

Approved

ZONING BOARD OF APPEALS

November 17, 2015

Present: Michael Dudick, Chairman (7:05), Denise Bagramian, Michael Bloss, Jerry Cifor, Randy Gifford, Chris Lemire, Tony Morelli (7:05), Mario Fantini

Also Present: Louis Renzi, ZBA Counsel
Steve Myers, Director, Building & Zoning

Absent:

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. Tonight all 7 members are present, plus the alternate. To receive approval, an application one must receive 4 yea votes regardless of the number of members present. There are seven voting members present tonight so the applicant must receive four out of seven votes for approval.

OLD BUSINESS

None

NEW BUSINESS

The secretary read the legal notice as it appeared in the Daily Gazette on November 12, 2015

An application from Riverview Construction Assoc., Inc. for a variance from Section 208-98 which requires a special setback for Grooms Road of 130' from centerline; 105' available; Variance required = 25'.

Property is located at 675 Grooms Road and 300 Vischer Ferry Road, Clifton Park, NY 12065 (Permit#81059)

The application was presented by Nick Costa, Advanced Engineering & Survey, representing Riverview Construction. He advised they prepared the site plan. He asserted they need the variance because they cannot move the building any further to the North or to the rear of the property because of the NY DEC wetlands and they cannot build within 100' of them.

Mr. Costa stated the building is only 50' wide, and if reduced to meet the setback it would be only 25' wide. He maintained the building conforms to the 80' setback from the property line which is required in that zone and pointed out that the building will be in the same alignment as the other buildings on the road.

Mr. Dudick asked Mr. Myers for insight into the special setback requirement.

Mr. Myers informed there are several Town roads designated with a special setback, naming Lapp Rd, Ushers Rd, Grooms Rd and Vischer Ferry Rd. He explained that, at the time the code was written, those roads were considered to be major thoroughfares and that there might be a need to widen them eventually. For this reason they wanted to make sure the buildings were back far enough. He said for some of those roads this has not come true and most of them are still two lane roads.

Mr. Dudick asked if there would be enough room to make four lanes in the future. Mr. Myers said "yes" explaining that most of the normal 80' setbacks guarantee there would be enough room. He said they are easily 100' off the centerline.

Mr. Costa informed the proposed building would be approximately 81' off the property line and about 105' from the centerline.

Mr. Lemire asked Mr. Myers whether the Stewart's canopy to the east is closer than the 130'. Mr. Myers surmised it probably is. He reminded they granted variances for the new Stewart's on Crescent Road for this same reason.

Mr. Bloss asked about the other buildings along the road and Mr. Myers replied they are pretty much in line with Stewarts.

Mr. Lemire queried about the type of building intended. Mr. Costa responded it will be retail and office.

Mr. Dudick asked for public comment. There was none.

Mr. Myers apprised they cannot move the building back toward the wetland because they would need a permit from the DEC to encroach on the buffer and most likely it would not be granted. He stated this is a minor request and he does not have an issue with it considering the other buildings along the road.

Mr. Lemire asked if the 100' measurement to the wetlands is to the proposed pavement. Mr. Costa said they set it a foot or two farther away. Mr. Lemire asked the purpose of the macadam in the back.

Mr. Myers informed it is needed for fire code and parking and explained they need access all the way around the building. Mr. Costa said if they removed the back driveway the fire department would have a problem with that. Mr. Dudick agreed.

Mr. Dudick made the motion to close the public hearing. Mr. Gifford seconded the motion. All approved. Public hearing closed.

Mr. Dudick pronounced the Zoning Board of Appeals as lead agency for SEQRA and made the motion to declare this application a Type II action and a negative declaration. Mr. Cifor seconded the motion. All approved.

Mr. Dudick summarized this is an unusual property on a corner lot and on a special road with designated wetlands to the north. He pointed out that fire code would be an issue moving the building farther back.

Mr. Cifor made the motion to approve the application as submitted. Mrs. Bagramian seconded the motion.

Ayes: Bloss, Morelli, Gifford, Dudick, Cifor, Bagramian, Lemire Noes: none
Application approved as submitted.

The secretary read the legal notice as it appeared in the Daily Gazette on November 12, 2015

An application from DeGraff Bloom Custom Builders for a variance from Section 208-11 which requires a 50' setback in an R-1 zone. 30' setback requested; Variance required = 20'.

Property is located at 12 Yogi Court, Ballston Lake, NY 12019 (Permit#81060)

The application was presented by Lee DeGraff, one of the partners of DeGraff Bloom, representing the owner, Kain Development.

He told the board this particular lot is working around numerous parameters of wetland setbacks which created a very small buildable footprint. The largest house that would fit in that envelope would be 45' x 28' and he has nothing in his portfolio of plans to fit that. He admitted they could come up with something but they are building homes in the \$400,000 - \$600,000 range and what they could come up with would not fit the character of the neighborhood.

Mr. DeGraff stated the plan they came up with to solve the problem is to push the house forward which will increase the footprint and allow them to build a house that fits within the subdivision.

Mr. Bloss asked if the driving force is the wetlands which created a 100' buffer. Mr. DeGraff answered it is, explaining there are special isolated wetlands surrounding on both sides which create the buffer. He repeated he thinks it is pretty special because it is an isolated wetland which normally wouldn't be an issue. He discussed the size of the homes currently built and the buildable lots.

Mr. Myers commented this is a unique subdivision with specific land preservation areas set up as a result of isolated wetlands and neighborhood considerations. He pointed out the wetlands and explaining that each lot has a specific envelope they are allowed to build on. He said in this case Mr. DeGraff will be increasing the building envelope by pushing the house forward and away from the wetlands rather than try to go backwards beyond the envelope. He said, in his opinion, it won't be visually unique enough to stand out.

Mr. DeGraff reminded it is on the cul du sac.

Mr. Dudick asked the number of building lots on the property and when did they start construction. Mr. DeGraff answered there are sixteen lots and he believes they started building about three years ago.

Mr. Dudick asked if the lot was the same as when it was first set up. Mr. DeGraff answered yes, the same since day one. Mr. Dudick asked if the lot was set up then, what has changed since then. He questioned why, if they knew the wetlands were there, was the road set up in a way to cause this requirement. He suggested the road could have been done differently so it wasn't so close to the building lot.

Mr. DeGraff asserted it was because of numerous unique situations during the development of this project and the special uses put into place to protect "substantially" above and beyond what would normally be protected. He informed he was not involved in the development of the road as he is merely the builder. He said he knew this lot was going to be a problem when it came time to have a potential buyer.

Mr. Dudick commented that the subdivision was designed to make this lot a problem. Mr. DeGraff admitted it was a mistake, adding that is the bottom line, it was a mistake.

Mr. Lemire commented it is a mistake only if you want to put the same size house as the rest of the homes. He commented you could put a smaller house but admitted it would look out of place.

Mr. Gifford asked the square footage difference between a smaller house that would fit there and the ones he has built. Mr. Dudick asked the range of sizes in that subdivision.

Mr. DeGraff answered they have some ranches which are smaller footage but would take up a bigger footprint. The smallest would be 2550 sq ft up to 3200 sq ft.

Mr. Dudick asked what size house could be built if they didn't receive the variance. Mr. DeGraff said if you subtract the garage from the width it would give them a house of 25' x 28', estimating it would be about 1500 sq ft or 750 sq ft on each floor.

Mr. Gifford asked the size of the ranches they build. Mr. DeGraff answered the white ranch they built is small (about 1800) sq ft. but they couldn't build any ranch on that property because it requires a larger footprint.

Mrs. Bagramian asked if they have a required minimum size home. Mr. Dudick questioned whether the differences between an 1800 sq ft ranch and a 1500 sq ft colonial creates a big visual difference.

Mr. Myers said there is a big visual difference between a 1500 sq ft colonial and a 3200 sq ft colonial.

Mr. Lemire asked if the house depicted on the plan is the one they want to build, and if so where is it extending outside the envelope. Mr. DeGraff answered that is the house they want to build, and it is showing its placement with a variance.

Mr. Cifor commented that, to him, a mitigating factor is that it is on the cul du sac and not on the main road. Mr. Dudick agreed that is an advantage.

Mr. Lemire questioned where it would normally be placed with the 50' setback. Mr. DeGraff said it would put it way back in the wetlands. Discussion ensued regarding the placement at the 50' line.

Mr. Gifford asked Mr. DeGraff if he is going to come back for setbacks for the other houses. Mr. DeGraff answered he has checked all the other lots and with most of them the houses are either set way back or they are all different. He asserted they wouldn't come back.

Looking at the map, Mr. Dudick commented the road is different, noting he thinks they changed the road. Mr. DeGraff disagreed, saying it is not different.

Mr. Myers informed, in his opinion, the road was adjusted because, when they developed the subdivision, they had no idea they were going to have the special circumstances that would be applied to it. He said he believes it was only because of neighborhood concerns that such restrictions about land preservation areas were put on areas in the subdivision.

Mr. Dudick asked if the restrictions were part of the original subdivision. Mr. Myers responded that the Planning Board placed the restrictions on it and then the lots were modified as a result of it. Mr. DeGraff said there are in a unique setback issues because some of the "forever wild" land that was created.

Mr. Myers informed the Planning Board put restrictions on certain areas and he doesn't have a problem with moving things away from the wetlands and doesn't believe it will impact the neighborhood.

Mr. Dudick asked if this has always been a building lot. Mr. Myers said that it is and they are just expanding the envelope by moving it forward to allow them to build a house of similar size as the others. He reminded that all the houses are not going to be set 50' from the road because of the way the land is in different places and concerns about wetlands.

Mr. Dudick asked Mr. DeGraff how many of the homes are developed now and if he foresees the need to come back for other variances. Mr. DeGraff answered six homes are built now and he

has looked at the map and doesn't foresee others. He repeated he knew there would be a problem with this lot.

Mr. Lemire asked if he could place the house farther back and put a driveway between the wetlands. Mr. DeGraff responded it would be possible but it would be a huge driveway.

Mr. Myers confirmed that keeping the house as far away from the adjacent neighborhood would be a better option. He said he would suspect the land between the wetlands would not be good land to build on.

Mr. Lemire summarized that this is a legitimate buildable lot and the builder wants to move it closer to the road so he can build a house of similar size to the others. He asked Mr. Myers, as the Building Officer, if he has any problem with that.

Mr. Myers answered that, as the Building Officer, he has no problem because the Planning department approved it and set the lot sizes and didn't ask the building department about it.

Mr. Myers informed the board he has the owner authorization for the builder to represent the application.

Mr. Dudick made the motion that the Zoning Board is the lead agency and this is a Type II application and a negative declaration. Mr. Morelli seconded the motion. All approved.

Mr. Dudick announced the public hearing and asked for comments. There were no comments. Mr. Dudick made the motion to close the public hearing. Mr. Bloss seconded the motion. All approved. Public hearing closed.

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

Mr. Dudick complimented Mr. DeGraff for his candor and commented that better planning could have prevented this problem. Mr. DeGraff agreed.

Mr. Dudick summarized that because of the wetlands, the location on the cul du sac, and the fact that the property was approved several years ago, he doesn't see a problem with this.

Ayes: Lemire, Bagramian, Cifor, Dudick, Morelli, Bloss Noes: Gifford
Application approved as submitted.

The secretary read the legal notice as it appeared in the Daily Gazette on November 12, 2015

**An application from Shawn VanVeghten for a variance from Section 208-11 Note C & 208-98 which require a 200' lot width. Variances for five lots total requested: Lot A = 70'; Lots B,C,D = 100'; Lot E = 160'.
Property is located at 380 Ushers Road, Clifton Park, NY 12065 (Permit#81061)**

The application was presented by Duane Rabideau, Van Guilder Associates, representing the owner of the property.

Mr. Myers interjected, informing he had made an error in including lots A and E while writing up the application. He advised the board need only consider variances for Lots B, C and D and not for A and E.

Mr. Lemire asked if Lots B, C and D fall under the same section of the law. Mr. Myers confirmed they do, citing 208-11 C for width and also Section 208-98.

Mr. Renzi counseled it does not have to be re-noticed because they are not adding to the application, only taking something away.

Mr. Rabideau introduced himself and presented his application. He stated they are asking for a variance from the 200' lot width (at the building line) requirement (Section 208-11C), explaining this is a special road requirement. He explained the owner is looking to subdivide the five acre parcel into five residential building lots. He said three of the proposed lots (B,C & D) do not meet the required 200' width at the building line.

Mr. Lemire asked if Section 208-98 relates to the distance from the road centerline. Mr. Rabideau answered it is about the width of the lot.

Mr. Renzi asked Mr. Myers to clarify the statute.

Mr. Myers explained that Section 208-11C applies to the width of the lot along the building line which applies to special roads. He further explained that Ushers Road is a special road which means the width must be 200' wide versus the normal 100' required width and requires additional setback as well.

Mr. Rabideau, referring to B, C & D, asserted the lots meet all the other building requirements and pointed out they were able to reduce the access to Ushers Road to two curb cuts. He explained Lots A & B come out on to one curb cut and the others come out to the second cut. He claimed this is less than if they went straight to the R-1 zoning because they were able to reduce the curb cuts from three to two.

Mr. Lemire asked about the map, referring to the 100' setback from the property line. Mr. Rabideau corrected that it is from the centerline of the road. He explained (on the map) how the 200' width is derived.

Mr. Lemire asked the length of the parcel from one end of the other, asking how many lots they could get if they conformed to the 200' width. Mr. Rabideau answered three. Mr. Myers informed it is about 680' at the buildable line, from one end of the lot to the other and agreed they could put in three lots and meet the code.

Mr. Lemire reiterated they could put in three lots with no variance. Mr. Myers agreed. Discussion ensued regarding how the 200' width is determined and the way the measurements are made.

Mr. Dudick repeated there is no variance needed to subdivide into three building lots. He asked when the need for a variance came up, and what happened to the concept of developing this into four lots. He asked why they are asking for five building lots when it doesn't meet the requirements for four.

Mr. Rabideau explained the configuration of the lot lends itself to a situation where the rear lot is 2 ½ acres. He said they are trying to utilize that lot and minimize the impact to the neighborhood lots around the parcel. He showed the county GIS map with the layout and how it looks in the neighborhood.

Mr. Rabideau informed the existing house on the lot is abandoned. He said they are trying to make the lots conform to the R-1 zoning and set it up so the largest lot has buffering to minimize the impact. He opined it fits into the size of the houses in the neighborhood.

Mr. Lemire commented these would be the first houses facing Ushers Road because all the existing homes have back yards facing the road. He asked if they would be changing the topography on Lot A.

Mr. Rabideau said they would not. He explained they are trying to minimize the visual impact of the entrances and will put buffering along the frontage. He asserted they are trying to minimize additional curb cuts with the two driveways and the lot is very green. He added it has public water and sewer and reminded that, even though the houses will face the road, they will be adding buffering.

Mr. Myers said the plan has the houses facing Ushers Road, but they could turn them sideways.

Mr. Dudick asked the length of frontage. Mr. Rabideau answered 680'. Mr. Dudick pointed out that, with the requirement of 200' frontage, they could get three homes in there with 220' of frontage. Mr. Rabideau agreed.

Mr. Lemire asked how long the code had been in effect, pointing out the homes on the north side of the road have large frontage. Mr. Myers disagreed saying he doesn't think they have 200' of frontage. Discussion ensued with Mr. Myers pointing out a lot on Knollwood.

Mr. Lemire asked if the backyard of a lot has to be 200' also. Mr. Myers confirmed it does, explaining the code doesn't say the address has to be on Ushers Road, just that the lot has to be on the road.

Mr. Dudick announced the public hearing and asked for comments. There were no comments from the audience. Mr. Dudick made the motion to close the public hearing. Mr. Lemire seconded the motion. All approved. Public hearing closed.

Mr. Lemire opined that because this is one parcel, there is nothing to stop them from putting in one driveway and subdividing for four parcels.

Mr. Rabideau argued the biggest factor would be the cost and secondly the Planning Board would have an issue with (reducing) the amount of green. He said they looked at putting in a cul du sac in but then once you get the road in you have one big open area which the neighbors would not like because it forces the houses back. He said they can minimize the amount of disturbance by setting a no cut zone and a smaller footprint with the driveways. He opined the topography hides things so five houses fit in nicely there on five acres.

Mr. Dudick asked if the land was under contract or is the application from the owner of the property now. Mr. Rabideau said it is by the owner of the property now.

Mr. Dudick asked how long he owned the property and Mr. Rabideau answered a couple of months. Mr. Dudick asked how this not a self-created hardship.

Mr. Rabideau answered because it cost a lot of money. Mr. Dudick questioned if the owner did not know this would cost a lot of money when he bought the property a couple of months ago.

Mr. Rabideau responded that the whole process costs are tremendous. He suggested when you look at the requirements as far as A, B & C they meet those, especially B. He said they are allowed three lots and if they are only allowed three out of the five they would lose two building lots.

Mr. Dudick pointed out that there is more money to be made with five than with three so the financial reward is greater with five than there would be with three if there was no variance. He agreed it has a unique characteristic with a deep lot and could be taken in consideration. He said in his own mind he would consider the width at the front of the property than at the building line, even though that is not the number they are looking at here. He opined it is an excessive reach trying to put five building lots when the variance starts with the fourth. He opined, with the depth of the property and keyhole, it justifies the fourth but considers the fifth is a gift rather than a necessity, just so that the owner can make some extra money. He suggested the owner should have considered at time of purchase several months ago, that without variance the most he could hope for is three, and not buy property saying I'm going to definitely get that variance approved. He repeated he sees this as self-created but could see the fourth as reasonable because of the depth of the property and it being a keyhole. He said he could see it getting the variance for a single extra lot, but not an extra two.

Mr. Lemire asked if there have been issues with other keyhole lots. Mr. Myers said no.

Mr. Lemire asked Mr. Dudick if he is saying he would be comfortable with four lots, including the keyhole lot, but not three.

Mr. Dudick confirmed that is not in the applicant's proposal but he can see having three lots and the keyhole lot, although a variance would still be necessary.

Mr. Lemire suggested removing lot C, making a 40' driveway and then lot D would be 130' and Lot B would be 130'.

Mr. Rabideau asked if they got a variance for four lots, if the board consider a fifth.

Mr. Dudick suggested if they combine lots B & C into one lot it wouldn't need a variance, lot E wouldn't need a variance, no lines would have to be moved and only one lot would need a variance. He proposed moving the lines a little they could get a little more frontage for D and still have the keyhole lot. He reiterated he can see four lots because of the depth but going for five is not necessary. He reminded the board wants to look at the minimum amount of variance.

Mr. Lemire noted the property was purchased recently and the zoning hadn't changed so when the property was purchased they knew they would have to go for a variance and knew it would be a challenge. Mr. Dudick repeated that it is a self-created hardship but between that and the shape of the property he feels that he would have a comfort level with four and wouldn't hold the owner hard to the three because of the size and shape.

Mr. Lemire referred to Section 208.11C asking for reassurance it is not measuring along the street, but at the building line. Mr. Myers said that it is his interpretation because the code does not say "at the road it says "at the building line" so if it is off the road that is what they are looking at.

Mr. Myers stated he disagrees with the chairman on his evaluation. He asserted that self-created hardship doesn't necessarily preclude granting the variance. (Mr. Dudick replied that is so.) Mr. Myers suggested that if they are going to re-configure it, at best the applicant should table it to give them a chance to come up with a drawing. He commented the board has granted this kind of variance many times in the past for lots narrower than the code requires.

Mr. Dudick stated, for the benefit of the applicant, if they have the vote today and they are denied the variance for five lots it would be significantly different to come back for four which is another possibility. Mr. Myers agreed.

Mr. Myers commented that Mr. Lemire mentioned building a public road of 400-500 feet and said he doesn't think the highway department would like a short road. Mr. Lemire clarified he wasn't talking about a public road; he was talking about sharing a driveway. He said he suggested taking the driveway that is there, moving it over and putting three houses off of it. Mr. Myers said that would be a very different configuration than what it is now so you would need some kind of new drawing.

Mr. Dudick reminded he doesn't speak for the board, only for his own position. He is only saying that if the board doesn't go for five lots, that four lots would be a significant change if they wanted to come back.

Mr. Rabideau asked if the board would consider five lots. Mr. Dudick said he just expressed his opinion and Mr. Myers disagrees with him. He stated he is willing to allow him to convince him to change his mind about five, but he is simply stating his opinion about the way it is presented. He commented they will find out how the rest of the board feels when they vote.

Mr. Rabideau opined that Section 208-98 has outlived its usefulness because the special roads were considered that at some time would be a four lane road like Lapp Road. Mr. Myers agreed, saying they had granted a 100 foot variance for Lapp Road. Mr. Rabideau suggested that if the

town re-zoned it would change the code as it has outlived its usefulness because this comes up all the time about these roads.

Mr. Dudick said the board is asked to consider the law as it is written. Mr. Myers responded that is why the Zoning Board is there, to grant relief. Discussion ensued about the code. Mr. Myers referred to the new zoning in the commercial district saying it was changed because the old zoning didn't work in that area of town any more.

Mr. Dudick asked Mr. Myers to convince him. Mr. Myers alluded to Lapp Road where the board has previously granted variances there for four lots at 100' width.

Mr. Lemire pointed out that the size of all the lots in that area were smaller as were the size of the houses.

Mr. Rabideau said the lots they are proposing meet the R-1 zoning and it is just because they are on a special road. Mr. Myers asserted if they were not on a special road, they would not be having the discussion.

Mr. Dudick asked if there are any other undeveloped areas on the road. General discussion ensued as to where these might be and the size of the lots.

Mr. Renzi counseled that the guidance is the balance between the benefit to the applicant versus any detriment to the community. He reminded the four requirements that need to be considered have all been discussed so they have made their record and they can go forward with the balancing test.

Mr. Myers asked Mr. Rabideau if he wants to consider re-configuring it. Mr. Rabideau said they are obviously here for five and it's a situation where it is one of the last large parcels on this road. He repeated it is one of those situations where 208-98 has outlived its usefulness and they are burdened by it. He repeated the layout meets R-1 zoning and they are buffering for the neighbors so it is not like they are packing too much in there and they feel they have a good layout.

Mr. Dudick said he will call for a vote. Mr. Lemire asked if they will have a no cut buffer in front of B, C & D. Mr. Rabideau said they will leave as many trees as they can to retain the streetscape, except the houses will face out. Mr. Lemire asked again if there is a no cut buffer there. Mr. Rabideau said no, but they will leave existing vegetation. He said the biggest concern was the neighbors.

Mr. Dudick called for a motion saying the applicant does not want to withdraw.

Mr. Lemire asked for clarification, that if the vote is a "no" the applicant will be able to come back for four lots. Mr. Dudick said yes, repeating that he has only given his opinion and he needs for someone to explain to him why he should vote for five instead of four. He assured he will hear everything that is presented to him. Looking at the Lapp Road issue he said this road is pretty well developed and there aren't any lots on this road that it can be applied to.

Mr. Lemire suggested that if the application is approved that the no cut buffer in the front of B, C & D should be made a stipulation to lessen the impact. He added that from the applicant's perspective that is the best use of the five acres but from the perspective of the residents of Stonegate and Country Knolls he thinks there will be a lot of upset people. He said the residents are not here because they don't have to be noticed because this is only an area variance but he thinks that this will be an issue.

Mr. Dudick commented that some people perceive that areas that are undeveloped are forever wild when they are not.

A person from the audience requested to speak. Mr. Dudick reminded the public hearing is closed, but after consulting with the board, made the motion to re-open the public hearing. Mr. Lemire seconded the motion. All approved. The public hearing was re-opened.

Mrs. Mariann Moloeznik, 24 Eagle Trace, owns property that adjoins the parcel. She stated she has the least generous buffer and believes the developer is depending on her property to make the buffer. She expressed the opinion that this is not a generous buffer and she is the most impacted because her buffer zone is very close to her home. She stated she is the sole owner of the property and it doesn't change the property line.

Mr. Rabideau responded they designate the home as Lot 24, not by the owner, and the property line doesn't change. He said there will not be a buffer there because there has to be a house there. He said they did take that into consideration.

Mr. Lemire asked whether, if they had 200 feet for Lot B & C, they could still build a house on Lot D. Mr. Rabideau said that is correct. Mr. Dudick clarified that even without a variance they could still build a house along that property line. Mr. Rabideau agreed that is correct, by zoning law. Mr. Dudick articulated zoning law allows for the placement of a house there because it is at least 10 feet off the property line.

Mr. Dudick asked for other public comment. There was none. Mr. Morelli made the motion to close the public hearing. Mr. Cifor seconded the motion. All approved. Public hearing closed.

Mr. Lemire asked how they determined the placement of the driveway. Mr. Rabideau explained that when they first presented it to the Planning Board the driveway was in a different place (showing on the map). He said the Planning Board had them move it based on comments from the neighbors so the impact is smaller than the entire length of her back yard. He said by doing it this way they could turn three driveways into one.

Mr. Bloss made the motion to approve the application as submitted.

Mr. Lemire said he would like to make a condition that there be a no cut buffer along Ushers Road as well as the other no cut buffers already on the map. Mr. Rabideau agreed to the condition. Mr. Bloss asked for clarification, asking if the no cut buffer applied to the owners as well. Mr. Rabideau informed the condition runs with the land. Mr. Bloss asked what would happen if a tree was damaged. Mr. Rabideau explained it would be a safety factor.

Mr. Dudick repeated the motion has been amended to include the no cut buffer in the front and those on the application. Mr. Lemire pointed out the others are not listed on the application, informing they are on the map delineated in green.

Mr. Renzi counseled the map must become part of the record.

Mr. Rabideau explained the buffer would be about 35' in back of the telephone poles along Ushers. Mr. Dudick suggested it be a 30' no cut buffer along Ushers Road on lots A, B, C & D (the entire length of the development) as well as 50' buffer on the western part of Lot E, a 40' buffer on the western part of Lot A, and a 50' no cut buffer on the southeast portion of Lot E.

Motion was withdrawn temporarily for Mr. Dudick to make a SEQRA statement.

Mr. Dudick made the motion to declare this board lead agency and made a negative declaration in regard to this application. Mrs. Bagramian seconded the motion. All approved.

Mr. Bloss made the motion to approve the application as submitted with the stipulation that the no cut zones as described above be included. Mr. Dudick seconded the motion.

Ayes: Dudick, Bloss Noes: Lemire, Bagramian, Cifor, Gifford, And Morelli
Motion is defeated, application denied.

Mr. Dudick made the motion to approve the minutes for the October 20, 2015 meeting. All Present at that meeting approved. Minutes approved.

The next meeting is December 15, 2015

Mr. Morelli made the motion to adjourn. The motion was seconded by Mr. Gifford. All approved. The meeting was adjourned at 9:57 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