

## ZONING BOARD OF APPEALS

May 18, 2010

Present: Michael Dudick, Chairman, Robert Ritter, Douglas Strother, Brian Telesh,  
Deborah Ferro (alternate member)

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

Absent: Dale Gleason, James Whalen, Christopher Lemire

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

Mr. Dudick advised that Deborah Ferro will be voting in the place of Dale Gleason

### PLEDGE OF ALLEGIANCE

The applicant for the item of old business consented to be heard last.

### **NEW BUSINESS:**

- 1. An application from Justin and Barb Miazga, requesting another variance from 208-12. 80' required from front property line for accessory structures. Corner lot requires 80' from both fronts. Previous 40' variance (80739) granted for pool. Applicant wants to add deck to pool which requires another 15' of variance. Resulting setback to property line would be 25'. The property is located at 17 St. Andrews Drive, Clifton Park. (Permit #80769)**

The secretary read the legal notice as it appeared in the *Daily Gazette* on Thursday, May 13, 2010.

Mr. Dudick advised the applicant that only five voting members are present and four votes in favor of the application are needed to pass. The applicant chose to present his application.

Mr. Justin Miazga presented this application. He wishes to construct a pool deck and chose the proposed location between the pool and the road because he lives on a corner lot and if the deck is placed on the other side of the pool, the pool would be shaded by three large trees which cannot be removed because they are on his neighbor's property.

Mr. Telesh asked about fence height and Mr. Miazga replied it is 4 feet high. Mr. Telesh asked about the proposed deck height and Mr. Miazga advised that his above-ground pool is 52 inches high. The deck would be flush with the edge of the pool. There was discussion about the railing height over the deck and Mr. Myers advised that this would be discussed if the variance is passed.

Mr. Ritter asked why this deck was not proposed in the previous variance request. Mr. Miazga replied that he planned to build a deck but did not know that a permit for a deck was needed. He also learned that he could have applied for the deck variance at the same time as the pool variance.

Mr. Dudick asked why the deck could not be placed on the far side away from the house on the south side of the pool. Mr. Miazga replied that there is not enough room. The deck cannot be placed on the east side because of the trees on his neighbor's property. It could not be placed on the north side of the pool because of aesthetics and also he would not be able to watch his son in the pool.

Mr. Dudick referred to the minutes of July 14, 2009 regarding the prior pool variance and believes that with a little advanced planning the pool could be placed a little to the east. He thinks that the whole issue could be resolved by placing the deck on the other side of the pool, which would not require a variance.

Mr. Dudick asked Mr. Myers for his comments. Mr. Myers recalls stressing to the applicant in the last application to make sure he had requested everything he wanted, but he does not have an issue with this. Per Mr. Myers, if this were not a corner lot, he would not need to be here for a variance. Since it is inside the fence, Mr. Myers does not believe it detracts from the neighborhood.

Mr. Miazga believes that Mr. Myers was clear with him but his understanding was that he did not need a permit for the deck.

Mr. Dudick stated that he voted yes on the initial pool application because it was on a corner lot and he understood the constraints. He felt that the hardship was not self-created and the request was reasonable. He is not in favor of this application now because he knew about the deck at the time he presented his last application and could have built the pool to accommodate the deck. Mr. Miazga responded that he wanted the pool where it was so there could be a large enough space in his back yard.

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. Ritter agreed with Mr. Myers. He believes that the applicant is credible and appreciated his honesty in admitting that he probably should have resolved the deck issue with the prior application and did not. It is still a corner lot issue. He is in favor of the application.

Mr. Telesh was torn. He agreed with Mr. Dudick that the applicant knew about this the last time. However, he would like to know if this request would be reasonable if it were presented then. Mr. Myers believes that variances with smaller setbacks have been granted and referred to one on the corner of Sandpiper and Miller. The corner lot makes it unique.

Mr. Dudick read from the minutes of this applicant's prior variance. The applicant was made aware of issues regarding the location of the pool if a deck were to be built. Regarding variances granted to other applicants, and the difference in the other applications is that the board did not foresee an issue regarding placement of the pool and deck. In Mr. Miazga's case it was discussed. There was discussion about the variances granted to other applicants.

Mr. Miazga advised the board that even if the deck issue were resolved in the prior application he would have asked for it where he wants it now. Nothing was done to mislead anyone.

Mr. Strother did not believe the applicant was trying to mislead anyone and he is in favor of the application.

Mr. Dudick asked Mr. Myers if there would be an issue if this were not a corner lot and Mr. Myers replied no, there would not have been a pool issue, either.

Mr. Dudick believes he may have been in favor of granting the variance for the deck if it were presented at the time of the pool variance request.

Ms. Ferro believes that since the applicant knew about the deck and could have moved the pool so that such a substantial request would not be needed, she is not in favor of the application. The applicant could also relocate the deck.

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

- 2. An application from Al and Christina Bishop, requesting a variance from 208-12 accessory buildings, to build a shed. Property is a corner lot requiring 80' setback from both Plaid Place and Denim Drive. Setback from Denim Drive is available. A 5' variance from the 80' requirement is needed from Plaid Place. The property is located at 26 Plaid Place, Clifton Park. (Permit #80770)**

Mr. Dudick reminded the applicant that there are five voting members present and four votes are required in favor of an application in order for it to be approved. The applicant chose to present the application.

The secretary read the legal notice as it appeared in the *Daily Gazette* on Thursday, May 13, 2010.

Ms. Christina Bishop, owner, presented this application. She would like to place a pre-built 10x20 shed in her yard. She resides on a corner lot and does not have a back yard so this is the only place she can put it. The shed would be used for storage of equipment.

Mr. Dudick asked if any attachments would be built onto the shed and Ms. Bishop replied that there may be an overhang to store items under it. The overhang would face Plaid Place. There was a lengthy discussion about whether an overhang would require a variance and how much of a variance would be needed or changed. This issue was resolved by Mr. Myers' suggestion to amend the variance request to 10 feet instead of 5 feet, which he feels is a minor change, but asked Mr. Renzi for his opinion. Mr. Renzi, prior counsel to the Zoning Board, recalled a number of occasions where the board accommodated changes of this magnitude. This is not significant enough to warrant a new application. Mr. Renzi asked Ms. Bishop if she understood what the board is suggesting and clarified the suggestion that this application be amended to request a 10-foot variance, rather than a 5-foot variance, so that she has room to add the overhang.

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. Ritter made a motion to approve the application as amended for a 10-foot variance instead of 5 feet. Mr. Strother seconded. Ayes: Ritter, Dudick, Strother, Telesh, Ferro. Noes: None.

### **OLD 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.**

Mr. Dudick recused himself from this application and advised the applicant that for this application there are four voting members present and all votes must be in favor of the application in order for it to pass. The applicant chose to continue to present the application.

Mr. Telesh chaired the meeting for Mr. Dudick.

Mr. Gavin Vuillaume of Environmental Design Partnership continued the presentation of the application and presented a revised site plan. Since the board previously requested that they present their plans to the ECC, they met with one of the members. Mr. Myers stated that the ECC had no problem with the application, as it resolved the issue of the LC zone by removing any conflict with it. Also addressed and resolved in the revised site plan was the access drive. They decided to cut off the second driveway that was encroaching on the LC zone. They feel that they have enough parking for the proposed project and will probably not use it all. They will go to the planning board to discuss land banking some of the parking.

Mr. Ritter asked about the configuration of the building and a fire / safety issue. Mr. Myers replied that the way that parking lot was originally designed fire trucks would not be able to make the turns. Mr. Vuillaume advised that the older plans had the building way in the rear of the parcel which would have made it more difficult for access. With the new plan, which Mr. Vuillaume stated the planning board is in favor of, fire trucks can access both sides of the building – from Route 146 and Bruno Road.

In response to the board's prior request, Mr. Vuillaume also presented an alternate plan of what the site would look like if there were two smaller buildings instead of one large one. The one large building is preferred, as it makes a better presentation at that intersection than two smaller buildings.

Ms. Randeep Johar, architect, has studied this site over many years and feels that the presentation of the single building on the corner is the best for the site. She feels it is also best for the doctor in terms of internal flow and efficiencies, staffing, equipment, etc. She also referred to the 9,000 sq. ft. building requested and believes that the Glasgow variance discussed at the prior meeting was for an 8,100 sq. ft. building. The acreage for both properties are approximately the same. In this application they are eliminating the old structure. She advised that technically they can build 12,000 sq. ft. on this property and are building substantially less than that. There is also more green space.

Mr. Vuillaume believes that Glasgow was allowed 12.5% building coverage. Here they are only at 8%. Mr. Myers believes that this is correct.

The plan with the two buildings was discussed and Ms. Johar advised that it would be approximately \$200,000 more to construct two buildings, not to mention energy and equipment costs.

Mr. Telesh asked Mr. Myers for clarification regarding the two-building proposal, and the issue with the 9,000 sq. ft. single-building proposal is that it is over the maximum allowed for that zone. Mr. Myers clarified this for Mr. Telesh and he also does not think it makes sense to divide the practice into two buildings.

Mr. Ritter asked about the septic system issue. Mr. Vuillaume replied that for this project there is existing sanitary sewer that has been extended right in front of the property. There will no septic system for this building. It will connect to the county sewer district.

Mr. Ritter asked Mr. Vuillaume if he knew how the planning board felt about two buildings versus one. Mr. Vuillaume stated that they preferred and recommended one building, and recommended it be closer to the intersection where it would be more visible.

Mr. Renzi referred to two Army Corps of Engineers wetlands there and asked about notifications that may have been required. Mr. Vuillaume replied that they have flagged the wetlands and the Army Corps of Engineers has already been to the site. They do not have the final verification on the mapping yet.

Mr. Strother asked if there has been any statement or corroboration from the planning board, as it has been implied that there has been planning board approval. Mr. Vuillaume replied that they did not have planning board approval. Mr. Myers replied that he has an email from the director of planning in support of the applicant's area variance request.

Mr. Ritter asked about stormwater management and retention basins. Mr. Vuillaume replied that they will be putting a substantial amount under the parking and a small basin in the front of the parking area.

Mr. Strother asked if there was any response from neighbors. Mr. Vuillaume replied that they notified neighbors when the use variance was in the first application and has not had a response. Mr. Myers has not heard from neighbors, either. There are only area variances being asked for now since the LC issue has been resolved.

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

Mr. Telesh feels that the one-building proposal is preferable, is well thought out and will upgrade that corner substantially.

Ms. Ferro wanted to be sure that what is being built on this lot is allowable in the B-1 zone. Mr. Myers replied that it is allowed and that the variance requested is for the size of the building.

Mr. Ritter made a motion to approve the application as amended for variances from B-1 Regulations for a medical office at 923 Route 146, Clifton Park, as follows: (1) maximum building area = 4,800 sq. ft, proposed building = 9,000 sq. ft. – variance = 4,200 sq. ft.; (2) minimum front yard building setback = 70 ft from Bruno Road and 130 ft from the centerline of

Route 146, proposed = 25 ft from Bruno Road and 83 ft from centerline of Route 146 – variance = 45 ft from Bruno Road and 47 ft from the centerline of Route 146; and (3) the minimum front yard parking setback = 70 ft from Bruno Road and 130 ft from the centerline of Route 146, proposed = 42 ft from Bruno Road and 112 ft from the centerline of Route 146, variance = 28 feet from Bruno Road and 18 ft from the centerline of Route 146. Ms. Ferro seconded. Ayes: Ritter, Strother, Telesh, Ferro. Noes: None.

The minutes of May 4, 2010 could not be approved at this time as there were only three members present who were also present at the May 4<sup>th</sup> meeting..

Mr. Telesh made a motion to adjourn the meeting at 8:25 p.m. Mr. Ritter 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