

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
August 22, 2013**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham
Norma Dolan
Frank Kealty

Arthur Weiland

Arlene Campbell, Secretary

MEMBERS ABSENT

Macy Sherow III

ALSO PRESENT
Bob Fennell, ZEO

Chairman Malcarne called the meeting to order at 7:33 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:

Ernest Klopping – property located at 377 Ruskey Lane, **Tax Grid No. 6366-00-256522.**

The applicant proposes re-approval of the variance granted on September 23, 2010.

Ernest Klopping along with his attorney, Stephen Habiague appeared for this application.

Mr. Habiague explained why they were back before the board. Mr. Klopping is currently in the process of site plan approval. He noted that Mr. Klopping started cleaning up the yard (such as classifying and junking parts) to prepare the site for construction of the building. Based on the town attorney's opinion, preparing for construction in the manner described by Mr. Klopping does not constitute commencing construction under the town regulations. They are now back before the board asking for an extension of the variance.

Mr. Calogero read the Planning Board's recommendation which is positive. No letter was received from any of the adjoining property owners.

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
August 22, 2013**

Chairman Malcarne asked for questions and comments from the board.

Mr. Canham expressed his comments about this case. The benefit to the town and the applicant still exist. He hopes to see this application move forward.

Chairman Malcarne asked the applicant, "What stage of the process are you at?" He asked if the applicant is in the position to start the construction of the building within a year.

Mr. Weiland added that the board can table the application if the applicant needs more time.

Chairman Malcarne explained that the board needs to know whether the applicant is able to move forward with the application in order to avoid coming back before the board.

Mr. Fennell remarked that the clock should start to run again after all the approvals are done. He read the zoning law, to wit:

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."

The board disagreed with Mr. Fennell. The law clearly states "One year from the date of the variance approval."

The panel had a lengthy discussion about the issue. Ms. Dolan stated that the Planning Board minutes indicated that construction should start within a year after a variance is granted. It's crystal clear. She asked if the lot line adjustment was done.

Mr. Habiague responded that the lot line is going to be addressed after the site plan is approved.

Mr. Canham stated that the board is hoping to see that the applicant moves forward and gets done.

Mr. Habiague stated that Mr. Klopping started cleaning up the property. The intent is there. He added that the hardship incurred was about the preparation of the site plan in accordance with the Planning Board comments. They need to get the variance in order to move forward to the Site Plan approval process.

Chairman Malcarne explained that the board's concern is whether the applicant can move forward once the variance is granted.

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
August 22, 2013**

Chairman Malcarne explained that the board needs to know whether to extend the variance or table this application.

Mr. Fennell remarked that this is not an extension of the variance. This is a new variance.

Chairman Malcarne noted that the requested variances are for the same variance.

Mr. Weiland questioned the application on hand. He asked, "Is this an extension or re-approval of variance?" The board should address an application in accordance on how it was advertised.

Ms. Campbell noted that this case was advertised as re-approval of the variance.

The board discussed the variance application. Chairman Malcarne asked, "What is the comfortable time to start the construction?" Mr. Klopping responded that he hopes to start the construction by next spring.

Mr. Calogero expressed his comments. He stated that he wants to see the original variance re-approve because it has a fine balance and benefit the town and the applicant. As long as the applicant is going 100% as is, where it is, Mr. Calogero stated that he hopes to see this project move forward.

Mr. Canham concurred with Mr. Calogero.

Ms. Dolan asked about the lot line adjustment. She asked, "How come the lot line adjustment is not done yet?" Mr. Habiague responded that the lot line adjustment is the last step process. They have to get the site plan approval first before combining these lots.

The board agreed to open the public hearing. Chairman Malcarne motioned to open the public hearing, seconded by Mr. Canham, All Aye, Motion carried, 6-0.

Hearing no comments from the public, the board agreed to close the public hearing. Chairman Malcarne motioned to close the public hearing, seconded by Mr. Calogero, All Aye, Motion carried, 6-0.

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

Mr. Calogero motioned that the Town of Clinton Zoning Board of Appeals grant re-approval of the area variances granted on September 23, 2010 to **Ernest G. Klopping, Jr.**, on property located at 371-377 Ruskey Lane, **tax grid #132400-03-6366-00-256522**, with all conditions and stipulations previously approved.

Whereas:

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
August 22, 2013**

- 1- The applicant wishes to construct a new building to consolidate the repair shop and junkyard presently operated on the property as pre-existing and grandfathered.
- 2- On 9/23/2010, the Zoning Board of Appeals granted three area variances from the zoning law: (a) from Section 250.17 to allow the existence of more than one principal structure and more than one principal use per lot; (b) from Article 250, Attachment2, to allow for a front yard setback from 100 to 40 feet; and (c) from Section 250.22A.3 to allow for the existing accessory structure which is closer to the road than the principal dwelling on the lot.
- 3- The conditions which the applicant agreed to as part of the variance struck a balance between the continuation of Mr. Klopping's livelihood and the eventual elimination of the grandfathered, non-conforming use.
- 4- The ZBA found that once the conditions are met, the granting of those variances would not have an adverse effect or impact the environmental conditions in the neighborhood and would be an improvement to the town.
- 5- Jacoby Real Property,LLC, filed an article 78 against the ZBA that stopped the clock on the one year construction start requirement.
- 6- On 5/1/2012, the Supreme Court of the State of New York ruled in favor of the ZBA, re-starting the clock on the one year construction start requirement which then expired on 5/1/2013.
- 7- The Town Of Clinton Planning Board made a positive recommendation that the ZBA reapprove the variances on August 6, 2013.
- 8- The re-approval of the variances is in keeping with the intent of the ZBA in granting them in 2010.

Therefore, Be it Resolved, the Town of Clinton Zoning Board of Appeals grant re-approval of the variances.

Seconded by Mr. Canham, All Aye except for Mr. Weiland who Nay, Motioned carried, 5-1.

Discussion.

Ms. Dolan asked about the accessory structure close to the road. She suggested using the word existing building instead of a word "placement", i.e. "To allow for the existing building structure closer to the road". The board agreed.

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
August 22, 2013**

All Aye, except for Mr. Weiland who Nay, Motion carried, 5-1.

Stewart's Shop Corp - 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 (limits the footprint of a structure in the Hamlet District to 3,000 square feet) from 3,000 to 3,295 square feet to allow construction of a 714 square foot addition to the building and a 120 square foot freezer.

Chuck Marshall appeared on behalf of Stewart's Shop. He briefly explained his proposition as indicated above. He discussed the variance needed for the size of the building. Since this property is classified as a grocery store with gas pump, the zoning limits the size to 3,000 square feet. Mr. Marshall stated that they are proposing 3,295 square foot addition to the building. This is a very busy store. They will also add a gas pump (diesel) to the rear end of the gas pump.

Mr. Marshall indicated the items that had transpired at the Planning Board meeting. They agreed to accommodate the Planning Board's concern about a one way in and out driveways. They are currently waiting for the DPW's comments. To address the Planning Board's concern about the issue regarding the headlights of the vehicles coming out of the western driveway (facing the road), Stewart's Corporation will be adding a 4-foot fencing to mitigate the headlights. He pointed out to the map the location of the fenced area.

Mr. Marshall discussed the Planning Board's concern about the lighting on this property. The lights are sequenced.

Mr. Marshall explained why the requested variance should be granted.

Chairman Malcarne asked questions and comments from the board.

Ms. Dolan asked if the timer for the lighting is set for daylight savings time. Mr. Marshall responded that he will make sure that the timer is adjusted.

Mr. Marshall discussed that the variance request is not substantial. He stated that based on the zoning regulation, 3,000 square feet is not an industrial standard.

Mr. Fennell read the zoning regulations about the 3,000 square foot limitation. He noted that this limitation is for housing and not for commercial.

Mr. Weiland added that this is a building size limitation in a hamlet.

Mr. Fennell stated that the zoning regulation states that the maximum footprint shall be 3,000 square feet except for Agricultural buildings.

TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
August 22, 2013

Sec. 250-11 C-3 (Maximum size of structures) states that “The maximum footprint ground area covered by the building and foundation) of any structure shall be 3,000 square feet, except such limitation shall not apply to agricultural buildings”.

Mr. Weiland asked if this limitation is in the Hamlet and certain districts. The Zoning Enforcement Officer responded, “Yes”.

Mr. Marshall explained the configuration of the gas pump in relation to the traffic (ingress and egress).

Mr. Canham commented that the one way in and out proposal for the driveway will alleviate the issue about the congestion on this area. Cars are going different ways on these driveways.

Mr. Weiland asked the applicant about the expansion of a retail space. He asked the applicant if he is adding another isle in the store. Mr. Marshall responded that he doesn't know the answer to this question. All he knows is that they are adding square footage to have more room in the store.

Mr. Weiland commented that this store is getting busier than it was before. He expressed his concern about additional parking slots. He asked the applicant if they are expanding the parking lot. The parking area is tight. Mr. Marshall responded, “No.” They are only moving 3 parking spaces from the delivery area to the other side due to the delivery truck. The delivery truck will deliver straight to the freezer area.

Mr. Marshall indicated that they are increasing the distance from the canopy of the gas pump 17 feet to 25 feet.

Mr. Canham read the Planning Board recommendation which is positive. There was no letter receive from the adjoining property owner.

Mr. Canham expressed his comments. Based on his calculation, the requested variance is 9.8% above the zoning limitation. He agreed with the Planning Board that the requested variance is substantial though he doesn't see any adverse effect in the neighborhood. The addition which is on the side of the building is barely noticeable. He stated that he didn't realize it was there 'till he visited the property. Even though the roof line is being raised, Mr. Canham stated that he doesn't see any substantive changes on the structure. He also agrees that the trees will alleviate the headlights of the cars pulling out of the store.

Mr. Marshall noted that they didn't have a plan about continuous roof line in the beginning but Mr. Marrapodi, a Planning Board member suggested the idea.

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
August 22, 2013**

Mr. Canham stated that it's nice to see that the business grow in such a way that it doesn't create problems in the hamlet. He opined that he viewed these as a positive to the town and the applicant. Mr. Canham commented that this is a sensible request.

Mr. Weiland asked about the signage. Mr. Marshall responded that the original sign will come down. The sign will be smaller and will just state "Stewarts".

The board agreed to open the public hearing. Chairman Malcarne motioned to open the public hearing, seconded by Mr. Canham, All Aye, Motion carried, 6-0.

Michael Hanson, 2303 Salt Point Turnpike spoke about the proposed driveways. He stated that the headlights of the cars coming out of the western driveway (facing the road) shine right to his house. He remarked, "Now, you are proposing that all cars come out of this driveway?"

Mr. Canham responded that this issue is actually Planning Board's purview. The applicant is before the board for a variance application to change the size of the building and not to rule the traffic.

Mr. Weiland stated that the board can include a condition to the variance.

Mr. Hanson stated that cars coming out of the other driveway don't bother him. He has two big pine trees on his property and cannot even see the store. He noted that he has a problem about cars coming out of the store driveway at 11:00 pm with lights shining on his bedroom. He stated that if the applicant turns the proposal the other way around, then he will not see any headlights because of the pine trees.

Chairman Malcarne asked Mr. Marshall about the status of the proposed driveways. The applicant responded that the Department of Public Works is currently reviewing this request. They have to configure the intersection and the sight distance. He noted that the proposal has to be in compliance with the DPW.

Mr. Weiland stated that it might be possible to discuss with the Planning Board the alignment of the exit to reverse the proposed in and out of these driveways.

The panel discussed the configuration of the driveways. Mr. Marshall explained the lay out of the ingress and egress. He noted that the sight line towards the east is a lot better. He indicated the amount of traffic coming in and out of the store. The first driveway is like the first opportunity to come in considering the traffic coming from the Taconic Parkway.

Mr. Hanson remarked that he just bought his property this year and noticed that the amount of traffic coming from both driveways is the same.

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
August 22, 2013**

Mr. Marshall stated that there are considerations that they are willing to make but it is still up to DPW to decide. The entrance and the exit will depend on the DPW.

Mr. Hanson asked if the store hours are going to be the same. Mr. Marshall responded, "Yes". It is still 6:00 am to 10:00 pm. He noted that the store hours are actually a condition of use.

Mr. Hanson noted that the store lights are closed by 11:00 pm. He expressed his hope that the store entrance will be to the east side (facing the store from the road).

