

APPROVED

JOINT TOWN/VILLAGE OF CLAYTON

ZONING BOARD OF APPEALS

October 19, 2020

The meeting was opened at 7:03 pm **with the following members present:** Jim Kenney, Dale Maclaughlin, Andrew Wood (alternate), Ashley Owens, Lori Arnot. Absent were Steve Mack and Chip Garnsey (alternate). Andrew Wood sat in for Steve Mack.

Also Present: Zoning Officer (ZEO) Richard Ingerson, Recording Clerk Susan Kenney

Townpeople Present: Sylvia Hungerford, Jim Hungerford, Dale Mallon (?), Jim Burrows, Gary Busby, Darla Chase, Eric Gragware, Jonathan Taylor

The minutes from last month's ZBA meeting were reviewed, and no corrections were noted. At 7:03 pm, **MOTION** was made by Lori Arnot, second by Ashley Owens, to accept the minutes as submitted. Motion was passed with all in favor.

At 7:04 pm, due to ongoing issues with the application, **MOTION** was made by Dale Maclaughlin, second by Andrew Wood (sitting in for Steve Mack), to adjourn the hearing for the Riverview Associates until next month. Motion was passed with all in favor.

7:05 pm – David Stilley – Town – seeking an area variance to locate a bunkhouse in the Marine Residential District.

Prior to the start of the hearing, Dale Maclaughlin noted that he knows Mr. Stilley well, and asked if he should recuse himself from making any decision on the application. Chairman Kenney asked if he had any financial interest in the property or the project. He did not, so he did not recuse himself.

Mr. Stilley did the presenting via cellphone. He wishes to add a bunkhouse to his property on Grindstone Island. When the house was first built, the previous owner had requested and been granted an area variance for the house, setting the boundary at 26 ft. from the high water mark, instead of the 55 ft. required by town zoning ordinance. He is now requesting a variance of 14 ft. in order to build a bunkhouse. He noted that the proposed position for the bunkhouse was the furthest it could be from the neighbors, and would be out of sight. Construction on the proposed site would be easier due to the level grade at that point. Some trees would have to be removed to make room for the bunkhouse, but the trees would remain on three sides of the lot. He stated that 90% of the people in that area have bunkhouses. The proposed bunkhouse would be upriver from the existing house. Mr. Stilley said that he could possibly go back another 4 ft., but any more would mean a reconfiguration of the road, which was not economically feasible.

Chairman Kenney read four letters received by the ZEO, all of which supported the proposed project. ZEO Ingerson noted that this application would have to go before other entities before final approval could be given.

Public Comment:

James Burrows, from the law firm of Conboy, McKay, Bachman & Kendall, LLP, is representing Bruce and Lynn Taylor, Mr Stilley's immediate neighbors. He submitted to the Board a letter from Mr. Taylor, which specified several reasons he was opposed to the project. Mr. Burrows' clients do not support the proposed project for a number of reasons. (1) The previous application for house construction was set at a three-bedroom, two-bath home, which limitation was not adhered to, nor was the house built on the agreed location, making it in violation from the start. (2) Bunkhouses are

not permitted in that zone without a special use permit. (3) The proposed building is larger than what is permitted in this zone. (4) Private septic systems must comply with state health regulations; the current septic system is located on the Taylors' property, so that also makes it fixed at its current size (5) The bunkhouse would require either a separate system or an expansion of the current system; since the septic is on the Taylors' property, they will not agree with an expansion of the system, particularly since it lies between two buildings on the Taylors' property. They gave Mr. Stilley an easement for repair and maintenance of the septic system, not expansion.

Mr. Burrows also cited a precedent set by the NYS Court of Appeals in 1978, which according to his information, says that applications based on personal preference should not be approved. This bunkhouse is solely based on personal preference, therefore should not be approved. He further cited Samon vs. City of Utica, 1993, which he asserted said that just beautifying a property is not an acceptable reason for granting a variance.

Mr. Burrows stated that his clients are friends with the applicant and that this is not a personal issue. He encouraged the Board to reach out to the town attorney for further education and clarification.

Mr. Stilley responded that although the Taylors are related to his wife, he has not been able to talk with them about this issue. He noted that Mr. Taylor had gotten the original variance. He has problems with the idea of "personal preference," and does not see how this proposed project differs from any other addition of buildings. Mr. Stilley pointed out, and Chairman Kenney agreed, that the septic system is not in the purview of this hearing.

When asked what his clients' main concern was, Mr. Burrows said it was the septic system. He added that in 1989 the Clayton Town Board said there would be no more bunkhouses in the Marine Residential District without a special use permit.

Board members agreed that there was insufficient time to go over in one evening all the material that Mr. Burrows had handed out tonight. Questions were raised about the accuracy of the map provided, and not enough details. Mr. Stilley was asked to come back next month with a survey map and other information about the location of the septic system, all buildings, and other pertinent data. He was agreeable to adjourning this hearing until the next meeting.

At 7:52 pm, **MOTION** was made by Ashley Owens, second by Andrew Wood (sitting in for Steve Mack), to adjourn this hearing until the next meeting on November 16. Motion was passed with all in favor.

7:55 pm – Hungerford Point LLC – Village – seeking to erect a garage in the Resort-Single Family Residential District

Sylvia Cerow did the presenting. The Cerows wish to build a new garage on their lot, which needs a 12'2" variance from the rear lot line. The lot is oddly shaped, with a long boundary line on the river; it was determined after some discussion that any line opposite the river is a rear lot line. The Cerows are retired and wish to live here year-round, so they need a garage to keep snow and ice off their vehicle(s). The old cottage that had been on the lot has been torn down and a new house built. The proposed garage is 576 ft². The land is basically scrubland; the lot was part of a larger estate but this part was never developed. The Cerows would like to build a new garage, remove the scrub trees, and add some nicer trees. The tree removal might even open up the view of the river for the neighbors. Ms. Cerow note that this application has nothing to do with the LLC.

No letters or calls were received for this application. At 8:10 pm, **MOTION** was made by Dale Maclaughlin, second by Ashley Owens, to declare this a Type II action. Motion was passed with all in favor. **MOTION** was made by Ashley Owens, second by Dale Maclaughlin, to close the public hearing. Motion was passed with all in favor.

Chairman Kenney did the finding of fact. At 8:24 pm, **MOTION** was made by Dale Maclaughlin, second by Lori Arnot, to approve the application, noting that the variance increased from 9'7" to 12'2".

Aye: Kenney, Maclaughlin, Owens, Arnot, Wood (sitting in for Mack)

Nay: none

Abstain: none

Absent: Mack, Garnsey (alternate)

8:25 pm – Jeanne Newberry – Village – area variance to erect a deck in the Riverwalk-A district

Jonathan Taylor did the presenting. Ms. Newberry's house is being remodeled from a two-family dwelling to a multiple-family dwelling, going from two apartments to three. The previous owners turned the house into two apartments, and she just got Planning Board approval to add a third. She is seeking a 4'5 5/8" side yard variance to erect an open deck in the back of the house to create an outdoor space for the third apartment. Currently the house is 9'10" from the side yard line. The closest portion of the deck would be 5' from the side yard line.

Only one call had been received concerning this application. Other members of the public expressed concerns about the size of the families that would be renting and the consequent added noise and activity to the neighborhood, and also drainage from the house, which has the lowest grade in the area and much clay in the back. Mr. Taylor noted that the basement of the house might be a little damp, but no more so than other properties in the area. It was noted that the drainage of the property is not within the scope of this application.

At 8:41 pm, **MOTION** was made by Dale Maclaughlin, second by Lori Arnot, to declare this a Type II action. Motion was passed with all in favor. **MOTION** was made by Ashley Owens, second by Dale Maclaughlin, to close the public hearing. Motion was passed with all in favor.

Chairman Kenney did the finding of fact. At 8:49 pm, **MOTION** was made by Ashley Owens, second by Dale Maclaughlin, to accept the application as submitted.

Aye: Kenney, Maclaughlin, Owens, Arnot, Wood (sitting in for Mack)

Nay: none

Abstain: none

Absent: Mack, Garnsey (alternate)

8:52 pm – Darla Chase – Town – to erect a deck in the Marine Residential District.

Darla Chase did the presenting. She wants to replace two decks on her house. The smaller one was already present when she bought the house. The larger one was built later and was poorly constructed, so that it is now in bad shape. She also wishes to add a ramp, to provide potential future access for a disabled family member. The variance calls for a 7' east side yard variance and a 31' front yard variance. The original deck was not approved when it was first built, so this board needs to make sure that it is formally approved by adding the front yard variance. Ms. Chase talked to some of her neighbors, and no issues were raised. There were no calls or letters received by the Zoning Office.

At 9:00 pm, **MOTION** was made by Andrew Wood (sitting in for Steve Mack), second by Lori Arnot, to declare this a Type II action. Motion was passed with all in favor. **MOTION** was made by Lori Arnot, second by Andrew Wood (sitting in for Steve Mack), to close the public hearing. Motion was passed with all in favor.

Chairman Kenney did the finding of fact. At 9:10 pm, **MOTION** was made by Ashley Owens, second by Lori Arnot, to approve the application as amended, by adding the front yard variance.

Aye: Kenney, Maclaughlin, Owens, Arnot, Wood (acting for Mack)

Nay: none

Abstain: none

Absent: Mack, Garnsey (alternate)

9:12 pm – Joseph Ehle – Town – area variance to erect a house in the Marine Residential District

Joseph Ehle did the presenting. His father-in-law wishes to build a house on a lot from a former subdivision. This is meant to be a duplicate of his house in Syracuse except on a smaller scale. He is asking for a 5' variance on both the east side and the west side. The overhang for the eaves is 2 feet as shown on the plan, which could be adjusted, as well as the size of the house itself.

The question was raised about the granting of variances for new construction when there were no buildings on the lots previously, i.e. there are no former residences to conform to. The feeling on the board was that new buildings should fit into the established setbacks; house plans should be adjusted to fit.

At 9:27 pm, **MOTION** was made by Dale Maclaughlin, second by Andrew Wood (sitting in for Steve Mack), to declare this a Type II action. Motion was passed with all in favor. **MOTION** was made by Ashley Owens, second by Dale Maclaughlin, to close the public hearing. Motion was passed with all in favor.

Chairman Kenney did the finding of fact. At 9:31 pm, **MOTION** was made by Dale Maclaughlin, second by Andrew Wood (sitting in for Steve Mack), to deny the application.

Aye: Kenney, Maclaughlin, Owens, Arnot, Wood (acting for Mack)

Nay: none

Abstain: none

Absent: Mack, Garnsey (alternate)

At 9:35 pm, **MOTION** was made by Lori Arnot, second by Andrew Wood (sitting in for Steve Mack), to adjourn the meeting. Motion was passed with all in favor.

Respectfully Submitted,

Susan Kenney, Recording Clerk