

**TOWN OF CLINTON
ZONING BOARD OF APPEALS
ZOOM MEETING
FINAL MINUTES
May 28, 2020**

Due to the Pandemic Coronavirus (COVID 19), Emergency State and Federal Bans on large meetings or gatherings and Pursuant to Governor Cuomo's Executive Order No. 202.1 issued on March 12, 2020 and 202.15 as extended, suspending the Open Meetings Law, the Zoning Board of Appeals held their regular meeting via Zoom videoconference with a You Tube livestream to the public.

Members of the public may also view the Board meeting on the Zoning Board of Appeals video page on the www.townofclinton.com

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham
Norma Dolan
Ronald Mustello
Virginia Morrow
Arthur Weiland

MEMBERS ABSENT

Arlene Campbell, Secretary

ALSO PRESENT

Dean Michael, Liaison Officer

Chairman Malcarne called the meeting to order at 7:37 pm.

Chairman Malcarne welcomed everyone and noted that this is the first time that the board is holding a public meeting via Zoom. He read his opening statement in accordance with the Governor's Executive Order 202.1, and 202.15 as extended, which suspends certain provisions of the Open Meetings Law to allow the ZBA to convene a meeting via videoconferencing. He added that the public has also been provided with the ability to view the meeting via the Town's YouTube Channel, a link has been provided in the meeting notice, and a transcript will be provided at a later date.

Chairman Malcarne asked the board members to introduce themselves.

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

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INTERPRETATION:

None

VARIANCE APPLICATIONS:

Boucher/Spooky Hollow Properties Variance – property owned by Rebecca Boucher/Spooky Hollow Properties LLC located at 304 Clinton Avenue, **Tax Grid No. 6366-00-837288.**

The applicant is requesting the following area variances to the Town of Clinton Zoning Regulations to permit the construction of a 280-square foot Greenhouse in the AR5 Zoning District.

Sec. 250 Attachment 2

- Front Yard setback reduction from 100 feet to 40 feet

Sec. 250-22 A-3

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

Robert Nielsen, contractor, appeared on behalf of the property owner. He indicated that this property received a demolition approval to demolish a two-story caretaker's barn/apartment due to its unsafe condition and the repairs exceeded its value. The property owner wishes to put up a greenhouse using the same footprint of the old barn. He noted that the previous structure was closed to the road which triggers the variance.

Mr. Nielsen explained why granting the variance will not change the character of the neighborhood. The proposed structure would be a pleasing view from the road keeping with the agricultural setting of the neighborhood.

Mr. Calogero indicated the two variances requested as indicated above. The applicant is proposing to construct a greenhouse in place of the demolished old barn. He read the Planning Board's recommendation which is positive (letter on file).

Mr. Calogero expressed good comments about the property. This is a very attractive property. One building is being reconstructed economically and in harmony with the general character of the property. The building that was demolished was right next to the primary building but was not physically

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attached. The applicant wishes to install the greenhouse that is smaller footprint than the original building. Per his understanding, Mr. Calogero stated that the applicant is also incorporating part of the foundation and stone walls into the project to keep as much of the historical nature of the building.

Mr. Nielsen concurred with Mr. Calogero. They will be using the existing foundation from the previous structure to rebuild a greenhouse on the same footprint although the greenhouse will be smaller. The size of the proposed greenhouse is 19'1" x 11'7". The existing foundation will be used as a garden wall and behind to the left is the proposed greenhouse area.

Chairman Malcarne asked for questions and comments from the board.

Mr. Canham stated that he drove by the property and commented that the proposed actions makes a very good sense for him. Given the topography and the use of the land, this is a sensible place to put the structure. There are various farms in the area with barns/structures closed to the road.

Mr. Weiland asked Mr. Calogero if he drove by again the property that afternoon regarding his concern about a potential building in the required setback.

Mr. Calogero responded, "Yes". He did drive by again but didn't notice any sighting of a shed or building in the setback. There are some sheds much farther from the setback. He deferred the question to the applicant.

Mr. Weiland explained why he asked Mr. Calogero whether the same shed is still out there. He dealt with this property 15 years or so ago. At that time, there was a turn-out shed north of the house and barns. This shed is about 40 feet from the road. If the shed is still out there, Mr. Weiland stated that this structure might be in violation of the front yard setback. He needs clarification as he doesn't see that structure on the map. The map that was submitted for this application is not the same map that he had seen on parcel access. This map doesn't go farther up the north.

The board discussed Mr. Weiland's concern. Mr. Weiland stated that it's also possible that the shed was already dealt with, if not, then that shed is in violation and needs to be addressed.

Chairman Malcarne asked Mr. Calogero about any sighting of any sheds in the setback. Mr. Calogero responded that there were various sheds farther out on the field but they were farther back from the setbacks.

Mr. Nielsen stated that to the best of his knowledge, he doesn't recall seeing any sheds closer to the road on the north side other than what's on the map. He

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opined that it must have been removed when the fencing was redone. He underscored that he honestly doesn't know the answer to this concern.

Mr. Calogero stated that he drove by at a reasonable speed but didn't observe any outbuildings. He suggested putting a condition that this shed be checked out.

Ms. Campbell asked, "What if that shed has been out there and predates the zoning?" Mr. Weiland responded that there were various sheds that were installed in 1975. He doesn't think that this shed predates the zoning.

Mr. Weiland asked about the language on the application form. It states that this land is undeveloped. The answer should be, "Yes". The application also stated that the farm is commercial. He asked, "Is this commercial?"

Mr. Nielsen responded that it is not a commercial operation. It is a private horse farm. There are no borders.

Mr. Weiland commented on the Planning Board's recommendation and Mr. Calogero's draft motion regarding "100 feet to 40 feet front yard setback." He suggested adding the word, "for this accessory structure" to the resolution. For future purposes, Mr. Weiland stated that some people might think that setback was changed to 40 feet.

Mr. Nielsen indicated his full understanding that the variance only applies and specific to the greenhouse.

The board agreed to open the public hearing.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Calogero, Roll call, all Aye, Motion carried, 7-0.

Nancy McGlaughlin, 330 Clinton Ave and who borders the property appeared and vocalized her full support to this application. She commented that the property owner has done tremendous great job improving the property.

Chairman Malcarne concurred with Ms. McGlaughlin. He rides his bike by the property all the time and also noticed the progress and improvements that were done by the property owner.

Hearing no more comments, the board agreed to close the public hearing.

Chairman Malcarne motioned to close the public hearing, seconded by Mr. Calogero, Roll call, all Aye, Motion carried, 7-0.

Mr. Weiland commented that this seems like a marvelous addition to the property.

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The board agreed to pass a resolution, to wit:

Mr. Calogero motioned that the Town of Clinton Zoning Board of Appeals grant the following variances, requested by **Rebecca Boucher**, to enable construction of a 280 square foot greenhouse on her property located at 304 Clinton Avenue, Salt Point, NY, **Tax Grid No. 132400-6366-00-837288-0000**:

- (i) A variance from Sec.250-Attachment 2, reducing the front yard setback (measured from the center of the road) from 100ft to 40 ft for this structure;
- (ii) A variance from Sec.250-22 permitting an accessory structure to be closer to the fronting street than the principal building.

Whereas:

1. The applicant desires to build a 280 sq. ft greenhouse within the footprint of recently demolished building.
2. That building pre-dated zoning and did not meet the current required front yard setback, and was located in front of the principal building on the property.
3. The building was in a state of disrepair and the cost of repairs would have /exceeded its value.
4. The applicant intends to make use of the existing stone walls and parts of the old foundation in the new construction.
5. There should be no undesirable change to the surrounding properties or to the neighborhood since the new building is smaller than that which it will replace. Also, there are many properties along Clinton Ave and Browning Rd which also predate zoning and are closer to the road than currently permitted and are typical of agricultural practices years ago. The building which was removed was much taller than the proposed structure and was in that spot for more than 100 years without adverse effects. Therefore, the new building should result in a marginal reduction in the properties non-conformity.
6. The project will incorporate a new garden which should add to the aesthetics of the property.

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7. This 18.19 acre parcel is in an AR5 Zoning district.
8. The property is not in a Critical environmental area, nor within the Ridgeline, Scenic and Historic Protection Overlay District.
9. The request is substantial but making use of a previously developed site makes good sense rather than locating the greenhouse elsewhere on the property and disturbing more potential farmland.
10. The alleged difficulty is self-created but the restoration of this property should be a benefit to the neighborhood and to the town.
11. There are no known violations.
12. The Planning Board has made a positive recommendation to the ZBA for approval.
13. An area variance is a Type II action under SEQRA and requires no further action.

Conditions:

1. All fees have been paid.

Seconded by Mr. Weiland.

Discussion.

Chairman Malcarne asked if the word “structure” per discussion earlier was added in the motion. Mr. Calogero responded, “Yes”.

Mr. Weiland indicated a couple of issues. Mr. Fiorese, the ZEO had mentioned in the denial letter that no accessory structure shall project closer to the fronting street than the principal dwelling or the required front yard setback whichever is less restrictive per Sec. 250.22 A-3. The application doesn't state that the applicant was asking for that variance. They are only asking for the variance to the front yard setback.

Mr. Weiland noted that the board is also granting a variance for the structure to be in front of the main structure though it really doesn't matter since the board is giving the less restrictive.

Second issue per Mr. Weiland. The application states 100 feet to 32 feet. He asked Mr. Nielsen about the discrepancy in the number. Mr. Nielsen responded that it is 40 feet to the edge of the property line.

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Mr. Canham remarked that it seems that the 32 feet is measured to the center line of the road as per the zoning regulations definition of the front yard setback.

Mr. Calogero stated that there is an additional 8 feet because it goes to the center of the road. The board reviewed the map and agreed that 40 feet is from the stonewall (property line).

Sec. 250.105 of the Town of Clinton Zoning Regulations defines Front Setback, ---The setback, as herein defined, measured to the center line of the roadway, or street.

Mr. Weiland suggested adding “40 from the center of the road.”

Mr. Calogero asked about the condition about the shed in the setback per Mr. Weiland’s concern. Chairman Malcarne stated that he passed by this property all the time and never seen a shed that looks like in the setback. Mr. Calogero didn’t notice any either especially when he was specifically looking for it. Chairman Malcarne opined that it must have been removed already if it is not on the map. He asked Mr. Weiland how he wants to handle his concern.

Mr. Weiland responded that he is okay with it. It is not on the map.

Roll call, All Aye, Motion carried 7-0.

Murphy Area Variance – property owned by Patrick Murphy regarding property located at 53 Lake Pleasant Drive, **Tax Grid No. 6366-00-925457.**

The applicant is requesting an area variance to Sec. 250 Attachment 2 (Area and Bulk Regulations) of the Town of Clinton Zoning Regulations for a rear yard setback reduction from 75 to 69 feet in order to enlarge and repair an existing wood deck.

Patrick Murphy appeared and explained that he did a kitchen renovation and had planned on expanding the deck out towards the lake. Due to the government shut down, he ended up putting a small deck on purely for safety. He put in a door with no landing out so he built a temporarily deck but later decided to keep it and no longer want a large deck. He is now proposing to extend this deck 6 feet to the length of the garage.

Mr. Canham commented that the application was quite confusing at first. The map shows the original plan indicating a reduction from 75’ to 55’ while the Planning Board recommends 69 feet. After speaking with Mr. Murphy, he realized that the proposed project is much smaller.

Mr. Canham read the PB recommendation which is positive.

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Mr. Canham questioned the discrepancy in the acreage of the property. The Planning Board's motion indicates states 1.75 acres while the parcel access and property card states 1.8 acres. He wasn't sure if it really matters.

Mr. Canham explained that the proposed action is also intruding the controlled area per Sec. 250.78. (Wetlands/Water Law Permit). Aside from the proposed deck, there is an action to bury a propane tank which is in the controlled area. Based on his understanding, this falls under the Planning Board's purview and not the ZBA. The board is only addressing the variance application.

Mr. Canham expressed his comments based on his site visit. This is a very neat property. It's in great condition. He commented that it was obvious that the deck had changed. The proposal is to just extend the existing deck which is to the length of the house. It makes sense. It also doesn't change the character of the neighborhood. The proposed deck is to provide egress to the newly renovated kitchen.

Mr. Weiland remarked that there's another deck by the lake without any paperwork. Also, based on his research of the zoning code regarding protrusion as indicated per Sec. 250-23 D-1 ...that ordinary building projections are allowed like bay windows, awnings up to 3 feet into the yards. Mr. Weiland said that the applicant is requesting for 6 feet, so technically there is another variance required.

Sec.250.23-D(1) Measurement and Use of Yards states that

“ Minimum yards may not be encroached upon for construction, except: Ordinary building projections, including, but not limited to, bay windows, fireplaces, fire escapes, chimneys, uncovered stairs, landings, balconies and cornices, canopies, eaves, or other architectural features not required for structural support, up to three feet into the required yard;”

Mr. Canham was baffled and questioned Mr. Weiland's comment about the requirement of a second variance.

Mr. Weiland explained that the protrusion of the deck is more than 3 feet into the yards. This protrusion is considered a part of the building that is also a part of the building that is intruding the setback.

Mr. Canham remarked, “But this is covered by the rear yard setback variance!”

Chairman Malcarne stated that the new deck is going to be 6 feet which is directly under the existing deck from the second floor. If there had not been a deck before or if the applicant wasn't applying for a variance, and since the applicant is now applying for a variance, Chairman Malcarne stated that granting

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of this variance will essentially make the need for any others null and void in relation to the deck.

Mr. Weiland explained that he brought this concern up for the sake of the new members of the board.

Mr. Weiland asked about the paperwork of the deck down by the lake.

Mr. Murphy responded that the deck existed when he acquired the property. Ms. Campbell noted that the deck predates the zoning. Majority of the houses in this area have decks or docks right by the lake. It's a pre-existing deck. The Town doesn't have a record.

Mr. Canham agreed. The deck by the lake is the first thing he will build if he owns a property by the lake.

Mr. Weiland raised another issue for the sake of the new board members. He said that there was nothing called "deck" in our code. Maybe because the people who wrote the code that time used to deal with "Porches." Mr. Weiland feels that this need to be addressed in the future or an interpretation can be made whether a porch is also a deck.

Mr. Canham asked whether the buried propane tank is in fact a Planning Board purview.

Ms. Campbell noted that the applicant has to go back before the Planning Board to get a Water Law Permit due to the burial of the propane tank that is within the controlled area per Sec. 250.78. The buried propane tank is not considered a structure and thereby doesn't trigger a setback variance.

Mark Graminski, applicant's surveyor who was also in attendance gave clarity about the acreage and the application. The original application that he prepared shows the original proposal about the large deck. After the discussion with the Planning Board and doing the plan for modification of the proposed deck, Mr. Graminski stated that the actual measurement should be 68 feet to the edge of the pond. He also did the calculation of the lot coverage and came up with 2440 square feet (deck, existing deck, and footprints of the house and garage) which is an increase of 3.2%. This is based on the actual survey of the lot of 1.75 acres.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Canham. Roll call, All Aye, 7-0.

Hearing none, Chairman Malcarne motioned to close the public hearing, seconded by Mr. Canham, Roll call, all Aye, Motion carried, 7-0.

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The board passed a resolution, to wit:

Mr. Canham moved that the Town of Clinton Zoning Board of Appeals grant the area variance requested by **Patrick W. Murphy, Jr.** from Town of Clinton Zoning Law District Schedule of Area and Bulk Regulations (Section 250 Attachment 2) to reduce the rear yard setback from 75 feet to 69 feet to allow enlargement of the wood deck on the rear of the principle dwelling unit on property located at 53 Lake Pleasant Drive, Staatsburg, NY 12580, **Tax Grid No. 132400-6268-00-779108-0000**. The property is a 1.75-acre lot located in an AR5 Zoning District.

Factors:

1. The applicant is requesting a reduction of the rear yard setback from 75 to 68 feet in order to extend an existing deck further along the rear wall of the house.
2. The proposed extension of the deck takes place within a Controlled Area under Section 250-78, that being the 100-foot buffer around the edge of Browns Pond. The construction of the deck within the Controlled Area is a regulated activity under Section 250-78 (B) (1), and requires a permit approved by the Planning Board. The applicant also wishes to bury a propane tank within the Controlled Area. That activity that will also require a permit approved by the Planning Board but does not affect the area variance requested here.
3. Granting the requested variance will not cause an undesirable change in the neighborhood or be a detriment to nearby properties. The proposed deck construction simply extends an existing deck further along the rear wall of the house, and will not be visible from neighboring dwellings.
4. The requested variance will not have an adverse effect on the physical and environmental conditions of the neighborhood. Construction of the deck extension requires only minimal soil disturbance to provide footings for posts. That said, we defer to the judgment of the Planning Board on whether the proposed actions, including the burial of the propane tank, meet the requirements under Section 250-78 for approval of a regulated activity within the Controlled Area of Browns Pond.

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5. The requested variance is modest, representing only an 8% reduction in the rear yard setback.
6. The benefit sought by the applicant cannot be achieved by other means. The extension of the deck allows egress from a remodeled kitchen onto the deck from a newly installed door.
7. The alleged difficulty is self-created, but this does not preclude granting the variance.
8. The property is not in an Agricultural District, nor is it within the Ridgeline, Scenic and Historic Protection Overlay District, or a Critical Environmental Area.
9. An area variance is a Type II action under SEQRA and requires no further review.

Conditions:

1. That all fees have been paid.

Seconded by Mr. Calogero,

Discussion. None.

Roll call, All Aye, Motion carried 7-0.

OTHER MATTERS:

Chairman Malcarne thanked Mr. Weiland for bringing up the building protrusion of 3 feet and the issue about the deck on the zoning regulations. Hopefully, this can be addressed in the new zoning regulations.

APPROVAL OF MINUTES:

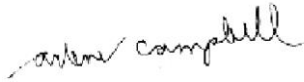
No minutes were approved.

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ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 8:55 pm, seconded by Mr. Canham, roll call, all Aye, Motion carried, 7-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary