

Town of Ballston
Zoning Board of Appeals

**TOWN OF BALLSTON
ZONING BOARD OF APPEALS**

Regular Monthly Meeting: February 4, 2015

ATTENDEES: Marilyn Bell, Vice Chair
Ellen Brown
Robin Kane
Stephen Merchant
Daniel Mertzlufft
Peter Reilly, Attorney
Thomas Johnson, Building Inspector
Members of the General Public

Vice Chair Bell called February 4, 2015 meeting at 7:30 p.m. and led the Pledge of Allegiance.

Vice Chair Bell asked for corrections to the January 7, 2015 minutes.

MOTION: Ms. Kane made a motion to accept the January 7, 2015 minutes as submitted. Mr. Russell seconded the motion. All board members voted in favor. **CARRIED.**

NEW BUSINESS:

Matthew Duemler and Emily Falls, 121 & 125 Charlton Road, Ballston Spa, NY 12020 (238.-2-78.11 & 12) Area Variance 138-10.1 (lot area)

Vice Chair Bell stated the applicant at 121 Charlton Road is seeking an application pursuant to §138-10.1 for a 17,931 sq. ft. lot area variance – zoning requires 80,000 sq. ft. and the proposed lot would be 62,069 sq. ft.

Vice Chair Bell stated the Zoning Board of Appeals is made up of seven members with four affirmative votes needed in order to gain approval on the variance request.

Dr. Duemler supplied the board with an affidavit from Emily Falls, owner of 121 Charlton Road giving Dr. Duemler permission to act on her behalf.

Dr. Duemler provided the board with a tax map showing the lot areas of the abutting parcels.

Dr. Duemler stated that he and his fiancé purchased 125 Charlton Road because they wanted to be in a rural/residential setting having the community feel, but have privacy from neighbors and the ability to have a horse.

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Dr. Duemler stated the lot is configured with the hedgerow is in the middle of the property and in the future may sell the property making sure that hedgerow stays maintained and have privacy.

Dr. Duemler said, "He tried to make the survey include as much acreage as possible so we included the whole hedgerow to that front property and make that the border of the property 62,000 sq. ft. approximately."

Dr. Duemler stated he feels the five criteria have been met for an area variance by benefiting the community, by keeping the history, stonewall and keeping the privacy and the setting. Dr. Duemler stated that he never plans on developing the property further - making this a city setting and wants to keep it a residential country setting, historic character and charm of the neighborhood.

Dr. Duemler said, "If you look at the survey plans, there is still plenty of room if that septic system had to be replaced or construct a shed – there is still room to do that."

Dr. Duemler said, "If you look at the tax map of the six properties on that side of the road directly adjacent to mine, 125 Charlton Road is the only property that meets the current lot requirements – others are smaller than what is being proposed and does not feel it will change the community."

Mr. Merchant said, "We are taking a compliant lot to make a non-compliant lot and thinks there are other options locating the driveway on the west side of the property. Dr. Duemler stated it's located in the wetlands – a driveway cannot go through that area. Mr. Merchant asked is the east side located in wetlands. Dr. Duemler said, not DEC wetlands, but does have a stream that runs through there. Mr. Merchant said, "He would not see a problem putting a pipe in and a driveway through there." Mr. Merchant suggested the driveway (ingress/egress) between the Russell (238.-2-54.1) and Petersen (238.-2-78.13) properties. Dr. Duemler said the only objection is that this is the lowest spot of the entire lot.

Mr. Reilly said the applicant's goals are understandable and commendable, but can accomplish this by retaining the easement when you sell the lot – one to maintain the stonewall/hedgerow and restrict the new owners ability to take any of that down, put restrictions that there be no development south of the stonewall and could certainly put that restriction in the deed - keep the lot the way it's configured, retain an easement for the maintenance of the hedgerow, restrict their ability to take anything down, restrict any structures south of the stonewall and should be disclosed to any perspective purchaser.

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Dr. Duemler said his proposal was to try to make the lot lines simple just like the houses next to his as every property is non-compliant grandfathered in. Dr. Duemler said after reading through the five criteria understands that it does not meet the "Zoning Board Law", but does not see the detriment to anybody involved in this situation.

Vice Chair Bell said a lot of these properties were already subdivided before the two acres went into effect. Vice Chair Bell said lots to the north do not show lot area and assumes are greater than two acres.

Mr. Johnson said the zoning changed in 2003 from one acre (40,000 sq. ft.) to two acre lots (80,000 sq. ft.).

Mr. Reilly said another possibility would be to move the lot line further to the west as suggested by Mr. Merchant to keep this a compliant lot and simply retain an easement for the proposed ingress/egress.

Mr. Russell stated there are several alternatives to maintain the two acres, which will achieve the desired goal.

A further discussion was held on alternative lot configurations maintaining the two acre lot area minimum.

Mr. Russell asked the purpose of the existing shed and which way the doors open. Dr. Duemler said it's a pole barn type shed and the doors open to the east and would remain on the property.

Mr. Mertzluft thanked the applicant for providing a thorough narrative. The issue is we (the board) would be setting a precedent forever. Dr. Duemler said, "That is not as significant as making a lot that does not have anything on it and making that non-compliant and allowing it to be built on – it's a structure that is already there and will not be requiring additional building permits."

Mr. Russell said it is different because the board created that non-compliant lot whereas, if there is an existing lot and want to build on the lot, we (the board) look at ways to help the applicant do that – that is a condition that is not self-created and in this case we (the board) is creating the deviant condition.

Vice Chair Bell opened the public hearing at 7:55 p.m.

Vice Chair Bell closed the public hearing at 7: 56 p.m.

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No one wished to speak.

Mr. Russell reiterated the board would need four positive votes as mentioned at the beginning of the meeting.

Mr. Mertzlufft stated that would give the applicant time to consider some of Mr. Reilly's good counsel and moving the line west and still getting the area cleared in back.

A further discussion was held on alternative lot configurations.

Dr. Duemler asked why the two acre requirement is important.

Mr. Reilly stated that this board is struggling and appreciates what the applicant is saying and done a very good job on their narrative and one of the factors is certainly the surrounding properties - the negative affect - if they were two acre lots, there would not be any question however, this board and any zoning board are charged with given the minimum variance and if there is a way to comply without the granting of a variance, then it's a strong argument and the denial of the variance. If there are other ways to accomplish the goal without this board giving a variance and setting a precedent they do not want to give. To grant a non-compliant lot is something they (the board) have never done before, really don't want to do and agreeably shouldn't do.

Vice Chair Bell said because the applicant has control over both lots at this time.

Vice Chair Bell said how do we (the board) make this more fair and equitable to everybody by granting the minimal variance required or possible is applying it equally to all.

Mr. Russell read 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. No, significant degradation by the proposed change.
- 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. Yes, there are several options that could be pursued such that the board would not have to grant the variance.
- 3) Whether the requested area variance is substantial. Yes, it's decreasing the lot area 17,931 sq. ft. and out of 80,000 sq. ft. is almost 20% so it's reasonably large, but it's not huge, but it is establishing a non-compliant parcel, which would make it a substantial change.

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- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood of district. 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. Yes, it is self-created and proposing to change it and do not have to in order to meet the needs.

MOTION: Mr. Mertzlufft motioned to declare this a Type II action under the SEQQR process therefore exempt from further review.

Mr. Reilly said procedurally the best way to go about it could necessarily make a motion and vote against and not sure how the board is going to vote, but the easiest way to proceed is for someone to make a motion to grant the variance and see what happens from there.

MOTION: Mr. Russell made a motion to grant a variance pursuant to §138-10.1 the parcel 238.-2-78.12 located at 121 Charlton Road for a variance decrease of 17,931 sq. ft. to the lot size. Mr. Merchant seconded the motion.

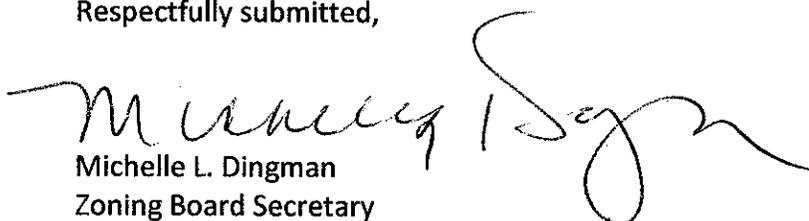
Mr. Russell – Opposed
Ms. Kane – Opposed
Mr. Merchant – Opposed
Mr. Mertzlufft – Opposed
Vice Chair Bell – Opposed

The board voted NOT in favor of the application. **CARRIED.**

MOTION: Ms. Kane moved to adjourn. Mr. Russell seconded the motion and all present voted in favor. **CARRIED.**

Meeting adjourned at 8:17 p. m.

Respectfully submitted,


Michelle L. Dingman
Zoning Board Secretary