

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
August 31, 2023**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero

Norma Dolan
Ron Mustello
Russel Tompkins
Frank McMahan

ALSO PRESENT

Arlene Campbell, Secretary
Eliot Werner, Liaison Officer

MEMBERS ABSENT

Charles Canham

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

Chairman Malcarne welcomed everyone and asked his colleagues to introduce themselves.

AREA VARIANCE:

Anwari Area Variance - parcels located at 81 Milan Hollow Road with **Tax Grid Nos. 6469-00-538694 and 617680.**

The applicant requests the following variances to Sec. 250-29 of the Town of Clinton Zoning Law to build an accessory dwelling unit within a principal structure that is proposed to be built on a total of 4.496 acres in the C Zone District. Parcel 538694 – 3.6 acres and Parcel 617680 - .844 acres.

Sec. 250-29 B(2)- All accessory dwelling units, within the principal structure or detached, shall meet the following requirements:

(2) The lot may not be an existing nonconforming lot of less than the prescribed lot area or lot width required in the district.

Sec. 250-29 C(1) Accessory dwelling unit within principal structure. In addition to the provisions specified in Subsection **B** above, accessory

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dwelling units within or attached to a principal structure shall meet the following requirements:

(1) The total acreage required for the single-family dwelling with the accessory dwelling unit within the principal structure is the same as the acreage required for a single-family dwelling unit in the district in which it is located, except as may be required by Subsection B(9) above.

Sec. 250-29 C (2) No accessory dwelling unit within a principal structure shall be allowed in buildings issued a certificate of occupancy after the effective date of this chapter.

Hamed Anwari appeared for his application. He said that he bought this property in 2011. He fell in love with this property the first time he saw it and immediately knew that this would be the perfect one to build the house that he wants. He didn't want a cookie cutter house or traditional house and decided to have a custom-built home. He started working with his architect in 2012, worked with a local engineer and encountered setbacks. It sat for years and then COVID hit, fast forward, he's now finally ready to build. Everything takes a while in regards to permitting including the Niagara Mohawk easement. Mr. Anwari explained the details of the floor plans of the house that he wants to build. He also described the very long drive access on this property that is on a separate parcel.

Mr. Anwari indicated his wish to always have an ADU like an apartment over the garage for extended family. He tried buying some acreage from the neighboring properties but nobody wants to sell not even the swamped areas of land from the adjoining lot. He explained that if his mom or family guest wants to come up and stay in the house, then there is a separate entry to get in that unit instead of going through the main house. He noted that his plan is to house extended family and accentuated that he will buy the adjoining property if anything comes up for sale. He loves that portion of that lake. The drive is very peaceful and the property is secluded. He is now before the board seeking the above variances.

Mr. Calogero expressed his comments. It's a stunning piece of property and the proposal is reasonable. He shared the enthusiasm about the intention in building a home and understood the hurdles that go with it. He indicated his own experience when he built his home. The project in general will be looked at as an asset to the neighborhood and not something in his opinion will be taxed to the neighborhood. He commented that this driveway is spectacular. His driveway is interesting but this driveway is even more interesting. He is not dissuaded by the driveway in the easement area (Niagara Mohawk) since he doesn't think that much ever going to happen in that area other than giving access to the other parcel. He doesn't have a personal problem about the shortage in the acreage given that any domain changes that. He doesn't think that they should differentiate on a part of the property that is no longer attached to the other parcel. Visually, from just any way you look at, it seems to be a contiguous

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property. (Note that these parcels are intersected by the Niagara Mohawk property). Mr. Calogero stated that this is only short of a half-acre though this is a nonconforming lot. He doesn't think that there's much of a difference in terms of how a community is affected by it. He is in favor of the project in general but felt that there is still a problem.

Mr. Calogero discussed variance #s3 per Sec. 250-29 C-2. He felt that he was more troubled by this section of the code. He encouraged the board to discuss this section first.

Mr. Calogero read the Planning Board's recommendation dated August 15, 2023 which is positive on two variances and neutral on the 3rd variance.

The board discussed the application.

Mr. Calogero commented that you can be in favor of the project but still not be okay with the project given the regulation. He solicited comments and discussion from the board to find an alternative or ways around it.

Mr. Tompkins expressed his concerns. He felt that the request was an error. He read 250-29 D as stated below.

Sec. 250-29 D states that "Accessory dwelling unit in existing gatehouse, garage, barn, or similar detached structure. An accessory dwelling unit is allowed under this subsection in a gatehouse, garage, barn or similar detached structure which may legally exist at the time the accessory dwelling unit is proposed. For the purpose of this section, any structure which does not have at least one wall in common with the principal structure is a detached structure. A common roof, patio, porch or breezeway shall not be construed as causing such an accessory structure to be within the principal building."

Mr. Tompkins stated that per the Cambridge dictionary - Common wall means a wall that divides two buildings that are joined together, and belongs to both of them. Under Law Insider, a Common wall means a wall or set of walls in a single structure shared by two or more dwelling units. The common wall must be shared for at least 25 percent of the length of the side of the building of the dwelling units. The common wall may be any wall of the building, including the walls of attached garages.

Based on the submitted drawings, Mr. Tompkins felt that this is an accessory dwelling that is not in the principal building and therefore doesn't not fall under Sec. 250-29 C-2. Unfortunately, it opens up another issue which is Sec. 250-29 (B)3 as stated below.

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Sec. 250-29 B-3 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.

Mr. Tompkins stated that based on this regulation, this requires 10 acres. He thinks that the board can waive the requirement of double the acreage but doesn't think that the board can waive the requirement of Sec. 250-29 C-2.

Sec. 250-29 C (2) No accessory dwelling unit within a principal structure shall be allowed in buildings issued a certificate of occupancy after the effective date of this chapter.

Mr. Tompkins emphasized that in his reading of the law, this is not an accessory dwelling in the principal dwelling but rather a detached ADU. He doesn't think one can see it in any other way.

Mr. Anwari remarked that he spent a lot of time reading the regulation with his architect and came up with a logic that if he has 10 acres then that's enough to build two houses. Chairman Malcarne commented that he will still need a special permit approval. He cannot have two dwellings on a single lot without a special permit.

Mr. Anwari felt that he doesn't look at this as a separate structure if you look at the ADU side of it and make it as a movie theater room or game room. It's not like you have to take off your shoes and enter into a different structure. He added that when he spoke with Mr. Newman about this issue, the whole point of going before the ZBA is to get a relief of the code. He believes that the purpose of an ADU is to increase the density without having an impact on the neighborhood or surroundings.

Mr. Tompkins stated that he had issues about some of the verbiage of the regulation like not allowing ADU in the principal structure if the C of O is issued after the date of the zoning regulation. He asked, “Why? If you allow it before then why cut it off?” He also questioned the requirement of the double the acreage requirement for a detached ADU. He asked, “Why?” He commented that you're going to have two structures, no matter what. He feels that it is still the same density. He believes that these two sections of the law need to be reconsidered.

Mr. Tompkins opined that these are separate structures. The breezeway is called a mudroom. The common wall means the main building has to touch the secondary building to make it one. In this case, these structures are joined by a connected link. He feels that the board is being asked to waive the double the acreage requirement. It's up to the board to discuss this issue.

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Mr. Anwari said that he looked at the definition of a breezeway and it says unconditioned space and open that adjoins two separate structures. He noted that the common wall is the end of the mudroom.

Mr. Tompkins commented that he viewed this as a connecting wall and not a common wall.

Chairman Malcarne asked the MCEI's opinion about the matter.

Mr. Newman said that he also looked at the definition of the breezeway. The fact that there is a conditioned space and the fact that there is a staircase that goes from there into a portion of the principal structure, then it's sizable enough to be comparable to the office/guest room in size. It is a fully conditioned space. He felt that that common wall issue became moot. You can move from one space to another space without removing your shoes. It's an ADU within the principal structure.

Mr. Tompkins raised the definition of the common wall that states "The common wall must be shared for at least 25 percent of the length of the side of the building of the dwelling units."

Mr. Newman responded that the common wall definition refers to a common wall in the townhome where you share ownership of the wall and there is no passageway between the walls. It's a division between two separate dwelling units. In this case, Mr. Newman said that there is no common wall here because they're all exterior walls.

The board had a lengthy discussion about the application. Mr. Tompkins asked, "How do we get around this issue? It doesn't seem to be a request for an area variance?"

Mr. Newman responded that the laws are laws. He doesn't think that one section is more powerful than the other sections of the law. He feels that the variance is to seek a relief of any sections of the law. He thinks that this is no different than getting the setback variance. For him, this is a demonstration of the current feeling of the town. He noted that these sections are being removed in the zoning revision process.

Mr. Tompkins remarked, "But this revision is not in the current regulation yet." Mr. Newman agreed. He reiterated that he doesn't feel that there is a difference in the variance or other sections of the law.

Chairman Malcarne said that this is about the concept. He asked, "Are they changing the use?" If the board agrees that they are not changing the use then it is an area variance.

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Mr. Newman agreed. He said that the proposal is not changing the use of the structure, it is an area variance. The use variance is different from the area variance.

Mr. Tompkins expressed his sympathy to the applicant but the law is clear.

Mr. Newman remarked that the question is – “Is the use allowed in the district that it is in?” The answer is –“It is - since this is a residential district.” Is the allowed use within the principal building? “It is.” Is this an area variance? Mr. Newman responded that an area variance is about dimensions. Location is in the dimension of the space. This is moving the location within the building. He cited a past application about the increase in hours in Stewarts that was determined by the board as an area variance since it is dimension.

Mr. Tompkins asked Mr. Newman if he reviewed the code about the requirement of Sec. 250.29 about the double the acreage requirement and the date that the Certificate of Occupancy was issued.

Mr. Newman responded that C-2 of the code will be completely eliminated so the revised code will only have two subsections.

Mr. Werner said that he doesn't think that the double the acreage is removed in the proposed revised zoning law.

Mr. Tompkins questioned the double the acreage requirement. You will have the same number of people if you have an apartment in the garage or in the house. Why do you need double the acreage?

Ms. Dolan noted that variances go with the property. Whatever the board decides, go with the property. She asked about the proposed zoning law. “Are these code revisions a done deal?”

Mr. Newman indicated the process of the zoning revision. It is now in the process of compiling all the revisions then sent to the DC Planning for review and waiting for comments, then public hearing will be scheduled. It could take six months to two years.

Mr. Werner commented that nothing in the proposed new zoning law is cemented. All the revisions and changes that were made can be overturned. It's not done until it's done.

Mr. Newman said that he only mentioned the revision in the code as a demonstration of where the town is now. The town's view has shifted. The opinion has changed.

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Ms. Dolan expressed her concern about a potential use of a rental for this ADU. This can be a different ball game.

Mr. Anwari responded that he bought this property for privacy. He doesn't have any plans of renting the place. In case this house sells in the future and the ADU turns into rental, he thinks that this is the ideal way to increase the density.

Ms. Dolan expressed her personal opinion. The town has changed the way we had to live. The traffic, the noise, the ATVs, the impact of the renters since some of them are very respectful.

Mr. Mustello commented that he doesn't think that policing of a potential violation should weigh on the board. They cannot make a decision based on fear. This applicant can basically build a house on this vacant lot with an empty garage and turn it into an ADU after getting a C of O and will most likely be going to be unknown.

Mr. Dolan agreed with Mr. Mustello and said, "It's a valid point". The reason why she raised that concern was due to Mr. Tompkins comment about the double the acreage. Since variance goes with the property in perpetuity, for her, cutting the acreage to 5 with two separate units is pretty drastic.

Mr. Mustello asked the applicant if the main house is a single story. Mr. Anwari responded that it has a walk out basement, with a loft that is going to be his office.

Mr. Mustello asked about the concept of the layout of the main structure in relation to the ADU. What is he stepping into when he leaves the mudroom from the main house? Mr. Anwari responded that if he goes left, there will be doorway stairs that goes down to the garage, and if you make a right, there is the potential ADU.

Mr. Mustello asked Mr. Newman what's the difference between going to space above the garage or into master bedroom suite space. Mr. Newman responded, there is no difference. The fact that you don't have to go outside the garage, this is a significant demonstration that this is a part of the principal building.

Mr. Anwari noted that there is no separate exit. It is through the garage.

The board agreed to open the public hearing.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Mustello, all Aye, Motion carried, 6-0.

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Mr. Werner commented about the issue that the board might run into is about consistency in regards to what was done in the past and what the board is trying to do now. He stated that it has been a practice following this law for many, many years. He commented that there will be an issue about people getting treated differently.

Mr. Anwari opined that what other people went through is just history. He's trying to make sense why everyone before him was allowed to have cesspool by the lake feeding nitrogen into the lake for hundred years when he had a tough time going through the process of putting a septic system on this property. The reality is "Laws are always changing". The town objective might have changed in regards to density. What does the Zoning Board of Appeals really want? If the board doesn't want the density then he can understand that. For him, this is the perfect example of increasing the density. He also responded to the comments about a potential use of rental on this property. He stated that he can basically finish the basement and rent it out though he doesn't have the intention to.

Ms. Dolan reiterated that her concern was about the 10 acres going down to 5 with two dwellings.

Chairman Malcarne noted that the board considers each application differently.

The panel discussed Sec. 250-29 C-2 which states that "No accessory dwelling unit within a principal structure shall be allowed in buildings issued a certificate of occupancy after the effective date of this chapter, except buildings covered by § **250-92E**."

Mr. Mustello responded to Mr. Werner comments. As far as he remembers, the difference between the previous applications and this application is that the previous ones had the intention of renting it out given the COVID. He noted that this application is about housing family members.

Ms. Campbell noted that the Motashami's case a couple years ago was to house her mother.

Paul Thomas, Planning Board Chair who was present for this application spoke about the similar case back in 2020 where both the Planning Board and Zoning Board of Appeals viewed the proposal as a use variance. The only reason why the ZBA did not make a ruling for the application was because the applicant withdrew her application. In regards to this case, Mr. Thomas stated that the reason why their recommendation is neutral is because they were told that the law is going to change which then sways the negative recommendation.

Mr. Thomas stated that one of the things that was discussed at the Planning Board meeting was to retrofit this as an ADU but not build it as an ADU until the

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law changes. They also made a couple of suggestions to go around it like build something that is not an ADU. Mr. Thomas underscored that the Planning Board does not have anything against the project but they feel that it is nullifying the law completely. The provision is pretty absolute.

Mr. Anwari commented about the phase that this structure can be converted into an ADU in the future. He said that they will need to put the plumbing in the house during construction. In the meantime, they cannot use the house as they originally intended to.

Chairman Malcarne said that if they, for instance, call this an ADU in a detached structure then it will need double the acreage, then they can call this an area variance since it's about the number of acreages. He feels that the board has the purview to be able to address the issue.

Mr. Newman said that when you talk about setback variances then you look at the Schedule of Bulk Area Regulations. That is a number there. If you look at Sec. 250-23 which governs the measurement and use of yards, it says specifically that, "Minimum yards may not be encroached upon..." Mr. Newman compared that verbiage and said, "For him, it means that an ADU may not be in the building."

Mr. Thomas disagreed. They are not invalidating the setback rule. This is different. This is completely nullifying the provision of the law. He shared Mr. Werner's opinion about the people that were denied the use for years and the next person who will be able to do it. He underscored that the Town Board has not changed the law.

Mr. Newman disagreed with Mr. Thomas. He noted that a variance, by definition, is a case-by-case basis. The process exists specifically to nullify the section of the code and to allow a property to do what they cannot do.

Mr. Thomas asked, "What would be your response to the next person?"

Chairman Malcarne responded that the board looks at applications individually. He feels that the board can do this for this particular case. In his own opinion, that is the purpose of the Zoning Board of Appeals. If the board feels that they can grant this as an area variance, then they can. If they don't then they don't. He underscored that this is not saying that they will do or grant it. That will be the discussion for the board. This is a question about whether the board has the power to nullify this section for this particular application. They can give a variance based on this section. Chairman Malcarne noted that he strongly believes that the board can.

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Mr. Newman agreed with the chairman. The board can do that as a board but not as an individual. He as MCEI doesn't have the power to do that. This is the reason why he refers this application to the board.

The board had a very lengthy discussion about the issue.

Ms. Campbell said that the board can also seek the town attorney's opinion about the matter.

Chairman Malcarne wants a discussion and consensus from the board. He asked, "Can the board do this?"

Mr. Mustello asked, "In this particular application or in general?"
Chairman Malcarne responded, "In general."

Ms. Campbell suggested looking at the past case law.

Mr. Newman said that the board can use precedence for continuity but not for decision. It's like a deed restriction. He said that a deed restriction is not a decision maker, it is information to use in making a decision.

Mr. Mustello doesn't feel that the board is empowered to do that. If there's a 100 feet setback, what is the demarcation? Is it 10 feet?

Mr. Tompkins said that it depends on the surrounding area. Each case has its own consideration. You can go closer on one case or maybe farther on another one. It depends on how close are the neighbors?

Chairman Malcarne said that since he's not hearing any objection then he solicited the board's thoughts about this particular application.

Mr. Tompkins said that he just can't agree with Mr. Newman about Sec. 250-29 C-2. He doesn't agree with it and thinks it's ridiculous but the law is clear. He doesn't think that the board has the power to override it.

Mr. McMahon shared Mr. Tompkins' view. He asked the applicant if there is any alternative to achieve this. Maybe they can do everything but plumbing.

Mr. Tompkins said that what the Planning Board says makes sense about "Go ahead build the garage with the hope that the law will change in the near future."

Mr. Calogero commented that the board wrestled about "ADU" for a while about what constitutes an ADU. They always come down to plumbing, sanitary facilities or kitchen. Maybe the applicant can leave these components out for the time being, roll the dice and maybe the town law will change sooner. In his mind, this

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is not a tremendous hardship. The law is pretty clear and it's really tough for him to pass this. Comprehensive plan talks about affordable housing. He is comfortable with holding off and has a temporary unit the way this structure is finished until the new law is passed. He added that the only thing that the town objects to is about the kitchen facility and the sanitary sewage system.

Chair Malcarne commented that having a kitchenette makes it an ADU.

Ms. Dolan thought the kitchen is defined by having an oven or not. Mr. Newman responded that it was a judgment call. If for instance a pool house has a bathroom and another wall has every preparation to prepare or cook food, then this means that this is clearly a kitchen though there's no kitchen on the floor plans. It's like a bedroom where it used to be defined by the closet. He added that per the Department of Health, if a room can easily be converted to a bedroom then they can easily decide to count it as a bedroom.

Mr. Mustello asked what about having two kitchens?

Ms. Campbell responded that the town used to order violators to remove the second kitchen for properties who illegally converted the basement into living space to make it back to single family dwelling.

DWELLING, TWO-FAMILY as defined in zoning regulations states, "A detached, semi-detached or attached building, or portion thereof, containing two dwelling units only, but not including a single-family dwelling to which an accessory dwelling unit, as permitted herein, has been added."

Mr. Newman responded that it depends on the intended use. He needs to further look into it. He said that the law does not forbid two kitchens. He cited one house on Hollow Road where there is a kitchen and prep kitchen. It depends on every case.

Mr. Mustello asked if you're passing from the main home through a second structure by means of breezeway, (as he cited in early discussion), then how is this different to having two kitchens? Mr. Newman responded that it depends on the intended use. If the intended use is to put a second kitchen to house somebody else, then that is an ADU.

Mr. Newman indicated the definition of an ADU per Section 250.105 of the Town of Clinton Zoning Law as stated below.

Accessory Dwelling is "A Dwelling Unit having its own exterior or interior entrance which is subordinate to, and located on the same lot as, the principal residence.

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An accessory dwelling unit may or may not be located within the principal residence. See § 250-29, Accessory dwelling units.

Mr. Newman commented about the above definition as underlined above. He said that the definition does not say “prior to the passing of this code.”

Mr. Tompkins remarked, “That is just a definition of an ADU.” The actual section that deals with it has rules.

Mr. Newman pointed out that an ADU has its own exterior and interior entrance. You go through the door and the other side of the door is a room that contains eating, sleeping, and sanitary facilities as opposed to one with just a kitchen.

Mr. Newman underscored that the board has an applicant coming forward before the board trying to abide by the law. This is a huge contrast to a lot of people who made an application, got denied and did it anyway or someone who never made an application. Mr. Newman felt that the board’s role is to look at each application on a case-to-case basis and decide when that variance can be applied.

Mr. Tompkins reiterated that the board is sympathetic with the petitioner but he is still troubled by the verbiage of the law.

Ms. Dolan asked about the driveway setback in relation to Cornerstone property. It seems that it’s right along the property line. She asked the board if they need to address this.

Mr. Newman responded that all driveways shall be constructed so that the tangent of the curve of the driveway shall be a minimum of 10 feet from any property line. He noted that the driveway itself has no setback. It’s one of the confusions of the law. It only applies to where the driveway touches the road.

Mr. Newman clarified that in regards to Cornerstone, some special permit applications do have setback requirements for the roads but not for residential properties.

Chairman Malcarne solicited the feelings of the board about the matter.

Mr. Mustello commented that Mr. Newman’s view resonated with him. He feels that the board is here to give relief to the code. Is the applicant allowed to do this or not? It’s all or nothing!

Ms. Dolan said that she hates to vote on partial construction but she’s also very hesitant to completely circumvent the section of the code.

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Mr. McMahon shared the view of Ms. Dolan. He doesn't want to circumvent the law either. He commented that if they don't give this to the applicant then the applicant can just do this and come back before the board at a later time when the new law is passed. Maybe he won't even need a variance.

Mr. Tompkins said that the applicant still needs to come back before the board for a variance. It still is an ADU. They are not removing everything but rather just removing that one stipulation. He can complete 90% of the work and come back later for a variance when the law is passed. Mr. Tompkins felt that giving an applicant a direction is fair.

Mr. Calogero read the section of the code about the role of the ZBA. He discussed the intent of the law that refers back to the date of the zoning law. He asked, "What was the intent of the law at that time?" Was the intent that time to limit the population of the town? He doesn't know the intent of the law. He thinks that it is up to the board to determine the intent of the law. He asked, "Would the board envision restricting property's rights?" If the intent is to keep the density low, then the applicant's proposal does not accomplish that. He can make an extra bedroom to have rooms for extended family. Mr. Calogero doesn't think that it would reduce density. In this case, the applicant is coming forward to do everything and saying this is an ADU. His intent is to have a place for his extended family. He feels that the board can fairly interpret the section of the code that they do not think that this stipulation violates the law. Mr. Calogero underscored the words "In this case".

Mr. Calogero continued his comments and asked, "Will they be setting precedence?" He responded, "He doesn't know." Will all the people get annoyed, "Probably". He opined that the intent of the law is fuzzy. He doesn't know what was the intent when the law was crafted that time. He indicated that he was working with the zoning revision committee during the earlier process and the intent of the comprehensive plan was to provide a situation like this.

Chair Malcarne noted that he can only see access from the inside. The only way to get in is through a breezeway which is part of the house. He sees this structure as an "attached" as opposed to "detached".

Chairman Malcarne circled back to Mr. McMahon and Mr. Tompkins after hearing Mr. Calogero's comment to see if there is a change in their views.

Mr. McMahon commented that Mr. Calogero made a good argument about the intent of the law but his view is the same.

Mr. Tompkins felt that they were pre-voting. Chairman Malcarne noted that this is just discussion. He is soliciting questions and discussions.

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Mr. Newman indicated Sec. 250-98 about the powers and duties of the board. He underscored that it doesn't differentiate between any sections or chapters. He added that it doesn't say that there's any certain sections or chapters that can be granted a variance.

The board agreed to close the public hearing.

Chairman Malcarne motioned to close the public hearing, seconded by Mr. Mustello, all Aye, Motion carried, 6-0.

After all the deliberations were made and excruciating and lengthy discussion, the board passed a resolution, to wit:

Mr. Calogero motioned that the Town of Clinton Zoning Board of Appeals grant the following three variances, as delineated by the Town of Clinton ZEO and requested by Hamed Anvari, 475 48th St, apt 3908, Long Island City, NY, in order to construct an accessory dwelling unit within a principal structure on his property located at 81 Milan Hollow Rd in the Town of Clinton, NY, **Tax Grid No. 6469-00-538694**, in the C zone district:

1. Section 250-29.B2 -"the lot may not be an existing non-conforming lot of less than the prescribed lot area...."
2. Section 250-29.C1-" the total acreage for a single family dwelling with the accessory dwelling unit within the principal structure is the same as the acreage required for a single family dwelling unit in the district in which it is located...."
3. Section 250-29.C2-"No accessory dwelling unit within a principal structure shall be allowed in buildings issued a certificate of occupancy after the effective date of this chapter...."

WHEREAS:

1. The Applicant wishes to construct an approximately 800 sq ft accessory dwelling unit above a garage attached to an approximately 4000 sq ft single family house located on two parcels totaling 4.496 acres.
2. The total acreage was reduced through eminent domain for the construction of overhead power lines.
3. That project did not really add to the density of the parcels or diminish the sense of continuity or otherwise telegraph the fact that the site now consists of two non-conforming lots instead of one conforming lot.
4. The lots are heavily wooded and naturally screened, preventing or greatly diminishing any potential visual impact that an ADU might have on the parcel or its neighbors.

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5. The Planning Board notes that there should be no adverse effect or impact on the neighborhood other than a slightly increased population density which a 4000 sqft residence can bring with it in any case.
6. The requested variances are substantial
7. The alleged difficulty is self-created
8. The property is not in a CEA or Taconic Parkway Viewshed or within the Ridgeline, Scenic and Historic Protection Overlay District.
9. The property is in a C Zoning District.
10. Per the ZEO, there are no outstanding violations.
11. The ZEO has determined that the application is a request for three area variances and not a use variance.
12. Area variances are a type II action under SEQRA

Condition:

All Fees are paid.

Seconded by Mr. Tompkins:

Discussion. Ms. Campbell asked to condition the fees for the variance. Mr. Calogero agreed.

Ms. Dolan expressed her concerns about the board's consistency.

Mr. Mustello commented that precedence bothers him but the board looks at every application on a case- to-case basis. The pressure of consistency is somewhat relieved in light of that. He also expressed his struggle when the board can't seem to get around the code but after hearing Mr. Newman's statement that each of the entries in this code was just as bound as the others, he felt that they circumvent each application. He indicated the role of the ZBA and commented that's what the board does and that's why they are there. It seems that there is no entry or code in the book that has gravity over another. Why? He doesn't understand.

Mr. Newman commented that precedence is important but asked, "If precedence is hard and fast, then why does this process exist?"

Mr. Calogero asked if they need to include the intent of the law in the resolution. Mr. Malcarne responded that the minutes reflect that matter.

Ms. Dolan commented that she'd seen some decisions where the lack of consistency from the ZBA brought into question the judgment they made on one particular case or another. She said that it lacked a particular reason for granting

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a decision but an overall reason. She noted that consistency is different from precedence.

Chairman Malcarne commented that one thing sure about the board is that they don't rush to make a decision given the over two hours deliberation for an application. These are all reflected in the minutes.

VOTE:

Chairman Joseph Malcarne	Aye	
John Calogero	Aye	
Charlie Canham		Absent
Norma Dolan	Aye	
Frank McMahon		Nay
Ronald Mustello	Aye	
Russ Tompkins		Nay

Motion carried, 4-2.

OTHER MATTERS:

Mr. Werner gave an update about the proposed Farm Operation Local Law. He also indicated that the town board will be revisiting the Short-Term regulation.

INTERPRETATION:

None

ADMINISTRATIVE ITEMS:

None

APPROVAL OF MINUTES:


Chairman Malcarne motioned to accept the minutes of July 31, 2023, seconded by Mr. McMahon, all Aye, Motion carried, 6-0.

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ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 9:55 pm, seconded by Mr. Tompkins, All Aye Motion carried, 6-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary