

Clifton Park Zoning Board of Appeals Meeting Minutes

March 2, 2004

Present: Dale Kelley, Michael Dudick, Gil Kortz,
Jessica McCarthy, Robert Ritter

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

Mr. Kelley called the meeting to order at 7:03 PM. Mr. Kelley thanked Mr. Dudick from chairing the last meeting in his absence.

NEW BUSINESS

1. An application from Ma Ma Vee's Inc., requesting an area variance from Section 208-38G from the required 35% green space - proposed = 22% - variance requested = 13%; an area variance from Section 208-98 from the required 130 ft. front yard setback from the centerline of Rt. 146 - proposed = 47 ft. - variance requested = 83 ft.; an area variance from Section 208-38D from the required 20 ft. side yard setback - proposed = 12 ft. on the west side - variance requested = 8 ft. and 18 ft. on the east side - variance requested = 2 ft.; an area variance from Section 208-38D from the required 20 ft. side yard setback for parking - proposed = 0 - variance requested = 20 ft.; and an area variance from Section 208-38B from the required minimum lot size of 40,000 sq. ft. - actual = 26,934 sq. ft. - variance requested = 13,066 sq. ft.. The property is located at 1218 Route 146, Clifton Park. Permit #80479.

The secretary read the legal notice as it appeared in the Daily Gazette on February 26, 2004.

Gil VanGuilder, Surveyor, presented this application. He explained that this is a lot that existed for a number of years. It used to be the old Jonesville Fire House. In 1973 it was purchased by Ma Ma Vee's and has operated as an Italian restaurant and pizzeria since that time. There has become a need in the business to expand the kitchen area partially due to new exhaust fans that are needed due to new safety and fire code

3/2/04 Page 2

requirements. There will be no increase in the number of seats available in the restaurant. He explained when he met with Mr. Clemens he suggested bringing the property into compliance therefore there is a need for all the variances as requested. The current zoning requires 35% green space, the existing green space is 22%. The addition will be on the back of the building and will not effect the green space areas. It will be built on an already paved area. The front yard setback is needed due to the patio area that has existed for a number of years. The need for the side yard variance will increase by one foot for the addition, the existing building is at 13 ft., the addition will be at 12 ft. therefore the variance for 8 ft. on the west side is needed. The existing building is at 18 ft. on the east

side which requires the 2 ft. variance. There are an adequate number of parking spaces but due to the configuration of the lot the setback is not met and therefore there is a need for a variance for the parking setback.

Mr. VanGuilder continued, the lot has existed for many years and due to zoning changes the overall area variance for lot size is needed. He explained that all but one of the variances are due to existing conditions.

Mr. Clemens confirmed that the only new variance is due to the setback on the west side which is almost mandatory for them to meet the new health and building department code requirements for the kitchen, particularly for the new exhaust fan. He stated he supports this request and it will bring the property into compliance.

Mr. Kelley noted that this is a common problem with the older properties due to new zoning changes since they've been at that site. When an applicant comes in for one variance they discover that several are needed to bring them into compliance with the new zoning regulations.

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

Mr. Kelley stated that this is a popular business that has been in Town for quite a number of years. They have been active in the community and have been a good neighbor. He stated he feels this is a reasonable request to keep in line with current NYS Fire Codes, etc., and it will bring the property into compliance with the current zoning laws.

Mr. Ritter made a motion to approve this request as submitted.

Mr. Kortz seconded. Ayes: Kelley, Dudick, Kortz, McCarthy, Ritter. Noes: None.

3/2/04 Page 3

2. An application from Randall Gifford, requesting a variance from 171-4H(1) of the Town Code to allow an off premise sign for 1739 Route 9. The property is located at Fire Road & Rt. 146, Clifton Park. Permit #80480.

The secretary read the legal notice as it appeared in the Daily Gazette on February 26, 2004.

Randall Gifford presented this application. He stated that he owns Giffy's Bar-B-Q on Route 9. He opened the restaurant approximately 2½ years ago but noted that people still have a difficult time locating them. He stated that he has spent a lot of money on advertising, radio, television, etc, and has also tried to get a spot on the restaurant signs on the Northway but they are all filled. He feels he needs some identification stating that he is located on Route 9. He also feels there are other businesses on Route 9 that have the same problem.

Mr. Gifford stated that he talked with the property owner at Fire Road and Route 146, and he is willing to let him put an arrow sign made out of highway aluminum, yellow with black letters, 48" x 16", that would be reflective at night to indicate the direction of his restaurant.

Mr. Kortz asked exactly where the sign would be located.

Mr. Gifford stated it would be directly across from exit 9 (when heading north) of the Northway on a pole approximately three feet off the ground.

Mr. Clemens stated he understands the plight of the applicant and is sympathetic but there are other businesses in this area that suffer the same problem.

Mr. Gifford stated that his next step would be to go to the State of New York to see about putting a sign on their property that could also list other businesses. He stated that it would be a longer process and he has not pursued it as of yet.

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

Mr. Ritter asked, if this variance was granted would it open the door for everyone else.

Mr. Clemens explained that a variance doesn't legally set a precedent but the practically of it does. It's difficult to grant this type of variance to one person and then deny the next applicant with the exact same application. What if five or six other businesses along Route 9 wanted the same thing.

3/2/04 Page 4

Mr. Kelley noted that it could even be a greater number because any retailer on Route 9 would like to get as much of the traffic as possible from the Northway to go to Route 9 instead of west on Route 146. He noted that this is a legitimate concern for most of the business owners on Route 9.

Mr. Clemens explained that there have been other requests over the years but they have been discouraged from even making an application.

Mr. Ritter asked if the applicant is on the DOT sign on the Northway south of exit 10.

Mr. Gifford stated no because he feels it would be too confusing because it is 3½ miles down from that point, there would have to be some indication to turn right towards Route 9.

Mr. Gifford stated he can understand the concern of the Board but he has spent over \$50,000 on advertising this year and he has not seen any advertising from the other restaurants in his area. He explained that he has spent a lot of money trying to let the public know where he is located.

Ms. McCarthy asked if his advertising has paid off. Mr. Gifford responded it has paid off but he still gets phone calls asking how to get to the restaurant.

Mr. Kortz noted that the problem is obvious and he understands the applicant's position, but in reading the purpose and intent of the Sign Law it is to control signage, be fair to all businesses, and to preserve the character of the neighborhood. He also noted that perhaps the State could help with additional signage on the Northway.

Mr. Gifford mentioned that he has looked into the bill board signs but they are taken for the next three years so he is even unable to get one of those.

Mr. Kortz also noted that the signs located at the Fire Road Plaza as you get off the Northway at the exit are for the businesses at that location.

Mr. Gifford inquired about the sign for Comfort Suites at the exit. Mr. Clemens responded that it is on State property, not Town property.

Mr. Kelley suggested that the applicant contact the State or the Chamber of Commerce and explain his problem and those of the other businesses and perhaps they could handle the problem globally.

3/2/04 Page 5

Mr. Dudick noted that many offices on Route 9 have the same problem and have to explain how to locate them, but the longer they are in town, they may not get the long distance traveler, but their business will grow as a local business and institution.

Mr. Gifford noted that people traveling the Northway frequent the chain restaurants because of their locations. He asked if the Board would consider granting the variance for a six month period and if it was not working, or if there were a lot of complaints, he would remove the sign.

Mr. Renzi explained that the Board does not have the jurisdiction or authority to do a "trial run".

Mr. Kelley expressed his understanding of the applicant's plight but the Board has expressed their concern with granting this variance. He suggested the applicant try other avenues to solve this issue globally instead of individually.

Mr. Gifford asked for direction in trying to solve this problem. Mr. Kelley suggested the Chamber of Commerce.

Mr. Renzi noted that it is within the purview of the Town Board to make a change in the ordinance.

Mr. Clemens suggested working through Barbara McHugh, Community Development Director.

Mr. Ritter encouraged the applicant to not only work with the Town but also with the State.

Discussion continued with suggestions on how this applicant can pursue his problem.

Mr. Dudick made a motion to deny this application. Mr. Kortz seconded. Ayes: Ritter, McCarthy, Kelley, Kortz, Dudick. Noes: None.

3. An application from Gordon P. Nicholson, RLA representing Pearl Partners, LLC, requesting a Use Variance from Section 208-37 to allow a warehouse/distribution use in a B-3 Neighborhood Business Zone. The property is located at 202 Ushers Road, Clifton Park. Permit #80483.

The secretary read the legal notice as it appeared in the Daily Gazette on February 26, 2004.

Gordon Nicholson, Environmental Design Partnership, presented this application. He explained that this site is located at the intersection of Route 9 and Ushers Road. It was originally an automobile sales and repair shop in the 1980's. It then used for the sale of LP gas up until the mid 1990's at which point it has

3/2/04 Page 6

been vacant and in a state of disrepair. It is currently used for some off site parking by Corpus Christi Church. There will be no changes to the site except it will be occupied and cleaned up. He explained the light industrial uses currently in the area and noted that this business will not affect the character of the neighborhood. He noted that the property will be leased to John Deere Landscapes which does on site design and wholesaling of irrigation equipment and supplies. He noted that this is a complimentary business to E. J. Prescott immediately to the east. There will be two full time employees and one part time employee. They have one 20 ft. truck that is used for deliveries. Basically the deliveries are shipped from warehouses to the site. They supply and design irrigation equipment and systems to municipalities, park systems, institutions, school systems, etc.. He noted that it is not a retail operation. It is basically a seasonal operation from April-September or October. The winter months are used for on-site design services. They will be open from 7AM-5PM, five days a week and 8AM-2PM on Saturdays. They do not expect any conflict with Church traffic across the street because the hours don't conflict.

Mr. Nicholson referred to the site plan as originally approved and noted that John Deere will not make any changes to the building and parking but will clean up the site with additional landscaping, etc.. He noted there will be no changes green space or utility infrastructure i.e. sewer and water. He explained that they believe because there have been two unsuccessful businesses at this site over the last 15-20 years something with the

existing zoning does not work there. They feel John Deere landscape is a major healthy tenant and would be successful there. He also noted that E. J. Prescott is operating under a Use Variance. He also noted that because the building was constructed for an auto repair business and LP gas sales business it would be very difficult to convert it to office use, restaurant, day care, etc.. He also noted that John Deere Landscape can use the building without any major changes, except for being cleaned up and occupied, therefore there will be no adverse impact on the neighborhood.

Mr. Clemens agreed that this is a natural use for this property. He explained that this was zoned Light Industrial until approximately 1996 when it changed to B-3. He noted that the owner has made a significant investment in the property. He feels this is a reasonable request. He also noted that E. J. Prescott to the east has a use variance that was granted for warehousing and is virtually the same type of business.

Mr. Nicholson added that John Deere Landscaping does not need any expansion for the site area and it is not a business that conflicts with existing businesses.

3/2/04 Page 7

Mr. Renzi asked if they would be storing materials outdoors as does their neighbor.

Brian Wimble, John Deere Landscapes, responded yes, but not in front. He noted there is enough space behind the building and it would not be seen from Ushers Road, it may possibly be seen from Route 9. He also noted that it will not be to the scale of E. J. Prescott.

Mr. Clemens noted that there is an existing fence on the property.

Mr. Nicholson also noted that the Planning Board still has to review the site plan and they do quite a good job and may require upgrades to the landscaping.

Mr. Kelley asked if the plan presented is the existing plan.

Mr. Nicholson explained that it is the original plan that was approved.

Mr. Clemens explained that it was the plan for Empire Gas and noted that everything except the tanks is still there.

Mr. Nicholson explained that there will be minimal signage and no lighting except for security reasons will be needed.

Mr. Wimble explained that they will put an irrigation system on the site and the corner will be aesthetically pleasing.

Mr. Kortz asked when the property was purchased from Mr. Newell. Mr. Nicholson stated approximately one year ago, but the site has quite a bit of history.

Mr. Kelley noted that this is a very visible corner and he would like to see improvements made and a healthy business operating there.

Mr. Dudick asked for clarification on the granting of this variance. He asked if this variance is granted for Light Industrial use would it allow a future tenant to operate a more industrial business.

Mr. Clemens explained that the way the variance request is worded is for a warehouse/distribution use and that is what the variance would be for.

Mr. Kelley also noted that the building is very specific.

Discussion continued on conditions that could be placed on the use that could be allowed if the variance is granted.

3/2/04 Page 8

Mr. Renzi asked if it would be acceptable to the applicant if the use variance was granted with a condition specific to this owner or this tenant.

Mr. Pentkowski, attorney for Pearl Partners, responded that it would make the property owner return every time there is a new tenant which would make it an unusual procedure.

Mr. Pentkowski suggested limiting the size of the building. He noted the applicant has no intention to expand.

Mr. Nicholson noted that they only plan to make cosmetic changes.

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

Mr. Kelley noted that there have been no comments received on this request either by the Town or the applicant. He also noted that all the conditions of a Use Variance have been met.

Mr. Dudick made a motion to approve the Use Variance as requested with the condition that the building shall not be increased in size greater than 5,000 sq. ft.. Mr. Ritter seconded. Ayes: Kortz, Dudick, Kelley, McCarthy, Ritter. Noes: none.

4. An application from Bruce Tanksi, requesting an area variance from Section 208-11 from the required 100 ft. front yard setback from the center line of Rt. 146 - proposed setback = 40 ft. - variance requested = 60 ft., and an area variance from Section 208-11 from the required 50 ft. front setback from the property line on Waite Road - proposed setback = 19 ft. - variance requested = 31 ft.. The property is located at 1359 Rt. 146, Clifton Park. Permit #80484.

The secretary read the legal notice as it appeared in the Daily Gazette on February 26, 2004.

Gil VanGuilder, Surveyor, presented this application. He explained that this is a 2.3 acre parcel at the intersection of Route 146 and the northwest corner of Waite Road that has been before the Planning Board for subdivision approval. The property lies within the R-1 zone. It has a single family residence already on the property. The Planning Board requested the applicant convey a 10 ft. strip along both Route 146 and Waite Road for intersection improvements that are anticipated to be needed in that area. The existing building lies very close to the right-of-way lines of both roads. The setback requirements for Route 146 for a residential structure is 100 ft. and the existing building is at 40 ft., on the Waite Road side the
3/2/04 Page 9

setback requirement is 50 ft.. The setback of 19 ft. is from the new right-of-way line that is 10 ft. closer to the existing building. No improvements are planned to the building that would necessitate any additional variances. It is going to be re-conditioned in its current location, construction has been on-going, which Mr. Tanski plans to complete. He explained this is the only step that needs to be completed before going back to the Planning Board for final approval of the two lot subdivision.

Mr. Clemens stated he has no objections, this is basically a technicality.

Mr. Kelley noted that this is an old farm house that has been there for quite sometime.

Mr. VanGuilder stated that it is definitely in need of rebuilding which Mr. Tanski has started.

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

Mr. Kelley made a motion to approve the application as submitted.

Mr. Ritter seconded. Ayes: Ritter, McCarthy, Dudick, Kelley, Kortz. Noes: None.

5. An application from Angelo Piccirillo & Estate of Guido Piccirillo, requesting an area variance on two contiguous lots from Section 208-11 & 208-97E(2) from minimum 100,000 sq. ft. lot size in an R-3 zone; Lot 1 = 54,300 sq. ft. - variance requested = 45,700 sq. ft. and Lot 2 = 45,200 sq. ft. - variance requested = 54,800 sq. ft.. The property is located at 63 & 65 Blue Barnes Road, Clifton Park. Permit #80481.

The secretary read the legal notice as it appeared in the Daily Gazette on February 26, 2004.

Don DeAngelus, attorney, presented this application. He explained that these are two vacant contiguous non-conforming lots. He noted that they were purchased in 1979 and

received subdivision approval. They were in the neighborhood business zone. In 1996 they were re-zoned residential R-3 requiring 100,000 sq. ft. per lot. They are seeking the area variance for two residential lots. It is impossible to comply with the required lot size because both lots combined do not equal the 100,000 sq. ft. requirement. The lots were approved for subdivision as they currently exist. The lots were purchased in 1979 so both brothers could each have a commercial lot. This hardship is not self-created because the zoning has changed over time and this would create an economic hardship. The two
3/2/04 Page 10

residential lots would have no change in the character of the neighborhood. There is public water at the site.

Mr. Clemens noted that this is an unusual situation because they have owned the lots for 25 years and the zoning has changed twice since they purchased the land.

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

Mr. Ritter made a motion to approve this variance as requested. Ms. McCarthy seconded. Ayes: Kortz, Dudick, Kelley, McCarthy, Ritter. Noes: None.

A quorum was not present to approve the minutes of February 17, 2004.

The secretary announced that there will not be a meeting on March 16, 2004.

Mr. Kelley made a motion to adjourn the meeting at 8:17 PM, Mr. Ritter 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,
Assessor