

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
February 28, 2013**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero

Macy Sherow III
Arthur Weiland

Arlene Campbell, Secretary

MEMBERS ABSENT

Charles Canham
Norma Dolan
Frank Kealty

ALSO PRESENT
Bob Fennell, ZEO

Chairman Malcarne called the meeting to order at 7:31 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.

VARIANCE APPLICATIONS:

Nancy Packes Use and Area Variance – property located at 37 Stissing View Drive, Tax Grid No. 6469-00-070585.

The applicant is seeking re-approval of the area variance that was granted in 2007.

Nancy Packes along with his architect, Robert Dupont appeared for this application.

Mr. Dupont explained that Ms. Packes was granted an area variance in 2007 (ZBA motion dated 9-25-07) that would allow her to demolish two of the structures (a two-story concrete block dwelling and the storage shed) and construct a new primary dwelling in enlarging the nearby barn located at the higher part of the property.

This is a 26.1 acre wooded parcel that was acquired by Ms. Packes in 2006. The process of rehabilitating this property was ongoing for the past seven years. Mr. Dupont noted that Ms. Packes wasn't aware that the variance expired until a building permit was sought to start the construction. She was hoping that this variance gets reinstated.

Chairman Malcarne asked questions and comments from the board.

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Mr. Weiland stated that the recommendation from the Planning Board indicates use and area variance. He noted that there is no application for a use variance. Mr. Dupont agreed. He stated that their understanding is -- this is an area variance since this is the same scope of variance that was sought six years ago.

Ms. Packes added that the Planning Board recommendation in 2007 never mentioned anything about a use variance either. She indicated her intention about the old two story dwelling structure that she demolished years ago. Ms. Packes stated that the Planning Board recognized in their previous recommendation that this structure is pre-existing and thus an area variance. The ZBA didn't consider this application in 2007 as a use variance.

Ms. Packes noted that she wasn't aware that variance expires after a year. She indicated all the improvements that she had done on this property.

Ms. Packes expressed her love for this property. She discussed about the second dwelling on this property. This dwelling supports her retirement. She noted that she cannot afford this property without the second dwelling. Her intentions when she bought this property were to maintain the 26 acre lot as one piece and retire on this property. She reiterated her strong objection about the notion of subdividing this property.

Mr. Dupont noted that part of the condition of the variance approval in 2007 was about no subdivision.

Mr. Weiland discussed the benefits of subdivision. He noted that Ms. Packes doesn't have to sell the other lot. She can still has full control of both of the subdivided lots.

Ms. Packes explained why she doesn't want to subdivide this property. She noted that she wants to preserve this land as it is. She acknowledged the notion that she can subdivide this property but is strongly opposed to it.

Mr. Weiland stated that there are six structures on this property. He noted that the zoning regulations allow one primary dwelling and three accessory structures. He advised the applicant that she can have one primary and three accessory structures on each lot if this property is subdivided into two lots.

Ms. Packes responded that she wants to keep this property intact. She acknowledged the advantage of subdividing it but doesn't want to subdivide it.

The panel focused on the application on hand.

Mr. Weiland stated that there are two ways in looking at this application. The application for the two accessory dwellings can be looked as a bulk variance and the other way is by way of a use variance.

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Mr. Weiland stated that the condition of the variance has changed due to the nature of the application. He indicated the dwelling that was demolished long time ago.

Ms. Packes remarked that the two story dwelling was already demolished before the variance was granted. The application hasn't changed.

Mr. Weiland noted that there is a time involved when demolishing a structure. There is a question of "How long has the building been down?"

Mr. Fennell agreed. He noted that the building was only down for a couple of months at the time the original variance application was made. The nonconforming use of a building doesn't expire for a year. Mr. Fennel noted that the nonconforming use of that building hadn't expire yet at the time of the original application.

Mr. Weiland concurred with the ZEO. The applicant wasn't changing or increasing the density of the structure. On the other hand, Mr. Weiland indicated that what was lost at that point was the fact about nonconforming uses. He noted that you are not supposed to move the nonconformity.

Mr. Calogero asked for clarity about the Planning Board's recommendation. He stated that he understands that variances expire. He also agreed about all the improvements made on this property. Although he didn't get a chance to look at this property years ago, this seems to be a stunning piece of property. It doesn't seem that the application has changed.

Mr. Calogero wants to know why they are looking at this application as a use variance and why they weren't then in 2007.

Mr. Fennell opined that the Planning Board finds that the nonconforming use of the structure expired.

Mr. Werner, a Planning Board member explained the Planning Board's recommendation. The use variance was about the change of a use since this property is going to have two accessory dwellings. He stated that nobody from the Planning Board six years ago knew why and how the issue about the use variance didn't come up.

Mr. Weiland stated that there are two restrictions on accessory dwelling units based on his research about accessory uses and accessory dwelling units. There's only one accessory dwelling in an area and bulk regulations. He noted that two accessory dwelling units are not allowed.

Mr. Weiland opined that this is a bulk issue on the number of the accessory units. He believes that the town doesn't want this. He added that there is a little flexibility of how much bulk would be allowed as a variance in an accessory dwelling unit.

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Mr. Werner asked, "Would this then make this case an area variance?" Mr. Weiland responded that if this is a bulk regulation then this is an area variance.

Mr. Dupont shared his views based on his reading of the regulations. He stated that the regulation talks about the accessory uses of the property such as generating income, etc. He noted that Ms. Packes is not changing the use of this property. This property is still going to be used as residential.

Mr. Werner stated that another issue that was discussed at the Planning Board meeting was about ownership of the property. Ms. Packes will not own this property forever so the use could change over a period of time.

Mr. Werner agreed that there are ramifications in subdividing a property. He stated that as an owner of these properties, the property owner still has control over these lots.

Ms. Packes expressed her appreciation in knowing the benefits of the subdivision but noted that she cannot fully comprehend the overall benefits of the subdivision to the town other than putting more buildings on a 26 acre lot.

Ms. Packes noted that she is not putting more structures on this property. The buildings are already on there. She also noted that the proposed accessory dwelling (barn) is already on the property. Ms. Packes opined that she is also making this building in conformity with the character of the neighborhood.

Ms. Packes explained that she is looking at the overall benefit to the town. Her intention is to improve this property. She noted that her objective here is to build a primary residence, live here, retire and generate income so that she could retire and live on this property. She doesn't want to subdivide this property. Ms. Packes opined that she thinks that this is a benefit to the town rather than creating more buildings on the subdivided lots.

Chairman Malcarne expressed his comments about this case. He stated that he agreed and understands the point and intention of the applicant. He also expressed his understanding about the applicant's wishes to keep this property intact and beautifying this property.

Chairman Malcarne expressed his puzzle about this proposal. Since the variance expired and since the sunset clause of that was reached, and due to the earlier discussion about the use variance, area and bulk regulations, Mr. Malcarne asked the ZEO's opinion about his thoughts whether this is a use or area variance.

Mr. Fennell responded that the addition of the second accessory dwelling requires a use variance.

The panel had a lengthy discussion about the issue.

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Chairman Malcarne stated that the board is trying their best as they can to understand and help the applicant achieve what they want to do that would also benefit the neighborhood and the town or find balance between the two. Mr. Malcarne noted that because of the serious nature of the issue at hand, the board needs to find the balance between the benefit to the applicant and to the town.

Mr. Fennell remarked that his opinion was just an opinion. The board can decide whether this is a use or area variance.

Mr. Weiland read the Planning Board's recommendation dated 2-19-13 which is neutral. There were no communications received from the adjoining property owners.

Chairman Malcarne asked the board's opinion about whether this is a use or area variance.

Mr. Fennell suggested that the question should be "What makes this application an area variance?"

Mr. Weiland opined that the only thing that he could see to make this an area variance is - the applicant is not asking to have an accessory use on the property which is not in the schedule of accessory use. What they're asking instead is to have two accessory dwellings units. Mr. Weiland stated that he doesn't think that this is the intention of accessory use of the property. When he looked at the schedule of use accessory units, the law didn't say one and only one accessory dwelling unit. His trouble is the expiration triggers the use issue as opposed to bulk regulations.

Mr. Weiland stated that he thinks that the accessory dwelling unit is an accessory use.

Mr. Calogero expressed his view about this case. The law is clear on one year window to replace a nonconforming use. They could have decided as two, three or four years when this was written. He stated that he doesn't understand why this was crafted in a certain way (1 year). He wished that there was a lot more time after the demolition. This is the exact terminology. Mr. Calogero opined that he wished that there could be a wiggle room or term. He commented that the term wasn't also specified in the resolution that could make the applicant aware of the regulations.

Mr. Calogero expressed his sympathy with the situation. She's human to make mistakes.

Mr. Calogero questioned the change in the application or plan over the years. He stated that he doesn't see an expansion of the use. The application is exactly the same except that something triggered the use variance. Mr. Calogero opined that the applicant just didn't seem to execute the plan at that particular time. Mr. Calogero also indicated his trouble about seeing how the expiration of an area variance could trigger this becoming as a use variance.

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Mr. Weiland stated that it seems that the applicant is asking a lot from the Bulk Regulations. The applicant is asking to have two accessory dwelling units on the property. They're asking to rebuild outside the time limit. They're also asking to build larger than what is allowed. Mr. Weiland remarked that the proposed structure is larger than what was demolished.

Ms. Packes explained that the upper level of the barn contained 900 square feet. The size of the structure that was demolished was 1,200 square feet that would make it 2,100 square feet. The building is 3,200 square feet in addition to the existing 900 square feet that's already in there.

Mr. Weiland remarked that this is still a larger building than what was demolished. The location was also changed.

Mr. Dupont indicated that the other accessory structure is less than 1,000 square feet after measuring it again. He indicated the correction on the site plan.

The board discussed the issue about time variance versus an area variance.

Chairman Malcarne asked the board about their thoughts regarding the time variance due to economic hardship or human error in 2007. He commented that the application didn't change and noted that this is a variance that was granted before. Mr. Malcarne said that they were looking before at this parcel as a whole (26 acre lot) as 5 acre zoning (5 lots if subdivided).

The board took a 5 minute recess.

The board agreed to open the public hearing. Chairman Malcarne motioned to open the public hearing, seconded by Mr. Calogero, all Aye, Motion carried, 4-0.

Mr. Randlev, 27 Silver Lake spoke in favor of this proposal. He stated that this property is not visible from his house. He asked the board to grant the requested variance.

Hearing no more comments from the public, Mr. Malcarne motioned to close the public hearing, seconded by Mr. Sherow, all Aye, Motion carried, 4-0.

Mr. Calogero stated that the mandate is to weigh whether this is a detriment to the town versus benefit to the applicant. The town didn't have a problem with it when the variance was approved in 2007. Mr. Calogero added that he doesn't see any changes in the proposal. He also doesn't think that there will be a negative effect in the town. However, Mr. Calogero opined that he sees that there will be a serious negative effect to the applicant if the variance is not granted. It will put the applicant's retirement into disarray. It could even force a subdivision that could negatively affect the impact of the neighborhood or the town. Mr. Calogero thinks that this variance can be extended. He

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noted that he doesn't want to see any changes on this variance. He wishes to see the same restriction on the variance.

Mr. Sherow shared the same thoughts with Mr. Calogero.

Chairman Malcarne asked the Zoning Enforcement Officer about his opinion about extending the time. Mr. Fennel responded, "None".

The panel discussed the verbiage of the resolution. Time variance is going to be issued to extend the time of the variance that was granted in 2007.

Mr. Fennel stated that since the previous primary dwelling is proposed to increase the size to 2,400 square feet which is in excess of the allowed 1,000 square feet, to become an accessory dwelling unit. He stated that an area variance is also needed for this dwelling. The board agreed.

The board had a lengthy discussion about whether this resolution is simply an extension of the variance that was previously approved.

The board reviewed the original motion.

Mr. Fennel asked the board if they are extending the original motion from the sunset of one year to today's date. Mr. Weiland responded, "Yes". He added that this is also an area variance to increase the size of the accessory dwelling.

The board reviewed Sec. 250.98 D-3 (Expiration) of the Town of Clinton Zoning Law. Mr. Fennel suggested that the resolution should indicate that the original variance is hereby extended per Sec. 250.98 D-3. The board agreed.

After a very long discussion and reviews, the board passed a resolution, to wit:

Mr. Weiland motioned that the Town of Clinton Zoning Board of Appeals grant area variances to **Nancy Packes**, from Sections 250.98 D-3, 250.81 A and 250.84 to rebuild a nonconforming building after being demolished, to increase the new building beyond the allowed 50% and to change the location of the rebuilt residence. Additionally to grant accessory dwelling unit variance from Sec. 250-29 B-6 from 1,000 to 2,400 square feet on property located at 37 Stissing Avenue, **Tax Grid No. 6469-00-070585**.

Factors:

- 1 An undesirable change will not be brought about in the neighborhood nor will there be a detriment to nearby properties because documentation indicates that there were three residences on the property built in 1951.

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2. The benefit sought by the applicant can be achieved by some other feasible method besides granting the variance, such as subdivision.
3. The variance is substantial.
4. The rearrangement of residences on this parcel will not have an adverse effect on the physical or environmental conditions in the neighborhood because they will remain grouped in a fashion similar to clustering which is encouraged by our zoning. Additionally, documentation indicates that there have been three residences on this large parcel for over half a century.
5. The original difficulty was self created by the nonconformity of the property and the desire to make changes to improve the property without a major increase in the nonconformity. The difficulty was compounded when a misunderstanding relating to the time period occurred.
6. A residential area variance does not require an Ag Data Statement.
7. A residential area variance is a type II action under SEQRA and requires no further action.
8. The site is in a CEA district.
9. The site is on a Scenic or Historic Road – Slate Quarry Road.
10. The 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.

CONDITION:

- There will be no subdivision on the property.

Seconded by Mr. Calogero.

Discussion. Chairman Malcarne suggested including in the resolution a statement about the financial hardship to the applicant.

Ms. Campbell reminded the board that this project needs to get special permits for the two accessory dwelling units as per requirement by the Planning Board. The board agreed to include as a condition.

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All Aye. Motion carried 4-0.

APPROVAL OF MINUTES:

Chairman Malcarne motioned to accept the minutes of January 23, 2013 as amended, seconded by Mr. Calogero, all aye, Motion carried, 4-0.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 9:45 pm, seconded by Mr. Weiland, All Aye Motion carried, 4-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk