

ZONING BOARD OF APPEALS

June 15, 2010

Present: Michael Dudick, Chairman, Dale Gleason, Robert Ritter (arrived 7:16 p.m.), Christopher Lemire, James Whalen (arrived 7:16 p.m.), Brian Telesh, Deborah Ferro (alternate member)

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

Absent: Douglas Strother

Mr. Dudick called the meeting at 7:08 p.m.

Mr. Dudick advised that Deborah Ferro will be voting in the place of Douglas Strother.

PLEDGE OF ALLEGIANCE

OLD BUSINESS:

- 1. An amended application from Hanley Sign Co., requesting a variance from Chapter 171 Sign Law. Applicant requests 83 sf for a wall sign for a commercial retail business. Two variances currently granted for location. Variance 80318 allowed 63 sf wall sign. Variance 80539 allowed 79 sf wall sign. Applicant requests 83-79 = 4 sf variance. (space = 30,000 sf and 60 sf wall sign without variance.) The property is located at 54 Crossing Boulevard, Clifton Park, New York. (Permit #80771)**

Mr. Dudick advised that after further review this applicant did not require a variance. Mr. Myers replied correct.

2. **An application from Jennifer Zaccaria, requesting variances for a subdivision in a B-1 zone at 932 & 934 Rt 146, Clifton Park, New York (Permit #80776).**

Variances requested as follows:

- 1: **208-35C - Required lot A width = 180ft, available = 160', variance required = 20ft.**
- 2: **208-86A - Keyhole lot formed by subdivision - not allowed per this section.**
- 3: **208-86B - Minimum setback for all sides = 50' in keyhole lot, available on east side = 34' plus lot B, variance required = 16' plus/minus.**
- 4: **208-35D.(3) greenspace required lot A = 50%, available = 45.9%, variance required= 4.1%.**
- 5: **208-35D.(1) no parking in front yard in B-1 zone. Lot B all parking in front yard - variance required.**
- 6: **208-35D.(2) no parking closer than 25' to side & rear property line. Lot A parking on side & rear property lines 25'. Variance required for both (2 variances).**
- 7: **208-35D.(4) 10' buffer required along side & rear property lines. Lot A requires variance for both west side and rear property lines (2 variances).**
- 8: **208-35C -40000 sf minimum required, available is 34,722 sf, 5,278 sf variance required.**
- 9: **208-35C required lot B width = 180', available = 40', variance required = 140'.**
- 10: **208-35D.(3) building & parking area maximum coverage = 50% of total lot area. Lot A = 54.1% variance required = 4.1%.**

Mr. Dudick stated that this applicant has asked for a postponement until the July 20th meeting.

3. **An amendment to previously granted 46-foot variance for a pool for Joe Suriano (permit #80767) due to a site inspection for compliance. The property is located at 35 Gloucester Street, Clifton Park, New York.**

Mr. Myers explained that the applicant came to the building department after he had begun construction to ensure that he had met the requirements. It was realized that the pool was closer than was approved. As a result, Mr. Myers went to the site to measure and discover that they measured off of the pavement and not off of the property line. The frame for the pool is in the ground already and the hole has been dug. Mr. Myers does not believe that moving it back to comply with the approved variance is an option. The applicant needs an additional 15-foot variance (for a total amended variance of 61 feet).

Mr. Myers explained that this is a corner lot, which has setback requirements on two fronts. If this were not a corner lot, he would only need 10 feet.

Mr. Joe Suriano spoke. He did not understand the right-of-way and this caused an error in measurement.

Mr. Peller asked Mr. Myers if he believes there was no intent to violate the variance. Mr. Myers believes there was no intent.

Mr. Dudick explained to Mr. Suriano that five voting members were present and four yes votes are required to pass. He asked Mr. Suriano if he would like the board to vote on his application. At this time, Mr. Whalen and Mr. Ritter appeared so that there were now seven voting members.

At this point, a short recess was taken. When the meeting resumed, Mr. Myers summarized the reason for the amended variance request.

Mr. Lemire asked Mr. Myers for clarification and asked if the pool was larger than what was contemplated. There was discussion about the measurements from the house and street.

There was discussion about a motion and Mr. Peller advised that if the amended variance is denied, it does not affect the current variance, which would still stand.

Mr. Ritter made a motion to approve variance as amended. Mrs. Gleason seconded. Ayes: Gleason, Ritter, Whalen, Dudick, Lemire, Telesh. Noes: Ferro.

NEW BUSINESS:

- 1. An application from Melissa D. Lescault, Esq., for a variance from Section 208-86B, for a front (not side) setback for an existing addition to their home (front faces the street). Fifty (50') feet required, 41' available, 9' variance needed. (Note: addition does not appear to have building permit) The property is located at 6 Hilltop Court, Rexford, New York. (Permit #80775)**

The secretary read the legal notice as it appeared in the *Daily Gazette* on June 10, 2010.

Melissa Lescault, Esq. is the attorney for the property owner and she presented this application. She stated that her client bought this property in July of 2009. When they purchased the property there was an existing paved patio. The house was built in 2000 and a certificate of occupancy was issued. Her clients were under the impression that the patio itself was included in the certificate of occupancy and met all of the proper setbacks to the property line. Her client then enclosed the patio area and he was made aware of the fact that the setback did not meet the requirement. They then went to the town for a variance application.

Ms. Lescault explained that the property is located off of Appleton Road. It was a four-lot subdivision that was approved a few years back. When you cross over Hilltop Court to get access to her client's property, which is a flag-shaped lot and is zoned Conservation Residential. Without the fact that it is a keyhole lot, they would be in compliance with all of the setbacks for the addition.

Ms. Lescault discussed her written submission that was provided in the application and discussed the requirements for an area variance. The property is setback the farthest from the neighboring parcels so she does not believe the addition would be in the foresight of any of the three

properties surrounding it, except for possibly one. The landscaping consists of mature white pines and large arborvites so she does not believe there would be a visual or noise impact to any adjacent neighbors. She believes that although the structural addition may be inconsistent with the front area setback requirement, the manner in which it was constructed and the landscaping would have no adverse affect on the aesthetics of the neighborhood. As far as whether the benefit can be achieved by any other means, Ms. Lescault stated that the only way to do that is to be able to purchase land from a neighbor, which is not available, or pick up his house and move it back. She does not believe that the variance request is substantial as only one variance is being sought and it is only 9 feet. On the neighboring parcel owned by the Mariotti's, their house is set back 125 feet from the property line, so there would be 166 feet of distance between the structures on the two properties. Ms. Lescault does not believe that the proposed variance would have an adverse impact on the physical or environmental conditions in the neighborhood. As far as whether the hardship was self-created, Ms. Lescault wanted the board to take into consideration that should not be enough to deny the application. She recognizes that ignorance of the law is no excuse but wanted the board to consider that the applicant did buy this property and the paved patio was existing. They enclosed it and now recognize that the setback requirement was violated.

Mr. Peller asked Ms. Lescault to comment on the lack of a building permit. Ms. Lescault replied that when the client built the addition, he believed that the patio was lawful and was not aware that he had to get a building permit. Recognizing that he now needs to get a building permit, if the variance is granted he knows that he has to tear up the footings and make sure that everything is in compliance. Her client recognizes his error and that is why they are before the zoning board.

Mr. Ritter asked if the structure has already been built and Ms. Lescault replied yes. Mr. Dudick added that it was built without proper footings. Ms. Lescault does not know if the footings were not done to code, but they have to dig them up to be sure and she asked Mr. Myers if that is correct. Mr. Myers replied that if the variance is approved it should be with the requirement that they get a proper building permit and confirmation that the addition is, in fact, constructed according to code. It is not just the footings, but the entire structure including electrical, heating and everything. If it was built on a patio, Mr. Myers is skeptical that there are footings. Without the variance the structure has to go.

Mr. Peller asked Mr. Myers if the addition is a four-season structure. Mr. Myers has not viewed it but it appears to have a roof, heating and electric. A full permit would be needed.

Mr. Ritter asked Ms. Lescault if she has a photo of what is viewed from the other side of the trees. Ms. Lescault did not and apologized, as her concern was what was viewable from the neighbors. Mr. Ritter would like to see more detail of what was built.

Mr. Lemire asked when the structure was built. Ms. Lescault replied that it was constructed about three or four months ago. Mr. Dudick discussed the recent pictures provided and noted that there are no pictures depicting a winter's view. Ms. Lescault replied that the arborvites are green all year but was unsure if the white pine sheds its needles.

Mr. Ritter is concerned that he could not make a determination without seeing what is there. Mrs. Ferro agreed. Not only would she like to see the structure but she would also like to know what went into the construction as well as a detailed statement of the cost of the addition.

Mr. Dudick asked if this is a residence. Ms. Lescault replied yes. Mr. Dudick asked why the owner's name is Genstar FZE. Ms. Lescault replied that it is a single family dwelling but the property owner put it in as an entity for liability purposes. It is not an LLC formed in New York, but a foreign corporation. Mr. Dudick asked if the foreign corporation owns the property and Ms. Lescault replied yes. Mr. Dudick asked if there is business going on at the property. Ms. Lescault replied that they are currently before the planning board for a special use permit for a business being operated in the basement, but the first and second floor are the primary residence. Mr. Dudick asked if the addition is being used as residential and Ms. Lescault replied yes, it is not being used at all for the business.

Mr. Telesh asked Mr. Myers how this has come to this board's attention. Mr. Myers believes that it was the business going on at the residence. Upon investigation and upon the submission of a request for a special use permit it was discovered that they also needed a variance. Ms. Lescault stated that when she was hired by the applicant with respect to the home occupation, she visited the house and it was brought to her attention that it was enclosed. She represented the applicant when they bought the property, so as soon as this happened, she wanted to be sure that it met all of the setbacks. They had a surveyor come out at that time and it was realized that they were only setback 41 feet, which is why they applied for the variance, knowing that they cannot go forward with a special use permit application until everything on the property is in conformance.

Mr. Dudick asked about the business and what the FZE stands for. At this time, Mr. Steve Licursi of 88 Congress Street, Saratoga Springs spoke. He does not reside at the residence in question. He replied that Genstar FZE is incorporated in the United Arab Emirates and FZE is similar to a Ltd in the UK. It is the corporate acronym for the way they establish companies.

Mr. Peller asked Mr. Licursi what his relationship is to the applicant and Ms. Lescault replied that he is a partner in this company. Mr. Licursi replied that if it was in the UK it would be Genstar Ltd, that is all the FZE stands for.

Mr. Dudick asked Mr. Licursi about the nature of the business of Genstar FZE. Mr. Licursi replied that they are a third-party logistics company. They outsource logistics and transportation for companies. They primarily work for power generation and oil and gas companies who have global projects. The US office is their administrative office. They primarily work in projects in developing countries such as Lithuania, parts of Africa and South America. Mr. Dudick asked if this corporation from the United Arab Emirates is setting up logistics for third-world countries in the basement of a house in Rexford. Mr. Licursi replied yes, that the house in Rexford is their US headquarters. They also have offices in Mexico City, Columbia, Rotterdam and Dubai.

Mr. Dudick asked for public comment.

Ms. Barbara Nebb of 933 Riverview Road spoke against the application. Her property runs parallel to Hilltop. She explained the history of her property and the surrounding properties which her family had owned. She does not believe the new owners of the property in question are good neighbors and does not like that they are operating a business there. Mr. Dudick reminded Ms. Nebb that with regard to the business being operated there, that is not the issue. Ms. Nebb understood, but she stated that there are four employees there and she does not know how this patio will be used. Mr. Dudick advised Ms. Nebb that the issue of the business is a planning board issue; the zoning board's issue is whether to grant a 9-foot variance for the sunroom. Ms. Webb replied that this is a conservation residential area and if the town board, planning board or zoning board approves a business like this, then this town is bought. She does not need neighbors like this, a business hiding in the backwoods.

Ms. Maryann Mariotti of 4 Hilltop Court spoke against the application. She and her husband reside next door to the property in question. She described the road being used for four properties. There is a turn-around area at the end of the road that is supposed to be used for emergency vehicles, but it is being used by employees of the business who park their cars there. The four property owners who use that road have a driveway agreement which states that the turn-around area is for emergency vehicles. She is not pleased with the increased traffic and does not want any further encroachment onto her property.

Mr. Peller asked Ms. Lescault if there is a private road maintenance agreement of record. Ms. Lescault replied that there is a driveway agreement. Basically they share in the maintenance of the road. Mr. Peller asked about the turn-around at the end of the road. Ms. Lescault does not recall reading anything about that in the driveway easement. She will review it but believes if she had seen it, it would have alarmed her when she requested the special use permit.

Ms. Mariotti stated that the driveway agreement does not state that it is an emergency turn-around but it was built as a cul-de-sac. It was discussed between them when they purchased it that it would be used for emergency vehicle turn-around. Emergency vehicles need a certain area to turn around and cannot if cars are parked there. She stated she was told by her builder that it was a requirement for fire and emergency use.

Mr. Dudick asked Ms. Mariotti how long she has lived at her residence and Ms. Mariotti replied twelve years.

Mr. Lemire asked if the road is a private drive and she replied yes. Mr. Lemire asked if parking is permitted on that road. She replied yes, as long as people are not blocked, but it is residential and is not for business parking. He asked if there is a deed restriction regarding parking. Ms. Mariotti's memory is that you can park as long as no one is blocked.

Mrs. Gleason asked about the width of the road. Ms. Mariotti believes it is 30 feet.

Mr. Lemire asked Ms. Mariotti if she can see the structure from her house and she said yes. It is behind trees but she can still see it.

Mr. Dudick showed Ms. Mariotti the photos that had been provided and asked her to comment on them. Ms. Mariotti stated that the pictures are taken very close to the trees so the view is obscured, but further back you can see a little more.

Mr. Dudick asked Ms. Mariotti if she would mind it if board members walked on her property to see if they can see the structure. Ms. Mariotti replied that it would be okay.

Mr. Ken Manning of 2 Hilltop Court spoke against the application. He questioned the wording of the application wherein it states that a front (not side) setback is requested and that the front faces the street. He does not see how that can be interpreted from the location of the house, street, or addition. Mr. Myers replied that Hilltop Court is a private drive, not a town road and as far as we are concerned the street is Appleton Road. Mr. Manning was surprised that Mr. Licursi did not know the meaning of FZE – it stands for Free Zone Enterprise. It is a tax-free designation in the United Arab Emirates.

Mr. Dudick asked Mr. Myers if it is a possibility that at some point the Town would ever take over the private drive and designate what would be front and side setbacks. Mr. Myers doubts it. There is a 30-foot easement that does not meet the Town right-of-way standards. The Town needs 60 feet for a right-of-way. There is maybe 20 feet that is paved. It is a driveway pavement, not a town road pavement. The property owners would have to be willing to give up a significant portion of their property to put a large cul-de-sac down at the end so a plow truck could turn around.

Mr. Manning spoke about the drive agreement. Mr. Rotundi wrote the agreement with the town before any of the other houses were built. As far as parking is concerned, he does not believe there is any understanding that there would be any permanent parking. He does not believe it is 30 feet wide. Mr. Myers believes it is about 20 feet.

Mr. Dudick asked Mr. Manning how long he has lived there. Mr. Manning replied 15 years.

At this time, Mr. Dudick advised that he would keep the public meeting open. There has been discussion from some board members regarding an additional review of the property in order to assess some of the things that have been discussed.

Mr. Lemire questioned the credibility of the application since it is listed as having an existing use as a residence in a conservation residential zone but there is a business being operated there. He also has a problem with an applicant asking for an area variance when they potentially should not be there in the first place. Mr. Dudick believes that although this is unusual, it would be more of a planning issue.

Ms. Lescault advised the board that there are two people who reside at the residence in question. There is a business being operated in the basement, but in the residential zone, you are permitted to run an occupation with a special use permit. She advised that this business is not a huge conglomerate international occupation. It is not. There are four partners in this business, two of whom reside there. The other two come to the house to work there, and then there are two employees. At any given moment, there are no more than five people there at the same time

because usually one person is traveling overseas. Ms. Lescault stated that the loudest noise you will hear is a fax machine. There are no clientele and no shipping trucks. According to Ms. Lescault, a lot of the complaints that some of the neighbors have had concerned earlier construction that was done. There is a three-car garage and parking for three additional cars.

Ms. Ferro asked if they are already operating a business even though they do not have a special use permit. Ms. Lescault replied that is true but that they have gone to the town and they were not asked to cease and desist the business, as long as they submitted their application. She advised that they cannot go back to the planning board until this application is decided. There was discussion about this point.

Mr. Dudick asked about the percentage of a residence that could be used for a business. Ms. Lescault advised that they are under that threshold. Mr. Dudick asked if the primary use is residential and Ms. Lescault replied yes. Mr. Dudick questioned why the application came from the business, then. Ms. Lescault replied that the business is not Genstar. The business is WLS Corporation. Her client uses the name Genstar for liability purposes. As an individual that is the entity that he uses. Ms. Lescault added that there is nothing in the law that states you cannot own a property under a different name. Mr. Peller replied that the board should not let the record ownership have any effect on the decision.

Mrs. Gleason asked about the percentage of the house used for residence and percentage used for the business. Ms. Lescault replied that she can get calculations for the board. If this matter is tabled she can get that information. The sunroom is 18' x 19'.

Mr. Lemire asked if the structure that was built is prefab. Ms. Lescault replied no. There was more discussion about the percentages used for residence and business. Ms. Lescault added that the total current square footage of the home is 6,180 sq. ft., and she believes it includes the addition.

Mr. Lemire asked about access to the addition. Mr. Licursi replied that it is off the master bedroom and there is a door.

Mr. Dudick raised a discussion about the calculations used in determining the amount of space allowable for a business.

Mr. Peller indicated to Ms. Lescault that the board has concerns and asked if she wanted to table the meeting. Ms. Lescault recognized that there are board members who would like to see the property so she would not want this to be decided at this time. She would feel comfortable tabling it.

Mr. Lemire asked why the sunroom was not put on the patio in the back or the patio on the other side where a variance would not be needed. Ms. Lescault replied that she believes that the woman who lives in that house wants to do her pottery there and it is off the master bedroom.

Mr. Whalen asked if the paved patio already extends past the 50 feet. Ms. Lescault replied yes, that the actual dimensions of the addition are the paved patio. There is no additional footprint.

Mr. Whalen asked about the cost of the addition. Ms. Lescault did not know, but could provide that information. Mr. Whalen asked about the approximate value of the home. Ms. Lescault replied that the home has been appraised for over \$800,000 to close to \$900,000.

Mr. Dudick asked the board about their feelings concerning tabling this matter. Mrs. Gleason will not be there but she is ready to vote tonight and would vote no. Mr. Ritter is not comfortable voting tonight as he would like more information. Issues arose and he is torn. Mr. Whalen is prepared to vote tonight. Ms. Ferro could vote but if other board members want additional information she can wait. Mr. Lemire is prepared to vote tonight. Mr. Telesh is prepared to vote and is having a hard time supporting the variance request with the information provided.

Mr. Lemire asked about the people living there and asked if they are related. Ms. Lescault replied that they are boyfriend and girlfriend.

Ms. Lescault would like the time to provide the additional information and would like to table this matter to July 20th. She waived the 61 days. The public hearing remained open.

Ms. Mariotti spoke and advised the board that she is not always home during the day. She would like to be notified if anyone wants to stop and view the property.

2. **An application from Richard Kaylor, requesting a variance from 208-12 accessory buildings for a storage shed. Front setback required = 80 feet, 60 feet are available – variance requested = 20 feet. The property is located at 23 Via Da Vinci, Clifton Park, New York. (Permit #80780)**

The secretary read the legal notice as it appeared in the *Daily Gazette* on June 10, 2010.

Mr. Richard Kaylor presented his application. He has resided at 23 Via Da Vinci since 1977. The shed is for the storage of his motorcycle. Being on a corner lot he is a few feet short, having measured from the wrong spot.

Mr. Dudick asked why the shed needs to be located in the proposed location rather than in a location that would not require a variance. Mr. Kaylor replied that the idea is to put it alongside the garage so he can drive his motorcycle into the shed and access it from the back side for yard work and yard equipment.

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

Mr. Dudick asked Mr. Myers for his comments. Mr. Myers replied that the applicant would have a problem placing the shed elsewhere due to the trees. It was a little close according to the fire code but the applicant has agreed to supplement the shed with the requirements needed. Mr. Myers has no real issue with it now.

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

Mr. Dudick made a motion to approve the minutes of June 1, 2010. Mr. Ritter seconded. Ayes: Gleason, Ritter, Whalen, Dudick, Telesh, Ferro. Noes: None.

Mr. Ritter made a motion to adjourn the meeting at 8:30 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