Coppedge who asked to speak even though public hearing was close, wishes to see a variance not running with the land in order to protect his neighborhood.

Mr. Sherow stated that if the variance runs with the land then he has a problem not putting a time limit on this approval.

Chairman Malcarne asked the ZEO if he has a problem with this variance not running with the property. Mr. Fennel responded that the variance doesn’t necessarily run with the land.

After exchanging thoughts and views about this case, the board passed a resolution, to wit:

Ms. Dolan motioned that the Town of Clinton Zoning Board of Appeals grant the renewal of the requested area variance to Sec. 250.59 B that was granted to **Allan and Barbara Harper** in April 2006 and which is due to expire on April 27, 2011, property located at 264 Nine Partners Road, **Tax Grid No. 132400-6568-00-046661**. This is a 28.04 acre lot located in an AR 5-A Zoning District.

Factors:

1. This project would not produce an undesirable change in the character of the neighborhood or become a detriment to nearby properties because the Harpers already have two dogs in a spacious (nearly one acre) outdoor, fenced in yard. Comments from neighbors were positive during the original application process and during the subsequent 5 years. It is a welcome addition to the town, hailed by all that have used their service.
2. The benefit sought by the applicant cannot be achieved by a feasible alternative to the variance because the applicant is seeking to provide an alternate

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form of care for dogs which could be described as day care or home care where dogs are not caged and are considered members of the family.

3. The requested area variance is substantial reducing the front setback to 90 feet from the required 250 feet, which is well over 50% but this should not preclude its granting.
4. The proposed setback variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood because the Harpers already have two dogs and the property is very well kept. Also, the Harpers are maintaining the upkeep for the dogs in an appropriate way and the house will muffle any barking.
5. Since the request is for an area variance, an Agricultural Data Statement is not required.
6. The difficulty is self-created.
7. The property is not in the ridgeline, scenic and historic protection overlay district.
8. The property is not located in a Critical Environment Area
9. The New York State Environmental Quality Review Act has determined that the granting of an area variance for a single-family, two-family, or three-family residence is a Type II action and therefore this action is not subject to further review.

Conditions:

- a. Variance expires upon change of ownership of the property.
- b. The Harpers will not board any puppies. Puppies are defined in the zoning ordinance as dogs under six months of age.
- c. There will be no more than six dogs allowed on the property at any one time.
- d. There will be no dogs kept in any of the outbuildings on the property.
- e. The dogs must be spayed or neutered.
- f. This variance is to the current owners of the property, Allan and Barbara Harper, and not to the property.

Seconded by Mr. Calogero.

Discussion. Mr. Weiland asked that the original 6 conditions of the variance be restated to this renewal. The board agreed.

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Mr. Harper indicated his concern about the overlapping of the number of days. He noted that he cannot take another dog due to the days overlapped. There are times that there are 2 or 3 days overlapped and for this reason cannot take another dog.

Ms. Dolan responded that as long as there are no more than 6 dogs.

Chairman Malcarne stated that it is better to maintain the original variance conditions. There have been no complaints. The ZEO will keep a tracked of everything.

Ms. Dolan suggested, “How about putting no more than 6 dogs except minor overlaps?”

Chairman Malcarne responded that this will create an issue.

The ZEO stated that if a complaint is received then the town will react. The board agreed to leave the same number of dogs.

Mr. Weiland commented about the language of the condition stating “variance expired upon changing hands of the property.” Mr. Fennel suggested using the words “upon change of ownership of the property”. The board agreed.

All Aye, Motion carried 7-0.

Forever Ivy Acres (Wowaka) 4 lot subdivision – property owned by Stephen and Rhonda Wowaka and is located at East Fallkill Road, **Tax Grid No. 6266-00-935470.**

The applicants proposed the following area variances to **Sec. 250.25 of the Town of Clinton Zoning Law** in order to have four (4) adjoining accessways as part of a proposed 4 lot subdivision, to wit:

- | | |
|-----------------|--|
| Sec. 250-25 B-3 | Requirements for non abutting accessways. |
| Sec. 250-25 B-4 | Rear lots – A driveway entrance must be a minimum of eighty (80) feet at its closest point, from another existing or proposed adjacent driveway on the same side of the road, except where two (2) abutting accessways have been allowed by the Planning Board.... |

Joe Berger and Michelle Zerfas from Berger Engineering and the Wowakas all appeared for this case.

Mr. Berger explained their project. They originally want to subdivide this property into 9 lots then reduced it to 7. They discarded the previous layout of a 6 lot subdivision with a proposed town road in favor of a 4 lot configuration. Lot 1 would have a frontage on East Fallkill Road and its own driveway. (Note that Lot 1 is not classified as rear lot). Lots 2, 3, and 4 would be configured as Rear Lots. These rear lots will have 3 accessways.

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These 3 abutting accessways are adjacent to an existing accessway on an adjacent lot of the Swensons. The 3 lots would share a common driveway and the 4th lot would have its own driveway. The common driveway will be within 80 feet of the existing adjacent property driveway.

Mr. Berger noted that Planning Board and DEC were satisfied with the current layout. They are now before the board to get the necessary variance in order to proceed with the subdivision application.

Chairman Malcarne asked the board for comments.

Mr. Fennel noted that the law states that you cannot create a land locked parcel. Every parcel has to have a 40 foot strip and provides access over that accessways just in case something happen to the other access.

Mr. Berger agreed. He stated that if they don't get the variance, they will have to build the road which will impact the environment.

Mr. Canham asked the applicant if there is going to be an easement. Mr. Berger responded positively. All these 4 lots will participate with the Easement Agreement. There will be an Easement and Maintenance Agreement approved by the town attorney for the 3 flag lots and the common driveway.

Mr. Weiland read the Planning Board recommendation dated 2-15-11 which is positive. One letter was received from the neighboring property owner, Rudy Groetzer, expressing disapproval of this project. The Groetzers also indicated in the letter the violations on Wowaka's property.

Chairman Malcarne asked the ZEO if there is an existing violation on this property. Mr. Fennel responded "No". The Groetzers were referring to other lands of the Wowakas.

Mr. Weiland asked the ZEO if the requested variance is a setback variance as indicated in the Planning Board's recommendation. Mr. Fennel agreed since the requested variance refers to 80 feet.

Mr. Weiland asked about the blue line (wetlands) on the map. Mr. Berger responded that they were used to delineate the wetlands.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Calogero, All Aye, Motion carried 7-0.

Hearing none from the public, Chairman Malcarne motioned to close the public hearing, seconded by Mr. Kealty, all aye, motion carried 7-0.

The board agreed to pass a resolution, to wit:

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Mr. Weiland motioned that the Town of Clinton Zoning Board of Appeals grant to **Stephen and Rhonda Wowaka** of 851 Violet Avenue, Hyde Park NY on their parcel with **Tax Grid No. 132400-6266-00-935470**, a variance from Section 250-25 B-4 of the Town of Clinton Zoning Law requiring an 80 feet separation from adjacent driveway and Section 250.25 B-3 to allow abutting rear accessways.

Factors:

1. An undesirable change will not be brought about in the neighborhood nor will there be a detriment to nearby properties because it will be an additional residential subdivision a residential neighborhood.
2. The benefit of having the number of lots sought by the applicant can not be achieved by some other feasible method besides granting the variance due to the dimensions of the current parcel and the constraints of the terrain.
3. The variance is substantial but considered reasonable by the Planning Board.
4. The configuration of these driveways will not have an adverse effect on the physical or environmental conditions in the neighborhood because they will reduce the access points of the public highway for the new parcels.
5. The alleged hardship was self created by the owners desire to subdivide the current parcel. However, this is a normal and reasonable desire amongst property owners.
6. A residential area variance does not require an Ag Data Statement.
7. A residential area variance is a type II action under SEQRA and requires no further action.
8. The site is not in a CEA district.
9. The site is not on a Scenic or Historic Road.
10. The site is within the boundary or buffer of a wetland.
11. The site is not in the Scenic of Historic Overlay District.
12. There are no known outstanding zoning violations on this property.

Seconded by Mr. Canham.

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Discussion: Chairman Malcarne commented on the statement where it states “the variance is substantial but considered reasonable.” He suggested adding “by the Planning Board” at the end of the statement. The board agreed.

Mr. Weiland asked to put the following statement on the record:

“In this case the abutments, because they share a common drive will be safer than if they have separate drives.”

All aye, motion carried, 7-0.

Chairman Malcarne left at 8:30 pm.

APPROVAL OF MINUTES:

Mr. Weiland motioned to accept the minutes of January 27, 2011 as amended, seconded by Mr. Calogero, All Aye except for Mr. Malcarne who left earlier, Motion carried, 6-0-1.

ADJOURNMENT:

Mr. Weiland motioned to adjourn the meeting at 9:15 pm, seconded by Mr. Calogero, All Aye except for Mr. Malcarne who left earlier, Motion carried, 6-0-1.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary