

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

**MEMBERS PRESENT**

Joseph Malcarne, Chairman

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

**MEMBERS ABSENT**

**ALSO PRESENT**

Arlene Campbell, Secretary

Eliot Werner, Liaison Officer  
Jeff Newman, MCEI

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 application on the agenda was properly advertised and adjoining neighbors were notified. Ms. Campbell responded positively.

**AREA VARIANCE:**

**DeMello Variance** – property located at 13 Mountain View Road, **Tax Grid No. 6468-00-944427.**

Applicant request removal of condition of the variance previously granted dated March 25, 2021 that states. Only an approved accessory dwelling unit can be tied into a septic system.

Darren Davidowich from Art of the Building was back before the board. He gave a recap of what had transpired at the previous meeting and updates of all the construction on this property. The stone garage that was built in 1970 and was approved to be converted to a one-bedroom ADU is completed. The old chicken coop that was demolished and was reconstructed as a garage is also now completed. There is a swimming pool on the property that existed prior to the DeMello's ownership. The last remaining structure located behind the chicken coop is the white barn that was built in 1990. The current use of this building is a gym. As indicated at the previous meeting about their intention to enlarge and

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double the size of this structure, Mr. Davidowich stated that the property owners now wish to expand the gym. They would like to add amenities to this building. They are proposing to add one bathroom with a steam shower that is good for before and after workouts. They are also proposing a sauna and a hot tub.

Mr. Davidowich commented that the property owners have been spending a lot of time in this building. This building has the best views of the mountains out of all the structures on this property. The guest cottage is always occupied by friends and family. He accentuated that this building will not be used as a short-term rental.

Mr. Davidowich explained that per the condition of the previous variance approval, they need to come back before the board if they decide to add plumbing in this structure. He is now back before the board asking to remove the condition of the variance granted in 2021.

Chairman Malcarne solicited questions and comments from the board.

Mr. Calogero expressed his comment. It has always been the topic at the ZBA meeting about plumbing in an accessory structure. Hopefully, the town board will address this issue in the zoning revision. Mr. Calogero stated that this is the first time that he can recall the board has to deal with a condition preventing a tie-up to a septic system.

Mr. Calogero expressed his thoughts about the application. Per the applicant's statement, the property owner has been spending a lot of time on this property. Spending a lot of time on your property comes with a lot of amenities. One of the positive statements that he heard about this property is about the no intention of short-term rental use though the property owners can pursue it if they want to. He opined that the property owners seem to be just enjoying their property and having guests and family. Looking back at the previous cases, the board allowed some structures to put a bathroom in a gym. Since, this was the condition that was put in the variance, Mr. Calogero stated that he will give historical information tied into this matter when doing the resolution.

Mr. Canham said that one of the underlying concerns in allowing plumbing to an accessory structure is becoming an accessory dwelling unit. He asked, "Does the accessory dwelling require to have its own 911 address?" Mr. Davidowich responded that every accessory dwelling that he knew has its own 911 address. Chairman Malcarne concurred with Mr. Davidowich.

Mr. Newman responded that every structure on the property requires to have its own 911 address whether it's an accessory dwelling unit or not.

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Mr. Canham asked, "So, the barn needs to have a 911 address?" Mr. Newman responded, "It should! 911 would prefer that for fire safety purposes."

Mr. Canham stated that he's always been reluctant to see people not allowed to be able to use their property due to zoning issues. He commented that the issue about the structure becoming an ADU has always been a concern.

Mr. Davidowich agreed and noted that the same concern is shared by every town. They struggle with the same concept and enforcement.

Chairman Malcarne stated that the reality of enforcement is when the neighbor calls the town and makes a complaint. Mr. Canham agreed.

Mr. McMahon indicated his concern about the septic system. Per his reading of the history, there was a problem with a septic system.

Mr. Davidowich responded that they had addressed a couple of issues on this property. Gas lines that were buried have been replaced. There was also an old septic system that was basically just pipes on bedrock. As part of the approval of the accessory dwelling, Mr. Davidowich noted that they put in a completely new septic system. He gave the details of the new septic system. They now have a 5-bedroom septic system for the main house, one bedroom for the guest cottage and extra capacity for future use hoping that someday they will be able to tie this barn/gym building into this system. There is one whole new septic system on this property that is capable of handling seven bedrooms.

Mr. Mustello asked if all the proposed amenities like hot tub etc, will be contained in one structure. Mr. Davidowich responded, "No." The hot tub will be outside, and side by side with the pool.

Mr. Mustello asked if there were any building permits open. Mr. Davidowich responded that all the building permits are closed except for the generator that they are still currently working on.

Mr. Mustello commented that the applicant is doing the right thing in coming forward to ask to remove the condition of the variance. In theory, they could just install the bathroom.

Ms. Campbell responded that the MCEI caught it when the building permit to add a bathroom was filed. Mr. Newman denied the building permit and sent the applicant to the ZBA to request the removal of the condition.

The board agreed to open the public hearing.

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

Mr. Werner asked the board about the determination for the Litvak/Swomley case in regards to putting a bathroom in the gym. He asked, "Was that a full bath or half bath?"

Mr. Calogero read the resolution about the gym as stated below.

***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.

Mr. Calogero noted that the determination only says a bathroom.

Chairman Malcarne said that the bathroom includes a shower. Mr. Canham stated that he understands the need for a bathroom but you also need to shower after the workout.

Mr. Mustello stated that there was a long discussion about the issue and the board landed with the bathroom for a particular reason.

Mr. Canham said that the board shared concerns about illegal accessory dwelling units. Having a bathroom without a shower in the gym doesn't make sense to him.

Bruce Brown, 119 Mountain View Road, spoke and indicated his concern about the potential use of short-term rentals. He noted that his concern is not necessarily particular with these property owners but expressed concerns about the future owners and future use of the property. There are lots of amenities that are being proposed here and all seem to land as short-term rentals. He asked the board, "How are you going to prevent the illegal use of short-term rentals in this case?"

Chairman Malcarne responded that this will all come to the neighbors. When a neighbor sees something and files a complaint, the town investigates and issues a violation if the complaint is warranted.

Mr. Werner noted that the property owner still needs to file a special permit application to be able to host short-term rentals. The Planning Board is the one who processes the short-term permit and not the ZBA. The property owner cannot just operate a short-term rental. That is a violation. There is a process.

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Mr. Brown asked, "What are the chances of having this short term approved?"

Mr. Newman responded that the Planning Board has the discretion to put restrictions on the special permit. For instance, if the house is small and only has two bedrooms, the planning board can limit the number of lodgers and number of times the house can be rented. In terms of enforcement, Mr. Newman noted that it is difficult. Relying on the voice and ears of the neighbors and having a regulation in place are very important. He also indicated the company that monitors the properties in town who are operating short-term rentals illegally. There are fines and penalties imposed on these violators.

Chairman gave a recap about the application. He understands the concern and the board is aware about a potential use of a short-term rental. The board is looking at every application on a case-to-case basis and not looking to penalize the applicant about a potential use or something that didn't happen yet.

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

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

Mr. Calogero expressed his comment about the earlier discussion about short-term rentals. He is happy that the town is generating some revenue from short-term rentals. He is not averse to seeing a similar fee schedule that would provide the town the ability to monitor accessory structures that were granted bathrooms that could turn into an illegal accessory dwelling unit. This can also circumvent short-term rentals problems.

Mr. Canham indicated the Swomley Interpretation on Pumpkin Lane that a bathroom is a legal use of a home gym.

Chairman Malcarne commented that COVID significantly transformed the way people conduct their lives. More people are spending more time in their homes and enjoying the amenities of their homes. It's common for these properties to add amenities to their homes. The crises that they're seeing in these buildings are typically high-end houses and most likely won't be looking to generate additional income.

The board had a lengthy discussion about the concern. Mr. Canham indicated the past applications who tried adding a sink or bathroom in an office, studio, etc. He asked, "Should the board put some bounds on this interpretation to put some clarity about the issue?" Should they legitimize the use of a bathroom in an accessory structure?

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Ms. Campbell reminded the board that the application on hand is not an interpretation. This application is about removing the condition of the variance granted.

Mr. Werner stated that one of the discussions in the zoning revision is about the context of this application, i.e. whether they should allow full bath or half bath in non- accessory dwelling units. This will be part of the zoning revision process.

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

Mr. Calogero motioned the following resolution in reference to the DeMello area variance conditionally granted in March 25, 2021.

**Whereas**, the applicant is proposing to construct an addition to an existing barn that will have plumbing. The current use of the building per the property owner is home gym.

**Whereas**, the Town of Clinton ZBA has previously determined "... that a special use permit or variance is not required to install a bathroom in an accessory structure containing...a gym/exercise room." In doing so and in discussion leading to that determination the ZBA acknowledged the changing desires of our community and the increasing variety of uses of accessory structures in our town.

**Be it resolved** that this determination of January 27,2022 renders moot the condition placed on the March 25,2021 variance granted to Michael Clark and Carmaine DeMello of 13 Mountain View Rd., Grid 6366-00-070730.

Seconded by Mr. Canham, all Aye Motion carried, 6-0.

**Discussion.** Mr. Calogero commented that he crafted the resolution simple and straightforward. The hope is that the town board will address this issue.

All Aye, Motion carried, 5-0.

**BOARD DISCUSSION:**

The board had a lengthy discussion about plumbing in relation to accessory structures and the concern about the structure becoming an illegal ADU.

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**APPROVAL OF MINUTES:**

No minutes were approved.

**ADJOURNMENT:**

Mr. Canham motioned to adjourn the meeting at 9:30 pm, seconded by Mr. Mustello, All Aye Motion carried, 5-0.

Respectfully Submitted By:



Arlene A. Campbell  
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk