

Town of Clifton Park

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Zoning Board of Appeals



Zoning Board of Appeals

September 1, 2015

Present: Michael Dudick, Chairman, Michael Bloss, Mario Fantini, Chris Lemire, Tony Morelli

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

Absent : Jerry Cifor, Denise Bagramian, Randy Gifford

Mr. Dudick called the meeting at 7:15 p.m.

PLEDGE OF ALLEGIANCE

Mr. Dudick informed the applicants this is a seven member board with one alternate. Tonight five members are present. To receive approval, an application must receive 4 yeas votes regardless of the number of members present. Mr. Mario Fantini (alternate) will be sitting in for Denise Bagramian. There are five voting members present tonight so the applicant must receive four out of five votes for approval.

DISCUSSION ITEM

Mike Dudick asked Mr. Myers if he wanted to read the letter first from Mr. Jonathon Lapper. Mr. Myers stated yes.

Mr. Dudick stated there is a letter from Mr. Jonathon Lapper representing an application that was heard on July 21, 2015 that the board approved. The applicant is asking that the board reopen their proceedings. The attorney goes into detail as to the rationale for the request. There is a letter from the applicant's attorney, dated August 26, 2015, which will be put into the record. There is also a letter from the Clifton Park town Attorney, regarding Clifton Park

Associates LLC advising their attorney for Whitney Lane at their request. Mr. Dudick proceeds to read this letter.

Mr. Dudick stated that before we get to the new business we are going to visit the old business.

Mr. Dudick stated that this board needs to vote if the application is to be reopened.

Mr. Dudick asked for questions from the board.

Mr. Peller stated to Mr. Dudick to put on the record pursuant to the Town Attorney's letter to Mr. Brick the town law article 16, section 267A subsection 12 which allows the ZBA to hold a rehearing to renew any order decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such hearing to occur.

Mr. Peller clarified that what is before the board is a discussion on whether or not the board would like to entertain the applicant's request to rehear the application. What that would mean is that if the board decided to, it would need to be renoticed and it would be put on as new business for a subsequent meeting. There would be a public hearing comment period, then the board could then look at the criteria necessary to make a SEQRE determination in whether or not the board wanted to grant the variances. Before the board tonight for discussion purposes is whether or not they want to rehear the application, not any type of substance or specifics to that application.

Mr. Dudick stated of the five voting members here that decision would have to be unanimous.

Mr. Peller agreed. He stated to Mr. Dudick that he would have to entertain a motion which would need to be seconded then it would need to pass unanimously.

Mr. Dudick agreed.

Mr. Dudick stated that before asks for a motion he asked the board members for any questions with regard as to what's been said.

Mr. Lemire asked Mr. Dudick for a clarification because he was not present at the July 21, 2015 meeting and did not have a vote on the application. Would he able to participate in the proceedings tonight as it pertains to this application for a potential motion.

Mr. Dudick stated his perspective is since that application had multiple dates this would be just an allowance for that applicant to have a renewed application. Even if Mr. Lemire wasn't present for any aspect of it, he could allow it if Mr. Lemire wished to. This would be the applicant's desire to have the application reopened because of issues that they have.

Mr. Peller stated to Mr. Lemire that there is no prerequisite in the town law that says you needed to have sat and made a decision before you can make a decision on whether or not you can rehear the application. He agrees with Mr. Dudick that he can participate in this discussion as to whether or not he can rehear the motion.

Mr. Dudick stated that Mr. Lemire can participate in this discussion and this vote and pending your attendance vote on it again with all the information that is presented here.

Mr. Dudick asked the board for any other questions or comments. He made a motion to vote to determine where the board can hear this application again. Motion was seconded by Mr. Fantini.

Mr. Lemire asked the board what is the basis for the motion.

Mr. Duduck in response then read the August 26, 2015 letter from Attorney Jonathan Lapper, the applicant's attorney.

Mr. Lemire asked Mr. Dudick if that puts the board back to open public comment. Because the applicant represents the application, everything starts again.

Mr. Peller stated that is correct. The applicant would be afforded the opportunity to present anything additional. There would be public comment. Mr. Dudick agreed.

Mr. Lemire asked Mr. Peller about the decision that was rendered in July 21, 2015, if that was unanimous based upon the members of the board that were there.

Mr. Peller stated that it was.

Mr. Duduck asked for any other comments from the board. There were none. A vote was called.

Ayes: Bloss, Dudick, Fantini, Lemire, Morelli Noes: none

Mr. Peller stated for the record upon the rehearing, the board can reverse, modify or annul its original order, decision or determination upon the unanimous votes of the members present. When there is the rehearing, the board can modify, reverse or annul the original decision.

Mr. Dudick asked Mr. Peller if the subsequent vote on this application has to be unanimous. Mr. Peller stated that any vote to modify, reverse or annul the prior decision would have to be unanimous as well, or the prior July 21, 2015 determination would stand as is.

Mr. Dudick asked for further comments. There were none.

NEW BUSINESS

The secretary read the legal notice as it appeared in the Daily Gazette on August 27, 2015

An application from Nicholas Rhoades for an area variance to expand a non-conforming structure which does not meet required front setback. 100' front setback required per Section 208-98, Longkill Road has 90' of right of way in this area. Homeowner shows 14' to road edge. It is expected the right of way takes up most if not all of the 14', therefore a zero setback is available. Variance required is 100'.

Property is located at 62 Longkill Road, Ballston Lake, NY 12019 (Permit #81047)

The application was presented by Nicholas Rhoades, owner of 62 Longkill Rd, Ballston Lake. He stated he purchased the property two months ago. The staircase in the house (The applicant proceeds to pass out pictures taken of the staircase which will be part of the record).

Mr. Dudick asked Mr. Rhoades if he notified property owners within 500 feet of his property. Mr. Rhoades stated that he did. Mr. Dudick asked Mr. Rhoades if he did so with certified mail. Mr. Rhoades stated he was not told he had to. Mr. Dudick stated that he just wanted clarification.

Mr. Peller asked Mr. Myers about his opinion on whether this is a use or area variance.

Mr. Myers stated that the more he considered the application, that the law states that a non-conforming lot may be the site of minor additions or alterations provided that the new construction conforms to everything it has to. The applicant needs a variance because it is an old house which is too close to the road. Granting an area variance would make the house conform which would release any issues that would be for modifications to the house. Plus, it does allow minor modifications in the non-conforming use section of the law. Because of what is proposed and the reasons it was proposed on, this application is an area variance.

Mr. Peller asked Mr. Myers that if this is an area variance and it was properly noticed, then Mr. Rhoades does not need to notify his neighbors by certified mail. Mr. Myers stated that was correct.

Mr. Rhoades presented the staircase pictures to Mr. Dudick. He explained the actual depth of the staircase is 5 ½ ft. rising up to 7 ½ ft., which he feels is pretty steep. He stated that they are unsafe to use. The bathroom is downstairs and the nursery is upstairs. The addition would be setback two more feet than the current house is, so it will actually allow for 18 feet front yard depth versus 16 feet front yard depth. They are not going any closer to the road. They are taking out that staircase and making a hallway upstairs and putting a new staircase that is up to code in the addition. They did a 203K reconstruction loan for this mortgage because they could not bring the price of the house down far enough to take care of this.

Mr. Lemire asked Mr. Rhoades if the old staircase there now is the one coming out. Mr. Rhoades stated that was correct.

Mr. Rhoades stated that he just filed for the area variance so far. For the building permit, if granted on tonight's variance decision, will have architect's stamped drawings with a full poured foundation. This will add to the value of the house and have an upstairs bathroom. For insurance reasons, those old staircase is out of code.

Mr. Lemire stated to Mr. Rhoades that he is 48 feet give or take from his neighbor which will go down to 38 feet. Mr. Rhoades stated that is correct. Mr. Lemire also asked that there is a big tree and will that be coming down. Mr. Rhoades stated that is correct. The tree is about 19 feet from the south side of the house. He stated that the tree which is dead and close to power lines will be taken down with a crane.

Mr. Lemire asked Mr. Rhoades if he is able to run electrical off the back of the house.

Mr. Rhoades stated that the way that it is set up, the septic tank is off the back. They need a full poured basement since the basement height is 6 feet. The electrical panel will be in the new foundation. In the other portion of the house is a crawl space so they couldn't go over the top of that because of the footings; it couldn't take the weight of a second story addition.

Mr. Lemire asked Mr. Rhoades if the septic is off the kitchen. Mr. Rhoades stated yes, that is where the septic is.

Mr. Dudick asked Mr. Rhoades if this is just a front yard setback not a side yard setback.

Mr. Rhoades stated that this is just a front yard setback. There were no side yard concerns.

Mr. Myers stated that in Jonesville all the old houses were built close to the road, plus it has extended right of way off Longkill. Mr. Peller agreed.

Mr. Lemire stated that Mr. Rhoades isn't going closer to the road he is going further back. Mr. Myers stated that was correct.

Mr. Rhoades stated that there was a variance for an extended porch in 2012.

Mr. Dudick asked Mr. Rhoades if he talked to his neighbor about this project. Mr. Rhoades stated that he has talked to them and they are fine with it. He stated Mr. John Byrnes is on one side and Longkill Park on the left hand side if you are looking at the house and a baseball field behind him.

Mr. Dudick asked for comment from the board.

Mr. Bloss asked Mr. Dudick for a comment that Mr. Rhoades is a former teammate of his son's. When he read the application he didn't realize it was him. Would there be objective in evaluating the variance.

Mr. Dudick stated to Mr. Bloss he didn't feel it would be a problem.

Mr. Dudick asked Mr. Rhoades if he had any business dealings with Mr. Bloss. Mr. Rhoades stated no.

Mr. Dudick asked Mr. Myers for any opinions

Mr. Myers stated that the house has no historical significance. The modifications to make it more livable are a good idea.

Mr. Bloss asked Mr. Myers if the house is structurally sound. Mr. Myers stated to his knowledge it was.

Mr. Myers asked Mr. Rhoades that when he bought the house he had inspections done on it. Mr. Rhoades stated that he did.

Mr. Dudick asked for any public comments. There were none.

Mr. Dudick made a motion to close the public hearing. The motion was seconded by Mr. Bloss. All approved. Public hearing is closed

Mr. Fantini made a motion to approve the application. The motion was seconded by Mr. Morelli

Mr. Lemire stated that this application has no effect on the character of the neighborhood. There doesn't appear to be an alternate solution without the variance for the septic situation. It doesn't appear to have a negative effect on the environment. Although the requested variance may be self created, it seems like a good improvement to the property.

Ayes: Bloss, Dudick, Fantini, Lemire, Morelli Noes: None

Application approved as submitted

The minutes from the August 18, 2015 are not available yet and are pending

The next meeting is September 15, 2015.

Mr. Dudick made the motion to adjourn. The motion was seconded was Mr. Morelli. The meeting was adjourned at 7:45.

Respectfully submitted,

A handwritten signature in cursive script that reads "Cristi Shuhart".

Cristi Shuhart
Acting Secretary/ZBA

cc: Town Clerk, Town Board, Town Attorney, Zoning Board Members, Joel Peller, Counsel, Steve Myers, Department of Building and Development, ECC, Assessor, Highway