

ZONING BOARD OF APPEALS

February 2, 2010

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

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

Absent: Deborah Ferro (alternate member)

Mr. Dudick called the meeting at 7:07 p.m.

PLEDGE OF ALLEGIANCE

OLD BUSINESS:

- 1. An application from Benson's Pet Center, requesting a variance from Chapter 171, Chart I, Commercial Signs Permitted. Maximum allowed signage = 32 sq. ft., unless business is greater than 6,400 sq. ft. (No information is provided regarding size of space). Proposed sign = 120 sq. ft., variance requested = 88 sq. ft. The property is located at 12 Fire Road, Clifton Park, New York. (Permit #80751).**

Mr. Dudick asked if anyone was present on behalf of this application. There was no reply, and so Mr. Dudick stated this matter would be addressed later in the meeting. At the end of the meeting Mr. Ritter made a motion to hold meeting over to the first meeting in March. Mr. Telesh seconded. Approval unanimous. Mr. Myers stated that he would call the applicant.

NEW BUSINESS:

- 2. An application from BHS Clifton Park Inc., requesting a use variance from Section 208-37B, permitted uses in a B-3 zone. Applicant wishes to provide vehicle rental at a gas station and convenience store. The property is located at 1529 Crescent Road, Clifton Park. (Permit #80755)**

The secretary read the legal notice as it appeared in the Daily Gazette on January 28, 2010.

Mr. Barkat Hossain, owner of BHS, presented this application. Currently there is a gas station and convenience store at the location. There is a large parking lot which he would like to utilize for the purpose of renting U-Hauls. He believes this is a suitable location in that it is convenient for the residents of Clifton Park.

Mr. Dudick asked about the chicken business that was going to be developed there. Mr. Hossain replied that he tried, but it has not been successful. Sometimes they are open, sometimes not. Mr. Dudick referred to the two businesses currently there, the gas station / convenience store and then the restaurant business side and asked if this is not enough for the applicant. Mr. Hossain agreed.

Mr. Telesh recalled that the board previously granted a sign variance for the chicken business at this location, Chesters.

Mr. Ritter asked if this is a change of use or an additional use to the uses already there. Mr. Hossain replied that this would be in addition to the businesses already there.

Mrs. Gleason asked about signage. Mr. Hossain referred to a temporary sign.

Mr. Dudick asked Mr. Hossain if he spoke to his surrounding neighbors. Mr. Hossain provided proofs of mailing for the record.

Mr. Dudick asked if Ace Hardware is within 500 feet. Mr. Hossain replied no. Mr. Dudick added that Ace Hardware is close by and they rent trucks as well.

Mr. Dudick advised Mr. Hossain about the criteria for use variance and asked the applicant why a reasonable return could not be realized unless this use variance was granted. Mr. Hossain replied that he already invested money in the U-Hauls. Mr. Dudick asked how long Mr. Hossain has owned the property. Mr. Hossain replied that he is not the owner, but has been the leaseholder for 9 months. Mr. Dudick asked if he leased the property knowing that there were no truck rentals at that time. Mr. Hossain replied no.

Mr. Strother referred to Ms. Gleason's issue about signage. He asked Mr. Myers if an additional sign would be a permitted use. Mr. Myers replied that there are already several signs on the property and he is unsure how necessary additional signage would be since the trucks advertise themselves. The applicant has not applied for a sign.

Mr. Strother feels that to some extent this hardship is self created.

Mr. Strother asked the applicant how many vehicles would be located in the parking lot. Mr. Hossain replied there would be no more than 5 or 6 trucks.

Mr. Dudick asked Mr. Myers for his comments. Mr. Myers replied that the closest variance previously granted was Borst Tire, which rents U-Hauls, and Clifton Park Auto. Those businesses are also located in B-3 zones. Mr. Myers does not have a problem with what is being proposed, but has a problem with the fact that he is already conducting business without a variance. Mr. Myers is unsure if the applicant has proven financial hardship and does not know if the hardship is self created, but other similar variances in B-3 zones have been granted.

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

Mr. Peller asked Mr. Hossain if he had something from the owner of the property acquiescing to the application. Mr. Hossain presented a letter for the record written by the applicant to Alicia Metz of GRJH Inc, asking for approval for U-Haul rentals, and a response from GRJH stating that they are in line with this but would like to limit it to 4 to 6 vehicles / trailers. Mr. Dudick also read the Saratoga County Planning Board's response regarding this application which stated no significant countywide or intercommunity impact.

Mr. Dudick does not see any evidence of hardship, but rather just an expansion of business.

Mr. Lemire does not feel that the applicant has demonstrated evidence of hardship, has not provided financial evidence, and that the applicant failed to pass 3 of the 4 requirements for a use variance.

Mr. Ritter believes that since this is a new use within the existing businesses it would be difficult to show any financial hardship evidence, and since the building department does not feel it will change the character of the neighborhood and limits can be put on the number of vehicles, he is inclined to approve the application with the understanding that it is a use for this specific portion of this business, and strictly for U-Hauls, and if the U-Hauls go away, so can the variance. He asked Mr. Peller if he is correct in his understanding. Mr. Peller replied yes, if he wants to make that stipulation. Mr. Ritter feels more comfortable given the lack of evidence that the variance be restricted to U-Haul rentals, no greater than 6 vehicles, and that the variance should go away if the U-Haul business does.

Mr. Dudick made a motion to deny the application based upon the applicant not meeting the criteria for a use variance. Mr. Lemire seconded. Ayes: Whalen, Dudick, Lemire. Noes: Gleason, Ritter, Strother, Telesh. Application approved.

After the vote, Mr. Ritter asked if it was accepted with the amendment. Mr. Telesh replied that the motion was made for a denial of the application. Mr. Ritter explained that he thought he was voting yes to the application with a stipulation. The secretary advised that he voted no to a motion to deny. Mr. Peller's opinion is that this application has been approved.

Mr. Telesh feels that the response from the landlord will keep the business in check.

Mr. Dudick explained to Mr. Hossain that his application was approved.

An application from Robert and Sylvia Phillips, (permit #80756) proposing to subdivide a single parcel into 3 parcels at 54-58 Clifton Country Road, Clifton Park. The current parcel is zoned B-2, a significant portion of which is considered to be part of a wetland and LC zone adjacent to the wetland. Area variances are required as follows:

Application review: area variance – the town’s internet mapping shows the LC zone boundary significantly further south than the submitted plan. It is assumed the submitted plan is more accurate. Parcel #1 is entirely within the LC zone (54 Clifton Country Rd.). Parcel #2 (56 Clifton Country Rd.) is partially in the LC zone and partially in the B-2 zone. Parcel #3 (58 Clifton Country Rd.) appears to be entirely within the B2 zone.

Parcel #1 – LC zone (B2 underlying zone-most restrictive to be used)

Area Variances

- 1. Area variances required = 100,000 sf. Proposed = 67,518sf. Variance needed = 32,482 sf**
- 2. Side yard required = 20’. No variance for structure needed since setbacks are greater than 20’ but setbacks for parking appear to be needed. Parking setback variance required = 20’ Zone B-2 requires a 10’ landscaped buffer along the side property lines. One side line is in a parking lot therefore a 10’ variance is required.**

Parcel #2 (208-35D = B2 section for variances/208-70 = LC section for variances)

Area Variances

- 1. LC zone area required = 100,000 sf.
B2 zone area required = 40,000 sf
56,192 sf available
LC zone variance required = 43,808 sf
B2 zone variance required = 16,192 sf**
- 2. Side yard setback for LC zone required 20’ required, 0’ available, 20’ variance required.**
- 3. Side yard setback required for B2 zone. 25’ required, 0’ available, 25’ variance required.**
- 4. 10’ planted buffer along side & rear property lines required. Side property line are in parking areas therefore 10’ variance required.**
- 5. Building & parking shall not cover over 50% of lot area. Coverage is estimated at**

78%, therefore 28% variance required – B2 zone.

Parcel #3

Area Variances

- 1. Property fronts on 2 roads. Front parking setback required = 70', parking lot road extends to Clifton Country Road therefore 0' setback, 70' variance required.**
- 2. Side & rear parking setback required = 25', 0' available on north side, 25' variance required. Northeast corner 10' available, 15' variance required.**
- 3. 10' landscaped buffer required on sides & rear. 0' available on north side, 10' variance required.**

The secretary read the legal notice as it appeared in the Daily Gazette on January 28, 2010.

Mrs. Gleason recused herself from voting on this application.

Mr. Dudick explained to the applicant that there would only be 6 voting members and that 4 votes in favor of the application must be made in order for a variance to be approved.

Jacqueline Phillips Murray presented this application. Ms. Phillips Murray is an attorney with The Murray Law Firm, and is the daughter of the owners / applicants. She appeared with owner, Robert Phillips. Ms. Phillips Murray explained that this is not a typical area variance application in that the area variances sought will not result in any new development or any physical changes to the site. They wish to subdivide the parcel into 3 parcels. The subdivision plan has already been proposed to the Planning Board. The Planning Board minutes indicate that the subdivision plan is generally acceptable to them. Ms. Phillips Murray explained that if the area variances are granted they will go back to the Planning Board and continue to pursue the subdivision. Ms. Phillips Murray explained that the reason the subdivisions are requested is because over the years since the premises was constructed in 1996, the restaurant on the premises has not been economically viable. There have been 6 or 7 tenants in that restaurant building, and Ms. Phillips Murray believes that tenants have no vested interest. A purchaser would not find this economically feasible because as it stands now, the potential owner of the restaurant could not afford to buy the buildings that are a part of the parcel. Also, the two buildings on the parcel have tenants in them who have expressed an interest in purchasing one building so that they could improve their economic viability, but they cannot afford to buy the whole parcel either. The purpose of these variances according to Ms. Phillips Murray is to draw lines on paper to subdivide the parcels so that they could be individually transferred. She believes this would help cure the lack of economic viability of the restaurant and at the same time help keep businesses in Clifton Park that may want to buy one building but not all three and the whole parcel as is.

Ms. Murray discussed the factors relevant to granting the area variances as well as the standard of review prescribed by Town Law Section 267(b)(3), but the main thrust is whether or not the benefit to the applicant if the variance is granted outweighs the detriment to the health, safety

and welfare of the neighborhood or community by granting such variance. Ms. Phillips Murray reiterated that this will be just lines on paper; the buildings will remain as is and there will be no further development. There would be no change perceived by the community and therefore, no impact on the neighborhood or its character. The benefit sought cannot be achieved by any other means feasible for the applicant because they would be required to subdivide a parcel in order to achieve this. Additionally, there is no other available additional land on that corner that can be acquired to avoid the variances. As to whether the variances requested are substantial, Ms. Phillips Murray stated that there will be no development and therefore, there would be no substantial impact. As to hardship, the businesses would benefit by the variance and the restaurant has been impacted by the lack of ability to subdivide. Ms. Murray also reminded the board that the standard for an area variance is different from a use variance.

Ms. Phillips Murray introduced Joe D'Annibale, engineer from EDP.

Mr. Strother asked about Planning Board minutes, how we got here, and where the LC line is. Mr. D'Annibale defined where the LC zone is. Ms. Phillips Murray interjected by stating that the LC zone was not established in the Town law at the time that the project was approved, which was in June of 1996. It is her understanding that it went into effect in the fall or winter of 1996. Mr. Lemire referred to the Zoning Board agenda for May 7, 1996, which includes a use variance request from Robert Phillips to construct a restaurant in the LC zone. Ms. Phillips Murray's understanding that this was not pursuant to Town Law but rather, DEC, and the subject of this meeting is area variances.

Mr. Dudick discussed whether the hardship is self-created -- for example, if they were not allowed to build the restaurant in the LC zone, would they be here tonight. Ms. Phillips Murray stated that the fact is the variance was granted and it runs with the land. Mr. Dudick believes that the owner created the situation by which now there is a hardship. There was further discussion between Mr. Dudick and Ms. Phillips Murray on that point. Ms. Phillips Murray stated that the goal here is to make the business a success, and this is the vision her family had years ago when they took the risk to develop that property, and since it is area variances that are being requested she feels they have no problem meeting the criteria.

Mr. Lemire asked if, in order to rule on the area variances, the board needs to know what representations have been made in the past on those variances that were granted so that the board can know if what is being asked for now is consistent with what was asked for in the past. Mr. Dudick agreed with Mr. Lemire in that accommodations were made by the Town in the past and if there is no unforeseen hardship, what would be the necessity of the additional variances. Ms. Phillips Murray replied that there has been a new unforeseen hardship, specifically that the restaurant has not been economically viable. Ms. Phillips Murray believes that if an owner came in as opposed to a tenant, it would be economically viable. There was discussion about why a restaurant would be more successful if it were owned rather than leased, how many seats the restaurant accommodates and the uniqueness of the restaurant.

Mr. Robert Phillips spoke and stated that he and his wife own the property. They came up with the idea years ago to develop in this manner. He gave a history of his motivation for building there. He has been successful in every office building he has built and feels he has unfinished

business here which he is unhappy about. That restaurant has failed and he wants to put it in a position to succeed. He had a vision for that pond and spent a lot of money cleaning it up. He has improved the area and will continue to. He asked for the board's support so that he can make this successful.

Mr. Lemire asked Mr. Phillips for clarification about who owns the restaurant and park, and Mr. Phillips explained what part is owned by him and what part is owned by the town. Mr. Lemire asked about the not-for-profit and Mr. Phillips said that they never wanted it and the Town turned them down. Ms. Phillips Murray further explained what transpired to Mr. Lemire.

Mr. Dudick asked about the rationale for splitting the two office buildings as he does not feel they have anything to do with Mr. Phillips' vision. Mr. Phillips stated that is a financial issue. Mr. Phillips does not believe anybody would buy the whole piece right now because of the restaurant. Another type of person would buy an office building.

Mr. Lemire would like to know more about the history in order to logically and rationally rule on the variance requests. When he looks at the March 1994 application, it appears to him that there was a variance or subdivision application to subdivide the property into two buildable lots, one portion which was to remain unbuildable in the LC zone (he presumes that this is where the restaurant is). To Mr. Lemire, it seems that in 1994 they wanted two buildings and then in 1996 that changed to build a restaurant. He would like to know what representations were made as to what would happen in the future and whether any representations made are inconsistent with what is being asked for now. Mr. Lemire and Mr. Phillips discussed the timeline. Mr. Phillips said they were approved in 1994 to put up two office buildings and the restaurant was not considered. Later, they wanted to clean up the retention area. Mr. Dudick asked Mr. Phillips what motivated him to place a restaurant next to the retention area, and again, Mr. Phillips explained his vision for the area.

Mr. Peller asked Mr. Lemire what effect does what happens with this parcel have on his opinion of the variances being requested. Mr. Lemire's concern is that applicants make representations that something will or will not occur in the future if a variance is granted. In this case, there is a long history and a lot of things have happened. Mr. Peller advised Mr. Lemire that the applicant came to him and Mr. Myers with a broader scope and tried to determine what was necessary for them to get the subdivision. Mr. Peller and Mr. Myers have reviewed the entire file and history and have made a determination that there is a need for necessary area variances that they are requesting and there was not a need for other variances which may preliminarily have looked as if they were necessary. Mr. Peller believes that the applicant has done everything that they said they would up until this point asking for this subdivision. Mr. Lemire stated that in 1996 they represented that they were not proposing to subdivide. Mr. Lemire is not comfortable not knowing the full history. Mr. Peller offered to put together the history of this application from its inception.

Mr. Dudick added to Mr. Lemire's point that if an applicant comes before the Zoning Board at one point saying they would like a variance granted and they promise they will not subdivide and then they come before the board at some period after that changing their mind, that even if it was not an initial representation or plan to subdivide, the variance was granted with the statement that

they would not subdivide and would they have gotten the variance initially if they stated it up front.

Ms. Phillips Murray understands the issue but they are addressing something that was unforeseen at the time – applications, projects and land use evolves. There could have been promises made at that time that were relevant to that board's judgment and the Town has grown significantly since then. Ms. Phillips Murray pointed out an example of how there was an agreement with Town and its planning agency to subdivide the park portion off in 1997, which was withdrawn or discontinued.

There was discussion between Mr. Phillips and Mr. Lemire about the LC zone and when it was created and put into Town Law. Mr. Phillips believes he has done everything right and that this request is just for lines on paper. Mr. Dudick advised Mr. Phillips that every application that comes before the board is about lines on paper. Ms. Phillips Murray noted for the record that the difference here is that these lines on paper are so that they can create new development that would give rise to any physical or environmental.

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

Mr. Telesh appreciates Mr. Lemire's concern about statements that an applicant may have made at a previous board meeting but Mr. Telesh also takes the responsibility to include any concerns in his motion so that it becomes part of the actual approval of variances that were issued in the past. If previous boards did not do that, he is hard time weighing that as being something that would disqualify this board from considering the application here now.

Mr. Telesh questioned Mr. Myers regarding easements and how are they going to be addressed. Mr. Myers stated that is more of a planning issue. Ms. Phillips Murray referred to the plans and the planning board minutes that cross easements will be required among all 3 parcels for parking, ingress / egress, storm water management, sewer, water, dumpsters and utilities.

Mr. Strother asked if there is a record that a variance was granted on the entire property with the understanding that it would not be subdivided. Mr. Dudick replied that this goes to Mr. Telesh's point, that unless there was a specific stipulation in the variance, it may have been something stated by the applicant but not voted on. There was further discussion between Mr. Strother and Mr. Dudick regarding this. Mr. Peller suggested putting together a history of the property to show what variances have been granted. Mr. Strother stated that it would not influence his opinion or vote. Mr. Dudick believes having a history of the property would be pertinent. Ms. Phillips Murray wanted to clarify the issue regarding whether there was a stipulation regarding subdivision. She believes this would be relevant to the Planning Board's review as they are the agency vested with the authority over subdivision. There was further discussion regarding the importance of there being a stipulation or statements made regarding a prior variance request.

Mr. Strother believes that the applicant substantially improved this parcel of land and he would support this application as submitted.

Mr. Dudick asked Mr. Myers for his comments. Mr. Myers believes that all issues involving the use variances or previous permits and variances for this property are resolved. He does not recall any restrictions on the subdivision of this property. Mr. Peller added that in his review of the files on this matter he concurs with Mr. Myers' statement. Mr. Myers stated that as it stands now, this is a new variance for the subdivision of the property. Anything further is done and over with and has nothing to do with this variance. Mr. Myers does not have a problem with what the applicant is trying to do here.

Mr. Dudick reminded the board that a similar application was made in an industrial park a few months ago and the variances were granted.

Mr. Whalen believes that there has been no representation in the past that there would be no subdivision in the future. It seems clear to Mr. Whalen that economically it is preferable to have three separate parcels as opposed to one, and that the restaurant is dragging the other two properties down. What concerns Mr. Whalen is the potential that someone who would own the restaurant would ask for additional variances in the future. Mr. Telesh, who is in the restaurant business, believes that it is better to own the site.

Mr. Ritter plans on voting in favor of the application because he believes the applicant has demonstrated a dedication to the community over the last 35 years and has proven time and time again that when they take on a project, they see it through. He believes the request is reasonable and is an enhancement in preserving this property for what it is.

Mr. Myers discussed the deck being enclosed and believes they are looking to increase customer capacity year round.

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

Prior to the vote being taken, Mr. Lemire stated that he does not believe the board spent any time discussing whether or not the request is substantial. Mr. Strother disagreed in that it is basically a preexisting condition. Mr. Dudick stated that he believes the applicant has a substantial reputation in this town, the property looks better, and he gives weight to someone's past record.

At this time, the board called for a five-minute recess, from 8:50 p.m. to 9:05 p.m.

3. An application from Ronald Wayne Van Patten, (permit #80758) proposing to subdivide property at 621 Englemore Road, Clifton Park, into 12 lots, requesting area variances as follows:

**Lot #1: This lot is divided by the road – see * below
Applicant requests 2 dwellings to be allowed to remain on one parcel. One of these residences is a 2-family dwelling. 2 Separate variances from Section 208-10B are required in order for this to occur.**

- 208-10B(2) allows a 1-family dwelling

- **208-10B(9)(a)[7] allows a 2-family dwelling with a special use permit from the planning board**
 - (1) The first variance would be to 208-10B(2) to allow more than a single dwelling on the parcel.**
 - (2) the second would be for 208-10B(9)(a)[7] to waive the requirement for an SUP for the 2-family.**
 - (3) 208-86 Keyhole lots 50' setback is required: Building A – 12' available, variance requested = 38'.**

*** The following will be addressed at the ZBA hearing as to whether variances are required. Lot #1 includes 2 other lots separated by the road from the main lot. The physical separation of the lots may be considered as separate parcels. If they are considered as separate lots, these are the variances that would be considered: Call them 1A, south of the road and 1B, southeast of the main lot.**

Lot 1A: Unbuildable if 50' setbacks for keyhole lots applied. Variance would be to waive the 50' setback requirement.

208-11: 20,000 SF minimum required, 12,702 SF available, 7,298 SF variance required.

Lot 1B: Unbuildable if 50' setbacks for keyhole lots applied. Variance would be to waive the 50' setback requirement.

208-11: 20,000 SF minimum required, 14,601 SF available, 5,399 SF variance required.

Lot #2:

(4) 208-86 Keyhole lots: 50' setback required from all property lines, minimum available = 11', variance required = 39'.

Lot #3:

(5) 208-11: Minimum lot size required = 20,000 SF, current = 12,030 SF, variance required = 7,970 SF.

(6) 208-11 Minimum lot width required = 100', current = 36.74', variance required = 63.26'

(7) 208-86 Keyhole lots 50' required, current = 16.2, variance required = 33.8'

Lot #4:

(8) : Minimum lot size required = 20,000 SF, current = 8,043 SF, variance required = 11,957 SF.

(9) 208-86 Keyhole lots 50' setback required, current = 2.5', variance required = 47.5'

Lot #5:

This lot is divided by the road – see * below

(10) 208-11 Minimum lot width: 100' required, current = 33.41' variance required = 66.59'

(11) 208-86 Keyhole lots 50' required, current = 0', variance required = 50'

*** The following will be addressed at the ZBA hearing as to whether variances are required. This property is divided by the road with parcel 5A being west of the main parcel. If considered as 2 parcels, further variances would be required as follows:**

Parcel 5: 208-11 Minimum lot size required = 20,000 SF, current = 14,597 SF, variance required = 5,403 SF

Parcel 5A: 208-11 Minimum lot size required = 20,000 SF, current = 16,831 SF, variance required = 3,169 SF;

Keyhole lot setback requirement = 50', current = 0', variance required = 50'

Lot #6:

(12) 208-86 Keyhole lots 50' setback required, current = 5.9', variance required = 44.1'

Lot #7:

(13) 208-86 Keyhole lots 50' setback required, current = 25' (proposed), variance required = 25'

Lot #8:

(14) 208-86 Keyhole lots 50' setback required, current = 25' (proposed), variance required = 25'

Lot #9:

This lot is divided by the road – see * below

(15) 208-86 Keyhole lots 50' setback required, current = 31', variance required = 19'

*** The following will be addressed at the ZBA hearing as to whether variances are required. This property is divided by the road with parcel 9A being east of the road and main parcel. If considered as 2 parcels, further variances would be required as follows:**

Parcel 9: 208-11 Minimum lot size required = 20,000 SF, current = 14,099 SF, variance required = 5,901 SF

Parcel 9A: 208-11 Minimum lot size required = 20,000 SF, current = 7,352 SF, variance required = 12,648 SF;

Keyhole lot setback requirement = 50', if applied lot would be unbuildable and therefore, the potential variance would be to waive the requirement.

Lot #10:

(16) 208-86 Keyhole lots 50' setback required, current house = 18.6', variance required = 31.4' (15' to garage is okay)

No variances are required on Lot #11 and Lot #12.

The secretary read the legal notice as it appeared in the Daily Gazette on January 28, 2010.

Mr. Gilbert VanGuilder presented this application on behalf of the applicant. He explained that the property consists of 25 acres of land either under contract to Wayne VanPatten, or directly owned by him. He explained the frontage on Grooms Road and the expansion to a larger parcel of land on the southern side. The property is bordered on the east by the Stony Creek Reservoir. There are two subdivisions to the north, Stony Heights and Bristol Gate. There are multifamily apartments along Englemore Road which, as part of this application, there will be a connection made to the Saratoga County Sewer District lines in Grooms Road. All of the existing 9

residential buildings have been constructed over a long period of time, dating back into the 1960s. There will be individual grinder pumps installed for each residence. Connection to the Clifton Park Water Authority will be made by connecting the two existing dead-end water mains from the Stony Heights side, and from the Bristol Gate side which is seen as an advantage by the Clifton Park Water Authority because it helps equalize pressures in the area. The water main will extend through the VanPatten property and through the road system which mirrors the existing road system that services the 9 residential buildings now.

Mr. VanGuilder stated that one of the improvements that will come with the subdivision will be an improvement of the roads to the current New York State Fire Code standards of 20 feet minimum width, able to support a 75,000-pound emergency vehicle. Currently, the roads do not meet those requirements. All of the lots are configured around the existing buildings to best meet the usable area around them. Some lots are small and buildings are clustered, but they are existing and they have done the best they could to define areas for them.

Another advantage of the subdivision, according to Mr. VanGuilder, will be that there will not be septic systems. Right now, there are community septic areas that service all of the buildings, but those will be abandoned and connected to the central sewer.

What has moved this application forward is an action taken by the Town of Clifton Park. Mr. VanGuilder stated that a judge basically said to work it out, which is why they are here, to bring in health, safety and welfare. One of the issues with the private water supply is that all of the apartment units are supplied water from an onsite well. The water line will be connected to the property line and they will have the ability, with proper approvals from the Clifton Park Water Authority, to extend water to those buildings and connect to the public water supply.

Mr. VanGuilder referred to parcels on the other side of the road that have been connected to the main parcel, such as Lot #1A and 1B, which are not intended to be buildable parcels and he would label those as such for board purposes. There are a number of parcels that are connected mainly for the purpose of having control across the road in between the roadway and the Stony Creek Reservoir for what happens to that land because there is a view across there, if someone were to put up a shed there could be an issue.

Mr. VanGuilder realizes that the variances are numerous but they have had many meetings with Town Attorney, Tom McCarthy, as well as Mr. Scavo and Mr. Myers, regarding the best way to achieve something that would be as consistent as possible with R-1 zoning, which allows for clustering. When looking at the overall density, this project does not even approach the number of units that would be allowed in that acreage in R-1 zoning, so Mr. VanGuilder believes they have a de facto cluster subdivision. He knows that there have been numerous complaints over the years but believes this would address the big problem.

Mr. Dudick asked Mr. VanGuilder for clarification regarding the lower part of the map presented. Mr. VanGuilder provided clarification and provided an explanation of how emergency vehicles could respond in a safe manner. There was discussion about the lots that are separated by the road, and there would be no building allowed on the reservoir side.

There was discussion about numerous buildings being built on one parcel at various times which has led to the need for the subdivisions.

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

Mr. Dudick requested Mr. Myers' input. Mr. Myers believes that in order to resolve the many issues and make it as legal as possible, they need to be separate parcels. There are emergency access issues. There has never been water there or clear access to all of the properties. There is no sewer and the septic systems are in bad shape. Mr. Myers thinks that this proposal is to provide proper fire, water, sanitation and access. The problem Mr. Myers has with Mr. VanGuilder's proposal is he feels that the parcels separated by the road should be treated as separate parcels.

Mr. Dudick asked if all of the people on the parcel where variances are requested are renting. Mr. VanGuilder replied yes, except for Mr. VanPatten. There is another owner of a portion of the parcel, Mr. Trion, who is in contract with Mr. VanPatten, but there are no variances being requested on that portion.

Mr. McCarthy advised that the contract for the purchase and sale of that lot was instigated by the Town's lawsuit. Mr. VanGuilder agreed. This parcel is being repurchased by the applicant in order to provide frontage and direct access to Saratoga County Sewer facilities pursuant to their requirements.

Mr. Dudick asked Mr. VanGuilder if he believes the owner intends additional development of the property. Mr. VanGuilder replied not at this time.

Mr. Telesh and Mr. Myers discussed the benefits of connecting to the sewer system. Mr. McCarthy also addressed the concern regarding as to whether the wells on the properties are too close to the reservoir, a problem solved by connecting to public water. Mr. McCarthy stated that the work / improvements cannot be done unless the lines are drawn properly and the zoning board grants the variances.

Mr. Telesh and Mr. Myers discussed how to enforce the unbuildable lots. Mr. McCarthy stated that the zoning board has the power to address the unbuildable lots in the notice of decision.

Mr. VanGuilder stated that there is a preexisting structure on lot 5. He requested that lot 5 be excluded from that stipulation.

Mr. Myers discussed stipulating the variances based on the sewer being put there. If they do not, all of the variances are gone. Mr. Dudick asked if this is stated in the application and Mr. Myers replied no, that it is all a part of the bigger picture. This is step one in solving the issue. If they default on the water or sewer, it goes back to Court. Mr. McCarthy reminded the board that they can place any conditions in the notice of decision.

Mr. Dudick asked Mr. Myers for his input regarding a timeframe for the improvements to take place. Mr. Myers believes the workload can be done in one year, but he does not know whether Mr. VanPatten can finance it in one year. There was discussion between Mr. Dudick and Mr. Myers regarding a suitable timeframe. Mr. VanGuilder has spoken to Mr. VanPatten and would say that a two-year period of time would be reasonable for them to get the improvements in place. A good way to control it could be that no lots be conveyed out until the improvements are made. Mr. Dudick asked for clarification on this point, which Mr. Peller and Mr. Myers provided.

There was discussion on whether to address each variance individually or take the application as one, and how to address the lots separated by the road – as two lots or one. Mr. Peller believes that from a legal standpoint it would be clearer to handle them as separate parcels. The board unanimously agreed to treat them as separate parcels.

Mr. VanGuilder would like there to be an exception to the unbuildable lots to have non-habitable structures like a gazebo be built. There was discussion among board members regarding whether any structure should be allowed to be built on the unbuildable lots. Mr. Myers reminded the board about 100-foot buffer, and no residences within 200 feet of the reservoir.

There was discussion regarding the formulation of a motion.

Mr. Dudick made a motion to approve the application as follows with the following stipulations: that there be no conveyance of the subdivided lots until all improvements stated – public water, public sewer and road improvements are made; that the variance shall be in effect for 2 years effective the date of the subdivision by the planning board, if one is granted and improvements must be made before the expiration date of 24 months and will expire if improvements are not made within that time; that designated unbuildable lots 1A, 1B, 9A and 10A are deemed unbuildable and no accessory structures are allowed; and that lot 5A is allowed accessory structures as long as they are approved by the building department. Ayes: Gleason, Ritter, Whalen, Dudick, Strother, Lemire, Telesh. Noes: None.

- 4. An application from Linda C. Fleming, proposing to rebuild a single family home on the same footprint of a house that was removed, requesting a variance from Section 208-97D(2), which allows reconstruction of a non-conforming damaged or destroyed home by any means other than demolition. This house was demolished purposely without a permit and cannot be rebuilt on the non-conforming lot without a variance. Time limits have expired. The variance would have to waive all the requirements of this section and allow the house to be rebuilt in the original footprint. The property is located at 165 East Side Drive, Clifton Park. (Permit #80757)**

The secretary read the legal notice as it appeared in the Daily Gazette on January 28, 2010.

Mr. Gilbert VanGuilder presented this application on behalf of the applicant. Ms. Fleming has owned the property since 1982. In 2008, Mr. VanGuilder's office was contacted to perform a boundary survey of the property in preparation for a proposed plan to seek a building permit to build a garage. The building department granted the permit and it is Mr. VanGuilder's understanding that the building department was not called back for any subsequent inspections.

They stopped out to the site to see what the status of the garage was and the majority of the home was demolished. Ms. Fleming and her building representative's opinion was that because they were rebuilding it on the exact same footprint they did not realize that a demolition permit was needed. It is Ms. Fleming's intent to rebuild on exactly the same footprint, which was documented on the 2008 survey. They did leave a portion of the structure on the lake side.

There was discussion about the garage being built and the discovery of damaged wood which led to the decision to demolish.

Mr. Myers stated that if this house had a foundation and the foundation were still there this would not be an issue, they would have only been ticketed for not having a demolition permit.

Mr. Peller asked Mr. VanGuilder how he can assure the board that the house will be built on the same footprint. Mr. VanGuilder has the location documented on the 2008 survey.

Mr. Ritter asked when the original house was built. Mr. VanGuilder believes that there was an original part of the structure and then an addition, but the subdivision of the property was approved in 1927, possibly before.

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

There was discussion regarding whether to stipulate that the new home have a foundation and a penalty for demolition.

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

Mr. Ritter made a motion to approve the minutes of November 17, 2009. Mr. Dudick seconded. Ayes: Gleason, Ritter, Whalen, Dudick, Lemire, Strother. Noes: None. Abstentions: Telesh

Mr. Ritter made a motion to approve the minutes of December 1, 2009. Mr. Dudick seconded. Ayes: Ritter, Whalen, Dudick, Strother, Telesh. Noes: None. Abstentions: Gleason, Lemire.

Mr. Ritter made a motion to adjourn the meeting at 10:40 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