Mr. Weiland responded to the issue about the headlights shining on the neighboring property. He stated that he hopes to see more pine trees on this property.

Mr. Canham noted that this is the Planning Board's purview. The variance is about the size of the building and not about the traffic on the road.

Mr. Weiland and Mr. Canham exchanged opinion about the above issue. Mr. Weiland stated that the board is granting a variance to increase the retail capacity of the store. This will increase the traffic in the store.

Mr. Weiland suggested extending the store hours during power outage or emergency times. This will help the community get emergency supplies like dinner, etc. He understands that there is a restriction about the operation of store hours but maybe the Planning Board can re-open the public hearing about the issue.

Mr. Marshall responded that they would love to do it but it is his understanding that the store hours is in accordance with the zoning law.

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

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

Mr. Calogero commented about screening. The proposal is about adding fencing between tree lines and not adding more trees, right? The applicant agreed. They are not removing trees to put up a fence.

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

Mr. Charles Canham motioned that the Town of Clinton Zoning Board of Appeals grant an area variance requested by **Stewarts Shop Corporation** to Section 250.11.C.3 of the Town of Clinton Zoning Law to allow construction of a 714 square foot addition and a 120 square foot freezer adjacent to an existing building located at 2300 Salt Point

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES**

August 22, 2013

Turnpike in the Town of Clinton, tax grid #132400-6566-00-331547, as shown on the proposed site plan attached to their application.

Factors:

1. The property is a 3.6 acre site in a Hamlet zoning district. Town of Clinton zoning law limits the footprint of a structure in the Hamlet district to 3000 square feet. The footprint of the current structure is 2461 square feet. The 714 square foot addition and 120 square foot freezer would result in a structure with a footprint of 3295 square feet.
2. The requested variance is substantial, and would exceed the maximum size limit by 9.8%, but this should not preclude granting a variance.
3. The site is located in a Critical Environmental Area, and in the Ridgeline, Scenic, and Historic Preservation Overlay District. However the requested additions, by themselves, do not present an environmental threat or a significant change in the current character of the property. Site plans before the Town of Clinton Planning Board will address concerns associated with changes in the commercial use of the site under Section 250-15 of the Town of Clinton Zoning Law.
4. There will be no adverse effect of the additions on physical or environmental conditions within the neighborhood. The additions are on a side of the building that is well shielded from neighbors by a fence and a fencerow of trees. Compatibility with the historic and primarily residential character of the hamlet is protected through design criteria in the site plan review process.
5. The benefit sought by the applicant – to expand the retail services available to customers – cannot be achieved by other feasible methods.
6. The alleged difficulty is self-created.
7. An area variance is a Type II action under SEQRA and requires no further action.

Conditions:

1. That all fees have been paid.

Seconded by Mr. Canham.

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
August 22, 2013**

Discussion.

Chairman Malcarne asked about the building coverage. Mr. Canham responded that he based the square footage from the Architect's drawing which is 2,461 square feet. The property card has a lower number and thinks that the Architect's plan is more accurate. The proposed addition is 740 square feet and the footprint of the freezer is 120 square feet. The total square footage is 3,295.

All Aye, Motion carried, 6-0.

Scianna variance – property owned by Virginia Scianna located at 713 Slate Quarry Rd, **Tax Grid No. 6469-00-200588**

The applicant proposes an area variance from Sec. 250-19 of the Town of Clinton Zoning Law for property located at 713 Slate Quarry Road, **Tax Grid No. 6469-09-200588**, to allow reduction to less than the minimum lot size allowing a lot to be reduced to less than the minimum lot size in the zoning district, in order to sell a lot portion (50' x 50') north east corner to the adjoining property owner.

It was noted that the applicant withdrawn her application. The board agreed to close the public hearing which was opened dated June 27, 2013.

Chairman Malcarne motioned to close the public hearing, seconded by Mr. Weiland, All Aye, Motion carried 6-0.

APPROVAL OF MINUTES:

Chairman Malcarne motioned to approve the minutes of July 24, 2013, seconded by Mr. Calogero, all Aye, Motion carried, 6-0.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 9:25 pm, seconded by Mr. Kealty, All Aye Motion carried, 6-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk