

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
January 23, 2014**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham
Norma Dolan
Frank Kealty
Macy Sherow III
Arthur Weiland

MEMBERS ABSENT

Arlene Campbell, Secretary

ALSO PRESENT
Bob Fennell, ZEO

Chairman Malcarne called the meeting to order at 7:37 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 APPLICATION:

Nancy Packes' Area Variance – property owned by **Nancy Packes**, property on 37 Stissing View Road, **Tax Grid No. 6469-00-070585.**

The applicant is seeking for a 90 day-extension of the area variances that were about to expire on February 28, 2014.

John Andrews, engineer and Ron Blass, lawyer both appeared on behalf of Ms. Packes. Mr. Blass indicated the encumbrance that he had prepared for Ms. Packes noting that Ms. Packes is not trying to get the subdivision and variance approvals both ways but instead to substitute the subdivision (if granted) for the variances. .

Mr. Andrews explained why this case is back before the board. This property received variances almost a year ago due to the number of accessory structures. Currently, they are pursuing a two- lot subdivision. Mr. Andrews noted that the subdivision action was suggested as an alternative to variances by both the Planning Board and the Zoning Board of Appeals during the discussion of the original variance. He noted that the subdivision would bring the property into compliance with current zoning eliminating the need of the variances.

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Mr. Andrews stated that after taking comments from the Planning Board and the Zoning Board of Appeals, Ms. Packes decided to subdivide this property into two lots. Lot 1 (16.1 acres) has a house, a caretaker cottage and existing driveway. Lot 2 (10 acres) has a barn (proposed to enlarge to become primary residence and the tennis court. They are also proposing to use the existing driveway as shared driveways. Mr. Andrews stated that the subdivision will bring this property into compliance.

Mr. Andrews stated that if the subdivision has to occur, a variance will also be required for the size of the accessory structure per Sec. 250.29 B-6 of the zoning regulations. The primary dwelling has 2,400 square feet and the accessory structure has 960 feet. Mr. Andrews noted that 35% of 2,400 square feet is 960 square feet.

Sec. 250.29 B-6 of the Town of Clinton Zoning Law states that “The accessory unit shall contain no greater than 35% of the total habitable space of the existing principal structure prior to the construction of such accessory apartment or 1,000 square feet of floor space, whichever is more restrictive.”

Mr. Andrews explained the reason for requesting an extension of the approved variance. Even though these lots are in compliance with the zoning, each lot also needs to be able to support itself. The zoning regulations require that there should be a feasible access on the property. Mr. Andrews explained that they need to demonstrate a separate and feasible driveway on each lot even though the proposal is to use a common driveway.

Mr. Andrews indicated the timeline that they have regarding the Department of Public Works. They are currently completing the driveway process through DPW. They need a sight line analysis for the proposed driveway location on Lot 2. Since the variance is expiring on February 28, 2014, Mr. Andrews stated that they cannot move forward through the subdivision process. He noted that if for some reason the subdivision fails, Ms. Packes will still want to pursue the original proposal about the variances.

Mr. Andrews reiterated that Ms. Packes is not trying to have the approvals both ways. Ms. Packes will relinquish the variances once the subdivision is approved by way of a legal document. This is accomplished by a recordable legal instrument which is acceptable to the Town and its Town Attorney. He noted that the town attorney has reviewed and approved the document. He added that there will also be a subdivision agreement about “No Further subdivision”. Mr. Blass believes that this proposal is allowable.

Chairman Malcarne asked questions and comments from the board.

Mr. Weiland indicated a little technicality about the square footage of the lots when Mr. Andrews was explaining his proposal. Mr. Andrews acknowledged the error and agreed about the correction. Lot 1 should be 16.01.

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Mr. Weiland asked if there are new lines on the map. The applicant responded, "Yes".

Mr. Weiland indicated his concern about the legal document in relinquishing the zoning (variance). Mr. Blass explained that the legal document will not take effect until the subdivision is approved and the plat is signed and recorded to the Dutchess County Office.

Mr. Weiland expressed his thoughts about this case. There is nothing changed from the previous variance application. He feels that this is a case of an extension of time instead of re-approval.

Mr. Weiland indicated his confusion about the application on hand. Mr. Andrews stated that they were hoping that they can move forward without filing a new application. They were hoping to get an extension of time.

Mr. Weiland asked the board if they can just make a motion to extend the time. Mr. Fennell responded that the board has the ability to do that.

Mr. Weiland stated that he doesn't quite agree that an extension is implied but he doesn't see anything in the zoning a regulation preventing them from acting on the applicant's behalf.

The variance hasn't expired. The applicant is requesting for an extension of the time. Mr. Weiland opined that they have the authority to extend the time of the variance.

The board discussed the above issue. Mr. Blass stated that the way this is structured is to review the matter for the purpose of extending the duration beyond the regulatory time i.e. February 28, 2014.

Chairman Malcarne expressed his concern. He stated that the main issue here is about the period of time necessary for the project to be completed. How do we prevent the same situation? Is 90 days enough time?

Chairman Malcarne asked Mr. Werner who is a Planning Board member, about the timeline of the proposed subdivision. Mr. Werner responded that 90-days is not a lot of time. He also indicated the related issue about the special permit that was granted on this property that is due to expire on May 2014. He noted that the zoning doesn't allow re-approval of the special permit. He commented that there is no point in extending the variance beyond the expiry date of Special permit because the special permit is not renewable.

The board had a lengthy discussion about the above issue.

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Mr. Blass suggested extending the variance from the time it runs out subject to special permit condition. He stated that if they need re-approval then they will seek re-approval of the special permit.

Mr. Weiland asked Mr. Werner about the special permit. Mr. Werner responded that the special permit is for the accessory use of the accessory dwelling. He noted that this will also need a variance if the subdivision is approved due to the size of the accessory structure in relation to the primary dwelling.

Mr. Weiland asked a follow up question. He asked Mr. Werner if the variance is required for the special permit to take effect. Mr. Werner responded, "Yes" per Section 250.29 B-6.

Mr. Andrews noted that if the subdivision is not approved then Ms. Packes will immediately start the process of the barn renovation (original proposal). He stated that nine months will be sufficient.

Mr. Canham commented that if the panel is going to grant 9-months, then why not make it a full year. Mr. Werner remarked that the special permit runs out in May. Mr. Blass commented that then they will have to get re-approval of the special permit once it expires. Mr. Werner remarked, "Then the variance will also expire after 3 months".

Mr. Blass suggested that maybe the board can grant 6 months with a condition about the special permit.

Chairman Malcarne asked the applicant if the issue can be resolved in six months. Mr. Andrews commented that there is no guarantee with DPW, but they are hoping to hear from the DPW within the next couple of weeks.

Mr. Werner stated that the only outstanding issue right now is about the driveway. If DPW signs off on this, the subdivision process can be approved.

After a lengthy discussion about the above issue, the board agreed that six-months is reasonable.

The board agreed to open the public hearing. Chairman Malcarne motioned to open the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 7-0.

One letter was received from the adjoining neighboring property owner, Peter Randlev of 27 Silver Lake Road indicating no objection about this project.

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. Sherow, all Aye, Motion carried, 7-0.

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

Mr. Weiland motioned that the Town of Clinton Zoning Board of Appeals grant six months extension from the date of expiration (2-28-13) of the 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 of the benefit sought by the applicant to proceed to pursue similar course of action.
2. The additional time sought by the applicant can be achieved by some other feasible method besides granting the variance, such as the subdivision abandonment *as well as the other* various conditions *previously granted to improve and configure the property*.
3. The granting of this extension is substantial.
4. The granting of this extension will not have an adverse effect on the physical or environmental conditions in the neighborhood because of the current situation in regards to plans for future improvement on the property.
5. The difficulty was self created by pursuing other *avenues* for improvement.
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 not 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 in the Ridgeline, Scenic or Historic Protection Overlay District.

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CONDITION:

1. There will be no subdivision on the property.

Seconded by Mr. Canham, All Aye. Motion carried 7-0.

Discussion: Mr. Canham commented that since this is just an extension of time then the condition will just carry forward. The board agreed.

Mr. Werner indicated a correction about the resolution that was read. He noted that this property is in the Ridgeline and not in the CEA.

All Aye, Motion carried, 7-0.

APPROVAL OF MINUTES:

Mr. Canham motioned to accept the minutes of December 5, 2013 as amended, seconded by Mr. Calogero, all Aye, Motion carried, 7-0.

Mr. Malcarne motioned to accept the amended minutes of October 24, 2013 seconded by Mr. Kealty, all Aye, Motion carried, 7-0.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 8:55 pm, seconded by Mr. Canham, All Aye Motion carried, 7-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk