

**TOWN OF CLINTON
PLANNING BOARD MEETING
FINAL MINUTES
July 16, 2013**

MEMBERS PRESENT

Mike McCormack, Chairman
Art DePasqua

Tracie Ruzicka
Robert Marrapodi
Paul Thomas
Eliot Werner

MEMBERS ABSENT

Gerald Dolan

ALSO PRESENT

Arlene Campbell, Secretary

Dean Michael, Liaison Officer

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

VARIANCE APPLICATION:

Aristadata Inc – property on 831 Bulls Head Road, **Tax Grid No. 6469-00-502537.**

The applicant requests the following area variances in order to relocate an existing accessory dwelling unit from its current location to an alternate building, to wit:

- Sec. 250-29 B Lot area reduction from 10 acres to 2.47 acres
- 250-29 D Rear Yard setback reduction from 75 feet to 11 feet
- 250-29 D Side yard setback reduction from 50 feet to 43 feet
- 250-81 Relocation of nonconforming use

Brandon Petrella, from Mauri Architects, appeared on behalf of the property owner. He explained the above requested variances. This is a 2.47-acre lot in the C Zoning District. There are three buildings on the site. The existing barn was demolished and the construction of the new barn was started. Mr. Petrella stated that they want to relocate the use of the nonconforming use to the new barn as an accessory dwelling.

Chairman McCormack solicited questions or comments from the board.

Mr. Marrapodi asked if there was a special permit granted to the existing accessory dwelling (barn). The applicant responded, “None.” The existing accessory dwelling was nonconforming. It predates zoning.

Mr. Marrapodi noted that the nonconforming use of the existing accessory dwelling (barn) cannot be transferred per zoning regulations. The applicant needs to get a special use permit in order for the structure to become an accessory dwelling.

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The applicant stated that the use will continue on the proposed dwelling and they are actually reducing the square footage. This is the reason why one of the requested variances is about relocating the nonconforming use of the dwelling.

Mr. Marrapodi noted that because this is a nonconforming lot there are a number of issues that would need to be incorporated into a recommendation.

Mr. Marrapodi asked the applicant, "What is the current use of the principal dwelling?"

Mr. Petrella responded that the primary dwelling was the property owner's residence. The primary dwelling is currently being renovated. Mr. Petrella opined that he presumed that the property owner will move back to the house once the renovation is finished. He added that the other accessory dwelling, which was previously occupied by the caretaker, is vacant right now.

Mr. Marrapodi noted that one of the provisions of the law states that the property has to be owner occupied in order to have an accessory use. He also noted that there are some indications that there is a rental on this property.

The applicant stated that he cannot affirm if this is the current primary residence of the property owner. He noted that he knew that this was the primary residence before the renovation was done. He stated that he will verify this info.

Mr. Marrapodi indicated his concern about determining the square footage of the accessory dwelling, which cannot exceed 35% of the habitable space of the primary dwelling. Based on his computation, Mr. Marrapodi stated that the square footage of the proposed accessory dwelling exceeds 35% of the primary dwelling's habitable space.

Mr. Petrella stated that the accessory dwelling was pre-existing. They are actually reducing the size of the accessory dwelling.

The board discussed the square footage of the house in relation to the proposed accessory dwelling. The applicant questioned the above calculation.

Mr. Marrapodi responded that the zoning regulation (Section 250.29 B-6) states that it should be 35% of the habitable space or 1,000 square feet, whichever is more restrictive.

Mr. Marrapodi remarked that he's not comfortable with this particular application. There is a profound nonconforming situation. There is a line that needs to be drawn. He asked, "Where do you stop?"

The applicant expressed his understanding about this case. He reiterated that this is the reason why they are requesting for a variance. He also added that he doesn't think that this proposal is detrimental to the neighborhood.

Mr. Marrapodi remarked that this application is before the board for a recommendation. He stated that he is not comfortable in giving his vote due to the above concerns.

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Chairman McCormack asked the applicant the reason why he wants to move the nonconforming use to the new proposed dwelling. Mr. Petrella responded that the proposed dwelling is an updated facility.

Chairman McCormack noted that the variance is granted because of its necessity and not because the owner wants to. He asked, "Why can't you build on the same footprints?"

Mr. Petrella stated that it is not fair to build two buildings instead of one, which is to rebuild the old building and construct a storage building. The proposed new facility is cheaper to maintain. He remarked, "It doesn't make sense."

The board had a lengthy discussion about this case.

Ms. Ruzicka asked about the proximity of the neighboring property. Mr. Marrapodi responded that there are no houses nearby. The surrounding area is wooded. This property is not visible to the neighboring properties.

Mr. DePasqua stated that the biggest concern here is about whether this property is owner occupied. The second issue is about the square footage of the dwellings. These are the questions that need answers in order to move on with this application.

Mr. Marrapodi asked about the demolition permit that was indicated on the parcel history. Mr. Petrella responded that he will find out the details of this permit.

The board discussed the issue about the requested variance. Mr. Thomas responded that this is about moving the nonconforming use and then creating a new use.

Mr. Petrella asked about the process of getting a special permit. He asked if he needs to get a special permit once the variance is granted. The chairman of the board responded, "Yes." The required variance for the setback is needed before he can proceed with the site plan and special permit process.

Mr. Marrapodi stated that technically the applicant cannot come before the board if there is a violation on the property.

Mr. Petrella asked to elucidate the variance needed. Mr. Marrapodi responded that the variance needed is about the size of the lot, square footage of the buildings, and the setback.

Mr. Petrella asked about the transfer of the nonconforming use. Mr. Marrapodi responded that he's very uncomfortable about transferring the nonconforming use.

Mr. Werner suggested rebuilding the barn/shed instead of an accessory dwelling. The foundation is already there and the need of all these variances goes away. He can put the

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accessory dwelling back where it was (as long as he does this within a year) since this dwelling is preexisting.

Mr. Marrapodi and Mr. Thomas concurred with Mr. Werner. This will simplify everything.

Chairman McCormack suggested calling the Board of Health due to the stream by the septic.

The panel discussed the wetlands on the property. Mr. Marrapodi noted that the applicant will need a DEC permit if they are disturbing within the buffer. The applicant agreed.

The board discussed how to move forward. There are still a lot of concerns that need clarity. Mr. Petrella pleaded to get a recommendation for the other variances in order to move forward. He stated that the board can strike the variance about the transfer of the nonconforming use and address the remaining requested variances.

Chairman McCormack solicited thoughts and comments from the board. Mr. DePasqua stated that he's very uncomfortable moving ahead without knowing the facts. He asked, "What is two weeks to get the answer?" He remarked, "It's not like the case is being delayed for 6 months."

The applicant responded that it still pushes their timeline off five weeks since the ZBA only meets once a month.

Chairman McCormack noted that the acreage variance is substantial. You need to have double the acreage for an accessory dwelling.

The panel reviewed the variances needed such as acreage, two side yards, and the size of the building if it's more than 35% of the size of the primary dwelling.

After a lengthy discussion, the board agreed not to give a recommendation to the Zoning Board of Appeals. There are still questions that need to be answered. Is the property owner occupied? What is the total square footage of the primary dwelling in relation to the accessory dwelling?

No action taken.

PUBLIC HEARING:

Ernerst Klopping Site Plan approval – property on 377 Ruskey Lane, Tax Grid No. 6366-00-256522.

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The applicant proposes to construct an automotive repair and storage garage in order to enclose auto recycling operation.

Ernest Klopping along with his lawyer, Stephen Habiague and engineer, Tom Cummings appeared for his application.

Mr. DePasqua motioned to open the public hearing, seconded by Ms. Ruzicka, all aye, motion carried, 6-0.

Mr. Cummings briefly explained his application as indicated above. They want to put up a 40 x 80 square foot building to consolidate the nonconforming use of the property inside the building. There will be screening to the east side of the property between the neighbors. There will be a fence in yard so that everything is contained inside the property. There will be some outbuildings that will be removed and cleaning up to the property and consolidate it inside the building.

Mr. Habiague added that part of the property that has been used as a junkyard will disappear and becomes a lawn. All activities will be inside the building and any incompliance vehicles will be inside the fenced area. He noted that the end result will be positive and better result.

Chairman asked questions from the public. Hearing no comments from the public, the board agreed to close the public hearing.

Mr. DePasqua motioned to close the public hearing, seconded by Mr. Thomas, all Aye, Motion carried, 6-0.

APPLICATION:

Ernerst Klopping Site Plan approval – property on 377 Ruskey Lane, Tax Grid No. 6366-00-256522.

The applicant proposes to construct an automotive repair and storage garage in order to enclose an auto recycling operation.

Ernest Klopping, along with his lawyer Stephen Habiague and engineer Tom Cummings, appeared for this application.

The board discussed the site plan. Chairman McCormack asked for questions and comments from the board.

Mr. Werner questioned the validity of the variance. He asked, “When does the clock start running again after the court ruling of Article 78, which is May 1?” He noted that a variance expires after a year. He remarked, “ It’s been over a year.”

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The panel discussed the above concern. Mr. DePasqua thinks that this case has been going on for more than a decade. He opined that this should have a bearing on the matter.

The board exchanged opinions about the issue. There has to be a tangible movement on the property for the variance to be valid. The board thinks that they should not speculate and a legal opinion is necessary.

Mr. Habiague asked about the specific language of the law.

Town of Clinton Zoning Law Sec. 250.98 –D-3 (Expiration) states that “Unless construction or use is diligently commenced within one year from the date of the granting of a variance, such variance shall become null and void without further rehearing or action by the Zoning Board of Appeals.”

Mr. Habiague asked Mr. Klopping about any work done on this property. Mr. Klopping responded that he’s been busy cleaning up the yard. Vehicles have been removed.

Mr. Habiague stated that part of the variance condition is to prepare the site before construction of the building can be started. Cleaning up the site is part of the process and right now the clean up is ongoing. He asked the board to take this into consideration.

Mr. Marrapodi agreed. He commented that this is a good point. The applicant made an attempt to prepare the site.

The panel reviewed the variance resolution. Mr. Thomas asked if all these conditions can be tied up to the site plan approval. Chairman McCormack responded, “Yes.”

Mr. Marrapodi stated that the provision states that “the existing junkyard shall be removed within 36 months from issuance of the building permit.” Mr. Marrapodi stated that removing the junk vehicles is an attempt to clean up the site.

Chairman McCormack advised the applicant to write a letter addressed to the Planning Board about the validity of the variance so the town attorney can address the issue.

The board discussed the site plan. Mr. Werner asked about the letter from the DEC dated 11-2-12 about the need of the work permit. Mr. Cummings responded that the DEC permit is good for 10 years. This needs to be revalidated.

Mr. Werner asked, “What permit is being asked in the DEC letter?” Mr. Cummings responded that it was pertaining to the old driveway that is in the buffer zone.

Chairman McCormack asked how long does it normally take to get the work permit. Mr. Cummings responded that this is normally done during the months of September to April. He also noted that the building is outside the buffer.

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Chairman McCormack suggested applying for the permit. It's better to have this permit now rather than requiring this permit as a condition of the approval.

Mr. Werner questioned how come there's only one lot grid number under the parcel access. Mr. Habiague responded that they went through this issue in the past before the Zoning Board of Appeals. He explained that there are two separate deeds that were consolidated by the assessor. He noted that the applicant never applied to consolidate these lands.

Mr. Werner indicated that part of the condition of the variance is also a lot line adjustment. These lots need to be combined. The applicant noted that the other structures also need to be removed as part of the conditions.

Mr. Werner asked about the color of the building. Mr. Klopping responded that this will be a premanufactured building. He doesn't know the color yet. Chairman McCormack asked the applicant to submit a sample of the color.

Mr. Marrapodi asked about the fencing. Mr. Cummings responded that it will be a chain link fence or stockade fence. He added that they will also plant evergreen trees in this area.

Chairman McCormack asked the applicant if the proposed building is visible from the road. Mr. Klopping responded that the building is visible from the road (Ruskey Lane) during winter but not the fence. He noted that you can only see the top of the building.

Mr. Marrapodi asked about the lighting. Mr. Cummings responded that it is going to be downward lighting. He noted that there will be no lights that can shine toward the Jacobys' property.

Mr. Werner summarized the items needed for this case: roof material, color sample, fencing style, and lighting fixtures. A written request for waivers is also needed.

The board reviewed the long Form EAF. After doing the Long Form EAF, the board issued a resolution, to wit:

Mr. Werner motioned to issue Negative Declaration for SEQR purposes in the matter of Klopping Competetion Site Plan application on property located at 377 Ruskey Lane, seconded by Mr. Thomas, all Aye, motion carried, 6-0.

No other action taken.

OTHER MATTERS:

The board discussed the fee schedule, zoning, etc. with Liaison Dean Michael.

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APPROVAL OF MINUTES:

Mr. DePasqua motioned to approve the minutes of June 4, 2013 as amended, seconded by Ms. Ruzicka, All Aye, motion carried, 6-0.

ADJOURNMENT:

Chairman McCormack motioned to adjourn the meeting at 9: 55 pm, seconded by Mr. DePasqua, All Aye, Motion carried, 6-0.

Respectfully Submitted,



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