

**Clifton Park Zoning Board of Appeals Meeting Minutes
December 5, 2006**

Present: Michael Dudick, Chairman, Dale Gleason (arrived at 7:09 PM),
Gil Kortz, Joel Koval, Christopher Lemire, Eric Ophardt, Robert Ritter

Absent: Jessica McCarthy,

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

Mr. Dudick called the meeting to order at 7:08 PM.

NEW BUSINESS

1. An application from DCG Development Company representing 99 Restaurant & Pub, requesting an area variance from the required 20 ft. side yard setback for parking – proposed setback = 0 – variance requested = 20 ft.; an area variance from the required 30 ft. rear yard setback for parking – proposed setback = 0 – variance requested = 30 ft.; an area variance from Section 208-48 from the required 15 ft. vegetative buffer on both sides from the front building line to the rear property line; and a variance from Section 208-47 – only one entrance/exit allowed per establishment. The property is located at 306 Clifton Park Center Road, Clifton Park. Permit #80628.

The secretary read the legal notice as it appeared in the Daily Gazette on November 30, 2006.

Gordon Nicholson, Environmental Design Partnership, presented this application. He gave a brief update of the property and explained that this site was originally approved through the previous mall owner and constructed as an out parcel lease and when Don Green bought the mall property it included this parcel. He explained that when this was originally approved there was an oral agreement with the Planning Board that additional parking would be available in the

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large field (to the south, across Clifton Park Center Road) for employees and overflow customers because it did not meet the parking ratio required. He continued, when Don Green purchased the mall and started to look at the development of it he presented master plans to the Planning Board for the redevelopment of all parcels and for additional parking as shown on the site plan map.

Mr. Nicholson explained that the Planning Board did not have any problems with what

was presented and he talked with Steve Bulger today and he has no problems with moving this application forward at this time. He also noted that they have been before the NYS DOT and he presented for the record a copy of a lease for use and occupancy of the attached area that is the NYS DOT property. He explained that the tree lined area is currently maintained as lawn area for the 99 Restaurant and the actual property line is not defined. He explained that they would like to add 41 additional parking spaces primarily for restaurant employees and customers. He discussed DCG Developments growing concern about the overflow parking to the south with people walking back and forth across Clifton Park Center Road from a safety perspective.

Mr. Nicholson noted that the existing tree line will not be disturbed, some current lawn will be maintained and the reason for the zero setbacks is that the parking will be to the property line and over the property line but DOT has granted a permit for construction, occupancy and maintenance of that area.

Mr. Kortz asked for the number of current parking spaces on the site. Mr. Nicholson responded 61 and between employees and customers they need an average of 80-90 places. He also stated that he does not know how the ratio works out with the number of seats for customers but this is the experience so far.

Mr. Myers stated that his memo refers to the number of seats required by the code for customers; he does not believe it addresses the workers at all. The code requires one space for every three seats; he assumes the code takes into account worker spaces as well.

Mr. Nicholson explained that when the restaurant went in they felt they needed additional parking and they had a handshake agreement with the mall for a series of spaces across the road.

Mr. Dudick noted that the road appears to go through the mall property and asked if there were any possibility of shifting the road to create more space.

Mr. Myers explained that it would be costly to move the road and that would be a larger issue.

Mr. Nicholson noted that it is a Town road that was reconstructed when the interchange was installed and he feels there would be a significant problem in terms of leasing and financing when property lines are affected.

Mr. Myers also noted that it could possibility create site distance issues.

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Mr. Nicholson added that this does not affect any of the adjacent neighbors, Pier I is the only neighbor and DOT is the adjacent neighbor and by issuance of the permit they obviously do not feel there is any issue and also there is an extensive amount of existing

green space and trees along Route 146 that will not be disturbed. He stated that there really will be little difference in visual impact when looking at the site.

Mr. Lemire asked if the present 63 spaces include those across the street. Mr. Myers responded no. Mr. Lemire asked why they need more parking; they are not increasing the building size.

Mr. Myers explained that the additional parking is not required by the code, they feel they need additional parking for employees and overflow.

Mr. Koval noted that originally there was an agreement for parking across Clifton Park Center Road and that parking will be lost due to changes being made at the mall and they would like to replace it and add a few more spaces.

Mr. Nicholson also noted that they would like to solve what DCG looks at as a growing safety problem. The mall has not had full occupancy for many years and when they start to redevelop this area they believe there will be considerably more traffic and their concern is for the safety of the employees and customers that use this area in peak evening hours.

Mr. Koval asked if the zoning code requirements take into account customers at the bar or just in the restaurant area. Mr. Myers responded that the code requires one parking space for every three seats. Mr. Koval noted that the bar area is usually crowded and that may be why they feel they need the additional parking spaces.

Mr. Myers explained that he counted up the table seats on the original plan and that is how he got the 183 from, he does not believe that included seats at the bar.

Mr. Dudick noted that they currently have 63 parking spaces and the management of the restaurant feels they need between 80-90 parking spaces. Mr. Nicholson explained that usually a restaurant of this size looks at 100-110 regardless of what the code says and that is what they are trying to get into the vicinity of, in the worst case scenario they could make due with 80-90. This presentation is what they thought worked practically engineering wise, DOT thought it appropriate for the site and the area the area that is being leased from them. He stated that maybe they could land bank some of it and see how it works out, but this is what DCG and the restaurant people felt would be appropriate for their use.

Mr. Renzi asked what the current total is. Mr. Nicholson responded that they have 64 now and they are asking for 41 for a total of 105 parking spaces.

There was Board discussion on the minimum variance needed and the difference in numbers of the 80-90 parking spaces that the applicant feels are needed and why the request for 105 spaces.

It was felt by some Board members that the 105 spaces seem excessive.

Mr. Nicholson noted that they feel with the redevelopment of the mall, when it gets busier the restaurant will also get busier. They are asking for the 105 spaces because they believe it works and they believe they're going to be needed.

Mr. Dudick inquired about preparations for drainage. Mr. Nicholson explained that they are not altering the drainage. They are putting this in at grade and there is a high spot that will drain into the existing storm system on site.

Mr. Ophardt asked if they are increasing the impervious area. Mr. Nicholson responded yes, but not significantly enough to the point where they believe there would be problems but if the Board is willing to grant the variance, they will be before the Planning Board for site plan approval and the drainage issue will be subject to their review in the approval process. He explained that what they tried to do is construct this so there is very little disturbance to the flat area and minimize the infrastructure that is going in there. The drainage will go into the existing storm system.

Mr. Ophardt asked if they are increasing the size of the culverts for the runoff. Mr. Nicholson responded that if the Planning Board and Clough Harbour think it is necessary they could put in a couple of dry wells to handle it and recharge it back into the underlying system.

Mr. Lemire asked if the parking was going to extend all around the building (on the Route 146 side) and would there be any additional buffering. Mr. Nicholson stated that there is none proposed and referred to the existing trees on the site and noted that some would be removed and a suggestion to the Planning Board could be that they replace the existing vegetation that will be removed and/or supplement or accent it. He noted that he feels confident that Clough Harbour and the Planning Board will look at that issue in detail.

Mr. Lemire noted his concern with the proposed parking area being so close to the second driveway on Clifton Country Road. Mr. Nicholson responded that they could look at that issue and a recommendation could be made to eliminate those five spaces.

Mr. Kortz asked for clarification on the entrances/exits for this site and asked why they want an additional entrance/exit. Mr. Nicholson explained that they currently exist.

Mr. Myers explained that he is requiring the request for a second entrance/exit because he went back and looked at the original variances for this property and they never applied for a variance for a second entrance/exit.

Mr. Nicholson also explained that they are asking to reduce the green space requirement from 35% to 29%.

Mr. Lemire asked why they need the second driveway. Mr. Nicholson explained that he was not involved in the original design and approval for this site so he cannot explain why they have the second entrance only that it is opposite the roadway into JC Penney's and is commonly done to create a four way intersection and may be needed for the trucks using the service area and it also could have been a suggestion by emergency services during the original design and approval procedure.

Mr. Dudick asked if they are looking to increase the number of handicapped spaces, there currently are three. Mr. Nicholson stated they will have four spaces. Mr. Dudick explained that if they have over 100 parking spaces they are required to have five handicapped spaces, if they are under 100 they are required to have four spaces, therefore they would not be within code if they had over 100 parking spaces.

Mr. Nicholson explained that they will not increase the number of spaces; they will stripe one regular space to create an additional handicapped space.

Mr. Ophardt suggested eliminating the five spaces on the very eastern portion next to the second entrance. Mr. Nicholson agreed and noted that may even happen when they get to the Planning Board review.

Mr. Dudick explained that by asking for a zero setback they are looking for a substantial amount of parking to be added into the lot size. He noted that they are maximizing space and if they allowed for more setbacks and less parking they could possibly meet the green space requirement and need less of a variance. Mr. Nicholson explained that part of the reason for the layout setup is so that when you enter there is not a dead end parking lot and for them to get any parking on the site the zero setback is required otherwise 16 spaces would have to be eliminated.

Mr. Koval noted that the main reason for the setback requirement is to give space to the neighbors but they are leasing space from the neighbor (NYS) and even a 15 ft. setback variance would essentially eliminate all the parking spaces.

Mr. Lemire asked why this wasn't addressed originally when they had the parking across the street. Mr. Nicholson stated he does not know the answer to that other than the agreement to provide the additional parking across the street may have been part of the site plan approval.

Mr. Dudick recalled that he believes that it was felt that the restaurant would not be so busy as to overwhelm the parking with the overflow across the street the parking would be satisfactory for the restaurant.

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

Mrs. Gleason seconded approval unanimous.

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Mr. Myers agreed that there is a safety issue with customers and employees crossing the road that will only get worse without a doubt. He did not address the green space issue because if some parking spots are eliminated they may get back to the green space requirement.

Mr. Renzi noted that green space is a Planning Board issue. Mr. Myers explained that there is a requirement of 35% green space in the zoning code and they are only proposing 29%. He explained that his biggest issue is with the parking spaces by the second entrance from a safety standpoint. He also feels the additional drainage issue should be addressed.

Mr. Nicholson explained that they can deal with the runoff with additional dry wells and he would be willing to eliminate the five spaces near the second entrance to satisfy the safety issue.

Mr. Koval agreed that the runoff is a Planning Board issue and by eliminating the five spaces

Mr. Myers and other members of this Board would be satisfied as far as the safety issue goes and by doing so the green space requirement may also be met.

Mr. Nicholson expressed his concern that even by eliminating the parking space they still may not meet the green space requirement, they will be closer but he does not feel it would be adequate.

Mr. Dudick noted that if those spaces were eliminated they would be under 100 parking spaces total and would require one less handicapped space and would be closer to the green space requirement and the Board would be more comfortable with the request.

Mr. Nicholson agreed to eliminate the parking spaces and they will deal with the drainage issue when they get to the Planning Board.

Mrs. Gleason agreed that crossing the street is dangerous and increased business should be encouraged and some relief should be given to the applicant.

Mr. Nicholson agreed to add to the plantings but explained that there will still be a deficiency in green space. He noted that the entrance by Pier I straddles the property line and there never was any opportunity for a buffer in that area. He also explained that the position of the Building Department is to bring into conformance any deficiencies that exist through the area variance process and if that was overlooked it should be taken care of at this time.

Mr. Ritter asked about the visual impact from Route 146. Mr. Nicholson responded that you will see some additional blacktop and existing vegetation. He noted that the blacktop area that will be on the state property does not eliminate any vegetation other than lawn area.

Mr. Myers noted that there will not be any trees eliminated.

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Mr. Renzi explained that they can amend the application to include the green space variance since it is a very small variance.

Mr. Dudick asked if there is a way to include the removal of the eight parking spots in the southeast corner. Mr. Myers stated that he does not have a problem with the driveway because it is across from the Penney's road but he does have a problem with the parking spots in relation to circulation. Mr. Nicholson stated he cannot agree to closing that entrance because it is existing and he has no way of knowing how it relates to the lease with 99 Restaurant. He believes the entrance arrangement was something that was discussed at length with emergency services, they always have input on emergency access in and out of a site.

Mr. Ophardt stated that there are site distance issues in having cars parked there and noted that they are also asking for a variance for a second driveway that he feels should not be granted.

Mr. Kortz explained that the driveway already exists and makes no difference.

Mr. Koval asked why the Board would want to close an existing driveway. Mr. Kortz stated that he feels there should be a good reason for not allowing it. Mr. Dudick stated that it does not significantly change the traffic flow. Mr. Nicholson stated that he believes it was put in for a service entrance so that the service trucks do not interfere with Pier I because that is a major customer access area.

Mr. Dudick made a motion to approve this application as submitted with the amendment of the elimination of the eight parking spaces at the southeast corner and that area will be added to the green space and the green space variance will not exceed 6%.

Mr. Ritter asked that they commit to addressing storm water management problems. Mr. Renzi suggested that a letter could be sent to the Planning Board to take a careful look at the storm water management issue.

Mr. Dudick explained that storm water management is not an issue for this Board.

Mr. Kortz noted that he is very confident that the Planning Board will evaluate that issue.

Mr. Myers explained that he is designated the storm water management officer for the Town and he is confident that it will be addressed.

Mrs. Gleason seconded Mr. Dudick's motion. Ayes: Dudick, Kortz, Koval, Ophardt, Ritter, Gleason. Noes: Lemire.

Mr. Ophardt noted that there was a math error in the pending minutes of November 14, 2006 as it referred to the sign for Marshalls on page 7 it was typed as 153 sq. ft. sign and should be 173 sq. ft. sign. The secretary will make the necessary correction.

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Mr. Ritter made a motion to approve the minutes of November 14, 2006 as corrected. Mr. Koval seconded. Ayes: Kortz, Dudick, Koval, Ritter, Gleason, Lemire. Noes: None. Abstained: Ophardt.

Mr. Ritter made a motion to adjourn the meeting at 7:53 PM, Mr. Ophardt 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