

Approved

ZONING BOARD OF APPEALS

March 19, 2013

Present: Michael Dudick, Chairman, Michael Bloss, Mario Fantini, Randy Gifford, Chris Lemire (7:07), Amy Standaert, Doug Strother,

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

Absent: Jennifer Vucetic

PLEDGE OF ALLEGIANCE

Mr. Dudick called the meeting at 7:07 p.m. He informed this is a seven member board with one alternate. In order to receive approval, the application must receive four yes votes. Mr. Fantini, who is the alternate, will be sitting in for Jenn Vucetic, who is absent tonight.

OLD BUSINESS

An application from Ray Sign Inc. for area variance for freestanding sign and possibly offsite sign. Per Chapter 171, Table I maximum allowable freestanding sign= 150 sq ft; 244 sq ft requested; variance required = 94 sq ft (soldier = 72 sq ft; oval 57 sq ft; digital board =87 sq ft; Soldier base = 28 sq ft). (Wits End)

Property is located at 1762 Route 9, Clifton Park, NY 12065 (Permit #80898)

Mr. Gavin Vuillaume, Environmental Design Partnership, site consultant for the applicant, presented the continuation of the application. He reminded the Board the applicant is here proposing a sign for Wits End to be placed off premises on Rt 9 its End property. He informed that applicant's attorney and Mr. Peller have spoken regarding establishment of an easement for the property.

Mr. Peller explained that he had met with Mr. Penkowski and he had reviewed and approved the agreement wherein Michael grants an easement to his wife, Susan Hoffman. He added this is a difference circumstance only that the owners are related. He reminded that Mrs. Hoffman had indicated her intent to buy the parcel, but there are some things going on which prevent her from doing it right now. Mr. Peller explained the issue of the application was the vested ownership, and the easement is the mechanism that will allow them to do that. He suggested to the Board that should they grant the variance, it should be contingent upon the easement being recorded in Saratoga County Clerk's office and that it should run with the land until Mrs. Hoffman buys the property. He submitted a copy of the proposed easement for the record. He requested a signed copy and a copy of the recording record from the applicant. Mr. Vuillaume presented the site plan for the record as well.

Mr. Lemire asked if they needed a variance for other issues or if the variance is only for the off site sign. Mr. Peller said there are other issues as well.

Mr. Vuillaume responded they need an additional variance for the sign which is 243 square feet. He explained the limit is 150 square feet, which the main portion of the sign actually is that size, but the soldiers holding up the sign put it over the legal size.

Mr. Myers informed they also need a setback variance because the proposed location of the sign is not 15 feet off the property line.

Mr. Lemire asked if this variance was noticed. Mr. Myers said it was not noticed as this just came up in the last couple of days.

Mr. Dudick asked if the sign could be moved. Mr. Vuillaume answered the parking lot is there, and what they propose is a better location for the sign.

Mr. Peller responded this is a substantive change and that it has to be noticed as it is a new variance. Mr. Dudick mentioned that other applicants had to have their applications renoticed for less distance than the fifteen feet.

Mr. Vuillaume responded they are ok with re-noticing it, and asked if they could have an open discussion on the square footage.

Mr. Dudick answered he would rather wait.

Mr. Lemire asked if the proposed easement resolved the off site issue because of the easement or because of the relationship of the owners of both properties. Mr. Peller said it is because of both.

Mr. Lemire asked if this would be setting a precedent. Mr. Peller answered it is contiguous properties and the owners are related, there is an easement and there is intent to purchase the property.

Mr. Lemire asked if the decision on that part of the variance (easement) should be made contingent on the property purchase.

Mr. Dudick answered it would be discussed at the next meeting on April 16, 2013.

Mr. Peller asked Mr. Vuillaume if he would waive the 61 day period, and Mr. Vuillaume answered he would. Mr. Myers requested Mr. Vuillaume submit a written authorization to represent Mrs. Hoffman.

Application deferred to April 16, 2013. Public hearing remains open.

NEW BUSINESS:

The secretary read the legal notice as it appeared in the Daily Gazette on March 14, 2013.

1) An application from Massaroni Enterprises Trust for two variances 1) Section 208-46D, rear yard setback req =30', requested=11', variance required = 19'; 2) Section 208-46F greenspace req = 35%, has 23.6% from prior approval, requested=21.3%, variance required=13.7%

Property is located at 629 Plank Road, Clifton Park, NY 12065 (Permit #80904)

The application was presented by Duane Rabideau, Associate for Gilbert VanGuilder, Land Surveyor, representing Massaroni Enterprises Trust. They are seeking two area variances. The first is a rear yard setback variance for a proposed 36' x 14' maintenance shed to be located in back of the main building. The second is for a 13.7% variance for greenspace (from 35% to 21.3% greenspace.)

