

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 23, 2022**

**MEMBERS PRESENT**

Joseph Malcarne, Chairman

Norma Dolan  
Ron Mustello  
Russel Tompkins  
Frank McMahon

Arlene Campbell, Secretary

**MEMBERS ABSENT**

John Calogero

Charles Canham

**ALSO PRESENT**

Eliot Werner, Liaison Officer

Chairman Malcarne called the meeting to order at 7:34 pm.

Chairman Malcarne welcomed everyone and asked his colleagues to introduce themselves. The board welcomed Frank McMahon as a new board member.

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

Chairman Malcarne noted that the meeting is being broadcast live via YouTube and on local TV channel 22.

**AREA VARIANCE:**

**Diesing Area Variance – 42 Bowman’s Glen, Tax Grid No. 6568-00-148673**

The applicants propose an area variance to Sec. 250-29-B-6 in order to permit an increase in the size of an accessory dwelling from the allowed 1,000 square feet to 1,260 on property located in the AR 5 Zoning District.

The Diesings appeared for this application. Mr. Diesing explained that they received an area variance in 2008 for the increase in square footage of an accessory dwelling per Sec. 250-29 B-6. A special permit was also granted by the Planning Board in 2008 for the use of the accessory dwelling. Mr. Diesing noted that they didn’t know that this variance expired. They are now back before the board to restart the process.

This is a 10.18-acre lot in the AR5 Zoning District. It was noted that the current structure on the property is intended to be used as an accessory dwelling. The

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applicants sought an area variance 14 years ago to build a primary dwelling and convert the existing structure to an accessory dwelling. This primary dwelling was never built and the variance expired.

**Sec. 250-29 B-6 of the zoning regulations states** that “The accessory unit shall contain no greater than 35% of the total habitable space of the existing principal structure prior to the construction of such accessory apartment or 1,000 square feet of floor space, whichever is more restrictive.”

The board discussed the application.

Chairman Malcarne asked the applicants the exact variance they are seeking for. Mr. Diesing responded that they are seeking for 260 square feet variance which is above the threshold of 1,000 square feet per the regulation.

Mr. Mustello read the Planning Board’s recommendation dated June 20, 2022 which is positive.

Mr. Mustello expressed no concern about the proposal. The variance was granted in 2008. At that time, the applicants were not in the position to build the main residence and were not aware that variance expires. It’s pretty straightforward. This is a 10-acre lot in the 5-acre zoning district.

Mr. Mustello indicated the discussion back in 2008 about the suggestion of subdividing the property instead of a variance. He solicited comments from the board.

Mr. Tompkins stated this property has 10 acres. Sec. 250.29-D-3 of the zoning regulations allows them to have an accessory dwelling. The double the acreage makes perfect sense to have an accessory dwelling rather than subdividing the lot. He doesn’t have a problem with the proposal.

**Sec. 250-29 D-3 of the zoning law** states that “The total acreage required for the single-family dwelling unit with the detached accessory dwelling unit shall be twice the acreage required for a single-family dwelling in the district in which it is located.”

Ms. Dolan indicated her concern about granting a variance without a principal dwelling. She commented that they are granting a variance on something that doesn’t exist yet.

Ms. Dolan said that with the proposed size of the principal dwelling, there is no question that the current structure on the property will not be larger than the principal dwelling but how do they know that. The principal dwelling is currently

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not built. She wonders if they can make the variance effective when the principal dwelling is constructed.

The board had a lengthy discussion about the matter.

Mr. Mustello stated that the proposed principal dwelling to be constructed is at least 3,317 square feet per the Planning Board's recommendation.

It was noted that the property is currently for sale with the variance. Chairman Malcarne stated that variance goes away after a year if a building is not constructed or commenced within 6 months.

Mr. Diesing stated that the buyers intended to construct the primary residence within a year. They are aware of the timeline.

Chairman Malcarne stated that the property owners can also ask for an extension of the approval if they need more time.

Mr. McMahon commented that it sounds pretty straightforward.

The board agreed to open the public hearing.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Mustello, All Aye, Motion carried, 5-0.

Hearing none, the board closed the public hearing.

Chairman Malcarne motioned to close the public hearing, seconded by Mr. McMahon, All Aye, Motion carried, 5-0.

After all the reviews were made, the board passed a resolution.

Mr. Mustello motioned that the Town of Clinton Zoning Board of Appeals on the requested area variance to Section 250-29 B (6) allow the increase of the floor space requirement from 1,000 square feet to 1,260 square feet for an Accessory Dwelling (currently the principal dwelling). The applicant's intent is to sell the property with the requested variance and allow the new owners to build the new principal dwelling of at least 3,317 square feet and convert the existing dwelling on the property to an accessory dwelling unit.

The requested variance is on a 10.18-acre site located off of Nine Partners Road on 42 Bowman's Glen Lane, Lot #1 of the Bowman Subdivision property owned by Carl Diesing, Joseph Diesing, and Rosaria Diesing, Tax Grid No. 6568-00-148673 which is located in the AR 5 Zoning District in the Town of Clinton.

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**WHEREAS:**

1. The applicant requests the variance to allow the increase of the floor space requirement from 1,000 square feet to 1,260 square feet for an Accessory Dwelling Unit (currently the principal dwelling).
2. The applicant's intent is to sell the property to new owners who will construct a new principal dwelling of at least 3,317 square feet or else a new variance will be required and convert the existing dwelling on the property to an accessory dwelling unit after obtaining the required Special Permit.
3. The new principal structure will be of similar style to the existing dwelling and will not be a detriment to the character of the neighborhood.
4. The property is in the Ridgeline, Scenic and Historic Protection Overlay District.
5. An area variance does not require an Ag Data Statement.
6. The site is not in a NYS DEC Wetland.
7. The site is on a designated Scenic or Historic road, that being Nine Partners Road.
8. There are no known outstanding zoning violations.
9. The property is not in a CEA district.
10. It is noted that an area variance is a type II action under SEQRA and requires no further action.
11. The proposed variance will not have an adverse effect on the physical or environmental conditions in the neighborhood. Accessory dwelling unit is a permit use in the AR 5 zoning district.
12. The impact of the additional building square footage of 260 square feet is minimal.
13. The alleged difficulty is self-created.

With the following condition:

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- 1) All fees have been paid

Seconded by Mr. Tompkins,

**Discussion.** Chairman Malcarne reminded the applicants about the variance timeline.

All Aye, Motion carried 5-0.

**INTERPRETATION:**

**Medical Arts Sanitarium Inc dba Cornerstone of Rhinebeck** - located at 73-93 Serenity Hill Road, **Tax Grid No. 6469-00-531763.**

Kyle Barnett, Esq of Van DeWater and Van De Water LLP is requesting an interpretation of Sections 250-31 (5) and 250-81 of the Town of Clinton Town Code and the review of a determination made by the Municipal Code Enforcement Officer dated April 1, 2022 regarding an increase in the number of patient beds to ninety-nine (99).

Jodi Cross from Zarin and Steinmetz, representing Cornerstone along Mr. Purnell an executive from Cornerstone appeared for this case. Kyle Barmett from Van DeWater and Van DeWater representing the neighbors was not in attendance.

The board agreed to enter into an executive session.

Chairman Malcarne motioned that the Town of Clinton Zoning Board of Appeals enters into an executive session for the purpose to discuss confidential attorney and client product and to confer with the town attorney regarding privileged and confidential information and material, Seconded by Mr. Tompkins, all Aye, Motion carried, 5-0.

The board reconvened at 9:30 pm.

Chairman Malcarne motioned to end the executive session and come back to the regular session, seconded by Mr. Mustello, all Aye, Motion carried, 5-0.

Chairman Malcarne stated that Ms. Cross submitted a memo to the board dated June 22, 2022 after the public hearing was closed. Mr. Barnett asked that the memo be disregarded or be given a chance to respond particularly to that memo.

Chairman Malcarne proposes that Mr. Barnett be given a chance to respond to that memo until July 1, 2022 in order for the board to consider the memo. The

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board will have 62 days from July 1, 2022 to render a decision. He asked Ms. Cross if she was okay with that. Ms. Cross agreed.

Chairman Malcarne asked the town attorney to communicate with Mr. Barnett regarding this matter. Mr. Egan agreed and said that he will email Mr. Burnett the next day.

Chairman Malcarne stated that assuming Mr. Barnett agreed with these terms, the 62 days rule will then start from July 1, 2022. Any submission from anyone after that date will be rejected and denied. This case will be on the agenda next month.

No action was taken.

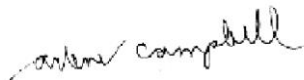
**APPROVAL OF MINUTES:**

Mr. Tompkins motioned to accept the minutes of January 27, 2022, seconded by Ms. Dolan, All Aye, Motion carried 5-0.

**ADJOURNMENT:**

Mr. Tompkins motioned to adjourn the meeting at 9:48 pm, seconded by Mr. McMahon, All Aye Motion carried, 5-0.

Respectfully Submitted By:



Arlene A. Campbell  
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk