

## ZONING BOARD OF APPEALS

October 21, 2008

Present: Michael Dudick, Chairman, Gilbert Kortz, Douglas Strother, Brian Telesh,  
Deborah Ferro (alternate member)

Also Present: Joel Peller, ZBA Counsel  
Steve Myers, Director, Building & Zoning

Absent: Robert Ritter, Dale Gleason, Christopher Lemire

Mr. Dudick called the meeting at 7:03 p.m. He advised that Ms. Ferro, alternate member, will be sitting in for Christopher Lemire.

At this time, Mr. Dudick led the pledge of allegiance.

Mr. Dudick explained that this is normally a seven-member board and that four yes votes are needed for an application approval. He asked if any applicants wish to postpone their application due to attendance. There was no response.

### **NEW BUSINESS:**

- 1. An application from Joseph and Suzanne Clayberg, requesting an area variance from Section 208-12 for an accessory structure; 80-foot front setback required, 28.5 feet available, variance requested = 51.5 feet; variance requested to build structure in an LC zone. The property is located at 17 McLane Street, Rexford, New York. (Permit #80716)**

The secretary read the legal notice as it appeared in the Daily Gazette on October 16, 2008.

Suzanne Clayberg of 17 McLane Street, Rexford, presented this application. She explained that the house does not have a garage and they would like to build one. They have a carport. The 82-foot setback puts it in an area of the property where they have a drilled well, septic tank and leech field. They were hoping to move it up closer to the front of the property so they could avoid having to move the well and septic tank. She referred to the survey map submitted which shows the approximate area where they hope to build the garage, marking off where the septic tank and leech field are. There is also a slope in the side yard and in order to build there, they

would have to fill it in. They are at the end of the road, and the way they intend to build the garage would put it close to the roadway, but their property line goes into the middle of the road.

Mr. Strother asked where the septic tank is located. Mrs. Clayberg replied that it is next to the house.

Mr. Dudick commented that the map is not drawn to scale and asked Mrs. Clayberg if she knows where on her property, the septic tank and leech field are. She replied that she knows where the septic tank is.

Mr. Joseph Clayberg, husband of Suzanne Clayberg, explained where the septic tank and leech field are located.

Mr. Dudick commented on the testing done to determine where a leech field is. Mr. Clayberg stated he would not want to construct anything next to the house.

Mr. Kortz asked for further explanation of the map. He stated he observed the property and noticed the slope of the property. Mrs. Clayberg discussed the slope. Mr. Kortz suggested minimizing the variance and trying to get out of the LC zone. Mr. Myers stated that as he understands it, the whole area is in the LC zone. He is unsure of that but this is what he has been told. Mr. explained that, according to the maps we have, it appears that the limit of the LC zone is almost right to their house. That would have to be verified by somebody qualified in the field. Our mapping is only approximate, but it takes up a significant portion of their property. Mr. Myers and Mr. Dudick discussed the map and a printout from GEIS.

Mr. Dudick commented on Mr. Kortz statement regarding trying to minimize variances. It looks like they cannot construct anything that would not be in an LC zone, but they could move the garage closer to the house. He asked if that was possible. Mrs. Clayberg stated that this would put it almost in the middle of the yard. Mr. Clayberg stated that aesthetics have to be considered. They do not want to mess with the slope or their view.

Mr. Dudick asked if they could attach the garage to the house. Mrs. Clayberg stated that they would have to move the septic system, and on the other side of the house is a very small yard and there is not enough room.

Mr. Dudick asked if they could put it where the carport is or further back. Mr. Clayberg stated that there would not be enough room.

Mr. Dudick asked how long they have lived in the house. Mr. and Mrs. Clayberg replied four to five years. Mr. Dudick asked how many cars they have. Mr. Clayberg stated that he has two antiques, a truck and Mrs. Clayberg's car. They also have motorcycles.

Mr. Dudick asked if there was any public comment. When there wasn't, Mr. Dudick made a motion to close the public hearing. Mr. Strother seconded. Approval unanimous.

Mr. Dudick asked Mr. Myers for comment. Mr. Myers stated as a point of clarification that the Zoning Board is looking strictly at the setbacks required by the zoning law. The proposal to build in the LC zone and all things associated with that, including the 100,000 square foot requirement; need to be addressed by the ECC when they hear it. The ECC grants variances for building in the LC zone. We are looking strictly at the footage right now. Mr. Myers stated that the ECC will address the other issues.

Mr. Kortz asked Mr. Myers if they decide to build in the LC zone are they going to require additional variances. Mr. Myers stated that as he sees the law, they would be granted by ECC. He discussed Chapter 124 which is controlled by the ECC. Mr. Myers sent this to the ECC and the ECC will need to review this because the applicant wants to build in the LC zone. The applicant still has to go through that process even if they are granted variances by the zoning board. Mr. Kortz asked if they would judge by the standards that are in the LC zone. Mr. Myers replied yes, that this is his understanding.

Mr. Strother asked about the footage of the front setback variance requested. Mr. Dudick explained it to Mr. Strother.

Mr. Myers commented on the suggestion to move the garage closer to the house. He stated that if the garage is not attached to the house, it has to be a minimum of 10 feet away from the house due to the fire code.

Mr. Telesh stated that the other problem they may run into involves restrictive grading issues due to being in the LC zone. If they do move into the sloped roadway and start moving the gravel, there may be another issue as to the disturbance in the LC zone as well. He feels that this is a tricky application.

Mr. Kortz stated that it looks like the only place they could construct a garage of any kind without being in the LC zone is to eliminate the carport and part of the concrete walk, and build the garage where the carport is.

Mr. Dudick asked when the house was built. Mrs. Clayberg replied 1928. Mr. Dudick replied that this is an old part of our town. Mr. Myers stated that the map he gave is approximate. The limit of the LC zone could be a lot different.

Mr. Dudick stated that he feels that they are trying to squeeze a lot into a small area. He stated that if the applicants needed garage space for storage of multiple vehicles, they did not choose the best house. Mrs. Clayberg replied that they moved there separately from Syracuse, and for 3 ½ years they had separate houses. They were limited on what they could afford when they moved here. Mr. Dudick replied that he understood, but this is a small plot of land and they are restricted in what they can build.

Mr. Kortz stated that he can now look at this objectively since the ECC is reviewing it, since we are not judging it by that criteria. He discussed the requirements for an area variance. He feels the request is fairly substantial. He feels that the hardship is self-created, but this does not rule it

out. He is concerned, however, about the environmental impact, which we will not know until the ECC reviews it.

There was discussion regarding the order of who decides the application first, the zoning board or the ECC. Mr. Kortz would feel more comfortable knowing what the ECC's opinion is first. We could approve area variances but they may have to be moved based on what the ECC determines. The issues here are environmental.

Mr. Strother stated he would like to commend the applicants for their application.

Mr. Dudick asked the applicants if they would agree to table this matter pending the ECC hearing. Mr. Clayberg replied no.

Mr. Peller asked the applicants if they would agree to waive the 61 days. Mr. Clayberg replied yes.

Mr. Dudick stated that this matter will be tabled pending ECC's determination.

- 2. An application from Edmund J. Backstrom, requesting a use variance from Section 208-43.2 (permitted uses in an HM Zone) to operate a strictly commercial business on a parcel that is not an allowed use. Previous contracting business has been inactive for over one year and the discontinued non-conforming use cannot be continued per Section 208-97C. Pre-existing lot does not conform to current zoning requirements. 50 feet of frontage is required, 40 feet available, variance requested = 10 feet. Lot is a keyhole lot, which is only allowed in residential zones. The property is located at 3 Rustic Bridge Road, Rexford, New York. (Permit #80717)**

The secretary read the legal notice as it appeared in the Daily Gazette on October 16, 2008.

The secretary asked for receipts for mailings to property owners within 500 feet. The applicant supplied the receipts for the file.

Mr. Dudick confirmed the address as 3 Rustic Bridge Road. Mr. Peller asked the secretary what address appeared in the legal notice. The secretary acknowledged that she mistyped 23 Rustic Bridge Road instead of 3 Rustic Bridge Road. Mr. Peller stated that this is significant and that the application would have to be renoticed. The secretary apologized. The application will be renoticed with the correct address of 3 Rustic Bridge Road.

Mr. Dudick stated that there are members of the public present and that we will not be able to conclude our decision at this time. He stated that we could either come back again and have the applicant present his application the next time on November 18, 2008, but he wanted to give the public an opportunity to speak.

It was discussed that the applicant would not have to remail his notices as he did his mailings using the proper address.

Mr. Dudick asked the applicant if he wanted to make his presentation today or wait. The applicant chose to make his application.

Mr. Edmund Backstrom of 417 Taurus Rd, Niskayuna, presented this application. He owns a small moving and storage business. They move construction equipment, forklifts, generators and things of that nature. They presently have six trucks and a couple of trailers. On occasion, pieces of equipment are stored on the trailer overnight, on the weekend, or for a very short period of time – one to two weeks, in the yard. From there, it would be transported to where the next job is. Currently, they are leasing property in Colonie, two buildings away from the town offices. He stated he runs a neat and clean operation. He feels that overall there is a minimal impact on the neighborhood. Everybody leaves during normal business hours in the morning, between 6:00 a.m. and 9:00 a.m. Everybody is usually back by the close of business. He is here because the property in question was available for sale, it did not meet the zoning requirements but suits his needs.

Mr. Dudick asked if he owns the property at this time. Mr. Backstrom stated that he is looking to purchase the property pending approval from this board. Mr. Peller asked Mr. Backstrom if his contract is contingent on approval from this board and Mr. Backstrom replied yes.

Mr. Kortz asked Mr. Backstrom if his vehicles move very large construction equipment. Mr. Backstrom replied some very large and some very small. Mr. Kortz asked if this were approved, for a one to two-week period would he be storing his equipment at the Rustic Bridge site. Mr. Backstrom replied yes.

Mr. Peller asked Mr. Myers if he had a notice of representation from the owner of the property allowing the potential purchaser to come before the board, giving his consent. Mr. Myers stated that he did not believe so. He asked, for completeness' sake if he could obtain one for the file. Mr. Myers stated that the owner is sitting in the audience. At this point, Tamara Bojarski spoke from the audience and stated she is one of the owners, but the rest of her statement was inaudible. Mr. Dudick asked her to come to the microphone.

Mr. Dudick advised Ms. Bojarski that the Zoning Board sent a letter to Sharon Mills of 3 Rustic Bridge Road, Rexford, but the letter was returned undeliverable by the post office, stating no such street. Mr. Dudick asked Ms. Bojarski who Sharon Mills is. Sharon Mills is her aunt. Ms. Bojarski stated that her father, Ron Mills, was the owner, along with Sharon Mills. She does not know why the mail was returned. Mr. Peller asked Ms. Bojarski if she is currently an owner. Ms. Bojarski stated yes, and that the deed was recently changed to add her, along with her brother and sister. Mr. Peller asked Ms. Bojarski if based on her being an owner, is she consenting to allow the applicant to come before the board to request variances. Ms. Bojarski replied yes.

Ms. Bojarski stated that she had a couple of letters from back in 1989 about her father's business which had a non-conforming use permit. She stated that apparently there were issues about there being a problem with it being a non-conforming use permit. They thought there was a violation on the property back in the 1960's and 1970's. Her father passed away in December of 2004 and the business is still alive but not in the capacity that her father had done it. There are trucks that

still run out of the property. She stated that she knows that it is being said that the business has been idle for over a year.

Mr. Dudick asked what the business is or was. Ms. Bojarski said it was a trucking company. They haul equipment, bulldozers and large equipment. She produced pictures of the building. She feels it is a perfect situation.

Mr. Peller asked if the business is still in operation today. Ms. Bojarski stated that the business has not been dissolved. They have a friend that is property at this time with his trucks. They basically sold all of the equipment.

Mr. Dudick asked for financial records regarding the income / operation, tax records and customer receipts for the business. Ms. Bojarski stated that the other owner would have tax records. She did not have any. Mr. Dudick stated that this is important. If a business is still operating there and someone wishes to take ownership of the property and run the same type of business, then there would be no necessity for a variance from the board, because they would be within one-year's time. The problem arises if a business stops operating for over one year, whatever permits were granted would no longer be valid and then the property would go back to its original zoning. A key issue here is to determine whether or not there is even a need to have a variance application heard, depending on whether or not a business is operating on the property right now.

Ms. Bojarski asked if the board wanted copies of the letters regarding the permit, and Mr. Dudick stated yes.

Mr. Kortz discussed getting into the legalities of if the town code states "not operating," what does that mean. If they are paying taxes are they still operating. Mr. Peller asked Mr. Myers how he made that determination.

Mr. Strother asked Ms. Bojarski if she can remember the last time there was activity. Ms. Bojarski stated that there is activity going on all the time because she does have somebody there with trucks.

Mr. Kortz asked if that money is tracked. Do they pay rent. She said their job is to maintain the property. Mr. Kortz stated that theoretically, that would be tracked as some sort of income. Mr. Telesh asked if this was a verbal agreement. She stated that she had a letter which she believes she brought.

Mr. Dudick stated that there would also have to be a distinction as to if he is talking about having a trucking company and then they have an arrangement, even if they are making money off the property because somebody parks their truck there, he does not know that he would say that parking a truck on the property constitutes having a trucking company.

Mr. Kortz referred to Mr. Myers being asked how he made a determination. Mr. Dudick stated that it gets grayer and grayer the more you start doing on the property, but does not feel that simply parking a truck on the property makes it a trucking company.

There was discussion between Mr. Kortz and Mr. Dudick as to whether there is still a trucking company. Mr. Dudick stated that without records in hand, we have to at this time conclude that it is not a working business, until someone shows the board that it is.

Mr. Dudick asked for public comment.

Mr. Bruce Bochette of 144 Blue Barns Road spoke against the application. He first wanted to point out that his property was not mentioned in the legal notice. He stated that his property is right up against it. There was discussion about where his property is located. He stated he is located north of the property. Mr. Kortz and Mr. Bochette discussed the location of the property according to the map. Mr. Myers pointed out that he is not directly a part of it, only on one corner.

Mr. Bochette stated that the construction company has not been active since Ms. Bojarski's father died. Nothing has gone on there for four to five years. Mr. Bochette has lived there for twenty-three years. Mr. Dudick asked Mr. Bochette he was there when there was a construction company and Mr. Bochette replied yes. When Ms. Bojarski's father was alive you knew there was construction going on. There were trucks going in and out all night long. There is currently a tractor trailer that pulls in there once a month, but there is no construction going on. He is concerned about the value of his property. He does not want a construction company next to him.

Mr. Kortz reminded Mr. Bochette that there was a construction company next to him when he bought the property. Mr. Bochette replied yes, but there is not there anymore.

Mr. Bochette discussed Blue Barns Road and the value of the homes in Ballston. He does not want this next to him and will do whatever he has to, including litigation.

Mr. Kortz asked about activity going on at the property to the north of him. Mr. Bouchette stated that the town allowed that on the vacant property. He said it does not disturb him because it is further north of him and not adjacent to him, but he is not happy about it.

Mr. Kortz and Mr. Bochette discussed the mixed use in his area. Mr. Bochette stated that he does not want contamination from a construction area.

Mr. Dudick made mention of a petition that was signed by 25 residents surrounding the property, stating their opposition to granting this variance.

Ms. Pat Paquin of 5 Rustic Bridge Road, Rexford, spoke out against the application. She lives next door to the property in question. She stated that there has been no activity of a construction company there for numerous years. She has lived there for 15 years. Mr. Dudick asked if she has lived there when it was an active business and her response was inaudible. She stated that the neighborhood has been nice and quiet since Mr. Mills passed away. There is no more construction and bulldozing at all hours of the day and night, no more burying of miscellaneous things, no more trucks and heavy equipment coming in and out.

Ms. Paquin had a question regarding the notice sent to her home regarding this application, which stated that “we will be impacting your neighborhood very minimally as trucks leaving and returning at normal business hours...” She referred to Mr. Backstrom’s opening statement wherein he stated that the trucks would leave between 6 – 9am. She asked when they would be returning. Mr. Backstrom replied that it could be 1pm to 6 or 7pm. It would not be all night. It would be half a day on Saturday, if at all. Ms. Paquin was concerned with what would happen in bad weather or if the trucks break down – would they return late at night in those circumstances. Mr. Backstrom replied that if they had to be towed they would not wait until the next morning. She asked if they would be leaving construction vehicles and equipment there at the site. Mr. Backstrom replied for a very short period of time and on a very limited basis.

Ms. Paquin stated that in lieu of all of this and because of how nice the neighborhood has been for the past four to five years, she is opposed to having a construction company there. She stated that regardless of exactly goes on and how the business is run, it is still a construction company. It was not a pleasant experience with Mr. Mills’ company there.

Ms. Paquin asked if how long he idles his trucks in the morning. Mr. Backstrom replied not very long, maybe five minutes.

Mr. Backstrom stated for verification that he is not running a construction company. All he does is transport equipment. He does not own any bulldozers, forklifts, etc. He just transports them.

Mr. Dudick asked Mr. Backstrom how he became aware that the property was for sale. Mr. Backstrom stated that a personal friend advised him, and told him the type of business that was there. He looked at number of different places in different areas and he was either restricted by money or the area, getting in and out.

Mr. Dudick asked Ms. Bogarski if she has listed the property with an agent. She replied that she is the listing agent, with Purdy Realty. The property has been for sale since before her father passed away in 2004, when they knew he was terminally ill, possibly in 2003. The property is 3.96 acres. It was originally listed as commercial for \$250,000. Due to her conversations with Mr. Myers and due to the hamlet being a mixed use, she has since listed it as vacant land for \$150,000, since this year.

Mr. Kortz stated that there are a lot of uses that are allowed. Ms. Bogarski stated that it has attracted a lot of people in the trucking field.

Mr. Dudick and Mr. Kortz stated that the board would require financial documentation, including the attempts to sell the property and hardship.

Mr. Strother asked about the storage of trucks and equipment and the cumulative effect of trucks going in and out. Could this result in a more or less constant presence of heavy equipment and trucks. Mr. Kortz stated that he understands that they would just be coming in and out. Mr. Backstrom stated that people would basically leave around the same time in the morning and come back at various times.

Mr. Strother and Mr. Backstrom discussed how long the trucks would be idling.

Mr. Kortz stated that for a use variance we require competent financial evidence.

Mr. Peller again asked Mr. Myers about his determination that the business has been idle for over a year. Mr. Myers replied that this is based on an open building permit on the property in 2004. His predecessor determined that once the time passed, the permit was closed out because the construction did not get completed. He is using that as the end date for the business. To Mr. Myers' knowledge there has been no activity since that date. He has met with the land owners a couple of times and believes Mr. McCarthy was involved. Uses of the property were discussed and financial records were requested but they never received anything to prove the business is still active. Therefore, Mr. Myers' initial decision that the business has been inactive for over a year still stands. He does not believe that they have proven what they need to prove to get a use variance.

Mr. Bruce Boquette asked about the petition with 25 names on it. He believes there is 100% consensus of the residents on that road. There was discussion about how many households are involved. Mr. Dudick stated that we take all aspects of the application into consideration.

Mr. Dudick made a motion to approve the minutes of October 7, 2008. Ms. Ferro seconded. Ayes: Dudick, Kortz, Strother, Telesh, Ferro. Noes: None.

Mr. Dudick made a motion to adjourn the meeting at 8:20 p.m. Ms. Ferro seconded. Approval unanimous.

Respectfully Submitted,

Jess McCarthy  
Secretary

cc: Town Clerk, Town Board, Zoning Board Members, Joel Peller, Counsel, Steve Myers, Department of Building and Development, Planning Board, ECC, Assessor, Highway