He explained Massaroni wants to construct a 6000 sq ft building (60 x 100). Initially when the site plan was approved, the greenspace was met, but now will not meet it. He said they are trying to acquire the strip of land owned by the Town of Clifton Park to get the greenspace up to close to 30%. He added it is quality greenspace now.

Mr. Rabideau asked if they need a front setback variance for the proposed building. Mr. Myers responded that the greenspace variance is for the new building and the setback variance is for the shed, adding there are two variances for this application.

Mr. Rabideau explained that, in regard to the shed in the back, there is a retaining wall about 10' high and behind it, a hill with chain link fence, and behind that is the Northway. He added it cannot be seen from the Northway or the street. He said it is a practical location for it.

Mr. Myers informed there isn't any lawn space now, it is dirt or blacktop and the wall comes up to the parking lot.

Mr. Peller asked Mr. Myers if Mr. Rabideau has an authorization for representing Massaroni. Mr. Myers explained that Mr. Massaroni was called away for a personal reason on short notice, and contacted Mr. Rabideau to go through the application. He said he would give the form to Mr. Rabideau to complete for the record.

Mr. Rabideau asked Mr. Myers if they are requesting a variance for where the proposed building will be off the existing right of way which is off Old Rt 146. Mr. Myers said he had been told that all the setbacks had been met although he didn't know. He said the ten feet setback which looks like a front, is considered a side yard because it is really a driveway. It leads to the hotel and the town maintains it, but it is not a road and he doesn't consider it a front.

Mr. Lemire asked if it is two fronts, and Mr. Myers said he wouldn't consider it so.

Mr. Dudick asked if that road is necessary. Mr. Myers said it is the access road to the hotel. Mr. Dudick asked if there is a reason the town has to maintain a driveway. Mr. Myers said no it is secondary access to the hotel, but he couldn't say why it is still a public road.

Mr. Dudick suggested if it is not a public road, why does the Town not get rid of it. Mr. Myers responded because if someone wanted to make it a private road, they would have to take ownership of it and take care of it, and would probably not want to do that.

Mr. Dudick asked if it were not a public road, would this take care of the variance. Mr. Myers answered that it would not as they would still need the green space variance. He added that the parcel they want to obtain used to belong to the DEC and now belongs to the town. He said the town will still own that parcel if Massaroni does not get ownership of it.

Mr. Dudick speculated the town maintained ownership because it was along side the town road. Mr. Myers said he believes it came as a right of way with the road. Mr. Dudick suggested that if the town did not own the road there would be no need for the right of way. Mr. Myers agreed. He said when the state abandons a road, he believes the locality has to take ownership.

Mr. Dudick asked if this is the only way to get into the Best Western; Mr. Myers said it is.

Mr. Lemire asked if Massaroni purchases the pie shaped area, would they still need the greenspace variance. Mr. Myers answered they would still be below the 35% but would be more than it is now. Mr. Rabideau said it would be 30%, more than it is now. Mr. Myers informed they are asking for 21.3% from the 23% or 25% they have now, however if they get the parcel they would be better off than they currently are.

Mr. Rabideau discussed the piece of property in question adding it is quality greenspace and maintained. Mr. Dudick asked when they tried to buy the land, and was told 1987. Mr. Rabideau said the town is doing nothing with it at this time.

Mr. Lemire asked what the motivation to buy it would be if the board grants the variance now. Mr. Dudick agreed they would be knocking down the reason to buy. Mr. Myers also agreed and suggested it would be the case unless the approval is made contingent upon obtaining that parcel, unless, for some reason they cannot.

Mr. Peller asked Mr. Myers what is the breakdown in the communication. Mr. Myers said he did not know. He said he looked at the information from 1987 when they said they were going to do the same thing, and it never happened and now it is reactivated as part of the proposal.

Mr. Strother stated his concern is he is that, although is area is small, he is concerned that greenspace is vulnerable to "creep". He asked Mr. Peller what do they should do.

Mr. Peller answered it is more of a strategical rather than legal question.

Mr. Strother asked if they granted the variance contingent acquisition of the property, and the Board is acting on town business, wouldn't that be a conflict of interest?

Mr. Dudick said it wouldn't be, but the issue is that at some point, the Board should have some sort of understanding that the town is either interested or not. He indicated he feels that just discussing it for the past 25 years strains the Board's ability to look at it as a variance question.

Mr. Rabideau informed they would still need the variance. Mr. Myers added that there would be a new allowance in the variance. Mr. Dudick said that since they have a variance already, purchasing the property would allow them to build a little bit more and still be within it.

Mr. Rabideau showed the plan and said it was just a small amount (indicating on the map) that they are taking away from the greenspace and they are not adding any more parking.

Mr. Dudick said he is not considering it creep, but from his standpoint if they purchase the property they might not need the variance at all. He said he would like a simple statement from the town as to whether the property is available or not. If it is not for sale he would like to know it because if they buy it, they might not need the variance.

Mr. Rabideau agreed the greenspace would then be more than the initial variance already in place. Mr. Dudick repeated he would like to know if the Town wants to sell it to them, and if they do, granting a variance now would interfere with that. He would like to know one way or the other.

Mr. Rabideau reiterated that this has to be definitive, sale or no sale before the board can make a decision.

Mr. Dudick said they need to know and if it is for sale they can negotiate without the Zoning Board being involved in it.

Mr. Myers stated he knows, in his discussions with Mr. Pelagalli, that if he gets the parcel, he is going to move the building further towards the back so he can get parking in front of the building.

Mr. Dudick said he is uncomfortable getting in the way of that. He suggested the Town Supervisor is more accessible now that he is full time and they should speak to him.

Mr. Peller told Mr. Rabideau that if they would like to make an offer for the property, he would be happy to take it to the Town for him. Mr. Rabideau answered that he would like to do that. Mr. Peller suggested they put the offer in writing and he will be the go-between.

Mr. Rabideau asked if they could take action on the shed.

Mr. Peller suggested that since the public hearing is still open, the board should table both variances and the applicant come back on April 16, 2013.

Mr. Rabideau agreed to do everything as one and move it along.

Mr. Dudick said he is not going to have a problem with the shed.

Mr. Myers said they might still need a variance, depending on where they site the building, and conservatively, he might have to come back. He added he meets the current greenspace now, but he would need to come back if he doesn't meet it with the new building.

Mr. Peller said the public hearing will remain open, and asked Mr. Rabideau if he would return on April 16 and waive the 61 day rule. Mr. Rabideau agreed. Mr. Myers asked Mr. Rabideau to inform him if, for some reason, he is unable to come to the April 16 meeting.

The secretary read the legal notice as it appeared in the Daily Gazette on March 14, 2013.

2) An application from James Strozyk for a variance from Section 208-12A for an accessory structure (3 stall garage) required setback = 80', 60' available, variance required = 20'. Parcel is zoned CR and has 2 fronts (Hunter Hill & Schaubert) variance required for both.

Property is located at 3 Hunter Hill Road, Ballston Lake, NY 12065 (Permit #80905)

Mr. James Strozyk, owner of the property on 3 Hunter Hill Road, presented the application. He informed he wishes to build a three car detached garage. He is located on a corner lot which requires an 80' setback. He is looking for a 20' variance due to the fact he has a Trans Vap septic system and if the garage was closer it would be impeding the field drainage lines. The second issue is setting it back gives him an easier transition to his driveway so he would not have to have another entrance. He added there is a five foot buffer so it can't be seen from Schaubert Road.

Mr. Lemire asked if there is a shed. Mr. Strozyk said there is, and he would be moving it. Mr. Lemire asked if the garage is going on that location and was told it is. Mr. Strozyk said he would move the shed within the 80' setback so it wouldn't be an issue. He said the back wall of the shed would be where the back wall of the garage will be.

Mr. Peller referred to his comment that the garage would be 60' from the right of way and asked if he meant Schaubert Road? Mr. Strozyk said yes. Mr. Peller informed it isn't a right of way. Mr. Strozyk said it actually comes out to 75' from the edge of Schaubert Road.

Mr. Lemire mentioned it is 32' width and asked how far it is from the driveway and why he can't move the garage closer. Mr. Strozyk responded that it is 30' and he can't move it closer because of the septic system.

Mr. Myers explained the drawing was not in scale, and the septic is actually much larger than is represented on the picture with the slope and mound. He said he drew a closer approximation of the size because he wanted the board to see why he can't put it closer.

Mr. Strozyk said the back area is treed so it won't be an eyesore.

Mr. Dudick asked about the 30' apron. Mr. Strozyk said he needs that apron to get a straight shot to get into the garage instead of coming right off the bend.

Mr. Strother stated this is an easy application to support and the relative size of the variance is small.

Mr. Lemire asked about the side setback.

Mr. Myers stated it is ten feet. He said he tried to make the drawings more representative and that the septic system is very big. He added the driveway configuration is slightly different also and there is an island. He informed that it is as close as he can get it.

