

Clifton Park Zoning Board of Appeals Meeting Minutes

April 16, 2002

Present: Dale Kelley, Chairman, Michael Dudick,
Helmut Gerstenberger, Sandra Pace, Gil Kortz, Dale Gleason

Absent: Susan McGranahan

Also Present: Don Clemens, Director Building & Development
Oscar Schreiber, ZBA Counsel

Mr. Kelley called the meeting to order at 7:32 PM.

NEW BUSINESS

1. An application from Lewis Polsinelli, requesting an area Variance from Section 208-11 from the required 50 ft. front yard setback - actual setback = 40 ft. - variance requested = 10 ft.. The property is located at 26 Leonardo Drive, Clifton Park. Permit #80368.

The secretary read the legal notice as it appeared in the Daily Gazette on April 12, 2002.

Gordon Nicholson, Environmental Design Partnership, presented this application. He explained the shape of the lot as being a trapezoid shape and noted that it was purchased in 1982. It was an approved subdivision lot by the Planning Board in 1985. The area of the lot is 23,550 sq. ft.. In 1987 the Town enacted the LC zone which is an overlay zone on a stream along the rear property line. That LC zone included a 50 ft. buffer as indicated on the map presented. Since 1985 Mr. Polsinelli has paid in taxes, road improvement, and the utility infrastructure along Leonardo Drive, approximately \$28,000 into this lot. He noted that he has been working with the Building Department, Michael O'Brien, and Jason Kemper, over the last year and a half to develop what would be a reasonable conclusion to propose a house on this building lot.

This request for a 10 ft. front yard setback variance is at the suggestion of Mr. Clemens instead of asking for a Use Variance along the LC zone so that they can construct a house on this lot that was reasonably priced and sized with those in this neighborhood. They also met with the builder to customize the back side of the house to get a distance between it and the LC zone. They will stay away from the LC zone and will use hay bales and erosion control fabric along that line to protect the LC zone.

The hardship is met due to the dimensional criteria for the zone. The economic hardship is met because there is not any additional land to purchase and therefore Mr. Polsinelli would loose this building lot and all monies spent to date on this lot. This variance would not affect the character of the neighborhood because it is related to the street setback, not the side yard or rear yard setback where there are already other houses.

Mr. Clemens noted this is a suggestion he made to the applicant. He feels it is a more reasonable request to ask for a front setback instead of going into the LC zone - it should be protected as much as possible. He also noted that a smaller house would not fit in with the character of the rest of the neighborhood.

There was no public comment. Mr. Gerstenberger made a motion to close the public hearing, Mrs. Pace seconded, approval unanimous.

Mr. Kelley stated that this is a reasonable request and the Board would rather consider an area variance than a Use Variance.

Mr. Kortz inquired about the flagged wetland. Mr. Nicholson stated it is an Army Corp wetland, not a DEC wetland. It was flagged with the original subdivision approval and at that time there was no LC zone. The LC zone became the problem two years ago when Mr. Polsinelli wanted to sell the lot. It is a LC zone because it's a classified stream that eventually finds its way into Bear Brook and Dwaaskill - it's the upper drainage basin of a classified stream.

Mrs. Pace made a motion to approve this variance as requested.

Mr. Dudick seconded. Ayes: Kelley, Dudick, Gerstenberger, Kortz, Pace, Gleason. Noes: None.

2. An application from Daniel Cole for Richard & Doris Cole, requesting area variances subdivide a lot into two lots, each with less than the required 100,000 sq. ft. area in a R-3 zone - Lot 1 = 79,000 sq. ft. - variance requested = 21,000 sq. ft.; Lot 2 = 81,000 sq. ft. - variance requested = 11,000 sq. ft.. The property is located at 824 Riverview Road, Rexford. Permit #80369.

The secretary read the legal notice as it appeared in the Daily Gazette on April 12, 2002.

Daniel Cole presented this application. He stated they would like to divide the lot approximately in half. He indicated the current dwelling on the southeast corner of the lot. He noted they are not currently planning on building on the other lot but his brother would like to build in the future if possible. He stated they are on a town water supply and the current dwelling has a septic system. He stated his current understanding is that the 100,000 sq. ft. restriction has to do with a well and septic system being on the same lot.

Mr. Clemens confirmed that one of the main reasons for the lot size in that zone is to allow well and septic on the same lot. Since they have access to Rexford water that will not have to happen. He also noted that it is conceivable that in the future sewer may become available and suggested that it could be made a condition of approval that they be required to hook in at that point.

Mr. Kelley asked Mr. Cole if connecting into the sewer if and when it became available would create a problem. Mr. Cole stated that it would not be a problem for the existing

dwelling but may be for the proposed lot as it is 40-60 feet below grade level and he does not know if that would create a problem.

Mr. Clemens noted that if the engineering would not allow it then they would not be forced to.

Mr. Gerstenberger inquired about the location of the sewer currently. Mr. Clemens stated approximately at Nott Road.

There was no public comment. Mr. Kelley made a motion to close the public hearing, Mrs. Pace seconded, approval unanimous.

Mr. Kortz asked if the house was owned by the applicant prior to the new zoning. Mr. Cole responded since the house was built in 1946.

Mrs. Gleason made a motion to approve the variances for lot size with the condition that the applicant connect to the municipal sewer when and if it becomes available and if it is determined to be feasible by an engineer. Mr. Gerstenberger seconded. Ayes: Kortz, Gerstenberger, Dudick, Kelley, Gleason, Pace. Noes: None.

3. An application from Belmonte Builders, Inc., requesting a Use Variance from Section 208-69.2 to construct a single family residence in the Land Conservation Zone. The property is located at Judith Drive, Clifton Park. Permit #80372.

The secretary read the legal notice as it appeared in the Daily Gazette on April 12, 2002.

Michael Hale, Environmental Design Partnership, presented this application. He gave some background on the site. He stated the property was purchased by Belmonte Builders in 1986. In 1989 the Judith Drive subdivision was started. In that subdivision there was a paper street established that led to the 38 acre parcel representing the only public road access to the site. The public road was never built. In 1987 the Corp of Engineers established their guidelines for wetland delineations, which are the same guidelines that are used today. In 1997 the NYS DEC established new guidelines that made their wetland delineations criteria more akin to the Army Corp of Engineers criteria.

He continued, in that spirit when they first approached the site on behalf of the applicant, their first goal was to conduct a feasibility study to determine what, if any, development would be possible. In that light, they flagged federal jurisdictional wetlands and when that was completed they contacted NYS DEC to establish their line. He indicated the DEC wetlands shown on the maps indicating a portion of the land that would be available for development. Using the Army Corp of Engineers criteria for wetland delineation, he flagged an area as shown on the map presented with the application. He indicated an area of shallow swales that were developed approximately 20 years ago to drain the neighboring property. They agreed with his delineation and determined they would take jurisdiction over these wetlands. This parcel is completely encumbered by the LC zone. There is no way to get into the site without going into the LC zone. In an effort to do

something within reason it was decided that a single house would be the only alternative to be built in an upland area. This would necessitate a minor amount of wetland disturbance but is a reasonable approach for this parcel.

Mr. Hale noted that there would be no reasonable return under the current zoning for this parcel. A single home is a minor way to get some return. This is a unique circumstance because it sits at the end of a developed roadway. All the land off to the back is owned by the Latham Water District and all the land in the front that abuts it is a residential subdivision. This land is unique in that it is a parcel encumbered by wetlands largely to the extent that it prevents development. The modifications will not alter the essential character of the neighborhood. This is a residential subdivision and there are other residential areas in the area.

The hardship is not self-created, the property was owned since 1986 which proceeds the Army Corp of Engineers wetland delineation standards, the DEC inspection and of course the LC zone requirements.

Mr. Clemens asked for clarification if they were subdividing four acres off the 38 acre parcel. Mr. Hale stated they were. He noted that is indicated by the dotted line on the map presented. He stated he believes that is what Mr. Belmonte wanted.

Mr. Clemens stated that the Board needs to know that for sure. The Board needs to know what it is acting on. Mr. Hale stated that is the intent of the applicant.

Mr. Kortz noted that the application states the lot size as 38 acres. Mr. Hale stated that they anticipated that they felt the zoning issue would be looking at the single house versus the lot line.

Mr. Clemens noted that the remainder of the parcel off Bonneau Road and Berthiume Road could possibly be further subdivided. Mr. Hale stated there is no frontage off Bonneau Road. The Latham Water District owns the land on Bonneau Road and they also own Berthiume Road. There is no public access to that portion of the land. He noted he has not illustrated all wetlands on the map, they did not see the need for it.

Mr. Kelley agreed with Mr. Clemens concern over whether the variance would be on a 4.4 acre parcel or the full 38 acre parcel.

Mr. Clemens stated the Board should limit that to the one house on a 4.4 acre parcel. If anything further is desired they would have to return.

John Beach, 10 Judith Drive, expressed his concern over a deal being struck with the Latham Water District for access to this parcel. Mr. Hale stated there has been some conversation but the Water District would like a dedication of lands for use of the road. There would not be any access to Judith Drive due to the amount of wetlands involved. He also inquired as to what would be built on the lot. Mr. Hale responded it would be a single family dwelling that would be in character with the neighborhood.

Mr. Beach asked that some language be included that would state that this would be used as a driveway only.

Mr. Kelley noted if the Board proceeds this evening it would be for a single family dwelling on the total 38 acre parcel. The Board needs to know the intention of the applicant, is it for a single family dwelling on a 4.4 acre parcel or a single family dwelling on a 38 acre parcel. Now there is discussion on a subdivision with further possibility of further development. This application may need to be amended.

Mr. Clemens stated this may be able to be cleared up this evening. If it is a lesser variance it can be amended this evening.

There was Board discussion on whether this application could and should be amended this evening or if a new application should be submitted. The Board also was concerned about subdivision of this land and if a variance should be granted prior to subdivision or after.

Tom Wayne, 15 Judith Drive, stated it seems obvious they are making efforts to gain access to the total parcel. He expressed his concern about a change in the character of the neighborhood. He does not want a change to the cul-de-sac nature of the area. He stated he does not have any problem with one house being built, but does not want this to become a thoroughfare.

Mr. Kelley noted that is also the Board's concern.

Joe Day, 8 Judith Drive, expressed his concern that the wetlands were designated prior to Belmonte purchasing the land. Mr. Kelley stated the LC zone was established after the applicant purchased the land.

Mr. Hale noted that the intent of the application was straight forward and he tried to structure the application that way. He stated Mr. Belmonte would like to subdivide the property to create one building lot of 4.4 acres off of Judith Drive. He is seeking a variance for that building lot.

Mr. Kelley asked what is going to happen to the other acreage.
Mr. Hale stated he did not know at this time.

Board discussion continued on the remainder of the property and its use. Mr. Clemens noted that the variance would be for the 4.4 acres for a single building lot that could not be further subdivided. There would be no access for the remainder of the property from Judith Drive.

Mr. Day asked if this would be a driveway or a continuance of Judith Drive. Mr. Clemens responded it would be a driveway.

Mr. Kelley asked Mr. Clemens for his opinion on this application.
He replied he would like to see the action only on that 4.4 acre parcel. He would only be able to build in the upland region that would be completely boxed in by wetlands that

could not be developed at all. It would preclude access to further development on the rest of the 38 acres from Judith Drive if they were allowed to build the one single family home in that area.

Mr. Kortz asked how they could build on the rest of the land if the Board granted a Use Variance for only one single family dwelling on the total acreage. Mr. Clemens noted there are other upland areas on the property and it may open the door for future development. Discussion continued on the subdivision of the land and the possibility of future development.

The neighbors present again expressed their concern over a thru street versus a driveway.

Mr. Dudick asked what would give the best protection to this not becoming a thru street. Mr. Clemens responded it would be the 4.4 acre parcel with a single family dwelling. He noted there would also be another step beyond this if this variance is granted. They would have to go to the Environmental Commission to get permission to put a driveway across some wetland and LC zone.

Mrs. Gleason stated there has to be some clarification on the procedure for the subdivision of the land.

Mr. Kelley recommended that this application be tabled for further action until a legal description of the parcel can be obtained so this Board can have a better understanding of the applicant's request.

Mr. Clemens stated that they should reapply for subdivision and complete the survey work and then return to this Board for the variance.

Mr. Clemens stated this application can be amended and will be tabled until the applicant notifies this Board of their desire to return to complete the variance procedure.

Mr. Schreiber asked the applicant to waive the 62 day period for this Board to act on this variance. Mr. Hale agreed.

Mrs. Gleason asked for more specific information on the mapping of the area. Mr. Hale replied he will revise the maps.

It was agreed that the applicant would work with Mr. Clemens and notify him when he is ready to return with this application.

Mrs. Pace made a motion to approve the minutes of April 2, 2002, Mrs. Gleason seconded. Ayes: Kortz, Dudick, Gerstenberger, Pace, Kelley, Gleason. Noes: None.

Mr. Gerstenberger made a motion to adjourn the meeting at 8:42 PM, Mr. Dudick seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb
Secretary