

**TOWN OF CLINTON
ZONING BOARD OF APPEALS
FINAL MINUTES
January 26, 2012**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham

Frank Kealty
Macy Sherow III
Arthur Weiland

Arlene Campbell, Secretary

MEMBERS ABSENT

Norma Dolan

ALSO PRESENT

Bob Fennel, ZEO

Chairman Malcarne called the meeting to order at 7:34 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.

Chairman Malcarne noted that the meeting was being recorded.

VARIANCE APPLICATIONS:

Haggerty and Throm Variance Application – property on 92 Sunset Trail owned by Steven Haggerty and Kim Throm, **Tax Grid No. 6467-00-412353.**

Applicants are seeking an area variance to Sec. 250. 29 B-6 to increase the size of an Accessory Dwelling unit from 420 square feet to 1,000 square feet.

James Crisp and Sandy Mahoney of Crisp Architects appeared on behalf of the applicants.

Mr. Crisp explained that they want to construct a pool house and use this as temporary residence while the addition to the main house is being renovated. He indicated the Planning Board's concern about the timing of the construction of the main dwelling. Mr. Crisp noted that the property owners have all the intentions to construct the addition to the main house.

Mr. Kealty read the Planning Board's recommendation which is positive. There was no correspondence received from the neighboring property owners.

Chairman Malcarne asked the board for any questions and comments.

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Mr. Kealty asked about the location of the proposed pool house. Ms. Mahoney pointed out on the map the proposed location of the structure.

Mr. Kealty asked the applicant why they want to build the pool house prior to renovating the main house. Mr. Crisp responded that this is a summer and weekend house. The property owners want to make sure that they have a place to stay while the main residence is being renovated.

Mr. Weiland asked the applicant about the size of the pool house. Ms. Mahoney responded that the size of the pool house is 781 square feet habitable space (1,000 square feet floor space).

Mr. Canham stated that the floor space is larger than habitable space. He then asked the Zoning Officer if the requested variance is based on the floor or habitable space. Mr. Fennel responded that the variance should be based on floor space.

Mr. Sherow asked if the applicant needs to get a Special Permit for this project. Mr. Fennel responded, "Yes after receiving a variance".

Mr. Malcarne motioned to open the public hearing, seconded by Mr. Calogero, All Aye, Motion carried, 6-0. Hearing no comments from the public, Mr. Malcarne motioned to close the public hearing, seconded by Mr. Canham, All Aye, Motion carried, 6-0.

The board agreed to pass a resolution, to wit:

Mr. Kealty motioned that the Zoning Board of Appeals grant to **Kim Throm and Steven Haggerty** of 92 Sunset Trail, **Tax Grid 132400-6467-00-412353-0000**, a variance from Section 250-259 B6 ACCESSORY DWELLING UNIT, General Provisions, unit limited to 452 square feet to allow for a unit of 1,000 square feet.

Factors:

1. An undesirable change will not be brought about in the neighborhood nor will there be a detriment to nearby properties because a pool house of 1000 square feet will be built as an accessory dwelling. The applicants intend on increasing the size of their primary dwelling, currently 1293 square feet by an additional 1100 square feet to a size of 2393 square feet. This is to be completed within three years of the date of this variance. The need for the variance will be negated as the accessory dwelling unit will then be smaller and accessory and within the 35% limit.
2. The benefit sought by the applicant can be achieved by some other feasible method besides granting the variance, such as renovating the

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principal dwelling with the proposed 1100 square foot addition first which would negate the need for the variance for the pool house.

3. The variance of nearly 60% is substantial.
4. The addition of a pool house on this property will not have a significant effect on the physical or environmental conditions in the neighborhood because it is on a property of over 54 acres. The benefit for the applicant can be realized without significant detriment to the health, safety or welfare of the community.
5. The alleged hardship was self created because, according to the application, the owners wanted to construct a pool house and have stated that the allowable 452 square foot accessory dwelling allowed under town law would be insufficient to provide adequate space and function of a poolhouse.
6. A residential area variance does not require and Ag Data Statement.
7. An area variance for a one family residence 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 on a Scenic or Historic Road – Sunset Trail.
10. The building site is not within the boundary or buffer of a Wetland.
11. The site is not in the Ridgeline, Scenic or Historic Protection Overlay District.

CONDITIONS:

1. One story dwelling subordinate in style complementary to existing structures.
2. Property card updated with office of the assessors.
3. In any further subdivision of the ± 54 acres, both dwellings will be on a single lot of at least 10 acres with access to a town road. This condition should be on a newly filed surveyed map in the Dutchess County Office.
4. If the proposed expansion of the primary dwelling does not occur within three years, the Zoning Board Appeals supports the Planning Board's proposed restrictions to the Special Use Permit especially their requirement that it be subject to review and renewal.
5. The variance is null and void if the principle structure is not expanded to a

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sufficient size that the accessory structure meets the Town of Clinton Zoning requirements within 5 years of the date of this variance January 26, 2012.

Seconded by Mr. Canham.

Discussion. Mr. Canham indicated that the provision refers to the responsibility of the applicant to provide building plan for the proposed accessory dwelling. Ms. Mahoney presented the outline/diagram of the proposed dwelling.

Ms. Mahoney asked about the statement stating 100 yards from the accessory dwelling. She explained that they they're only doing 62.5 feet from the stone wall. The board agreed to strike that statement out.

Mr. Weiland commented about the Planning Board's restriction on the time line in doing the construction of the accessory dwelling. He asked the board, "How will this affect the variance?" The board agreed to add another condition about this concern (see condition #5).

All Aye, Motion carried, 6-0.

Mike Appolonia variance – property owned by Michael and Barbara Appolonia located on 521 Schultzville Road, **Tax Grid No. 6567-00-257398.**

The applicants propose area and use variances to Sec. 250-29B-6 and Sec. 250-29B-1 respectively in order to convert the existing barn on a 41.4 acre parcel into an accessory dwelling apartment.

Mr. Appolonia appeared and explained his case. They want to convert the upper portion of an existing barn into an accessory dwelling to house a caretaker. This portion of the barn is currently used as storage (hay). Because of their age, Mr. Appolonia indicated the hardship in storing the hay upstairs and thus decided to convert this part of the barn into a caretaker's house. They're only using 2/3 of the barn as an apartment. The rest of the barn is still going to be used as storage.

Mr. Appolonia stated that there is an existing small apartment near their house since 1946. The barn (proposed apartment) where they want to house the caretaker is located on the site where the caretaker's work is. This structure is also suitable for caretaker with small family.

Mr. Weiland read the Planning Board recommendation which is positive. There was no correspondence received from any of the surrounding property owners.

Chairman Malcarne asked for questions and comments from the board.

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Mr. Weiland stated that there are two variances required for this application. The use variance needs to be addressed first. Mr. Weiland read the four criteria that need to be met for a use variance.

Mr. Weiland expressed his opinion about this case. The board needs to see if this case meets all the criteria of a Use Variance. He stated that he hasn't seen any financial statement related to reasonable return in this case. He asked, "How is this property different from other properties in the town?" What is unique in this property versus the other property? There is an option however to avoid this variance. The property can be subdivided that would allow two main dwelling and two accessory dwellings on the property. Mr. Weiland noted that the zoning calls for one accessory dwelling unit per property.

Chairman Malcarne went over the criteria.

Mr. Weiland commented on criteria #4 (Alleged hardship is not self created). He opined that he doesn't see hardship in relation to the property. He doesn't know what the "hardship" is in this case. He wants to know what the future plan is on this property.

Mr. Weiland stated that there are other ways to approach this project. One way to approach this is to allow only one accessory apartment on the property. The other way is to subdivide the property to allow 2 accessory apartments. The board needs to consider the standards of a Use Variance in granting this variance.

Chairman Malcarne asked the zoning officer about the Ag and Markets Ruling in relation to Special Permit process for a working farm. Mr. Fennel responded that he doesn't have the Ag and Markets' Regulations in front of him. All he knows is – Ag and Markets protects farmers from inappropriate zoning regulations. The applicants have to go through the process. They need to get turned down by the municipality first before they can go before Ag and Markets.

Mr. Appolonia addressed the Standards of a Use Variance.

1. No reasonable return.
2. Unique circumstances.
3. No Adverse impact on the neighborhood.
4. No self-created hardship.

Item #1 (Reasonable Return) - Mr. Appolonia stated that it's hard to qualify for a reasonable return in New York State. There is no reasonable return for farmers in NYS.

Item #2 (Uniqueness) – (Having help in this case) Mr. Appolonia stated that the neighboring farmers have a lot of help in their farm. He opined that his farm is not unique to the neighborhood since there are larger farms within 5 miles of this property.

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#3 (Character of the neighborhood) – This property is isolated. They never had any complaints or concerns from the neighboring property owners.

#4 (Creating Hardship) –Mr. Appolonia stated that there is hardship created by working indoors but this is not his choice. He chose to do farming. Is this unnecessary hardship? Mr. Appolonia stated that one can argue that it is self created but remarked that most hardships are self created. Lastly, Mr. Appolonia opined that “Yes, there is hardship by working 14 to 16 hours/day in this case.

Mr. Calogero expressed his opinion about this case. The Appolonias are getting older. For him, self created implies that you’re doing something unreasonable. In this particular case, it’s not unreasonable for a person to want help or assistance in order to maintain what they did. For instance, property owners want somebody on their property as health care workers. He doesn’t see any difference in having an apartment to house a caretaker. If Mr. Appolonia moves further into management operation, then he could reach ages 90 to 100. Mr. Calogero opined that he doesn’t see any self created problem on this case.

Mr. Weiland disagreed with Mr. Calogero. He noted that this is a Use Variance application. There is a question about compensation when you hire help. There are other ways of getting help without living on the property. You don’t need to have somebody to live on the property to have help.

Mr. Canham concurred with Mr. Weiland about the heavy burden of a Use Variance. He also understands the applicant’s desire to have a caretaker that lives on the property and the benefit of having 24/7 help. Mr. Appolonia opined that for him, the standard of uniqueness in this case is the need to have an accessory apartment to house a caretaker for a working farm that’s not generally applicable throughout the zoning district. He commented that the applicant has to prove that there is uniqueness on this property that requires use variance.

Mr. Weiland asked, “What is unique about this farm”? Other working farms in the neighborhood do the same thing (24/7 help).

Mr. Weiland and Mr. Canham exchanged opinion about the uniqueness of this property. Mr. Weiland remarked that unique means one of a kind.

Mr. Appolonia remarked that most farms just put families in trailers on the property. Mr. Appolonia stated that he doesn’t do that. He wants to do the right thing that’s why he is before the board.

Mr. Canham responded to Mr. Weiland’s alternative (subdivision) to avoid the requested variance. He doesn’t think that this is a good way to resolve this issue. There is a law that prevents breaking up of a parcel. Mr. Canham also indicated the cost and paperwork involve in a subdivision process.

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Mr. Weiland stated that another aspect or concern in the law is shelter. If this parcel is subdivided then there will be more structures and additional dwellings for families to live.

Mr. Kealty asked the applicant about the viability of his proposal. He asked if having full time or 24/7 help stays in business. Mr. Appolonia responded, "Absolutely". He indicated the horse boarding operations that they used to have in this farm. Boarding horses and other animals are time consuming. Mr. Appolonia noted that they don't have time to do this kind of work now. They need the assistance of a full time onsite caretaker to perform that portion of work. They held off as much as they can in getting a full time caretaker. Most farms in the neighborhood have at least 3 extra hands.

Based on the above discussion, Chairman Malcarne asked the board if they are ready to make a decision or need more time to review this case.

Mr. Calogero stated that he feels that there is a practical purpose for this barn. He was happy to see that there is an existing building being proposed to be used and having an effective use of the property.

Chairman Malcarne reiterated that there is an alternative in resolving this case. He asked Mr. Appolonia if he has any intention of subdividing this property. The applicant responded, "None". His intention is to keep this parcel in tact.

Mr. Calogero asked the applicant about how long he owns this property. Mr. Appolonia responded, "13 years". He indicated all the improvements that he had done on this property.

Once again, the panel exchanged opinion about the case. Mr. Canham stated that he sees hardship in the absence of the housing for the caretaker to be on site 24/7. This is something not generally applicable to any other properties in the district. Also, this proposal will not change the characteristic of the neighborhood. This is a large parcel and a working farm. Mr. Canham opined that getting a relief subdividing a property is opposed to the open space law.

Mr. Kealty expressed his view. He sees that this is a benefit to the town. He understands that the use variance is hard to obtain but viewed this proposal differently.

Mr. Weiland remarked that this project can go forward if there was only one accessory dwelling on the property. He cited the case from the previous meeting wherein the board denied the case of use of a toilet in the barn and controlled the growth of uncontrollable accessory dwelling units on the property.

Mr. Weiland stated that in the future, this property will have a rental and accessory dwelling unit up on the hill. In terms of subdividing this parcel, Mr. Weiland commented that there are several properties in the town that are owned by the same individual or

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property owner. These lots can be also re-combined in the future if they wish to merge. There is a benefit to the town to have more legal residence. He asked the board to verbalize the standards of Use Variance in reviewing this case.

Mr. Sherow expressed his opinion about the issue. He feels that this case is different since this is agriculture. Although he wants to say yes to the variance, Mr. Sherow noted that he'd rather go over the standards of the use variance before deciding on this case.

Mr. Weiland stated that he wishes to see in the next zoning a provision allowing larger parcel to have more accessory dwelling units.

The chairman asked the board members if they are confident enough to make a decision or do they need more time.

Mr. Canham stated that he understands that time is of essence. If the process takes a while and needs more time, he stated that his vote will not change. He's ready to vote.

Mr. Calogero stated that he doesn't know if Ag and Markets will overrule the board's decision. He hopes to learn more about the Ag and Markets ruling and process. How will they treat this case? Mr. Calogero stated that he knows how he's going to vote on this case if the board decides to vote that night although he'll rather educate himself first about the Ag and Markets ruling to make a better decision.

Mr. Sherow wished he could educate himself and get clarity about the standards of a use variance.

Mr. Canham commented on criteria #1 of the use standard. The word reasonable for him means that they get to judge what is reasonable. He viewed this language as using your own judgment.

The panel discussed dollar and cents proof criteria. Mr. Sherow asked if the board really needs to see the paper work about this. Mr. Weiland responded, "Yes".

Mr. Calogero stated that this situation is different. This is about whether this return is going to diminish. He stated that it's hard to speculate what the return is going to be.

Mr. Canham concurred with Mr. Sherow. He doesn't know what kind of documentation they need to see about the dollar and cents proof criteria.

Mr. Appolonia stated that they generate their income mostly from boarding. They trained people to train their own animals. He opined that this is their realized reasonable return. Unfortunately, they haven't realized this kind of profit now due to lack of help in the farm.

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Mr. Calogero stated that this is about future situation. The applicant is talking about the future and trying to maintain the same level. For him, this is more realistic. With the normal aging process and having a farm, one could do less. The less you do in a farm the lesser return you get. Mr. Calogero stated that he doesn't think he needs any document to proceed.

Mr. Sherow agreed. You could do less as you get older.

Mr. Weiland remarked that this doesn't prove uniqueness. What about the reasonable return on this farm?

Mr. Weiland stated that the applicant already has an accessory dwelling unit on this property. There is no reason not to move the accessory dwelling unit to take care of the housing for the caretaker and still maintain the same reasonable return because the proposed accessory dwelling unit fulfills the caretaker function better than the current accessory dwelling unit. He questioned the advantage of having the barn as a caretaker unit versus the existing accessory dwelling without getting a use variance. He noted that the board has responsibility to the township.

Mr. Calogero asked about the size of this proposed apartment. Mr. Appolonia responded that the size of the proposed apartment is only 800 feet. It's a very small house for a caretaker (one bedroom apartment).

Mr. Weiland commented that the existing accessory dwelling can be enlarged.

Mr. Canham asked if AG and Markets ruling has a better way of dealing with this case.

The board exchanged opinion about the issue.

The Zoning Officer remarked that this application needs to be sent out to the Dutchess County Planning for review per Sec. 250.98 B-5 since the property is within 500 feet of the state parkway.

The chairman of the board asked the secretary to send this application to Dutchess County Planning as soon as possible.

No action taken.

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APPROVAL OF MINUTES:

No approval of minutes was done.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 10:40 pm. Seconded by Mr. Calogero, All Aye Motion carried, 6-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk