

ZONING BOARD OF APPEALS

April 3, 2007

Present: Michael Dudick, Chairman, Dale Gleason, Gilbert Kortz, Christopher Lemire (arrived 7:20 PM), Jessica McCarthy, Eric Ophardt, Robert Ritter

Absent: Joel Koval

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

Mr. Dudick called the meeting to order at 7:04 PM. He announced that the application For DCG Development Company has been adjourned at the request of the applicant.

NEW BUSINESS

1. An application from Randeep Johar, Envision Architects, representing Dr. Nagaraju Namassivaya, requesting an area variance from Section 208-35D(1) from the required 70 ft. front yard setback – proposed setback = 13 ft. - variance requested = 57 ft.; an area variance from the required 70 ft. front yard setback for parking from Rte. 146 – proposed setback = 40 ft. – variance requested = 30 ft.; an area variance from the required front yard setback from Bruno Road for parking – proposed setback = 20 ft. – variance requested = 50 ft.; an area variance from Section 208-98 from the required 130 ft. setback from the centerline of Rte. 146 – proposed setback to existing structure = 65 ft. – variance requested = 65 ft.; an area variance from the required 130 ft. setback from Rte. 146 for parking – proposed setback = 95 ft. – variance requested = 35 ft.; and a variance from Section 208-33B from the 4,800 sq. ft. maximum building size – proposed = 8,954 sq, ft, - variance requested = 4,154 sq. ft. The property is located at 923 Rte. 146, Clifton Park. Permit #80641

The secretary read the legal notice as it appeared in the Daily Gazette on March 29, 2007.

Randeep Johar, Envision Architects, presented this application. She gave a brief synopsis of the site explaining that it is on a corner lot with an existing two story house that will be converted to an interim office. If the variance is approved they will build a larger structure of approximately 7,300 sq. ft. attached to the existing structure so it can function as one contiguous space. The building will house the dental office and a potential tenant office to make it economically feasible for the Dr. Because of the density of parking required of 1 space for each 150 sq. ft. of building there will be a total of 60 parking spaces with access off Bruno Road. The access from Rte. 146 will be removed as well as the existing garage.

Ms. McCarthy questioned the need for the large number of parking spaces. Ms. Johar explained that one space is required for every 150 sq. ft. of building space. She explained that they are proposing a 7,300 sq. ft. addition to the existing 1,700 sq. ft. building which is a total of 9,000 sq. ft. She explained that the 60 spaces are what are mandated by the code for this type of occupancy.

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

Mr. Kortz referred to a note from Mr. Myers regarding a possible need for an additional variance from the maximum 50% coverage of lot area by buildings, maneuvering areas and storm water retention areas since no storm water plans are indicated on the map. He asked the applicant if she thinks they will be within the 50% coverage of the lot.

Ms. Johar responded that they still have to do that analysis but hope to be within the 50%. She explained that they are proposing the one large building due to the existing topography of the site. She noted that there is a stream that goes through the site with a steep grade which renders a good portion of the site unusable for construction which is why they clustered the structure with parking in front of it. She also noted that she is aware that there is a 4,800 sq. ft. maximum build out but because of the existing site conditions they are unable to meet that requirement.

Mr. Dudick asked specifically what they are unable to do, build a 4,800 sq. ft. building? Ms. Johar responded no they are unable to build a 4,800 sq. ft. building and something beyond that to accommodate another tenant because of the location of the stream and other site features.

Mr. Kortz noted that the lot is constrained and asked if the plan submitted is in conformance with the setbacks from the streams.

Mr. Myers explained that the wetland protected areas that usually apply to streams does not begin until well beyond this lot well to the north of the property. He stated that it may

be because it crosses under Rte. 146, a manmade diversion, may be why the actual wetland does not start until much further downstream.

Mr. Kortz stated that as far as the stream is concerned it is always a 50 ft. buffer. Mr. Myers explained that it is not even considered a stream at this site. He noted that looking at the map the Dwaaskill does not start until farther up.

Mr. Ophardt asked if it is just a ditch or a seasonal type stream. Mr. Myers explained that it is a culvert crossing that seems to run all year long and may contribute to the Dwaaskill.

Mr. Kortz asked if the stream in the back of the property to the north has to do with the culverts. Mr. Myers responded no, the culvert is just to the south of the building. Ms. Johar referred to a map and indicated the culvert and noted that it goes under Rte. 146.

Mr. Kortz asked about the stream that is along the right side of the property to the north. Ms. Johar noted that at the time the survey was done it ran along the property.

Mr. Myers stated that he does not think it is a regulated stream because all the wetland delineations he could find were well north of this property.

Mr. Dudick asked if they considered the possibility of building two 3,600 sq. ft. buildings on the site to achieve the same square footage.

Ms. Johar responded that they looked at it but the doctor needs approximately 4,000 sq. ft. for his practice and even if they have the existing structure to link it in order to have the appropriate staff space he would still need beyond the 3,600 sq. ft. They are proposing to do a cluster of two buildings that will be joined to mass it.

Mr. Dudick noted that it looks like one building to him.

Ted Mallon, principal for Envision Architects, explained that there is a septic system behind the house with an existing steep grade so the area that is buildable is very limited. If you separate the buildings the area for the parking will decrease and they want to meet the parking requirement of the zoning ordinance because, though it sounds high with dual occupancies it's not that high.

Mr. Dudick asked how long the owner has owned the property. Dr. Namassivaya responded two years.

Mr. Dudick asked if he knew what he was going to do with the property when he bought it. Dr. Namassivaya responded that he came here to find out how much he could build.

He thought he could build three buildings on three acres but the architects told him there were restrictions with the steep grade and it would be difficult to have three buildings so that is why they came up with this plan. Ms. Johar explained that the doctor assumed that with three acres he could build a 4,800 sq. ft. building per acre, but once the project started and they did the survey and saw the topo and sight restrictions is what brought them to the ZBA.

Mr. Ophardt asked if any thought had been given to having less parking to eliminate some of the variances. Ms. Johar asked for clarification of the question. Mr. Ophardt explained that less variances would be needed if the number of parking spaces was reduced.

Mr. Myers stated that it is a considerable amount of variances for this property but if you look at the rest of the buildings in that area there is at least one that is more than 4,800 sq. ft. but he doesn't think there is any building as large in the surrounding complexes. He noted that this is a good use of the property but he has some concerns with the size of the building. He stated that the access coming off Bruno Road will help

Ms. McCarthy asked if there is a comparable building of 7,300 sq. ft. in this area. Mr. Myers responded most of the buildings are 4,800 sq. ft. he does know of one that is 6,000 sq. ft. towards the back of the complex.

Ms. Johar noted that the building will be screened from Rte. 146 by the existing house so you would not see the entire mass and it will be set back from Bruno Road and will be landscaped.

Mr. Myers stated that he agrees with what is being said about the confines of the property with the steep grades but there are considerable problems. He noted that if the additional space was rented by another medical office they would not be able to reduce the number of parking spaces.

Mr. Kortz asked if they presented a conceptual plan to the Planning Board. Ms Johar stated that they had a meeting initially with Planning and Mr. Myers.

Mr. Myers explained that they did have an initial meeting and he believes that the building proposed on that plan was smaller than this one. Ms. Johar responded she thinks it was about the same size.

Mr. Myers noted that in concept it was more of an informal meeting, they wanted to know what they needed to do.

Mr. Kortz stated that he saw the steep slopes and knows it will be very difficult for a storm water basin and asked for it's location.

Mr. Myers noted that it is a major concern of his, he does not know what they are going to do for storm water retention.

Mr. Kortz noted that it could change the whole configuration of what's being presented this evening.

Mr. Myers explained that planning will not look at this in depth until they know that they will get the variances needed so they are a little ahead of the game. He explained that they could have concurrently gone through planning and the ZBA, but they went to the ZBA first.

Mr. Kortz expressed his concerns about the site being so constrained and without a storm water plan and with the steep slopes he is not sure the building is doable as presented.

Mr. Dudick referred to the fact that this is a self-created hardship in that the owner of the property purchased the lot with all its hardships and problems as far as topography is concerned.

Mr. Kortz noted that in all fairness you would think that with 2.47 acres you could build two 4,800 sq. ft. buildings.

Mr. Dudick noted that the topography is obvious and it's not as though the zoning has changed since the purchase was made, the zoning existed, the purchase was made. It's not as though the property can not be built upon, it's just that there are limitations. There is an issue of wanting to build a structure that far exceeds what zoning allows to make up for the fact that the property has its own limitations just doesn't seem appropriate or fair to other people that were held to those provisions.

Mr. Kortz agreed and noted that he is very uncomfortable with this application. He feels he has valid reasons to believe that this might not be doable and therefore cannot grant any variances until he is sure that it is doable.

Mr. Peller asked if it is their intention to tear the house down. Ms. Johar responded no because the doctor's lease situation is such that they would have to immediately, before the end of the summer, move the dental office into the existing house and then at some point attach the two structures together to provide contiguous space. The dental clinic would move there temporarily until the whole build out is done.

Mr. Peller asked the age of the house. Dr. Namassivaya responded 160 years old. Mr. Peller asked if there are any historical concerns to address as well. Ms. Johar responded that they did check into that as well. Mr. Myers stated that Mark Kazmierczak, as well as John Shearer, looked into that and there does not appear to be any historical jurisdiction.

Ms. Johar stated that it is just old and they have to make sure that it is structurally sound and buildable which they will do.

Mr. Peller noted his concern that they did not get a formal ruling from the historical commission of the town stating that they do not have any concerns that may have an effect on connecting the buildings at some point and what can and cannot be done. Ms. Johar responded that they have an unofficial word

Mr. Myers explained that the process. When you file for a permit and the building is over 50 years old they automatically have 30 days to analyze the structure for its historical value and assess the need at that point. Unofficially it is being done on an as need basis but officially they do not do it until that point.

Mr. Ritter asked for renderings of the proposed structure. Ms. Johar responded that they have not proceeded much further than this because they focused more on the interim plan but in terms of the massing of building they would do it so that it doesn't look like one giant façade, that it's really broken up into multiple facades and the scale is appropriate with adjacent structures.

Ms. McCarthy asked if they can make it a two storey building and use less area. Ms. Gleason noted that buildings can only be one story in that area. Ms. Johar stated that they can be 35 ft. in that area for new construction. Mr. Myers confirmed that a building can be 4,800 sq. ft. and 35 ft. in height. Ms Johar noted that it would require an elevator and a second set of stairs at an increase in costs.

Ms. McCarthy expressed her concern that this is a large building for the amount of buildable area of the land and asked if there was any way to minimize the building and still accommodate a tenant.

Ms. Johar stated that it is 4,800 sq ft. per building at a maximum height of 35 ft. and they could technically do a two story building but it would not be feasible economically.

Ms Johar explained that when the doctor purchased the land he did not have a topo and he thought, as a lay person, that he had two plus acres and could build two 4,800 sq. ft. structures and that is really the perspective he is coming from. He did not study the lot and he's not trying to pull a fast one on anybody. He has to make it economically work for him, he has to move his clinic right away and it does need to be contiguous space.

Mr. Dudick asked if the mall would let him extend for an additional six months. Dr. Namassivaya responded they want him to extend for five more years.

Mr. Ritter asked if they considered different scenarios for parking. Ms. Johar responded that they did study several scenarios but it created more paved area and less parking. They also tried two separate buildings and once again there was more circulation and less parking. They did study it being a two storey structure but with the cost of the elevator and the second set of stairs and the amount of usable area it takes away did not make it feasible. They did do a series of analysis and this is their conclusion that fits his interim and long term needs for his clinical space and makes it work economically for him.

Mr. Mellon commented that this is less than what the doctor had hoped and expected when he invested in the property. He came to the realization that the property just won't support what he has hoped to do and therefore he is just trying to optimize his investment.

Ms McCarthy noted that this is a great concept but is it doable with that square footage, that building and that topography with the steams, etc.

Mr. Kortz stated that he cannot vote in favor of this application without knowing that the proposed project is really possible. He would like some input from the Planning Board as to the feasibility of this project. He stated that he cannot vote for it in good conscience because he does not want to grant massive variances when it might wind up being totally different from the plan presented this evening, therefore he would make a motion to deny this variance request.

Mr. Ophardt asked if he is waiting for more information from the Planning Board.

Mr. Kortz responded not specifically, he does not know if this project is doable on this property. If there is a way not to deny the application and get the homework done so there is way to make an intelligent judgment perhaps get them to table the application or give them a chance to revise it because he's not sure if it is denied if they can resubmit it.

Mr. Peller explained that they cannot resubmit it with the same information, it would have to be changed.

Mr. Mellon noted that the implication is that the applicant will be required to invest in a lot more study, engineering study on the drainage and solution and drawings for it to possibly be denied in the end.

Mr. Dudick explained that the applicant can table the application and have further discussion with the Planning Board and get feed back from them or they can call for a vote this evening on the information they presented.

Mr. Peller suggested that they start the planning process and go before them conceptually to get their insight on the issues brought out this evening plus they will get more insight on other items not being considered on the variance requests.

Ms. Johar asked to table this application.

Mr. Ritter asked for an update in writing.

Mr. Peller explained that the applicant should make an application for conceptual review to the Planning Board. He asked for the applicant to waive the 62 day period for this board to act on their application. The applicant agreed.

There was no second to Mr. Kortz motion. This application has been adjourned for the applicant to return at a future date.

Mr. Ritter made a motion to approve the minutes of March 20, 2007. Ms. Gleason seconded. Ayes: Ophardt, Ritter, Gleason, McCarthy. Noes: None. Abstained: Kortz, Lemire.

Mr. Dudick made an announcement that there are two old items of old business, the cell tower in Jonesville and the Mohawk Country Club application that should be addressed and asked that the secretary to send notification to the applicants to come forward prior the first meeting in May or the board will take action to close these applications. It was also brought to the attention of the board that the application for Mr. Rekucki for the Hoffman car wash location on Re. 9 was still pending. The secretary will send notices to all three applicants.

The secretary informed the board that she received a call from Mr. Koebbeman who was at the meeting for the Mohawk Country Club (1/16/07) stating that he feels some pertinent statements were left out of the minutes for that meeting. She explained that the minutes are not verbatim and would ask for counsel's opinion. Mr. Peller explained that the minutes stand as approved. He noted that the application is not closed and further information can be submitted if and when there is a future meeting.

Mr. Dudick made a motion to adjourn the meeting at 7:40 PM, Mr. Ophardt seconded, approval unanimous.

Respectfully Submitted,

**Judy Lamb
Secretary**

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