

## ZONING BOARD OF APPEALS

March 3, 2009

Present: Michael Dudick, Chairman, Dale Gleason, Robert Ritter (arrived 7:04pm), Christopher Lemire, Douglas Strother, Brian Telesh, James Whalen

Also Present: Louis Renzi, Esq., on behalf of Joel Peller, ZBA Counsel  
Steve Myers, Director, Building & Zoning

Mr. Dudick called the meeting at 7:01 p.m

PLEDGE OF ALLEGIANCE

### NEW BUSINESS:

1. An application from Frederick Voehringer, requesting area variances for a property zoned R-1 and for a significant portion also zoned LC. Variances requested are as follows: (1) from Section 208-11: required front setback = 50 feet, proposed setback = 47 feet, variance requested = 3 feet; (2) from Section 208-98: required setback from centerline of Grooms Road = 100 feet, proposed setback = 69 feet, variance requested = 31 feet; (3) from Section 208-70A: required lot size = 100,000 square feet, proposed = 64,904 square feet, variance requested = 35,096 square feet; and, (4) from Section 208-70B: required front setback = 80 feet, proposed setback = 47 feet, variance requested = 33 feet. The property is located at 589 A Grooms Road, Clifton Park, New York. (Permit #80726)
2. An application from Frederick Voehringer, requesting a use variance from Section 208-69.2A. Building of a residence in an LC zone is not a permitted use. The ECC has reviewed this application pursuant to Section 124-8. The ZBA must conduct a SEQRA review of the application. The property is located at 589 A Grooms Road, Clifton Park, New York. (Permit #80727)

Applications 80726 and 80727 were presented together. The secretary read the legal notices for these applications as they appeared in the Daily Gazette on Thursday, February 26, 2009.

Mr. Gil VanGuilder presented these applications on behalf of Mr. Frederick Voehringer, who is under contract to purchase this land from the Rogers' to develop this parcel of land, which consists of 1.49 acres. He stated it is virtually the same application that was before this board back in September of 2008, but it was a different applicant, Mr. Michael Belanger, who is no longer under contract.

Mr. VanGuilder stated that the property is bounded on all sides the Latham Water District except on the north, where it is bounded by Grooms Road. There are two existing barn-type structures. The proposal is to take those buildings down and construct an approximate 2,000 sq. ft. single family home which will be connected to public water and sewer that currently exists on Grooms Road. The proposal has been reviewed by DEC because it falls within the LC zone. No wetlands are to be disturbed but the 100-foot buffer covers almost all of the property. DEC is waiting for a SEQRA determination.

Mr. VanGuilder referred to a letter from Richard Speidel of the DEC to John Scavo in August of 2008, stating that they would like either the Planning Board or Zoning Board to serve as the lead agency in the SEQRA process. He also referred to an e-mail from Dan Seiber, professional engineer for the Latham Water District.

Mr. VanGuilder gave a brief history of the parcel, which was created by deed in 1952, by map in 1949, when the Latham Water District purchased land for the Stoney Creek Reservoir. The deed was transferred to Wallace Ostrum who owned the property until 1891, when the property was transferred to the Rogers, who previously purchased the Ostrum house across the road. The Rogers' lived there until 2006, when they put the property up for sale. Originally, the property was listed with Brice Realty. They originally listed the two properties together. The buyer who purchased the property with the house could not qualify for a mortgage large enough to buy both parcels. They did not receive an acceptable purchase offer on this parcel until February of 2008, but that purchase offer was modified later to be contingent upon the ability to construct two duplex units on the property, which is the application brought to the board in September of 2008. There was no action taken by the board.

Mr. VanGuilder stated that there were other steps that needed to be taken. They had to go to the ECC and there were some clerical matters that needed attention such as a variance from the 100,000 sq. ft. minimum area that Mr. Kortz previously pointed out. They met with the ECC in January of 2009. There were 6 members present of the 9-member board. They heard the application and made recommendations in both directions but there was not a clear majority. One member recused himself. There were two members against the proposal, and three members for it. Lacking five affirmative votes necessary to support the resolution, the resolution did not carry.

Mr. VanGuilder stated that he prepared a letter to John Frazier, a professional engineer for the Latham Water District, describing the parcel and its history and their intentions with the property, discussing the wetlands that are involved. He included notes from the

ECC which requests that projects that involve wetlands and 100-foot buffers to wetlands use no salts, fertilizers or pesticides be used on the property in a manner where they can cause contamination.

Mr. Dudick, Mr. Lemire and Mr. VanGuilder discussed the January minutes from the ECC and how they voted. Mr. Dudick asked why one member recused himself and Mr. VanGuilder replied because that member works for DEC.

Mr. Dudick asked what the property was listed for and what offer(s) were made on the property. Mr. VanGuilder stated that property was listed for \$75,000. The first offer was for \$60,000, but that was for two duplex buildings to be approved. The offer was reduced to \$37,500 when the potential buyer found out he could not subdivide the property. Then he went back to the Rogers after the first meeting and he thought the approval process was going to be too expensive so he asked them to further reduce the price, which the Rogers did not agree to do. There is a current offer on the property.

Mr. Dudick stated that this sounds significantly less than what a building lot would normally go for. Mrs. Gleason stated that this is because it is not buildable. Mr. Dudick agreed with Mrs. Gleason.

Mr. VanGuilder stated that one issue is the need for demolition of the current buildings from the site. The other issue is the cost of getting approval for this. The estimated cost of use variance approval has run higher than the previous applicants thought. This all has to be added in to the final cost. Mr. VanGuilder stated that the house and lot were originally listed together and were priced at \$375,000. The house sold but the other lot did not.

Mr. Renzi reviewed the ECC minutes from January 20<sup>th</sup>. He thinks there needs to be clarification about the ECC's recommendations and how the members voted. The ECC concluded / recommended the following: that the proposed use was inappropriate within the LC zone. A motion to adopt the recommendation (that it was not appropriate) was made and seconded. It does not say that anybody voted in favor of the project. Mr. Renzi and Mr. VanGuilder discussed the voting for clarification and Mr. Renzi understood that three voted against the inappropriateness, two voted that it was inappropriate and one recused. Mr. Ritter stated that a majority voted that it was appropriate, but lacking five affirmative votes, the resolution did not carry.

Mr. Strother asked about the use of fertilizers and how is it possible to enforce that fertilizers not be used. The response to this was inaudible as there was sound malfunction (feedback) occurring over the speaker system.

Mr. VanGuilder referred to an e-mail he received from Dave Rogers the day before. Mr. Rogers is frustrated because he bought the property in 1981 and the LC zone was legislated in the mid to late 1980's. He bought the land with the thought that he could use it in the future. Mr. Dudick asked how much he paid for it. Mr. VanGuilder stated that his total investment over the years was \$27,000.

Mr. Lemire asked for explanation of the charge of the ECC. Mr. Myers stated that the ECC is an advisory committee at the disposal of planning, zoning and the Town Board, to

look at matters that involve the environment in town. As a separate entity they make recommendations to the boards. They do not have any regulatory authority; they operate strictly in an advisory capacity.

Mr. Dudick read a letter from Jason Kemper, Director of Planning for the Saratoga County Planning Board with respect to this application. From a County perspective there is no significant countywide or intercommunity impact.

Mr. Dudick asked Mr. Myers for his comments regarding the application. Mr. Myers stated that he is not crazy about it. If it was infringing on the LC zone a little bit that would be one thing, but the bulk of the project is in the LC zone. Additionally, this is located on the fringe of the Stoney Creek, and even though Mr. VanGuilder has done all his requirements, Mr. Myers believes that this will be a wet piece of property and there will be problems, at least from a construction standpoint. He does not believe this property is viable for a house to be built.

Mr. Myers further stated that whether the LC zone was imposed after the Rogers bought the property or not, it was done for a reason and he feels this is a real issue. Mr. Lemire asked Mr. Myers for clarification on his comments regarding it being done for a reason. Mr. Myers stated that the LC zone was instituted to protect the wetlands in town.

Mr. Dudick reminded the board and audience that the purchase of a lot of property in and of itself does not guarantee that the property will gain in value and not all properties have to be developed.

Mr. VanGuilder discussed the elevation of the property and stated that the house would be built 6 feet higher than the flood plain and it does not need a basement.

Mr. Dudick asked for public comment.

Mr. William Engleman of 6 Partridge, Ballston Lake spoke against the application. There was a period of time when he was an ECC member because of that he has some experience with issues relating to the LC zone. He is concerned about the impacts of projects like this one on the LC zone. He feels that the boards of the Town should be good stewards of the LC zone. He discussed the August letter from DEC to John Scavo regarding the proposed duplex at the time, wherein it is requested that the Planning Board or Zoning Board serve as the lead agency in the SEQRA process.

Mr. Renzi stated from a procedural standpoint that Mr. VanGuilder is aware of the completion of a SEQRA form required from this Board as part of this application. This is something that is not standard procedure for this Zoning Board. His expectation is that the Board will compile answers needed for the form at the end of this application process.

Mr. Engleman asked if the DEC has designated this Board as lead agency for their wetlands permitting process. He does not see this Board appropriately taking on DEC's permit authority or the SEQRA that needs to be completed for that, nor does he feel that DEC has authority over zoning decisions. Mr. Renzi stated for the record that DEC requested that either the Zoning Board or the Planning Board take the position as lead agency and pursue the SEQRA process.

There was discussion about what board should be the lead agency over the wetlands permit. Mr. Myers stated that he believes DEC will still administer the wetlands permit. The only reason the Zoning Board has this now is because it did not go to the Planning, since this is a single building lot. There is no subdivision that would make this application go to Planning. This is a very unusual case.

Mr. Engleman questioned the square footage of the area as described in the area variance application. Mr. VanGuilder explained that they squared the footprint.

Mr. Engleman stated that believes that any land within the LC zone is zoned LC, not R-1. He also discussed the four standards for the use variance and does not believe the standards have been met. He also discussed the demolition of the barns and the historic significance of that.

Mr. Dudick stepped out for a moment and Mr. Ritter chaired the meeting until Mr. Dudick returned.

Mr. Ritter asked for comments regarding concerns raised by Mr. Engleman. Mr. Renzi addressed the issue of zoning classification as R-1 or LC by stating that they are not mutually exclusive. There is an overlay – it can be both. LC is an overlay over R-1. The more restrictive of the two when there is an overlay is the one that controls.

Mr. Lemire asked Mr. Myers how much of the parcel is in the LC zone. Mr. Myers replied all of it except for a small portion along Grooms Road. Additionally, believing the barns are more than fifty years old, there will be a required evaluation by the Historic Preservation Committee. A recommendation will be made as to whether they can be demolished or not. They are an advisory committee and do not have regulatory authority but this recommendation has to be made before anything can go forward. Mr. Ritter asked for explanation of that process and the order of it, which Mr. Myers provided.

Mr. Bill Koebbeman of 861 Riverview Road spoke to support the strong enforcement of the LC zone. He feels it was very enlightened legislation when the Town enacted it. It protects water quality as well as the consumer. He referred to a comment made by a board member regarding pollution and the use of fertilizers, which Mr. Koebbeman feels cannot be enforced. He asked the board to consider this. Also, he feels that the owner had a potential opportunity to realize a reasonable rate of return in the past, even after the LC zone legislation.

Ms. Margaret Catellier of 26 Royal Oak Drive spoke against the application. She and Mr. Koebbeman are friends of the Open Space Committee and she agrees with Mr. Koebbeman. She discussed her own property and the wet area behind it. She discussed the open land in the west end of town.

Mr. Engleman asked for clarification about part 1 SEQRA assessment form concerning the 100-year flood plain and the acreage and proportion of the site. Mr. VanGuilder described the flood plain on a diagram for Mr. Engleman.

Mr. Dudick made a motion to close the public hearing. Mr. Ritter seconded. Approval unanimous.

Mr. Dudick asked Mr. VanGuilder to clarify information concerning the 50-foot buffer on the site plan. Mr. VanGuilder replied that DEC asked him to demonstrate a scale / perspective regarding disturbance to the wetlands. His experience with DEC is that many times, the 100-foot buffer is a transition zone from wetlands to upland. They were on this site and delineated it and asked him to put it on as a perspective. This varies from property to property.

Mr. Dudick stated he could understand why someone would want to build a house there. There was conversation between Mr. Dudick and Mr. VanGuilder which was inaudible because of feedback from the sound system.

Mr. Lemire asked what the purchase price for the whole property was in 1981. Mr. VanGuilder stated that the house across the road was purchased first and he does not know what the purchase price was.

Mr. Lemire asked if there was any attempt to sell this property for anything other than a building lot. Mr. VanGuilder replied no. Mr. VanGuilder asked Mr. Myers if he had investigated whether the Town would possibility purchase the property as an access. Mr. Myers stated that to his knowledge there have been no discussions about that. It is up to the Town whether they are interested or not.

Mr. Lemire asked if it would be fair to say that the Rogers may be able to realize a reasonable return for this property for any of the uses available in the LC zone. Mr. VanGuilder stated that the underlying zone is R-1. Because the LC zone does exist, that is the controlling zoning.

Mr. Ritter asked if, after the LC zone came into effect, did the Rogers make any attempt to market this property as an LC property. Mr. VanGuilder stated that there are very limited uses in an LC zone. Mr. Lemire stated that it could be a park, nature preserve or boat launch. Mr. VanGuilder replied that it would be hard realize a gain from that, and there could not be a boat launch as there is no water, just a flood plain.

Mr. Ritter stated that it is hard to determine for this use variance if the four necessary requirements have been met. He does not see clear and convincing documentation.

Mr. Dudick stated that he finds it difficult to come to a conclusion regarding financial hardship. Additionally, he feels that some properties are not suitable for building.

Mrs. Gleason referred to a typo on page two of the application which refers to a duplex. Mr. VanGuilder stated that this is a carryover from the previous application for a duplex. This is for a single family home.

Mr. Telesh asked for clarification about the selling of the property. Mr. VanGuilder stated that the properties were purchased separately, but they were trying to sell them together. The buyer could not qualify for a mortgage large enough for both properties, so they just bought the property with the house.

Mr. Dudick stated that he feels that the proposed application is an overly aggressive use of the property.

Mr. Strother stated that he also feels that the area variances are excessive.

Regarding the application for area variances (permit #80726), Mr. Dudick made a motion to deny the application as presented. Mr. Strother seconded. Ayes: Gleason, Ritter, Whalen, Dudick, Lemire, Strother, Telesh. Noes: None.

Regarding the application for a use variance (permit #80727), Mr. Dudick made a motion to deny the application as presented. Mr. Strother seconded. Ayes: Gleason, Ritter, Whalen, Dudick, Lemire, Strother, Telesh. Noes: None.

Mr. VanGuilder asked Mr. Myers about potential uses for an LC property. Mr. Myers answered this for Mr. VanGuilder and Mr. Renzi stated that the uses are clearly enumerated in the statute which created the LC zone.

Mr. Whalen stated the he does not feel the applicant demonstrated due diligence in trying to realize a reasonable rate of return.

At this point, the Board took a brief recess at 8:35pm and resumed the meeting at 8:45pm.

- 3. An application from Frederick Voehringer, requesting a variance from Section 208-7A – Definitions: Keyhole lots require 40 feet of land on a public right of way by fee simple ownership. Property has 60 feet of deeded access. Property also requires variance from Section 208-86B, which requires main building on a keyhole to be set back 50 feet from all property lines. Structure shown is setback 35 feet, variance requested = 15 feet. The property is located north of Westview Court, Clifton Park, New York. (Permit #80728)**

The secretary read the legal notice as it appeared in the Daily Gazette on Thursday, February 26, 2009.

Mr. VanGuilder presented this application on behalf of Frederick Voehringer. He explained the property and the transference of it over the years, from Stanzak to Belmonte to Voehringer. In 2003, A 60-foot wide easement for ingress / egress was granted per deed stipulation. When the property was conveyed to Mr. Voehringer, what was needed was 40-foot ownership on a public road in order to get a building permit, so they did not qualify for one. On lots 11 and 13, those owners have been made aware of how their property would be affected. Mr. VanGuilder spoke to attorney Joel Peller, and he requested that they pursue an easement signed by Belmonte signed by Mr. Voehringer. This is in process. They are working with DEC and Army Corps of Engineers regarding the wetland corridor that the driveway will cross. It will be one driveway for one house.

Mr. Telesh asked about the setbacks on a property so large. Mr. VanGuilder explained that it is a keyhole lot and there is a knoll. He explained the map to Mr. Telesh. There was discussion about access to the property.

Mr. Dudick asked about the plan for the rest of the property. Mr. VanGuilder replied that it would be used as open space, but an application will probably be made for a conservation easement, but no plan to do that officially at this time. Mr. VanGuilder also stated that there will be no more building lots and no further subdivision.

Mr. Ritter asked if the owner of the property has children. Mr. VanGuilder replied yes, grown children (50 years old).

Mr. Dudick asked Mr. Myers for his comments. Mr. Myers stated that he really does not have a problem with either of the variances. However, he believes that there should be a stipulation that there be no further development on the parcel.

Mr. Lemire asked about the purpose of the variance from the 40 feet of land on a public right-of-way by fee simple ownership. Mr. Myers replied that he believes you need access on a public road to have a legal address. Mr. VanGuilder referred to 1972 NYS Highway Law Section 288, which requires all parcels of land have ownership on a public road. The problem here is that there is no ownership along the public road. Mr. VanGuilder believes that this was an oversight. The previous owner should have paid more attention.

Mr. Dudick asked why the the property isn't just sold, instead of asking for an easement. Mr. Lemire discussed this with Mr. Dudick and explained that lots 11 and 13 around it and the access to them. Mr. VanGuilder explained the driveways and easements and referred to the map.

Mr. Strother asked what the boards responsibility is in this case with regard to wetlands. Mr. Dudick discussed this point with Mr. Strother and stated that they are building a driveway there, which is allowable.

Mr. Dudick asked for public comment.

Mr. William Engleman of 6 Partridge, Ballston Lake, asked about the total amount of wetlands. Mr. VanGuilder stated that total wetlands crossing is a little over 100 feet, and another 100 feet on each side in the LC zone, for a total of about 300 feet. Mr. Engleman asked if there is a wetlands disturbance permit and stream crossing permit required and Mr. VanGuilder replied yes. There was discussion about the stream and Mr. VanGuilder stated that it is not a named stream; it is a tributary.

Mr. Engleman asked if a different standard is applied when constructing a driveway in an LC zone, because wetland crossing is involved. Mr. Lemire referred to Section 208-69.2(A), which states that a roadway or driveway is a permitted use in an LC zone, and he believes this is not an issue. Mr. Engleman asked if this is an issue with a building department. Mr. Myers replied that the Building Department will grant a permit based upon full compliance with DEC permit processes and their approval of the plans for the crossing. There will probably be some storm water requirements, as well.

Mr. Dudick asked for further public comment and there was none.

Mr. Dudick made a motion to close the public hearing. Mr. Ritter seconded. Approval unanimous.

Mr. Ritter discussed the possibility of the applicant moving the house. Mr. VanGuilder stated that they chose the location because it is natural and undisturbed. There would be additional cost for grading if they moved the house.

Mr. Dudick made a motion to approve the application for the construction of a single family home with the stipulations that there be no further subdivision of the property and for the expiration of the sideyard variance if it is not used within 18 months. Mr. Ritter seconded. Ayes: Gleason, Ritter, Whalen, Dudick, Lemire, Telesh. Noes: Strother

- 4. An application from Northeast Petroleum Tech. Variance #80283 dated October 3, 2000, approved one freestanding sign at 82 sq. ft. total which included the Hess logo and 4 gas price signs. Sign permit #2001-0207 specifically prohibits cross-branding on freestanding sign since variance was specifically for Hess. Applicant requests variance to allow cross-branding by removal of 2 gas price signs. Currently, sign is in violation of Section 171-4I(2) since no permit was issued for change of prices to Dunkin Donuts. Variance requested is from Section 171-4J(2) – change of service identified. The property is located at 100 Commerce Drive, Clifton Park, New York. (Permit #80729)**

The secretary read the legal notice as it appeared in the Daily Gazette on February 26, 2009.

Mr. Dave Raber, owner of Northeast Petroleum Technologies, a contractor for Amerada Hess. They perform service and construction in the Albany area market. They would like co-branding of signs by removing two of the Hess signs and adding Dunkin Donuts to the freestanding sign. The sign is already up. He discussed the original sign, which included for product price signs. They secured a permit to change their coffee configuration inside the store, which used to be Mountaintop coffee. As part of that work, Hess has a sign company that changes the logo. They installed the sign believing they could. It was suggested they leave the sign up until this Board makes a determination. They are not asking to increase the square footage but to co-brand by adding Dunkin Donuts coffee and removing two of the existing product designations. They have always sold coffee in the store. They hire engineering companies to permit their jobs. Generally, their policy is to place the coffee signs on the goal post outside. This was not done on purpose to slip something by; this is part of the corporate retail strategy.

Mr. Dudick made a motion to close the public hearing. Mr. Ritter seconded. Approval unanimous.

Mr. Dudick asked Mr. Myers for his comments. Mr. Myers stated that the only reason he noticed this is because of the appearance of so many Dunkin Donuts. He believes that Mr. Raber is correct, that they did have Mountaintop up there for a long time, apparently illegally because it was not in the permits. He did get a reconfiguration permit for inside the store. Once the Dunkin Donuts sign went up, Mr. Myers noticed it, called the

applicant and told him that it is illegal and he needs a variance, but that he could leave it up until after the hearing.

Mr. Lemire asked Mr. Myers about the language on the old copy which mentions no co-branding, was that put there by the applicant or by the ZBA. Mr. Lemire stated that the applicant added that they had no intention to cross-brand.

Mr. Raber commented that this corporation's policy is generally not to co-brand. Hess owns everything and he believes they meant that they will own everything in the store. They are not going to lease the space to another tenant which would require a change in use.

Mr. Myers asked if Mr. Raber if all of those price signs on that sign are required and Mr. Raber replied no, just on the pumps.

Mr. Lemire asked what the original variance request was for and Mr. Myers replied that it was an area variance for the size of the sign. They originally wanted two signs but settled on one larger sign.

Mr. Strother asked if Hess has other issues like this in town. Mr. Myers replied that this is the only Hess station in town.

Mr. Dudick reminded the board that it previously granted a similar variance to Taco Bell. This is not an increase in the size of the sign. He does not have any problem with this application.

Mr. Lemire expressed concern about other advertising being added to the sign and at what point do we say it's a Hess station and not every product should be advertised on the sign. Mr. Dudick stated he is not going to micromanage how to best advertise their business. Mr. Lemire asked if we had an issue with Dunkin Donuts at Cumberland Farms and Chester's Chicken at Cobblepond Farms. Mr. Myers stated that if he had not found this note about no cross-branding in their original permit, they would not be here for a variance. He can change the face of a sign by just going through the building department for a new permit. The issue with the other companies was not a sign issue but an indoor one.

Mrs. Gleason made a motion to approve the application as submitted. Mr. Ritter seconded. Ayes: Gleason, Ritter, Whalen, Dudick, Lemire, Strother, Telesh. Noes: None.

Mr. Telesh commented that he believes it is a good decision to grant this variance. It is not affecting the size of the sign and allows the business to market its products.

Mr. Dudick made a motion to approve the minutes of February 2, 2009. Mr. Ritter seconded. Approval unanimous.

Mr. Dudick made a motion to adjourn the meeting at 9:30 p.m. Mr. Ritter seconded.  
Approval unanimous.

Respectfully Submitted,

Jessica McCarthy  
Secretary

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

Approval of Minutes of February 3, 2009