

**Clifton Park Zoning Board of Appeals Meeting Minutes  
May 2, 2006**

Present: Michael Dudick, Chairman, Joel Koval, Christopher Lemire,  
Jessica McCarthy, Eric Ophardt, Robert Ritter

Absent: Dale Gleason, Gil Kortz

Also Present: Lou Renzi, ZBA Counsel  
Steve Myers, Director, Building & Zoning

Mr. Dudick called the meeting to order at 7:02 PM.

**NEW BUSINESS**

1. An application from Country Club Acres, Inc., requesting a Use Variance from Section 208-37 to conduct retail sales in a B-3 Neighborhood Business Zone. The property is located at 823 Main Street, Clifton Park. Permit #80594.

The secretary read the legal notice as it appeared in the Daily Gazette on April 27, 2006.

Dean Taylor, Remax Park Place, acting as an agent for Country Club Acres, presented this application. He explained that Aird Dorrence currently operates a portion of its wholesale facility across the street at the former site of C.K. Supply. They would like to move across the street to the site that U.S. Foods currently occupies, but in order to do that they will need a sales counter and they have been informed by the Town that they will need a Use Variance. He explained that this is not where their retail center is located. It is currently located at Exit 11 which is a Kohler premiere fixture showroom, one of four in New York State.

Tom Evans, Aird Dorrence, explained that they are a plumbing and heating distributorship. He explained that they are expanding their retail operation at the Round Lake Road site to include kitchens and will need new space and additional warehousing. Right now they are forced to keep items outdoors which they do not want to do during the winter because of damage. They would like a facility with indoor storage and a service counter for the local plumbing retail trade.

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Mr. Taylor reviewed the application. He referred to the packet presented. He explained that when the facility was built in the 1960's it was a Light Industrial zone in which a building material yard and warehouse was an allowed use. He noted that all building

material yards have a counter for sales and when this building was built it was in accordance with the current zoning. It was rezoned in 1993 by the Town and the allowable uses are for buildings of a totally different configuration. This is an industrial metal building with loading docks and is not conducive for the zoned uses. He referred to the floor plan included in the package indicating where the counter will be including handicapped accessibility and noted it will meet all town building codes. He then referred to an aerial photograph showing the general character of the neighborhood. He noted other businesses in the area that have sales counters, i.e. Clifton Park Rental Center, Northeast Stairs, and Invisible Fence. He explained that the area was built out when it was zoned Light Industrial.

He referred to a narrative presented in the application explaining the hardships in renting this site. He noted that this building is not being rented at the going price.

Mr. Dudick asked how long the building had been listed for rent. Mr. Taylor explained that currently it is not listed because U.S. Food Services is a current tenant. They are there because they were a continuation of the Grand Union use and therefore they were allowed that use. They are loosing \$30,000-40,000 a year. They would like to replace them with Aird Dorrence; with their lease they would be closer to breaking even.

Mr. Taylor stated that he has tried to market this site in the \$2.50 per square foot range for years and years. He noted that in zoned areas the rate is between \$4.50-7.00 per square foot and he was able to lease 200,000 square feet in the time it took to get U. S. Foods in this site. He noted that this is a very difficult property to market.

He referred to the allowable uses and demonstrated why the mismatch of zoning hurts this site. First, he explained the physical characteristics of the building are not conducive; second the uses allowed, i.e. banks, bowling alleys, dry cleaners, personal service establishments, shopping centers, etc. require a much higher traffic count than what passes this site.

He referred to the financial hardships indicating losses of \$30,000 in 2004, \$50,000 loss in 2003. There were modest gains in years before that. He also included a copy of the signed lease from Aird Dorrence showing that it can be usable as a building material site. He referred to the zoning map showing an LI zone when the building was built and explained that the zoning changed in 1989 but still included a building material yard up until 1993; up to that point they did well on the building. They are trying to use the building for what it was built for and are therefore asking the Board to consider approving the Use Variance.

Jerry McCormick, 8 Torrey Pines, stated that he lives 7/10 of a mile from this building and noted that the nearest residence is approximately 1/10 of a mile from the building. He noted his concern with retail sales. He referred to the statement that there would be a sales room staying

open in the Malta area and they would be building a counter for retail sales at this site. He questioned the public notice and its reference to retail sales. He gave the definition of retail sales as selling to the consumer and if this is sales to the wholesaler he feels there needs to be a correction made. Mr. Evans explained that sales will be to the trade, their retail operation is in Ballston Lake.

Mr. Taylor explained that Steve Myers, Director of Building and Zoning, referred to the use as retail sales. Mr. Koval explained that as long as someone is buying something over the counter it is considered retail sales.

Discussion continued on retail sales and trade sales and Mr. McCormick asked if the variance could be restricted to only trade sales. He also referred to the handicapped counter and stated it gives the appearance of being more of a retail sales operation. He also stated that he feels there are other buildings available in the Town that are zoned for this type of business.

Mr. McCormick asked if proper notification was made to the neighbors in the area. Mr. Taylor presented the proof of proper notification.

Mr. McCormick asked to have this use restricted as much as possible due to future unknowns. He feels it could be restricted to a plumbing wholesale house and all sales restricted to wholesale and trade people only. He noted that as soon as they filed sales tax with NYS you would know that they were not complying with the restrictions.

Mr. Renzi explained that the sales tax issue is not as black and white as presented. Some discussion continued on this issue.

Mr. Dudick asked how long he resided in Clifton Park. Mr. McCormick responded 19 years in this residence.

Mr. Dudick asked if he is concerned with having retail sales at this particular location. Mr. McCormick responded his concern is with the terminology retail sales. He is concerned with what kind of retail sales, anything sold over the counter, and they pay their sales tax, could go in there.

Mr. Dudick explained that the current zoning would allow for a shopping center to be built on this site and would allow for retail sales. Mr. Koval noted that the lot would have to be ten acres or more so an area variance would be needed for a shopping center. Discussion on the allowed uses and their need for a larger site than this continued.

Mr. McCormick explained that his concern is with the terminology of retail sales, it could cover anything that anyone would like to sell.

Mr. Koval asked if the applicant's intention is to sell to the public. Mr. Taylor explained that the intention is to sell to the trade but if someone wandered in for a part they would like to be able to accommodate them. Their main retail center is in Ballston Lake.

Mr. Taylor explained that he does not consider this a retail sales counter. Mr. Myers considers it a retail mercantile sales counter so that is why they are asking for a variance.

Mr. Lemire asked if the smaller building, closer to the golf course, indicated on the aerial photo is part of this request. Mr. Taylor responded that building is a separate piece owned by someone else.

Mr. Lemire asked for clarification on the location of the sales counter. Mr. Taylor explained it will be closest to the parking lot.

Mr. Ritter made a motion to close the public hearing, Ms. McCarthy seconded, approval unanimous.

Mr. Myers explained that this was a pre-existing non-conforming structure. Being on the cautious side he interpreted that the sales counter required a variance as the zoning law was not very clear.

Mr. Ritter asked if he differentiated between wholesale and retail sales. Mr. Myers responded no, they did not enter into that conversation, sales are sales.

Mr. Ritter asked if they are required to make it handicapped accessible. Mr. Myers responded yes if the general public is allowed in it has to be handicapped accessible.

Mr. Ophardt asked what would happen if a new owner came in. Mr. Myers responded the variance stays with the property.

Mr. Dudick reviewed the criteria to be considered in granting a Use Variance. He asked how long the applicant has owned the property. Mr. Taylor responded since 1965.

Mr. Ritter stated that the only reason they are here is due to the change in the zoning laws since the building was built. It was an allowed use when it was built.

Mr. Renzi explained that the 1993 zoning change is the reason they are here tonight.

Ms. McCarthy asked why the variance is needed; she noted that retail sales would be allowed if this were a shopping center.

Mr. Meyers responded that the zoning law is a little "gray" in this area. There was no clear cut answer and due to the zoning change it is now considered non-conforming but it is pre-existing

so it's allowed to stay if the use is continued but now that they want to add something that the current zoning does not clearly state is allowed so the variance is needed.

Ms. McCarthy asked what would happen if this variance is granted and the ownership is transferred, would a strip mall be allowed.

Mr. Myers stated that they would have to come back and ask for a variance for the 10 acre requirement.

Mr. Ritter asked if they were allowed retail operations when the building was first built. Mr. Renzi responded that in 1965 there was almost no zoning. Mr. Taylor stated that they were a building material yard that had a counter then and the proposed tenant has a counter now across the street at the CK Supply site.

Mr. Taylor stated that when it was a lumber yard they had a counter, when Grand Union came in they remodeled and changed to offices, but when it was a lumber yard they did do counter sales.

