

**TOWN OF CLINTON
PLANNING BOARD MEETING
FINAL MINUTES
May 7, 2024**

MEMBERS PRESENT

Paul Thomas, Chairman
Jack Auspitz
Tom Bonanno
Gerald Dolan

Alex Ferrini
Gerry Thorpe

MEMBERS ABSENT

Justin Carroll

ALSO PRESENT

Secretary – Arlene Campbell

Jeff Newman, MCEI
Katherine Mustello, Board Liaison

Officer

Chairman Paul Thomas opened the meeting to order at 7 :02 pm. He gave his procedural comments about the agenda items. The Town Board is in the process of working on updating the Short-Term Regulations. He also indicated the update about the Laserfiche in regards to posting.

VARIANCE APPLICATION:

None

PUBLIC HEARING:

Bamber Site Plan for Ground Mounted Solar System– 228 Browns Pond Road, Tax Grid No. 6267-00-868974

Applicant wishes to install a 22.8 kW AC system ground mounted solar system at the rear of the property.

Sara Sensini and Grayson Ball from SunCommon Solar Company appeared for this application. Ms. Sensini explained that the Bambers propose to install a ground solar mounted solar system to the south of their property. It will consist of 62 panels, two arrays and three TESLA inverters.

Chair Thomas motioned to open the public hearing, seconded by Mr. Auspitz, all Aye, Motion carried, 6-0.

No one spoke, the board discussed the application.

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Mr. Ferrini indicated the comments that were just received from the CAC and the town engineer. CAC's comments are positive. They touched on the same issue that the board had, i.e. comments on the site plan and proximity to the water course. He noted that the applicants had submitted wetlands' permit application. The town engineer also commented on the site plan. He doesn't see any issue giving approval once the outstanding item on the site plan is addressed. He suggested leaving the public hearing open to give the public a chance to read the comments that were just received from the town consultants.

Chair Thomas asked the applicant if they had seen the town engineer's comments. Ms. Sensini responded, "Yes". Ms. Campbell sent them a copy this afternoon. Mr. Ball added that this site plan was based on the latest comment from the town engineer as shown on page 5. They are still in the process of addressing the rest of the items on the letter.

Ms. Sensini explained the site plan that they submitted for that meeting. Page 2 shows where the well is. Rendering is on page 3.

Chair Thomas suggested incorporating everything on one sheet (site plan).

The board had a lengthy discussion about the items that need to be on the site plan. Chair Thomas suggested putting everything that the town engineer asked on sheet 2.

Mr. Ferrini commented that everything should be consolidated on one sheet. The chair has to sign the approved site plan.

The board agreed to leave the public hearing open. They can be on the next meeting's agenda.

No action taken

APPLICATIONS:

Bamber Wetlands Permit – 228 Browns Pond Road, Tax Grid No. 6267-00-868974

Applicant wishes to install a 22.8 kW AC system ground mounted solar system at the rear of the property that is within 100 feet of the wetlands pursuant to Sec. 250-78 of the zoning regulation.

The board agreed to take no action until the town engineer's comments are addressed.

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Brown Wetlands Permit for vegetation and clean up – 99 Willow Lane, Tax Grid No. 6267-00-868974.

Applicant seeks wetlands permit to lift the violation about the stop work order that was issued a couple of months ago.

Chair Thomas recused himself for this application given his residency on this road.

Mr. Ferrini took the floor and asked the applicant to give a brief summary of their proposal.

Lindsey Brown and her husband Fire Dean Schilling both appeared for this application. She stated that the description of their project is to remove invasive plants and replace them with non-invasive species, remove unauthorized dumped materials such as commercial and organic waste, and improve the wetland.

Ms. Brown stated that people were dumping tires, metals, etc on the far corner of their property about 17 years ago. Her husband started working on this waste. She also indicated the poison ivy in the area that is growing around their yard. They are trying to improve the drainage in the area.

Mr. Ferrini asked the applicant about the prior variance application that she withdrew.

Ms. Brown responded that they had a variance application to install a tool/garden shed in that area. They decided to withdraw the application mainly because of the harassment that they received from their neighbor, John Caccia including Eliot Werner. She indicated the invasion of privacy from Mr. Caccia who's coming on her property screaming and videotaping her husband while working on the yard. She added that Mr. Werner also pops up sticking his head. She also indicated that Mr. Caccia hired a lawyer (John Lyons) and made a list of complaints about them which she claims are unfounded. She stated that they withdrew their application for peace of mind. It's not worth it.

Mr. Ferrini stated that part of the submitted application states improving the drainage. He asked the applicant if she has any details, drawings or more information of what it does entail.

Ms. Brown responded that they put in some river rocks in the area.

Mr. Newman asked Ms. Brown if this existing water flow is interchanging.

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Mr. Schilling responded that Hampton Court is a 35 degree angle dumping flow in this area.

Mr. Ferrini asked if the work was already done. Ms. Brown responded, "Yes."

Mr. Ferrini indicated the wetlands permit process such as declare lead agency, set up an escrow and refer the application to the town consultants. Ms. Brown remarked that they had already been through that. They already met with the town engineer and comments were already sent to the ZEO.

Ms. Campbell commented that this is a new different application and the process is re-started.

Mr. Ferrini agreed with Ms. Campbell. This is a new application that is before the board. This is the process and to get a better understanding of the application, they need to get the opinion of the experts.

Ms. Brown argued that this process was part of the original proposal. The original proposal was for a shed and wetland permit. They remove the shed and based on her understanding, they have to submit a new wetlands permit application for procedural process. She noted that they already paid the town engineer to come and do his review. CAC also already did their review and gave their comments.

Mr. Schilling remarked that nothing is changing.

Mr. Newman commented that the work that the applicant is now proposing does not technically require wetlands permit. Nothing in the law states that requires a wetlands permit. The main reason for the wetlands permit application is to cure the stop work order violation i.e. the work in preparation of the shed. The town engineer had gone out there based on the proposal to install a shed that is now withdrawn. He underscored that the work is already done so his comments were satisfactory. The work that the applicant is doing now is not changing or modifying that. It does not require wetlands permit.

Ms. Campbell asked Mr. Newman, "Are you saying that they don't need wetlands' permit?" Why are they here?

Mr. Newman responded, "Correct". The appearance of the applicant is mainly to cure the violation.

Ms. Campbell asked, "Is the wetlands permit application to restore what was done?"

The board expressed bafflement.

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Mr. Auspitz said that they needed a wetlands permit because of the shed installation. The shed proposal was withdrawn so wetlands permit is not required. The proposal is to cure the violation but if they are not working on the shed. Does that cure the violation?

Mr. Newman said that if the outcome of the work is a garden that does not require wetlands permit then the change of work is basically to stop the work order.

Ms. Campbell asked what about the second driveway that they cut. Mr. Newman responded that they withdrew that.

Mr. Auspitz asked Mr. Newman, "Is there anything that the board needs to do here?" Mr. Newman responded, "He thought about that."

Mr. Ferrini expressed his concern based on his reading of the law per Sec.250.78 C-4 and 5 as stated below.

"Regulated activities which require a permit. Except as otherwise provided in Subsection D herein concerning exempt activities or Subsection H herein concerning waiver of requirements, it shall be unlawful, in the absence of a permit issued pursuant to this section, to do any of the following activities in any wetland, watercourse or controlled area (as defined below):

(4) Conduct any form of draining, dredging, excavation or removal of material, either directly or indirectly.

(5) Conduct any form of dumping, filling or depositing of material, either directly or indirectly.

Mr. Ferrini said that understanding this statute, even though it's remedial work, it still doesn't fit what was required of the definition of wetlands permit. The board has a wetlands permit application in front of them.

Ms. Brown remarked that the wetlands permit application is just to cure the violation.

Mr. Ferrini responded that it is an enforcement issue. The official who issued the violation is the one who can deal with that violation. The board deals with the application that is before them. He also commented that reading the narrative of the proposal such as dredging, removal of materials, drainage, etc. seems to fit the statute of the wetlands permit.

Mr. Auspitz asked, "Does that require another round of wetlands permit?"

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Mr. Ferrini responded that if the point of the work is restoration, he would feel comfortable deferring this to the town consultant and hear them say, "Yes they have addressed the restoration of the wetland".

Mr. Thorpe asked if all work done is in the wetland area? Ms. Brown responded, "No."

Mr. Ferrini said that one of the issues with the original application is they don't have an accurate detailed map. They don't know. One of the requests is to get a more detailed wetlands map which they still don't have.

Mr. Thorpe asked, "Was there permission to work in the garden area?"

Ms. Campbell said that the submitted map was not an accurate delineation of wetlands.

Mr. Newman stated that when you look at the parcel area, it looks like it is in the controlled area and not in the wetland. There was a question about the accuracy of the parcel map in relation to the wetland areas. One of the discussions of the board was to get a professional delineation.

Mr. Ferrini added that is also part of the comments from the town engineer

Ms. Brown negated that the town engineer did not ask them to get a survey.

Ms. Campbell said that it's not a survey. It is a wetland delineation.

Mr. Thorpe added that it's a plot of boundary wetland.

Mr. Schilling and Ms. Brown both said that the town engineer never asked them to get that.

Ms. Campbell asked the applicant if they have a copy of the town engineer's comment.

Mr. Ferrini commented that this might not be a request from the town engineer but it is certainly a request from the board.

Mr. Schilling asked the board what they needed to do to simplify this.

John Lyons who was in the audience asked to speak but Mr. Ferrini said that this is not a public hearing.

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Mr. Ferrini understands the question to simplify things but there is also an application before the board for a wetlands permit to restore the property to what it was before. He is not sure he is qualified to review this restoration.

Ms. Brown remarked that they are not asking to restore the property to what it was before. Mr. Ferrini responded that this is more of a reason for a town consultant to take a look at this application.

Ms. Campbell asked if all the work is done or are they still doing the work. Mr. Schilling responded, "No."

Ms. Brown responded that they are planting a garden in an area that was a dumping site with poison ivy. They have replaced the poison ivy and other invasive species with native plants. They have cleaned out the garbage and waste to get into the area and brought some material in there.

Ms. Campbell asked if bringing material is allowed. Mr. Ferrini responded, "Sure with a permit."

Ms. Brown questioned the need for a permit. This is not a wetland. They are not doing work in the wetland. She noted that there is a small part of a wetland that comes into the area. That area is not affected by what they are doing.

Mr. Ferrini said that the regulation accomplishes both the buffer and the wetland area.

Ms. Brown remarked, "That would mean the whole street and neighborhood". It means that their neighbor can't even have a driveway."

Mr. Schilling remarked that the flooding comes from Hampton Court into their entire backyard. If this is true, does it mean they need to have a permit to keep water off the buildings on their property.

Mr. Ferrini said that per the regulation the list of the activities that are in the buffer and in the wetlands area required wetlands permit. All he's doing is lay out the process and procedure.

Ms. Brown asked what the MCEI had to say. She asked if Mr. Newman can weigh on this.

Mr. Newman read the regulation about exempt activities per Sec. 250.78-D-2

Exempt activities. The following activities are allowed without a permit under this section:

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D(2) Ordinary maintenance, repair and/or replacement of existing structures or improved areas which do not involve expansion or substantial modification, including but not limited to bridges, roads, driveways, highways, bulkheads, docks, piers or pilings.

Mr. Newman stated that doing maintenance and improvement in the wetland area is exempt. This is the section that he was looking for when somebody goes to the wetland area and does a clean-up.

Mr. Ferrini said that if that is the case, why is this application before the board? He doesn't see anything in the regulation for the board to reference a decision that addresses "You don't need a permit when there is an application before the board".

Mr. Auspitz commented that they can do that if an application is a mistake.

Mr. Newman said that the board can send it back to him to make a determination specifically on that point.

Mr. Auspitz felt that this seems to solve the issue.

Ms. Campbell said to Mr. Newman, "I thought you wanted to legalize the action that was done on the wetland."

Mr. Newman responded, "If that is necessary if it falls 250.78 D2 as opposed to C-4.

The board had a lengthy discussion. Mr. Auspitz recapped that the MCEI suggested that the board can defer the application back to him whether the action falls on Sec. 250.78D-2 as opposed to C-4. See sections below.

D(2) Ordinary maintenance, repair and/or replacement of existing structures or improved areas which do not involve expansion or substantial modification, including but not limited to bridges, roads, driveways, highways, bulkheads, docks, piers or pilings.

C(4) Conduct any form of draining, dredging, excavation or removal of material, either directly or indirectly.

The applicants started ranting about their neighbors including Mr. Werner, who they claimed, goes out there and takes pictures of their property.

Mr. Ferrini said that these comments have no relevance to this application.

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Ms. Brown said that all they want is to remove the stop work order on the property.

Mr. Ferrini responded that the board does not have the power to remove a violation on the property.

After a very lengthy discussion, the board agreed to pass a resolution, to wit:

Mr. Ferrini motioned to send the application back to the MCEI to make a determination whether the stated activities required a wetlands permit or not, seconded by Mr. Auspitz,

Discussion. Mr. Thorpe asked what if it still needs a wetlands permit. Mr. Ferrini responded, "Then, it goes through the process." They have to deal with the issue whether the activity is in the buffer or in the wetlands.

All Aye, Motion carried, 5-0.

Chair Thomas joined the panel back for the next application.

Rossmann Demolition Plan Approval of House and Shed – 106 Mountain View Dr, Tax Grid No. 6368-00-244878.

Applicant wishes to demolish the house on this parcel.

John Cordero, contractor appeared for this application and explained that Mr. Rossmann recently bought this property and wishes to demolish a single family dwelling built in 1985 that is on the 5 acre parcel. The property owner proposes the parcel to be vacant and unimproved.

It was noted that the building has No known historical significance.

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

Mr. Auspitz motioned that the Town of Clinton Planning Board approves the following resolution:

WHEREAS:

1. Applicant Adam Rosman seeks to demolish a private home on his property at 106 Mountain View Road in the Town of Clinton (#6368-00-244878). Under Section 250-93 of the Zoning Code, approval by the Planning Board is required

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2. The house is a single-family residence which was constructed in 1981. The building has not been used as a home since its purchase by applicant. Applicant states there is no national, state or local designation of significance associated with the building or property on which it is located.
3. Applicant states that the land will be left as open property after the demolition. Applicant has a home on the adjoining property.
4. Applicant seeks to demolish the building because of its condition and recent water damage. He asserts it would not be worth the cost to rebuild. His contractor has submitted a plan for the demolition.
5. The Planning Board concludes, based on this submission, that there is no historic significance to the building and that the proposed demolition will not harm the character of the surrounding area.
6. We make no determination as to whether or not a wetlands permit is required. However, we require that the wetlands boundaries be delineated on the land in connection with the demolition and that the wetlands be reasonably protected. Applicant is to comply with the requirements of 250-78 to the extent they are applicable.

NOW THEREFORE BE IT RESOLVED that the Planning Board approves the demolition of the existing private home at 106 Mountain View Rd. subject to the following:

- review and approval of the plan of demolition by the Building Inspector,
- payment of all applicable fees, and
- subject to the applicability of 250.78

Seconded by Mr. Ferrini,

Discussion. None.

All Aye, Motion carried, 6-0.

Shamdasani Non-Hosted Short Term Renewal Permit – 246 Clinton Ave, Tax Grid No. 6366-00-843102

Applicants seek renewal of their Short-Term Renewal pursuant to Sec. 250-69.1

The board had a lengthy discussion about the number of bedrooms on this property.

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It was noted that the size of the septic is 1,000 gallons and town's record shows 3 bedrooms. The board agreed that the number of lodgers go with the size of the septic tank and certificate of occupancy.

Mr. Thomas motioned that the Town of Clinton Planning Board approves the following resolution, to wit:

Whereas, the Town of Clinton Planning Board has received an application to renew a Special Use Permit from Reshma Shamdasani for the purpose of utilizing a principal residence ("Dwelling Unit") located at 246 Clinton Avenue in the Town of Clinton as a Non-Hosted Short-Term Rental pursuant to Section 250-69.1 of the Zoning Law; and

Whereas, the subject property is identified as tax parcel number 132400-6636-00-843102 and is located in the AR5 Zoning District was previously issued a Special Use Permit for an STR on April 19, 2022; and

Whereas, the applicant's application for renewal of the Special Use Permit was received on April 14, 2024, and the applicant does not propose any permit changes with respect to the Dwelling Unit or use as an STR; and

Whereas, the Zoning Administrator has inspected the Dwelling Unit and certified that it is in compliance with the permitting requirements set forth in Section 250-69.1 for use of the Dwelling Unit as a Non-Hosted Short-Term Rental and that there are no known zoning violations on the property and that no complaints have been received regarding the property's use as an STR; and

Whereas, the applicant has submitted proof of a valid insurance policy and confirmed a local contact for the property: Gilda Elser, 11 High View Terrace, New Fairfield CT 06812; and

Whereas, after review of the renewal application and all other submissions by the applicant, the Planning Board has determined that the application and Dwelling Unit are otherwise in compliance with the requirements of Section 250-69.1; and

Whereas, this Special Use Permit shall remain in effect for one year from the date of the expiration of the prior permit and shall require annual renewal by the Planning Board, upon timely request by the property owner pursuant to Section 250-69.1D(4), no later than the anniversary of such issuance; and

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Whereas, the applicant shall ensure that the Dwelling Unit complies with the requirements of Section 250-69.1 at all times while it is being utilized as a Non-Hosted Short-Term Rental and shall otherwise comply with applicable Town, County and New York State law and regulations governing such use; and

Whereas, notwithstanding that the property shall be listed or advertised as offering three bedrooms useable by Lodgers with a maximum capacity of six adults; and

Whereas, all applicable fees have been paid:

Now Therefore Be It Resolved, that the Planning Board hereby grants renewal of the requested Special Use Permit, effective as of the date of the expiration of the prior STR permit.

MAXIMUM NUMBER OF LODGERS PERMITTED: 6 adults

MAXIMUM NUMBER OF DAYTIME GUESTS: 6 adults

NUMBER OF BEDROOMS TO BE USED BY LODGERS: 3

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PERMIT REMAINS IN EFFECT UNTIL 4/18/2025 (SEE SECTION 250-69.1D(4) FOR ANNUAL RENEWAL PROCEDURE)

RENEWAL APPLICATION IS DUE ON OR BEFORE 1/18/2024

Seconded by Mr. Ferrini,

Discussion. None.

All Aye, motion carried, 6-0.

BOARD DISCUSSION:

None

APPROVAL OF MINUTES:

Mr. Dolan motioned to accept the minutes of April 16, 2024, seconded by Mr. Ferrini, all Aye, Motion carried, 6-0.

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ADJOURNMENT:

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

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Arlene Campbell".

Arlene A. Campbell, Clerk
Planning & Zoning Board of Appeals