

Clifton Park Zoning Board of Appeals Meeting Minutes

January 7, 2003

Present: Dale Kelley, Chairman, Michael Dudick,
Helmut Gerstenberger, Sandra Pace,
Dale Gleason, Donna Lawton,
Gil Kortz (arrived 7:20 PM)

Also Present: Don Clemens, Director Building & Development
Joel Peller, for ZBA Counsel

Mr. Kelley called the meeting to order at 7:00 PM. He announced that Oscar Schreiber, ZBA Counsel, has resigned as he is not living in the Town of Clifton Park any longer. He welcomed Joel Peller who will be Counsel for this evening and introduced and welcomed Louis Renzi who will be the new ZBA Counsel.

Mr. Kelley reviewed a current legal case and Mr. Peller noted that an appeal has been filed.

Mr. Kelley read a letter of resignation from Helmut Gerstenberger due to family commitments and work schedules. Mr. Gerstenberger will be serving on the Board of the Water Authority. Mr. Kelley expressed his disappointment in his loss from the Board and thanked him for all his good work and wished him the best.

Mr. Kelley also announced that Donna Lawton was reappointed to another five year term. Mr. Kelley noted that the first application from Barbara Lee Jensen is to be a joint meeting with the ECC and noted that they are meeting at this time and if they are needed they will be available.

NEW BUSINESS

1. An application from Barbara Lee Jensen, requesting a Use Variance from Section 208-69.2 to construct a riding area in the LC zone. The property is located at 711 Waite Road, Clifton Park. Permit #80410.

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The secretary read the legal notice as it appeared in the Daily Gazette on January 2, 2003.

There was no one present to present this application at this time.

2. An application from Gordon P. Nicholson, RLA, agent for Vinciguerra, requesting an area variance from Section 208-35D(1) from the required 70 ft. front yard setback for parking - proposed setback = 30 ft. - variance requested = 40 ft.; an area variance from Section 208-33B from the maximum building area to lot size of 12% - proposed = 14.4%

- variance requested = 2.4%; and an area variance from Section 208-33B from the maximum building size of 4,800 sq. ft. - proposed = 30,000 sq. ft. - variance requested = 25,200 sq. ft.. The property is located at the East side of Maxwell Road, Clifton Park. Permit #80415.

The secretary read the legal notice as it appeared in the Daily Gazette on January 2, 2003.

Gordon Nicholson presented this application. He reviewed some background for the site. He stated Mr. Vinciguerra has owned the property for approximately 20 years before Shoppers World and Price Chopper was constructed, before Maxwell Road was constructed, and before Plank Road was realigned. He reviewed the surrounding commercial development in the area, i.e. the loading docks for Price Chopper, 150,000 sq. ft. Delmar Publishing across the street, undeveloped land, Abele Boulevard and Leonard Geriatric, two office buildings of 45,000 and 25,000 sq. ft. owned by the Abeles, and the rest of the Shoppers World Plaza. He continued, the site is zoned B-1 but they feel due to the type of development in this area, that is not the proper zoning. Instead of building four or five 4,500 sq. ft. buildings, they would like to construct one, two story 30,000 sq. ft. office building that would be more consistent with the neighborhood. Because of the configuration of the property and the constraint of the retention basin they need the setback variance for parking spaces. The parking on adjacent sites is within 30 ft. of the road and this would be consistent with the neighborhood. There would be no detriment to other properties, a 4,800 sq. ft. building would be an economic detriment to the property and would not be consistent with the neighborhood.

Mr. Kelley asked for a rendering showing what the site would look like with the four or five buildings of 4,800 sq. ft. each that would be allowed without a variance. Mr. Nicholson did not have one available, but indicated that with the edge of the slope the buildings would be jammed in one area with the parking. He also indicated that Windsor Development had previously talked with the Planning Board and they even suggested combining the buildings that would be allowed into one building.

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Mr. Clemens noted that this is an intense use. Although it is a large lot approximately one-third is taken up with the water retention basin for Shoppers World, the nursing home, and the overflow from Delmar Publishing. To say that this lot could accommodate four or five 4,800 sq. ft. buildings is stretching because there is not that kind of usable area. The type of building itself does go along with the area but it is an intense use of the site.

Mr. Dudick inquired about the need for the variance for the increase in building area, why not make a smaller building?

Mr. Nicholson responded that it works better with this building, but the building size could be reduced.

Mrs. Gleason inquired about the parking area. Mr. Clemens noted the number of parking

spaces are due to the size of the building and there is no other place on the lot to put the parking spaces due to the storm water retention area.

Mr. Gerstenberger asked if the parking setback is consistent with other businesses in the area. Mr. Clemens responded yes, but the Delmar building is part of a PDD and is a different situation.

Mr. Kelley would like to see what the actual configuration would look like if there were several buildings on the lot. He noted it would be helpful to see a comparison.

Mr. Nicholson suggested showing a 25,000+ sq. ft. building with the related parking, and an alternative showing the 12% in individual buildings. Mr. Kelley stated he would like to see that and the Board members all agreed.

Mr. Nicholson asked to table this application until the next meeting and he will provide the information asked for.

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

Barbara Lee Jensen arrived to present her application for a Use Variance. She outlined an existing open area and stated that she has contacted DEC and received a permit from them to square off the area and make a larger riding area. This will involve taking some trees down in the wetland area and make the area 170 x 185. The DEC wants sand added and landscaping tiers around the outside to prevent the sand from running into the wetland areas. She needs to make her business profitable and this will make the area more attractive and help attract more clientele.

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Mr. Clemens asked for clarification on the riding area, is it entirely in the LC zone? Ms. Jensen responded she is not sure where the LC zone is, but the wetland boundaries were marked by DEC. She referred to the asterisks on the site plan stating that they were marked by Alan Koechlein, from DEC.

Mr. Clemens then stated that the entire area is within the LC zone, but noted that the applicant has been using a portion of this area all along. Ms. Jensen agreed and stated it is a rather small area and more space is needed.

Mr. Clemens stated that he does not have any objections to this request. It has been a riding stable for approximately 30 years.

Ms. Jensen stated that she has owned the property for about three years and rented it for eleven years prior to that.

Mr. Clemens stated the stable has gone through hard times and had conflicts with the neighbors that they have worked through. It is a long standing business in the Town. Mr.

Clemens noted that he has not had any complaints in a long time.

Mr. Kortz inquired about the area where trees will be removed.

Ms. Jensen pointed out the area on the map attached with the application. She showed the current open area which is a considerable portion of the area.

It appears that most of the area is within the buffer. Mr. Clemens noted that approximately 35-40 years ago the area was a hay field.

Mr. Clemens also noted that he has walked much of the area with Alan Koechlein.

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

Mr. Kelley noted that this seems to be a reasonable request. He stated that under other conditions there have been struggles and concerns with the LC zone but the density and actual use for this particular applicant is not for any residential buildings it is just to expand a recreational area and he does not see where there will have any effect on the neighborhood, there will be no change. The applicant has stated that she wants to grow and has economic reasons. Mr. Kelley asked the applicant if she has brought any financial information with her. She stated no, but what she would like to do is add a second instructor because she can only teach a certain number at a particular time. She gave an example, if she gets \$25.00 per hour per person and she can only teach 4-6 people it is a maximum of \$150.00 per hour. She has to generate \$10,000 per month just to keep afloat, which is a serious challenge. Her boarders generate between \$500-900 per month, and if they are not happy because they cannot ride because she is teaching lessons,

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they will look for another place. One way for her to make her business more economical is to hire a second instructor so they both can be working at the same time. She needs more space in order to accomplish this.

Mr. Kelley noted that one of the criteria this Board must contemplate in considering the granting of a Use Variance is the financial hardship and the impact on the applicant.

Ms. Jensen stated that she must be able to grow and there are no other areas to cut back on.

Mr. Kortz asked if there were any streams where she will be cutting trees. Ms. Jensen replied no.

Mr. Kortz then stated that the only problem he has is what is competent financial evidence. He stated it seems what they are hearing is that she is having trouble breaking even and staying in business. Ms. Jensen replied yes and she is committed to doing well and staying in business. Mr. Kortz then asked if she has supplied sufficient proof of

financial hardship or does it have to be in writing?

Mr. Kelley referred to Counsel. Mr. Peller responded it is at the Board's pleasure. If the Board feels that the information presented in the form of oral testimony is sufficient enough to give them a basis to meet that criteria then by all means, however the Board has every right to ask for verification in order to make an opinion.

Mrs. Gleason stated she is prepared to go ahead this evening on this application.

Mr. Dudick noted that there has to be a weighing back and forth of the amount of the variance that is being requested, as the volume of the variance increases the proof and the burden to show financial hardship increases. For example, removing one tree in the corner for a 25 sq. ft. space does not have the same criteria as someone wanting to go with a 50% expansion.

Mr. Kortz noted his concern for the environmental impact.

Mrs. Lawton asked if the four inches of sand will be over the entire area. Ms. Jensen stated that DEC wants her to taper it down as it gets closer to the outer boundaries and the landscape timbers to diminish the amount of runoff of sand into the wetland areas.

Mr. Kortz asked how it will drain, towards the wetland area?

Ms. Jensen stated she did not ask, she assumes it will drain towards the wetland area. Mr. Kortz then asked how it will minimize the erosion of the sand. Ms. Jensen stated that Alan Koechlein wanted landscape timbers around the boundary.

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Mrs. Gleason made a motion to approve this application for a Use Variance as submitted. Mr. Dudick seconded.

Mr. Kelley suggested adding contingencies subject to environmental concerns and following DEC guidelines.

Mr. Kelley asked Mr. Peller to help add the contingencies to this motion. Mr. Peller stated approval should be made contingent upon, and Mr. Clemens added, the applicant should exercise due diligence to prevent runoff and migration of sand and manure into the wetland areas, consistent with DEC and Planning Board findings.

Mr. Kortz noted that his main concern is the runoff of the manure more than the sand because it could contaminate the water supply.

Mr. Kelley noted that applicant appears to have a sensitivity to the environment.

Mr. Kelley called for a vote on the amended motion. Ayes: Kelley, Dudick, Gerstenberger, Gleason, Lawton, Pace, Kortz. Noes: None.

3. An application from Saxton Sign Corporation representing Taco Bell, requesting an area variance from Chapter 171 of the Town Code (Sign Law) for a height variance for a wall sign - allowable height = 16 ft. - proposed height = 20 ft. - variance requested = 4 ft.; a second wall sign of 22 sq. ft. with a height variance of 4 ft. (16 ft. to 20 ft.); and a third wall sign of 22 sq. ft. with a height variance of 4 ft. (16 ft. to 20 ft.). The property is located at 811 Route 146, Clifton Park. Permit #80400

The secretary read the legal notice as it appeared in the Daily Gazette on October 10, 2002.

Pat Boni, Saxton Sign Corporation, presented this application. He stated they are requesting three signs, the first is on the south side for Taco Bell, it is just a height variance due to the actual location being below the grade of the road. The second sign is on the east side for Long John Silver. If they do not have the sign they will lose the Long John Silver portion of the business. The height variance is needed due to the design of the building. The third sign will be on the west side of the building for recognition.

Mr. Kelley asked if they still had the flags on the roof of the building. Mr. Boni said he didn't think so.

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Mr. Clemens stated that he feels these signs are justified. The height is self explanatory. The wall signs are needed because they are adding a second business and the signage is needed.

Mr. Kortz asked for clarification on the signs being requested.

Mr. Boni responded they are on the south, east and west sides.

The sign on the south will be a Taco Bell sign, the east and west sides will be Long John Silver.

Mrs. Pace asked why. Mr. Boni stated if you look at the building from behind you see the building but have no idea what it is.

Mr. Kortz asked why they do not put a sign on the north side then. Mr. Boni stated that they way the building is constructed you cannot put the pre-made signs on that location.

Mr. Dudick asked if this variance is granted and they decide not to put Long John Silver on it, could they then put Taco Bell on the signs? Mr. Kelley responded that there could be language put into the approval that would prevent that.

Mr. Kortz asked if this is a different request from a previous one that was turned down. Mr. Clemens responded it is because they are taking on a second franchise in the same building.

Mrs. Pace asked why they wouldn't put Taco Bell and Long John Silver on the same sign. Mr. Boni responded that due to the design of the building the Taco Bell sign would not fit.

Discussion continued on a previous application that was submitted to this Board by this applicant.

Mr. Kelley noted that they are combining two franchises in one building. There will be no additional building, pavement, or parking.

Mrs. Pace asked why the signage is being done as it is.

Mr. Kelley responded it must be a business decision.

Mr. Kortz asked if the variance is justified. Mr. Kelley stated the concept of two franchises in one building means less building, parking, etc..

Mr. Dudick asked if this would set a precedent for other businesses that have more than one occupant in the building. Discussion continued on the amount of signage, the location of the signs, and the size of the building.

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Mr. Gerstenberger asked how far below grade the building is set. Mr. Clemens stated approximately 6-8 feet.

Mr. Dudick noted that he has no problem with the height of the sign, but he is not in favor of additional signage.

Mr. Kortz stated he does not see how this accomplishes the purpose.

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

Mr. Kelley made a motion to approve the variances as submitted, Mrs. Gleason seconded.

Mrs. Gleason noted this is more of a safety issue, it would be easier to find on a congested road.

Mr. Kortz stated that the pylon sign should accomplish this.

Mr. Gerstenberger noted that it depends on the site and the location.

Discussion continued on this request and what guidelines must be considered.

Mr. Kelley stated the Board should consider what is compatible with the area, what is customary, and the sign ordinance itself. We should be sure it is fair and reasonable, it is

compatible. This is a bit of a unique situation because they are combining two business in one.

Mr. Kortz reviewed the guidelines in the Sign Law.

Discussion continued on the number and location of signs.

Mr. Clemens suggested a compromise, maybe approve the west side sign.

Mr. Peller asked if the applicant is willing to accept a division of its request? Mr. Boni replied they are but they would like to have the sign on the east side of the building.

Mr. Kelley withdrew his motion, Mrs. Gleason withdrew her second.

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Mr. Kortz made a motion to approve the 4 ft. height variance for the sign on the south side of the building and an additional sign on the east side of the building as requested. The request for the sign on the west side of the building will be eliminated.

Mr. Gerstenberger seconded. The applicant agreed with the elimination of the sign for the west side of the building. The sign on the south side of the building will be for Taco Bell, the sign on the east side of the building will be for Long John Silver.

Ayes: Pace, Lawton, Gleason, Kortz, Gerstenberger, Dudick, Kelley. Noes: None.

Mrs. Pace made a motion to approve the minutes of December 3, 2002, Mr. Kelley seconded, approval unanimous.

Mrs. Pace made a motion to adjourn the meeting at 8:30 PM, Mrs. Lawton 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