

Clifton Park Zoning Board of Appeals Meeting Minutes

May 18, 2004

Present: Dale Kelley, Michael Dudick, Dale Gleason,
Donna Lawton, Robert Ritter

Absent: Gilbert Kortz, Jessica McCarthy

Also Present: Louis Renzi, ZBA Counsel

Mr. Kelley called the meeting to order at 7:00 PM.

NEW BUSINESS

1. An application from Capital District Contractors & Decks, requesting an area variance from Section 208-11 from the required 25 ft. rear yard setback for an addition - proposed setback = 20 ft. - variance requested = 5 ft.. The property is located at 7 Bevswood Oaks, Clifton Park. Permit #80497.

The secretary read the legal notice as it appeared in the Daily Gazette on May 13, 2004.

Rhett Cavanaugh, owner, presented this application. He stated that he would like to put a screen porch on the back of his home. When he applied for the building permit he found out that he is short on the rear yard setback. He corrected the listing of the adjacent property owners stating that on one side it is considered "Class B" open space and is not owned by the Oaks Association. The side that needs the variance is closer to the "Class B" open space.

Mr. Cavanaugh also noted that he is not sure that he only needs a 5 ft. variance, he may need closer to 10 ft..

Mr. Renzi asked if the applicant could better locate the addition on the back of the house. He stated that the drawing is not very clear.

5/18/04 Page 2

Mr. Cavanaugh noted that he measured from the back corner of the house to where he wanted the addition, but does not have the exact measurements. The drawings are not to scale.

Mr. Renzi recommended that the application be amended to "not to exceed a 10 ft. variance".

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

Mrs. Gleason made a motion to grant a rear setback variance as amended not to exceed 10 ft.. Mr. Ritter seconded. Ayes: Kelley, Dudick, Gleason, Lawton, Ritter. Noes: None.

2. An application from Brooks Hertiage, LTD, requesting an area variance from Section 208-98 from the required minimum lot width of 200 ft. at the building line - proposed width = 158 ft. - variance requested = 42 ft.. The property is located on the north side of Ushers Road, Ballston Lake. Permit #80498.

The secretary read the legal notice as it appeared in the Daily Gazette on May 13, 2004.

Gil Van Guilder, surveyor, presented this application. He explained that he has been working with the Planning Board for several months for a subdivision scheme for this property. He stated the property is located on Ushers Road just west of the animal hospital. The Knollwood Hollow subdivision is just east of this location. The rear lots will butt up against this property. The other two sides are abutted by lands of the Town of Clifton Park.

He noted that they had a 10 lot scheme originally with three lots on the cul-de-sac. Through negotiations with the Planning Board they combined two lots into one. The problem that arose is that Ushers Road is one of the special roads that requires 200 ft. of width at the building line. Lot 1 will not enter onto Ushers Road, it's driveway will open onto the cul-de-sac. The spirit of the law is to keep driveways separated and not have several driveways exit onto the busier roads within the town. Therefore, this will not violate that section of the ordinance because they will not be entering onto Ushers Road. In fact, he continued, the Planning Board requested that both of the lots closest to Ushers Road have the homes face Ushers Road. Originally, they had them facing the cul-de-sac, by doing this it will keep the feeling of being a part of the community. Therefore, there is the need for the requested variance.

There was no public comment. Mr. Kelley made a motion to close

5/18/04 Page 3

the public hearing, Mrs. Gleason seconded, approval unanimous.

Mr. Kelley noted that he had discussed this application with Don Clemens and Jason Kemper and they both support the granting of this variance.

Mr. Ritter asked who the builder would be. Mr. Van Guilder explained that it probably will be Brooks Heritage, a local builder.

Mr. Ritter asked if they owned the property. Mr. Van Guilder responded no, it is owned by Bill Hattlee but they have it under contract.

Mrs. Gleason made a motion to approve this variance as requested. Mr. Ritter seconded.

Mr. Ritter asked how the issue of the storm water management area will be addressed, will there be a man made pond, and who will maintain it. Mr. Van Guilder responded yes, it will meet the DEC regulations for water quality and runoff control. He stated it will be maintained by the Town as with all subdivisions. He continued, that land is a part of the subdivision that they are dedicating to the Town, it will be 6½ acres contiguous to other lands owned by the Town and will make a substantial Town ownership of the stream corridor through the property and also along three sections of Country Knolls.

Mr. Renzi asked if the Town will own what appears to be a drainage easement from the cul-de-sac back into the storm water area. Mr. Van Guilder responded yes.

Mr. Ritter stated for the record that with the storm water management plan the ownership is not necessarily always the Town, it could be up to the individual rules and regulations set forth by the Planning Board on who maintains and has ownership of it because there are subdivisions that have been approved in the Town that have had to develop a homeowner's association to maintain them.

Mr. Van Guilder stated that he was not aware of that. Mr. Kelley also noted that he was not aware of that fact and could be put on the record but it is a Planning Board issue.

Mr. Van Guilder noted that they conceptual approval and will still be working with the Planning Board.

Mr. Kelley called for a vote on the motion currently on the floor. Ayes: Dudick, Kelley, Ritter, Lawton, Gleason. Noes: None.

5/18/04 Page 4

3. An application from Yates Lansing, requesting an area variance from Section 208-11 from the required minimum lot size of 100,000 sq. ft. in an R-3 zone - actual = 52,272 sq. ft. - variance requested = 47,728 sq. ft., and an area variance from Section 208-98 from the required 200 ft. lot width at the building line on Riverview Road - actual = 167.8 ft. - variance requested = 32.2 ft.. The property is located on the easterly side of Riverview Road, 1/4 mile south of Droms Road, Rexford. Permit #80499.

4. An application from Yates Lansing, requesting an area variance from Section 208-11 from the required minimum lot size of 100,000 sq. ft. in an R-3 zone - actual = 67,954 sq. ft. - variance requested = 32,046 sq. ft., and an area variance from Section 208-98 from the required 200 ft. lot width at the building line on Riverview Road - actual = 167 ft. - variance requested = 33 ft.. The property is located on the easterly side of Riverview Road, 1/4 mile south of Droms Road, Rexford. Permit #80500.

The secretary read the legal notice as it appeared in the Daily Gazette on May 13, 2004.

Gil Van Guilder, surveyor, presented both applications. He explained that this property was subdivided in 1985 by the Lilla's and they have owned the property since that time.

Just recently, within the last week, Yates Lansing, who also lives on Riverview Road, went under contract and subsequently purchased these two lots. He explained that they have always been shown, since 1985, on the tax map as two separate lots, the utilities have been designed for two separate lots. He continued, there is a six inch water main running along the westerly side of Riverview Road and Mr. Lansing has confirmed that it is acceptable to the Rexford Water District for him to tie into that main for the two lots. They will have individual septic systems.

Mr. Van Guilder noted that the zoning has changed requiring minimum lot sizes of 100,000 sq. ft.. If there is public water available it does lower the requirement to 90,000 sq. ft., but there is no public sewer available in this area. He explained that Mr. Lansing would like these lots to be treated as two separate lots. They will be built as per the approved plan in 1985. NYS Health Department requirements for septic systems have not changed. The Lilla's have paid taxes on two separate building lots since 1985 and they believed they were selling two pieces of property and Mr. Lansing took title to the property as two separate lots.

5/18/04 Page 5

Mr. Van Guilder noted that there was a sunset clause and stated Mr. Clemens did extensive research on these lots and found in the Planning Board minutes in 1984 that the two lots would need width variances but they would not be needed prior to the map being filed.

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

Mr. Kelley noted that Mr. Clemens has no specific issues with this request and Mr. Kemper had no problems with this request.

Mr. Dudick asked if this meets the requirements of granting a variance. He noted that these are two contiguous lots that could be combined to build a home, he questioned if the difficulty is self-created, and asked if there is a significant financial hardship caused if the variance is not granted.

Mr. Kelley explained that a financial hardship is not a requirement of an area variance.

Mr. Kelley did state that it could be said that this is self-created because the applicant knew that the two lots did not meet zoning requirements and would need substantial variances.

Mr. Van Guilder noted that the applicant went by what the Lilla's told him that these were two separate building lots, they had been paying taxes on two lots for almost 20 years.

Mr. Kelley noted that the Town has recognized that these were two separate subdivided

lots.

Mr. Van Guilder stated that there was a sunset clause for a period of time after the zoning went into effect, but he is not sure when that expired.

Mr. Kelley expressed his concern whether the benefit can be achieved by other means feasible to the applicant. He asked if Mr. Yates has purchased the property or is under contract to purchase the property. Mr. Van Guilder responded he has actually closed on the property.

Mrs. Lawton mentioned her concern in that the applicant did not thoroughly research whether or not two houses could be built on these lots. Mr. Van Guilder noted that the Lilla's did supply

Mr. Yates with an approved subdivision map stamped by the Town stating that it was approved in 1985 and it would appear to be a valid map, and they also showed him the tax bills where they have been paying taxes on two separate lots.

5/18/04 Page 6

Mrs. Lawton asked how the applicant found out the variances were needed. Mr. Van Guilder responded that he called Mr. Clemens and he informed him that they were outside the sunset clause period.

Mrs. Lawton asked why the applicant came to him. Mr. Van Guilder stated that he does a lot of work for Mr. Yates and he came to him to see about tying into the Rexford Water District because it was important for him to have a public water supply.

Mr. Dudick noted that he purchased the property not even knowing if he could tie into the water. Mr. Van Guilder stated that it was just prior to him purchasing the property. He did close on the property knowing that it was subject to a variance, but when he went under contract he does not believe he knew he needed the variances.

Mrs. Gleason noted that this Board has granted variances like this before because when the property was subdivided it was allowable and she feels granting this variance would be consistent.

Mr. Kelley noted that this is an interesting situation, what would be the options for the new owner of the property, he has legally subdivided lots approved by the Planning Board.

Discussion continued on how, when, and what could be done to help this applicant.

Mr. Dudick noted his concern that the applicant bought the property knowing that he needed a variance and perhaps he could have delayed the purchase until after this hearing.

Mr. Renzi noted that the applicant's best argument is that he now stands in the shoes of the former owner. Had he come in before the Board and asked for the variance, the Board certainly would have been justified in granting it. He sold for a fair market price based on the assumptions that were made. Denying the variance will unjustifiably enrich the former owner and penalize the new owner. You have to look at it from the perspective of who sold it, when, and for how much money, and what were the reasonable expectations of the two parties involved.

Discussion continued on why the applicant did not wait to close on the property until after this application was heard.

Mr. Dudick asked when the current owner closed on this property.
Mr. Van Guilder responded approximately a week ago.

5/18/04 Page 7

Mr. Dudick asked when this application was made. Mr. Van Guilder responded the application was made approximately two weeks ago. He stated that there was some urgency in the closing. There was a situation with the Lilla family where they had to close by a certain date. There did appear to be "a time is of the essence" closing and he could not wait until this meeting took place therefore he went ahead with the purchase.

Mr. Dudick noted that he was aware of the need for the variances and still closed on the property not knowing if he could build on the property. Mr. Van Guilder noted that he tried to delay the closing but there was some urgency and he had to close by a certain date.

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

Mrs. Gleason noted that the applicant did not apply within the time period allowed by the sunset clause but she feels they are buildable lots and were before the zoning changed, and other similar variances have been granted.

Mrs. Lawton noted that she feels it is wrong to grant this variance.

Mr. Kelley noted that this request does not change the character of the neighborhood, most of the lots are of similar size. He also noted that the lots have been recognized by the Town as subdivided buildable lots for over 20 years.

Mr. Van Guilder presented the tax map showing the size of the lots in the surrounding area are consistent and not out of character.

Mr. Ritter explained that he feels the situation surrounding this particular application compromises the Board's position. He feels the applicant knew what he was buying based on the date of this application.

Mr. Dudick stated that he feels Mr. Lansing should be present to explain why he purchased the property knowing he could not build on it without a variance.

Mr. Kelley called for a vote on the motion to approve an area variance of 47,728 sq. ft. to allow for a lot size of 52,272 sq. ft. and an area variance of 32.2 ft. to allow for a width of 167.8 ft. at the building line. Ayes: Gleason, Lawton, Kelley. Noes: Ritter, Dudick.

5/18/04 Page 8

Mr. Ritter made a motion to approve an area variance of 32,046 sq. ft. to allow for a lot size of 67,954 sq. ft. and an area variance of 33 ft. to allow for a width of 167 ft. at the building line. Mrs. Gleason seconded. Ayes: Kelley, Lawton, Gleason. Noes: Ritter, Dudick.

Mr. Ritter made a motion to approve the minutes of May 4, 2004, Mrs. Gleason seconded. Ayes: Gleason, Kelley, Lawton, Ritter. Noes: None. Abstained: Dudick.

Mr. Kelley made a motion to adjourn the meeting at 8:46 PM, Mr. Ritter seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb
Secretary

cc: Town Clerk, Zoning Board Members, Louis Renzi, Counsel,
Don Clemens, Department of Building and Development, Planning Board, ECC,
Assessor