

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
December 12, 2023**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham

Frank McMahon
Ron Mustello
Russel Tompkins

Arlene Campbell, Secretary

MEMBERS ABSENT

Norma Dolan

ALSO PRESENT
Jeff Newman, MCEI

Eliot Werner, Liaison Officer was absent

Chairman Malcarne called the meeting to order at 7:01 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 adjoining neighbors were notified. Ms. Campbell responded positively.

VARIANCE:

Schoellinberger Area Variance- property on 107 Deer Hill Road, **Tax Grid No. 6469-07-517933.**

The applicant requests the following area variances in order to construct an open 20' x 24' two-car carport on a .40-acre lot in the C zone district, to wit:

Sec. 250 Attachment 2 Area Bulk and Regulations:

- Front yard setback reduction from 100' to 36'
- Side yard setback reduction from 50' to 43'
- Side yard setback reduction from 50' to 40'
- Building coverage from 7% to 14%

Sec. 250-23 A – Front yard setback is measured from the nearest point

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center line to Front property line.

Mr. Schoellberger appeared and explained his application. He is proposing to construct a carport. He has less than an acre lot. Given the small size of the lot in the C Zone District, it's hard to meet the setback. He described the proposed two-carport structure that is basically to protect his cars since he lived in the wooded area. This is just an open structure.

Mr. Schoellberger stated that there was a confusion at the Planning Board meeting as to the front yard and rear yard setback. He pointed on the map which one is the front yard.

Mr. Canham disagreed with the Planning board in regards to the front, sides and the rear yard of this lot. In this case, the road enters from the south and the house front door faces south so for him this is the front yard.

Sec. 250-105 defines Front yard as "An open area extending across the entire width of the lot between the front main wall of a building and the centerline of the street. See also § 250-23, Measurement and use of yards.

Mr. Newman said that the front yard is measured from the centerline of the road. It gets more confusing in this case as to where the center of the road is. He indicated the previous variances granted on this property where the eastern boundary of the property is the front yard.

Mr. Canham commented that it makes no sense as it's hard to find the center line of this road. The road comes in 30 feet down along the south border of the property.

Mr. Canham read the Planning Board's recommendation which is positive.

The board discussed the variances. Mr. Canham said that given the proposed carport addition, an area variance to the building coverage from 7% to 14% is required given the small size of the lot.

Mr. Canham stated that the structure is already there and constructed. He was surprised to see the structure up when he visited the property. He understands that this is a violation that needs to be corrected. Mr. Newman noted that there is a fee for starting construction without a building permit.

Mr. Canham commented that it is not out of character to build something in this area without a variance given the small sizes of the lots. There are four sections in the code that deal with nonconformity. There is nonconforming use, nonconforming building, nonconforming lot and additions to nonconforming building. Single family dwelling is a permitted use in the C Zoning District. The

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use is not nonconforming but the house and the lot are. The house will not be able to expand more than 50% of what is permitted in the regulation. The rest of the application is pretty straight forward.

Mr. Canham indicated the two letters received from the neighboring properties owned by Art de Pasqua and Randy Sacheim who both supported the proposed project.

Mr. Tompkins suggested since this carport is already constructed to include a condition about the additional fees for construction without a building permit.

Mr. Mustello asked since the construction without a permit is a fee, is there typically a "fine"? Mr. Newman explained the difference between a fee and fine. If there is an apparent violation, a fine is not taken until the action is taken all the way to court. If the property is brought into compliance during that process, then it is no longer in violation. In this case, the permit cures the violation.

The board had a lengthy discussion about the matter. Mr. Tompkins asked "What is the additional cost of building without a permit?" Ms. Campbell responded that the applicant has to pay additional \$500.00 in addition to the regular cost of the building permit. This is in the fee schedule. There is another section in the code that regulates penalties and fines.

Mr. Canham commented that the applicant presumably pays the fine if they don't get the approval. He cited a case where the board ordered the structure in violation to be removed.

Mr. Mustello asked, "What if the building inspector finds that the building that was constructed without a permit was not properly constructed or not in compliance with the building code?"

Chairman Malcarne responded that is not the board's purview. The building inspector will not issue a certificate of occupancy until the building is in compliance.

The board exchanged opinions about the matter. Ms. Campbell said that contractors sometimes chose to just pay the additional fee of \$500.00 rather than waiting and going through the process. She suggested calling the additional fee for construction without a permit a violation fee instead of just "fee". Mr. Calogero agreed.

Mr. Canham suggested bringing this matter to the town board. The board takes it seriously and disapproves of the practice of ignoring the law. The board still looks at the application based on the merits of the proposal. He noted that there is a consequence for ignoring and violating the law.

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Mr. Calogero commented that the Planning Board did not notice that the structure is already up.

Mr. Schoellberger noted that the structure wasn't constructed yet when he went before the Planning Board. He acknowledged the bad behavior and explained that he needed to start the construction given the weather. The carport was just built a week ago.

The board opened the public hearing.

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

Hearing none, Chair Malcarne motioned to close the public hearing, seconded by Mr. McMahan, all Aye, Motion carried, 6-0.

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

Mr. Canham motioned that the Town of Clinton Zoning Board of Appeals grant the following variances to Sec. 250 District Schedule of Area and Bulk Regulations for property at 107 Deer Hill Road, Tax Grid #132400-6469-07-517933-0000, in the Conservation Zoning District, owned by Mr. Dieter Schoellberger for the construction of a 20' x 24' open wood carport as an accessory structure:

- (1) reduction of the front yard setback from 100' to 40',
- (2) reduction of the rear yard setback from 75' to 43',
- (3) reduction of the side yard setback from 50' to 36', and
- (4) increase in maximum building coverage from 7% to 14%,

Factors:

1. The property is a pre-existing non-conforming lot due to the small size of the parcel (0.4 acres). The normal minimum lot area per dwelling unit in the C district is 5 acres.
2. A one-family dwelling unit is a permitted use in the C district under the Town Schedule of Use Regulations, and therefore not subject to the limitation on the expansion of a non-conforming use under Section 250-81.
3. The parcel is in a neighborhood consisting of many similarly small lots, and any changes in the primary dwelling unit or addition of accessory structures typically requires variances to setback requirements. Therefore, the granting of the variances will not produce an undesirable change in the character of the neighborhood, or be a detriment to nearby properties. The closest adjoining

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landowner submitted a letter noting that the proposed carport will provide easier access to their own property.

4. The proposed variances should not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The carport structure is well away from the lakeshore, and in a location already used as parking space.

5. The requested variances are substantial, but are necessitated by the small size of the parcel, and are not out of character with the neighborhood.

6. The alleged difficulty is self-created but that does not preclude the granting of the variances.

7. There are no reasonable alternatives to accomplish the proposed additions given the small size of the parcel.

8. The property is not in a Critical Environmental Area.

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 with regard to the proposed variances.

Conditions:

1. All fees have been paid.

Seconded by Mr. Mustello,

Discussion. Mr. Canham asked if they need to include the additional fee for construction without a building permit. Mr. Mustello responded that the verbiage about “all fees” should cover the additional fees.

All Aye, Motion carried 6-0.

Maloney Area Variance (Extension) – on property located at 511-521 Schultsville Road, **Tax Grid No. 6567-00-257398**

The Maloneys are seeking a 6-month extension to the variance approved on December 1, 2022 due to engineering delay in processing board of health approval.

Mr. Mustello recused himself for this application.

Mike Maloney was back before the board and briefly explained his proposal. He expressed his frustration about the engineer that he originally hired.

Mr. Tompkins gave the history of the application per ZBA meeting 12-1-2022.

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It was noted that the Maloneys were granted an area variance to build an accessory dwelling measuring approximately 2,050 square feet on their property which exceeds the allowable size of an accessory dwelling unit of 1000 square per Sec. 250-29 B(6) of the zoning regulations. This is a horse farm property on a 41.4-acre lot.

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

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

The board agreed to extend the variance.

Mr. Tompkins motioned that the Town of Clinton ZBA grant a one-year extension to the current variance that was issued to Michael and Molly Maloney on December 1, 2022 to construct a 2050 square foot accessory dwelling unit on their property at 511-521 Schultzville Rd, Tax Grid # 6567-00-257398.

Factors:

1. The Maloney's were granted the current variance on 12/1/2022.
2. Section 250-98-D-3 (Expiration) of the Town of Clinton Zoning law states "Unless construction or use is diligently commenced within on year from the date of the granting of a variance, such variance shall become null and void **without further rehearing or action by the Zoning Board of Appeals**"
3. In a letter dated October 1, 2023 Michael Maloney advised the ZBA that due to continued difficulties with engineers he has been unable to start construction of the project.
4. There have not been any changes in the zoning law since this variance was issued that would affect the same variance being granted at this time or that would affect the granting of an extension to this variance.
5. Granting this extension would still comply with the considerations that were met when the variance was issued on 12/1/22, and is a reasonable request.

Seconded by Mr. Canham,

Discussion. None.

All Aye, Motion carried, 5-0.

Cogdell Area Variance – properties owned by Celia Cogdell and Dwight and Shannon Bonk located at 38 and 50 Tobin Drive, Tax Grid Nos. 6569-00-184196 and 188218.

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The applicants request an area variance to Sec. 250 Attachment 2 for a side yard setback reduction for the garage in order to correct the encroachment of the garage and do lot line adjustment.

Mr. Mustello joined the panel back.

Richard Morse and Shannon Bonk appeared for this application.

Mr. Morse explained that back in the 70s, the garage was built on the neighbor's property. Nobody knew it and the heir of the state is now selling the property. Luckily, the neighbor (Bonk) was nice enough to sell the portion of the lot to the Cogdells to rectify the issue.

Mr. Morse explained that the neighbor (Bonks) allowed the Cogdells to do maintenance 15 feet around the garage. Ms. Bonk agreed to sell .04 acres to the Cogdells. Mr. Morse underscored that the action will not make both lots substandard.

Ms. Bonk spoke and expressed her understanding about the variance and the lot line adjustment as a result of the sale of the .04-acre lot. Her understanding is her property line is going to be 15 feet around the garage.

Mr. Mustello asked Mr. Morse which property owner he represents. Mr. Morse responded that he is representing the Cogdells. Letter of authorization is submitted and is on file.

Mr. Mustello read the Planning Board's recommendation dated 10-17-2023 which is positive.

Mr. Mustello expressed his comments based on his site visit. Although there is a solution like moving the garage to another location, Mr. Mustello opined that this solution might not be agreeable to both parties.

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

Hearing none, Chairman Malcarne motioned to close the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 6-0.

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

Mr. Mustello motioned that the Town of Clinton Zoning Board of Appeals approve the requested area variance to Section 250-98D(2) to allow a proposed side lot line adjustment as requested by Cecilia Cogdell, trustee of the property, located at 38 Tobin Drive. The applicant's intent is to sell the property with the requested

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variance at 38 Tobin Dr., Clinton Corners, NY, tax grid number 6569-00-184196 in an AR3A zoning district.

WHEREAS:

1. The applicant Cecilia Cogdell at 38 Tobin Drive, is requesting a variance to the minimum required side lot line setback of 50' to 15' to correct an error in placement of the 1970s construction of a garage structure that currently encroaches on the Bonk property located at 50 Tobin Drive. The applicant Cogdell at 38 Tobin has agreed to purchase approximately 0.04 acres from the adjacent property located at 50 Tobin (Bonk) and to apply for the variance to bring the garage structure into zoning compliance with said variance and sell the property.
2. The property is in a AR3 zoning district
3. The property is not within the Ridgeline, Scenic and Historic Protection Overlay District.
4. The property is not in a Critical Environmental Area or Taconic State Parkway viewshed
5. The requested variance is substantial from 50' reduced to 15', however, the owners of 50 Tobin might not agree to a larger exchange and a larger exchange might create a substandard lot.
6. An undesirable change will not be produced in the character of the neighborhood or be detrimental to nearby properties.
7. The applicant cannot achieve the same benefit without the requested variance.
8. The proposed variance should not have an adverse effect or impact on the physical and environmental condition of the neighborhood.
9. The alleged difficulty is self-created but should not necessarily preclude the granting of the area variance, considering the limited impact on surrounding conditions.
10. There are no known outstanding zoning violations.
11. It is noted that an area variance is a type II action under SEQRA and requires no further action.

With the following conditions:

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- 1) All fees have been paid
- 2) No items may be stored outside of the garage, in the setback

Seconded by Mr. McMahon,

Discussion. Mr. Newman stated that he recommended in his denial letter to condition the variance with the lot line adjustment.

The board exchanged opinions about the matter. Ms. Campbell indicated that the Planning Board typically disagreed. The variance goes away if the lot line adjustment is not granted.

Mr. Morse echoed the Planning Board's view. It is a moot point.

Mr. Canham commented that it's a catch 22.

After all the discussions were made, the board agreed not to include the condition about the lot line adjustment.

All Aye, Motion carried, 6-0.

Morse Area Variance – property owned by Richard and Joyce Morse located at 610 Hollow Road Tax Grid No. 6366-00-442907.

The applicants request an area variance in order to do a 2-lot subdivision in the AR3 Zoning District.

Sec. 250 Attachment 2 – Minimum lot width requirement from 300 ft to 210 feet.

Mr. Morse appeared and explained his application. He said that he's getting old and doesn't want to burden his wife with anything. He recently retired and is trying to get rid of a lot of stuff. He wants to separate the building to the north of his property to a 5-acre lot and be able to sell it. He indicated the woodworking guy who is using this structure wants to buy it.

Mr. Morse explained that he doesn't need the wetlands variance (Sec. 206-16 C). It was noted that the Planning Board's recommendation indicated a variance to Sec. 206-16). He noted that this matter was cleared and he doesn't need that variance. He explained why he needed the variance to the lot width requirement. He doesn't want to put the lot line 300 feet in front of the building since there is a knoll there with a lot of oak trees. It keeps it rural and keeps separation. He is seeking a variance from 300 feet to 210.

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Mr. Tompkins commented that he suffered some anxiety from this application. He indicated his confusion about the Planning Board's recommendation letter indicating a variance to Sec. 206-16-C. He also questioned the procedural process since the PB letter of recommendation was dated October 2023 while the applicant's variance application was dated November 1, 2023.

Mr. Newman explained that the Planning Board knew at that meeting that they need a variance application so they made a recommendation at that meeting.

Ms. Campbell noted that the Planning Board discovered that a variance is required during the review process of the subdivision. They made a variance recommendation on the spot at that meeting to save the applicant some time from coming back before the board for a variance recommendation.

Mr. Tompkins continued that Mr. Newman's letter on December 8 then clarified the percentage of wetlands that is no longer required. The minimum lot size of 3 acres in the AR3 Zone District that is not affected by the wetlands. He explained why the variance to Sec.206-16-C is disregarded. Lot 1 of 5 acres after taking wetland will result in 3.5 acres thereby meeting the zoning requirement. The second lot that is 13.5 acres will result in 4.5 acres after taking wetlands thereby still more than 3 acres in the AR3 Zoning District.

Mr. Tompkins discussed the variance to the minimum lot width.

The board agreed to open the public hearing.

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

Marcy Behr, asked whether the proposed two lots are going to be further subdivided.

Mr. Morse responded, "No, he just wanted to separate the 5-acre lot from the rest of his property."

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

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

The board passed a resolution, to wit:

Mr. Tompkins motioned that the Town of Clinton Zoning Board of Appeals grant a variance to **Richard and Joyce Morse**, 610 Hollow Rd, Staatsburg N Y, in the

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Town of Clinton from The Town of Clinton Zoning Law section 250 attachment 2 requirement from the minimum lot width of 300 feet to 210 feet. This is for lot 1 of a proposed 2 lot subdivision of the current parcel located at 567-610 Hollow Rd, tax grid # 132400-6366-00-442907.

Factors:

1. This is a proposed 2 lot subdivision of an approximately 18.52-acre parcel tax grid # 132400-6366-00-442907 located in the AR-3 zone.
2. Applicants desire to form a lot #1 of approximately 5.07 acres and a lot #2 of approximately 13.45 acres.
3. Lot #1 will be a rear lot since it does not meet the Minimum Lot Width at the Minimum Front Setback for the zoning district.
4. Lot #1 will need an area variance from the Minimum Lot Width requirement of section 250 Attachment 2 for the Low Density Agricultural Zoning District from 300 feet to approximately 210 feet.
5. The site is on a Clinton Scenic/Historic Road, and must conform to Local Law #3 of 2001.
6. Both lots contain DEC wetlands and both new lots will have the required minimum lot size that complies with the required land outside of the wetlands.
7. The lots are not in an Ag District.
8. An undesirable change will not be produced in the character of the neighborhood or be a detriment to nearby properties.
9. The requested variance is substantial being approximately 30%.
10. The difficulty is self-created.
11. It appears that the problem could have been avoided if the survey bounds had been modified when being completed.
12. There will be no potential adverse effect or impact on the physical or environmental condition of the neighborhood.
13. An area variance is a Type II action under SEQRA and requires no additional action
14. The Planning Board made a positive recommendation for this variance on 10/17/23.

Conditions:

- All fees are paid
- This variance is conditioned on the Subdivision approval by the Town of Clinton Planning Board

Seconded by Mr. Canham,

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Discussion. Mr. Calogero expressed good words about the applicant saving the trees and going through the variance process instead.

All Aye, Motion carried 6-0.

BOARD DISCUSSION:

Mr. Newman gave an update about the proposed Local Law re Farm Operations.

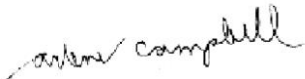
APPROVAL OF MINUTES:

Mr. Calogero motioned to accept the minutes of October 26, 2023, seconded by Mr. Mustello, all Aye, Motion carried, 6-0.

ADJOURNMENT:

Chairman. Malcarne motioned to adjourn the meeting at 9:28 pm, seconded by Mr. Mustello, All Aye Motion carried, 6-0

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk