

ZONING BOARD OF APPEALS

April 20, 2010

Present: Michael Dudick, Chairman, Dale Gleason, Robert Ritter (arrived at 7:13 p.m.), Christopher Lemire, James Whalen, Deborah Ferro (alternate member)

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

Absent: Douglas Strother, Brian Telesh

Mr. Dudick called the meeting at 7:10 p.m.

Mr. Dudick advised that Ms. Ferro would be voting in place of Brian Telesh.

PLEDGE OF ALLEGIANCE

Mr. Dudick acknowledged the passing of former secretary, Judy Lamb, with sadness. She was a pleasure to work with and thoughts go out to her family and friends.

OLD BUSINESS:

- 1. An amended application from Craig S. Benson, requesting a variance from section 208-11, front setbacks in R-1 zone, for the construction of an attached garage on a corner lot. 50-foot setback from both streets is required. 35 feet is available from Settlers Lane – variance requested = 15 feet. 24 feet is available from Patroon Place – variance requested = 26 feet. The property is located at 6 Settlers Lane, Ballston Lake, New York. (Permit #80765)**

The secretary read the legal notice as it appeared in the Daily Gazette on April 15, 2010. This was a renote for an application previously presented. There were questions about paperwork being done properly and Mr. Dudick asked Mr. Myers for his comments. Mr. Myers explained that normally in an application like this he would put in for the most severe variance which covers the whole lot. Since the board felt that there should have been a variance for each front it was readvertised. Mr. Myers did not have any issues with the application.

Mr. Dudick asked if there were any plans to ever develop the road and Mr. Myers replied not that he is aware of. There is a piece of property between it and Horseman Lane that has been bought by a private owner.

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. Dudick commented that corner lots tend to have special circumstances because of setback issues. Technically this is a corner lot because of a phantom street which will never be developed.

NEW BUSINESS:

- 1. An application from Nagaraju Namassivaya, requesting variances from B-1 Regulations for a medical office at 923 Route 146, Clifton Park (permit #80764), as follows: 208-33B: Maximum allowable building area = 4800 sf. Proposed area = 9000sf. Variance required = 4200sf. Variance requested = 4400sf. Use 4400sf since building size is approximate.**

208-35D (1): Building front setback = 70' required from property line. 208-98 front setback = 130' from centerline of Rt 146. Proposed building setback is 25' from property line which would require a 45' variance and 83' from centerline of Rt 146 or a 47' variance required - the 47' variance controls. (70' from Bruno Rd property line controls that side but the Rt 146 side is a larger variance)

208-35D (1) & 208-98: No parking allowed within front setbacks. Proposed parking Rt 146 is 112' from centerline 54' from property line resulting in 18' and 16' variances. Proposed parking from Bruno Rd. is 42' from property line resulting in 28' variance. 28' variance required from Bruno Rd. controls.

208-69.1A (2): 50' area adjacent to classified stream considered LC zone. Believed to be applicable since NYSDEC has determined stream to be classified.

208-69.2(3): Roadway or driveway crossings allowed provided applicant demonstrates that there is no other reasonable means of access available and obtains the appropriate permits from NYSDEC.

The secretary read the legal notice as it appeared in the Daily Gazette on April 15, 2010.

Mr. Dudick recused himself from this application. Mr. Whalen chaired for this application.

Mr. Whalen advised that there are now five voting members and the applicant must receive four votes in favor of the application for it to be approved.

Gavin Vuillaume of Environmental Design Partnership presented this application. The applicant is requesting variances in order to construct a 9,000 sq. ft. medical office building on the corner of Route 146 and Bruno Road. The property is 2.47 acres and is located within the B-1 zoning district.

Mr. Vuillaume explained the history of this project. Back in January, the applicant made a proposal to the planning board for a layout similar to the one presented. At that time, however, they were proposing a 7,500 sq. ft. office building while keeping the existing historic structure on the right (a 1920's vacant farmhouse that has been renovated several times over the years). There is a detached garage and open field in the corner, which has received general fill over time. When they presented their plan to the planning board, they wished to place the building in the rear with the parking at the corner. For several reasons, mainly aesthetics and proximity of the building to the LC zone, the planning board asked them to relocate the building. What they have done is come up with a different configuration of the building. They have been able to fit it at the corner, with a design that brings the building, parking and pedestrian access toward the street. They feel it would be highly desirable at that intersection due to visibility. They presented the current plan to the planning board and they noticed that several variances would be needed. He feels that by condensing into one building rather than having two, it would be more attractive and limit the amount of disturbance on the property. They have met with the ECC and with DEC out at the site. According to Mr. Vuillaume, DEC has essentially stated that this is a tributary and has to have the LC zone protection along with it, which they are adhering to.

Mr. Whalen asked if the only ingress / egress point is from Bruno Road and Mr. Vuillaume replied yes. The purpose is to limit the access points. There is an existing driveway now that would be removed in an effort to control access onto Route 146.

Mr. Whalen asked where the footprint of the current building is and Mr. Vuillaume replied that it is in the center of the property as it fronts on Route 146.

Mr. Ritter asked about the historic building on the site. Mr. Myers replied that anything historic either has been taken out or will be. The building as a whole does not have any historic significance due to the many renovations. Mr. Vuillaume added that Mr. Scherer and other members of the Historic Committee visited the site and went inside the building and did not determine there to be a lot of historic significance to the structure. Therefore, he felt it would be okay to remove the building. They will attempt to save some pieces that may have some value. Mr. Ritter asked if there was any report generated and Mr. Myers believes there is.

Mr. Ritter asked Mr. Myers about the prior variances asked for regarding a building at this location. Mr. Myers replied correct, and that application was either tabled or denied. He did not recall.

Mr. Ritter asked if there is a use variance that needs to be granted as a result of the LC zone, as he believes it was an issue with the prior application. Mr. Myers replied that the building was in a different spot in the prior application. In Mr. Myers' description of the variances for this application, he noted that roadway / driveway / crossings are allowed if the applicant demonstrates that there is no other reasonable means of egress. Mr. Myers feels that because of the very small section of the LC zone that is affected by the driving lanes of the parking lot, that this would apply and the applicant would not need a use variance, but if the board feels differently, the applicant would have to go to the ECC for a use variance.

Mr. Ritter and Mr. Myers discussed the prior application and Mr. Myers replied that this time the location is greatly different. Mr. Ritter noted that the prior application requested a 7,500 sq. ft. building and now they are asking for 9,000 sq. ft. Mr. Myers referred to an email from the planning director stating that the planning board is supportive of the concept and the applicant's area variances requests. They are aware of the larger building.

Mr. Ritter would feel more comfortable revisiting the prior application and reviewing the discussions. Mr. Ritter believes that in the prior application there was a concern about the LC zone and the size of the building requested. Mr. Myers left to locate the prior variance request.

At this time, the architect for the project, Randeep Johar, spoke regarding the application. She began this application about four years ago. Initially they looked at several options. She explained the design proposed and the history of the application. Mr. Ritter believes that the prior application was tabled pending additional information from the applicant regarding the use variance, such as financial hardship issues. He feels that in order to objectively look at this project they need to look at and resolve the issues of the prior application.

Mr. Whalen asked for clarification on the variance asked for regarding the size of the building. Mr. Vuillaume replied 4,400 sq. ft. Mr. Whalen asked if the reason for building it this size is because of economics. Ms. Johar stated that it is a combination of economics and the location (corner gives a little less utility). She also believes this will give the applicant more flexibility down the road as he expands his practice. Mr. Vuillaume added that the aesthetics are important, too. They feel that this proposal an attractive addition to that corner.

Mr. Lemire asked for clarification on the location of the Dwaaskill, which Mr. Vuillaume addressed by referring to a map. It is north of the property. The parking lot is closest to the Dwaaskill. There was a discussion between Mr. Lemire and Mr. Ritter about the prior proposed building and it being located closer.

Ms. Johar explained the design of the building which would be more residential in scale. Right now they are in a preliminary design stage, which they will further detail if variances are granted.

Mrs. Gleason likes the idea of the design of the building proposed but is very concerned about its size. She referred to a variance granted to Dr. Glasgow and wanted to know the size of that building. Mrs. Gleason is also concerned about setting a precedent, as this is a large variance being requested. Ms. Johar stated that they could build 4,800 sq. ft. buildings, which would be allowed, but it would not be as attractive. Mr. Ritter agreed with Mrs. Gleason.

Mr. Myers returned and was unable to locate the first application. It may have been discarded as abandoned.

Mr. Lemire's recollection of the first application was along the lines of what Mr. Ritter indicated, that there were issues with the placement of the second building in the LC zone. Mr. Lemire wanted to know how LC zone issues are being addressed. Mr. Vuillaume stated that by requesting the variances the project can be moved closer to the front of the property, further from the LC zone. Mr. Lemire believes that they ran into this issue last time and that this property may not be suitable because of the LC zone issue. There was discussion about a small portion of the drive aisle being in the LC zone as well as a portion of the storm water management area. Mr. Villaume stated that the applicant will do their best to avoid having to go into the LC zone.

There was discussion about whether a use variance is required. Mr. Myers advised that if the board disagrees with his finding then they need to go to the ECC for a use variance to put the driveway through that zone.

Mr. Whalen read a letter from the Saratoga County Planning Board dated March 19, 2010, which decided no significant countywide or intercommunity impact by this project.

Mr. Whalen also read a memorandum from the Town of Clifton Park ECC regarding this project. After their review of data presented the ECC supported the area variance for the front yard building setbacks and parking setbacks but did not support the variance to increase the size of the building due to the increased number of parking spaces required resulting in encroachment in the LC zone. The ECC recommends that the storm water management retention basin and the applicable parking areas be located outside the LC zone per Section 208-69.2 "Permitted Uses" in the LC zone, which specifically states that "no land shall be expanded or altered for any purposes within the area depicted on the Official Zoning Map as L-C." According to the ECC, this project appears to be a good candidate to incorporate green infrastructure measures in the building and site plan design.

Mr. Myers advised that the ECC's statement is not complete, and should say "other than for..." driveway, boat launch, utility work, creation of wetlands. They left that part out. Mr. Ritter asked Mr. Myers to read it in its entirety, which Mr. Myers did. Mr. Myers does not believe that the ECC has a problem with the applicant putting a driveway there. There was discussion on this point as well as the number of parking spaces needed.

Mr. Lemire asked if there is a way to move the parking area somewhere not in the LC zone. Mr. Ritter added that if you do that you create a dead end to deny access to the LC zone but that restricts access by emergency vehicles. Mr. Vuillaume replied that this is correct.

Mr. Ritter believes that the self-created hardship issue for a use variance in the first application was never addressed. He believes the matter was tabled in order for the applicant to come back with some documentation. The current application has less in the LC zone but this issue still needs to be addressed.

Mr. Myers stated that if the board does not agree with his determination about the driveway, then they should send the application back to the ECC for a recommendation regarding a use variance. There was discussion about whether this should be done.

Mrs. Gleason again asked about the size of the variance granted to Dr. Glasgow for their building. Mr. Myers replied that Dr. Glasgow's building was 7,800 sq. ft., and a 3,300 sq. ft. variance was approved. Mrs. Gleason recalls Dr. Glasgow asking for a larger building than what was granted.

Mr. Whalen asked for public comment and there was none. Mr. Ritter suggested that the public hearing be kept open.

Mr. Villaume reminded the board that this new application is very different from the prior application in that they have relocated the building and parking as far away as they can from the LC zone. Mr. Lemire advised that the board should consider the minimum variance necessary to meet the applicant's needs, and he suggested repositioning, reducing the size of the building and parking needed. Mr. Villaume replied that then he would have more flexibility. Mrs. Gleason liked the possibility of reducing the size of the building and parking. Ms. Johar discussed some possibilities and Mr. Villaume was unsure if that would get them out of the LC zone. The issue is the one section of the driveway.

Ms. Ferro asked about greenspace. Mr. Villaume replied that right now they have 75% greenspace. Ms. Ferro asked when the applicant purchased the building and Mr. Villaume replied five years.

Mrs. Gleason stated that although she likes the design, she is uncomfortable granting a variance for such a large building and is concerned about setting precedent. Mr. Whalen and Mr. Ritter are interested in more documentation by the applicant. Mr. Whelan would like to know about costs and why, economically, does the building need to be 9,000 sq. ft. Mr. Lemire is concerned about the LC zone. Mr. Ritter is concerned about the size of the building and the LC zone. Ms. Ferro is concerned about self-created hardship and substantial variances being requested.

After discussing whether this matter should be sent to the ECC, it was decided and agreed upon to table this matter to May 18th. The applicant waived the 61 days.

- 2. An application from Joe Suriano, requesting a variance from 208-12 setback for accessory structures, to construct a pool. Property is a corner lot which requires 50' front setback from property line on both streets and 80' from property line for accessory structures. 80-34' available = 46' variance required. The property is located at 35 Gloucester Street, Clifton Park. (Permit #80767)**

Mr. Joe Suriano presented this application. He stated that his house as originally designed was supposed to face Tudor Street but faces Gloucester. They would like to put in a pool. If they try to comply with zoning and they move the pool to the west end they would have to remove a number of trees and excavate due to hills. The pool would then be completely in the shade. If they place it behind the house they would not need a variance but they would have to remove the

garden and it would take up the entire back yard. The proposed location is in the side yard which is still behind the house, but it requires a variance from Tudor since they are on a corner lot.

Mr. Dudick asked about turning the pool 90 degrees. Mr. Suriano replied that this has been considered but the north end corner would still require a variance. It would also cut off the yard and put the pool in the shade of the house. Mrs. Suriano added that it would cut into her garden.

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

Mr. Dudick asked Mr. Myers for his opinion. Mr. Myers has no issues with the application.

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

Mr. Ritter made a motion to approve the minutes of April 6, 2010. Mr. Whalen seconded. Approval unanimous.

Mr. Ritter made a motion to adjourn the meeting at 8:35 p.m. Mr. Dudick 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