

ZONING BOARD OF APPEALS

September 1, 2009

Present: Michael Dudick, Chairman, Dale Gleason, Robert Ritter, Douglas Strother, Christopher Lemire, Brian Telesh, James Whalen.

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

Absent: Deborah Ferro (alternate member)

Mr. Dudick called the meeting at 7:05 p.m.

PLEDGE OF ALLEGIANCE

OLD BUSINESS:

1. An application from **Belmonte Properties, LLC**, requesting a use variance from **Section 208-69(2)** to construct a single family home in an LC zone of a previously approved subdivision, Oakwood Estates. (The entire proposed house was in the LC zone originally and due to a new delineation it appears that approximately half of the proposed house is now in the LC zone. (910 SF per the drawing) The size of the proposed structure is actually larger now (1829.1 SF) than was originally proposed (1800 SF))

If use variance is granted, two area variances will be required as follows: (1) from **Section 208-70(A)**, which requires a minimum lot size of 100,000 sq. ft., the proposed

lot is 20,504 sq. ft., variance required = 79,496 sq. ft.; and (2) from Section 208-70(D), which requires a side setback of 20 feet, 10 feet is proposed, variance required = 10 feet. The property is located at 16 Bonneau Road, Clifton Park, New York. (Permit #80730)

This application was not heard at this meeting and has been postponed at the applicant's request to September 15th.

- 2. An application from Gerald Currier, requesting a use variance from 208-43.2 (permitted uses) to allow a business involving boat sales and service, construction equipment sales and service in a hamlet / mixed use zone. They are believed to be a heavier commercial use than the zone was intended for. The property is located at 1111 Route 146A, Clifton Park, New York. (Permit #80736)**

This application was not heard at this meeting and has been postponed at the applicant's request to October 6th.

NEW BUSINESS:

- 1. An application from Parkway Music, proposing to construct a new 2-story 12,000 sq. ft. music store and the necessary site improvements, requesting area variances as follows: (1) from Section 208-50.3B – 80-foot front building setback is required, 31 feet are available – variance requested = 49 feet; (2) from Section 208-50.3B - 30 foot front parking setback is required, 3 feet are available – variance requested = 27 feet; (3) from Section 208-50.3C – 30 foot side building setback is required, 12 feet are available – variance requested = 18 feet; (4) from 208-50.3C – 20 foot side parking setback is required, 8 feet are available – variance requested = 12 feet; (5) from 208-50.3F – 35% greenspace required, 31% is available – variance requested = 4%; and (6) from 208-50.5 – landscaping 15 feet wide along sides, minimum available along south side is 7 feet – variance requested = 15 feet. The property is located at 14 Biette Road, Clifton Park. (Permit #80741)**

The secretary read the legal notice as it appeared in the Daily Gazette on August 27, 2009.

Mr. Peller disclosed that he represented the applicant when they formed an LLC. He does not feel that this is a conflict for the purpose here, but he wished to disclose that.

Mr. Dudick explained that this is a seven-member board, that alternate member, Ms. Ferro is not present, and that Mr. Strother has recused himself from voting on this application. Mr. Strother stated that he is recusing himself because of his general loyalty to Parkway Music. Mr. Dudick explained to the applicant that four affirmative votes are needed for this application. The applicant wished to present his application.

Mr. Gil VanGuilder presented this application on behalf of the applicant. He explained that Parkway Music has been in the area on Route 9 for about 15 years. They currently lease approximately 8,000 square feet of retail space and they are growing. They have looked at the

current piece of property and have worked with Mr. Myers and Mr. Scavo from planning for an initial look at their plan. A few suggestions were made and they went before the Planning Board on June 23rd as a discussion item. He made copies of the minutes of that meeting for the board's review. The application entails one acre of land which does meet the B4(a) zone requirement. However, due to the configuration of the parcel, they cannot meet all of the setback requirements. He explained the different area variances needed.

Mr. VanGuilder also explained that the off-street parking requirements for retail space is one parking space per 200 square feet. For a 12,000 square-foot building, this would mean 60 spaces. With land banked parking spaces they show 61 spaces, but based on the historic use that Parkway Music has had in their current rental space, at 8,000 square feet they generally max out at about 35 cars – employees and customers. If this were to increase, that would relate to about 52 spaces that they would use. They are proposing to land bank at least 6 of these spaces, which would give them 55 spaces paved. This should cover any additional need they would have during seasonal times.

Mr. VanGuilder referred to a map and explained that the right-of-way along Route 9 is generous, about 65 feet from the edge of the shoulder. The reason it is so wide is that there is a fairly large hill that they had to form a slope on. What the Planning Board and their engineers have suggested is that the site be taken down in elevation. DOT will regularly grant permits for grading on their right-of-way. If the hill is lowered, this will create more of an open space in between, which will make the property look much larger. Planning also asked them to look at possible future connectivity with the Rusty Nail to the north, because they have a serious parking problem. The Planning Board has also suggested communicating with adjoining landowners to work out a mutual relationship with regard to shared parking for day/night use.

