

Town of Clifton Park

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ZONING BOARD OF APPEALS

Minutes

January 15, 2019

7:00 PM

Present: Chairman Dudick, Lisa McCoy, Jerry Cifor, John Klimes, Michael Bloss, Mario Fantini, David Donohue, alternate

Absent: Chris Lemire

Also Present: Neil Weiner, Esq., ZBA Counsel
Steve Myers, Director, Building and Zoning
Meg Springli, Secretary

The meeting was called to order at: 7:06 pm.

PLEDGE OF ALLEGIANCE

ROLL CALL

Chairman Dudick noted that Mr. Donohue would be a voting member in the absence of Mr. Lemire. Mr. Dudick then stated that 7 out of 7 voting members were present, and that all applications would require at least 4 affirmative votes to pass.

OLD BUSINESS:

NONE

NEW BUSINESS

- 1) An application from **Shaun T. Brennan** requests variances from the front setback requirements. Section 208-11, 50' front setback required, 39' available, 11' variance required. Section 208-98, 100' from road centerline required, 64' available, 36' variance required. Property is located at 664 Kinns Road, Clifton Park, NY 12065 (Permit #81197)

The secretary read the notice as it was published in the Daily Gazette.

Duane Rabideau with VanGuilder and Associates, representing Shaun Brennan, the owner and applicant, stated that he was requesting a variance to allow an addition of 1100sf to the existing residence. It was added that Kinns Road was one of the "special setback" roads listed in Town Code, and the existing house was pre-existing and non-conforming so the variances requested would bring the property into conformance. It was noted that a 200sf portion would be demolished in order to build the addition.

Mr. Myers noted that the application was a Type II action pursuant to SEQR and no further action was required. The chief zoning officer stated that the house was built about 1890 according to the assessor's records. Mr. Myers also stated that the Historic Preservation had no issue with the application.

Board members appeared to favor the application.

There being no further comment, Chairman Dudick made a motion, seconded by Mr. Bloss to close the public hearing at 7:12 pm. All in favor, none opposed.

Mr. Bloss moved, seconded by Mr. Cifor to approve the area variance as requested.

Mr. Bloss stated that the variance would not create undesirable change, and it would not present a detriment to nearby properties. Then he stated that there were no other reasonable methods of achieving the result, that he felt the request was not substantial; nor would it create an adverse effect on the environment. The board member also noted that he felt the hardship was self-created but that it was not preclusive.

Roll Call: McCoy, Cifor, Klimes, Bloss, Fantini, Donohue, Dudick

Ayes: Unanimous

Noes: None

Motion Approved 7:0

- 2) An application from **Jason Walton** requests variance from Section 208-86B. 50' setback required from property lines for main building. 25' setback requested for front line, 25' variance required. Lot is pre-existing in a CR zone therefore size variance is not required. Property is located at 46 Bradt Road, Rexford, NY 12148 (Permit #81198)

The secretary read the notice as it was published in the Daily Gazette.

Jason Walton, the owner and applicant, stated that he was requesting a variance to allow him to build a larger footprint single story residence with a walkout basement on the lot than had been originally designed.

Board members appeared to favor the application.

There being no further comment, Chairman Dudick made a motion, seconded by Mr. Fantini to close the public hearing at 7:22 pm. All in favor, none opposed.

Mr. Myers noted that the application was a Type II action pursuant to SEQR and no further action was required. The chief zoning officer stated that the 50' setback was a requirement because the lot is a keyhole lot and Mr. Myers felt that there still was a significant distance from the neighbor's house and since neighbors all signed

Mr. Cifor moved, seconded by Mr. Fantini to approve the area variance as requested.

Mr. Cifor stated that the variance would not create undesirable change, and no detriment to nearby properties. Then he stated that there were no other reasonable methods of achieving the result, that he felt the request was substantial but not monumental; nor would it create an adverse effect on the environment. The board member also noted that he felt the hardship was self-created but that it was not disqualifying.

Roll Call: McCoy, Cifor, Klimes, Bloss, Fantini, Donohue, Dudick

Ayes: Unanimous

Noes:

Motion Approved 7:0

- 3) An application from **Jack Osmancevic** requests a use variance from Section 208-86A which does not allow duplexes on keyhole lots. Lot 489 Moe was created 10/14/2011 by subdivision. Group home 485B Moe was completed 8/28/2013. Applicant purchased 489 Moe Road 12/5/2014. Applicant completed his residence at 487 Moe Road 1/18/2018. Lot purchased for \$70,000. Section 208-86A last modified in 2006. Property is located at 489 Moe Road, Clifton Park, NY 12065 (#81199)

Mr. Cifor noted for the record that his daughter lives in the group home at 485B Moe Road and that he had a conflict of interest, and he recused himself from the Board but asked that he be allowed to speak as a town resident.

Duane Rabideau, VanGuilder and Associates representing the applicant, Jack Osmancevic, who was requesting that he be allowed to build a duplex on 489 Moe Road which is a keyhole lot. The 4 lots have a common access road on to Moe Road. Mr. Rabideau stated that the applicant has had difficulty selling the lot to interested buyers for single family residential use. Mr. Rabideau claimed that the group home was a higher level use and activity than would otherwise be expected of a single family residence. Mr. Rabideau felt that any variance granted would not set precedence for future variances because the circumstances and location in the subdivision are unique and would not apply elsewhere.

Mr. Dudick questioned claims by the consultant that the amount of Emergency Services activity was in fact more than other residences. Mr. Rabideau stated that his comment was based on general observations by the parcel owner.

Mr. Fantini stated that he felt that the higher level of scrutiny needed for approving a use variance was not met. Discussion ensued. Mr. Weiner asked if the parcel was purchased after the group home already existed and Mr. Rabideau stated that it was.

Jack Osmancevic, the owner then explained that he had built his own home within the subdivision and that he had purchased another parcel with the intention of building and selling the property. Mr. Osmancevic stated that realtors have informed him that potential customers were not interested in the location based on the proximity of the group home.

Board members were not convinced that a hardship was proven through data, as required, rather than anecdotal evidence. Mr. Weiner stated that the Board would need to see real data, a “dollars and cents explanation”, to prove financial hardship.

The applicant stated that he would like the opportunity to gather more data and financial information before the board considered finalizing its decision.

Public Comment:

Mr. Jerry Cifor, resident at 49 Ray Road, Rexford, NY who recused himself from the Zoning Board for this application, expressed concern for the proposed variance. Mr. Cifor explained that he and his wife had built the infrastructure for the subdivision and that his daughter lived in the group home at 485B Moe. Mr. Cifor then added that he felt that one of the criteria for a use variance, the self-created hardship, was not going to be overcome.

Board members said that they felt that by purchasing the parcel after the establishment of a group home in the vicinity, the applicant could not claim that the use was more intense than it had been at the time of purchase. Mr. Weiner explained that the applicant might want to consult a land use specialist regarding the hurdle of the self-created hardship. Then, the attorney added that if the applicant was unable to overcome the self-created hardship criteria, the financial hardship won't matter anyway, as the board cannot grant a use variance if the hardship is deemed to be self-created.

Mr. Myers noted that this was zoned as a residential property according to State Law. The Chief Zoning Officer also stated that group homes were given special consideration under State Building Code and that the law prevents this property from being held to the standard of a commercial property.

Mr. Osmancevic requested adjourning to another meeting to gather more information. Mr. Osmancevic stated that he was willing to waive the 62-day rule for a decision in this case.

The public hearing was not closed.

Mr. Dudick moved to accept Minutes for December 4, 2018

Ayes: McCoy, Cifor, Klimes, Bloss, Fantini, Dudick

Noes: None

Abstain: Donohue

The meeting was adjourned at 8:16pm by Chairman Dudick, seconded by Mr. Donohue.

Respectfully submitted,


Meg Springli