

ZONING BOARD OF APPEALS

March 17, 2009

Present: Michael Dudick, Chairman, Robert Ritter (arrived at 7:25pm), Christopher Lemire, Douglas Strother, Brian Telesh

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

Absent: Dale Gleason, Deborah Ferro (alternate member)

Mr. Dudick called the meeting at 7:04 p.m

PLEDGE OF ALLEGIANCE

At the time the attendance was taken five members were present. Mr. Dudick explained to the applicant that four yes votes are needed to approve an application and asked if he would like to wait for more members arrived. The applicant stated that he would. At this point, a brief recess was called, from 7:08 p.m. to 7:15 p.m.

OLD 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).**

Mr. Joseph Clayberg of 17 McLane Street, Rexford presented this application which was tabled from October 21, 2008. He would like to build a two-car garage. He cannot build it in a suitable

location without a variance because there is a well and leech field in the area. There are limitations on the side of the property as well.

Mr. Dudick asked how long he has owned the property. Mr. Clayberg believes he has owned it since the fall of 2002. Mr. Dudick asked if there has been change in Mr. Clayberg's needs which would require a garage now that were not there before. Mr. Clayberg stated that before he moved here he lived in Syracuse and that house had a two-stall garage. He owns antique cars and he currently has an antique car that is being kept outside. Additionally, he hopes to gain additional storage space which is limited in this house.

Mr. Dudick referred to the prior meeting and referred to reviews that were supposed to be done. Mr. Clayberg provided copies of two letters: one from the NYS DEC, which found no regulated freshwater wetlands on or adjacent to the property and therefore a freshwater wetlands permit is not required; the other from the Army Corps of Engineers which stated that a Department of the Army permit is not required for this specific proposal.

Mr. Dudick stated that based on the above this is not in an LC area and so the variance requests are simple area variances. Mr. Dudick asked the Board if they had specific questions regarding this application.

Mr. Telesh stated that he recalls this application from the prior meeting wherein many alternative locations were discussed. He feels that the applicant would actually have more potential land disturbance issues if he were to relocate this to another area, and therefore he is supportive of this variance request.

Mr. Dudick asked the applicant if the variance is granted to build the garage what would he do with the carport. Mr. Clayberg stated that his wife would park there in the winter. The garage is for the antique cars and storage. He also does some slight restoration work.

Mr. Dudick asked for public comment and there was none. Mr. Dudick made a motion to close the public hearing. Mr. Whalen seconded. Approval unanimous.

Mr. Peller asked Mr. Clayberg about the restoration work he does and wanted to clarify that he only does this for his own cars. Mr. Clayberg stated that he only restores his own cars. One is mostly complete; he just has to add some new interior parts. He stated that when he spoke to DEC and the Army Corps of Engineers they stated that they would not stop him, but would work with him to make sure there was no harm. Mr. Clayberg also stated that he would not do anything to disturb any of the wildlife in the area with chemicals. Mr. Peller asked if he is a licensed repair shop and Mr. Clayberg stated he is not.

Mr. Dudick asked Mr. Myers for comment. Mr. Myers stated that all of his concerns were based on the LC zone and since that issue has been resolved he does not have a problem with the application.

Mr. Lemire asked if the parcel of land where the garage would be built in a separate parcel. Mr. Clayberg stated that it was awhile back, but he purchased the whole thing. Mr. Lemire asked

about the rear of the property as presented on the map which Mr. Clayberg explained. Mr. Peller asked about the slope of the property. There was further discussion between Mr. Lemire and Mr. Clayberg about the layout of the property.

Mr. Lemire asked Mr. Clayberg why he cannot move the garage back. Both Mr. Myers and Mr. Clayberg explained that this is due to the septic system. There is also a pond and wildlife there.

Mr. Dudick asked if the garage were further back would he have a clearer view of it and if it were moved forward would his neighbors have a clearer view of it. Mr. Clayberg stated that if it were moved to the front he would still have a view of it but his neighbors would have more. However, it is a dead-end road. Mr. Lemire asked if all of his neighbors are on the same side. Mr. Clayberg replied all but one. After Mr. Lemire viewed a color aerial photograph, there was further discussion between Mr. Lemire, Mr. Clayberg and Mr. Strother about the property and its location as well as the LC zone.

Mr. Ritter arrived at 7:25 p.m.

Mr. Lemire again asked why the garage cannot be moved to the back of the property. Mr. Clayberg replied because the view of the pond and wildlife would be blocked. He is trying to keep some aesthetics to the property.

Mr. Strother stated that now that this has been clarified he does not see that anybody would be adversely affected. Mr. Lemire stated that he believes the Board's job is to try to meet the code if they have room to do it, unless there is a good reason and that just because you like the view of what is on the other side of your property line, he does not feel this is a good reason. Your choice to put this structure up. You choose the structure or you choose the view.

Mr. Myers stated that he understands Mr. Lemire but what is not being considered here is that Mr. Clayberg wants to keep the structure separated from his well. If the garage is moved back it would be much closer to the well and the impact on that could be a problem. Mr. Myers further stated that If fluids leak from his vehicles or whatever he keeps in his garage, there is a better chance it will get to his well if the garage is moved back further. It is more level in the back and there is a better chance of well contamination. Mr. Dudick and Mr. Myers discussed this point further as well as the body of water on the property and the dropoff.

Mr. Lemire asked Mr. Clayberg if there was a garage on the property when he purchased it in 2002. Mr. Clayberg agreed. Mr. Lemire asked Mr. Clayberg if he had antique cars then. Mr. Clayberg replied yes, in a garage in Syracuse. Mr. Lemire asked if since he moved here in 2002 have the cars been garaged locally and Mr. Clayberg replied no. When he moved here he bought what he could afford. His wife came here first, then the cars came.

Mr. Dudick stated that he believes this is a unique piece of property and that this Board is challenged to interpret the needs of the property, the needs of the property owner and the needs of the community. This house is the last house on a dead-end street. He shares Mr. Lemire's concern regarding what is the greater concern: a better view or a garage to take care of this things. Mr. Dudick stated that having the NYS DEC and Army Corps of Engineers state that

they do not feel there is an issue takes away a lot of questions. However this still a tight fit for this piece of property. In this case he finds for the property owner as he does not feel it has a tremendous impact on neighboring properties. Mr. Clayberg stated that he does not have anything in writing but he did speak to his neighbors and they do not have a problem with it.

Mr. Dudick made a motion to approve the application as amended; the LC variance was withdrawn with Mr. Clayberg's consent. Mr. Ritter seconded. Ayes: Ritter, Whalen, Dudick, Strother, Telesh. Noes: Lemire.

Mr. Strother commented that he voted the way he did because the applicants argument was consistent with his thinking. Mr. Lemire's argument was well taken, but the his decision was also affected by the effort made to get the environmental statements.

Mr. Ritter made a motion to approve the minutes of March 3, 2009. Mr. Whalen seconded. Approval unanimous.

There was discussion about one item on the agenda for the April 7th meeting, which has to be postponed per Mr. Myers for ECC's, so the next scheduled meeting would be April 21st.

Mr. Dudick made a motion to adjourn the meeting at 8:02 p.m. Mr. Ritter seconded. Approval unanimous.

Respectfully Submitted,

Jessica McCarthy
Secretary

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