

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
January 25, 2024**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham

Frank McMahan
Ron Mustello
Russel Tompkins

Arlene Campbell, Secretary

MEMBERS ABSENT

Norma Dolan

ALSO PRESENT

Katherine Mustello, Liaison Officer
Jeff Newman, MCEI

Chairman Malcarne called the meeting to order at 7:00 pm. Chairman Malcarne welcomed everyone and asked his colleagues to introduce themselves. He also welcomed Katherine Mustello who is the new board Liaison Officer.

Chairman Malcarne thanked board member Norma Dolan who resigned after almost two decades of dedication and voluntary work as a Zoning Board member. She will be missed.

Chairman Malcarne asked the secretary if the applications on the agenda were properly advertised and adjoining neighbors were notified. Ms. Campbell responded positively.

AREA VARIANCE:

Marrott and Grimaldi Area Variance for Lot Line Adjustment –on properties located at 12 Schoolhouse Road and 869 Hollow Road, respectively, with **Tax Grid Nos. 6467-03-077325 and 070291.**

The applicants request an area variance to Sec. 206-16-C of the Subdivision Regulations in the Town of Clinton which requires that at least 75% of the minimum lot area not be in a wetland, in order to do a lot line adjustment. Both properties are in the Hamlet Zone District.

Sec. 206-16 – C (Lots) of the Town of Clinton Subdivision regulations states that “Not less than 75% of the minimum lot area within any zoning district must be fulfilled by land which is outside any NYS DEC-designated

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wetland. Likewise, not less than 75% of the minimum lot area within any zoning district must be fulfilled by land which is outside a FEMA-designated floodplain or Army Corps of Engineers designated wetland.

Kirk Horton, Land Surveyor appeared on behalf of the property owners. He explained that the Marrotts and Gilis are purchasing one acre of land from the Grimaldis who have 4.3 acres of property. The Grimaldi's property is currently for sale. He added that Ms. Grimaldi has a small house that is to the west side of the Wappingers Creek.

Mr. Calogero explained why variance is required for the proposed application. He read the Planning Board's recommendation which is positive.

Mr. Calogero stated that this property was substandard when the zoning regulation was adopted. Out of 4.3 acre-lot that Ms. Grimaldi owned, she is selling one acre of this property to which 3.1 acres are in the flood zone. Ms. Grimaldi is looking for a reduction of 50% that sounds very large but in fact, it is a reduction of 2/10 of an acre of what she was supposed to have. He noted that Ms. Grimaldi did not have what the law requires since this is a nonconforming lot to begin with.

Mr. Horton noted that in this case, in order to have 75% of the minimum lot area, you need to have at least .75 acres of dry land (75% of 1 acre which is the minimum lot in the Hamlet). The wetland is not the issue but rather the floodplain that where it is.

Mr. Calogero asked what is the size of the parcel as it is right now (with the structure) that Ms. Grimaldi is keeping on Schoolhouse Road. Mr. Horton responded, "It is about 2/10 of an acre".

Mr. Tompkins commented that it looks like the flood line completely includes the house and the garage.

The board reviewed the map and had a lengthy discussion in regards to the wetlands. Mr. Mustello noted that the scale of the map is off. The boundaries are not accurate.

Mr. Canham expressed his hope about the presence of at least one of the property owners in regards to the intention in purchasing some land. He asked, "Why do they need another acre?"

Mr. Horton responded that he was told that the Marrotts are purchasing one acre of the property for a natural buffer.

Mr. Tompkins commented that it seems that there is an error in the Planning board's recommendation stating that both parcels will be substandard lots. He

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commented that the lot on the east side which is already an acre met the regulation (75% of an acre dryland). They already met the requirements of the law which is 75% of the minimum lot in the zoning district even though they're buying another acre of lot. Mr. Horton agreed.

Ms. Campbell noted that this variance recommendation was crafted on the spot at the Planning Board meeting during the lot line adjustment application. The variance came into play at the last minute.

Mr. Tompkins opined that this will not impact the property to the west. The house and the garage have been there for as long as he remembers. He doesn't see any benefit to the one who is buying an acre given the wetlands except creating a buffer. He doesn't see any harm from this transaction.

Mr. Horton agreed. The use of the property is still the same.

Mr. McMahon echoed Mr. Tompkins comment. Nothing is changing except the lot line.

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

Michael Kaplan, 863 Hollow Road, expressed his strong opposition to the proposal. The one acre of land that Ms. Grimaldi is selling her land. He doesn't understand why he cannot buy this piece. He noted that he called Ms. Grimaldi the day before and was told that she will gladly sell it to him.

Mr. Tompkins noted that this is between him and the Grimaldis.

Mr. Horton stated that he was not sure whether the parties are already in contract.

Mr. Kaplan stated that per his conversation with Ms. Grimaldi, the Marrotts are the ones paying for the surveyor, the survey and the application. They are the ones paying for everything.

Mr. Kaplan asked why all of a sudden the Marrotts want to buy this portion of the land that is abutting his lands.

Ms. Campbell responded that supposedly, the Grimaldis are having a tough time selling the property so he asked the Marrotts if they are willing to buy the portion of the lot.

Mr. Kaplan expressed his concern about people walking by the creek given the STR use of the Marrott's property. He indicated the STR guests walking around his property constantly. He also expressed his strong concerns about safety from the STR guest getting lost on his property.

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Mr. Tompkins noted that the board can only act on the application on hand. If Mr. Kaplan wants to buy that piece of land then he needs to talk to Ms. Grimaldi.

Mr. Kaplan responded that he did approach Ms. Grimaldi and it seems that everything was already a done deal.

Maddie Goldstein, 44 Schoolhouse Road spoke and said she was sorry that both property owners are not around for this application. She showed pictures of the property that she had taken and described the wetlands and the wildlife area. She wonders what is the plan for the area that is being conveyed. These are wetlands and it goes to Wappingers Creek. She asked, "Who would buy this land to buffer their property?" The only thing she can think about the use of this portion of the parcel is a beach for a short term rental property that disturbs Mr. Kaplan's property. People smoke marijuana on the deck and the smoke comes into Mr. Kaplan's windows. The neighboring properties have to blackout shades because there are so many lights.

Ms. Goldstein remarked that there's nothing you can do there. You can't even walk down there. She showed pictures of the subject area and said, "It is a mess down there "There are rocks and down trees". She wonders why the Marrotts are not buying the whole Grimaldis' property but just the wetlands part. This concerns her greatly. The Marrotts are not in attendance of the meeting to say their true intention of the purchase of the portion of the land. She also indicated her problems and the impact of the properties in the area who are operating AirBnBs. She expressed her strong concerns about this application. She doesn't think that the Marrotts are being honest with their intention. Who will want to buy this little piece of property?

Mr. Horton responded that the Marrotts are buying this piece for protection of view. It is a buffer.

Mr. Tompkins noted that whatever they intended to do would need town approval.

Chairman Malcarne laid out the area that is being purchased. He commented that the area between the water and the marker is not being purchased.

Ms. Goldstein's husband commented that the marker is at Center Road.

Ms. Goldstein remarked that they have to walk the property to know the wetlands. She also expressed her concern about the cutting of the trees.

Mr. Horton noted that the Marrotts are strongly opposed to cutting trees.

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Mr. Newman stated that it will require wetlands permit from the Planning Board if there is a disturbance within 100 feet of the controlled area.

Mr. Canham echoed the above comments. Any disturbance such as cutting of trees within 100 feet of the controlled area will require approvals from the DEC, Army Corps of Engineer and the town.

Mr. Newman read the regulation per Sec. 250-78-C about the regulated activities that require wetlands permit.

Mr. Goldstein asked, "Out of one acre that is being conveyed, how much are wetlands?"

Mr. Canham opined that 90% of the property to be conveyed are in the controlled area. He wouldn't call this wetlands.

Mr. Horton agreed. Flood plains are different from wetlands. He pointed on the map where the flood plains area is, which is the dotted line.

Mr. Goldstein expressed his concern about the area to be conveyed in regards to the 75% wetland rule.

Mr. Canham noted that the 75% rule does not apply to the subject parcel to be conveyed since this will be merged to Marrott's parcel. The Marrott's parcel already met the regulation which is 75% of the minimum acreage in the zoning district.

Chairman Malcarne added that the Marrotts can add 50% wetlands or more as long as they meet the 75% of the minimum acreage, which they did.

Mr. Horton noted that this is a one acre zoning district and the Marrotts already met the regulation.

Mr. Goldstein asked the variance to be conditioned.

Mr. Newman responded that the applicant needs to go back to the Planning Board for a lot line adjustment once the variance is granted. The Planning Board has the purview to include conditions in their approval.

Ms. Campbell noted that the lot line adjustment process does not call for public hearing. The neighbors will not get any notifications about the process. The only reason why the public was notified and can speak is due to the requirement of the variance.

Mr. Newman agreed. It was determined during the process of the lot line adjustment that an area variance is required.

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Ms. Goldstein asked if they could write to the board. Ms. Campbell responded, "Sure", but the board is not required to respond to it since there is no public hearing opened. It's up to the board if they will hold a public hearing. She never recalled any public hearings for the lot line adjustment process.

Mr. Newman read the section of the law in regards to Lot Line Adjustment Procedure.

Sec. 206-50-C Public hearing for a lot line adjustment will not normally be required; however, if the Planning Board has reason to believe that a public hearing on the application is needed, such a public hearing may be scheduled.

The board had a lengthy discussion whether to include a condition to the variance.

Mr. Goldstein commented that this condition could be an encumbrance to the land.

Mr. Canham commented that wetland protection is a tricky thing. The town wetlands law allows wetlands permits to be issued at a discretion of the Planning Board. The law intends to protect wetlands but it's flexible. It suggests encouraging people by putting some restriction like no intention in cutting trees or development on the wetlands. He commented that it's really hard to craft regulations that really work but precludes reasonable use of the land. He likes the idea of putting an easement but right now, he just doesn't know how to do that.

Mr. Goldstein reacted to Mr. Horton's response about the intention of the Marrotts. He asked, "What about the intention of the future property owners?"

Mr. Canham responded that much of the lands are in the rear yard setbacks so it's limited of what you can do on this parcel. He underscored that this will add another layer of protection to this land.

Mr. Canham stated that it's hard to guess and understand the intent of the current and future owners.

Mr. Calogero commented that this application really aims at Ms. Grimaldi's ability to sell the property. There's no way that it can really affect what the buyer does in the future. The board can include a condition to the variance to gain some leverage, but whoever Ms. Grimaldi sells this lot, will still have to go through the same process.

Chairman Malcarne thanked the neighbors for coming out and expressing their concerns in protecting the wetlands.

The board agreed to close the public hearing.

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

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

Mr. Calogero motioned that the Town of Clinton Zoning Board of Appeals grant a the following area variance to Christine Grimaldi, of 12 Schoolhouse Rd. (6467-03-077325) in order to effect a lot line adjustment with adjacent property owners Lan Gili and Morton Marott of 869 Hollow Rd (6467-03-070291):

- Reduction from Section 206-of the Subdivision Code which requires that at least .75acre of the minimum lot area NOT be in a wetland or floodplain, from .75 to .2.

FACTORS:

1. Christine Grimaldi wishes to sell her neighbors Gili and Marott an adjacent one-acre parcel reducing her property to 3.3 acres and increasing the neighbors' property from 1.016 acres to 2.016,
2. Both of these properties are in RH and H zones, so they meet the acreage requirement,
3. The Grimaldi lot is a pre-existing non-conforming lot in that it is .35 acres short of the section 206 requirement
4. After the proposed lot line adjustment, the lot would be .56 acres short of the section 206 requirement which is substantial as a percentage but as real acreage amounts to .2-acres. In fact, it renders no real change to the usable part of the lot which contains the dwelling since the only portion of non floodplain land being sold is on the opposite side of the creek,
5. The zoning code strongly limits the expansion of non-conformity and the ZBA is bound by this general principle allowing it in only rare instances with a sharp eye on the charge to "...judge whether the benefit to the individual outweighs the detriment to the town....",
6. There is to be no disturbance to the land as no building is proposed, so there will be no undesirable change to the

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character of the neighborhood,

7. There will be no adverse effect to the environment as the new owners would be subject to the same restrictions as Ms. Grimaldi,
8. An area variance is a Type II action under SEQRA and requires no further action,
9. The Planning Board has made a positive recommendation to the ZBA concerning this variance,
10. The Zoning Board has relied on the submitted calculations to make this motion.
11. Per the ZEO, there are no zoning violations on record.

Conditions

- a) All fees have been paid
- b) Approval of Lot Line Adjustment.

Seconded by Mr. Tompkins.

Discussion. Mr. Canham asked if they need to include a condition about the public hearing. He doesn't think that the board can do this.

Chairman Malcarne stated that the board can include a recommendation to the Planning Board about holding a public hearing. It cannot be a condition.

The board discussed whether to include this recommendation. Mr. Tompkins doesn't think that they can include a condition forcing the Planning Board to hold a public hearing.

Mr. Mustello felt that this was a legislation out of fear. It's speculation and overstepping. The new property owners will be subject to the same town approvals for anything that they want to build.

Mr. Tompkins agreed. The board cannot speculate on what they can do on their property but at the same time, the board is bound by the town code of what they can do.

Chairman Malcarne felt that a recommendation about the public hearing instead of condition is perfect for the matter.

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Mr. Mustello expressed strong opposition to the public hearing recommendation. This is setting precedence.

Mr. Tompkins echoed Mr. Mustello's comment about setting precedence.

After a very lengthy discussion, the board agreed not to include the verbiage about the public hearing recommendation.

Mr. Newman suggested including the condition about approval of the lot line adjustment. The board agreed.

All Aye, Motion carried 6-0

APPROVAL OF MINUTES:

Chairman Malcarne motioned to approve the August 31, 2023 minutes as they are, seconded by Mr. Tompkins, all Aye, Motion carried, 6-0.

Chairman Malcarne motioned to approve the minutes of September 28, 2023, seconded by Mr. Calogero, all Aye, Motion carried, 6-0.

ADJOURNMENT:

Chair Malcarne motioned to adjourn the meeting at 8:45 pm, seconded by Mr. Canham, All Aye Motion carried, 6-0

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk