

Clifton Park Zoning Board of Appeals Meeting Minutes

November 18, 2003

Present: Gil Kortz, Acting Chairman, Michael Dudick,
Skye Heritage, Sandra Pace, Donna Lawton,
Dale Gleason

Absent: Dale Kelley

Also Present: Don Clemens, Building & Development
Louis Renzi, ZBA Counsel

Mr. Kortz called the meeting to order at 7:02 PM. He explained that he will be acting as chairman for this meeting in Mr. Kelley's absence.

NEW BUSINESS

1. An application from MRK Real Property LLC, requesting an area variance from Section 208-8 to allow two (2) primary residential properties on the same lot. The property is located at 865 NYS Route 146A, Clifton Park. Permit #80470.

The secretary read the legal notice as it appeared in the Daily Gazette on November 13, 2003.

Gavin Vuillaume, Environmental Design Partnership, presented this application. He stated that the property is located on the north side of Route 146A with an existing residence with an attached furniture showroom that was in operation for approximately 8-10 years. Since that time it has been non-operational for the last 2-3 years. He explained that the applicant has tried to sell the property with the showroom as is and has not been successful in the last couple of years, therefore he is requesting the variances in order to help him sell the property and get a return from his investments.

He continued, they would like to take the buildings that are connected by a breezeway and separate them into two buildings. He stated they would like to separate the buildings and have two principle buildings on the one lot and make the second building a

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two family residence. There would be interior changes in the walls and updates in the septic and water service. The physical appearance of the building itself, which looks like a barn, will remain the same.

Mr. Vuillaume indicated that there are two variances being requested, one for the two principal buildings on the same lot and the second for a front yard setback for the existing

building that does not meet the current zoning requirements. He also inquired about a setback from the centerline of the road.

Mr. Clemens responded that the only item on the agenda is for the second primary residence, everything else is existing.

Mr. Vuillaume asked if there was any need for the other variances. Mr. Clemens stated that nothing is being changed and they are existing so other variances are not necessary.

Mr. Vuillaume also noted that they are also asking for a two family residence in the second structure. Mr. Clemens responded that will be heard before the Planning Board for a Special Use Permit.

Mr. Clemens noted that this is a unique property. It has been on the market for about 4-5 years and no one has offered to purchase it as a furniture store. He stated that there is an existing Special Use Permit to operate it as a furniture store and the applicant is willing to give that up in return for a Special Use Permit for the two family dwelling, and that will be discussed at the Planning Board level. He explained that the owners could utilize it as another store but he does not believe the neighbors are in favor of that and one reason why Mr. Klimkewicz purchased the property is to have more control over its use.

Mr. Clemens stated that this is almost a four acre parcel and is close to the density requirements of the zone and he does not see where there would be any negative effect on the neighborhood, in fact it will be a lot less of an impact than if it became a furniture or antique store, therefore he does not have any objections to this request.

Mr. Kortz asked if anyone is currently living in the existing residence. Mr. Vuillaume responded no.

Mr. Dudick asked if there is a reason why they are not considering subdividing the property into two residential lots. Mr. Klimkewicz responded there is not enough land.

Mr. Clemens stated that in this zone 100,000 sq. ft. is required per building lot and due to the layout it would be very difficult to subdivide even if you wanted to give variances for two sub-standard lots.

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Mr. Vuillaume also noted that the side yard between the two buildings would be very tight and it would also create driveway problems because a shared driveway would be preferred in this instance.

Mrs. Lawton asked how long the applicant has owned the land.

Mr. Klimkewicz responded 18-20 months. He noted that he lives right next door and the

issue is that it has become an eyesore. He stated he is maintaining it but the fact is if the right family takes it over and renovates it, it is an 1860 building, it could be a beautiful building. He noted that a furniture store is not the right fit in this neighborhood. He stated that his neighbors are happy with the possibility that this will be turned into a nice residential area.

Mrs. Pace asked if he bought the property when the furniture store went under. Mr. Klimkewicz responded yes, actually the bank took it over and it became a state of disrepair and then he took it over to have some control over it and has been maintaining it.

Mr. Dudick asked why it would not make sense to have only one residence on the lot. Mr. Klimkewicz stated there are three buildings on the lot and they are all in varying levels of quality. He continued, the showroom is in the best condition and it makes the most sense to save that building.

Mr. Dudick asked if that was the one built in 1860.

Mr. Klimkewicz responded no, that is the back barn. The house in the front is the 1860 building that has been added on to several times. He stated there has been discussion about bull dozing that building in front but it is very old and has a lot of potential with the right buyer and amount of energy.

Mr. Dudick asked for clarification if this approval is granted. If two residences were approved and someone wanted to bull doze the 1860 house would they be allowed to build another building on the property because of this approval? Mr. Clemens responded that would be true.

Mr. Renzi commented that the Board could make some conditions for the approval.

Mr. Dudick asked if the intention of the applicant is to tear one residence down and replace it with a new one if the variance is granted. Mr. Klimkewicz responded no, but if the variance is only being granted with the condition that the front building stays it will limit the market value if someone does come along and decides to clear the site and do what they want with it. If you condition it that the front building must remain you are mandating that the front building has to be renovated regardless.

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Mr. Kortz tried to clarify Mr. Dudick's concerns. He stated if they totally bull doze the whole front building, not just a portion of it, they would be aware that there is a condition when they bought the property and knowing that they would have use of the two family but not be allowed to build a new residence on the property without a new variance being granted.

Paul Wigger, 871 Route 146A, adjacent to this property, noted his concerns for this property as a rental property. He explained the lot size in this area is 2 ½ acres and the

homes are high end. He is concerned with the number of families that will be living on the property. He noted there are other buildings on the property that could be used as rentals. He also expressed his concern with the high water table and the drainage of the current septic system. He is also concerned with the well and if it can support three families. He suggested subdividing the property into two single family residences.

John Ryker, 869 Route 146A, commented on the concept of saving the property from further disrepair is good but he is concerned with the perspective of making it appealing to the eye.

Mr. Kortz explained that the aesthetics is part of the Special Use Permit and will be addressed by the Planning Board. He explained that this Board is only concerned with the issue of having a separate two family residence on the property and asked him what his concerns are in that respect.

Mr. Ryker responded his only concern is with making it look good and he has no concern with the two family residence issue.

Mr. Vuillaume stated that there will be a site plan presented to the Planning Board that will show the location and what the site will look like when completed.

Mr. Klimkewicz stated that he lives next door and the reason he bought the property was to protect his investment. He stated that he planted additional trees and has put a restriction on the property that there could be no building in the rear area of the lot. He noted that he has had offers for a business to build out the remaining portion of the lot but he feels that is not right for the neighborhood and has refused the offer.

Mr. Kortz asked if that is in the form of a deed restriction.

Mr. Klimkewicz responded yes, it is for everyone's protection. He stated he has a current offer from a family that wants to move the grandfather and daughter in the two family barn building and they will live in the front building. This will turn this eyesore into a nice neighborhood again.

Mr. Wigger stated that it is hard to imagine without seeing it on paper. Mr. Klimkewicz stated that he is willing to incorporate

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suggestions into his site plan.

Mr. Kortz asked if a variance was granted with restrictions would he have a problem with a single family and a two family residence on this site?

Mr. Wigger asked what the history is on property values, does rental property tend to effect the value of neighboring homes? These are high end homes. What can happen with this property in ten years?

Mr. Kortz explained that a variance runs with the property, not the owner.

Mr. Klimkewicz discussed the alternatives available to him.

Mr. Wigger asked for clarification on what will happen on the site and what it will look like.

Mr. Kortz explained that that is a Planning Board issue and there will be a public hearing and he can express his comments at that hearing.

Mrs. Gleason asked about the building on the property that was previously mentioned with an apartment in it.

Mr. Klimkewicz stated that there is a small house that was used at one time but he does not anticipate using it, it is in rough shape.

Mr. Kortz asked if that was allowed under the zoning. Mr. Clemens responded no, it predated the zoning. He noted that if this variance is granted it is allowing one single family residence and one two family residence, so even if there is another building there that was used at one time as an apartment it cannot be used any longer as an apartment, it could be used for storage. If anyone wanted to use it as an apartment they would have to come back before the Board for another variance.

Mr. Clemens noted that when these homes were built this was an active furniture store and he believes this would be a much better situation. He stated there may be some concerns but restrictions could be made by the Planning Board that perhaps maybe the barn has to maintain the look of a barn to preserve the rural character, etc.. He also noted that this Board could put on a restriction that if they tear down the existing farm house it could never be replaced to safeguard the neighborhood. He stated that he feels this is a reasonable request. The property could be utilized as a business which really does not belong here.

Mr. Renzi asked if a Special Use Permit expires after a certain period of inactivity. Mr. Clemens responded no, it is like a

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variance, it goes with the land.

Mr. Renzi noted there are a couple of legal issues to be considered by the Board. He noted there was a similar application before this Board in recent weeks, Permit #80467 that was denied by this Board. Also he mentioned another avenue to explore, is an application to entertain two sub-standard lots is at least feasibly possible. The initial question that was asked why this is not an application to subdivide and the response was that there wasn't enough land, which is true, but if it were to be subdivided, not

withstanding the setback variances that would be required, the Board could consider an application to accept two substandard lots if that was a direction the Board wanted to go to.

Mr. Klimkewicz stated that if that were to happen it would be a financial hardship. He looked at every avenue to make this worthwhile and there is no value to divide it into two lots.

Mr. Renzi noted that a full record has to be made.

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

Mrs. Pace asked what is the square footage of the barn?

Mr. Klimkewicz responded approximately 3,500 sq. ft. of living space total that would be split into two areas.

Mrs. Pace asked if there was any consideration given to making that a single family residence? Mr. Klimkewicz stated he tried to generate interest for that but the cost does not make sense.

Discussion continued on dividing the land into two lots and the inability to do so.

Mrs. Gleason noted that this application is a special circumstance and is unique. She noted that the applicant seems to be willing to work with the Planning Board and the neighbors to get this back as a working property.

Mr. Klimkewicz stated that he would not object to the Board mandating certain plantings, cleaning up the site, etc..

Mr. Dudick asked for clarification on the potential buyer for the property and the number of living units. Mr. Klimkewicz responded that he has a buyer if this variance is granted. They want to live in the front house and renovate the barn structure into a two family residence for their father and daughter to live in separate residences.

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Mr. Clemens explained they want three living units, not two. He stated if this remained connected and had three apartments in it, it would become a multi-family unit and is not allowed under the zoning and would require a Use Variance which is much more difficult to obtain than an area variance which it takes to have two structures, which is why it is separated.

Mr. Renzi reiterated that this Board is here to consider whether there is to be one or two primary residential structures on this lot, it is up to other Town officials to decide how many people can live in them.

Mr. Kortz stated they are applying for a two family residence.

Mr. Vuillaume stated that is the intention but what is here before the Board tonight is for two single family residential units on the same lot. The Planning Board will then deal with the two family residence.

Mrs. Gleason stated that she is willing to make a motion to approve this application as submitted knowing that there will be additional work done when the applicant goes before the Planning Board.

Ms. Heritage agreed stating that there has already been a lot of discussion with the Town and this is really the only feasible way to do this financially and physically as well, and because they do have to go to Planning and cover all these issues again.

Mr. Kortz mentioned that there is some concern over the older building being torn down and also there is a huge barn that costs a considerable amount of money and it would be a financial hardship to take either one down, but he agrees that if either one goes the variance for two primary residences should become null and it should revert back to a one family lot.

Mrs. Lawton expressed her concern that this is a self-created hardship, the applicant knew what he was buying and has only owned it for less than two years. She stated she would like to see that the original house stays.

Discussion continued on conditions that could be put on the variance should either building be torn down.

Mrs. Gleason made a motion to approve this variance with conditions.

Mr. Dudick recommended that the variance be approved with the condition that if one building is destroyed by intent or mishap that the property would revert back to a one family unit.

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Mr. Kortz stated he would like to add that it be a primary structure because there are other structures on the site.

Mr. Renzi stated it could be incorporated by reference to the drawing by Environmental Design Partnership which indicates the two structures.

Mr. Vuillaume responded #1 and #2 on the map.

Mr. Klimkewicz expressed his concern that if someone is living in each house and one

burns down they would have to leave the site.

Mr. Renzi responded that seemed to be an initial attempt by Board members to pick and choose to see which building should be saved given a choice, the possibility of some Act of God or other hazard

potentially destroying one of the buildings through no fault of anyone makes that a moot point so that the condition that is sought to be imposed on the variance is should one of those two buildings be lost, destroyed, or otherwise substantially made defunct, it could not be rebuilt and the variance for two buildings on one lot would expire.

Mr. Klimkewicz responded he does not know how you would insure that situation.

Mr. Renzi stated it is an interesting point and bears some further study.

Mrs. Gleason stated that does not make sense, if an Act of God destroys the property you should be able to rebuild on your footprint, the idea that you can't knock it down and rebuild is reasonable.

Mr. Kortz suggested modifying the condition by identifying the two primary residences and stating if either is intentionally demolished the property reverts back to a single family lot.

Mr. Clemens suggested substantially demolished should be added to the condition.

Discussion continued on the wording of the condition relating to demolishing and renovations of the buildings.

Mrs. Gleason made a motion to approve this variance for two primary residences on the same lot, those being #1 and #2 as shown on the map by EDP, with the condition that if either structure is intentionally or substantially demolished the property will revert back to a single family residential lot. Ms. Heritage seconded. Ayes: Heritage, Dudick, Kortz, Lawton, Pace, Gleason.

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Noes: None.

Mr. Renzi noted a correction to the pending minutes.

Mr. Dudick made a motion to approve the minutes of October 21, 2003 as corrected, Mrs. Pace seconded, approval unanimous.

Mrs. Gleason made a motion to adjourn the meeting at 7:56 PM, Mr. Dudick seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb
Secretary

cc: Town Clerk, Zoning Board Members, Louis Renzi, Counsel,
Don Clemens, Department of Building and Development, Planning Board, ECC
Members