

ZONING BOARD OF APPEALS

October 6, 2009

Present: Michael Dudick, Chairman, Robert Ritter, Christopher Lemire, Douglas Strother, Brian Telesh, James Whalen, Deborah Ferro (alternate member)

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

Absent: Dale Gleason

Mr. Dudick called the meeting at 7:09 p.m.

PLEDGE OF ALLEGIANCE

Mr. Dudick advised that alternate member, Deborah Ferro, will be voting in place of Dale Gleason.

Mr. Dudick asked if anybody was present for the Gerald Currier application and there was no reply. Mr. Dudick suggested they may be running late and so the Board would hear the item of new business first and then go back to the Currier application.

NEW BUSINESS:

1. **An application from Larry and Linda Upton, requesting an area variance for an enclosed deck. The variance requested is from Section 217-98 (Crescent Estates South PUD – underlying zone R-1) which requires a 25-foot rear setback. The proposed deck would reduce setback to 18 feet – variance requested = 7 feet. The property is located at 6 Montgomery Way, Clifton Park, New York. (Permit #80748)**

Linda Upton presented this application with her husband, Larry Upton. They have resided at 6 Montgomery Way for 13 years. When they purchased the house, the rear of the property had an in-ground pool and a wood deck. A month ago, they decided to extend the deck to the side. When they went to the building department to apply for a permit, they were told that the new and existing deck is 18 feet away from the rear property and that they would have to get a variance for 7 feet. Mark Kazmierczak from code enforcement came out to their residence and verified the setbacks. Mrs. Upton stated that they will not be going any closer than the original deck line.

Mr. Dudick asked for public comment and there was none.

Mr. Dudick made a motion to close the public hearing. Mr. Ritter seconded. Approval unanimous.

Mr. Dudick asked Mr. Myers for his comments.

Mr. Myers stated that this is a simple application and that it is just a matter of getting it correct on paper. He believes the original deck was built without a permit but it is preexisting. When the Uptons came in for the permit to expand the deck they caught the problem and are trying to rectify the issue.

Mr. Lemire asked if they are expanding the deck. Mr. Myers replied yes, that they are going to expand the existing deck and add a new one onto it.

Mrs. Upton stated that they will enclose it.

Mr. Dudick stated that he looked at the property with the Uptons' permission. They showed him the backyard which is very well enclosed. Mr. Dudick does not believe that this will be an intrusion on any neighbor.

Mr. Dudick made a motion to approve the application as proposed by the applicant. Mr. Ritter seconded. Ayes: Ritter, Whalen, Dudick, Lemire, Strother, Telesh, Ferro. Noes: None.

Mr. Dudick and the secretary stated that another application, Sibson, has been withdrawn.

OLD BUSINESS:

- 1. An application from Gerald Currier, requesting a use variance from 208-43.2 (permitted uses) to allow a business involving boat sales and service, construction equipment sales and service in a hamlet / mixed use zone. They are believed to be a heavier commercial use than the zone was intended for. The property is located at 1111 Route 146A, Clifton Park, New York. (Permit #80736)**

At this time Mr. Dudick stated that he did not notice anybody come in for this application and asked if anybody had any knowledge regarding this. Mr. Strother asked about the status of this application and what the applicant's rights are, as Mr. Strother missed the last meeting. Mr. Dudick stated that this goes back to before the last meeting.

Mr. Dudick asked Mr. Myers if he had anything to add to the Currier application. Mr. Myers stated that he has not heard from Mr. Currier. He does not know if Mr. Currier still wishes to pursue this application but Mr. Myers does know that some things have changed that the Board is probably unaware of. Mr. Myers stated that right now he has an application before Planning to subdivide the property and put in 4 building lots for homes, which Mr. Myers does not expect to be an issue as long as he can prove viable wells and septic on the property. Also, Mr. Myers stated that the building that was the subject of most of the application is its own separate lot. Mr. Myers has spoken to Mr. Currier about other potential tenants he had for the building that were acceptable uses – one of them was another bottle recycling center like the one at North Country Commons. Mr. Myers suggested that perhaps he has found a tenant that is an allowable use, plus he is taking the rest of the property and making building lots out of it so his plans may be different. This may be why Mr. Currier is not here but Mr. Myers does not know as he has not heard from Mr. Currier.

Mr. Dudick asked if this is the first time he missed. Mr. Myers replied correct.

Mr. Dudick asked the secretary if Mr. Currier was notified of this meeting. The secretary replied yes. Mr. Lemire discussed the prior emails. The secretary stated that the matter was tabled to August 18th, postponed to September 1st, and then postponed to October 6th. Mr. Lemire referred to an email from the secretary to Mr. Currier dated August 31st advising him that it has been placed on the calendar for October 6th.

Mr. Dudick stated that this application has been postponed several times to get to this missed meeting, and he feels comfortable voting on the application at this point unless anybody has an issue that they would like to allow for one more postponement. Mr. Strother feels the Board has spent a lot of time on this. He has also been to the site and would like to vote on the application.

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

Mr. Telesh feels that there are a lot of permitted uses for this property, and that based on the merits of the application and the makeup of the property, even if the applicant were to appear today he feels comfortable denying this application based on the facts presented to the Board previously. Mr. Dudick agreed.

Mr. Strother made a motion to deny the application. Mr. Telesh seconded. Ayes: Ritter, Whalen, Dudick, Lemire, Strother, Telesh, Ferro. Noes: None. Application denied.

Mr. Ritter made a motion to approve the minutes from September 15, 2009. Mr. Whalen seconded. Ayes: Dudick, Ritter, Lemire, Telesh, Whalen, Ferro. Noes: none. Abstentions: Strother.

Mr. Dudick made a motion to adjourn the meeting at 7:21 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