

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
August 26, 2021**

MEMBERS PRESENT

MEMBERS ABSENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham
Norma Dolan
Ronald Mustello
Russel Tompkins
Arthur Weiland

ALSO PRESENT

Arlene Campbell, Secretary
Not in attendance

Liaison Officer not in attendance

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

Chairman Malcarne welcomed everyone and said that it's good to be back meeting in person after the COVID lock down. He thanked everyone for wearing their masks.

Chairman Malcarne asked his colleagues to introduce themselves. He also indicated that the meeting is being recorded.

Chairman Malcarne asked the board members to introduce themselves.

VARIANCE APPLICATIONS:

Hollingsworth Area Variance - property located at 21 Talleur Lane Clinton Corners NY, **Tax Grid No. 6566-02-516810.**

The applicants request an area variance to Section 250 Attachment 2 (District Schedule of Area and Bulk Regulations) of the Town of Clinton Zoning Regulations for a side yard setback reduction from 34 feet to 15 feet in order to construct a 10' x 20' pool house/shed near the existing pool. The property is in the Hamlet Zoning District.

Mr. Weiland recused himself for this application.

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Mr. Hollingsworth appeared and briefly explained their application. They wish to install a pool house/shed but due to the layout of the land, Mr. Hollingsworth indicated that one corner of the proposed pool house/shed will be too close to their neighbor.

Mr. Hollingsworth indicated that their neighbor supported their proposed project of the shed since the structure gives them privacy.

Ms. Dolan expressed good comment about the Hollingsworth property. The house is well maintained.

Ms. Dolan read the Planning Board's recommendation dated August 17, 2021 which is positive.

Ms. Dolan commented on the Planning Board's recommendation noting that Talleur Lane is not in the scenic road.

Chairman Malcarne opened discussion to the board.

Mr. Calogero stated that the applicants and the affected neighbors agreed about the proposed location. He doesn't have a problem with the proposal.

Mr. Tompkins expressed good comments about the property. It's a very well-maintained property. There's no one around when he visited the property and knocked on the door. Mr. Hollingsworth stated that his mother who was 85 years old was home but couldn't get the door.

Mr. Tompkins stated that there's no other alternative to locate the proposed shed given the location of the well and the septic. It makes perfect sense to install the shed on the proposed location.

The board agreed to open the public hearing. Chairman Malcarne motioned to open the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 6-0.

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

Chairman Malcarne motioned to close the public hearing, seconded by Mr. Tompkins, all Aye, Motion carried, 6-0.

Ms. Dolan commented about the ZEO's calculation of the side yards. It seems that he took the total width of the side yards. She asked the applicant about the total width of the house. Mr. Hollingsworth said that the width of the house is 31

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feet. Ms. Dolan stated that her guess was 40 feet and this is the number that she used to get the number for the 1/3 rule.

Mr. Tomkins agreed. It should be measured from the building line to the property line. Chairman Malcarne asked what is the distance from the shed. Ms. Dolan responded, "15 feet".

The board discussed the variance. The total width of the side yards is 102 feet. The width of the house is 40 feet. 62 feet divided 3 is 21 feet. The applicant is seeking 15 feet. She commented that it doesn't matter what the applicant is seeking but the board needs to get the number that is appropriate. She suggested using approximately 40 feet for the width of the house due to the angle of the house rather than using the total side yards. The board agreed.

Mr. Canham suggested a verbiage "allowing a structure within "x" number of feet. Ms. Dolan suggested approximately 20 feet to 15 feet of the property line. The board agreed and passed a resolution.

Ms. Dolan motioned that the Town of Clinton Zoning Board of Appeals approves the area variance to Section 250-22 Attachment 2. A variance to 15' of the property line to the left of the house as you face it is being requested. The variance is required in order to construct a pool house/shed on the property in the location that is least constrained by the other features on the property owned by **Scott and Julieann Hollingsworth** located at 21 Talleur Lane, tax grid number 132400-6566-02-516810-0000 in the "H" zone.

FACTORS:

1. The applicant wishes to construct a 12'x20' pool house & shed requiring the variance to Section 250 Attachment 2. There will be no water or electrical components to the structure.
2. The lot is not in an Ag District.
3. It is noted that an area variance is a Type II action under SEQRA and requires no further action.
4. The site contains Federal wetlands but the pool house/shed is located outside the 100' buffer.
5. An undesirable change will not be produced in the character of the neighborhood or be a detriment to nearby properties as all of these properties have narrow side yards.
6. There are no alternatives to the benefit sought by the applicant.
7. The requested variance is not substantial.
8. There will be no potential adverse effect or impact on the physical or environmental condition in the neighborhood.
9. The alleged difficulty is self-created.

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10. A strong letter of support of this action was received from the adjoining neighbors, Brandon and Kelly Marchant of 17 Talleur Lane.
11. The Town of Clinton Planning Board gave a positive recommendation.
12. There are no known outstanding zoning violations.

Condition:

- All fees have been paid

Seconded by Mr. Canham,

Discussion. Chairman Malcarne asked if Ms. Dolan stated that the variance is a type II action under SEQRA. Ms. Dolan responded, "Yes".

Mr. Canham asked if all the fees have been paid since Ms. Campbell is not around to confirm. The board agreed to include a condition that all fees should be paid.

Chairman Malcarne asked the board if they feel that the variance is substantial since the variance request is 5 feet from 20 feet. Usually the variance is substantial. Chairman Malcarne doesn't think that this variance is substantial. The board agreed that the requested variance is not substantial.

The applicant was advised to reach out to Ms. Campbell about any outstanding fees, if any.

The board agreed that the request is not substantial.

All Aye, Motion carried, 6-0.

Mr. Weiland returned to the panel for the next application.

INTERPRETATION:

Kimberly and Keith Puchar Interpretation - for an application interpreting Sections 250-28 (B) and (J) the Town of Clinton Town Code.

The appellants are seeking a reversal of the Zoning Administrator's determination letter dated May 18, 2021 regarding his interpretation of Sections 250-28 (B) and (J) of the Town of the Clinton Code for activities related to smoke, fumes and odors emanating from 92 Deer Ridge Drive, Staatsburg NY 12580 Tax Grid No. 6368-00-289180.

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§250-28-(B) Smoke or particulate matter. Any emission of smoke or particulate matter, from any source, shall comply with all local, state and federal regulations.

§250-28-(J) Odor. No person, firm or corporation, excluding farms and agricultural operations, shall permit the emission of any offensive odor at the property line of the lot from which the odor is emitted.

Mr. Weiland joined the panel back.

Kim and Keith Puchar appeared for their interpretation application. The attorneys (Town attorney and applicant's legal counsel) were not in attendance.

The Bishops and Patricia Smith Zolnick were also in attendance.

Mr. Canham asked the chairman if he can take care of a couple of details before starting the application.

Chairman Malcarne responded, "Yes, go ahead,":

Mr. Canham gave an overview of the interpretation request. This is an interpretation request regarding the Zoning Administrator's determination dated May 18, 2021 about the April 28, 2021 complaint by the applicant."

Mr. Canham noted a couple of things. The applicants had requested that he recused himself because he once worked with one of the neighbors. He doesn't think it's a conflict of interest and the town attorney agrees so he decided not to recuse himself.

Mr. Canham stated that the applicants had requested that the board adjourns the meeting because their attorney cannot be in attendance. The board is required to open the public hearing since it's been advertised. The public will be given a chance to be heard and the public hearing can be closed or keep it open and hopefully their legal counsel will be here next meeting.

Mr. Canham said that this will also then give the board some time to consider all the materials submitted depending on how much material submitted then. He suspects that the meeting will be adjourned until a month later and the board will have time to review all the submissions.

The board agreed to open the public hearing.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Weiland, all Aye, motion carried, 7-0.

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Mr. Canham asked the applicants if they want to hold off their comments until their legal counsel is present or they can start presenting it. She said that she can send the video footage to Ms. Campbell and include all the board members. She asked, "Can I get everybody's email address?"

Mr. Canham responded that he prefers that Ms. Puchar send them to Ms. Campbell.

Chairman Malcarne responded, "Please send them to Ms. Campbell". The board agreed.

Mr. Calogero stated that Ms. Campbell forwards all the documents and submission to the board.

Ms. Dolan commented that the large file renders her phone useless. Ms. Campbell forwards them to a different email address so that she doesn't end up with a frozen device.

Ms. Puchar laughed and said, "They are large files!" Ms. Puchar agreed to forward the video footage to Ms. Campbell.

Mr. Weiland asked, "Do you copy yourself to ensure that these emails are sent?" Ms. Puchar responded, "Yes, I can".

Ms. Puchar handed out a letter from the Department of Health. She wasn't sure whether Ms. Campbell had shared them with the board. She was going to send the electronic version of this document but giving out paper copies is helpful as well.

Ms. Puchar said, "You should be aware that Michael and Laurie Bishop received a notice of violation from the Department of Health for the activities they continue to undertake which violate health, and department laws in addition to the zoning laws." Patricia Smith, with her understanding, will be also receiving her notice of violation within the next week or so.

Ms. Puchar asked the board, "Guess, you want to hear if somebody else has public comments before we continue?"

Chairman Malcarne responded, "Basically, what we're going to do at this point is certainly continue with any comments that you have then go around the room to see if anyone else has comments and then once the comments are done, we conclude our meeting."

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Ms. Puchar asked, "And we'll come back next month?" Chairman Malcarne responded, "Yes, we will keep the public hearing open".

Ms. Puchar directed her next comments to Mr. Canham. She said, "You are formerly a colleague of Patricia Smith, formerly Zolnick. That is exactly a conflict of interest!"

Mr. Canham interjected, "Because we worked together in the past?" Ms. Puchar said, "Correct".

Mr. Canham underscored, "She sees no conflict and I see no conflict!"

Ms. Puchar said, "Even though she is one of the parties of the offenders?"

Mr. Canham said, "Well, she's not a party to this application."

Ms. Puchar remarked that she's kind of a party to this application. She noted that they include Ms. Smith in the actual application but Ms. Campbell said that she only has to list one property on the legal ad for circulation purposes.

Mr. Canham said that this is a large company. He remarked, "I don't know her socially at all. We don't work together. We have the same employer and there is no conflict of interest as confirmed by the town attorney!"

Ms. Puchar said, "Okay."

Chairman Malcarne asked Ms. Puchar for any more comments. Ms. Puchar replied, "Let's hear other people's comments first."

Chairman Malcarne asked the public for any comments.

Laurie Bishop, 92 Deer Ridge Drive spoke and confirmed the receipt of the letter from the Department of Health. She said, "I did receive the notice from the Department of Health yesterday and reached out to Ms. Kelly from the Department of Health today. She was on vacation. She has not or is unable to investigate the situation yet and so she invited her to take a look."

Ms. Bishop addressed Ms. Puchar's allegation. She noted that the July 11th event that Ms. Puchar is referring to is actually a charcoal grill. They were using a charcoal grill. She asked Ms. Kelly from the Department of Health, "Am I allowed to cook on my grill?" Ms. Kelly responded that she cannot tell her that she cannot cook on her grill."

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The board compiled the documents. Mr. Canham asked, "If we can keep this all together so that I can send them all at once to Ms. Campbell."

Patricia Smith said, "I have a comment on the July 11th burning".

Chairman Malcarne asked Ms. Smith to identify herself and state her address.

Patricia Smith formerly Zolnick, 93 Deer Ridge Drive spoke and said that she was there at the July 11th burning. She concurred that it was a charcoal grill.

Laurie Bishop addressed Ms. Puchar's complaint about her using the wood fire smoker and quoted, "Since the Puchars admitted to using a pellet stove all winter". Ms. Bishop noted that she ended up buying a Traeger grill, a grill that is fueled by a pellet stove. She underscored that this is now what she uses.

Ms. Puchar addressed the public comment earlier. She said, "So, no one say anybody can't cook or use a grill, right? We have a pellet stove, so you know. We've operated it for so many years. There were never any thick smokes coming out of our property. If you operate the pellet stove properly, you don't get any smoke, you don't get any smell. There's absolutely no excuse! The problem is – they have created excessive nuisance air contaminants emissions which are not normal for anybody."

Ms. Puchar showed some videos of the smoke activity coming from the Bishop's property. She said to the board, "I would like for you to think back how many times you've done this at your house or seen this from your neighbor, -- a pellet grill, a charcoal grill. It doesn't matter. It doesn't matter what they're doing. Any ground producing smoke imminent device cannot create nuisance, air contaminants emissions to their neighboring property. It's their responsibility! They're causing the problem. They have to stop the problem.

Ms. Puchar continued, "We had never given them permission to invade and to contaminate our property and never will. We have property rights too. We have town laws to support our ability to peacefully and comfortably use and enjoy our property without being polluted by somebody else, specifically these two neighbors.

Ms. Puchar said that she will forward this video so that the board can comfortably watch and enjoy the video footage for next month's meeting.

Ms. Puchar made another comment, "And that's interesting that she showed you that video because I can also show you a campfire that she supposedly told everybody-- "That's all what we're doing!"

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Ms. Puchar continued, "When you see these pictures, that's not what's going on there." Pictures could say a thousand words!

The board watched the video and Ms. Puchar commented, "This is a common occurrence at those people's property. They do it time and time again.

Mr. Tompkins gave his comment per his drive by of the property. He asked Ms. Puchar, "If I am correct, going south on Deer Ridge, your property is to the right and theirs to the left and higher than your property?"

Ms. Puchar responded, "Well, it's higher but it's not. We're on the ridge, There's a big drop off behind their house. It kind of dips down, our pond as the lowest spot and our house kind of comes back up.

Mr. Puchar commented, "But, that's hardly reasonable! I have been cooking on my grill for many, many years. I have lived at my house since 1995 as with my husband, and I have never produced that kind of disgusting smoke as when I am cooking food. That's unreasonable! It's obnoxious! It's defenseless! This is what continues! This is what we've been suffering from here for years and she'll show you a little picture of tiny smoke.

The panel watched the video as Ms. Puchar narrated and described the scenes.

Ms. Puchar questioned one of the scenes on the video. She asked, "What is that? Is that a charcoal? Who cooks on that? That's ridiculous!

Ms. Puchar stated that the smoke that you see on that picture is not what's going on. This is a video. Pictures can be modified, videos cannot be. So, let's keep going.

One male in the audience made an inaudible comment. Chairman Malcarne reminded the public that all comments should be directed to the board.

Ms. Puchar continued her comments as everybody watched the video. She asked the board to take the topography of the property into consideration. She said, "We lived in this location for many, many years before both these two parties moved into the area. We never had any problems with any prior neighbors and you can't tell me that any of these neighbors' grill occasionally. This is excessive! This is over the top. It's inappropriate!

Ms. Puchar made comments as she watched and presented the video. She remarked, "Look at it! They're enjoying it!"

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Ms. Puchar said to the board, "We'll send you exactly what went to the Health Department so you have it as well."

Chairman Malcarne asked Ms. Puchar, "Do you have other videos that are different from those that you're showing us right now?"

Ms. Puchar responded, "Yes. They're different dates and different events."

Chairman Malcarne stated that it will give the board an idea. He asked Ms. Puchar to send more videos that she has and the board will take a look at them.

Ms. Puchar replied, "Yes, absolutely!"

Ms. Puchar continued her narration. She said, "What it does is -- it washed out over our house into our property! We live here in the town since 1995, I've ridden horses around the whole neighborhood block and tons of the neighboring roads. This is not a common occurrence."

Ms. Puchar still describing the video, said, "That person we see is pumping out smoke, similar to others."

Ms. Puchar scrolled through the videos, searching for one from the Smith's property. She said, "Let me give you something about Patty Smith here, which is why they are both in violation."

Presenting a video, Ms. Puchar said, "That's the smoke entering our property from Patricia Smith's. Huge clones coming this way."

Ms. Puchar continued narrating about the video that she presented to the board. She said, "This is after he gets up and decides to get in the house, and let the smoke continue to smolder and smoke like crazy."

Mr. Puchar said, "And again, the topography holds it right in our little dish area. It's not our fault either. We're not creating the problem. We live in peace and harmony with many other neighbors. I can give you three contacts of former neighbors. You can verify and they can vouch for us. We don't have any issue living here until these people...who were inconsiderate and disrespectful! She remarked, "These individuals are not."

Chairman Malcarne said, "Again, this is presenting information to us and we would like you to keep your comments again directly to us."

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Ms. Puchar presented the video on 4th of July. She said, “This is 4th of July when they decided to add illegal fireworks on top of their burning event that they chose to do this at the Bishops’ property. You cannot breathe on the 4th of July! We’re literally choking to get the air in. Between them and the other neighbor who decided to do this. She continued, “And as if the smoke from the firewood wasn’t enough, They had to light their fire pit as well and create more smoke which basically ruined our ability to enjoy our property. We work hard all week. It’s our holiday too. We have the right to use and enjoy our property peacefully and quietly on the 4th of July however we choose. When you can’t breathe on your property because, that comes over. It’s completely inappropriate!

Ms. Puchar underscored, “We have property rights. It’s the town's responsibility to enforce the town laws which are designed to protect everyone's property rights, ours included, not just theirs.”

Chairman Malcarne acknowledged Ms. Puchar for her presentation.

Ms. Puchar said, “I’ll send you the other stuff that supports it. You’ll have more time then”.

Chairman Malcarne said, “Again, the videos just give us the flavor of what we’re talking about, unless there’s something.”

Mr. Puchar commented on one of the scenes where the smoke is blowing to one direction.

Ms.Puchar continued, “We had to buy an accuweather station that documented the airflow on our property to prove where it’s coming from. You can tell exactly where it’s coming from.

Ms. Puchar said, “So, we’ll definitely send you all that information and you can do that anytime between now and the next meeting. If you have time to view it, I just want to give it ahead of time so that you have time to take it in. If you have any questions, feel free to ask. I’ll send whatever additional information you think you need and then we’ll go from there.”

Chairman Malcarne asked the public, “Any other comments from the public?”

Mr. Canham indicated the procedural process. He said that the public hearing was open at the applicant’s request. The public hearing can be kept open to provide additional documents, otherwise, the board can close the public hearing but adjourn to give the board some time to review all the materials.

Chairman Malcarne agreed.

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Mr. Canham asked the applicant how she wanted to proceed. He asked Ms. Puchar if she thinks she might have more comments to make next month. He said that they will keep the public hearing open if they think that there will be more comments.

Ms. Puchar asked the board, "Are you asking us if we want to keep the public hearing open?" Mr. Canham responded, "Yes, is that your preference?"

Ms. Puchar replied, "Actually, don't you have to keep the public hearing open for me to send you the videos?"

Mr. Canham responded, "Well, they are public records. I don't know. That's an interesting question."

Chairman Malcarne said, "Not if she'd shown us the videos".

Ms. Puchar remarked, "But I didn't show you every single thing. I was going to send them."

After exchanging opinions, the chairman said, "To be safe, we will keep the public hearing open."

Ms. Puchar thanked the board.

Chairman Malcarne said, "Thank you for your time and send us the other information that you have. See you next month."

Public hearing remains open.

No action taken.

APPROVAL OF MINUTES:

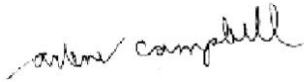
No minutes were approved.

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ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting, seconded by Mr. Calogero, all Aye, Motion carried, 7-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk