

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
December 3, 2020**

Due to the Pandemic Coronavirus (COVID 19), Emergency State and Federal Bans on large meetings or gatherings and Pursuant to Governor Cuomo's Executive Order No. 202.1 issued on March 12, 2020 and 202.15 as extended, suspending the Open Meetings Law, the Zoning Board of Appeals held their regular meeting via Zoom videoconference with a You Tube livestream to the public.

Members of the public may also view the Board meeting on the Zoning Board of Appeals video page on the www.townofclinton.com

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham
Norma Dolan
Ron Mustello
Russel Tompkins
Arthur Weiland

MEMBERS ABSENT

ALSO PRESENT

Arlene Campbell, Secretary

Chairman Malcarne called the meeting to order at 7:32 pm.

Chairman Malcarne welcomed everyone and noted that the board is holding a public meeting via Zoom. He read his opening statement in accordance with the Governor's Executive Order 202.1, and 202.15 as extended, which suspends certain provisions of the Open Meetings Law to allow the ZBA to convene a meeting via videoconferencing. He added that the public has also been provided with the ability to view the meeting via the Town's YouTube Channel, a link has been provided in the meeting notice, and a transcript will be provided at a later date.

Chairman Malcarne asked the board members to introduce themselves.

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 read the notice about the Executive Order as indicated above.

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VARIANCE APPLICATIONS:

Forschler Area Variance – property owned by Stephen and Beth Forschler located at 85 Maple Lane Rhinebeck NY 12572, **Tax Grid No. 6468-00-678862**

The applicant requests an area variance to Sec. 250-23 and Sec. 250 Attachment 2 (District of Area and Bulk Regulations) of the Town of Clinton Zoning Law for a side yard setback reduction from 50 feet to 16 feet in order to construct a 24' x 24' detached garage in the AR5 Zoning District.

Mr. Tompkins and Mr. Weiland both recused themselves due to their connection to the Fire Department where in Mr. Forschler is also a member.

Stephen Forschlers appeared for his application. He explained that he needs an area variance to construct a 24' x 24' detached garage given the current location of the driveway and the grade of the property. The only feasible location is to the west side of the house. It's an oddly shaped property.

Ms. Dolan read the recommendation from the Planning Board dated Nov. 18, 2020 which is positive.

Ms. Dolan commented that this application is pretty straight forward. Mr. Calogero concurred with Ms. Dolan. He noted that the neighboring property (Robbin Novack) who is impacted by this action submitted a letter of support. She doesn't have a problem with the proposal.

Mr. Canham stated that this neighborhood has a number of pre-existing nonconforming lots. It is not uncommon to require variance in this area due to the small sizes of lots.

Mr. Tompkins expressed good words about the application and commented that the proposed location of the garage makes sense.

The board agreed to open the public hearing. Chairman Malcarne motioned to open the public hearing, seconded by Ms. Dolan, Roll Call, All Aye, Motion carried, 5-0.

Hearing no comments, Chairman Malcarne motioned to close the public hearing, seconded by Mr. Calogero, Roll Call, All Aye, Motion carried, 5-0.

The board passed a resolution, to wit:

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Ms. Dolan motioned that the Town of Clinton Zoning Board of Appeals approves the area variance to Section 250-23 (referencing 250-22 Attachment 2) for a side yard setback reduction from the required 50 feet to 16 feet for a 24' x 24' detached garage for a .99 acre property in an AR5 zone owned by Steven & Beth Forschler and located at 85 Maple Lane, tax grid number 132400-6468-00-678862.

FACTORS;

1. The applicant wishes to construct the garage within the side yard setback made necessary by the location of the driveway and the grade of the property.
2. An undesirable change will not be brought about in the neighborhood and is consistent with other surrounding properties. Existing vegetation barriers and distance of neighbors primary dwelling minimizes any impact. The Town of Clinton Planning Board gave a positive recommendation.
3. The benefit sought by the applicant cannot be achieved by some other feasible method besides granting the variance.
4. The requested variance is substantial.
5. The alleged hardship was self-created.
6. A residential area variance is a type II action under SEQRA and requires no further action.
7. The site does not contain a NYSDEC wetland.
8. The site is not in an Ag District and a residential area variance does not require an Ag Data Statement.
9. The site is not in a CEA (Critical Environmental Area)
10. The site is on a Clinton Scenic/Historic Road, that being Maple Lane, and must comply with Local Law #3 of 2001.
11. The site is not in the Ridgeline, Scenic or Historic Protection Overlay District.

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12. Per the Zoning Enforcement Officer, there are no outstanding zoning violations.
13. A letter for support from the adjoining neighbor (Robbin Novack) has been received.
14. The applicants have stated they are removing two small sheds immediately behind the proposed location of the garage. The removal of these is not a condition for obtaining a building permit for the garage.

CONDITION:

- All fees have been paid

Seconded by Mr. Calogero,

Discussion. Mr. Tompkins stated that this is a fair proposition and is advantageous to the applicant with no disadvantages to the neighborhood.

Roll Call, All Aye, Motion carried, 5-0.

Mr. Tompkins and Mr. Weiland joined the board for the next application.

Kenneth and Christine Dempsey on property located at 1074 Bulls Head Road, Clinton Corners, NY 12514, **Tax Grid No. 6569-00-122449**.

The applicant requests an area variance to Sec. 250-22(A)(3) regarding accessory structures located closer to the fronting street than the principal building in order to construct a 12' x 20' shed in this 13.18 acre lot in the AR5 Zoning District.

John C. said that he will participate to make some comments but he will not vote.

Mr. and Mrs. Dempsey both appeared for their application. Mr. Dempsey stated that he wants to put up a 12' x 20' shed on their property. His garage is jammed right now and he needs more room for storage. This is a 13-acre property with no outbuildings. He described the terrain of his property which is sloped, wooded and have wetlands. The proposed structure will be on a plateau. He underscored that this property cannot be seen from the road. It's secluded and wooded. He added that he really doesn't need to do anything but clear some brush areas. He explained the pictures that he submitted.

Chairman Malcarne asked for questions and comments from the board.

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Mr. Mustello read the recommendation from the Planning Board dated November 17, 2020 which is positive. He read the two letters that were received from the adjoining property owners, the Banks of 1062 Bulls Head Road and Gina Palmer of 1064 Bulls Head Road both expressed good comments and supported the application.

Mr. Mustello expressed his comments per his site visit. The site that the applicant has chosen seems to be the most practical location. This will not be visible from the road and it's secluded. The proposed structure will not have plumbing nor electric.

Mr. Tompkins commented that he agreed with the Planning Board's recommendation that this application does not need a variance. The propose structure is obviously not in the setback. He read the section of the regulations.

Sec. 250-22 (Accessory Structures) A-3 of the Town of Clinton Zoning Regulations state that "No such structure shall project closer to the fronting street than the principal building on the lot or the required front yard setback for the district, whichever shall be less restrictive."

Mr. Tompkins also read the code stating that the board can seek an interpretation regarding a determination of the Zoning Officer. He feels that the Zoning determination regarding the variance is incorrect. It is clear that the proposed location is less restrictive and therefore no variance is required.

Mr. Canham shared Mr. Tompkins's view. He stated that this is also his interpretation of the regulation that there is no variance required. It seems strange to grant a variance when it is not clear that the law requires it. If the board decides to rule on this, the board can put it on the record and makes a decision that there is no variance required for the purposed of future cases

Chairman Malcarne agreed. He added that there are some properties in the town with large parcel that have similar cases. There are also houses that are closer to the road with a structure behind them that still meets the setback.

Mr. Weiland agreed with Mr. Tompkins and Mr. Canham. He disagreed with the Zoning Administrator's determination but moving forward the board can craft a motion that a variance is not required for this application for future cases purposes.

Chairman Malcarne solicited the board's opinion whether this application needs an area variance.

Ms. Dolan agreed with everyone's opinion but felt that the applicant doesn't need to seek an interpretation regarding the ZEO's determination.

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The board exchanged opinions. Mr. Weiland doesn't think that the board needs to do an interpretation of the law. The board is amending the decision of the Zoning Administrator.

Chairman Malcarne agreed. This is clearly pretty straight forward. Mr. Canham concurred. There is no need to do an interpretation. This is the way the board viewed the statute.

Ms. Campbell indicated the application in the past on Silver Lake Road about the proposed garage that was also in front of the house. The board found that the garage met the setback and variance wasn't required. She noted that the board did not do an interpretation and instead just voted on the resolution.

Mr. Calogero stated that there should be a record that would indicate that no variance was needed in case the same concern arises for future purposes.

The board agreed to open the public hearing.

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

Mr. Calogero spoke as a neighbor and expressed great words about the proposal. It's absolutely not visible from the road nor any neighboring properties. It's an ideal setting for a shed. It provides natural screening and is well hidden. He added that this is keeping the land as natural and pristine.

Gina Palmer, 1082 Bulls Head Road stated that she was in total agreement with Mr. Calogero.

Mr. Demsey noted that they received a letter of support from the adjoining neighbors (Teehans).

The board agreed to close the public hearing.

Chairman Malcarne motioned to close the public hearing, seconded by Mr. Mustello, Roll Call, All Aye, Motion carried, 6-0.

The board discussed the verbiage of the resolution.

Mr. Mustello suggested a motion stating that after a review of the information submitted by the applicant and Planning Board, it is a collective opinion of the members of the Zoning Board of Appeals that Sec. 250-22 A-3 is not applicable and therefore no variance is required.

Ms. Campbell suggested adding due to the setback of the proposed location.

Mr. Canham opined that Sec. 250-22 A-3 is actually applicable to this application. There is no area variance required due to the distance of the proposed structure

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that is greater than the required setback and therefore less restrictive than the two requirements.

The board exchanged opinions and had a lengthy discussion about the verbiage of the motion.

The board passes a resolution.

Chairman Malcarne moved that the Town of Clinton Zoning Board of Appeals determine that an area variance to construct a 12' x 20' storage building 346 feet from the front yard is not required for Kenneth and Christine Dempsey on the property located at 1074 Bulls Head Road, Clinton Corners, NY 12514, **Tax Grid No. 6569-00-122449** in an AR5 Zoning District with the following findings:

Factors:

Sec. 250-22(A)(3) restricts the location of accessory structures (a) closer to the front street than the principal building, or (b) within the front yard setback, whichever is less restrictive. In this case, since the 100' front yard setback is the least restrictive metric and the accessory structure will be located 346' from the front of the property an area variance is not required.

Seconded by Mr. Weiland.

Discussion. Mr. Weiland commented that this is not a motion. This is just a resolution. Mr. Canham stated that he needs to say "I moved or motioned...", Chairman Malcarne agreed to amend the first part.

Mr. Canham suggested adding the verbiage about the whichever is less restrictive.

Roll call, All Aye, Motion carried 6-0.

OTHER MATTERS:

Ms. Campbell reminded the board members that a member who recused himself/herself must not participate in the discussion of the matter.

APPROVAL OF MINUTES:

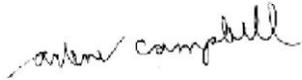
No minutes were approved.

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ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 9:10 pm, seconded by Mr. Mustello, All Aye Motion carried, 7-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary