

## ZONING BOARD OF APPEALS

September 2, 2008

Present: Michael Dudick, Chairman, Dale Gleason, Douglas Strother, Robert Ritter  
(arrived at 7:10 p.m.), Gilbert Kortz, Brian Telesh

Also Present: Louis Renzi, Esq., appearing for Joel Peller, ZBA Counsel  
Steve Myers, Director, Building & Zoning

Absent: Christopher Lemire

Mr. Dudick called the meeting at 7:05 p.m. It was explained by Mr. Dudick that there were originally three applications to be heard, but now only two were to be heard. This was confirmed by Mr. Myers.

Mr. Dudick welcomed and introduced the Board's newest member, Brian Telesh. Mr. Telesh stated it is his pleasure to serve.

### **NEW BUSINESS:**

- 1. An application from Mike Belanger, requesting an Area Variance from Section 208-11 – 50-foot front setback required, actual setback = 47 feet; variance requested = 3 feet; an Area Variance from Section 208-98 – 100 feet required from center line of Grooms Road, actual setback = 69 feet, variance requested = 31 feet. The property is located at 598 A Grooms Road, Clifton Park, New York. (Permit #80705)**

The secretary read the Legal Notice as it appeared in the Daily Gazette on August 28, 2008.

Mr. Myers stated that he spoke to attorney Joel Peller about this application earlier in the week. Mr. Myers stated that he made a couple of errors when he wrote the application. Mr. Peller did not feel the errors were enough to stop the hearing of this variance this night. The actual front setback is 44 feet, not 47 feet, making the variance request 6 feet. The setback from the centerline of Grooms Road is actually 66 feet, requiring a variance of 34 feet, not 31 feet.

Mr. Kortz mentioned that both applications to be heard are for the same property; one is a use variance, the other an area variance. He suggested the Board hear the use variance first because one depends on the other. He also looked at the land conservation bulk standards, section 208.70, and stated that the minimum area for any application pursuant to this article shall be 100,000 square feet, and this is less than that by quite a bit. He was unsure if that also should be part of the variance requested. Mr. Myers stated that he feels that this does not apply to the use requested. Mr. Myers stated that that request could be put in, but because it was an allowed use, he did not go that far into it.

The secretary then asked what application would be heard first, because she read application

80705, not 80706. Mr. Dudick agreed with Mr. Kortz that these applications are tied together and he did not know if we would approve an area variance that would allow for development but not allow the use variance. He stated that he would like both applications read, and the Board will decide the use variance first. Based upon that decision, the Board will then come to a conclusion regarding the area variance.

Mr. Myers further replied to Mr. Kortz's question by stating that if the use variance is approved, it would be automatically said that any other particulars of that section would also be approved. Mr. Kortz asked why would the Board approve the other area variances then. Mr. Renzi asked Mr. Myers if he was suggesting that by approving the use variance the Board is automatically approving the area variances required as well. Mr. Myers stated that he is unsure that this is what he meant. He still thinks the setback variances could be discussed and changed, but the plot of land is what it is. Mr. Renzi stated that, as an opening remark, it can be said that approval of the use variance by the Board would imply a clear direction of intent to go ahead and approve the area variances, once they have been ironed out.

Mr. Kortz stated that what he was questioning was the lot size, 1.49 acres, and the minimum lot size for an allowed use is 100,000 square feet which is about 2.5 acres. This would require a 1 acre variance, which is not in the application. Mr. Renzi asked where the bulk variance was requested. Mr. Kortz stated that this is his point, that it was not requested and maybe it should be.

At this point, Mr. Gil VanGuilder, project land surveyor, spoke and stated to Mr. Kortz that he was under the impression that he was under the outline zoned, and he missed the 100,000 square foot requirement. The R-1 zoning is the overlying zoning with the LC zone affected. Mr. Myers stated he did not believe the entire lot is in the LC zone, and Mr. VanGuilder agreed. There is a small portion of the lot that is not in the LC zone. Mrs. Gleason asked what percentage. Mr. VanGuilder stated that it is probably 85 to 90% in the LC zone.

Mr. Dudick stated that he would like to have the second application read so that it officially becomes a part of the record, and stated to Mr. VanGuilder that he can then make his presentation.

**2. 1. An application from Mike Belanger, requesting a Use Variance from Section 208-69.2 to build a duplex in an LC (Land Conservation) Zone. The property is located at 598 A Grooms Road, Clifton Park, New York. (Permit #80706)**

The secretary read the Legal Notice as it appeared in the Daily Gazette on August 28, 2008.

Mr. Gil VanGuilder, project land surveyor, presented this application. He stated that this is a very unique piece of property. It was essentially created in 1948 when the Latham Water District purchased the property to make the Stony Creek Reservoir. They purchased land around two farm structures that are still on the property. There is a barn and a pole barn that exists on the property today. The property consists of 1.49 acres. New York State DEC wetlands have been delineated. Everything to the west and south is involved with DEC wetlands, and the middle portion of the property is upland and has been used. This is the purpose of his handing out the 2007 aerial photos from the Saratoga County GEIS website. He said it can be seen that the property has been maintained in an informal manner probably two to three times per year just

to keep the vegetation down. He then introduced Mr. Belanger.

Mr. VanGuilder stated that they met with DEC onsite, because he knew that this Board would be looking for feedback from DEC since the majority of the property lies within the 100-foot buffer of the LC zone. The proposal he suggested to DEC was a duplex building. He stated that DEC thought it was an excellent use for the property because you are generally dealing with people who do not have ownership of the building. They are renting and are less likely to do incremental filling and start maintaining beyond the bounds of the dashed area. The dashed area has been agreed upon with DEC as a zone of occupation.

A letter was included from DEC. They have reviewed the application and find it acceptable. The only thing DEC requests is for the Zoning Board or Planning Board to issue a special permit for the duplex use. Mr. Dudick read the middle paragraph of the August 28, 2008 letter from Richard Speidel, Division of Environmental Permits, of the New York State DEC, which states:

The DEC has completed technical review of the application, which includes the plan titled "Wetland Disturbance Map, Lands of Rogers" prepared by Gilbert VanGuilder Land Surveyor, dated May 15, 2008. Based on our review, the proposed layout is acceptable. However, before DEC issues the Freshwater Wetlands permit, we request that either the Town Planning Board or Zoning Board serve as lead agency and complete the SEQR process. This will assist our review, particularly if the Town's forthcoming review results in any project changes.

Mr. VanGuilder stated that this property is served by public water and public sewer on Grooms Road. There will not be any septic system or well on the property, so the possibility of pollution from a failing septic system affecting the ground water table is no longer a concern. Mr. Belanger feels that the area shown as the zone of occupation is an adequate area for a lawn. There is about 50 feet behind the building that the tenants can use for occupation. There is a single entrance onto Grooms Road with a turnaround shown, so there will be no backing onto Grooms Road. The building is situated so that the front of the building is in the same plane as the front of the main part of the barn. There is an addition out in the front that will not project that close to the road. Those structures will be removed from the property and the building will set back on the same plane. The topography is level and everything drains well to the wetlands on the south and west. They would keep the drainage patterns the same as they are today. All of the utilities are adequate to serve this property. Mr. VanGuilder believes this allows for a piece of property that does not currently have a good community use to have a more purposeful use.

Mr. Kortz asked when Mr. Belanger purchased the property. Mr. Belanger stated that he is currently under contract. Mr. VanGuilder stated that David and Betsy Rogers are the current owners and have owned the property since 1981.

Mr. Kortz stated he is trying to assess whether this is a self-created hardship. Mr. VanGuilder stated that the Rogers have been trying to sell the property for about 5 years. They have not had a serious offer. Mr. VanGuilder has had a number of calls from the Planning Department and the Building Department and it always came back to the LC zone.

Mr. Dudick asked what the property was on the market for. Mr. VanGuilder stated that he did not know. Mr. Kortz and Mr. Dudick stated that hits on the competent financial evidence that is always asked for when use variances are requested. Mr. VanGuilder stated he did not have the actual listing but believes they are asking about \$89,000.

Mrs. Gleason asked if we ever received a response to Mr. Kortz's opening question about the acreage. Mr. VanGuilder stated that if she is referring to the 100,000 square-foot minimum, they neglected to apply for that variance because he thought that the R1 zoning was the overriding zoning at 20,000 with public water and sewer. They missed that section of the code. Mrs. Gleason asked if this is crucial to the application. Mr. Dudick referred Mrs. Gleason's question to counsel as to whether this application needed to be tabled.

Mr. Myers had a question regarding a section he did not recall seeing any information about in the application, that being addressing the requirements of Chapters 119 and 124 of the code; one is for flood plains, the other for freshwater wetlands disturbance. He stated that there are requirements that the Zoning Board shall hear and decided appeals for requests for variances from requirements of the flood damage prevention chapter, but it states that you have to provide additional information. Mr. Myers stated that he is not sure if the property is in the flood plain or not. If it is adjacent to the Stony Creek Reservoir, it very well could be. Mr. VanGuilder stated that a small portion of the property is in the flood zone, but the area that the house is proposed is not. The problem with that portion of the Stony Creek Reservoir is that is an A zone and does not have a base elevation established for it. The next best thing is the historic flooding of the area, and no one can remember the area of those farms being subject to flooding. He spoke with the Rogers and they did not indicate that this has been a problem. Mr. Myers stated that he did not feel that this was addressing the application. He was wondering if that needs to be in there, as well.

Mr. Renzi stated that he still cannot get past the bulk variance. He stated that being an acre shy of where you need to be is a lot. Mr. Dudick stated that he feels we should put this application on hold, hear it at the next possible date and re-notice it. There was discussion regarding having ECC review the application. There was also discussion regarding what the lead board would be. Mr. Myers stated that the application needed to be renoticed with the 100,000 square-foot variances; we need to have Mr. VanGuilder address the other chapters that have not been addressed; and we need to have ECC review the application. It was discussed that the next meeting would be September 16<sup>th</sup>, but the County needs to hear it again, and that would not be until after the September 16<sup>th</sup> hearing.

Mr. Dudick referred to his prior question about what the listing price is. Mr. Belanger stated that the property was listed with Brice Realty for \$75,000. Mr. Dudick stated that he would like to see something in writing that the Board would want to have access to. Mr. Kortz mentioned records of taxes over the years. Mr. Dudick stated the Board would like some competent financial information to look at and consider.

Mr. Ritter stated he would like more documentation provided, either from the applicant, or better, from the owner. He stated that the applicant is buying the property contingent on this and that he is aware of the LC zoning issue. He stated that the applicant is not creating the hardship,

but the owner needs to document the hardship and provide some sort of evidence of financial hardship. Mr. Ritter stated that on face value, if this were to come to a vote, he would vote no because they did not prove that. Mr. Dudick stated that we did not get that much into this and that the applicant may have enough information, but more is better. Mr. Dudick stated that this application is officially on hold. He stated that the applicant will not be recharged. It was discussed that the next meeting would be in October.

Mr. Dudick and Mr. VanGuilder discussed the 60-day waiver. Mr. VanGuilder asked Mr. Belanger if he would extend beyond the 60 days in case a decision is not made at the next meeting. Mr. Belanger stated that is fine. The secretary asked if this applied to both applications. Mr. Dudick asked this of Mr. VanGuilder and Mr. Belanger, and they replied yes. Mr. Dudick asked for confirmation from Mr. Myers of the extension of the 60-day rule for both applications and Mr. Myers replied yes.

Mr. Dudick made a motion to table this application. Mr. Kortz seconded. Approval unanimous.

Mr. Dudick stated that this would be a new application and would be re-noticed so that the 60 days would not apply. It was discussed that the application could be amended.

Mr. Ritter made a motion to approve the minutes of July 15, 2008. Mrs. Gleason seconded. Approved by: Dudick, Gleason, Strother, Ritter. Mr. Kortz abstained.

Mr. Strother stated he sent an e-mail to see if members wanted to get together to talk and thanked Board members for their responses. He asked for clarification regarding the Board receiving letters from other agencies like the DEC and the County. He asked if the letters from those agencies say they do not have a problem with an application, is that guidance and how can we best use that information. Mr. Dudick described this as guidance. He gave examples of letters from the County and Planning that have been submitted. These letters are letters of opinion from an interested Board which can be used as guidance. Mr. Dudick stated that he makes his decisions based upon his understanding of the Town law and what our obligation is here, from a zoning perspective. Mr. Kortz added that County Planning is reviewing this from a different aspect. Mr. Renzi explained that there are some circumstances under which applications need to be submitted to the County. Sometimes we receive what is essentially a non-jurisdictional letter from the County wherein they do not have a problem. He would not call that a guidance document, but more of a situation where they are not interested in it. Perhaps one like tonight, they would say, we're not interested, but do something. That would be considered a guidance document. A Planning Board document would be considered guidance, but would not be considered binding. There was discussion regarding the County recommending denying an application. If the Zoning Board disagrees with that they have to pass it by a super majority. There was further discussion regarding other agencies' recommendations and guidance and decision making by the Zoning Board. Mr. Dudick mentioned that when we hear an application we need to discuss why we like or dislike it, so that our votes carry merit. It also allows other members to listen to the comments and help them make a decision. Mr. Kortz stressed that it is important that you have all the information you need to vocalize a rational decision, especially if the application is complicated. Mr. Renzi stated, especially to the newer members, that they are familiar with the Town Code which distinguishes wetlands from buffer zones or LC zones.

Mr. Dudick made a motion to adjourn the meeting at 8:05 p.m. Mr. Ritter seconded. Approval unanimous.

Respectfully Submitted,

Jess McCarthy  
Secretary

cc: Town Clerk, Town Board, Zoning Board Members, Joel Peller, Counsel, Steve Myers,  
Department of Building and Development, Planning Board, ECC, Assessor, Highway