

## ZONING BOARD OF APPEALS

June 7, 2011

Present: Michael Dudick, Chairman, Randy Gifford, Deborah Ferro, Eric Prescott,  
Douglas Strother

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

Absent: Christopher Lemire, Jennifer Vucetic

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

### PLEDGE OF ALLEGIANCE

Mr. Dudick informed the applicants that the board has seven members and an alternate, but there is currently one vacant seat. He said there are two members absent, leaving five sitting members this evening. He said Ms. Ferro, who is the alternate, is designated to sit in for the vacant seat. He informed that, for an application to be granted, it must receive a minimum of four yeas votes (regardless of the number of members present) and explained that the more sitting members present, the better the odds of approval. He told the applicants they have the choice to postpone their applications until a later time or proceed tonight. He added he could not guarantee how many members would be present at any meeting. He asked if anyone would like to defer to July 19. None asked to defer.

### **OLD BUSINESS:**

The secretary read the legal notice as it appeared in the *Daily Gazette* on May 28, 2011.

An application from **Michael A Verreau, Sr.** to add a 2 car garage to existing house (4 total). Addition would result in 36 foot front setback, 50 foot setback required in R-1 zone = 14 foot variance required from 208-11. Property is located at 29 Liberty Way, Clifton Park, NY (Permit #80818)

The application was presented by Joyce McAlister, co-owner of the property. She and Mr. Verreau were present at the last meeting and had chosen to defer due to there being five members seated. Ms. McAlister stated they would like to proceed. She stated they need a variance to construct a second garage. The present garage is 20' x 20' slab. She states it is actually 19'3" because of the overhead door, which is 16'. The inside area is reduced by the stairway and storage racks, numerous equipment and cabinets on the sides and a workbench in the back. She stated the truck owned by Mr. Verreau does not fit in the garage, so they are asking to add a 24' x 24' garage to store it so it does not sit in front of the house. She provided pictures to show the size of the truck. She states the truck is 19' long 82" wide with 15" side mirrors. She states they have a great deal of lawn equipment currently kept in a shed that they would like to put in the garage in the winter. They have spoken to an architect and would construct something that would match the house.

Mr. Dudick asked Mr. Verreau if he knew it would not fit in the garage when he purchased it. Mr. Verreau said he did not, it was secondary.

Mr. Dudick stated he could see the need for the garage. He said he had looked in the neighborhood and sees three car garages, but not four car garages, which would be a change in the neighborhood. He asked if there is a possibility of making the extension to fit the truck rather than four car garage.

Ms. McAlister stated the garage would not be freestanding. Mr. Dudick explained that he meant to scale back the size a little bit. He said he could see the need for another garage but maybe it could be a three car garage rather than a row of four. Ms. McAlister explained that the first garage has just one door, and that the second would only have one door so it wouldn't look like four bays. She said they spoke to Bennet Contracting and explained that when you build the extension you need three feet on either side of the door to make it structurally sound. This means you need a ten foot door minimum in order to fit the truck which would mean 16 feet all together, which would be tight..

Mr. Dudick asked what size door they would be looking for. She answered she was looking for a 24' garage with a variance of 14'. Mr. Dudick asked if she is looking for one door, and she answered "yes".

Mr. Strother asked if this garage would be deeper than the current garage (24' rather than 20' which is more standard) and was told "yes". He said they are in a tight situation based on the structure of the house. He stated based on the drawing they would need a variance to expand out that way. Mr. Myers explained the clearance in the back of the house. Mr. Strother asked to clarify the drawing and did so with the board.

Mr. Dudick said what he thinks she is asking for "two doors (double doors)" and asked if she could instead construct a garage that is big enough to house the truck and make it a large door, but not a double door.

Ms. Ferro reiterated that it would be one other bay instead of a 2 car garage. Mr. Dudick agreed that is what he means.

Discussion ensued as to the width of the garage. Mr. Strother stated that a smaller width would be more consistent with other structures in the neighborhood.

Ms. McAlister mentioned a 12' door with 3' on each side which would be 18'.

Mr. Dudick asked Mr. Myers the difference between a larger single door vs a double bay garage door. Mr. Myers said a standard door is 8 ½ - 9 feet but you can get any width door you want and a double is 16'. He suggested they are looking for about 12' door. Ms. McAlister answered that they would need 12' plus 6' on the sides for 18' or maybe an 8' variance.

Mr. Dudick said that is what he is looking for, which would be an extension that would accommodate the truck and it would become a three car garage with the third bay being oversize. He thinks the variance request would meet the needs of the applicant and a three car garage is a reasonable thing in that neighborhood. He suggested if they get rid of the wall between them they would have more storage space. Mr. Myers said that is their call, and Ms. McAlister said they had to look into it. Mr. Verreau explained they were planning to put a doorway in as the wall was structural. Mr. Myers indicated that the garage slopes toward the door.

Mr. Dudick asked if they could reduce their request for variance to make it a three car garage with a bay of a size to accommodate the truck. Mr. Verreau said "yes". Mr. Dudick stated there would be an amendment to the application.

Mr. Dudick informed this is public hearing and asked for comments. There were none. Mr. Strother made the motion to close the public hearing, Ms. Ferro seconded. All in favor. Public hearing closed.

Mr. Myers stated he has nothing to add to the amended application. Mr. Dudick asked if there was an issue with a shed. Mr. Myers informed it had been moved and is not an issue.

Mr. Dudick clarified the amendment of the application. Ms. McAlister stated they need a 12' door with 3' on each side, or an 8' variance. This is a reduction from 14'. The application is amended to read "add a one car garage to the existing house for three bays total. Addition would be for an 8' variance.

Mr. Dudick made a motion to approve the amended application. Mr. Prescott seconded.

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

Unanimous approval of the amended application.

**NEW BUSINESS:**

Mr. Dudick asked Mr. Myers if he had heard from Saratoga County Planning Board with regard to the **RSPJ Holding Co** application. (The board had deferred hearing the application until the County had heard the application and passed their opinion to the ZBA.) Mr. Myers stated that the County had not responded. The attorney for RSPJ Holding pointed out that the 30 day period for response from the county had passed. Checking the record, the secretary informed that the date of the County request was May 3, 2011. This being June 7, 2011, the 30 day period had expired without county comment.

The secretary read the legal notice as it appeared in the *Daily Gazette* on May 28, 2011.

- 1) An application from **RSPJ Holding Co, LLC** for variances to increase building size with a 3,200 square foot addition to expand building to 33,200 square feet.  
Variance from 208-33B required = 3,200 square foot addition to previous variance  
Variance from 208-33B required = Maximum allowed building to lot size ratio = 12%, building to increase to 15.9% (additional 1.5% increase required).  
Property is located at 10 Maxwell Drive, Clifton Park, NY 12065. (Permit#80819)

The application was presented by Gavin Vuillaume with Environmental Design representing **RSPJ Co.** He stated Bob Phillips and Jackie Murray are also present from RSPJ. The project was originally constructed and approved in 2003 with 2-3 variances for the construction of a 30,000 square foot building. The building has always been fully occupied and there has been a need for the past 4-5 years for additional office space within the building and been voiced by the tenants. He informed there is plenty of parking on the site and a large courtyard. He added there is plenty of room on the site for additional building space, but the zoning criteria will not allow it for the square footage for the overall building area. He said to get the additional space, they would have to build a second building, which is a hardship. He added that a smaller building would look out of place, and it would be expensive to bring in all new infrastructure, utilities, stormwater management, etc. They requested a variance to add to the building they already have. He presented renderings on what it would be to add a second wing. He states it would be minimal. He said overall greenspace, stormwater management would stay the same. He said the Planning Board appeared to be comfortable with what was presented and if they receive approval tonight, they would be going back to the Planning Board for approval.

Ms. Ferro asked to explain as to why they could put an additional building on the property. Mr. Vuillaume stated they could but there is limited space to put another building especially if they did not want to increase the amount of impervious area. He mentioned that there is a large patio adjacent to the building, and the addition right next to the existing building would not increase the impervious area. He said putting an additional building would require a lot of grading and disturbance to the site to accommodate it.

Ms. Ferro asked that as a condition of granting the variance, are they foregoing any right to put another building on the site. Mr. Vuillaume stated "not necessarily".

Mr. Dudick opened the hearing to the public.

Mr. Dudick asked “going back to what you were saying, you want to build the extension on the current building and want to reserve the right to build another building on the lot?” He was told it is doubtful due to existing drainage and the very large stormwater area that is critical to other projects in the area. Mr. Vuillaume said they would never be able to do anything there. He said just looking at the sight it would be highly doubtful, but can never say never.

Ms. Jackie Phillips Murray, attorney for the applicant, stated they wouldn't be able to build another building on the site because of the site condition and also because it would not be physically possible due to the wetlands to the rear of the building.

Mr. Dudick asked if the hardship condition for which they are seeking the variance would prohibit them from seeking permission to add another building to the lot. She stated “yes” and looking at all the variables one of the goals is to make the building aesthetically pleasing and will bring the North wing out to make it symmetrical to the West wing. She added that adding another building, they wouldn't be able to use the existing infrastructure such as elevator, HVAC etc. She said that adding another building results in unnecessary environmental impact and visually wouldn't achieve the symmetry.

Mr. Dudick asked if they would be willing to make it a stipulation if the variance is granted that they wouldn't add another building. She stated that she does not think it is physically possible to add another building.

Mr. Myers stated he does not have an issue with the proposal. His biggest concern is the stormwater area behind the building which, evidence indicates, is not operating as it is supposed to and is creating problems downstream. He said those issues will be addressed during a site review by Planning and himself. He said looking back at the plans in 2003, he feels this is a minor addition to the variance already granted.

Mr. Dudick asked if they were to decide to build another building on the site, would they need another variance. Mr. Myers answered “correct” because of building to lot ratio, they would need a variance either way whether it was a stipulation or not. Mr. Dudick asked if they would they still be compliant with greenspace and parking space if they put on the addition. Mr. Myers answered they would.

Mr. Strother commented that the original variance was 2.4% and the total variance with the addition would be 3.9% which is a relatively minimal variance in total and even less of a variance proportionately as they are talking 1.5%.

Mr. Dudick made the motion to close the public hearing. Mr. Gifford seconded. All in favor. Public hearing closed.

Mr. Peller asked Ms. Phillips Murray if she had heard from the county. She indicated they had not. Mr. Myers suggested that Maxwell Dr is a town road so theoretically it is not within 500 feet of a county road and that might be why they didn't respond. He added it is within the distance to a protected waterway which is a reason they might look at it. He said he hasn't heard from them but he would contact them tomorrow.

Mr. Peller indicated he was comfortable with what the applicant brought up, that it is outside of the 30 days response time from the county. Mr. Myers said he would forward anything on to the board when he looks into it. Mr. Peller informed that he doesn't have an issue with it.

Mr. Dudick made the motion to approve the application as submitted. Mr. Strother seconded.

Ayes: Strother, Dudick, Gifford, Prescott Noes: Ferro  
Application approved.

The secretary read the legal notice as it appeared in the *Daily Gazette* on May 28, 2011.

2) An application from **Nathan R. Clark** for variances to rebuild collapsed garage. Variances needed from 208-11 1) CR Zone requires 40,000 square feet minimum, lot is 13,200 square feet (pre-existing) Variance = 26,800 square feet. Variance needed from 208-12A 1) Accessory structures require 10 foot rear setback, 1 foot available = 9 foot variance needed. No front or side setback variances required. Property is located at 104 Eastside Drive Ballston Lake, NY 12019. (Permit #80821)

Mr. Nathan Clark presented the application. He informed the board that his garage has collapsed. It was 27 x 24' with a woodshed on the side and he would like to build another garage to replace it 28' x 26' with the woodshed. The old garage did not have a second story and he wants to add attic storage area for toys, etc to the new one. He stated his house is a 2 bedroom 1500 square feet and he now has a young son and needs more room.

He added that the current garage is one foot off the back property line and he has nowhere else to go. Also the septic system is off the left side and he would like to move it one foot to the right (south) to allow more space between the septic than what is currently there.

Mr. Strother asked what year the garage was built. Mr. Myers indicated it was approx 1902. Mr. Clark informed that there is no foundation and it was built on the dirt.

Mr. Strother asked if the height requires something. Mr. Myers said he hasn't seen the plans yet but stated that if it is over 15' at midline measurement, the variance may have to be increased. Mr. Clark indicated it is 24' 11" to the peak and 14 feet to the edge of the roofline. Mr. Myers said he would need an extra 8' variance according to the code. He explained that anything over 15' you need 2 feet offset for every foot of overhang. As far as legalities, he would say 17 feet variance would meet all legalities. Mr. Peller asked if it was ok to amend the application to 17 feet. Mr. Clark agreed as long as he can build the garage.

Mr. Dudick asked if that was a problem to amend it. Mr. Myers said there are no side yard issues.

Mr. Peller said there was not a problem because 1) Mr. Clark was kind enough to provide his neighbor's approval to rebuild the garage and secondly he did not think that they were amending

anything that was different from what was intended. Mr. Strother said he agreed as it wasn't changing anything. Mr. Peller said it is just legally "cleaning it up".

Mr. Dudick asked if the garage will be taller than the house. Mr. Clark said it would not be. He wants the garage to match the house.

Ms. Ferro asked Mr. Myers how close he is building to the neighbors. Mr. Myers answered that he has 50-60 feet between the houses, and one of the neighbor's garages is a pretty good size too.

Mr. Dudick announced the public hearing. There were no comments. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Strother. All approved.

Mr. Strother made the motion to approve the application with the clarified language regarding the additional linear specifications. Mr. Myers reminded the variance also included the size of the lot. Mr. Prescott seconded. Mr. Dudick added that they have seen several like this around the lake, which were built as camps. He said this will be better than the structure that was there and safer. He informed he is in favor, and it is a hardship based on what was there.

Ayes: Ferro, Prescott; Gifford, Dudick, Strother Noes: none

Application approved with amendment to footage as discussed.

The secretary read the legal notice as it appeared in the *Daily Gazette* on May 28, 2011.

- 3) An application from **Matthew Lyle** for **Brad Farrin** (Milton Real Properties of Massachusetts, LLC) for a use variance for Light Industrial 2 (LI2) zone for truck sales. Variance required from 208-64B permitted uses. Sales and service of heavy equipment is not addressed in zoning law.  
Property is located at 500 Commerce Drive, Clifton Park, NY 12065 (Permit #80822)

Matthew Lyle and Brad Farrin, corporate facilities manager for Milton Real Properties, spoke. Mr. Lyle informed that Caterpillar announced it will now produce an over the road, vocational truck bumper to bumper, not just the engine. They would like to add that to their repertoire on Commerce Drive. They are not looking to do any modifications. They have a truck service area for the engines, and would now like to service the entire truck and sell the vehicles. They would have four to five of them on sight because they are special order. Mr. Farrin said they already have an equipment storage area designated which was approved in 2001 and they would just use that storage area to put the trucks.

Mr. Peller stated Mr. Myers discussed this and said the code is silent on the sale of the trucks and felt that it would be best for them to go to the board for approval. He said taking a literal reading of the code, it just doesn't say.

Ms. Ferro asked for clarification about servicing the heavy duty trucks. Mr. Peller stated they service motors now. She said they are talking about bringing trucks in. Mr. Farrin explained that

the trucks are already there now, that the trucks drive in and they service the engines. Mr. Peller added that the engines are not separate from the vehicle. They just don't sell the trucks now.

Ms. Ferro asked, to sell the complete truck, not just the engine. Mr. Strother asked if they are ok to sell the equipment, hardware, but you are not ok to sell the vehicles and that is the deficiency in the code you are trying to do. He asked, you want to sell the entire vehicle which is something you do not do now? He was told "yes".

Mr. Strother asked about the potential for "creep" if this is allowed. Mr. Peller said the application is to allow truck sales, not automobiles. Mr. Strother stated that it makes sense.

Ms. Ferro stated she had looked at the article governing the industrial district. She explained that the zoning law says the determination of any use shall be made by the zoning enforcement officer in writing who will go through the criteria. She asked if that means he goes through the criteria here and presents something in writing as to the suitability of this use so the board can consider it.

Mr. Duick added "Or the other side of that is whether we even need to consider it."

Mr. Strother asked if Mr. Myers is empowered to make that decision without the ZBA.

Mr. Ferro suggested it would be advisory as Mr. Myers might not make the determination as to whether it is by himself. Mr. Myers said he does that with every application.

Mr. Dudick stated that looking at the overhead there would not be a lot of traffic, being at the end of the cul du sac and the railroad tracks to the south. He said if someone wanted to sell cars, this location is not one they would be looking for because the lot is secluded.

Mr. Strother added that the language restricts it to trucks.

Mr. Myers said he believes it is a suitable use and that this is a natural expansion of their business. He couldn't put his finger on where it said it was a permitted use because of the gray area in the code. He felt it was best to go to the board to see if they were going in the same direction he was.

He mentioned they have allowed sales in other light industrial zones when the business and the parcels fit what they thought should be in that area. He feels it will have zero environmental impact or extras added as it is just another piece of equipment they will sell outright and service. He indicated he doesn't have a problem with the use.

Mr. Dudick asked if Mr. Peller feels it is necessary for them to come for a variance and if not, he will take a vote from the board and let them decide.

Mr. Peller stated Mr. Myers and himself wanted to be conservative and in the past when it was unclear, they said let the board decide. He said he is agreeable to let the board decide, but he can argue both ways. He can also see that Steve might decide as he sees it as an extended use. He would be comfortable either way.

Mr. Strother stated he would prefer to treat it as a variance so they can have it as governance for other decisions they have to make in this area.

Mr. Dudick asked Mr. Farrin and Mr. Lyle what they would do if they couldn't sell the trucks. Mr. Farrin answered that they would continue as they are and would have to change their business strategy.

Mr. Strother said he felt the code indicates the board has some discretion here. He pointed out that as time goes by, there will be a public record and everyone would know what they were thinking.

Mr. Dudick informed this is a public hearing and invited audience to speak. No comments.

Mr. Dudick conferred with Mr. Peller and stated he will poll the board as to the question of interpretation. He then said that because the issue is not addressed, based on Mr. Myers and counsel, the board doesn't need to vote on if there needs to be a variance granted if this would be an acceptable use of the lot, as there would be no need for a use variance. He said that, by interpretation, it would be a permissible use. He stated he would poll the board as to whether they think the unstated purpose or use is allowable based on interpretation by the code enforcement officer.

A yes would be a statement that this is allowable without a variance vote.

Yeas: Dudick, Gifford, Prescott Noes: Strother, Ferro

Mr. Dudick stated that the vote indicates a majority of the five members feel the code enforcement officer's interpretation is enough. He added that this is not a variance vote and only needs a majority, not four votes. Mr. Peller agreed it just needs to be a majority.

Mr. Strother added he thinks the code needs fine tuning, particularly regarding automotive sales and automotive service. He cited other times the code is silent and they granted variances and he asked if this is going to get harder for them.

Ms. Ferro reminded that if the board does not vote on a variance, then the code needs to be complied with. She went on to say that Mr. Myers, according to 208-64E needs to put something in writing if no variance is required. Mr. Dudick stated that if Mr. Myers has no issue with this and determines it is a reasonable use then the applicant does not need to come back to the board. Ms. Ferro added it is more than having no issue, that he has to look at the criteria and pursuant to the criteria, address it and determine it is a suitable use.

Mr. Dudick summarized that she wants Mr. Myers to fulfill his requirement.

Mr. Peller said that you get either Mr. Myers written interpretation or they get a variance of approval by the board.

The meeting adjourned for five minutes while the zoning enforcement officer and Mr. Peller, counsel conferred.

At the end of the adjournment, Mr. Farrin announced that he and Mr. Lyle are withdrawing their application and referring it to the zoning officer.

Mr. Dudick summarized that the majority of the board feels that the decision lies with Mr. Myers. Mr. Peller said that would be in compliance with town law. Ms. Ferro feels that if Mr. Myers makes the decision, he needs to address certain issues and do it in writing. Mr. Dudick agrees with that. He ended by saying that the applicant does not need to come to the board for a variance pending Mr. Myers signing off on it. If Mr. Myers doesn't approve of it, they can file for a variance.

No further action to be taken by the board.

Approval of the May 17, 2011 minutes was deferred to the next meeting or until such time that there are at least 4 members (who attended that meeting) present to approve them.

The next meeting is June 21, 2011.

Mr. Dudick made a motion to adjourn the meeting at 8:47 p.m. Ms. Ferro 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