

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
August 31, 2022**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham
Norma Dolan
Ron Mustello
Russel Tompkins
Frank McMahon

Arlene Campbell, Secretary

MEMBERS ABSENT

ALSO PRESENT

Eliot Werner, Liaison Officer

Chairman Malcarne called the meeting to order at 7:30 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:

Romeobird LLC - Lake Pleasant Dr, Tax Grid No. 6268-00-781093.

The applicant requests the following area variances to Sec. 250 Attachment 2 (Area Bulk Regulations) in order to construct a new single-family dwelling on a 1.1-acre lot in the AR5 Zoning District.

Side Yard Setback reduction from 50' to 45.9'
Side Yard setback reduction from 50' to 48.1'
Open Space reduction from 75% to 71.3%

Mr. Graminski appeared and made a presentation of his variance application. This lot is Board of Health approved for two bedrooms. They are currently in the process of updating this system to a 3-bedroom house. Mr. Graminski explained the details of the variance application as indicated above. In regards to the open space calculation, Mr. Graminski explained that he took away the area for the

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septic system per his interpretation of the code. There is approximately 85% of open space if you remove the area for the septic system.

Mr. Graminski stated that they are seeking area variances to construct a three-bedroom single family dwelling on a 1.1-acre nonconforming lot in the AR5 Zoning District. This parcel was one of the many parcels created by a subdivision on June 15, 1962. Majority of these parcels are 1.1-acre in size, some are a little bit larger and have been to a lot merger. Mr. Graminski accentuated that these lots are extremely substandard to the current zoning requirements.

Mr. Graminski continued that the site development of the property has been done to respect the physical features of the property. The septic system is located on the only feasible location on the property in consideration to the adjacent well and septic of the neighboring properties and Browns Pond. The decision in developing the architecture of the house was to be respectful of the neighborhood in maintaining hundred feet of separation from Browns Pond and adequate separation from the adjoining properties. He also explained the details of the proposed two-story house that is on a slab on grade.

Mr. Calogero read the Planning Board's recommendation dated August 2, 2022 which is positive. Two correspondences were received from the neighboring properties expressing strong opposition of the proposal.

The board discussed the application on hand. Mr. Calogero felt that this application does not require coverage variance. The board doesn't normally include the septic area in the calculation of the open space. The board agreed that the proposed project does not require open space variance.

Mr. Graminski addressed the neighbor's concern. He made a presentation showing the location of the existing residences near this property. He noted that these residences are also in the setback.

The board agreed to open the public hearing. Chairman Malcarne motioned to open the public hearing, seconded by Ms. Dolan, all Aye, Motion carried, 7-0.

Mr. Calogero read the correspondences received from the neighboring property owners.

Patrick Murphy, 53 Lake Pleasant Drive and Divya Jayachandran, 42 Lake Pleasant Drive both expressed strong opposition to the construction of a new residence.

Kathleen Duran, 39 Lake Pleasant Drive supported the proposed project.

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

Chairman Malcarne motioned to close the public hearing, seconded by Mr. Mustello, all Aye, Motion carried, 7-0.

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

Mr. Calogero motioned that the Town of Clinton Zoning Board of Appeals grant the following variances to Section 250-16 and Attachment 2 of the Zoning Code, to **Romeobird LLC**, for their property on Lake Pleasant Drive, **Tax Grid No 6268-00-781093**, a pre-existing non-conforming lot in an AR5 zone: a side yard variance to 45.9 ft when 50ft are required; a side yard variance to 48.1 ft when 50 ft are required;

Whereas:

1. The need for variances arises from the relatively small size of this lot which is characteristic of several of the other lots, also pre-existing non- conforming on Lake Pleasant Drive.
2. Reducing the width of the proposed building to avoid the variances would render the design restrictive and awkward.
3. Reducing the side setbacks by 4.1 ft and 1.9 ft should have no significant visual impact on the adjoining properties.
4. According to the ZEO, the requested variances are less than 4% on one side and about 8% on the other. They should not have an adverse effect on the physical or environmental conditions in the neighborhood.
5. The proposed building is set further back on its lot than its neighboring structures which should soften any visual impact on those structures.
6. The Planning Board has made a unanimous positive recommendation to the ZBA with the added commentary that it is their belief that the distances are not substantial enough to deny the granting of these variances.
7. The difficulty is self-created.

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8. An area variance is a type II action under SEQRA and requires no further action.

9. There are no known outstanding zoning violations.

Condition: Any side yard lighting will be facing downward.

Seconded by Mr. Tompkins,

Discussion. Ms. Dolan expressed concerns about the proximity of the next-door house. She suggested including a condition that any side yard lighting will be facing downward. The house is farther set back from the road.

Mr. Tompkins expressed his comments per his site visit. These lots were created prior to the zoning regulations. The property is only 120 feet wide. It is long and narrow. The property to the north who was opposed to this variance is in the side yard. The other property owner who is also complaining and who lives across the street is also in the setback.

Mr. Tompkins stated that houses in the setback are typical in this area given the size and shape of the lots. He commented that it's nice to have a place next to a vacant lot who doesn't belong to you and you can keep it vacant, but the owner of this lot also has the right to build a house if he chooses to. Mr. Tompkins feels that the request is minimal and should be granted.

All Aye, Motion carried 7-0.

Koleoglou Area Variance – property owned by Peter Koleoglou located at Lake Dr, Tax Grid No. 6468-00-072915.

The applicant requests an area variance to Sec. 250-10 D (5) for a setback reduction from 200' to 155' in order to install an on-site wastewater treatment system (sewage system) on a 3.4-acre nonconforming lot in the C Zone District

Mr. Koleoglou and his engineer, Dave Ryder appeared for this application. Mr. Ryder stated that this lot previously had Board of Health approval in 1986 when the required septic setback was 100 feet. They have the wetland and the pond areas recently re-delineated and found out that the original septic system is closer to the lake. They are now looking to place the proposed septic system in a different location that is in between the two wetlands. He noted that there is a wetland to the north of the property and the pond to the south. In view of this, Mr. Ryder said that they are seeking mitigation to allow placement of an enhanced

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treatment septic system 150 feet from each of the wetland. He also explained why there is no other means to achieve the required setback of 200 feet from the lake, wetland or waterbody.

Mr. Tompkins read the Planning Board's recommendation dated August 16, 2022 that is positive.

Mr. Tompkins expressed his comments per his site visit. He noted that this lot is part of the subdivision approved in December 2, 1985 and is Board of Health approved in February 21, 1986. He also demonstrated the topography of the land.

Chairman Malcarne solicited for questions and comments from the board.

Ms. Dolan commented that she is not familiar with this particular septic system. She asked if this requires yearly maintenance. Mr. Ryder responded, "Yes". This requires effluent filter in the septic. Effluent filters are designed to protect the drain field and allow for cleaner and more clear effluent to exit the tank.

Ms. Dolan suggested putting a notation in the resolution regarding the maintenance of the septic system in case the property changes hands in the future. Mr. Dyre responded that this maintenance is notated on the plans as the Department of Health approves this system.

The board agreed to open the public hearing. Chairman Malcarne motioned to open the public hearing, seconded by Mr. Tompkins, all Aye, Motion carried, 7-0.

One letter was received from Omega Institute indicating concern about the septic system. Is it above ground or inground? Mr. Dyre responded that the septic system is conventional inground. No fill is necessary.

Hearing no comments from the public, the board agreed to close the public hearing. Chairman Malcarne motioned to close the public hearing, seconded by Mr. Tompkins, all Aye, Motion carried, 7-0.

Chairman Malcarne opened discussions from the board.

Mr. Canham asked, how often is the maintenance of this system. Mr. Dyre responded, "Every two months". They will be using a septic system called "Eljen GSF (Geotextile Sand Filter)".

Mr. Calogero asked if this a commonly used system. Mr. Dyre responded, "Yes". This is commonly called enhanced treatment system.

After a lengthy discussion, the board agreed to pass a resolution.

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Mr. Tompkins motioned that the Town of Clinton Zoning Board of Appeals (ZBA) grant area variance requested by **Peter Koleoglou** on property located on Lake Drive, Rhinebeck N.Y. tax grid # 6468-00-072915 in the C district from section 250-10D -5 reducing the septic setback from a lake from the required 200 feet to 155 feet.

Factors:

1. The applicant requests a variance to reduce the septic setback from the required 200 feet from the lake (Long Pond) as listed in section 250-10D 5 of the Town of Clinton Zoning Law to 155 feet.
2. The property is an existing non-conforming lot of 3.4 acres in a C district.
3. The hardship is not self-created as the applicant has prior approval from the Department of Health dated February 26, 1986 when the required setback was 100 feet.
4. A letter of Recommendation was submitted by Jeff Newman, the Town of Clinton Municipal Code Enforcement Officer to the Town of Clinton Planning Board on July 26, 2022, in which he asserts that the 200-foot setback from a lake, watercourse, or wetland would render this parcel unbuildable.
5. There is no other means to achieve the placement of the septic system.
6. The variance is substantial however this does not preclude the granting of it.
7. There will not be an undesirable change in the neighborhood character and the granting of the variance will not be a detriment to nearby properties.
8. The variance will not have an adverse physical or environmental effect.
9. The Town of Clinton Planning Board made a positive recommendation to the Zoning Board of Appeals by letter dated August 19, 2022.
10. An Area Variance is a Type II action under SEQRA and requires no further action.

Conditions:

1. All fees are paid
2. The septic system is designed and installed by P.E. David Rider and is built using the Eljen GSF as discussed at the Planning Board meeting.

Seconded by Mr. Calogero,

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Discussion: Mr. Canham expressed his concern about the impact to the lake. He said, "The last thing that this lake need is more nutrient loading." He hopes that the landowner will maintain the filter to protect the lake.

Chairman Malcarne asked to include a statement that states "Variance is a type II action and requires further no action." The board agreed.

Mr. Mustello asked the applicant's engineer exactly how the Eljen GSF system works.

Mr. Dyre explained how the Geotextile Sand Filter (GSF) system works. The incoming effluent and bacteria flow through the perforated pipes which distribute the effluent over the Modules. Open air channels in the Modules allow beneficial bacteria to grow on the Bio-Matt fabric and treat effluent. A geotextile fabric covers the top and sides of the GSF Modules, protecting the system's sand and soil from fine particles that can clog the system. After effluent passes through the GSF Modules, a lighter, secondary biomat forms on the layer of sand below the system, where the treatment process is continued. Treated effluent is then absorbed by the native soil where final filtration takes place. Basically, you get about bacteriological growth on that membrane and as wastewater passage from there, the microbes actually eat the pollutants out of the water, then it goes from there as it goes through the unit, it hits a layer of sand. Mr. Dyre noted that you actually get sand filtration before it actually hits the ground.

All aye, motion carried 7-0.

Squirrel Hollow LLC Area Variance – property owned by Michael Goldstein and Emily Blumenthal located at 162 Rymph Road, **Tax Grid No. 6367-00-080033.**

The applicant requests an area variance to Sec. 250-29 B-6 which states that the floor area of an accessory dwelling unit (ADU) not exceed 35% of the total habitable space of the existing principal dwelling or 1,000 square feet of floor space whichever is more restrictive in order to construct a 1,156 square feet pool house/ADU.

Mr. Goldstein and Ms. Blumenthal appeared for their application. Mr. Goldstein explained the application as stated above. They own a 17.2-acre property in the AR3 Zoning District. They are proposing to install a pool house/accessory dwelling. This will be sited at the back of the property and will not be visible to any of the neighboring properties. This structure is 156 square feet larger than the 1,000 square feet cap for an accessory dwelling per the regulation.

Mr. Goldstein noted that they need to update the septic system given the proposed pool house. The current septic system is grandfathered as the leach

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field is actually on the front of the house. He commented that this will be an improvement not only to the property but also to the surrounding neighborhood since the leach field will be moved to the back of the property.

Mr. Goldstein explained that he thought that they were within the code requirements when he designed the pool house. The main house is 3,000 square feet big and the habitable space is less than the code requirement. This is a modest accessory dwelling unit to accommodate a pool house.

Mr. Canham read the Planning Board's recommendation dated August 16, 2022 which is positive.

Mr. Canham commented that every time an application about an accessory dwelling comes before the board, he always looks up "Habitable Space" in the NYS Building and Fire code. None of the sections of the code exactly tell you how to calculate the habitable space. Hopefully, this item gets addressed during the zoning revision. Over the years since this provision was put into code, the average size of an American home has ballooned exorbitantly. He feels that a 3,000 square feet home is a fairly small structure by modern standards though he feels that it is still fair to limit it in the code and ask the Zoning Board of Appeals to review and decide if this variance is appropriate to be granted.

Mr. Canham stated that in his opinion, the proposed square footage of the pool house/accessory dwelling is larger than the 1,000 square feet threshold and thus requires a variance.

Mr. Canham said that he noticed that there seems to be a new driveway to access the pool house. He asked, "Is this a functioning driveway?"

Mr. Goldstein responded that this is not intended to be a driveway. They put this in as a service access for the trucks to get to the back property for the septic installation. They didn't want these construction vehicles to go through the main driveway. He added that there will be a farm gate in front of it when all is said and done.

Mr. Canham expressed his concern about this access. If this is a functioning driveway yet not intended to be a driveway, do they need a driveway permit? He deferred his question to Ms. Campbell and the chairman.

Ms. Campbell responded that driveways need to be reviewed and signed off by the Highway Superintendent to ensure there's enough sight distance and is in accordance with the code.

Mr. Canham asked the applicant whether he intends to keep and maintain this accessway for the structure permanently.

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Mr. Mustello echoed Ms. Campbell's comment about driveways. He said that the purpose of the driveway is safety for sight distance, etc. You will post a bond when you pull a driveway permit and that bond protects the town from any damage to the roadway specifically the edge or shoulder of the road. If this access is being used for construction purposes, it's conceivable that the edge of the road could sustain some damage and the bond might become necessary or useful. He suggested putting this issue as a condition to the variance.

Mr. Tompkins stated that he spoke with the highway department about this access. The property owners were given just a temporary permit to use this accessway for construction purposes. He commented that if the property owners will use this access for the accessory dwelling, then they should have a conversation with the highway department.

Mr. Tompkins expressed his concern about the proposed pool house. He was concerned that people will potentially live in there.

The board had a lengthy discussion about the accessway to the pool house.

Mr. Goldstein stated that they did receive a temporary permit for accessway for construction access purposes. He noted that the use of the pool house/accessory dwelling is for their kids and family when they visit them.

The board agreed to include a notation in the resolution about the temporary use of the driveway/accessway to the pool house/accessory dwelling while the construction is being done. A driveway permit is required if the applicant decides to use this accessway in the future as a legal driveway.

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

Mr. McMahon read a correspondence from James Brands who supports the proposal.

Hearing no comments from the public, the board closed the public hearing.

Chairman Malcarne motioned to close the public hearing, seconded by Mr. Tompkins, all Aye, Motion carried, 7-0.

After all the reviews were made, the board passed a resolution, to wit:

Mr. Canham motioned that the Town of Clinton Zoning Board of Appeals grant the area variance requested by Squirrel Hollow LLC, represented by principals **Michael Goodstein and Emily Blumenthal**, to Section 250-29B (6) with respect

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to the floor space of an accessory dwelling unit. Specifically, the Applicants request a variance to construct a 1,156 square foot pool house/accessory dwelling unit on their 17.2-acre property located at 162 Rymph Road in the Town of Clinton (**Tax Grid # 132400-6367-00-080033-0000**). The property is in an AR3 Zoning District.

Factors:

1. Section 250-29B(6) limits the size of an accessory dwelling unit (ADU) to not exceed 35% of the habitable space of the existing principal dwelling unit, or 1,000 square feet of floor space, whichever is more restrictive.
2. Habitable space is defined by the New York State Uniform Fire Prevention and Building Code. That code is vague on exactly how to calculate habitable space, and what rooms within a building qualify as habitable space. The Applicants calculated the habitable space of the principal dwelling unit as 2,514 square feet, and the habitable space of the ADU as 633 feet. The Municipal Code Enforcement Inspector disagreed, and concluded that the habitable space was larger.
3. Regardless, the total floor space of 1,156 square feet is larger than the 1,000 square foot limit in Section 250-29B(6), necessitating a variance regardless of the method of calculation of habitable space.
4. The variance requested is modest: 16% based on the 1,000 square foot limit, or 40% vs 35% of the principal dwelling unit (if calculated simply using total floor space). The property is 17.2 acres in an AR3 Zoning District, and the proposed ADU is well away from neighboring houses.
5. An undesirable change will not be produced in the character of the neighborhood or be a detriment to nearby properties. The site for the ADU is well back from the road and screened by trees and foliage.
6. The proposed variance should not have an adverse effect or impact on the physical and environmental conditions of the neighborhood. The building location is within an existing clearing on the property.
7. The property is not in a Critical Environmental Area.
8. The alleged difficulty is self-created, but that does not preclude the granting of the area variance.
9. An area variance is a Type II action under SEQRA and does not require further review.
10. The Planning Board has made a positive recommendation.
11. The current driveway for construction is covered under a temporary permit. If the applicants wish to maintain the driveway permanently, they will need to obtain a driveway permit.

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12. The project will include an upgrade and improvement of the existing septic system.

Conditions:

1. All fees have been paid.

Seconded by Mr. Tompkins,

Discussion. Mr. Calogero commented that he was pleased about the upgrade of the septic system. He suggested including a notation in the resolution stating “This upgrade is an improvement of the existing system.”

Mr. Canham agreed that upgrading the septic system on this property is an improvement to the property and the existing system.

All Aye, Motion carried 7-0.

The board agreed to take a five-minute break and resume the session at 8:42 pm.

INTERPRETATION:

Medical Arts Sanitarium Inc Db a 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:

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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.

Michael Zarin for Cornerstone and Michael Purnell appeared. Kyle Barnett was not in attendance. Shane Egan and Jesse Gleason both appeared to represent the Town.

Chairman Malcarne motioned to enter into executive session for the purpose of discussing confidential attorney client work product and to confer with the town attorney regarding privilege and confidential information and materials.

Seconded by Mr. Canham, all Aye, Motion carried, 7-0.

The board reconvened at 9:22 pm.

Chairman Malcarne motioned to return to the regular session, seconded by Mr. Tompkins, all Aye, Motion carried, 7-0.

Chairman made a recap about the interpretation application on hand. He indicated the exceedingly large amount of paperwork received that the board have been going through since the start of the application. The public hearing was closed a few months ago and to date, the board is still within the 62- day period to render a decision.

Chairman Malcarne solicited comments from the board.

Mr. Canham expressed his comments. Although he missed the public hearing, Mr. Canham stated that based on his readings of the very detailed minutes prepared by Ms. Campbell and all the materials submitted for this application as well as the findings and decision draft, he feels that this case really boils down to Section 250-81 that limits the expansion of nonconforming uses. He opined that this language essentially prohibits intensification of use. The Zoning Board of Appeal's job is to interpret that language. In his mind, going from 66 beds to 99

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beds constitutes an intensification of use given all the testimonies and all the information provided by some of the speakers including the increase in the activity in the area.

Chairman Malcarne noted that the board had to sort through and go through all the opinions and comments (speaking in opposition and support) including all the letters and correspondence from the legal counsels that the board received.

Mr. Mustello opined about some of the comments (in opposition of Cornerstone) made during the public hearing in regards to what Cornerstone does and the people they treat. For him, the most difficult piece of this case is the work that the Cornerstone does and the people that they treat. He expressed his deepest sympathy about the people who've been affected and suffering from drugs and alcohol. None of these decisions were taken lightly by himself or by anyone else on this board. This is extremely difficult to get through. When you think about the people in your lives that could be or have been affected by this, Mr. Mustello said that this weighs heavily on him but the board's job is to interpret the code. Cornerstone presented many accreditations and certifications, etc. but at the end of the day, the local code still prevails.

Mr. Calogero echoed Mr. Mustello's comments. There isn't a part of him that is not sympathetic to the mission of Cornerstone. He was in the education field for 39 years and having the experience with the young people who struggled with this addiction was almost daily. He expressed hardship in separating the responsibility that he has with the town in defending the town code with your emotional side. He hopes that going forward, Cornerstone can build more bridges with the community so that more people understand their mission and they can all be better neighbors to each other.

Ms. Dolan concurred with the comments of her colleagues. She didn't want to say much as this is a very emotional topic for her given a family experience. A lot of time and thought have been put into this application.

Mr. McMahon stated that he lost both his nephew and niece to alcoholism. They all have been affected by alcohol and drugs. He indicated the career that he had for decades dealing with the people who had these kinds of problems. Mr. McMahon commented that they are all sympathetic but the bottom line comes down to the board's interpretation of the zoning law. They have to make a decision based on the law regardless of their sympathies. They cannot let themselves be clouded by these sympathies.

Chairman Malcarne asked Mr. Canham about his comments regarding the findings and decision.

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Mr. Canham stated that it will become clear in the findings and decision that the board's conclusion is a bit of a double-edged sword. He thinks that the board is essentially concluding that Cornerstone is outside of the Planning Board's purview given the nonconforming status. He hopes that there is a way to have Cornerstone work with the neighbors and the town to resolve these conflicts and ensure the safe operation of this facility. He hopes that there is a way to make this happen. The interpretation application is about the expansion of use. This does not address the concerns of the neighbors. He understands that this case is before the Planning Board and hopefully the neighbors can resolve these issues with Cornerstone. He hopes there is a way to address the differences.

After all the deliberations were made, the board agreed to pass a motion, to wit:

At a special meeting of the Town of Clinton Zoning Board of Appeals (the "Board") duly held at the main town hall of the Town of Clinton, 1215 Centre Road Rhinebeck NY 12572 on the 31st of August 2022.

Upon the calling of the roll by the Zoning Board Clerk the following members were:

Present: Joseph Malcarne, Charlie Canham, Russ Tompkins, John Calogero, Norma Dolan, Ronald Mustello and Frank McMahon

Absent: None

The following resolution was offered for adoption by Chairman Malcarne which resolution was seconded by Mr. Canham.

RESOLUTION APPROVING FINDINGS AND DECISION DATED AUGUST 31, 2022.

WHEREAS, on March 17, 2022, a group of Town of Clinton ("Town") property owners represented by the law firm of Van DeWater & Van DeWater, LLP (the "Neighbors") submitted a complaint to Michael Cosenza, the acting Municipal Code Enforcement Inspector ("MCEI");

WHEREAS, the Neighbor's March 17, 2022 complaint alleged that Medical Arts Sanitarium, Inc. d/b/a Cornerstone of Rhinebeck ("Cornerstone") violated certain provisions of the Town Code by expanding its bed capacity and adding detoxification services to the treatment it offers to its patients (the "MCEI Complaint");

WHEREAS, Cornerstone operates as a drug and alcohol rehabilitation facility located at 73-93 Serenity Hill Road (Tax Grid Id. No.

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132400-6469-00-531763-0000) (the “Cornerstone Property”);

WHEREAS, on April 1, 2022, the MCEI issued a determination which amongst other findings: (a) confirmed Cornerstone’s status as a preexisting nonconforming use under Section 250-80 of the Town of Clinton Town Code (the “Town Code”) based on Rhinebeck Lodge for Successful Living, Cornerstone’s predecessor, operating the same type of rehabilitation service facility on the Cornerstone Property with a capacity of 66 patient beds prior to the Town’s adoption of zoning regulations; (b) classified Cornerstone’s use of the Cornerstone Property as an Alternative Care Facility (“ACF”) – Rehabilitation Services Facility (“RSF”); (c); found that the Cornerstone Property is located the Conservation Agricultural Residential (C) Zoning District in which ACFs are not permitted; (d) interpreted relevant provisions of the Town Code (e) held that the bed capacity increase did not impermissibly expand or intensify Cornerstone’s preexisting nonconforming use of the Cornerstone Property in violation of the Town Code; and (f) held that the offering detoxification services to its patient population did not impermissibly expand, intensify or change Cornerstone preexisting nonconforming use in violation of the Town Code (the “MCEI Determination”);

WHEREAS, The MCEI Determination was filed with the Town of Clinton Town Clerk (the “Town Clerk”) on April 6, 2022;

WHEREAS, On April 29, 2022 the Neighbors submitted an application to this Board seeking an interpretation of the Town Code reversing the MCEI Determination and finding that Cornerstone did violate the Town Code (the “ZBA Application”);

WHEREAS, the Board conducted a public hearing in regard to the ZBA Application on May 26, 2022 during which members of the public spoke and made written submission both in support of and in opposition to the ZBA Application;

WHEREAS, the Board, upon stipulation of both the Neighbors and Cornerstone through their respective attorneys’, permitted further written submissions from the Neighbors and Cornerstone and agreed the Board’s 62-day deadline to render a decision on the ZBA Application commenced on July 8, 2022;

WHEREAS, the Board has reviewed and considered the statements and submissions of the public, both in support of and in opposition to the ZBA Application;

WHEREAS, the Board has reviewed the ZBA Application as

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well as additional written material submitted to it by Kyle Barnett, Esq. on behalf of the Neighbors and Jody Cross, Esq. on behalf of Cornerstone;

WHEREAS, the Board now desires to adopt the “Findings and Decision” dated August 31, 2022, which is attached hereto and is incorporated herein.

NOW THEREFORE BE IT RESOLVED as follows:

1. that the Neighbor’s submission of the ZBA Application was timely pursuant to Town Code Section 250-98 (B)(3);
2. that Cornerstone’s increase in bed capacity to 99 constituted an impermissible intensification and enlargement of the preexisting nonconforming use of the Cornerstone Property as an ACF RSF in violation of Sections 250-80(B) and 250-81 (A) of the Town Code;
3. that Cornerstone offering detoxification services to its patient population did not impermissibly intensify, enlarge, or change the preexisting nonconforming use of the Cornerstone Property as an ACF RSF in violation of Sections 250-80 (B), 250-81 (A) and 250-81 (C) of the Town Code.
4. that the Board adopts the “Findings and Decision” dated August 31, 2022 which details and explains the rational for the conclusions reached in this Resolution;
5. that the Board authorizes, directs and empowers Chairman Malcarne to sign the “Findings and Decision” dated August 31, 2022; and
6. that the Board authorizes, directs and empowers the Zoning Board Clerk to file this Resolution along with the “Findings and Decision” dated August 31, 2022 in the office of the Town Clerk within five business days of the date of this resolution as well as mail copies to Jody Cross, Esq. and Kyle Barnett, Esq. counsel for Cornerstone and the Neighbors, respectively.

The vote having been taken upon such resolution the result was as follows:

Joseph Malcarne	VOTING	<u>Aye</u>
Charles Canham	VOTING	<u>Aye</u>
John Calogero	VOTING	<u>Aye</u>

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Ronald Mustello	VOTING	<u>Aye</u>
Norma Dolan	VOTING	<u>Aye</u>
Russell Tompkins	VOTING	<u>Aye</u>
Frank McMahon	VOTING	<u>Aye</u>

There being a majority of the Board voting to approve the resolution, the resolution was declared by the acting Chairman to have been adopted.

All Aye, Motion carried, 7-0.

Michael Zarin, Cornerstone legal counsel asked to make a verbal application to the board based on the decision that was made. He stated that based on the empathy that was expressed that night and in the interest of fairness to the Cornerstone residents that are currently at the facility and due to the critical nature of the service that is provided, given the opioid epidemic and the fact that this facility has operated 99 beds since 2006 and has relied on the opinions by at least two zoning enforcement officers over the years, and the fact that Cornerstone has been a good neighbor for 40 years and it's not seeking to expand facilities or alike, Mr. Zarin respectfully asked the board to stay their decision until such time a decision is rendered on the Article 78 that they intend to bring to appeal.

Mr. Zarin stated that there is a precedent in the code. It's interesting that there's an automatic stay in the subdivision application in the town code if somebody brings an Article 78. He commented that it doesn't mention the ZBA per se but it is the same concept. He added that there is a bill before the Senate currently in committee that's supported statewide specifically for making automatic stay for ZBA decisions that are appealed to Article 78.

Mr. Zarin opined that this board clearly has the discretion. It's done in many municipalities to stay the decision while the appellant appeal it within Article 78. He said that the board can do it and say, "We will stay for a 30-day period," and within that time an appeal is made that they would ask the board to stay their decision until the court renders a decision. There maybe motions to the Supreme Court on the topic and they will take whatever actions they feel is appropriate

Chairman Malcarne stated that in general, any enforcement of this decision would be taken at the Town Board. The request seems very reasonable and he doesn't think that there would be any issue. He agreed that the ZBA does not have its own enforcement powers.

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Mr. Zarin concurred that this is a Town Board's purview. He commented that the ZBA can make a recommendation. It's like Planning Board sending a recommendation to the Zoning Board of Appeals on variance applications.

Mr. Tompkins commented that this is up to the Town Board and not the ZBA. Mr. Zarin remarked that all he is asking is a recommendation to the Town Board.

After a lengthy discussion about the request, the board had the consensus that this request is a town board's discretion.

Wendy Adelman spoke and indicated Mr. Replansky's response when asked about the number of populations during one of the public hearings. They were told that that they didn't have anything like 99 and it's been 66 for the past year. She doesn't understand what seems to be the problem if Cornerstone is functioning at 66 beds. She asked, "Are they going to bring more people in to get up to 99?"

Chairman Malcarne acknowledged Ms. Adelman question but noted that the board's responsibility is to make the determination and enforcement is not their purview. It's up to the Town if Cornerstone has to go back to 66 beds.

APPROVAL OF MINUTES:

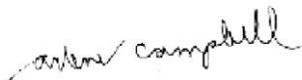
Chairman Malcarne motioned to accept the minutes of May 26, 2022 minutes, seconded by Mr. Mustello, All Aye, Motion carried, 7-0.

Chairman Malcarne motioned to accept the minutes of July 28, 2022 minutes, seconded by Mr. Tompkins, All Aye, Motion carried, 7-0.

ADJOURNMENT:

Mr. Tompkins motioned to adjourn the meeting at 10:25 pm, seconded by Mr. Mustello, All Aye Motion carried, 7-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary