

**TOWN OF CLINTON
ZONING BOARD OF APPEALS
FINAL MINUTES
August 27, 2015**

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

Robert Fennell, ZEO

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

Femenella et al Area variance – property owned **Lynda Femenella, Sharon Carbis, and Martha Mashburn** located at 262-278 Hollow Rd, **Tax Grid No. 6466-00-200341.**

The applicants propose the following area variances for the purpose of 2 lot subdivision, to wit:

Sec. 250 Attachment 2 of the Town of Clinton Zoning Law:

- a) Front yard setback reduction from 100 feet to 60 feet.
- b) Side yard setback reduction from 50 feet to 45 feet.

Sec. 250-25 B(6) rear lot setback reduction from 50' to 0'

Michael Dalbo, Land Surveyor, Kevin Halton, Contractor and the property owners all appeared for this application.

Mr. Dalbo explained that they needed a variance in order to proceed with the subdivision application. The only parcel that is affected by this application is Lot 1 where the house is.

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Mr. Dalbo indicated the two dwellings on the property. Mr. Marshburn's house has been on this property since 1985. Mr. Dalbo noted that nothing is changed on this parcel and granting these variances will bring this property into compliance.

Mr. Fennell explained the history of this property. There is a long standing violation on this property. In 1985, Sol Masburn obtained a building permit for Catherine Smith (owner) to construct a barn on the Smith's property. Instead of building a barn, Mr. Mashburn built a second dwelling which is in violation of the building code and zoning law. Mr. Mashburn has lived in this dwelling ever since and the violations continue. Mr. Fennell stated that granting the requested variances and the proposed subdivision can bring this property into compliance.

Mr. Kealty read the Planning Board's recommendation letter dated August 18, 2015 which is positive. No letter was received from any of the adjoining property owners.

Chairman Malcarne asked for questions and comments from the board.

Mr. Calogero asked about item #9 of the Planning Board's recommendation.

Item #9 states that "The Planning Board notes that the dwelling on the proposed Parcel 2 is also located within the front yard setback. If the Zoning Board of Appeals determines that a variance is required, the Planning Board supports the granting of said variance."

Mr. Fennell responded that he doesn't think that the said variance is necessary. This is a pre-existing and nonconforming lot. It is an existing lot.

Chairman Malcarne solicited Mr. Werner's opinion (Planning Board member) about this recommendation. Mr. Werner commented that the Planning Board wasn't sure about this issue so they included this concern to their recommendation just in case the said variance is required.

Chairman Malcarne asked the Zoning Enforcement Officer that if the setback is historically pre-existing and nonconforming, the variance is not required. Mr. Fennell responded, "Yes".

Mr. Weiland indicated the shed that is in the setback. Mr. Kealty responded that the applicant will relocate this shed. Mr. Halton agreed.

Mr. Weiland asked Mr. Werner about the status of the subdivision application. Mr. Werner responded that the Planning Board is hoping to conclude the subdivision process next meeting subject to the variance application.

The board exchanged opinion about the proposed subdivision. Chairman Malcarne stated that the applicant is proposing to subdivide this property into two lots.

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Mr. Weiland commented that this is an existing lot and on this existing lot is a pre-existing lot. Current lot is grandfathered. Chairman Malcarne opined that the larger lot is pre-existing.

Mr. Fennell noted that the subdivision is not creating two new lots. It's basically just creating one new lot.

The board agreed to open the public hearing.

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

Linda DiFrenza, 190 Clinton Hollow Road asked if this application affects the parcel next to her property. She asked about the details of the subdivision and wanted to know if the driveway will stay the same.

Ms. Femenella responded that the driveway will stay the same.

Mr. Dalbo illustrated on the map about the proposed changes on this property.

Ms. DiFrenza asked if the applicant is seeking a variance to the lot next to her property. Mr. Weiland pointed to the map about the location of the new lot. He explained why and where the variances are required. He noted that they are not addressing anything on the lot where the old house is.

Ms. DiFrenza questioned the 3rd variance. She asked, "Are they building another house?" Mr. Weiland responded that this is not the board's purview. The applicant is before the board about the variance application.

Mr. Halton responded that the 3rd variance is about the minimum lot width. The zoning regulations call for 400 feet.

Ms. DiFrenza asked about the shed that is coming down. Mr. Weiland responded that the shed needs to be removed since it is in the setback. There should not be anything in the setback.

Ms. DiFrenza indicated her concern. She thought that the lot next to her property needs setback variances. Mr. Fennell noted that the lot next to her property can be sold in the future. This is a separate lot.

Mr. Fennell stated that nothing is changing on the ground. Mr. Dalbo concurred with the ZEO. It's basically separating the lots.

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

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

After a lengthy discussion, the board passed a resolution.

Mr. Kealty motioned that the Town of Clinton Zoning Board of Appeals grants the following resolution, to wit:

BE IT RESOLVED, that the Town of Clinton Zoning Board of Appeals grant area variances requested by the **Lynda Femenella, Sharon Carbis, and Martha Mashburn**, from Section 250 Attachment 2 of the Town of Clinton Zoning Law (District Schedule of Area and Bulk Regulations) for the purpose of correcting a zoning violation in existence since 1983 when a building permit was obtained for a replacement barn which was then converted to a dwelling on this property at 262-278 Clinton Hollow Road Tax Grid No. **#132400-6466-00-200341**, which is located in the AR5 District in the Town of Clinton.

Whereas:

1. The minimum required front setback of 100 feet and a side setback of 50 feet required under Section 250 Attachment 2 (District Schedule of Area and Bulk Regulations). Further, Sec. 20-25 B (6) requires that a building must be setback 50 feet from the point at which the lot achieves its minimum lot width.
2. The applicants wish to request an area variance from Section 250 Attachment 2 to allow a reduction in the front yard setback of 100 feet to 60 feet.
3. The applicants wish to request an area variance from Section 250 Attachment 2 to allow a reduction in the side yard setback of 50 feet to 45 feet.
4. The applicants request an area variance from Section 250-25 B (6) to allow a reduction from the setback of 50 feet from the point at which the lot achieves its minimum lot width to 0 (zero) feet.
5. There are no known outstanding violations on the property per the Zoning Enforcement Officer.
6. An Area variance is a Type II action under SEQRA and requires no further action.
7. The requested variances are substantial.
8. The benefit sought by the applicant cannot be achieved by some other method.
9. The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.

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10. This decision is unique in that the property subject to this variance already contains two dwelling units within one lot which these variances expect to correct. This decision should not be construed to establish a precedent for similar future applications submitted before the Zoning Board of Appeals.
11. The applicants will move the barn and two sheds out of the side yard setbacks.
12. The application fee has been paid.

Conditions:

- All variances are contingent on approval of the subdivision by the Planning Board.
- Applicant will obtain a Building Permit for the dwelling unit and Building Permits and Certificate of Occupancies for all the structures on Parcel 1.

Seconded by Mr. Calogero.

Discussion:

The board discussed the verbiage of the conditions.

Mr. Dalbo stated that two sheds will be moved out of the setback and one will be removed.

Chairman Malcarne asked if they need to include the condition about the subdivision approval. Mr. Fennell responded, "Yes".

Mr. Fennell suggested including another condition about obtaining a Building Permit and Certificate of Occupancy for the house and other structures on the property. The board agreed.

Mr. Fennell reminded the applicant about the variance timeline. The subdivision map cannot be signed by the Planning Board's chairman until the required Building Permits and Certificate of Occupancies. are obtained.

All Aye, Motion carried 4-0.

OTHER MATTERS:

The board discussed the proposed Local Law about Solar Energy System. Mr. Calogero stated that he was comfortable with the proposed local law. He indicated his concern about the aesthetics and sizes of the solar panels.

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APPROVAL OF MINUTES:

Chairman Malcarne motioned to accept the amended minutes of June 25, 2015 seconded by Mr. Calogero, all Aye, Motion carried, 4-0.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 9:00 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