

Town of Clifton Park

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Zoning Board of Appeals



APPROVED

6-6-17

ZONING BOARD OF APPEALS May 2, 2017

Present: Chairman Dudick, Chris Lemire, Lisa McCoy, Mario Fantini, Terry Cosgrove and Michael Bloss.

Absent: Jerry Cifor and Randy Gifford.

Also Present: Tom McCarthy, Esq., Town Attorney
Steve Myers, Director, Building and Zoning

The Meeting was called to order at 7:03 p.m. by Chairman Dudick and he designated that Terry Cosgrove will sit in for Mr. Gifford.

PLEDGE OF ALLEGIANCE
ROLL CALL

OLD BUSINESS

The secretary read the legal notice as it appeared in The Gazette on April 27, 2017:

1. Application from **Boni Builders, Inc.** for 4 area variances from Section 208 to construct a 2 story single family home on a existing non-conforming lot. 1) 20,000 SF required in an R-1 Zone for lots with sewer. 11,592 SF available; 8,408 SF variance required; 2) front setback required = 50' from property line; estimated 35' proposed (60' from centerline); 15' variance required; 3) Section 208-98 (special roads) front setback required from road centerline = 100'. 60' proposed, 40' variance required; and 4) Section 208-11c – lot width required in residential districts along special roads = 200', 60' proposed, 140' variance required. Property is located at 896 Main Street, Clifton Park, NY 12065. (Permit #81125).

Mr. Larry Boni handed out an additional packet of documents to the Board members and Mr. McCarthy confirmed the Board members had received the 1988 Planning Board file for the Foxfire Development he had mailed.

Addressing the criteria reviewed by the Zoning Board for area variances, Ryan Boni stated that there will not be an undesirable change to the character of the neighborhood because the lot is locating in an R1 Zone; they are planning to build a single family house as shown in the packet; there are many small lots with narrow

homes on the road and in the neighborhood and because they are requesting a variance to move the proposed house towards the road to be in line with the neighboring properties.

He also stated that with the R1 Zoning requirements, there is no alternate method for them to pursue and that the requested variances are not substantial, especially now that they have sewer, which has lessened the impact on the lot and the variance required.

He referenced a page in the handout showing 7 highlighted lots which he described as narrow or of the same size that have homes on them. He confirmed for Mr. Lemire that the subject lot is in front of the Foxfire Bend subdivision, across from Carlton Road and the park.

Ryan Boni went on to state that the requested variances will not have a negative effect on the physical conditions of the neighborhood because the proposed house will match the other single family houses in the area and will not have a negative effect on the environmental conditions of the neighborhood because the lot has sewer, water and natural gas, adding that they have sign offs from those departments as well as from the County Highway Department for a driveway.

As to whether the alleged difficulty is self-created, Ryan Boni reiterated that the Planning Board created the lot and as shown in their handout, had also created a sewer easement along Lots 7 and 9 to get sewer to the subject lot, which has now decreased the required variance by 20,000 SF

Upon inquiry from Mr. McCarthy as to how the easement was discovered, he explained that after the last meeting they went back and looked at the Planning Board minutes and found there was a 15' easement that went directly to the subject property, 10' of which is on Lot 9 and 5' of which is on Lot 7, as shown on the final stamped plot plan included in their handout.

Mr. Cosgrove commented that in his opinion, to say that the Planning Board created the parcel is incorrect, as he believes the Planning Board was trying to prevent exit to County Route 52 and to remove the paper street which is what the subject lot was originally designated to be.

Mr. Myers commented the Mr. Cosgrove did not know that for sure and the Chairman indicated he would like to let the applicant finish his presentation before any further comments are made. He added that for any application, this Board reviews the information presented as opposed to presumptions.

Ryan Boni advised that have provided a copy of the easement in their handout which states that is for any utility lines that are needed for the lot.

Mr. Boni stated there is also a modification of that easement in their packet and Mr. McCarthy confirmed the Easement is shown on both the preliminary and the final site plan. Ryan Boni confirmed it is also shown on the final plot plan for prepared for Lot 9.

Ryan Boni advised that a photo in their packet shows that the back yard of the subject property consists of a berm of pine trees and therefore, the new house will not be seen by the development as it has a forever wild look. He added that the distance of the proposed home to the neighboring houses will be 80', 150' and 220' respectively, which more than in any another other subdivision.

Mr. Boni again pointed out they had done something very similar to this proposal in the past on a lot that had a 70' front line, 30' of which was a ditch, which left them only 40' to put a house up, adding that the subject lot is bigger. Upon inquiry from Mr. Cosgrove he confirmed the width of the proposed house would be 28' or 29' leaving approximately 15' on each side.

At the request of Mr. Lemire, Mr. Cosgrove re-visited his earlier comment, adding that in reviewing the Planning Board minutes provided, it states that the purpose of drawing the boundary at Lot 9 was to eliminate access from Lot 9 to the Main Street and therefore, he doesn't believe the Planning Board created that boundary in order to create this parcel. He believes it just happened by default and that the minutes only note that the parcel would be maintained and owned by Robert Van Patten Jr.

Mr. Boni responded that it is clear Mr. Van Patten always thought it was a lot because why else would he have bothered to have an easement created so many years ago?

Mr. Bloss inquired as to whether the easement was granted before, after or as part of the Foxfire subdivision approval. Mr. Myers confirmed it was shown on the final site plan and that note #5 on the plan says, "There shall be no access onto Main Street from Lot 9".

Mr. Lemire advised that the question in his mind is what was contemplated by the Planning Board, given the initial denial of the 10-lot subdivision with all lots being 20,000 SF or greater, which then went to litigation in Supreme Court. He advised that the Judge had remanded it back and there was a further proceeding before the Planning Board, at which time he assumes, in consultation with the applicant, Mr. Van Patten or his representative, the Planning Board decided that in order to make the 10-lot subdivision, they were going to change the lot lines of Lot 9 because originally this 60' strip was part of Lot 9. He opined that the Planning Board could have simply said no egress/ingress to Main Street and left the lot lines alone, but that is not what they did. He added that as noted in the minutes, Mr. Tribble had mentioned that the lot being created is substandard in that there isn't 200' of frontage on Main Street which is one of the actual variances that we're here dealing with tonight. In response to that, it seems to him that the applicant's representatives and the board members, on the recommendation of counsel, agreed to established boundary lines for Lot 9 by connecting the corners of the parcels owned by Mr. Tribble and Mr. Williams and provided that Mr. Van Patten would retain and maintain the 60' strip accessing onto Main Street. He went on to state that it wasn't a subdivision approval for 11 lots - it was a subdivision approval for the 10 lots that the applicant wanted, excluding this piece of property that for some reason he didn't want to be part of Lot 9.

Mr. Myers pointed out that the final site plan does not say it is not a buildable lot, which Mr. Lemire disagreed with. Mr. Myers clarified that this is an established lot, created by the Planning Board and according to Town Law, every pre-existing lot is allowed one (1) house. He further stated that the original subdivision plan was a horseshoe that came out to where this lot is, but that they changed the subdivision to make the lots back up to this parcel and the road was no longer there. Therefore, they established an easement through the lots that they now blocked it with to provide utility access to this property and the Planning Board made them make it a separate lot.

Mr. Lemire referenced the minutes of a Hearing held on November 9, 1987, where a plan was submitted with lot sizes varying from 20,000 SF to 63,000 SF and therefore, he assumes the purpose of the subdivision, which included the piece of property we are talking about now, was to make lots that were between 20,000 and 63,000 SF. Mr. Myers stated that he was assuming he knew what the Planning Board did and Mr. Lemire pointed out that is was stated in the minutes.

Mr. McCarthy counseled the Board to focus on the statutory factors required to be reviewed for area variances and asked Mr. Myers if he was convinced there is an easement from Lot 9 to the subject property for utilities. Mr. Myers advised that he was.

Mr. Fantini pointed out that the subject lot is a residential lot which is the applicant's intended use and as they have now found an easement, the applicant has reduced the required variances by 20,000 SF.

Mr. Dudick opened the Public Hearing and asked for questions or comments.

Tony Karam, who resides at 9 Foxfire Bend again spoke in opposition to the proposal, citing that this was originally a horseshoe development and the subject lot was a 60' strip to go back out to Main Street. He advised that in 1999 the State had approached him and the group home (formerly the lands of Williams), asking to run a sewer lines through their property to the sewer line on Foxfire and had offered them \$10,000.00 which his wife had turned down. He further advised this is the first he is hearing about the easement and in his opinion, it would still be an intensive use of an 11,000 SF lot.

Mr. Dudick inquired as to how the easement would allow for connection to the subject property since it would have to go through property that doesn't belong to Mr. Karam or to the State group home. Mr. Karam replied that he did not know whether they had approached Van Patten back then or not.

Upon inquiry from Mr. Lemire, Mr. Karam advised that he had purchased the land from the Meyers Brothers approximately 6 months before he closed on Lot 9 Foxfire in July of 1999. Mr. Lemire pointed out that the plot plan presented to them by the applicant clearly shows the easement on his property and is dated July of 1999.

Mr. Cosgrove pointed out that the Easement should also be reflected in his deed and Mr. Karam responded that this is the first he is hearing of it, as it was always his understanding it was a paper street going all the way out to Main Street.

Mr. Dudick asked if the Easement is not shown on Mr. Karam's site plan, if that would make it a false site plan.

Mr. McCarthy stated if it is on record, it is an active easement. Mr. Myers advised the easement is shown on the stamped site plan and that the site plan appears to be part of a building permit application for the house at 9 Foxfire.

A discussion ensued about the material in the packet, which includes information on the easement filing and a written modification of the easement, which specifically speaks to the reservation of a utility easement to this Van Patten property.

Ryan Boni stated that a road would not be 25' and that clearly this is an easement.

Mr. Boni stated that he didn't know Mr. Karam's background or knowledge, but pointed out that the records and plot plan show there was an easement done a long time ago which is how the title company found it.

Mr. Dudick advised that Mr. Karam had been on the Planning Board for Clifton Park in the past and therefore assumes he has knowledge and understanding of these types of matters. He asked whether there were any further questions or comments from the Public. Being none, he made a motion to close the Public Hearing. Mr. Bloss seconded. All voted in favor and the Public Hearing was closed.

Mr. Myers clarified that the original variance requested for the area was 28,408 SF, but has now been reduced to 8,408 SF, because the applicant had verified there is access for water and sewer through the easement to the lot. He also stated that in addition to the lots on Main Street which are below 20,000 SF, there are at least 2 new subdivisions in Town which had been built within the last 10 years, that have many lots smaller than this one and do not require variances because they were approved that way as part of a cluster subdivision plan and therefore, this is not a unique sized lot.

Upon inquiry from Mr. Bloss, he also confirmed that if the variance was approved, the applicant would be required to use sewer.

Mr. Cosgrove questioned how this lot differs from the 2 lots at 944 Main Street that were addressed at the April 4th meeting that were denied by the Board.

Mr. Myers explained the difference was that the other applicant (Bryan Bagstad) was looking to create 2 substandard lots and this lot is a pre-existing substandard lot. He also confirmed that this is a Type II action and therefore, no further SEQRA review by the Board is required.

Mr. Dudick advised that he is not in favor of the creation by this Board of substandard lots when there's no extraordinary need. However, in his mind all lots that exist in residential areas are buildable lots and the question for the Board then becomes do we grant the variance to accommodate for those issues that don't meet the requirements of the Town Code?

Mr. Lemire stated that he is having a difficult time seeing the distinction, especially since the Board denied Mr. Bagstad's request for a variance when in 1987 Mr. Van Patten requested a 10 lot subdivision, all of which exceeded 20,000 SF, thereby making them buildable without a variance, including this little sliver of a lot and as part of the Planning process and the litigation that ensued, as well as whatever negotiations were ultimately had, it was agreed that this line would be drawn between Mr. Tribble's property and Mr. Williams' property creating a barrier so that they couldn't come out onto Main Street, but also creating a substandard lot.

Mr. Dudick again advised that he is resistant to the idea of creating a substandard lot. However, when presented with a substandard lot, regardless of when it occurred, the fact is somewhere along the line this lot was created. He pointed out that the Planning Board minutes for the Foxfire subdivision state that additional boundary lines separating the outer small piece of property fronting on Main Street will be owned and maintained by Mr. Van Patten until further negotiations take place, adding that these are the future negotiations and therefore, this Board should not be attempting to interpret what was contemplated by the Planning Board back in 1988 when the lot was created.

Mr. Lemire asked whether it was a fair statement that the contiguous parcels which surround the subject lot, are substantially larger.

Mr. Myers responded that all the other lots on the Main Street in Jonesville that are smaller than the subject lot, have larger lots next to them as well. He added that Mr. Van Patten didn't want this lot, the Planning Board demanded he draw the line to make it a separate lot. He didn't ask for it.

A discussion ensued amongst the Board members in an effort to clarify what would be considered the neighborhood surrounding the subject lot.

Mr. Dudick commented that in his mind, the neighborhood runs between the Main Street Grill all the way down to the old Jonesville store, if not a little farther in both directions and therefore, he doesn't see that this proposed house will change the character of the neighborhood, especially since the subject lot exists through no fault of the applicant.

Mr. Lemire disagreed, pointing out that the surrounding properties starting at the entrance to the golf course, are substantially larger, although he opined they might not be conforming as far as frontage or square footage. He added that when this lot was created Mr. Van Patten was okay with creating this lot which had zero value, because he got the 10-lot subdivision that he wanted.

Mr. Myers pointed out that was just another assumption.

Following a discussion, the Chairman stated that he and Mr. Lemire would have to agree to disagree because regardless of whether or not Mr. VanPatten wanted this particular lot or not, the lot exists.

Mr. Fantini agreed, advising he too does not believe the history of how the lot was created is relevant, only the criteria the Board is required to consider.

Mr. Dudick reiterated that the Board is here to decide whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties created by the granting the area variance. In his opinion, he does not think so because there are many houses of similar size on similar sized lots in the neighborhood. As far as whether the granting of the variance would create a detriment to nearby properties, in his opinion, each Board member will have to make their own decision as to what they consider nearby properties. He further stated that he does not believe that the benefit sought by the applicant can be achieved by any other method feasible for the applicant to pursue; he does not consider the requested variances substantial as the one request has now been significantly reduced; and he does not believe the requested variances will have an adverse effect on the physical or environmental conditions of the neighborhood because the property is intended to have a residence and be connected to sewer, water and utilities like all of the other residences around it.

Mr. Dudick added that although there is a question of whether this was a self-created hardship created by the property owner or whether this was forced upon the property owner as a requirement by the Town, in his opinion it is not a self-created hardship because the property has been owned since 1988 as a residential lot in a residentially zoned area, which can support a house of similar size in the neighborhood.

Mr. Lemire disagreed, advising it is his position that there will be a substantial undesirable change to the character of the neighborhood and a detriment to the nearby properties given that the specific location of this property is surrounded by lots and houses that are significantly larger than what is being contemplated on this lot; that the requested variances are substantial; and that he does believe that alleged difficulty was self-created by the applicant, Boni Builders by purchasing this property and trying to build a house on a lot that

doesn't meet the zoning requirements. He concluded by stating from a practical standpoint, in addition to the required elements to be considered for area variances, he doesn't think anybody would want a tiny house on a tiny lot built next to their house if it isn't allowed in the zone.

Mr. Fantini made a motion to approve the amended application as submitted. Mr. Dudick seconded.

The secretary called the Vote:

Ayes: Mrs. McCoy, Mr. Dudick, Mr. Fantini, and Mr. Bloss.

Noes: Mr. Lemire and Mr. Cosgrove.

Amended application approved.

The Chairman then read a letter received from the Saratoga County Planning Board into the record dated April 21, 2017, which states that following their review of the Boni Builders application, it is their decision that no significant County wide or Inter Community Impact would be had.

NEW BUSINESS

The secretary read the legal notice as it appeared in The Gazette on April 27, 2017:

1. **Application from Northern Enterprises General Contracting LLC for an area variance from Section 208-11 which requires a 25' rear setback in a CR Zone. 16' available for dining room addition. 9' variance required. Property is located at 7 Camp Road, Rexford, NY 12148. (Permit #81127)**

George Ludwig, owner of Northern Enterprises presented the application. He has been contracted by the owners to build a 6' dining room addition off the back of the existing house that will be 14' long. He explained that although the homeowners also own the property behind the subject property, they cannot connect the property to make the setback work because there is an unused, overgrown private road in between, which he believes may be a second entrance to a neighboring house, called Hall Road.

Upon inquiry from Mr. Dudick, Mr. Ludwig confirmed that the variance will bring the house closer to the road and although the private road is not being used now, it could be used in the future if somebody were to cut back the 30' trees. He added that there is no other way to configure the addition as they are trying to make it as small as possible in order to have the least impact on the neighborhood, and noted there are many other houses along Camp Road that are not in compliance with the setback requirements.

In response to inquiries from Mr. Cosgrove and Mr. Lemire, he confirmed that the house will be 16' from the unused, private road once the addition is built; that they are building on Lot 15 shown on the map submitted and that Lot 16 on the other side of the road is the other parcel owned by the homeowner.

Mr. Myers advised that since the original submission, he is now in receipt of a survey showing there is only 15' available. Therefore, the applicant now requires a 10' variance instead of 9' and because the change is minor, there would be no need to republish. He believes what the applicant is referring to as an old private road is a strip of land that belongs to the Canal Corporation for access to the fairly significant piece of property they own all the way down to the river.

Mr. Myers also stated that this is a Type II action and therefore no further SEQRA review by the Board is required.

Mr. Dudick stated he does not believe the benefit sought by the applicant could be achieved by any other feasible method; that he does not believe an undesirable change to the character of the neighborhood or detriment to nearby properties will be created by the granting of the variances and that he does not believe the Canal Corporation will mind if there's a dining room 9' or 10' closer to their vacant land that they've cut out for access from one part of their property to the other. He added that he does not consider the requested variances to be substantial; that the requested variances will not have an adverse effect on the physical or environmental conditions of the neighborhood; and the alleged difficulty is self-created by the fact the variances are being requested, but he does not see that as an issue.

The Chairman opened the Public Hearing and asked for questions or comments. Being none, he made a motion to close the Public Hearing. Mr. Fantini seconded. All voted in favor and the Public Hearing was closed.

Mr. Lemire made a motion to approve the application as amended by Mr. Myers, for the reasons set forth on the record by Mr. Dudick. Mr. Fantini seconded.

The secretary called the Vote:

Ayes: Mr. Lemire, Mrs. McCoy, Mr. Dudick, Mr. Fantini, Mr. Cosgrove and Mr. Bloss.

Noes: None.

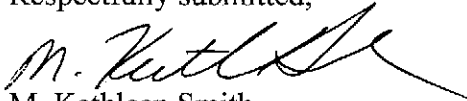
Application Approved as amended by Mr. Myers.

Chairman Dudick made a motion to approve the minutes from the April 4, 2017 meeting. Mr. Dudick, Mr. Lemire, Mrs. McCoy, Mr. Bloss and Mr. Cosgrove, who were present at that meeting, all voted in favor and the minutes were approved.

Mr. Dudick made a motion to adjourn the meeting. The motion was seconded by Mr. Fantini. Approval was unanimous. The meeting was adjourned at 8:23 p.m.

The next scheduled meeting is May 16, 2017.

Respectfully submitted,



M. Kathleen Smith
Secretary, Zoning Board of Appeals

Cc: Town Clerk, Town Board, Zoning Board Members
Tom McCarthy, Esq.,
Neil Weiner, Esq.
Steve Myers, Department of Building and Development
Town Assessor, Town Highway Department