

ZONING BOARD OF APPEALS

October 2, 2007

Present: Michael Dudick, Chairman, Dale Gleason, Gilbert Kortz,
Joel Koval, Robert Ritter, Jessica McCarthy, Eric Ophardt

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

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

NEW BUSINESS

1. An application from **Vincent J. Laurenzo**, requesting a Use Variance from Section 208-64B to operate a used car sales business in a Light Industrial zone. The property is located at 2083/2085 U. S. Route 9, Clifton Park. Permit #80674

The secretary read the legal notice as it appeared in the Daily Gazette on September 27, 2007.

Jessica McCarthy recused herself from hearing this application due to a close personal relationship with Lynn Apa, wife of the owner of Quick Response.

Jim Trainor presented this application. He introduced Vince Laurenzo, owner, and Dean Taylor from Remax. He explained that Mr. Taylor has another engagement and will have to leave so he will present his evidence in support of reasonable return at this time.

Dean Taylor, licensed NYS Real Estate Broker/associate with Remax, 9 Vineyard circle, Clifton Park, explained that he was the listing agent from March 2005 until the following year. He marketed and showed the property numerous times and had a difficult time due to the allowed uses. He noted that he did due diligence; he placed the property with the Saratoga Economic Development Corporation and asked them to help him market the property. He did not advertise extensively in the newspapers but he did advertise twice in the Times Union and three times in

the Daily Gazette to try to generate activity. He also used multiple listing services not only in the Capitol region but also with the commercial investment board, it was linked to realtor.com and had a sign placed on the property. He also went back to former clients that were potential users for a property like this.

Mr. Taylor explained that the allowed uses in a light industrial zone are light assembly, storage, warehousing, automobile rental facilities, transportation facilities, auto body shops, and service stations but it is very difficult to build a building over 12,000 sq. ft. without municipal water due to the necessity for sprinkler systems so this eliminated the warehouse uses. The other allowable uses related to automobiles are typically in high traffic areas and this location is not a high traffic area. He explained that he did get interest from several automobile dealers for this location. Mr. Taylor also noted that the owner was willing to negotiate on taxes.

Mr. Taylor explained that the current site has a building of approximately 1,000 sq. ft. that was used as a body shop for years with the use of three acres of land. He stated that the price of \$2,500 is a very good value and is priced properly.

Mr. Kortz asked if the property has been off the market since March 2006. Mr. Taylor responded that he does not know what has transpired since his listing expired. He is only speaking for the time he listed the property.

Mr. Koval asked if the site was being used as a used car dealership when he listed it. Mr. Taylor responded yes. Mr. Koval asked if the people that were using the site at the time of listing were interested in continuing to use it. Mr. Taylor responded that it was about the time the zoning changed and they were interested but it was not an allowed use. Mr. Koval explained that he could have continued to use it as an existing non-conforming use.

Mr. Trainor stated that B and W auto sales were in there until it was listed. Mr. Koval stated that they had a year to use it as an existing non-conforming use. He asked what happened last year. Mr. Trainor explained that an interested party was going to process the application himself but apparently it didn't go anywhere.

Mr. Kortz asked if there is still interest from Mr. Taylor's former clients that had an interest in the site. Mr. Taylor responded that he does not know.

Mr. Kortz asked if there is a potential buyer at this time. Mr. Taylor responded he cannot answer that he is only explaining what he did when he had it listed.

Mr. Dudick asked if it was listed for sale. Mr. Taylor responded no, he was listing it for lease. Mr. Dudick asked if it is for sale now. Mr. Trainor responded no.

Mr. Dudick asked if there was someone interested in leasing it for car sales when it was listed by

Mr. Taylor. Mr. Taylor responded yes but it was his understanding that at the time it was not an allowed use.

Mr. Dudick explained that it was usable for car sales if the information being provided is that it was used car sales at the time. Mr. Taylor stated perhaps that was not understood because if you looked at the zoning book it was not shown as an allowable use.

Mr. Trainor explained that it was B and W car sales for 14 years until December 2005. After that time Vince Apa was interested in leasing the property. They believed he was going to get the approvals on his own but for whatever reason he did not so that is why they are here tonight.

Mr. Dudick asked if anyone approached the applicant or the town to use the space for car sales between December 2005-2006. Mr. Trainor explained that Mr. Apa came to the town but did not file a formal application.

Mr. Kortz stated that technically there was a year from December 2005-December 2006 where it could still have been leased out for a used car dealership but apparently people were unaware that the condition existed.

Mr. Taylor explained that there was some interest at that point but a lease was not signed. He supplied them with the allowable uses. He thought a variance was needed.

Mr. Myers explained that Vince Apa approached him and he believes the town board in part. He is sure he told him that it was not an approved use for that area. It was his understanding that the prior operator of the business lived in the house, fixed up cars and sold them once in awhile. He explained that he talked with Don Clemens about this and Mr. Clemens felt it was never a "dealership" in his mind so nothing was ever done about it. When Mr. Apa approached Mr. Myers about opening a dealership there he told him it was a non-conforming use and he was going to need a variance. If he actually moved into the building it would have been a change in tenant and would have activated the same situation because it wasn't the same continuous owner.

Mr. Myers stated that he talked to Mr. Apa a couple of times but he never applied for a variance and the use has now been discontinued for over a year.

Mr. Koval asked if B and W auto was a NYS registered dealer. Mr. Trainor responded he does not know. Mr. Laurenzo stated they were.

Mr. Dudick read the recommendation from the County Planning Board stating no significant County Wide or Inter Community impact with the comment that the applicant should contact NYS DOT regarding a curb cut.

Mr. Trainor presented for the record a letter from Mr. Taylor regarding his listing of this property and a map indicating the exact site. He explained the location as being at the very northeast corner of Clifton Park along Route 9. He described the property as 37 acres with approximately two-thirds of it wooded. A small area along Route 9 (five to ten acres) is cleared and they are only talking about a three to five acre area that was previously used for automobile sales.

Mr. Trainor explained that there has been a car dealership at the site for approximately 14 years and there are other auto related businesses to the south, Mackey Auto Sales, and Neet's Body shop. Car sales had been permitted in the Light Industrial zone in the past. The zoning law was changed in 2005. He pointed out that Section 208-7, under definitions, refers to a use variance as permission by the ZBA for a parcel for a use which is otherwise prohibited by this chapter. He explained that they are proposing a use that was previously conducted on this property and is not specifically prohibited. He noted it is not listed as a permitted use nor is it listed as a prohibited use. He pointed out that some permitted uses are a body shop, auto service station, an auto repair shop and a parking garage all of which are much more intensive uses for the property. He referred to the definition of transportation services which is broken down into accessory and local transportation services. He read the definition of accessory transportation services as being establishments furnishing services incidental to transportation such as park and ride, parking services, and the arranging of passenger or freight transportation. The definition of local transportation services is establishments primarily engaged in furnishing local and suburban passenger transportation including taxi cabs, passenger transportation, charter services, school buses, terminal and service facilities for motor vehicle passenger transportation. He pointed this out because arguably this proposed use for automobile used car sales fits the definition of a transportation service. They are not prohibited and arguably they are included or permitted.

Mr. Trainor addressed the issue of impact on the neighborhood by stating that it would only be positive. It is a proposed use that was there for 14 years and there are more intense uses that could be made of the property. He pointed out that this corridor of Route 9 itself is set up for highway or automobile related businesses. He feels the LI 2 zone is an extension of the B-4 and B-4A zones. He explained that they are surrounded by other businesses, JIMAPCO immediately to the north, Quick Response immediately to the south, and Mackey Auto Sales and Neet's Auto Body Shop to the south.

Mr. Trainor emphasized that of the 37 acres they are only talking about utilizing approximately 10% of the property and the impact will be minimal. He also noted that the law changed in 2005. He has spoken to Mr. Myers several times regarding this application and understands that he feels this would be an appropriate use for this area. He feels this is a natural fit in the area and will only have positive effects.

Mr. Koval asked if the 10% of the area to be used is defined. Mr. Trainor responded no but it was marketed as approximately 3-5 acres. He noted that there are approximately 10-12 acres that are cleared but it would be only the northern portion of the site near the road.

Mr. Koval noted his concern is with the property backing up to a residential area and he feels the area that would be used for auto sales should be defined.

Mr. Trainor explained that there are approximately 20 acres that remains wooded and they are only talking about the front part of the property and it could be limited to that portion.

Mr. Dudick asked how long they owned the property. Mr. Trainor responded since 2003.

Mr. Kortz asked if this was an allowed use at that time. Mr. Trainor explained that there was a used car dealership there but he is not sure if it was allowed under the old zoning, there was a shaded and unshaded area of the zone and automobile sales were permitted in one of the areas. The zoning changed to Light Industrial.

There was continued discussion regarding used car sales ever being an allowed use for this site.

Mr. Kortz asked for clarification on the marketing of the property between 2005 and now. Mr. Trainor explained that Mr. Taylor's contract expired and there was an interested party who they thought would apply for the variance but did not followed through.

Mr. Dudick asked for further explanation on not being able to realize a reasonable return because it sounds like the property has not been marketed for approximately 19 months.

Mr. Trainor explained that the property was marketed and they thought Mr. Apa was pursuing a variance so he could lease the property for automobile sales for himself, not for Mr. Laurenzo.

Mr. Myers presented an old zoning map showing that the property was in the shaded area and auto sales was not an allowed use.

Mr. Peller asked to have the record reflect that Mr. Myers presented an old zoning map dated December 26, 1996 and Mr. Myers determined that the parcel in question was in the shaded area.

Mr. Dudick again asked for an explanation of how there is a demonstration of financial hardship if the property was not listed for a period of 18-19 months. Mr. Trainor explained that the property was being marketed for a number of different uses and as explained by Mr. Taylor the only one that expressed any interest was for automobile sales.

Mr. Dudick explained that he is looking at the period between March 2006 and October 2007. Mr. Trainor explained that after the period of marketing and the only interest being shown was for automobile sales they thought someone else was pursuing the variance at that time. There has been no other interest except auto sales so Mr. Laurenzo is now seeking the variance.

Mr. Ophardt asked if the lease for Mr. Apa was \$2,500 per month or \$30,000 per year.

Mr. Laurenzo responded yes. Mr. Ophardt asked if any attempt was made to lower the rent to attract other potential users for the property. Mr. Trainor explained that Mr. Laurenzo was willing to negotiate on the taxes which are approximately \$11,000. Mr. Laurenzo explained that he was willing to negotiate but he only had interest for car dealerships nothing else.

Mr. Dudick asked if there is currently interest for a car dealership with an actual proposal being made. Mr. Laurenzo responded at this time no but he has three or four people that were previously interested.

Mr. Dudick asked why he is making this application now because there is no pending lease agreement, the property is now listed with a sign, there's no agent selling it. Mr. Trainor explained that it is very difficult to market it without the zoning being in place.

Mr. Peller asked if they are agreeable to the Board placing a restriction on the amount of acreage that could be used for auto sales. Mr. Trainor responded yes, what they need is 3-5 acres.

Mr. Peller asked if the application can be amended to say up to five acres. Mr. Trainor agreed.

Mr. Koval noted that it should be kept away from English Road. Mr. Trainor referred to the color photographs submitted with the application indicating the building and suggested referring to the area immediately to the north and back of the building; the area that was used previously for auto sales.

There was discussion on how to define the area to be used.

Mr. Myers explained that there is a strip along the back that is a Saratoga County Sewer easement. He also noted that Mackey's Auto Sales is also a non-conforming use but has been a continuous use. He explained that the zoning was changed but it does seem that every other kind of transportation/automobile business that is allowed in town is allowed in this zone except sales. He feels it is reasonable to assume that sales would be allowed in this area.

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

Mrs. Gleason stated that she agrees that there is a lot of automotive business in this area and she would vote yes for this application.

Mr. Dudick agreed that this is a reasonable use and the applicant has agreed to amend his application to include a lesser area but he has a problem with the financial evidence presented because it seems as though the property was not marketed for over a year and to claim that you cannot get a reasonable return concerns him.

Mr. Trainor stated that he feels Mr. Taylor's letter and affidavit presents a lot of information, specifically that the larger and more intense uses are not possible because of a lack of water, also there has been, and continues to be, interest in the property from auto sales people. Mr. Laurenzo makes known the fact that the property is available.

Mr. Koval explained that it is very difficult to generate interest when you refer to a potential use, from a buyer's standpoint they do not like to go through town approvals. He can see after trying for a year and not getting any real interest except for this potential use and the fact that they were under the impression that this was not an allowed use could create a situation where they wouldn't continue to market it.

Mr. Ritter noted that based on the marketing they did the only interest they had was for auto sales and if that is the trigger to re-market this property they might want it re-zoned so they could market it and get a reasonable rate of return. The rate of return is a factor, not the deciding factor. He feels the applicant has done work to demonstrate that this is the conclusion they are at and if they are going to be successful with this property they need to have this use established. From that perspective he would be in favor of approving this application.

Mr. Kortz noted his concern that there is not a current tenant for this property. He is sympathetic to the small car dealerships and feels they should be allowed in this area but the town board chose not to allow them. When the property was purchased, even though there was some confusion about the dealership being there, it was a non-conforming use and in that respect it is a self-created and that has to be considered, therefore he would vote no on this application.

