

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
September 25, 2014**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham
Norma Dolan

Arthur Weiland

Arlene Campbell, Secretary

MEMBERS ABSENT

Frank Kealty
Macy Sherow III

ALSO PRESENT
Bob Fennell, ZEO

Chairman Malcarne called the meeting to order at 7:30 pm.

Chairman Malcarne asked the secretary if 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:

Levin Area Variance – property owned by **Richard and Kathleen Levin** located at 127-143 Browning Road, **Tax Grid No. 6366-00-517296.**

The applicants are requesting the following area variances in order to replace an existing accessory dwelling unit with a new accessory dwelling unit, to wit:

Sec. 250 Attachment 2 – Front yard setback reduction from 100 feet to 82.3 feet

Sec. 250-29D-1 which requires that an accessory dwelling in an existing barn must meet the minimum setback requirements for the zoning district.

Paul Pilon from SP Architects appeared on behalf of the property owners. He explained that the Levins need a variance to rebuild the existing structure on the exact same location. The proposed building will have the same use as the existing building. The upstairs will continue its use of a two- bedroom accessory dwelling and the lower level will have storage, garage and mechanicals. The proposed structure will also be using the

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same driveway and same septic system.

Mr. Pilon explained the variances needed for this project. The proposed structure needs a variance for a reduction of front yard setback to 82 feet and a variance to enlarge the size of the nonconforming structure from 912 to 990 square feet. Demolition permit approval was also granted.

Chairman Malcarne asked for questions and comments from the board.

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

Mr. Weiland asked, "How long was the barn unoccupied?" Mr. Pilon responded that he doesn't know the answer to this question. The Levins owned this property for four years.

Mr. Weiland questioned the requested variances. The Planning Board indicated variances to three sections of the Zoning Regulations while the application form only stated two variances. He asked about the language of the legal ad that was published for this application.

After reviewing the verbiage of the legal ad, the board agreed that the language in the ad covered the requested variances.

Mr. Weiland asked to review the law about extending a nonconforming structure.

Sec. 250.29 B-6 of the Town of Clinton Zoning Regulations 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. Pilon stated that the size of the primary dwelling is 3,635 square feet habitable space and 35% of that is 1,272 square feet.

Mr. Fennell noted that the law states 35% of the habitable space.....whichever is more restrictive. In this case, Mr. Fennell stated that 1,000 square feet is the maximum.

Ms. Dolan commented that the accessory structure is not listed on the Assessor's property card. Mr. Weiland stated that Parcel Access indicated that this structure was built in 1930.

Mr. Calogero asked the applicant if they will use the same foundation. Mr. Pilon responded, "No." The building will have the same footprint and will retain some of the

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historical aspect of the old building. He explained the fascia of the proposed building. The proposed structure will also be slightly larger.

Mr. Calogero asked about the requested front yard setback reduction. He asked if there is a way to eliminate this variance. Mr. Pilon responded, "No, the septic is located behind the structure."

The board agreed to open the public hearing. Chairman Malcarne motioned to open the public hearing, seconded by Mr. Weiland, all Aye, Motion carried, 5-0.

Hearing no comments from the public, Chairman Malcarne motioned to close the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 5-0.

Mr. Weiland expressed his comments about this project. He commented that the Planning Board's recommendation did not mention anything about Scenic and Historic area. This building was on this site for almost 100 years. He added that the board can probably make recommendations about the structural and architectural features of the proposed building.

The board had a lengthy discussion about the architectural details of the proposed building. Mr. Weiland stated that he hopes to see architectural shingles. Mr. Canham preferred not get into the architectural details of the building.

Mr. Calogero noted that the resolution indicated that the Planning Board wants to pursue every effort to preserve the same features of the barn (#7 of the Planning Board's recommendation). He stated that he hopes to see this item in the variance resolution.

Mr. Weiland discussed the draft resolution that he had prepared. He included a notation that this property is in the Scenic and Historic Preservation and Overlay District. He suggested maintaining the architectural details (color, sidings, etc) and aspects of this building and to show these details on the drawing/floor plan.

Mr. Pilon explained the architectural details of the proposed structure. The existing structure has a front deck. This will be removed and placed in the rear. He noted that there was a discussion about putting original architectural shingles or metal roof for architectural look.

The board expressed concerned about the aesthetic of the proposed building.

Mr. Weiland suggested using a cedar or slate roof. Chairman Malcarne stated that these comments are good but these concerns are addressed at the Site Plan approval.

Chairman Malcarne asked the board how they feel about including conditions about the roof material, etc. to the variance. Mr. Calogero stated that he wishes to underscore a

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level of concern about maintaining the same look of the building. He commented that maybe the board can include a condition about maintaining the aesthetic of the building.

Mr. Canham disagreed. This is the Planning Board's purview. He stated that he is not comfortable in putting restrictions about the color, roof material, etc. on the variance. He would prefer to emphasize maintaining the looks of the building but not as condition of the variance.

Mr. Weiland remarked that this building is in the Scenic and Historic Preservation Overlay District. The board has to put some responsibility on the aesthetics.

Ms. Dolan concurred with Mr. Weiland. She wants to see an emphasis that this property is in the Scenic and Historic District. She also wants to include item #7 from the Planning Board recommendation to the variance approval.

Chairman Malcarne opined that the proposed building fits the characteristic of the neighborhood. He would rather not include this concern as a condition to the variance.

Mr. Weiland asked if the floor plan that was reviewed by the Planning Board is the same as the proposed plan to be built. Mr. Pilon responded, "Yes".

Mr. Weiland was adamant about including a condition about the roofing, color, and sidings of the proposed building.

Mr. Canham strongly objected to the notion, arguing that this is outside the purview of the variance.

Mr. Pilon noted that the Planning Board approval process was done. A Special Permit was issued and they don't have any intention of going back before the Planning Board.

The board passed a resolution, to wit:

Mr. Weiland motioned that the Town of Clinton Zoning Board of Appeals motioned to grant to **Richard and Kathleen Levin** of 127-143 Browning Road - **Grid # 03-6466-01-040884-00**, a variance from Section 250-83 A -requiring all alterations of extensions on nonconforming building comply with the area and bulk regulations, Section 250-29 D.- that requires that an accessory dwelling in an existing barn must meet the minimum setback requirement and Section 250 Attachment 2 requiring a 100 foot setback to be reduced to 82.3 feet.

Factors:

1. An undesirable change will not be brought about in the neighborhood nor will there be a detriment to nearby properties because this is the replacement of an existing 912 sq. foot garage with accessory dwelling unit with a 990 sq. foot

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structure on virtually the same footprint which will make use of the existing well, septic, driveway and electric service at this footprint.

2. The benefit sought by the applicant can be achieved by some other feasible method on this 46+ acre parcel besides granting the variance, but with a substantial increase in the cost for new infrastructure.
3. The variance of nearly 18% is substantial
4. The rebuilding of this 1930's barn (according to Dutchess County Parcel Access) with existing accessory dwelling unit will not have an adverse effect on the physical or environmental conditions in the neighborhood because the barn's existence for close to a century makes it an established element in the neighborhood.
5. The alleged hardship was self created by the choices the owners made to improve their property. These choices are reasonably elaborated and not detrimental to the neighborhood or community.
6. The property is not in an Ag District
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 - Browning Road - and Should be an architectural improvement due to the change in entry and decking. The plans should be followed as presented on the drawings and to retain the same barn look with the new structure.
10. The site is not within the boundary or buffer of a Wetland.
11. The site is not in the Ridgeline, Scenic or Historic Protection Overlay District.
12. There are not any know outstanding Zoning violations.

Seconded by Mr. Canham.

Discussion. Chairman Malcarne verified the square footage of the primary and the accessory dwelling.

All Aye, Motion carried 5-0.

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William and Janet Boyer property on 31 Long Pond Road **tax grid #132400-6469-00-273503**.

The applicants are seeking an area variance to Section 250 Attachment 2, to allow for the creation of a nonconforming 4.40-acre lot with a substandard minimum lot width of approximately 378 feet, on a 5.32-acre site in a Conservation zoning district.

Mr. Boyer appeared and explained his application. He owns two parcels. He wants to expand his residential lot by taking a portion of the vacant lot. He stated that he and his wife are getting old and want to sell the other lot.

Mr. Boyer expressed his frustration. He stated that the Zoning Enforcement told him that the chances of getting this variance were good. He was deeply hurt by the Planning Board's discussion. The Planning Board strongly opposed his proposal since it will create nonconforming lots. He added that he wasn't aware of the additional fees (publication fees) that need to be paid. He stated that the Zoning Enforcement Officer only mentioned the variance application fee of \$165. He wasn't told of any additional fees.

Chairman Malcarne asked for questions and comments from the board.

Mr. Canham commented that this application seems simple but is actually complicated. The adjoining lot is vacant and is a buildable lot. There is a five minimum acreage so creating a nonconforming lot and setting precedence will be concerns. There is a reason for the acreage zoning i.e. to protect the open space.

Mr. Canham opined that carving out 1.32 acres to give more buffers around the house sounds easy but buying a nonconforming lot is difficult since the lot has so many restrictions. He understands the benefit of the variance to the property owner as the owner of the residential lot but this will be detrimental to the other lot. Mr. Canham opined that creating a nonconforming lot is a challenge and generally avoided. He'd like to see a compelling reason why enforcing this law will create hardship to the applicant.

Mr. Fennell remarked that you don't need to demonstrate hardship for an area variance. This case benefits the applicant but is detrimental to the adjoining lot. The applicant owns both parcels. The Zoning Enforcement Officer noted that there are nonconforming lots in the neighborhood.

Ms. Dolan stated that the board traditionally avoids creating nonconforming lot. Mr. Fennell noted that the board has the right to do it by way of variance.

Mr. Canham stated that this is a tough case. There is also a recommendation from the Planning Board which is negative.

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Chairman Malcarne asked the applicant if he can still accomplish his goal by modifying the request reduction to .32 acres. Mr. Boyer responded that he was told that the minimum acreage is 5 acres and the reduction of the lot to 4.9 acres is discouraged.

The board reviewed the map and exchanged opinion about different configurations of the lots.

Mr. Weiland stated that there are two issues on this case (acreage and lot width). He noted that these lots have to meet the minimum lot width of 400 feet per zoning regulation.

Mr. Boyer asked, "Does it mean that I cannot reduce the lot by .32 acres either?"

Mr. Canham responded that the applicant can take 50 feet from the back of the lot. Mr. Fennell commented that it depends on how the applicant wants to design the lot.

Chairman Malcarne stated that the applicant can certainly request anything that he wants. The board is trying to work out different ways/ideas to help minimize the amount of variance needed.

Mr. Weiland noted that the lot doesn't fall under the 400 feet threshold. Right now, this is a buildable lot. If it is a different cut out then maybe there will be a concern. If the property owner takes a small portion of it then there is a concern. Mr. Weiland reiterated that this is a buildable lot right now and the board is trying to help the applicant achieves his goal.

Mr. Boyer stated that due to their ages, they might sell the other lot. He wishes to widen his residential lot. Ever since he bought the other lot, Mr. Boyer indicated the work and time that he put up in maintaining these properties.

Mr. Weiland expressed good comments about this property based on the aerial view of the property per County property access.

Mr. Canham suggested moving the lot line or adjusting the boundary lines between the two lots. This will give more space around the house. The only problem is the shed on the other lot.

Mr. Boyer stated that he is planning to demolish the machine shed. Mr. Weiland stated that the machine shed is on the back corner of the lot. The lot line doesn't have to be a straight line. It can be a trade off.

The panel had a very lengthy discussion about the layout of the lot. After reviewing different layouts, the board agreed that the lot line can be moved or cut out differently. It will need a variance for the lot width but the other lot will remain 5 acres.

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Ms. Dolan remarked that the board cannot speak for the Department of Health with regards to the location of the septic and well. Mr. Boyer noted that the vacant lot is already Board of Health approved.

The board agreed to open the public hearing. Chairman Malcarne motioned to open the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 5-0.

William Brew of 775 Fiddlers Bridge Road spoke in strong opposition of this application. He remarked that everybody pays taxes on 5 acres or more.

Mr. Boyer responded that his residential lot is less than 5 acres.

Mr. Canham read the Planning Board's recommendation which is negative. One letter from the adjoining property owner (Maroneys) was received opposing the proposal about the reduction of the acreage.

After all the discussions were made, the applicant agreed to modify the lay out of the lots. Maintaining the minimum acreage of five and moving the lot line to cut it from the back end of the property.

Mr. Calogero asked the applicant to work with his surveyor. Tell the surveyor his goal and what the zoning regulations are. Let the surveyor contour the property in a way that really works for him.

Chairman Malcarne noted that the board is trying to balance and work out what is good to the community and the applicant.

Mr. Boyer commented about the dilapidated structure on Long Pond Road. He stated that it affects the value of the properties in the neighborhood. He remarked that if the Town is harsh on him trying to transfer some acreage to his other lot, he asked, "How can the Town look at that structure?" This building is impacting his property.

Chairman Malcarne asked the Zoning Enforcement Officer to look into this matter. Mr. Fennell agreed.

Mr. Fennell apologized to the property owner. He stated that he didn't mean to give a wrong impression or wrong idea about this application.

Public hearing remains open.

No other action taken.

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APPROVAL OF MINUTES:

Chairman Malcarne motioned to accept the minutes of August 28, 2014 as amended, seconded by Mr. Canham, all Aye, Motion carried, 5-0.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 9:55 pm, seconded by Mr. Weiland, All Aye Motion carried, 5-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk