

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
August 29, 2024**

**MEMBERS PRESENT**

Joseph Malcarne, Chairman

John Calogero  
Charles Canham  
Frank McMahon  
Ron Mustello  
Russel Tompkins

**MEMBERS ABSENT**

Daniel Vonderbrink

**ALSO PRESENT**

Arlene Campbell, Secretary

Katherine Mustello, Liaison Officer  
Jeff Newman, MCEI

Chairman Malcarne called the meeting to order at 7:03 pm. He welcomed everyone and asked his colleagues to introduce themselves. He asked the secretary if the applications on the agenda were properly advertised and adjoining neighbors were notified. Ms. Campbell responded positively.

The meeting is livestream on YouTube.

**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 to the following section of the code in order to construct a new garage.

Sec. 250 Attachment 2 Area Bulk and Regulations –  
Front Yard reduction from 100' to 30'

Richard Morse was in attendance and briefly explained his application. He doesn't have a garage and wants to park his cars in the garage. He is proposing to construct a garage 51 feet off the center of the road instead of 100 feet. He explained why the proposed location is the most feasible site. His house was built in 1790 and in the old days, houses were typically built closer to the road. There was a severe drop off on the south side of the driveway so he can only go so far.

Chair Malcarne opened questions and comments from the board.

**TOWN OF CLINTON**  
**ZONING BOARD OF APPEALS MEETING**  
**FINAL MINUTES**  
**August 29, 2024**

Mr. Tompkins read the Planning Board's recommendation dated August 21, 2024 which is positive. No comments received from any of the surrounding property owners.

Mr. Tompkins expressed his comments per his site visit. He agreed with the applicant about the proposed site. There is a gravel area where Mr. Morse parks his cars and behind it is a significant drop off. He commented that you want a garage close to your house. This is the most feasible place to install a garage.

Mr. Canham echoed Mr. Tompkins comments. He was sympathetic to the applicants' request given the same situation that he had when he got a variance for his garage.

Chair 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. Tompkins, all Aye, Motion carried, 6-0.

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

Mr. Tompkins motioned that the Town of Clinton Zoning Board of Appeals grant an area variance requested by **Richard and Joyce Morse**, 610 Hollow Rd, **tax grid # 6366-00-442907**, to section 250 attachment 2 reducing the required setback from the centerline of the road from 100 to 51 ft.

***Whereas:***

1. The applicant is requesting to construct a 30 ft by 40 ft garage near his residence on his 13.45-acre parcel.
2. The proposed garage would be 51 ft from the centerline of Hollow Rd. when the minimum specificized by the Zoning law is 100 ft.
3. The proposed site is the most suitable due to the topography of the land near the residence where a garage would be located.
4. The proposed garage would not produce an undesirable change in the neighborhood or be a detriment to nearby properties.
5. The request is substantial but that does not preclude the granting of the request.
6. The variance is substantial being approximately a 50% reduction in the setback however this type of variance is common.
7. The proposed variance will not have an adverse environmental or physical effect.
8. An area variance is a type II action under SEQRA and requires no further action.
9. The Planning Board made a positive recommendation for approval of this variance at their August 20, 2024 meeting.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
August 29, 2024**

***Conditions:***

1. All fees are paid
2. Any exterior lighting will be downward facing

Seconded by Mr. Canham,

Discussion. Mr. Mustello raised the discrepancy between the Planning Board's recommendation and the board's proposed variance. He suggested making it not less than 49 or not less than 51 feet to have room for error.

Mr. Morse responded that it doesn't really matter. It's going to be at least 51 feet.

Chair Malcarne suggested going with the applicant's recommendation.

All aye, motion 6-0.

**ADMINISTRATION/INTERPRETATION:**

**John Caccia Appeal re MCEI Determination** in regards to 99 Willow Lane Wetlands Permit application with **Tax Grid No. 6567-00-193832.**

The appellant, John Caccia, pursuant to Sec. 250-89 (L) of the Town of Clinton Zoning Law, is seeking an interpretation and an appeal from the determination of the Municipal Code Enforcement Inspector dated June 11, 2024 waiving the requirements of the code and issuing the wetlands permit.

John Lyons from Grant and Lyons LLP, an attorney for Mr. Caccia was back for this application. He asked that the July 16, 2024 Planning Board meeting record be entered in the ZBA record as per his memorandum letter dated August 26, 2024. He was hoping that the Zoning Board members had a chance to watch the recording of that meeting for two reasons, first - Mr. Schilling (Ms. Brown's husband) who appeared at that meeting discussed the work that was done on the site and second - the Planning Board raised some concerns about whether the Wetlands' Permits are required here. He hopes that the Zoning Board can offer some direction to the Planning Board about the requirements of the law as part of this process.

Mr. Canham stated that the public hearing is still open. He solicited questions from the public.

**TOWN OF CLINTON**  
**ZONING BOARD OF APPEALS MEETING**  
**FINAL MINUTES**  
**August 29, 2024**

Lindsey Brown, 99 Willow Lane spoke and asked the board if they read the letter that she had submitted dated July 24, 2024. She also asked if the board had the chance to look at their property recently. Mr. Canham responded, "Yes."

Ms. Brown commented that per her reading of the last ZBA meeting, it sounded like they have done something to affect the way that the water is flowing to the wetlands, and that the wetlands would be drying out and would be affecting John Caccia's property. She remarked, "That is not what is going on there!" She described the wetlands on her property. She noted that they haven't created a pond. She stated that the area always has water. Per her conversation with the DEC, if it is not a DEC wetland then the 100 foot buffer does not apply.

Mr. Canham disagreed. He said that this is incorrect. There is still a town wetland law that regulates the wetland buffer depending on the size of the wetland. It can be 50 or 100 feet.

Mr. Canham explained that the Zoning Board is here to review the determination made by MCEI, i.e. waive the requirements of the wetland law and immediately issue the wetlands permit. The Planning Board has the authority to implement the wetlands permit. He noted that is not the Zoning Board's purview. The details are relevant but they are only relevant as far as what influenced Mr. Newman's recommendation.

Ms. Brown disputed some of the comments made by Mr. Lyon like the CAC's comment, parking lot, etc. Some of these accusations were from the time they were applying for a tool shed variance. Based on her foil request, Ms. Brown said that Mr. Lyons sent an email to Barbara Mansell from CAC and fed her wrong information.

Mr. Canham explained to Ms. Brown that the point of public hearing is to listen to the public quietly and decide whether the comments are relevant to the case.

Ms. Brown continued and said that what they have done in the area did not have any negative impacts to the wetlands. They brought in native plants. They had met with the DEC, the Dutchess Soil and Water, and the town engineer. She underscored that what they did was just to reinforce some of the areas around the wet where there could be an erosion. They put in more plants and still continue to put more plants. They removed poison ivy. She also commented about Mr. Lyons' statement about the poison ivy not being an invasive species. She underscored that this is a dangerous species and it was completely taking over the entire area. The wetland that she shared with her neighbor, John Caccia is a spring fed pond. She said that this pond is not going to dry up as Mr. Caccia claims. She added that Mr. Caccia also planted numerous River Birch and evergreens along the boundary of their property, 10 feet from the stream that they both shared. Ms. Brown also complained about their neighbor directly across from the Caccia's driveway who she claimed removed trees with the help of Mr. Caccia's

**TOWN OF CLINTON**  
**ZONING BOARD OF APPEALS MEETING**  
**FINAL MINUTES**  
**August 29, 2024**

landscaper and installed a pickleball court within 20 ft of the stream. She noted that she wanted to get along with her neighbors. She also indicated that she sent numerous emails to Mr. Caccia asking him about what's going on at a time when he was doing lots of construction on his property. She said that it would be a good idea to exchange phone numbers but she didn't get any response from Mr. Caccia.

Ms. Brown claims that Eliot Werner as stated in her letter to the board, rerouted water that flows to his large pond to create a small pond next to his driveway where he planted two willow trees 5 feet from the wetlands.

Ms. Brown commented about Mr. Lyon's statement in regards to what they're doing and how waiving the requirement of the wetland law is setting precedent that will affect the decisions going forward for the Wetland law. She remarked, "This is completely insane and wasting everybody's time!" Hiring a lawyer just to complicate things and because they have the money to do it is the one setting precedence in her opinion.

Mr. Lyons indicated his strong objection about Ms. Brown's allegation that he provided inaccurate information. He noted that all the information that they provided to the town have been accurate to the best of their knowledge.

Mr. Lyons said that he wasn't aware of the letter that was submitted by Ms. Brown. He asked if he can request a copy and get an opportunity to get a little bit more time to respond to this letter. Mr. Canham handed Mr. Lyons a copy of Ms. Brown's letter.

The board agreed to close the public hearing.

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

Chair Malcarne opened discussions from the board.

Mr. Canham said that the board has 62 days from this date to give a decision. He wants to solicit the board's thoughts about the case before crafting an interpretation. He said that he was actually proud about the town's Wetland Law. It's a very strict law. It lays out very noble purposes to protect wetlands. The history of wetlands in this country is that many have been lost to draining and development. Tens of millions of acres of wetlands were lost particularly in the early days of the country as farmers drained them. They were often the richest soil particularly here in Dutchess County. He indicated the importance of wetland laws. Wetlands serve all sorts of important functions for biodiversity, storm water runoff, and drainage. He commented that New York City is looking at restoring its wetlands to prevent storm surge and hurricanes. He feels that the Town's Wetland Law is well intentioned and very well written. It has pretty strict

**TOWN OF CLINTON**  
**ZONING BOARD OF APPEALS MEETING**  
**FINAL MINUTES**  
**August 29, 2024**

standards. He added that it is the Planning Board that implements it and not the Zoning Board of Appeals.

Mr. Canham commented about the long list of factors stated in the Town's Wetland Law. He said, "You need to have a really compelling argument if you want to do something in a wetland and that's what the law is designed to do." He underscored that anything done in the wetlands or in the buffer needs a wetland permit. He thinks that the Planning Board is pretty expeditious in dealing with this.

Mr. Canham indicated that he respectfully disagreed with the MCEI's determination. The word "any" is emphatic. It means you basically cannot put anything into or take anything out of a regulated wetland or the buffer without a permit. He remarked, "It's that simple!" The fact that it's that broad, reflects the goal of the language. In other words, "Don't mess with a wetland unless you have a permit!" You have to convince the Planning Board that you have a good reason to disturb a wetland if you're going to get a wetland permit. You have to meet all the factors on the list.

Mr. Canham stated that the notion that "any" is vague is where he strongly disagreed. You cannot deposit materials or remove any materials from a wetland - that includes plants and dirt, both of which were done in this particular case - without a permit. He added that this is actually in the letter of the MCEI.

Mr. Canham commented about the word "De minimis" that was used a lot in a Planning Board's discussion based on him watching the video. Is this case just so minor that there is a provision in Sec. 250.78 where the Planning Board can waive all the information requirements?

Mr. Canham commented that the question whether this is de minimis is a Planning Board's decision. He doesn't think that this is de minimis. He thinks that this should have gotten a permit. He drove by there and commented that what was done out there basically changed a wetland into an upland garden. A big part of the area is no longer a wetland likely because of the fill that was brought in. He added that there were lots of ornamental shrubs planted in. For him, this clearly requires a permit. It's just not debatable. He doesn't think that Mr. Newman debates that it required a permit. His letter of determination just states the notion that "any" is too vague.

Mr. Canham stated that there's nothing in the Wetland's Law that says that you can beautify a wetland and that exempts you from requiring a permit. He sympathized and is dangerously allergic to poison ivy but he is careful. He noted that poison ivy is not a health risk. You just have to be careful. It's not attractive. He indicated the recent research that increases in atmospheric CO2 actually makes poison ivy grow faster. He stated that poison ivy grows faster particularly in the south. The notion that "any" means

**TOWN OF CLINTON**  
**ZONING BOARD OF APPEALS MEETING**  
**FINAL MINUTES**  
**August 29, 2024**

vague, for him this was almost by definition de minimis because it was just (quote) “improving the wetland”. He added that we all have the urge to beautify our yards or properties but wetlands have a special level of protection under this law.

MCEI Newman clarified about what was said earlier regarding the appeal against his determination that the Planning Board waive all the requirements and issue the wetlands permit. He clarified that wasn’t his determination. He noted that he made a recommendation to the Planning Board to waive any future requirements under the exemption clause of the law which will allow them to issue the wetlands permit. He underscored that it wasn’t a determination to just issue the wetlands permit. This is a Planning board’s purview.

Mr. Lyons disagreed with Mr. Newman. The Planning Board asked the MCEI to make a determination at the last meeting.

Mr. Tompkins commented that “any” is a specific term that says anything. He doesn’t think it’s vague at all. It’s very concise. Obviously, the work was started here and there was a ‘Stop work order” issued. There was a reason before to get permission to work in the controlled area or buffer. They no longer want to put a building there though it still doesn’t change the fact that work was done there, soil was moved around and soil was added, path was changed and apparently a ditch was dug. There was no doubt that there was a disturbance that affected Sec. 250.78. He feels that if the Planning Board thinks that the action is insignificant because of a small area then that’s their purview. He thinks that Mr. Newman is recommending to the Planning Board but doesn’t tell them to issue the permit since he doesn’t have the authority though he noted that he disagreed with Mr. Newman’s interpretation that it is vague. Mr. Tompkins added that he basically echoed Mr. Canham’s comments.

Mr. Calogero commented that he is troubled by this. He remembers that the Town's Wetland law was partially in response to the NYSDEC. It’s like announcing that they were going to put more of their resources into larger wetland areas and that the burden for evaluation of the smaller areas was going to be put upon the municipality. He opined that it does put the burden to the town since the town is burdened with having to deal with smaller wetlands. He made a comment about the word “de minimis”. You can’t dismiss any size and say that’s not relevant. There are benefits of wetlands to our drinking water supply, to our general health and to the ability of a town to have an aquifer. He cited his past experience with the DEC when he went through a rigorous process. He indicated that he was troubled by the way that term was used. He feels that the activities and work that were done on this property falls right in the regulation. There are things that cannot be done on the wetlands such as draining, dredging, removal of material, filling depositing, etc. He indicated the wetlands on his property. It’s not a pretty thing. It renders part of your property totally unusable.

**TOWN OF CLINTON**  
**ZONING BOARD OF APPEALS MEETING**  
**FINAL MINUTES**  
**August 29, 2024**

Mr. McMahon agreed to all the points made. When the law says “any”, that's really it! He said, “It takes a lot to overturn that!”

Mr. Mustello said that Mr. Canham’s summary of the case is spot on. Some of the key points that he had were already touched on by Mr. Tompkins. He commented that having a chance to look at those maps that they were able to view last month specific to this property helped him get a clarity. Based on these maps, it's pretty clear that this should not have occurred without a permit. For him, those maps are the deciding factor on how these things proceed.

Mr. Calogero added that seeing exactly where the wetland and the buffer is, if he was in a position of granting a permit or not, which he is not, that would be de minimis at the very least. He said he would want to see these things.

Mr. Mustello asked Mr. Calogero expands on that comment.

Mr. Calogero responded that to date, he doesn’t think that there is a specific basic delineation of wetlands on the property. The Planning Board should have that at their disposal. As the DEC backs down, they are going to have and make many of these determinations particularly on smaller parcels.

Mr. Canham said that this is something that the CAC, PB chair, Liaison Officer Mustello and him are discussing. This is going to be a real challenge for small towns. They found out that the Town of Woodstock has a biologist in their town staff though he doubts that taxpayers here will go for that. We need to make this efficient and clear without a huge cost burden to landowners. There are some various proposals out there that would help landowners because the DEC is backing off their maps. They’re going to put more stringent regulations though they will not provide maps. The penalties are going to be quite substantial. He hopes that there is something that the Town Board can do that makes it clearer for people.

Mr. Canham said that Mr. Newman has seven determinations and one recommendation per his letter dated June 11, 2024. He doesn’t think that some of these determinations are spot on. There doesn't seem any question that the work was within the boundary of a wetland as regulated by Town law. This is also not a NYSDEC regulated wetlands according to the current maps.

Mr. Canham expressed his trouble with the notion of the vagueness of the word “any”. There’s also this notion about improving the site. He agreed, it's human nature to clean up our yards yet there is nothing in the wetland law that allows “improving the wetland”. There’s a whole field of restoration ecology or wetland restoration. He commented that



**TOWN OF CLINTON**  
**ZONING BOARD OF APPEALS MEETING**  
**FINAL MINUTES**  
**August 29, 2024**

it's really hard work. He advised one of the graduate students years ago when Arlington High School was in the process of expanding, that under a Federal Law, if you have a compelling need, you can destroy a wetland as long as you can create a comparable wetland somewhere else given the blanding turtles or endangered species. He commented that it's really hard work so (quote) "improving a wetland" is a real challenge and aesthetics are just not anywhere in there. Wetlands are not always pretty but they serve critical functions. He disagreed with the MCEI's determination that the proposed project achieves the stated objective to minimize negative impacts because it is specifically designed to improve the area.

Mr. Canham said that he would like to see the MCEI adhere to the letter of this law first and let the Planning Board decide the next step. Let them get all the information first together and say, "Well, this is de minimis or this is sufficient under Sec. 250.78, or they need more data, then go through the process." It will be then the Planning Board's determination whether what was proposed meets the regulation.

Ms. Brown remarked that people are dumping construction waste in that area. They are not just beautifying the area.

Mr. Canham responded that they should have gone through the process to remove the waste.

Ms. Brown stated that the wetland itself has not changed.

Mr. Canham disagreed. Based on his visual from driving that area over the months, what had been a wetland before was now being filled in and had ornamental shrubs planted in various places. It's changed. He's letting the Planning Board decide on this.

Mr. Canham explained the next step process. He is going to craft the draft motion and run it by the town attorney. The board has 62 days to issue the decision. For him, the two issues on this determination are about the word "any" and "improving". It's not specifically in the law.

Chair Malcarne noted that the board is just reviewing the MCEI determination. This is not what is happening on the property or anything or rewriting anything.

Mr. Canham said that the MCEI makes recommendations, it's like a variance. He denies the permit given the language of the regulation and the applicant seeks appeal from the Zoning Board of Appeals. He doesn't tell somebody or the Planning Board or ZBA to give a permit or a variance. The same thing with wetlands permit. His role is just a recommendation. Mr. Canham was concerned about the language that was used in the MCEI's determination letter that the law was being ignored.

**TOWN OF CLINTON**  
**ZONING BOARD OF APPEALS MEETING**  
**FINAL MINUTES**  
**August 29, 2024**

Mr. Calogero added –“That the law is de minimis!”

Mr. Newman said that this is similar to the Planning Board’s discussion about the steep slopes permit apropos the question regarding the disturbance within 10,000 square feet of steep slopes. This is a valuable conversation because there is a lot of seemingly innocuous and innocent projects that can happen not in the wetland but 99 feet from a wetland.

Mr. Canham advised Ms. Brown that there was a Stop Work Order issued so nothing should happen in that area until a wetlands permit is issued. It would be a violation to continue any activity in that area. He underscored that anything they put in or removed from that area is a violation of the law.

Mr. Tompkins commented that there seems to be a violation of Stop Work Order given the continued work in that area as shown on the pictures showing the numerous plants and vegetation that have been planted.

Ms. Brown responded that they just followed what the town engineer had recommended. The planting activity was a response to the town engineer’s recommendation.

Mr. Canham asked Ms. Brown if she was under a Stop Work Order when she applied for a shed variance. Ms. Brown responded, “Yes.”

Mr. Canham noted that for the purposes of going forward, nothing should happen in that area until the Planning Board issues a permit. His reading of the law is that anything put in or taken out of that parcel or part of the property would be in violation of the law.

Ms. Brown asked if the whole property is in violation. Mr. Canham responded that the area that's within a wetland or the buffer is covered by the town law. Outside the buffer is not covered by the water law.

Mr. Newman stated that in this case, it is a 50 feet buffer for this property.

Mr. Calogero noted that a 50 feet buffer does not mean anything since the wetland has not been delineated. Mr. Canham suggested staying away from that area to ensure compliance.

No action taken.

**TOWN OF CLINTON**  
**ZONING BOARD OF APPEALS MEETING**  
**FINAL MINUTES**  
**August 29, 2024**

**APPROVAL OF MINUTES:**

Chair Malcarne motioned to approve the minutes of July 25, 2024 as amended, seconded by Mr. Tompkins, all Aye, Motion carried, 6-0.

**OTHER MATTERS:**

The board agreed that effective next meeting, the ZBA meeting starts at 7:00 pm instead of 7:30 pm.

The next regular ZBA meeting is scheduled on October 24 at 7 pm.

**ADJOURNMENT:**

Chairman Malcarne motioned to adjourn the meeting at 8:25 pm, seconded by Mr. Calogero, All Aye Motion carried, 6-0.

Respectfully Submitted By:



Arlene A. Campbell  
Zoning Board of Appeals Secretary