Mr. VanGuilder wanted to point out that at the June 23rd meeting the Planning Board took a look at the proposed use, the fact that Parkway Music has been a longstanding successful business in town and are looking to continue to grow, felt that this use would comply with goals and strategy outlined in the Town's comprehensive plan and that the expansion would be an asset to the community.

Mr. VanGuilder stated that the business does receive a tractor-trailer delivery once or twice per week. To make it so that no trucks are parking on the road, they made a turnout that is long enough to accommodate a tractor-trailer. They do not need a loading dock as everything they receive is delivered by hand truck from the tractor-trailer. However, they feel that due to safety reasons it would be a good idea to get the tractor-trailer off the road entirely and park it on-site while the delivery is unloaded.

Mr. Lemire asked if there the curb cut on Biette Road is the truck unloading area. Mr. VanGuilder replied yes. Mr. Lemire asked if that is the only ingress-egress off of that road, and is it only one way in. Mr. VanGuilder explained that there is a small parking area there for employees. Mr. Lemire asked if there is another curb cut in the parking area and Mr. VanGuilder replied no. Mr. Lemire asked how the tractor trailer pulls out if it pulls in straight. Mr. VanGuilder explained that he would pull in and pull out. It is a half circle.

Mr. Dudick and Mr. VanGuilder clarified that there is no curb on the Biette Road side and there is no curb cut because there is a meshing of the road with parking lot.

Mr. Peller asked Mr. VanGuilder about his notation “subject to whatever right, title or interest the Town may have,” and asked if it is an easement. Mr. VanGuilder replied that they looked at all of the previous surveys and that road was set up as a two-rod road, only 33-feet wide. What they want is to make it so that if the Town needed it wider they would essentially have an easement and they would not be encroaching into that strip if the road ever needed improvement. It is a short sight road off of Route 9. Mr. VanGuilder stated that he and the Planning Board feel that it probably will never need to be improved, but the Town would have the ability to if they need to.

Mr. Lemire asked what is on the east side of the road. Mr. VanGuilder stated that it is a piece of property that is owned by the same company that owns Turf Mobile Home Park. It is not very far from the town line and goes into Halfmoon. Mr. Lemire asked how long the road is and what is on the other end. Mr. VanGuilder explained that there is an office supply place and it is probably not even ¼ mile long. Mr. Dudick believes it is Old Route 9. Mr. VanGuilder stated that it could be.

Mr. Peller asked Mr. VanGuilder if Biette Road is a town road and Mr. VanGuilder replied yes. Mr. Peller asked if it can handle a tractor trailer and again, Mr. VanGuilder replied yes. He explained that the nearby Appliance Giant store has its loading dock on the rear of their building.

Mr. Lemire asked if a variance is needed for the 130 feet to the centerline of Route 9 and Mr. VanGuilder replied no, that they are meeting that setback requirement. They are trying to stay consistent with Appliance Giant, so they are pushing it closer to Biette Road.

Mr. Lemire asked about the parking on the plans and Mr. Lemire explained this to Mr. Lemire by referring to a map. He provided a copy of a birds-eye view aerial map.

Mr. Dudick asked Mr. VanGuilder if there was anything else he wished to discuss regarding the application. Mr. VanGuilder replied that they are asking for a number of area variances, but this is a very challenged site. Over the years, many possible purchasers have asked him to take a look at the property but they were for a lot more intense uses which just would not work.

Mr. Lemire asked about parking spaces and Mr. VanGuilder replied that they are proposing, with the land bank, 61 spaces. They are proposing 55 permanent spaces. Mr. Lemire asked if this is meeting or exceeding a number. Mr. VanGuilder replied that a strict interpretation by gross square footage would be 60. By their historic use of the property they feel that 52 spaces would be consistent with the square footage and number of customers they have now, but they are increasing their square footage by about 50%. For most seasons of the year this is a lot, but during the busy season they have to plan.

Mr. Dudick asked for public comment and there was none. Mr. Dudick made a motion to close the public hearing and Mr. Ritter seconded. Approval unanimous.

Mr. Dudick asked about the benefit of land banking 6 spaces. Mr. VanGuilder replied that if you are not paving it then it is a less impervious area which means less runoff and more greenspace. Mr. Dudick feels this is not really greenspace because it has to be designated by code for parking. Mr. VanGuilder stated that they had to put it into their calculations. This is why they are asking for change. If the spaces never get paved and the interconnection to the neighbors never get paved they will be over 35% on greenspace. However, because they may at some point have to meet the 60 parking spaces and if the Planning Board can work it out with the interconnectivity, that would put them down at 31% which would make them short on greenspace. This is their worst case scenario.

Mr. Dudick asked if there is a possibility that they may bank the 6 spaces but still interconnect. Mr. VanGuilder replied yes.

Mr. Lemire asked about the purpose of the interconnected parking. Mr. VanGuilder thinks it was mostly aimed to solve the ongoing problem with parking at the Rusty Nail. They have cars parked along the road and he understands that they are using some private property across the road for expansion parking. People have to cross the road. They would like to have parking on the same side of the road. The Planning Board is seeing this as an opportunity to possibly clean it up, because the lot that they are on is so small. Mr. Dudick commented that this would be an income generator for the applicant and solve a congestion problem for the Rusty Nail. Mr. VanGuilder agreed.

There was discussion about the property across the street. Mr. Myers stated that there is a residence across the street opposite the Rusty Nail, behind it, which is currently attempting to be purchased by the Rusty Nail's owner's daughter. The interconnection is to try to alleviate the parking problem at the Rusty Nail. Mr. Myers answered Mr. Peller's question about the road by stating that there is a Latham Construction that was just built on Biette Road which is a heavy contracting business. The road issue was addressed when that was approved so he does not see an issue here with trucks for this business. Mr. Peller asked Mr. Myers if it is wide enough for a fire truck and Mr. Myers replied yes, that the two-rod road is 33 feet, so there is probably 20 feet of paved area, which is enough.

Mr. Dudick asked Mr. Myers if there is currently a plan or if there would be a plan to put a curb onto that between Biette Road and the property. Mr. Myers replied no, that a closed drainage system would have to be put in to collect the water if a curb is put in, so they are just going to want to let it run onto the grass or whatever is adjacent to the road.

Mr. Peller asked Mr. VanGuilder if there is an easement of record in case the Town does want to widen the road and Mr. VanGuilder replied no, that he believes that according to 1974 Highway Law that any roads that weren't dedicated user roads became three-rod roads. If the Town needed it and they pushed it they could probably force it to be a three-rod road. Mr. Myers stated that unless something drastic happens on that road he does not see the Town ever needing it to be wider than it is. As long as they can get a plow or emergency vehicles down it, expanding the pavement would probably not happen. This is basically like having a road with no shoulder. Mr. Peller's thought is that it might be an opportune time to clean it up. Mr. Myers stated that there are so few residences and businesses on that road so it would be a reach, unless

it became an issue for some reason. Mr. VanGuilder stated that Appliance Giant has an entrance off of Biette Road and also on entrance onto Route 9. He believes that Flanders' office just uses Biette Road for his access. They are not intending to make it a primary access for this site.

Mr. Lemire asked if there is a variance needed for the possible shared / interconnected parking. Mr. Myers and Mr. VanGuilder replied no. Mr. VanGuilder thinks that this is just an easement agreement. Mr. Lemire stated that even though it is blacktop, because it is not designated a parking space, and Mr. Myers replied yes. Mr. Myers stated that because it is only proposed and is to benefit both properties he did not see any need for a variance there. Planning has not fully approved it yet. It is the same with the banked parking. Mr. Myers did not see a need to require a parking variance because Planning really handles parking and if they are okay with the banked spaces, so is he. Mr. Myers feels that if the applicant asked for 60 spaces and he can only put in 35, then he would say they need a variance.

Mr. Dudick asked Mr. Myers for comments regarding the application. Mr. Myers feels that this would be a good use for the property and it would be cleaned up from what it is right now.

Mr. Telesh asked for clarification about the banked parking and further use of the property. He asked if there were another use in the future could those parking spaces meet code at that time. Mr. Myers replied yes, that a change of use in the building would require a review by Planning again, perhaps, and that if Planning felt that they needed all 60 spaces they could tell them to pave the other spaces.

Mr. Lemire asked if the only ingress – egress to the parking lot is from Route 9. Mr. Myers replied yes. Mr. Lemire asked where the parking ends before the possible interconnectivity. Mr. VanGuilder explained this but the response was inaudible due to feedback / sound system problems. There was discussion about parking from the north end and Mr. Myers does not feel he needs a parking variance. Mr. Myers supposes that the road could be construed to mean part of the parking lot. Mr. Lemire's concern is that if he cuts off someplace now within the side parking setback he will need another variance, and that what is drawn on there is not presently proposed. Mr. VanGuilder stated that they are leaving the door open for the interconnectivity. Mr. Myers and Mr. Lemire discussed the parking lot further and possible variances needed. Mr. Myers clarified what is needed and what is not for Mr. Lemire.

Mr. Dudick asked what the plan is for where snow would be plowed / placed. He does not think there is a lot of area that is not covered with pavement. He asked if there enough room. Mr. VanGuilder believes there is enough room and discussed where this would take place by referring to a map.

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

Mr. Dudick made a motion to approve the minutes of July 14, 2009. Mr. Strother seconded. Ayes: Gleason, Ritter, Dudick, Strother, Lemire, Telesh. Noes: None. Abstentions: Whalen

Mr. Dudick made a motion to adjourn the meeting at 7:40 p.m. Mr. Telesh seconded. Approval unanimous.

Respectfully Submitted,

Jessica McCarthy
Secretary

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