

Clifton Park Zoning Board of Appeals Meeting Minutes

March 5, 2002

Present: Dale Kelley, Chairman, Gil Kortz, Michael Dudick,
Helmut Gerstenberger, Sandra Pace, Dale Gleason
Absent: Susan McGranahan

Also Present: Oscar Schreiber, ZBA Counsel
Don Clemens, Director Building & Development

Mr. Kelley called the meeting to order at 7:30 PM.

NEW BUSINESS

1. An application from Abele Builders, requesting an area variance from Section 208-11 from the required 100,000 sq.ft. building lot area in a R-3 zone - actual = 49,500 sq.ft. - variance requested = 50,500 sq. ft., and an area variance from Section 179-26C from the required 40 ft. of frontage on a public street - actual frontage = 26 ft. -variance requested = 14 ft.. The property is located at Lee Avenue, Rexford. Permit #80345.

The secretary read the legal notice as it appeared in the Daily Gazette on March 1, 2002.

Chris Abele presented this application. He noted that this piece of property is a remnant from the River Wind Estates project in Rexford. He noted this area was high end homes and for whatever reason this was a parcel that was left over. They did not realize this until they received some tax bills. They then noted that this parcel is landlocked. They have researched on how to legitimize the parcel and these variances are the result. One variance will take a landlocked parcel and allow it to exit onto Lee Avenue. This lot is just a little over one acre and the other variance will allow for a home to be built on the lot since the current requirement is 100,000 sq. ft. per lot. This lot will need a septic design and perk test.

Mr. Clemens noted that when River Wind Estates was approved the building lot size was 40,000 sq. ft. and this would have been a buildable lot. He also stated that water is available in this area, but that fact alone does not allow for a smaller lot size as would sewer being available. If just sewer is available the lot size would be allowed to be smaller because water and sewer would not be required.

George Habetter, an abutter to this property, commented that he feels rules are rules and this lot was not originally designed as a building lot.

Mr. Kortz asked about the two parcels in front of this lot.

Mr. Abele stated they are two single family residential homes each lot just shy of one-half acre.

Mr. Habetter noted that those two lots were there since the 1940's and are not part of River Wind Estates.

Mr. Dudick inquired about the access for this lot. Mr. Abele responded in doing the research they found that these were two parcels, one the leg that goes to Lee Avenue and the other is the land locked parcel. During the title search it was uncertain if they actually owned the leg parcel so he has a contract to purchase it from the owner pending approval of this variance. The two parcels would be combined to form one lot.

Mr. Dudick asked Mr. Habetter why he is not in favor of this request. Mr. Habetter responded that he thought this area is the rural end of town and the lot size is suppose to be 100,000 sq. ft..

Mr. Dudick asked if he felt this would have a negative impact on him. Mr. Habetter stated he is not sure, he is really not against it.

Mr. Habetter noted that there was no notification sent on this request. Mr. Kelley informed him that this is an area variance and no personal notification is made.

Mr. Schreiber noted that it is published in the legal notices of the newspaper.

Mrs. Pace inquired about the triangular lot to the rear and the right of this parcel. Mr. Abele noted it is one of the rear lots of River Wind Estates.

Mr. Kortz noted that the only issue is negative impact on the neighborhood. This is certainly a unique situation in that the lot when purchased was of legal size.

Mr. Kelley asked if they would be keeping with the other homes in the area. Mr. Abele noted they are older homes with a smaller profile. He noted he does not have a plan in mind at this time.

There was no further public comment. Mr. Kelley made a motion to close the public hearing, Mr. Dudick seconded, approval unanimous.

Mr. Kelley noted that without this variance this parcel would be rendered useless, and there will be no change in the character of the neighborhood.

Mr. Dudick made a motion to approve this variance as requested. Mr. Gerstenberger seconded. Ayes: Kortz, Dudick, Gerstenberger, Kelley, Pace, Gleason. Noes: None.

2. An application from Brian Marcinkiewicz, requesting an area variance from Section 208-12 from the required 80 ft. front setback from the property line for an accessory building - proposed setback = 50 ft. - variance requested = 30 ft.. The property is located at 48 Walnut Drive, Clifton Park. Permit #80360.

The secretary read the legal notice as it appeared in the Daily Gazette on March 1, 2002.

Brian Marcinkiewicz presented this application. He stated he would like to add a detached garage and he cannot adhere to the setback because of an existing deck and pool. If he adhered to the setback the garage would be two feet from the deck.

Mr. Clemens noted that this is a corner lot and basically has two front setback requirements which creates a hardship when putting on any kind of an addition. If this garage were attached there would be no problem, but because it is detached it is considered an accessory building and thus has the 80 ft. setback requirements.

There was no public comment. Mr. Kelley made a motion to close the public hearing, Mr. Gerstenberger seconded, approval unanimous.

Mr. Dudick inquired as to why this is a detached garage.

Mr. Marcinkiewicz responded the detached garage is more aesthetically pleasing and fits in better with the neighborhood.

Mr. Kelley made a motion to approve this variance as requested. Mr. Kortz seconded. Ayes: Gleason, Pace, Kortz, Dudick, Gerstenberger, Kelley. Noes: None.

3. An application from Stewart's Shops Corporation, requesting 1.) a Use Variance from Section 208-37 for retail uses in a B-3 zone; 2) an area variance from Section 208-38B from the required 40,000 sq. ft. per establishment - 80 sq. ft. required - actual = 54,450 sq. ft. - variance requested = 25,550 sq. ft.; 3) an area variance from Section 208-38C from the required 80 ft. front setback from Vischer Ferry Road - proposed setback = 32 ft. - variance requested = 48 ft.; 4) an area variance from Section 208-98 from the required 130 ft. front setback from the centerline of Grooms Road - proposed setback = 80 ft. - variance requested = 50 ft.; 5) an area variance from Section 208-38C from the required 30 ft. front setback from Vischer Ferry Road for parking - proposed setback = 10 ft. - variance requested = 20 ft.; 6) an area variance from Section 208-38D from the required 20 ft. side yard setback for parking - proposed setback = 18 ft. - variance requested = 2 ft.; 7) an area variance from Section 208-93C from the required 50 ft. setback from the property line for gas pumps - proposed setback = 45 ft. - variance requested = 5 ft.. The property is located at 639 & 645 Grooms Road, Clifton Park. Permit #80358.

The secretary read the legal notice as it appeared in the Daily Gazette on March 1, 2002.

Tom Lewis presented this application. He introduced Paul Bulmer, Real Estate division of Stewarts. Mr. Lewis noted there are three issues, the Use Variance, area variances revolving around lot size, and a third issue of internal circulation. They purchased an adjoining lot and would like to put to rental use. He noted their market penetration in this area is so strong that they are investing considerable money in existing sites. This is a busy site and currently the setup of the gas islands in a series does not work as well as it would if they were parallel. They have appeared in front of the Planning Board three times and asked for three gas islands versus the two they currently have. The third island

will help to recover the considerable cost that will be invested. The Planning Board did not like the curb cuts that would be needed so they readjusted their plan back to two gas islands to improve the internal circulation and are now in front of this Board for the requested variances. These area variances will not affect the character of the neighborhood and are the minimum required.

Mr. Lewis continued with the Use Variance. He noted it is their opinion that the highest best use is for retail.

Mr. Kortz asked Mr. Clemens about the zoning in the area.

Mr. Clemens noted the lot Stewart's bought is zoned B-3, the lot next to it is R-1.

Mr. Clemens noted that the criteria for a Use Variance is hard to meet. This is a self-created hardship, they bought the lot knowing the zoning. The Board should take a look at what is allowed in a B-3 zone, i.e. professional office, banks, personal service related businesses, pizza shop, etc.

There was some discussion on a pizza shop and if it is considered a restaurant. Mr. Clemens noted there is usually minimal seating in a pizza shop. He noted a restaurant would not be allowed because there is a 300 ft. setback needed from a residential district boundary.

Mr. Clemens stated he does not have any issues or concerns with the area variances being requested. They are really needed to make the new arrangement for the gas pumps work.

Mr. Dudick asked if the Use Variance was not granted and the area variances were granted what practical consideration would that have on this project.

Mr. Clemens stated they would have to go with the uses of a B-3 zone.

There was no public comment. Mrs. Pace made a motion to close the public hearing, Mr. Kelley seconded, approval unanimous.

Mr. Kelley noted there is a circulation problem that does at times affect traffic on Vischer Ferry and Grooms Road and he would be in favor of allowing the area variances but not the Use Variance because there does not seem to be any financial hardship.

Mrs. Gleason inquired about the nearest residence. Mr. Lewis stated he was not sure it was quite away down the road.

Mr. Kelley made a motion to grant the area variances as requested and deny the Use Variance. Mr. Dudick seconded. Ayes: Kortz, Dudick, Gerstenberger, Kelley, Pace, Gleason. Noes: None.

4. An application from Corpus Christi Church, requesting an area variance from Section 208-38C from the required 80 ft. setback from the front property line - actual = 69.3 ft. -

variance requested = 10.7 ft.; an area variance from Section 208-98 from the required 130 ft. setback from the centerline of Ushers Road - actual setback = 62 ft. - variance requested = 68 ft.; an area variance from Section 208-38C from the required 30 ft. setback from front property line for parking - actual setback from Rt. 9 = 1 ft. -

variance requested = 29 ft.; a variance from Section 208-38C from the required 30 ft. setback from the front property line for parking - actual setback from Ushers Road = 20 ft. - variance requested = 10 ft.; and an area variance from Section 208-39 for a second entrance/exit onto Ushers Road. The property is located at 2001 Route 9, Round Lake. Permit #80359.

Gordon Nicholson, Environmental Design Partnership, presented this application. He stated that the area variances being requested relate to the existing building and parking facilities on the site. He noted they have conceptual approval from the Planning Board. There is an 18,000 sq. ft. addition being planned and reworking and additional parking also are included. There are extensive wetlands on the site and they will not be affected. Most of the requests are due to the widening of Ushers Road and Route 9 over the years as well as changes in the zoning laws. The hardship associated with this would be the removal of half the existing structure and removal of the facade. The pavement currently goes all the way out to Ushers Road. There is a minimal green area along Route 9. There will be increased green space along Route 9 in another area.

The practical difficulty associated with this request is the removal of the existing building and restructuring the parking lot would eliminate more parking than can be given up. There would be significant economic hardship with the removal of building and additional parking could not be obtained because of the restrictions of the wetlands. There would not be a substantial detriment to the adjacent area because this building has been here for years and years. The second entrance will not create any additional hazards and will not have any effect on the adjoining properties. The primary use for the site and building is during off peak hours and this is in an industrial zone. There is one residence in the area and they have no problems with this request.

Mr. Clemens had no comments on this request.

There was no public comment. Mr. Gerstenberger made a motion to close the public hearing, Mr. Dudick seconded, approval unanimous.

Mr. Kortz questioned the variance of 29 ft. for parking along Route 9. Mr. Nicholson responded it is existing parking that has been in existence for a long time. It is due to the widening of Route 9 for turn lanes, etc. over the years.

Mr. Gerstenberger made a motion to approve these variances as requested. Mrs. Pace seconded. Ayes: Gleason, Pace, Kelley, Gerstenberger, Dudick, Kortz. Noes: None.

5. An application from SpectraSite Network Service, requesting an area variance from Section 208-95B(2) from the required 500 ft. setback from any residence to any

telecommunications equipment - proposed setback = 250 ft. - variance requested = 250 ft. The property is located at Sugar Hill Road, Rexford. Permit #80361.

Mike McGretti, SpectraSite Network Services, presented this application. He noted this is an existing communications tower in a residential area. With the new zoning ordinances and a recent subdivision of land this tower now is 250 ft. from a residential property line and requires a variance.

Mr. Clemens noted that the new ordinances require that any tower including guide wires should be 500 ft. from residential property. This request is for guide wires only, the tower is approximately 500 ft. from the residence.

Mr. Kelley inquired why this is not grandfathered. Mr. Clemens responded they are requesting a change to the existing tower therefore the variance is needed. There will be an addition to the tower.

Mr. Dudick asked if there would be an increase in output.

Mr. McGretti responded no.

There was no public comment. Mrs. Pace made a motion to close the public hearing, Mr. Kelley seconded, approval unanimous.

Mr. Kortz made a motion to approve this variance as requested. Mr. Gerstenberger seconded. Ayes: Gerstenberger, Dudick, Kelley, Kortz, Gleason, Pace. Noes: None.

OLD BUSINESS

1. An application from Keith Giles, requesting a Use Variance from Section 208-69.2 to allow a residential subdivision in a LC (Land Conservation) zone. The property is located on the west side of Moe Road, Clifton Park. Permit #80361.

Kevin Dailey represented the applicant for this application. He stated the ZBA requested some dollar and cents values for this application. He handed out information he summarized on the comments made by Mr. Smart at the last meeting for other uses for this property. He also presented the expert opinion from an appraisal company and submitted this information to the Board for the record.

There was no public comment. Mr. Kelley made a motion to close the public hearing, Mr. Gerstenberger seconded, approval unanimous.

Mr. Kelley referred to a letter received from the Chairman of the ECC, Mr. Marino, giving reasons and the recommendation of the ECC for denial by the ZBA of this request for a Use Variance because the project as proposed is not consistent with the Town's policy to preserve, protect, and conserve freshwater wetlands and/or streams and their associated buffer zones, and the applicant has not demonstrated that reasonable alternatives have been given fair consideration.

Mrs. Gleason asked to be recused from voting on this application because she was not a member of the Zoning Board when it was first heard. Mr. Kelley responded that it would not be a problem.

Mr. Kelley noted that this application has had ample consideration and he was hoping there could be a compromise worked out. There was a meeting with the ECC, Planning Board, ZBA, the applicant and the contractee but the position taken by them is that the application is fair and reasonable and this is the only way the applicant can make a fair and reasonable return on the property. At this point they are not able to reduce the size of the project and the issue of encroachment into the buffer zone remains. He noted the proposal stands this evening as originally submitted.

Mr. Dailey agreed. He restated that based upon the statutory requirements of the State of New York relative to a Use Variance he believes they have submitted the required information. They have shown in all four categories sufficient evidence, and there are other issues relative to conflict of laws, whether the State of New York prevails over the Town of Clifton Park. He believes in all justice relative to the applicant he is entitled to a reasonable return on his property and the only way to obtain a reasonable return is to have the use of the property for a subdivision which would include the DEC buffer zone, which DEC has indicated they would give them a permit to use, they are not encroaching into the wetlands, they will be respecting all the wetlands. They have redrawn the subdivision to preserve as much wetlands as possible. The only wetlands impacted are less than 1/10 of an acre, which he believes is consistent with the policy of the Town of Clifton Park. He asked the ZBA to grant the Use Variance as it is required to do by law.

Mr. Kortz asked if all the new information submitted is the financial information that was previously discussed. Mr. Kelley stated he did not see anything new presented. Mr. Kortz continued, based on his understanding and personal judgement, and the statements by the ECC on the impact with the current configuration

as submitted, he personally does not feel this is the minimum variance necessary to adequately address the hardship proven by the applicant. He thinks it could be a lesser variance and still get a reasonable return and protect the health, safety, and welfare of the community in a better way.

Mr. Dailey stated he had a long talk with Mr. Bassett of the ECC and they did attempt to look at scaling down the project. It was suggested that perhaps five or six lots could be considered instead of twelve. Mr. Dailey noted that before the modern wetland laws with full use of the property there probably could have been 16 or 17 lots. They presented a 13 lot configuration to the Planning Board and the Planning Board did not want the drainage ditches filled in and asked if they could be preserved. They eliminated one lot and now have 12 lots, which is 75% of full capacity. He noted that for all practical purposes to do five or six lots the amount of infrastructure you would have to develop would be the same as for twelve lots. When that cost is figured for five lots, plus the cost of the property the economics are not there.

He feels twelve lots are the minimal amount necessary to make this a viable project.

Mr. Dailey continued, they have looked at alternatives and they just don't work, he feels they have made a good faith effort to do everything they could to please the Town.

Mr. Kelley noted that he has been extremely pleased with effort made to supply the requested information to this Board. They have been very cooperative. Mr. Kelley stated he is disappointed that they could not come to an agreement on scaling back the project.

Mr. Dudick asked a question about the infrastructure cost being the same for five or six lots and/or twelve lots. Mr. Dailey stated the cost of roads, utilities, and clearing, etc. generally will be the same because of the necessity to meet the subdivision regulations of the Town. Economically it is not possible to do with five or six lots.

There was additional discussion on reasonable rate of return.

Mr. Kelley made a motion to deny this application for the reasons stated in the recommendation of the ECC. Mr. Kortz seconded. Ayes: Pace, Kortz, Kelley, Noes: Dudick, Gerstenberger.

Since there was not a majority vote there was no action taken on this application. Discussion continued on when action will be taken on this application. Mr. Schreiber stated a new motion could be offered and another vote could be taken.

Mr. Gerstenberger made a motion to approve this application for a Use Variance as submitted. Mr. Dudick seconded. Ayes: Gerstenberger. Noes: Dudick, Kortz, Kelley, Pace.

This motion was denied.

Mrs. Pace made a motion to approve the minutes of February 5, 2002, Mrs. Gleason seconded, approval unanimous.

Mrs. Pace made a motion to approve the minutes of February 19, 2002, Mrs. Pace seconded. Ayes: Pace, Gerstenberger, Kortz, Gleason, Dudick. Noes: None. Abstained: Kelley.

Mr. Gerstenberger made a motion to adjourn the meeting at 9:10 PM, Mrs. Pace seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb
Secretary

cc: Town Clerk, Zoning Board Members, Oscar Schreiber, Counsel,

Don Clemens, Department of Building and Development, Planning Board, ECC
Members