

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
January 28, 2016**

**MEMBERS PRESENT**

Joseph Malcarne, Chairman

John Calogero  
Charles Canham  
Norma Dolan

Macy Sherow III  
Arthur Weiland

Arlene Campbell, Secretary

**MEMBERS ABSENT**

Frank Kealty

**ALSO PRESENT**

Chairman Malcarne called the meeting to order at 7:30 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:**

**Sadri and Azimi Area Variance** – property owned by Kass Sadri and Mahtab Azimi located at 30 Bartles Landing, **Tax Grid No. 6369-00-393630** in the C Zoning District.

The applicant is seeking the following area variances to Section 250 Attachment 2 of the Zoning Regulations in order to construct an in-ground pool (18' x 36'), to wit:

- Rear yard setback reduction from 75' to 60' - pool
- Rear yard setback reduction from 75' to 50' – patio & walkway

Thomas Cummings, applicant's engineer, appeared and explained the application on hand. The Sadris wish to install an in-ground swimming pool in the rear yard with a small patio around it. Due to the layout of the house, the property owner wants to utilize an area where it is easy to access the pool.

Mr. Cummings explained that they weren't sure whether the patio requires a variance since this is part of the landscaping. He noted that Mr. Burger who was appointed as the temporary ZEO suggested to including this variance to cover the bases.

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Mr. Cummings discussed the photos that he submitted showing the proposed location.

Mr. Cummings explained that the proposed area will be partially in the existing septic system. The existing septic system requires relocation to the originally approved 100% reserve area with minor modification. A new 100% reserve area must be designated and approved by the Board of Health.

Mr. Cummings stated that when the house was originally built, the house and septic system were rotated relative to the approved site plan layout. Due to this orientation, it forces the pool to be rotated as well, causing an intrusion into the setback. The corner of the pool projects into the rear yard setback. Mr. Cummings opined that if the house had been built parallel to the property line, then the pool wouldn't need a variance.

Chairman Malcarne asked for questions and comments from the board.

Mr. Canham read the Planning Board recommendation dated December 15, 2015 which is positive. No letter was received from any of the neighboring property owners.

Mr. Canham commented that the submitted pictures are self-explanatory. The house sits on top of the hill and farther back from the road. The proposed location (rear yard) is wooded. He opined that there is no other feasible area to locate the swimming pool.

Ms. Dolan asked about the proposed patio around the pool. She asked, "Is it wood or stone patio?" Mr. Cummings responded that the proposed patio around the pool is at-grade.

Chairman Malcarne commented that this is a good question. If the proposed patio is a frame structure to put the wood on the patio then the patio will need a variance.

Mr. Cummings responded that the proposed patio is made of thick wood that is set on the ground.

Ms. Dolan asked, "How high is the proposed patio?" Mr. Cummings responded, "Two inches in height."

Ms. Dolan asked about the fencing around the pool in relation to the deck from the house. Mr. Cummings responded that NYS Building Code requires fencing around an in-ground pool. The Building Inspector will make sure that the pool will be in compliance.

Mr. Canham agreed with Mr. Cummings. Fencing around the pool is the Building Department's purview.

Mr. Canham expressed his comment about this project. This property is in the C Zone. One of the concerns in this area is about protecting the surrounding water resources. Looking at the site, Mr. Canham commented that he doesn't think that the

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construction/excavation activities in this site can impact the lake. He doesn't think that this would be a problem. He asked the board if protecting the lake is the purview of the Building Department.

Ms. Campbell noted that the Town has a Water Law that limits construction or activity within the buffer of the lakes, streams and other water resources. Mr. Canham noted that this property is farther away from the lake.

Compared to the surrounding properties in the area which are one tenth of its size, Mr. Cummings stated that this is a 3 ½ acre lot property. It's a flag lot and well secluded. This property is roughly ½ mile away from the lake.

Mr. Weiland noted that based on his view via Parcel Access, there are a couple of areas where you could install the in-ground pool. The lots in this neighborhood are mostly nonconforming lots. However, Mr. Weiland stated that after viewing this property from Oak Tree Road, he doesn't have a problem about the proposed location.

With regards to the excavation/construction concern, Mr. Cummings stated that any sediments that are washed out during rainstorm, stone walls, wooded areas and ground covered leaves would slow down and absorb it. It won't go offsite.

Ms. Dolan remarked that there is really no more room in the rear yard for a pool storage. Mr. Cummings responded that there is a bilco door next to the deck that goes into the basement. This will be used to store pool equipment.

Mr. Weiland indicated his concern about the endangered species (Blanding turtles) in this area. He asked the applicant to keep an eye on these species especially during the excavation process.

Mr. Calogero asked the applicant if he can anticipate any problems or concerns about the proximity of the pool to the septic system.

Mr. Cummings responded, "No." He stated that according to the Town official from the Board of Health, the requirement is 20 feet from the septic system to the basement, pool or any habitable space in case of any leak. He noted that they're keeping the distance 20 feet away.

Mr. Weiland asked about the two septic fields. Mr. Cumming responded that the first one is the primary field that can last at least four years or more. The second one is reserved area to reconstruct new septic if the other field fails.

Mr. Weiland asked if they will go for a new tank. Mr. Cummings responded that they will be using the same tank.

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Mr. Cummings explained the details of the septic system. Mr. Calogero asked if the septic will require fill. The applicant's engineer responded that it will require a little fill. This is not a deep fill system. It's only about 2 feet and the pipes are 4 inches. Mr. Cummings noted that these are all within the current standards.

The panel had a very lengthy discussion about the details of the proposed septic system. Mr. Cummings stated that they are building a new septic system to the north. Some trees are coming down but not the big ones. He noted that they are not going to clear cut trees.

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

Barbara Fischbach, 28 Bartles Landing asked to see the map to learn the details of the proposed project. She indicated her concern about erosion and water runoff since her property is located down below. She noted the negative impact to her property when a neighboring property constructed their driveway.

Chairman Malcarne asked the applicant about the elevation of the proposed location. Mr. Cummings demonstrated the elevation of the property. He stated that any sediment from the construction site will not go offsite due to the stone wall. He noted that the proposed project is ½ mile from the lake.

Mr. Cummings explained the details of his project to the public. He noted that all the activities are towards the back of the property. He pointed out on the map where the water runoff goes due to the elevation of the property. The stone wall in the back will intercept any water runoff.

Mr. Cummings opined that the proposed action will not impact the neighboring property. No trees are coming down from the front yard. The Sadris are very private and like to be secluded. He commented that there might be two or three trees coming down right by the driveway but that's about it. He reiterated that they are not going to clear cut the trees.

Craig Colloway of 22 Bartles Landing asked why are they installing a new septic system. He asked if the number of bedrooms will increase. Mr. Cummings responded that the size of the septic system will be the same. It will have the same volume of water. He noted that this will function better than the old septic system due to modern technology.

Carol Colloway of 22 Bartles Landing noted that the turtles go up to their property. They lay nest in there.

Mr. Cummings discussed the timeline of his project. He stated that they are hoping to start the construction of the pool by mid-April. They are hoping to have the swimming pool ready by Memorial Day.

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Mr. Fischback asked about the type of construction equipment that will be onsite. Mr. Cummings responded that there will be one or two trucks a day (small excavator and pick-up truck). These are not monstrous trucks.

Mr. Calogero asked about the pool liner. Mr. Cummings responded that they will probably use fiberglass metal with concrete around.

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

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

Mr. Canham motioned that the Town of Clinton Zoning Board of Appeals grant an area variance requested by **Kass Sadri and Mahtab Azimi** with respect to the Town of Clinton Zoning Law District Schedule of Area and Bulk Regulations (Section 250 Attachment 2) for a rear lot setback reduction to 60 feet from the required 75 feet for the purposes of placement of an in-ground pool, and a reduction from 75 feet to 50 feet for a patio and walkway adjacent to the pool, on their property at 30 Bartles Landing, Rhinebeck, NY, **Tax Grid # 6469-00-393630**. The 3.55-acre property is located in an AR-5 Zoning District in the Town of Clinton.

***Factors:***

1. The applicants request an area variance to allow placement of an 18' by 36' in-ground pool and an adjacent patio and walkway on a 3.55-acre lot. The lot is in a neighborhood of typically small, non-conforming lots, and the necessity for area variances is not uncommon in such settings. The principal dwelling on the property is located near the rear of the lot, and it would be impractical to add a pool and patio to the yard without a variance. Thus, given the unique configuration 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.
3. The requested variance will have no adverse effect on the physical or environmental conditions within the neighborhood. The in-ground pool and patio/walkway will have minimal visibility from the dwellings on the adjacent properties.

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4. The property is in the Ridgeline, Scenic and Historic Protection Overlay District. It is also located in a Conservation Agricultural Residential District with regulations intended to preserve and maintain the quality and quantity of surface and groundwater in the watersheds of Silver Lake, Mud Pond, and Long Pond. The proposed variance will not violate the General Standards for that District contained in Section 250-10-C.
  
5. An area variance is a Type II action under SEQRA and requires no further action.

Seconded by Mr. Sherow.

**Discussion:** Mr. Weiland remarked that one of the criteria in granting a variance is about “No other alternative method or any feasible area...”. Mr. Weiland commented that the 5 criteria in granting a variance should be in the resolution. In this case, there are other locations to install an in-ground pool. Mr. Weiland cited the front yard and the side yard as other alternative location to put up a pool.

Mr. Canham commented that he cannot imagine seeing an in-ground pool in the front yard. However, locating the pool to the side yard would require cutting down of trees. Mr. Canham stated that given the uniqueness and location of this property, he doesn’t think that it is necessary to include this criterion in the resolution.

Mr. Werner remarked that this property is in the Ridgeline due to the elevation of the property (500 feet). The Planning Board made a discussion the elevation of the property and agreed that this property is in the Ridgeline. Mr. Werner noted that the property is however in the Scenic and Historic Overlay Preservation District.

All aye, Motion carried, 6-0.

**APPROVAL OF MINUTES:**

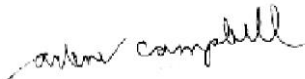
Chairman Malcarne motioned to accept the minutes of August 27, 2015 as written, seconded by Mr. Calogero, all Aye, Motion carried, 6-0.

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**ADJOURNMENT:**

Chairman Malcarne motioned to adjourn the meeting at 8:40 pm, seconded by Mr. Sherow, All Aye Motion carried, 6-0.

Respectfully Submitted By:



Arlene A. Campbell  
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk