

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
June 27, 2013**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham
Norma Dolan
Frank Kealty

Arthur Weiland

Arlene Campbell, Secretary

MEMBERS ABSENT

Macy Sherow III

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:

Daniel and Dawn Harkenrider Variance – property located at 12 Friends View, Tax Grid No. 6566-00-364475.

The applicants propose an area variance from Sec. 250 attachment 2 of the Town of Clinton Zoning Law for a side yard setback reduction from 17' to 10' in order to construct a 10' x 12' shed on property.

This is a 1.1 acre lot in the CR1 Zoning District.

Dan and Dawn Harkenrider appeared for their application.

Mr. Harkenrider briefly explained that he is currently building a pool and wants to put up a shed next to it.

Mr. Calogero read the PB recommendation which is positive. One letter was received from the adjoining property owner, Robert Detlefs of 44 Heritage Road, who is supporting the applicant's project.

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Ms. Dolan asked about the requested variance. First page of the application form indicates 17 feet to 10 feet, second page states 20 feet to 10 feet. Which one is the correct variance?

Mr. Fennell responded that the variance should be 17 feet. This is a 1/3 -2/3 rule since this is a triangular lot. The zoning regulation calls for 17 feet. Ms. Dolan suggested correcting the application form.

Mr. Weiland asked if there is a violation on the property. Mr. Fennell responded, "None". Mr. Weiland questioned the shed on the rear yard setback. He also asked about the number of structures on this property. He counted the accessory structures on the property such as proposed shed, swimming pool, and the shed within the setback. He stated that the plastic structure is counted as an accessory structure. He opined that there might be a violation on this property.

The board discussed the structures on the property.

Mr. Fennell asked the applicant, "How many sheds are on the property?" Mr. Harkenrider responded, "Just one, which is the one in the setback". He noted that he didn't count the plastic shed as an accessory structure.

Chairman Malcarne asked about the size of the plastic shed. Mr. Harkenrider responded that the size of the shed is 8' x 10'.

Mr. Fennell asked about the exact location of the shed that is in the setback. Mr. Harkenrider responded that the shed is located more on the state land (Taconic State Parkway). The intrusion into his property is only a foot. He added that this shed was on this site when he moved in to this property. He remarked that this shed is owned by the state.

Mr. Weiland remarked that there should not be any storage or anything in the setback without a variance.

Mr. Fennell commented that this shed might have been built there without the town knowledge. He suggested putting a stipulation in the resolution about moving the shed in question out of the setback.

Mr. Weiland stated that there should be a condition stating that there is no storage or structure in the setback without a variance.

Ms. Dolan remarked that there should be a condition to remove the plastic structure off the property.

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Mr. Canham questioned what is allowed in the setback. He thinks that the board should look into the definition of setback in the zoning regulations (Sec. 250.105 of the Town of Clinton Zoning Law).

Mr. Weiland responded that there are different regulations about setback.

Mr. Fennell asked the applicant, "What is in the shed?" Mr. Harkenrider responded that the plastic shed has kid's toys.

The Zoning Enforcement Officer noted that the language of the law is found on Sec. 250.23 C of the Town of Clinton Zoning Law.

Sec. 250.23 C (Measurement and use of yards) states that Minimum yards, as required herein, shall not be used for the storage of merchandise, equipment, building materials, junk, vehicles, vehicle parts or any other material or for signs, except as otherwise specifically permitted herein.

The panel had a long discussion about storage in the setback.

Mr. Fennell commented that the Town of Red Hook now allow sheds to be placed 5 feet into the side yards of the setback since every property in the area has a small lot.

Chairman Malcarne asked about the number of accessory structures on this property. The zoning regulations allow three accessory structures. Chairman Malcarne stated that the house was built in 1975. This is prior to the zoning law (1981).

Mr. Weiland responded that there is a shed, proposed pool and the plastic shed (8 x 10). He opined that structures less than 50 feet are considered an accessory structure. Chairman Malcarne noted that the limit is 120 feet.

The zoning enforcement officer noted that there is no need for a building permit if the structure is not permanent and is less than 120 feet.

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

Hearing no comments from the public, the board agreed to close the public hearing. Chairman Malcarne motioned to close the public hearing, seconded by Mr. Calogero, all Aye, Motion carried, 5-0.

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

Mr. Calogero motioned that the Town of Clinton Zoning Board of Appeals grant to **Daniel and Dawn Harkenrider** of 12 Friends View, Clinton Corners, NY, **Tax**

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Grid#6566-00-364475, a variance from Section 250, attachment 2, side yard setback, from the required 17 feet, to 10 feet, for the construction of a 10 X 12 shed.

FACTORS:

1. This is a 1.1 acre lot located in the CR1 zone.
2. The NYS Environmental Quality Review Act has determined that an area variance for a single family residence is not subject to further review.
3. An AG data statement is not required for an area variance.
4. This property is located in a Critical Environmental Area.
5. The requested variance is substantial but that should not preclude its granting.
6. The alleged difficulty is self-created, but the benefit to the applicant cannot be achieved in any other way due to the irregular shape of the lot.
7. The neighbors have provided letters in support of the proposal.
8. The proposal and area variance will not adversely affect the community as it is in character with the other properties on the street, many of which have sheds and garages in the setbacks.

Conditions:

1. All fees must be paid.
2. There is no storage in the front, side, or rear yard setbacks, nor are there accessory structures in those areas unless allowed by a variance.

Seconded by Mr. Kealty.

Discussion.

Mr. Harkenrider questioned the condition of the resolution. He asked, “Do I need to get a variance for the existing shed on the setback”? Mr. Weiland responded, “Yes, if he wants the shed to stay on the property.”

Mr. Harkenrider remarked that this is not his shed.

Chairman Malcarne advised the applicant to talk to the zoning officer about the concern.

Mr. Weiland noted that this parcel is not a triangular lot since there are two side yards. This is an irregular lot. He added that there is a little side yard that goes into the parkway.

All Aye. Motion carried 6-0.

Virginia Scianna Variance – property on 713 Slate Quarry Road, Tax Grid No. 6469-09-200588.

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The applicant proposes an area variance from Sec. 250-19 of the Town of Clinton Zoning Law to allow reduction to less than the minimum lot size allowing a lot to be reduced to less than the minimum lot size in the zoning district, in order to sell a lot portion (50' x 50') north east corner to the adjoining property owner.

This is a nonconforming .49 acre lot in a C Zoning District.

Ms.Scianna appeared for her application. She explained that she wants to sell the rear portion of her lot (50' x 50') to the adjoining property owner.

Mr. Canham read the Planning Board recommendation to the Zoning Board of Appeals which is negative.

Mr. Canham explained his comments about this case. These are two nonconforming lots (the applicant's property and the adjoining property) in a C Zoning District. The minimum lot size on this area is 5 acres. Looking at these properties in isolation, you will actually think that the portion of lot (requested variance) looks like it belongs to the adjoining property owner. Mr. Canham added that it almost look like rationalizing a lot line.

Mr. Canham stated that this proposal needs two variances. It needs a variance for the building coverage in addition to the lot coverage variance.

Mr. Canham stated that he was torn on this case. He agreed about the Planning Board's concern (see PB recommendation dated 6-18-13). However, he opined that this case do not have an adverse affect to the character of the neighborhood since the lot size is common in this area. This proposal will also make the neighboring lot less nonconforming. Mr. Canham stated that it seems fairly sensible for him to rationalize the lot line. This is a very small piece of land (1/3 of an acre) to be given to the neighbor.

Mr. Weiland wished to see more possible solutions like long term lease instead of going for a setback variance. He stated that he understands that doing something on your property on this area is restrictive due to the sizes of the lots. He acknowledged all the activities on this neighborhood recently like putting up a deck, garage, etc. He noted that all these activities received variances.

Mr. Canham stated that he sees this application as a simple transfer of land.

Mr. Weiland noted that they also have to look at the benefit for the township.

Mr. Fennell asked the applicant, "What's the intention of the neighboring property owner about the portion of land?"

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Ms. Dolan asked about the access of the emergency vehicles (fire truck) in case there is a fire with regards to the house at the rear. Ms. Scianna responded that fire trucks access thru Silver Lake Road.

Mr. Calogero expressed his view about this case. He stated that he shared the same views with Mr. Canham. He discussed the building coverage in relation to the size of the lot. What does this mean to the parcel? He commented that he doesn't know how will this play out in the future or how will this affect the future property owner. He doesn't think that the variance will have a significant effect to the physical environment not unless the property is developed in the future. He also acknowledged the difficulty in developing properties in this neighborhood. Anybody who wishes to develop their properties or make an improvement on this parcel will be based on the existing condition.

The board agreed to open the public hearing. Chairman Malcarne motioned to open the public hearing, seconded by Mr. Canham, All Aye, Motion carried, 6-0.

James McCauley, 719 Slate Quarry Road stated that his property adjoins both the Sciannas and the Roushes. Looking at the layout of these properties, Mr. McCauley stated that the variance makes sense. He noted that he doesn't have a problem with this application.

Mr. Calogero asked Mr. Werner, a Planning Board member about the reason for the negative recommendation. Mr. Werner responded that the major point is about making the lot more substandard. He remarked, "It's a tough call!"

Chairman Malcarne asked the property owner who wishes to buy Scianna's portion of lot about any plans for this piece of lot. Mr. Roush responded that he doesn't have any plans as of now.

Mr. Fennell asked, "Why do you want to buy this piece of land"? Mr. Roush responded that he just wanted to make his lot bigger.

Hearing no more questions from the public, the board agreed to close the public hearing. Chairman Malcarne motioned to close the public hearing, seconded by Mr. Kealty, all Aye, Motion carried, 6-0.

The board discussed the application on hand.

Mr. Weiland noted that any additional structure on this area will require a variance.

Ms. Dolan shared her views about this case. The end result of this case is not inconsistent with the whole area in this neighborhood. She cited the house next door where in the front is 25 ½ feet wide with the house two feet off the property line. This is the kind of nature on this area. She remarked, "Never consider doing this unless it's consistent in the area."

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The board discussed the concern about setting precedence.

Chairman Malcarne explained that each situation is weighed differently. Each application has individual matters. This is a challenging situation and there is a zoning law that needs to be considered.

Mr. Weiland reminded the applicant that lot line adjustment needs to be done if the variance is granted.

Mr. Weiland noted that this case needs two variances (building and lot coverage).

The board discussed the building coverage of Scianna's property. Mr. Canham stated that based on his computation, the new configuration of the building would be 12.4% (after a portion of lot is sold) so the variance will be an increase of 5.4%.

The panel discussed how to proceed with this application. After all the discussions were made, the board agreed that the building coverage wasn't advertised on the paper. This application needs to go back before the Planning Board to get a recommendation, advertise for public hearing, and come back before the board next meeting.

The board agreed to re-open the public hearing. Mr. Weiland motioned to re-open the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 6-0.

Chairman Malcarne advised the applicant that the application needs to be amended to include the variance for the building coverage.

Public hearing remains open. No action taken.

APPROVAL OF MINUTES:

Chairman Malcarne motioned to accept the minutes of April 25, 2013 as amended, seconded by Mr. Calogero, all Aye, Motion carried, 6-0.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 9:30 pm, seconded by Mr. Kealty, All Aye Motion carried, 6-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary
Cc: Carol Mackin, Town Clerk