

**APPROVED**

**ZONING BOARD OF APPEALS**

March 15, 2011

Present: Michael Dudick, Chairman, Christopher Lemire, Douglas Strother, Eric Prescott, Randy Gifford,

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

Absent: Deborah Ferro

Mr. Dudick called the meeting at 7:10. The meeting was delayed for a short period due to difficulties with the recording device. Mr. Dudick requested occupants of the room to please turn off their cell phones as they interfere with the recorder.

PLEDGE OF ALLEGIANCE

**OLD BUSINESS:**

None.

**NEW BUSINESS:**

The secretary read the legal notice as it appeared in the *Daily Gazette* on March 10, 2011

**1) An application from Robert Tomlinson for a variance from 208-11 for the addition of a 26' x 14' two story structure to an existing residence. Side setback in an R-1 zone =10 feet, required proposed addition results in 9 foot side setback, variance required = 1 foot. Property is located at 1 Rodriso Court, Clifton Park, NY (Permit #80811)**

Mr. Robert Tomlinson, owner of the property at 1 Rodriso Court, Clifton Park, NY presented the application. Mr. Tomlinson stated he wants to put an addition on his home because his family is

getting larger and they have outgrown the house. He stated the lot is pie shaped and the proposed location is the only place they can add on to the house. He needs to go off the back of the house and the addition would go over the setback requirement by one foot.

Mr. Dudick asked if there was any other place he could put the addition, for example, the other side of the deck. Mr. Tomlinson informed there is a swimming pool in the back yard. Mr. Dudick asked if it would be too close to the pool and Mr. Tomlinson said it would. He added that on the other side are the gas, filtration system and air conditioning and all the “mechanicals.”

Mr. Strother asked for clarification as to what was on the other side of the property line. Mr. Tomlinson explained it was the neighbor’s back yard and fence with arbor vitae along the back.

Mr. Dudick announced it is an open meeting and asked for public comments. There were none. He made the motion to close the public hearing which was seconded by Mr. Strother. All agreed. Public hearing closed.

Mr. Dudick stated in his opinion that this is a simple application.

Mr. Myers had a question regarding the fence, whether it is on the property line. Mr. Tomlinson said that it is the neighbor’s fence and it is on the property line. Mr. Myers said it looks closer than the 9’ to his house, but he would assume that it is laid out correctly. He said that it looked like it would need more of a variance if it is really on the property line, but he hopes when they stake it out they will make sure that will not happen. Other than that, he did not have an issue with it.

Mr. Dudick asked if, for site plans, they had a survey, to which Mr. Tomlinson replied they were using the original survey when they bought the house and the architect used that.

Mr. Myers stated they will need an actual surveyor when they lay out the corners to make sure they don’t exceed the variance if it is granted.

Mr. Dudick said they should do this because you wouldn’t want to place it in a location that is wrong, based upon an assumption. Mr. Tomlinson agreed. Mr. Dudick repeated that it is a one foot variance on a diamond shaped lot, which happens on occasion which is why the zoning board of appeals was created for unusual situations.

Mr. Dudick made the motion to accept the application as presented. Mr. Strother seconded.

Ayes: Lemire, Strother, Dudick, Gifford, Prescott Noes: none

Application approved.

Mr. Strother added that one of the benefits of this process is that Mr. Tomlinson will now have a certificate of compliance for the future.

1. An application from **Tony Casale** for variances for 2 existing parcels in a B-4A zone to be subdivided into 3 new parcels. Parcel #1 = 1.2 acres, Parcel #2 = 2.6 acres. Parcel #3 = 7.5 acres with 3.45 acres+/- in Clifton Park and 4.05 acres+/- will be in the Town of Halfmoon. Parcel #3 meets the definition of a keyhole lot. Seven (7) variances required:

Permanently deeded access for all parcels to the private driveway/road should be a condition of any variances granted. Site plan shall have note as a condition of any granted variances that no development will occur in the Halfmoon portion of Parcel #3 without proper approvals from both Clifton Park and the Town of Halfmoon. This shall include any ingress or egress to that portion of the parcel.

- 1) Lot #2 Proposed to be a parcel with a group of establishments. (2) variances required from Section 208-50.6 as a result
  - a) 5 acres minimum required, 2.6 acres proposed = 2.4 acres variance required.
  - b) 400 ft lot width required, 220 +/- proposed = 180+/- ft variance required
- 2) Lot #3 One (1) variance from Section 208-86 required.
  - a) Lot is proposed as keyhole lot which is not allowed per Section 208-86. Planning can allow them in R-1 and R-3 zones only. Variance required from Section 208-86.
- 3) Lot #3 Variances required (4)
  - a) Section 208-50.3B: 30 ft parking setback required from front property line, 20 ft proposed = 10 ft variance required
  - b) Section 208-50.3D: 50 ft building setback required from rear property line, 0 ft proposed = 50 ft variance required
  - c) Section 208-50.3D: 30 ft setback required from rear property line for parking, 0 ft proposed = 30 ft variance required
  - d) Section 208-50.3G: 100 ft buffer required from abutting residential zone (in Halfmoon), 0 ft proposed = 100 ft variance required
- 4) Section 208-50.3F – green space required is 35%. Plan states overall project shall have 35% green space. It is unknown if new parcels will each meet this requirement so it is unknown if another variance is required at this time.

The property is located at 1747 & 1751 Route 9, Clifton Park, NY (Permit # 80814)

Mr. Tom Andress, with ABD Surveyors , presented the application, representing Tony Casale. The property is located across from Cap Com Federal Credit Union and Tractor Supply. This involves two tax parcels which they plan to combine and re-subdivide them. Two lots have 2 single family homes on them which will be taken down. He described the parcels as indicated on the map.

Mr. Peller asked if the property (referring to parcel 3, the keyhole lot) can be accessed off Cemetery road. Mr. Andress demonstrated on the map that it cannot be access from there. Mr. Peller responded “you can only get to this parcel from Rt 9 ingress and egress. He stated the

parcel is in both Halfmoon and Clifton Park is part of their property. It cannot be accessed from Halfmoon.

Mr. Andress indicated they want to subdivide the two lots into three parcels and create a group of establishments. He said he believes as they go through it, there may be some interpretation on some of the variances, if they are actually required or not. They are proposing for the whole area the group of establishments. The parcel in the town of Clifton Park is 6.4 acres which exceeds the requirement of 5 acres for a group of establishments. They have more than 400 feet frontage which is the minimum required for a group of establishments. He said that even though it is in the notice that they need variances, it refers to lot 2 because there are two buildings on it, but they are looking to make the whole parcel a group of establishments. He stated he thinks the variances would not be variances.

Mr. Lemire clarified that Mr. Andress' interpretation is different than Mr. Myers interpretation. Mr. Andress agreed. Mr. Lemire asked him to explain again.

Mr. Andress explained they have two pieces combining into one and calling all of the land as it is allowed to be a group of establishments. The group of establishments requires two things, that you have a minimum of 5 acres and a lot width of 400 ft which is out of 208-50.6.

Mr. Lemire repeated that it is a group of establishments even though you want three separate parcels.

Mr. Andress stated it is the exact same way as Parkwood Plaza which is a little way north of them. He pointed out that it is a group of establishments with keyhole lots. He said that group of establishments was done with a 35% overall greenspace, not individually.

Mr. Lemire asked if he is calling the four buildings a group of establishments even though they are being subdivided into three pieces of property. Mr. Andress stated "correct".

Mr. Lemire asked if this is the difference between what he is saying and what Mr. Myers is saying.

Mr. Andress agreed. He said they also want to show intent which is to make an office park which would be a group of establishments with a common drive so they are not utilizing individual lots. They utilize a single entrance with all utilities coming off of that. It would have a common access easement and work as a single entity. They want to be able to subdivide it out. They could construct the same without any property lines and would not need variances but they want to be able to eventually sell out some of the lots. Originally Mr. Casale wanted 4 lots, but changed it to three to reduce the issues the Planning Board had. He informed that whoever buys the lot with two buildings would have to own both. They would build one road to access the buildings, with a cul du sac for emergency vehicles. There would be a common drive maintained by all the entities. They are proposing 4 buildings, starting from the front and working their way back. He said the plan shows the front as a combination office/retail but that could change. They are suggesting a bank type development on the triangular lot.

Mr. Andress informed that they tried to maintain the side yard setbacks so they don't have parking protruding into the setbacks. The buildings meet the setbacks and they can maintain buffer areas. They propose a sidewalk as recommended during the Planning Board review.

He stated that one variance needed would be for the keyhole lot because regulations do not allow them any more. The justification is that this is how most of the area is developed, namely Parkwood Plaza across the street. They want to maintain the same kind of design but not as large.

They will require a variance for the 20' to the property line as the requirement is 30' but they were looking at it as a side yard, not front yard. That would be one variance they would be asking for along with the one for a keyhole lot.

He discussed the additional variances required for parking. He stated they do not feel a variance is needed because the building and parking is not adjacent to a property line, but adjacent to a municipal boundary line into Halfmoon.

Mr. Andress questioned the requirement for a 100 foot buffer for the rear. He stated a buffer is required next to residential and then the code contradicts itself by noting that no building shall be placed closer than 50 feet to a rear property line if the adjacent district is residential. He stated all the land on the Halfmoon side is zoned residential and the developments were built within 100 feet of that property line. He believes the application has not been done in the past. He stated he is not aware of any 100 foot buffers that have been enforced on adjacent properties.

He discussed the note on greenspace and the question if individual parcels will meet the 35%. He stated that they won't meet that and they are proposing 35% for the whole project as a group of establishments. He stated the Planning board would look at it as a whole.

Mr. Peller asked if the purchase contract Mr. Casale has is contingent on the approval of the Planning and Zoning Board for the development. He asked if it does not fly at the planning or zoning board level, would the contract be applicable. Mr. Andress said that is correct.

Mr. Dudick stated he does not recall a variance being requested across municipal lines and it creates several questions in his mind. Mr. Andress said they are not asking to build on the Halfmoon section. Mr. Dudick clarified that they are looking to put a building right on the town line. Mr. Andress said for tax purposes they need to put it in one town. He added that the property zoning on the Halfmoon side does not allow commercial development but is allowed on the other side. Mr. Dudick stated that the building is so close to the line that there will be watershed from the building to the Halfmoon side. Mr. Andress said he is not aware of any regulations that they cannot have water fall onto your own property.

Mr. Gifford asked how much property falls into Halfmoon. The answer was 4.8 acres.

Mr. Dudick questioned if there were plans for development on that side and was told there are not. Mr. Andress informed that it is possible that the land could be sold to an adjoining owner in

Halfmoon who could use it for residential use. He said they had no plans to go before Halfmoon in an attempt to change the zoning.

Mr. Peller asked if there were plans to enter it. Mr. Address said no. Mr. Peller responded that the only other option is for an adjoining landowner. Mr. Address agreed.

Mr. Dudick mentioned that if someone bought the property, then they would have an adjoining landowner with an office building right up against his property. Mr. Address stated he wouldn't be able to do it without coming back for variances. Mr. Peller informed that the board has no jurisdiction on Halfmoon.

Mr. Address stated that the zoning issues that are listed in the application (for the rear) are not their requests to the town but are the interpretations of the zoning officer.

Mr. Lemire stated that part of the conundrum the board is faced with is that Mr. Address is saying the applicant doesn't need some of the things our zoning officer says he needs and the board has to decide who is right before it votes on it. Mr. Address agreed.

Mr. Lemire asked if parcel 3 is the one towards the rear that will be created which will straddle the property line. Mr. Address said "yes" but it extends into Halfmoon. Mr. Lemire clarified that if the plans are approved they will make the building on parcel 3 with property that extends into Halfmoon. He added that if five years down the road, someone purchases the property, they will get that building with property in the back that is residential. He suggested that then the person could make an application to the town of Halfmoon for variances to that property. Mr. Address said yes. Mr. Lemire brought up that if that person wanted access, they would have to get it from the Halfmoon side. Mr. Address said yes, but clarified that, at this time, the back of that land is adjacent to other parcels so unless they wanted access from the Clifton Park side they would have to go to the CP Zoning Board for a joint review of that site plan.

Mr. Lemire asked if the applicant had discussed with Halfmoon getting a variance for the property that will be parcel 3 to make that a commercial zone. Mr. Address answered he had not.

Mr. Peller suggested that the board limit the ingress and egress so that no other ingress or egress would be used to the back of that property from the Town of Clifton Park which would require them to come back to the zoning board.

Mr. Address informed that because of zoning, there is nothing they can do with that property unless they combine it and sell it to someone else. If they sold it, they would still have to maintain a piece of that property in Halfmoon to maintain the setback from the property line.

Mr. Strother asked where is the rear property line on lot 3. Mr. Address said it is about 600 feet from the municipal boundary line. Mr. Strother referred to Section 208-50.3D: (50 ft building setback required from rear property line) and asked where the boundary is.

Mr. Address said in his interpretation, the boundary is 600 feet behind them, so they have more than 50 feet because it is not a property line, but a municipal boundary.

Mr. Strother asked why it is included in this information. Mr. Andress stated this information was not in his application. He said all of it is from the building department.

Regarding front setback, he discussed that if they look at one line as a side yard and they would need 20 feet, but if it is the building department's determination that it is a front yard, they would need 30 feet.

Mr. Dudick clarified that board has always assumed that a front yard is the yard that is facing toward the road leading to the property.

Mr. Strother stated that seems logical. He asked if they have a clarification that the municipal boundary has any rights or relevance. Mr. Peller clarified the question "Is the municipal boundary considered a property line." He said if the answer is yes, then a variance would be required. Mr. Strother agreed.

Mr. Peller informed he is not aware that a municipal boundary is considered a property line. Mr. Myers stated that when he looked up the definition of what a line is, it said "a line bounding a lot dividing one lot from another from a public or private street or other public area". He said that dividing it from another municipality seemed to fit so he considered that the boundary.

Mr. Peller said he did not agree and is not aware of any case study on this, but that he would defer to Mr. Myers opinion and do some research on it.

Mr. Myers informed there are buildings in Clifton Park that are split in two towns and the same area and zoning. Mr. Dudick mentioned the Clifton Park Hotel, and Mr. Myers added that the County Waste new facility is in both Halfmoon and Clifton Park. He said there was conscious decision made by this town as to who would enforce the code.

Mr. Strother asked Mr. Andress to repeat what he said about a discrepancy in the code.

Mr. Andress read the citation in the code 208-50.3G "when abutting a residential zone a minimum buffer of 100 feet shall be maintained and supplemented as deemed appropriate by the planning board. He asked if it is deemed appropriate for the Planning Board to be responsible for supplementing it, or for maintaining it. Also, in 208-50.3D which is rear yards, "no building shall be placed closer to a rear property line than 50 feet if the adjacent district is a residential district". He said he had conversations with Mr. Scavo who he said maintains that the 100 foot buffer would not be applicable, however, that interpretation has to be made by the zoning officer or the Zoning Board. He said if you look at the municipal boundary between Halfmoon and Clifton Park, there is a lot of development along there that does not conform with the 100 foot buffer. He is not aware if there are restrictions that are placed on those properties.

Mr. Strother asked if they are counting any of the land on the Halfmoon side in the 35% greenspace. Mr. Andress said they are not. He said the calculations are to the municipal line.

Mr. Lemire asked if it is inconsistent that the municipal line is used with the fact that the municipal line really isn't the line.

Mr. Andress said it was not because it is common in the town of Colonie uses that all the time with commercial property and extends into residential zones. He cited examples. He informed that in Colonie all of the area requirements with regard to greenspace have to be met within the area you are developing.

Mr. Strother stated he has had two of his three questions answered. He asked, with regard to the discrepancy of code, if anyone else felt that they wanted to defer in order to do research on the boundary, particularly because it is straddling the residential zone.

Mr. Dudick said he would like to get back to that but he wanted to first read a letter dated November 18, 2010 sent to the CP Planning Board from the Clifton Park Environmental Conservation Commission regarding the building. He read the letter which stated the plans should indicate the amount and location of greenspace for the project which should be in keeping with the goals of tree preservation in the town's comprehensive plan as much as possible.

Mr. Dudick asked if the lot was treed and was told it is.

Mr. Myers stated that in his mind, the Parkwood Plaza is not a legal subdivision because none of the frontages meet the legal limits. He said they are all illegal keyhole lots. He indicated that they are a bad example to compare to this project because it is not a group of establishments because each building has its own parcel. He said a building is an establishment and once you put two buildings on it, it is a group of establishments. He did not look at this as a group of establishments, but per parcel, which is the way he also looked at it for greenspace.

Mr. Myers said Parkwood Music doesn't work as an example of a keyhole lot definition because it has two fronts and doesn't have a rear. He cited the code "if an adjacent zone is residential, it needs a 100 foot buffer" and said that the adjacent zone is residential is clear. Using the most stringent requirements of the code he feels it needs the 100 foot buffer. He said Colonie is a poor example and a different world from what is done here. He stated he doesn't see any way of breaking it up as there is no egress to the parcel from anywhere else. He indicated that the front of a keyhole lot has always been the front that faces the public road. He said the greenspace should be per parcel because if the parcels are sold off, then a separate parcel can become illegal because suddenly it doesn't meet the greenspace requirement.

Mr. Dudick said the application falls into the zoning law, which sets boundaries. He said this application claims hardship before owning the property. While the property is in contract, it talks about two different things. They want to split it into 3 separate parcels but want it to be considered for total greenspace. With separate parcels there could be separate ownership. The board would have to ignore the greenspace and setback issues so that they could redesign the parcels to allow for the hardship. He stated he is trying to figure what the hardship is. He understands that some of the property cannot be developed, but the board needs to talk about Clifton Park. He would like to know if they can come up with something less encompassing, either consider making it one lot with multiple buildings, or if splitting, then consider what the zoning is with regard to the greenspace.

Mr. Address stated he did not agree. He cited Clifton Park Center as being done the same way. Their interpretation is that with a parcel of land with or without the lines, to the public, they would have the same greenspace. He said he believes they had changed their original plan to conform with zoning requirements and came to the board not asking for anything but the variance for the keyhole lot. He said there are significant interpretation differences as to what is a group of establishments. He mentioned that the Planning Board was in favor and that the chair has had discussions with Mr. Scavo.

Mr. Lemire and Mr. Address discussed options of how many buildings could be made if they did not make a 3<sup>rd</sup> keyhole parcel with a building on it. Mr. Lemire made the point that the only variance that Mr. Address thinks he needs is the keyhole lot.

Mr. Lemire read the code 208-86A, which states that “keyhole lots may be permitted by the Planning Board only in residential districts R-1, R-2, R-3 and only in rare instances when required due to unusual conditions of the area”. He asked if the Zoning Board has the authority to grant something that the code says the Planning Board can permit.

Mr. Dudick clarified “you are asking if the Zoning Board can create a keyhole”. Mr. Lemire then read “keyhole lots shall not be created for any use other than a single family dwelling.” Mr. Myers stated this is not a residential zone, and he thinks this is the right venue for granting relief. A discussion ensued between Mr. Lemire and Mr. Myers.

Mr. Dudick asked why they want to split this into three lots because there would be no variances if it was one lot. Mr. Address responded that it is because you cannot market and develop such a large piece. He said it is difficult to own multiple buildings and almost impossible to sell them.

Mr. Dudick asked if they predict they will sell the lots individually. Mr. Address, said the intent is to hold but that is not saying that is what the owner is going to do. Mr. Dudick said the board then has to consider it as separate lots for separate owners. Mr. Address agreed that if they don't have that, they don't have the ability to develop the site. Mr. Dudick said that if they are looking at it with the expectation of separate owners then they have to consider each lot for greenspace and setbacks.

Mr. Address stated the plans are conforming to area requirements for setbacks to set it up as a group of establishments.

Mr. Dudick asked what the projected greenspace is for each of the lots. Mr. Address didn't know and cannot make that prediction. He said they can't go to that level until they get approval for the project.

Mr. Gifford asked what other projects Mr. Address mentioned that have done it this way. Mr. Address cited Moradians and Clifton Park Center and the hotel. He states they don't conform but have restrictions.

Mr. Lemire said he looked at the code and didn't see a definition for a group of establishments. He asked Mr. Andress to explain why he defines both 4 buildings on one parcel or the same 4 buildings on 3 parcels as the same group of establishments. He asked him if he thinks they would still be a group of establishments if they were owned by different owners. Mr. Andress said yes because it was developed as an entity reviewed by the Planning Board. Mr. Lemire repeated it is defined as developed by one entity and a common entrance. Mr. Andress added "reviewed by the Planning Board as an integrated sight plan .....and based on the past actions of the Town of Clifton Park."

Mr. Lemire suggested that they need to go back and research actions of Clifton Park and asked how far back they should go.

Mr. Dudick declared he has been on the board nine years and he does not recall doing it that way. Mr. Andress informed the board that Mr. Casale told him it is not bankable if he doesn't have this because he won't get financing.

Mr. Lemire asked what is the rare instance or unusual condition to justify that they should grant the keyhole lot. Mr. Andress explained it would allow for a single common drive which would be safer and it would have only one entrance to Route 9 instead of two. He added there is precedent that has been set by the town with the adjoining properties. He said the exact same development can happen in the same way, without any impact difference, but they have a keyhole issue.

Mr. Lemire inquired if the property, other than the two residential houses is essentially undeveloped and, if once the houses are taken down, it could it be developed without a keyhole lot. Mr. Andress said it could. Mr. Lemire reflected that it is not an undevelopable piece of property without a keyhole lot. Mr. Andress said no, if you could get someone who wanted to build a 60,000 square foot, 3 story office building there.

Mr. Dudick asked if it was possible to develop as a non keyhole lot if you made two lots instead of three. Mr. Andress said you could, but you would have to make a significantly larger building to make it work, or many smaller buildings and hope there is someone to invest the money in it and who doesn't need financing.

Mr. Myers said if the internal road were made public and built to town standards, the keyhole lot would go away because all the buildings in front would be on a public road. Discussion ensued and Mr. Andress questioned whether the town would want the cost of maintaining the road.

Mr. Dudick stated there are four questions he would like answered.

- 1) What the appropriate definition of a group of establishments would be
- 2) Greenspace projection for each lot individually
- 3) Further review of town vs property line
- 4) Further review as to how to "front" is defined. He is willing to listen to anything the council would offer and will look at possible options.

Mr. Dudick suggested addressing the application at a future date. Mr. Andress stated he knew this will be the case. Mr. Dudick asked him to return with greenspace information for each lot.

Mr. Andress stated they can do that but because it is going through the Planning Board process, the lot may not end up looking exactly like it does now. Mr. Dudick said when you are looking at lot 3 he wants to know the greenspace for the Clifton Park portion only.

Mr. Dudick stated for the record that the public portion of the meeting will remain open.

Mr. Strother said he believes the plans have merit and it is a challenging situation. They need to figure out the town line and cross jurisdiction of the two zones. He reiterated that Mr. Andress is looking for flexibility, it is a good idea so they do not have to come back to the board in five years. He strongly wants to see the greenspace met per projected parcel so there is not a problem in the future.

Mr. Myers stated that regarding the sidewalk buffer, if you take the sidewalk out, it still meets the 15 foot buffer. The buffer appears to meet the intent of what is required.

Mr. Peller suggested they adjourn the application until the 19<sup>th</sup> of April to give him and Mr. Myers time. Mr. Peller asked Mr. Andress if he would waive the 51 day period, and he said he would.

Approval of Minutes of March 1, 2011

Mr. Dudick made the motion to approve the minutes of March 1, 2011. Mr. Gifford seconded. All were in favor; motion approved.

Slated on the agenda was board approval of November 16, 2010 amended minutes, and approval of December 7, 2010 minutes. Four votes were needed by members who were at those meetings. There were only three of those members present at the meeting, therefore, approval of the minutes was tabled until the next meeting which is April 19, 2011.

Mr. Dudick made a motion to adjourn the meeting at 8:46. Mr. Strother seconded. Approval unanimous.

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; Tom McCarthy