Mr. Ritter asked if to the best of his knowledge was there a counter there until the zoning change that prompted this request. Mr. Taylor responded there was until Grand Union occupied the space.

Mr. McCormick stated the site was vacant for a few years and Grand Union was there for a number of years. Mr. Taylor noted that the previous zoning allowed for bakery, cabinet making, clothing manufacturer, etc.

Mr. Dudick noted that as Mr. Meyers stated it is better to err on the side of caution if there is a "gray" zone or issue that might be interpreted two ways. He noted that he visited the site and actually went to the neighboring building; it's a records storage building that has a counter. The owner has held this property for a substantial period of time and the zoning has changed around current ownership therefore, he feels it is appropriate to grant the variance as requested and he does to see a need to stipulate between retail and wholesale sales.

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

2. An application from Wilton Development LLC, requesting a Use Variance from Section 208-37B for a restaurant use within 300 ft. of a residential zone – actual distance = 170 ft. – variance requested = 130 ft. The property is located at 1532 Crescent Road, Clifton Park. Permit #80595.

The secretary read the legal notice as it appeared in the Daily Gazette on April 27, 2006.

The secretary corrected that the application above is for an area variance within 300 ft. of a residential zone, not a Use Variance.

Gavin Vuillaume, Environmental Design Partnership, presented this application and introduced Tom Burke from Wilton Development. He explained that this is an allowed use in this zone. He referred to the location on a map presented in the packet to the Board. He explained that this will be a 2,700 sq. ft. Dunkin Donuts restaurant. He referred to a map showing the site, the CVS Plaza, and the Park and Ride lot at Exit 8. He noted that the building has been partially vacant for many years and was recently purchased by Wilton Development. They presented the site plan to the Planning Board in November and received approvals for three separate uses within that building, one use is the Dunkin Donuts restaurant, the second use is a proposed Planet Fitness Center, and the Trustco Bank that is currently there now. He explained that they applied for a building permit to construct the project and then found out that a variance is needed for the 300 ft. setback for the Dunkin Donuts from a residential zone. He noted that if you measured straight back to the residential district from the back of the property there is well beyond 300 ft., but the residential zone takes a bend on the east side where Dunkin Donuts will be located therefore the back of the actual building to the residential zoning district is 170 ft. so they need the variance. He explained that in reality they are nowhere near any type of neighborhood. He referred to the aerial map showing there is a subdivision behind this project but they are at least 400-500 ft. from any houses. He also explained that there is also a very large expanse of wetland area that will never get developed unless there is a severe change in the wetlands regulations.

Mr. Renzi noted that they are designated as Corps of Engineer wetlands and asked if he has confirmed that. Mr. Vuillaume responded yes. He referred to the actual subdivision and noted that if anything gets developed it would not be towards this area.

Mr. Renzi inquired about the 20 acre site on the map. Mr. Vuillaume stated that there is nothing planned for that area at this time and if anything residential were proposed the access would be from Christina Marie Drive. If anything commercial were proposed it would probably come off the road just to the east of this property.

Mr. Vuillaume noted that the use is consistent with the current uses in the neighborhood. He noted that there are five other restaurants in the area and they are closer to a residential neighborhood than this proposed project. He explained that the Planning Board has seen an extensive package and has had no problems with this proposal and they have received permits from Saratoga County Highway for access.

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

Mr. Dudick asked Mr. Meyers if the line shown on the drawing indicating the 170 ft. setback from the building to the residential area is correctly drawn.

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Mr. Meyers explained that the law reads the setback is from the restaurant use, not from the building that includes the restaurant. It does not include the pavement. Mr. Dudick asked if the whole building is considered for the restaurant use. Mr. Meyers stated it is just the portion of the building that includes the restaurant use, it does not relate to parking, etc.

Mr. Ritter made a motion to approve this variance as requested. Mr. Koval seconded. Ayes: Ritter, Ophardt, McCarthy, Lemire, Koval, Dudick. Noes: None.

Mr. Ritter made a motion to approve the minutes of April 18, 2006, Mr. Lemire seconded. Ayes: Dudick, Ritter, Lemire, McCarthy, Ophardt. Noes: None. Abstained: Koval.

Mr. Ritter made a motion to adjourn the meeting at 7:39 PM, Ms. McCarthy seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb  
Secretary

Cc: Town Clerk, Zoning Board Members, Louis Renzi, Counsel, Steve Meyers,  
Department of  
Building and Development, Planning Board, ECC, Assessor