



Town of Ballston
Zoning Board of Appeals
September 2, 2009

ATTENDEES: Michael Lesniak, Chairman Peter Reilly, Deputy Town Attorney
Marilyn Bell, Vice Chairman Thomas Johnson, Building Inspector
Ellen Brown
Michael Groves Members of the General Public
Robin Kane
Fred Rogner
Jan VanDeCarr
Richard Kinney, 2nd Alternate

Chairman Lesniak called the meeting at 7:30pm and Mr VanDeCarr led the Pledge of Allegiance. The chairman asked for corrections to the August 5, 2009 minutes. They were as follows: Page 2) 1st para; strike "is it", 12th para; change "is to "isn't".

MOTION: Mr. Groves made a motion to accept the August 5, 2009 minutes as amended. Ms. Kane seconded the motion and all present voted in favor. **CARRIED.**

Mr. Lesniak reviewed the agenda for this evening.

OLD BUSINESS:

Richard and Mary Czub, 152 Lake Road, Ballston Lake, NY 12019 for an area variance pursuant to section 138-138-11.1. Mr. Lesniak said when the application was tabled back in April; the Board asked the applicant to pursue purchasing more property and obtain site plan review from the Planning Board to include a turn-around to alleviate backing out onto Lake Road. Mr. Lesniak asked if the applicant tried to purchase additional property. Mr. Rabideau replied yes, and both neighbors declined. Mr. Lesniak said the applicant obtained site plan review from the Planning Board.

Duane Rabideau of VanGuilder and Associates was present on behalf of Richard and Mary Czub for a front yard, side yard, and area variances. Mr. Rabideau said there was a request from the Zoning Board for the applicants to apply for site plan review due to the size of the lot and what was being proposed to be built. Mr. Rabideau said after extensive review by the Planning Board, CT Male, DEC, and ACOE their plan met all the requirements for the septic system and storm water run-off. Mr. Rabideau said before an application be submitted to the Planning Board for site plan review, the applicants met with the Chairman and suggested that if the applicants in the future wanted to build a garage on the site, it should be shown on the site plan; the plan met all the environmental requirements .



Mr. Rabideau said the other request was to obtain land from adjoining property owners and both neighbors declined.

Mr. Rabideau handed out color-coded tax maps to each Zoning Board members. The first highlighted in yellow indicates existing lakeside building lots equal to or smaller than the Czub parcel (only on the lakeside). Mr. Rabideau said there is a precedent of buildings along the lake of this size.

Mr. Lesniak asked lots equal to or smaller. Mr. Rabideau said he is referring to the lot area.

Mr. Rabideau said the map highlighted in Red are the lakeside lots with lot widths equal to or less than the Czub parcel. Mr. Rabideau said there are numerous lots developed throughout the entire lake.

Mr. Rabideau said the map highlighted in green are the lakeside lots are less than the current zoning of 80,000sq. ft. Mr. Rabideau said at one time, the zoning was 40,000sq. ft. and feels the zoning does not fit what is presently built out on the lake which will be environmentally driven since the Planning Board has to review all the lots through site plan review process.

Mr. Rabideau said the larger parcels shown on the map are wetlands.

Ms. Bell asked Mr. Rabideau to define the environmental concerns. Mr. Rabideau said CT Male reviewed the septic system extensively and it was determined that it met all the standards. The Planning Board recommended upgrading the septic system, but after CT Males review, it was determined that, it did not need upgrading because it met the standards.

Mr. Rabideau said ACOE and DEC permits were issued and DEC had returned to the site and issued the mean high water level. Mr. Rabideau said there is a misunderstanding of mean high water (it is not where the highest water hits) it is a visible location indicated by scour along the shoreline (brush line).

Mr. Rabideau said mobile recharge basins have been added to catch the additional flows metered out at a certain rate.

Mr. Rabideau said front yard variances are being requested to push the house, drive, and fill area closer to the road to leave in a natural state.

Mr. Lesniak asked the proposed square footage of the house. Mr. Rabideau said 726sq. ft.

Mr. VanDeCarr asked if the lots shaded in green as shown on the map currently have a home on them. Mr. Rabideau said he believes over 90 percent.

Mr. VanDeCarr asked if the lots shaded in red as shown on the map currently have a home on them. Mr. Rabideau said they currently have structures on them.

Mr. VanDeCarr asked if the lots shaded in yellow as shown on the map currently have a home on them. Mr. Rabideau said some have structures on them.



Ms. Bell said yes, but no necessarily year round homes. Mr. Rabideau said that he did not know he believes most of them are year round homes.

Ms. Brown asked the applicant when he purchased the property. Mr. Czub replied in 2005. Ms. Brown asked the applicant if he was aware back then it was a substandard lot. Mr. Czub said, "honestly I did not give it a thought there was a structure on it and I am not asking for any more than what is there in square footage."

Mr. VanDeCarr said earlier the applicant had attempted to purchase property from both neighbors and asked if the discussions involved purchasing a "slice" of their parcels. Mr. Rabideau said there were discussions with the neighbors to purchase property to meet the zoning requirements, but the neighbors' declined.

Mr. VanDeCarr questioned Mr. Rabideau about the neighbors selling wetlands to the applicant. Mr. Rabideau said, "it is lakefront whether the neighbors' can use the land or not; they declined."

Mr. Groves said the map illustrates developed parcels and asked how many of those predate the current zoning. Mr. Rabideau said he would expect a majority of them and one of the parcels received a variance for almost 70,000sq. ft. on 30 Hickory Grove; more than what the applicant is proposing.

Mr. VanDeCarr asked the applicant if there were any discussions about purchasing lands across the street. Mr. Rabideau replied no.

Mr. VanDeCarr said there were discussions from the Planning Board minutes regarding upgrades to the septic system and it was determined the applicant met all the requirements and did not need to upgrade the septic system.

Mr. Rabideau said if the Planning Board made Mr. Czub upgrade his septic system, they would have to make each applicant upgrade their septic system; their septic system meets all the requirements.

Mr. VanDeCarr asked if the septic system has been designed for year round capacity. Mr. Rabideau said the septic system has been designed for a year round residence and is located in the front of the house.

Mr. Groves asked if there is an existing septic system on the property. Mr. Rabideau said it is similar to an outhouse.

Ms. Brown asked on the first map shown color-coded in yellow, are any of the other homes on the lake equal to the amount of fill that will be brought onto the property. Mr. Rabideau said no, because they are preexisting.

Ms. Bell asked how much fill. Mr. Rabideau said from the bottom to the top of the retaining wall is 4ft. there may be 18" of fill to run up against the stonewall.

Ms. Bell asked for clarification of PFF and BFF. Mr. Rabideau said proposed finished floor 62.5, which is 2ft. above the 100 yr. flood plan (258.3). The BFF is the basement-finished floor.

Ms. Bell asked the applicant if they are seeking approval for the house. Mr. Rabideau said for the actual site plan and variances the Planning Board Chairman requested the potential build-out.

A further discussion was held on setbacks.



Mr. Johnson asked the setback from the garage. Mr. Rabideau said 18’.

Mr. Lesniak opened the public hearing at 8:09pm

Dave Graudons, 100 Lake Road said that he is against this proposal because it is a significant variance. The applicants own a home directly across the lake located a 61 Saunders Road with approximately 2.1 acres. Mr. Graudons said the applicants purchased the property October 9, 2005 on Lake Road and should have known something about the zoning. The lot area in that district is 80,000sq. ft. the actual area is 15,644sq. ft. The lot width on the road is 175ft. the applicant has 106.13ft.on the road actually a lot width of 103ft. The front setback is 60ft. and the applicant has 40ft. Mr. Graudons said the distance from the septic system and the lake requirement is 200ft on December 15, 2008 was 110ft. The Town of Ballston approved the variance February 14, 2009, sent out a waiver, and may be revoked if conditions change. Mr. Graudons has observed water behind this wall many times and feels the waiver should be reviewed.

Mr. Graudons went through criteria of an area variance.

The first he stated is detrimental to near properties, achievements by other methods, area variance that is not substantial, adverse effect on the neighborhood, and difficulty was this self-created.

Mr. Graudons said that he does not want to hear the Board’s lawyer state as he did prior at the last meeting “this is a close call.” Mr. Graudons said, “if this was close, I would like to know what a good call is.”

Mr. Graudons asked why they allow the ordinary high water.

Mr. Rabideau said the terminology was reviewed by DEC.

Mr. Graudons said the Board should consider the possibility of creating another eyesore and more cluster housing.

Mr. Graudons asked what happens when the snow melts.

Mr. Lesniak wanted to point out that the town has several lots that are non-conforming that preexisted zoning. Mr. Lesniak said in 2006 the zoning changed to 80,000sq. ft. and years ago the town did not even have zoning for lot area. Mr. Lesniak said the town went to 80,000sq. ft. for any new development. Mr. Lesniak said if the town went to enforce every zoning law, on every piece of property that was on the lake, there would be a number of them. Mr. Lesniak said this lot is grand fathered and the applicant is paying taxes on that property.

Mr. Gaudaons said it is a stand-alone lot; this is not a building lot.

Anne Pearce, 110 Lake Road said the variance sends a signal that there are different rules for people in the watershed for those on the lake and this project does not support the BLOD. The area variance is substantial and self imposed hardship sometimes a project needs to be rejected and prolonging the process by sending the applicant to the Planning Board or the Town Board with a substandard lot without a recommendation is very confusing to the other Boards. Ms. Pearce said she was at the Planning Board meeting and they asked, “why do we have this.”



Mr. Lensiak said the reason was due to the issues of the sensitivity of the lake and whether or not could actually configure a dwelling that met the DEC regulations.

Ms. Pearce said she feels the Planning Board was still confused about not having any recommendation.

Mr. Lesniak said the Zoning Board could not make a recommendation and wanted to get the Planning Boards input.

Ms. Pearce said there was a discussion about grass in the front yard and having natural buffers to soften the view from the lake even though they will have a view from any potential house. Ms. Pearce said the future garage should not have any living quarters or bathrooms permitted.

Peter Herman, 104 Westside Drive said the applicants have gone through hoops and feels our goal is to protect the lake and the Zoning Board sets a bad precedent for anyone coming in front of the Board in the future.

Mr. Rabideau clarified the definition of mean high water. The determination for the establishment of the 200ft. distance is from the mean high water is from the DEC application.

Mr. Rabideau said, "the mean high water level can be determined by observing shoreline characteristics as vegetation clearing at the line that crest on the bank scouring or shelving." Mr. Rabideau said it does not matter how high the lake gets; mean is the key word and that is what the Planning Board and Town Board used as their criteria to establish the variance for 200ft. to 110ft."

Mr. Rabideau said the site plan meets all the environmental considerations that the town has established for development along the lake.

Mr. Rabideau said there is more environmental damage along the lake made by the geese.

Mr. Rabideau said the damage is not on the lake, but on Route 50 in the watershed.

Mr. Groves said current zoning came into effect in January 2006. Mr. Johnson said no, the zoning changed in 2003 and June of 2006.

Mr. Lensiak closed the public hearing at 8:22pm

Mr. Rogner went through the five criteria of 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. Mr. Rabideau said no as by the color renderings the typical build out on the lake are small narrow lots and as far as a detriment to the vacant lots will not and always will be vacant. Mr. Rabideau said the quality of the proposed house is better visually than what is there presently. Mr. Rabideau said directly across the street is a garage.



- 2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. Mr. Rabideau said no it is a preexisting lot prior to zoning and the applicant did approach the neighbors on both sides and request to obtain more land and the answer was no.
- 3) Whether the requested area variance is substantial. Mr. Rabideau said yes the current zoning in this area which was poorly thought out; 2 acres on the lake just does not work and no by the practical build out along the lake.
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood of district. Mr. Rabideau said no the proposed layout is consistent with the physical build out of the lakefront properties. Again, through the extensive site plan review, all environmental concerns have been addressed.
- 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.

Mr. Rabideau said it is a preexisting lot prior to zoning and the zoning has become more restrictive.

MOTION: Mr. Groves motioned to name The Town of Ballston Zoning Board of Appeals the Lead Agency in the SEQR process. Ms. Mr. Rogner seconded the motion and all present voted in favor. **CARRIED.**

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

Mr. Reilly said there is 62 days from the public hearing for the Board to make a final decision as far as looking at the criteria based on evidence presented. Mr. Reilly went through the criteria of 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. Mr. Reilly said there has been no evidence significance toward a legal nature will be granted or have any detriment on the neighbors as far as land rights, conditions of the property.
- 2) Whether the benefit sought by the applicant can be achieved by some method. Mr. Reilly said that was explored.
- 3) Mr. Reilly said there is no doubt, there are substantial variances.
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood. Mr. Reilly said the applicant went to three thorough Planning Board meetings for site plan review and received approval and were reviewed by the town engineer.



Mr. Reilly said it was definitely self-created and stands by his statement “it is a close call” however, the members have to weigh those criteria and decide whether or not to grant a variance.

Mr. Reilly said there has been no evidence submitted as to any detriment to any property.

Mr. Reilly said the Board could vote now or within 62 days.

MOTION: Ms. Bell made a motion to deny the request for variances for a single-family residence at 152 Lake Road. Ms. Bell said that she feels the house is just too much for that parcel and feels once it gets raised up it will be too much house on that property and feels the variances are too great. Ms. Brown seconded the motion.

Mr. Rogner voted against the motion.

Ms. Kane voted against the motion.

Mr. Brown voted in favor of the motion.

Mr. VanDeCarr voted against the motion.

Mr. Groves voted against the motion.

Ms. Bell voted in favor of the motion.

Mr. Lesniak voted against the motion. Mr. Lesniak said this lot pre-exists zoning as our attorney states the answers by the consultant were straightforward. Mr. Lesniak feels the applicant warrants the consideration after going to the Planning Board and town engineer.

MOTION: Mr. Groves made a motion that the Town of Ballston Zoning Board of Appeals grants the following variances for 152 Lake Road pursuant to section 138-11.1 for a lot area variance of 64,356sq. ft. a lot width variance 68.87ft. a front yard setback of 20ft. Ms. Kane seconded the motion.

Mr. Rogner does admit that it is a very small lot and has been a lot for a number of years and feels the applicants have been paying taxes on the lot for a number of years. Mr. Rogner said the house is very small and feels Mr. Rabideau has done his homework with all the maps; it was an eye-opener and did not realize all the lots existed and is in favor of the motion.

Ms. Kane is also in favor and said there are a lot of areas on that lake that are very undersized that probably was not the intention in those days and feels Mr. Czub should have a right to build a home.

Ms. Brown said she feels the request for a new home and these variances are substantial and is against the motion.

Mr. VanDeCarr is in favor of the motion and in his judgment; the change will be desirable and will be a vast improvement over what is located on the property presently. Mr. VanDeCarr said he is delighted to see improvement there and is in favor of the motion.



Mr. Groves said he feels it will be an improvement and said there is a substantial area variance however, is entrusting that the engineering and due diligence has been done; there will not be any drainage problems. Mr. Groves said the applicants have done everything asked of them, should have every right to build a home, and is in favor of the motion.

Ms. Bell opposes this motion, and feels and respects that the applicants are taxpayers and landowners and does not think that owning the land precludes the owners from using the land without a permanent full time dwelling on it. Ms. Bell feels the applicants are making nice improvements, but thinks that it is too great a variance.

Mr. Lesniak said he is in favor of the motion and is an advocate against substandard lots, but that is the creation of a substandard lot. The area variances and setbacks requested are very substantial, but the applicants did their homework; they are taxpayers, and feel they have the right to build a home; it is a modest dwelling and feels it is an improvement to that area. **CARRIED.**

NEW BUSINESS:

Geoffrey Leggieri, 4 Parkwood Drive, Burnt Hills, NY 12027 for an area variance pursuant to section 138-8.1 for the construction of a 10' x 16' shed. Mr. Leggieri was present to address comments from the Board for the variances requested to construct the proposed shed.

Mr. Rogner asked if there are any residences close to the side yard. Mr. Leggieri said yes located at 2 Parkwood Drive.

Mr. Rogner asked the distance from the house to the property line. Mr. Leggieri said approximately 20ft. Mr. Leggieri said the neighbor has a shed that is 6ft. off the property line.

Mr. Rogner asked if the neighbor is aware of this proposal. Mr. Leggieri replied yes.

Ms. Bell asked if the shed would be for personal storage. Mr. Leggieri replied yes.

Mr. Lesniak asked why the 12ft. setback could not be met. Mr. Leggieri said there is a tree that would need to be taken down.

Ms. Bell asked if there was an attempt to purchase other land so the lot area or width could be met. Mr. Leggieri replied no.

Mr. Rogner asked if there would be living accommodations in the proposed shed or used for any type of business. Mr. Leggieri replied no.

Mr. Lesniak opened the public hearing at 8:47pm.

Mr. Lesniak closed the public hearing at 8:49pm.

No one wished to speak.

Mr. Groves went through the five criteria of 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. Mr. Leggieri replied no.
- 2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. Mr. Leggieri replied no.
- 3) Whether the requested area variance is substantial. Mr. Leggieri 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. Mr. Leggieri 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. Mr. Leggieri replied no.

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

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

MOTION: Ms. Bell made a motion for 4 Parkwood Drive pursuant to section 138-8.1 for an area variance of 3,428sq. ft. a lot width variance of 30ft. and a side yard setback of 3ft. be granted for the construction of a 10' x 16' storage shed with the stipulations that it be used for personal storage no business, no residential living, or hazardous materials.

Ms. Brown seconded the motion and all present voted in favor. **CARRIED.**

Mary Gildea, 8 Orchard Terrace, Burnt Hills, NY 12027 for an area variance pursuant to section 138-8.1 for the construction of an 8' x 16' front porch. Ms. Gildea was present to address any comments from the Board for the variances requested to construct the proposed front porch.

Mr. Groves asked if this would be a covered porch. Ms. Gildea replied no.

Mr. Groves asked if the proposed porch is unattached and freestanding. Mr. Gildea replied yes.

Ms. Bell asked the reason for the porch to be freestanding.

Ms. Gildea said the existing porch is concrete and felt it difficult to attach.

Mr. Lesniak opened the public hearing at 8:52pm

Mr. Lesniak closed the public hearing at 8:53pm

No one wished to speak.



Mr. VanDeCarr went through the five criteria of 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. Ms. Gildea replied no.
- 2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. Ms. Gildea replied no.
- 3) Whether the requested area variance is substantial. Ms. Gildea 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. Ms. Gildea 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. Ms. Gildea replied no.

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

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

MOTION: Mr. Rogner made a motion to grant an area variance at 8 Orchard Terrance pursuant to section 138-8.1 for the construction of a 8' x 16' front porch for a front setback variance of 22ft. Mr. Groves seconded the motion and all present voted in favor. **CARRIED.**

MOTION: Mr. Groves made a motion to adjourn. Ms. Bell seconded the motion. **CARRIED.**

Meeting adjourned at 8:58pm.

Respectfully submitted,

Michelle L. Dingman