

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
July 28, 2022**

**MEMBERS PRESENT**

Joseph Malcarne, Chairman

John Calogero

Ron Mustello  
Russel Tompkins  
Frank McMahan

Arlene Campbell, Secretary

**MEMBERS ABSENT**

Charles Canham  
Norma Dolan

**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.

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:**

**Blake Area Variance** – property owned by Kathleen Blake located at 132 Old Bulls Head Road, Tax Grid No. 6469-00-913517.

The applicants request the following area variances to Sec. 250 Attachment 2 (Area Bulk Regulations) in order to construct an in-ground pool and a SPA.

- Front Yard setback reduction from 100' to 70'
- Side Yard Setback reduction from 50' to 15'
- Rear Yard setback reduction from 75' to 25'
- Building coverage increase from 7% to approximately 9%

Kathleen Blake and her husband, Jeff Silverman appeared for this application. Ms. Blake stated that she owned this property for 11 years. This is a .49 acre nonconforming lot in the AR5 Zoning District. She had always wanted to have an inground pool. There are only two flat surfaces on the entire lot other than the

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location of the house. They want to put the pool in one of the flat surfaces since the other flat surface is where the septic field is.

Mr. Silverman explained why they needed a variance. Given the size of this lot and location of the septic, this is the only feasible area to locate a pool. He described the topography of the land and indicated that the proposed site provides a natural privacy barrier.

Mr. Tompkins read the Planning Board's recommendation dated July 8, 2022 which is positive. There were no correspondences received from the neighboring property owners.

Chairman Malcarne asked for questions and comments from the board.

Mr. Tompkins expressed his comments per his site visit. He agreed with the applicants that there are no other areas to locate a pool. The house is on the road level and the property drops off drastically in the back. The only area where it is level is the proposed location of the pool aside from where the septic is.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Tompkins, all Aye, Motion carried, 5-0. Hearing none, the board agreed to close the public hearing.

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

The board agreed to pass a resolution, to wit:

Mr. Tompkins motioned that the Town of Clinton Zoning Board of Appeals (ZBA) grant area variances requested by Kathleen Blake of 132 Old Bulls Head Road, tax grid # 6469 -00-913517 from section 250 Attachment 8 Table 2 reducing the side yard setback from 50 feet to approximately 15 feet, the rear yard setback from 75 feet to approximately 25 feet and the maximum building coverage from 7% to approximately 9% for the installation of an inground pool and spa. The parcel in a non-conforming lot of 0.49 acres in an AR5 district.

***Factors:***

1. The applicant requests variances to reduce the side yard setback from the required 50 feet to approximately 15 feet, the rear yard setback from the required 75 feet to approximately 25 feet and the maximum building coverage to approximately 9% where the current allowed is 7% in order to install an inground pool and spa. There is also requested a variance to reduce the front yard setback from 100 feet to 70 feet however this is not required.

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**Section 250 22 A3**, Accessory structures states "No such structure shall project closer to the fronting street than the principal building on the lot, or the required front yard setback for the district, **whichever shall be less restrictive.**" In this instance the proposed pool is farther from the fronting street than the principal building which is the home and therefore doesn't need a variance for the front yard setback.

2. The property is an existing non-conforming lot of 0.49 acres in an AR5 district.
3. The property is not within the Ridgeline, Scenic and Historic Protection Overlay District or the Taconic State Parkway Viewshed.
4. The property is within a Critical Environmental Area.
5. The three variances involved are substantial however the proposed pool will not be visible from the road or any nearby residences.
6. There is no other area of the property where the pool can be located due to the topography and the location of the septic system.
7. There will not be an undesirable change in the neighborhood character and the pool will not be a detriment to the nearby properties.
8. The proposed requests will not have an adverse physical or environmental effect.
9. The difficulty is self-created but that not necessarily preclude the granting of these variances.
10. The planning board has made a positive recommendation to the ZBA on this request.

***Conditions:***

    All fees are paid

Seconded by Mr. Calogero,

**Discussion.** None.

All Aye, Motion carried 5-0.

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**INTERPRETATION:**

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

The appellant 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).

**Sec. 250-31 – B(5)** Alternate Care Facility - Any increase in the resident population, change in type of population, and/or any expansion of the facilities shall require application to the Planning Board for consideration of a new special use permit and shall require re-examination of the site plan by the Planning Board.

**Sec. 250-81 (Non-conforming Use)** – (A) Shall not be enlarged or extended, or placed on a different portion of the lot or parcel of land occupied by such use on the effective date of this chapter, except as provided in this article. For the purpose of this section:

**Sec. 250-81 –C-** Shall not be changed to another nonconforming use without prior approval by the Zoning Board of Appeals, and then only to a use which, as determined by the Zoning Board of Appeals, maintains or reduces the nonconformity. Such change of nonconforming use approval by the Zoning Board of Appeals shall be prior to any other approvals required by the Planning Board.

**Sec. 250-81 (D)** Shall not be reestablished if such use has been discontinued for any reason, whether through vacancy or cessation of use, for a period of one year or longer, or has been changed to, or replaced by, a conforming use for any period of time. The intent to resume a nonconforming use does not confer the right to do so.

The legal counsels for both parties were not in attendance. Shane Egan was in attendance to represent the Town.

The board agreed to enter into an executive session at 7:45 pm.

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Chairman Malcarne motioned to enter into an executive session for the purpose of discussing client and attorney material product, seconded by Mr. Mustello, All Aye, Motion carried, 5-0.

At 9:03 pm. Chairman Malcarne motioned to resume the regular session, seconded by Mr. Mustello, all Aye, Motion carried, 5-0.

Chairman Malcarne stated that he and Mr. Mustello will not be around at the next regular ZBA meeting date which is August 25, 2022. After polling the rest of the board regarding their availability, the board agreed to tentatively schedule the next meeting to August 31, 2022 depending on the availability of Mr. Canham and Ms. Dolan

The board discussed the application.

Chairman Malcarne made a recap and gave the status of this application. He indicated the arguments from both parties on whether the increase in the number of beds increases the nonconforming use. "Is the addition of detox services a change of use from the way Cornerstone had been treating their patients in the past years or before the zoning law?"

Chairman Malcarne expressed his appreciation about all the materials that were received. It's an enormous amount of documentation that the board has to go through in reviewing this interpretation. He then solicited thoughts and comments from the board.

Mr. Tompkins commented that there's a lot of materials to digest. It will certainly keep him busy.

Mr. Calogero stated that one of the biggest issue for him is about the alleged morphing from alcohol treatment into detox. Does that change the use or is it an additional use in the services that are offered here? He commented that we're talking about a span of 30 years or more. The technology of medical treatment changed and improved over the years. It morphs certain things. He remembered shock treatment in the 50s being heralded as end-all be-all for patients with certain types of mental disorders. He's trying to clarify in his mind if this is or is not a significant difference. He commented that we're talking about human beings and treating people who have fallen into drug addiction. Alcohol is an

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addictive drug and this is broadcast to all of us all the time particularly to children. Mr. Calogero noted that he is putting a lot of thoughts into this issue.

Mr. Mustello echoed Mr. Calogero's comments. He is concerned over the issue about the transition from alcohol rehab to detoxification. He also commented about the large documentation received from all the parties. He expressed thanks to the chairman in guiding the board about their responsibility as a zoning board member. He said, "It's a difficult situation because nobody wants to say – "You should or should not treat people that needs help." The board has to leave their emotions out of it and strictly look at it from a zoning standpoint. It's a very difficult decision because no matter how this comes out, people are going to be concerned with the outcome. Mr. Mustello commented that this weighs heavily on him.

Chairman Malcarne expressed his comments. The transition from alcohol rehab to intense detoxification is the issue that he will put a fair amount of weight into. He is looking into a great detail about the intensification of use. Despite the overwhelming amount of information, Chairman Malcarne stated that he is comfortable and confident that the board will come up with the right decision.

Mr. McMahon echoed the board's concerns. He added that there's a lot of emotional sides to this factor but in the end it will all boils down to "What is the zoning situation versus the emotional situation?"

Chairman Malcarne stated that there's a lot of information to digest plus all the testimonies from the neighbors and the Cornerstone stuff. He indicated the three questions for recap.

- (1) Does the town code has any per se prohibition on the expansion of this nonconforming use?
- (2) Does the 50% increase in bed (66 to 99) impermissibly intensify the use?
- (3) Did Cornerstone impermissibly expand by providing detoxification services?

Chairman Malcarne indicated that the board will continue to review this case.. The board will give a decision next meeting.

No action taken.

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**APPROVAL OF MINUTES:**

Chairman Malcarne motioned to accept the minutes of April 28, 2022 minutes, seconded by Mr. Mustello, All Aye, Motion carried, 5-0.

Chairman Malcarne motioned to accept the minutes of June 23, 2022 minutes, seconded by Mr. Tompkins, All Aye, Motion carried, 5-0.

**ADJOURNMENT:**

Mr. Tompkins motioned to adjourn the meeting at 9:25 pm, seconded by Mr. Mustello, All Aye Motion carried, 5-0.

Respectfully Submitted By:



Arlene A. Campbell  
Zoning Board of Appeals Secretary