Mr. Lemire speculated that if he only had a front on Hunter Hill, he would only need a ten foot setback on the side, except for Schauber Road.

Mr. Dudick asked for public comment, there was none. He made the motion to close the public hearing. The motion was seconded by Mr. Bloss. All agreed. Public hearing is closed.

Mr. Strother made the motion to approve the application as submitted. The motion was seconded by Mr. Strother.

Ayes: Bloss, Fantini, Gifford, Dudick, Strother, Standaert, Lemire Noes: none
Application approved.

The secretary read the legal notice as it appeared in the Daily Gazette on March 14, 2013.

**An application from Paul A Sears for a variance from Section 208-12A for construction of detached garage. 80' front setback required, 30' available, variance required = 50'.
Property is located at 436 Vischer Ferry Road, Clifton Park, NY 12065 (Permit #80906)**

Mr. Paul Sears, owner of the property, presented the application. Mr. Sears informed he has a keyhole lot. He described the lot, which comes off Vischer Ferry Rd. He said the way the house is situated on the property there is no other place to put the garage. He described the shape of the driveway.

Mr. Lemire asked about the island.

Mr. Sears said there is an island which was originally a turnaround.

Mr. Lemire asked where the existing garage is located.

Mr. Sears showed the location of the two car attached garage on the other side of the house.

Mr. Sears informed the house is cedar sided, and they would side the garage the same way.

He showed the 80' line and where it is located. He informed they meet the setbacks on the side.

He presented pictures of the area, showing it is wooded between the proposed garage and the neighboring property.

He said he discussed it with the four neighbors, one of which is the Town. He said two were favorable with it and the third was not excited but he was pleased when he told him the garage would match the house with cedar siding. Mr. Sears said he was pleased with the way the town had put a buffer behind the house when it put in the development behind him.

Mr. Dudick announced the public hearing and asked for comments. There were none. Mr. Dudick made the motion to close the public hearing. The motion was seconded by Mr. Gifford. All approved. Public hearing closed.

Mr. Strother commented this is a challenging situation and significant on a percentage basis. He asked if there was a way to get less of a variance by moving the garage back 10-15 feet.

Mr. Sears said he could move it back a little but moving it too much lines it up with the turn around. He said he wanted to get it wide enough to get the vehicle in.

Mr. Lemire suggested turning it the other way. Mr. Sears answered he could but it wouldn't look as good as it wouldn't be aligned with the house, and also it would have an impact on the woods because he would have to bring the driveway around.

Mr. Lemire suggested getting the front of it back to 30'. Mr. Sears said it would not look as good for him or neighbors. He explained the neighbors would see a blank rear wall with his design and the other way, they would see the doors and vehicles coming in and out.

Mr. Lemire asked if all keyhole lots have an 80' setback. Mr. Myers responded that they all do for any accessory structure from the front line.

Mr. Sears added that his neighbor per code can build within 5 feet of the line, which is right in front of his house.

Mr. Strother stated that due to the nature of the situation, it is something he can support.

Mr. Fantini said he is concerned with the neighbor having something built close to his house and it is a large variance.

Mr. Sears presented copies of pictures of the trees and the garage site.

Mr. Bloss asked if it is the intention of the 80' setback to make sure the structures are in the back. Mr. Myers said typically, yes, but it was modified. Historically, in the past they have allowed accessory structures much closer than this, and cited Mountain View as an example.

Mr. Dudick stated he does not have a problem with the setback because it is a wooded area. He said Mr. Sears had spoken to the neighbors. He reminded that there was a public notice and the neighbor who had some opposition to it could have come to the meeting and voiced his concerns.

Mr. Bloss suggested if the building was on the driveway side, they would not be here, except for the keyhold nature of the lot.

Mr. Dudick said there is a good amount of buffer with the trees and he does not think that just because you can see a structure on your neighbor's property should be a prohibition against building a structure.

Mr. Dudick made the motion to approve the application as submitted. The motion was seconded by Mr. Gifford.

Ayes: Gifford, Dudick, Standaert, Strother, Bloss Noes: Lemire, Fantini

Application approved.

The minutes of January 15, 2013 were approved by Mr. Bloss, Mr. Gifford, Mr. Lemire and Mr. Dudick, Mrs. Standaert, and Mrs. Vucetic.

The minutes of the March 5, 2013 meeting were approved by all members present except Mr. Strother who was not present at that meeting.

The next meeting is April 16, 2013.

Mr. Dudick made the motion to adjourn the meeting. Mr. Lemire seconded the motion. All approved. The meeting was adjourned at 8:12 pm.

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, __, ECC, Assessor, Highway