

ZONING BOARD OF APPEALS

January 8, 2008

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

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

Mr. Dudick called the meeting to order at 7:07 PM. He explained that Judy Lamb will be acting secretary until a new secretary is appointed.

NEW BUSINESS

1. An application from **Stewart's Shops Corporation**, requesting a variance from Chapter 171 – Signs, Chart I, to allow for three additional wall signs and an area variance of 24 sq. ft. The property is located at 645 Grooms Road, Clifton Park. Permit #80684

The secretary read the legal notice as it appeared in the Daily Gazette on January 3, 2008.

Chad Fowler, representing Stewart Shops, presented this application. He explained that they would like to brand this gasoline as Mobil. It is currently unbranded. Due to the demographics and high credit card usage in this area it is an ideal site for a Mobil gas station. In order to do that they are proposing to put the Mobil legend on the existing white canopy. It will be internally illuminated with a blue stripe around the canopy on three sides. There will not be a freestanding sign. The signs will be 12 sq. ft. each. There are currently two 8 sq. ft. wall signs on the building for identification for Stewarts and there is an 8 sq. ft. price sign on the pumps that will remain. This site fits the criteria to be branded Mobil due to the high credit card usage; the normal is 40%, this site has 60-70% credit card usage.

Mr. Lemire asked what the credit card usage has to do with the brand of gas. Mr. Fowler explained that the customers are already in tune with pay at the pump with speed pass and that is typical of the Mobil brand.

Mr. Lemire asked if the speed pass is already on the pumps. Mr. Fowler responded no, it is unique to Mobil and will be placed on the pumps.

Mr. Lemire asked if that would be considered a sign. Mr. Myers indicated no.

Mr. Dudick asked the applicant to indicate on the diagram the exact location of the requested signs. Mr. Fowler referred to a site plan and indicated there will be one sign facing Vischer Ferry Road, one facing the intersection with Grooms Road that will be seen from the west and one along Grooms Road that will be seen from the east. They will be 1 ft. 10 in. high x 6 ft. 4 in. long. They will be 15 ft. above the ground due to the height of the canopy.

Mr. Dudick asked if there was a prior application from another gas station similar to this one that was denied. Mr. Myers responded not to his knowledge.

Mr. Kortz noted that there are a lot of other gas stations in the area that have a lot more signs than what is being requested.

Mr. Fowler explained that they have done a lot of similar branding over the last twelve months at other sites that also included a large free standing sign which is not needed at this site.

Mr. Dudick asked if this is part of a PDD. Mr. Myers responded it is all B-3.

Mr. Lemire asked if there is a mock up of what the signs will look like. Mr. Fowler responded he does not have an additional mock up; he only has a copy of what was submitted with the application.

Mr. Lemire asked if the blue strip is considered part of the sign since it will be illuminated. Mr. Myers responded no because he considers it an exterior finish. He feels this request is in line with other Mobil stations in town

Mr. Peller asked if the pricing sign will be removed. Mr. Flower responded no it will remain just as it is.

Mr. Dudick noted that having an illuminated strip around the fascia is not unusual for gas stations.

Mr. Lemire explained that his concern is if the blue stripe is considered signage then the variance request would be much larger than what is being requested. He also noted his concern for the residential areas around this site.

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

Mr. Myers stated that he does not have any problem with this request. He feels it is comparable to other gas stations in the area. He does not consider the blue strip a sign.

Mr. Dudick asked if the issue of having signs on three sides instead of two sides is of any concern. Mr. Myers explained it is due to the canopy's orientation and he does not feel this request is unreasonable.

Mr. Lemire asked if this site is sold in the future would a variance be needed for someone to add signage to the blue area. Mr. Myers responded absolutely.

Mr. Kortz noted that he does not feel this request is out of line

Mr. Dudick noted that this request is reasonable. He questioned the credit card requirement of Stewart's versus Mobile. Mr. Fowler responded that is what draws attention to the site, one is volume and the other is credit card usage.

Mr. Dudick made a motion to accept this application as presented. Mrs. Gleason seconded. Ayes: Dudick, Gleason, Kortz, Lemire, McCarthy, Kortz, Ritter. Noes: None.

2. An application from **Adirondack Dental**, requesting a variance from Section 208-50.3A from the required 43,560 sq. ft. minimum lot size – proposed = 25,075 sq. ft. – variance requested 18,485 sq. ft.; a variance from Section 208-98 from the required 130 ft. setback from the centerline of Rt. 9 – proposed setback = 105.9 ft. – variance requested = 24.1 ft.; a variance from Section 208-50.3 from the required 80 ft. front setback – proposed setback = 38 ft. – variance requested = 42 ft.; a variance from Section 208-50.3C from the required 30 ft. side yard setback – proposed setback = 17.3 ft. – variance requested = 12.7 ft.; a variance from Section 208-50.3C from the required 20 ft. parking setback – proposed setback – 3 ft. – variance requested = 17 ft.; and a variance from Section 208-50.5 from the required 15 ft. of landscaping from front building line to rear property line – proposed = 3ft. – variance requested = 12 ft. The property is located at 1753 Route 9, Clifton Park. Permit #80686

The secretary read the legal notice as it appeared in the Daily Gazette on January 3, 2008.

Peter Reilly, attorney, presented this application. He introduced Andrew Singh, owner, and Gilbert VanGuilder, surveyor for this project.

Mr. Reilly explained the location of the site as being on the east side of Route 9 approximately 950 ft. south of Biette Road, immediately south of the Yamaha dealership. The zoning is B-4 and it is presently being used as a dental office. It is a 1,980 sq. ft. office with 13 parking spaces. The proposal is to add 1,152 sq. ft. to the rear of the building and eight additional parking spaces to stay code compliant. The application was in front of the Planning Board in November 2007 for concept site plan proposal and was well received by the board. They advised the applicant to seek the necessary variances from the ZBA.

Mr. Reilly explained that he does not believe the 80 ft. setback variance is needed because he believes Section 208-98 sets forth a special setback from Route 9 of 130 ft. If that variance is granted he does not feel the 80 ft. setback variance is required. He stressed that the addition will be put on the back of the building and will be further away from Route 9 than the existing building and also further from the side yards as it angles reducing the impact. The existing site is 25,075 sq. ft. and there is no other land available for the applicant to purchase. The landscaping variance is due to the size of the lot as it exists and cannot be met due to the existing driveway on the north and the parking on the south. The Planning Board did state that if this variance request is successful with the ZBA they will be looking at that on the site plan and will require whatever is necessary to minimize the impact on the surrounding properties. He explained that the area is commercial in nature with a single family home that sits back quite a ways. There would not be any undesirable change to the neighborhood, it is currently a dental office and there is no other feasible way for the applicant to obtain what he needs. Although some of the variances are substantial some of the allowed uses under B-4 would have more of an adverse impact. This request would have a minimal impact; it looks like a single family home and does not have the negative aspects that many of the allowed uses would have. It is not a self-created hardship, it was approved in 1990 and the zoning has changed over the years as far as bulk and area requirements.

Mr. Kortz asked if this is the same owner. Mr. Reilly responded no. Dr. Singh stated that he purchased the property two years ago.

Mr. Reilly noted that the B-4 zone requires 35% green space and even with the expansion on this site there will be 50% green space. He also noted that they will connect to the county sewer system which will be a benefit not only to this property but to surrounding properties. He also explained that the Planning Board has raised the potential of some cross easements both north and south of this property and the applicant is willing to discuss those.

Mr. Kortz questioned the request for an 80 ft. front yard setback variance and the statement that it may not be needed. Mr. Reilly explained that in some ways it is an academic discussion because he believes that the special setbacks take precedent over any others, so the need to be 130 ft. from the centerline of Route 9 takes precedent as opposed to the 80 ft. setback from the property line.

Mr. Peller noted that there will be no change in the front of the building and he explained that he agrees with Mr. Reilly's interpretation and does not feel the second front setback variance is

needed. Mr. Myers explained that he always applies the most restrictive and in this case it would be the 130 ft. setback.

Mr. Kortz explained that in the narrative it states that the current setback is 105.9 ft. Mr. Reilly explained that is from the centerline of Route 9. Mr. VanGuilder stated that in 1990 a 27 ft. front setback variance was granted so therefore they do not feel any variance is required for front setback.

Mr. Peller asked Mr. Myers if he knew if a variance was granted in 1990 for front setback. Mr. Myers responded that he does not know for sure.

Mr. Reilly read from a decision sent to the applicant on October 2, 1990 for a setback variance of 27 ft. from the centerline of Route 9

Mr. Peller requested that a copy of that decision be put into the record for a 27 ft. variance and he explained that he does agree with Mr. Reilly's interpretation of Section 208-98 so therefore it is not necessary that the ZBA look at a variance for the 130 ft. setback from the centerline of Route 9.

Mr. Peller amended the application to remove any request for a setback variance from the centerline of Route 9.

Mr. Lemire asked if that means the variance request for a setback from the front property line stays in. Mr. Peller responded it is not necessary.

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

Mr. Dudick asked how many dentists are working at this site. Dr. Singh responded currently one, his wife.

Mr. Ritter asked if they are hoping to expand. Dr. Singh responded yes, they are currently seeing new patients and they would like to be able to service the community.

Mr. Dudick noted that the building is not getting closer to the road or side, the green space requirements are met or exceeded, and it is pre-existing.

Mr. Lemire asked for clarification on the expansion. Mr. Myers explained that because of the addition to the building the envelope for the parking lot is getting closer to the side lines. They need the additional parking due to the size of the building.

Mr. Kortz asked if the existing driveway will change. Mr. VanGuilder explained they are not getting any closer to the property line but at the closest location they are running parallel to the property line to create a better turning radius into the parking spaces.

Mr. Lemire asked who owns the property to the south. Mr. VanGuilder responded there is a single family residence that sits quite away back and there will be additional plantings in the area for a buffer. It is a keyhole lot.

Mr. Reilly noted that the Planning Board will require buffering and the effect will be less.

Mr. VanGuilder referred to comments by the Planning Board that if the ZBA chooses to approve the variances required they will intensify the buffering in locations that would be advantageous to the homeowners.

Mr. Dudick read the comments from the Saratoga County Planning Board stating that there is not a significant impact from this project.

Mr. Kortz noted that even though some variance requests are substantial it is a pre-existing lot.

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

3. An application from **59 Boyack Road, LLC**, requesting an area variance from Section 179-35B (1) (a) from the required 20 acres for a cluster subdivision - actual = 17.67 acres available - variance requested = 2.33 acres. The property is located at 59 Boyack Road, Clifton Park. Permit #80687

The secretary read the legal notice as it appeared in the Daily Gazette on January 3, 2008.

John Belyea, P.E., presented this application. He introduced Ken Gifford, landscape architect and developer of this project.

Mr. Belyea explained that the variance is a simple area variance from 20 acres to 17.67 acres. The lot configurations will not change once the variance is granted. The variance is to get some relief from the setbacks that are part of the R-1 zoning. He referred to the zoning table on the site plan showing the current setbacks for R-1 and referred to the proposed setbacks. The only changes are for the front setbacks from 50 ft. to 30 ft. This will allow them to protect a sensitive wetland area in the back of the property and would allow them to have a building envelope for a house.

Mr. Kortz asked if they are DEC or Federal wetlands. Mr. Belyea responded Federal at this point. They are too small for DEC.

Mr. Kortz asked how many lots. Mr. Belyea responded 18 lots slightly less than one acre per lot.

Mr. Kortz asked for the number of lots if they were not clustered. Mr. Belyea explained that there would still be a need 18 lots, it is critical to the developer. They would have to alter the road, put in more design time and greater expense. There is a limit with the grade on the southern side of the property and the further the road is put in there the more it will impact the retention walls as shown.

Mr. Gifford explained that they went to the Planning Board and they recommended they seek the variance. It is a beautiful site with many mature trees that provide a large buffer. If they don't seek the variance they would be required to move the road further up the hill that would require disturbing the trees. They would like to preserve the trees. Each lot has been site planned and graded and actually came from the site planning exercise and feels right. They could still have 18 lots but it would require removing more trees which they prefer not to do.

Mr. Peller asked where they are in the planning process. Mr. Gifford explained that they submitted conceptual design but they agreed to come for an area variance first before going for final approval from the Planning Board for the cluster subdivision.

Mr. Belyea explained that they did a pre-sketch planning meeting and did an official submittal to the Planning Board where they suggested going for the variance and he believes if the variance is granted they will go directly to a public hearing.

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

Mr. Myers noted that the cluster subdivision does not require the same front setbacks as R-1. He does have concerns with the grade on the property that will be addressed at a later date. If the variance is approved and the Planning Board approves the cluster subdivision they will set the front setbacks at 30 ft.

Mr. Peller noted that this Board is acting under the assumption that the cluster subdivision will be approved and if the cluster subdivision is not approved by the Planning Board they will have to return to the ZBA for front setback variances.

Mr. Dudick asked if approved by the ZBA can the approval be conditioned on the applicant receiving cluster subdivision approval from Planning. Mr. Peller explained as a matter of law it would have to be.

Mr. Lemire asked why the cluster subdivision was written into the code. Mr. Myers explained that it allows for smaller lots and roads to maintain as much of the natural surroundings as possible.

Mr. Kortz explained that the cluster subdivision provides a way to keep large tracts of open space contiguous to each other and allow smaller lots as a trade off for the environmental benefit.

Mr. Ophardt noted that in this case the public land will not be accessible. There was discussion on other forever wild areas in town and the access to them.

Mr. Myers noted that some of this property is quite restrictive due to the terrain so this request makes the property viable.

Mr. Kortz asked if the cluster subdivision allows the Planning Board more flexibility. Mr. Myers explained the Planning Board can modify all the setbacks.

Mr. Kortz noted that the amount of variance requested in terms of protecting a sensitive area is reasonable.

Mr. Ritter asked if going to a cluster subdivision actually makes the roads smaller. Mr. Myers responded yes it could. Mr. Belyea noted that it allows the road to be smaller but they are actually going to keep the exact configuration as shown on the plans. The road does meet the requirement for R-1. The only thing they are looking for is a lesser front setback to allow them more distance from the wetland areas.

Mr. Ritter noted he does not have a problem with the smaller setback; his concern is with a narrower road.

Mr. Myers asked if the road is 26 ft. Mr. Gifford noted that they are 12 ft. lanes. Mr. Dudick noted that it will get worked out at the planning level.

Mr. Dudick noted that this variance request is not substantial.

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

Mr. Dudick reminded the board about the training class on January 30, 2008.

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

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Mr. Dudick made a motion to adjourn the meeting at 8:00 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