

**ZONING BOARD OF APPEALS**

June 21, 2011

Present: Michael Dudick, Chairman, Randy Gifford, Christopher Lemire, Eric Prescott, Jennifer Vucetic

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

Absent: Deborah Ferro, Douglas Strother

Mr. Dudick called the meeting at 7:10 p.m.

**PLEDGE OF ALLEGIANCE**

Mr. Dudick informed the applicants that the board has seven members and an alternate, and there is currently one vacant seat. He said ordinarily Ms. Ferro, who is the alternate, would be designated to sit in for the vacant seat. However, Ms. Ferro and one member are absent, leaving five sitting members this evening. He informed that, for a variance to be approved, it must receive a minimum of four yeas votes (regardless of the number of members present) and explained that the more sitting members present, the better, percentage-wise, the chance of approval. He told the applicants they have the choice to postpone their applications until a later time or proceed tonight. He asked each applicant if they wished to defer. All three applicants indicated they wished to proceed.

**NEW BUSINESS:**

The secretary read the legal notice as it appeared in the *Daily Gazette* on June 18, 2011.

**1. An application from Erin and Brian Smith for a use variance from Section 208-97B (2)(b) and 208-97D (3). Applicant wishes to demolish existing structure and rebuild home in almost the same footprint but with a second story. Parcel is located in a CR zone. Applicant requires a variance from Section 208-11 for lot size. 40,000 SF required since property does not have public water or sewer, 0.28 acres or 12,197 SF available, variance required = 27,803 SF."**  
**Property is located at 81 East Side Drive, Ballston Lake, NY (Permit #80823)**

The application was presented by Wilson Mathias, a lawyer with offices at 726 Bay Road, Queensbury, representing Erin and Brian Smith. He stated this is a lot in an existing subdivision created in 1927 when the concept of zoning was different from what it is now. He demonstrated on a map that over 80% of the lots have residences on them, and 100% of them do not comply with current zoning board laws regarding square foot requirements. The Smiths are asking to build a single family house. The current house is a little over 1000sq ft. They are proposing to build a larger two story structure around 2,000 sq ft which will meet all of the area requirements except for the front yard setback. This is due to the proposed proposed attached two car garage which will be about six feet from the road. Side yard setbacks will be met. The current home is a little close on the south side to one of the neighbors. His understanding is that they had approached the neighbors and none has opposition to the building. They are proposing what they believe is an improvement and will be energy efficient.

Mr. Dudick asked Mr. Myers for a clarification if it is a use variance because it is a nonconforming lot. Mr. Myers stated that is correct as they want to increase the size of the structure which would make it more nonconforming; therefore they need a use variance. He added this is the same situation as previous applicants on that street who have appeared before the board.

Mr. Lemire asked if they need an area variance for the sides. Mr. Myers stated "yes". He explained that the garage needs an 11 foot setback variance, the area variance is for the lot size, and the use variance is for the nonconformance.

Mr. Dudick asked about the existing garage. Mr. Mathias stated that the hope is that the board will allow it to exist so they can keep that for storage. Mr. Myers added that it had been there for a long time, and as long as it is not unsafe, there is no problem.

Mr. Dudick suggested if they do that, they would have four garage bays on the property. Mr. Mathias said it is not big enough for two cars. Mr. Brian Smith (owner) spoke up and added that is more like a large shed.

Mr. Dudick expressed concern about adding a two car garage and keeping the other garage which he suggested is bigger than a shed but looks like a two car garage. He said if there could be any "cleaning" up to push structures away from the road, it would be a "win win". Mr. Mathias said that if that is a concern of the board they would agree to demolish it. Mr. Smith agreed.

Mr. Dudick asked if they considered placing the new garage farther from the road.

Mr. Mathias said the well is on the opposite side and the septic is located on the northern part of the lot. He suggested moving it would put it closer to the lake. Mr. Dudick asked if it was considered. Mr. Mathias assured that it had been.

Mr. Dudick announced it is a public hearing and asked for comments.

Mr. Myers asked if there had been a study done regarding the safety of the existing structure, or if it is more of a desire rather than a need. Mr. Mathias stated a study had not been done as to structural soundness.

Mr. Dudick expressed concern with leaving the old garage which he estimates is 40 x 40. He said he can understand the need for a two car garage and even the need for a storage shed, but asked if that is the best place to put a storage shed.

Mr. Myers said the other problem they will have if they do want a storage shed is getting the required setbacks on the lot.

Mr. Dudick asked Mr. Myers how he felt about leaving the garage. Mr. Myers stated that unless it is unsafe, he doesn't have a problem with it as there are several houses on that road with garages that are right on the road. He added most of the houses in the area they have discussed have been replaced because they were unsafe. He said he didn't believe this house fit that scenario as others have in the past. This is a demolition not out of need, but to create a larger living structure, which is fine. He said he wanted the board to understand it is a different parameter than what they have looked at in the past.

Brian Smith stated he is in the process in purchasing the home which is dependent on getting the variance. They took a tour of the house and it is being sold "as is". He stated that he could put as much into the house to remodel it as he would build a new one. He indicated that 1000 sq ft is too small for a family of four. They didn't do structural inspection because the sale is "as is".

Mr. Myers told the board that his intent was not to say that it has to be structurally unsound in order to get a variance, but just to let the board know that usually when they have them on East Side Drive it is because the house cannot be lived in as it stood. He added that investing just as much money for remodeling as for a new one doesn't make any sense. He reminded Mr. Smith that if he increases the size of the house he must prove to the building department that the septic system can handle the larger number of bedrooms or present an engineering design or modification. He must also prove the viability of the well. He added there have been well problems out there. He stated as long as they feel they can do this, he does not have a problem with what they want to do.

Mr. Lemire asked why they are going for a use variance. Mr. Myers stated it is for expansion for a nonconforming structure which is required if an applicant is going to demolish more than 50% of the structure. He referred to the nonconforming use law.

Mr. Lemire said that because it is now an application for a use variance, they have very stringent requirements to evaluate. He read the code out loud. He said what they want to do is wonderful,

but questioned whether it meets the use variance criteria. Mr. Myers said every other one they have done here has been a use variance. Mr. Lemire countered that it was because the others were not liveable.

Mr. Myers stated he does not know about this one. He added all the others have been visibly easy to tell by looking at them.

Mr. Dudick said that in his opinion this one looks very old and added that if it is structurally sound he would give it a low grade for structural soundness. He noted that parts of the foundation are caved in and it looks like it is minimal. He said he is willing to assume it is not sound based on his own inspection.

Mr. Lemire asked if it was currently occupied and was told the owner is in a nursing home. Mr. Peller asked how long it has been vacant and Mr. Smith said "a couple of years".

Mrs. Kathy Kelly spoke. She has lived at 99 East Side Drive for the last 32 years. She stated the house looks the same as it did then. She said she did not think anyone in the room would want to live in the house and informed that the roof leaks and it could have mold.

Mr. Mathias said they did not get a structural inspection because it would show there was more than \$1500 of repairs required and they would say it can't be a contingency.

Mr. Dudick said he understands Mr. Lemire's concern about the use variance and the requirements, but he is very comfortable with the idea there is no rehab because of the amount of fixing up that is required. He sees it as an area variance which crosses into a use variance because of the amount of repair necessary. He is looking at the scope of rehabilitating the property and not developing any more of a footprint on it than is already there. He added that is the reason why he is looking at having the current garage removed since there will be a new garage.

Mr. Mathias said they would accept that as a condition of the grant.

Mr. Lemire asked if they were to build the house exactly on the old footprint, would they still need a use variance. Mr. Myers said yes because once they go to a second story they increase the square footage which makes it more non conforming. He added that the house built in 1910 and the roof leaks and has been vacant for a couple of years, chances are it is exactly like the others. He suggested a letter saying it was uninhabitable would help but there is nothing in the law that says it has to be uninhabitable.

Mr. Dudick said this situation is unique.

Mr. Myers informed that if they are going to put a second story on the house, they would be rebuilding the whole house especially since it was built in 1910. He said it makes sense to tear it down and start new. He indicated it is the same footprint except for the garage.

Mr. Prescott asked the age of the owner. Mr. Mathias did not know but knew the house was purchased in 1944. Mr. Prescott suggested that since she went to a nursing home, probably for years before that she was not maintaining it.

Mr. Dudick said he would like to make an amendment to the application to remove the existing garage. There were no objections from the board.

Mr. Dudick made the motion to close the public hearing which was seconded by Mr. Lemire. All approved.

Mr. Dudick made the motion to approve the application as submitted with the amendment that the current freestanding garage structure be removed upon the building of the new structure with the new garage. Mr. Gifford seconded.

Mr. Myers added that the front setback variance of 11 feet is needed for the garage addition. He said the sketch shows 19' and the code is 30 foot front setback so they need an 11 foot variance. Mr. Dudick added the second amendment to the motion.

Mr. Dudick verified the post office receipts for notice of building intent to neighbors.

Ayes: Vucetic, Dudick, Gifford, Prescott Noes: Lemire

Application approved with the addition of the two above mentioned amendments.

The secretary read the legal notice as it appeared in the *Daily Gazette* June 18, 2011.

**2. An application from Boni Enterprises, LLC for area variances from bulk standards (lot size) of the B-3 zone (for a B-1 use for office building) from minimum lot area and from keyhole lot setbacks. Variances required:**

- a) 208-38B Parcel area: 40,000 sq ft required, 25,010 available; variance = 14,990 sq ft
  - b) 208-86B front setback: 50' required, 27' available; variance = 23'
  - c) 208-86B rear setback: 50' required, 10' available; variance = 40'
  - d) 208-86B side setback: 50' required, 10' available; variance = 40'
  - e) 208-38C front parking: 30' required, 3' available, variance = 27'
  - f) 208-38D side parking: 20' required, 5' available; variance = 15'
  - g) 208-38E rear parking: 30' required, 5' available; variance = 25'
- Property is located at 313 Vischer Ferry Road, Clifton Park, NY. (Permit #80824)**

Mr. Kevin Daley representing Boni Enterprises presented the application. He explained the history as to how the parcel came about. He stated that in 2004 Mr. Boni and Mr. Van Patten owned two pieces of property off Grooms Road close to corner of Vischer Ferry Rd, Stewarts being on the corner. There was a small fire department. He indicated the area was developed into 15 lots and they had a request from the owner, Bill Cole, on behalf of the fire department. They requested they cut some property out to be sold to the fire department which was looking to put a bigger substation up and they needed about an acre. Mr. Boni asked the planning board to divide out a lot of 25,000 square feet which is .57 acres for the fire department. The development was built (Heavenly Way) with a lot intended for the fire department. The fire

department changed its mind and built elsewhere. Instead of combining the two parcels to be sold together, the fire department sold their parcel separately. Mr. Boni was left with a 25,000 sq foot legal lot. He stated they would like to use it for an allowed purpose. The zoning is B3, transition zone, which allows R1 20,000 square foot lots. He stated they could put a home there, but the entrance would have to be through Stewarts because the road frontage on Vischer Ferry road has a classified DEC stream and they don't want to cross the stream or violate the wetlands.

They propose an office building to go on the dogleg lot. He demonstrated with pictures that there is a row of plantings between the lot and the neighboring residences. He stated this is a legal lot for the building they are proposing, a 2,996 square foot office building, about the size of the residences next to it. He stated the problem is how to fit the building on the keyhole lot and meet the setbacks. He added that because it is office use, they have to have an appropriate number of parking spaces required by the zoning law, which requires more setbacks.

He stated it is an allowed use which he thinks is reasonable and presented a narrative to discuss the requirements:

- 1) It does not present an undesirable change to the character of the neighborhood and is an appropriate use with screening
- 2) There is no other way to achieve the desired use by something other than a variance. He states once you consider the setback requirements there is nothing else you can build there.
- 3) It is substantial but they are only asking for what is necessary
- 4) It will not have an adverse impact on the neighborhood as it is an allowed use under the zoning law
- 5) It is not a self created hardship as the parcel was a legally existing lot created by the action of the Clifton Park Planning Board
- 6) The strict application of the Clifton Park zoning regulations will result in practical difficulties as they cannot comply unless they have variances. The strict application of the requirements will result in economic injury because they cannot use the property without a variance. The granting of the variance will not be a substantial detriment to the public.

He added that they have an agreement with Stewarts and a letter from Tom Lewis allowing them to use their parking lot for ingress and egress to the property. He stated if they get the variance, they have to go to the Planning Board for approval.

Mr. Lemire asked if it is a one story building and was told it is.

Mr. Lemire asked where the dumpster would be. Mr. Boni stated there would be none as he will be the tenant and will not need a dumpster as the office is small.

Ms Vucetic asked how many people would be coming in and out.

Mr. Boni answered that it would probably be no more than two or three people.

The parking spaces were discussed. Mr. Daley stated they have planned for 15 as that is required according to the zoning law. Mr. Myers informed that the code is ballpark and at the Planning Board's discretion, they could reduce it.

Mr. Daley said they would like to put only five or six spaces if the Planning Board will allow them to reduce the number.

Mr. Lemire asked if they plan to put signs on Stewarts property, and was told "no"

Mr. Lemire mentioned the frontage on Vischer Ferry , which they could not use. He asked what effect this would have on Stewart's property. Mr. Myers stated they have done that before. Mr. Daley stated that several years ago they had granted Stewarts use of their stormwater management system, however Stewarts are charging them for the use of the right of way through their property.

Mr. Dudick informed it is a public hearing and asked for comments. There were none. Mr. Dudick made the motion to close the public hearing, seconded by Ms. Vucetic. All approved.

Mr. Myers stated this is an appropriate use of the property and that they are in a bind as to what they can do with it. Mr. Dudick agreed.

Mr. Lemire asked if the pictures submitted are from the homeowners' perspective. He was told yes. Mr. Daley stated a SEQRA was done in 2004.

Mr. Lemire asked if there was any way to move the building away from the rear and to the north side. Mr. Daley stated there isn't because there is a buffer zone.

Mr. Dudick made the motion to approve the application as submitted. Mr. Prescott seconded.

Ayes: Prescott, Gifford, Dudick, Lemire, Vucetic Noes: none  
Application approved as submitted.

The secretary read the legal notice as it appeared in the *Daily Gazette* on May 28, 2011.

**3. An application from Marlys Joanne McGinnis for a front setback variance to extend existing deck for residential home located in R1 zone. Applicant requests variance from 208-11 requiring 50' front setback; 30' available, 20' variance required. House fronts on both Broadleaf Dr and Broadleaf Court.**

**Property is located at 13 Broadleaf Drive. (Permit #80825)**

Mrs. Marlys McGinnis presented the application. She stated they have owned the property for 17 years. The front of the house is on Broadleaf Drive and the back of the house is on Broadleaf Court. She said the house is a corner lot and she didn't realize she needed a permit to extend the deck.

Mr. Dudick stated that the property is more of a peninsula since it has a road on three sides. Mr. Lemire asked about the location of the driveway. Mrs. McGinnis stated she has an executive ranch that is flipped so that instead of driving into the garage in the front, it goes into the back. The family room is in the front of the house where the garage should have been.

Mr. Charles McGinnis said when they moved in the driveway extended along the side of the house. They didn't do anything to it except re-pave. He stated where the proposed addition is he had already had crushed stone put down as they didn't know it would be a problem. There is a lot of room to the pavement, but because of the radius of the court 30 feet of their lawn is taken up by the right of way.

He said he presented letters from neighbors stating they have no opposition to the deck extension. Mr. Dudick asked the location of the neighbors who had written the letters. One is in the court, one on the south side and the other next to it. Mr. Lemire asked if they had asked people in #5, #7, #9 and they said they had not asked for letters from them, but could get them.

Mr. Dudick noted there were no members of the public present and proposed closing the public hearing. Seconded by Mr. Lemire. Public hearing closed.

Mr. Myers stated that their coming to the board was his doing. He said that the variance would correct existing issues with the porch that was built without a permit before the McGinnis lived there. He said he has no problem with what they are trying to do.

Mr. Dudick made the motion to approve the application as submitted. Seconded by Mr. Lemire.

Ayes: Vucetic, Lemire, Dudick, Gifford, Prescott Noes: none

Application approved as submitted.

Mr. Dudick made the motion to approve the minutes of May 17, 2011, Mr. Lemire seconded. Unanimous approval of the minutes

Approveal of the Minutes from June 7, 2011 was deferred to the next meeting or until such time that there are at least 4 members (who attended that meeting) present to approve them.

The next meeting is July 19, 2011.

Mr. Dudick made a motion to adjourn the meeting at 8:22 p.m. Mr. Gifford seconded. Approval unanimous.

Respectfully Submitted,

Susan White  
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