

## ZONING BOARD OF APPEALS

June 4, 2013

Present: Michael Dudick, Chairman, Michael Bloss, Randy Gifford, Chris Lemire, Amy Standaert, Jennifer Vucetic

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

Absent: Doug Strother , Mario Fantini

Mr. Dudick called the meeting at 7:05 p.m.

### PLEDGE OF ALLEGIANCE

Mr. Dudick asked everyone to turn their cell phones off to prevent static on the recording.

Mr. Dudick informed the applicants this is a seven member board with one alternate. To receive approval, an application must receive 4 yeas regardless of the number of members present. There are six members present tonight, one member and the alternate are absent. He explained applicants must receive 4 of the six votes for approval however, they may defer presenting the application to a later meeting if they believe there might be more members present. He added there is no promise that any meeting will have all members present.

### **OLD BUSINESS:**

### **NEW BUSINESS:**

*The secretary read the legal notice as it appeared in the Daily Gazette on May 31, 2013.*

1) **An application from Sarah Sanders for a variance from Section 208-12A which requires 80' setback for accessory structures from front property line. House is corner lot with 2 fronts (Southbury & Daniel Lill Ct) 32' setback requested, 48' variance required. Property is located at 25 Southbury Road, Clifton Park, NY 12065 (Permit #80917)**

Mrs. Sarah Sanders, resident at 25 Southbury Road, presented the application. She informed her husband is the owner of the home and she is presenting for him.

Mr. Peller asked if her name was on the deed and Mrs. Sanders answered it is not. Mr. Peller requested an authorization form be completed authorizing her to speak on her husband's behalf.

Mrs. Sanders informed they are requesting a variance so they can install a swimming pool in their back yard. She stated there is not enough space to put the pool with the 80 foot setbacks.

Mr. Dudick asked if this is a corner lot and was told it is. He asked if there is any other location to put the pool which would not require a variance. Mrs. Sanders answered there is not.

Mrs. Vucetic asked if there is a pool there now. Mrs. Sanders responded they have a permit and they put it up.

Mr. Myers explained the Sanders came for a permit a while ago and he told them they need a variance for the setback and they wouldn't be in compliance until they got it. He said they put it up but they still haven't gotten the variance. He told them putting it up would be at their own risk without a variance, but it didn't happen.

Mr. Dudick asked Mrs. Sanders if she was aware that the pool was not allowed without the variance. Mrs. Sanders responded they were not aware it was not allowed and they were told it would be ok to put it up at their own risk.

Mr. Dudick explained that if the variance was not granted, the pool would have to come down. He said the risk would be the expense of having the pool set up and not receiving the approval and then be ordered to take it down as it would be in violation of town law. He asked how long the pool had been up.

Mrs. Sanders answered it was put up last summer.

Mr. Myers reported she came in last year for the permit. He explained a building permit lasts one year, and she was given the permit and told she would be putting it up at her own risk.

Mr. Dudick asked Mrs. Sanders if she understood what a variance is. Mrs. Sanders responded certain footage that is required. Mr. Dudick said that is pretty accurate.

Mr. Lemire referred to the 24' round pool and asked what the square area on the drawing is. Mrs. Sanders said it is a deck they might put in and that she was told rather than come in twice she should come in and ask for the variance for both.

Mr. Lemire asked if the 32' variance includes the deck.

Mr. Myers verified that is correct, she was told to come in and ask for a variance for both rather than come back a second time.

Mr. Gifford asked what side the deck would be on and was told it would be towards the street. He commented he was surprised to see the pool is up already.

Mrs. Vucetic asked Mr. Myers if, in his opinion, this is the best situation, and Mr. Myers agreed it is because the lots are not very big.

Mr. Dudick asked Mr. Myers which comes first, the issue of a building permit or the issue of a variance. Mr. Myers explained that very often homeowners don't realize they need a variance when they come in and their contractor is coming the next day. He said he tells them they don't advise it, but they can proceed at their own risk but they still have to get a variance. He said they like to get the variance first but for some reason or other, they may have scheduled it with a contractor and can't reschedule it for six months. When they happens they warn about doing it at their own risk.

Mr. Dudick asked if the permit specify protective fencing. Mr. Myers answered it depends on the height of the pool and sometimes the pool itself is the barrier, but it is all included in the permit.

Mr. Dudick asked again if this pool has a permit and Mr. Myers responded it does and it is stated on the permit it is at their own risk until they have a variance.

Mr. Dudick asked Mrs. Sanders how long they have lived in their home and was told eight years. Mr. Dudick stated he knows the lots are small and understands the need for a variance. He explained the variance means they are being given additional permission because it is not allowed the way the law is written.

Mr. Myers said there is no problem with the application. He explained that usually the variance follows very closely behind the permit, but for some reason it lagged until the end of the permit.

Mr. Dudick stated he has no problem with the application given the special circumstances pending receipt of an authorization form signed by her husband.

Mr. Myers explained he didn't realize she was not on the deed or he would have had the form filled out.

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

Mr. Dudick made the motion to approve the application with the stipulation the applicant get a signed authorization. Mr. Lemire seconded the motion.

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

Application approved with stipulation pending signature of authorization.

*The secretary read the legal notice as it appeared in the Daily Gazette on May 31, 2013.*

**2) An application from Karl E. Salzer for a variance from Section 208-8B(1)(a) to keep livestock. Five acres required to keep livestock on a parcel in an R-3 Zone. Applicant has 2.3 acres with potential for obtaining abandoned road bordering property. Property is located at 77 Vischer Ferry Road, Rexford, NY 12148 (Permit #80918)**

The application was presented by Karl Salzer, owner of the property on 77 Vischer Ferry Road. He distributed a picture of the “ghost road” surrounding his property. Mr. Salzer informed he is trying to sell the property but the prospective buyer will only purchase if he can have livestock as he plans to have brood mares. He said the previous owner had a horse on the property.

Mr. Gifford asked for clarification as to where the road is from Vischer Ferry Road. Mr. Salzer said it is 45 degrees off the driveway and explained the location of the buildings.

Mr. Peller asked Mr. Salzer if he had had a conversation with Rick Kukuk, Highway Superintendent, about the road. Mr. Salzer responded he has been trying to contact him. He added more often than not the county would pawn the road off on the Town but there is no record of that so they don’t know if it is a county or town road.

Mr. Dudick said if it is the Old Vischer Ferry Road and if it has not been deeded over to the Town it would still be a county road and it would go to public auction to the adjoining neighbors.

Mr. Myers said it is similar to the application the Board just heard and it could be deeded to the Town, but they just don’t know about it. He added Mr. Kukuk is looking into it, but it’s only value it would be to Mr. Salzer or his neighbor.

Mr. Peller asked if the road had been used since Mr. Salzer has lived there, and was told it has never been used.

Mr. Peller advised that, based on the facts they are hearing, he does not think the Board should not take the road into account for any potential that Mr. Salzer might acquire it because there are too many variables. He explained abandonment has to go through the legislative process and then it would come to the town and go to public auction. For those reasons he recommended the Board not consider the road.

Mr. Dudick added that if it goes to the Town, it could decide to split it between the two neighbors as a possible option. He said another option would be for the neighbor to either give or sell his portion to him, but added that the amount of land he could get could be anywhere from zero to all of it. He asked Mr. Salzer what the acreage is they are addressing.

Mr. Salzer said it would still be under the five acres.

Mr. Dudick said if they are looking at a fraction below five acres, that would be a big difference than looking at 2 ½ acres. He explained people come to the Board because they have “close, but not quite” and if he had five acres he wouldn’t require a variance.

Mr. Peller explained to Mr. Salzer that the Board cannot grant him a variance on land he does not own. Mr. Dudick stated they are then looking at a variance request on the 2.3 acres he does own.

Mr. Lemire asked if this is a use variance. Mr. Myers answered it is an area variance because he doesn’t have the acreage required to have livestock but the use would be allowed if he had the five acres.

Mr. Bloss asked Mr. Salzer if he has had any conversation with his neighbor about selling the property to someone with horses. Mr. Salzer answered he has mentioned it and the neighbor said that was fine but did comment on the size of the property.

Mr. Gifford asked how many horses the potential buyer wants to have on the property. Mr. Salzer responded no more than eight.

Mr. Lemire asked, if there is a variance given for livestock, does the town have any control over the number allowed. Mr. Myers said it does not. He explained that under stables and riding academies two horses per acre are allowed, but this is not what this is.

Mr. Peller suggested if there is no mechanism for this, it could be a health and safety issue. Mr. Dudick suggested the Town Board be notified regarding the deficiency regarding how many animals are allowed per acre.

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 the motion. All approved. Public hearing closed.

Mr. Lemire referred to the code 208-85 and asked the size of the workshop to be turned into a barn. Mr. Salzer answered it is 26 feet by 82 feet and the buyer would put in five stalls. Mr. Lemire asked how is this not a stable if it would be for breeding horses there.

Mr. Peller read the definition for a stable “stable - any structure or building for the sheltering and/or feeding of horses..... commercial any stabling of horses for financial or any other considerations”. Mr. Peller summarized you could clearly make an argument that this is a non commercial stable.

Mr. Myers informed he has reservations about granting a livestock variance for less than five acres. In this case, there would have to be an application to the planning board for site planning review to approve a stable. Mr. Dudick added this would be in addition to a variance.

Mr. Peller said, more importantly, the type of stable, and Mr. Myers agreed.

Mr. Lemire asked if the structure would be farther than 50 feet from the lot line.

Mr. Salzer said he had a building permit for the workshop, and it is farther than 50 feet.

Mr. Myers replied the setback for a pole barn is a lot different than for a stable because for a pole barn you only need 5 or 10 feet which he is sure he has.

Mr. Dudick asked how much acreage he would have if the road was included. Mr. Salzer responded he does not know but it would still be under 5 acres.

Mr. Dudick informed Mr. Salzer he has two options 1) the board can vote on the application as presented and discussed or 2) he could withdraw the application and find out if there are other options. He explained that if the board votes and it is denied, Mr. Salzer can't come back with the same application, but if its withdrawn he can.

Mr. Salzer said he preferred to have the Board vote.

Mr. Dudick made the motion that the application be denied as submitted as there is not enough property for livestock on less than three acres. Mr. Gifford seconded the motion.

A vote of yes means denying the application.

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

Application denied based on information presented and there is not enough acreage for livestock.

Mr. Dudick noticed a few people sitting in the audience and asked what brings them to the meeting. (Names not given) From the audience one person informed they are students at Burnt Hills High School and were required to attend a meeting for government class.

Mr. Dudick asked if they had questions. One student asked why the variance was granted for the swimming pool. Mr. Dudick explained the applicant has a corner lot which is unique because it has two fronts which means larger setbacks, cutting down on the buildable area.

Steve Myers informed that the Ray Sign applicant was not present (Permit #'s 80915 and 80916). He explained the applicant told him they are in discussion with the owners of Comfort Inn and Chili's to see if they would be willing to remove their store names from the sign and obtain individual freestanding signs (if they want it) on their own parcels now that the parcel was divided. He stated that if they can get an agreement among the three parties, the sign would no longer be non-conforming and there would be no request for a second freestanding sign. He added that if they do that, they would be needing a new, larger than normal directional sign and would be coming for a variance for that.

Discussion ensued as to how to handle the applications, whether to call them deferred or whether to abandon the applications. The decision was made to delineate the two applications as held in abeyance up to September 1, 2013. Should action not take place by that time, the applications would be abandoned. Mr. Myers said he does believe the agreement is coming. A letter will be sent to the applicant that if the applicant does not present by the end of August, the applications will be abandoned.

Mr. Dudick made the motion to approve the minutes of May 7, 2013. Mr. Gifford seconded the motion. All approved (Mrs. Vucetic abstaining). Minutes approved.

There are no applications for June 18, 2013 and the meeting scheduled for that date is cancelled. The next meeting is July 16, 2013.

Mr. Dudick made the motion to close the meeting. Mr. Lemire seconded the motion. All approved. Meeting adjourned at 7:50 pm

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