

Approved

ZONING BOARD OF APPEALS

April 19, 2011

Present: Michael Dudick, Chairman, Eric Prescott, Randy Gifford, Douglas Strother, Christopher Lemire, Jennifer Vucetic (7:07), Deborah Ferro

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

Absent: none

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

Mr. Dudick welcomed Jennifer Vucetic as a new member of the Zoning Board of Appeals. He asked Ms. Vucetic if she is familiar with the item of Old Business (Tony Casale application). He indicated that she was present as a member of the audience at the last meeting when the application was first presented. She stated that she was familiar with the application and had read the minutes and has the packet of information.

PLEDGE OF ALLEGIANCE

OLD BUSINESS:

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)

The secretary read the summary of the application.

Mr. Tom Andress, with ABD Surveyors , representing Tony Casale, summarized the application. He presented a new plan/map and lot summary coverage to the members. He stated that one of the assignments they had was to look at the percentage of greenspace for each parcel. He informed that they have done that and reported that Parcel #1 has 72% green, Parcel #2 has 36.6% green (which is the lot with two buildings) and Parcel #3 has 46.8% within the town of Clifton Park. He added that counting the whole parcel, which includes the part in Halfmoon, it is over 80% green. He stated that the question of the need for a variance (#4) regarding greenspace has been answered and they no longer need a variance for greenspace.

Mr. Dudick informed that was something he was looking for.

Mr. Andress referred to the discussion at the March 15, 2011 meeting, as to what was the front yard on Parcel #3. He stated they have changed the plan so they no longer will have parking

within 20 feet of the line. He indicated the plan change makes it so they will only have parking on one side of the access aisle, which will make the front setback 35-40 feet. He indicated that this would eliminate the need for a variance from Section 208-50.3B which would require a 30 ft parking setback from front property line.

He stated that they are now bringing forward a plan that conforms to the individual setbacks to each lot. He showed that the parking meets all the requirements for the 20' and 30' setbacks for the side and front and now conforms. He said they are not asking for any setback or buffer setbacks or any building variances.

He then discussed the issue of the Town of Halfmoon property line and referred to Mr. Peller's letter regarding the split lot. The cited items #2 b,c, & d of the original application which would fall under the question of how the line is interpreted.

Mr. Peller indicated that there was an issue with the fact that it is split lot between two towns and Mr. Myers' initial reaction was that they look at the boundary line of the municipalities for setback and buffers, etc. Mr. Peller informed that he had research case law and found it allows them to interpret that they do not have to look at that as a boundary line. He stated that in his opinion the board does not have to address those requests for variances that were originally required. Mr. Peller requested that a copy of his letter of April 18, 2011, addressed to Chairman Dudick, become part of the record. He asked Mr. Address if he is ok with amending the original application so that those variances can be eliminated. Mr. Address agreed. He suggested that for clarification, Mr. Address identify the variances he is now requesting.

Mr. Lemire referred to the code on paragraph one on page two which talks about the courts allowing the building inspector take into account the boundaries of the entire lot. He asked if the inverse is true and is it wrong to do what the building inspector did. Mr. Peller stated it is not and Mr. Myers' interpretation is completely acceptable. He indicated there is an alternative. He informed that the court has said that the code could address the split line situation. He went on to say that if the town board wanted us to use the town boundary line as the setback line in these situations, the code should be specific and say so. Because the town code doesn't say that, it is up to the zoning board to interpret case law.

Mr. Peller summarized that the variance requests for Lot 3, and variance #4 (referring to greenspace) and are eliminated leaving 2 variances - #1 and #2 on the application which refers to lot #3 as a keyhole and lot #2 as a group of establishments.

Mr. Dudick referred to a letter he received from the Saratoga Planning Board, from Jason Kemper, Director of Planning, with regard to the application. He stated that the board had unanimously agreed to disapprove the proposal due to the quantity of variances being proposed and the nature of the variances. The Saratoga Planning Board encouraged the town to suggest re-designing the project with less density. Mr. Dudick stated that he thinks with regard to the quantity of the variances, this has been addressed. He said he believed that has been satisfied and is pleased, with regard to the greenspace issue, which has been addressed. He advised the board to give the letter the weight they might wish to give it.

Mr. Dudick also presented a letter, dated April 19, 2011, from Clifton Park Planning Director, John Scavo. The letter referred to the PB meeting in November 23, 2010, and that the board's initial reaction was positive with no strong objections raised to not advance the project further. The applicant was advised to seek the necessary variances prior to re-submitting the plan to the Planning Board for additional consideration.

Mr. Lemire spoke about the request from the County Planning Board to re-design the project with less density. He asked if the reduction of the variances (which they have dealt with) addresses the issue of reduced density.

Mr. Dudick stated that the CP Zoning Board of Appeals gets to decide whether they want to weight or not weight the County Planning Board's opinion.

Mr. Lemire suggested that the density has not been addressed and it is just as dense as it was before. Mr. Dudick said the issue regarding density will be up to each (member of the board).

Mr. Strother offered the opinion that, given the proportionate greenspace solution, the fact that they are not measuring from the town boundary line, and the fact that the parking has been moved to the other side of the lot, closer to the building, he believes the density is less than when they first came to the board.

Mr. Address said he agreed. He informed that he spoke with Mr. Kemper and Mr. Valentine (assistant planner) in reference to the memo. He said he explained the greenspace and the situation and told them about the letter from the Planning Board. He stated that they told him they would reconsider if they received another referral.

Mr. Address said he would like to discuss the two variances still being requested. One is the creation of a keyhole lot and the other is the question about the group of establishments. He stated they were calling it a group of establishments because they felt with a group of establishments they could have 35% overall greenspace. Now that they are eliminating that issue, the question is, if there are two buildings on one lot, does that become a group of establishments or can they eliminate that ordinance? Based on that, if they call the two buildings a group of establishments, he said the ordinance would require them to have 5 acres and 400 feet to put two buildings on one lot. He said he did not know of any rules in the town that restricts him from putting more than one building on a lot. He explained that to him, the term group of establishments was meant for the way things work, like using one common drive. He asked for the board's consideration on that.

Mr. Myers stated the only definition they have to work with in the zoning law is that a building is an establishment which is basically a structure or building. He said that, to him, if there is more than one then it becomes a group of establishments which is the way he has interpreted it. He informed that, in this case, he personally doesn't think it is a big issue. He added that the clarification has to be made by the board. He reiterated that there is no definition of a group of establishments within the law.

Mr. Dudick asked what would be the difference. Mr. Myers told him it would be the 5 acre and the 400 foot width requirement. Mr. Peller clarified that if you interpret it not to be a group, then those two variances would not be necessary and that Tom (Andress) is saying there is nothing in the code to say you cannot put two buildings on that lot. Mr. Peller indicated that Mr. Myers is saying it is not important to be a group in this instance. He added that if the board is comfortable with the fact that it is not a group, because the code does not give a lot of direction, then the need for those two variances is moot.

Mr. Lemire asked “if it is not a group, then what is it?” Mr. Peller suggested it is a lot with two buildings on it. Mr. Lemire asked what would be a group?”

Mr. Dudick said that is the question that is being asked. He posed the question whether you could have a group of one. Mr. Lemire stated “no because that is in the code”. He added that individual offices within a building are not establishments for purposes of determining the definition of establishment. If you have different businesses within a building, they are not establishments.

Mr. Strother said that given the potential of issues in the future, he would think it would be a group and consider it for variances. Mr. Dudick agreed with Mr. Strother and stated that it is in uncharted territory.

Mr. Lemire read the definition of establishments from the code. He concluded that if a building is an establishment, than more than one is a group. He did not think that was unclear.

Mr. Andress asked if they have met the requirement because they have four buildings. Mr. Lemire replied that it is about two on one. Mr. Dudick said they are talking about it in two different ways, one being the number of buildings in the entire development and whether that is a group. The second refers to the two buildings on Lot 2 and whether that is a group.

Mr. Andress asked for a vote to back it up and asked if the board members feel there is additional information he needs to provide so he would not have to address it later. Mr. Dudick polled the board, asking each person if they considered the two or more buildings a group.

Ayes: Ferro, Prescott, Gifford, Dudick, Strother, Lemire, Vulcetic

Mr. Dudick stated the vote concluded that the board considers the two buildings to be a group, and then asked the members if there is more information that needs to be provided by Mr. Andress.

Ms Ferro mentioned that there might be other ways the project could be achieved. Mr. Dudick said he was specifically asking the board if they needed any information. Ms. Ferro stated there was no further information required. The members were individually polled and unanimously responded they did not need more information. Mr. Andress said he wanted to make sure all information provided at the last meeting will be considered. He said he did not have more to add.

Mr. Dudick informed that this is a unique application with the town line involved and he had had a level of lack of comfort due to different issues. With the counsel providing information, and other issues addressed, he said he feels more comfortable with the way it is presented and it meets the requirements he had with regard to three parcels.

Mr. Dudick announced this is a public hearing and asked for public comment. There was none. Mr. Dudick made the motion to close the public hearing. Mr. Strother seconded. All were in favor, none opposed. Public hearing closed.

Mr. Dudick asked the board if there were further comments.

Mr. Lemire said he had two issues. The first issue mentioned was that the code 208-86, permits the Planning Board to create keyhole lots in a residential districts and only the Planning Board. (He read “only in rare instances when required due to unusual circumstances of the area and keyhole lots should not be created for any other use except for a single family dwelling”). He stated he is constrained by the language. He said he felt that meant whoever drafted the code did not contemplate keyhole lots to be created for anything other than residential single family dwellings and for rare circumstances due to unusual conditions of the area. He stated he did not know what unusual conditions have been demonstrated other than the increased density which the county planners talked about.

His second reservation was the variance for Lot 2, group of establishments. He stated he is unsure as to why they need two buildings instead of one. Dealing with those two issues in conjunction with the issues he indicated he felt the benefits can be achieved by other means not requiring the variances. He said he feels the requests are substantial and self created and in his opinion, regarding the five elements the board needs to consider, the applicant hasn't met those.

Mr. Dudick responded that with regard to the law not allowing for keyhole lots other than residential properties, the Board of Appeals addresses those issues that are not provided for or are outside of the law and is the reason why the ZBA exists. Mr. Lemire agreed, but referred to the statute that makes it restrictive and puts an additional burden in granting the variance.

Mr. Dudick asked if he was referring to the density and keyhole lot. Mr. Lemire agreed and repeated that it is self created and can be achieved by other means.

Mr. Dudick asked for other discussion from other board members. There were none.

Mr. Andress asked if, due to the response (denial) from the county, would the vote require a majority or super majority based on the findings of the board.

Mr. Peller answered it does not require a super majority. He stated that if the county had re-reviewed it with the changes, he is not sure they would be getting a denial from them.

Mr. Myers commented that you can't put a residential structure in a B-4a zone so the consideration of a keyhole in residential is beyond the pervue here. He stated he personally feels that with the changes, he does not have as much of an issue as he did before. He pointed out that

it is a good example of what is coming down in the future. He informed that the trend is for a new kind of development strategy called low impact development and green infrastructure. He informed this will push infilling leftover pieces of property between others that haven't been developed rather than finding a new piece of vacant land because this is more environmentally friendly.

Mr. Myers' other question was to verify that there would be permanently deeded access to all the properties to one road. Mr. Andress said "yes" this is the case.

Mr. Myers mentioned that in the big picture, the town may begin to look at and change their zoning laws because of low impact development to be able to infill the properties so they don't have to build on virgin land. He added the town has a lot of properties like this.

Mr. Dudick stated he did not have a problem with developing the piece of land with two buildings. Mr. Lemire responded that this is why they are here for a variance, and that some think this is ok to increase the density, but he does not agree.

Mr. Dudick called for a vote, with a vote of yes to accept the application as amended with the remaining two variances still in existence. Mr. Dudick made the motion to approve the application. Mr. Strother seconded.

Ayes: Vucetic, Strother, Dudick, Gifford, Prescott Noes: Lemire, Ferro

Revised application approved as above mentioned.

NEW BUSINESS:

The secretary read the legal notice as it appeared in the *Daily Gazette* on April 14, 2011.

1. An application from **Eugene Goykhman** to demolish existing house and garage and reconstruct new home. Variances required: 1) 208-97D(3) – demolition of a non conforming structure. Repairs not allowed (structure is non conforming due to setbacks, lot is non conforming due to size) 2) 208-11 – 40,000 sq ft minimum required, 9745 sq ft is available, 30,255 sq ft variance required. Note: Proposed setbacks for new home appear to meet zoning requirements. A viable well & septic system will be required prior to issuance of a building permit.

Property is located at 163 East Side Drive, Ballston Lake, NY (Permit #80815)

Mr. Eugene Goykhman presented his application. He corrected the application stating that the garage is not to be demolished. Mr. Goykhman informed that he and his wife purchased the home in the winter with the intention that it would be used as a summer place. In the spring and summer, they realized there was a mold and sanitary condition that was dangerous. They asked their construction person who told him it would be difficult to change. They have decided to demolish the house and build a small home of approx 1600 square feet, to live there and move from their large Guilderland home.

Mr. Peller asked if they are going to use the same footprint after they demolish the structure. Mr. Goykhman said they cannot use the footprint because one side of the current structure is exactly on the property line so they cannot build there.

Mr. Myers informed that the placement of the new structure will meet the setback requirements. Mr. Peller stated that this is improving the situation to be conforming.

Mr. Dudick asked the size of the structure. He was informed it is 1600 square feet.

Mr. Dudick asked if anyone is living there now. Mr. Goykhman told him that no one lives there and when there was, it was only in the summer.

Mr. Dudick announced it was a public hearing and asked for comments. There were none.

Mr. Myers stated that the board had granted similar variances last year for the house directly next door and it was on a smaller lot. He said they would have the same issues as the one next door which is to have a viable water supply and septic. Next door they have a well and a management plan for a holding tank which is pumped out regularly. He stated Mr. Goykhman may have to do the same, which would be acceptable.

Mr. Strother made the motion to close the public hearing. Mr. Gifford seconded. All approved. Public hearing was closed.

Mr. Dudick asked for comments or questions. Mr. Strother stated he thinks it is straightforward and doesn't change anything, and, in fact, improves the situation. He said he is in favor of granting the variance.

Mr. Dudick commented the board has seen similar situations with regard to the lake area with 1920's and 1930's homes.

Mr. Lemire agreed, stating it is a wonderful application.

Mr. Strother made the motion to accept the proposed application. Mr. Lemire seconded.

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

Application approved

2. An application from **AJ Sign Company** for setback variance for freestanding sign. Property is zoned B-1. Freestanding signs are required to be setback 15 feet from the front property line. Applicant requests variance from Chart II of Chapter 171. Setback requested = 2 feet, 13 foot variance required. (temporary sign currently at 22 feet.)
Property is located at 323 Ushers Road, Ballston Lake, NY (Permit #80816)

The secretary read the legal notice as it appeared in the *Daily Gazette* on April 14, 2011.

The application was presented by Tom Wheeler, from AJ Sign Company. He stated this is a unique property because there is a freestanding sign which is for the parcel behind their property. He informed it is allowed because it is in the deed of the property that pre dates the code. He said the existing “State Farm” sign there now is in the town right of way and they propose to have the sign two feet back off the town line. They needed to find a spot that could be seen around the existing sign. He said they tried to be consistent to the other signs in the area.

Mr. Lemire asked if the temporary sign is further from the road than what they are asking for. Mr. Wheeler informed that are asking to be back farther than that.

Mr. Myers clarified that the current sign is at 22 feet and he is requesting to put the sign 2 feet beyond the right of way which would be about 27 feet from the centerline of the road. He added that it would be closer to the building, not in the town right of way, and that the temporary sign is in the right of way. Mr. Myers provided pictures. He said he measured the other signs in that vicinity and all the signs appear to be at the limit of the right of way, but not in the right of way. The State Farm sign would be the same. He was unable to find permits for the other signs in that area but could not find them, except for the Stewarts on the other side of the road which had been recently approved by the board.

A discussion ensued regarding the signs on that side of the road. Mr. Myers stated that the dentist sign was almost on the right of way, but that the deed allowed it to be there and that there is nothing they can do about it.

Mr. Peller asked Mr. Dan Wagner (State Farm) if there was anything in his franchise agreement that said he had to have a specific type of sign. Mr. Wagner answered it does not. Mr. Wagner said the Roselle sign that is deeded on his property is a hazard and makes it difficult to turn out of his drive. He stated he doesn't want his sign to be more of a hazard and they tried to pick a safer spot but still give him visibility.

Mr. Dudick asked if you could write a deed that circumvents the code, but it was clarified that the deed preceded the code. He asked if the solid base sign for State Farm would be a hazard and if they had to talk about it.

Mr. Myers informed that the sign he is proposing would be further back and not a sight problem. He added that the Roselle sign and a tree block the view. He said that as long as it is outside of the right of way, you cannot mandate what kind of sign it has to be when there is another sign more in the way. Mr. Dudick asked if it was outside of the right of way, and was told that is correct.

Mr. Lemire indicated that the temporary sign is closer to the road than what they are asking for. He was told it is five feet closer. Mr. Myers informed it is 27 feet from the center line. He repeated you cannot mandate the base on his sign outside the right of way when there is a hazard caused by another sign already.

Mr. Lemire asked if the sign went back 13 feet you wouldn't need a variance, and asked if there be visibility issues. Mr. Wagner answered you would not see the sign going 35 miles an hour as

its would be too far back. Mr. Myers stated that you would never see it when the foliage “greens up” and the sign would disappear.

Mr. Strother said that there was concern about the Stewarts sign, but he thinks it is a lot safer now that you can see it.

Mr. Dudick stated that based on the pictures Mr. Myers submitted, he does not see a problem with it.

Mr. Dudick asked for comments from the public as this was a public hearing. He made the motion to close the public hearing since there was no one in the audience. Mr. Gifford seconded. All approved. Public hearing closed.

Mr. Strother suggested that they need to keep an eye on this area of the road. He asked what is their liability for the signs. Mr. Myers said he doesn’t believe it will be developed that much, but if it becomes an issue, and if the committee determines the signs are a hazard, the town could address it and decide on a group basis that everyone has to move their sign back.

Mr. Dudick asked Mr. Wheeler if it was an internally lit sign and was told it is.

Mr. Strother made the motion to approve the application. Mr. Prescott seconded.

Ayes: Dudick, Strother, Lemire, Vulcetic, Prescott, Gifford Noes: Ferro

Application approved.

Mr. Dudick made a motion to approve the revision of minutes of November 16, 2010. Ayes: Dudick, Strother, Lemire, Ferro. Noes: None. Minutes approved.

Mr. Dudick made a motion to approve the minutes of December 7, 2010. Ayes: Dudick, Strother, Lemire, Ferro. Noes: None. Minutes approved.

Mr. Dudick made a motion to approve the minutes of March 15. Ayes: Prescott, Gifford, Dudick, Strother, Lemire. Noes: None. Minutes approved.

The next meeting is May 3, 2011.

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