

Approved

ZONING BOARD OF APPEALS

October 15, 2013

Present: Michael Dudick, Chairman, Michael Bloss, Jerry Cifor, Mario Fantini, Doug Strother

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

Absent: Randy Gifford, Chris Lemire, Jennifer Vucetic

Mr. Dudick called the meeting at 7:06 p.m.

PLEDGE OF ALLEGIANCE

Mr. Dudick asked everyone to turn cell phones off to avoid interference with the recording system.

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 five members present tonight. Mr. Fantini will be sitting in for Mr. Gifford, making a voting board of five. He offered applicants the option of deferring if they wish to wait until another meeting when there might be more members present. He reminded he cannot promise how many members will be present at any one meeting.

OLD BUSINESS:

None

NEW BUSINESS:

The secretary read the legal notice as it appeared in the Daily Gazette on October 10, 2013.

1)An application from Leland R. Palmer for (1) a use variance from Section 208-97B(2)(b) “alterations to existing nonconforming residential uses provided alterations do not increase area of residence” Applicant wishes to increase garage by 225 sf. (2) applicant requests variance from Section 208-11, CR zone requires 30’ front setback and 10’ side setback.

Proposed 25' front setback, 5' variance required (19' proposed side setback ok) Property is located at 312 Riverview Road, Rexford, NY 12148 (Permit#80946)

Mr. Leland Palmer, owner of the home on Riverview Road along with his wife, Anna, presented the application. He related they own a Greek Revival home which was built in 1849 prior to existing zoning laws. As such, he stated the home is non-conforming, pre-existing, as is the garage. He said the original single car garage built in the 70's burned down and was replaced with a one car garage. Mr. Palmer stated he wishes to demolish the current garage and rebuild a 2 car garage in the style of Greek Revival so they do not have to park in the driveway.

Mr. Fantini asked why this is a use variance rather than area variance.

Mr. Myers answered that is because the section that was quoted states it is pre-existing, non-conforming and when the plan is to enlarge and increase the square footage, it becomes a use variance.

Mr. Dudick asked if there is anything of extraordinary circumstances.

Mr. Myers responded there is nothing unusual and it is a case that the house was built before zoning laws existed and they want a more usable functional garage. If it had been newer house they wouldn't be having this discussion.

Mr. Bloss asked if the new garage is still not as close to the road as other homes in the area.

Mr. Strother questioned whether this is a single variance.

Mr. Myers answered it is two, a use variance and a setback variance.

Mr. Dudick questioned the size of the lot and Mr. Myers answered it is ½ acre.

Mr. Strother said he had looked at it and feels it will look fine and indicated he would like to make a motion to approve the application. Mr. Cifor seconded the motion.

Mr. Dudick reminded they are pre-mature and have to call the public hearing and ask for public comments.

Mr. Mark Kazmierczak , 446 Vischers Ferry Road, stated he is the chairman of the Historic Preservation Commission and they have reviewed the application. He said the garage will be built in the same style and they are all in favor. He reminded the garage will not be any closer to the road than the main part of the house, and added his opinion that building the garage will be an upgrade and something the people need.

Mr. Dudick inquired when the garage was attached to the house in 1970. Mr. Palmer responded he had purchased the property in 1984 and it was a detached garage and the house had a renovation project when the kitchen was re-done. He said he does not know what happened before.

Mr. Dudick asked Mr. Palmer if he is going to tear down the old garage and Mr. Palmer answered he will be tearing it down and replacing it. He explained that the original garage was burned in the 1970's. He summarized the garage is not an historic structure.

Mr. Dudick stated he has no problem with the application.

Mr. Myers informed the garage is not part of the original house.

Mr. Fantini questioned if they are tearing down the old structure, it is still a use variance.

Mr. Myers answered it is because Mr. Palmer is making the garage larger.

Mr. Dudick read the criteria required for a use variance listing the four qualifications as they apply to this application and adding his perspective of how the criteria is met 1) cannot realize a reasonable rate of return shown by financial evidence 2) hardship is unique – Mr. Dudick does not see an issue and it is going to match the house 3) does not alter the character of the neighborhood – Mr. Dudick said he does not see anything that alters, and if anything, it enhances 4) hardship has not been self created hardship – Mr. Dudick asked what the problem is and Mr. Palmer informed the current garage too small

Mr. Myers stated he believes it is a financial hardship because the substandard garage affects the ability to sell the house.

Mr. Dudick explained the standard used in the past is that the applicant shows evidence of financial hardship. Mr. Myers interjected that this covers a wide spectrum of things. Mr. Dudick explained that certain conditions of a use variance has a higher bar than an area variance as it applies to showing financial hardship. He added that his personal feeling he would see any evidence of showing reasonable return.

Mr. Dudick informed they must meet the requirements despite their personal feelings and he does not see any evidence of reason and asked Mr. Palmer if he has anything of that nature.

Mr. Palmer answered he does not have any financial evidence tonight as he was unaware this was an issue. Mr. Dudick said it can be enough to affect their votes. He suggested he could table the application if Mr. Palmer would like to come back with any financial information.

Mr. Peller offered the legal opinion that there is a phrase in the law quoting “the thing speaks for itself.” He suggested that, although in the past there has been financial information, it would seem to him that this would fit in because most families have two cars and a person might need to pay to store one if the garage is not large enough. He repeated he thinks this speaks for itself.

Mr. Cifor opinioned that this is an atypical use variance.

Mr. Myers stated it happens to fall into that category and he feels that a substandard garage will create financial hardship down the road.

Mr. Strother stated he is withdrawing his motion, and Mr. Cifor withdrew the second.

Mr. Dudick summarized they are discussing the idea of whether they need financial material or not. He reminded the public hearing is still open.

Mr. Dudick asked Mr. Palmer if a delay would be a problem with construction. Mr. Palmer said it will.

Mr. Fantini asked if Mr. Kazmierczak's testimony can't count for the financial. Mr. Dudick answered it speaks for the other three criteria without any doubt.

Mr. Strother stated he thinks it is logical that a house with a two car garage is worth more than a house with a 20 year old structure and in the past they have relied on that.

At 7:25 pm Mr. Dudick called a five minute recess to discuss whether board has the power to summon a realtor for opinion and for Mr. Myers, Mr. Peller (counsel) and himself could confer on the interpretation of the zoning ordinance.

Upon return at 7:30, Mr. Dudick stated that after consultation and reviewing the code, they have decided the application could better be described as an area variance. He explained that because the garage does not increase the liveable, habitable square footage of the house it would not qualify as being a use variance issue. He summarized that the application request is now going to be considered as an area variance and a setback variance.

Mr. Bloss made the motion to close the public hearing, seconded by Mr. Strother. All approved. Public hearing closed.

Mr. Dudick made the motion to accept the application as amended for an area variance only. Mr. Cifor seconded the motion.

Ayes: Bloss, Fantini, Dudick, Cifor, Strother Noes: none
Application approved as amended.

The secretary read the legal notice as it appeared in the Daily Gazette on October 10, 2013.

2) An application from Faith Baptist Church for two variances from Section 171-Chart III which allows 24 sf for sign and requires 15' setback from property line. Applicant requests 40 sf sign, variance requested = 16sf; and 7' setback requested, variance required = 8'. Property is located at 11 Glenridge Road, Rexford, NY 12148 (Permit#80947)

The application was presented by Barry Relyea, chairman for the sign committee for the church, and Paul Taddeo, director to the church heading up the sign project.

Mr. Relyea reminded they had received approval for the digital sign at an earlier meeting but have since discovered the sign is inside of the setback requirement. He informed the present sign is 7' within the 15' requirement, which is where they want to put the new sign. He states it is a visibility issue.

Mr. Taddeo submitted pictures of the sign and its location.

Mr. Peller asked Mr. Taddeo if, as director, he is authorized to speak on the church's behalf. Mr. Taddeo answered he is. The form was signed and notarized by Mr. Peller.

Mr. Myers informed that Mr. Taddeo is the same individual with the same authorization when the church came to the Zoning Board for a variance for the digital sign.

Mr. Cifor asked the size of the sign and was told it is 32 square feet. Mr. Cifor said they are increasing it by 8 square feet and keeping it in the same location.

Mr. Fantini asked if the other churches have variances.

Mr. Myers pointed out that the Christ Community Church has a zero foot setback, explaining that the DOT right of way is wide. He added that this is the same situation and their request is less than the Christ Community Church.

Mr. Taddeo asserted that there are trees that would block the sign further back and it would be difficult to see, adding that this location is good. He pointed out that if they can't see the sign, they would have to brake suddenly at a 45 mpg road.

Mr. Myers informed he is ok with the setback.

Mr. Cifor asked when the current sign was erected. Mr. Myers responded it was in 2006.

Mr. Fantini made the motion to close the public hearing, seconded by Mr. Bloss. All approved. Public hearing closed.

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

Mr. Dudick said this is not overwhelming in size or scope. He summarized that the location of the sign was pre-established and the church is in the rural part of town.

Mr. Strother asked if all other guidelines had been met. Mr. Myers informed the previous variance approved had taken care of that.

Ayes: Strother, Cifor, Dudick, Fantini, Bloss Noes: none
Application approved as submitted.

The secretary read the legal notice as it appeared in the Daily Gazette on October 10, 2013.

3) An application from Mark Kazmierczak for variances from Section 208-86B, keyhole lots which requires 50' setback from property lines for main building. Applicant requests
1) 40' for front and rear setbacks on #442 (rear lot) Variance = 10' (rear and front setback)
2) 35' rear setback and 40' front setback on #444(middle lot) Variance = 15' rear setback, 10' variance front setback.

**Property is located at #442 & #444 Vischer Ferry Road, Clifton Park, NY 12065
(Permit#80950)**

Mr. Peller informed, for the record, that he represents Mr. Kazmierczak as his real estate attorney. He stated he does not feel it is a conflict of interest for him to sit on the board, but if Mr. Kazmierczak feels there is, he will recuse himself and the board can have another attorney sit in his place. Mr. Kazmierczak said he has no problem with Mr. Peller remaining.

The application was presented by Mark Kazmierczak, 446 Vischer Ferry Road, owner of the property on Vischer Ferry Road. Mr. Kazmierczak stated he is requesting the setback variances for two vacant lots because of the footprint of the properties. He informed that with required setbacks, a home on the #442 (front lot) would have to be built facing the back of the existing lot. He asserted that he would like the setback so homes built would face the driveway and be side to side. He pointed out that most subdivision homes are 25-30' apart, and these homes would be separated by about 74-75 feet and the rear yards would be larger. He referred to a recently approved development on Clifton Park Center Road, which, he said, has smaller lots. He added he does not want the homes to face someone's back yard. He reiterated that this would be more like a subdivision design.

Mr. Bloss questioned if the plan they are looking at is the existing plan and that he wants it changed.

Mr. Myers responded by passing around a new plot plan.

Mr. Bloss asked if the driveway would go into a side garage. Mr. Myers said that would give them enough room to turn the houses.

Mr. Dudick summarized that he wants to turn it so the front faces the driveway and the rotation of the houses causes the need for a variance. Mr. Myers explained that the driveways have rotated from the old plan to the new plan. He referred to the Semenza application where the board approved the change for the same reason.

Mr. Myers stated there is nothing that says he is going to use all the variances, only that it gives him options.

Mr. Dudick made the motion to close the public hearing, seconded by Mr. Cifor. All approved. Public hearing closed.

Mr. Dudick summarized this is almost a mirror of the Semenza application, which the board gave long contemplation and approved it to help the homeowners.

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

Ayes: Strother, Cifor, Dudick, Fantini, Bloss Noes: none
Application approved as submitted.

The secretary read the legal notice as it appeared in the Daily Gazette on October 10, 2013.

4) An application from Matt & Sue O'Connor for 1) Variance from Section 208-12A, accessory building. Setback required = 80', 50' requested, variance required=30' 2) Variance required from Section 208-98, setback required from centerline of road on Blue Barns Road is 100', 75' available, variance required=25'. House is in CR zone. Property is located at 107 Dubois Lane, Rexford, NY 12148 (Permit #80951)

The application was presented by Matt O'Connor, owner of the property on Dubois Lane. Mr. O'Connor asked for approval to install a pre-built Amish shed (12 x 22') by their garden on the corner of the property on Dubois and Blue Barns Road. He presented pictures of the property with actual measurements. He informed there is currently an 8 x 10 shed on the property which was moved over.

Mr. Myers asked if the 30' covers the new measurements. Mr. O'Connor answered they now need less of a variance and it will actually be less than 84 ½ feet from Blue Barns Road and 90 feet from Dubois Road. He approximated the variance will now be 20'.

Mr. Myers suggested that, for the record, it should be left at 30' in case he needs to modify something.

Mr. Dudick asked why the shed could not be place where it was originally drawn.

Mr. Myers responded that it is a wooded lot in that area.

Mr. O'Connor informed there are only saplings in the area he wants to locate the shed now, and no fully grown trees.

Mr. Bloss commented it is adjacent to a large garden. Mr. O'Connor said he needs the shed to store gardening equipment.

Mr. Fantini made the motion to close the public hearing, seconded by Mr. Strother. All approved. Public hearing closed.

Mr. Fantini made the motion to approve the application as submitted, seconded by Mr. Strother.

Mr. Dudick summarized this is a corner lot with two front yards and they see this all the time and recognize the unique hardship that comes from having a corner lot.

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

Application approved as submitted.

All members were also present at the previous meeting of October 1, 2013 and voted to approve the minutes for that meeting.

The next meeting is November 19, 2013.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mr. Cifor . The meeting was adjourned at 8:06 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