

## **Clifton Park Zoning Board of Appeals Meeting Minutes**

**June 15, 2004**

Present: Dale Kelley, Michael Dudick, Dale Gleason,  
Gilbert Kortz, Donna Lawton, 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. He informed the Board members and the public that the application on the agenda for Independent Wireless One has been adjourned at their request until the next meeting on Tuesday, July 20, 2004. He also noted that additional correspondence was received from Crane, Greene & Parente, attorneys for the applicant, concerning this application.

### **NEW BUSINESS**

1. An application from Fred Proctor, requesting an area variance from Section 208-12 from the required 80 ft. front yard setback for an accessory building - proposed setback = 75 ft. - variance requested = 25 ft.. The property is located at 23 Bonneau, Clifton Park. Permit #80503.

The secretary read the legal notice as it appeared in the Daily Gazette on June 10, 2004.

Mr. Proctor was present for this application. Mr. Kelley asked if there was any additional information he wanted to present to the Board. Mr. Proctor responded no.

Mr. Clemens noted that this is a minor variance and because of the angles of the lot the variance is necessary for him to build the garage. He recommended approval of this variance.

Mr. Kelley agreed with Mr. Clemens' opinion that this is an unusual shaped lot.

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

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

2. An application from Joel Koval, requesting an area variance from Section 208-11 from the required minimum 100,000 sq. ft. for a building lot in an R-3 zone - actual = 61,855 sq. ft. - variance requested = 38,145 sq. ft.. The property is located on Waite Road, Rexford. Permit #80504.

The secretary read the legal notice as it appeared in the Daily Gazette on June 10, 2004.

Mr. Koval presented this application. He explained that he purchased the lot a couple of years ago and called Planning at that time and they said it was an existing lot and was ok to build on. He decided that he was not going to build on it and was going to sell. That person called Planning and he was also told it was ok for him to build on it, but when he went to the Building Department to get further information he was informed that it did not meet zoning requirements and that a variance would be needed.

Mr. Koval stated that he made a purchase based on being told that it was a buildable lot, perhaps he should have done more research, but he was not going to build at that time so he relied on the phone call he made at that time. He noted that the lot is 1.42 acres and the surrounding lots with houses already on them are a lot smaller, therefore he does not feel that this request would change the character of the neighborhood.

Mr. Clemens stated that he has no objections to this request. He noted that several lots in the area that are one acre or less with homes already on them. He also stated that the applicant purchased the lot in good faith on some bad information.

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. Mrs. Gleason seconded.

Mr. Kortz noted that although it does not meet a couple of the guidelines he feels that due to the situation in the neighborhood and the fact that it was an existing lot and not a subdivision overrides that and he would recommend approval.

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Mr. Renzi noted that the applicant purchased the property after the current zoning took effect.

Mr. Kortz stated he did and it was self-created in a sense that he received bad advice but it also was a building lot that became substandard after the zoning changed. It wasn't a lot that was standardized and subdivided and now their asking for a variance so they would have to purchase more land and that may not even be available.

Mr. Kelley asked about the call to the Planning Department.

Mr. Koval responded that he called them and they said it is an existing lot and he was not looking to subdivide the lot so he would be able to build on it. That was approximately two years ago. The perspective buyer also received the same information and until he approached Mr. Clemens he did not know he could not build on this lot without a variance.

Mr. Clemens stated that when this zoning changed the existing non-conforming lot owners had seven years to utilize these lots. He noted that the seven years just ran out approximately two years ago, so if he wanted to build back then he would not have needed a variance, now one is required.

Ayes: Kelley, Dudick, Kortz, Gleason, Lawton, McCarthy, Ritter.

Noes: None.

## OLD BUSINESS

1. An application from Gordon Nicholson, Environmental Design Partnership, representing Country Club Acres, requesting a Use Variance for Blue Spruce Landscaping to operate a wholesale landscape nursery business in a B-3 zone. The property is located at the south side of Rt. 146A, opposite the intersection of Elnora Road, Clifton Park. Permit #80488.

The secretary read the legal notice as it appeared in the Daily Gazette on April 1, 2004.

Mr. Nicholson presented this application. He gave a history of the site. He stated Country Club Acres has owned this property for 30 years and they market their own land and it has been on the market for either sale or lease for the last 30 years. They have a co-broker arrangement with Re-Max and Dean Taylor has tried to market it through advertising and multiple listings.

He explained that the 4.17 acre site has a unique geometric configuration that is sandwiched between Route 146A, the bridge over the railroad, the railroad, and wetlands along the railroad.

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He noted that the land use south of the site is single family residential along Tanner Road and warehousing along both sides of Elnora Road (Main Street). He stated the proposed site plan is for a 5,000 sq. ft. pole barn for offices and inside storage with garage doors with one entrance on Route 146A. The Blue Spruce Landscaping and Nursery has approximately 15 employees. They will be storing mulch, stone, and landscaping materials on the site. This is not a retail landscaping nursery business such as Hewitt's Garden Center or Troy's Landscaping and Nursery. Most of the material is shipped directly from the wholesaler to the site.

Mr. Nicholson addressed the criteria that must be met for approval of a Use Variance. He noted that no reasonable return is possible in the current zoning because of the proximity to the railroad tracks, the wetlands, and Route 146A which make it an undesirable location for typical uses in a B-3 zone, i.e. office use. It has been marketed for those uses for years. He also noted that the site also lacks the appropriate utility infrastructure to support restaurants, i.e. no sanitary sewer or municipal water supply.

He continued, regarding unique circumstances, the configuration of the property is long and narrow sandwiched between the major collector highway and railroad with continuous noise. He also stated that this will not alter the essential character of the neighborhood due to the type of improvements that are being proposed and the low impact type land use with respect to lighting, noise, and occupants at the site. Other uses would have a much greater impact on the neighborhood, i.e. restaurants, office buildings, etc., which are currently permitted in B-3 zoning.

He addressed the issue of the hardship being self-created. He explained that the land has been owned for 30 years by Country Club Acres and was originally zoned Light Industrial and was changed to B-3 Neighborhood Business. He noted there is not enough residential land use in the vicinity to support a neighborhood type business as typical at other locations in Clifton Park.

He also stated that Country Club Acres has paid over \$17,000 in taxes since 1973 and the assessed value has increased approximately 300% over the years without any benefit of any interest in the property or any tenants.

Mr. Nicholson introduced Mr. Daley, owner of Blue Spruce Landscaping and Nursery.

Mr. Kelley read the Saratoga County Planning Board's decision that this application has no significant inter-community or county wide impact. He also read Michael O'Brien's (ECC staff member) concern over a potential environment concern with a proposed landscape/nursery business. He requested that this  
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concern be attached to the application. He noted that this is not a Zoning Board concern but that the applicant would need to address this issue during future review.

Mr. Kelley noted that this was the site of an old coal yard operation. Mr. Nicholson stated that a Phase I Environmental Assessment has been completed and there is no current or ongoing problem that would require any further investigation. He noted there was a fuel spill in the area that did not have an impact on the property. He submitted a copy of the Phase I Environmental Site Assessment Report.

Mr. Kelley stated that the Phase I Environmental Site Assessment Report, dated April 6, 2004, prepared by EDP for Robert VanPatten, will be passed on to the Planning Board with any conditions this Board sees necessary.

Mr. Nicholson explained that with regards to that potential for any issue on the site it is important to note that if it was used for residential, if there was a problem it would have more of a potential impact, or if it was used for office type land use with people occupying the site for 8-10 hours per day it would be a different issue, but with this issue the employees arrive in the morning, leave for the day, come back in the evening, or go straight home so in terms of people inhabiting the site for any length of time this is probably an ideal use.

Mr. Renzi asked if Mr. O'Brien indicated which of the issues mentioned by the applicant were his concerns. Mr. Kelley responded no, he just stated environmental concerns, past history of the site, and things which he is aware of, and he attached a document which listed this as a site that was a former coal yard.

Mr. Kelley noted that he is sure that the Phase I report has covered those items.

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

Mr. Ritter asked about the location of the proposed driveway and why it is not across from the existing intersection.

Mr. Nicholson responded it is where the existing driveway is currently located. He explained that if they get to planning they will be looking at that access issue. It has been that way for years and years.

Mr. Kelley also noted that they would have to approach NYS to get another curb cut. Mr. Nicholson explained that during the planning process the Town Engineers would go look at the site and suggest any improvements that they feel would be necessary.

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Mr. Dudick questioned the land being for sale for 30 years.

Mr. Nicholson explained that with the VanPatten organization has a huge inventory of land and they market their own land and whenever anyone is interested in developing land in Saratoga County, all of their inventory is always on the market for property. Also Dean Taylor has also specifically marketed this property to prospective buyers that want to locate in the B-3 zone to no avail.

Mr. Kelley noted that this is a difficult piece of property due to the environmental issues and the railroad tracks in the back. The current zoning would allow for retail usage.

Mr. Dudick asked if Country Club Acres has any other B-3 land that is for sale. Mr. Nicholson responded yes, the land on the other side of Elnora Road including the old Grand Union warehouse.

Mr. Dudick explained that he is wondering if the lack of the ability to sell the land is due to its size, proximity to the railroad tracks, and the shape of the property, or if it just a combination of all things that all land does not sell like all other land. What is the difference between this land and the land across the street that is the same zone and is for sale? What is the special circumstance?

Mr. Nicholson responded, geometric configuration, which is long and narrow which is very restrictive. The widening of Route 146A over the years and the changing of the intersection have changed the configuration of this parcel. The building envelope on this

land is very narrow due to the setbacks along the railroad tracks and the extensive setbacks from the centerline of Route 146A. The railroad is a detriment to any type of land use there and the perception that it is sandwiched so closely between 146A and the railroad. He noted that if you were to build an office building that is allowed in the B-3 zone, there are a lot of other lots in Clifton Park that are much more attractive than this.

Ms. McCarthy asked what the distance is to the residents.

Mr. Nicholson responded approximately 200 ft.. She asked if they were notified about this application. Mr. Nicholson responded yes within 500 ft..

Mr. Kelley noted that there has been no objections received by the Town.

Mr. Nicholson stated that he received one call from a resident on Tanner Road requesting them to look into a potential environmental problem there, which they did.

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Mr. Kortz asked for the location of the wetlands in relation to the building envelope on the property. Mr. Nicholson responded they run along the ditch along the railroad tracks and the stream on the south side of the railroad tracks, which is on the other side of the railroad tracks. Mr. Nicholson noted that ditches along the railroad tracks are subject to federal jurisdiction but not state, the only state wetlands in this vicinity are on the south side of Tanner Road.

There was discussion on the stream and if it was LC zoned. It was determined that it is but it is on the south side of Tanner Road and this property abuts the north side of Tanner Road.

Mr. Nicholson noted that he is confident that the Environmental Specialist will carefully look at what will be stored on the site. He also noted that with today's environmental standards and regulations there is very little that can be stored on site that is open and would migrate to streams or would contaminate water.

Mr. Kortz noted that there are probably many reasons to grant this Use Variance. He asked what the employees would be doing at the site.

Mr. Daley responded they would load the trucks and leave the site for the day. Basically all that will be stored on the site will be hard goods, i.e. mulch, brick pavers, washed stone, etc.. Plants and pesticides will not be inventoried at the site.

Mr. Kortz would like to condition any approval on the nursery/landscape business being operated in such a manner that it does not contaminate the LC zone and wetlands south of the property.

Discussion continued on the specific wording of any Use Variance that may be granted for this site.

Mrs. Gleason noted that there has been no concern shown from the neighbors.

Mr. Clemens stated that he has no objections to the granting of this variance. This site was previously zoned Light Industrial on both sides of the railroad tracks.

Mr. Ritter made a motion to approve this Use Variance with the conditions that only a wholesale landscaping business may be operated at the site and that business shall be operated in such a manner that does not adversely impact or contaminate the wetlands just south of the property. Mr. Dudick seconded. Ayes: Kortz, McCarthy, Dudick, Kelley, Ritter, Lawton, Gleason. Noes: None.

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Mr. Ritter made a motion to approve the minutes of May 18, 2004, Mr. Kelley seconded. Ayes: Gleason, Kelley, Lawton, Ritter, Dudick. Noes: None. Abstained: Kortz, McCarthy.

Mr. Kelley made a motion to approve the minutes of June 1, 2004, Mr. Ritter seconded, approval unanimous.

Mr. Kelley adjourned into executive session at 7:45 PM, the meeting reconvened at 8:05 PM.

Mr. Renzi stated that the Independent Wireless One application has been adjourned by the applicant and noted that the Board is not in a position to take any action whatsoever on this application tonight because the applicants are not present.

Mr. Kelley stated that he, Mr. Ritter, Ms. McCarthy, and Mr. Kortz visited the cell tower site of the Colonie Water District at Tower Heights.

Mr. Miller, attorney, made a submission to the Board that was put into the record on behalf of the residents of Knolltop.

Mr. Kelley stated that no discussion could take place without the applicant being present and that they would be on the agenda for July 20, 2004.

Mrs. Gleason made a motion to adjourn the meeting at 8:08 PM, Ms. McCarthy 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