

**TOWN OF CLINTON
ZONING BOARD OF APPEALS
VIRTUAL MEETING
FINAL MINUTES
January 27, 2022**

Governor Kathy Hochul signed legislation (S.50001/A.40001) extending virtual access to public meetings under New York State's Open Meetings Law, which allows New Yorkers to virtually participate in local government meetings during the COVID-19 pandemic. The legislation, which was initially implemented by Executive Order during last year's State of Emergency, allows state and local government meetings that are normally held in-person to be held remotely instead, as long as the public has the ability to view or listen to the meeting and as long as the meeting is recorded and later transcribed. This statutory change will reduce the need for congregation at public meetings while the Delta variant is prevalent, while ensuring public business can continue.

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

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham

Ron Mustello
Russel Tompkins
Arthur Weiland

Arlene Campbell, Secretary

MEMBERS ABSENT

Norma Dolan

ALSO PRESENT

Eliot Werner, Liaison Officer

Chairman Malcarne called the meeting to order at 7:33 pm.

Chairman Malcarne welcomed everyone via zoom and asked his colleagues to introduce themselves. He read the legislation regarding NYS Open Meetings Law during COVID as indicated above. He also indicated that the meeting is being recorded.

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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VARIANCE:

Morse Area Variance - 636 Hollow Road, **Tax Grid No. 6366-00-570998** in the AR3 zone in order to do lot line adjustment.

The applicants request an area variance to Sec. 206-13 (B-1) provides that a “proposed lot line adjustment shall not create any substandard lot, or render any lot more substandard than it may be.

Richard and Joyce Morse both appeared for this application. Mr. Morse explained that they need an area variance in order to do a lot line adjustment with his neighboring property (the Boyds) given the nonconformity of the two lots. He added that the .53 acre transfer of lot to the Boyds will bring this lot into conformity. It also makes sense since the Boyds use the back portion of the Morse’s property.

Mr. Weiland indicated that Joyce Morse didn’t sign the application form but her presence at the meeting is suffice.

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 none, the board agreed to close the public hearing.

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

Mr. Canham asked if any communications were received from the neighboring properties. Ms. Campbell responded, “No”.

The board agreed to pass a resolution.

Mr. Tompkins who was assigned to this application was having a technical difficulty with his audio and had to mute himself. Mr. Canham read the resolution that was prepared by Mr. Tompkins, to wit:

Mr. Canham motioned that the Town of Clinton Zoning Board of Appeals grant the area variance requested by Richard and Joyce Morse to Sec. 206-13(B)(1) to allow a lot line adjustment to reduce the size of the 2.67-acre parcel at 124 Sodom Road (**Tax Grid 132400-6366-00-538971**) by 0.553 acres by conveying

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that area in the easternmost portion of the property to an adjacent parcel located at 636 Hollow Road. Both properties are in an AR3 Zoning District.

Factors:

1. The Applicants are requesting permission to reduce the size of the preexisting nonconforming lot of 2.67 acres on Sodom Road by transferring a 0.553-acre portion of the property to the property at 636 Hollow Road. While this will render the lot more substandard than it is at present, the transfer of the land to the neighboring property will convert that location from a 2.89-acre nonconforming lot to a greater than 3 acre and now conforming lot. Thus, the aggregate result of the lot line adjustment will be to reduce the number of nonconforming lots in the neighborhood.
2. The variance requested is substantial (approximately 21% of the acreage) but the property to be transferred is heavily wooded and in the back yards of both properties, with no expectation of change in the use of that land.
3. An undesirable change will not be produced in the character of the neighborhood or be detrimental to nearby properties.
4. The proposed variance should not have an adverse effect or impact on the physical and environmental conditions of the neighborhood.
5. The property is not in a Critical Environmental Area.
6. The alleged difficulty is self-created but that does not preclude the granting of the area variance.
7. An area variance is a Type II action under SEQRA and does not require further review.

Conditions:

1. All fees have been paid

Seconded by Mr. Calogero.

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Discussion. Mr. Canham noted that the neighboring property (Boyds) does not require a variance since the conveyance will bring the other property into conformity.

Mr. Weiland made a comment in reference to the applications on the agenda. He commented on the ZBA application form in relation to the role of the ZBA. He wished that the form could be changed to state "Administrative Review" instead of "Interpretation" as Administrative Review covers more than interpretation.

All Aye, Motion carried 6-0.

Timothea Letson and Patrick Nelligan - 21 E Meadowbrook Lane, Tax Grid No. 6467-00-408433 in the AR3 zone.

The applicants request an area variance to Sec. 250 Attachment 2 of the Town of Clinton Zoning Regulations for a side yard setback reduction from 50 to 45.5 feet in order to construct a wraparound deck on the north and east side of the home.

Ms. Letson appeared for their application. She explained that they would like to build a deck at the back of their house that is 45.5 feet from the property line. The house was built in 1971 and the addition was in 1973. The house is 37 feet from the property line so the deck would be further away from the property line than the house itself. It's pretty straightforward.

Mr. Tompkins read the Planning Board's recommendation dated Dec. 21, 2021 that is positive.

Mr. Tompkins indicated the letter received from the adjoining neighbor, the Sokoloskis who indicated no objection to the proposal.

Mr. Tompkins expressed that this is a straightforward application. He indicated the hill and the trees that buffered and screened the neighboring property (Sokolowskis).

The board agreed to open the public hearing.

Chairman Malacarne motioned to open the public hearing, seconded by Mr. Weiland, all Aye, Motion carried, 6-0.

Ms. Campbell expressed her comment as a neighboring property owner. She indicated the great improvements that the new neighbors are doing to this property.

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

The board agreed to pass a resolution.

Mr. Weiland read the resolution that was crafted by Mr. Tompkins since Mr. Tompkins audio was frozen.

Mr. Weiland motioned that the Town of Clinton Zoning Board of Appeals grant the area variance requested by **Timothea Letson and Patrick Nelligan**, tax grid #6467-00-408433, with respect to the Town of Clinton Zoning Law District Schedule of Area and Bulk Regulations (Section 250 Attachment 2) for a side yard setback reduction to 45.5 ft from the required 50 ft for the purpose of constructing an exterior deck. The 1.3-acre parcel is located in an AR3A zoning district in the Town of Clinton.

Factors:

1. The applicants request an area variance to construct a wraparound deck on the north and east side of the home. They are requesting a reduction in the side setback from the required 50 ft side setback as required in Section 250 Attachment 2 of the Area and Bulk Regulations to 45.5 ft.
2. The property is located in the Ridgeline, Scenic and Historic Preservation Overlay District.
3. The lot is not in an Ag District or CEA
4. An area variance is a type II action under SEQRA and requires no further action.
5. The site does not contain a DEC wetland.
6. The site is on a Clinton Scenic/Historic Road that being E Meadowbrook Rd and must conform to Local Law #3 of 2001.
7. The benefit sought by the applicants can't be achieved by any other feasible method.
8. This variance will not cause an undesirable change in the neighborhood character or be a detriment to nearby properties. The deck will not be visible from the road or the adjoining property due to a wooded hill between the properties.
9. The request is not substantial.
10. The variance will not have an adverse physical or environmental effect.
11. The alleged difficulty is self-created but this does not preclude its granting.
12. There are no known violations.

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13. The Planning Board at its December 21, 2021 meeting made a positive recommendation to the ZBA on this request.

Conditions:

1. All fees have been paid
2. Any exterior lighting will be downward facing

Seconded by Mr. Calogero,

Discussion. Mr. Tompkins was back and commented that he doesn't have a problem with the proposal.

Mr. Weiland commented on #9 of the resolution indicating "request is substantial". He suggested stating "modest and not substantial".

Mr. Tompkins stated that the verbiage that they normally use is either substantial or not substantial. The board agreed to use not substantial.

All aye, Motion carried, 6-0.

INTERPRETATION:

Joanna Swomley and Sanford Litvack (Interpretation) - 570 Pumpkin Lane, Tax Grid No. 6468-00-944427 in the AR5 zone district.

The applicants are seeking an Interpretation of Sec. 250 Attachment 1 (Schedule of Use Regulations -Accessory Uses of structures) after a determination of the Zoning Board of Appeals dated April 25, 2002, that the only accessory building that can contain plumbing is one that has a special permit for an accessory dwelling unit in order to install a ½ bath in an exercise facility on a 70 plus acre parcel.

John Marvin, the applicant's legal counsel appeared with the property owners. He explained that the property owners recently bought this property. There is a barn that they use for recreation. This barn has a basketball hoop downstairs and exercise equipment upstairs. The property owners use this structure regularly as an Exercise Facility and want to put a half bath as a necessity and convenience.

Mr. Marvin stated that the ZEO denied the building permit application to install the half bath based on a previous determination by the ZBA.

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Section 250, Attachment 1 (use chart) of use regulation - accessory use does not permit a bedroom bath or kitchen in an accessory building without special permit from the planning board, as an accessory dwelling.

Mr. Marvin commented that there is no support in the Code for such an interpretation. Prior interpretations by the Board of similar issues with respect to accessory structures are inconsistent and can be corrected in this matter for proper precedent.

Mr. Marvin stated that the use of the Exercise Facility for exercise and recreation is not an accessory use.

He quoted, "Accessory use is defined as a "use which is customarily incidental and subordinate to the principal use of the premises, building or structure located on the same premises as such principal use."

Mr. Marvin opined that the use of the Exercise Facility for playing basketball or exercising is not an accessory use but rather activities that are part of the principal use of the property i.e. residential.

Mr. Marvin underscored that there is no indication that the Exercise Facility is intended to be used as an Accessory Dwelling Unit. There is nothing in the Code that categorizes the owners and their families exercising in an accessory structure as a separate and distinct use outside of residential use.

The applicant's lawyer explained that the addition of the half bath to the Exercise Facility does not make this structure an accessory dwelling. He quoted the definition of the Accessory Dwelling as a dwelling unit as having its own exterior or interior entrance which is subordinate to, and located on the same lot as, the principal residence. An accessory dwelling unit may or may not be located within the principal residence.

Mr. Marvin noted that A Dwelling Unit is defined as:

"A building or entirely self-contained portion thereof containing complete housekeeping facilities, including kitchen facilities and bath for only one family, and having no enclosed space, other than vestibules, entrances or other hallways or porches, or cooking or sanitary facilities in common with any other dwelling unit."

Mr. Marvin stated that there is no rational basis to conclude from these applicable code definitions that a half bath in the Exercise Facility requires a special permit as an Accessory Dwelling Unit. He opined that to qualify as a Dwelling Unit, it requires that it contain "complete housekeeping facilities" which the Exercise Facility does not have.

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Mr. Marvin noted that the code is clear that complete housekeeping facilities include, at a minimum, "kitchen facilities and bath," not kitchen facilities or bath. There is no kitchen in the Exercise Facility and none is intended. He underscored that nothing in the Code prohibits a bathroom.

Mr. Marvin commented about the determination of the ZBA in 2002 which states:

"Customary accessory uses of structures associated with the permitted or special permit use and located on the same lot" – in all districts – **does not** include an extra bedroom, bath, or kitchen. A recreation room, personal office, or sitting area would be permitted with approvals, assuming other requirements of the Zoning Law were met. A bathroom, which requires sanitary disposal needs, a kitchen or a bedroom would necessitate approvals by the Planning Board, such as a special permit, as an accessory dwelling unit."

Mr. Marvin stated that there is simply no basis for this finding in the language of the code. He also commented about the interpretation made by the board in 2013 that poolhouse as an accessory structure does not require a special permit because poolhouses customarily have plumbing. The interpretation about the pool house is correct. He strongly disagreed about the determinations made in 2002. He commented that the 2002 precedent is not binding though he agreed that precedent is important.

Mr. Marvin commented that if this case gets to Article 78 which he underscored nobody really wants given the cost and the time involved, he feels that the ZEO and the ZBA's decision will be problematic to support the interpretations (barn and art studio) that they had in the past. He remarked, "When you allow plumbing in an accessory structure, it doesn't make the accessory structure an accessory dwelling unit."

Mr. Marvin commented that the 2002 interpretation and determination were based on concern that plumbing is a step toward making it easier for owners to establish unpermitted accessory dwelling units. He cited a case law about Di Milia V Bennett and noted that "A building permit may not be withheld due to the mere possibility of future illegal use." He said that the standard to be applied is the actual use of the building in question and not its possible future use.

Mr. Marvin underscored that the applicants don't want the Exercise Facility to become an accessory dwelling unit. The property owners don't want people living in there. They only want to be able to use a convenient bathroom when exercising. He urged the board that the denial of the building permit application

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to install a bathroom in the exercise facility be reversed. Mr. Marvin opined that this is pretty straightforward. He also encouraged the board to revisit the prior interpretations. He also stated that the board can also seek the town attorney's legal advice.

Sanford Litvack spoke and said that he and his wife are also lawyers. He spoke about precedence. He noted that this was a gym when they bought the property. They use this barn all the time. As you get older, there are physical changes in your body. He said, "When you're working out, you need a toilet and a sink. You don't necessarily need a shower. You don't need a kitchen but you need a toilet and a sink." He underscored that this is a special need. A necessity for people as they get older. He asked the board to look at this context as we will all have the need for these things.

Chairman Malcarne thanked the applicants and passed the floor to Mr. Weiland who was assigned to the case.

Mr. Weiland expressed good words about the legal counsel's narrative letter. He noted that this application is an administrative review through the application form only refers to variances and interpretation. It's very hard for the applicants to fit something odd like this into the application form. The applicants are no longer asking the board to use the 2002 Interpretation.

Mr. Weiland expressed his comments. He understands the need to be able to reach facilities when there is a need. There are other ways to deal with that need. He cited the previous cases (doctors, artists, etc) who asked to have bathrooms in the structure. Until the town modifies its current code, he opined that it would be a mistake to interpret this code other than the way they have been.

Mr. Weiland continued that the only way that they can verify that an accessory structure is not being used as residential is if it doesn't have a septic hook-up. They can't have running water in the facility.

Mr. Weiland commented that he's not too happy about the pool house interpretation. He feels that this needs to be regulated. He cited a case a year ago about a property that recently changed hands. The new property owners bought the property on the assumption that the huge pool house was a legal accessory dwelling.

Mr. Tompkins discussed the definition of "Accessory structure" per the regulations.

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**Sec. 250-105 of the Town of Clinton (Definition)
ACCESSORY STRUCTURE**

A structure, the use of which is customarily incidental and subordinate to that of the principal building and is attached thereto, or is located on the same lot or premises as the principal building. Accessory structures shall include but are not limited to tennis courts, garages, swimming pools, garden or tool sheds, barns, studios, greenhouses, and playhouses, and such elements as satellite dish antennas and windmills. See also "structure."

Mr. Tompkins felt that the definition that states "Accessory structures shall include but are not limited to" pertains to this instance.

Mr. Tompkins also read the determination made on October 24, 2013, about the pool house stating ".....customary use of a pool house that will include a bathroom..." Mr. Tompkins felt that the same thing should be done in the customary use of the gym, i.e. includes a bathroom. He added that in the future, this issue should be addressed so that these accessory structures can have a bathroom.

Mr. Tompkins commented about the case law (Di Millia vs. Bennett) that the legal counsel has mentioned in his narrative. He likes some wordings about the supreme court and the board's determination to protrude houses based on future illegal uses. It's arbitrary and capricious! Mr. Tompkins commented that case law is in the second district so it's not binding to our town. We are not in the second district."

Mr. Tompkins said that it is illegal to turn a structure into a dwelling without getting the proper permits and approvals but he doesn't think that the board can legislate on what might happen. He feels that they should be flexible to allow people to use their property in a way these people want to do. Mr. Tompkins felt that this is a reasonable request and the board can do an interpretation similar to what was done with a pool house.

Mr. Canham shared Mr. Tompkins' view. This is a small town and there are challenges in enforcing our zoning law. He agreed with Mr. Tompkins. The board cannot use the problems that they have in enforcing the zoning law as a reason to deny a reasonable use of the property for something that would be a customary use like having a bathroom in the gym. He said, "Frankly, I would want a shower too as a customary use of a gym but I also agreed with Mr. Weiland that there are really good reasons why there were concerns about improper use of accessory structures as a dwelling." There's also a building and fire code safety issue.

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Mr. Weiland remarked that there have been too many illegal uses of property around. People living in inappropriate conditions.

Mr. Canham asked, "Is this the town's responsibility?"

Mr. Weiland responded that this is similar to the smoke/burning case who wants the town to enforce the smoke ordinance. He also cited the recently adopted Short Term Law which is very comprehensive and outlines the responsibility of the town. This needs to be regulated in the future.

Mr. Mustello commented that the discussion is getting a little far away from the matter at hand. He remembered the time when he was interviewed for the ZBA position and someone pointed out that the board's responsibility is not to make a law or make codes but to provide relief from the code. He said that if this is to move forward and the half bath turns into a full bath and a three-bedroom dwelling then this is the ZEO's responsibility. He also commented on the recent Short Term Regulations that the town has adopted.

Mr. Calogero felt that the board is caught in the middle of a situation of faith. The board is sometimes faced with punishing a person for something that someone else might do. In this particular instance, he sees an expression of faith in the application. These people are not asking for a tiled bath with a walk-in tub, etc. The applicant is merely asking for a sink and a toilet. It's a reasonable request given the distance from the main house. At this particular time of year, it might require getting in the car and driving to the traverse to get to the bathroom. There might be a need to use the bathroom again. It becomes a matter of inconvenience. It's like a punishment for something that others might do or have done.

Mr. Calogero doesn't see much difference between a need here and the need at the pool house. With the act of faith that the applicants have pledged to keep it simple to a sink and a toilet, this is compelling. He concurred with Mr. Mustello that this town has now opened the door with its short-term rental, a situation to the tremendous need for a lot more inspections. He feels that there should be inspections made to ensure that these structures that were allowed to have bathrooms will not turn into an accessory dwellings.

Chairman Malcarne asked Mr. Weiland for further comments based on what has been shared.

Mr. Weiland stated that this property seems to have an excessive number of structures. He doesn't know if this property is in violation of any variances that were granted.

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The board has a very lengthy discussion about the number of structures on the property. There is the main house, guest cottage, detached garage, pool and pool house, barn/exercise facility, and storage barn.

Mr. Marvin noted that there was a municipal search done when the property was bought. These buildings existed when his clients took possession of the property. There was no violation reported.

Ms. Campbell stated that this is a 60-acre property that used to be owned by Gilbert Scharf. The use of the property was a farm and these structures were pre-existing. They had an Ag Exemption.

Mr. Marvin noted that the real issue here is whether they need special permit to put a bathroom in a structure. Some of the board's concerns are town board issues. The issues, concerns, and things that the board wants to protect like somebody might do or could do --goes to the Town Board to be able to give the Zoning Enforcement Officer the right tool to enforce the code.

Mr. Marvin commented that to assume about what's going to happen is not what the Zoning Board of Appeals does though he completely understands the concerns. There are people who are doing things they're not supposed to do and this is a concern for every town. He reiterated that this issue is the Town Board's purview – to empower the ZEO to enforce the rules when people break the law.

The board agreed to open the public hearing.

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

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

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

Chairman Malcarne asked Mr. Weiland for his draft resolution. Mr. Weiland responded that he didn't craft a motion since he didn't get enough information that he need.

The board agreed to take a five-minute break to give Mr. Weiland time to craft a motion.

Chairman Malcarne called back to order and resumed the meeting at 8:55 pm.

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The board discussed the application on hand. Chairman Malcarne stated that the question that they have on the table is either to issue an interpretation that makes customary use of a pool house and a gym that includes a bathroom or they can make it specific to this particular application. He solicited the board's thoughts.

Mr. Canham prefers addressing the interpretation. He's not sure how they can go about saying these folks can do it and then someone else who has a gym might seek the same request. He suggested issuing a one-sentence resolution that the Zoning Board of Appeals issues an interpretation that the customary use of a gym or an accessory structure primarily use for exercise includes a bathroom.

Mr. Tompkins stated that the definition of an accessory structure states "not limited to". This is technically a barn. There is no definition of a gym. He's not sure if that is something that they need to put somewhere in there like a structure that has a facility for exercise or something like that. He agreed with Mr. Canham that the customary use of a gym includes a bathroom.

The board had a very lengthy discussion about the verbiage.

Mr. Mustello feels that the board should be specific. Somebody can put a mat down and a couple of exercise equipment and call it a gym.

Mr. Canham agreed with Mr. Mustello. He thinks that this should fall under the building inspector's judgment. If the building inspector finds that this is not a gym then it can be forwarded to the Zoning Board of Appeals. He feels that the board is going to see more of this application. He shared Mr. Weiland's concern.

Ms. Campbell suggested getting a certification letter from the property owners about the use of the subject building. Mr. Weiland felt comfortable if there is a covenant in place or something attached to the deed for future property owner's purposes. He suggested verbiage like..."That this half bath is only used as part of the gym facility and cannot be converted into an accessory dwelling."

The board exchanged opinions about the issue.

Mr. Marvin commented that these conditions are something that the Planning Board does when reviewing site plan approval. This is not what they're here for. He understands the board's concerns but suggested not dealing with this on a global level. He suggested that the board addresses the application on hand and put a vote on it.

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Mr. Marvin suggested doing lines like, "The application for a building permit to install a half bath in a barn use for exercise or an exercise facility does not trigger the need to apply for a permit as an accessory dwelling unit."

Mr. Calogero commented that the board is caught in a tough spot. He can foresee people who want a garden shed, or tool shed. People who want barns all coming in for individual interpretations. It would be very difficult to deny them in lieu of the pool house determination. Recalling back to the discussions at that meeting, Mr. Calogero stated that one of the defining factors for him at that time was heating. If there's no heating system, it can't be used as a dwelling.

Mr. Calogero doesn't think that a half bath would be sufficient to define a dwelling nor someone will be enticed to rent a section of a building and be satisfied with just having a half bath. The idea of a half bath is very important for him. You cannot bathe. It's not a full bath. He suggested crafting a motion along the lines of just limiting the structure to a half bath.

Mr. Weiland agreed that a half bath without a shower would not make a very comfortable residence or a dwelling. He indicated his concern that once a septic system is in place, future renovations can easily be made as adding a bedroom, etc. He stated that a decent portable potty is more feasible to address this situation.

Mr. Tompkins remarked that you need three things to have a dwelling. You need bathroom or plumbing facilities, a bedroom, and a kitchen. The question here is about the bathroom. You cannot sleep in the bathroom. He stated that just one criterion (bathroom) of the dwelling does not make a structure a dwelling. People still do stuff inside their houses without proper town approvals. Eventually, these violators get caught.

Mr. Marvin said that he doesn't think that the board can anticipate somebody's use of the property and deny them a reasonable use. There are regulations in place. He agreed with Mr. Tompkins that there are components that make a structure an accessory dwelling. There is a definition in the code. You need complete housekeeping facilities. It used specific references to the kitchen.

Mr. Marvin stated that the ZBA cannot put these kinds of conditions that are not supported by the code or based on something that might happen. It's just a limiting factor that just limits what the board can do.

Mr. Weiland remarked that the interpretation in 2002 modifies the code. He cited the previous case about a property owner who wanted to have a bathroom in her dance studio but the neighbor across the road was strongly opposed to it

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concerned about a potential dwelling unit that is less than 100 feet from his front door. That's the balance of the community.

Chairman Malcarne suggested focusing on the half bath matter as specifically requested on the application and per Mr. Calogero's earlier recommendation. Chairman Malcarne opined that it seems like a fairly reasonable request from people with large parcels like this one.

Mr. Calogero said that he sees this as a limiting factor than making an interpretation that is aimed strictly at one parcel.

He doesn't see that as being fair to anyone in town except the person who's getting the benefit of it. He suggested focusing on one element of the three components that makes a structure a dwelling unit or an accessory dwelling unit. The half bath is still not a full bath that is required for a dwelling.

Mr. Canham commented that when he thinks of a bathroom in a gym, he usually thinks about the shower. He's comfortable just stating "bathroom" but in order to address Mr. Weiland's concern about the misuse of the provision and in this case, if the applicants are only asking for a half bath then he's okay with the half bath. He asked the applicants if they are comfortable with a half bath.

The applicants responded that they need the toilet and the sink but a shower would be nice.

The board had a lengthy discussion about whether to use the term "half-bath" or "bathroom".

Chairman Malcarne solicited a consensus from the board. The board knows where they stand. They just need to get it down to words.

Mr. Tompkins concurred with Mr. Canham. He suggested using the term "bathroom". If the applicant wants to put a half bath, it's fine. If they want to put a bath with a shower in which he noted that he would for a gym so that he can shower after the workout. He recommended using the term bathroom as what was used in the pool house.

Mr. Mustello suggested a motion that read, "The Town of Clinton Zoning Board of Appeals has determined that for the inquiry of the Litvack and Swomley to install a half bath in an existing accessory structure, a special use permit or variance is not required."

Mr. Mustello doesn't feel that they can deal with generalizations here.

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Mr. Calogero suggested verbiage stating it's a gym with a half bath and not an accessory dwelling this way if it changes in the future, it will show up on the certificate of occupancy when the title search is made.

Mr. Calogero asked, "Supposed they turn it into a movie room next month, are we going to make them remove the bathroom?"

Chairman Malcarne stated that the board is just addressing the gym just like the pool house. If you generalize then it's like basically allowing all the structures to have a bathroom.

The board exchanged opinions in crafting the resolution.

Mr. Canham stated that the purpose of an interpretation is not going to be for this particular application. This is an interpretation. It's going to be general. The whole logic here is the customary use of an accessory structure. He expressed understanding of Mr. Calogero's comments. He remarked, "It seems almost punitive."

Mr. Canham explained that he was stuck on the half bath term in trying to continue the preventative situation that blanketly said "No" to water in any buildings without special permit approval. Keeping it as a half bath still gives the town the element of control. He was hoping that Mr. Weiland would soften to that idea to some extent.

Mr. Canham stated that he was trying to make something that would be workable. There's no question in his mind that any gym in the country has showers. He applauded the applicants for trying to be limited because they were fully aware of the problem that the town has.

Mr. Weiland underscored that the application on hand is an Administrative review. He read the code per Sec. 250-98 – C of the Town of Clinton Zoning Regulations.

Administrative Review –

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator, Building Inspector, Fire Inspector, or any administrative official charged with the enforcement of any law adopted pursuant to Article 16 of the Town Law. It shall also hear and decide all matters referred to it or upon which it is required to pass under any such law, including interpretations of the language, intent of such law, or interpretation of the location of zoning district boundaries by the Zoning Administrator or the Building Inspector.

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Mr. Weiland commented that this is a particular situation. It is a requirement to get a special use permit from the Planning Board but the ZBA can decide whether that requirement, in this case, is appropriate.

The board agreed to use Mr. Mustello's resolution and broaden it. A lengthy discussion was made and the board finally agreed on the following resolution, to wit:

Mr. Mustello motioned that the Zoning Board of Appeals approves the following resolution:

Be it Resolved, that the Town of Clinton Zoning Board of Appeals has determined that for the inquiry of the **Litvack/Swomley** request to install a bathroom in the existing accessory structure containing a second floor gym/exercise room property on 570 Pumpkin Lane, **Tax Grid No. 6468-00-944427**, a special use permit or variance is not required.

Seconded by Mr. Canham.

Discussion:

The board expressed concerns about future cases. Mr. Canham agreed with Mr. Mustello's concern, If somebody wants to have a movie room with a bathroom, someone can easily add exercise facility in that building to qualify as a gym. The board feels that this is something that needs to be addressed in the town code.

Mr. Weiland agreed. This needs to be clarified in the town code. The requirement can be changed.

Mr. Calogero noted that the town is in the process of doing the Zoning Revision.

Chairman Malcarne commented that traditionally the board tried to keep interpretations on a general level so that they don't see the same case.

VOTE:

John Calogero	<u>Aye</u>	
Charlie Canham	<u>Aye</u>	
Norma Dolan		<u>Absent</u>
Ronal Mustello	<u>Aye</u>	
Joseph Malcarne	<u>Aye</u>	
Russ Tompkins	<u>Aye</u>	
Arthur Weiland		<u>Abstain</u>

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Motion passed.

Chairman Malcarne acknowledged everyone's comment about the above case.

OTHER MATTERS:

Mr. Werner, this year's board's Liaison Officer stated that the zoning revision committee will be resuming the session anytime soon.

APPROVAL OF MINUTES:

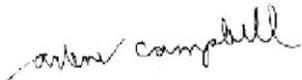
Chairman Malcarne motioned to accept the minutes of August 26, 2021, seconded by Mr. Mustello, all Aye, Motion carried, 6-0.

Chairman Malcarne motioned to accept the minutes of September 23, 2021, seconded by Mr. Tompkins, all Aye, Motion carried, 6-0.

ADJOURNMENT:

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

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary