

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
September 27, 2012**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero

Frank Kealty
Macy Sherow III
Arthur Weiland

MEMBERS ABSENT

Charles Canham
Norma Dolan

ALSO PRESENT

Arlene Campbell, Secretary

Chairman Malcarne called the meeting to order at 7:38 pm.

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

Chairman Malcarne noted that the meeting was being recorded for record keeping purposes.

Chairman Malcarne recused himself for this application and asked Mr. Calogero to act as a Chairman of the board.

VARIANCE APPLICATIONS:

Weber and Black Area Variance – property owned by Evelyn Weber and Glen Black located at 15 Fifth Avenue, **Tax Grid No. 132400-6469-10-306636.**

The applicants propose area variances to Sec. 250 Attachment 2 (Area Bulk Regulations) of the Town of Clinton Zoning Law to reduce the rear setback from 75 feet to 32.31 feet and to increase the maximum lot coverage from the maximum 7% to approximately 17.2% in order to construct a 7'x 28' Rear Deck.

Glen Black along with his contractor, Nevien Sidarous from Malcarne Contracting both appeared for this application.

Ms. Sidarous briefly explained that the property owners own a small story house on Silver Lake. They want to put up a 7-foot deck at the back of the house to enjoy the lake. She noted that there is one neighbor who can view the proposed deck.

Mr. Kealty read the Planning Board's recommendation which is positive.

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Acting Chairman Calogero asked for questions and comments from the board.

Mr. Kealty asked if the proposed deck is also a sunroom as indicated in the Planning Board's recommendation. The applicant responded, "Yes",

Mr. Weiland asked the board members if they are comfortable in moving on with this case without the presence of the Zoning Enforcement Officer. The board agreed to proceed without the presence of the ZEO.

Mr. Weiland motioned that the letter from the ZEO is sufficient enough to proceed without the presence of the Zoning Enforcement Officer, seconded by Mr. Kealty, All Aye, Motion carried, 4-0.

Mr. Weiland asked if there is a basement in the house. Ms. Sidarous responded, "Yes".

It was noted that the ZEO had determined that this project will need to obtain a Water Law permit from the Town of Clinton.

The board discussed the issue.

Mr. Weiland asked about the wetland (Silver Lake) setback Ms. Campbell indicated the updates about this issue. There is a recent exchange of emails between the Planning Board and the Zoning Enforcement Officer. The Planning Board contented that this case should be exempted from the local law per Sec. 250.78 (D-8) of the Town of Clinton Zoning Law.

Ms. Campbell noted that the Zoning Enforcement Officer subsequently agreed that this application is exempt from the Town Water Law permit.

Sec. 250.78 (D-8) of the Town of Clinton Zoning Law states that, "Wetlands of 12.4 acres or greater regulated by the New York State Department of Environmental Conservation Law, Freshwater Wetlands water act ... shall be regulated by the Department of Environmental Conservation and shall not be subject to this section."

After reviewing the above section, the board agreed that this section addressed the water setback issue.

Mr. Sherow asked if the proposed deck is also a sunroom. He wonders what bearing it might have since the recommendation from the Planning Board indicates a deck.

Mr. Weiland remarked that this is the reason why he feels comfortable when the ZEO is present to answer the board's question.

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Ms. Sidarous responded that this deck is enclosed but not heated. There is a door from the kitchen and another door for an egress. Mr. Black noted that this is just a screened porch with a roof.

The board reviewed the project.

Mr. Weiland questioned if the proposed deck will also increase the size of the dwelling. He asked, "Can we allow expansion of this dwelling?" This is a nonconforming structure. There is a question whether a sunroom is a livable space.

The board reviewed the mathematics of the lot coverage and the size of the dwelling. Mr. Weiland asked Ms. Campbell if she can find the section about allowable expansion in the Zoning Regulations.

Ms. Campbell responded that Sec. 250.84 (A) of the zoning ordinance talked about alteration permitted to nonconforming buildings.

Sec. 250-84 A of the Town of Clinton Zoning Law -- Alteration permitted to Nonconforming Buildings states that "A building which is nonconforming under the previous zoning ordinance and nonconforming under this chapter shall be permitted to expand to an amount not exceeding 50% of the aggregate building area as it is existed on the effective date of the 1974 zoning ordinance....."

After reviewing the mathematics of the proposed deck, the board agreed that there is no need for an area variance for the building coverage. Mr. Weiland noted that if the proposed sunroom is a livable space, then it would need a variance.

Mr. Calogero motioned to open the public hearing, seconded by Mr. Kealty, All Aye, Motion carried, 4-0.

Sandra Sanicki of 13 5th Avenue spoke and supported the applicant's project.

Hearing no more comments from the public, the board agreed to close the public hearing.

Mr. Calogero motioned to close the public hearing, seconded by Mr. Sherow, All Aye, Motion carried, 4-0.

After all the reviews were made, the board agreed to pass a resolution, to wit:

Mr. Kealty motioned that the Zoning Board of Appeals grant to Evelyn Weber and Glen Black of 15 Fifth Avenue, **Tax Grid 132400-6469-10-306636**, a variance from the Town of Clinton Zoning Law District Schedule of Area and Bulk Regulations for:

- (1) A backyard setback reduction to approximately 32.31 feet from the required 75 feet, and

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- (2) an increase of the maximum lot coverage from the required 7% to approximately 17.2% on a .12 acre site located at 5 Fifth Avenue, Tax Grid No. 132400-6469-10-306636, which is located in the Conservation Agricultural Residential (C) District in the Town of Clinton.

FACTORS:

1. An undesirable change will not be brought about in the neighborhood nor will there be a detriment to nearby properties because the addition of a sunroom to the rear of their dwelling will extend an additional 7.5 feet into their rear yard. Other neighborhood dwellings have existing rear decks/enclosed porches of similar dimensions.
2. The benefit sought by the applicant can not be achieved by some other feasible method besides granting the variance.
3. The variance of nearly 17.2% is substantial.
4. The addition of a rear sunroom on this property will not have a significant effect on the physical or environmental conditions in the neighborhood because as neighboring properties have the requested additions on their nonconforming lots. 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.
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 in a Critical Environmental Area district.
9. The site is not on a scenic road – Fifth Avenue.
10. The building site is within the boundary or buffer of a Wetland. It will require a permit from the New York State Department of Environmental Conservation prior to construction of the proposed structure.
11. The site is not in the Ridgeline, Scenic or Historic Protection Overlay District.
12. The Planning Board has made a positive recommendation.
13. All required fees have been paid.

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14. There are no known zoning violations.

Seconded by Mr. Sherow.

Discussion. None

All Aye, Motion carried, 4-0.

Chairman Malcarne rejoined the panel. He noted that in order for a space to be considered livable, the space needs to be 55 degrees.

APPROVAL OF MINUTES:

Mr. Malcarne motioned to approve the minutes of August 23, 2012 minutes as amended, seconded by Mr. Weiland, all Aye, Motion carried, 5-0.

Chairman Malcarne motioned to accept the amended minutes of July 26, 2012, seconded by Mr. Calogero, all Aye, Motion carried, 5-0.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 9:00 pm. seconded by Mr. Calogero All Aye Motion carried, 5-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk