

Clifton Park Zoning Board of Appeals Meeting Minutes June 6, 2006

Present: Michael Dudick, Chairman, Joel Koval, Christopher Lemire,
Dale Gleason, Gil Kortz, Eric Ophardt, Robert Ritter

Absent: Jessica McCarthy

Also Present: Paul Pelagalli, for ZBA Counsel
Steve Myers, Director, Building & Zoning

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

NEW BUSINESS

1. An application from David Leon-Planet Fitness, requesting an area variance from Chapter 171 of the Town Code (Sign Law) from the maximum allowable wall sign of 60 sq. ft. – actual sign allowed per building area = 58.2 sq. ft. – proposed sign = 90.7 sq. ft. – variance requested = 32.5 sq. ft.. The property is located at 1532 Crescent Road, Clifton Park. Permit #80596.

The secretary read the legal notice as it appeared in the Daily Gazette on June 1, 2006.

Dave Leon, owner, presented this application. He explained the location is the old CVS building and the mall includes the Trustco Bank and a Dunkin Donuts is proposed. He noted that it is an “L” shaped building and in order to utilize the space he needs to create a suitable entrance and vestibule that is safer for his customers.

He explained that there will be no adverse effect on the character of the neighborhood. It will create a more appealing building at the gateway to the community. He feels this is the best use and fit for the entire space.

He explained that an overhang is needed to be created and the awning is the best way to do it to protect his customers from the weather elements. He noted that the awning will still be the

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same size even if the variance is not granted. He addressed the issue of being a substantial variance and explained that the sign fits well on the awning.

He stated there will be no adverse effect on the environment and addressed the self-created issue and noted that he does want to rent this space and there really is no other way to create an entrance to this building, this will give the most exposure and create an appealing look for the building.

There was no public comment.

Mr. Myers stated that this is a dramatic improvement to the property and he does not have a problem with the size of the sign due to the setback from the road.

Mr. Kortz asked why the applicant feels he needs more than a 60 sq. ft. sign. Mr. Leon responded that because he is in the corner of the "L" shaped building he needed to create a dramatic entrance and explained that he went to a great expense to add the vestibule addition. He also noted that if the logo were smaller it would be hard to read from the road. He also noted that the actual size of the signs for the previous tenants at this site were double the size he is asking for.

Mr. Kortz asked why it is important to have another sign if they already have a freestanding sign for this location. Mr. Leon responded that he needs a building sign because of the building layout.

Mr. Kortz stated that he does not feel it is a valid argument to say that the building sign needs to be seen from the road since they already have a road sign.

Mr. Leon stated that he cannot be seen in the corner, there are a lot of trees around the road sign, and the property is heavily treed, therefore he feels he needs the identification.

Mr. Koval asked if there is any way to reduce the size of the sign being requested. Mr. Leon responded because of the angle of the awning it would be hard to see it if were any smaller. He explained he tried to make it as appealing as he could.

Mr. Dudick noted if the addition is not put on as shown on the plans submitted with the application, and a different entranceway is designed and this sign is approved, it would be an oversized sign, therefore he asked if the Board approves this variance request would he be agreeable to the stipulation that this approval is for this design only. Mr. Leon agreed, he stated that this is the only design he wants.

Mr. Lemire asked for clarification on the location of the vestibule and noted that the sign does not directly face the road.

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

Mr. Dudick noted that this is an improvement on what has been an underutilized building in the town and stated that he does not have any problem with this request as shown in the renderings submitted with the application as long as the applicant agrees to the stipulation that the sign will be approved only for the design of the vestibule as submitted.

Mr. Dudick made a motion to approve this application with the stipulation that the approval for the sign is only for the plans as submitted with this application. Mr. Ritter seconded. Ayes:

Dudick, Gleason, Koval, Kortz, Lemire, Ophardt, Ritter. Noes: None.

2. An application from Tom & Christine King, requesting an area variance from Section 208-86B from the required 50 ft. side yard setback on all sides for a keyhole lot – actual setback on the right side = 48.5 ft. – variance requested = 1.5 ft. The property is located at 845 Grooms Road, Clifton Park. Permit #80599.

The secretary read the legal notice as it appeared in the Daily Gazette on June 1, 2006.

Tom King, owner, presented this application. He explained that when the house was set out they measured 55 ft. but when the foundation was put in they discovered the error, therefore a 1.5 ft. setback variance is needed.

Mr. Dudick asked if the foundation is in. Mr. King responded yes, it is almost framed.

Mr. Myers explained this was a measurement error in the field and has no effect on the neighborhood. He stated he told the applicant he could continue working on the house.

Mr. Myers asked the length of the driveway. Mr. King responded 1,500 ft.

Mr. Koval asked if any of the adjoining property owners had an issue with this request. Mr. King responded no.

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

Mr. Ritter made a motion to approve this application as submitted. Mrs. Gleason seconded. Ayes: Ritter, Ophardt, Lemire, Kortz, Koval, Gleason, Dudick. Noes: None.

2. An application from New Horizon Construction (James Pasquarell) representing William Cerqua, requesting an area variance from Section 208-11 from the required 10 ft. side yard setback in an R-1 zone – actual setback = 3.5 ft. – variance requested = 6.5 ft. The property is located at 33 Acorn Avenue, Clifton Park. Permit #80600.

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The secretary read the legal notice as it appeared in the Daily Gazette on June 1, 2006.

Jim Pasquarell, presented this application. He explained that the owner would like to build a 14 ½' x 24' garage that would be near the side yard to allow for space for people to enter the backyard. He explained that it is the only place it would fit on the lot. He also presented a letter from the next door neighbor stating that she has no problem with this request.

Mr. Koval asked if this meets the 80 ft. front setback for a detached building. Mr. Myers responded unless this is a special district and he's not sure, it's one of two things, he didn't note it or it's a special development district that allows a lesser setback.

Mr. Dudick asked the distance between the proposed garage and the house. Mr. Pasquarell responded 10 ft.

Mr. Ritter asked the rationale for that. Mr. Pasquarell responded it is the only access they would have to the backyard unless they were to go all around the house.

Mr. Koval asked for verification of the front setback requirement.

Mr. Pelagalli stated that Section 208-12 refers to the side or rear property line, the 80 ft. setback refers to the front property line. Mr. Koval noted that this is only 47 ft. to the front property line and unless this is in a special development district it would also need a front setback variance.

Mr. Pasquarell noted that if this were put 80 ft. back it would be on the back end of his property line and 30 ft. behind the house.

Mr. Koval explained that he is only asking because a second variance may be needed. Mr. Myers confirmed that a front setback variance is needed for a detached garage.

Mr. Dudick explained that this application will have to be tabled and renoticed for the second variance. He asked why the garage could not be put further back and behind the house, which would allow for access to the backyard. Mr. Pasquarell responded it would take away from their backyard and he also noted that the property behind them is swamp.

Mr. Ophardt asked if any consideration has been given to aesthetics for the neighbor to the east.

Mr. Pasquarell responded that there is still 20-30 ft. to the house.

Mr. Lemire asked if this is a raised ranch and does it have a garage underneath. Mr. Pasquarell responded it does not have a garage; they turned it into living space.

Mr. Dudick explained that this application will be tabled and he asked if the owner of the property could be present at the next meeting to answer the Board's questions. Mr. Pasquarell responded yes.

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Mr. Dudick stated that this application will have to be amended and renoticed.

There was Board discussion on an attached garage versus a detached garage and the

setbacks required for each.

3. An application from Michael J. Roth, requesting an area variance from Section 208-11 from the required 20,000 sq. ft. building lot size – actual lot size = 18,560 sq. ft. – variance requested = 1,440 sq. ft.; and an area variance from Section 208-86 from the required 50 ft. setback on all sides for a keyhole lot – actual rear yard setback = 20 ft. – variance requested = 30 ft. The property is located at 16 Cherry Lane, Clifton Park. Permit #80601.

The secretary read the legal notice as it appeared in the Daily Gazette on June 1, 2006.

Michael Roth presented this application. He stated that he would like to subdivide the acre he lives on so that his daughter and her husband can build on it. He referred to pictures submitted with the application and explained the views represented. He noted that the majority of the lots in the neighborhood are approximately 17,000-22,000 sq. ft. He noted that he backs up on Hollandale Lane. He informed the Board that he approached Mr. Hollander to buy additional land but for legal reasons it cannot be sold; it is a 30 ft. easement that contains a sewer line. He presented a letter from Mr. Hollander stating that he has no objections to the rear yard setback variance. He also explained the need for the lot size variance is to maintain an 18 ft. side yard setback from his current residence.

Mr. Roth stated he spoke to all his neighbors and has signatures from them stating that they have no objections to this request. He submitted a copy of the signatures for the record.

Mr. Lemire asked about the 40 ft. curb cut. Mr. Roth responded it is required for the keyhole lot.

Mr. Ophardt asked about the easement between his property and 15 Cherry Lane. Mr. Roth responded it is a sewer easement. Mr. Ophardt asked if they would be putting the driveway over the sewer easement. Mr. Roth responded it would be to the side of it.

Mr. Dudick stated that the neighbor at 15 Cherry Lane, Mr. VanVorst, contacted Mr. Myers today and stated he would like to speak on this issue but is out of town this evening. Mr. Myers stated that he does not know when Mr. VanVorst was approached regarding this matter but he contacted him today. He stated he told him he has privacy issues he would like addressed and that he would like to speak at the meeting but could not be here tonight.

Mr. Kortz asked if this has been before Planning yet. Mr. Roth responded no.

Mr. Koval referred to Mr. Myers' notes stating that he is not sure the easement is exactly as

shown by the applicant. Mr. Myers explained he reviewed the tax maps and they show the 30 ft.

runs perpendicular to what is shown, but he is not sure if it matters, because if that is the property line, he still needs the same amount of variance.

Mr. Lemire asked what is to the north of the easement. Mr. Roth stated it is vacant land owned by Mr. Hollander.

Mr. Dudick referred to special circumstances that surround a keyhole lot and stated that neighbors should have the opportunity to voice their concerns and obtain clarification of information, and since Mr. VanVorst contacted the Town and would like to be part of the application process, he is inclined to table this application so that Mr. VanVorst could be here at the meeting or draft some response in favor of or against this application. Mr. Roth stated that he was told by Mr. VanVorst that he does not have any objection; he is concerned about visibility and losing his privacy. Mr. Roth stated that from a privacy aspect he will never see the house and he also explained that he told Mr. VanVorst that he would put more arborvitae along the line to ensure more privacy. He also noted that he is concerned that this may detract from the value of his house.

Mr. Dudick stated it is always better to get the information from the person himself.

Mr. Ritter stated that if someone has concerns they usually put them in writing if they cannot be present.

Mr. Dudick asked when Mr. VanVorst was first contacted about this project. Mr. Roth responded approximately four months ago and at that point he listened and did not voice too much of an opinion one way or another. Then about a month and a half ago he told him he was submitting the papers and then he informed him yesterday that he was going to the Planning Board for the subdivision.

Mr. Lemire asked when he sent around the list for signatures of his neighbors. Mr. Roth stated he walked around the neighborhood and had it signed, but Mr. VanVorst would not sign it. He told him he would not sign but he would not stand against him if he obtained the approval.

Mr. Koval noted that there was proper notification given and Mr. VanVorst knew about tonight's meeting and he chose not to be here, and not to put anything in writing, therefore he is ready to make a decision on this application tonight,

Mr. Kortz agreed, most of the neighbors have signed off and Mr. VanVorst could have sent a letter explaining his concerns. He also noted that the issue seems to be one of privacy and that is definitely a Planning Board issue and he will have an opportunity to speak at that meeting.

Mr. Kortz also noted there are no substantial impacts.

Mr. Lemire asked about the two numbers on the plan with square footage. He asked if the larger number of 19,000 sq. ft. is with the 10 ft. setback from Mr. Roth's property. Mr. Roth responded
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yes, it is an alternative plan.

Mr. Dudick asked when all the signatures were obtained. Mr. Roth responded he got them yesterday. Mr. Dudick noted that there is a difference if the notice was done within the last day or so. Mr. Lemire noted that there is 50 ft. from the property line and the variance is not affecting that property at all except for the size of the lot. Mr. Dudick agreed except that the property owner did not expect there would be an additional house placed next to him, it is an unexpected development that normally would not be allowed without a variance.

Mr. Kortz asked if the applicant is willing to change the subdivision line to meet the 20,000 sq. ft. Mr. Roth responded he could move the line to meet the extra 1,500 sq. ft. and would not need that variance, but would still need the setback variance.

Mr. Myers stated that this is a unique situation and the applicant can make the lot size work within the law, but a 30 ft. setback variance would still be needed.

Mr. Kortz noted that it would be prudent to put in any motion for approval that the variance approval would be contingent upon Planning Board approval of the design.

Mr. Pelagalli explained that once the variance is granted it is really not conditioned on the Planning Board. He suggested this Board may want to consult the Planning Board regarding their concerns on the design before a decision is made.

Mr. Kortz stated it has been done before being contingent upon Planning Board approval.

Mr. Dudick stated that if Planning does not give its approval then even though the variance runs with the property it becomes a mute point.

Mr. Pelagalli explained that once a variance is granted, unless there is some problem with ingress or egress, he does not see how the Planning Board could deny it. He explained that the Board may want Planning Board input prior to approval.

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

Mr. Kortz made a motion to approve this application as submitted. Mr. Ritter seconded. Ayes: Ritter, Ophardt, Kortz, Koval, Gleason, Dudick. Noes: Lemire.

4. An application from M. J. Rekucki Construction Inc., requesting a setback variance from Section 208.50.3B from the required 30 ft. front yard setback for parking in a B4A

zone – proposed setback = 16.8 ft. – variance requested = 13.2 ft.; and a setback variance from Section 208-50.3C from the required 20 ft. side yard setback for parking – proposed setback on west side = 13. ft. – variance request = 7 ft.; and

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proposed setback on east side = 8 ft. - variance requested = 12 ft. The property is located at 11 Old Plank Road, Clifton Park. Permit #80602.

The secretary read the legal notice as it appeared in the Daily Gazette on June 1, 2006.

Tom Andress, ABD Engineers & Surveyors, presented this application. He indicated the location of the property and explained that it was subdivided out a couple of years ago from an adjoining house that still remains. It is surrounded by a hotel, Church, and proposed diner to be built. The access will be from Old Plank Road. He explained they will build a 10,000 sq. ft. office building and the parking will be in the front of the lot and the building in the rear. They will work with the Church and eventually open up access with the Church so they can have use of the parking lot. He also noted that the adjoining house has an access easement across the driveway on this site.

Mr. Andress also presented an alternative plan that can conform to the ordinance and would have additional parking spaces but he feels it has more of an effect on the area. He explained they can put the building in the front of the lot and the parking in the rear and meet all setbacks but the building would be in front of the adjoining house and they did not feel it would be appropriate for this site therefore they are asking for the variances.

He feels this does not create an undesirable change to the character of the neighborhood; the proposed plan has a more desirable look creating a view in the front. He also noted that there is no other feasible way to develop the lot without a variance except to reverse the building and parking areas which is less desirable. He also explained they do not feel this is a substantial variance request because they can buffer the view with proposed berms and trees. Also the only people coming to the site will be going to this facility; it is not on a main road. He also noted that it is an odd shaped lot.

There was no public comment.

Mr. Ritter asked if there were any leases for this building yet. Mr. Andress stated there are no contracts at this time but there have been discussions with a number of possible office tenants.

The variances have to be obtained and site plan approval is needed from the Planning Board.

Mr. Ritter inquired about signage for the site. Mr. Andress stated that there will be signage but it should be within the Town guidelines.

Mr. Dudick asked about green space. Mr. Andress stated it is 48.1%.

Mr. Ritter asked if the adjoining home owner has been informed of the proposed project. Mr. Andress stated he had a discussion with the adjoining owners and explained the project.

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Mr. Dudick referred to the topography of the site. Mr. Andress stated they will be removing quite a bit of sand and will level out the area near the Church and will work with them so they can have some additional parking.

Mr. Lemire asked about the size of the building. Mr. Andress explained this will be a single story building with a more residential look.

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

Mr. Myers stated this is a difficult site and he feels this is a good use for the site. He does not feel this will have a negative effect on the neighborhood.

Mr. Dudick noted that the parking will be further back than the parking lot of the Church next door and he does not see any problems with the application as submitted. He also feels this will be a good use for the property.

Mr. Dudick made a motion to approve this application as submitted.

Mr. Ophardt asked about the Vandenburg shared driveway. Mr. Andress responded they have an asphalt drive and they will continue that use. They do have the rights for access across this property. He does not believe there will be any conflict with the size of the building or amount of traffic.

Mr. Ophardt asked if anyone consulted the Vandenburg's about giving them separate access onto Old Plank Road. Mr. Andress stated they could but when he spoke to Mr. Vandenberg he asked if he would still have the same access and Mr. Andress responded yes.

Mr. Kortz referred to the criteria of granting the minimum variance necessary and stated if the building were smaller some of the variances would not be needed. Mr. Andress stated that financially a 10,000 sq. ft. building is needed to make this site work. They can build that size building on the lot in the opposite direction without any variances. He feels if it could not be built without any variances then that point would be more valid.

Mr. Koval noted that this proposal is more aesthetically pleasing than the way they could do it without any variances.

Mr. Dudick agreed that this is a more appealing plan.

Mr. Kortz explained that he wanted to enter into the record the answer to the question of the minimum variance necessary. He agrees if this plan is aesthetically more pleasing, and there is no substantial impact to the neighborhood, and no safety issues he has no problems with this request.

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Mr. Ritter seconded the motion. Ayes: Dudick, Gleason, Koval, Kortz, Lemire, Ophardt, Ritter.

Noes: None.

6. An application from William Jewett, requesting an area variance from Section 217-98 from the required 30 ft. front yard setback – proposed setback = 15.2 ft. – variance requested = 14.8 ft. The property is located at 27 Algonquin Road, Clifton Park. Permit #80603.

The secretary read the legal notice as it appeared in the Daily Gazette on June 1, 2006.

William Jewett presented this application. He stated he has owned the property since 1996 and is the original construction. He explained that the home was constructed without a family room and he would like to take the existing two car garage and turn it into a family room and add a new two car garage and laundry room. The existing laundry room will be turned into a half bath. This would still allow him to have two cars in the garage and two cars in the driveway without having any cars out in the roadway impeding any traffic on Algonquin Road. The wall line to the east will remain the same. There is an arborvitae buffer and he has spoken to his two adjoining neighbors and they do not have any objections. The addition will match the current home and will be aesthetically pleasing. There will be no impeding of any vision on Southbury and Algonquin.

There was no public comment.

Mr. Myers stated there is no significant change to the neighborhood and he has no problem with this request.

Mr. Ophardt asked if the addition is proposed or existing. Mr. Jewett responded it is proposed. There will still be approximately 30 ft. to the curb line.

Mr. Ophardt asked if there were any similar homes in the neighborhood. Mr. Jewett stated there are several homes with additions off the front. He also noted that no existing trees will be removed.

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

Mrs. Gleason made a motion to approve this application as submitted. Mr. Ritter

seconded.

Ayes: Dudick, Gleason, Koval, Kortz, Lemire, Ophardt, Ritter. Noes: None.

7. An application from David P. France, requesting an area variance from Section 217-98 from the required 30 ft. front yard setback. If placed 10 ft. from main structure variance required would be approximately 12 ft. from Tekawitha Court. The property is located at 25 Old Coach Road, Clifton Park. Permit #80604.

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The secretary read the legal notice as it appeared in the Daily Gazette on June 1, 2006.

David France presented this application. He explained that he measured from the curb, not the property line. He stated he would like to build a shed for his tools. He referred to pictures of the site and noted that this is a town house on a corner lot. He presented a letter from his neighbor stating that he has no problem with this request. He also noted that there are sheds on other lots in the area. He explained that he needs a 14' x 16' ft. shed to accommodate his woodworking tools.

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

Mr. Myers noted that the applicant has an existing shed on his lot and if that were taken down a new shed could be built within the setback lines. Mr. France explained that his wife uses that shed for her garden tools. He did consider building on to the other shed but was not sure how it would look.

Mr. Lemire inquired about the setbacks. Mr. Myers explained that this is a corner lot and therefore has two 30 ft. front yard setbacks.

Mr. France explained that the shed would be parallel to the house.

Mr. Ritter asked if the applicant would be allowed to build an extension on to the existing shed to the degree of the proposed shed. Mr. Myers explained that the existing shed did not require a permit and if he wanted to add on he would have to obtain one. He also noted he does not know how feasible it would be to add on to the existing shed.

Mr. France stated the existing shed is only 6 ½ ft. tall and he needs a higher shed so he can stand up in it.

Mr. Dudick stated that he feels since these are town houses and there is a high density in that area multiple sheds seem to be inappropriate.

Mr. Ritter stated his concern is any precedent that may be set by granting a variance for two sheds.

Mr. Koval explained that the applicant could build additional sheds on his lot without a

variance or a permit as long as they did not exceed 100 sq. ft.

Mr. Dudick asked why the shed could not be placed closer to the house. Mr. France explained due to the landscaping and trees. He stated that it would be about 10 ft. from the house.

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Mr. Koval made a motion to approve this application as submitted. Mrs. Gleason seconded. Ayes: Ophardt, Lemire, Kortz, Koval, Gleason. Noes: Dudick, Ritter.

Mr. Ritter made a motion to approve the minutes of May 2, 2006, Mr. Ophardt seconded. Ayes: Dudick, Ritter, Lemire, Koval, Ophardt. Noes: None. Abstained: Kortz, Gleason.

Mr. Ritter made a motion to adjourn the meeting at 8:45 PM, Mr. Dudick seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb
Secretary

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