

**TOWN OF CLINTON
PLANNING BOARD MEETING
FINAL MINUTES
September 3, 2013**

MEMBERS PRESENT

Mike McCormack, Chairman

Gerald Dolan

Robert Marrapodi

Paul Thomas

Eliot Werner

MEMBERS ABSENT

Art DePasqua

Tracie Ruzicka

ALSO PRESENT

Arlene Campbell, Secretary

Dean Michael, Liaison Officer

Chairman McCormack called the meeting to order at 7:35 p.m.

VARIANCE APPLICATION:

Korin Swanson LLC area variance - property located at 68 Fiddlers Bridge Road Tax Grid No. 6267-00-894438.

The applicant requests an area variance to Sec. 250.22 A-4 (Number of Accessory Structures) to increase the number of accessory structures from three to six.

Cris Nejame of Nejame Pools and Christine Krauss from Landscape Design appeared on behalf of the property owner.

Mr. Nejame explained why they need a variance. This is a 29.2-acre lot. There are currently four accessory structures on the property. One of the accessory structures is pre-existing. They needed a variance in order to construct an in-ground swimming pool. He noted that the proposed swimming pool will not be visible from the road.

Chairman McCormack asked for comments or questions from the board.

Mr. Marrapodi asked if the property owner would be willing to limit the number of accessory structures. There are two sheds on the property that are in bad shape. One or two accessory structures can be taken down to avoid the variance. Mr. Marrapodi stated that one shed is just a roof housing a boat. The other shed is a fully enclosed building but is in terribly bad shape. Mr. Marrapodi opined that these structures already have limited life. He commented that if he were the owner of this property, he would rather take down these structures to avoid the variance.

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Mr. Nejame suggested that maybe the board can include a condition in the variance stating that once these structures are dilapidated and no longer safe, they cannot be rebuilt.

Mr. Marrapodi remarked that they cannot be rebuilt anyway without getting a variance and building permits.

Mr. Marrapodi indicated the other concern on this property. There are DEC wetlands on this property and DEC permit is required. This property is also in a CEA. There are environmental issues. Mr. Marrapodi also raised the issue about the presence of Blanding turtles on this property.

Ms. Krauss responded to the above concern. She indicated the DEC permit that was issued by the DEC with a condition about putting up a fence to address the issue about the Blanding turtles. She also submitted a letter from the Dutchess Land Conservancy indicating approval of their project.

Mr. Werner asked if this property is under conservancy. Ms. Krauss responded that she's not sure. She noted that she only knows that part of the property is under conservancy.

Mr. Thomas asked if the proposed pool will be visible from the road or any adjoining property owner. Mr. Marrapodi responded negatively. He noted that he doesn't have a problem about the construction of the pool. His concern was about the number of accessory structures on this property. He opined that five or six accessory structures on a property are excessive. He also feels that some of these structures can be removed.

Mr. Werner asked about a procedural question. He asked if the board should include in the resolution about the environmental concern even though the variance is about the number of accessory structures.

Mr. Marrapodi responded that he already included this concern in the resolution that he drafted. He added a notation stating that the application should be in full compliance with the DEC regulation.

Chairman McCormack acknowledged the presence of Norene Collier from the CAC and asked her to explain their concern about the presence of habitats in the area.

Ms. Collier presented the new map showing the significant wildlife habitats. She explained the significance of these habitats. She noted that they spotted significant habitats in this area. She also indicated the CAC's comment about taking extra precautions in doing construction in these areas to prevent turtles from entering the construction site.

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Ms. Coller suggested putting up fences all over the area to protect these creatures. She stated that she loves to see that these habitats are protected. She added that there's should be procedures and steps to be followed in working on this areas. She also noted the breeding season of these habitats, which is October to May. She asked if the Planning Board or Zoning Board of Appeals can establish an escrow for the town engineer to oversee the construction of the pool.

Ms. Krauss asked if there is a checklist that they can go over or follow in doing the construction on the site. She noted that she hasn't seen this information on the DEC website.

Mr. Marrapodi stated that there is a laundry list written on a site plan that address or spell out this issue. He suggested checking the previous subdivision site plans (like Silver Lake Subdivision) about this checklist.

Ms. Coller stated that they have to take precautions when doing construction in these areas. Make sure there are no turtles that could fall in these holes.

Mr. Nejame remarked that they have to dig a hole since this is an in-ground pool. Ms. Coller responded, "Just make sure that there are no turtles."

The panel had a very lengthy discussion on how to protect the habitats.

Chairman McCormack noted that the building department has the purview about this concern. The building inspector is the one who should inspect the site.

Mr. Nejame asked Ms. Coller if she can forward them a checklist or criteria in taking these steps. Ms. Coller agreed. She stated that she will contact the DEC and will forward this copy to the clerk to include in the ZBA's resolution.

Mr. Thomas asked Ms. Coller if this case also needs town water law permit aside from the DEC permit. Ms. Coller responded negatively. It's just the DEC permit.

The panel exchanged opinions and comments about the verbiage of the recommendation to the Zoning Board of Appeals.

Mr. Marrapodi stated that the board can make a positive recommendation with a condition to take one or two accessory structures down. This will bring the number of accessory structures into compliance.

Mr. Nejame remarked that if that is the direction in which they are going, they don't need a variance. He suggested doing a recommendation based on not removing the structures.

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Mr. Thomas asked about the use of the sheds in question. Mr. Marrapodi responded that one shed is just a roof that houses a boat. He opined that this could easily be torn down. He remarked that this boat can be covered instead of having a roof (shed).

Mr. Thomas expressed his comment about this case. This structure is grandfathered. He stated that he understands the concern about the number of structures but he also feels that a pool is a different type of accessory structure. This is not the same thing. Mr. Thomas thinks that the board should issue a neutral recommendation due to the size of this property. He also stated that he doesn't think that the neighbors will raise concerns about this project.

Mr. Marrapodi stated that the Zoning Board of Appeals still has the final decision. They can suggest taking one structure down, which could still make this property less noncompliant.

Mr. Nejame disagreed. He stated that the reason why they were before the board is because they want this variance. They do not want to take any of the accessory structures down.

Chairman McCormack noted that the board is only doing a recommendation. The Zoning Board of Appeals still has the final say.

Mr. Nejame expressed his understanding but big disappointment about the above discussion. He stated that he understands the point of this recommendation but then noted that the board's recommendation is probably highly influential to the Zoning Board of Appeals.

The board agreed to do a recommendation, to wit:

Mr. Marrapodi motioned that the Town of Clinton Planning Board approves the following resolution, to wit:

BE IT RESOLVED that the Town of Clinton Planning Board is making a **positive conditional** recommendation for approval to the Town of Clinton Zoning Board of appeals on the requested area variance to Section 250 -22 A (4) for the number of Accessory Structures from the allow 3 structures to 5 structures for property owned by **Korin C. Swanson LLC** located at 68 Fiddlers Bridge Road, **tax grid number 132400-6267-00-894438** in the AR3A zone on 29.32 Acres.

WHEREAS;

1. The applicant wishes to construct a 20' x 50' in ground swimming pool and 15' x 35' patio. The applicant is seeking a variance from Section 250 -22 a (4) due to the non-conforming property which has **(4) four** existing accessory structures and proposes to construct a pool which would increase the number of accessory

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- structures to **(5) five**.
2. This is a 29.32 acre site located in the AR3A zoning district.
 3. The property is not located within the Ridgeline, Scenic and Historic Preservation Overlay District.
 4. The site is within the Pleasant Plains CEA Hamlet.
 5. The site is on a designated Scenic or Historic road, that being Fiddlers Bridge Road.
 6. An area variance does not require an Ag Data Statement.
 7. It is noted that an area variance is a Type II action under SEQRA and requires no further action.
 8. The site does contain a NYSDEC wetland SP-7.
 9. The benefit sought by the applicant can be achieved by another feasible method.
 10. The requested variance is substantial.
 11. There will be potential adverse effect or impact on the physical or environmental condition on the site and in the neighborhood.
 12. The alleged difficulty is self-created.
 13. The application fee has been paid.
 14. There **are no known** violations associated with this property.

NOW THEREFORE, BE IT RESOLVED, the Town of Clinton Planning Board provides a **positive** recommendation for approval to the Town of Clinton Zoning Board of Appeals with the following **conditions**:

1. Demolish (1 or 2) existing accessory structures (Shed #1 and/or #2 indicated on Site Plan submitted by Christine Krause Landscape Design Studio, dated 8/15/13.
2. Compliance with NYS DEC Permit rules and regulations Effective Date 8/21/13 under the Environmental Conservation Law (ECL).

Seconded by Mr. Dolan.

Discussion.

Mr. Dolan asked if the condition was about to take one OR two structures. Mr. Marrapodi responded that he's leaving this decision to the Zoning Board of Appeals.

Mr. Werner asked, "Who inspects the construction site? Is it DEC or the town engineer?" Mr. Nejame responded that he believes that it is Heather from DEC who comes and inspects the site. She told them that she wants to see the fence in place.

Mr. Nejame asked if let's say that one of the contingencies of the variance is about removal of the structure that is in the wetlands, does this mean that he needs to get a DEC permit again to demolish this shed? He noted that the shed with the boat is in the buffer of the wetlands.

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Mr. Nejame remarked that this requirement would throw their schedule off another year round before they can finally start the construction of the pool. He remarked, “We could have gotten this permit when we applied for the DEC permit the first time!”

Mr. Marrapodi responded that the applicant can take the structure down that is not in the buffer of the wetlands.

Mr. Nejame noted the other hardship in taking the structures down which is consideration to the value and cost in demolishing the buildings.

Chairman McCormack expressed his comment about this case. One of the criteria in granting a variance is that the applicant has to prove why they cannot bring the number of accessory structure into compliance. He opined that so far, he cannot see the reason why the applicant cannot bring the number of structures into compliance.

Mr. Marrapodi noted that other criteria in granting a variance is about the question “Is there a way to achieve the property owner’s goal without getting a variance”?

Mr. Marrapodi said that the applicant needs to prove the value and the hardship of the variance.

All Aye except for Mr. Thomas who voted Nay, Motion carried, 4-1.

Nancy Packes 2-lot subdivision (Sketch plan approval) – property located at 27-37 Stissing View Drive, **Tax Grid No. 6469-00-070585.**

The applicant wishes to subdivide a 26.1-acre lot into two buildable lots. Lot 1 is 8.1 acres and Lot 2 is 18 acres.

John Andrews from Rhodes, Soyka and Andrews appeared on behalf of the property owner.

Mr. Andrews explained their proposal. After further thought, Ms. Packes revised her decision. She now wishes to subdivide this property. Lot 1 contains the guesthouse and the current primary residence. Lot 2 contains the tennis court and the barn, which will become the primary structure. There will be a shared driveway with a maintenance agreement.

Mr. Andrews noted that the lots to be created are configured in a manner that the primary and secondary residences will be on one lot and the barn and tennis court on the other. The barn will be converted into a new residential dwelling unit.

Mr. Andrews stated that the parcel is served by an existing driveway. The driveway will be maintained and will serve as a common driveway for the two lots subject to a filed cross-access and maintenance agreement. He also indicated the potential driveway

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location as shown on Lot 2. The lot line was also designed to accommodate the walking trails and other trails on the property. Mr. Andrews noted that by doing all these proposals, the variance and the other permits granted on this property will go away. He added that if Ms. Packes decides to put up a pool in the future, then she will have the right to do so.

Chairman McCormack asked for questions and comments from the board.

Mr. Marrapodi indicated his confusion about this case. He asked about the procedure in going forward to this application. Does the variance need to be rescinded first?

The panel had a lengthy discussion about the issue. Chairman McCormack stated that the variance needs to be modified or the variance will just go away.

Mr. Dolan asked, “Does the subdivision takes care of the variance?”

Mr. Andrews responded that the variance goes with the land.

The board reviewed the sketch plan. Mr. Marrapodi stated that one lot has 8.1 acres. You need to have “double the acreage” (10 acres) to have an accessory dwelling. Mr. Andrews agreed to adjust the lot line.

Mr. Werner asked, “Why the sudden change of heart?” Mr. Andrews responded that he thinks that the applicant realized that she could do more with the property if she subdivides it.

Mr. Werner stated that this was a very controversial decision. It seems very odd why the property owner would change her mind in a couple of months.

Chairman McCormack remarked that whatever the reason is, this project makes better sense.

Mr. Thomas indicated the letter from the Zoning Enforcement Officer that this subdivision cannot be heard due to the variance condition.

Mr. Andrews said that since there was no action taken to file a building permit, then the variance goes away. He noted that he doesn’t have a problem asking the Zoning Board of Appeals to rescind the variance. He presumed that doing the subdivision makes the variance go away on its own.

The panel had a lengthy discussion on how to proceed with this application.

Chairman McCormack opined that subdivision is the best solution to resolve the issues on this property.

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Mr. Werner asked about the access on the property. This is the number one concern. He opined that they need to understand the subdivision before giving up the variance.

The panel reviewed the access and the theoretical driveway. Chairman McCormack stated that the applicant needs to get a permit from the DPW for the theoretical driveway. He asked the applicant to check with the Department of Public Works for conceptual approval about a feasible driveway. Mr. Andrews stated that he verified the sight distance. This property has 400 feet sight distance as opposed to the requirement of 375 feet.

The board reviewed the issue about the variance. What triggers the variance? The variance goes away after twelve months from the date of the variance if construction hasn't started.

Mr. Werner stated that this property is in the CEA. A Long Form EAF is not needed if it is a single-family residence. Mr. Werner stated that he will check whether this application needs Short Form or Long Form EAF.

Mr. Marrapodi asked the applicant to check the setback of the buildings due to the proposed subdivision lines.

Chairman McCormack asked the board if they are okay with the subdivision application.

Mr. Werner expressed his confusion about the sudden change of mind of the property owner. It was noted that the property owner strongly opposed the notion of the subdivision when the variance application was presented a couple of months ago.

Mr. Thomas and Mr. Marrapodi thinks that this application will also need steep slopes permit. The board agreed that the town engineer needs to get involved with this project.

After all the discussion, the board agreed to set up an escrow in the amount of \$1,000 for the town engineer and town attorney's services.

Mr. Werner asked Mr. Andrews to include the names of the surrounding property owners on the map. Notation about the Ridgeline and building envelopes also need to be shown on the map.

Mr. Marrapodi asked the applicant to also check whether the wetlands on the property will a need local water law and/or DEC permit.

No action taken.

OTHER MATTERS:

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The board discussed the rulings about the properties that are on the Ridgeline. Is it Long Form or Short Form EAF?

Sec. 250.15 of the subdivision regulation states that single-family dwellings are excluded from the requirement of a Long Form EAF. Mr. Marrapodi noted that in reference to the 2-lot subdivision, this refers to the single-family dwelling.

Chairman McCormack stated that the law is silent. It talks about a site plan and special permit but doesn't mention anything about a subdivision.

The board agreed that the Nancy Packes Special Permit needed a Long Form EAF and the subdivision needs a Short Form EAF.

APPROVAL OF MINUTES:

Mr. Dolan motioned to approve the minutes of June 18, 2013 as amended, seconded by Mr. Thomas, All Aye, motion carried, 5-0.

ADJOURNMENT:

Chairman McCormack motioned to adjourn the meeting at 9: 45 pm, seconded by Mr. Marrapodi, All Aye, Motion carried, 5-0.

Respectfully Submitted,



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