

## ZONING BOARD OF APPEALS

January 16, 2007

Present: Michael Dudick, Chairman, Dale Gleason, Gil Kortz,  
Joel Koval, Jessica McCarthy, Eric Ophardt,  
Robert Ritter (arrived at 7:15 PM),

Also Present: Joel Peller, ZBA Counsel  
Steve Myers, Director, Building & Zoning

Mr. Dudick called the meeting to order at 7:07 PM. He welcomed Mr. Peller to the Board.

### **NEW BUSINESS**

- 1. An application from Rafael Flores, requesting a Use Variance from Section 208-97B to allow for golf course & banquet house use in an R-3 zone. The property is located at 847 Riverview Road, Rexford. Permit #80629.**

The secretary read the legal notice as it appeared in the Daily Gazette on January 11, 2007.

Frank Herba, contractor for the applicant, presented this application. He explained that they applied for a permit for an expansion to the building and under the current zoning this is a non-conforming use. He referred to the site plan and explained that it is a 158 acre site that currently has a banquet house, maintenance building, a couple of out buildings, and a pro shop on the site. They would like to put a 6,000 sq. ft. addition on the banquet house and a 1,000 sq. ft. addition on the pro shop in order to separate the functions so that all the activities for the golf course can take place in the pro shop separate from the banquet house.

Mr. Herba stated that the banquet house is being expanded because currently it can accommodate a maximum of 200 and this would give them the opportunity to accommodate 300-350 people for banquet facilities which is needed to be competitive in the marketplace. He indicated the existing buildings and their proposed expansions. He noted that they will increase the amount of green space.

He explained that he believes the concept of the Conservation Residential zone is to keep out major development. He noted that the concept of a golf course is very open and stated that there are no plans to add any housing to the site. He stated that even with the expansion it is less than half of one percent of the total area.

Mr. Kortz asked for clarification on the expansion of the parking and if any variances are needed. Mr. Herba explained that the area is currently the tennis court and does not require any variances.

Bill Koebbeman, 861 Riverview Road, stated that he attended a lot of the hearings and public information meetings on the GEIS for western Clifton Park and noted that there was a great deal of input from the public, the town spent a lot of money and time doing it and now he does not think variances should be granted, he feels we should stick to the rules for the GEIS and asked that the variance request be denied because it is not in conformance with the findings of the GEIS for western Clifton Park. He believes if there is any hardship it is self-created. If the club house business is not profitable it's because of a poor business plan. It was designed and built in recent years. Construction of the club house was completed two or three years ago and therefore the economic factors that existed when the business was started haven't really changed. If a larger business was required to make a profit it should have been built at that time. He believes this expansion is rather the result of a successful business and a desire to enlarge what is already a reasonable rate of return on investment. Mr. Koebbeman continued, making greater profits is naturally the goal of any businessman but in this case the expansion of this business is in conflict with the goals of the GEIS for western Clifton Park which were set to balance economic growth with the environmental and quality of life issues for the residents of Clifton Park. He asked the ZBA to fully respect the extensive planning and public input that resulted in the GEIS findings and the subsequent zoning regulations.

Gene Khlyapov, 863 Riverview Road, agreed with Mr. Koebbeman's comments and also noted that there is an area in the back of the course that is a dumpster area that has been expanded. He explained that there are rodents and odor in the area. He stated that the expansion of the business will create more garbage and rodents. He also noted that there are issues with the water line. Water comes from the golf course into his property. He explained that he raised this issue with the town and was denied because they thought the golf course was building at that time. He explained that he put 18 inch piping and a drainage system through his backyard and he still has some water. He believes that the golf course has raised the dumping site by at least six feet. He noted that the environmental specialist was there and he wants to know who allowed this to happen. Who oversees the permits for all this?

Mr. Dudick asked who he reported this to. Mr. Khlyapov stated Jason Kemper and Mike O'Brien. He explained that the water is supposed to go back into the pond but they built something and the water flows right back to their yards. By expanding this who is going to oversee it and make sure it's not going to happen again or create additional problems.

Mr. Dudick asked how long this has been going on. Mr. Khlyapov responded that he has lived there for seven years and it has always been a problem.

Mr. Kortz asked if he had a problem when he bought the house. Mr. Khlyapov responded yes.

Alexandra Verrigni, 865 Riverview Road, spoke to this issue. She explained that there was always an issue of water in the spring but you had ponds that receded. Approximately since 2003 the water problem increased largely. In the spring the water would come up so close to the house which it never did before now there is standing water that never goes away. She stated that she was told by an excavator that she has at least nine inches of standing water.

Mr. Koval asked if she feels this is due to the change in the golf course. She responded cumulatively yes. She can hear large machinery going on in back of her home where there never was that impending feeling of activity. There used to be a large buffer in the back of the homes and the activity at the golf course and they were oblivious to what went until recent years. While it's been gradual there is now noise all the time and it can be seen from the backyard.

Ms. Verrigni noted that the dump site is also an issue. She explained that the dump site is continuing to rise beyond the tennis courts.

Mary O'Conner, 859 Riverview Road, explained that she is here to see what they are doing and what they are building. She noted her concern with the dumpster that is behind her property and also with the water issue. She explained that there is a pipe behind the property next to her coming from the back of the golf course that goes diagonally underneath her basement to the drain in the front. When they did the work they said it wouldn't back up on her and it hasn't backed up yet. Her concern is with the hole in her cellar that drains into the pipe that continues from there out to the road.

Mr. Koval asked if it belonged to the golf course. Ms. O'Conner stated it starts on their property and goes under the house next to her and into her yard and out to the sewer.

Mr. Koval asked if there were any drainage easements. Mr. Khlyapov responded that he has those. He explained that there are suppose to be catch basins behind their properties, it is suppose to go from the catch basin between them straight along their properties and out. He explained that there is a pipe right up to his property. It isn't golf course property, it's Belmonte property. That pipe goes into his property and is connected to the rest of the piping.

Mr. Dudick asked how long the golf course has been in operation under the present owner.

Mr. Flores responded seven years. Mr. Myers explained that Belmonte owned it prior to that.

Rafael Flores explained that he took possession seven years ago; the club house will be open

two years in May. It was a very bad issue for the neighborhood. We took it over and cleaned it up.

Mr. Dudick explained that the citizens brought up issues of water and drainage and what he understands is that the water and drainage was a problem even before you took over the operation of the golf course.

Mr. Flores explained that he owns the house next door and also has major water problems. It is not anything they did, it is just a wet area. Mr. Myers stated that Belmonte had the same problems.

Mr. Kortz asked when they built the club house and started operating it. Mr. Herba explained that the facility has been in existence for years and was operated as a club house from the beginning. The banquet house existed at that time. When Mr. Flores bought the property he closed it down and rebuilt because it was really a non-functioning facility.

Mr. Kortz asked if the building indicated by yellow on the map is the clubhouse and is it operational. Mr. Herpa responded yes and it is operational.

Mr. Kortz stated that he is trying to get a time line as to when the zoning changed and renovations were done. Mr. Herpa responded that actually it was all built prior to the zoning change.

Mrs. Gleason asked for clarification on the location of the dump area. Ms. Verrigni responded that it exists behind multiple homes and has become more apparent over time. It has been raised and is more visible, is loud, and there is a garbage issue.

Mr. Flores stated that it is part of the operation. They have two 20 yard dumpsters.

Mr. Dudick asked if there is any kind of buffer around the dumpsters. Mr. Rafael responded there are trees.

Mr. Khlyapov stated that there is construction going on that pushes back and there are tree limbs being ground into mulch.

Mr. Kortz asked what the heavy machinery is that they keep talking about. Mr. Flores explained that they are digging trenches on the golf course in the fairways to contain the water

Ms. Verrigni stated that she hears machinery directly in back of her property not from the middle of the golf course.

Pauline Bain, 861 Riverview Road, stated that ideally when you think of living near a golf course you think it's pretty nice, but as far as the dump is concerned there is no buffer whatsoever. She stated that part of the noise is the bringing of the garbage to the dumpsters and BFI picking up the garbage. It is noisy and you hear beeping. It's not like when you think of living near a golf course as being pastoral; it isn't nice and she has concerns with the addition. She now sees big lights at night and expressed her concern with fireworks, when they go off it's like they are right in your backyard. She called and complained and was told that they have a permit and can do that until 10 PM. She noted that the western GEIS was put into place, a lot of money and time was put into it, and she feels they should have to live by those rules just like she has to.

Mr. Dudick explained the function of the ZBA. He stated that the Town has certain rules and laws with certain guidelines and zoning for the Town but there are times when it seems appropriate to allow a little bit of leeway for help with certain situations. He gave examples such as a deck or addition that may need area variances, and he referred to zoning changes in the law such as with this property. He explained that this was a golf course, it fell into disrepair and has then been restored but the zoning has changed around it. The question is what would be better, to leave it in disrepair until it comes to total ruin or to try to resume and restore some of the grandeur that was once a country club and golf course. He also noted that if there are other issues such as drainage or trash pick up and removal the Board wants to know about them as they pertain to this request for a zoning appeal. The Board has to figure out how does this affect the project. Just to say this is the GEIS and it's how the Town wants it and you shouldn't change it, that is why this Board is here, sometimes changes just seem appropriate.

Mr. Myers stated that he has discussed this project with Mr. Herba at some length and told him he expects all drainage issues to be addressed and resolved. Mr. Myers noted that there are drainage issues in other places on the golf course that have nothing to do with the expansion. Mr. Myers also noted that he did not know that Belmonte owned the strip of property adjoining the golf course.

Mr. Herba stated that he did not see any strips of property owned by Belmonte that would separate the golf course parcel. He did note that Belmonte owns parcels around the property that were not sold as part of the golf course.

Mr. Myers explained that he spoke to Mike O'Brien about the dumpster issue and the drainage problems by the club house. In theory, the golf course is already there. He has other issues that he would like to see resolved before any permits are issued. He explained that the building already exists and they just want to expand it.

Mr. Kortz asked for confirmation that the expansion will not worsen the drainage issues. He also would like to see some financial evidence that this expansion is necessary.

Mr. Herba addressed the drainage issues. He explained that the county or town put a drainage pipe underneath Appleton Road and started dumping a lot of water onto this property and some of that water may make it over to the back side of the other properties; most of it though stays on the Appleton side and comes across the drainage basin. They are doing major drainage work along the right side of the 10<sup>th</sup> and 16<sup>th</sup> fairways and that is probably where the noise is coming from. He also noted that there is also a drainage problem to the south because all of the water goes underneath Grooms Road to a pipe with a culvert but in the middle of that there is a pond located at one of the houses on Riverview Road that does not have adequate drainage coming out of it. He explained that they are trying to get the town and DEC involved with and probably the only way to get any action is to take a civil action against the owners of the property because they are essentially damming up the water and it flows back onto the course.

Mr. Herba indicated that when Mr. Flores purchased the property he had plans to put an addition on the back of the existing building which would have been similar to the expansion they are now showing on the side. This was a consideration as part of the package to put together a banquet facility. The pro shop area has had nothing done to it and it is in need of an upgrade for the quality of activity there.

Mr. Herba referred to the issues of the drainage in the back of the homes and the garbage dumpsters, he explained that there is a lot of activity going on in those areas due to the cutting of the grass and trees that are coming down and they need a location to be taken to. He stated that screening could be done but feels this is a Planning Board issue because it is a site specific issue and they would be happy to deal with it at that level. He does not feel this is a zoning issue.

He stated that there are two golf courses in that zone now and to be competitive the expansion is necessary. He explained that they now can only service a small market and they have always considered expanding to be able to handle larger functions. He noted that they are presenting a very small addition to a very large piece of property. He also explained that Mr. Flores is willing to work with the neighbors regarding their issues.

Mr. Dudick asked if some screening around the dumpster area to make it more contained might satisfy those present. He also mentioned the noise of the machines and the neighbors being upset over the noise and also their disappointment over the upkeep of the property.

Mr. Dudick explained that the owner has stated that the machines are there to fix up the property and the neighbors have concerns with the machines that are fixing up the property. It's difficult to have it both ways.

Mr. Koebberman stated that Mr. Flores has done a good job with the renovations to the clubhouse. He referred to the machines noting that there are two things; one is digging ditches to get water off the golf course that may or may not have created problems in their back yards, there are dumpsters back there, you hear trucks coming in. These are all issues that the Planning Board could deal with and they could be worked out, but he feels the fundamental issue is the GEIS. This is not a small problem, it is about a 6,000 sq. ft. addition or a third of the existing

building. He continued if you look at the GEIS there was a real approach to limit growth in western Clifton Park and an attempt to balance the economic development with the environmental and quality of life issues. The things being talked about are quality of life issues. It is making our quality of life a little bit less and that is what the GEIS tried to address. Everybody would like to make more profit. They had plans to expand three or four years ago and there are probably a lot of businesses in western Clifton Park that are thinking about expanding their business and if they are all allowed to expand it would negate the point of the GEIS. He also stated that he would not have any problem with improving the pro shop, it is something that existed years ago but to expand by 6,000 sq. ft. is a major consideration when it is outside the GEIS and he feels this would set a precedent for the future of western Clifton Park that is not going to be desirable for the residents. He stated they were very happy with what the town did with the GEIS but if it's not going to have some teeth, it was a waste of a lot of money and time for the town.

Mr. Herba responded to the concerns over the expansion of 6,000 sq. ft.. He explained the existing banquet house is approximately 28,000 sq. ft. and if you take all of the buildings in itself you are probably taking less than a 20% expansion of the entire site. This is a 158 acre site.

Mr. Koebbeman responded that he does not think the size of the site is relevant.

Mr. Herba stated that he thinks it has a lot to do with it because they were looking at the environmental impact of things what are you going to do to keep open space.

Mr. Dudick explained that it is up to the Board to decide, the applicant presents the point of the square footage of the buildings, the point of the acreage he has, you present your point as members of the audience and then the Board decides if it is an issue they want to consider.

Mr. Herba explained that there has been a drainage study done on this site that is prepared right now and as far as the expansion is concerned they are showing new drainage basins that will collect the water from the buildings and there will not be any water from the new parking area that will be running back towards these houses.

Ms. McCarthy asked if he had the results of the drainage studies with him tonight. Mr. Herba responded no, this is a Planning Board issue and has always been a part of the plan.

Mr. Ritter asked if that was new or over the past years. Mr. Herba explained that the town was allowing Mr. Flores to build the property up with the understanding that he was going to be doing drainage calculations to deal with the DEC requirements as far as handling the drainage on site and it has been completed. This has been done within the last ten months.

Mr. Ritter asked at whose request. Mr. Herba stated that when they started the plans for the expansion of the building this was part of the deal with the town. He talked with Jason.

Mr. Ritter asked if he had documentation. Mr. Herba responded he would only have records of meetings.

Mr. Dudick explained that drainage issues would be planning issues.

Mr. Ritter explained that he feels it would be helpful to know when and if the town was aware of this proposed expansion.

Mr. Ritter also asked for documentation on financial hardship.

Mr. Herba stated that he would have to go back through his records to see when he met with the town Planning Department. He explained that they had several different concepts for the expansion and he approached the planning people to make sure there would not be a lot of variances needed as far as area and setback were concerned. He does not believe the zoning had changed at that time.

Mr. Dudick clarified that there is a different level of requirement for a use variance than an area variance and asked the applicant to adjourn this public hearing so that they can submit information that is needed for consideration of this application, i.e. financial hardship, the ownership of a strip of property by Belmonte, and past history of the proposed expansion.

Mr. Kortz clarified the requirement that the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence. He explained that no evidence has been presented this evening and it is needed in order to consider this request.

Mr. Ritter also asked for documentation from the community of the water problems, etc.

Mr. Koval explained that a lot of the issues discussed are planning board issues. The applicant is asking for a use variance for an existing non-conforming use. They were in conformance at one time and the zoning changed around them.

Mrs. Gleason asked Mr. Myers about his concerns. He responded most of them are planning issues and will be addressed there.

Ms. Verrigni expressed the overall concern that it will be an increased use and will magnify the existing problems.

Mr. Dudick explained that there has not been any information provided to show financial hardship which is a requirement of a use variance.

Mr. Kortz explained that there is a separation between zoning and planning. One of the ZBA's criteria is an adverse effect on the neighborhood, if it increases the drainage problem it is an adverse effect but the ZBA could condition any approval that this project not worsen the drainage problem and that would be addressed by the Planning Board.

Mr. Dudick asked if the applicant wants the Board to vote on this application this evening or if he wants an opportunity to present some aspect of financial hardship.

Mr. Flores requested an adjournment to a future meeting.

Mr. Dudick explained that he is not closing the public hearing.

Mr. Peller explained to the audience that the applicant is not required to give them notice of the next meeting. They should check with the town.

Mr. Koebbeman responded to the comment that we are talking about planning board issues. He feels they are bringing up a substantial point about a zoning issue that is the GEIS and that is all about zoning.

Mr. Koval explained that the Board is very familiar with the GEIS, but the job of the ZBA and what people come to the Board for is relief from specific zoning rules that are in place. Every meeting involves granting relief if it looks to be reasonable to specific zoning ordinances. The argument of will this increased customer base cause me a problem in my neighborhood, will this additional parking be blight, is what the Board wants to hear. The fact that it doesn't adhere to the new GEIS, the fact that there is a garbage dump back there are pertinent issues but not to this Board.

Mr. Koebbeman stated the result of the GEIS is new zoning. Mr. Koval responded that the Board understands what it is, but the GEIS study was very comprehensive and the Board is dealing with specifics as opposed to the broad picture. He explained there are a lot of reasons for the GEIS, a lot of it has to do with open space but again this is a specific circumstance and what the ZBA does is grant variances when they feel it is required and reasonable for specific circumstances so referring back to the GEIS study, we all know what is in that.

Mr. Koebbeman stated that he just wanted to make a point that they are bringing a zoning issue to the Board's attention.

Mr. Ritter clarified that drainage only came into the equation as it affected this addition and the addition for the use requires a variance along with financial issues that needs to be documented.

Mr. Herba stated they will submit documentation substantiating meetings with the Planning Board, plans for the proposed expansion, and the financial hardship.

Mr. Koebbeman asked to see the information prior to the next meeting. Mr. Myers responded

that the plans are in his office.

**2. An application from David Triller, requesting an area variance from Section 208-11 from the required 50 ft. front yard setback – proposed setback = 34 ft. – variance requested = 16. ft. The property is located at 636 Clifton Park Center Road, Clifton Park. Permit #80631**

The secretary read the legal notice as it appeared in the Daily Gazette on January 11, 2007.

David Flanders, surveyor, and David Triller, owner presented this application. Mr. Flanders explained that the front setback variance is needed for an existing building that is setback 34.4 ft. The building was built in the early 1950's prior to the zoning and has been used as a residence ever since. There have been no changes to the building but due to the fact that they would like to subdivide the property and create an additional lot the Planning Board requires the variance for the existing building. He explained that the only way to meet the setback would be to raze the house and put in a new foundation farther back. This would be extremely expensive.

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

Mr. Myers explained that this is a matter that came up as a result of the subdivision.

Ms. McCarthy asked the distance of the proposed driveway to the adjoining neighbor. Mr. Flanders responded approximately 10-12 ft., the driveway will be 16 ft. wide.

Mr. Myers explained that there is no setback needed for the driveway.

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

Mr. Dudick made a motion to approve the minutes of December 5, 2006. Mr. Ritter seconded. Ayes: Kortz, Dudick, Koval, Ritter, Gleason, Ophardt. Noes: None. Abstained: McCarthy.

Mr. Ritter made a motion to adjourn the meeting at 8:19 PM, Mr. Koval 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