

**TOWN OF CLINTON
PLANNING BOARD MEETING
FINAL MINUTES
August 6, 2013**

MEMBERS PRESENT

Tracie Ruzicka
Robert Marrapodi
Paul Thomas
Eliot Werner

Arlene Campbell, Secretary

Acting Chairman Mr. Werner called the meeting to order at 7:38p.m.

VARIANCE APPLICATION:

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

The applicant proposes the following area variances in order to relocate an existing accessory dwelling unit from its current location to an alternate building.

- 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

- It was noted that the applicant has withdrawn the variance application.

Ernest Klopping Area Variance – property on 377 Ruskey Lane, **Tax Grid No. 6366-00-256522.**

- The applicant proposes an extension of the area variance that was granted on September 23, 2010.

After receiving a determination from the town attorney regarding the validity of the variance that was granted on September 23, 2010, the applicant is now back before the board to reapply for the variance.

It was noted that the town attorney opined that classifying and discarding items does not amount to planning and design. Mere preparation does not constitute the commencement

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of construction. Therefore, the variance has expired one year after the date the Appellate Division's Decision and Order was entered (May 1, 2012).

Ernest Klopping and Pat Smalley were present for this application.

Acting Chairman Mr. Werner asked for questions and comments from the board.

Mr. Thomas asked if this variance application is for an extension or re-approval of the variance.

The board discussed the issue. Mr. Thomas stated that technically, you cannot extend an expired variance. After exchanging opinions, the board agreed that this application is for re-approval of the variance.

The board agreed to pass a resolution, to wit:

Mr. Werner motioned that the Town of Clinton Planning Board provide a positive recommendation to the Zoning Board of Appeals on the requested area variances as requested by **Ernest G. Klopping, Jr.**, on property located at 371-377 Ruskey Lane, **tax grid #132400-03-6366-00-256522**, as shown on the provided drawing.

WHEREAS:

- 1) The applicant wishes to alter the preexisting, nonconforming junkyard and repair shop use of his property so as to enclose his operation in a new building to be constructed at the site.
- 2) On 9/24/2009 the Zoning Board of Appeals interpreted this proposal as not being an extension or enlargement of the preexisting, nonconforming use, and recommended as part of the project that the lot line between the two abutting lots on the property be eliminated to reduce the parcel to a single lot.
- 3) On 8/3/2010 the Planning Board denied the applicant approval of a special use permit on the grounds that eliminating the lot line resulted in two principle uses on a single lot, which is not permitted under the Town of Clinton Zoning Law. In its denial the Planning Board recommended that the Zoning Board of Appeals grant the applicant a variance from this requirement, and whatever additional variances are necessary to allow him to proceed with his application for a special use permit.
- 4) On 9/23/2010 the Zoning Board of Appeals granted three area variances from the Town of Clinton Zoning Law: (a) from Section 250.17.A to allow the existence of more than one principal structure and more than one principal use per lot; (b) from Article 250, Attachment 2 to allow for a reduction in the front yard setback from 100 to 40 feet; and (c) from Section 250.22.A.3 to allow for the placement of an accessory structure closer to the road than the principal dwelling on the lot.

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5) The Town of Clinton Zoning Law states that an applicant is required to begin construction within one year after an area variance is granted.

6) Jacoby Real Property, LLC, filed an Article 78 against the Zoning Board of Appeals that stopped the clock on the one-year construction requirement.

7) On 5/1/2012 the Supreme Court of the State of New York ruled in favor of the Zoning Board of Appeals, allowing the applicant to move forward with his application for a special use permit and restarting the clock on the one-year construction requirement.

8) The one-year construction requirement expired on 5/1/2013, requiring the applicant to reapply for the area variances so he can proceed with his application for a special use permit.

NOW, THEREFORE, BE IT RESOLVED, the Planning Board is making a positive recommendation to the Town of Clinton Zoning Board of Appeals that the requested area variances be reapproved.

Seconded by Ms. Ruzicka, All Aye, Motion carried, 4-0.

Discussion:

Ms. Smalley asked about the date that the original variance expired. Mr. Marrapodi responded that the original variance expired on May 1, 2013.

All Aye, Motion carried, 4-0.

It was noted that the applicant also needs to do a lot line adjustment if the variance is granted. The lot line adjustment can be done concurrently with the site plan approval.

Stewarts Shop (area variance) - property located at 2300 Salt Point Turnpike, Tax Grid No. 6566-00-331547.

The applicant proposes an area variance to Sec. 250. 11 C-3, which limits the footprint of a structure in the Hamlet district to 3000 square feet.

- The applicant wishes to construct a 714 square foot addition to the building and a 120 square foot freezer, for a total of 3295 square feet.
- The site is located in a Critical Environmental Area (CEA).

Chuck Marshall, Stewart's Shop's representative, was back before the board to get the necessary variance for the building addition.

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Mr. Marshall explained the variance as indicated above. They need this variance due to the size of the building, which will be larger than the allowed footprint in a Hamlet district.

Mr. Werner asked about the square footage of the building. He noted that based on his computation, the square footage is 3,295.

The board discussed whether the freezer's area should be included in the footprint. After exchanging opinions about the concern, the board agreed that the freezer's square footage should be included in the computation of the footprint. The total footprint is 3,295 square feet.

Mr. Werner suggested tying up the variance with the site plan approval. He stated that if the site plan does not materialize, then the variance should go away.

Ms. Ruzicka asked, "How can they build without a site plan? The variance will go away after a year if they decide not to build. The variance is tied up with the site plan whether they like it or not."

Mr. Marrapodi concurred with Ms. Ruzicka. He added that the applicant needs an amended site plan for any modification of the site plan, even if the modification is just minor.

The board agreed that it is not necessary to include this in the resolution.

Mr. Werner solicited the board's opinion about the requested variance.

Ms. Ruzicka opined that the requested variance is reasonable. The Agway store across the road is a lot bigger than this store. She commented that she doesn't have any problem with this application.

Mr. Marrapodi and Mr. Thomas shared the same thoughts as Ms. Ruzicka.

The board passed another resolution, to wit:

Mr. Werner motioned that the Town of Clinton Planning Board provide a positive recommendation to the Zoning Board of Appeals on the area variance requested by **Stewarts Shop Corporation** to Section 250.11.C.3, to allow the construction of a 3295 square foot building on a 3.614-acre site in a Hamlet zoning district, located at 2300 Salt Point Turnpike in the Town of Clinton, **tax grid #132400-6566-00-331547**, as shown on the provided drawing.

WHEREAS:

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- 1) The applicant requests the variance in order to proceed with an amended site plan for the property.
- 2) Section 250.11.C.3 of the Town of Clinton Zoning Law limits the footprint of a structure in the Hamlet district to 3000 square feet. The footprint of the current building is 2461 square feet. The applicant wishes to construct a 714 square foot addition to the building and a 120 square foot freezer, for a total of 3295 square feet.
- 3) The site is located in a Critical Environmental Area and in the Ridgeline, Scenic, and Historic Preservation Overlay District.
- 4) An area variance is a Type II action under SEQRA and requires no further action.
- 5) An undesirable change will not be produced in the character of the neighborhood, and a detriment to nearby properties will not be created, by granting this area variance.
- 6) The benefit sought by the applicant cannot be achieved by some other method that will be feasible for the applicant to pursue.
- 7) The requested area variance is substantial (approximately 33 percent more than the footprint of the existing structure and 10 percent more than the maximum size allowed in a Hamlet zoning district) but this should not preclude its granting.
- 8) The alleged difficulty is self-created.
- 9) All appropriate fees have been paid.

NOW, THEREFORE, BE IT RESOLVED, the Planning Board is making a positive recommendation for approval to the Town of Clinton Zoning Board of Appeals.

Seconded by Mr. Marrapodi.

Discussion:

None.

All Aye, Motion carried, 4-0.

PUBLIC HEARING:

None

APPLICATION:

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Stewart's Ice Cream Shop (Amendment of Approved Site Plan) - property located at 2300 Salt Point Turnpike, **Tax Grid No. 6566-00-331547.**

The applicant is requesting modification of an approved site plan.

The board discussed the site plan.

Mr. Marshall explained what had transpired in his meeting with the town consultants. He discussed the town engineer's comments per letter dated July 29, 2013.

The town consultants are concerned with two things. First was about the possibility of eliminating the three relocated parking spaces along the easterly property line. This would allow for the pavement to be cut back in this area. The second concern was about the headlights projecting to adjacent neighbors.

Mr. Marshall explained that the town consultant wants to eliminate three parking spaces due to the neighbors on that side. There is a stockade fence that extends there and deflects the headlights. He noted that the area is not significant and is hoping that the board can decide on this issue. He noted that they did the low-profile plantings that the town consultant requested.

Ms. Ruzicka asked, "If the stockade fence is causing the neighbors not to complain, can they put these parking spaces down in front more?"

Mr. Marshall responded that they don't want to remove the tree line that is in there. The plantings are on Stewart's side of the tree line.

Mr. Marshall suggested leaving the buffer for the trees and the fence and putting the fence up on the requested site.

Mr. Thomas asked, "Whose stockade fence is that? Is it Stewart's or the neighbors'?"
Mr. Marshall responded that he doesn't know. This was before his time. He stated that he knows that they're supposed to provide the buffer but is not sure who owns the fence.

Mr. Marrapodi asked the board's opinion about the parking spaces in question.

Ms. Ruzicka opined that considering that this is the only gas station in this town and since the site is always chaotic and crowded, a few more parking spaces will alleviate the issue.

The board exchanged opinions about the above concern.

Ms. Ruzicka asked how they can keep these parking spaces and also address the concern about the headlights during the winter.

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Mr. Marshall suggested that he could put a six-foot stockade fence to the end of the other section. It comes with an eight-foot panel section so they will need 48 feet total.

The board agreed. Ms. Ruzicka commented that this is a good solution since they are expanding the store. The expansion of the store will create more of a mob scene than what it is now. She added that hopefully the one-way in and out driveways will alleviate the issue.

Mr. Werner asked if they heard anything from the Department of Public Works about the driveways.

Mr. Marshall responded that he spoke with Steve Gill of DPW about their concerns. The two concerns are (1) drainage, which they addressed by adding two dry swells; and (2) sight distance of one of the driveways. DPW wants to extend one of the driveways. Mr. Marshall noted that he hasn't yet received anything in writing from the Department of Public Works and Highways.

Mr. Marshall noted that this is the reason (sight distance) why he was hesitant about the one-way in and out driveways during the previous discussions.

Mr. Thomas stated that cars are coming out of this driveway and make a left (heading south).

Ms. Ruzicka remarked that this is what most people are doing now anyway.

Mr. Werner asked about the lighting. Mr. Marshall responded that the lighting is going to be recessed. It will be upgraded to soft fit. The canopy lights will be flush mount. He added that he also took care of Mr. Werner's concern about the lights being shut off at 10:00 pm.

Mr. Thomas asked if there is going to be a buffer of evergreen trees. Mr. Marshall responded, "No." He pointed out on the map the trade off on this area. He noted that they didn't know about the stockade fence until they had a meeting with the town consultants. He added that they addressed the concern about the headlights by the low-profile plantings.

Mr. Marshall noted that the town engineer signed off on this case. The only outstanding concerns are the above issues. They are also waiting for the written response from the DPW. With regard to the Board of Health, Mr. Marshall stated that they are not adding any bathrooms. They are only relocating the bathroom to the other side of the store.

The board agreed to hold the public hearing on September 17, 2013. SEQRA also needs to be done at this meeting.

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APPROVAL OF MINUTES:

Ms. Ruzicka motioned to approve the minutes of June 18, 2013 as amended, seconded by Mr. Marrapodi, All Aye, motion carried, 4-0.

ADJOURNMENT:

Acting Chairman Mr. Werner motioned to adjourn the meeting at 8: 50 pm, seconded by Mr. Thomas, All Aye, Motion carried, 4-0.

Respectfully Submitted,



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