

**TOWN OF CLINTON  
PLANNING BOARD MEETING  
FINAL MINUTES  
December 7, 2021**

**MEMBERS PRESENT**

Art DePasqua, Chairman  
Jack Auspitz  
Gerald Dolan  
Justin Carroll  
Michael Galantich  
Katarina Maxianova  
Paul Thomas

**MEMBERS ABSENT**

**ALSO PRESENT**

Secretary – Arlene Campbell

Dean Michael, Liaison Officer

Chairman DePasqua called the meeting to order at 7:31 pm.

**VARIANCE APPLICATION:**

None

**PUBLIC HEARING:**

**Smithyman NonHosted Short Term Rental** - 5 Lake Drive Tax Grid No. 6368-00-752443.

Applicants wish to utilize the guest cottage as a Non hosted STR. This is a 10.65-acre property in the C Zone District.

Mr. Carroll motioned to open the public hearing, seconded by Mr. Auspitz, all Aye, Motion carried, 7-0.

Paul Smithyman appeared and explained that they renovated the existing garage that is currently used as a yoga studio. They want to start doing short-term rentals on this property. The ZEO inspected this building and it passed the requirement of the STR regulation. The septic system was updated. They are now seeking approval to operate a Non-Hosted Short-term Rental.

Chairman DePasqua solicited questions and comments from the public.

Hearing none from the public, the board agreed to close the public hearing.

Mr. Auspitz motioned to close the public hearing, seconded by Mr. Carroll, All Aye, Motion carried, 7-0.

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**Kross 3 Lot subdivision**– property located 1403 Centre Road, Tax Grid No. 6469-00-476009.

Applicant proposes to subdivide a ±61.01-acre parcel into 3 residential lots. The property is in the C and AR3 Zone District.

Lot 1 – ±28.27 acres

Lot 2 – ±16.41 acres

Lot 3 – ±16.33 acres

Justin Carroll recused himself for this application.

Steve Alex, surveyor from Chasen Engineering, appeared on behalf of the property owners.

Mr. Auspitz motioned to open the public hearing, seconded by Mr. Thomas, all Aye, Motion carried, 6-0.

Mr. Alex explained that they are proposing a 3-lot subdivision on 1403 Centre Road. The ±61.01-acre property is intersected by Centre Road. The existing horse farm and on-site subsurface sewage disposal system (SSDS) located on the southwest lot below Center Road is proposed to be Lot 1 - ±28.27 acres; the existing house and on-site SSDS located on the southeast lot below Center Road are proposed Lot 2 – ±16.41 acres, and the existing barn and small shed located in the north lot above Center Road would become Lot 3 - ±16.33 acres. He pointed out on the map how the lot is going to be subdivided.

Mr. Alex noted that the site is split zoned with the western portion in the C Zoning District and the eastern portion in the AR 3 Zoning District.

Chairman DePasqua asked questions and comments from the public.

Josephine Azzopardi, 1360 Centre Road, spoke and said that she lives across the property. She asked if there will be new improvements. Mr. Alex responded, “No”.

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

Mr. Thomas motioned to close the public hearing, seconded by Mr. Auspitz, all Aye, Motion carried, 6-0.

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**O'Leary 2 Lot Subdivision** - 2039-2105 Salt Point Turnpike, Tax Grid No. 6466-00-861415

Applicant wishes to subdivide a ±275.04-acre parcel into 2 lots for the purpose of selling Lot 1 containing ±116.828 acres and retain Lot 2 – ±159.76 acres.

Kirk Horton, surveyor appeared for this application.

Mr. Carroll joined the board back for this application.

Mr. Auspitz motioned to open the public hearing, seconded by Mr. Carroll, all Aye, Motion carried, 7-0.

Mr. Horton explained that they want to subdivide a ±275-acre parcel into two lots. Mr. O'leary wants to sell the ±117 acre lot (Lot 1) and retain the 159.76 acres. They are not proposing any changes or new development but to separate the lots for the purpose of selling the vacant lot (lot 1). There will be no new improvements proposed.

Chairman DePasqua opened questions and comments from the public.

Dawn Rambo, 1991 Salt Point Turnpike said that part of the subdivision is bordering her property. She asked how her property is going to get affected by the subdivision.

Mr. Horton responded that the Rambos property is on the southern part of the farm. Mr. Horton asked Ms. Rambo if her property is in Clinton or Pleasant Valley. Ms. Rambo responded that her property is partly Clinton but more of Town of Pleasant Valley.

Mr. Horton stated that the Rambo's property is right by the Kirchhoffs. Her property is not affected since Mr. O'leary is proposing to sell the upper portion of the farm which is 2,000 feet away from her property. Mr. Horton pointed out on the map how the lot is going to be subdivided.

Ms. Rambo asked if Mr. O'leary will keep the farm property. Mr. Horton responded, "Yes".

Chairman DePasqua asked the applicant if this property is on the market. Mr. Horton responded, "No". Mr. O'leary is selling the other lot to his friend/colleague who is also a doctor. The property is not listed on the market for sale. He already knows who is he selling it to.

The board agreed to close the public hearing.

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Mr. Carroll motioned to close the public hearing, seconded by Mr. Auspitz, all Aye, Motion carried, 7-0.

**APPLICATIONS:**

**Smithyman NonHosted Short Term Rental - 5 Lake Drive Tax Grid No. 6368-00-752443.**

Applicants wish to utilize the guest cottage as a Nonhosted STR.

Mr. Smithyman was back for the conclusion of his application. He explained that they own a 10.65-acre parcel in the town. They have a guest cottage that received special permit approval in 2020. They now wish to utilize this guest cottage for Short term rental.

Chairman DePasqua passed the floor to Ms. Maxianova.

Ms. Maxianova noted that the application on hand for Nonhosted Short Term Rental only applies to the guest cottage. She asked the applicant if they will be using the AirBnB exclusive to do Short Term Rental. The applicant agreed.

Ms. Maxianova asked the applicant if they have any intention of renting out the main dwelling. Mr. Smithyman responded, "No, they absolutely have no intention of renting out the main house."

Ms. Maxianova asked if the home insurance covered the use of the Short-Term Rentals. Mr. Smithyman responded, "Yes".

Ms. Maxianova indicated that the guest cottage received special permit approval a couple of years ago. The applicants have fully addressed prior Town Code violation and removed the physical Tentrr structure on their property as well as the listing from the Tentrr and Airbnb websites

Mr. Smithyman concurred that the tentrr was removed.

The board agreed to pass a resolution.

Mrs. Maxianova motioned that the Town of Clinton Planning Board approves the following resolution, to wit:

**Whereas**, the Town of Clinton Planning Board has received an application for a Special Use Permit from Paul Smithyman and Garrett Long for the purpose

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of utilizing an accessory dwelling located at 5 Lake Drive in the Town of Clinton as a Non-Hosted Short-Term Rental pursuant to Section 250-69.1 of the Zoning Law; and

**Whereas**, the subject property is identified as tax parcel number 6368-00-752443 and is located in the C Zoning District; and

**Whereas**, the applicants do not propose any alteration, excavation or construction on the site in connection with the requested permit; and

**Whereas**, the applicant has submitted a septic inspection report dated within 90 days of the application stating the system was adequately functioning for the intended use at the time of inspection; and

**Whereas**, the Zoning Administrator has inspected the property and, in his letter to the applicants dated September 29, 2021, certified that it is in compliance with the permitting requirements set forth in Section 250-69.1 for the use of the parcel as a Non-Hosted Short-Term Rental within the Town of Clinton; and

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

**Whereas**, the applicant has submitted an agriculture data statement, given the proximity to a working farm; and

**Whereas**, the applicants have fully addressed prior Town Code violation and removed the physical Tentrr structure on their property as well as the listing from the Tentrr and Airbnb websites; and

**[Whereas**, the applicant will exclusively utilize Airbnb commercial rental service and rely on the commercial insurance provided by the platform; and

**Whereas**, the applicant acknowledges the STR permit strictly applies to the accessory dwelling and does not extend to the primary dwelling; and]

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

**Whereas**, the Planning Board has determined that the proposed action will not have a significant adverse impact on the environment based on the criteria set forth in 6 NYCRR 617.7(c) and qualifies as a Type II action under SEQRA (6 NYCRR 617.5(c)(18) (“reuse of a residential or commercial structure”)); and

**Whereas**, the Planning Board referred the application to the Dutchess County Department of Planning and Development pursuant to General Municipal Law, Sections 239-l and m, and has received a response they have ‘no jurisdiction’; and

**Whereas**, the Planning Board conducted a public hearing during its regular meeting on December 7, 2021; and

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**Whereas**, the Planning Board has determined that the dwelling shall be used as maximum 1 bedroom unit and number of Lodgers allowed shall be 2, and the maximum number of daytime visitors permitted on the property shall be 2; and

**Whereas**, after review of the application and all other submissions by the applicants, the Planning Board has determined that the application and Dwelling Unit are otherwise in compliance with the requirements of Section 250-69.1; and

**Whereas**, this Special Use Permit shall remain in effect for one year from the date of approval by the Planning Board and shall require annual renewal by the Planning Board, upon timely request by the property owner pursuant to Section 250-69.1D(4), no later than the anniversary of such issuance; and

**Whereas**, the applicants shall ensure that the Dwelling Unit complies with the requirements of Section 250-69.1 at all times while it is being utilized as a Non-Hosted Short-Term Rental and shall otherwise comply with applicable Town, County and New York State law and regulations governing such use; and

**Now Therefore Be It Resolved**, that the Planning Board hereby grants approval of the requested Special Use Permit, effective as of the date of this resolution.

Seconded by Mr. Dolan.

**Discussion:** Mr. Dolan asked about the parking spaces. Ms. Maxianova responded that the parking space is sufficient.

All aye, Motion carried, 7-0.

**Kross 3 Lot subdivision** (Preliminary and Final approval) – property located 1403 Centre Road, Tax Grid No. 6469-00-476009.

Applicant proposes to subdivide a ±61.01-acre parcel into 3 residential lots. The property is in the C and AR3 Zone District.

- Lot 1 – ±28.27 acres
- Lot 2 – ±16.41 acres
- Lot 3 – ±16.33 acres

Justin Carroll recused himself for this application.

Steve Alex was back for the conclusion of his application.

The board reviewed the Short Form EAF and agreed to issue Negative Declaration for SEQR purposes.

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Mr. Thomas asked the applicant if he is asking any waivers. Mr. Alex responded, "No". He added that he submitted an Ag Data Statement.

The board passed another resolution, to wit:

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

**Whereas**, the Town of Clinton Planning Board has received an Application for Subdivision from Peter Kross for the purpose of subdividing a +/-61.01 acre parcel located at 1403 Centre Road in the Town of Clinton into three lots consisting of 28.27 acres (Lot 1), 16.41 acres (Lot 2) and 16.33 acres (Lot 3), as shown on a "Final Plat of Subdivision Prepared for Peter Harris Kross" prepared by Chazen Engineering, Land Surveying, Landscape Architecture & Geology Co., D.P.C. dated April 19, 2021 as revised on October 25, 2021 (the "Map"); and

**Whereas**, the application involves tax parcel number 6469-00-476009, which parcel is located in the Conservation (C) and AR-3 Very Low Density Agricultural Residential Zoning Districts; and

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

**Whereas**, on July 22, 2021, the Zoning Board of Appeals issued four area variances relating to and curing encroachments by pre-existing, non-conforming structures into the front and side yard setbacks on the parcel; and

**Whereas**, the parcel includes a working farm in an Agricultural District and an Agricultural Data Statement has been submitted; and

**Whereas**, the Planning Board previously granted Sketch Plan approval for the application on September 21, 2021; and

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**Whereas**, the Planning Board held a public hearing on December 7, 2021 concerning the proposed subdivision and closed said public hearing on December 7, 2021; and

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

**Whereas**, the Planning Board, as Lead Agency, has determined that the Kross Subdivision would not result in any significant adverse impacts and has issued a Determination of Non-Significance pursuant to the requirements of the State Environmental Quality Review Act (ECL 8-0101 et seq.) for this Unlisted Action; and

**Whereas**, after review of the Map, the Planning Board has determined the proposed subdivision is in compliance with the requirements of the Town of Clinton Zoning Law, Subdivision and Lot Line Adjustment Regulations and Master Plan; and

**Whereas**, the applicant has addressed the questions set forth in the Town of Clinton CAC's review letter dated November 12, 2021; and

**Whereas**, pursuant to §277(4)(b) of the NY Town Law and Section 206-18 of the Town of Clinton Subdivision Regulations, the Planning Board has determined that a proper case exists for requiring that a park suitably located for playgrounds or other recreational purposes within the town be required for this development. However, pursuant to §277(4)(c) of the Town Law, the Planning Board has determined that a suitable park or parks of adequate size to meet the additional requirement cannot be properly located on the proposed site, and that the applicant shall pay a sum of money in lieu thereof relating to each new lot created, but not to include the original lot, in the total amount of \$9000 (\$4500 per new lot created), representing the amount payable as established by the Town Board:

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**Be It Further Resolved**, that the Planning Board hereby grants Preliminary and Conditional Final Subdivision Approval for the Kross subdivision, provided the following conditions are met:

1. Payment of all applicable fees including park and recreation fees.
2. Submittal of a Final Plat for signature prepared in accordance with the requirements of the Town Zoning Law and Town Subdivision and Lot Line Adjustment Regulations.

Seconded by Mr. Auspitz,

**Discussion.** None.

All Aye, Motion carried, 6-0.

**O’Leary 2 Lot Subdivision** (Preliminary and Final Plan Approval) - 2039-2105  
Salt Point Turnpike, Tax Grid No. 6466-00-861415

Applicant wishes to subdivide a ±275.04-acre parcel into 2 lots for the purpose of selling Lot 1 containing 116.828 acres and retain Lot 2 – 159.76 acres.

Mr. Carroll joined the panel back for this application.

Kirk Horton, Land Surveyor was back for the conclusion of his application.

Mr. Carroll indicated what had transpired at the previous meeting. He discussed the items that were missing on the map per the previous submission such as the property address, house site and the proposed driveway.

Mr. Horton stated that the only item missing on the map is the location of the proposed driveway per the county.

Mr. Carroll read the comments from the CAC.

The board reviewed the Short Form EAF and issued Negative Declaration.

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

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**WHEREAS**, on November 16, 2021, the Town of Clinton Planning Board declared itself lead agency pursuant to SEQRA for the uncoordinated environmental review of the O’Leary Subdivision Application; and

**WHEREAS**, the Dutchess County Department of Behavioral and Community Health reviewed the Application and supporting documents and stated that it does not need to be involved in subdivisions such as this one where the acreage is over 5 acres, unless the Town has specific concerns and requests Department review or comment; and

**WHEREAS**, the Town of Clinton Conservation Advisory Council reviewed the Application and supporting documents and anticipates no adverse impact on natural resources from the proposed subdivision, particularly since there is an existing conservation easement on a resource-rich portion of the site; and

**WHEREAS**, no other involved or interested agency provided feedback regarding the O’Leary Subdivision; and

**WHEREAS**, a public hearing on the Application was held on December 7, 2021;

**NOW THEREFORE, BE IT RESOLVED**, that, based upon the information, responses and analysis from the short environmental assessment form, involved and interested agencies, and the public hearing, the Town of Clinton Planning Board has determined that the proposed action does not result in any significant adverse environmental impacts; and

**BE IT FURTHER RESOLVED**, the Town of Clinton Planning Board hereby issues a Negative Declaration pursuant to the requirements of SEQRA and in accordance with Article 8 of the Environmental Conservation Law.

