

ZONING BOARD OF APPEALS

Approved

June 19, 2012

Present: Michael Dudick, Chairman, Michael Bloss, Mario Fantini, Randy Gifford,
Amy Standaert , Jennifer Vucetic

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

Absent: Chris Lemire ; Doug Strother

Mr. Dudick called the meeting at 7:00 p.m.

PLEDGE OF ALLEGIANCE

OLD BUSINESS:

NEW BUSINESS:

The secretary read the legal notice as it appeared in the *Daily Gazette* on June 14, 2012.

1) An application from Mark H. Deyo for a variance from Section 208-12A for shed/pool house. Accessory structure setback required=80' from front property. Existing pool setback =40', proposed sited setback = 27', variance required =53' which would bring pool into compliance also.

Property is located at 1 Applewood Drive, Rexford, NY 12148 (Permit #80874)

Mr. Mark Deyo, owner of the property, presented the application. He informed that this is a corner lot (Applewood and Crescent) he has an existing inground pool that was installed in 1986. When he went to the town to apply for a shed permit, he found out there had been no variance filed for the pool.

Mr. Peller asked if there is a shed there now and Mr. Deyo said there is not, just some equipment.

Mr. Bloss asked if the shed will be there to support the pool.

Mr. Deyo said no, it will hold equipment

Mr. Dudick said the shed will be closer to Crescent than the pool will be and asked why it can't be put on the other side.

Mr. Deyo said the aesthetics are better than if it is between the pool and the house and showed a diagram.

Mr. Dudick asked about moving the location and Mr. Peller asked if there is a leech field and was told yes.

Mr. Deyo explained on the diagram that he doesn't know if he could meet the rear setback.

Mr. Dudick asked about moving it more behind the house where there would be a lesser variance request.

Mr. Myers pointed out that if they grant the variance for the shed, they would then meet the variance for the pool also. He added that he has a tendency to go where Mr. Deyo wants to put it as it might interfere with the leech field otherwise.

Mr. Dudick said there is a uniqueness with corner lots since they have have two front setbacks.

He asked when Mr. Deyo purchased the property and Mr. Deyo said he bought it in 2006.

Mr. Dudick said he has a level of comfort with this.

Mr. Dudick announced a public hearing. No comments. Mr. Dudick made the motion to close the public hearing and seconded by Mr. Bloss. All approved. Public hearing closed.

Mr. Dudick made the motion to accept the application as submitted. Mrs. Vucetic seconded. A vote of yes is to approve.

Ayes: Bloss, Vucetic, Gifford, Dudick, Standaert, Fantini Noes: none

Application approved as submitted.

Mr. Dudick explained this is a seven member board with one alternate. Today there are five members present and one alternate and two members absent. Mr. Fantini, alternate, has been designated to sit in for Mr. Lemire. He further explained that in order to receive approval, the application must receive four yes votes, regardless of the number of members present. Today, there are six voting members so four votes out of six are required. Applicants may defer if they wish to wait until another meeting where there might be more members present. He added there is never a guarantee there will be more members present at any one meeting.

The secretary read the legal notice as it appeared in the *Daily Gazette* on June 14, 2012.

2) **An application from Daniel & Diane DeRusso for variances from Section 208-12A for above ground pool, deck and new shed. Accessory structures require 80' setback from front property line. Proposed setbacks are pool=60'; deck=50'; shed=10'. Maximum variance required = 70'.**

Property is located at 6 Toms Way, Clifton Park, NY 12065 (Permit #80875)

The application was presented by Daniel DeRusso, owner of the property at 6 Toms Way.

Mr. DeRusso stated that they would like the pool to be 75' from the road instead of 80' and the shed would be between the pool and the fence. He showed there is a driveway on the side, and the deck would be straight to the pool and doesn't need a variance.

Mr. Myers said he thought Mr. DeRusso's measurements were off and he would take 15' off the numbers. He explained that the maximum is 70' from the shed and once granted, it covers all else.

Mr. Dudick said if it was just the pool and deck it would need only a 20' variance and that it is a corner lot. He asked why he wants to place the shed close to the road.

Mr. DeRusso showed where he wants it closer to the driveway and there will be a privacy fence. He said he will store all his equipment and closer to the drive works better.

Mr. Myers said he has a unique yard and the neighbors have a pool too. The shed is the only thing close to the road. He added he has no issue with it and there is a privacy fence.

Mr. DeRusso said the back fence is chain link because of the woods but along the road and driveway it will be a privacy fence.

Mr. Dudick announced the public hearing and asked for comments. There were none. Mr. Dudick made the motion to close the public hearing. Mr. Bloss seconded. All approved. Public hearing closed.

Mrs. Vucetic made the motion to accept the application as submitted. Mrs. Standaert seconded.

Ayes: Dudick, Gifford, Vucetic, Bloss, Standaert, Fantini Noes: none
Application approved as submitted.

The secretary read the legal notice as it appeared in the *Daily Gazette* on June 14, 2012.

- 3) An application from Corey Reid for variance from Section 208-16E(2)(c) for single family home with garage which requires 50' setback. Requested setback = 25', variance required = 25'.
Property is located at 498 Miller Road, Clifton Park, NY 12148 (Permit #80876)**

Mr. Peller mentioned a note from the building department, which indicated that 498 and 500 don't have separate lots yet, and asked if the subdivision had been approved by the town. He suggested that any motion made should indicate that it has to do with the land owned by Corey and Lisa and not by land owned by Mario under 270.000.68 so the variance does not go over the entire 10.56 acres.

Mr. Corey Reid, applicant, presented the application. He said they received approval for the subdivision by the Planning Board on May 23. He stated at the time they didn't realize they needed a 50' setback on all property lines because of the one time single lot family zoning

exemption. He informed that they wished to build the house on the narrow area because the rest is wetlands. He added that if they put the house 50' back, it would put it closer to the wetlands. He continued that there is a financial hardship if they have a 50' setback in that they would have to move the driveway back at least 100' at additional cost. He added it also would require extra cost for power and sewer lines. He added that it is better to build where the land is higher.

Mr. Peller asked if there has been a closing or is the land under contract. Mr. DeRusso answered this is a family transaction.

Mr. Peller said his concern is that, if the board approves the variance, and they don't receive the property, the variance will run with the land.

Mr. Myers suggested granting the variance contingent on the sale of the property to the DeRussos.

Mr. DeRusso said it is a family transfer. He said he is going through with the process, he needs to develop the land, have water and is designing the house.

Mr. Peller said there are two contingencies: 1) receiving a tax ID number 2) Mr. DeRusso buying the land.

Mr. DeRusso explained the one time family plot exemption, minimum two acres.

Mr. Dudick asked if it is only available for family members. Mr. Myers said that is correct.

Mr. Peller asked Corey's relationship, and was told he is Mario and Ida's son-in-law.

Mr. Myers said the tradeoff for one time family exemption is that all setbacks have to be 50'. He explained that if he had to comply with the 50' and get the house he wants, he would have to move the house south another 25' which would put him in the wetlands so he would have to back the house up into the wider part of the lot. CR ordinarily requires 30' setback, but this exemption requires 50'. He further explained he would have to put in a longer, wider driveway and longer lines for service facilities.

Mr. DeRusso said he has only 2 1/2 feet elevation so he wants to have the best drainage possible and wants to be away from the wetlands.

Mr. Bloss asked if he had a more traditional shaped lot, would there be an issue with front setback? Mr. Myers said yes.

Mr. Dudick announced a public hearing. There were no comments. He made the motion to close the public hearing. Mrs. Vucetic seconded. All approved. Public hearing closed.

Mr. Myers said they need to get proof of potable water and septic before they can get a building permit.

Mr. DeRusso asked if it was possible to ask for ten more feet of variance.

Mr. Dudick stated the board likes to come up with the least necessary variance. He informed they can vote on the 25', but Mr. DeRusso would have to come back with an amended application if he wishes less because of legal requirements in that the change would have to be noticed in the newspaper and posted on the website and town. He added that a small change of a foot or so is insignificant, but 15' is a large increase.

Mr. Myers stated that if, when they begin building, they feel they have a significant problem they could come back to re-visit it.

Mr. Bloss asked if they could flip the garage to the other side. Mr. DeRusso said they had thought about it, but they would be in the lower part of the land. Mr. Dudick said it could be fixed with a retaining wall but that would cost.

Mr. Bloss made the motion to accept the amended application with stipulations: 1) the subdivision is approved by the county with a tax ID# 2) property is transferred or sold to the applicant. Mr. Gifford seconded the motion.

Ayes: Standaert, Fantini, Dudick, Gifford, Vucetic, Bloss Noes: none
Amended application approved with stipulations.

The secretary read the legal notice as it appeared in the *Daily Gazette* on June 14, 2012.

**4) An application from Ken Eitelman for a variance from 208-12A, accessory structure setback. Corner lot with 2 fronts requires 80' setback. Wants to place shed at 11.5' from property line. Variance required = 68.5'
Property is located at 1C Spyglass Hill, Clifton Park, NY 12065 (Permit #80877)**

Mr. Ken Eitelman, owner of the property, presented the application. Mr. Eitelman said he has a very small property and no garage. He stated he cannot comply with the Clifton Park setback rules. He explained he needs a shed because they are so tight for space. He continued that he now pays for storage for his snow blower because they have no place to store it. He said it is a financial burden to them as they have to pay to transport it to storage and pay \$50 a month for it.

Mr. Dudick asked if he has a corner lot and was told he does.

Mr. Bloss asked if the picture was accurate. Mr. Eitelman said it is but the picture is not as nice. Mr. Bloss asked if the front of the shed would face down Spyglass and was told it will.

Mr. Myers stated it is a small yard and it is difficult to put anything there. He added that he does not have an issue with this because he does not have a lot of options.

Mr. Peller asked if any of the neighbors have sheds. Mr. Eitelman said that he counted 16 and then saw another 6.

Mr. Myers mentioned that those sheds probably didn't have variances.

Mr. Dudick suggested that he could bring attention to Mr. Myers if he sees unsightly sheds.

Mr. Dudick made the motion to close the public hearing as there was no one in the audience. Mr. Gifford seconded the motion. All agreed. Public hearing closed.

Mr. Dudick stated he did not have a problem with this, the quad plex with 4 on the corner gives them no room.

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

Ayes: Bloss, Vucetic, Gifford, Dudick, Standaert, Fantini Noes: none
Application approved as submitted.

Mr. Dudick made the motion to accept the minutes of the June 5, 2012 meeting, seconded by Mr. Bloss. The minutes were unanimously approved by members who were present at that meeting.

Mr. Dudick made the motion to adjourn the meeting, seconded by Mr. Gifford. All approved.
Meeting adjourned at 8:00 pm.

The next meeting is July 17, 2012.

made a motion to adjourn the meeting at pm. Seconded by. 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, __, ECC, Assessor, Highway