

## Clifton Park Zoning Board of Appeals Meeting Minutes

June 4, 2002

Present: Dale Kelley, Chairman, Michael Dudick,  
Sandra Pace, Susan McGranahan, Dale Gleason,  
Gil Kortz

Absent: Helmut Gerstenberger

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 - proposed setback = 40 ft. - variance requested = 10 ft.. The property is located at 26 Leonardo Drive, Clifton Park. Permit #80368.

Mr. Kelley announced that the application for Lewis Polsinelli is being re-heard due to an improper legal notice. He expressed the Board's apology to the applicant and residents for any inconvenience this may have caused.

The secretary read the legal notice as it appeared in the Daily Gazette on May 30, 2002.

Gordon Nicholson, Environmental Design Partnership, presented this application. He noted that he has represented the applicant on all phases of Renaissance. He stated the property was purchased in 1982 and was subdivided in 1985 and the map was filed in the Saratoga County Clerk's office. Lot 26 was approximately 23,000 square feet in size. At that point in time the building line on the rear as well as the building line setbacks were established based on current zoning regulations which created a building envelope that was entirely in accordance with the Town's bulk and

density schedule for the R-1 zone. In 1987, two years after the map was filed and the roads constructed, the Town enacted the LC overlay zone which encumbered this piece of property along the stream corridor. Mr. Polsinelli has now elected to build on this piece of property and he has a builder interested in its development.

Since he originally stated working on the project he has incurred approximately \$28,000 in costs which are related to road construction, taxes, Town fees, engineering, insurance, etc.. When Mr. Polsinelli indicated that he had a builder interested in building on this lot, they located the stream and talked with

Mr. Clemens and Mr. Kemper to work out the building envelope. The two alternatives

were to ask the ZBA for a Use Variance in the LC zone or, as Mr. Clemens suggested, ask for a front yard building setback of approximately 10 feet to construct a house which was basically the same value and character as those already in the neighborhood.

At a previous meeting it was the ZBA's suggestion and recommendation, based on Mr. Clemens' recommendation, that they ask for and secure a 10 ft. front yard building line setback variance which was granted. The ZBA in relationship to area variances, is empowered to request the applicant to demonstrate three considerations.

The zoning regulations will result in a practical difficulty because the proposed building lot was approved by the Town of Clifton Park on December 2, 1985. At that point in time the area adjacent to the stream located on the parcel was not designated as a Land Conservation zone. In 1987 the Town designated the area along the drainage corridor as part of the LC zone, limiting the building envelope on the parcel, therefore creating a practical difficulty. Secondly, that the strict application of dimensional requirements of the ordinance will create significant economic injury. The applicant has made a significant financial investment in the residential lot that is no longer buildable under current dimensional requirements. Since 1982 Mr. Polsinelli has accrued approximately \$14,600 in school taxes, \$3,600 in property taxes, \$800 in insurance, \$2,000 in engineering and permitting fees, approximately \$7,500 in road construction, which included the extension and installation of utility infrastructure to service the property.

Third, there will not be a substantial detriment to public interest or property improvements in the district because the variance will provide additional protection to the LC zone, it avoids future environmental related impacts. The variance relates to the highway setback and not to adjoining properties, meaning the rear or either side, which have homes constructed on them. It also allows the applicant to construct a home that is consistent with those in the neighborhood.

Mr. Clemens indicated that they have discussed this on numerous occasions. Given the fact that a variance would probably be required to build on this lot, it is preferable to have a front setback variance rather than an intrusion into the LC zone. It will be less of an impact environmentally on the neighborhood.

Mr. Kelley asked if the ECC agreed. Mr. Clemens stated that is correct.

Lawrence Schillinger, 28 Leonardo Drive, thanked the Board members for their time and energy in serving on this Board. He reviewed the standards that this Board should consider in granting an area variance. He continued, they are what effect it will have on the character of the neighborhood, if any alternatives exist, is the variance substantial, what is the impact on the environment and health of the people in the neighborhood, and is it self-created.

He referred to the brief he submitted for the record outlining his remarks and reviewed them. He noted he believes that the fair and impartial application of these standards can only lead to one conclusion: "that the detriment to the health, safety, and welfare, of the

community by a grant of the variance greatly outweighs the benefit to the applicant”.

Mr. Schillinger continued by referring to each item as submitted in his brief.

Mr. Schillinger presented a copy of the Environmental Specialist’s comments stating that he is not sure that the granting of the variance will achieve the result desired.

He stated that the applicant created a substandard lot himself. He presented a copy of the site plan submitted to the Planning Board in 1994 showing the setbacks required. He noted the applicant agreed to all setbacks at that time, but now he is here asking for a variance. He continued, developers go from Board to Board often in hopes that one Board will not talk to the other. He is here to share this information tonight.

He noted he is sympathetic to neighbors that would request a variance to build a shed, garage, etc., but this is a developer seeking a variance for a lot he created with the full knowledge, appreciation, and understanding of the local zoning codes and land use regulations. He is asking for a variance that will cause a detriment to the very people he sold homes to in the first place. He is asking this Board to deny this request for an area variance.

Mr. Nicholson noted that he represents many applicants in front of the Zoning Board and he is personally offended with the way

Mr. Schillinger is dealing with this application because there has never been any attempt on the part of Mr. Polsinelli or himself to mislead any Board.

He continued, the idea that this is a self-created hardship is totally untrue. The reason for the configuration of Lot 26 is because there is a 60 ft. area that was intended to be a public road for access to land for a future phase. When the Town enacted the LC zone they decided to minimize the disturbance to the LC zone and asked for the subdivision. Everything that relates to Lot 26 is from the original subdivision application in 1985. He also pointed out for the record that there is an adversarial role between Mr. Schillinger and Mr. Polsinelli that has been there for a number of years.

Mr. Nicholson noted that everything that has been done after the Town enacted the LC zone has been in an effort to protect that area and try to address and comply with the Town’s concerns. This building lot has not changed since its approval. The hardship is related to the Town of Clifton Park creating the LC zone, reducing the building envelope of a piece of property on a subdivision map on file in the Saratoga County Clerk’s office.

Mrs. McGranahan asked if this lot is large enough to build a house on. Mr. Nicholson responded yes it is. They could build a smaller house, but that’s not what they want to do. They would like to maintain the character of the neighborhood.

Mr. Nicholson noted that his office designed all of the plot plans and the majority of the houses are at the 50 ft. setback. There are not many that have 150 ft. driveways. They are the result of lots like 26A or lots with steeper grades or sections where there are federal

and state wetlands that have been addressed.

Mrs. McGranahan asked if there would be any backyard for this house. Mr. Nicholson stated the side yard would be used. The LC zone will be on the plot plan and will not be disturbed. The owners will be well advised of the restrictions.

Priscilla Wyman, 11 Leonardo Drive, suggested the Board should walk the property. She does not know how a house could be built on this lot.

Mr. Schreiber noted that the minimum single family lot is 20,000 sq. ft. and this lot meets that requirement and is therefore legally a buildable lot.

Ms. Wyman stated that the aesthetics should be considered and noted that she feels the builder has removed trees that were not necessary. Mr. Schreiber stated he is just speaking legally.

Mr. Kelley asked Mr. Clemens if he had any comments on this situation. He responded no.

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Bob Aldunate, 14 Leonardo Drive, stated he moved into this neighborhood because of the aesthetic value, if he were aware of this situation he may not have purchased there. He also asked if the EPA is looking at the property or standards. He asked if there were other options. He asked if the community could buy the property?

Larry Freedman, 26A Leonardo Drive, also asked if there was a professional environmental statement done. He also noted that he offered to buy that lot but never received a response.

Mr. Kelley clarified that the foot and a half from the rear of the house being talked about is from the actual buffer zone which is 50 ft. from the creek, it is just a buffer that has limited uses.

Mr. Kelley noted that the Environmental Specialist and ECC have shown some concerns. He stated he does not believe this qualifies for the EPA or State.

Mr. Nicholson responded this does not qualify due to size. It is usually handled with a Short Environmental Assessment Form. He noted he recalls that the ECC was satisfied with this solution because they are not asking to create any physical improvements in the LC zone which they have historically resisted. He continued, they are showing standard

erosion control measures of the Town of Clifton Park, the Department of Environmental Conservation, the Army Corps of Engineers, and Clough Harbour, the Town Engineers. These measures will protect the edge of the buffer zone which will protect the 50 feet before the stream. He added that the trees and vegetation in the buffer zone must remain undisturbed and remain forever wild.

Mr. Kelley asked him what he feels Mr. O'Brien means when he states he does not believe the variance will achieve the result the applicant desires. Mr. Nicholson responded he does not know.

Mr. Clemens responded he feels he has concerns about building so close to the edge of the LC zone. He feels he is probably questioning how they will protect the LC zone when they build the house.

Mr. Dudick also agreed that it probably has to do with the protection of the LC zone during construction and noted there are standards that must be followed.

Mr. Nicholson noted there are a number of permitted uses in the LC zone. He stated he thinks the issues with the ECC, Zoning Board, and the Planning Board with the LC zone over the years is to restrict, limit, or not allow any oppressive use of the LC zone because it is so easy to do. In most instances it's not a case of a building lot that pre-exists the LC zone enactment. It's the case of someone buying the house in the LC zone and they are not happy with the building envelope and want to put a pool or deck in the LC zone area.

Valerie Andreoli, 22 Leonardo Drive, expressed her concern that the owners may want to put a pool in the front yard and this will change the facade of the street. She stated she does not want her neighborhood changed. She wanted to know what control they would have over preventing this.

Mr. Nicholson stated that they would have to meet Town Code and you cannot have a pool in your front yard. She noted that the Town Code states that chain link fences are not allowed, but her neighbor put one up. This is why she is questioning this.

Mr. Kelley noted this lot will have a backyard but they will not be able to build in the LC zone.

Tom Early, 32 Leonardo Drive, produced a brochure promising classic homes. He stated the agent specifically mentioned covenants that would be adhered to, i.e. no chain link fence.

Mr. Kelley asked if that was in his deed. He stated yes.

Mr. Schreiber stated the Town cannot enforce deed covenants, i.e. chain link fences. Mr. Early noted the builder promised to leave many trees. Some of the most recent builders have cleared the lots and the houses look out of place. He wants this to stop.

Mr. Early asked about the size of the house that could be built on this lot and the

percentage of the lot that could be built on.

Mr. Schreiber explained that you cannot build in the LC zone or within 50 ft. of the LC zone, but this is a buildable lot.

Mr. Nicholson stated that he believes they can build on this lot without a variance all they have to do is meet the setbacks and not disturb the LC zone. He believes they can build a 900 sq. ft. house without any variance.

Mr. Clemens confirmed that is correct, it would be approximately 960 sq. ft..

Mr. Dudick explained if the variance is allowed they can build a house approximately 2,000 sq. ft. that would better fit in with the neighborhood.

Mr. Nicholson stated Mr. Polsinelli has been trying for over a year to come up with a plan that would enable him to build the biggest house on this lot and comply to the greatest extent possible with the Town Code and its spirit and intent after the Town enacted the LC zone which restricted the building envelope based on the

original subdivision approval.

He continued, if this variance is denied they could obtain legal counsel but doubts that what they will do. He feels Mr. Polsinelli may put the lot on the market to whoever is interested in building whatever size house they want.

Mr. Early reiterated that he was promised a look and feel to this neighborhood and he thought it was tied up legally better than it is. He encouraged the Board to go out and look at the lot and see how it will effect the neighborhood.

Ellen Puppo, 6 Leonardo Drive, stated that when she bought her home approximately five years ago she was able to purchase lot 4 also. She questioned why the neighbors on the adjoining lot cannot do the same.

Mr. Kelley stated he cannot speak for the actual people involved, but he believes they have a right to offer to purchase the property.

Mr. Nicholson responded, to the best of his knowledge,  
Mr. Polsinelli offered the lot to Mr. Schillinger. Mr. Schillinger responded that he made an offer to Mr. Polsinelli but it was not accepted.

Karen Page, 25 Leonardo Drive, noted that this is such a small lot and suggested the Board go and look at the lot.

Mr. Kelley stated he has been there.

Ms. Page stated that she understands they cannot build on this lot without this variance.

Mr. Kelley responded, no that is not correct, it is a legal lot.

Mr. Schreiber noted that the variance is needed to allow for a larger house to be built outside the LC zone.

Alan Bulmer, 30 Leonardo Drive, stated he is against the granting of this variance. He also noted that he does not like the implied threat that a small house would be built on that lot if the variance is not granted.

A resident from 7 Raphael Court asked not to have the variance granted because he feels it will impact the character of the neighborhood.

Mr. Schillinger again stated he feels when you apply the law to this application, the application it is doomed. The stream was

there when the subdivision was created by Mr. Polsinelli. At that time it was noted on the site plan that all setbacks would be met. He continued, the character of the neighborhood will be disturbed and there will be a detriment to the neighborhood. There has been virtually no consideration made as to how, over time, the stream will be protected which goes to the heart of the health and safety of the neighborhood. He believes this was self-created and asked the Board to deny this variance.

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

Mr. Kortz asked for clarification on when lot 26A was created.

Mr. Nicholson produced the original subdivision map from 1985. It showed the original lot 26 and a proposed street, Bernini Drive. This was used to create lot 26A.

Mr. Kortz asked if it was ever part of lot 26. Mr. Nicholson responded never, the only reason it is labeled lot 26A is for postal designation. The configuration of lot 26 has never changed over the years. It has always been 23,550 sq. ft.. The only change has been the application of the LC zone.

Mr. Kortz asked if there were other similar size lots in terms of square footage in the area. Mr. Nicholson pointed out lots 31, 33, and 35, which all have less square footage.

Mr. Kortz noted that there are certain covenants which neighborhood associations have the right to pursue regarding agreements and promises made, but they do not relate to Town code and this Board cannot help with those. He expressed he appreciation of their situation.

He asked about the size of the house proposed for this lot and if there are similar size houses. Mr. Nicholson responded there are many larger homes in the area but there are also some that may be similar.

Mr. Nicholson responded to a question regarding lot 34. A public road was always intended in this general vicinity for access to remaining lands. He stated a lot of comments made about the applicant misleading the neighborhood in terms of roads and lots has happened over time and a lot of the intent is shown on the map and is evident by the subdivision plans.

Mr. Schillinger asked for the square footage of the neighboring parcels, lots 22, 24, and 26. Mr. Nicholson responded lot 22 is 49,000 sq. ft., lot 24 is 46,000 sq. ft. and lot 26 is not on the map. He stated the reason that those lots are the size they are is because of access off the corridor of the stream and due to the

drainage corridor it made the most sense to use the keyhole lot concept. The lot sizes are simply because Mr. Polsinelli abandoned the idea of a public road. He believes the revision to lot 24A consumes some of that acreage.

Mr. Kortz asked if there are other houses that are closer to the 50 ft. setback. Mr. Nicholson responded absolutely.

Mr. Kortz spoke to the issue of another solution being obtained by some other method. He stated yes, they could build a smaller house which would not achieve what the residents are looking for, it would not be a good thing. Whether it is substantial, there are other lots that are smaller. The key issue is whether the variance will have an adverse effect on the neighborhood. Whether it is self-created - no the LC zone was created in 1987 after the subdivision was approved. He continued, this Board can deny this request and the applicant can build a smaller house, the variance can be granted and a larger house, more in character with the neighborhood could be built, or the applicant can meet with those in the neighborhood interested in an alternative.

Mrs. McGranahan stated she concurs with Mr. Kortz. The character of the neighborhood is very hard to determine. In some cases a ten foot variance would make a difference. The character is sometimes one's feelings. There is a law of the land that you cannot deny someone the right to build on their property, even if you don't like it. This is not a self-imposed hardship. If there was a legitimate offer to buy the lot she would wonder why it was not accepted. The issue those present want the Board to consider is that this will destroy the neighborhood and she finds that hard to do.

Mr. Kortz noted that a smaller house can be built on this lot and other small lots in the neighborhood that would not be appropriate to the neighborhood.

Mrs. Pace noted not everyone wants a large backyard to take care of. The owners would be aware of the restrictions before purchasing this house.

Mr. Kortz noted that a ten foot variance is not considerable. He also noted that he is sympathetic to the concerns of the neighborhood.

Mr. Nicholson noted that at least half of the 10 ft. request will be porch area only. They have worked for months with the builder to get the inside of the house to work with the outside of the house to minimize the variance requested.

Mrs. Gleason noted that this is a difficult decision. This is a buildable lot and a smaller house could be built on it.

Mr. Kelley stated that the Board tries to be fair and reasonable and tries to do the right thing. They also have the responsibility to uphold the laws to protect everyone. Sometimes it does not please everyone but the Board tries their best.

Mr. Kelley made a motion to approve this variance as requested.

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

The meeting recessed at 8:53 PM and reconvened at 8:57 PM.

2. An application from Joseph Battiste, requesting an area variance from Section 208-97E(3)(b) from the required 100,000 sq. ft. lot area - actual lot area = 40,000 sq. ft. - variance requested = 60,000 sq. ft.. The property is located at 16 Deerfield Court, Rexford. Permit #80379.

The secretary read the legal notice as it appeared in the Daily Gazette on May 30, 2002.

Joseph Battiste, owner, presented this application. He noted that this parcel was in a previously approved subdivision. He was not aware that the zoning had changed until he applied for the building permit. They have already purchased the parcel and made down payments to the builder. He has also sold his current residence based on the assumption that he could build on this lot. He has already invested approximately \$80,000 in this project. This lot and proposed home are similar to those already in the neighborhood. It will be used as originally intended. There is water and electric already on the lot and sand has been brought in for a septic system.

Mr. Clemens noted that in 1997 the Town changed the minimum lot size in the R-3 zone to 100,000 sq. ft.. This was an already approved subdivision. The larger lot size is basically because there is not water and sewer available in this area. The lots on either side have already been built on so there is no additional land available for purchase.

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

Mrs. Gleason asked how someone could purchase a substandard lot and make down payments to a builder. Mr. Clemens stated someone sold him the lot that was not aware that the "sunset" clause expired and the agent was not informed.

Mr. Dudick made a motion to approve this variance as requested.

Mrs. McGranahan seconded. Ayes: Dudick, Kortz, Kelley, McGranahan, Pace, Gleason. Noes: None.

3. An application from Beverly & Nellie Adams, requesting an area variance from Section 208-12 from the required 80 ft. front setback for an accessory structure -proposed setback = 19 ft. - variance requested = 61 ft. The property is located at 67 Eastside Drive, Ballston Lake. Permit #80380

The secretary read the legal notice as it appeared in the Daily Gazette on May 30, 2002.

Mr. Adams presented this application. He stated his house was built in 1929. There is a neighbor's garage on the north property line already. This will be in keeping with the neighborhood. This is an older neighborhood that was mostly camps. If the setback was met the garage would be in the lake. They will be living here year round and a garage is needed.

Mr. Clemens noted that this is in keeping with the other homes and buildings in the area.

Mr. Dudick asked about attaching the garage to the house.

Mr. Adams stated there is a porch in that area and it would have to be removed. There is also an old flagstone path on the side of the house that goes down to the lake and they do not want to destroy that.

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

Mrs. Gleason made a motion to approve this variance as requested. Mr. Dudick seconded. Ayes: Dudick, Gleason, Kelley, Kortz, McGranahan, Pace. Noes: None.

Mrs. McGranahan made a motion to approve the minutes of May 21, 2002, Mrs. Pace seconded. Ayes: Kelley, Pace, McGranahan, Dudick. Noes: None. Abstained: Gleason, Kortz.

There was no further business to conduct. Mr. Kelley made a motion to adjourn the meeting at 9:14 PM, Mr. Dudick seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb  
Secretary