Mr. Dudick explained that there is logic to having this area for auto sales but that's not the way the town board went. They deemed this property should be zoned Light Industrial. He sees no rationale or logic for asking for this use at this time other than the applicant wanting to have different zoning.

Mr. Koval explained that there was a car dealership there so even though the use may not have been a permitted use it was an existing non-conforming use from the time before Mr. Laurenzo purchased it and it could have continued if someone wanted to use it as a car dealership within a year from the zoning change. He can see how that could cause some confusion for the owner or the purchaser of the property if you buy it with an existing dealership in place.

Mr. Dudick asked if this was a registered car dealership with DOT. Mr. Laurenzo responded yes it had a registered sign on the wall. He thought he should come to the town to make sure it was ok to continue the use. He was not aware of the time limitation.

Mr. Dudick asked if the property were to allow for an auto dealership what his expectation is as far as how long it would take to find a tenant interested in auto sales on the property.

Mr. Laurenzo responded almost immediately.

Mr. Dudick asked if he couldn't find a tenant for auto sales on this property even after 12 months of marketing with an allowed use of auto sales, would you then conclude that it wasn't just that issue. Mr. Laurenzo responded yes. Mr. Dudick asked if the application was amended to a five acre lot size with a stipulation that a potential leasee must be found for auto sales within 12 months and if there isn't a signed lease within 12 months then this variance would be rescinded.

Mr. Trainor asked for clarification, if there is not an auto sales tenant within 12 months then this variance will expire, it does not mean that if he has one tenant and then changes tenants the variance will not expire with the first tenant. Mr. Dudick agreed he has 12 months to find someone interested in a lease for auto sales; it is not a 12 month variance. It is a property variance, not an owner variance.

Mr. Peller explained this is not an issue as long as a lessee is found within one year and as soon as that happens the variance will continue. The restriction is that the applicant has one year to lease to an auto dealership and in fact if he can't then the variance will expire.

Mr. Koval inquired as to who will be responsible for enforcing the restrictions placed on this variance. Mr. Peller explained that a buyer has the duty to research the municipal records before purchase. The conditions will be part of the permanent record.

There was discussion on the language necessary to put the restrictions on this variance.

Mr. Dudick made a motion to approve this application with the condition that the owner of the property should have a signed lease for auto sales that begins within 12 months from today in order for this variance to continue. Without having a signed lease that starts by October 2, 2008 this variance will expire. The variance is also conditioned that a five acre portion of the lot that surrounds the current building structure will be the only portion allowed for the use of commercial auto sales. Mr. Ritter seconded. Ayes: Dudick, Gleason, Koval, Ophardt, Ritter. Noes: None.

Mr. Peller made a point of order and noted that Ms. McCarthy recused herself from hearing this application, she did not abstain her vote.

2. An application from **Peter Fowler**, requesting an area variance from Section 208-11 for a side yard setback – proposed setback = 4.6 ft. – variance requested = 5.4 ft.; an area variance from Section 208-16E (2) (c) from the 10 acre minimum lot size in the CR zone (current lot size is 7 acres) and a variance from the requirement that any subdivided lot be initially owned by a family member. The property is located at 320 Riverview Road, Rexford. Permit #80675

The secretary read the legal notice as it appeared in the Daily Gazette on September 27, 2007.

Dwayne Rabideau from Gilbert VanGuilder Land Surveyors presented this application. He explained that they have a plan before the Planning Board to subdivide the seven acre parcel into a three and a four acre parcel. It was determined by Mr. Myers that the two lots are not complying lots. The variances being requested are due to the CR zone requiring a ten acre minimum lot size and the requirement that the lot being subdivided must be owned by a family member. There is also a 5 ft. side yard setback variance needed for the existing house.

Ms. McCarthy asked when the CR zone was created and when the applicant purchased the property. Mr. Fowler responded that he has owned the property for five years, since July 2002.

Mr. Myers stated that the CR zoning went into effect in May 2005 and therefore the applicant owned the property before the zoning changed.

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 request is similar to others that have been addressed in the past; it does not meet the 10 acre requirement but is a significant parcel of land. He feels it does not qualify as a flag lot because of the way it is subdivided, it is not directly behind the existing house.

Mr. Kortz referred to the development options for the CR zone referred to in the zoning law. He quoted development option "A" states for development on less than 10 acres, which this qualifies for, may be developed at a maximum capacity of one dwelling unit per three acres of unconstrained land. He then referred to "C" which refers to a one time single lot exception is allowed, meaning a subdivision of one parcel as it existed in January 1, 2005 to a maximum two lots to be used for single family residential purposes. He then referred to the section stating that this should only be permitted for parcels greater than 10 acres and shouldn't be allowed. He continued, in "C" it says that it can't be subdivided if less than 10 acres but in "A" it says you can build on lots of three acres and he feels it is all very confusing.

Mr. Dudick asked if Mr. Myers knew what the issue is with regard to subdividing for family members only. Mr. Myers responded that he really does not know but he feels this would allow the larger tracts of land to be subdivided for one time only to a family member without having to meet all the requirements of the CR zone.

Mr. Dudick noted that this request seems reasonable; each lot will be over three acres so density does not become an issue.

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

Mr. Kortz asked if there is public water for the lots. Mr. Rabideau responded no.

Mr. Dudick called for a vote on the motion. Ayes: Kortz, McCarthy, Ophardt, Dudick, Ritter, Koval, Gleason. Noes: None.

3. An application from **Adam Joachim**, requesting an area variance from Section 208-12 from the required 80 ft. front yard setback for an accessory structure – proposed setback = 35 ft. = variance requested = 45 ft. The property is located at 84 Blue Jay Way, Rexford. Permit 80676

The secretary read the legal notice as it appeared in the Daily Gazette on September 27, 2007.

Adam Joachim, 84 Blue Jay Way, presented this application. He explained that he would like the variance for an above ground pool. He is putting up a fence and the pool will be put in at a future date. This is a corner lot with the requirement of two 80 ft. setbacks. There is a problem because of an existing shed and wetlands in the back. It would also be close to the adjoining property line. The area being proposed for the pool is a large open area and would be a good area for a pool.

Mr. Ophardt asked if he is proposing the fence be put up at a 35 ft. setback and if the pool will be put in at a later date. Mr. Joachim explained that they will probably not put the pool in for another three or four years; he wants to put the fence in this year and wanted to be sure he could.

Mr. Ophardt asked if he would have to come back for a separate application for the pool. Mr. Myers explained that he will have to apply for a pool permit; a permit is not required for the fence. He cautioned that the fence should meet the pool enclosure law if that is the intent of the fence. There are specific restrictions regarding height, etc. if it is to be used for the pool.

Mr. Kortz asked what this variance is actually for. Mr. Myers responded for the setback from the property line for an accessory structure, which is what a pool is considered. The fence actually has no effect on it until the pool is put in.

Ms. McCarthy noted that this is a strange request making an application now for something they are going to do four years from now. Mr. Myers explained that the variance will stay with the property.

Mr. Dudick noted that this is a common problem with corner lots.

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

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

4. An application from **Ted Cillis, Jr.**, requesting an area variance from Section 208-86 from the required 50 ft. setback for a keyhole lot – proposed setback on west side = 25 ft. – variance requested = 25 ft. – proposed setback on east side = 44 ft. =- variance requested = 6 ft. The property is located at 47 VanVranken Road, Rexford. Permit 80677

The secretary read the legal notice as it appeared in the Daily Gazette on September 27, 2007.

Ted Cillis, custom home builder, presented this application. He explained that the request is for the Hoffman family and this is part of a family plot. They would like to build a 4,000 sq. ft. ranch house near their family. The lot is large but does have a drop down to a stream, it is longer than wide and therefore the side yard setbacks cannot be met. The proposed house is 106 ft. long.

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

Mr. Koval asked if this requires 40 ft. of access on a public road. Mr. Myers explained that they have deeded access of 40 ft. Mr. Koval noted that this is a landlocked parcel with the exception that it has the right-of-way and it is an existing lot.

Mr. Myers explained that it serves the purpose of the lot because it is landlocked and he did not think a variance was needed for the 40 ft. of access because the parcel had been there so long. He did not feel it was significant.

Mr. Koval explained that if they were creating a new lot they would be required to have 40 ft. of road frontage. Mr. Myers explained that there are currently several lots that have common driveways with deeded access. He noted that with a landlocked parcel the only access is over a deeded access.

Mr. Peller asked if the access was granted in 1978 Mr. Myers responded yes.

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

Mr. Ritter made a motion to approve the minutes of July 17, 2007, Mr. Koval seconded. Ayes: Ritter, Koval, McCarthy, Kortz, Ophardt. Noes: None. Abstained: Dudick, Gleason.

Mr. Koval made a motion to approve the minutes of September 4, 2007, Mr. Dudick seconded. Ayes: Koval, Dudick, Ophardt, McCarthy, Kortz. Noes: None. Abstained: Gleason, Ritter.

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Mr. Dudick made a motion to adjourn the meeting at 8:38 PM, Mr. Ritter 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