

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
September 26, 2013**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero

Norma Dolan
Frank Kealty
Macy Sherow III
Arthur Weiland

Arlene Campbell, Secretary

MEMBERS ABSENT

Charles Canham

ALSO PRESENT
Bob Fennell, ZEO

Chairman Malcarne called the meeting to order at 7:40 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:

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

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

Mr. Swanson (applicant's brother in law), Chris Nejame from Nejame Pools Inc. and Kristine Krauss of Landscaping Co. all appeared for this application. Graham Trask, the property owner also joined the panel via international phone call.

Mr. Swanson explained what had transpired at the Planning Board meeting. He discussed the conditions of the recommendation from the Planning Board about the accessory structures (barns) on the property. He noted all the improvements that were done on this property.

Mr. Trask explained the correspondences that he submitted and circulated to the board. He explained why they need to save and keep the structures that the Planning Board has

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recommended to remove. He stated that the barn is historical as described in the zoning regulations.

Mr. Trask noted that the intention is to renovate this barn as a farm building which is currently used in the farming operations for the daffodils farm. The other barn that was built in 1950 which is also historical will also be renovated and used for agricultural purposes.

Chairman Malcarne asked for questions and comments from the board.

Mr. Calogero read the Planning Board recommendation which is conditional positive. Two letters were received from the adjoining property owners indicating no objection about this project (letters on file).

Ms. Dolan asked if they have an Ag Exemption received for the daffodil farm.

Mr. Trask responded negatively. He noted that this property is in the Ag District.

Mr. Weiland stated that the zoning regulation has a financial threshold of \$1,000 income in order to be recognized as a farm.

Town of Clinton Zoning law definition of Farm states that A Farm is a parcel of land of not less than five acres used for the production of crops, livestock products, including dairy poultry, agriculture, fruit, vegetable and field crop farms, plantations, orchards, nurseries greenhouses or other similar operations used primarily for the raising of agricultural or horticultural commodities and having an annual gross value of production of \$1,000 or more.

Mr. Trask believes that the zoning limitation of 3 accessory structures which is more likely targeted at a typical hamlet of one acre lot is overly restricted to a very big piece of property such as theirs. This property is under Easement. He indicated the letter of approval that was received from the DLC and the DEC permit that was already issued.

Mr. Trask stated that these barns are completely obscured. You cannot see any of these structures from the road. There will be zero impact to the neighborhood once the proposed project is completed. He added that the requested variance has no adverse effect or impact to the neighborhood. The neighboring property owners indicated no objection about this proposal.

Mr. Calogero asked about the condition of the Conservation Easement.

Mr. Trask responded that there is a limit on the building envelope and square footage of the house.

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Chairman Malcarne asked the applicant if he is allowed to subdivide this lot. Mr. Trask responded, "No, unless he wants to go out of the easement which can be too expensive."

Mr. Weiland asked if he is allowed to have an additional residential home on this property. He cited the possibility of adding a livable space on the second floor of the barn.

Mr. Trask responded that he doesn't have any intention of building another house or livable space on this property.

Mr. Weiland indicated his concern about the benefits to the community versus the benefit to the landowner. There is a concern about the future use of a property. The town has a serious problem about having extra people living on a property which is very hard for a small town to monitor. He added that he is very interested with the idea of the easement and thinks that this is an effective way for properties to be balanced in relation to the zoning.

Mr. Trask cited the case about the Gladstone's variance wherein there was a variance granted for the number of accessory structures. He commented that this is similar to that case. He noted that the Gladstone's case also has a pool.

Mr. Fennell noted that farm buildings are excluded from the accessory structures limitations.

Mr. Weiland asked if this ruling is also in the Ag and Market's ruling. Mr. Fennell responded, "No, this ruling is just in the town regulations."

Ms. Dolan asked if the farm property income of \$1,000 typical in the past. Mr. Trask responded that this is the first year that they have enough production to be able to claim this property as a farm. He noted that they will certainly continue the farm operations.

Ms. Dolan asked about any intention of adding a living space in the barn. Mr. Trask responded, "Maybe at some point but not to rent it out to people."

Ms. Dolan asked which barn has historical designation. The applicant responded that building "A" (shed) is the barn with historical designation.

Ms. Dolan then asked, "Who designated this building as historical?" Is it the comprehensive plan or the county?

Mr. Fennell noted that there are only five or six historical buildings listed in the comprehensive plan.

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Ms. Dolan explained her concern. She noted that historical buildings have restrictions about alterations. The property owner indicated earlier about doing renovation on these buildings.

The panel had a lengthy discussion about the above issue. Mr. Trask noted that what they are proposing is to restore the existing building. They are not doing any alteration.

The Zoning Enforcement Officer reviewed the ruling about agricultural buildings per Sec. 250.22 A-4 of the Town of Clinton zoning law.

Mr. Calogero asked Mr. Fennell about the regulation stating “Accessory structures in the residential except for farm buildings in the farm.”

Mr. Fennell responded that this section talks about the limitation of accessory structures.

Mr. Calogero opined that this section doesn’t seem to limit the number of structures in a farm. Mr. Fennell agreed.

Chairman Malcarne asked Mr. Fennell about the ZEO’s determination about this case. Mr. Fennell responded that the notion about a farm came in place after the application was presented to him.

Chairman Malcarne asked the applicant how many structures are being used as farm buildings. Mr. Trask responded that all the buildings on this property are used as farm buildings. The barn is used to store the fertilizer and bulb equipment and the office is the farm office.

Mr. Calogero asked about the condition of these barns. Mr. Trask responded that Barn “A” is in desperate need of restoration. They will obtain a building permit to renovate this in the next 12 months. With regards to Barn “C”, the intention is to restore it at some point since this is in much better condition than Barn “A”.

Ms. Dolan asked about the use of the pole barn (Exhibit C). Mr. Trask responded that this barn is used to store woods and tools.

Mr. Weiland asked about the copy of Conservation Easement. He stated that the easement may satisfy the condition of the variance. Mr. Fennell stated that easement is not a part of the zoning regulations.

Mr. Trask addressed the above concern. He noted that Conservation Easement specifically addresses and allows pools and does not limit accessory structures particularly barns.

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

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Jack Cleary, 53 Lake Pleasant Drive spoke and gave favorable comments about this property. He noted that these structures are very well screened.

Hearing no more 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.

The panel had a long discussion whether this property is a farm.

Mr. Kealty asked if this property is considered a farm. Mr. Weiland responded that this is a legal question.

Chairman Malcarne stated that two of the accessory structures are used as farm structures. There is no income yet from the farm operations but the property owner stated that it is coming.

After a very long discussion and review of this proposal, the board agreed to pass a resolution, to wit:

Mr. Calogero motioned that the Town of Clinton Zoning Board of Appeals to grant the requested variance, seconded by Mr. Kealty.

Discussion. Ms. Dolan questioned the motion. She asked, “Why are we granting a variance when it is not needed?”

Chairman Malcarne asked the ZEO if this property qualifies as a farm operation. Mr. Fennell responded, “Yes”.

Chairman Malcarne made a follow up question. “Will this case need a variance?” Mr. Fennell responded, “No”.

Mr. Weiland asked about documentation of the income from the farm operations. He indicated the SC order in the packet dated December 1, 2013. He asked, “Was there any income received?”

Mr. Trask responded, “No, there was no income received yet, but there will be an income coming shortly. He explained that SC order is about a shipment of flowers to South Carolina Company. He noted that he is just awaiting for the payment.

Mr. Weiland expressed his comment. This is a nice property and the pool will be great on this property. He doesn't agree with the Planning Board that this is a detriment to our zoning to allow the increase in the number of accessory structures. He added that at this point, he doesn't believe that this property qualify as a farm since the income wasn't

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realized yet. Once the income is realized, Mr. Weiland stated that he doesn't have a problem recognizing this property as a farm.

Mr. Weiland indicated his concern about accessory structures turning into farm buildings. There are issues about people living on farm structures. Mr. Weiland stated that when the property stops operating as a farm, people maybe still living in these structures.

Chairman Malcarne made a recap about this proposal. Based on the above discussion and what was presented in the packet about the income which is not realized yet, and given the statement that two of the structures are being used as farm buildings, it is now a question of "Does this property qualify as a farm? Is the area variance needed to put up a pool?"

Mr. Calogero gave his thoughts about this case. If this property qualifies as a farm and the Zoning Enforcement Officer says that he will issue the permit for the pool then this project doesn't need a variance.

Mr. Sherow stated that he feels that this property doesn't qualify as a farm 'till the income is realized. He also commented that the proposal about the pool is great.

Mr. Kealty asked the applicant when they are planning to build a pool. Ms. Krauss responded that they are hoping to start the project by spring and finish it by June of next year.

Ms. Dolan suggested that the board can make a resolution to return the application to the Zoning Enforcement Officer for review. The board is not in a position to state whether the variance is needed. The board concurred with Ms. Dolan.

After a very long discussion, the board agreed to modify the resolution, to wit:

Mr. Calogero motioned that the Town of Clinton Zoning Board of Appeals grant the following resolution, to wit:

Be it resolved that the Town of Clinton Zoning Board of Appeals finds that based on the information presented at the Zoning Board of Appeals dated 9-26-13, the board refers the issue back to the Zoning Enforcement Officer for a review.

Seconded by Mr. Sherow.

Discussion.

Mr. Weiland stated that he hopes to see that the Zoning Enforcement Officer will make sure that the income is realized first. Mr. Fennell asked about the documentation that he needs from the applicant to prove that this property is a farm. Mr. Weiland responded that it needs sufficient proof that \$1,000 is received.

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All Aye, Motion carried, 6-0.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 9:30 pm, seconded by Mr. Weiland, All Aye Motion carried, 6-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk