

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 29, 2015**

**MEMBERS PRESENT**

Joseph Malcarne, Chairman

John Calogero  
Charles Canham  
Norma Dolan  
Frank Kealty

Arthur Weiland

Arlene Campbell, Secretary

**MEMBERS ABSENT**

Macy Sherow III

**ALSO PRESENT**

Chairman Malcarne called the meeting to order at 7:34 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:**

**Hagedorn Variance** – property owned by **Aaron Hagedorn and Katarina Maxianova** located at 79 Deer Hill Road, **tax grid number 6469-07-511859** in the C zone.

The applicants propose an area variance to Section 250 Attachment 2 (Area Bulk Regulations) for a side yard setback reduction to 45 feet from the required 50 feet in order to construct an addition to the existing house.

Mr. Weiland questioned the letter of authorization of Harvey Cohn, property owner's Architect. He stated that the signature of the husband is not on the document. He noted that both property owners must sign the authorization letter.

The board agreed to get a verbal authorization from Mr. Hagedorn via phone in order to proceed. Mr. Hagedorn authorized Mr. Cohn to speak on his behalf. Ms. Dolan remarked that the board still needs a written letter from the applicant for file purposes. The board agreed to include this item as a condition to the approval.

Mr. Cohn explained that they want to put up a 538-square-foot addition to the rear of the house. There are steep slopes on the front and they slope up to the back of the property. Due to the oddly size of the lot, Mr. Cohn noted that there is very little room left for the

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main dwelling. They are taking advantage of the grade drop-off from the front to back by making the addition a “split level.” They wanted to build the addition within the building envelope except for the small portion that they are requesting.

Mr. Cohn stated that they are proposing to flip the current entrance of the house from the back to the front (Deer Hill Rd) of the house. The existing entrance is in the back of the house where there is also a bedroom. They will take this bedroom out and make it as an entrance. This will remain a 3-bedroom house. Mr. Cohn opined that this layout is more safe and convenient as the current entrance slopes down and is hazardous especially during winter. The new layout of the entrance will bring the house more compliant than the existing condition except for the .48 feet overhang on the building.

Ms. Dolan read the Planning Board recommendation dated October 6, 2015 which is positive. No letter has been received from any of the neighboring property owners.

Ms. Dolan indicated the discrepancy about the lot acreage. She suggested correcting the acreage at the County Clerk’s office. The applicant noted that he took the measurement from the copy of the survey.

Ms. Dolan expressed her comment per her site visit. She commented that the proposed project is very attractive and beneficial to the Town.

Chairman Malcarne solicited for more questions and comments from the board.

Mr. Canham stated that this is a nonconforming building on a nonconforming lot in the C Zone. The proposed addition is within the limits of the 50% expansion of a nonconforming building.

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

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. Weiland, all Aye, Motion carried, 6-0.

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

Ms. Dolan motioned that the Town of Clinton Zoning Board of Appeals grant the area variance to **Aaron Hagedorn & Katrina Maxianova** for property located at 79 Deer Hill Rd in the Town of Clinton, tax grid number **132400-6469-07-511850**, a pre-existing non-conforming .091 acre property in the C zone. Applicants wish to put up a 538 sq ft addition to the rear of the house.

The requested area variance is to Section 250 Attachment 2 of the Town of Clinton Zoning Regulation:

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The applicants are requesting a side yard setback from 50' to 45' for which the variance applies to a small corner of the addition.

***Factors:***

1. An undesirable change would not occur in the character, physical or environmental conditions of the neighborhood or be a detriment to nearby properties and is consistent with setbacks for other nearby structures also on pre-existing non-conforming lots.
2. The benefit sought by the applicant could not be achieved by any other feasible method.
3. The requested variance is not substantial.
4. The alleged difficulty was self-created
5. An area variance is considered a type II action under SEQRA and requires no further action.
6. The property is not in the Ridgeline, Scenic or Historic Protection Overlay District.
7. The site does not contain a NYS DEC Wetland
8. There are not any known outstanding zoning violations.
9. The property is not in a CEA district.
10. The lot is not in an Ag district.
11. A letter of authorization is on file from Ms. Maxianova
12. All fees have been paid

***Conditions:***

Any exterior lighting must face downward

No outside storage in setbacks

Mr. Hagedorn is to provide a letter of authorization for Mr. Cohn to the ZBA clerk stating that he authorized him for the 10/29 meeting.

***Note:***

The owners should have the size of the lot corrected with the town assessor's office which lists the property as .89

Seconded by Mr. Kealty.

**Discussion.** Ms. Dolan suggested including a condition about downward exterior lighting.

Chairman Malcarne commented that he doesn't think that the requested variance is substantial due to the size of the lot. Ms. Dolan noted that she just followed the statement from the Planning Board's recommendation. After exchanging opinions, the board agreed that the requested variance is not substantial.

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Mr. Weiland stated that there should be no outside storage in the setback. Chairman Malcarne suggested including a condition about the letter of authorization from Mr. Hagedorn.

All Aye, Motion carried 6-0.

**Weibrecht Variance** – property owned by **George Weibrecht, Jr.** property located at 100 Deer Ridge Drive, **tax grid number 6368-00-286200** in an AR5 District Zone.

The applicant proposes an area variance to Section 250 Attachment 2 (Area Bulk Regulations) for a side yard setback reduction to 1 foot from the required 50 feet in order to allow for the construction of a shed.

Mr. Weibrecht appeared for his application. He stated that he needs a one-foot variance to put up a shed that will encroach into the side yard setback due to the shape of the lot. The lots in this area are long and narrow when the lots were created in 1962. He opined that these lots barely have sideyards.

Mr. Weibrecht explained why the proposed location is the only feasible place to locate the shed. He indicated the small backyard that he has but wanted to preserve this area for family outdoor activity. The backyard is small and is the only backyard or open space that he has.

Mr Weibrecht stated that this is a very narrow lot. A shed in the side yard is a common scenario in this neighborhood due to the shape of the lots. He also indicated the rock wall behind the house. He remarked that there is really no place to put up a shed on this property.

The panel discussed the application. The shape of the lot is very odd. This is a 7.85-acre lot with a 192-foot lot width. It has plenty of acreage but it is not usable. The subdivision was approved in 1962.

Chairman Malcarne opened questions and comments from the board.

Mr. Calogero commented that he agreed with the applicant about the shear rock wall on the rearyard that is causing the need for a one-foot variance. As far as the sideyard, Mr. Calogero opined that this is screened nicely. He agreed that there is really no other feasible location to put the shed. He asked, “What’s the view looking towards the house on the left?” Mr. Canham responded that the ledge blocked the view from the house to the left.

Mr. Weiland remarked that there is another area where you can put up the shed. However, Mr. Weiland commented that the applicant’s rationale is solid. Behind the property is another feasible site to locate the shed but this is also the best place to enjoy the property.

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Mr. Weiland asked the applicant about the exact location of the shed. Mr. Weichbert responded that he wants to put up the shed in between the shell wall where the larger rocks are. He wanted it to be closest to the rock wall and farther from the well.

Mr. Weiland asked if he will fill the hollow spot and level it out. Mr. Weibert responded, "Yes."

Mr. Weiland asked about the size of the shed. The applicant responded that the size of the shed is 14' x 40'.

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

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.

Hearing no comments from the public, Chairman Malcarne motioned to close the public hearing seconded by Mr. Kealty, all Aye, Motion carried, 6-0.

Mr. Canham expressed his comments. The requested variance is substantial. This is a very unusual lot. It has 7.5 acres of land but is very narrow. He agreed that this is the most feasible place to install a shed given the shape of the lot.

Mr. Weibrecht noted that there will be no construction on the site. This is a pre-fab shed that will be brought to the property. The shed is from Bayhorse Company.

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

Mr. Canham motioned that the Town of Clinton Zoning Board of Appeals grant an area variance requested by **George Weibrecht, Jr.** with respect to the Town of Clinton Zoning Law District Schedule of Area and Bulk Regulations (Section 250 Attachment 2) for a side lot setback reduction to 1 foot from the required 50 feet for the purposes of placement of a 14' by 40' shed on his property at 100 Deer Ridge Drive, **Tax Grid # 132400-6368-00-286200-0000**. The 7.85 acre property is located in an AR-5 Zoning District in the Town of Clinton.

**Factors:**

1. The applicant requests an area variance to allow placement of a 14' by 40' shed adjacent to the principal dwelling on the lot. The lot is narrow, and there is a high and essentially vertical rock cliff immediately behind the principal dwelling. The cliff precludes placement of the accessory structure further back on the lot, and placement of the desired accessory structure outside of the side-lot setback would take up most of the useable backyard space. Thus, given the unique configuration

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of the lot, there is no other feasible location for the accessory structure.

2. The alleged difficulty is self-created, and the requested variance is substantial, but this does not preclude its granting. Granting a sideyard setback variance of this magnitude is a very unusual case, however, and is a result of the very unique configuration of the property.
3. The lot is in a neighborhood of similarly long, narrow, non-conforming lots, and the requested variance will have no adverse effect on the physical or environmental conditions within the neighborhood. The accessory structure will have minimal visibility from the dwellings on the adjacent properties.
4. The property is not in the Ridgeline, Scenic and Historic Protection Overlay District.
5. An area variance is a Type II action under SEQRA and requires no further action.

**Conditions:**

1. All fees have been paid.
2. Given proximity to the well, no hazardous material should be stored in the shed.
3. No north fencing windows.

Seconded by Mr. Kealty

**Discussion.** Mr. Weiland discussed his concern about the proximity of the well in terms of spills that can go through the well cracks. He asked the board to include a condition about no storage of gas, chemicals, etc. to protect the well. The board agreed to include a condition about no storing hazardous material.

Mr. Weiland commented that the screening to the neighboring properties is really low. He explained his concern about the impact of the window or lighting to the neighbor's property (lights shining towards the neighbor's yard).

Mr. Weibrecht stated that the lights will be facing west or to the road if he decided to install them. Mr. Weiland suggested installing the lights facing the road. The board agreed to put a condition as indicated above.

All Aye, Motion carried 6-0.

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**INTERPRETATION**

**Erik and Lindsey Brown** property located at 99 Willow Lane, **tax grid number 6567-00-193832.**

1. The applicants are seeking an interpretation of the following section of the zoning in order to put a sink and a toilet in a studio in an existing barn:

Sec. 250-105 Definition “Accessory Use – previous determination of the Zoning Board of Appeals that the only accessory building that can contain plumbing is one that has a special permit for an accessory apartment.

2. The applicants are seeking a determination whether an existing cottage that was built in 1945 can be used as a living unit.

Lindsey Brown appeared and explained her application as stated above. As an artist, Ms. Brown explained that she wants to install a toilet in the barn and use this structure as a studio.

Ms. Brown explained the second interpretation application that she is seeking from the board. According to the Town Assessor, this structure is classified as a shed. Ms. Brown remarked that this structure was always used as a “Cottage” prior to the zoning. She asked the board how to reclassify this shed back to a “Cottage”.

The board reviewed the Zoning Enforcement Officer’s denial letter dated October 5, 2015 which states that, “The property card from the Dutchess County Parcel Access shows that the “Cottage” is not a cottage but a 480-square foot machine shop built in 1945. The Town Assessor provided a survey of the property from 1959 showing that the structure was in fact a “cottage”.”

Chairman Malcarne asked for questions and comments from the board.

Mr. Calogero stated that this issue is one of the concerns in the Town wherein property owners wish to have water in the accessory structure for convenience whether it is a barn or a shed.

With regards to the use of the cottage, Mr. Calogero commented that based on his research, somewhere along the line, the “Cottage” description became a “Machine Shed”. He assumed that this happened somewhere in 1959. The survey indicates that this structure is a “Shed”. The Assessor’s record doesn’t have any record that the previous owner changed the use to a “Machine Shed” for tax purposes.

Mr. Calogero opined that he feels that the applicant is trying to remedy a situation that happened during the change of ownership. Unfortunately, there is no record to support that. Mr. Calogero feels that the applicant is stuck in facing this issue.

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Ms. Dolan asked about the letter of authorization from the other property owner. Ms. Brown responded that the letter of authorization was submitted and is on file.

Ms. Dolan asked the applicant about the year they purchased the property. Ms. Brown responded, "2006". Ms. Dolan stated that the property owners are responsible to verify the accuracy of the town records when it comes to the details of their property.

The panel exchanged opinions about the issue.

Mr. Canham commented that the building could have been grandfathered but there is a question of continuous use.

Chairman Malcarne concurred with Mr. Canham. This is a question of whether this structure was used continuously as a dwelling. He commented that you can have a vacant building but the use disappears if the existing nonconforming use is not used for more than a year.

The panel had a very lengthy discussion about the above case. Chairman Malcarne asked if there was a bathroom at some point. Ms. Brown responded, "Yes". It has a pipe, etc.

Mr. Weiland asked if there was a Board of Health approval. Mr. Calogero noted that this building was built in 1945.

Mr. Weiland commented that there are no steps to the door. Ms. Brown responded that the steps are off to the side.

Mr. Weiland indicated the requirements of an Accessory Dwelling per Sec. 250.29 of the Town of Clinton Zoning Regulations. He stated that one of the requirements is about double the acreage. Mr. Weiland stated that the required lot acreage should be 10 acres since this property is in the C Zone.

Mr. Canham opined that he doesn't think that the goal of the applicant is to restore the use of the accessory dwelling unit. Ms. Brown agreed.

Mr. Canham stated that the term "Cottage" makes this structure a second accessory dwelling. If this cottage was used as a dwelling all this time then it would have been grandfathered.

Mr. Canham expressed his difficulty in restoring the classification of the accessory structure as a "Cottage" since its nonconforming use was extinguished.

Ms. Brown explained that she wasn't aware that the status of the "Cottage" had been changed. Based on her discussion with the Town Assessor, there might have been a



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situation that occurred wherein the property owner might have asked to down grade the classification of the structure. Maybe the previous property owner did not respond when the Town sent out a survey. She asked the board, "What difference does it make?"

Mr. Canham opined that another scenario is that the Assessor noticed that the structure is not being maintained as an accessory dwelling so it was changed to "Shed".

Chairman Malcarne noted that property owners do reclassify the use of the structures for tax purposes.

The panel exchanged "Ifs" and "Maybes" why the use of structure was reclassified. Ms. Brown asked, "Do you need to sleep in the building in order to classify it as an Accessory Dwelling?"

Mr. Canham responded that an accessory dwelling needs to be habitable. It has a kitchen, sanitary and heating. Ms. Brown noted that this structure had electricity and kitchen at one point.

Mr. Weiland remarked that it is a "Shed" if it is not habitable.

Mr. Canham stated that they wouldn't be here if this was a legitimate Accessory Dwelling. He reiterated that an Accessory Dwelling has plumbing (sink and toilet). Mr. Weiland agreed. It cannot have a septic system.

Chairman Malcarne agreed with Mr. Canham. It's been a year since this structure was in a livable condition. The nonconforming use has to be continuous.

Chairman Malcarne explained why the zoning regulation doesn't allow plumbing in the barn. This is due to the easy conversion of it to an apartment.

Mr. Weiland expressed his concern about the people who live in a place that is unsafe. These dwellings have to be in compliance with the fire code.

Ms. Dolan asked if the barn is heated. Ms. Brown responded, "Yes".

Chairman Malcarne stated that the board wished that they could agree with the applicant's plea but this is not what the zoning calls for.

Mr. Weiland commented that at this point, the board cannot really go out of the zoning.

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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Hearing no comments from the public, the board agreed to close the public hearing.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Kealty, All Aye, Motion carried, 6-0.

After a very lengthy discussion, the board acted on the application.

Mr. Calogero motioned that the Town of Clinton Zoning Board of Appeals finds that the Zoning Enforcement Officer's determination re: Lindsey Brown' property on 99 Willow Lane in respect to allowing water and septic in a barn and that the cottage use as a living unit has ended, is correct and consistent with the Town of Clinton Zoning Law,

Seconded by Mr. Canham,

**Discussion.** None

All Aye, Motion carried, 6-0.

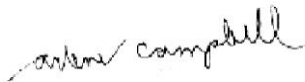
**APPROVAL OF MINUTES:**

No minutes were approved.

**ADJOURNMENT:**

Chairman Malcarne motioned to adjourn the meeting at 9:55 pm, seconded by Mr. Calogero All Aye Motion carried, 6-0.

Respectfully Submitted By:



Arlene A. Campbell  
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk