

Town of Clifton Park

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Zoning Board of Appeals



APPROVED
5-2-17

ZONING BOARD OF APPEALS April 4, 2017

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

Absent: Randy Gifford.

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

The Meeting was called to order at 7:06 p.m. by Chairman Dudick. He announced that the Board's Alternate Member, Terry Cosgrove would 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 March 30, 2017:

1. Application from **Bryan B. Bagstad** for 6 area variances to subdivide existing lot into 2 parcels for new residence to be constructed in R-1 Zone. 1) minimum lot size without sewer = 40,000 SF. Lot 1 = 18,710 SF; 21,290 SF variance required; 2) Lot 2 = 29,910 SF; 10,090 SF variance required; 3) minimum lot width at front building line on a special road = 200'. Lot 1 width = 81.36'; 118.64' variance required; 4) Lot 2 width = 75.57'; 124.43' variance required. 5) 50' front setback required to property line for R-1 Zone. Main Street is a "special road" per Section 208-98 which also requires a 100' front setback from the road centerline. Lot 1 = 18.9' available to property line; 31.1' variance required; 59' available to road centerline; 41' variance required; and 6) Lot 2 = 39' available to property line; 11' variance required; 72' available to road centerline; 28' variance required. Property is located at 944 Main Street, Clifton Park, NY 12065. (Permit #811116).

Duane Rabideau from Gilbert VanGuilder and Associates presented the application. He explained that this is an amended application for area variances associated with a proposed subdivision of an existing 1.12 acre parcel into 2 single family residential lots. Lot 1 would consist of approximately 19,000 SF on which the existing home is located. Lot 2 is for a new house which is proposed to be just under 30,000 SF. The existing drive on Lot 1 would be relocated and a new driveway is proposed to be placed along the south side of the house to an area in the back. Both lots have public water; the existing septic is located to the south of the existing house and the proposed septic is to be located between the new house and the proposed garage.

He explained that the proposed house on Lot 2 would be positioned on the same building line as the existing house to the south and with the neighbor to the north and would fit the character of the neighborhood. He advised that one of the reasons the application was tabled at the December 2016 meeting was because issues of seasonal drainage had come up regarding the proposed lot and the neighboring lot. He explained that watershed on approximately 3 acres of land behind the subject parcel, drains down into the Village, comes along between the house to the north and the proposed lot to a catch basin, which then floods out the 2 neighbors on the east side of Main Street. He advised that part of their proposal is to add a catch basin and storage area which will allow the water to get below the frost line so it's able to percolate into the ground, thereby eliminating the surface runoff, but acknowledged there are other groundwater issues in the area.

Upon inquiry from Mr. Cifor as to whether he believed the system would be overwhelmed because of the 19' grade change, Mr. Rabideau advised the system is designed to handle the watershed from the 3 acre area and distributed a photo taken today after the rains, showing the volume of water that commonly flows into the existing catch basin and ends up flooding the neighbors on the other side of Main Street and another photo, showing the flow that goes under the applicant's driveway. He added that they also have a letter from two (2) neighbors on the other side of Main Street in support of the application and drainage plan. (Elaine Jones of 943 Main Street and Traci James of 947 Main Street)

Mr. Rabideau advised that another question raised at the December 2016 meeting was whether the proposed house could be moved farther south, which they are now proposing to be 26' from the neighboring property to the north, instead of the 18'. He advised that although the variances being requested may appear to be excessive because Main Street is considered a "special road" which requires the house to be setback 50' from the property line and 100' from the centerline of the special road, he had prepared and distributed to the Board Members a color coded map of the parcels along Main Street to demonstrate that there are no lots along Main Street that appear to meet all of the requirements of the current zone based on the "special road" criteria. He explained that the parcels highlighted in yellow, representing 80% of the parcels along Main Street, do not meet the current R-1 Zoning requirements of acreage, lot size, lot width and/or building setbacks, implying that everyone else in the hamlet suffers along the street.

Upon inquiry from Mr. Lemire, Mr. Rabideau confirmed that the applicant would still need a variance to put an addition onto his existing house and that everybody in the zone would be in the same position.

Mr. Rabideau mentioned that the research provided by Mr. Myers showed that he had looked at 55 existing parcels and found that 10 lots, or 18% of the existing houses, are smaller than the house on Lot 1 and that 21 lots, or 38%, are smaller than the house proposed for Lot 2. He referenced an overall photo of the lots in the area which had been submitted as part of the amended application, which shows 4 different examples of existing, future and potential investment into the hamlet of Jonesville, 2 of which had been previously approved and 1 of which is currently before the Board tonight from Boni Builders, indicating the applicant intends to build the new house to fit the architecture of the hamlet.

Upon inquiry from Mr. Cosgrove, Mr. Rabideau advised that the proposed house would have a basement and that the existing arborvitae would more than likely be cut down. Mr. Rabideau also mentioned that the neighbor to the south, June Lajeunesse, has drainage and water table issues that unfortunately, the new proposed drainage system would not be able to help with. He explained that Mrs. Lajeunesse has a situation that's more of a ground water issue, in that she simply has no place to get the water out to except to pump it into the neighbor's property, but that their proposal would take care of the problem on the other 2 lots.

The Chairman opened the Public Hearing and asked for questions or comments.

Susan Nowik of 946 Main Street again spoke in opposition to the proposal, citing her continued concerns that crowding 2 houses onto 2 inadequately sized lots would not enhance the character of Jonesville; that the granting of the variance could create a detriment to her property and adversely affect her ability to sell her house; would adversely affect the sale price of her home and that the construction may divert more water onto her property, thereby affecting her basement and septic system. She added that the applicant's circumstances are self-created; that the benefit sought by the applicant could in fact be achieved by some other method; that the granting of these variances would create substandard lots for financial benefit; and that having a house so close, even with the additional 8', and would still decrease protection of residential areas and her privacy.

Mr. Rabideau responded by pointing out the R-1 Zone allows for side yard setbacks of 10' and stated it is a matter of opinion as to whether the proposal would enhance or lower the value of Mrs. Nowik's parcel. He disagreed that the proposal would be a detriment to her property or to the neighborhood and advised what they are proposing would be a benefit to the people who are not moving by solving a major drainage problem. He added that the new septic system being proposed is lower than Mrs. Nowik's septic system.

Chairman Dudick suggested that perhaps the applicant could attempt to resolve his issue by buying Mrs. Nowik's home.

Upon inquiry from Mr. Lemire, Mr. Rabideau confirmed that the applicant's house on Lot 1 is currently being renovated; that if the application is approved they intend to eventually move into the new house and sell the existing home on Lot 1; that the applicant had purchased the property in 2008 and acknowledged that the zoning had not been changed since 2008.

June Lajeunesse of 942 Main Street, whose property joins the applicant's property on the south, again spoke in opposition to the application. She advised that when she subdivided her lot in 2009, she had a perc test done and upon the advice of Harold Berger, had her septic system located in the front of her house instead of behind her house, which would surely be under water now if she had. She described a pond, 100' in circumference 30' behind her house and ponding which happens in the spring, fall and with the winter thaw, as well as after heavy rainfalls in the summer. She stated that she has been told there is nothing that can be done to alleviate her problem and that she has continued concerns that more water will be disbursed into the ground and that since her property is lower, with the construction and the new septic system, more water will just be added to her side and to the water table.

Mr. Rabideau agreed that Mrs. Lajeunesse definitely has a ponding issue behind her house. Upon inquiry from Mr. Cifor as to the flow of the groundwater, he explained that what they are trying to do is capture the surface runoff and that there really is no flow, as the water basically just tries to seek its own level. He described ideal sand conditions in the area which is why the septic systems work so well and why the initial build out was so tight and close. He indicated that Mrs. Lajeunesse's unfortunate situation is because she is closer to the water table and that although they can address the problem, she has no place to put the water and that although she can pump it out, basically she's just recirculating the water and has no place to put it.

Nancy Kiyonaga of 14 Garnsey Road in Rexford, Chairperson of the Town's Historic Preservation Commission, requested that the Zoning Board temporarily table the application in order to refer the matter to the Historic Preservation Commission for review and comment, since the property in question is located in the historic district of Jonesville and is surrounded by many houses that are on the Town's Historic Register. She indicated that although this is something they do quite often with the Planning Board, she had not had occasion to make such a request to the Zoning Board.

Upon inquiry from Mr. McCarthy, Mr. Myers indicated that he does not believe Jonesville is formally recognized as a historic district. Mrs. Kiyonaga advised that to her knowledge, there was a strategic plan that was done for the Town which included Jonesville and Rexford as historic districts; that the subject property is not on the Historic Register, but that the Town Historian, John Scherer was presently out of Town and therefore she had been unable to verify those details. She also acknowledged that being on the Historic Register is voluntary.

Mr. McCarthy asked Mrs. Kiyonaga if she could cite any statutory authority in the Historic Perseveration Code that would give the Zoning Board authority to refer the application to the Historic Preservation Commission, indicating he had reviewed that Code and could not find any such authority.

Mrs. Kiyonaga responded that she could not, but that it was a practice and perhaps a policy of the Planning Board to allow them to review and comment on applications.

Mr. Myers advised that he believed the only time Planning Board matters are referred to the Commission is when the subject property is either on a national or a local historic registry; when demolition is contemplated or when the house is over 50 years old.

Chairman Dudick inquired as to why the request was being made during the Public Hearing. Mrs. Kiyonaga replied that she had spoken with the Committee's liaison on the Town Board, who had suggested she do it this way this evening; that she was not aware of the application when it was originally heard and had only recently become aware of it through a member of the Preservation Commission who lives in Jonesville.

In response to inquiries from the Chairman, Mrs. Kiyonaga went on to state that although the Historic Preservation Commission doesn't have stringent authority, they do provide advice to the Planning Board and the Town Board on what the impact would be from a historic preservation perspective on different actions that are proposed.

Chairman Dudick explained that if the application was approved by the Zoning Board, it would then go back to the Planning Board for site plan review and suggested that would be the proper, standard channel for Mrs. Kiyonaga's request on behalf of the Historic Preservation Commission.

Bryan Bagstad addressed the Board and mentioned that last year, when he initiated an application for a permit to re-side his existing house, a neighbor had discussed with him what the siding plans were. He further advised that it is his intention, whether it be through Planning or Zoning, to discuss the current plans with the Historic Preservation Commission and take into consideration all of their concerns and suggestions.

Chairman Dudick replied that there is no reason that he is aware of for the Zoning Board to address historic preservation issues and that such issues should go through the usual Planning Board channels. Mr. Bagstad agreed.

Mr. Rabideau advised the proposed house will have historical architecture to it and Chairman Dudick reminded him that the Zoning Board does not address architectural issues.

Vince Degiulio of 741 Carlton Road indicated that he has been a resident of Clifton Park since 1969 and knows Susan Nowik. He stated that he did not believe anyone had addressed her concerns about the basement of the new home affecting her septic system.

Chairman Dudick advised that would also be a Planning issue as far as design and planning for the property if the zoning variances were approved this evening.

Mr. Myers reiterated that if the variances are approved, the matter would then go back to Planning for a review of the subdivision and that the variances would have to be approved before Planning will address the furtherance of the subdivision proposal.

Mr. McCarthy clarified that if the area variances were granted, the subdivision would be something that would be as of right and thereafter, the Planning Board would deal with such issues as drainage, curb cuts, aesthetics, septic, architecture and possibly put some restrictions on the look and feel of the house.

Tony Karam of 9 Foxfire Bend spoke in opposition to the proposal. He indicated his neighbor, Roger Mead of 904 Main Street had told him 30 or 40 years ago when he went to build an addition onto his house, that he was instructed he couldn't even go a foot further towards Main Street than the existing house and that he had to abide by the setback off the centerline of Main Street and as such, he didn't know why this application should be any different. He stated that if the Board approves the application, it will change the entire character of Main Street, suggesting that everyone with a 40,000 SF lot is going to start separating their lots to build another house on to make money.

Chairman Dudick advised Mr. Karam that the Board always considers what precedents are being set with all applications. He then asked if there were any further questions or comments. Being none, he made a motion to close the Public Hearing. Mr. Cifor seconded. All voted in favor and the Public Hearing was closed.

Mr. Dudick stated that in his opinion, the Board is not in the habit of creating substandard lots, and although there are other substandard lots in this area, they pre-date the zoning. He added that although this proposal would be in character with those other substandard lots, the Board does not have to create any more of them and add to the overcrowding situation and therefore, he is not compelled by the argument for the need here. Further, he pointed out that the applicant had purchased the property knowing what the zoning was and therefore, this is a self-created hardship and he would not be supportive of the application.

Mr. Myers stated that this is Type II action and therefore, no further SEQRA review by the Board is required. He added that the entire discussion about the drainage issues should be disregarded because that is not a Zoning issue. He advised that when this request was amended, most of the requested variances were reduced and that although his research had shown there is a considerable percentage of homes in the area that do not meet the current zoning, there are also quite a few lots that are considerably smaller than these 2 being proposed.

Mr. Fantini indicated he agreed with the points made by Chairman Dudick and that in his opinion, the requested variances are substantial; he does not believe the granting of the variances will meet the character

of the neighborhood set by the zoning law because it would result in the creation of another substandard lot; and that the hardship is self-created.

Mr. Dudick pointed out to Mr. Fantini that he had in fact indicated he believes the proposal would be within the character of the neighborhood, but that he doesn't believe the Zoning Board is in a position to continue creating substandard lots.

No motions were made to the approve the application by any Board Members. Mr. Dudick then made a motion to deny the amended application as submitted. Mr. Fantini seconded.

In support of his motion, Mr. Dudick stated that although he does not believe an undesirable change would be produced in the character of the neighborhood by the granting of the variances, he does believe a detriment to nearby properties would be created by the overcrowding, which could potentially create environmental issues. He stated that the benefit sought by the applicant could be achieved by some other method feasible for the applicant to pursue other than the area variance, by purchasing another home. He added that the requested area variances are substantial; that the proposed variances would have an adverse effect or impact on the environmental conditions of the neighborhood and that the alleged difficulty is self-created.

The secretary called the Vote:

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

Noes: None.

Amended Application denied.

NEW BUSINESS

The secretary read the legal notice as it appeared in The Gazette on March 30, 2017:

2. **Application from Jonathan Messinger for an area variance from Section 208-12A for accessory structure setback. 80' front setback from property line required. 30' available; 50' variance required. Previous variance granted 30' relief. Property is located at 34 Country Club Acres Drive, Clifton Park, NY 12065 (Permit #81124).**

Mr. Dudick and Mrs. McCoy disclosed that their children had been taught and/or tutored by the applicant, who is a school teacher at Shenendehowa. Both stated they could vote on the application with impartiality and Mr. Messinger advised he had no objection to Mr. Dudick or Mrs. McCoy voting on the application.

Mr. Messinger explained that in August 2016, they had started the process to obtain an above ground pool; that it was determined they needed a setback variance; and that they had learned the front of their house is the back and the back of their house is the front. He reminded the Board that initially they sought a variance for an 18' x 33' oval pool. Upon researching the cost however, he had determined that the cost of an oval pool was significantly more than the cost of a circular pool. Therefore, he now has decided to go with a 27' circular pool. He advised that when the Town Inspector came out to look at the proposed area, it was noted that more footage was needed for the setback variance, which is why he is back before the Board tonight. He added that the plan is still to have the deck which is noted in the pictures submitted with the application.

Mr. Myers confirmed that the original application was based on the applicant's measurements and that to prevent issues that have arisen in the past, they now are trying to go out and do locations on pools before the holes are dug. He explained that when the subject site was inspected, it was noted that the applicant has an addition or turn-a-round to his driveway which was not calculated in initially and that an additional 20' variance is now required. He also confirmed that that the applicant has an 8' white vinyl fence which is approximately 30' off Route 146 in the back of his house because DOT has a significant right of way through there and that it's another 30' from the fence to where the pool is to be located.

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

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

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

Mr. Lemire stated that his motion to approve is based on the fact that he doesn't believe there will be an undesirable change in the character of the neighborhood or detriment to the nearby properties by the granting of the variance; that the request is not substantial; that the request will not have an adverse physical or environmental affect and although the alleged difficulty is self-created, which is relevant, but not determinative, it appears the situation was created by an honest error.

The secretary called the Vote:

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

Noes: None.

Application Approved.

The secretary read the legal notice as it appeared in The Gazette on March 30, 2017:

3. **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) 40,000 SF required in an R-1 Zone for lots without sewer. 11,592 SF available; 28,408 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).**

Ryan Boni of Boni Builders presented the application. He explained that the subject property is located across from the George Smith Park; is a record lot with a tax ID number; that the lot was created when the Planning Board approved the Foxfire Subdivision and that it is noted on site plan that the parcel was not to be used as access to the Foxfire Subdivision. He further indicated this is a pre-existing, non-conforming lot; that the surrounding neighbors are a State Group Home and a historic house from 1870 which is pushed up towards the road and that they are trying to match the setback of neighboring properties.

He advised a soil sampling had been done to make sure the perc test would work and handed out to the Board members a letter dated March 10, 2017 from H.V. LaBarbara & Associates. He stated that the lot has public water and handed out to the Board Members a letter issued by the Clifton Park Water Authority dated April 4, 2017. He further indicated they had met with Gary Meier from the County Highway Department to make sure the site distance worked for the property and that they could obtain a curb cut and that Mr. Meier had written an approval letter dated April 4, 2017, which he also handed out to the Board Members.

Mr. Boni advised that they have just finished restoring the Smith house down the street; had worked with the Historic Committee and that they planned to build something on the subject property that looks like it's been there for a 100 years in order to fit in with the character of the neighborhood.

Mr. McCarthy inquired as to whether he had brought with him any of the old subdivision material from when the lot was created. He replied that they had a blown-up aerial of the lot and pointed out that map note #5 states that this adjacent property will not go through that parcel. He added that they had been told that some of the neighbors had tried to purchase the property for a very low number.

Mr. Lemire asked whether the parcel they are looking to build on was contemplated by Mr. VanPatten to be used for ingress and egress to the subdivision lands, but was told by the Planning Board it couldn't be used for that purpose. Mr. Boni replied it had nothing to do with ingress and egress and that when the Planning Board approved the subdivision it was left over as a lot and noted it could not be used for that purpose.

Mr. McCarthy inquired whether the Planning Board had noted it to be a non-buildable lot or that they just didn't want a future road going through there. Mr. Boni replied they had not, that this is a record lot with an SBL number, which is a pre-existing, non-conforming lot that was created when the subdivision was approved.

Mr. Dudick asked when the lot was created. Mr. Myers advised he believed it was in 1988. Mr. Myers also stated that it appears the VanPatten property came out to where Foxfire comes out on Main Street and that when they did the subdivision, during the layout they made it a cul-de-sac and it appears it was determined that they didn't want this to be part of the lot that it was directly adjacent to, so they made it its own separate lot.

Upon inquiry from Mr. Cifor, Mr. Boni confirmed that Boni Builders does not own the lot now, but is under contract and that he is also speaking on behalf of Mr. VanPatten who wants to do something with the land.

Mr. McCarthy clarified the Country Club Acres is the owner of the lot and Mr. Myers confirmed that the applicant had supplied an owner authorization letter from Robert VanPatten, Jr.

Mr. Lemire asked whether there were meetings back then about this and if there were discussions about whether this was or was not intended to be a buildable lot.

Mr. Boni replied that from what he had seen if that was the case, Planning would have noted something about that.

Mr. Myers confirmed that the map he has does not have any special notes about what can or cannot be done with this lot.

Mr. Cifor stated that the reason he had asked whether Boni Builders owned the parcel is because when the applicant is talking about whether it was self-created hardship, if it's a pre-existing, non-conforming lot, a hardship was not created and that if it is not, it would be a self-created hardship and the applicant doesn't have to buy the lot.

Mr. Boni replied that he is speaking on behalf of Mr. VanPatten who wants to do something with the lot; that the Town approved it and now he has a piece of property that he can't do anything with.

Mr. Cosgrove asked what the drawing being the proposed house is as shown on exhibit A. Mr. Boni replied it was the septic system and pointed out that the backyard is 239 feet deep.

Mr. Lemire commented that his biggest issue is that although everyone here tonight can tell the Board what they think happened in 1988, it would be important to have the information available from a review of the Planning Board file instead.

Mr. Myers indicated that although he does not have any direct knowledge of what the Planning discussions were about this lot when this subdivision was done, he was sure there would be minutes that he could find that might contain some information.

Mr. Dudick commented that would be important to have that information in order to address the issue of whether or not this is a self-created hardship. He added that if Planning created the parcel with the understanding that it would never be built upon and then the owner of the property is coming to this Board saying he'd like to build upon it, then it would certainly be a self-created hardship.

Larry Boni stated that he had talked to Bobby (VanPatten) about it and he said that it was a buildable lot. He added that the Planning Board wrote the map note because they did not want lot #9 lot in the back to come out to Main Street

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

Tony Karam of 9 Foxfire Bend, Clifton Park, who lives directly behind the subject parcel, spoke in opposition to the application. He advised that when he purchased his lot in 1999 from the Meyers Brothers, it was the last lot left and on his map a paper street was shown by two dotted lines between lot 7 Foxfire Bend and his lot along the property line all the way out. He added that Foxfire Bend was originally going to be horseshoe; that lot #9 never existed because the roadway would have been there; and that for some reason it was eliminated and turned into a cul-de-sac, and that it was going to be a public road, which is why it is only a 60' strip of land.

Mr. McCarthy asked if the paper street was eliminated when lot #9 was built. Mr. Karam replied that it was eliminated during the development. He added for the record that he was the one who had offered \$5,000.00 to buy the subject property, which was assessed at \$3,000.00, but that Mr. VanPatten had come back with a \$25,000 offer, which he thought was too high for a 60' strip of land.

Mr. Karam handed out to the Board members a letter in opposition to the proposal dated March 24, 2017, which outlines the criteria the Board must consider and the reasons why he is in opposition to the request. He also handed out to the Board members a letter containing 15 signatures he indicated he had collected

from the neighbors in the area in opposition to the proposal. He stated he did not get Mr. Tribble signature who lives next door or a signature from the group home, because the house manager he had spoken to had told him the state owned facility would not get involved in something like this.

Mr. Karam then stated that the notice he had received from the applicant about the proposal was vague, did not contain an address, plot number, SBL number or anything, making it very difficult to determine what the application was for. He suggested that in the future, the Board put something on their website or come up with a form that says what information is required to be put into such notices so there is no misinterpretation as to what information needs to be provided.

Mr. Karam concluded by stating that he had been on the Planning Board for 6 or so years and that as far as he is concerned, the notice provided by the applicant is defective on its face and devoid of any of the required information.

Phil Tribble of 892 Main Street, immediately adjacent to the lot in question, also spoke in opposition to the application. He advised that although a notice may have been received by his wife, he did not receive it. For historical background, he advised that the Foxfire application originally came in with a proposal that the street in question would run directly behind his lot line, but that after the public hearing and numerous discussions, it was revised to the current plan which basically moved the street back to the golf course side and the houses were put on the side adjacent to his property and a berm went in. He indicated he did not recall whether the initial proposal had a paper street, but did recall that it was a 60' strip of land.

Mr. Tribble stated that the subject lot is completely different from any other lot around, as it is a very narrow and awkward strip of land, that in his opinion is much too small to put a house on. He added that it was surprising to him that the applicant had been told they could get another curb cut there, because it's very close to an intersection with a lot of traffic. Further, he stated that if you put a house on this size of a lot it would have to be set back. He added that his property is a historic house which is closer to the street and if he wanted to build again or add onto it, he would have to comply. He concluded by stating that the argument the Board doesn't want to create another non-conforming lot is very real and his opinion, the proposal just does not fit.

Larry Boni stated that in talking with Bobby (VanPatten), who owned all the land at one time including the land where the handicapped home currently is, he had told him he had enough right of way areas to get back to his golf course and that the subject lot was created when the Town did not want him to use the property to come out onto Main Street. He added that the Planning Board actually broke that parcel off to be that way; that he always thought it was a building lot; that it wasn't a 60' right of way and therefore, there is no hardship.

Mr. Cifor commented that if the Town didn't want lot #9 to come out to Main Street, building a new house would still create a driveway out to Main Street.

Larry Boni again stated that the Town created this lot; that Bobby (VanPatten) has been has been paying taxes on it as a building lot ever since; it is an approved lot with water; and the septic system does work. He indicated that the house they are thinking of putting on the lot is 28' wide which gives them plenty of room on both sides. He added that they had built a house already like the one proposed down at Birch Estates which was actually on a lot that was 70' wide, but had a 3' storm management system going through, which only gave them 40' to put the house on it, which came out really nice. Further, he indicated they had worked

with the Historical Board for a house on Sugarhill Road, as well as the old Smith House on Main Street and that they intended to make this house look like it fits in the community.

Upon inquiry from Mr. Dudick, Mr. Myers confirmed that there are 2 lots smaller than 12,000 SF on Main Street and that the last zoning change was in 2005, but he did not think that re-zone touched the Jonesville area.

Mr. Lemire inquired as to why the lot is being called a pre-existing, non-conforming use since there is no house on it. Mr. Myers replied that if there was public sewer available, variances would still be needed to put the house on the property because of the size, which is why he called it a pre-existing, non-conforming lot. He also pointed out that the Town has approved cluster subdivisions with lots this size and smaller in the past, but that those lots had sewer and water available.

Mr. Dudick indicated the questions he has are whether this is a self-created hardship and whether the lot is pre-existing or not.

Mr. Myers advised that he could try to dig up the minutes from when the subdivision was approved and go to the Planning Department to see what they have in their original file, which may shed some light on those issues.

Mr. Bloss advised that he too would be interested to find out if there was input by the Planning Board at that time as to whether this was considered to be a buildable lot.

Mr. Dudick commented that what he is hearing is that there was a developer who developed and built houses here in 1988 and for whatever reason, he walked away from one of the building lots that they had intended to build on, which strikes him as an unusual thing for a developer to do.

Ryan Boni advised that VanPatten had kept the lot for himself because the builder did not want it.

Upon inquiry from Mr. Dudick, Mr. Myers advised that if someone were to build a street they would need 60'.

Bryan Bagstad of 944 Main Street stated that he didn't feel strongly about the Boni proposal one way or the other. He indicated he understood the point of the neighbors who are in opposition who don't want a house built in their back yards. He pointed out that the zoning requests are similar to the ones he requested, but are a little bigger because the lot is smaller. He indicated that he found it curious that on one hand, nobody wants a house built in their backyard, but they don't care when they're building a house in somebody else's backyard. He pointed out that Mr. Tribble at some point had houses built in his backyard, and that in support of the builder, he has seen the Smith House they restored, as well as the house next to it, which are beautiful houses that do fit the aesthetics of the street.

Mr. Dudick again reiterated that he what he is looking at is did VanPatten knowingly create a substandard lot and what was the origin of how this lot was created, which are important points he'd like to know the answers to as he is not looking to reward people who create substandard lots.

Larry Boni reiterated that the Planning Board created the lot because they didn't want anyone to go out to Main Street from Lot #9. He added that situation had come up before when he did a development on Vischer Ferry Road and the Town told him to leave a piece of property for the firehouse because they were going to build a bigger firehouse there, which they wound up doing a different location on Grooms Road, which then left him with an acre lot with no frontage.

Mr. McCarthy asked Larry if he had any objection to tabling the application to allow the Board to follow up and gather more information. Larry advised he did not.

Mr. Karam suggested to the Board that they also get ahold of the County and ask them whether or not they wanted 1 or 2 access points during the planning phase of the street to eliminate the 60' strip.

Application tabled until the May 2, 2017 meeting.

Chairman Dudick made a motion to approve the minutes from the February 21, 2017 meeting. Mr. Dudick, Mr. Cifor, Mrs. McCoy, Mr. Bloss and Mr. Cosgrove, who were present at that meeting, all voted in favor and the minutes were approved.

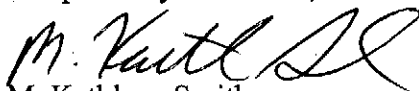
Chairman Dudick made a motion to approve the minutes from the March 21, 2017 meeting. Mr. Dudick, Mr. Cosgrove, Mr. Fantini and Mr. Bloss, who were present at that meeting, all voted in favor and the minutes were approved.

It was determined that no new applications have been received and as such, the Zoning Board of Appeals meeting scheduled for April 18, 2017 has been **canceled**.

Mr. Dudick made a motion to adjourn the meeting. The motion was seconded by Mr. Fantini. Approval was unanimous. The meeting was adjourned at 9:10 p.m.

The next scheduled meeting is May 2, 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