

ZONING BOARD OF APPEALS

October 19, 2010

Present: Michael Dudick, Chairman, Deborah Ferro, Robert Ritter, James Whalen, Douglas Strother (7:08), Christopher Lemire

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

Absent: Brian Telesh

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

PLEDGE OF ALLEGIANCE

OLD 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. The property is located at 6 Hilltop Court, Rexford, New York. (Permit #80775)**

Mr. Dudick informed everyone present that the public hearing was still open.

Melissa Lescault, Esq., representing the owner of the property presented information on the continuing application. Ms. Lescault stated that the board had asked the applicant to remove the business from the premises, which they have done. She stated that the home was now strictly a single-family dwelling and the business has relocated off-site.

Mr. Myers confirmed that he had visited both the residence and the new place of business. Ms. Lescault informed that it is now a single variance application for a three-season porch. The request is for a 9' setback variance from the property line, which is 18% of the required setback of 50 feet on a keyhole lot. It is approx. 110 sq. ft over the setback requirement.

She informed that the porch is completely enclosed by 20ft tall arbor vitae trees along the line that block the neighbor's view of the room. There are also white pines that act as a buffer. She reiterated that there is no adverse impact on the neighborhood and they are the last house on the block.

Ms. Ferro asked if it is a three-season room or an actual room.

Mr. Myers stated that it is a three-season room that is attached to the house. Mr. Ritter added that it is a pottery room, which was confirmed by Ms. Lescault and added that it comes off the master bedroom.

Mr. Ritter asked Mr. Myers to confirm that the business was out of the house.

Mr. Myers confirmed it is, however he has some issues that he would like to make part of the variance that the issues be corrected. He informed the board that the basement has been fully finished although the original home purchase shows it is unfinished. It was finished without a permit. The basement has to be brought back to its original state for him to consider it acceptable. He said that the addition has to meet all requirements of the building code because there was no permit taken out on that. He recommended that those contingencies be done for the variance to stay in force. He said he had a request from the neighbor was that the arbor vitae not be removed.

Mr. Dudick recapped that the owner bought the house, located a commercial business on the property against town code, and built the three-season room and finished the basement, all without a permit. Lescault agreed that there was no permit for the basement and porch, and the owner knows they must either get a permit or bring the basement back to original.

Mr. Myers is not opposed for them to get a permit, as long as they do whatever needed to bring it to code. Mr. Peller asked if the owner is willing to do so. Ms. Lescault said the owner absolutely would do so. She stated she has no idea about an arbor vitae stipulation and would have to talk to the owner about that.

Mr. Dudick asked if there are windows in the room, that, if a new owner purchased, they might want to take the trees down to have more of a view. Ms. Lescault stated there are windows. A discussion ensued regarding the arbor vitae, whether they should be part of the contingency. Mr. Dudick stated they could approve the variance with a contingency. Mr. Strother stated he wouldn't support making the arbor vitae a contingency, as the structure is not obtrusive.

Mr. Lemire asked if the Mariottis had withdrawn their opposition.

Mr. Myers said that in his last conversation with Mr. Mariotti they only mentioned the arbor vitae remain. He had requested it in writing but has not received that. Mr. Dudick asked if they were present tonight, they were not.

Mr. Dudick asked for public comment. There was none.

Mr. Ritter made the motion to close the public hearing and Mr. Strother seconded. Unanimously agreed.

Mr. Ritter stated he would support the application with the modifications, on the grounds that the applicant has worked to comply with the board's requests. He would like to leave the arbor vitae out.

Mr. Whalen asked the cost of the addition. Ms. Lescault stated it was \$75,000. Mr. Whalen asked if a contractor built it. The answer was yes. Mr. Whalen reiterated that there was no permit.

Mr. Dudick stated he was disappointed that the owner was unaware or not concerned with building codes. He questioned whether this was lack of knowledge of the law or disregard for it. He said it gives him pause that it was almost taunting as to how much would be tolerated unless it was unconscious of the law. Ms. Lescault stated she knew moving the business into the house was due to lack of knowledge. Mr. Dudick asked if the owner went to the board for a permit for the business because of complaints. Ms. Lescault stated "yes" they didn't know until then.

Mr. Ritter made the motion to accept the application with the following amendments: Within 90 days, the applicant must obtain the required building permits as per the building department regulations for the addition and the basement (obtained after the fact) from Mr. Myers. There is no shrubbery contingency.

Mr. Dudick stated that, assuming the application is approved with a vote, the applicant should be aware that there will be an inspection and there will be digging around the footings. He reminded that if the footings are not good, they might have to repour them, etc, and if there might be substantial cost, they could always tear the structure down if the cost is too much.

Mr. Strother seconded the motion.

Ayes: Ferro, Ritter, Dudick, Strother Noes: Whalen, Lemire

Ms Ferro and Mr. Whalen stated they felt there was flagrant disregard of the codes.

Application approved with amendments.

2. An application from One Fairchild Square, Inc. requesting variances to further subdivide property into 5 parcels (currently 3 parcels) 1. Section 208-65E(1) No parking allowed in the front yard, Lots C,D & E all show parking in the front yard (3 variances)

2. Per 208-65C and 208-65E (2) there shall be a 25' buffer of vegetation along the side and rear property lines. Variances required.

Lot C – East & west sides of property (2 variances)

Lot D – West side & rear of property (2 variances)

Lot E – North side of property (1 variance)

Notes: Only one curb cut is allowed per lot per 208-661. The same curb cut is proposed for all 3 properties. Access is provided per a common roadway.

Landscaping requirements of 208-66B appear to be satisfied by the required 40% Green space standard being met on all lots. Planning Board has the final approval of this requirement.

The property is located at 1 Fairchild Square, Clifton Park. (Permit #80792)

Mr. Tom Andress representing ABD Engineering and Mr. Rekucki presented the continuing application.

Mr. Dudick stated he is re-opening the public hearing.

Mr. Andress reminded the board he is there to get a variance for setbacks and parking variances for the internal lots created in the subdivision. They propose 3 separate lots. All perimeters meet code for buffer and setbacks. They have made the commitment that access would only be off Van Patten Drive as part of the variance. There would be no further access off Ushers Road. There is parking that crosses lot lines, which require variances. There is a 25-ft vegetative buffer along the internal lines. He stated that the perception might be that this would increase traffic, but said that the Planning Board will be looking at the traffic and internal circulation.

Mr. Andress showed alternate plans that could be developed without requiring a variance. He indicated that combining the parcels they could build a big 120,000 – 132,000 sq. ft building, but they might have 6-10 loading docks. He states it is viable, but they feel it would be difficult to sell and may mean more traffic.

The second plan showed separating Lot D, the newly purchased lot and developing that with an access to Ushers Rd for about 30,000 sq. ft, and developing the rest of the property which would be about the same sq. footage in buildings. He states that they would not necessarily do this, but he wanted the board to see that the other alternatives would mean about the same or more square footage than the current plan. He states the restrictions Mr. Rekucki has placed would make it look better. One building that could be seen from the road is attractive and the other is a large box but would be partially hidden.

Mr. Lemire asked how they would get more parking if they need it. Mr. Andress said this was discussed with the Planning Board, and he indicated that they could accommodate the overflow.

Mr. Lemire asked if the parking is sufficient even with the alternatives he showed. Mr. Andress said he didn't go through that. He said that if they built the large building, it would most likely be warehouse or manufacturing, which would not need as much parking.

Mr. Dudick asked for public comments. There were none. Mr. Ritter made the motion to close the public hearing. Ms. Ferro seconded. All were in favor. Public hearing closed.

Mr. Dudick said that with the ingress and egress being off Ushers Road, he feels it is a positive thing. It is zoned for industrial development and it is a good way to fill it out.

Mr. Lemire referred to the criteria the board must consider. He said Mr. Andress conceded that the variances are substantial and they are self-created. Mr. Lemire stated he thinks there is an adverse change in the neighborhood and that based on the alternative plans, Mr. Andress has showed that the benefits can be achieved by two other ways they can use the property. He feels that four of the five areas have not been met and he would deny the application.

Mr. Ritter said that with the applicant proposing plans that avoided access to Ushers Road he felt that it would be better than the alternatives. Mr. Lemire disagreed stating that the suggestion for Lot D was access to Ushers Road, but the building would be smaller.

Mr. Dudick asked if the alternate plan would mean that all the land would still be owned by Mr. Rekucki. Mr. Address said the main part of the land would be whole, but Lot D is a separate parcel as it stands, so it could be sold.

Mr. Dudick mentioned to Mr. Lemire that he felt every application could have an alternative Plan B. Mr. Lemire read from the code 1) whether the benefit could be achieved by other means without getting an area variance, which he feels it can 2) if it produced an undesirable effect which he believes it would by increasing density which is an adverse effect on the character of the neighborhood. 3) whether it is substantial, which Mr. Address conceded it is 4) whether it had an adverse physical and environmental effect regarding to traffic, which could be discussed 5) whether it was self created which Mr. Address conceded that it is. Mr. Lemire stated he felt those criteria had not been met.

Mr. Address stated he brought the alternatives to show density but not as a threat, but that there is a demand for smaller buildings in the near future. He said the chances for someone coming in for a large building are small.

Mr. Lemire said they could build the same thing without the variances, but Mr. Address said they couldn't get the finances.

Mr. Dudick stated the financial climate is the driving force and catalyst and it is the criteria that is blocking the development of the property and the funding.

Mr. Address stated a lot of the business coming in want to own their own properties rather than rent. Mr. Whalen reiterated that the goal couldn't be achieved unless they subdivide.

Mr. Ritter asked if he had any prospects now. Mr. Address said he was not aware of it. Mr. Ritter stated he sees both Mr. Lemire's and Mr. Dudick's point. He said the bottom line is that Mr. Rekucki wants to be able to build and sell the buildings.

Mr. Myers stated he has an e-mail from Planning Director, John Scavo confirming that the Planning Board support of the subdivision and the required variances.

Mr. Ritter made the motion to accept the application with the stipulation that no additional curb cuts on Ushers Road and with one curb cut on Van Patten (in addition to the other curb cut already existing between the A & B lots). Mr. Strother seconded.

Yeas: Ritter, Whalen, Dudick, Strother Noes: Ferro, Lemire

Application approved with stipulations.

3. A revised application from Robert Mackey requesting a variance setback from Section 208.11 for attached garage addition. Fifty feet (50') required in R-1 zone. Variance required = 11'. The property is located at 40 Male Drive, Clifton Park. (Permit #80795)

Robert Mackey, of 40 Male Drive discussed his application. He submitted a revised plan. He stated he has tabled the carport. He also submitted letters from neighbors in support of his project.

He mentioned there is a problem with the next door neighbor's wife who is against the project. He stated that to address the complaint that the view would be blocked, he has removed 5 trees and took out some of the hill. He said he has improved the property by removing the dirt. He said he has added several sheds, which are now housing much of his things.

He stated he needs additional living space and the garage would help. He told the board that many of the accusations the neighbor's wife has made are false.

Mr. Lemire asked about the carport and the size of the house. Mr. Mackey said the carport is off, and that the garage will be the same dimensions width-wise as the house. Mr. Lemire clarified that the garage is the same size as it was in the original map and asked if the only variance he is asking for is the 11' setback from the front. Mr. Mackey verified that is true.

Mr. Lemire asked how many sheds he had put up. The answer was 4, and that he wanted two more.

Mr. Lemire suggested that if Mr. Mackey cleaned up his back yard it would help his problems with the neighbor. He said he would be in favor of the garage as long as it is the same size as the original one and not bigger.

Mr. Peller asked Mr. Myers if he had amended the application and removed the carport and revised the application ending the wording at the garage portion. Mr. Myers verified this, and it was amended in the minutes.

Mr. Myers stated he doesn't have a problem with just the garage, and echoed Mr. Lemire's sentiment about cleaning up the yard. He informed Mr. Mackey that he would have a problem with his adding too many sheds. He told him that if he puts too many sheds together he might consider them as one building. Mr. Mackey disagreed. Mr. Myers told him that the court would make that decision.

Mr. Dudick suggested that Mr. Mackey work with his neighbor and review if there are better ways to hide the items in his yard and it seems he is working on that with the garage and other proposed buildings in which he can put items.

Mr. Dudick stated this is a public hearing and asked for comments. There were none. Mr. Ritter made the motion to close the public hearing. Mr. Strother seconded. Unanimous decision to close the public hearing.

Ms. Ferro referred to his 2008 application for a garage workshop. She asked why he needed another garage. Mr. Mackey informed her that the other garage was for equipment, RV and jetskis and a workshop and the current application is for a garage for his cars. Ms. Ferro asked if he would be back in another few years asking for another variance for another garage. Mr. Mackey said he needed the garage attached to his house. Ms. Ferro asked if he gets the variance for this garage would it take care of his cars and other equipment. Mr. Mackey said it would.

Mr. Lemire asked Mr. Peller if they could put a time limit on variance for completion of the project. Mr. Peller informed they could not put a timeline for completion. Mr. Lemire stated the front of the house was dug out and it looks like it needs to be completed soon. Mr. Mackey stated he would make every effort to complete

Mr. Dudick asked why he has not built the other garage. Mr. Myers said he obtained a permit two weeks ago. Mr. Lemire stated he had been at the property, and the garages are for two purposes with the one being part of the homestead and the other is farther back and part of the land.

Mr. Strother made the motion to accept the amended application for the garage with an 11' front setback variance. Mr. Ritter seconded.

Mr. Lemire pointed out that the plans Mr. Mackey submitted tonight had the dimensions of the garage incorrect and Mr. Myers knows the correct dimensions, which are the ones in the first plan (22' x 28').

Yeas: Lemire, Strother, Dudick, Whalen, Ritter, Ferro Noes: none

Amended application for the garage approved.

NEW BUSINESS:

The secretary read the notice as it appeared in the *Daily Gazette* on October 14, 2010.

- 1. An application from Michael J. Mayo for a variance from Section 208-12 for accessory building which requires an 80' setback from the front property line. Structure estimated to be 78' from front line. Five foot (5') variance requested. The property is located at 6 Belmonte Lane, Clifton Park. (Permit #80801)**

Sarah Casey, daughter of Michael Mayo, presented the application. Ms. Casey informed that her father was out of town and had asked her to present for him.

Mr. Peller advised that for legal purposes Mr. Mayo needs to provide the board with written authorization for his daughter to represent him. He said an e-mail to Mr. Myers is sufficient.

Her father constructed a gazebo, which is supposed to be an 80' setback and it appears to be 78' from the line. They are looking for a 5' variance.

Mr. Myers stated that when he did the final inspection he saw the gazebo is a couple of feet beyond the expected distance but because of the way the property and house are aligned, it is difficult to determine exact measurement. When he looked at it, he estimates it was about 2 feet beyond the house, but suggested they apply for a 5' variance to make sure that any variations are covered. He stated it is not a big issue. He explained that when they went for the permit, they were told 80', and they placed it where they thought it was supposed to be, but the way the property line is skewed to the house, it just didn't get back far enough.

Mr. Whalen stated that it appeared to be an honest mistake.

Mr. Myers said, "correct". He added that there is a shed next to it, which he assumes to be far enough back.

Mr. Dudick asked for public comment. There was none. He made the motion to close the public hearing, seconded by Mr. Strother. All were in favor. Public hearing closed.

Mr. Ritter made the motion to accept the application contingent upon the express approval of the applicant in writing within 5 days. Mr. Lemire seconded. Mr. Dudick said it could be e-mail, fax or letter.

Mr. Strother informed the Ms. Casey that the benefit is that they will have a certificate of compliance which will stay with the property so they will not have to deal with any consequences in the future.

Ayes: Ferro, Ritter, Whalen, Dudick, Strother, Lemire Noes: none

Application approved.

The secretary read the notice as it appeared in the *Daily Gazette* on October 14, 2010.

2. **An application from The Hertz Corporation requesting a use variance in a B-4A zone. Applicant requests to open an automotive rental business that is not an allowed use in a B-4A zone. The property is located at 1768 Rt 9, Clifton Park, NY. (Permit #80802)**

Mr. Paul Peluso, manager of Hertz Corp and Chuck Hoffman, owner of the property, presented the application. Mr. Peluso stated they wish to open a car rental business on the property where there is currently a vacant commercial building. It used to be a Quik Lube which has been vacant for 3 years. It is located next to Urgent Care and the Parkwood Car Wash. The property was purchased from Mark Rekucki about 3 years ago.

Mr. Lemire asked Mr. Peller if the car rental is different than what is there now as it applies to the B4A code. Mr. Myers indicated he and Mr. Peller had that discussion and they decided that the code was silent and they felt a use variance was necessary to ensure that there was no question about it. He said there are a lot of automotive uses that are allowed in that area.

Ms. Ferro quoted that Article 9 208-64 B4 in a LI 2 area does allow car rentals in the town of Clifton Park. She indicated that it appeared they were asking for the variance in another zone because the code was silent on not allowing for car rentals anywhere in Clifton Park. She pointed out that if there is a specific coding for car rentals in the LI 2 zone that the code is not silent.

Mr. Peluso stated he was told they had to apply for a variance. Ms. Ferro asked the applicant if he had looked in a light industrial zone. He said he has not.

Mr. Myers informed that LI1 is before Ushers on the West side and LI 2 north of Ushers on the east side. He explained the B4A and B3 area locations.

Mr. Lemire read from B4A 208-50.2 citing the services allowed: auto body shop, auto repair, retail business or retail service, etc. He asked if car rental wouldn't be a retail business or service even though it is not specifically in the code. Mr. Myers stated he did not read it that way.

Mr. Whalen suggested that if there are codes that specifically allow car rental in other areas, you could assume it didn't intend to include car rental in this area. The board discussed whether the intent was to include car rental or not in the code, with different interpretations.

Mr. Myers said there is no definition of retail services in the code. He felt the area was not clear and defined, with concurrence of Mr. Peller, and that it was a grey enough area that the applicant should apply for a use variance. He said he would take the most conservative read on it.

Mr. Dudick asked if the board wished to be vote as to whether the board needed to vote for a variance. It was questioned as to whether such a decision was legally allowed. Mr. Peller stated that it is.

Mr. Strother stated he agrees with Ms. Ferro and Mr. Myers, that it would require a use variance. Mr. Dudick said he would poll the board as to whether they felt it was a use variance or not. Mr. Peller stated that the issue is that the code is silent on whether the car rental is a retail service. Mr. Lemire stated the permitted uses in the L1 & L2 do not specifically enumerate retail businesses or retail service but do talk about as allowed use automobile and truck rental facilities and retail garages. He reads that to mean that if they wanted the automobile and truck rental facilities to be included in retail business and retail service then they would not have set it out specifically separately in the L1 and L2 district. He said he agrees with Ms. Ferro, Mr. Whalen and Mr. Strother. Mr. Strother added that the code is not silent.

The board was polled with Ms. Ferro, Mr. Whalen, Mr. Strother and Mr. Lemire indicating they think the applicant needs a variance. Mr. Ritter did not agree. Mr. Dudick summarized that the majority of the board has indicated they need a variance.

