

ZONING BOARD OF APPEALS

October 1, 2013

Present: Michael Dudick, Chairman, Michael Bloss, Jerry Cifor, Mario Fantini (7:14),
Randy Gifford, Chris Lemire (7:18), Doug Strother

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

Absent: Jennifer Vucetic

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

PLEDGE OF ALLEGIANCE

Mr. Dudick informed the applicants this is a seven member board with one alternate, Mr. Fantini. To receive approval an application must receive 4 yeas regardless of the number of members present. There are currently five members present however two members are on their way. He offered to opportunity for applicants to wait until the members arrive or continue with the five members. Mr. Mackey and Mr. Opitz chose to wait, while Mr. Brust elected to present. Mr. Dudick requested that everyone turn off cell phones to avoid static to the sound system.

NEW BUSINESS

The secretary read the legal notice as it appeared in the Daily Gazette on September 26, 2013.

An application from Kent H. Brust for a variance from 208-12A which requires 80' setback from front property line. 15' requested, variance required = 65'. Currently there is 25' from the property line to the main building. Applicant requests placing shed 15' from property line. Property is located at 8C Spyglass Hill, Clifton Park, NY 12065. (Permit#80941)

Mr. Kent Brust, owner of the property on 8C Spyglass Hill, presented the application. He informed the home is a town house and they would like to erect a 10 x 10 pre-built shed on the road side of his property adding it would be nice. He said the shed would match the appearance of the house and it would be lower than the house roof, describing that there will be windows on the side on the road, and it will not have utilities.

Mr. Dudick asked what he plans to put in the shed, and Mr. Brust responded he would use it for garden supplies.

Mr. Dudick verified Mr. Brust lives in the C unit. Mr. Brust agreed, saying it is the closest unit to Spyglass Hill explaining the Units A & B do not enter from Spyglass.

Mr. Dudick asked the rationale as to why he doesn't put it in the back yard closer to Unit A. Mr. Brust answered it would look better on the side, more like it was attached to the house rather than in the middle of the back yard where it would look like it has grown in the middle of a field.

Mr. Gifford added there are a lot of trees in the back.

Mr. Strother questioned whether there are deed restrictions on the property.

Mr. Brust stated there isn't, that they have obtained the original deeds from when Van Patten built the units.

Mr. Cifor questioned if any other units have sheds.

Mr. Brust informed the neighbor has a shed.

Mrs. Donna Brust spoke, explaining they had downsized from a larger home, but they find they have no room for storage in the garage and they have no basement. She said they want it to look nice and that many of them in the neighborhood look very bad.

Mr. Dudick informed if anyone sees something that they think does not meet code, they should speak with Mr. Myers. He asked Mr. Myers for his opinion on the application.

Mr. Myers stated they have had a lot of requests for sheds on Spyglass Hill and this was just one that couldn't meet setbacks. He added this is a reasonable request.

Mr. Dudick asked him if he had a concern with the location and Mr. Myers answered he does not.

Mr. Dudick asked for public comment. There was none. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Gifford.

Mr. Bloss made the motion to approve the application as submitted, seconded by Mr. Cifor.

Mr. Fantini and Mr. Lemire had arrived. Mr. Fantini is designated to sit in for Mrs. Vucetic. Mr. Dudick left it to the discretion of both members as to whether they had enough information to vote. Mr. Lemire abstained as he had arrived later.

Ayes: Strother, Cifor, Dudick, Gifford, Fantini, Bloss Noes: none

Abstain: Lemire (due to late arrival)

Application approved as submitted.

OLD BUSINESS:

An application from John Opitz for a setback variance from Section 208-12A for accessory structure. 80' required from front property line, 26' requested, variance required = 54'. 50' setback was approved subdivision setbacks for main structure only. When approved was R-R or R3 zone, now is CR Zone. Property is located at 11 Deerfield Court, Rexford, NY 12148 (Permit #80944)

Mr. Opitz continued his presentation from September 17, 2012. He summarized they are asking for a variance for a detached garage and there was an issue with regard to location of the septic system and leech field. He presented the board with a new plot plan of the entire building project which included location of the septic system and leech field.

Mr. Opitz stated the dilemma is that the property is on a plateau with a 3-4 foot elevation and the property drops off toward the rear of the proposed garage and at the back of the property line. He stated he is here because he can't comply with the setbacks.

Mr. Myers confirmed the setback code is 80' for an accessory structure.
Mr. Lemire asked why he could not put the garage closer to the house.

Mr. Opitz explained the engineer had looked at that. He said there can be a turnaround area and it would make the driveway more workable. He said he wouldn't be able to get into the driveway as easily and this is the ideal spot.

Mr. Lemire indicated that the leech field is going behind the house and is no longer the reason why he is not putting the garage closer to the house. Mr. Opitz agreed. Mr. Lemire asked why the garage can't go within the 50' setback closer to the house. He repeated it seems to him, he could put it closer to the house.

Mr. Opitz said he wouldn't be able to get into the driveway.
Mr. Lemire asked Mr. Myers if he understands what he is trying to say, that the garage could go closer.

Mr. Myers informed he might be able to move it back but this is more a case of where he wants it.

Mr. Dudick commented the only other place would be to put it in front of the house. Mr. Lemire argued it could go on the south side next to the house. Discussion ensued regarding placement of the garage. Mr. Lemire stated he would still need a variance but if he got within 50' it would be less of one.

Mr. Dudick said it is an awkward shaped lot.
Mr. Opitz agreed and added there is a wooded area and he wanted to keep it in back and out of sight as much as he could.

Mr. Dudick questioned if he had contacted his neighbor, Dr. Iannello. Mr. Opitz responded he had spoken to his wife and they are not opposed and prefer it farther back and in the wooded area.

Mr. Dudick asked for public comments. There were none. Mr. Strother made the motion to close the public hearing, seconded by Mr. Gifford. All agreed. Public hearing closed.

Mr. Myers commented that based on the most recent drawing the variance he needs is actually 48' instead of 54'. Mr. Peller asked if the Planning Board has seen it. Mr. Myers said they wouldn't see that, but he would have to submit the revision to his house plans but he doesn't think it will be an issue. He added he has to submit the plan to him for the septic system.

Mr. Peller advised that any action the board takes should be contingent upon approval of the septic system and leech field location. He explained that if the leech field or septic system moved from where it is depicted, the board might make a different decision.

Mr. Dudick asked how long that would take and Mr. Myers informed it would be within a few days. Mr. Dudick asked whether they should vote on it before or after Mr. Myers approved the leech and septic system. Mr. Peller informed that as long as it is voted on contingent on that, it would be ok.

Mr. Myers stated he believes he could move the garage back further along the edge of the leech field. Mr. Dudick commented it looks like the leech field is only a few feet away from the driveway and you don't want to put the driveway over it. Mr. Myers informed it is one of the things he is going to look at.

Mr. Opitz said the garage could be moved farther back. Mr. Dudick discussed that the closer the garage is to the house, the smaller the variance and suggested there are two reasons to move it: 1) lesser variance and the more it is moved into the buildable area 2) lesser cost to pave a smaller area of the driveway

Mr. Opitz said it wouldn't change the distance that much from the cul du sac, and Mr. Dudick corrected it would move it more into the buildable area.

Mr. Peller asked what would be lessened if he moved it back. Mr. Myers responded the farther back or closer to the house, the lesser the variance needed.

Mr. Strother made the comment that he understands they try to get the least variance but the gain in any direction is minimal. He added he is inclined to approve the variance in the location the property owner desires. He added he looked at the area map, it is wooded and there is a cul du sac.

Mr. Lemire had more questions about the location. Mr. Myers showed Mr. Lemire pictures of the location and explained. Mr. Opitz explained the area is to be left wild and it is a hillside.

Mr. Lemire questioned if the garage was attached to the house, it wouldn't need a setback. Mr. Myers agreed and explained different locations to Mr. Lemire.

Mr. Cifor pointed out that then he would have three garages attached to the house.

Mr. Lemire asked again if it could be moved back. Mr. Opitz said it would need a longer driveway.

Mr. Dudick summarized that this is the second meeting they have been discussing this and he feels they has enough information to vote.

Mr. Cifor made the motion to approve the application pending approval of the building department for the location of the septic system and leech field. Mr. Strother seconded the motion.

Ayes: Bloss, Fantini, Gifford, Dudick, Cifor, Strother Noes: Lemire

Application approved with contingency.

NEW BUSINESS

The secretary read the legal notice as it appeared in the Daily Gazette on September 26, 2013.

An application from Robert Mackey for a variance from Section 208-12A for setback variance for accessory structure (deck and carport). Setback for accessory structures is 80', 19' available, variance required = 61'. Deck was constructed without permit/variance. Property is located at 40 Male Drive, Clifton Park, NY 12065 (Permit#80945)

Mr. Robert Mackey, owner of 40 Male Drive, presented the application. He stated he decided to put the trash cans in an enclosure to beautify his property, and explained that the person who helped him recommended he construct a deck over it. He said he thought it was a good idea and the person told him he didn't need a permit. Mr. Mackey added that the deck was constructed professionally and he is also appearing tonight to get a variance for his carport. He reminded the board about the last time he had appeared it was to obtain a variance for a garage and carport. He informed the board that since then, he has purchased the home next door to him so neighbors are no longer a problem, informing he owns half the road and across the street are wetlands that cannot be built upon.

He explained the reason he wants the carport is because his wife is an EMT and if he had the carport he would not have to push the snow into the road so she could get out in an emergency. He reminded the board it is a dead end road and there are only four houses on the road and he owns two of them.

Mr. Mackey claimed there would still be plenty of room for the easement for the carport but added he is not going to do that right away because he is building an addition on his house over top of the attached garage.

Mr. Peller, stating for the record, informed that he is currently representing Mr. Mackey's former neighbor, Michelle Miller, and recalls at last time Mr. Mackey had appeared before the board, there was some conflict between him and Ms. Miller. Mr. Peller asked Mr. Mackey if he wished

him to recuse himself, if he feels there is still a conflict. Mr. Mackey stated he had no problem with Mr. Peller remaining on the board, and there is no problem with his ex-neighbor.

Mr. Lemire asked the location of the deck. Mr. Myers stated he had drawn a map of the approximate location so it would be clearer. He explained the map to Mr. Lemire.

Mr. Lemire questioned if it is in the front of the house and Mr. Myers confirmed it is. Mr. Lemire asked for clarification of location of driveway and Mr. Myers explained locations. Mr. Lemire referred to the picture asking about the deck and garage and then questioned Mr. Mackey regarding the last variance. He asked if, at the time, he was intending to put the deck in a different location, which he indicated on the map.

Mr. Mackey answered that was true, but now he is building an addition to his house and will put the garage under it instead.

Mr. Lemire asked Mr. Myers if this was the issue of the last variance, getting closer to the street. Mr. Myers answered "correct". Mr. Lemire then commented that now the deck is even closer. Mr. Myers agreed with Mr. Lemire, that it is closer.

Mr. Dudick questioned Mr. Mackey's claim that someone told him he could build the deck without a variance. Mr. Mackey answered the man who was helping him build the garage suggested it. Mr. Dudick again asked if that man told him he didn't need a variance. Mr. Mackey did not respond to the question but answered while he was doing the landscaping....he didn't know he was going to do a deck on top.

Mr. Peller asked if anyone from the town told him that he didn't need a variance. Mr. Mackey said no it was the person who was helping him build the garage and he thought it was a good idea because it would help improve the look of his property. Mr. Peller asked if the builder is anyone from town and Mr. Mackey responded the person who constructed the deck is not a builder.

Mr. Strother asked if the contractor had told him he didn't need a permit. Mr. Mackey responded by saying "it wasn't attached to the house".

Mr. Mackey continued saying that at the time he wasn't thinking of building the deck he was just going to hide the trash so it wouldn't be visible.

Mr. Lemire asked if the deck is attached to the house and Mr. Mackey responded it is not.

Mr. Lemire asked what is behind the retaining wall and was told it is a patio. Mr. Lemire asked Mr. Mackey to explain the location of the deck in relation to the rest of the house and garage, which he did and also explained everything is level with the top of the retaining wall.

Mr. Lemire asked when he put the retaining wall there. Mr. Mackey said he did it when he needed to shore up the ground for the garage. Mr. Lemire asked Mr. Myers if the proposed carport is part of the variance.

Mr. Myers answered the variance should cover it as long as the carport does not extend beyond the deck but he hasn't seen the plans yet so he doesn't know how big it is.

Mr. Lemire stated it is his understanding the retaining wall is the forward most part of the deck which is 15' closer to the street.

Mr. Gifford asked how far the retaining wall is from the road.

Mr. Mackey "estimated" from the middle of the road it is 25'.

Mr. Myers answered his best guess as to what Mr. Mackey is saying is that the carport will be about 10' off the property line. He added that he only drew up the diagram from what he knew.

Mr. Gifford asked how he gets to the garage. Mr. Mackey answered the driveway is to the right of the deck and the driveway is a shared drive between two houses. He repeated that if he can put up the carport he wouldn't have to plow.

Mr. Gifford questioned who lives in the other house. Mr. Mackey responded his son is living there.

Mr. Dudick asked how many other people are living in the house and Mr. Mackey answered there are four people and his son.

Mr. Myers said he should address the carport now as it appears to be 8' off the property line. Mr. Fantini asked if this is a separate variance. Mr. Myers answered it could be either but informed it would be a 72' variance.

Mr. Peller asked Mr. Myers why he suggests the board vote on the carport now. Mr. Myers responded Mr. Mackey said he wants to build a carport but he does not have any plans or anything.

Mr. Peller then advised the board not to vote on the carport as it is too speculative and it should stick to the deck agenda item. Mr. Myers said it may very well be as Mr. Mackey might decide he wants to make it bigger or will change his mind.

Mr. Mackey said he has no intention of building the carport now as he has too many other things to do.

Mr. Myers advised that without any hard plans, it is difficult for the board to address it. Mr. Mackey said he would come back for the carport.

Mr. Dudick summarized the board will stay with what Mr. Mackey has and talk about the deck.

Mr. Dudick made the motion to close the public hearing (no audience present other than the applicant). Mr. Cifor seconded. All approved. Public hearing closed.

Mr. Myers related the history of the variance application, stating he found it going on in January 2013 and told Mr. Mackey to apply for a permit. He continued, Mr. Mackey applied for a permit in February and Mr. Myers asked for a plot plan because they had no information as to the location of the deck. Mr. Dudick questioned if the deck was completed then. Mr. Myers said it was not.

Mr. Myers informed that Mr. Mackey submitted a plot plan in August and by then the deck was built, and at which time Mr. Myers told him he needed a variance because it was too close to the road. He summarized that it is one of times that he told him to do certain things but he went ahead and built it anyway.

Mr. Myers added this is a unique location and a unique place but he has concerns it is too close to the road for the maintenance of the road, informing it is a town road and every time Mr. Mackey does one of these, he gets closer to the road.

Mr. Lemire referred to Mr. Mackey's appearance before the board in 2010 when he sought a variance to get closer to the road. Mr. Myers informed that Mr. Mackey received an 11' variance for the garage. Mr. Lemire stated his recollection was that they worked with Mr. Mackey and he wanted the garage to keep the snow off it so his wife could do her EMT job. He said he assumes that once Mr. Mackey got the variance he knew he couldn't go any closer to the road. Mr. Myers agreed, answering "you would think so".

Mr. Dudick asked Mr. Mackey why did he think he could go closer to the road when he received a variance for the garage which allowed him to go twice as close to the road as permitted.

Mr. Mackey answered the garage was attached to the house and he wanted to put things behind the wall which was much more attractive.

Mr. Dudick asked if he considered landscaping. Mr. Mackey said he does a lot of landscaping and the trash was right in the middle of the shared driveway and his intentions were to clean it up and comply and now there is nothing out anywhere and the deck is attractive and professional.

Mr. Dudick asked Mr. Myers if, in January, Mr. Mackey knew he wasn't to do this. Mr. Myers said he told him then that he needed a building permit.

Mr. Mackey asserted "and I put one in but I didn't know I needed a variance". He explained he still had a variance and he thought it was ok if it wasn't beyond the retaining wall.

Mr. Dudick asked if he had constructed the deck himself. Mr. Mackey answered he helped with it. Mr. Gifford asked if the person who built it is a professional builder. Mr. Mackey responded the person who built it is not with a company, but is an individual.

Mr. Lemire asked if the enclosure and the deck were put in at the same time as the garage. Mr. Mackey said it was some time after that. Mr. Myers verified it was put in after the garage.

Mr. Strother asked if the enclosure is in compliance without the deck. Mr. Myers said it is not, that it is still too close to the road. He explained this is a structure, but if a fence had been put around the trash cans, or even a small shed, they would not be having this conversation.

Mr. Fantini asked Mr. Myers if he is saying because he owns the house next door there is not a problem. Mr. Myers said "no" he explained he said this is a unique location, no one can build across the street and Mr. Mackey owns everything else around it on the cul du sac.

Mr. Mackey said he always is going to be there and he owns the two houses and maybe someday will buy the other two houses on the road. He admitted he should have not listened and checked it out at the time but the man was working cheap and he wanted to get the “stuff” out of sight to make people happy.

Mr. Lemire asked whether he did this before he bought the house next door. Mr. Mackey answered “no” and gave a detailed explanation about the former owner’s circumstances and his purchase of the house. Mr. Lemire asked who, then, would be complaining.

Mr. Dudick informed Mr. Mackey that he has been before the board almost as often as some of the town’s more successful builders and should have the expertise as to what is required. He told him that if he is going to construct anything at all on his property, (asking him to repeat what he said) that he will check with the town first before he does any sort of construction, regardless of who tells him not to worry about it.

Mr. Mackey answered that he will; saying he should have checked but then adding aesthetically he wanted to do it.

Mr. Dudick informed he can’t discuss aesthetics because that is a Planning Board issue. He stated that Mr. Mackey keeps building closer and closer to the road and this is not the way our building code was set up to do things, where someone builds something and then asks “can I keep it”. He clarified saying that the way it works is now the board has to make a decision on whether to approve a structure that shouldn’t have been placed there or disapprove and make him tear down the structure that shouldn’t be there. What is easier for everyone involved is that kind of pressure is not placed on the applicant or the board.

Mr. Mackey stated he has always complied with things he did and he made a mistake but it was an honest mistake and he had people’s recommendations in mind. Mr. Dudick reminded him he is the property owner and whatever happens on his property is his responsibility.

Mr. Lemire asked if the garage is completed and is there is a roof on the garage. Mr. Mackey informed he has built the garage and plans on putting a second level on it.

Mr. Lemire asked when he was before the board for the last variance if he was planning on building the garage and putting the deck on top of it. Mr. Mackey agreed that was his original plan. Mr. Lemire summarized that he told the board that he planned to build the deck over the garage and once he decided not to and he built the deck over on the other side knowing he was building it too close to the road. He added he knew that when he was here for the variance for the garage. Discussion ensued. Mr. Mackey claimed it was only a few feet from where it was.

Mr. Myers clarified that he needs a 61’ foot deck variance for the deck but if he adds the carport he is going to need a 72’ variance.

Mr. Cifor asked how far from the retaining wall does the deck extend. Mr. Mackey answered it is even with it. Mr. Cifor summarized the deck is an extension of the retaining wall. Mr. Mackey then declared he thought the variance was to the retaining wall.

Mr. Lemire said there is a lot of space between the deck and where the variance is.

Mr. Fantini commented the deck looks better than the retaining wall.

Mr. Cifor said there is minimum impact because he is on the end of the road, but he knew better and did it anyway and that puts the board in a tough position.

Mr. Dudick said he is ignoring the zoning laws is hurtful. He added they work toward a fair resolution.

Mr. Strother asked the cost of the deck and enclosure and Mr. Mackey estimated it was \$3000.

Mr. Dudick made the motion to approve the application, seconded by Mr. Fantini.

Mr. Gifford suggested they approve it but there should be a contingency that if he builds anything against zoning regulations it will be taken down. Mr. Dudick speculated they couldn't stipulate it has to come down.

Mr. Peller informed that would be punitive but it can be an understanding or strong suggestion.

Mr. Cifor offered that it would be safe to say if he builds anything again without getting a variance that most likely he would not get a positive vote.

Mr. Dudick repeated to Mr. Mackey that he wants him to acknowledge and believes he heard him do that, and he expects him to answer that he will not do any construction of any kind on his property, no matter how small, without first contacting with the building department. Mr. Mackey agreed

Mr. Myers added that based on this understanding, if it happens again, he will get no warning and it will go straight to a ticket. Mr. Dudick repeated he would not get any warning. Mr. Peller added that is Mr. Myers' prerogative. Mr. Myers stated that if Mr. Mackey decides to build the carport and comes back to the board for a variance, they don't have to grant it.

Mr. Mackey reminded he is putting an addition on his house which is going to take all of his money. Mr. Dudick instructed him before he does any additions to the house he needs to get a permit. Mr. Mackey said he would not assume anything and Mr. Dudick commented that is what he wanted to hear.

Mr. Strother emphatically stated that this motion to approve is not necessarily an endorsement but a way they construct the vote. Mr. Dudick reminded again Mr. Mackey must not ignore what the Zoning Board is telling him, that they are here as volunteers to enforce the code and they take it seriously.

Mr. Lemire stated this decision could affect future consideration of decisions, and this is not just this particular property on a dead end street. He suggested it sets a precedent.

Mr. Myers said he disagrees with Mr. Lemire, and every case is unique and this does not set precedent.

Mr. Dudick stated this is not like Rt 146 where there is a car every 5 seconds versus this road has one car every 5 days, making it unique. He added this is still not what he would like to see happening our town at any location because and they try not to give away variances to people who ignore code.

Mr. Mackey said he apologizes, he didn't know but he should have known.

Ayes: Strother, Cifor, Dudick, Gifford, Fantini, Bloss Noes: Lemire
Application approved.

Mr. Strother added he should confer with the building department every time.

The minutes for the September 3, 2013 were approved by the members present at that meeting. The minutes for the September 17, 2013 were approved with Mr. Dudick abstaining as he was not present at that meeting.

The next meeting is October 15, 2013.

Mr. Lemire made the motion to adjourn. The motion was seconded by Mr. Gifford. The meeting was adjourned at 8:25 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