Seconded by Mr. Thomas.

**Discussion.** None.

All Aye. Motion carried, 7-0.

After all the deliberations were made, the board passed another resolution, to wit:

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

**WHEREAS**, the Town of Clinton Planning Board has received an Application for Subdivision from Patrick O’Leary for the purpose of subdividing lands on a ±275.04-acre site located at 2039-2105 Salt Point Turnpike, which is in an AR-5 Zoning District in the Town of Clinton, tax grid #132400-6466-00-

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861415-0000, as shown on the plat created by Kirk Horton, Land Surveyor, 9 Broadway, Amenia, New York (the “Map”); and

**WHEREAS**, the Town of Clinton Planning Board previously granted conditional sketch plan approval for the Application on November 16, 2021; and

**WHEREAS**, the Application involves a tax parcel located in the AR-5 Very Low Density Agricultural Residential District, and will create a single new lot that the Applicant is not proposing to build on the at this time; and

**WHEREAS**, a Short Form EAF Part 1 was submitted prior to November 16, 2021;

**WHEREAS**, the Planning Board determined that the proposed project is an Unlisted Action and that an uncoordinated review of the action would be undertaken; and

**WHEREAS**, on November 16, 2021, the Planning Board declared its intent to be Lead Agency pursuant to Sections 617.6(2) and (3) of 6 NYCRR 617; and

**WHEREAS**, the Planning Board, as Lead Agency, has determined that the O’Leary Subdivision would not result in any large or important impact(s) and has issued a “Negative Declaration” on December 7, 2021 pursuant to the requirements of the State Environmental Quality Review Act (ECL 8-0101 et seq.); and

**WHEREAS**, the parcel is located within 500 feet of a working farm in an Agricultural District and Applicant has completed an Agricultural Data Statement; and

**WHEREAS**, after review of the Map, the Planning Board has determined the proposed subdivision is in compliance with the requirements of the Town Zoning Law, the Subdivision Regulations and the Town Master Plan as set forth herein; and

**WHEREAS**, the Dutchess County Department of Behavioral and Community Health reviewed the Application and supporting documents and stated that it does not need to be involved with the proposed subdivision, the Conservation Advisory Council anticipates no adverse impact from the proposed subdivision, and the Dutchess County Department of Public Works has reviewed and informally approved of the proposed driveway location; and

**WHEREAS**, the Applicant has either satisfied the Submission Requirements for Sketch Plans and Preliminary Plats set forth in Town of Clinton

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Subdivision and Lot Line Adjustment Regulations, or alternatively has been granted waivers with respect to the items requested in the Application; and

**WHEREAS**, the Applicant has either satisfied each of the Submission Requirements for Final Plats set forth in Town of Clinton Subdivision and Lot Line Adjustment Regulations, or the Planning Board has determined that such requirement is not applicable to this subdivision where no improvements are currently planned on the new lot; and

**WHEREAS**, pursuant to §277(4)(b) of the NY Town Law and Section 206-18 of the Town of Clinton Subdivision Regulations, the Planning Board has determined that a proper case exists for requiring that a park suitably located for playgrounds or other recreational purposes within the town be required for this subdivision. However, pursuant to §277(4)(c) of the Town Law, the Planning Board has determined that a suitable park or parks of adequate size to meet the additional requirement cannot be properly located on the proposed site, and that the Applicant shall pay a sum of money in lieu thereof relating to each new lot created, but not to include the original lot, in the total amount of \$4,500.00, representing the amount payable as established by the Town Board;

**NOW THEREFORE BE IT RESOLVED**, that the Town of Clinton Planning Board hereby grants preliminary subdivision approval for the O'Leary Subdivision as set forth on the Map and related submissions; and

**BE IT FURTHER RESOLVED**, that the Planning Board grants conditional final subdivision Approval for the O'Leary Subdivision after the Applicant has complied with the following conditions:

1. Pay all applicable fees, and
2. Provide a letter from the Dutchess Land Conservancy stating that they are aware of and have no objection to the proposed subdivision.

Seconded by Mr. Auspitz,

**Discussion.** None.

All Aye. Motion carried, 7-0.

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Chairman DePasqua and Ms. Maxianova both recused themselves and left the meeting room for the next item on the agenda.

**Cornerstone of Rhinebeck Special Use Permit** – 73-93 Serenity Hill Road, Tax Grid No. 6469-00-531763.

Applicant proposes Site Plan and Special Permit for the use of an “Alternate Care Facility” that was established prior to the adoption of the Town code to remove the violation on the property (Increase in the number of beds without proper approvals from the Town). The property is in the C Zoning District.

Paul Thomas, Deputy Chair took over the chair’s seat.

Warren Replansky, legal counsel, Jeff Oneifather, Cornerstone’s Chief Financial Officer and Michael Purnell, Executive VP of Cornerstone all appeared on behalf of Cornerstone of Rhinebeck. Mr. Replansky stated that Michael McCormack cannot make this meeting but will join the public hearing meeting.

Shane Egan, town attorney and his colleague, Jesse Gleason from Cappillino, Rothchild and Egan LLP were also present.

Numerous people from the neighboring properties appeared for this application though it is not a public hearing.

Mr. Replansky began by vocalizing his appreciation for the recusal of the two board members due to conflict of interest. He explained that they are before the board for an application for a retroactive approval of the increase in the number of residents on this facility pursuant to Sec, 250-31 B5.

Mr. Thomas noted that this item is before the board for preliminary discussion. The board will hear Mr. Replansky’s proposal. No public comments will be entertained at this meeting and the public will be given the opportunity to express their comments during the public hearing at an appropriate time.

Mr. Replansky stated that Cornerstone of Rhinebeck, formerly known as Rhinebeck Lodge for Successful Living, an alcohol and drug rehabilitation treatment facility located on 35 acres of land is a fully licensed facility for chemical dependence and treatment. He explained the application dated November 23, 2021. He indicated all the approvals that this facility had received as attached to the submission dated November 23, 2021.

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Mr. Replansky stated that the facility is fully licensed by the NY Department of State and received (1) Chemical Dependence Operating Certificate from the NYS

Office of Alcoholism and Substance Abuse Services (OASAS) now known as the NYS Office of Addictions and Supports to provide support to individuals who have received or are receiving treatment for chemical dependency.

Mr. Replansky added that other approval agencies are (2) an Opiate Treatment Program Certification from the US Department of Health and Human Services (3) Chemical Dependence Operating Certificate from the Office of Alcoholism and Substance Abuse Services of the State of NY (4) NYS Department of Health Control Substance License (5) Chemical Dependence Operating Certificate from the NYS Office of Alcoholism and Substance Abuse Services (6) certification as an education and training provider by the NYS Office of Alcoholism and Substance Abuse Services (7) a limited-service laboratory registration with the NYS Department of Health and (8) accreditation from Commission on Accreditation of Rehabilitation Facilities (CARF).

Mr. Replansky indicated the last time (November 19, 2021) he appeared before the Planning Board with Don Petruncola, an architect from Liscum McCormack Vanvoorhis LLP, for a discussion of a possibility of an application for a proposal to demolish an existing one-story indoor pool addition to a three-story existing building on the property currently used as storage space. The proposal was to replace this structure with a two-story above grade and one-story partially below grade structure with no change to the footprint of the building. At that time, they discussed the possibility of an application to expand the number of patients to 135. He noted that they did not move forward with that application. There are some questions about the status of this facility which existed well before 1992. He believed that this facility existed since 1977. This is the same facility, same treatment, and same licensing as it was before.

Mr. Replansky stated that they decided not to move forward with that application. The question that they had was whether they can expand the facility that is nonconforming use pursuant to the town's zoning code. The appropriate person who can make that determination is the ZEO. Mr. Replansky stated that he presented an argument to the previous ZEO, Louis Fiorese that the facility is a nonconforming use and the proposed expansion is permitted under the 50% rule per Sec. 250-84 (B) of the Town of Clinton Zoning Code. Mr. Replansky stated that Mr. Fiorese retired and it took Cornerstone some time to gather the application.

Mr. Replansky continued that ZEO Fenton finally made his determination when he sent them a denial letter dated March 6, 2021 that based upon the history of the facility, the facility is a pre-existing and nonconforming use. Mr. Replansky

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stated that the ZEO made a determination that Cornerstone is an alternate facility under Sec. 250-31 of the zoning regulations require that any increase in resident population or expansion of facility requires an application to the Planning Board for consideration of a new special use permit and site plan approval.

They are now before the board to correct this violation per the ZEO's letter dated August 31, 2021. He underscored that they are seeking retroactive approval for the increase in the number of beds from 66 to 99.

Mr. Replansky said that under NYS Rules and Regulations pursuant to Article 32 of Mental Hygiene Law, the OASAS has the exclusive jurisdiction to approve any increase in bed capacity for chemical dependency services such as Cornerstone. Per his understanding, Rhinebeck Lodge/Cornerstone has complied with that. Cornerstone was required and obtained all approvals from OASAS from 1988 to the present for the increase in bed capacity. This is a comprehensive approval process that they've gone through. He reiterated that the increase in bed capacity to 99 receives proper approval from the OASAS per Mental Hygiene Law.

Mr. Replansky stated that this state drug treatment process pre-empts the approval of bed capacity increase and supersedes the town zoning regulations. He added that the 99 beds increase was made 15 years ago and no increase has been made ever since that date. The bed population is exactly the same as 15 years ago.

Mr. Replansky noted that they are coming in good faith to correct this violation, He vocalized his request to have a public hearing as soon as possible and to get retroactive approval.

Mr. Replansky stated that he believed that there is one neighbor who is also a member of the board who has a problem with this facility. He also indicated his understanding of the issues from the neighbor regarding lighting, noise, basketball court, and maybe some more to come up during the public hearing. They want to take this opportunity to make things right, to address these problems such as screening that can buffer the property from the neighbors and reduce some of the noise and other issues. They are willing to work with the neighbors about other reasonable issues that can be met to see if these issues can be mitigated or eliminated completely.

Mr. Replansky commented that this is an unusual application since the facility already exists. They are seeking retroactive pre-approval and submitted the documents to the best they can. He felt that the board pretty has much everything needed and he felt that they complied with the requirements. They provided site plan, short form EAF, statement required in conjunction with the

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alternate facility, etc. He asked the board for any missing paperwork or anything else they need to submit.

Mr. Replansky stated that the intent to make a presentation and have witnesses at the public hearing. He reiterated his plea to get a public hearing scheduled to move forward with this application.

Mr. Thomas thanked Mr. Replansky and summarized the applicant's proposal. He noted that the board will want to have a discussion with the town attorney. The board is being asked to retroactively approve what was there in 1998. They're being asked about what's already there.

Mr. Replansky corrected Mr. Thomas and said that the facility gradually increased. The last increase was made 15 years ago.

Mr. Thomas said that the board is being asked of what's already there. Nothing new is contemplated on the site. They are not being asked to increase the bed capacity. Per the ZEO, this will need site plan and special permit approval. He asked the applicant if there was ever been any site plan approvals or any special permits issued for this facility.

Mr. Replansky responded that this facility predates the zoning. There was none. He indicated the letter from the previous ZEO Cookingham dated May 1998 indicating that Rhinebeck Lodge (predecessor of Cornerstone) is a valid nonconforming use as an Alternate Facility.

Mr. Thomas stated that there's never been any official site plan or special permit approval. They are looking at this as new application. They are not amending anything. The new site plan can be used for future use. They have to view this as a new site plan and special permit application even though everything is already there and nothing new is proposed to be built. They're not going to need all the detailed engineering information but they need to decide what they need to go forward with this. He asked the applicant if there is any future expansion contemplated. Mr. Replansky responded, "No, not at this time. They abandoned the original proposal for various internal reasons. It's not going to happen."

Mr. Replansky stated that this application will be good for the town, Cornerstone and the neighboring properties if they have the site plan approval. This is an unusual situation. Theoretically, they really don't need to seek town approval since the facility already exists and predates the zoning. The issue is about the increase in the number of patients that requires an amendment to the existing site plan.

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Mr. Replansky stated that this is how he will view this if he is the one guiding the town. He noted that he is not inexperienced with municipal laws. The buildings are already there and there may be certain things that they can do to make things better.

Mr. Auspitz stated that the original nonconforming use has 66 beds and the proposal is to retroactively increase this number to 99. He asked, "Does that increase falls under the 50% rule per the section of the law (Sec. 250-84)?"

Mr. Replansky replied, "No, they've tried that and that was turned down by the building inspector." Mr. Replansky stated that the increase is under section 250.31 (Alternate Care Facility). This section permits the increase. Theoretically, every time there is an increase, under OASAS, they need to come before the Planning Board. He noted that the increase is not under the 50% increase section of the code.

Mr. Auspitz stated that there's a lot of history to digest. There was a discussion in the past about the 50% increase. He asked, "Was it always 66 that increased to 99?"

Mr. Thomas doesn't believe that there was approval for the 99 beds.

Mr. Replansky said that Rhinebeck Lodge' 66 beds were approved as a nonconforming use per the previous ZEO Cookingham. It changed to 99. He stated that over the years, there were building permits filed to the Building Inspector and Zoning Enforcement Officer but there were no issues raised at that time. He noted that these building permits were granted without the town raising any issues.

Mr. Thomas questioned why the town didn't have an issue back in time. Mr. Replansky replied, that he doesn't know, he wasn't there at that time.

Mr. Replansky underscored that it is the Zoning Enforcement Officer who has the authority to make a determination or legal decision, it's not the town board nor the ZBA.

Mr. Auspitz remarked, "But the letter from ZEO Cookingham back in 1998 stated that any expansion over 66 in the number of beds requires town approval, right?"

Mr. Thomas said, "So, it was discarded, right?"

Mr. Replansky agreed with Mr. Auspitz' statement and said, "Yes, it says on the letter. The letter was sent to Rhinebeck Lodge. He doesn't' have the answer to that."

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Mr. Replansky opined that if that issue was brought out to their attention, they would have complied. He reiterated that these issues were never raised over the years. This is not unusual. This happens when you sell a house and it turns out that there are open permits or no permits when owners built something and there are some zoning issues, then you grant "as-built". Mr. Replansky commented that this happens. It's similar to selling a house. Things popped up without anybody knowing what happened.

Mr. Thomas asked, "When the expansion was made from 66 beds to 99, was that done by adding a new building, or was it a retrofit to an existing building?"

Mr. Replansky responded that there were no buildings added. They were the same buildings.

Mr. Thomas asked, "So, it was interior renovation then?"

Mr. Replansky replied, "It's all accommodated within the existing space." So, instead of one person in the room, there were two persons in a room."

Mr. Auspitz stated that there was an expansion in 1983 per parcel access. Mr. Replansky said that he doesn't know what happened in 1983. He noted that they are not arguing that they should have come before the board during that time. They are trying to rectify the situation now.

Mr. Carroll asked, "Why come forward now and not five years ago or 10 years after the expansion? Is it because of the application last year to expand and the issue is hot?"

Mr. Replansky indicated the proposal in 2019 that was abandoned. They were going to remove an existing one-story indoor pool addition to a three-story existing building. The reason it took so long from that time to now is that they had to do a lot of research. He added that it also has to do with the town ZEO. The amount of time reviewing the proposal and the history, He submitted a detailed letter to the ZEO but the letter sat and no response, then ZEO Fenton came. it takes a while to make this decision. He needs to review the code and study, etc. and finally, he made his determination. That's why it took time.

Mr. Carroll asked, "So when that application was made, was it from 99 to 135? How do we even know if it was 99, The record shows 66 beds? Mr. Carroll indicated that penalties and fines are accruing right now.

Mr. Replansky said that Mr. Fenton's letter states that this violation needs to be cleared up in conjunction with his determination that this is a nonconforming use. He made a decision that they need to come before the Planning Board. They

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were ordered to do that which is what they're doing now. He underscored that they're trying to clear that violation right now.

Mr. Carroll asked if there is still an option to use Sec. 250-84 in the future. Are they still going to ask for that 50% expansion as part of the code?

Mr. Replansky responded that they have abandoned the concept of the 50% rule. He cannot speak for the future attorney for Cornerstone but that's where he stands right now. They are not going to pursue that.

Mr. Thomas noted that the 50% rule applies to the expansion of the nonconforming building and not the use. He asked, "This is an expansion of a nonconforming use, is that what you're saying?"

Mr. Replansky agreed but commented about the ambiguity of the town code. He stated that the town's 50% rule expansion is a little different from other towns. The nonconforming uses and nonconforming structures are one and the same. He wrote the zoning law in the town of Rhinebeck. That's how they treated it.

Mr. Thomas said that these are separate and distinct. You can expand a nonconforming building but not the use.

Mr. Auspitz asked the applicant, "So, you are not coming before the board for the use or the building, you're before the board for Sec. 250.31?"

Mr. Replansky agreed. He added that they can expand under Sec. 250.31 (Alternate Facility).

Mr. Thomas underscored that the issue here is Sec. 250.31 (Alternate Facility) is not permitted in the C Zone District. It's prohibited use, so, this is a nonconforming use.

Mr. Thomas stated that the issue is if you increase the number of beds then it's a question of – "Is this an expansion of a nonconforming use that is not allowed?" There is a 50%- rule that is allowed but that is for the nonconforming buildings. Is this an expansion of use?"

Mr. Replansky commented about the zoning law when it was crafted back in time. He argued that it would have made sense to take a look at the existing uses. They prefer to make them permitted subject to the regulations. That's how they will view this application – it's a nonconforming use subject to the Alternate Facility regulation.

Mr. Thomas solicited questions from the rest of the board.

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Hearing none, Mr. Thomas stated that the board will enter into an executive session with the town counsel and come back.

The town attorney stated that the board needs to make a motion for an executive session.

Mr. Replansky questioned the need for an executive session. He asked to put it on the record that he doesn't think that town is permitted to go into an executive session under these circumstances.

Mr. Egan recommended that the board should make a motion to go into an executive session and have ground to enter into an executive session.

Mr. Thomas stated that there are some threshold legal questions that the board needs to understand in a private setting and that's why the board needs to have an executive session with the town attorney.

The board agreed to enter into an executive session.

Mr. Auspitz motioned to go into an executive session in order to have a private discussion with the town attorney for the purpose of discussing privilege and confidential work attorney-client's product, seconded by Mr. Carroll, all Aye, Motion carried, 5-0.

The meeting was reconvened at 9:05 pm.

Mr. Auspitz motioned to go back in session, seconded by Mr. Gallantich, all Aye, Motion carried, 5-0.

Mr. Thomas stated that the board will proceed with the review. They need to collect more escrow. The board agreed to refer this application to the town consultants to make sure everything on the checklist is checked out. They need this site plan to be as complete and as useful as possible. It's for the benefit of everybody. The site plan on hand will serve as a baseline for any future dealings about the facility. He indicated the procedural process. He added that there will be direct communication between the town consultants and the applicant's consultants/engineer. They will need the town planner and the town engineer to review this application. He suggested having the application and submission sent directly to the town consultants. The consultant prefers to have an electronic submission, The applicant's planner and town planner could exchange views. Once the site plan is complete and signed off by the town consultant then they can come back before the board instead of having a lot of town meetings.

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Mr. Thomas indicated that the ZEO needs to go over the submission and make the usual referral to the planning board. He noted the existing violations that they have to deal with such as noise complaints, etc. The primary violation is the expansion and they need to figure out how to handle this. The board will want to know more about these complaints and how to handle them.

The board discussed the escrow. Mr. Replansky questioned and indicated his strong opposition to the town attorney's fee being charged to the applicant. He expressed his protest about the fees and underscored that they will seek to re-coop these fees at some point. It does not comply with the standard of the escrow regulations. They won't just pay for every phone call that the town attorney makes though he understands his position. He also indicated their understanding that they cannot proceed with the application without escrow compliance.

Mr. Thomas indicated the issue of charging the applicants for penalties and fines regulations. There is an ongoing violation.

Mr. Replansky remarked that in order to cure the violation, they have to make an application and that's what they're doing. He noted that the notice of violation was in fact sent to him instead of his client. There are no other notices of violations. They understand that there were complaints from the neighbors but they will address these at the public hearing. He underscored that they are not aware of any other violations of the code of provision.

Mr. Thomas stated that the violation is the expansion without proper approval. Mr. Replansky agreed but in order to cure the violation, they have to come before the Planning board.

Mr. Thomas opined that the least concern should be the escrow. There are violations that need to be rectified.

The board had a lengthy discussion about this proposal.

Mr. Replansky agreed that the town engineer's involvement with the application is a great idea.

The board agreed to establish an escrow as follows.

Mr. Auspitz motioned to establish an escrow pursuant to Sec. 250.95 B-5 in the amount of \$7,500.00 for the town consultant's review of the application in the matter of Cornerstone of Rhinebeck.

Seconded by Mr. Carroll.

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**Discussion.** Mr. Replansky asked if this amount covers the three consultants. Mr. Auspitz responded, "Yes".

Mr. Replansky said that the only thing they asked is to see all the vouchers and to challenge these bills. There should be a process in recouping these fees.

Mr. Thomas noted that whatever unused funds are left get refunded to the applicant.

All Aye, Motion carried, 5-0.

The panel discussed the procedural process. Mr. Replansky indicated his eagerness to move this along as quickly as possible. He asked if the board can set the public hearing.

Mr. Thomas responded that it was hard to say. Depending on the submission. It depends on the town engineer.

The board agreed to put the application tentatively to the January 18, 2022 meeting. It will not be a public hearing. Ms. Campbell underscored that the submission deadline is two weeks prior to the meeting date.

Mr. Replansky stated that he's been trying to reach out to the Zoning Enforcement Officer but no response. He will try to reach out again.

No action taken.

Ms. Maxianoa was back and sat with the board.

**Goldman Fowler Wetlands Permit** - 164 Mountain View Road, Tax Grid No. 6368-00-49686.

Applicants wish to install a Roof Mounted SES that requires a submersible wire in a controlled area.

Sam Milo from SunCommon Solar Inc. appeared on behalf of the property owners. He explained that they are proposing to install a roof mounted solar system on the roof of the garage and need to put an underwater cable through the pond on this property.

Mr. Milo indicated that the DEC finally issue the DEC Permit dated November 17, 2021. He noted that the Army Corps of Engineers never responded to their call. The town engineer also had signed off on this project.

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Chairman DePasqua asked for questions and comments from the board.

The board reviewed the short form EAF and issued the following resolution, to wit:

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

**Be it Resolved**, that the Town of Clinton Planning Board has determined that the Goldman Fowler Wetlands Permit pursuant to Section 250-78 to put an underwater cable through a pond on her property at 164 Mountain Road in the Town of Clinton (**#6368-00-496860**) will not have a significant impact on the environment; and;

**BE IT FURTHER RESOLVED**, that 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. Thomas,

**Discussion**. None

All aye, Motion carried, 6-0.

After all the deliberations have been made, the board passed another resolution.

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

***WHEREAS***

1. Applicant Amy Goldman Fowler seeks wetlands permit pursuant to Section 250-78 to put an underwater cable through a pond on her property at 164 Mountain Road in the Town of Clinton (#6368-00-496860)
2. Applicant seeks to install a solar power system on the roof of her garage and run a cable to the main house on the property. Applicant proposes a submerged cable through a pond between the garage and house rather than nearly a thousand feet of trenching around the pond.

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3. The proposal has been reviewed by the Planning Board's engineer and the CAC. Both stated that appropriate governmental approvals were required. As of Nov. 17, 2021 applicant has received approval and a permit from the DEC. Applicant's representative stated that the Army Corp of Engineers was notified and has not responded.
4. We determine that the proposed activity is consistent with the policy of 250-78 to protect water body functions, that the permit is at least as restrictive as would result under the Freshwater Wetlands Act, that the proposal is compatible with the public health and welfare and that the proposed activity cannot be relocated without extensive trenching or unfavorable impact on the proposed solar energy project
5. The Planning Board appointed itself lead agency for this project and at its meeting on December 7, 2021 issued a negative declaration.

***NOW THEREFORE BE IT RESOLVED THAT*** the Planning Board hereby grants a wetlands permit pursuant to 250-78 for an underground cable in connection with a solar installation on this property as set forth in the application subject to full compliance with the conditions set forth in the DEC permit effective Nov. 17, 2021 and payment of all fees.

Seconded by Mr. Carroll,

**Discussion.** None

All Aye. Motion carried, 6-0.

**APPROVAL OF MINUTES:**

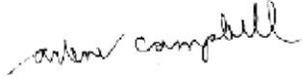
Mr. Dolan motioned to approve the minutes of November 16, 2021, seconded by Mr. Gallantich, all Aye, Motion carried, 6-0.

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**ADJOURNMENT:**

Mr. Auspitz motioned to adjourn the meeting at 9:55 pm, seconded by Mr. Carroll All, Aye, Motion carried, 6-0.

Respectfully Submitted,



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