

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
November 19, 2019**

**MEMBERS PRESENT**

Art DePasqua, Chairman  
Gerald Dolan  
Jack Auspitz  
Justin Carroll

Paul Thomas  
Tracie Ruzicka

Secretary – Arlene Campbell

**MEMBERS ABSENT**

Sara Love

**ALSO PRESENT**

Eliot Werner, Liaison Officer

Chairman DePasqua called the meeting to order at 7:30 pm.

**VARIANCE APPLICATION:**

**Smithyman Area Variance** – property owned by **Paul Smithyman and Garrett Long** located at 5 Lake Drive, **Tax Grid No. 6368-00-752443.**

The applicants are requesting the following area variances to the Town of Clinton Zoning Regulations to convert an existing structure to an accessory dwelling in the C Zone.

Sec. 250-29 D-1 and Sec. 250 Attachment 1

- Side yard setback reduction from 50 feet to 16 feet

Sec. 250-29 B-6

- Size of the accessory unit in relation to the principal dwelling which is an increase from 35% to 49%.

Paul Smithyman and Garrett Long both appeared for their application. Mr. Smithyman explained that they recently bought this property. They wish to add a bathroom to the existing renovated accessory structure. There will be no major construction involved to change the current building. There is currently heating and electric in this structure. Mr. Smithyman underscored that they also own the lands at the back of the property which is almost 10-acres parcel.

Chairman DePasqua asked for questions and comments from the board.

Mr. Carroll stated that these buildings are located close to the south property line of the neighbor on Fiddlers Bridge Road. He believed that the previous owner of this property

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
November 19, 2019**

approached the neighboring property owners in the past about the intention of converting this building into habitable space. Mr. Carroll explained the requested variances as indicated above.

Mr. Thomas asked the applicant if they have spoken with the Mobleys about any concerns about this application. Mr. Smithyman responded that the Mobleys gave them a blessing. With regards to the other neighbors, Mr. Smithyman stated that they haven't met them yet but intends to talk to them.

Mr. Carroll expressed his comments. The garage is currently finished with walls, heating and electricity. He pointed out on the submitted photos the proposed location of the bathroom where there is already an existing roofline. This is basically just putting walls under the roofline to add the bathroom. This structure is 16 feet from the southern property line.

Mr. Auspitz remarked that he tried visiting the property but the gate was intimidating. Ms. Long concurred with the remark. She found the gate intimidating as well. Mr. Smithyman stated that the gate could just be pushed to open.

Chairman DePasqua suggested getting letters from the neighboring property owners before the Zoning Board of Appeals meeting.

Mr. Auspitz asked the applicant if the buildings are visible from the road. Mr. Smithyman responded, "No". The house is farther set back from the road.

After all the reviews and discussions were made, the board passed a resolution, to wit:

Mr. Carroll motioned that the Town of Clinton Planning Board is making a positive recommendation to the Zoning Board of Appeals on the requested area variances to Sec. 250-29 D-1 reducing the side yard setback from 50 feet to 16 feet and Sec. 250-29 B-6 increasing the allowable accessory dwelling floor area from 35% to 49% of the principal structure for the purpose of adding a bathroom to an existing converted garage structure as requested by **Paul Smithyman and Garrett Long** on property located at 5 Lake Drive, Rhinebeck NY, **Tax Grid No. 132400-6368-00-752443** in an Conservation Agricultural Residential Zoning District.

**WHEREAS:**

1. The Applicant is requesting the area variances described above in order to add a bathroom to an existing converted garage structure on a 10.65 acre lot.
2. The property is in a Conservation Agricultural Residential Zoning District.
3. The property is not within the Ridgeline, Scenic and Historic Protection Overlay District.
4. The property is not in a Critical Environmental Area.

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
November 19, 2019**

5. The variances requested are substantial, however the accessory structure already exists albeit without a bathroom, and the proposed bathroom will be added under the existing roofline of the accessory structure.
6. An undesirable change will not be produced in the character of the neighborhood or be detrimental to nearby properties.
7. The benefit sought by the applicant can not be achieved by some other method.
8. The proposed variance should not have an adverse effect or impact on the physical and environmental conditions of the neighborhood.
9. The alleged difficulty is self-created but should not necessarily preclude the granting of the area variance, considering the surrounding conditions and lack of available alternatives.

**NOW, THEREFORE, BE IT RESOLVED**, the Planning Board is making a positive recommendation for the approval to the Clinton Zoning Board of Appeals for the requested variances.

Seconded by Mr. Auspitz.

**Discussion.** Chairman DePasqua asked if this property is in the CEA. Mr. Carroll responded that this property is outside of the CEA area.

All Aye, Motion carried, 6-0.

**Dickett Area Variance** – property owned by Michael Dickett and Tara Jessen located at 1567 Centre Road, **Tax Grid No. 6469-00-364453.**

The applicants are requesting the following area variances to the Town of Clinton Zoning Regulations to permit a construction of a 40' x 36' Pole Barn/Garage in the C Zone.

**Sec. 250 Attachment 2**

- Side yard setback reduction from 50 feet to 19 feet
- Side yard setback reduction from 50 feet to 25 feet

**Sec. 250-22 A-3**

- Placement of an accessory structure in front of the principal building

Mr. and Mrs. Dickett appeared for their application. Mr. Dickett explained that they are proposing to install a detached garage. Due to the shape of the lot, Mr. Dickett noted that the proposed site is the most feasible location of the proposed garage. The house is not visible from the road.

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
November 19, 2019**

Chairman DePasqua asked for questions and comments from the board.

Mr. Dolan expressed his comments. This property is a little over 3 acres and is a flag lot. The house is farther set back and not visible from the road. He commented that it is very limited where you can install a garage. There is also a pond on the site. He explained the requested variances as indicated above.

Mr. Auspitz concurred with Mr. Dolan. You cannot see the house from the road.

Chairman DePasqua asked the applicants if they have spoken to their neighbors about their proposal.

Mr. Dickett responded. "Yes and the neighboring property owners indicated no concerns." Chairman DePasqua said, "A letter won't hurt".

Chairman DePasqua asked about the details and floor plan of the proposed garage. Ms. Campbell presented the floor plan submitted by the applicants for building permit application. The garage proposes no septic.

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

Mr. Dolan motioned that the Planning Board approve the following resolution:

**BE IT RESOLVED**, the Planning Board is making a positive recommendation for approval to the Town of Clinton Zoning Board of appeals on the requested 2 area variances to Section 250-Attachment 2 and a variance to Attachment 250-22A.3 to build an accessory structure. The property, owned by Michael Dickett and Tara Jessen located at 1567 Centre Rd. **tax grid number 132400-6469-00-564453-0000** in the C zone.

***WHEREAS;***

1. The applicant wishes to build an 40'x36' accessory structure with variances requiring sideyard setbacks of 50' to 19' and 50' to 25'. Also requested is a variance for placement of an accessory structure in front of the principle building.
2. This is a 3.36 acre parcel located in the C zone...
3. The lot is not in an Ag District.
4. It is noted that an area variance is a Type II action under SEQRA and requires no further action.
5. The site contains Federal wetlands but the buffer is not intruded upon by the placement of the accessory structure.
6. An undesirable change will not be produced in the character of the neighborhood or be a detriment to nearby properties.
7. The requested variance is substantial.
8. There will be no potential adverse effect or impact on the physical or

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
November 19, 2019**

environmental condition in the neighborhood as this is a flag lot with substantial distances from adjacent homes.

9. The alleged difficulty is self-created.
10. The application fee has been paid.
11. Per the Zoning Enforcement Officer, that are no known violations associated with this property

*Now, therefore, be it resolved*, the Town of Clinton Planning Board provides a positive recommendation for approval to the Town of Clinton Zoning Board of Appeals.

Seconded by Mr. Thomas.

**Discussion.** None.

All Aye, Motion carried, 6-0.

**APPLICATION:**

**Hughes-Ghee Wetlands Permit** (continuance) – 8 Schoolhouse Road, Tax Grid No. 6467-03-054308

The applicant requests wetlands/water law permit for the placement of a storage shed within the 100' buffer of the Little Wappingers' Creek.

Mr. Hughes-Ghee was back for the conclusion of his application. Due to proximity of the Wappingers Creek, Mr. Hughes-Ghee explained that he needed Wetlands/Water Law Permit to install a shed. He made a recap of what had transpired at the previous meeting. The requested area variances were granted by the Zoning Board of Appeals dated October 24, 2019. A letter from the DEC was issued September 10, 2019. Mr. Hughes-Ghee underscored that the installation of the storage shed will correct the property maintenance violation on this property.

Chairman DePasqua opened questions and comments from the board.

Ms Ruzicka indicated that the public hearing was waived at the previous hearing. She read the comments from the CAC (letter on file) expressing no concern. CAC agreed that the proposed site is the only feasible place to put the structure.

The board agreed to review a Short Form EAF and thereafter concluded a Negative Declaration.

Ms. Ruzicka motioned that the Town of Clinton Planning Board approves the following resolution:

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
November 19, 2019**

**Be it Resolved**, that the Town of Clinton Planning Board hereby declares itself lead agency for review of the project pursuant to Sections 617.6(2) and (3) of 6 NYCRR 617, in the matter of Hughes-Ghee Wetlands Permit Application for the purpose of placement of a 8' x 14' Storage Shed located at 8 Schoolhouse Road. which is in the H Zoning District in the Town of Clinton, Tax Grid #132400-6467-03-054308-0000 for will not have a significant impact on the environment; and;

**BE IT FURTHER RESOLVED** the Town of Clinton Planning Board hereby issues a Negative Declaration pursuant to the requirements of the State Environmental Quality Review Act 6 NYCRR 617.6 (g) and in accordance with Article 8 of the Environmental Conservation Law.

Seconded by Mr. Carroll.

**Discussion.** None

All Aye. Motion carried, 6-0.

The board passed another resolution.

Ms. Ruzicka motioned the following:

**BE IT RESOLVED** that the Town of Clinton Planning Board grants approval of a Permit pursuant to Section 250-78 of the Zoning Law to Terrence Hughes-Ghee for the placement of a 8' x 14' Storage Shed that is within 100' of the Wappingers Creek, property located at 8 Schoolhouse Road which is in the H Zoning District in the Town of Clinton, **Tax Grid #132400-6467-03-054308-0000.**

**WHEREAS:**

1. Section 250-78 of the Town of Clinton Zoning Law prohibits construction within 100 feet of a Controlled Area unless a Permit is issued by the Planning Board.
2. The Town of Clinton Planning Board declared itself Lead Agency on 10-15-19 for this unlisted, uncoordinated action. A SEQRA review was conducted and resulted in a negative declaration of significance in accordance with the New York State Environmental Quality Review Act on 11-19-19.
3. The Planning Board has waived a public hearing on this matter.
4. Mr. Hughes received a letter from the DEC dated 9-10-19 allowing this project.
5. The CAC has issued a letter on 11-14-19 stating that given the constraints of this small lot #6467-03-054308, we appreciate the effort put forward for correcting the

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
November 19, 2019**

property violation. The proposed placement of the shed as far as possible from the Little Wappinger Creek without removing any trees seems a good solution.

6. There are no known violations per the ZEO.
7. All appropriate fees have been paid.
8. Necessary setback and lot coverage variances were approved by the ZBA on 10-24-2019 for the placement of new shed in this nonconforming lot.
9. Prior to construction, the applicant will be required to obtain any necessary permits from the NY DEC and to present evidence of same to the Building Inspector.

***NOW, THEREFORE, BE IT RESOLVED***, the Town of Clinton Planning Board grants approval of the Controlled Area permit for the storage shed pursuant to Section 250-78.

Seconded by Mr. Auspitz,

**Discussion.** None.

All Aye, Motion carried, 6-0.

**Forschlers Lot Line Adjustment** – 85 and 95 Maple Lane, Tax Grid Nos. 6468-00-678862 & 670872

The property owners wish to move the lot lines between the two parcels that they own.

The Forschlers were back for their lot line application. The subject parcels are both nonconforming lots in the AR5 Zoning District. (Lot A – 4.37 acres and Lot B – 0.39 acres.) The proposed action will result to Lot A - .98 acres and Lot B – 3.78 acres. Note that Lot A is where the residential house is while Lot B is a vacant lot. The required area variances were granted by the Zoning Board of Appeals dated 9-26-19.

Mr. Thomas commented that he doesn't have a problem with this application now that the variances were granted. He discussed the zoning requirement about the final plat and Mylar to be filed to the Dutchess County. The board can grant an approval subject to the requirement of a survey/Mylar.

The board agreed to pass a resolution, to wit:

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
November 19, 2019**

Mr. Thomas motioned the following resolution:

**Whereas**, the Town of Clinton Planning Board has received an Application for Lot Line Adjustment from Stephen and Beth Forschler for the purpose of combining a  $\pm.39$  acre parcel located at 95 Maple Lane (Lot B) with a  $\pm.59$  portion of a  $\pm 4.37$  acre parcel located at 85 Maple Lane (Lot A) creating a  $\pm.98$  acre house lot located at 85 Maple Lane (New Lot A) and creating a second  $\pm 3.78$  acre vacant lot located at 95 Maple Lane (New Lot B), as shown on an undated Lot Line Adjustment sketch plan prepared by Beth M. Forschler (the "Sketch Plan"); and

**Whereas**, Lot A is identified as tax parcel number 132400-6468-00-670872 and Lot B as tax parcel number 132400-6468-00-678862 and both are located in the AR5 Zoning District; and

**Whereas**, the parcels are not located in or within 500 feet of an Agricultural District containing working farms and an Agricultural Data Statement is not required; and

**Whereas**, the applicants have not been granted a special permit, site plan approval, variance or other permit that would be void as a result of this action; and

**Whereas**, the Planning Board has determined that a Lot Line Adjustment is a Type II action under SEQRA and no further SEQRA review is required; and

**Whereas**, the Planning Board has considered and granted the waivers requested by the applicants from the requirements set forth in Section 206-54(D) relating to the submission of certified plats showing the before and proposed lot lines, although the applicants will be required to submit a certified survey showing the final lot line configurations prior to final approval by the Chair; and

**Whereas**, area variances are required since both lots to be created are of substandard lot width and substandard lot size, and the required variances were granted by the Zoning Board of Appeals (ZBA) at its meeting on September 26, 2019; and

**Whereas**, after review of the application and the Sketch Plan, the Planning Board has determined the proposed action is in compliance with the requirements of the Town Zoning Law and the Town Master Plan, given that the necessary area variances were granted by the ZBA; and

**Whereas**, there are no known zoning violations on the parcels.

**Therefore Be It Resolved**, that the Planning Board hereby grants the Application for Lot Line Adjustment, provided the following **conditions** are met:

1. Payment of all applicable fees.

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
November 19, 2019**

2. Submission of a final Lot Line Adjustment plat, including a Mylar, certified by a surveyor or engineer licensed in the State of New York, that meets the requirements set forth in Section 206-54 of the Subdivision Regulations.

Seconded by Mr. Carroll.

**Discussion.** None.

All Aye, Motion carried 6-0.

**Wiedman Wetlands/Water Law Permit** – 176 Schoolhouse Road, Tax Grid No. 6467-00-058730.

Applicant requests wetlands/water law permit to Sec. 250-78 to allow construction of a 6,000 foot deer fence within a controlled area.

Jean Marc Flack from Hortulus Animae appeared on behalf of the property owners. He explained that they want to install fencing in the 32 acres portion of the property to prevent deer browsing. Total acreage of this property is 143.29. Mr. Flack indicated that they are proposing no mechanical equipment that would disturb ground or remove trees. The fence posts would be installed manually. Mr. Flack added that they are currently working with the DEC as there is a small area of the project that is within the 100-foot of the wetland buffer and crosses the intermittent stream.

Chairman DePasqua asked for questions and comments from the board.

Mr. Dolan asked about the height of the proposed fence. Mr. Flack responded that the height of the proposed fence is 8 feet.

The board discussed and exchanged comments about the application. The town doesn't have an ordinance about fencing except when the fence is intercepting the traffic visibility. However, since the proposed action is within the controlled area, the town permit is required.

Mr. Thomas commented that due to the pond and proximity to the stream, he feels that this application should be referred to the CAC for comments. He also suggested that the Town Engineer should take a look at this application given the nature of the proposed site.

Chairman DePasqua echoed Mr. Thomas' comments. He would feel more comfortable if the Town Engineer review the application.

The board declared lead agency.

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
November 19, 2019**

Mr. Thomas motioned that the Town of Clinton Planning Board approves the following resolution:

**Whereas**, the Town of Clinton Planning Board has received an application for a permit pursuant to Section 250-78 of the Zoning Law from Jean Mark Flack on behalf of **Mark Wiedman and Dana Kirchman** allowing the construction of a 6000 foot deer fence within a wetland, watercourse and/or Controlled Area on a parcel located at 176 Schoolhouse Road in the Town of Clinton; and

**Whereas**, the subject property is identified as tax parcel number 132400-6467-00-058730 and is located in the AR-5 Zoning District; and

**Whereas**, a Short Form EAF, Part 1, has been received; and

**Whereas**, all applicable fees have been paid; and

**Whereas**, the Planning Board has determined the proposed project is an Unlisted Action and that an uncoordinated review of the action will be undertaken.

**Now, Therefore Be It Resolved**, the Planning Board determines that the application is sufficient for purposes of commencing the selection of a Lead Agency pursuant to 6NYCRR 617; and

**Be It Further Resolved**, that the Planning Board hereby declares its intent to assume the role of Lead Agency for this unlisted, uncoordinated action pursuant to Article 8 of the Environmental Conservation Law and Sections 617.6 (2) and (3) of 6

NYCRR Part 617 and directs that a copy of the Short Form EAF Part 1, the application and related documents be sent to the following **interested agencies**: NYS Department of Environmental Conservation; Town of Clinton Conservation Advisory Council and West Clinton Fire District; and

**Be It Further Resolved**, that an escrow in the amount of \$ 500.00 will be established in connection with this application.

Seconded by Mr. Auspitz.

**Discussion.** None.

All Aye, Motion carried, 6-0.

The board agreed to establish an escrow of \$500.00.

No other action taken.

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
November 19, 2019**

**Murphy 2 Lot Subdivision (Sketch Plan Approval)** – property owned by Brian and Kevin Murphy, located at 83 Willow Lane, **Tax Grid No. 6567-00-129884.**

Applicant wishes to subdivide a ±61.80 acre parcel into two lots.  
Lot 1 is ±6.41 acres and Lot 2 is ±55.39 acres.

Jason Tommell from The Chazen Companies appeared on behalf of the property owners. He explained that they are proposing a two-lot subdivision. The Murphys own a 61.8 acre parcel in the AR5 Zoning District. The proposed subdivision is described as Lot 1 – 6.41 acre parcel with existing residence and Lot 2 is a 55.36 acre rear parcel. In addition, Lot 2 is to access through Lot 1. There is a conservation easement held by the Dutchess Land Conservancy encumbering several portion of the property.

Mr. Tommell pointed out to the map the proposed lay out of the subdivision. He explained that due to the proposed lay out, this application will require area variance. Mr. Tommell explained why they are proposing access from Lot 1. He described the steep slopes to the west side and the conservation easement on the property. Putting a driveway on Lot 2 (flag lot) would be strenuous due to the topography and grade of the land. They have been talking to the Dutchess Land Conservancy and accordingly, a driveway is permitted under the terms of the DLC.

Mr. Tommell indicated where the proposed building envelope is on Lot 2. The Murphys want to locate the building envelope by the pond outside the controlled area and outside the conservation easement.

Sec. 206-16 of the Subdivision Regulations states:

**Access from public roads** – The subdividing of land shall be such as to provide each lot with satisfactory access for routine purposes and emergency vehicle access from public roadways. Each lot is required to have not less than 40 feet of frontage on and access to a public street or highway and shall in accordance with Article IV of Chapter 250 of the Zoning.

Mr. Auspitz asked the applicant, “So you do agree that the proposed layout will require a variance?” Mr. Tommell responded, “Yes”. He noted that this is the preferred layout.

Mr. Thomas disclosed that his property is abutting the Murphys to the west side. He is very familiar with the property and its history. This application was before the Planning Board 12 years ago with a different configuration. He also indicated the concerns of another neighbor regarding the previous layout. After gearing up with lawyers, the DLC commended the property owners from putting a driveway to the proposed location. Mr. Thomas opined that there are two viable options. The driveway location that was mapped is one of the most viable options as it uses an existing farm road. The other option is to the right of the house. He agreed with the Zoning Administrator’s determination about

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
November 19, 2019**

the variance required to allow access through an easement of Lot 1. Mr. Thomas indicated the Town Attorney's opinion from 2007 that this is an alternative access during the same issue with a different subdivision layout.

Mr. Thomas stated that the applicant can also redraw the lot lines so that the farm road entrance is within the new lot. They can also run the flagpole to the right of the house to eliminate the variance.

Mr. Auspitz commented that if the applicant is okay with going for a variance then they should proceed with that procedure.

Chairman DePasqua asked what is exactly the variance required per the ZEO.

Mr. Auspitz stated that the accessway must be contained entirely within the lot except where an easement owned by a public utility exists.

**Sec. 250-25 (B-1) Rear Lots** states ...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. Tommell indicated the wetlands and the easement on the property. He asked the board if the proposed layout works for the board and a sketch plan approval can be granted at this meeting.

The board had a lengthy discussion whether to issue a sketch plan approval. Chairman DePasqua opined that the Town Engineer should get involved with this review. The Highway Superintendent should also review the proposed driveway to ensure that the proposed layout is feasible.

The board exchanged opinions on how to proceed. Variance or sketch plan approval? Mr. Auspitz stated that it seems that the best way to proceed is to first get the variance for the driveway.

Chairman DePasqua commented that the board needs the information about the accessway. He feels that this issue needs to be addressed before moving forward. The board agreed.

Escrow is set for \$1,000.00.

No action taken.

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
November 19, 2019**

**Cornerstone of Rhinebeck (Discussion)** – 73-93 Serenity Hill Road, SBL No. 6469-00-531763.

The property owner wishes to expand the number of bed count from 100 to 138 beds.

Warren Replansky, legal counsel, lawyer, Don Petruncola from Lis McCormack Architects, and Mike Purnell Director of Cornerstone all appeared for the discussion.

Mr. Petruncola explained that the property is off Bulls Head Road in the C Zone District. The primary building is a three-story residence hall care type facility composes of 13,372 square feet. They are proposing to demolish an existing one-story indoor pool addition to the main three-story building. This one story structure is an indoor pool that is currently used as storage. They are proposing to replace this area with a two story above grade and one story partially below grade structure with no change in the footprint of the building. The current footprint of the building is 13,372 square feet and will not be changed or increased with the proposed action.

Mr. Petruncola indicated their proposal to increase the number of bed count by 38 beds by utilizing the proposed space. The current bed count is 100. He stated that Cornerstone is a legal and nonconforming use in the district. The code allows up to 50% increase and underscored that the proposed increase is less than 50%.

Mr. Petruncola stated that the proposed action will not have any change in the setback due to the offset in setback. The currently one-story structure proposed to be removed is 22.4 feet over the northerly setback. The new two-story structure is proposed in the exact location of the existing 27.6 feet offset from the property line. They are simply removing the poolhouse that is currently used for storage and replace it with an addition. He underscored that this will be same scale and same type of residency.

Mr. Petruncola stated that they are also proposing modifications to the main entrance to provide ADA accessibility by adding ramp along the easterly side up to a landing on the north side of the main entrance. An ADA lift is also proposed interior to provide ADA accessibility within the existing structure.

Mr. Thomas disclosed that Mr. Replansky was his legal counsel when he purchased his house. He expressed his comments. The code allows extension of nonconforming building per Sec. 250-84. This is a question whether addition of number of beds mean expansion of use or expansion of building. If increasing the number of beds means expansion of nonconforming use then the proposed action is not allowed. Mr. Thomas opined that there should be a legal opinion or ZEO's opinion for this matter, or even both.

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
November 19, 2019**

If it is determined that the proposed action is an expansion of use then this will be a use variance.

**Sec. 250-84 Alterations permitted to nonconforming buildings.** – A building which is nonconforming under the previous zoning ordinance and nonconforming under this chapter shall be permitted to expand to an amount not exceeding 50% of the aggregate building area as it existed on the effective date of the 1974 Zoning Ordinance.

Mr. Replansky remarked that the Planning Board doesn't have the power to make a determination or decision about the proposed action.

Mr. Thomas noted that there is no application before the board. This is just for discussion. They need to seek a determination from the ZEO about the proposed action.

Mr. Replansky cited a case law that an expansion of volume of pre-existing and nonconforming building is not considered an expansion of use. This is permissible by law. He indicated that he is not opposed to the board seeking legal opinion. He asked the board about procedural process.

Chairman DePasqua remarked that this property has quite a history all the way back from the original property owners. He underscored the neighboring properties who are strongly opposed to the proposal. He also indicated the determination made by the previous Zoning Enforcement Officer.

Chairman DePasqua expressed his comments. It is very concerning that the original facility, as he believes has 65 beds is now 100-bed facility. This is an expansion already! He suggested checking all the records back.

Mr. Replansky stated that he looked back at the records and assured the board that he found a record acknowledging that this is a legal nonconforming use. He noted that he cannot speak about the prior history that preceded his client's ownership. The use of the building has been acknowledged and used for many, many years.

Mr. Auspitz cited Sec. 250-81-A-C in relation to the case law that Mr. Replansky had earlier cited. Mr. Replansky responded that he is not prepared to argue about it but the zoning law is ambiguous.

Mr. Carroll asked Mr. Replansky about the case law that he was referring to. Is this law in the last 15 years? Mr. Replansky replied that there are cases and litigation about an expansion of nonconforming use.

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
November 19, 2019**

After a very lengthy discussion, the board agreed that an escrow should be established to get a legal opinion from the town attorney.

Mr. Thomas motioned to establish an escrow of \$5,000 seconded by Mr. Carroll, all Aye, Motion carried, 6-0.

No other action taken.

**BOARD DISCUSSION:**

Mr. Werner joined the board about the discussion of proposed Events Local Law and Short Term Rentals.

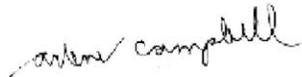
**APPROVAL OF MINUTES:**

No minutes were approved,

**ADJOURNMENT:**

Mr. Dolan motioned to adjourn the meeting at 9:28 pm, seconded by Mr. Carroll, All Aye, Motion carried, 6-0.

Respectfully Submitted,



Arlene A. Campbell, Clerk  
Planning & Zoning Board of Appeals