

ZONING BOARD OF APPEALS

November 18, 2008

Present: Michael Dudick, Chairman, Dale Gleason, Robert Ritter, Christopher Lemire, Douglas Strother, Brian Telesh, Deborah Ferro (alternate member, arrived at 7:09 p.m.)

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

Absent: Gil Kortz

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

PLEDGE OF ALLEGIANCE

OLD BUSINESS:

- 1. An application from Stewart's Shops Corp., proposing a restaurant in a B-3 zone. Restaurant is a permitted use but no part of building where restaurant is located can be within 300' of a residential zone. Building is 86 feet from residential boundary, variance requested = 214 feet. The property is located at 641 Grooms Road, Clifton Park, New York. (Permit #80712)**

Mr. Tom Lewis, the real estate representative of Stewart's continued the presentation of this application from the prior meeting. A variance is requested for a pizza shop at the corner of Grooms Road and Vischer's Ferry Road. He stated that they previously applied for a use

variance but it was turned down. This is an allowed use. Residents within 500 feet have been notified. They have not have a response.

Alternate, Deborah Ferro, arrived at 7:09 p.m.

Mr. Lewis continued by stating that the mail center has had a very difficult time. The owner sold the business and the new owner has not been able to make the 4,000 sq. ft. work, so they have been let out of half of the lease.

Mr. Dudick asked for proofs of mailing to residences, and Mr. Lewis provided them for the record.

Mr. Dudick then stated that alternate, Deborah Ferro, will be sitting in for member, Gil Kortz.

Mr. Dudick asked for comments from Mr. Myers. Mr. Myers stated that he has not heard anything from anybody who received a mailing. At the last meeting it was decided that the mailings were a good idea because of the proximity to the new neighborhood.

Mr. Lewis stated he read the minutes and spoke with Mr. Steve Bulger of the Planning Board. They had no objections. Mr. Dudick stated that we like to communicate with the Planning Board but they make their own decisions. Mr. Lewis stated that he was following the minutes wherein someone asked that they be contacted.

Mrs. Ferro stated that it was brought up the last time they appeared regarding this application that the reason for the 300-foot setback had to do with noise, order and grease that might come from a restaurant. She has not seen anything in the application that would address these issues even though they are proposing to put this restaurant within 86 feet of a residential zone. She asked what is proposed to address the nuisance. Mr. Lewis stated that there will be fresh air venting to address the odor issue. He asked that if this variance is granted, authority be given to the zoning officer to make sure that anything that can be done will be done.

Mr. Dudick referred to the whole building initially being a mail center. He asked if the half of the building for the pizza shop would be the half closest to the nearest residence and if so, why. Mr. Lewis responded that they told the mail center tenants that they said they could have the southern half so that they do not leave, as they are having a difficult time. Mr. Lewis stated he could call and ask them to switch but is not sure how that would go.

Mr. Dudick stated we would like to minimize the variance. Mr. Myers stated that this will not change the variance, because the variance is to the building and it does not matter what side of the building the restaurant is on. Mr. Dudick asked Mr. Myers based on his building inspection experience if he feels there would be a significant impact if the restaurant were on one side of the building or the other. Mr. Myers replied not really. What will have more of an effect would be where the vent is placed, and he suggests toward the back of the building and not toward the residential development. Mr. Lewis stated that this is reasonable.

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

Mr. Ritter stated that a prior application for Brooks' restaurant in Jonesville is similar to this application and they have been good neighbors. He does not see any odor, garbage or exhaust issues for that restaurant. The owner of that restaurant is the same as the owner for this application. He plans to vote in favor of this application based on the above, besides it being a good concept for this neighborhood and there being no opposition.

Mr. Strother stated that he was unaware that the Brooks' restaurant owner is the same as the owner for this application. He passes that restaurant often and also stated he has not seen any trace of anything adverse.

Mr. Dudick reminded the Board that if this variance is granted, five years from now the owner could sell to someone else who does not operate as diligently. However, since Brooks has been run so well, he feels that this has a lot of aspects and features which make him feel comfortable granting the variance. If there were concerns from neighbors he would weigh that heavily, but there do not appear to be any.

Mr. Lemire asked where the back of the building where the vent would be and about parking spaces and green space. Mr. Lewis clarified this for Mr. Lemire. Mr. Lewis stated that that they have a long history with the town and when the zoning office calls them to do something they always do; it's good business.

Mr. Dudick made a motion to approve the application as submitted. Mr. Ritter seconded. Ayes: Gleason, Ritter, Dudick, Lemire, Strother, Telesh. Noes: Ferro.

Prior to voting no, Ms. Ferro stated that she was concerned about the house located close to the parking lot and the venting issue.

Mr. Dudick asked Mr. Myers if he had comment about this and Mr. Myers stated that he is sure that they will do whatever they can with the building.

- 2. An application from Joseph and Suzanne Clayberg, requesting an area variance from Section 208-12 for an accessory structure; 80-foot front setback required, 28.5 feet available, variance requested = 51.5 feet; variance requested to build structure in an LC zone. The property is located at 17 McLane Street, Rexford, New York. (Permit #80716).**

This application was previously presented and was tabled to November 18th, but was not heard at this time.

- 3. An application from Edmund J. Backstrom, requesting a use variance from Section 208-43.2 (permitted uses in an HM zone) to operate a strictly commercial business on a parcel that is not an allowed use. Previous contracting business has been inactive for over one year and the discontinued non-conforming use cannot be**

continued per Section 208-97C. Pre-existing lot does not conform to current zoning requirements. 50 feet of frontage is required, 40 feet available, variance requested = 10 feet. Lot is a keyhole lot, which is only allowed in residential zones. The property is located at 3 Rustic Bridge Road, Rexford, New York. (Permit #80717)

The secretary read the legal notice as it appeared in the Daily Gazette on November 13, 2008. (This was a re-notice, as there was an error in the first legal notice which appeared in the Daily Gazette on October 16, 2008).

Mr. Edmund Backstrom continued the presentation of this application. He has a contract to buy property at 3 Rustic Bridge Road, Rexford, contingent upon the approval of this variance. He runs a small transportation company that has been in business for nine years. He stated that he has an excellent safety rating with the DOT, and runs a neat, clean operation. He owns six trucks and six trailers. All of his equipment is in new or near-new condition. He would use the property primarily for the storage of his trucks and trailers. His company employs four drivers who are required to be responsible and courteous to other drivers and neighbors. He is aware of noise and pollution concerns and stated he would be a good neighbor. His business is low impact and is mainly done by phone or fax. They do not need any signs. Drivers leave during normal business hours and most times are back by 6 or 7pm. They primarily operate Monday through Friday. He would change the appearance of the building, plant trees and shrubs and keep noise to a minimum.

Mr. Strother mentioned the prior request for proof of activity of the business. Mr. Dudick added that the board is looking for proof that the business actually never stopped operating. Tamara Bojarski, one of the owners of the property, brought some paperwork to the meeting. She brought tax information, a lease agreement, and real estate agreements from one of the times the property was listed. She made only one copy of these documents and the board reviewed them during the meeting.

Ms. Bojarski spoke about the type of business her father ran and people's opinion of him. She stated his business was noisy, nothing like what Mr. Backstrom wants to put there. Her father had bulldozers and fuel tanks and worked on his trucks. Many of the people who are there moved in knowing full well that the business was there. Her parents bought that property in the 1960's. When the neighbors bought property it was zoned industrial. Things have changed throughout the years. She said records were burned in a fire. Her father passed away in September of 2004. Mr. Dudick asked if business stopped when he passed away. Ms. Bojarski stated that they sold off all their equipment. They have a lease agreement with someone who uses the property and parks his truck there.

Mr. Dudick asked Ms. Bojarski if she is familiar with the Town law that if business ceases operation for one year, then...Ms. Bojarski interrupted by stating she was not aware of that. She then said she heard about it. No one has any paperwork to back it up.

Mr. Peller asked if someone handled her father's estate. Ms. Bojarski stated that the estate is still being handled because there are properties that are still being sold. Mr. Peller asked if the estate filed taxes from 2005 forward. Ms. Bojarski stated that from what she has been told, this is what

she can gather. Attorneys were switched in between. She called the executor of the estate and was told that the last she could remember was either 2005 or 2006.

Mr. Dudick again stated the he is looking for verification that the business has been in continuous operation from when her father operated it until now. At the least, he would like to see documentation to show that the business was in operation in the year 2007, and then back, but at least for 2007. If she does not have that, in writing, he does not know how this can go forward.

There was discussion about a letter in 2004 and a permit not fulfilled for 1 Rustic Bridge Road which was her father's residence, not business. Mr. Dudick stated that it is arguable when the business stopped. He does not want to figure that out. He stated that if she cannot provide verification of the business being in operation in 2007, then it does not matter if it was in operation in 2006 or 2005. He is looking to see if there is a year-long period when the business was not in operation, and it appears to him based on her presentation that there is no verification that the business was in operation in 2007.

Ms. Bojarski mentioned the lease. Mr. Dudick stated that if there was a lease, wouldn't there be income. Ms. Bojarski stated that the person who leases the property maintains the property. Mr. Dudick stated that this would not be a trucking business then. Ms. Bojarski stated that the person there has a truck that he runs there. Mr. Dudick stated that just because there is a truck on the property does not make it a trucking business.

Mr. Ritter asked about the person who operates the truck on the property and if that operation began in 2004. Ms. Bojarski replied yes. Mr. Ritter asked if he pays a fee. Ms. Bojarski replied that it is mostly maintenance.

Ms. Bojarski referred to a letter she enclosed from an adjoining property owner, Andrew Anganu, of 1 Rustic Bridge Road. There was discussion about this letter, which states they have no objection to the granting of this variance. Ms. Bojarski stated that this is the closest neighbor. Mr. Dudick referred to the petition signed by neighbors in opposition to the variance, and Andrew Anganu signed it. The petition was received on October 21st, and the letter is dated November 18th.

There was discussion about the mixed use of the area.

Mr. Peller asked Ms. Bojarski to describe the business as it existed when her father was alive. Ms. Bojarski replied that he did a lot of things. They had contractors and bulldozers. They salted in the winter. It was noisy and very active. Mr. Peller asked Ms. Bojarski if she would agree that the current use of a parked truck there is very quiet and very different than when her father was there. She agreed. Mr. Peller stated that the Board needs to know this because they have to make a decision on whether this is a continued use.

Mr. Lemire asked if her father's business was Best Contracting, and Ms. Bojarski stated yes. Mr. Dudick discussed the question of whether there has been a continued use of the business or a

business of that type. If that threshold has not been met, then would we grant a use variance. If it was, then there is no need for a variance to be granted.

Mr. Lemire asked if the lease with Best Contracting that appears to run through August of 2009 still valid. There was discussion about the lease and packet that Ms. Bojarski handed out. There is no rent being paid. They are leasing it to Mackery Mashuta. After further discussion about the lease, Mr. Peller stated that this is not a lease. It is part of a real estate listing. It states that the owner has the right, for a dollar amount, to resell or exchange the property. It is not a landlord-tenant lease. It is part of a listing agreement which states that the renter is renting the property and has no objection to the owner selling it. Mr. Ritter asked if this proves that someone is leasing it. There was further discussion about the document and Mr. Ritter viewed that from 2004 through today, on face value, a similar use has been in existence. The document is dated September 1, 2004 and runs through August 31, 2009, so it is a five-year lease.

There was further discussion about whether this document is a lease, and Mr. Dudick stated that even if there is a lease, and even if this lease was for a dollar amount, the current storage of a truck on a property is not a similar business to that which was in existence in 2004. Based on what he has heard and read he not feel there is sufficient evidence that the business has continued. He is not comfortable with this, and wants to see financial / tax evidence of the business continuing.

Mr. Lemire asked about the distinction between a business operating and a nonconforming use. If parking a truck on the property is a non-conforming use, as is doing the business that her father did, is the issue whether or not one non-conforming use replaces another, and therefore, the non-conforming use is continuous, or is the issue that her father's business ended when he passed away and because it was a non-conforming business that is the end of the non-conforming use. Mr. Dudick asked if parking a truck in a residential area would be considered a business. Mr. Myers replied no. Mr. Myers answered Mr. Lemire by stating that Ms. Bojarski's father's business was a non-conforming use. Once it stopped which was done before Mr. Myers' time, it was considered discontinued. If they had started it up again in some form or another within a year, it would still be continuing. Mr. Myers stated that it has been four years. He has had conversations between Ms. Bojarski, himself and Mr. McCarthy. They have asked for financial evidence in the past and have received nothing. This is a continuation of what has already occurred in his mind.

Mr. Lemire asked what kind of truck is presently parked there. Ms. Bojarski stated it is a tractor trailer. He asked if this is a business that the person operates. Ms. Bojarski replied yes. Mr. Lemire asked if that is a permitted use under 204.43(2). Ms. Bojarski stated that she has a letter from the Town states that he has a non-conforming use to run a trucking business. Mr. Lemire stated that if the tractor trailer being there is a non-conforming use which started in 2004 then how are they abandoning the non-conforming use. Mr. Myers stated that he has no knowledge of a truck being parked there currently. Mr. Peller stated to Mr. Lemire that you cannot tag a non-conforming use to a non-conforming use. The issue is whether it is the same non-conforming use. Mr. Myers stated that you cannot change from one non-conforming use to another. Mr. Peller stated we need to determine whether this is the same non-conforming use that her father ran, and Mr. Myers added, and whether it has continued since 2004.

Mr. Telesh stated that after reviewing the documents he has a problem with the application. He does not see proof that the business has continued. He has visited the property twice since the last meeting and he saw no sign of any business activity going on. This is concurrent with what residents in the area have been saying. He does not feel that the parking of a truck on the property is the same use. He stated that this hamlet has many mixed uses and the marketing of the property has not shown, in his opinion, any financial grievance.

At this time, Mr. Dudick stated that the Board is not voting on the application. The Board first needs to determine whether the application should be voted on. If it is concluded that this is a continuation of the business then there is no decision to make on the application.

Mr. Peller polled the Board to ask if anyone thought this was a continued use based on the presentation and materials. Mr. Ritter replied yes.

Before Mr. Dudick took a vote, Mr. Lemire referred to a letter from November 3, 1989 from then Town Attorney Kevin Luibrand to Ronald Mills, which concluded that the non-conforming use would remain in effect at this time and a subsequent purchaser could continue the non-conforming use. The use could not, however, be altered without jeopardizing the non-conforming use. Mr. Lemire stated that this is exactly what Mr. Peller was stating and it answered his question.

Mr. Ritter said that before a vote is taken, the reason he justifies being the only person who feels this is a continuation of the use is that her father had an active business at one time, which dwindled down to a less active business. For all we know, it could have been the storage of vehicles or less repairs. The applicant produced some evidence of a lease agreement involving the owner of a business who operates an eighteen-wheeler and uses this property to operate out of. In his opinion it falls within the time frame and there is the same non-conforming use continuing.

Ms. Gleason stated that she had not finished reading through all of the documentation handed out.

There was further discussion regarding the documents handed out and whether the business was continued and whether a year of inactivity had occurred. Mr. Dudick does not feel there is enough evidence. If you run a business there should be tax records. Mr. Strother stated that he feels these are two different uses. Her father had an active heavy construction business and this is certainly not the way the property is being used.

At this time, Mr. Dudick took a vote as to whether this non-conforming use is the same as it was in 2004 when the applicant received the variance? Ayes: Ritter. Noes: Gleason, Telesh, Dudick, Strother, Lemire, Ferro.

Therefore, the application for the use variance was continued.

Mr. Dudick asked for public comment. First he stated the four criteria which must be satisfied in order to grant a use variance.

Mr. Bruce Boquette lives on the north side of the property in question and he spoke against the granting of the variance. He owns a business and feels if you are actively operating a business on site you have to have a tax ID#, wage postings, liability insurance and compensation insurance. The reason these are not being produced is because nothing is going on there. He has lived there for twenty-four years. He stated that the truck the applicant is talking about that is on the property was not there until the day after the last meeting. It has not been there for years and suddenly it is back.

Mr. Strother stated that it has already been voted on that this is a non-continued non-conforming use and that all we are looking for now is to decide whether to approve the applicant's variance request.

Again, Mr. Boquette stated he is against the granting of the variance.

Mr. Randy Paquin of 5 Rustic Bridge Road also spoke against the granting of the variance. He said there are many other permitted uses. He purchased the property when the trucking business was in operation and complained many times. He grew up in Rexford and this was a place that he could afford. Now that the business has closed, the area has become much more of a neighborhood.

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

Mr. Dudick asked Mr. Myers for his comments. Mr. Myers stated that he does not believe the applicant proved what is required for a use variance, mainly with regard to financial evidence.

Mr. Dudick stated that there are numerous possible uses for the property. He referred to environmental concerns about odor and spillages on the ground caused by a trucking company being there for years. He is concerned that this may affect the ability to sell the property. He asked if there had been soil testing done and Mr. Backstrom replied yes. He did not have the DEC paperwork with him but stated that there were problems and they were fixed. They drilled fourteen holes, tested nine spots and removed a fuel tank and soil. There are still two acres that need to be addressed. This was done in 2004-05.

Mr. Dudick understood why someone would not want to build a house on a property that had environmental problems and this would affect the ability to sell the property but the hardship is self-created. He feels that the character of the neighborhood would be altered. He also stated that the applicant has not proven that they cannot realize a reasonable return and has not provided competent financial evidence. Mr. Dudick would not be in favor of granting this use variance as he has not seen enough evidence to show that it should be granted.

Mr. Strother agreed with much of what Mr. Dudick stated, and asked Ms. Bojarski how much and for how long she had the property listed. Ms. Bojarski stated that it was listed in 2004 for

\$395,000. Then in 2005, she listed it at a lower price. Now it is listed at \$150,000. Mr. Strother felt that this should at least be considered. This is a pretty significant test as to whether this property can be sold.

Mr. Dudick asked how long the property has been in the family. Ms. Bojarski stated since the 1960s. He asked how much it was purchased for. She could find that out, but knew it was not expensive. They purchased more property and subdivided it so it changed over the years. Mr. Dudick asked if it was possible that the property was purchased for substantially less than even what they are trying to sell it for now. Ms. Bojarski replied probably, at least the original portion.

There was further discussion about the environmental concerns.

Mr. Ritter asked who the applicant is. Mr. Ritter stated that it is Edmund Backstrom, with permission of the owner. Mr. Ritter stated that he does not necessarily think that the actual applicant would meet the self-created hardship clause if he is looking to purchase the property. Mr. Dudick stated that we have seen this before where someone is looking to purchase property and does this prior to purchasing it, that this is more of a legal-clerical issue. This application could be made by the owner. It's the same application with the same criteria. This is in preparation for purchase. Mr. Peller stated to Mr. Ritter that he is entitled to give it the due weight he wants to, irrespective of who the applicant is.

Mr. Strother made a motion to deny the application as presented. Mr. Telesh seconded. Ayes: Gleason, Dudick, Strother, Telesh, Ferro. Noes: None. Abstentions: Ritter, Lemire.

At 8:25 p.m., Mr. Dudick called for a five-minute recess.

NEW BUSINESS:

- 1. An application from Windsor Development Group, Inc., requesting area variances to construct a bank in a B4 zone. Area variances requested from Section 208-46B as follows: (1) front building setback (from Maxwell Drive) = 80 feet, 50.2 feet available, variance requested = 29.8 feet; and (2) front parking setback required = 30 feet, 12 feet available, variance requested = 18 feet. The property is located at 15 Park Avenue, Clifton Park, New York. (Permit #80718)**

The secretary read the legal notice as it appeared in the Daily Gazette on November 13, 2008.

Mr. Bruce H. Secor, Senior Civil Engineer with Stantec Consulting presented this application on behalf of the applicant. The proposal is to construct a bank with a drive-through and a bypass in the Shoppers World Plaza area. He went into detail discussing the proposal.

Mr. Lemire asked if this was a two-front situation. Mr. Myers stated that he believes so.

Mr. Dudick stated that the Shoppers World Plaza has three or four banks now.

Mr. Dudick referred to the record of minutes from ECC dated September 2, 2008 with regard to this application. The ECC notes that the Shoppers World as a whole already does not meet the minimum greenspace requirement. The ECC believes that the further loss of greenspace particularly at this location would have a significant adverse visual effect.

Mr. Secor addressed that by stating that the overall site is now at about 30% and he believes it predates the 35% requirement, but the developer also has a greenspace land bank that he developed in conjunction with the Town Board. At some point, the Town Board needed some additional area and there was a tradeoff, so the developer has additional greenspace which is in the greenspace bank which they propose to use. Although there is some loss of greenspace in a corner, they are looking to embellish the plantings, landscaping and architecture to give a better view rather than looking at the loading docks at Price Chopper. They are also looking to make this a more walkable community and he feels that having 35 to 45% greenspace would be counterproductive to the long term goal of this development.

Mr. Dudick mentioned the row of tall bushes. Mr. Secor stated that those will be maintained and they will add additional plantings.

Mr. Peller asked Mr. Myers if he agrees that plaza predates the 35% greenspace requirement. Mr. Myers stated that he would have to look, that he does not recall.

Mr. Peller asked when was it built. Mr. Dave Sussman, President of Windsor Development stated that it was built in the 1980's., around 1982. Mr. Sussman stated that they do have a greenspace land bank and, when the Planning Board requires additional greenspace, they have used it. Mr. Dudick asked Mr. Myers if he has a record of the land bank being used. Mr. Myers replied that Planning would have those. He has requested the status of the land bank from them but has not yet received a response. Mr. Peller asked if they have some left at this point. Mr. Secor said that they have quite a bit left.

A request for an explanation of what a land bank is was made and Mr. Myers explained that it is a parcel of land elsewhere that is greenspace which is used to offset places like this when they cannot meet the greenspace requirement. Mr. Lemire asked elsewhere means not in this plaza. Mr. Myers replied yes, but in this town.

Mr. Strother stated that he feels this is a more aesthetically pleasing use of the property and encourages safe passageways, as he rides his bike in the area.

Mr. Peller asked Mr. Secor if he has been to the Planning Board yet. Mr. Secor said that they were and have received positive feedback. They tried to meet all of the setbacks they could. They are here because of the two-front situation.

Mr. Dudick stated that he feels the area in front of the parking lot of K-Mart would be an ideal location for this bank as there are hardly any cars in that parking lot. No greenspace would be interrupted and there would be easy access. He asked why this cannot happen. Mr. Secor stated that the area is controlled under lease by K-Mart and K-Mart controls control the entire parking

lot. Even though it makes sense, they tried to contact K-Mart in the past and they were not interested.

Mr. Lemire stated that as much as he does not like sticking buildings on little pieces of property just because it is there, he understands that the issue is solely regarding variances for setbacks.

Mr. Myers added that the greenspace argument may be solved at the planning level as it has been on other pieces of property.

Mr. Myers further stated that he feels these are fairly minor variances when you consider the big picture. He does not know if he is crazy about the location either, but that is not the issue. He feels they have done everything they can to situate the site to the best of their ability. The one variance is only because he considers the drive-throughs as part of parking, so he told them they need to get variances for those as well since they are parking access.

Mr. Secor stated that the ordinance states that no parking spaces shall be within 15 feet. It does not really say pavement. This is up to the interpretation of the code enforcement officer. There is some gray language in the ordinance itself.

Mr. Telesh asked for the interpretation of the regulation on the parking frontage. Mr. Myers replied that his interpretation is, if it is paved, it is part of parking, whether it's a parking space or parking access. It is difficult to try to determine where the driveway ends and the parking spaces start. He feels the setbacks are required so that there is some sort of greenspace between the parking and whatever else, the neighbor, road, etc.

Mrs. Gleason stated that she feels Windsor has been a good neighbor. They are true to their word. She appreciates the amount of effort they have taken to maintain their strip malls. She stated that their plantings are exceptional. She trusts their word that if they are going to do something they do it. She does not feel it is up to this Board to decide if Clifton Park needs another bank. She will vote in favor of this application.

Mr. Dudick stated that the Board looks to minimize the impact, but he is satisfied with what they are proposing and their explanation for not being able to build it in the K-Mart parking lot. He does not see a problem with approving this application as presented.

Mr. Lemire asked if this variance is solely for the use of this property as a bank. Mr. Secor stated that it is for a bank, and unless he misinterprets it, if they change it they have to reapply. Mr. Peller replied that this is correct.

Mr. Strother asked if they have heard anything about contention regarding trucks going in and out of this area. Mr. Secor replied that they addressed that with the Planning Board. There is sufficient pavement to accommodate this. Most of the access is away from the truck traffic area and there is excellent sight distance. Mr. Myers stated that they may have to regulate traffic coming out from behind the building toward Park Avenue.

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

Mr. Ritter made a motion to accept the application as presented by the applicant. Mr. Telesh seconded. Ayes: Gleason, Ritter, Dudick, Lemire, Strother, Telesh, Ferro. Noes: None.

- 2. An application from Kenneth Relation, requesting area variances from Section 208-12A to construct an accessory structure as follows: (1) buildings over 15 feet in height require 1 foot of additional setback for every additional 1 foot of height over 15 feet. Additional setback required from normal requirements = 10 feet. Applicant wishes to place building at normal setbacks of 5 feet side and rear. Variances requested = 10 feet side, and 10 feet rear. The property is located at 4 Wildberry Court, Clifton Park, New York. (Permit #80719)**

The secretary read the legal notice as it appeared in the Daily Gazette on November 13, 2008.

Mr. Kenneth Relation presented this application. He recently purchased property at 4 Wildberry Court. He intends to construct an accessory structure on the northwest corner of the lot, which is the most wooded area of the lot and also the most convenient area. It has a downward sloping grade to the rear. They have a walkout basement at the rear of the home. The garage / accessory structure would have a dual level to match the existing grade, which would make the structure appear much higher. His attempt is to match the structure to the existing home and provide a buffer from the noise from Grooms Road.

Mr. Strother asked if the woods are still intact. Mr. Relation said yes, except for some that he recently cut down in anticipation of constructing an accessory structure.

Mr. Strother asked about the slope of the property and Mr. Relation explained that it slopes down away from the property toward the rear.

There was further discussion about the slope of the property.

Mr. Lemire asked how high the front of the building closest to the driveway is. Mr. Relation did not remember. Mr. Lemire stated this is not the reason the variance is needed and Mr. Myers replied correct. Mr. Lemire asked if the only way to build this in that location because of the grade is to have a rear entrance. Mr. Myers replied that he could put fill in and have it be a one-story structure but apparently he wants more storage. Mr. Relation stated that this is correct, he also does not want to spend extra money for fill, nor did he want to alter the existing elevations.

Mr. Lemire asked why he doesn't move it south and east. Mr. Relation stated that he could. Mr. Lemire asked if that would change any part of the project. Mr. Relation replied that it only changes the fact that it would make it 10 feet closer to Wildberry Court and 10 feet closer to another neighbor. It would also be more in the center of the yard, which would cause him to use yard space.

Mr. Dudick asked how many cars this will hold. Mr. Relation replied that the proposed structure would 30 feet x 60 feet. He anticipates that it would hold five cars comfortably. He has a small collection of antique mustangs. He does not want to place them in the driveway or backyard.

Mr. Dudick asked Mr. Myers for his comments. Mr. Myers replied that this is not a shed. It is quite a significant structure to place in the back of a house. He has concerns about what the neighbors would think. The one who would be most affected would be the neighbor closest to Grooms Road. Mr. Myers stated that if that neighbor did not have a problem with it being such a large structure, he would not.

Mr. Dudick asked if the drawing was to scale and Mr. Relation replied that he believes it is. Mr. Dudick stated that we are looking at a structure that is close to the side of the house. Mr. Myers agreed. Mr. Relation stated that it is a large structure. Mr. Myers stated that there are other residences in town that have large accessory structures. Mr. Relation stated that he would like to seclude it in the corner in a more wooded area.

There was discussion about the picture and the entrance to the building and whether it could be rotated 90 degrees. Mr. Relation stated that if he did that he would lose storage. Mr. Dudick stated that we are talking about a large structure. Mr. Relation stated that he does not want to slope down to get into the garage. The existing driveway is at a higher level. You would have to slope the driveway down to get into the garage, which he was hoping to avoid. He does not want runoff water in his garage. Mr. Dudick stated that if water is an issue, maybe he should not build back there at all. Mr. Relation stated that if he builds the structure as proposed, the driveway entry would be at equal grade as the current driveway.

Mr. Dudick asked where he currently keeps his cars. Mr. Relation stated that he has a two-car garage and full driveway. He has one at a friend's house and one at a paint shop.

Mr. Lemire asked what constitutes an accessory structure and can it be any size you want. Aren't there minimum space requirements for property size to have so many square feet of a building on a property in different residential zones. Mr. Myers stated whenever incidental, the use of the principal building. It does not have to be smaller than. But it cannot be habitable space. You cannot have two residences on the same property. You need 20,000 feet of square feet of property for a house. As long as you meet the setback requirement there is no limit to the size a house can be.

Mr. Dudick stated that this is a lot of garage. Mr. Lemire responded to Mr. Dudick by stating that we do not have a variance issue about the size of the garage. The issue is setbacks. Mr. Myers stated that this is correct. There are other accessory structures to residences in town that are as big or bigger. Some required variances and others met the setback requirements and did not come before the Board. Mr. Lemire stated that the Board may think that this is inappropriate for the property as far as square footage is concerned, but all the Board is really looking at is the issue of setbacks.

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

Mrs. Gleason stated that the neighbors should be reviewed. No one is here. Mr. Dudick stated that they would not be notified. The only notification is the legal notice in the Daily Gazette.

Mr. Relation stated that he was under the impression that the building department was going to interview surrounding people. If he assumed incorrectly, he apologizes. He spoke with Mr. Healy and #6 and 9 in Presidential Estates. He did not speak to anyone at Disabled Citizens.

Mrs. Gleason asked Mr. Relation if he told his neighbors about the size of the storage shed. He did not recall if that was part of the conversation. Mrs. Gleason stated that if she was notified about a storage shed, she would picture something like 8 feet x 12 feet.

Mr. Dudick requested that although it is not a requirement, Mr. Relation show some sort of documentation that the neighbors would be all right with the size of the structure proposed. This would make Mr. Dudick more comfortable approving the variance.

Mr. Dudick asked Mr. Relation if he would like to table this application so he could notify his adjoining neighbors about the size of the structure and its location. Mr. Relation agreed to table it to January 6, 2009. The method of notifying neighbors was discussed. Mr. Peller asked Mr. Relation to waive the 60 day requirement, which he agreed to do.

Mr. Dudick made a motion to approve the minutes of October 21, 2008. Mr. Telesh seconded. Ayes: Dudick, Strother, Telesh, Ferro. Noes: None.

Mr. Dudick made a motion to adjourn the meeting at 9:38 p.m. Mr. Strother 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