

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
June 22, 2023**

MEMBERS PRESENT

Charles Canham
Norma Dolan
Ron Mustello
Russel Tompkins
Frank McMahon

ALSO PRESENT

Arlene Campbell, Secretary

MEMBERS ABSENT

Joseph Malcarne, Chairman

John Calogero

NO Eliot Werner, Liaison Officer
Jeff Newman, MCEI

Acting Chairman Charles Canham called the meeting to order at 7:34 pm. He asked Ms. Campbell if the application was properly posted and the surrounding properties were properly notified. Ms. Campbell responded, "Yes". He also noted that the meeting is being recorded.

Acting Chairman Canham welcomed everyone and asked his colleagues to introduce themselves.

AREA VARIANCE:

Dailey Area Variance – property owned by Sean Dailey and Trustees located at 157 Silver Lake Road Rhinebeck NY, **Tax Grid No. 6469-00-339971.**

The applicant requests an area variance to Sec. 250-74-B (Swimming Pool) and Section 250 Attachment 22 (Area Bulk and District Regulations) for a side yard setback reduction from 50' to 10' in order to construct an inground pool in the C Zoning District.

Sean Dailey appeared and explained that they want to put up a pool that is 10 feet of the neighboring property line. This is a 8.038-acre lot in the C Zone District.

Mr. Tompkins stated that in addition to the requirement of Sec. 250 Attachment 2 of the zoning regulation, pools are not allowed in any setback per Sec. 250-74-B.

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES**

June 22, 2023

Sec. 250-74-B of the Town of Clinton Zoning Regulation states that “A private swimming pool shall not be located in any required setback area or in front of the permitted principal use. However, such requirements shall not apply to pools and related structures lawfully in existence on the effective date of this chapter.”

Mr. Mustello expressed his comments per his site visit. Although this property has over 8 acres, very little area is usable. The only practical location to install the pool is the proposed area due to the grade and topography of the land. He described the topography of the land that drops dramatically to the front of the road while the grade increases dramatically to the rear of the house. He also indicated the location of the septic and the leach field that also limits the feasible location of the pool.

Mr. Mustello discussed the chicken coop on the rear that is in the fenced area. This is not a permitted structure on the property line. Per his conversation with Mr. Dailey, the footprint of this structure is beyond the property lines.

Mr. Dailey confirmed Mr. Mustello’s statement. They are trying to find the stakes on the property.

Mr. Tompkins stated that the structure is 50 feet from the house and based on his measurement, it seems that the chicken coop is almost to the property lines.

Mr. Dailey stated that there is a stake by the chicken coop but to his understanding from his realtor, this is not the stake to the property lines.

Ms. Dolan asked if the chicken coop is in the setback. Mr. Tompkins responded, “Yes.”

Ms. Campbell asked about the size of the chicken coop. Mr. Mustello responded that he believes that the size of the chicken coop is less than 120 square feet.

Mr. Newman asked if the chicken coop has electricity. Mr. Mustello responded, “No.”

Mr. Canham and Ms. Dolan both remarked that this structure is still in the setback.

Mr. Mustello noted that the chicken coop and this fenced area will be removed. Mr. Dailey agreed. The idea is to construct the pool where the chicken coop is.

Ms. Dolan stated that she didn’t find this intention on any of the paperwork. Mr. Mustello agreed. This issue came up during the discussion about the chicken coop. He stated that if you look at the proposed pool on the map, it shows the layover of the existing structure (chicken coop) on the pool.

TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
June 22, 2023

Mr. Mustello read the Planning Board's recommendation dated June 6, 2023 which is positive. No letters or communications were received from any of the neighboring property owners.

Ms. Dolan commented that there was no notation about the removal of the chicken coop on the Planning Board's recommendation. The board agreed to include this in the resolution.

Mr. Tompkins expressed his comments per his site visit. He said that the Daileys can probably raise 50 goats there since it's quite a hill up there. He asked Mr. Dailey if he installed the drain field. Mr. Dailey responded, "No, that was installed by the previous owners." They would have never done that.

Mr. Tompkins stated that looking at the property of 8 acres seems to have a lot of usable land but when he saw the map showing the restrictive building envelope then he realized that this is the only area that the property owners are allowed to build on.

Ms. Dolan asked if this property is part of the conservatory. Ms. Campbell responded, "No." This property is part of the approved Silver Lake lot subdivision in 2004. These lots show the restrictive building envelopes, approved driveway, easement, etc. as part of the approved final plat.

Mr. Tompkins suggested in the resolution that most of these lands are not usable.

Mr. Canham agreed. This is important especially if there are other areas or locations to install the pool instead of the setback.

Mr. McMahon shared Mr. Tompkins views. At first, he thought that there were plenty of areas to install the pool given the 8 acres of land until he spoke with Mr. Mustello and learned the topography of the land.

Ms. Dolan commented that property owners should certainly enjoy their property. When so much of a property is considered unusable, there is a limit of what you can add. She solicited the board's opinion on what factors would be weighed in these types of circumstances.

Mr. Canham said that the fact that the rest of the areas of the 8-acre of lands are not buildable, the cost of the disturbance to the site (excavation, grading, tree cutting, clearing) will outweigh the issue of allowing something in the setback.

Ms. Dolan opined that looking at the layers of the land, it's too bad that the property lines are not a little farther over given the adjoining property with 20

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
June 22, 2023**

acres of lands. There's always an option of getting an additional property from the adjoining properties though this is not a requirement.

Mr. Mustello commented that the property is under the ownership of Mr. Dailey and Trustee. The board agreed to include a condition about a letter of authorization from the trustee.

The board agreed to open the public hearing.

Acting Chair Canham motioned to open the public hearing, seconded by Mr. McMahon, all Aye, Motion carried, 5-0.

Hearing none, the board closed the public hearing.

Acting Chair Canham motioned to close the public hearing, seconded by Mr. Tompkins, 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 make a positive recommendation on the requested area variance to Section 250 Attachment 2 to allow for a side yard setback reduction to no less than 5 feet from the required 50 feet for construction of an inground pool, and Section 250-74 B, specifying swimming pools "shall not be located in any setback area" to "shall be allowed up to 45 feet into the side yard setback to the north, but not in any other setback area" for the property owned by Sean Dailey and Trustees, located at 157 Silver Lake Road tax grid number 132400-6469-00-339971, in the C Zone

WHEREAS:

1. The applicant is requesting a variance to construct an inground pool on the north side of the home within the 50 foot side yard setback. The applicants are seeking a variance from section 250 Attachment 2 as stated above with a side yard setback reduction from 50 feet to no less than 5 feet and Section 250-74 B which does not allow swimming pools in required set back areas as stated above.
2. This is an 8.083 acre site located in the C zoning district.
3. The property is not in an Ag District or CEA
4. It is noted that an area variance is a type II action under SEQRA and requires no further action.

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES**

June 22, 2023

5. The site does not contain a NYSDEC wetland.
6. The site is on a Clinton Scenic/Historic Road, that being Silver Lake Road, and must conform to Local Law #3 of 2001
7. With this lot line reduction, an undesirable change will not be produced in the character of the neighborhood or be a detriment to nearby properties, as the pool would not be visible from the road or adjoining properties due to tree line and topography.
8. The applicant cannot achieve the same benefit without the requested variance.
9. There will be no potential adverse effect or impact on the physical or environmental condition in the neighborhood.
10. The alleged difficulty is self-created and substantial, but that should not necessarily preclude the granting of the area variance, considering the limited impact on surrounding conditions.
11. There are no known violations associated with this property.

Conditions:

- A site survey must be completed to clearly identify and define the side lot line for the purpose of determining the new setback to be no less than 5 feet.
- Existing structure and fence in proposed pool area must be removed to facilitate the installation of the pool.
- A letter of authorization must be submitted by all trustees listed on deed
- All fees have been paid

Seconded by Mr. Tompkins,

Discussion. Mr. Mustello suggested getting a survey to clearly identify the property lines.

Mr. Dailey noted that he has a copy of the survey but there are no stakes on the ground. Mr. Tompkins stated that it seems that the house is 50.4 feet from the property lines.

Mr. Canham asked what constituted the edge of the pool. Mr. Newman responded that it is the barrier around the pool. Mr. Canham stated that in this case, the fence can't be closer than 10 feet of the property lines. He asked the applicant if this accomplishes what he needs. Does the 10 feet include the fencing around the pool?

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
June 22, 2023**

Mr. Tompkins commented that a lot of times the measurement is from the paved area. Mr. Dailey agreed. He noted that they were thinking about the paving stone instead of the fence when they did the measurement.

Mr. Newman stated that the barrier around the pool defines the pool.

Mr. Canham asked the applicant if he had room to put up a fence.

The board had a lengthy discussion about the matter.

Acting Canham asked the board how they felt about allowing variance within 5 feet off the property lines.

Mr. Mustello felt that this is not a typical lot given the topography of the lands. The neighbors cannot see this pool and there is no other place to install a pool.

Ms. Dolan commented that this neighbor also has 20 acres of land. What if the property gets subdivided? Stuff happens down the road.

Ms. Campbell noted that all these lots that are part of the approved Silver Lake Lot subdivision have a restriction stating, "Lands are not subdividable." This restriction is noted on the final plat.

Mr. Tompkins stated that this property is not visible from the road.

Mr. Mustello agreed on the variance of no less than 5 feet. Ms. Dolan also agreed provided there are no other structures in the setback like storage for pool equipment

The board discussed "Pool equipment." Mr. Dailey stated that he will store the pool equipment behind the pool up the hill. It will not be near the property line.

Mr. McMahon asked the applicant if the requested 10-foot variance measured from the stonework around the pool. The applicant responded, "Yes, it includes the 10-14 inches of bluestone (guess estimate since there are no stakes) on the side of the pool. He noted that this is what they use to measure the variance and not the fence.

Mr. McMahon asked, "What if you added 4 inches for the fence and took the stone out and gave out an 8-foot variance, will that work?"

Mr. Canham felt that a 9-foot variance would cover the proposed project. They are just not sure where the lines are.

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
June 22, 2023**

Mr. Mustello echoed the above comment. He feels that the board should be a little more flexible.

Mr. Canham opined that this is the most feasible location to install the pool. He hates to see blasting, excavation and tree clearing given the proximity of the lake.

Ms. Dolan remarked that she doesn't dispute that. She is just concerned about another structure in the setback given the amount of variance.

Mr. Newman stated that pool and pool house are considered one structure. Pool house is not counted as an additional structure to a pool.

Ms. Dolan commented that it was a decision made by ZEO Fennel that everybody just went along with. Mr. Canham remarked that this has been the practice of the board for a while.

Mr. Newman said that whatever setback the board decides would include the pool and the poolhouse. It depends on how the variance is worded.

Mr. Canham stated that the variance would allow the construction of the pool that would include the barrier and the pool house within that footprint.

Mr. Canham asked the board if they were willing to gamble on 8 feet.

Mr. Dailey asked if the chicken coop still needs to be removed. Mr. Canham responded that the chicken coop is not permitted and underscored that it is in the setback. This is currently a violation. This structure needs to be removed to be in compliance with the code.

Mr. Mustello explained that the applicant will be allowed to put a structure like shed for pool stuff at least 8 feet of the property line as long it doesn't encroach the 8 feet.

Mr. Canham added that the variance also speaks for the pool. The applicant cannot just put anything in that setback but a pool house. Mr. Newman stated that it also needs to function as a pool house.

Mr. Canham asked the applicant if he intended to remove the chicken coop. Mr. Dailey responded, "Yes." He asked the board if he can have a 5-foot variance to make sure he doesn't need to come back before the board and waste everyone's time in case his math is off. He noted that his intention is not to put the structure within 5 feet.

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
June 22, 2023**

Mr. Tompkins asked, "How about reduction of no less than 5 feet instead of 10 feet?"

Acting Chairman Canham agreed with Mr. Tompkins. "Not less than 5 feet" makes it very clear.

Mr. Tompkins said that the PB recommendation states that there is one neighbor who is expected to provide support. Mr. Dailey stated that the neighbors to the north (O'brien) don't have an issue with their proposal. His wife had a text message from the O'briens about their support for their project.

Ms. Dolan commented that variances run with the land. This would be an agreement between the neighbors. Mr. Tompkins explained that he just wanted to know whether the neighbors are not opposed to it. It would be nice if they have that proof.

Mr. Mustello commented that the neighbors could have sent a letter or appeared at the public hearing if they have a problem with the proposal.

Mr. Tompkins said that it would have made him more comfortable if there was a letter submitted.

Ms. Dolan stated that the variance is really close to the property line. She felt strongly that the chicken coop should be removed and no other structure should be added in the setback.

Mr. Canham asked the applicant if he had any intention of adding another structure.

Mr. Tompkins commented that pool and poolhouse are counted as one structure.

Mr. Dailey responded that they are not contemplating any kind of sheds. It is what it is.

Ms. Dolan suggested including this notation in the resolution. This will make it firmer and defined.

Mr. Canham and Mr. Mustello didn't feel that they should handcuff the applicant if they decided to add a pool shed. You cannot legislate out of fear.

Mr. Canham stated that it is part of the minutes that the applicant is not contemplating adding another structure.

Mr. Tompkins asked the applicant if he has any more questions before the board vote.

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
June 22, 2023**

After a very lengthy discussion, the board agreed to give a variance of “No less than 5 feet from the required 50 feet.”

All Aye except for Ms. Dolan who abstained, Motion carried 4-1.

INTERPRETATION:

None

ADMINISTRATIVE ITEMS:

The board discussed the proposed Farm Operation Local Law.

APPROVAL OF MINUTES:

No Minutes were approved.

ADJOURNMENT:

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

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary