

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
January 22, 2015**

MEMBERS PRESENT

John Calogero
Charles Canham

Frank Kealty

Arthur Weiland

Arlene Campbell, Secretary

MEMBERS ABSENT

Joseph Malcarne, Chairman

Norma Dolan

Macy Sherow III

ALSO PRESENT

Bob Fennell, ZEO

Acting Chairman Weiland called the meeting to order at 7:36 pm.

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

Acting Chairman Weiland noted that the meeting was being recorded for record keeping purposes.

VARIANCE APPLICATIONS:

Jack and Nancy Persely Area Variance - property located at 18 Schoolhouse Road, Tax Grid No. 6467-03-066342.

The applicants are requesting an area variance to Sec. 250 Attachment 2 for a reduction of a rear yard setback from 50 to 15 feet for a 12' x 24' deck that was already constructed.

Jack Persely appeared and explained his proposition. They moved to this house in 1992 and the deck was constructed in 1997. The house is 28 feet from the water edge at the back of the house. They built and extended the deck out beyond an existing platform at the back of the house. He noted that there is a retainer wall at the back of the house. He illustrated the three footings that are just outside of the retainer wall.

Mr. Weiland read the Planning Board's recommendation dated 12-16-14 which is positive.

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The board discussed the application. Mr. Weiland asked the applicant if he hit any rock when he was doing the footings. Mr. Persely responded, "Yes in one of the footings". Mr. Weiland asked if the post is laid right against the retainer wall. Mr. Persely responded, "No, not directly." He added that he's supposed to take pictures of the footings of the deck but it was already dark by the time he gets home from work. His guess from memory is ---6 inches to a foot on outside of the retaining wall.

Mr. Weiland explained the concern of the Planning Board about the footings and columns support structure. Per the Town Engineer's comments, "If rock was encountered for the footing installation, it should be determined whether the footings and or columns are properly pinned to the rock."

Mr. Persely stated that he will take pictures of the footings this weekend. Mr. Weiland suggested taking a lever and plumb up all three posts. Mr. Canham suggested taking pictures of the posts too.

Mr. Weiland asked when the house was built. Mr. Persely responded that the house was built in the 1800s.

Mr. Canham asked how often or if he gets any flooding around the footings. Mr. Persely responded, "Never".

Mr. Weiland read the Town Engineer's comments dated 1-18-15. Mr. Weiland indicated that he agreed with the Planning Board's recommendation that the Building Inspector should sign off the deck.

Mr. Weiland asked about the letter of authorization to speak on the wife's behalf since Ms. Persely wasn't in attendance of the meeting. Mr. Weiland suggested tabling the application due to the absence of the required document. Ms. Campbell asked if this concern can be a condition to the variance approval. Mr. Fennell responded that this document can be a condition to the variance.

The board exchanged opinions about the application.

Mr. Canham commented that he feels comfortable with this application. The Planning Board also seems comfortable with the application. The height of the deck which is above the creek is reassuring. He'll be worried if this is much lower. Erosion is one of the issues and concern but noted that the deck has been there in a while. The Town Engineer also seems to support this application Mr. Canham stated that he doesn't have any problem with this application.

Mr. Calogero noted that the deck has proven its viability over the years. The height of the deck prevents the water from coming over the edge. Although he hopes to see the Building Inspector addresses the Town Engineer's comments, Mr. Calogero stated that this is really not the board's purview. He suggested using the verbiage in the resolution regarding this concern as "addressing the issue of the Town Engineer comments".

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Mr. Fennell asked about the railings. Mr. Perseley responded that the railings are about 3 ½ to 4 feet.

The board agreed to open the public hearing. Mr. Weiland motioned to open the public hearing, seconded by Mr. Kealty, all Aye, Motion carried, 4-0. Hearing no comments from the public, the board agreed to close the public hearing. Mr. Weiland motioned to close the public hearing, seconded by Mr. Calogero, all Aye, Motion carried, 4-0.

The board agreed to pass a resolution, to wit:

Mr. Weiland motioned that the Town of Clinton Zoning Board of Appeals grant to John and Nancy Persely of 18 Schoolhouse Rd, Tax **Grid # 03-6467-03-066342-00**, a variance from Section 250 Attachment 2 (District Schedule of Area and Bulk Regulations) to reduce rear yard setback from 50' to 15'.

Factors:

1. A small undesirable change will be brought about in the neighborhood causing a barely significant detriment to do its increased impingement to the environment. It is reasonable for them to be using the back of their house which is closer to the creek than the required setback. The house was sited prior the current zoning.
2. The benefit sought by the applicant can be achieved by some other feasible method besides granting the variance, such as a patio using a retaining wall which could be less stable and would have a similar impact on the environment and neighborhood.
3. The variance of 70% is substantial.
4. The placement of this deck will not have an adverse effect on the physical or environmental conditions in the neighborhood because of the issue discussed in #1 above.
 5. The alleged hardship was self created. However as discussed in #1 above, the use of this area of their yard is reasonable and expected. Other ways of using this space for outdoor living would likely be of a similar or more significant impact.
 6. A residential area variance does not require an 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 Scenic or Historic Road – Schoolhouse Road.
 9. The site is within the boundary of a controlled area (Sec. 250.78)

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10. The site is not in the Ridgeline, Scenic or Historic Protection Overlay District.
11. This will remedy an outstanding zoning violation.

Conditions:

1. A 9” or higher toe board or screen shall be inside the verticals to catch windblown napkins and such.
2. Notarized Letter of authorization from the wife.

Seconded by Mr. Kealty.

Discussion.

Mr. Weiland indicated his concern about any papers or trash going over the stream. He suggested putting a toe board or any type of barrier to catch windblown items.

Mr. Fennell asked about the opening on the railings. Mr. Persely responded that the railing is 3 ½ to 4 feet in height and 2’ x 4’ column across the center of the deck. Mr. Fennell stated that this will be a problem. There cannot be an opening or baluster less than 4 inches. Mr. Persely stated that he will put a heavy metal cedar wire on these openings. Mr. Fennell responded that this might address the issue.

The panel had a lengthy discussion about the opening and railing concern (safety issue).

Mr. Calogero commented that the deck has to meet the current Building Code. The Zoning Enforcement Officer concurred with Mr. Calogero. He noted that even though the deck was built in 1997, the deck still has to comply with the current Building Code.

Mr. Canham commented about satisfying the Town Engineer’s comment regarding the footing installation. He opined that there’s no way of finding out whether the footings or columns are properly pinned to the rock without dismantling or removing the foundation. Pinning is not hard, it is the drilling. This deck has been on this property for seventeen years. It hasn’t moved. Mr. Canham stated that he would be concerned if it’s moving but there’s no evidence of moving. It’s probably pinned.

Mr. Canham stated that the Building Inspector can address this concern. If the Building Inspector is satisfied then the deck is in compliance.

The board agreed to strike the condition about including item #1 of the Town Engineer’s comments.

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All aye, motion carried, 4-0.

The board took 10 minutes recess.

Ernest Klopping Area Variance – property on 377 Ruskey Lane, **tax grid #132400-03-6366-00-256522.**

The applicant is seeking an extension for an area variance that was granted on August 23, 2013.

Ernest Klopping, along with his attorney Stephen Habiague appeared for this application. Mr. Habiague indicated the status of the Site Plan Application before the Planning Board.

Mr. Canham indicated his perspectives why the board should extend the variance. There is a real benefit to the town in the long run i.e. to extinguish the nonconforming use of the junkyard. He also indicated the environmental benefit (risk of spills) containing the junkyard operations inside the building which is significant. The benefits are still here. He expressed his hopes to see this project proceed.

Mr. Canham indicated the two variance extensions that were granted to this property. This is a very complicated case. He asked the applicant about a comfortable timeline in extending the variance.

Mr. Habiague explained that the Planning Board has discretion to approve the Site Plan with stipulation that the Site Plan can only be effective for the purpose of obtaining a building permit upon delivery to the Town of a consolidation deed for the two parcels in proper form of recording. There is discretion about doing the Lot Line Alteration after Site Plan approval.

Mr. Canham expressed his sympathy about the hardship that the applicant is going through. Unfortunately, the Zoning Board of Appeals cannot dictate or give suggestions to the Planning Board. The Planning Board has their own issues and concerns.

Mr. Habiague opined that what they're proposing is simple and doable.

The panel had a lengthy discussion about the above matter. Mr. Weiland verified the issue about the Site Plan application. The applicant is not going to the direction of the Planning Board due to a financial impact (Escrow account). Mr. Klopping noted that he doesn't want to put more money on the Escrow account since he already spent \$15,000 on escrow alone. Mr. Habiague noted that they want to take a different step in resolving the issue i.e. avoiding replenishment of the escrow.

Mr. Habiague remarked that this is a simple solution! He doesn't think that there is a need to do research on how to proceed with the application. The Planning Board has discretion to approve the Site Plan contingent with the Lot Line Alteration and the Building Permit is not issued until the deed consolidation.

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Mr. Weiland expressed his comments about this case. He discussed the complexity of this case that has been before the board for a decade. He had bent backwards on this application. He commented that this project would be beneficial to the community. A lot of people like Mr. Klopping.

Mr. Weiland indicated his serious concerns about this application, not to negate Mr. Klopping but due to the proposed building. This is an industrial building. It is not the square footage or the building that bothers him but rather the industrial building that would be left at the neighborhood. Mr. Weiland stated that this property won't need a variance if this was a regular lot and the building is smaller than the house. He stated that he is willing to bend over a bit but doesn't like the idea of an industrial building in the neighborhood.

Mr. Kealty noted that the purpose of the proposal is to clean up the property. Mr. Weiland stated that the purpose of this application is to allow the applicant to approve and continue what he's doing. For that purpose, this means approving the proposed building and the conditions related to what he's doing and continuing his activities. He reiterated his strong opposition about the industrial building that would be left behind in the neighborhood.

Mr. Habiague explained the purpose of their project. Once the proposed building is up, cars will be dismantled, parts will be stored in the building and junkyard will disappear.

Mr. Klopping addressed Mr. Weiland's concern about the industrial building. He noted that the metal building that they're proposing is the same metal building that you see on farms in the town.

Mr. Calogero expressed his views about the above concern. This is a very long and complicated case. The Town granted the variance and came to a resolution that addresses everybody's concern. The State of New York agreed and supported Mr. Klopping's case. Mr. Calogero stated that if they change any part of it, this will make other parts fall out of balance or disarray. He commented that he doesn't think that the purpose of this application is to revisit the details of the variance. The ZBA came into an agreement that supported all other things about time and money matters which doesn't necessitate deferring the extension request.

Mr. Calogero stated that the only caveat is – he would like to approve the request for an extension to the original form of the variance so that they don't have to revisit the detail and stipulations. He commented that he doesn't think that there is an intent or attempt to fool the Town in not combining the lots in the end. There is no gain.

Mr. Calogero indicated that the other part of the equation is about the variance sitting on something extremely valuable. Part of the property is a junkyard in a residential area which is as rare as the same seat as _??. Mr. Klopping is willing to give that up in return to what is allowed in the Town. With this whole balance, Mr. Calogero suggested to extending the variance to one year as originally written to avoid having the applicant come back again before the board.

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Mr. Weiland responded to Mr. Calogero comments. He indicated his opposition to this project all along. He stated that the junkyard is conditional to the repair business. He noted that he didn't like the amount of documentation classifying this as the repair business. He didn't think that there is sufficient evidence about these documents.

Mr. Weiland stated that the Town has the responsibility to check the record that the applicant is still in business as a repair shop. The ZEO can potentially review records of the business in order to continue the operation every year. If this business has gone out of business then the nonconforming use of the property would have disappeared years ago. Mr. Weiland stated if the repair business will not continue in the future then the junkyard must disappear no matter how valuable it is to a residential area.

Mr. Calogero remarked that Mr. Klopping can also sell this property and the use continues. Mr. Weiland noted that once the use is disrupted or stopped for a year then the nonconforming use is ceased.

The board had a very lengthy discussion about the nonconforming use of the property. Mr. Weiland noted that the board had already bent backwards about this application. This is a nonconforming property. You cannot change the use or move a nonconforming property.

Mr. Weiland indicated all the buildings on this property. There are two lots on this property and it will diminish the value of this property once combined.

Mr. Canham remarked that the proposed building is not visible to the neighbors unless you drive up the property.

Mr. Weiland and Mr. Canham exchanged views about the proposed building in relation to the benefit to the Town. Mr. Canham expressed his preference for the proposed metal building as opposed to the junkyard. The risk of having a junkyard is worse and the benefit to the town is better. Mr. Canham found this very compelling.

Mr. Weiland noted that the proposed building has a very large footprint (40' x 80'). Mr. Klopping noted that this is only 1% of the combined lots.

Mr. Canham stated that he doesn't think that the board should revisit all the details of the variance. The application on hand is about an extension of the variance.

Mr. Fennell noted that this is a pre-existing use. Right now the variance is still in effect and the application on hand is about an extension of the variance.

After a very long discussion, the board agreed to table the application to get the majority of the board's opinion. Public hearing was not opened.

No action taken.

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APPROVAL OF MINUTES:

Acting Chairman Weiland motioned to accept the amended minutes of September 25, 2014 seconded by Mr. Canham, all Aye, Motion carried, 4-0.

ADJOURNMENT:

Acting Chairman Weiland motioned to adjourn the meeting at 9:55 pm, seconded by Mr. Canham, All Aye Motion carried, 4-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk