



Town of Ballston Zoning Board of Appeals Meeting
April 1, 2009

The following are the minutes of the Town of Ballston Zoning Board of Appeals hearing held on Wednesday, April 1, 2009.

ATTENDEES: Michael Lesniak, Chairman
Marilyn Bell, Vice Chairman
Ellen Brown
Michael Groves
Robin Kane
Fred Rogner
Jan VanDeCarr
Timothy Northrup, 1st Alternate
Richard Kinney, 2nd Alternate
Peter Reilly, Deputy Town Attorney
Thomas Johnson, Building Inspector
Members of the General Public

Chairman Lesniak called the meeting at 7:30pm and Ms. Brown led the Pledge of Allegiance. The chairman asked for corrections to the March 10, 2009 minutes. They were as follows:

Page 2) 2nd para; change “Roger” to “Rogner”

MOTION: Mr. Groves made a motion to accept the March 10, 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:

Stephen Fendick, 362 Goode Street, Burnt Hills, NY 12027 for an area variance pursuant to section 138-10.1. Mr. Lesniak read through the applicant’s narrative requesting a side yard variance of 4ft. to construct a two car garage at the above said address.

Ms. Bell asked if the proposed garage is going to be used to store additional vehicles. Mr. Fendick said his son will be moving to the area and will be living in the house and needs additional storage.

Mr. VanDeCarr asked if the door entering into the garage will continue to be used in that manner or is it going to part of the new improved expanded garage. Mr. Fendick said that will include that entrance, but the inside will change leaving more area for vehicles and storage.

Mr. VanDeCarr asked if the stairs will be in the garage or a separate room. Mr. Fendick said the garage is open when you walk in the stairs are to the right and go up in to the area to the house.



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Mr. VanDeCarr asked why the applicant is proposing a width of 28ft. Mr. Fendick said Stewart Construction felt this would be needed for the project. Mr. VanDeCarr said his two car garage measured 22ft. Mr. VanDeCarr is trying to weigh the balance between the applicant's desire for a two car garage and a possible impingement of the neighbor. Mr. VanDeCarr asked Mr. Fendick if it is possible to fit his vehicles in a smaller garage. Mr. Fendick said "I bet you would like to have your garage 28ft."

Mr. Fendick said additional room is needed for the stairway going into the house.

Mr. Lesniak asked the applicant if he has spoken to his neighbors. Mr. Fendick said yes.

Ms. Brown asked if the proposed garage will cause run off onto the neighbor's property. Mr. Fendick replied no.

Mr. Rogner asked if the proposed garage will have living quarters. Mr. Fendick replied no.

Mr. Lesniak opened the public hearing at 7:38pm

Mr. Lesniak closed the public hearing at 7:39pm

Ms. Bell 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. Fendick 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. Fendick replied no.
- 3) Whether the requested area variance is substantial. Mr. Fendick 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. Fendick 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. Fendick replied yes, it was self created to expand the garage.

MOTION: Mr. Groves motioned to name The Town of Ballston Zoning Board of Appeals the Lead Agency in the SEQR process. Ms. Kane 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: Ms. Bell made a motion for the property at 362 Goode Street for the construction of a two car garage pursuant to section 138-10.1 granting a 4ft. side yard setback. No living quarters, no business to be conducted in the new structure, no hazardous materials to be stored, and to be used for personal storage. Mr. Groves seconded the motion and all present voted in favor. **CARRIED.**



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Ms. Bell brought up the Saratoga County Planning Board comments.

Mr. Lesniak read the Saratoga County Planning Board comment which stated "No Significant County Wide or Inter Community Impact"

NEW BUSINESS:

Richard Czub, 152 Lake Road, Ballston Lake, NY 12019 for an area variance pursuant to section 138-138-11.1. Duane Rabideau of VanGuilder and Associates and Richard Czub were present to present the application to Board. Mr. Lesniak read through the narrative stating the applicant's (Richard & Mary Czub) are proposing to upgrade their summer dwelling at the above said address to a year round residence. To minimize site impacts for the single family residence proposal, the applicants are requesting 20ft. front yard variance; (required 60ft., actual 40ft.) The proposed engineered septic system was granted a lake setback variance of 90ft. by the Town of Ballston Town Board on February 24, 2009. The applicants are requesting a lot width variance of 68.87; (required 175ft., actual 106.3) and a lot area variance of 64,356sq.ft; (required 80,000sq.ft, actual 15,644sq.ft.). The existing lot has been a stand alone lot since 1971. Mr. Lesniak said that this lot was an approved lot prior to zoning.

Mr. Rabideau said that the minimum lot area variances seem quite excessive, but as the chairman sated, this lot was created prior to zoning and many of the lots around Ballston Lake do not meet zoning at this point in time.

Mr. Rabideau said the main goal for the front set back is environmental impacts; to keep any of the filling as far back form the lake as possible. Mr. Rabideau said that the applicants have an Army Corps of Engineers' Permit for wetland disturbance for the rip rap wall. Mr. Rabideau said that the wall is 18" to 24" high and the proposed grading in front of the building would be approximately 18" with most of the impact of fill up around the building. Mr. Rabideau said the reason for the extensive amount of fill is to get the proposed finished floor above the 100yr. flood plain; it needs to be 2ft. above. Mr. Rabideau said that Lake Road at that point in front of the lot is approximately that height; so the finished floor is about the same elevation of the road.

Mr. Rabideau said the applicant received the set back variance for the septic system. Mr. Rabideau said after looking at the site plan, the proposed house is 32' x 24' which fits quite well on this lot.

Mr. Rogner asked if the proposed house will be a single story. Mr. Rabideau said a story and a half.

Mr. Rogner asked the total square footage of the proposed house. Mr. Rabideau said 768sq. ft.

Mr. Lesniak asked the applicants if the plan is to get their water supply from the lake. Mr. Czub replied yes.

Ms. Bell said the rip rap is 18" to 24" high and asked if the entire property will be built to the height of that and will be higher at the house. Ms. Bell asked for justification on the fill.

Mr. Rabideau said the rip rap wall is for shore stabilization and at the same time will fill approximately a foot and a half behind it and taper it up to the house.



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Ms. Brown asked how many bathrooms are being proposed. Mr. Czub replied one.

Mr. Lesniak said that the setback being proposed is 40ft; required is 60ft. Mr. Lesniak asked it could not be between 40ft. and 50ft.

Mr. Rabideau said that was where the engineered septic system had to be placed and it had to maintain 20ft. between the system and the house and it is also farther away from the lake.

Mr. Rabideau said after looking at the ariel photos, this house will not block anyone's view and the nearest building is a garage in the back.

Mr. VanDeCarr said the applicant is stating there are no visual impacts associated with the structure for the home closest across the street currently or as it would be built. Mr. Rabideau said no. Mr. VanDeCarr said if I were on the second floor across the street and were to look out of my window what would I see. Mr. Rabideau said a tree that is in front of your house. Mr. VanDeCarr said assuming it is in the fall and there are no leaves on the tree. Mr. Rabideau said you will look down.

Mr. Rogner asked if the applicant has tried to purchase more property so the variances will be potentially minimized. Mr. Czub replied no.

Ms. Bell asked if the driveway has enough room for a turn around or will it require the applicants to back out onto the road. Mr. Rabideau said presently, back out, but can be redesigned to bring it in farther and have a turn around.

Mr. Lesniak opened the public hearing at 8:00pm

Dave Gaudons, 100 Lake Road is present to speak against this variance. Mr. Gaudons said the town resolution seems to be excessive to the waterway showing 110ft. Mr. Gaudons said the map, dated December 15, 2008 shows the water line and feels it is certainly not the high water mark; the high water is higher than that; closer to the spring time. Mr. Gaudons said that the lot width requires 175ft. and actual is 106.13ft. and feels that is a significant variance, the lot area is 15, 644sq. ft. and the percent of the actual is only 19.6%. Mr. Gaudons asked "why do you have these rules if are going to pass the variances."

Mr. Lesniak said the reason for the variances it is so that these things do not happen in the future. This is a building lot that existed prior to zoning; the 80,000sq. ft. that we use today.

Mr. Gaudons said that the application asked if the applicant is creating an unnecessary hardship. Mr. Gaudons said the hardship is on this lot because the applicant owns another lot on the lake and asked why the applicant is building over on this side of the lake.

Mr. Gaudons said that he owns three acres on the lake and has lived there for 40 years and was fined \$200.00 by DEC for digging a spoonful of dirt out of the lake.



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Mr. Gaudons said this whole application is excessive and does not think there is a hardship and feels the Board is being asked to create another problem. Mr. Lesniak said the Board is not creating a lot that did not exist before. Mr. Lesniak asked Mr. Gaudons if he would like to be paying taxes on a piece of property that would be worthless to him and not be able to live there.

Peter Herman, President Ballston Lake Improvement Association said that he had walked this property with Mr. Czub and at that time it just look incredible to even consider putting a house on it with all the lot restrictions and all the variances that have to be given to create this situation just seem impossible. The fact that the entire lot is going to be raised is going to create drainage problems which will affect the lake and surrounding properties and is speaking against granting a permit to build a house on this lot.

Mr. Lesniak closed the public hearing at 8:06pm

Mr. VanDeCarr asked if the property that is presently under construction would improve the esthetics of the neighborhood. Mr. Czub said that it would improve the neighborhood. Mr. VanDeCar asked how long has the existing structure been on the lot. Mr. Czub said at least 20 years.

Ms. Kane asked the applicants if they are planning on living in the house they are proposing to build. Mr. Czub replied yes; we plan to live in the house. Ms. Kane asked the applicants if they are going to sell their other home. Mr. Czub said yes. Ms. Kane asked the applicant if he like this side better. Ms. Czub said that it is because of the road they presently live on which Mr. Czub maintains has become too much work for him. Mr. Lesniak said basically the applicants are downsizing.

Mr. Reilly said that it is accurate to say this is a close call that it a substantial variance on a very environmentally sensitive lot however, it is a preexisting lot and this Board has to as it always does make a determination balancing the interest of the applicant on which is the health, safety, welfare of the neighborhood and adjoining property. The question was asked and answered there was no attempt to buy no other property perhaps the Board may want that pursued also the applicant stated there are similarly sized properties nearby or on the lake as a legal matter that is weight evidence in your determination by case law the existing lot is consistent with others it makes a stronger case for the applicant. Mr. Reilly feels it is a very close call and the Board as far a potential purchase of adjoining land and realizes that it is lakefront property and also not adjoining lots, but in the general vicinity, but whether the applicant wants to proceed to the Planning Board to look at the site plan.

Mr. Rabideau said the neighboring parcels show substandard lots and also across the lake.

Mr. Lesniak said in this case the applicant has to build up to get out of the 100 year flood plain.

A further discussion was held on building in the 100 year floor plain. Mr. Johnson said that new homes on Connolly Road have to be built up because they are in the 100 years flood plain. Mr. Johnson said the first floor has to be above 258.3ft.



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Mr. Rabideau said this proposed building has to be built up and the road is at the same elevation as the proposed house and is the same continuation of the natural grade that is there now. Mr. Rabideau also said the applicant is not compromising the design so it does not work and at the same time has less of an impact so 30 to 40% of the lot will not be touched as far as fill and will be modifying the grade that is there now.

Mr. Lesniak asked Mr. Johnson about a comment that was brought up by Peter Herman that it would create problems and runoffs. Mr. Johnson said that would be covered under site plan review when the property is located in the Ballston Lake Waterfront District anytime there is a disturbance more than a 1000sq. ft. of soil the applicant has to go in front of the Planning Board for site plan review and the engineered plan would have to be reviewed by the town engineer.

Mr. Reilly asked the applicant if it would be possible economically practical to proceed to the Planning Board at this point to find out their input on the site constraints to see if it is feasible and then further better define what you even want as a variance.

Mr. Rabideau said that the plan works and feels the requests for the variances are feasible.

A further discussion was held on having the applicant apply to the Planning Board for site plan review.

Mr. Rogner said the applicant was comparing this lot to other substandard lots on the lake and wanted to know if those lots have dwellings on them or were they empty lots. Mr. Rabideau said some had houses, but others were vacant.

Ms. Bell said there are specific areas that have been subdivided on the lake prior to zoning and is aware that this parcel has been there for a long period of time prior to zoning.

Mr. VanDeCarr asked what is appropriate for the Town to have this pristine the way it is now without being developed or should this be granted.

Mr. Lensiak is suggesting the Board table the application with the intent the applicant attempt to acquire more property and return to the Planning Board for site plan review.

MOTION: Mr. Groves moved to table this issue of Richard and Mary Czub located at 152 Lake Road an application pursuant to 138-11.1 for numerous variances to include an area variance and setback variances pending the applicant intending to purchase or acquire more land and pending site plan review by the Planning Board. Ms. Kane seconded the motion and all present voted in favor. **CARRIED.**

Meeting was adjourned at 8:35pm.

Respectfully submitted,

Michelle L. Dingman