Mr. Dudick asked the applicant if they had notified everyone within 500 feet of the property. Mr. Peluso indicated that they have and it is in the record that they have done due diligence on it. There is no one on record who has taken issue with it.

Mr. Dudick asked for public comments. Mr. Jamie Hinman stepped forward and stated that he would rather see a thriving business rather than see a boarded up, vacant business in that section.

Mr. Dudick informed the applicant that there are several criteria that need to be met with regard to a use variance being granted: 1) consideration by an applicant of other areas 2) detriment to the character of the neighborhood 3) financial evidence of hardship 4) reason why it has to be placed there instead of another location.

Mr. Hoffman said that the building has been closed for four years and no one has come forward to purchase.

Mr. Strother said he would support the use variance in the interest of getting a business in that location. He does not feel it is out of character. He suggests they write a letter to the town board asking them to review the code and reconsider the distinction that is being made in this case.

Mr. Ritter stated he would like some documentation provided. He recommended it for the board record and to uphold the standard of use variances, saying it would be prudent if the applicant would jot down on company letterhead (Mr. Hoffman) any attempts they had made to market the property or anything remotely in that area.

Mr. Hoffman said the property had been listed with the same agent for three years and Mr. Dudick said he could attest that he has seen the sign.

Mr. Lemire said they needed competent financial evidence for the file. He said this is what is required from all applicants. Mr. Hoffman asked if they could get a variance contingent upon the financial evidence.

Mr. Strother asked what type of documentation the board wants.

Mr. Peller stated they are trying to protect the file and to uphold the standards for every use variance. He has no issue in Mr. Hoffman providing the information after the fact.

Mr. Dudick cited past experience when they granted a variance contingent on financial information and it was later shown the applicant was asking more for the property than it was worth.

Mr. Whalen clarified that the documentation might include the appraised value, what price they are asking, what are the carrying costs and how many serious bidders. He is looking for documentation as to why is it needed as opposed to convenience.

Mr. Dudick asked why this particular location is preferable and why they don't want to locate 5 miles North. Mr. Peluso stated that they can't locate another Hertz with 10 miles of an existing one. If they go North for 5 miles into the LI area, they would be in another Hertz territory.

Mr. Dudick left the public meeting open and asked the applicant if they would come back to the next meeting on November 16, 2010. He asked them to bring documentation and reasons why

they need that location. The applicant agreed. Mr. Peller asked if they would like to waive the 61 day period. Mr. Peluso agreed.

Application tabled to November 16, 2010.

The secretary read the notice as it appeared in the *Daily Gazette* on October 14, 2010.

- 3. An application from AJ Sign Company requesting a variance from Section 171-4 H (1) which does not allow off premises signs. Request is to place sign for YMCA on Kids Lodge Property, which already has a freestanding sign. A variance from Table II of Chapter 171 is also required for a second freestanding sign. The property is located at 47 Clifton Country Road, Clifton Park. (Permit #80803)**

Mr. Tom Wheeler, with the AJ Sign Company presented the application. He stated they are looking to install a sign for the YMCA . The YMCA granted an easement to the town of Clifton Park to put a sewer pump station on the corner. Recently, the YMCA logo has changed. They want to put the Y sign in that area to disguise the sewer pump and beautify that corner. The Kids Lodge property is where they want to locate the sign. It is a gray area as to whether it is an off premises sign since the Y owns the Kids Lodge property. If the sign is placed on the actual Y property, it would not be visible from the main road and would have no directional impact at all. The sign that is on the Windsor Development property would be removed. He stated they would also remove the pillars.

Mr. Strother asked if the sign has to come down. Mr. Myers stated the sign has been there a long time, but it is illegal and has to come down.

Mr. Peller asked Mr. Wheeler if the new sign would be in the easement area. He said the pump station is on the Kids Lodge area.

Mr. Myers stated he thinks where they want to put the sign is in the town's right of way. He can't tell for sure based on the mapping he has to date. He needs the exact mapping of where the actual pumping station is and where the right of way is. Mr. Peller added you cannot obstruct the town's right of way. Mr. Myers clarified it cannot be in the town's right of way.

Mr. Peller stated he is not comfortable advising the board until they know if it is in the town's right of way which cannot be obstructed. Mr. Myers stated both roads are town roads and he cannot tell where the extent of the right of ways are.

Mr. Peller asked Mr. Wheeler if he will agree to an adjournment until they find out where they are proposing the sign to be and whether it is in the town area. Mr. Wheeler agreed to table until the next meeting. Mr. Peller asked if he would waive the 61 days and he agreed.

Mr. Peller stated he and Mr. Myers will determine where the easement is.

Application tabled until November 16, 2010 meeting.

The secretary read the notice as it appeared in the *Daily Gazette* on October 14, 2010.

- 4. An application from Kim Hinman requesting a variance from Section 208-11 requiring 20,000 sq. ft minimum land area per dwelling. The lot is 9,688 sq. ft. Variance required = 10,312 sq. ft. (over 3,000 sq. ft will be buildable). The property is located at 1 Broadleaf Drive, Clifton Park. (Permit #80804)**

The application was presented by Mr. Jamie Hinman and Mrs. Kim Hinman on behalf of Mrs. Hinman's mother.

The Hinmans explained the property is was owned by Mrs. Hinman's mother as part of settlement along with the home on 8 Bellemont (adjacent). The lot (#1 Broadleaf) was originally a full lot and had been purchased by the Hinmans and the resident of #3 Broadleaf who split the lot so there would be no home between them. When Mrs. Hinman's mother sold the house in 1991, the ½ lot was listed as an extra lot, and the buyers didn't want it. The property has been listed for \$59,000 since September 22, 2010. The realtor told them the property would be marketable if it were an approved building lot. Several people have looked at it, but the size of the lot is an issue. The lot meets the setback requirement but does not meet the sq. ft requirement to build. Mrs. Hinman has been paying taxes on the property for 20 years. They would like a variance to build a small house.

Mr. Peller asked for clarification of the situation of the land. Mrs. Hinman said it was the result of divorce and the property divided. Mr. Peller had a concern that although the lot is owned by her mother, the property ID# is the same. He confirmed with Mr. Myers it is its own parcel that was not conveyed with the house. The other half is owned by a neighbor who does not want to buy it.

Mr. Dudick re-iterated that the property had been listed for two weeks at a price of \$59,000. He asked what was its assessment value. She said much less. Mr. Dudick stated it is an unbuildable lot in its current state. Mr. Peller stated that assessed at ¼ acre, the value of a residential vacant land would be about \$2000-\$3000.

Ms. Ferro asked if they had offered the property to the neighbors for less money, for example \$10,000. Mrs. Hinman stated there was some conversation about buying the other half, but they were not interested. They had also had conversations about buying the other half that Mrs. Miller owns but it was brushed off. Mr. Hinman mentioned that whether his mother in law lives on it or sells the land, it would help her.

Mr. Dudick asked if they might divide the property in half and offer ½ to each adjacent neighbor.

Mrs. Hinman said they might want to build a one-story house there for her mother.

Mr. Myers stated it is a very small lot to try to put a house on. The setbacks are feasible, but his guess would be the neighbors are happy having the lot between them.

Mr. Hinman said it would be a small, single level tucked into the lot that would add beauty to the community.

Mr. Strother said he would have trouble supporting the application because he thinks it is substantial due to the size of the variance and the character of the neighborhood. He thinks trying to squeeze a home on there would be a bad idea aesthetically although he is sympathetic on what they are trying to do. He asked Mr. Myers how would it work if they sold the property to adjoining neighbor.

Mr. Myers said it would just be a lot line adjustment they could take care of easily.

Mr. Dudick said the board would hate to see property go to waste, but it is not a buildable lot currently and if you could figure a way to build a house on it, it would definitely be the smallest lot in the development, noticeably so. He stated that the board must take into consideration that when they make an exception to put a house on a small lot, that can carry over into other developments. A developer who puts houses on one acre lots and has $\frac{1}{4}$ acre left over can refer to that exception. The board tries not to make great jumps. If the lot was a little short of size, it wouldn't be such a large issue.

He stated that if the lot value is only \$3,000 to \$4,000 and they are asking the neighbors for \$59,000 he doesn't know if that would be of interest. Mr. Hinman said the realtor recommended that amount. Mr. Dudick said that would be right for a buildable lot but they are pricing an unbuildable lot at a buildable lot price, which is hopeful but not necessarily realistic.

Mr. Strother asked if there was any hope the second half of the lot could be bought. Could they make an offer they couldn't refuse and then they would have a prime building lot? Mr. Dudick asked if they could offer the neighbor \$59,000 so they could get a buildable lot.

Mrs. Hinman stated if they were willing to sell it. Mr. Hinman said that she would be pushed to her financial limit. Mrs. Hinman indicated she doesn't have the money to offer. Mr. Hinman said they were not looking to spend money, but to get out from under or build on it. He said they have exhausted all those thoughts.

Ms. Ferro said she doesn't see that the standards they are required to review have been met. She didn't think they have demonstrated there is nothing else feasible to do with the property; ie. buying additional property, reducing the price, sell to neighbors, or split the lot between two adjacent neighbors. It would produce an undesirable change in the neighborhood which has considerably larger lots, and this would be crowding a little house on a small lot. The request is substantial and the difficulty is self created. She said although she has sympathy for the situation, she would have to vote no.

Mrs. Hinman asked how it was self created. Ms. Ferro responded that it was created when the house was sold, by separating one portion and leaving one portion that was unbuildable. Mr. Dudick clarified that when the lot was purchased, it was known it was not a buildable lot.

Mrs. Hinman asked what their options are at this point. Mr. Dudick suggested the options would be selling the lot to one or all three adjacent neighbors, purchasing adjacent property so that they

could come closer to meet the square footage requirements to make a buildable lot, continue ownership of the property as is, or let it go or abandon it.

Mr. Hinman mentioned deeding it over to the town, also that there are trees on the lot to be harvested but it would look terrible if they were taken down. Mr. Dudick stated that might be a bargaining chip with the neighbor. Neighbors may desire to buy it rather than the trees being cleared.

Mrs. Hinman asked if there had been other lots that had been granted a variance like this. Mr. Dudick stated he hasn't seen anything like this before except for a lot of similar size that had been owned prior to the zoning laws. In that case it was grandfathered. He explained that this is a lot that was purchased when it was known it couldn't be built on.

Mr. Dudick made the motion to close the public hearing. Mr. Ritter seconded. All voted aye. Public hearing was closed.

Mr. Ritter mentioned similar situations in Ballston Lake with bungalows. Mr. Dudick pointed out the argument was that it did not change the character of the neighborhood because all of the lots are substandard size and the lots were created prior to zoning. None purchased the lots knowing they were substandard lots, as they were not zoned when they purchased them.

Mr. Strother pointed out this is a remnant situation they run into with developers who have exhausted all of the prime property and have pieces left. He stated he is sympathetic and that people don't always think long term, but the only thing he can see is to try to join the property back together which would be more profitable for all. In that way, both they and the neighbor would earn some money selling it as a building lot.

Mr. Dudick informed the Hinmans they had two choices, that the board could either vote or they could withdraw their application.

Mr. Peller suggested they withdraw, rather than a vote, as it would be better for them if the property was purchased and they had to come back .

Mr. Hinman stated they would officially withdraw their application.
Application withdrawn

The next meeting is November 16, 2010.

Mr. Strother made the motion to accept the minutes of October 5, 2010, Mr. Whalen seconded. All accepted. The minutes of October 4, 2010 were approved.
The meeting was adjourned at 10:22 p.m.

Respectfully Submitted,

Susan White
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