

ZONING BOARD OF APPEALS

June 2, 2009

Present: Michael Dudick, Chairman, Dale Gleason (arrived 7:05 p.m.), Robert Ritter (arrived 7:05 p.m.), Douglas Strother, James Whalen, Brian Telesh, Deborah Ferro (alternate member)

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

Absent: Christopher Lemire

Mr. Dudick called the meeting at 7:01 p.m.

Mr. Dudick explained that Ms. Ferro is voting in place of Chris Lemire.

PLEDGE OF ALLEGIANCE

NEW BUSINESS:

- 1. An application from Belmonte Properties, LLC, requesting a use variance from Section 208-69(2) to construct a single family home in an LC zone of a previously approved subdivision, Oakwood Estates. If use variance is granted, three area variances will be required as follows: (1) from Section 208-70(A), which requires a minimum lot size of 100,000 sq. ft., the proposed lot is 20,504 sq. ft., variance required = 79,496 sq. ft.; (2) from Section 208-70(B), which requires a minimum front setback of 80 feet, 50 feet is proposed, variance required = 30 feet; and (3) from Section 208-70(D), which requires a side setback of 20 feet, 12 feet is proposed, variance required = 8 feet. The property is located at 16 Bonneau Road, Clifton Park, New York. (Permit #80730)**

The applicant did not appear for this application. Mr. Strother referred to a May 26th letter from the applicant wherein it is mentioned they would be appearing on June 16th. The secretary explained that she sent the applicant a letter on May 20th, stating that their application would be heard on June 2nd. There was discussion about this and the matter was tabled to June 16th.

- 2. An application from Raymond Gaston, requesting a variance from 208-12 accessory building setback - 80 feet required, applicant wishes to place new shed at 52 feet from front property line, variance requested = 28 feet. This section of Kinns Road also falls under 208-98 special setback lines which requires 100' setback from the road centerline. Proposed location appears to be 76 feet plus/minus from centerline, variance requested = 24 feet. The property is located at 560 Kinns Road, Clifton Park, New York. (Permit #80734)**

Raymond Gaston presented this application to construct a shed which would be used for the storage of firewood and tools. He needs setback variances. He explained that he cannot move it further back because of the in-ground swimming pool. If he had to carry firewood from the other side of the back yard would defeat the purpose of the shed. If the firewood were able to be stored neatly in the shed it would dress up the area and enhance the property.

Mr. Peller asked if this was a replacement shed or a brand new shed. Mr. Gaston stated that it would be a brand new shed. It would be a small shed; he could not store a lot in anything more than a 10 x 10.

Ms. Ferro asked Mr. Gaston what how he presently stores his firewood. Mr. Gaston explained that he has the firewood on pallets with tarps over them on the side of the garage near where the shed would be built. Ms. Ferro asked if he were to build a smaller shed would it still be functional and not require a variance. Mr. Gaston explained no, that the variance is for the setback distance and that it has nothing to do with the shed size or the shed being built. He supposes he could build a smaller shed but he does not see the practicality in that.

Mr. Strother stated that he believes you do not need a building permit for a 10 x 10 shed, but the setback is the issue. Mr. Gaston agreed and stated he appreciated the building department working with him through this process.

Mr. Dudick asked Mr. Myers if this application needed to be reviewed by the County since it is on Kinns Road. Mr. Myers stated that he did not believe so, as long we abide by the setbacks of a County road. He believes the bigger setbacks are the Town's regulation.

Mr. Dudick asked Mr. Myers for his opinion about this application. Mr. Myers stated that there is something that resembles a shed there now. He does not know if that is going to be finished or if it is there temporarily. His pool is right there and he does not have an issue with that. Mr. Myers supposes the applicant could move it closer to the pool fence but it looks as if he wants to put a door on the pool side. Mr. Gaston stated that he would like to leave a path there so he can cut the grass in between.

Mr. Myers stated the he believes the application went to the County. The secretary explained that she sent the application to the County for review but she did not hear anything back from the County.

Mr. Dudick stated that he looked at the property and asked if the wood frame structure there now is the intended shed. Mr. Gaston explained that he started to build it but was told by the Town to stop.

Mr. Dudick asked why it could not go further back into the backyard, that he has a large backyard. Mr. Gaston explained about the distance in carrying the firewood. Mr. Dudick stated the he feels there is 20 feet from the structure he has there now up to the fence which surrounds the pool. Mr. Dudick believes he could move the shed 20 feet further away from the road. Mr. Gaston explained that if he did that it would be directly in view of the neighbors who sit out there a lot. There was discussion between Mr. Dudick and Mr. Gaston on this point and Mr. Dudick asked Mr. Gaston if the neighbors would have a problem with him moving the shed back 20 feet. Mr. Gaston stated that he has good neighbors who would not have a problem with it. Mr. Dudick asked Mr. Gaston if he would be willing to move the shed back 20 feet so that only a 4-foot variance would be needed. Mr. Gaston explained that this would be a lot of work.

Laura Gaston stated that if they moved it 20 feet back they would have to remove all of the shrubbery there now to accommodate the shed. They would like to leave some space. Mr. Dudick stated that the bushes could be moved and the shed could be put up against the fence to accommodate for the variance. Mr. Gaston again stated that this would be a lot of work. Mr. Dudick stated that part of the work to be done would be because the shed construction began without a permit. Mrs. Gaston explained that they were unaware of the setback issues. They knew the shed was within the size constraints and they did not need a permit for the size. Mrs. Gaston asked in general, why setback variances are needed. Mr. Dudick explained this to her.

Mr. and Mrs. Gaston stated that the shed is set back further than their house. Mr. Gaston stated that if there is an issue with the shed, he would have to move his house and garage. Mr. Dudick stated that this is a good argument.

Mr. Whalen stated that he appreciates that the applicant was not trying to do anything wrong by not getting a permit. He asked Mr. Gaston how much money has been put into the shed and how much money would be spent if he were forced to relocate it. Mr. Gaston replied that it would be hard to say. He still has to put about \$1,000 into it. He probably used a lot of building materials left over from work and some jobs. It is a hard question to answer, more labor than money. Mr. Ritter added that the point is it would be some sort of expense if he had to move it.

Mr. Telesh referred to the map and asked Mr. Myers about the centerline and the right-of-way. Mr. Myers stated that the Town requirement is 80 feet from the property line, and because Kinns Road is considered a special road in the Town it is 100 feet from the centerline of Kinns Road as well -- whichever is the most requested is what is usually worked with.

Mr. Strother asked what the weight of the County would be. Mr. Dudick replied that the Board votes to approve contingent upon the County's recommendation. If the Board were to approve

this application there could be a contingency so that if the County were to deny it, it would nullify the Board's approval. Mr. Strother asked Mr. Gaston if he understood that and he replied that he did.

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

Mr. Dudick stated that despite the fact that he would have been more comfortable with the shed being a little further back, the applicant made an excellent point about the house being closer to the road than the shed. After further review, he does not have a problem with this.

Mr. Strother made a motion to approve the application as submitted contingent upon the County's approval. Mrs. Gleason seconded. Ayes: Gleason, Ritter, Whalen, Dudick, Strother, Telesh, Ferro. Noes: None.

The secretary asked if the notice of decision would mention the contingency. Mr. Peller replied that the notice of decision would be sent after the County approves or denies it.

There was discussion about application #80730, which would have to be renoticed for the third time. Mr. Myers stated that it would just be a matter of holding it over to June 16th. Mr. Dudick stated that the applicant is under the impression that it is on for June 16th and he would not hold that against him. He asked if there was anyone in the public who would like to speak. Mr. Peller stated that the public could not speak about the application without the applicant being present. There was discussion about the Planning Board's recommendation, copies of which were distributed to the ZBA.

Mr. Dudick made a motion to hold application #80730 to June 16th. Mr. Telesh seconded. Approval unanimous.

There was discussion about the July meeting, which will be held on July 14th.

Mr. Dudick made a motion to approve the minutes of April 21, 2009. Mr. Whalen seconded. Ayes: Gleason, Ritter, Dudick, Strother, Whalen, Ferro. Noes: None. Abstentions: Telesh.

Mr. Dudick made a motion to adjourn the meeting at 7:33 p.m. Mr. Strother 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