

**TOWN OF CLINTON
ZONING BOARD OF APPEALS
FINAL MINUTES
July 26, 2018**

MEMBERS PRESENT

John Calogero
Charles Canham

Chris Juliano

Arthur Weiland

Arlene Campbell, Secretary

MEMBERS ABSENT

Joseph Malcarne, Chairman

Norma Dolan

Macy Sherow III

ALSO PRESENT

Eliot Werner, Liaison Officer

Acting Chairman Charlie Canham called the meeting to order at 7:35 pm.

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

Mr. Canham noted that the meeting was being recorded for record keeping purposes.

VARIANCE APPLICATIONS:

O'Brien Variance – property owned by Joseph and Janet O'Brien located on 203 Silver Lake Road **Tax grid # 6470-00-349027** which is in the C Zoning District.

Applicants request an area variance to Sec. 250-22 A-3 of the Town of Clinton Zoning Law for the placement of an accessory structure (garage) closer to the fronting street than the principal building.

Mr. O'Brien appeared and briefly explained his application as indicated above.

Acting Chairman Canham asked for questions and comments from the board.

Mr. Calogero read the Planning Board recommendation dated July 17, 2018 which is positive. He noted that the recommendation states that they don't believe that the proposed location necessitates a variance.

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Sec. 250-22 A-3 states that, “No 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. Calogero expressed his comments. Based on his review of the zoning regulations, the proposed site to install a garage does not necessitate a variance since it meets the setback requirements. Although the proposed site is located in front of the main dwelling, the code states “whichever is less restrictive”. On the other note, Mr. Calogero commented that it seems that there is an issue about the number of accessory structures.

Sec. 250-22 (A-4) states that, “Not more than three such accessory structures, other than permitted signs or agricultural buildings on a farm as defined herein, of which no more than one shall be a private garage, shall be permitted on an individual lot in a residential district except where lots are held in common ownership in accordance with §250-42.”

Mr. Calogero remarked that it seems that this project runs into this restriction by calling the proposed building “a garage”. This will trigger the variance to Sec.250-22(A-4). He suggested calling this building a “Barn” instead of a garage. Barn is not defined in Sec.250-105 (Definitions). However, “Barn” is also a large building use to house large vehicles and farm equipment. Although “Barns” are primarily use for farming, barns are also used to store large vehicles. It’s like semantics! He doesn’t have a problem calling it a “Barn”. The property owner will mostly likely use the second floor for storage.

Mr. Calogero stated that he understands the need of a garage along the driveway. This is a pretty steep driveway. He asked the board how they feel about this application. The board can decide that variance is not required and re-define the proposed building or the board can grant a variance to Sec. 250-22 (A-4).

Mr. Weiland agreed. There is no definition of barn in our code. However, Sec. 250-104 states that “...Except where defined in this chapter, in Article VIII or elsewhere, all words and terms shall carry their customary meanings in the context used.”

Mr. Weiland opined that this will allow the use of the barn in storing the lawn mower, tractor, etc. in this building.

Mr. Canham commented that the placement of this building on the proposed site makes more sense the way the topography of the driveway especially during the winter. He doesn’t have a problem calling this building a barn.

Mr. Calogero stated that the submitted drawing/sketch is just a generic sketch that gives the board an idea about the size and how the proposed building will look like although the building is labeled as a garage.

Mr. Juliano concurred with Mr. Calogero that the proposed building necessitates a variance.

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Mr. Weiland asked the applicant if he already filed a building permit. Maybe, he should classify this building as a barn instead of a garage. The barn is not defined in the zoning regulations.

The board had a lengthy discussion about the above issue. Ms. Campbell stated that if the building will be used for storing vehicles then this should comply with the fire code such as having concrete floors or cement. The board advised the applicant to consult the Building Inspector about the proposed building to ensure it complies with the Building and Fire Code.

The board agreed to open the public hearing. Acting Chairman Canham motioned to open the public hearing, seconded by Mr. Juliano, all Aye, Motion carried, 4-0.

Hearing none, the board agreed to close the public hearing. Acting Chairman Canham motioned to close the public hearing, seconded by Mr. Weiland, All Aye, Motion carried, 4-0.

The board discussed the application.

Mr. Calogero commented that the proposed building will be an improvement to this property and will provide safety for inclement weather condition. This can be treacherous.

Mr. Weiland stated that it seems that there is a shed in the setback per parcel access.

Ms. Campbell noted that the town doesn't have a record of this shed. She asked about the size of the shed. Mr. O'brien responded that the size of the shed is 10' x 15'. Ms. Campbell said that this shed requires a building permit. Mr. O'brien stated that the shed was there when he acquired the property. Mr. Weiland noted that the acquisition of the shed when the property was purchase doesn't mean that it predates the zoning. He advised the applicant to file a building permit for the shed.

After all the reviews and discussions were made, the board passed a resolution.

Mr. Calogero motioned that this application does not necessitate a variance, seconded by Mr. Weiland, all Aye, Motion carried, 4-0.

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Weber and Black variance – property owned by **Glen and Evelyn Weber** located at Bryant Way, **tax grid number 132400-6469-10-325617-0000** in the C zone.

The applicants seek the following area variances to convert a pre-existing garage into a single family dwelling where the Dwelling standards require 864 square feet minimum for the ground floor and the garage is 528 square ft.

Section 250-48 of the Town of Clinton Zoning Law to reduce the minimum square footage of the dwelling from 864 to 528 square feet.

Section 250 Attachment 2:

- Front yard setback reduction from 100 to 18 feet
- Side yard setback reduction from 50 to 18 feet
- Rear yard setback reduction from 75 to 58 feet

Robert Marrapodi, Architect, was back before the board for the continuance of his application. He recapped what had transpired at the previous meeting. He indicated the letter from the Department of Health about the removal of the seasonal use restriction at the above referenced lot. The Department of Health issued a one-bedroom Board of Health approval.

Mr. Marrapodi stated that the conversion of the garage to a one family dwelling home will make the property less nonconforming. This will bring the conformity to the intent of the residential area.

Mr. Weiland indicated Sec. 250-19 (C-1) of the zoning regulations that prohibits septic over lands less than 20,000 square feet in area.

Sec. 250-19 (Minimum Lot area per dwelling unit or establishment) (C) In consideration of minimum lot area, the following restrictions apply: (1) Individual septic tanks shall be permitted on existing lots of record of not less than 20,000 square feet in area.

Mr. Weiland opined that this building can continue to use the existing level of use of the property. The nonconforming building on this property can be expanded by no more than 50% of the aggregate building area....per Sec. 250-84.

Mr. Weiland commented that the property should not be changed to another nonconforming use. It should maintain or reduce the nonconformity. Having a residence on this property will change the existing use of the property.

Sec. 250-81 – C Nonconforming uses shall not be changed to another nonconforming use without prior approval by the Zoning Board of Appeals, and then only to a use which, as determined by the Zoning Board of Appeals, maintains or reduces the nonconformity.

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Mr. Canham stated that Sec. 250-98 D (Definition of Responsibility) indicated 2 kinds of Variances (Area and Use Variance) and Sec. 250-98 E states that the Zoning Board of Appeals shall hear and decide any request for change of a nonconforming use...and to determine the intended use maintains or reduces the nonconformity.

Sec. 250-98 E (Nonconforming Uses) states, “The Zoning Board of Appeals shall hear and decide any request for a change of nonconforming use, as required by Article VI of this chapter, and to determine whether the intended use maintains or reduces the nonconformity.

Mr. Canham opined that it seems that there is a third category whether it is to reduce or maintain the nonconforming use. It’s a gray area.

Mr. Canham indicated his objection to the Town Attorney’s opinion that this is an area variance. He feels that this falls under a 3rd category i.e. “whether there is a change in the nonconforming use”. Safety is pretty compelling.

Sec. 250-80 (General Provision) Article VI – B states that the intent of this article is to limit, by not increasing, nonconforming uses and to eliminate such uses as speedily as possible, but at the same time to alleviate economic hardship to an existing nonconforming use by allowing it to continue at its level of intensity,...

Mr. Canham commented that this section clearly limits the nonconformity by not increasing the nonconforming use.

Sec. 250-81 –A states that Nonconforming Uses shall not be enlarged or extended or placed on a different portion of the lot or parcel of land occupied by such use on the effective date of this chapter.

Mr. Canham concurred with Mr. Weiland’s earlier comment about not allowing the change in nonconforming use that increases the degree of nonconformity.

Mr. Canham cited Sec. 250-83 –which states that Nothing contained herein shall prohibit the extension of a permitted use to any portion of a nonconforming building or structure which existed prior to the effective date of this chapter.

Mr. Canham commented that he doesn’t know what this section means. For him, Article VI is very compelling. The goal is not to expand the nonconforming use. He feels that the conversion of the garage to a one family dwelling is an expansion of the nonconforming use.

Mr. Calogero stated that the board has to be flexible in granting an expansion of the use but not the use of the property. The property owner has the right to come before the board to ask for the garage to be expandable. The use of an apartment/cottage is a different use

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than the use of a storage facility. There is no environmental impact with the current use nor any impact to the surrounding neighbors' well. The Department of Health has the final say on the plumbing issue yet the Town has regulations that need to be adhered. The board has to conclude that the proposed action will maintain or reduces nonconformity and make sure that there will be nor environmental effect to the community health and safety and property value, etc.

Mr. Canham read Sec. 250-81 C which states that local nonconforming use shall not be changed to a more nonconforming use. The question is still whether it increases the nonconformity.

Mr. Juliano said that square footage is another separate issue. He agreed with the Town Attorney's opinion that this is an area variance. This will make the nonconforming use more conforming and will be an improvement as far as safety per Sec. 250-98 D-2A. There is no change nor there will be an adverse effect to the neighborhood. He's more concern about the existing septic which is old and might do more harm to the well. He would rather see a new septic on this property. As far as the square footage goes, Mr. Juliano stated that the sizes of the houses in the area are relatively small so the existing structure fits the neighborhood.

Mr. Calogero disagreed with Mr. Juliano. He is not sure whether adding another residence increases the public safety in the area, and whether the septic is new or old. This is a very dense area and septic systems are restricted by lot size. There maybe five or more septic systems in the area that are not properly working but putting a new one would not help the other systems.

Mr. Juliano commented that a new system is not going to improve the other system.

The board had a lengthy discussion about the septic system concerning environmental impact.

Mr. Weiland stated that one of the rationales of the minimum acreage regulations is to protect the septic and well. Mr. Juliano agreed but noted that this is also the Department of Health's purview.

Mr. Weiland indicated his strong concern about the septic if you add another residence in the area due to the density of the neighborhood.

Mr. Juliano said that he would not be surprised if the water test results in this area failed.

Mr. Canham responded to Mr. Juliano's argument that the proposed change will bring the property more in line with the character of the neighborhood. This argument comes close to the path that he's looking for but the definition of the Nonconforming Use applies to the "Use" .

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Mr. Juliano reiterated that he's looking at the proposal as an improvement. Right now, the garage is already there. The purpose of the Zoning Board of Appeals is to find a solution or the board wouldn't be here.

Mr. Weiland remarked that the board needs to find a balance to the Town and the community. If this nonconforming parcel sits with the large parcel around it then he might not have a problem with the proposal. This neighborhood is so dense. He doesn't think that adding another residence to this area will benefit the community.

Mr. Juliano opined that the conversion of the garage to a residence will increase the value of the property. This is beneficial to the town with regards to the taxes. It will also benefit the value of the property in the area. The visual impact is also positive. Looking at a house rather than a garage is so much better. The neighboring properties don't seem to have a problem with the proposal or else there would be voices of complaint or neighbors' attendance at the meeting. If he's one of the neighbors, he would rather see a house than a garage next door. Mr. Juliano added that this also promotes affordable housing.

Mr. Marrapodi agreed with Mr. Juliano. This proposal will improve the neighborhood. He underscored that they are not asking to increase the size of the existing structure.

Mr. Canham said that the nonconforming building can be expanded by 50%. Sec. 250-81 states that nonconforming use cannot be changed to another nonconforming use. It should maintain or reduce the nonconformity. The conversion of the garage to a house will change the use of the property. He verbalized his trouble meeting Article VI of the code in granting this request.

Mr. Calogero stated that he agreed with Mr. Juliano's assessment. The proposed action will give a positive visual impact to the neighborhood. However, he doesn't think that this action will be a reduction to an existing nonconforming use. There is currently a building that is unoccupied versus a building would be occupied. This building can be also rented out or use by a relative and there will be then use of septic, water and other resources. There will be activity versus a property that has unoccupied building. He doesn't see that the existing nonconformity is maintain or reduce. It seems that the nonconformity use will be increased.

Mr. Weiland also concurred about the improvement of seeing a residence instead of a garage. He laid out the "No Storage" restriction in the setbacks. He remarked that the homeowner will not enough space or room to put ladders, etc. He asked the applicant whether he wants to move forward with the application or wait for more members to be in attendance. (Note that there were only 4 board members in attendance).

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Mr. Marrapodi expressed his frustrations about the number of board members in attendance. He was hoping to see more heads to give their views at this meeting.

Mr. Canham stated that he just cannot find the verbiage in the code that will give him clearance on this issue. Mr. Juliano said that there is a lot of gray area in here. He viewed this application as definitely an improvement to the neighborhood and the Town (taxes wise). He understands the board's feeling about this case. The board needs to vote and make a decision or adjourn the meeting for this application to be vetted.

Mr. Marrapodi stated that he would rather get a decision now and leave the final decision to the property owner.

The board agreed to open the public hearing. Mr. Juliano motioned to open the public hearing, seconded by Mr. Calogero, all Aye, Motion carried, 4-0.

Hearing no comments from the public, the board closed the public hearing. Mr. Calogero motioned to close the public hearing, seconded by Mr. Juliano, all Aye, Motion carried, 4-0.

After a very lengthy discussion and thorough review, the board agreed to vote.

Mr. Weiland motioned that the Zoning Board of Appeals grant a variance to Glenn Black and Evelyn Weber / **Silver Lake Cottages LLC** of 16 Fifth Avenue for the parcel on Bryan's Way **Tax Grid # 6469-10-325617-00**, from section 250-48.A MINIMUM REQUIRED FLOOR AREA from 864 square feet to 528 square feet.

FACTORS:

1. An undesirable change in the neighborhood will be brought about by increasing nonconformity in a massively nonconforming area in contradiction to Sections 250-80 and 250-8-C by changing use. Additionally variances are likely needed to use this structure as a residence on an approximately 10,454 square foot lot when 20,000 square feet is required for a septic system 250-19 C(1) and thereby a lot minimum. The residence will also lack the statutory dimensions for lot width as well as setbacks needed for the front, rear, and one side yard.
2. The benefit sought by the applicant cannot be achieved by some other feasible method besides granting this variance as well as others.
3. The variance of 39% is substantial

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4. The benefit for the applicant cannot be realized without significant detriment to the health, safety or welfare of the community as indicated by the waivers needed from the Dutchess County Department of Health including the placement of the primary sewage disposal system closer than 100' of two neighboring existing wells and the proposed residence's well place at the edge of the road.
5. The alleged hardship was self-created because of the plans to increase the nonconforming use of this parcel. As per section 250-80 "The lawful use of any land, buildings or structures, or a part thereof existing at the time that this chapter . . . may be continued. . . The intent of this article is to limit, by not increasing nonconforming uses and to eliminate such uses as speedily as possible . . ." As well as 281-C "Shall not be changed to another nonconforming use without prior approval by the Zoning Board of Appeals, and then only to a use which, as determined by the Zoning Board of Appeals, maintains or reduces the nonconformity.
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 not in a CEA district.
9. The site is not within the boundary or buffer of a Wetland.
10. The site is not in the Ridgeline, Scenic or Historic Protection Overlay District.
11. There are not any know outstanding zoning violations.

Seconded by Mr. Calogero.

Discussion. The board feels that this request is a change in nonconforming use.

Motion:	<u>Art Weiland</u>	Second:	<u>John Calogero</u>	
Joseph Malcarne, Chairman				Absent
Charlie Canham, Acting Chairman			Nay	
John Calogero			Nay	
Chris Juliano		Aye		
Norma Dolan				Absent
Macy Sherow				Absent
Arthur Weiland			Nay	

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1 Aye, 3 Nays, Motion denied, 1-3.

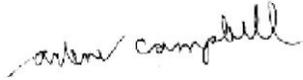
APPROVAL OF MINUTES:

No minutes were approved.

ADJOURNMENT:

Acting Chairman Canham motioned to adjourn the meeting at 9:15 pm, seconded by Mr. Weiland, All Aye Motion carried, 4-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk