

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
December 2, 2021**

MEMBERS PRESENT

MEMBERS ABSENT

Joseph Malcarne, Chairman

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

ALSO PRESENT

Arlene Campbell, Secretary

Liaison Officer not in attendance

Chairman Malcarne called the meeting to order at 7:33 pm.

Chairman Malcarne asked his colleagues to introduce themselves. He indicated that the meeting is being recorded. He also asked the secretary if the applications on the agenda were properly advertised and adjoining neighbors were notified. Ms. Campbell responded positively.

VARIANCE:

Greco Area Variance – property owned by **Daniello Greco** located at Pumpkin Lane, **Tax Grid Nos. 6468-00-705670 and 682712.**

The applicant requests area variances to Sec. 250-24 and 250-25B (1) to allow creation of 25-foot wide accessways with associated road frontage for revised Lots 1 and 2 in order to do Lot Line Adjustment and to allow placement of principal residences on both lots. These properties are in the AR5 Zoning District.

Sec. 250-25 (B-1) of the Zoning Law provides that “accessway to the rear lot must not be less than 40 feet wide along its entire length.....”

Sec. 250-24 states that “No lot shall be created, nor any driveway permit issued, nor any building permit issued for any structure unless the lot upon which such application is made has not less than 40 feet of frontage on and access to a public street or highway....”

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Paul Tirums, architect and Mike Dalbo, Land Surveyor appeared for this application.

Mr. Tirums explained their application. These are two vacant lots that the property owner recently purchased. Parcel #705670 is a 19.68-acre landlocked and the abutting lot with parcel no. 682712 is a 5.13-acre lot with access on Pumpkin Lane. The ±19.68 acre parcel has no lot frontage but has a 25-foot right of way off Nine Partners Road and through a DEC wetland. He noted that a DEC permit was acquired.

Mr. Tirums stated that they need variances to allow the creation of two driveways to access public street in order to do a lot line adjustment to build two homes on these two parcels.

Chairman Malcarne passed the floor to Mr. Weiland.

Mr. Weiland stated that he cannot find the letter of authorization for Mr. Tirum and Mr. Dalbo.

Mr. Tirum stated that the property owner is currently on the phone. Mark Cutinella and Danielle Greco joined the panel via phone. Ms. Greco introduced herself stating that she is the owner of these parcels that she recently bought. She vocalized her authorization for the two gentlemen to speak on her behalf.

Mr. Weiland noted that Marc Cutinella does not have ownership of these properties. (It was noted that Marc Cutinella's name is on the application form along with Danielle Greco). Mr. Tirum confirmed the statement. Ms. Greco is the sole owner of these properties. Mr. Tirum noted that they will take Mr. Greco's name off the final plat and application form.

Mr. Weiland read the Planning Board's recommendation dated November 16, 2021 which is positive.

Mr. Weiland expressed his comments about the Planning Board's recommendation in reference to the application and the fees. Ms. Campbell stated that the variance fee is paid.

Chairman Malcarne asked for questions and comments from the board.

Mr. Canham asked how many shared driveways there will be. It's hard to tell from the map whether the 50-foot driveway will share two driveways. There's one driveway there right now. He asked, "Will there be two driveways on each 25-foot accessway?" Mr. Tirum responded, "They're proposing one driveway for each 25-foot driveway".

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Mr. Canham stated that he likes the configuration of the small lot. He asked where the new driveway branches off without going through the 100' wetlands buffer.

Mr. Tirums explained the layout of the proposed driveways and pointed out on the map how the new driveway branches off. He also indicated the existing right of way and showed where the 100-foot wetland buffer on the map. Mr. Tirum stated that this proposal eliminates cutting the trees.

Mr. Canham asked if the large lot will have a right of way. Mr. Dalbo said that there will be a common driveway easement agreement that will be on the deed. The lawyers will craft the language of this agreement.

Mr. Tompkins said that he thought that there will be two parallel driveways 25 feet side by side per his reading of the Planning Board's recommendation. Mr. Weiland echoed that comment. He had the same impression.

Mr. Tirums stated that is not their intention.

Mr. Tompkins read the "Whereas" first paragraph per the PB recommendation per as follows:

"Whereas:

Applicants intend to seek a lot line adjustment allowing placement of principal residences on both lots. Lot 2 is a rear lot that includes a 50 foot wide accessway and frontage on Pumpkin Lane. Lot 1 does not have frontage on or access to a public street. Applicants' proposed lot line adjustment would split the existing accessway on Lot 2 between the two lots, resulting in new 25-foot accessways for each lot as well as road frontage of 25 feet. Revised Lot 1 will consist of about 19.73 acres and Revised Lot 2 will consist of about 5.09 acres."

The board had a lengthy discussion about the driveways.

Mr. Tirum stated that his interpretation of the code is different. He indicated the different layouts that they tried to come up with the right configuration.

The board reviewed the layout of the proposed lot line and exchanged opinions.

Chairman Malcarne stated that it is not uncommon to have a flag lot with three - 50 feet with one common driveway.

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Mr. Canham stated that he understands that there are flaglots with shared driveways. He was baffled and asked, "Why are we even here if one lot grants a right of way to the other lot? As a legal driveway, does that require a variance at all?"

Chairman Malcarne verified the proposal and asked the applicant, "You will have two lots with 25-foot driveway each access to the road, is that right?" The applicant responded, "Yes, also for future owner purposes."

Ms. Campbell indicated the Planning Board's concern that if the property changes hands in the future, what happens with the driveway access?"

Mr. Weiland shared the same concerns. He also discussed the existing right of way that goes through the buffer.

Mr. Tirums noted that you cannot just simply build a driveway out there. Mr. Weiland said that it's already there. Mr. Tirums said that there was a special approval by the DEC a long time ago. He indicated the procedures and approval process. There was an environmental review that was made, etc. He noted that the language of the driveway will be on the deed once it's finalized.

Mr. Tompkins read Sec. 250-25 Rear Lots are subject to the following conditions: (1) The accessway to the rear lot must be not less than 40 feet wide along its entire length, and must be contained entirely within the lot, except where an easement exists through lands owned by a public utility."

Mr. Tompkins said to the applicant, "It looks like you're going to make this one driveway for the bigger parcel to go through the other lot. It's not entirely within the lot." It seems that the proposed lot line should be done differently."

Mr. Weiland commented that there's a lot of acreage there to put the house on the small lot.

Mr. Tirums indicated the Department of Health approval process they've been through. With the perc test, soil test, etc, and given the amount of rock under the ground, Mr. Tirums noted that was the most feasible location to locate the building envelope.

Chairman Malcarne commented that the proposed driveways allow access from the public road. He feels that as long as they have an easement or a legal document in place, he doesn't have a problem with the proposal. They can always put another driveway on a different location but as long as they have an agreement in place, there should not be any issue.

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Mr. Canham expressed concern about the future property owners. The existing driveway sits in one of the properties right now, he asked, "What happens if the future property owners have a disagreement?"

Chairman Malcarne responded that this is not uncommon to see driveways side by side or shared driveways. These driveways will be deeded and there will be a legal document in place about the use and maintenance of the driveway.

Mr. Tirums concurred with the chairman. The driveway easement will be a contingency to the approval. The lawyers are crafting the language of the legal document.

Chairman Malcarne agreed. The Planning Board will take care of that issue. Mr. Canham said that as long as it is written on the deed about the legal rights to use the driveway, that takes care of his concern.

Ms. Dolan echoed Mr. Canham's concern about the future property owners in case there is a dispute or disagreement. She asked, "What about the emergency vehicle? What's the minimum width of the driveway for an emergency vehicle to access the property?"

Mr. Weiland responded that concern is included in his resolution as a condition. The Fire Department should review the driveway.

Mr. Tirums noted that this concern is part of the Planning Board review. They will need to show how an emergency vehicle can access the property, turn arounds, etc. The Fire Department most likely will visit the property to review the driveway.

Ms. Dolan said that it takes legal enforcement in case of any dispute like for instance --the driveway is not cleared etc. Mr. Tirums responded that it is the responsibility of the people who live there. Chairman agreed with Mr. Tirums.

Mr. Weiland stated that there are problems in this town about road shoulders and right of way. Neighbors don't really understand whose access. The driveway has to be a certain width and beyond that is just land. There are no side yard setbacks. They can do whatever they want on this land. There could be pile of woods everywhere on this driveway and things can be really bad."

Mr. Tirums said that these are wooded areas. He noted that he lived in an area where 4 properties shared one driveway. He lived there for 16 years and never had any issue.

Mr. Weiland said that there is also no reason in taking preventive steps.

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Mr. Mustello asked about the right of way off Nine Partners Road. Mr. Tirums responded that the easement on the right of way off Nine Partners Road is still valid. He pointed out on the map the location of the right of way.

Mr. Mustello asked, "What is the purpose of that right of way?" He saw some equipment back there and wondered if that road was created for that kind of access.

Mr. Dalbo responded that this is a deeded right of way to get to the landlocked parcel. This has been in place for 100 years. He noted that it is wooded back there and grass is overgrown. That equipment does not belong on this parcel.

Mr. Tirums stated that they were there a couple of weeks ago to do soil test and perc test but their machinery went through the main driveway and up to the clearing part. He noted that the machinery that Mr. Mustello had seen was on a different parcel. The board agreed that the machinery is on a different parcel after reviewing the map.

The board agreed to open the public hearing.

Chairman Malcarne motioned to open the public hearing, seconded by Ms. Dolan, all Aye, Motion carried, 7-0.

Ms. Campbell stated that the Redleners of 127 Nine Partners Road requested a copy of the variance application via email but did not leave any comments.

Mr. Tirums submitted a letter from the Waehlers, property owners to the north with parcel numbers #677734 and #648775 supporting the application.

Mr. Tompkins commented on the verbiage of the draft motion. He feels that this should be reworded as it says "two driveways abutting". There is one driveway with 50-foot width.

Mr. Dalbo said, "It's one common driveway."

Chairman Malcarne feels that the verbiage on the draft motion is correct. There are two entrances/two driveways, so technically what they have is correct. Mr. Malcarne said that it is up to the applicants how they work out the details of the deed. The board is technically granting two accessways or separate driveways. He added that instead of a one-40 feet driveway, the board is granting a two-25 feet driveway.

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, 7-0.

Ms. Dolan reiterated her concern about the emergency vehicles and who should be plowing the driveway to avoid dispute. She suggested, "Maybe a bond or whatever to address this issue".

Chairman Malcarne stated that the 40-foot driveway (per the regulation) allows flexibility for an emergency vehicle. The 50-foot driveway in this case will address this concern.

Mr. Tirums said that there are requirements in the town code to locate the turn around. These details are part of the Planning Board review.

Mr. Dalbo noted that all these concerns are spelled out in the Common Driveway Easement Agreement. This is a legal document and is deeded. It spells out the maintenance agreement, fees, etc. Mr. Tirums agreed. This is also the Planning Board's purview.

Mr. Weiland discussed the draft motion that he crafted. He asked the board to choose the appropriate word about the proximity to the DEC wetlands. "Should we use "buffer" or "boundary"?" "

Mr. Canham thinks that the word "buffer" would be more flexible in case they decided to get the DEC permit and branch off. In other words, if they decided to split the driveways or the driveways will no longer be abutting then it will still be within the language of their variance.

Mr. Weiland disagreed with Mr. Canham. He feels that "boundary" has more opportunity to get a driveway to the other lot.

Mr. Tirums commented that you will have to bring a substantial monofil into a wetland area. He feels that from the environmental and common sense perspective, given the stable road that they have, he feels that filling a wetland is not a good thing.

The panel had a lengthy discussion whether to use the word "buffer" of "boundary" of the wetlands.

Mr. Weiland was adamant that the board makes a choice between buffer and boundary. They can't move forward.

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Chairman Malcarne asked the applicant about their preference. Mr. Tirums responded that they prefer that the common driveway stays outside the buffer zone. This is everybody's preference on their side.

Mr. Dalbo commented that this is the most logical place. The grades in this area are pretty steep.

Chairman Malcarne asked, "Is there a variance specifically asking for this?" Do they need to address this at the motion?

The board reviewed the layout of the driveways apropos the wetlands on the map.

Mr. Tirums explained the environmental impact (clearing trees, affecting wetland vegetation) in filling the wetlands. There will be unnecessary costs for the owners.

Chairman Malcarne asked Mr. Weiland, "Is this particularly relevant and do we need to address this at the motion?"

Mr. Weiland responded that there was still no second on the motion.

Mr. Canham seconded.

Discussion. Mr. Weiland asked the board again, "Do you want to use a buffer or boundary?"

Mr. Tirums reiterated his response earlier about staying outside the buffer.

Mr. Canham said that given the environmental consequences of cutting through that buffer, then it should be avoided as much as possible. Chairman Malcarne agreed.

Mr. Tompkins and Mr. Calogero shared the above views. It's the buffer.

Chairman Malcarne opined that the buffer is the least restrictive.

Mr. Mustello asked clarity about the question, "Does it mean outside the buffer they must split?" This is how it is written on the draft motion. Mr. Canham said that it is a great point.

Chairman Malcarne doesn't think that the board needs to address this piece in the motion. Let the applicant decide on this.

Mr. Tirums agreed, this issue is part of the common driveway agreement.

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Mr. Weiland commented that the board can have the discussion once the motion is voted on.

Chairman Malcarne underscored that there was no motion on the table. This is just a question for the motion. This is not the motion.

Chairman Malcarne expressed his opinion on the matter. Unless there is a specific reason which he was looking for and they don't seem to have it, Mr. Malcarne said that his opinion remains the same.

Mr. Weiland stated that the applicant is requesting three variances e.g. (1) access to the rear lots will be reduced, (2) driveway may abut, and (3) separation of driveways. He said that he can describe the driveway eventually but he is still looking for the comments from the rest of the board.

Mr. Mustello said that if the two driveways abut then they abut forever.

Mr. Canham suggested, "Two driveways may abut". As Sec. 250-25 B-3 of the zoning regulations states, "No two accessways to rear lots may abut." Mr. Canham thinks that they should abut.

The board agreed.

Ms. Dolan asked, "Do we need to put how far in with regard to the location?" Mr. Canham responded, "No, pretty soon, they are going to branch them off". The chairman agreed.

After a very lengthy discussion about the consensus of the board regarding the verbiage on the motion, Mr. Weiland read his motion.

Mr. Weiland motioned that the Town of Clinton Zoning Board of Appeals grant to **Danielle Greco** owner of two lots on Pumpkin Lane, Clinton Corners – Tax Grid nos. **6468-00- 682712 and 705670**, a variances from sections 250-25 .B.(1), 250-25 .B.(3), and 250-25 .B.(4) relating to Rear Lot Access.

- Access to the rear lots will be reduced from 40' to 25'.
- The two drives may abut.
- The 80' separation of driveway entrances is waved.

FACTORS:

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1. The change in the neighborhood will be reconfiguring and upgrading two lots with a combine acreage of nearly 25 acres in a 5 acre zone.
2. The benefit sought by the applicant cannot be achieved by some other feasible method besides granting the variance.
3. The variance is substantial (80%).
4. These driveways as per the owner, the DEC has approved the driveway access.
5. The alleged hardship was self created due to the choice to have two driveways sharing 50' when a single driveway needs 40'.
6. A residential area variance does not require and Ag Data Statement.
7. A residential area variance is a type II action under SEQRA and requires no further action.
8. The site is on a historic road, Pumpkin Lane.
9. The parcels have boundary buffer Wetland considerations.
10. The site is not in the Ridgeline, Scenic and Historical Protection Overlay District.
11. There are not any known outstanding zoning violations.

Seconded by Mr. Tompkins.

Discussion. Ms. Dolan suggested adding a letter of authorization as a condition. Mr. Weiland stated that he was satisfied with the property owner's verbal authorization.

All Aye, Motion carried 7-0.

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Fraser and Vonderbrink Area Variance – property owned by **Peter Fraser and Danny Vonderbrink** regarding property located at 1235 Centre Road, **Tax Grid Nos. 6468-00-417698.**

The applicants request an area variance to Sec. 250 Attachment 2 (District Schedule of Area and Bulk Regulations) for a Front yard setback reduction from 100 feet to 52 feet in order to construct an entryway to a home built in 1878. This is .898-acre lot in the AR3 Zoning District.

Peter Fraser and his husband Danny Vonderbrink both appeared for their variance application. Mr. Fraser explained that due to the nonconformity of their property, they will need an area variance to construct a 10'5" x 13'11" Front Porch to their home that was built in 1878. They want to remodel the current porch addition that was built in 1977 to a beautiful entrance to their property.

Chairman Malcarne asked for questions and comments from the board.

Mr. Mustello stated that this application is pretty straight forward. This is simply an addition of 54 square feet to the porch.

Mr. Mustello read the Planning Board's recommendation dated November 16, 2021 which is positive. He read the email communication received from Kathleen Miles, 1237 Centre Road supporting this application.

The board agreed to open the public hearing.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 7-0.

Hearing none, the board agreed to close the public hearing.

Chairman Malcarne motioned to close the public hearing, seconded by Mr. Calogero, all Aye, Motion carried, 7-0.

The board passed a resolution, to wit:

Mr. Mustello motioned that the Town of Clinton Zoning Board of Appeals grant an area variance requested by **Peter Fraser and Danny Vonderbrink**, tax grid #6468-00-417698 with respect to the Town of Clinton Zoning Law District Schedule of Area and Bulk Regulations (Section 250 Attachment 2) for a front yard setback reduction to 52 feet from the required 100, for the purpose of reconstructing and enlarging a covered entryway for the existing home. The 0.898-acre property is located in an AR-3 Zoning District in the Town of Clinton.

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Factors:

1. The applicant requests an area variance to allow reconstruction and enlargement of a front entryway for the dwelling on the property. The property is an existing, nonconforming triangular lot, with over 347 feet of road frontage.
2. The principal dwelling was constructed in 1878 and is currently located approximately 52 feet back from the front lot line, and the proposed new structure would not result in any change from current setback distance.
3. The requested variance will have no adverse effect on the physical or environmental conditions within the neighborhood.
4. The granting of the variances will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties.
5. The alleged difficulty is self-created, and the requested variance is substantial, but this does not preclude its granting.
6. The benefit sought by the applicant cannot be achieved by other feasible means.
7. The site is located on a designated Scenic or Historic road.
8. An area variance is a Type II action under SEQRA and requires no further action.
9. There are no known violations.
10. The Planning Board has made a positive recommendation to the ZBA for approval.

Condition:

1. All fees have been paid.
2. Any exterior lighting shall be downward facing

Seconded by Mr. Canham,

Discussion. None.

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All Aye, Motion carried 7-0.

The panel had a 5-minute break before proceeding to the next application and resumed at 8:55 pm.

INTERPRETATION:

Kimberly and Keith Puchar Interpretation - for an application interpreting Sections 250-28 (B) and (J) the Town of Clinton Town Code.

The appellants are seeking a reversal of the Zoning Administrator's determination letter dated May 18, 2021 regarding his interpretation of Sections 250-28 (B) and (J) of the Town of the Clinton Code for activities related to smoke, fumes and odors emanating from 92 Deer Ridge Drive, and 93 Deer Ridge Drive Staatsburg NY 12580.

§250-28-(B) Smoke or particulate matter. Any emission of smoke or particulate matter, from any source, shall comply with all local, state and federal regulations.

§250-28-(J) Odor. No person, firm or corporation, excluding farms and agricultural operations, shall permit the emission of any offensive odor at the property line of the lot from which the odor is emitted.

Puchar Interpretation

Ms. Puchar and her friend, Ms. Hildwein were back for the conclusion of the interpretation application. No legal counsel was in attendance.

The Bishops nor Ms. Smith were neither present.

The lawyers were not in attendance.

Chairman Malcarne passed the floor to Mr. Canham.

Mr. Canham indicated the resolution that was crafted after going through all the details of this case.

The board passes a resolution.

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Mr. Canham motioned the following:

RESOLUTION APPROVING FINDINGS AND DECISION DATED DECEMBER 2, 2021.

WHEREAS, Kimberly and Keith Puchar (the “Applicants”) have submitted an application received by the Board on June 23, 2021 seeking an interpretation of the Town of Clinton Town Code reversing a May 18, 2021 determination made by Zoning Administrator, John Fenton (the “Application”);

WHEREAS, the Zoning Administrator’s May 18, 2021 determination held that smoke, fumes, and odors which emanated from a wood fire on 92 Deer Ridge Drive and crossed onto neighboring properties, including the Applicants property, did not constitute a violation of the Town of Clinton Town Code;

WHEREAS, the Board conducted a public hearing regarding the Application during which members of the public and the Applicants spoke;

WHEREAS, the Board has reviewed the statements made during the public hearing, both in support of and in opposition to the Application;

WHEREAS, counsel for the Applicants, Allan Rappleyea, Esq. has consented to extend the Board’s 62-day determination period provided for in Section 267-a of the Town Law until this meeting; and

WHEREAS, the Board has reviewed the Application as well as additional written material submitted to it by the Applicants;

WHEREAS, the Board now desires to adopt the “Findings and Decision” dated December 2, 2021, which is attached hereto and is incorporated herein.

NOW THEREFORE BE IT RESOLVED that the Board adopts the “Findings and Decision” dated December 2, 2021 which denies the Applicants request for an interpretation of the Town of Clinton Town Code reversing the May 18, 2021 determination of the Zoning Administrator;

BE IT FURTHER RESOLVED that the Board authorizes, directs and empowers Charles Canham to act as Chairman of the Board and sign the “Findings and Decision” dated December 2, 2021; and

BE IT FURTHER RESOLVED that the Board authorizes, directs and empowers the Zoning Board Clerk to file this resolution along with the “Findings and Decision” dated December 2, 2021 in the office of the Town Clerk within five business of the

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date of this resolution as well as provide copies to the Applicants and Michael and Laurie Bishop by mail.

Seconded by Mr. Weiland.

Discussion. None.

The vote having been taken upon such resolution the result was as follows:

Joseph Malcarne	VOTING	Aye	
Charles Canham	VOTING	Aye	
John Calogero	VOTING	Aye	
Ronald Mustello	VOTING	Aye	
Norma Dolan	VOTING	Aye	
Russell Tompkins	VOTING	Aye	
Arthur Weiland	VOTING		Abstain

There being a majority of the Board voting to approve the resolution, the resolution was declared by the acting Chairman to have been adopted.

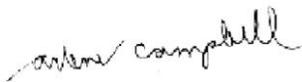
Ms. Puchar expressed her frustration to the board. She said, "Okay for those of you who continue to perpetuate a neighbor's behavior, you truly are a disgrace to this town. You truly are ignorant!"

Chairman Malcarne thanked Ms. Puchar.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 9:25 pm, seconded by Mr. Mustello, All Aye Motion carried, 7-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary