

**TOWN OF CLINTON PLANNING BOARD MEETING  
FINAL MINUTES  
March 4, 2014**

**MEMBERS PRESENT**

Art DePasqua  
Gerald Dolan

Robert Marrapodi

Eliot Werner

Arlene Campbell, Secretary

**MEMBERS ABSENT**

Mike McCormack, Chairman

Tracie Ruzicka

Paul Thomas

**ALSO PRESENT**

Dean Michael, Liaison Officer

Acting Chairman DePasqua called the meeting to order at 7:32 p.m.

**VARIANCE APPLICATION:**

**Packes subdivision (Lot 1) Area Variance** - property owned by Nancy Packes located at 27-37 Stissing View Drive, **Tax Grid No. 6469-00-070585.**

The applicant is seeking an area variance to Sec. 250.29 B-6 of the Town of Clinton Zoning Law to allow for an existing accessory dwelling unit of 752 square feet of habitable space.

John Andrews from Rohde, Soyka and Andrews appeared on behalf of the applicant. He explained that this property needs a variance for the accessory dwelling unit on the new lot (Lot 1) as part of the subdivision approval dated February 18, 2014. The primary dwelling has a gross square footage of 2,170 square feet and habitable space of 1,748 square feet. The accessory dwelling's gross square footage is 960 square feet while the habitable space is 752 square feet. He expressed his hopes to receive a positive recommendation from the board.

Mr. DePasqua asked for questions and comments from the board.

Mr. Werner stated that the zoning limit is 612 square feet (35% of 1,748 square feet). The accessory dwelling's square footage is 960 square feet (habitable space). This is a pre-existing structure. Mr. Werner indicated no concern about this application.

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."

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Mr. Marrapodi questioned the calculation based on the floor space as opposed to the habitable space of the accessory dwelling. He stated that this is contrary to the interpretation of the ZEO.

Mr. Werner stated that the Zoning Enforcement Officer changed his determination. Mr. Werner shared Mr. Thomas's opinion to use habitable space rather than floor space since floor space is more restrictive. This is keeping with the intent of the law, which is to limit the size.

Mr. Marrapodi indicated his difficulty in understanding this clause since "floor space" is not defined in the code. The verbiage in the Zoning Law needs to be revisited. Mr. Marrapodi opined that the board should not use the definition of the floor space in this case since the board will be interpreting the area of the accessory dwelling based on the gross square footage of the dwelling.

Mr. Marrapodi asked about the computation of the variance. The square footages of the accessory dwelling are 960 gross and 752 habitable. There are two numbers in front of the board. If the board is not concerned about not exceeding the maximum limit of 1,000 square feet, Mr. Marrapodi then asked, "Don't you think that the board should use gross space as the basis of the calculation of the variance? How do you make the comparison?"

Mr. Andrews remarked that the law clearly states that it should be 35% of the habitable space of the primary dwelling. The comparison should be habitable to habitable or floor space to habitable. He stated that either way this property needs a variance.

Mr. Andrews opined that it makes sense to use habitable to habitable since you are comparing apples to apples, but it is up to the board.

The board had a lengthy discussion about the issue. Mr. Marrapodi stated that there is a discrepancy in the verbiage in the zoning. The town is in the process of addressing these issues. He suggested that for now, the board should be consistent with this feeling and use this as a determination for the comparison.

Mr. Werner agreed. The town is redoing the Zoning Law and this issue needs to be addressed.

After all the discussions were made, the board agreed to use habitable space as a basis of the calculation (612 to 752 square feet, which is a 23% variance).

The board agreed to pass a resolution, to wit:

Mr. Werner motioned the following resolution:

**BE IT RESOLVED** that the Town of Clinton Planning Board provide a positive recommendation to the Zoning Board of Appeals on the area variance requested by **Nancy Packes** to Section 250.29.B.6, to allow for a preexisting, nonconforming

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accessory dwelling unit on a 10.02-acre site in a Conservation zoning district, located at 27-37 Stissing View Road in the Town of Clinton, **tax grid #132400-6469-00-070585**, as shown on the provided drawing.

***WHEREAS:***

- 1) The applicant wishes to subdivide the property into two parcels and has been required to secure a variance for the accessory dwelling unit on the new Lot 1 as part of the subdivision application.
- 2) Section 250.29.B.6 of the Town of Clinton Zoning Law limits the size of an accessory dwelling unit to 35 percent of the total habitable space of the principal structure on the lot or 1,000 square feet of floor space, whichever is more restrictive.
- 3) The principle structure on the lot has 1748 square feet of habitable space, which means the accessory dwelling unit is allowed a maximum of 612 square feet of habitable space.
- 4) The accessory dwelling unit has 752 square feet of habitable space, thus requiring a variance for the additional 140 square feet of habitable space.
- 5) The site is located in the Ridgeline, Scenic, and Historic Preservation Overlay District.
- 6) An area variance is a Type II action under SEQRA and requires no further action.
- 7) An undesirable change will not be produced in the character of the neighborhood, and a detriment to nearby properties will not be created, by granting this area variance.
- 8) The benefit sought by the applicant cannot be achieved by some other method that will be feasible for the applicant to pursue.
- 9) The requested area variance allows for an increase of approximately 23 percent in the permitted size of an accessory dwelling unit and is therefore substantial, but this should not preclude its granting.
- 10) The alleged difficulty is self-created.
- 11) All appropriate fees have been paid.

***NOW, THEREFORE, BE IT RESOLVED***, the Planning Board is making a positive recommendation for approval to the Town of Clinton Zoning Board of Appeals.

Seconded by Mr. Marrapodi.

**Discussion.** None.

All Aye, Motion carried, 4-0.

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**PUBLIC HEARING:**

- None

**APPLICATIONS:**

**Brands and Malcarne Lot Line Adjustment** – properties on 110 and 89 Rymph Road, Tax Grid Nos.. 6266-00-948870 & 6266-00-920931.

The applicants wish to do a lot line adjustment.

James Brands appeared on behalf of both property owners. He explained his proposal. Approximately ten years ago, when the Brands sold a piece of land to the Malcarnes, Mr. Brands explained that part of the discussion was to transfer more lands. They could not transfer the land during that time due to the forestry restriction on this land. After ten years they are now before the board to pursue this process.

Mr. Brands indicated the Deed Restriction on the land when the property was sold to the Malcarnes years ago. Mr. Brands noted that part of the details was about limiting the use of this land. The Malcarnes cannot use this land as another residence. He indicated his guess that the Malcarnes will combine both lands and make their lot bigger.

Acting Chairman DePasqua asked if the Malcarnes will combine the 17-acre lot with the small lot. Mr. Brands responded that he doesn't know the intentions of the Malcarnes. He noted that part of the restriction was the use of this land, which is privacy. He added that whatever intention of the Malcarnes on the other lot is not part of this application. He stated that the Malcarnes may or may not combine the lots.

The board discussed the issue. Mr. Dolan raised the issue about this proposition. He noted that this application will be creating a new lot. This is a land-locked lot.

Mr. Marrapodi concurred with Mr. Dolan. This will be a subdivision and the zoning does not allow them to do that.

Mr. Brands asked if the board can condition the approval on the Malcarnes combining the lots.

Mr. Dolan stated that the only thing the board can do is take the line away. A new lot cannot be created per zoning regulations.

The board had a lengthy discussion about the above issue.

Mr. Marrapodi commented that the board cannot approve this application, even with the condition that in the future the Malcarnes will combine these lots.

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Mr. Brands questioned the above statement. Mr. DePasqua stated that the whole application has to be in conjunction. The Malcarnes need to have an application to remove the line.

Mr. Brands asked the board if the board can issue an approval with a condition that Malcarnes will combine these lots. If the Malcarnes don't combine these lots, then it voids the approval.

Mr. Werner agreed with this approach but Mr. DePasqua stated that it is better to have everything on the table at one time, rather than doing conditional approval and waiting. Nothing can be signed anyway. He commented that this is a very simple lot line adjustment.

After all the reviews and board discussion, the board agreed that the Malcarnes need to submit an application to combine the lots.

No other action taken.

**OTHER MATTERS:**

Daniel Wise appeared and presented his proposed project about putting up a school in the Town of Clinton.

**APPROVAL OF MINUTES:**

Mr. Marrapodi motioned to approve the minutes of 2-18-14 as amended, seconded by Mr. Dolan, All Aye, motion carried, 4-0.

Mr. Werner motioned to approve the minutes of 1-07-14 as amended, seconded by Mr. Marrapodi, All Aye, motion carried, 4-0.

**ADJOURNMENT:**

Acting Chairman DePasqua motioned to adjourn the meeting at 8:40 pm, seconded by Mr. Dolan, All Aye, Motion carried, 4-0.

Respectfully Submitted,



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