

August 16, 2005

Present: Dale Kelley, Chairman, Michael Dudick, Dale Gleason, Jessica McCarthy, Gil Kortz, Joel Koval, Robert Ritter

Also Present: Don Clemens, Building & Development
Lou Renzi, ZBA Counsel

Mr. Kelley called the meeting to order at 7:03 PM. He recognized Don Clemens, Director of Building and Development, on his retirement after 19 years with the Town of Clifton Park. He reviewed Don's responsibilities and expressed the ZBA's appreciation for all his help and guidance.

OLD BUSINESS

1. An application from Ralph Figueroa, requesting an area variance from Section 208-11 from the required minimum lot size in an R-3 zone – proposed lot size = 90, 996 sq. ft. – variance requested = 9,004 sq. ft.. The property is located at 154 Vischer Ferry Road, Rexford. Permit #80561.

Gil VanGuilder, surveyor, briefly reviewed his presentation given at the last meeting. He presented a prepared statement from a realtor regarding the value of the tree row on the property. He addressed the letter from the Planning Board Chairman, Steve Bulger, and agreed with the accuracies of his statements and that they are the opinions of the Planning Board. He stated that the property has been maintained over the years and the tree row is important to the consistency of the property, value of the house, and also have an aesthetic value to the property. He noted that the Planning Board suggested to make Lot 3 comply with the minimum lot size they could push the lot line back and take in the tree row, but it is the contention of the Figueroa's that the tree row is so valuable and a deed restriction, would state to any future land owner of Lot 3 they could not cut those trees, but if they cut the trees when the land owner was not at home, there would be legal recourse, but that would not replace the value of the current trees. The estimate of the value of the tree line to the home is \$40,000-\$50,000 and is a substantial amount of money, but they would not be replaced with 20-30 ft. trees, they would be replaced with 6-7 ft. trees and it would take a long time for the trees to renew themselves to their present state. He explained that that is the stand of the owners and that is why they are here tonight.

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Ralph Figueroa stated that he wants to maintain the integrity of years of work. He noted that it has been expensive and costly to maintain the lot the way it currently is. He stated that a deed restriction does not hold much credence to deeds because you never know what can happen in a court of law and how long it will take. He explained that they gave up a portion of the tree line on the other side of the lot, but the tree line in front of the

house is major. He stated his intention that it remains in the family and if it did it would not be an issue, but you never know for sure.

Mr. Kortz noted that this was an approved two lot subdivision at one time. Mr. VanGuilder stated the map has been filed in the County Clerk's office. Mr. Kortz asked why they now want three lots. Mr. VanGuilder responded the main reason is that they have two children and would like to provide lots for each of them.

Mr. Kortz asked if he would sell the lots if they were subdivided. Mr. Figueroa stated that the entire piece of property has been on the market since March 7th and will be coming off in September. He explained that their intention was to move to Loudonville but over time their plans have changed.

Mr. Kortz inquired about the wetlands on the property. Mr. VanGuilder responded that the original two-lot subdivision showed a different configuration and there is plenty of room to put a house and not interfere with the wetlands. He stated that there are no wooded wetlands it is all mowed lawn area, but there are wetlands on the property.

There was discussion on the wetlands and conditions that would have to be met.

Mr. VanGuilder stated that percolation tests have been performed and the results have been presented to the Planning Board but they were presented close to the last meeting date and he does not believe that they had time to fully review the results.

Mr. VanGuilder stated that Mr. Figuero has kept the property mowed and the only reason it is wet is due to the slope of the land.

Ms. McCarthy asked for clarification on the tree line and the lot that would be affected by the tree line. Mr. VanGuilder stated that the rear lot would be 14.6 acres. He noted that findings of the western GEIS is looking at a maximum density of 3 acres per living area. This property would equate to six units under those criteria, but they are only asking for a maximum density of three living units.

Mr. Koval asked if there has been any further correspondence from the Planning Board. Mr. Kelley responded that their position has not changed.

Mrs. Gleason asked if the question has been answered regarding the waste water system. Mr. VanGuilder responded that the results were not submitted after the letter was written by

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Mr. Bulger, but he believes the Town Engineers did not have enough time to fully review the percolation tests. He stated that the Planning Board did have the results. He does not believe that Clough Harbour did any additional review of the latest information submitted prior to the letter being written.

Mr. Kelley explained that the Board has to consider if the applicant has met all the criteria for granting a variance.

Mr. Kortz reviewed the criteria that have to be considered in granting any variance.

Mr. Koval stated that there are two issues that stand out: 1) is there a way to avoid needing a variance and that is to extend the lot past the tree line, and the talk about an economic loss presumes that the lot was sold to someone else and those owners cut down the tree line ignoring a deed restriction that would be placed and 2) the more important, is that our Planning Board has sent a letter with concerns and he is not clear if those concerns have been satisfied yet. He stated he would like more information from them regarding the wastewater issue.

Mr. Kortz asked if it would be appropriate to have the Town Engineers address the concerns and issues of the Board and recommend conditions that could be put on any variance.

Mr. Koval noted that his concern is if this variance is granted will they have to go through Planning? Mr. Renzi responded that the subdivision would ultimately have to go back to Planning for finality, but the essence of the project is whether or not the square footage requirement is going to be granted by this Board. Planning is very much depending on what this Board does. The ZBA has to determine if the applicant has met the criteria for the granting of the variance.

Mr. Kortz noted that the trees could be protected if it was only the two-lot subdivision.

Mrs. Gleason noted that she was on the Planning Board and when a variance is granted by the Zoning Board it is very powerful.

Mr. Renzi suggested that the Board focus on the criteria for granting a variance and if the applicant has met those criteria.

Mr. VanGuilder noted that one of the concerns of the Planning Board was the position of one of the houses in relation to the wetlands. He explained that the septic system could be moved back quite a ways because the proposed well will be placed on the other side of the house. He noted that the Planning Board is always concerned with the proximity of the house to wetlands because as people enlarge their lawns they tend to fill wetlands. He stated that the criteria of the Army Corps of Engineers is for a house to be a minimum of 50 ft. away and this house is predicted to be 30 ft. away but it can easily be moved 70-80 ft. away from the wetlands. The plan can be fine tuned for the Planning Board if this Board grants the variance.

Mr. Kortz noted his concern whether the benefit can be achieved by other means feasible to the applicant, which is the tree line. He believes that it can be accomplished by other means. He stated that it was accomplished with the two-lot subdivision.

Mr. Renzi asked Mr. VanGuilder if he stated that the Planning Board received information subsequent to the letter to this Board that may influence a decision. Mr. VanGuilder responded no, there has been no new information submitted subsequent to this letter. He stated that he was referring to information brought into the last meeting of the Planning Board and the Town Engineer may not had time to do a thorough review. That information was a percolation test done on May 9th, the day before the Planning Board meeting.

Mr. Renzi stated that that kind of information speaks to whether or not this is a buildable lot after whatever action is taken by this Board, it has nothing to do with what the ZBA may or may not do, assuming the lot is subdivided it could then be built upon, that is between the applicant and the Planning Board and really is not something that has to be considered by this Board.

Mr. VanGuilder responded that it speaks to whether there is room to construct a waste water disposal system and allow a 50% expansion area and still have adequate separations. The information submitted suggests that it would not be a full fill system.

Mr. Clemens stated that he feels there are alternatives without jeopardizing the tree line. He stated that on lot 3, the southwest corner could be bumped out and include only 20-25 ft. of the tree line and a deed restriction could be placed on it, and if it were lost it would only be a minor problem.

Mr. VanGuilder stated that the point is well taken but the applicant feels it devalues the property and he spoke with his realtor and he does not wish to do that, to have an irregular shaped lot.

Mr. Figuero stated that he believes that simple clear lines will save problems in the future. He feels that aesthetically it is more pleasing. His intention was always to go back for a second lot.

There was no public comment. Mr. Ritter made a motion to close the public hearing, Mrs. Gleason seconded, approval unanimous.

Mr. Kelley stated that he has an issue with the granting of the variance, it is hard to justify it for a row of trees, it is an aesthetic issue, and it has no real rationale. He believes it is self-created.

Mr. Kortz agreed with the Planning Board issues and noted there are other means to reach this benefit.

Mr. Ritter made a motion to deny this variance request. Mrs. Gleason seconded. Ayes: Kelley, Gleason, Koval, Kortz, McCarthy, Ritter. Noes: None.

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NEW BUSINESS

1. An application from David Everitt, Jr., requesting an area variance from Section 208-12 from the required 80 ft. front yard setback for an accessory building – proposed setback = 50 ft. – variance requested = 30 ft. The property is located at 55 VanVranken Road, Clifton Park. Permit #80564.

The secretary read the legal notice as it appeared in the Daily Gazette on August 11, 2005.

David Everitt presented this application. He explained that he would like to build a detached garage next to the existing house for convenience.

Ms. McCarthy asked why he wanted a detached garage. Mr. Everitt stated that it is difficult to build an attached garage because the house was built in 1840 and is a farmhouse style. He does not feel it would fit. He explained that it would look like a carriage house.

Mr. Koval asked if there is any way at all to attach it so there is no need for a variance. Mr. Everitt asked if a sidewalk would be considered an attachment. Mr. Clemens explained that there would have to be a physical connection for it to be considered attached.

Mr. Koval explained that there are criteria that have to be met in order to grant a variance, i.e. financial hardship. Mr. Everitt explained that there is a difficulty in moving it farther back due to the drop off in grade and it would require 5-6 ft. of foundation in one corner.

Ms. McCarthy noted that the proposed garage is set further back than the existing house.

Mr. Clemens noted that the house does not meet the current setback requirements.

Mr. Kelley noted that this is an older home and there is an issue of aesthetics and trying to maintain the integrity of the house and the new building.

Mr. Kortz stated that the benefit to be achieved here is to have it within a reasonable aesthetically pleasing and an accessible position in relation to the house and there does not seem to be any other way of achieving that result.

There was no public comment. Ms. McCarthy made a motion to close the public hearing, Mr. Ritter seconded, approval unanimous.

Mr. Clemens suggested moving the garage back to 65 ft. therefore requiring a 15 ft. variance. Mr. Everitt responded that he would like to build it at the 50 ft. setback because it would be closer to the main entrance of the house and there would be less sidewalk to maintain.

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Ms. McCarthy asked about the grade if it were moved back. Mr. Everitt stated that it probably could be moved back about 10 ft. with about 1 ½ ft. of extra foundation showing.

Mr. Ritter made a motion to approve this application as submitted. Mr. Kortz seconded and noted that this is not a self-created hardship; this is an existing old house that was built under different zoning regulations. He also noted that with an old house you do not want an attached garage and there are a lot a circumstances that make it difficult to meet the current zoning.

Mr. Kelley stated that it does not adversely affect the neighborhood.

Mr. Koval noted that Mr. Clemens made a good suggestion to reduce the amount of the variance. He suggested an amendment to the motion to move the garage back another 10 ft. making it a 60 ft. setback and reducing the variance requested to 20 ft.. Mr. Ritter amended his motion and

Mr. Kortz seconded. Ayes: Kortz, McCarthy, Kelley, Koval, Ritter, Gleason. Noes: None.

2. An application from James W. Pasquarell, requesting an area variance from Section 208-11 from the required 10 ft. side yard setback in an R-1 zone – proposed setback = 1 ft. – variance requested = 9 ft.. The property is located at 10 Linden Court, Clifton Park. Permit #80565.

The secretary read the legal notice as it appeared in the Daily Gazette on August 11, 2005.

James Pasquarell presented this application. He explained that he would like to add a two car attached garage to his residence. The adjoining property is owned by the Town of Clifton Park.

There was no public comment. Mr. Ritter made a motion to close the public hearing, Ms. McCarthy seconded, approval unanimous.

Ms. McCarthy explained that she is familiar with this area and there are other homes in the area with similar attached garages. She also noted that the vacant Town property separates two homes and by moving closer to the Town property does not affect any neighbor. She stated she lives in the area and does not have any problem with this request.

Mr. Clemens had no comment on this application.

Mr. Ritter made a motion to approve this variance as requested. Mr. Koval seconded.

Ayes:

Koval, Gleason, Kelley, Kortz, McCarthy, Ritter. Noes: None.

3. An application from Rebecca & Mark Smith, requesting an area variance from Section 208-11 from the required 50 ft. front yard setback in an R-3 zone – proposed setback = 44 ft. – variance requested = 6 ft.. The property is located at 21 Robinson Street, Rexford. Permit #80566.

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The secretary read the legal notice as it appeared in the Daily Gazette on August 11, 2005.

Rebecca and Mark Smith presented this application. Rebecca Smith explained that they would like to add a sunroom on the house. She indicated on a map a stream and wooded area and stated that it is difficult to enjoy the outdoors without screened-in protection. She stated they would like to add a 16' x 16' sunroom to what is now the main entrance of the home. She noted that one corner of the room extends into the 50 ft. setback.

Mrs. Smith presented photographs of the adjoining vacant lot that is used for storage.

Mr. Kelley asked Mr. Clemens if there are any issues with the stream. He responded no. The Smith's explained that when they built their home they went through the environmental conservation service and they had to install a perimeter drain and this addition will not interfere with that setback line.

There was no public comment. Mr. Kelley made a motion to close the public hearing, Mr. Ritter seconded, approval unanimous.

Ms. McCarthy made a motion to approve this variance as requested. Mr. Ritter seconded.

Ayes:

Kortz, McCarthy, Kelley, Ritter, Koval, Gleason. Noes: None.

4. An application from Thomas & Denene Hisgen, requesting an area variance from Section 208-12 from the required 80 ft. front yard setback for an accessory building in an R-1 zone – actual setback = 60 ft. – variance requested = 20 ft.. The property is located at 389 Miller Road, Rexford. Permit #80569.

The secretary read the legal notice as it appeared in the Daily Gazette on August 11, 2005.

Denene Hisgen presented this application. She explained that they replaced an existing 150-year-old garage and the building is completed. The house is also 150 years old. They received two inspections that were approved but when they had the third inspection, the building was approximately 90% completed; the inspector measured and found the setback error. The building cost approximately \$60,000 and would be a financial hardship to move.

Mr. Clemens explained that the inspector that did the initial foundation inspection did not notice that the building was too close to the road. The approved plans indicated that the setback would be met. When the inspector went out to do the framing inspection he measured and discovered the error. Mr. Clemens noted that it is just an honest mistake. He also noted that there are wetlands in the rear of the property and if moved back too far there may be problems in meeting the wetland setbacks.

Mrs. Hisgen noted that the current house is setback only 17½ ft. from the road.

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Mr. Clemens noted that the setback should be measured from the actual property line; many people take it from the edge of the pavement, which is not correct. He stated that he believes when the plan was submitted the setback was measured from the edge of the pavement which indicated the building would meet the setback, when in reality it should have been measured from the property line, which is approximately 35 ft. from the centerline of the road.

There was no public comment. Mr. Ritter made a motion to close the public hearing, Ms. McCarthy seconded, approval unanimous.

Mr. Kelley noted that this is an unfortunate situation, it is already built and would be an unreasonable and unfair economic hardship to have the building moved. He did emphasize that the builder should have been more careful about the setback.

Mr. Kortz asked about rebuilding on the same footprint and the need for a variance. Mr. Clemens responded if it is destroyed by an act of God it could be rebuilt even if it is not compliant but in this case the owners took it down.

Mr. Ritter made a motion to approve this variance as submitted. Mr. Kortz seconded.

Ayes:

Gleason, Koval, Ritter, Kelley, McCarthy, Kortz. Noes: None.

5. An application from David J. Evers, requesting an area variance from Section 208-11 from the required 10 ft. side yard setback in an R-1 residential zone – proposed setback = 9 ft. – variance requested = 1 ft.. The property is located at 41 Longwood Drive, Clifton Park. Permit #80570.

The secretary read the legal notice as it appeared in the Daily Gazette on August 11, 2005.

David Evers presented this application. He explained that he would like to expand his family room on the back of the house. It would be 20' x 12'. The house is not built perpendicular to the property line; it is set to the right and at an angle. He also noted that there is a utility easement on that side. He explained that the foundation would be 7" into the easement. He has contacted the three utilities that have the easement, CPWA, Niagara Mohawk, and Verizon, and they have responded favorably that they have no issues with the plan as proposed. Mr. Evers entered into the record copies of the letters from the utilities.

Mr. Renzi entered into the record that he has had several phone conversations with Mr. Evers about his need to address the easement issue. Mr. Renzi indicated that he is satisfied with the letters from the utility companies, but the easement must be resolved by deeds.

There was no public comment. Mr. Kelley made a motion to close the public hearing, Mr. Kortz seconded, approval unanimous.

Mr. Kortz made a motion to approve this variance as submitted. Mr. Ritter seconded.

Ayes:

Kortz, McCarthy, Kelley, Ritter, Koval, Gleason. Noes: None.

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6. An application from David A. & Barbara C. Smith, requesting an amendment to variance #80559 – front yard setback variance from Section 208-12 from the required 80 ft. front yard setback for an accessory building in an R-1 zone – proposed setback = 34 ft. – variance requested = 46 ft.. The property is located at 13 Saxony Street, Clifton Park. Permit #80559 (amended).

The secretary read the legal notice as it appeared in the Daily Gazette on August 11, 2005.

Barbara Smith presented this application. She explained that they received a variance previously and before starting the project she staked the exact location for the shed but when it was finished the builder did not place it where it was staked out, therefore they need an additional 5 ft from the previous variance.

Mr. Clemens explained that the builder placed the shed and wired it at 34 ft. instead of 39 ft. as previously approved. He stated that he has no objections to this request.

There was no public comment. Mr. Ritter made a motion to close the public hearing, Ms. McCarthy seconded, approval unanimous.

Mr. Ritter made a motion to approve this variance as requested. Mr. Koval seconded.

Ayes:

McCarthy, Kortz, Koval, Gleason, Ritter, Kelley. Noes: None.

7. An application from Valerie Papero, requesting an area variance from Section 208-11 from the required minimum lot area of 100,000 sq. ft. in an R-3 zone – actual lot size = 26,000 sq. ft. – variance requested = 74,000 sq. ft., and an area variance from the minimum lot width of 150 ft. at the building line – actual frontage = 120 ft. – variance requested = 30 ft.. The property is located at 100 Eastside Drive, Ballston Lake. Permit #80571.

The secretary read the legal notice as it appeared in the Daily Gazette on August 11, 2005.

Valerie Papero presented this application. She explained she has a purchase offer on this property contingent on this variance being granted.

Mr. Renzi asked the applicant to present a copy of a signed purchase contract for the record.

Ms. Papero explained that this request will not affect the neighborhood, this piece of property is larger than most of the others in the area.

Mr. Clemens noted that this property is approximately double the size of others in the area. He stated that he has no objections to this request.

Mr. Renzi noted that the copy of the purchase contract submitted by the applicant has not been

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signed by the seller. Ms. Papero stated she has one and will fax a copy to the secretary for inclusion in the file.

There was no public comment. Mr. Kelley made a motion to close the public hearing, Mr. Ritter seconded, approval unanimous.

Mr. Kortz made a motion to approve this variance as requested conditioned on a copy of an executed contract being provided for the record. Mr. Ritter seconded. Ayes: Kortz, McCarthy, Kelley, Gleason, Ritter, Koval. Noes: None.

Mrs. Gleason made a motion to approve the minutes of July 19, 2005, Mr. Kortz seconded, Ayes: Gleason, Kortz, McCarthy, Kelley, Koval. Noes: None. Abstained: Ritter.

Mrs. Gleason inquired about the length of time temporary signs can be displayed. Mr. Clemens stated 30 days. She noted the one on the corner of Moe Road & Route 146 for the pediatric dentist has been up for sometime. Mr. Clemens stated he would look into it.

Mr. Kelley inquired about the temporary flyer type signs that were appearing around town.

Mr. Clemens stated there has been a reduction in their number.

Mr. Kelley made a motion to adjourn the meeting at 8:37 PM, Mr. Ritter seconded, approval unanimous.

Respectfully Submitted,
Judy Lamb
Secretary