

ZONING BOARD OF APPEALS

May 4, 2010

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

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

Absent: Dale Gleason, Douglas Strother, Brian Telesh

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

PLEDGE OF ALLEGIANCE

Mr. Dudick advised that Ms. Ferro would be voting in place of Douglas Strother. He also advised that there are only five voting members present and four yes votes are needed for an application to be approved. The applicant chose to go forward with the application.

NEW BUSINESS:

1. An application from James and Nicole Haley, requesting variances from two requirements of Section 208-11: (1) minimum lot size without sewer and water is 40,000 sq. ft., 12,632 sq. ft. is available – variance requested = 27,368 sq. ft.; (2) 30-foot front setback is required in a CR zone, 27 feet is available – variance requested = 3 feet. A variance also required from 208-16E(2)(a) “parcel less than 3 acres but more than 20,00 sq. ft. may be developed with a one-dwelling unit” – lot is 12,632 sq. ft. Pre-existing lot is non-conforming and requires use variances in addition to area variances. A Variance required from 208-97B "nonconforming use may not be enlarged or extended" The property is located at 157 East Side Drive, Ballston Lake, New York. (Permit #80768)

The secretary read the legal notice as it appeared in the *Daily Gazette* on April 29, 2010.

Nicole Haley presented this application with her husband, James Haley. They would like to construct an addition to their home which is currently a one-bedroom home with one level and a basement. They have two children who share the bedroom. They would like to add two bedrooms and a bathroom.

Mr. Haley stated that they have resided at the residence for five years and have been trying to accomplish this project for three years. They have been advised to put in a new septic system, which they have done, at a cost of approximately \$6,000 to \$7,000. They applied for a variance and were told they also need a use variance. They notified their neighbors by mail and the mailing receipts were entered into the record. Mr. Haley stated that they love where they live and do not want to sell the house. They decided to stay and add to their house as they cannot afford to buy a three-bedroom house.

Mr. Peller asked the Haleys if they have applied for a variance before and been denied. Mr. Haley replied no, and Mrs. Haley added that they contacted the building department three years ago and were told this would not be a problem. She spoke to Pat in the building department who is well aware of the situation. The Haleys were advised they need to put in a new septic system, which they did. When they had enough money for the addition they handed in their prints and were then advised that variances were needed.

Mr. Dudick asked Mr. Myers if \$6,000 is a normal price for a septic system or if there was a complication. Mr. Myers believes that because of the area there was probably a fill system. This is on the more expensive side and a leech field and tank had to be put in. Normally, you would just have to replace parts of a system but in this case they had to do it all, and this system that they put in is designed for a three-bedroom house.

Mr. Dudick asked if there is a special environmental issue. Mr. Myers said that the environmental issue was that they did not have a functioning septic system and the lake is there. Mr. Haley advised that they had one but the engineer concluded it was too deep.

Mr. Dudick asked about the age of the home. This was discussed and it is believed that the house was built in 1979.

Mr. Ritter asked Mr. Myers if the use variance standards apply. Mr. Myers replied yes. Mr. Ritter asked the Haleys if they have documentation regarding the sale of their house. Mrs. Haley advised that they contacted two different realtors. They were advised that their house was only worth \$150,000. They cannot afford to buy a home for \$150,000 in this community. They want their kids to attend the schools in their current district. They have no documentation because realtors looked at their home and told them what it could sell for and they could not afford a new home based on that and their own internet research. They never actually hired a realtor.

Mr. Ritter asked for an approximation of how much the Haleys have spent on this proposed project so far, including the sewer and engineer. Mrs. Haley believes they have spent approximately \$13,000, which also includes a new boiler which had to be replaced. They have applied for a couple of loans, as well.

Mr. Dudick asked for public comment. Mr. Richard Haskins, Nicole Haley's father, spoke in favor of the application. He wanted to mention that the 3-foot variance requested is part of the existing house, which was built too close to the road. He talked about the Haleys putting in a sewer system which would support a three-bedroom home in anticipation of this addition. He discussed Mrs. Haley's contacts with the building department. The Haleys were not aware there was a use variance needed.

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

Mr. Lemire asked Mr. Myers if the lot was empty could a house even be built without a use variance and Mr. Myers replied that it depends. If it was a preexisting non-conforming lot prior to zoning changes there is a chance that the property could be built on. Mr. Myers believes that the setback variances are minor. This is a condition that has been seen in this area many times. Mr. Myers believes that while financial evidence satisfaction is up to the board, he believes the applicant. He also believes that this is unique because the lot is very small and that the hardship has been created by the limits of the lot. He does not see how this will alter the neighborhood as renovations are taking place in that area, which is an improvement. Mr. Dudick agreed with Mr. Myers.

Ms. Haley discussed prior renovations to the home before they moved there and it was suggested that the home is older than 1979. Mr. Dudick is pleased that they want to renovate and understands that their home predates the current zoning law. He is comfortable approving the variance requests.

Mr. Ritter stated that he agrees with Mr. Myers that the applicants have made a significant investment in the property and he understands the size limitations. He does not see any adverse effect and does not believe that the hardship is self-created.

Mr. Dudick made a motion to approve the application as submitted. Mr. Ritter seconded. Ayes: Ritter, Whalen, Dudick, Lemire. Noes: Ferro. Variances approved.

Mr. Ritter made a motion to approve the minutes of April 20, 2010. Mr. Whalen seconded. Approval unanimous.

Mr. Dudick made a motion to adjourn the meeting at 7:35 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