

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
May 24, 2018**

MEMBERS PRESENT

John Calogero
Charles Canham

Chris Juliano

Arthur Weiland

Arlene Campbell, Secretary

MEMBERS ABSENT

Joseph Malcarne, Chairman

Norma Dolan

Macy Sherow III

ALSO PRESENT

Acting Chairman Charlie Canham called the meeting to order at 7:40 pm.

Acting Chairman Canham asked the secretary if the application on the agenda was properly advertised and adjoining neighbors were notified. Ms. Campbell responded positively.

Mr. Canham noted that the meeting was being recorded for record keeping purposes.

VARIANCE APPLICATIONS:

Weber and Black variance – property owned by **Glen and Evelyn Weber** located at Bryant Way, **tax grid number 132400-6469-10-325617-0000** in the C zone.

The applicants seek the following area variances to convert a pre-existing garage into a single family dwelling where the Dwelling standards require 864 square feet minimum for the ground floor and the garage is 528 square ft.

Section 250-48 of the Town of Clinton Zoning Law to reduce the minimum square footage of the dwelling from 864 to 528 square feet.

Section 250 Attachment 2:

- Front yard setback reduction from 100 to 18 feet
- Side yard setback reduction from 50 to 18 feet
- Rear yard setback reduction from 75 to 58 feet

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Robert Marrapodi, Architect, appeared on behalf of the property owners. He explained that the property owners wish to convert a 528 square feet garage into a single family dwelling when the zoning law requires a minimum of 864 square feet floor area. The property owners didn't want to expand the existing dwelling nor change the shape of the building.

Mr. Weiland read the Planning Board's recommendation dated May 1, 2018 which is positive.

Acting Chairman Canham asked for questions and comments from the board.

Mr. Weiland opined that this application is a change of use and is not permitted per Sec. 250.81 of the zoning regulations.

Sec. 250.81 C states that Nonconforming use shall not be changed to another nonconforming use without prior approval by the Zoning Board of Appeals and then only to a use which as determined by the Zoning Board of Appeals, maintains or reduces the nonconformity. Such change of nonconforming use approval by the Zoning Board of Appeals shall be prior to any other approvals required by the Planning Board.

Mr. Weiland also indicated Sec. 250.19 C- (Minimum lot area per dwelling unit) – (1) Individual septic tanks shall be permitted on existing lots of record of not less than 20,000 square feet in area.

He commented that there are applications in the past that were denied variances due to the sizes of the lots.

Mr. Canham commented that there are other lots in the town that are much smaller than this property. He shared Mr. Weiland's views about the use of the existing garage to make it a one family dwelling. He agreed that the use of the garage is different from the use of a family dwelling.

Mr. Canham read Sec. 250-82 which states "Nonconforming lots – Nothing herein shall prevent the use of a nonconforming lot, as defined in Article VIII provided it meets all applicable building codes, Health Department regulations, and other requirements of this chapter.

Mr. Weiland cited a case in the past wherein the application was denied due to the septic concern.

Mr. Juliano noted that the Board of Health approval is about the number of bedrooms and not the number of bathrooms. He asked the applicant if there is a well on the property. Mr. Marrapodi responded that there is an intention to put one. He noted that this is already approved by the Department of Health.

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Mr. Calogero asked if this property is intended to be used all year round. He indicated the Board of Health approval which is seasonal use only. Mr. Calogero indicated his concern about the potential use of the property as all year round residence.

The board had a lengthy discussion about the above concern. Mr. Canham stated that this is a nonconforming lot and the nonconforming use is the one that concerns him. The proposed change of use to a dwelling unit is a totally different use than the current use of the building as a garage. It seems that there is a request of change in the nonconforming use.

The board exchanged opinions whether this is a use or area variance. Mr. Marrapodi remarked that the proposed change is a permitted use. The Zoning Board of Appeals has the power to weigh on that.

Mr. Juliano indicated his concern about the dwelling becoming all year round residence given the seasonal use of Board of Health Approval. He also indicated his concern about parking spaces. Mr. Marrapodi responded that there is a parking space to the front.

Mr. Weiland stated that the minimum parking setback to the front is 50 feet in the C Zoning District. He noted that this building was built in 1961. It is pre-existing.

Mr. Canham asked the applicant about the proposed design of the dwelling. Mr. Marrapodi responded that they don't have the floor plans yet. The structure will remain the same. They don't have plans to take the building down. The renovations will be more on the interior. He added that this building is on a foundation.

The board agreed to open the public hearing.

Mr. Weiland motioned to open the public hearing, seconded by Mr. Juliano, all Aye, Motion carried, 4-0.

Hearing no comments from the public, the board closed the public hearing.

Mr. Juliano motioned to close the public hearing, seconded by Mr. Weiland, all Aye, Motion carried, 4-0.

Mr. Calogero expressed his views. The proposed action will probably be an improvement to the neighborhood once it is all done. However, Mr. Calogero expressed his concern about the septic. He indicated his concern about the future owners or future use of the property. This might become a rental. He feels that the Department of Health has the final say on this action. He reiterated that this will be an improvement to the neighborhood. The size of the dwelling doesn't bother him. He noted that the proximity to setback is typical in this area. He also shared Mr. Canham's views about the garage as a nonconforming use.

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Mr. Juliano agreed with Mr. Calogero. This will be an improvement to the neighborhood but he is concerned about the seasonal use of the septic. He commented, “Maybe, the septic can be redesigned to accommodate a full time use.”

Mr. Weiland commented about the neighborhood. He disagreed that the proposed action will be an improvement to the neighborhood. These lots are small and not in accordance with the zoning regulations.

Mr. Marrapodi stated that the size of the garage is 528 square feet. He asked to put it on record that he disagrees with Mr. Weiland that the proposed action will not be an improvement to the neighborhood.

Mr. Calogero expressed his desire to clarify the septic use. about the septic use. He vocalized his strong concern about the septic. He is worried about the potential full time use of this property as a rental when the septic approval is seasonal use.

Mr. Juliano asked if this is a separate parcel. Mr. Marrapodi responded, “Yes”.

Mr. Marrapodi responded to the above concern. He understands the board’s concern about the septic. He noted that the property owners intend to use this dwelling as seasonal and make this property better. He underscored there is no intention for rentals.

Mr. Canham asked Mr. Marrapodi why he doesn’t think that there is a change in the nonconformity.

Mr. Marrapodi responded that the nonconformity of this building is about the size, its physical dimension. If this is a one family dwelling then there will be no nonconformity due to the sizes of the properties in the neighborhood. All the lots in this area are non-compliant and of small sizes. He noted that the houses in this neighborhood are not much larger than the building that they propose.

Mr. Calogero stated that this will still be a nonconforming lot since this property is in the C Zoning District.

Mr. Calogero stated that this is what variance is for – to get a relief from the regulations but indicated his concern about the change of use. The fact that the building fails to comply with the setback and the size to meet the code then it is still a nonconforming property and the use of the garage is a nonconforming use.

Mr. Marrapodi expressed his frustrations about the Zoning Administrator. How did the Zoning Administrator miss the determination that the proposed action is a change of use instead of an area variance?

Mr. Juliano indicated his concern about the environmental impact. Mr. Calogero asked if the property owners are full time residents. Mr. Marrapodi responded, “Yes”.

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Mr. Weiland read the draft of his motion (to grant the variance), seconded by Mr. Calogero.

Discussion.

Mr. Calogero asked if this property is in the CEA. Mr. Weiland responded, “No.”

Mr. Juliano asked about the shed on the property. Mr. Marrapodi responded that the shed will be removed.

The board had a lengthy discussion about the proposition. Mr. Marrapodi suggested putting a restriction on the variance about the seasonal use of the dwelling. Mr. Canham stated that property ownership changes in the future. Mr. Calogero cited the ongoing use of properties as AirBnb. It’s becoming epidemic.

Mr. Canham summarized concerns in this application such as safety of the well and the change of use of the building. There are serious concerns that he has about this application. He commented that there is also an enforcement issue about the variance condition to ensure that this house will be just seasonal.

Mr. Juliano asked why the Department of Health restricted the approval. Did they ask or say that the use is seasonal? He commented that maybe it’s how they presented it to the Department of Health.

Mr. Marrapodi responded that he wasn’t involved with the septic design. He doesn’t have a clue about the rationale of the condition.

Mr. Calogero reiterated his big concern about the septic.

Mr. Juliano asked about the benefit to the town. He thinks that taxes will help the town. Mr. Canham responded that the benefit to the town about the taxes sounds appealing but the goal of the code is not to maximize the town revenue. He feels that the proposition can increase the property value and this is a benefit to the neighboring properties.

Mr. Juliano commented that the goal of the comprehensive plan is to encourage affordable housing.

Mr. Weiland commented that the Town needs residences but not in the congested area. However, he doesn’t think that this application is a use variance. The proposed action is allowed use. He discussed Sec. 250-81 C of the zoning regulations.

Mr. Canham indicated his strong concern based on Sec. 250-81 C.

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After a very long discussion, the board agreed to withdraw the motion and table the discussion. The variances to the setback are not needed since there will be no changes in the building. It was also agreed to get the Town Attorney's opinion. Is this a use or an area variance? The board also suggested getting more info about the septic.

Mr. Juliano motioned to re-open the public hearing, seconded by Mr. Weiland, all Aye, motion carried, 4-0.

Mr. Weiland motioned to withdraw the motion made and table the discussion, seconded by Mr. Calogero, all Aye, Motion carried, 4-0.

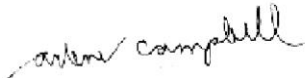
APPROVAL OF MINUTES:

No minutes were approved.

ADJOURNMENT:

Acting Chairman Canham motioned to adjourn the meeting at 10:00 pm, seconded by Mr. Weiland, All Aye Motion carried, 4-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk