

Clifton Park Zoning Board of Appeals Meeting Minutes

April 20, 2004

Present: Dale Kelley, Dale Gleason, Gil Kortz,
Donna Lawton, Jessica McCarthy,
Robert Ritter (arrived 7:12 PM)

Absent: Michael Dudick

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

Mr. Kelley called the meeting to order at 7:04 PM. He congratulated Mrs. Gleason on receiving the President's award for the YMCA.

NEW BUSINESS

1. An application from Glen Witecki, requesting an area variance from Section 208-11 from the required 100,000 sq. ft. minimum lot size in an R-3 zone - proposed lot size = 39,716 sq. ft. - variance requested = 60,284 sq. ft.. The property is located at 87 Hubbs Road, Ballston Lake. Permit #80491.

The secretary read the legal notice as it appeared in the Daily Gazette on April 15, 2004.

Glen Witecki presented this application. He explained this is a 78 acre farm and is one of the few active farms in this area of town. The reason the variance is being requested is due to the area surrounding the proposed site of the house contains farm buildings and corn fields. He noted that he believes this is consistent with Clifton Park's goals of preserving open fields and farming activity. He noted to go in any other direction would remove farm lands or cut into the farm buildings. He explained that there is approximately 900 ft. of road frontage and the proposed lot would have 276 ft. of frontage. He also noted that in an easterly direction the adjacent lots are 40,000 sq. ft.. He also stated that the zoning laws were changed in 1996 and he feels

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That they are unduly punitive to anyone who held out and did not develop until now. He noted that the land is sufficient to contain a house. He stated it has a well already on the property. He explained they are requesting the variance to preserve the farm land, to preserve the open space, and it is consistent with the surrounding lot sizes.

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

Mr. Kelley read into the record the recommendation of the Planning Board asking the

Zoning Board to deny this request due to comments of the Town Engineers referring to the GEIS currently being prepared that emphasizes current zoning standards. They also asked that if the applicant chooses to pursue the subdivision application they recommend that it conform to current zoning regulations and be relocated to either the eastern or western property boundary to prevent substantial impact on the existing visual open space aesthetic.

Mr. Kortz asked if Chester Witecki owns the property. Glen Witecki responded he is a life tenant, he is the remainderman.

Mr. Kortz asked how long they owned the land. Glen Witecki responded it's been in the family approximately 80 years.

Mr. Kortz asked why with 78 acres do they need to have a variance. Mr. Witecki responded that most of the land surrounding it is corn fields and farm buildings. He noted that there is only 900 ft. of frontage and a lot of the rear area is wetlands. He explained that if you're going to put a house up you want access to a main road. He pointed out the farm land and farm buildings and noted that there is no farming in the area where they are requesting the variance.

Mr. Kortz asked what the difference would be if the corn fields were on the subdivided lot or not since he is inheriting the land. He noted that the lot could still be farmed, it doesn't destroy the farm land just because the lot is larger.

Mr. Witecki responded that the owner of the lot would have to grant an easement to do that.

Mr. Kortz asked if he would be selling the lot to someone else. Mr. Witecki responded yes.

Mrs. Gleason mentioned that the Planning Board recommends not approving this request and this Board cannot see any overriding factors.

Mr. Kelley agreed. He noted that they have considerable acreage and they are still seeking an area variance. He explained that

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Normally when someone approaches this Board and seeks an area variance it for a real good reason, there is a real hardship, they are confined by geography in the lot size, etc.. He cannot see a lot of circumstances that would convince him that granting this variance would be appropriate because there is so much space, other than it's currently being used for an active farm. He realizes that the Town is committed to try to preserve working farms, he does not see this drastically affecting the working of the farm if a little more property is apportioned to the lot size.

Mr. Witecki noted that in this area a building lot on one side of the property line is 100,000 sq. ft. and on the other you need 40,000 sq. ft.. He also mentioned that a half mile up the road at the corner of Hatlee and Hubbs last December a 40,000 sq. ft. lot was divided into two 20,000 sq. ft. lots.

Mr. Kelley explained that that site has public water and sewer.

Mr. Kortz stated that the rationale given to the Board is for not wanting to disturb the farm land that's there, and asked if there were plans to further subdivide the land in the future.

Mr. Witecki responded no.

Mr. Kortz stated he sees no proven hardship as to why he can not conform to the zoning or at least come closer to conforming to the zoning because this is a substantial variance.

Mr. Witecki stated that the hardship is wanting to keep a working farm there and by increasing the lot size you are cutting the heart out of it.

Mr. Kortz asked if this is the absolute only place for a house.

Mr. Witecki responded no but it is the place that least interferes with farming activity.

Mr. Kortz asked what is the rationale for putting a house there if you want to farm the land.

Mr. Witecki stated it would still be a working farm with very little interference from this particular lot. The rationale is to let someone build a house there.

Mr. Clemens pointed out that just because it is a 100,000 sq. ft. lot it does not mean that you have to develop it, you can still farm a portion of it.

Mr. Witecki stated that in order to take the lot and extend it back far enough to have 100,000 sq. ft. you basically cut a path down the middle and make both sides of the farm inaccessible

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Without going out into the road.

There was discussion on increasing the lot size and leasing out some of the lot with the agreement that it could be farmed.

Mr. Kelley noted that every application has special and unique qualities and the purpose of these hearings is to get that information out so that a reasonable decision can be made.

He continued, when you get to a point where there doesn't seem to be a lot of reasons except to preserve corn fields then he personally cannot approve this request. He noted that if there was some flexibility perhaps there could be an approval granted.

Mr. Witecki suggested moving the location of the lot and making it 150 ft. wide by 300 ft. which would equal 45,000 sq. ft. and also using the same 150 ft. width and go back another 367 ft., without transferring the property to the owner of the house, which would equate to another 55,000 sq. ft., and put a deed restriction on the farm deed stating that no other dwelling could ever be built there. The land would stay with the current ownership (55,000 sq. ft.) and committed to not putting a dwelling there which gives you 100,000 sq. ft. with only one dwelling on it.

Mr. Kelley stated that is a Planning Board issue Mr. Witecki stated that he thinks a variance would still be needed because it would still be only a 45,000 sq. ft. lot, but the Board would be approving it with the knowledge that there would be 100,000 sq. ft. lot with only one house on it.

Mr. Kortz asked why they couldn't include that portion in the subdivided lot with the same deed restrictions. Mr. Witecki responded they want to be able to continue to farm the land without having to lease back the land.

Mr. Clemens asked if their intent is to keep the rest of the farm as an active farm and if the lot was going to be sold to a family member. Mr. Witecki responded yes.

There was continued discussion on this proposal.

Mr. Kelley asked the applicant if he would like to table this action and go back to the Planning Board with some other ideas and get a sense of what might be acceptable to them. Mr. Witecki responded yes. He also asked for more feedback from the Board members tonight because they would still need an area variance.

Mr. Renzi explained that the alternate proposal does not meet the zoning code and does not meet the guidelines of granting a variance or the test of hardship.

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Mr. Witecki stated he would like to table this application until the next meeting.

Mr. Kelley explained that this Board is willing to work with the applicant but there are standards that have to be met.

Chester Witecki stated that just down the road you can build on less land and he doesn't understand why he is having a problem.

Mr. Kelley explained that the Board is willing to work with him but the proposal is problematic. He would like to see an alternate proposal with justification for granting the

variance.

Mr. Witecki stated that a lease or easement for the lot would affect the marketability down the road for the house.

2. An application from Marshall Sign Corporation representing Nation Wide Insurance, requesting an area variance from Chapter 171 of the Town Code (Sign Law) to allow a wall sign height of 30 ft. - maximum height allowed = 20 ft. - variance requested = 10 ft., and an area variance for a second wall sign of 21 sq. ft. and a height variance for the second wall sign of 26 ft. 6 in. - variance requested = 6 ft. 6 in.. The property is located at 5 Southside Drive, Clifton Park. Permit #80490.

Mr. Kelley announced that this application has been adjourned by the applicant.

3. An application from Darin Palmetto, requesting a change in conditions of approval of variance #80215 to allow hours of operation for a pizza shop past 11 PM. The property is located at 17 Longkill Road, Ballston Lake. Permit #80492.

The secretary read the legal notice as it appeared in the Daily Gazette on April 15, 2004.

Darin Palmetto presented this application. He explained that he currently owns a pizza shop in Saratoga and has signed a lease with Stewart's for this location. He believes from experience that the previous tenant at this location had trouble generating enough sales volume to make his business viable. The fact that he wasn't open on Friday and Saturday nights past 11 PM cost him valuable sales. He also explained that he believes this request will not be disruptive to the general area. He reviewed the site plan noting a buffer of pine trees between his shop and the nearest residence. He explained that only two employees would be required to effectively generate the numbers that he feels are of importance for him to make his business viable. One would cook and the second employee would deliver. Deliveries would be made from the rear of the building. He also explained that Stewarts

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Would still be closing at 11 PM. The lights under the soffit on the front of the building would be off. The only lights would be for the employees working inside the building. Mr. Palmetto explained that the numbers that could be generated at that time of night are crucial for him to make his business viable.

Mr. Ritter asked if this would be strictly delivery. Mr. Palmetto stated that there could possibly be pick ups, but the restaurant would be closed, there would be no sit downs. He noted that his current shop does a large volume of business after 11 PM. He also noted that he has a large delivery area.

Mr. Kelley read the County Planning Board's comments stating that there is no significant county wide or inter community impact.

Mr. Kelley asked if he knows if anyone else delivers that late at night. Mr. Palmetto responded no one else. He also noted that his delivery radius will be approximately 10 miles, which is larger than most other delivery areas, most shops deliver only 2-5 miles.

Mrs. Lawton asked if the homeowners have been notified.

Mr. Palmetto stated that he went to the closest neighbor, Mr. Musick, and explained what he would like to do. He stated he asked him if he would write a letter stating that he was either for or against this application. Mr. Musick said he would get back to Mr. Palmetto, but has not to date.

Mr. Clemens explained the previous variance for this site and noted that it required the same hours of operation for Stewart's and the pizza shop.

Mr. Kelley stated after reviewing the minutes of that meeting he believes that decision was to prevent a full blown restaurant operation.

Mr. Kortz questioned the legality of being able to change a variance that was previously granted.

Mr. Palmetto stated that the lack of being able to have a delivery business that would generate a greater volume of business constitutes a hardship for him. He believes this is crucial to making this business work.

Mr. Renzi explained that any hardship is self-created. He asked if the lease he signed with Stewart's is contingent on this variance being granted. Mr. Palmetto responded no.

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Mr. Renzi noted that this site does have tables inside and parking so there is the potential for sit down consumption of food on the premises.

Ms. McCarthy expressed her concern with the neighbor not responding. Mr. Renzi noted that he was notified and since he is not here this evening and no correspondence was received you can assume he has no problems with this request.

Mr. Ritter suggested an approval could be granted with the condition it be limited to delivery service only.

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

Mr. Ritter made a motion to approve this variance application with the condition that the hours of operation Sunday thru Thursday would be until 11 PM, and Friday and Saturday the hours of operation would be until 2 AM with delivery service only from 11 PM-2AM. Mrs. Gleason seconded.

Mrs. Lawton asked what would happen if Stewart's comes forward and asks to stay open after 11 PM. Board discussion continued on this subject. It was agreed that this request is limited to the pizza shop only.

There was Board discussion and concern over the legality of an applicant being able to request a change to a previously granted variance.

Mr. Kelley explained that this is not a variance request, it is only a modification of a condition to a variance.

A vote on the motion was called. Ayes: Kortz, McCarthy, Kelley, Ritter, Gleason. Noes: Lawton.

4. An application from Richard B. Postulka, requesting an area variance from Section 208-11 from the required 40,000 sq. ft. building lot area in an R-1 zone - actual = 13,000 sq. ft. - variance requested = 27,000 sq. ft.; and an area variance from the required 100 ft. width at the building line - actual = 65 ft. - variance requested = 35 ft.. The property is located at 9 Meadow Road, Rexford. Permit 80493.

The secretary read the legal notice as it appeared in the Daily Gazette on April 15, 2004.

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Gavin Villaume, Environmental Design Partnership, presented this application. He explained that the property is located in Alplaus and is 65 ft. x 200 ft. He explained it is zoned R-1 and is currently vacant.

He referred to a plot plan showing a proposed house location and noted that this was an approved building lot since the early 1900's. He explained that the owner has been paying taxes on the lot for many years. He noted that there is room for a building and septic system without any additional variances being required. He also stated that this lot pre-dates zoning.

Mr. Renzi asked if the lot is changing hands. Mr. Villuame responded eventually it will be sold.

Mr. Clemens noted that it is a small lot but is consistent with those in the area. He also explained that it does have public water. He stated he has no issues with this request.

Mr. Renzi noted for the record that the application shows the taxes being paid on the property are for a buildable lot and has an assessed valuation to reflect that.

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

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

Mr. Ritter made a motion to approve the minutes of April 6, 2004, Ms. McCarthy seconded. Ayes: Gleason, Lawton, Ritter, McCarthy, Kortz. Noes: None. Abstained: Kelley.

Mr. Ritter made a motion to adjourn the meeting at 8:09 PM, 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