

Town of Ballston  
Zoning Board of Appeals

**TOWN OF BALLSTON  
ZONING BOARD**

**Regular Monthly Meeting: April 2, 2014**

**ATTENDEES:** Michael Lesniak, Chairman  
Marilyn Bell, Vice Chairman  
Ellen Brown  
Robin Kane  
Fred Rogner  
Daniel Russell  
Jan VanDeCarr  
Stephen Merchant, 1st Alternate

Peter Reilly, Zoning Board Attorney  
Thomas Johnson, Building Inspector

Members of the General Public

Chairman Lesniak called the meeting at 7:30pm and led the Pledge of Allegiance. The chairman asked for corrections to the March 5, 2014 minutes. No corrections noted.

**MOTION:** Ms. Kane made a motion to accept the March 5, 2014 minutes as submitted. Ms. Brown seconded the motion and all present voted in favor. **CARRIED.**

Mr. Lesniak reviewed the agenda for this evening.

**OLD BUSINESS:**

**Philip Wager, 2 Edward Street, Ballston Lake, NY 12019 (257.12-1-78) for an area variance pursuant to §138-8.1 to construct a 24' x 40' detached garage.** Chairman Lesniak said the applicant was before the board March 5, 2014, requesting a 33' front yard setback variance to construct a 24' x 40' detached garage. The board tabled the application requesting more information.

Mr. Wager said at the last meeting, the board requested the setback of the neighboring property (Farrigan). Mr. Wager said it's 33' from the center of the road.

Mr. Wager said if the proposed setback was increased to 33', a stump would need to be removed from the property. Mr. Wager is requesting the board consider his original application request of 27'.

Chairman Lesniak said the roots of the tree could become a problem with the buildings foundation in the future.

Ms. Brown said typically detached garages are positioned behind the row of houses and with are proposing it closer to the road, appearing to be larger than some of the homes

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on the road. Ms Brown said she would request the detached garage line up with rest of the houses in the area since this is a main road.

Mr. Wager said, " The narrower side of the garage will face the road."

Mr. Russell said this is a reasonably busy road and the town has established setbacks for a reason to have the ability for a maintenance area for possible expansion of water lines, drain lines, power lines or other easements in the future. It also provides a guideline so all the houses don't start encroaching that area. Since the other houses seem to be no closer than the neighboring property (33'), by moving the proposed garage an additional 6' closer, it would become a limiting controlling structure. In the event that something is built there, would be a cost for the town or some type of remediation. Mr. Russell would be opposed to anything closer than what is consistent along the road recognizing that 60' is the rule and would be granting a deviation with the existing structures.

Mr. VanDeCarr said he does not want to change the applicant's vision for the proposed structure, but asked if the dimensions were changed to 24' x 34 and 6' further back, would esthetically be in line with the existing homes along that stretch of roadway.

Mr. Wager said he could possibly meet the alignment of the other houses, avoid the stump and downsize.

Chairman Lesniak asked what were the applicant's plans for the garage. Mr. Wager said for storing cars, garden equipment, and a workshop for metal working and automotive repair.

Chairman Lesniak asked if the applicant would compromise, since this is a substantial variance request and would be in line with the other homes.

Ms. Wager asked do they need to meet the requirement, remove the stump or downsize.

Chairman Lesniak said the board needs to know the physical footprint, distance and front yard setback including the overhang.

Mr. Russell suggested an option of building a two story garage.

Chairman Lesniak suggested changing the design of the proposed garage and adding a workshop on the side.

Mr. Rogner said at the last meeting he asked, " Would that be a problem moving it back 5'. Mr. Wager said he would not be opposed to the 5'.

Chairman Lesniak opened the public hearing at 7:47 p. m.

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Chairman Lesniak closed the public hearing at 7:48 p. m.

No one wished to speak.

Ms. Bell read through the five criteria for an area variance:

- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. The Board replied "No."
- 2) Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance. The Board replied "No" - Not feasible.
- 3) Whether the requested area variance is substantial. The Board replied "No."
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood of district. The Board replied "No."
- 5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. The Board replied "Yes."

**MOTION:** Ms. Bell motioned to name The Town of Ballston Planning Board the Lead Agency in the SEQR process. Ms. Brown seconded the motion and all present voted in favor. **CARRIED.**

**MOTION:** Ms. Bell motioned to declare this a Type II Action under the SEQR process therefore exempt from review. Mr. Rogner seconded the motion and all present voted in favor. **CARRIED.**

**MOTION:** Ms. Bell made a motion for 2 Edward Street for the construction of a garage structure pursuant to §138-8.1 for the following variances be granted - a lot area of 13,864 sf. - a lot width of 20' and a front setback of 27' - No living quarters, no commercial/industry in the garage structure - to be housed for personal belongings. Contingent on obtaining NYSDOT issuing a curb cut. Ms. Kane seconded the motion and all present voted in favor. **CARRIED.**

The board appreciates the applicant working with them.

**Susan A. Musto, 14 Connolly Road, Ballston Lake, NY 12019 (239.-1-79,1) for 280A Relief (Residential Subdivision - 2-lots).** Thomas Grasso was present on behalf of the applicant. Chairman Lesniak said the applicant is proposing 280A Relief

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on Connolly Road to subdivide the property to provide the income from that property to erect warning devices at the railroad crossing at Connolly Road.

Mr. Russell asked is Connolly Road to close or if you (the applicant) were to add warning signs as requested by Delaware and Hudson (D & H) Railroad, would it be allowed to stay open. Mr. Grasso replied, yes.

Mr. Russell asked is there any consideration by adding additional lots and houses on the East side of the railroad tracks. By granting this application, would this change the requirements established by the Delaware and Hudson Railroad. Mr. Grasso replied, no.

Ms. Brown asked the cost of the crossing. Mr. Grasso replied the total cost is \$300,000.00. Ms. Brown asked how much are you (Mr. Grasso) responsible for. Mr. Grasso said according to Judge Ryback's decision, \$150,000.00 and \$1,800.00 a year for maintenance costs.

Ms. Brown asked is insurance required. Mr. Grasso replied, none as indicated in the decision by Judge Ryback.

Ms. Brown asked who will be liable. Mr. Grasso said he did not know.

Ms. Bell asked Mr. Reilly if 280A Relief were granted, could the town become liable. Mr. Reilly asked liable for what. Ms. Bell said if 280A Relief were granted and there isn't a gated crossing erected. Mr. Reilly said any relief granted would be contingent upon an agreement between the affected property owners and the Delaware & Hudson Railroad and any active improvements on that crossing before any building permits could be issued.

Mr. VanDeCarr asked if 280A Relief was not granted, would Connolly Road be closed. Mr. Grasso said that is not necessarily true. Mr. VanDeCarr asked if this request is the preferred option. Mr. Grasso said the preferred option would be having no cost or creating a special tax district to spread the costs. Mr. Grasso said the State took the recommendations made by Judge Ryback that the railroad would stay open and were asked to share the cost. Mr. Grasso said the railroad is contesting Judge Ryback's recommendations and scheduled to go to the Supreme Court.

Chairman Lesniak said if the board grants 280A Relief, there would be a stipulation that the applicant's have an access through Connolly Road and would remain open. Mr. Grasso is in agreement, but asked the board to add - "unless an alternate method is obtained." Mr. Reilly said the board could mirror the language in Judge Ryback's letter. Mr. Reilly said he will review this in detail and provide language to satisfy the board.

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Ms. Bell asked how many homes are currently on Connolly Road. Mr. Grasso said 22 individual properties East of the railroad tracks.

Ms. Bell asked who maintains the road. Mr. Grasso said, "He maintains the road from the railroad tracks to Route 50 and to his house."

Ms. Brown asked if there is a road association. Mr. Grasso said it's not formal, but contributions are made on a voluntary basis. Chairman Lesniak asked if everyone contributes. Mr. Grasso replied, no.

Ms. Bell asked if the 22 individual parcels include parcels off Powers Lane. Mr. Grasso said Powers Lane is in addition to those properties.

Ms. Bell asked if the applicant's property abuts up-to the properties on Saunders Lane. Mr. Grasso replied, yes. Mr. Bell asked if the property is located to the North. Mr. Grasso replied, yes. Mr. Grasso said the Musto property has ingress/egress rights through the Grasso property and the Grasso's own a strip up-to Route 50.

Ms. Bell asked if there was an option to connect through Saunders Road. Mr. Grasso replied, no.

Chairman Lesniak polled the board if they had any problems with the request for 280A Relief:

Mr. Rogner said, no.

Ms. Kane said, no it looks fine and asked the width of the road. Mr. Grasso said between 15' and 16'; wide enough for two trucks.

Mr. Reilly said according to Judge Ryback's letter it's 14' to 16' wide.

Chairman Lesniak said the rule is 15' for emergency vehicles.

Ms. Brown said as long as their being funded with a special tax district, and have the approval of the railroad, does not see a problem.

Mr. VanDeCarr said he agrees.

Mr. Russell asked is a common use driveway allowed. Mr. Lesniak said the town does not encourage, but there are properties in the town with a common use driveway. Mr. Russell asked for clarification of the 30' easement as shown on the map labeled parcel #2. Mr. Grasso said there are two parcels (#1 and #2). An easement across parcel #2 granted to the owner of parcel #1 across parcel #2. An easement granted to both parcels across the Musto parcel to access the Grasso parcel. An existing easement granted-

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Musto across to Grasso parcel. An easement from the Grasso parcel continuous up through the property- up-to Route 50 - with a 15' wide strip for parcel #1 and #2.

Ms. Bell asked is this proposal a backup. Mr. Grasso said, no - would like the ability for Mrs. Musto to sell some of her property for future living expenses. Mr. Grasso said another option is to provide money from the sales of the property, to the railroad, for the crossing.

Ms. Bell said if the railroad grade closes, then easements would be sought out through Powers Lane. Mr. Grasso said, yes. Mr. Grasso said the properties have no value without legal rights of access. Ms. Bell would like to see it linked - contingent on getting the grade crossing."

Chairman Lesniak is concerned about using an alternate method - contingent Connolly Road remain open.

Mr. Reilly said there are no legal rights to go out Powers Lane and if this isn't funded, the railroad will close the crossings - no ingress or egress of a public road.

A further discussion was held on 280A Relief for Powers Lane.

Mr. Reilly said an alternative ingress/egress over the railroad crossing over Connolly Road be established or return to the ZBA for a review of an alternative ingress/egress.

Mr. Grasso said one problems is time constraints - funding for the railroad crossing.

Mr. Grasso said the decision be based on the conditions that exist today. Mr. Reilly said Judge Ryback's decision that was adopted by the State cannot be ignored - somehow this board will have to include in their decision whether through Powers Lane or Connolly Road.

Mr. Reilly said the applicant will have a difficult time selling the lots until such time a railroad crossing is established.

A discussion was held on alternative options for the applicant.

Mr. Russell said, "No building permits will be issued unless the street or highway giving access to the structure has been placed on the official map or plan." Mr. Russell said it exists, but if the railroad chooses to close it, it no longer exists; therefore no building permit can be issued.

Chairman Lesniak open the public hearing at 8:29 p. m.

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Mr. Merchant said after recent discussion, feels the railroad crossing will remain open and will be resolved.

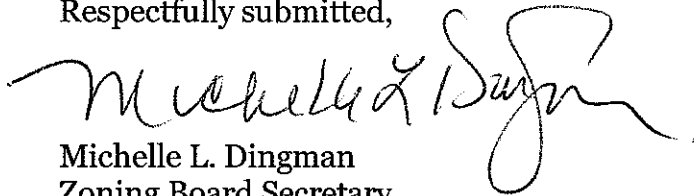
**MOTION:** Ms. Bell made a motion to table the application. Mr. Russell seconded the motion and all present voted in favor. **CARRIED.**

Mr. Grasso asked about moving forward with the proposed subdivision prior to the granting of 280A Relief. Mr. Reilly said the plan was to work with the applicant and get a general consensus of the board to grant 280A Relief as long as Connolly Road remains open at some capacity. Mr. Reilly suggested the applicant submit a proposal to Planning Board for a proposed subdivision with a condition that Connolly Road remain open at some capacity.

**MOTION:** Ms. Kane made a motion to adjourn. Ms. Brown seconded the motion and all present voted in favor. **CARRIED.**

Meeting adjourned at 8:33 p. m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michelle L. Dingman". The signature is written in a cursive style with a large, looping initial "M".

Michelle L. Dingman  
Zoning Board Secretary