

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
August 28, 2014**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero

Frank Kealty

Arthur Weiland

Arlene Campbell, Secretary

MEMBERS ABSENT

Charles Canham

Norma Dolan

Macy Sherow III

ALSO PRESENT

Bob Fennell, ZEO

Chairman Malcarne called the meeting to order at 7:38 pm.

Chairman Malcarne asked the secretary if all the applications on the agenda were 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:

John and Dianne Harding Area Variance - property located at 62 Camp Dr, Tax Grid No. 6468-09-180766.

The applicant is seeking an area variance to Sec. 250 Attachment 2 of the Town Zoning Law for the purpose of reducing the size of pre-existing, nonconforming parcel which is in the C Zoning District to convey .30 acres to the neighboring property to the north.

Mr. and Mrs. Harding appeared for this application. Mr. Harding explained that they moved to this property about a year ago. They had this property surveyed in May of 2014 and found out that the adjoining property owners are using part of his property.

Mr. Harding stated that they were told that the property line was by the fence line when they bought this property. He commented that he wouldn't have known the intrusion if he didn't have this property surveyed. In order to remedy the issue, they agreed to sell the subject area to the Bamfords.

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Mr. Harding noted that the metal shed was already taken down as part of the discussion at the Planning Board meeting.

The board discussed the application. Chairman Malcarne asked for questions and comments from the board.

Mr. Kealty expressed his comment per his visit to the property. He stated that he doesn't see any reason why the variance should not be granted.

Mr. Calogero stated that the board should really avoid increasing the nonconformity of a property per Zoning Regulations. However, if this is the solution that will resolve the issue and will make everybody happy, Mr. Calogero commented that he doesn't have any problem granting the requested variance.

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

Cathy McMann of 137 Long Pond Road indicated no objection about this application. However, she noted that the property to the east as indicated in the variance application is actually her property.

The board agreed that the other property affecting this application is the one to the north.

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. Weiland, All Aye, Motion carried, 4-0.

Mr. Weiland suggested adding a notation in the resolution that the intention of this variance is not to establish precedence. The board agreed.

After all the reviews were made, the board passed a resolution, to wit:

Mr. Kealty motioned that the Town of Clinton Zoning Board of Appeals grant an area variance requested by **John F. and Diane Harding** from Section 250 Attachment 2 of the town of Clinton Zoning Law (District Schedule of Area and Bulk Regulations) for the purpose of reducing the size of their pre-existing, nonconforming parcel located at 62 Camp Dr. Tax Grid No. 132400-6468-09-180766 which is located in the Conservation Agricultural Residential (C) District in the Town of Clinton.

FACTORS:

1. The minimum lot size permitted in the C District is 5 acres and the applicant's lot consists of 2.24 acres. The lot is a pre-existing nonconforming lot under the provision of the Zoning Law.

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2. The applicants wish to sell 0.30 acres to the neighbor to the north leaving them with a 1.94 acre parcel. The applicants request an area variance to allow them to convey said parcel to the neighbor by means of a lot line adjustment. This transfer would also reduce the side yard setback from 50 feet to 40 feet for their shed.
3. There are no known outstanding zoning violations on the property per the Zoning Enforcement Officer.
4. An area variance is a Type II action under SEQRA and requires no further action.
5. The requested area variance is substantial.
6. The benefit sought by the applicant cannot be achieved by some other method.
7. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.
8. This decision is unique in that the neighbor is already in occupation of the property to be transferred. This decision should not be construed to establish a precedent for similar future applications submitted before the Zoning Board of Appeals.
9. The applicants will remove the shed located in the side yard adjacent to the Bamford property prior to submission of an application for a lot line adjustment.

CONDITION:

All fees are paid.

Seconded by Mr. Weiland.

Discussion. Ms. Campbell suggested adding a condition stating that all fees should be paid.

Mr. Calogero asked Mr. Kealty about the verbiage of the notation regarding setting precedence. He feels that they should include the reason in granting this variance to avoid setting precedence.

Frank suggested stating, "That the variance is unique due to the nature of the situation."

Mr. Weiland stated that the neighbor has mistakenly used part of the property and both neighbors agreed to resolve the issue.

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Chairman Malcarne noted that these are all part of the minutes. The board granted this variance and the decision is unique. The intrusion was discovered via survey. This is the appropriate solution that the two parties agreed.

All Aye, Motion carried 4-0.

Matthew Taney Area Variance - property on 420 Browning Road, **Tax Grid No. 6366-00-913923.**

The applicant is seeking an area variance to Sec. 250.105 of the Town of Clinton Zoning Law which defines “Farm” as a parcel of land of not less than five (5) acres to allow 40 x 60 square feet Pole Barn to be used for agricultural purposes on 4.59 acre vacant parcel.

Matthew Taney appeared and explained his proposal. He owns two lots on Browning Road. Next to his residential lot is a 4.59 acre vacant lot where he wants to put up a 40 x 60 square feet barn. Accordingly, he needs a variance to make this lot a “Farm” in order to construct the barn.

Mr. Taney indicated and presented photos of the chicken coop, beehives, etc. He noted that he has all these structures on his property and wishes to consolidate them into a separate lot.

The board discussed the application on hand. Mr. Calogero stated that the variance application states, “... to conduct a farm on 4.59 acres and build a barn.”

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

Chairman Malcarne asked for questions and comments from the board.

Mr. Calogero asked the applicant about his rationale in not combining these lots. Mr. Taney responded that these are two separate lots. He doesn’t know what the future holds. He indicated his intention about the probability of sale.

Mr. Calogero expressed the same concern as Mr. Taney’s. He doesn’t know what the future will bring. He opined that if the variance is granted, the town will have a farm less than what is stipulated in the Zoning Regulations. Mr. Calogero expressed his concern about the future property owners if Mr. Taney decided to sell these properties. The Town stipulated Farm as 5 acres. There is a reason for that.

Mr. Calogero indicated the benefits in combining these lots and using them as a farm.

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Mr. Kealty asked if the board can make the variance grandfathered for the use as a farm if this is the concern.

Mr. Weiland remarked that everything that the applicant wishes to do can be done under the Section of Animal Husbandry in the Zoning Ordinance. If this property is a farm, all he needs to do is get a Building Permit. He doesn't have to do a lot line adjustment. He can put as many structures as he like. "Farm" is a broad category and is under Ag and Markets jurisdiction.

Mr. Weiland stated that Animal Husbandry is a primary use and is allowed to have a secondary use. If in case the property owner sells this property in the future, this property can then be used as animal husbandry or residential use.

Chairman Malcarne asked the applicant about the acreage of his residential lot. Mr. Taney responded that the residential lot is 3.1 acres.

Mr. Calogero noted that the requested variance is only .41. The vacant lot is 4.59 acres.

Mr. Taney expressed his understanding about the concern. He reiterated that he doesn't know what the future holds. He wants to keep these lots separated. He also like to keep things agricultural.

The board had a lengthy discussion about the issue.

Mr. Weiland explained the use of Animal Husbandry per Section 250.32 of the Town of Clinton Zoning Regulations.

Sec. 250.32 of the Town of Clinton Zoning Law states that "The purpose of Animal Husbandry section of this chapter shall be to provide opportunities for animal husbandry and to encourage 4-H projects on residential parcels in a manner which will not conflict with neighboring nonagricultural residential uses or other purposes of this chapter."

Sec. 250.105 of the Town of Clinton Zoning Regulation defines Animal Husbandry as "The Keeping, grazing, feeding and care of animals or fowl (poultry) other than household pets."

Mr. Weiland opined that Animal Husbandry is still agriculture. It has number of animals set per acre. He noted that Ag and Markets Law has precedence over the town zoning.

Mr. Taney noted that he doesn't want to go that route, and that's why he is before the board.

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Chairman Malcarne asked the Zoning Enforcement Officer about the requirement to use this property as Animal Husbandry and build a barn. Mr. Fennell responded that the Section of the law allows the housing of animals as primary use (Animal Husbandry). The proposed barn needs to meet the setback requirements.

The board discussed the number of animals allowed for Animal Husbandry based on the acreage of this property. Mr. Taney remarked that he is not looking to maximize the number of animals allowed.

Mr. Weiland noted that the applicant doesn't need a variance to use this property as Animal Husbandry.

Mr. Fennell concurred with Mr. Weiland. Animal Husbandry use is allowed on this property. Based on this section of the law, the primary use is Animal Husbandry. He noted that the variance is then not necessary.

The board reviewed the section of Animal Husbandry. The property owner can do his intention under this section of the regulation without a variance. This will also keep establishing a farm on a lot less than 5 acres (setting precedence).

The Zoning Enforcement Officer noted that he will allow the construction of the barn on the 4.59 acres under Animal Husbandry. All it needs is a Building Permit.

The board agreed to table the discussion. Mr. Calogero motioned to table any further discussion, seconded by Mr. Kealty, All Aye, Motion carried, 4-0.

No action taken.

OTHER MATTERS:

Mr. Calogero discussed the Zoning revision status. He also encouraged the board to give their input about the zoning.

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APPROVAL OF MINUTES:

Chairman Malcarne motioned to accept the minutes of July 27, 2014 seconded by Mr. Calogero, all Aye, Motion carried, 4-0.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 9:35 pm, seconded by Mr. Kealty All Aye Motion carried, 4-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk