

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
October 24, 2013**

**MEMBERS PRESENT**

Joseph Malcarne, Chairman

John Calogero  
Charles Canham

Macy Sherow III  
Arthur Weiland

Arlene Campbell, Secretary

**MEMBERS ABSENT**

Norma Dolan  
Frank Kealty

**ALSO PRESENT**  
Bob Fennell, ZEO

Chairman Malcarne called the meeting to order at 7:35 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:**

**Timothy Sullivan and Margaret Pierpont - property located at 318 Lake Dr Tax Grid No. 6469-00-143130.**

The applicants propose the following area variances in order to build a garage, to wit:

Sec. 250.22 A3 Accessory structure location from NOT in front of the principal building TO in front of principal building.

Sec. 250 Attachment 2 Front yard setback reduction from 100 feet to 28 feet.

Mr. Sullivan and Ms. Pierpont appeared for this application. Mr. Sullivan explained that there has never been a garage on this property. They have always wanted to install one. After having been on this property for 25 years, they finally decided to have one.

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Mr. Sullivan stated that they wish to construct a 24 x 24 square foot one story, two-car garage, 15 feet in height to the south of the house.

Mr. Sullivan explained that they originally requested two variances but the Planning Board determined that the other variance (setback) is not needed because the location of the house is pre-existing and nonconforming.

Mr. Fennell agreed. He stated that if you have a building that already intrudes into the front yard you can put your accessory structure up to the front line of that building. Mr. Fennell commented that the Planning Board is correct. The requested variance for this section is not needed.

**Sec. 250.22 A(3)** of the Town of Clinton Zoning Law states 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 restrictive.”

Mr. Sullivan indicated the hardship in putting the proposed garage 7 feet to the east. This is a shallow lot. Putting the proposed garage 7 feet to the east will obstruct the view to the lawn and the pond. The windows of the house are facing south and west. Looking through this window will give you the view of the lawn and the pond.

They want to locate the building more to the west as much as possible. They don't want the building to intrude the view of the lawn, landscaping and wetland. Putting the structure 7 feet to the east will bring it closer to the buffer zone of the wetlands. Putting the garage to the north side will need more engineering work.

Mr. Sullivan opined that the proposed site is the best option and the most economical choice because it uses an existing curb cut for a driveway with adequate sight lines and the garage can be built with minimal disruption to existing plantings and landscaping.

Mr. Sullivan noted that the neighboring property owners have no objection about this project.

Chairman Malcarne asked if moving the garage 7 feet to the east means a lot to him. Mr. Sullivan responded, “Yes, aesthetically.”

Mr. Canham read the Planning Board recommendation dated 10-15-13 which is neutral. One letter was received from the adjoining property owners, Elizabeth Wachs of 289 Lake Drive, indicating no objection to the proposal.

Mr. Weiland commented that the recommendation from the Planning Board sounded like a positive recommendation.

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Mr. Canham expressed his comment about this case. This is a very attractive piece of property. He concurred with the applicant that moving the proposed garage to the east will bring it closer to the wetland buffer. He gave positive comments about the view to the east side of the property.

Mr. Weiland asked about the garage door. Mr. Sullivan responded that the garage door will be facing south. There is a back door leading from the garage to the house.

Mr. Weiland advised the applicant about down lighting and no storage rulings in the setback (outside the garage). In this case, they are not allowed to put anything or store in the setback (35 feet).

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Calogero, all Aye, Motion carried, 5-0.

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

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

Mr. Canham motioned that the Zoning Board of Appeals grants an area variance to **Timothy Sullivan and Margaret Pierpont** located at 318 Lake Drive Rhinebeck, NY, tax grid number **132400-6469-00-143130**, a 3 acre property in the C zone. Applicants wish to construct a 24'x24' garage square feet south of the house.

The requested area variance is to Section 250-22A(3) which does not permit an accessory structure to project closer to the street than the dwelling for property. The applicants are requesting a setback of 28' from the center of the road as measured by owner. Section 250 requires a front setback of 100' in the C Zone. Section 250-22, #3 states 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. The house is set back approximately 35' from the center of the road making the variance for the garage 7'.

***Factors:***

1. An Undesirable change would not occur in the character of the neighborhood or be a detriment to nearby properties.
2. The benefit sought by the applicant cannot be achieved by a feasible alternative to the variance.
3. The requested variances are substantial.
4. The alleged difficulty was self-created

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5. An area variance is considered a type II action under SEQRA and requires no further action.
6. The property is not in the Ridgeline, Scenic or Historic Protection Overlay District.
7. An area variance does not require an Ag Data Statement
8. The site contains a NYS DEC Wetland
9. The site is on a designated Scenic or Historic Road.
10. There are not any known outstanding zoning violations.
11. The property IS NOT in a CEA district.
12. The lot is not in an Ag district.

***Conditions:***

Any exterior lighting must face downward

Seconded by Mr. Sherow,

**Discussion.** Mr. Weiland commented about the condition about aesthetics of the garage. He stated that the board already informed the applicant about no storage restriction in the setback.

Chairman Malcarne agreed. The board doesn't need to include this item as a condition since this is part of the zoning regulations. The board agreed to strike this item off the condition.

Mr. Canham read the concern of Ms. Dolan about the shed that is closer to the road than the principal dwelling. "Does this structure need a variance?"

Mr. Fennell responded that the building permit of this shed was issued in 1991. This structure was just a replacement of an existing building (shed). The Zoning Enforcement Officer noted that the shed doesn't need a variance.

Mr. Canham indicated Ms. Dolan's other concern. "How far south do they want to put the garage?" Mr. Canham responded that he doesn't think that this needs to be specified in the resolution since the variance needed is 28 feet to the center of the road.

Mr. Sullivan noted that the reason why they want to put the garage as far south as possible is due to the leach field to the north of the property.

Mr. Canham stated that the critical issue is the about the distance from the road and buffer from the wetlands.

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All Aye, Motion carried, 5-0.

**Halton Interpretation (Plumbing in a Pool house)** – presented by Kevin Halton, of Halton Construction Co. 837 Hollow Road.

The applicant is asking an interpretation of the zoning law after a determination was made that the only accessory building that can contain plumbing is one that has a special permit for an accessory apartment.

Kevin Halton appeared for this case. He briefly explained his interpretation application as indicated above. He noted that there is nothing in the zoning regulations that states that pool house cannot have plumbing. As long as the pool house is 400 square feet or less, Mr. Halton opined that the building is an accessory structure and not an accessory dwelling. He noted that there is nothing in the zoning that states that pool house is not allowed to have plumbing.

Sec. 250.29 B-6 of the Town of Clinton Zoning Law states that “The accessory unit shall contain no greater than 35% of the total habitable space of the existing principal structure prior to the construction of such accessory apartment or 1,000 square feet of floor space, whichever is more restrictive. The floor space of the accessory unit shall be a minimum of 400 square feet.”

Mr. Weiland commented that the zoning law about plumbing actually pertains to the accessory structures.

Mr. Halton indicated the importance of plumbing in the pool house. If the swimming pool is not proximity to the house, or if there is a swimming pool party going on, then a bathroom is a necessity. People needs to rinse or shower. Mr. Halton stated that plumbing in a pool house is a necessity. He reiterated that as long as the size of the pool house is not more than 400 square feet then he doesn't think that plumbing in a pool house is a violation to the zoning.

Mr. Halton asked if you need new Board of Health approval if you are tying the plumbing in the pool house to an existing septic. Mr. Fennell responded, “No”. Board of Health approval is based on the number of bedrooms.

Mr. Halton stated that the Department of Health advised him that you need to have a 1,000 gallon of tank at the pool house. The Department of Health official stated that he doesn't care if this pool house doesn't have a bathroom, but it needs 1,000 gallon of tank.

Mr. Halton stated that the County is requiring him to put a 1,000 gallon tank to a pool house but our zoning is not allowing plumbing. It doesn't make sense.

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Mr. Canham asked about the regulation about the 400 square feet regulation. If the size of 400 square feet makes a building an accessory dwelling, what other requirements do you need?

The panel reviewed Sec. 250.29 B (-6) of the zoning regulations.

Mr. Fennell commented about the definition of Accessory Dwellings in the zoning regulations. He stated that Accessory Dwelling is a building with complete housing facility including kitchen and bathrooms.

Mr. Canham stated that you cannot build an accessory dwelling greater than 35% of the principal dwelling. He asked, "Can you build a 1,500 square feet pool house? Mr. Fennell responded, "Sure, why not?"

Mr. Weiland indicated his concern about the possibility of these structures to becoming an accessory dwelling or rentals in the future when the property changes ownership.

Mr. Canham asked, "How do we prevent his?"

Mr. Fennell responded that he's never seen a pool house becoming an apartment. He noted that he'd seen lots of illegal apartments.

The panel exchanged opinions on how to prevent an accessory structure from becoming an accessory dwelling.

Mr. Weiland indicated the possibility of future property owners converting a pool house into an accessory dwelling. Mr. Fennell opined that property owners who normally built a pool house do not need extra money to have rental on their property. They don't even want extra people living on the property.

Mr. Weiland disagreed with the Zoning Enforcement Officer. Once the property changed ownership, the use of the structure might not be the same from the current use.

Mr. Weiland disagreed. He stated that this case was before the board in the past for an Interpretation application. He expressed his concern about accessory structures having sanitary.

Mr. Canham asked clarity about Mr. Weiland's statement. He expressed his understanding about a pool house becoming an accessory dwelling. On the other hand, Mr. Canham noted that there is a zoning regulation that could prevent this. There is a Town Attorney or Zoning Enforcement Officer who could enforce this law.

Mr. Fennell remarked that – "then this plumbing should be allowed."

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Mr. Weiland asked the Zoning Enforcement Officer if he is going to inspect these dwellings on a regular basis to make sure that these dwellings are in accordance with the law.

Mr. Fennell responded that the town can enforce it and there is a process to enforce this.

Mr. Canham shared Mr. Weiland's concern about the above issue. On the other hand, he also agreed with the Zoning Enforcement Officer that there is nothing in our zoning regulations that prevents a pool house from having water.

Mr. Canham stated that there are health reasons to allow water in a pool house. There is a procedure in place in our zoning law. There are remedies to police these concerns. Neighboring property owners normally complain when the neighboring properties are in violation.

Mr. Canham asked Mr. Weiland his rationale for denying a building permit to have water in a pool house. Mr. Weiland responded that the rationale is due to the past history of these dwellings.

Mr. Weiland indicated the Interpretation application in the past about plumbing in accessory structures (ZBA Interpretation dated 4-25-02).

The panel had a lengthy discussion about the issue.

Chairman Malcarne asked the Zoning Enforcement Officer about the reason for his denial for a building permit to have water in a pool house. Mr. Fennell responded that the denial was due to past history.

Mr. Weiland and Mr. Canham exchanged opinions about the extent of sanitary in a pool house.

Mr. Weiland stated that shower is great but in terms of sanitary there is a question of how far is the house.

Mr. Canham stated that you have to include a bathroom in a pool house as sanitary.

Mr. Halton responded to Mr. Weiland's concern. As part of the zoning, pool house should be close to the pool. There are building requirements for a swimming pool such as fence, etc. The town could prevent a pool house from becoming an accessory dwelling if the building is limited in size. He cited that if the pool house exceeds 400 square feet, then the building is a potential accessory dwelling.

Mr. Calogero stated that if the building doesn't have heat then this building is not habitable. He suggested that maybe you can put a toilet that is used seasonally. If the

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building is not heated and plumbing cannot operate during the winter then the chance of becoming an accessory dwelling is zero.

Mr. Weiland read the ZBA Interpretation dated April 25, 2002.

“Let it be known that ZBA interpretes Sec. 3.2, Schedule of Use Regulations – Accessory Uses (page 15 of the old book, August 1991) states that Customary Accessory Uses of structures associated with the permitted or special permit use and located on the same lot in all districts DOES NOT include an extra bedroom, bath or kitchen.

The board reviewed Sec. 250.30 (new section of the book) Accessory Use of the zoning regulations in relation to the above interpretation. Mr. Fennell stated that this section only indicates permitted use.

Mr. Canham suggested doing an Interpretation that limits the use to a pool house. Mr. Fennell concurred with Mr. Canham.

Mr. Weiland read another Interpretation dated 12-2011 (Ritter’s Interpretation), to wit:

Mr. Weiland motioned that the Town of Clinton Zoning Board of Appeals uphold the previous decision of the Zoning Board of Appeals dated 4-25-02 and that **sewage disposal is not permitted** in the accessory structures.

Seconded by Mr. Kealty, All Aye, Motion carried, 5-0.

Mr. Weiland opined that septic is not allowed in an accessory structure since it would make the building an accessory dwelling.

Mr. Fennell noted that septic and plumbing needs sewage disposal.

Mr. Canham stated that the board is trying to address the bathroom function (shower, sink, and toilet).

Mr. Sherow opined that there is a customary use of a pool house. He also expressed his thoughts sharing Mr. Weiland’s concern.

Mr. Weiland remarked that his concern is about the future owners of the property.

The panel discussed the verbiage of the Interpretation.

Chairman Malcarne stated that the board can do an Interpretation about customary use of a pool house that will include a bathroom.

After a lengthy discussion about the issue, the board agreed that the customary use of a pool house includes a bathroom.



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Mr. Halton asked if the board can also include kitchen-like in a pool house such as cold storage, glasses, refrigerator, etc.).

The board discussed the issue. Mr. Canham advised the applicant that he was in endanger of going too far.

Chairman Malcarne asked the Zoning Enforcement Officer about the process of putting a wet bar or kitchen in a pool house or shed.

Mr. Fennell responded that they will need a Special Permit for an accessory dwelling. There are requirements in the zoning regulations to adhere such as double the acreage, size limitation, etc. He suggested limiting the discussion that's on the table.

The board agreed to open the public hearing. Chairman Malcarne motioned to open the public hearing, seconded by Mr. Sherow, all Aye, Motion carried, 5-0.

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

After a very long discussion and all the reviews were made, the board agreed to do an Interpretation.

Mr. Weiland motioned that the Town of Clinton approves the following resolution, to wit:

Be it Resolved, that the Town of Clinton Zoning Board of Appeals issues an interpretation that the customary use of a pool house includes a bathroom.

Seconded by Mr. Canham.

**Discussion.** Mr. Canham suggested adding the word "Accessory Structure" i.e. Customary Use of a pool house as an accessory structure includes a bathroom".

Mr. Fennell and Mr. Weiland commented that a pool house is already an accessory structure.

Mr. Fennell stated that there is a limitation in the definition of accessory structure per zoning law.

The board agreed not to include the words "as an accessory structure".

All Aye, Motion carried, 5-0.

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**APPROVAL OF MINUTES:**

Chairman Malcarne motioned to accept the minutes of August 22, 2013 as amended, seconded by Mr. Calogero, all Aye, Motion carried, 5-0.

**ADJOURNMENT:**

Chairman Malcarne motioned to adjourn the meeting at 10:00 pm, seconded by Mr. Sherow, All Aye Motion carried, 5-0.

Respectfully Submitted By:



Arlene A. Campbell  
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk