

ZONING BOARD OF APPEALS

August 20, 2013

Present: Michael Dudick, Chairman, Michael Bloss, Jerry Cifor, Mario Fantini, Jennifer Vucetic

Also Present: Lou Renzi, Esq., ZBA Counsel
Steve Myers, Director, Building & Zoning

Absent: Randy Gifford, Chris Lemire, Doug Strother

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

PLEDGE OF ALLEGIANCE

Mr. Dudick informed this is a seven member board with one alternate. To receive approval an application must receive 4 yeas regardless of the number of members present. There are four members present tonight. Mr. Fantini, alternate, will be sitting in for Randy Gifford making a board of five. Applicants must receive 4 of the five votes for approval. Anyone wishing to defer to the next meeting, if you feel there may be more members present then, may do so. There are no guarantees that any meeting will have a full board of seven members, but they try. He explained that there is only one meeting in July and August because of the summer and in September they meet every other week.

Mr. Dudick requested everyone turn off cell phones as they interfere with the recording device.

In addition, Mr. Dudick made it known to all applicants that use variances require more scrutiny and more documentation than area variances.

OLD BUSINESS:

1) An application from John K & Deborah L Hill for 1) a use variance from Section 208-97B(2)(c) Proposal is to increase non-conformance by demolishing a 1200 sq ft house, combining lots and constructing a 1400 sq ft house in a different location 2) a variance from section 208-11 which requires 40,000 sq ft for parcels without public sewer. New septic system proposed. Total area = 21,109 sq ft; variance required = 18,891 sq ft. Property located at 144 East Side Drive, Ballston Lake, NY 12019 (Permit#80922)

Mr. John Hill, owner of the property, continued his presentation from the July 16, 2013 meeting. Mr. Hill presented a packet of documentation for proof of hardship. In the packet 1) information indicative of the prior use of the home as a residence of 1150 square feet 2) pictures of the house 3) a letter from the selling real estate agent describing the condition of the home (Charles Goodrich) 4) from his builder informing the condition of the home and his inspection after finding the state of collapse 5) a letter from the builder Van Slyck 6) a letter from a second builder (Crosse) 7) the notice of cancellation from the insurance company. Mr. Hill informed he was unable to get the underwriter's file copy as he was told by the insurance company it had not been retained 8) pictures of the interior of the house showing the walls and ceiling collapse, demonstrating they did not create the hardship.

Mr. Hill pointed out the home is not on the lake, but in the woods and most of the properties on East Side Drive are non-conforming. He added that his lot is a little bigger than 22,000 sq ft and is surrounded by woodlands which will not be built on by the neighbor. He also presented a schematic of the proposed house and its new location. He asserted that if one added the square footage of the garage to the old house it is greater square footage than the home they are asking to build. He also presented a document from the tax office showing the land of Ruth Gresher, Mr. Hill's aunt, who has offered to give the Hills the lot she owns of 1.24 acres. He explained he and his wife told her that they would have to go with the property that is on the corner. He summarized they did not create the hardship of the structure collapsing, and again asked for the variance.

Mr. Dudick summarized the application for the benefit of the members who had not been at the July 16 meeting. He explained this is a use variance and because of that, the board required proof of hardship. At the last meeting, Mr. Hill was asked to provide a letter from the insurance company showing the notice of cancellation to prove the hardship was not self-created.

Mr. Dudick reviewed the insurance letter notice of cancellation Mr. Hill provided, informing the board that the insurance company indicated the home did not qualify for the program based upon question of occupancy because of the condition of the roof.

Mr. Bloss apologized for his question, but explained he was not present at the last meeting. He asked if Mr. Hill lived in the house. Mr. Hill responded they live 100 yards away. He further explained he and his wife had purchased the house for \$70,000 which is now a vacant lot, with the purpose of rehabilitating it for their son, but then the structure collapsed.

Mr. Bloss questioned, if they went through a real estate agent, why didn't they have an inspection.

Mr. Dudick explained that the homes in that area were built in the 1930's, and they are looking at taking two separate building lots (to which Mr. Hill added, they are now combined into one lot, and Mr. Myers confirmed it is one deeded lot). Mr. Dudick stated this goes in the direction the town would like to see, it is still non-conforming, but a lot less non-conforming than it was and less than many of the other lots.

Mr. Dudick added they are still obligated to meet the use variance requirements and at the last meeting, the applicants did not have the financial information needed. He said now they have presented a better information package and explained that every application is unique requiring different financials. He stated that, with what they have presented, he has a level of confidence and he does not have a problem with the application and it substantiates what they were discussing at the last meeting.

Mrs. Vucetic asked if the septic system is in working order.

Mr. Hill responded they have a new septic system proposed, and that they are not on the lake.

Mr. Myers added that the engineers were involved and it should be fine.

Mr. Dudick announced the public hearing and asked for comments. There were none. Motion to close public hearing by Mr. Dudick, seconded by Mrs. Vucetic. All approved. Public hearing closed.

Mr. Myers informed he has no issue with the application and he is good with it.

Mrs. Vucetic made the motion to approve the application as submitted. Mr. Fantini seconded.

Ayes: Cifor, Dudick, Fantini, Vucetic, Bloss Noes: none

Application approved as submitted.

**2) An application from Firehouse Road Associates II, LLC for 1) use variance from Chapter 171 of town law to allow an offsite freestanding sign to remain 2) use variance from Section 208-97(2)(a) expansion of a non-conforming use, to add third sign to non-conforming sign structure 3) variance from Chapter 171 which allows one freestanding sign per parcel. Delmonico's requests second freestanding sign on Rt 146 in conjunction with sign at Fire Rd & Northside Dr 4) area variance for new freestanding sign setback. 15' required, 1' available, variance required = 14' 5) variance for directional signage as requested 2 sq ft per sign allowed (171-46 (3) 24sqft requested per sign; variance required per sign=22 sq ft
Property located at 5 & 7 Northside Drive, Clifton Park, NY (Permit #80916)**

Discussion ensued as to the disposition of the previous applications (80915 & 18016). Mr. Myers informed this is re-write of #18016 and takes the place of both of the previous applications. It was re-noticed as Permit #18016.

The continuation of the application was presented by Gavin Vuillaume, Environmental Design, and is representing the Firehouse Road Associates (Ed Abele, Frank Carnivale, Delmonicos).

He explained they are discussing Delmonico's restaurant (currently under construction) and Chili's and Comfort Inn Suites and the signage which is currently on the property. He explained they, at first talked about a use variance to add Delmonico's name to the current sign which is now non-conforming and then, at the last meeting on July 16, presented another option designed to get around the need for the use variance. He summarized that the board indicated they would rather leave the sign as it is and modify it, calling it a directional sign and then allow Delmonico's to have a sign out front on Rt 146). He explained the five variance requests in the application.

Mr. Dudick said when Mr. Vuillaume came before the board last month, he was representing Delmonico s, and the board realized that the application affects all three of the applicants who have a stake as far as the signage issue is concerned.

Mr. Vuillaume again related the history of the sign, which was a shared sign on one site with several businesses on it (group of establishments). He continued that now the lot has been subdivided into three lots creating an offsite sign issue.

Mr. Dudick offered his opinion that historically the board has been opposed to offsite signage but they had already come to the conclusion when the property was developed that the sign was fine as far as size and location. He said the question would be: do they now have a difference in the way they want the signage to be or do they go with the original intent. He added that it is his understanding the board felt this was a reasonable arrangement when the property was developed and it can continue that with the understanding that the hotel and Chili's will not have freestanding signs in front of their locations.

Mr. Vuillaume agreed.

Mrs. Vucetic asked if this agreement (about the hotel and Chili's) should be in writing that they not come back. Mr. Myers suggested it be made a stipulation in the notice of decision letter.

Mr. Dudick asked Mr. Vuillaume if he has the authority to agree to that and Mr. Vuillaume said he does.

Mr. Renzi asked Mr. Vuillaume the location of the second sign. Mr. Vuillaume responded it is located on Rt 146. Mr. Myers agreed they are adding the additional sign on 146.

Mrs. Vucetic asked if there is signage on the side of the Delmonico's building.

Mr. Dudick answered the wall signs are already there. He added there is a wall sign on the building, a sign in front, and the directional sign on Firehouse Road. He said the question was the size of the sign and they have already come to the conclusion that due to the uniqueness of the location they need a directional sign which would allow people to understand where to turn. The size of the directional sign was already agreed upon.

Mr. Dudick announced the public hearing and asked for comments. There were none. Motion to close public hearing by Mr. Dudick, seconded by Mr. Cifor. All approved. Public hearing closed.

Mr. Myers asked to have the notice read as it is a new application. The secretary read the public notice into the record.

Mr. Bloss asked if this would leave it open for the other property owners (Chili's and Comfort Inn) to come back to ask for a freestanding sign.

Mr. Dudick answered it will not if the stipulation indicates they cannot.

Mr. Myers responded that the stipulation will say they do not want signs on 146. He stated that signs on Rt 146 would not do them any good because that is not the entrance to their establishment.

Mr. Bloss questioned why Delmonico's needs a second sign. Mr. Myers answered that it is a new business and added he does not have a problem with it.

Mr. Bloss asked why the sign is so close to the road.

Mr. Vuillaume responded if they put it where the setback is, there is a ditch and it would be in a hole. Mr. Myers mentioned the sign would be in their parking lot.

Mr. Bloss made the motion to approve the application with the stipulation that Chili's and the hotel will not request and waive their right to a freestanding sign on their property. Mr. Myers added it is specific to the hotel and Chili's and others waiving their right to the freestanding sign. Seconded by Mr. Cifor.

Ayes: Dudick, Cifor, Vucetic, Fantini, Bloss Noes: none

Application approved with stipulation Chili's and the hotel both waives their rights to a freestanding sign.

NEW BUSINESS

The secretary read the legal notice as it appeared in the Daily Gazette on August 15, 2013.

**1) An application from Brian D'Ambro/Concord Pools for a variance from Section 208-12A. Setback required = 80' from front property line. Pool was installed at 61' from property line. Variance required = 19'.
Property located at 1 Legends Way Ballston Lake, NY 12065 (Permit#80929)**

The application was presented by Brian D'Ambro, representing Concord Pools. Mr. D'Ambro informed the pool in question has already been installed and was put in the wrong spot and does not meet the setback requirements of a secondary building. He said it has been completed and landscaping has already been done around it. They are here for a variance of 19'.

Mr. Cifor asked the type of pool and Mr. D'Ambro responded it is concrete.

Mr. Dudick questioned Mr. D'Ambro if the company has a fair amount of experience with pools like this, and Mr. D'Ambro answered it does. Mr. Dudick asked if they ever check the building codes and if they were aware of the zoning issues and where to put the pool.

Mr. D'Ambro he said he filed for the permit but he was not aware of the secondary building requirement as far as the setback. Mr. Dudick asked if that is not something his company has ever encountered. Mr. D'Ambro answered he has not come across that.

Mr. Myers responded to Mr. D'Ambro's answer, holding up the permit they issued to the pool company which, he said, clearly reads 80' from the property line to the pool edge. He said it is his understanding that the far pool edge actually is 80' from the property line rather than the near edge. Mr. Myers strongly asserted they were made aware of the requirements whether they knew what the code was or not. He continued that, all that being said, he does not have a problem with what happened because when the building department issues the permit, they don't go back out to inspect until it is completed. He reported when he drove by and saw it, he could tell it was very close and by then they were 90% done with it. He repeated he does not have a problem with it and it is nicely landscaped and it is still within the normal setback for the house.

Mr. Dudick asked Mr. Myers if it would be worthwhile or cumbersome to do spot checks on pools during excavation. Mr. Myers agreed that especially on the corner lots it might be something they need to look at more. He said usually they don't have these problems and this one just happened to slip through. He suggested they could add to the permit that they go out and inspect before they pour the concrete. Mr. Dudick asked if that change would require a Town Board decision and Mr. Myers answered that it is internal and the building department can do it.

Mr. Dudick announced the public hearing and asked for comments. There were none. Motion to close public hearing by Mr. Cifor, seconded by Mr. Dudick. All approved. Public hearing closed.

Mr. Dudick asked Mr. D'Ambro how long the company had been in business and how long he had worked for them. Mr. D'Ambro answered they had been in business for 40 years and he had been with them for 20 years. Mr. Dudick informed it would be disappointing if the same situation came up again. Mr. Dudick then stated he has no problem with the application and made the motion to approve. Seconded by Mrs. Vucetic.

Ayes: Fantini, Vucetic, Dudick, Bloss, Cifor Noes: none

Application approved as submitted.

2) An application from MK2CSWAG, LLC for a use variance from Section 208-10B. Building is within an R-1 zone. Applicant proposes converting building to office use not allowed in R-1 zone. Building was previously a daycare under specific special use permit. Property located at 511 Clifton Park Center Rd, Clifton Park, NY 12065 (Permit #80925)

The application was presented by Duane Rabideau, for Gilbert Van Guilder, Surveyor, representing MK2CSWAG, LLC. Mr. Rabideau informed the applicant wishes to convert the present residence on the property into office space. He related the history of the building which was a daycare in the 1990's. He informed there would be few changes on the outside, and they would like a variance to convert it to commercial use. He asserted it would clean up the corner and suggested it would be an advantage to the Town because they would still have control over the parcel. He explained that statement by adding if it were commercial, the Planning Board could stipulate what can and can't happen to the parcel. He stated he thinks because the property is on a busy intersection, it does not fit as residential. Mr. Rabideau described the location and surrounding areas.

In discussing the applicant's inability to get a reasonable rate of return, he informed the applicant has invested \$60,000 to stabilize the building. He stated that and in order to get it up to residential standards they would have to put in a kitchen and replace the bathrooms, which he claimed will cost another \$50,000. He admitted he knows it would be considered spot zoning, but there is enough mix of residential and commercial in that area. He reiterated that if the use is not granted, it will be residential and the town has no control, but if it is, the town can say exactly what it wants.

Mr. Dudick, at this point, asked for the legal notice to be read for the record.

The secretary read the legal notice as it appeared in the Daily Gazette on August 15, 2013.

Mr. Fantini requested written documentation of the economic hardship.

Mr. Rabideau presented a \$119,000 estimate from Hinman Construction for the cost to convert the building back to a residential home.

Mr. Dudick asked if the YMCA still owns the property, and Mr. Rabideau said it does not. He informed the applicant owns it and lives adjacent to it on Moe Road.

Mr. Dudick asked if everyone living within 500 feet has been notified and the secretary verified she had received proof of notice for the record.

Mr. Dudick questioned why Mr. Rabideau stated if the town gives a use variance it will have control, adding, as if the town has no control otherwise. Mr. Rabideau explained his opinion that the town does not have as much control over what is done for a residence.

Mr. Myers agreed that is somewhat true but if they move the driveway they would have to get permission for a new curb cut. He stated he is having some trouble understanding what Mr. Rabideau means also.

Mr. Rabideau responded that the town can decide for commercial what they can and can't do to retain the residential appearance of the building.

Mr. Dudick noted he has seen some construction going on there and Mr. Rabideau responded they fixed the roof. Mr. Dudick pointed out that some of the cost is for no other reason in that this is a very old building which would be the case whatever they do with it.

Mr. Rabideau repeated the applicant has taken out a \$60,000 loan to stabilize the building. Mr. Dudick commented the building is fitted out for daycare use and Mr. Rabideau answered it was. Mr. Dudick questioned whether it is now fitted as a commercial entity. Mr. Rabideau informed it is not fitted for anything and there is no kitchen and it needs to upgrade the bathrooms for residential.

Mrs. Vucetic questioned what kind of office they are planning to have.

Mr. Mike Ferguson, owner of the property, came to the podium to answer questions. He informed that when he purchased it, it was a daycare, and it has been vacant for five years. He described it as a nice structure, but run down with some leaking, water damage, trees down and the kitchen stripped out. He mentioned the loan they took out to stabilize the roof, replace the windows and remove trees. He said they would have to add a kitchen area and update one bathroom and that would cost another \$50,000 - \$60,000.

Mr. Dudick asked Mr. Ferguson if he were to turn the building into a residence is he saying it would cost \$50,000 to \$60,000 more than what would it cost to turn it into an office building. Mr. Ferguson said the \$60,000 loan they already took out would stabilize the building and cover all the rest of it. Mr. Renzi offered that he thinks he means it would be incrementally over and above the loan.

Mr. Dudick requested clarification, asking if he were denied the use variance, would it cost him \$50- \$60,000 additional to convert it to residential and how much to convert it to commercial. Mr. Ferguson answered it would cost the additional \$60,000 to convert to residential but for the commercial building, they have already spent \$18,000 and another \$25-30,000 would be enough to complete it from the original loan..

Mr. Dudick inquired if he has an estimate for converting to commercial as he had an estimate to convert to a residence. He referred to the estimate for conversion to residential, citing ceiling, painting, cleanup, etc. and pointing out that those things would be the same requirements for commercial. Mr. Ferguson answered he used to be involved in the general contracting business and he would do all the work himself. He said he got the professional estimate to convert to a residence so the board could get an idea of the cost.

Mr. Dudick stated he is looking for a comparison of the difference between the two. Mr. Ferguson said he does not have an estimate for converting to commercial but he figures the \$30,000 he has left from the loan should get him close to it.

Mr. Dudick asked if the difference of \$20,000 Mr. Ferguson is suggesting is the cost of cabinets and sinks, etc. He informed he knows that office buildings have certain requirements and commercial bathrooms can be more expensive than a bathroom in a residence, as they need hand rails and have size and ADA requirements. Mr. Ferguson stated he is familiar with that.

Mr. Dudick asked if there is any interest in maintaining it as a daycare and renting it out because then the input would be negligible.

Mr. Ferguson responded he is open to anything to “stop the bleeding”. He explained it is 25 feet from their back porch. He expressed the opinion that if it is commercial people would be there during the day and leave at night and it would be quiet and they could use their yard whereas if they rent they would have to be picky about their neighbors.

Mr. Fantini asked why the hardship is not self-created. He pointed out that Mr. Ferguson knew the condition of the property when he purchased it.

Mr. Ferguson said he didn’t know about the zoning. He added he knew it had been a daycare for the last twenty-five years but he didn’t know it would be such a process to continue on as it has been.

Mrs. Vucetic asked if he is looking to maintain ownership and rent it out. Mr. Ferguson said they intend to keep it and regulate and control what goes on there.

Mr. Dudick informed that what happens with any business, commercial properties have certain traffic flows and there are also parking issues. He explained it relates to the vision the Town has as far as where they want to put things. He pointed out that the location of the library caused quite a stir because there are people who live on Moe Road and until then it was residential with a couple of entrances into the school. He continued, schools are perceived differently and daycare is also a different type of environment and is more like a school. He explained the board has to look at the master plan of the Town and where the Town wants to locate businesses and offices.

Mr. Dudick discussed in detail, the requirements for granting a use variance, reading each one. He pointed out that there is a need for financial evidence to show that the owner cannot realize a reasonable rate of return as shown by competent financial evidence. He explained, that means you have to show financial evidence as to what the problem is if the variance is not granted. He continued: the alleged hardship is unique and does not apply to substantial portion of district or neighborhood. He pointed out this would be the only office that he is aware of along Clifton Park Center Road or Moe Road, so it would be putting an office where there are no offices. He mentioned a couple of offices that are residences with doctors situated in them and explained doctors and lawyers have to use 25% of their residence as professional use.

Mr. Bloss referred to the barber shop on Moe Road, and Mr. Dudick responded it was a pre-existing non-conforming use and wouldn’t be allowed if it were requested now.

Mr. Dudick continued defining the requirements for a use variance, “does not alter the essential character of the neighborhood and the alleged hardship has not been self-created, as Mr. Fantini brought up”. He informed Mr. Ferguson that his attorney should have done due diligence when he was looking over the contract with him so he knew what is going on with the property. He said, as an example, whether it has hazmat waste, etc. He quoted “let the buyer beware”.

Mr. Ferguson admitted they jumped right on buying it and thought it was ok because it had been a daycare.

Mr. Dudick suggested, since it was a daycare, if Mr. Ferguson was coming before the board for that, it would have a greater chance of grandfathering because of former use. He also cited the barbershop usage, explaining that when something has been there for a while, if it is not now an allowed use, it gives the board an idea of the impact it has had on the neighborhood.

Mr. Ferguson asked what the impact of an office would be. Mr. Dudick responded that it could be any kind of office. He explained it could be a professional office or something that has a lot of traffic in and out because it has salesman going back and forth. He stated they cannot tell people the type of business they can rent to.

Mr. Ferguson said he didn't know he had to come before boards to ask to build an office building. Mr. Dudick explained that once a variance is granted, they don't get to pick the tenant. He pointed out it could be an exterminator's office where trucks are going in and out and a parking lot with five or six trucks entering daily. He continued, whatever it might be, it adds to the traffic along that corridor and that is why they try to avoid plot zoning.

Mr. Ferguson stated he isn't sure what to do from here. Mr. Dudick informed he could ask the board to vote on it or withdraw the application, but he himself is not pleased with turning it into an office building although each board member has their own vote.

Mr. Ferguson asked Mr. Myers for his opinion. Mr. Myers responded that daycare is nowhere near a commercial use. He explained it is specifically allowed in a residential zone with a special use permit from Planning with the knowledge that daycare is a low traffic, light use. In that specific location the low traffic was a big consideration. He said he personally cannot see a commercial building on that corner without creating a situation traffic-wise. He added that when that was approved as a daycare 20 or 30 years ago, traffic was not like it is now in that location. He told Mr. Ferguson, he doesn't see how he can make the property viable for commercial parking because of the setback requirements, and putting parking closer to the road will not go over well. He explained the daycare just went on from one owner to another, but he does not believe the property is viable for commercial, pointing out that if they get blanket approval it could be any kind of business. He summarized that he agrees, as Mr. Rabideau stated, it looks like spot zoning.

Mr. Ferguson questioned whether it could be continued on as a daycare. Mr. Myers answered the special use permit runs with the property so if he wants to make it back into a daycare, he can. He added, other than that, if you want to make it something different you have to come here for permission.

Mr. Ferguson asked if he wanted to do use it for daycare he wouldn't have to come back. Mr. Myers said he would deal directly with him and with the Planning Department. Mr. Ferguson responded than he wants to withdraw his application.

Mr. Myers informed if the board votes on it and does not approve it, he cannot come back unless he submits a greatly changed application, but if he withdraws nothing will happen. He suggested he might want to rework his application just go the daycare route.

Mr. Dudick stated it is a good corner lot, and maybe 25 years from now the town might want to look at it and decide they would be ok with offices there, but for now they are looking to preserve the buildings.

Mr. Myers added that the driveway and parking is ok the way it is now, but if he goes to expand it, it will be a different story and they would need to come for a variance. He pointed out to the board that his second application was for the parking.

Mr. Ferguson stated he wished to withdraw his application. Mr. Myers asked if the withdrawal applies to both applications (#80924 & 80925) and Mr. Ferguson agreed. The record will reflect the applicant withdrew both applications.

3) An application from MK2CSWAG, LLC for setback variance for existing building in R-1 zone. Variance to be considered only if separate use variance (#80925) to allow office use of building is approved. Residential setback is 50', available = 19', variance required =31' (front yard) No parking setback requirements.

Property located at 511 Clifton Park Center Rd, Clifton Park, NY 12065 (Permit#80924)
Application withdrawn and not read into the record.

The secretary read the legal notice as it appeared in the Daily Gazette on August 15, 2013.

4) An application from Dan Lill for a variance from Section 208-86B to construct a deck. Rear setback variance in R-1 zone, keyhole lot, requested. 50' setback required, 45' available, 5' variance requested.

Property located at 7 Carrington Court, Clifton Park, NY 12065. (Permit #80930)

The application was presented by Mr. Dan Lill, Abele Builders, for the customers purchasing the 7 Carrington Court residence. He explained that the proposed deck will impose on the rear setback by five feet and they are asking for a variance.

Mr. Dudick asked if there were comments from the public or from the board. There were none.

Mr. Myers stated that if this were not a keyhole lot Mr. Lill would not be here, but because of the 50' setback requirement they have to be. He added he does not have a problem with it.

There were no questions from the board members.

Mr. Dudick agreed that he doesn't have a problem with it either. He asked for public input; there was none. He made the motion to close the public hearing, seconded by Mrs. Vucetic. All approved. Public hearing closed.

Mr. Fantini made the motion to approve the application as submitted, seconded by Mrs. Vucetic.

Ayes: Bloss, Vucetic, Fantini, Dudick, Cifor Noes: none
Application approved as submitted.

Mr. Dudick called for a five minute recess at 8:25.

The secretary read the legal notice as it appeared in the Daily Gazette on August 15, 2013.

5) An application from Elacia Harple for a variance from Section 208-12A for pool and shed. 80' setback required, 10' available, 70' variance requested.

Property located at 5D Lacosta Drive, Clifton Park, NY 12065 (Permit #80931)

The application was presented by Mr. Don Harple, spouse of Elacia Harple, both owners of the home on 5D Lacosta Drive. He stated they are asking for a variance for their pool and shed. He informed they are on a corner lot and because of that, cannot meet setbacks. He said the 30' right of way would put it right into their neighbor's property. He explained that the pool and shed are two separate projects but Mr. Myers suggested they submit them together so they would not have to return again.

Mr. Cifor asked if they will install a privacy fence higher than the pool and shed structure. Mr. Harple answered it would be about four feet or higher.

Mr. Myers explained that, because of the nature of the properties in this area, they cannot meet the setbacks. He summarized they have this issue with the fourplexes and they have had several of them over the years. He indicated he used the pool for reference because it will be the closer of the two structures and, if that is granted, then the shed would be ok. The fence will be required to meet the pool enclosure law unless the pool is over 48" high and then the fence can be something different. Responding to Mr. Cifor's question, he explained it will depend on what the pool is, what the fence will be. He added he does not have any problem with the application.

Mr. Dudick asked the size of the shed and Mr. Lill answered it is 8' x 10' feet. Mr. Myers stated he doesn't need a permit for the shed, but it still has to meet the setbacks.

Mr. Harple informed the pool will be 36-40" high to which Mr. Myers responded the pool will require a fence of four feet with a latch.

Mr. Dudick announced the public hearing and asked for comments.

Mrs. Elacia Harple came to the podium and pointed to the plan, showing where the fence will be located and stating the area will be completely covered so no one will be able to see it.

Mr. Myers said he is ok with the application.

Mr. Cifor made the motion to close public hearing, seconded by Mr. Fantini. All approved. Public hearing closed.

Mr. Fantini made the motion to approve the application as submitted. Mr. Bloss seconded.

Ayes: Cifor, Dudick, Fantini, Vucetic, Bloss Noes: none
Application approved for 70' setback variance.

The secretary read the legal notice as it appeared in the Daily Gazette on August 15, 2013.

6) An application from Trojanski Builders, LLC for a variance from Section 208-11, space and bulk standards which require 100' at lot width at front building line. Applicant requests lot widths: 1@80'; 5@84'; 1 @ 99'; 1@121'. 8 building lots plus 1 lot for environmental habitat. Property is located at 535 Clifton Park Center Road, Clifton Park, NY 12065 (Permit#80932)

For the record, Mr. Dudick read a letter from John Scavo, Planning Director, regarding the application. Mr. Scavo reviewed the plan presented before the Planning Board. He explained the original plan met the setback requirements but the Planning Board requested the applicant adjust the lot lines away from the identified critical habitat area. In doing so, the applicant is placed in a situation needing area variances. He has reviewed the revisions and supports the applicant's request for the variances due to his supporting the protection of the critical habitat area on the site.

The application was presented by Mr. Gavin Vuillaume, Environmental Design, representing the applicant Trojanski Builders. Mr. Vuillaume referenced the area on the map. He speculated that the habitat area had discouraged building there in the past and explained that it is one of the areas in Clifton Park that is a well-known butterfly habitat which has been monitored over the past 5-6 years. He informed the habitat is concentrated in the one location and is worthy of protecting. They had contacted DEC for their input and informed they have no problem with what they are doing. He said the Planning Board asked the applicant to give as much land as possible in case the area shifts. He informed the area has blue lupine plants growing there (they have not found Karen Blue butterflies) but they have observed Frosted Elfin butterflies, which are a rare and endangered species. He summarized it is worthy for the applicant to reduce the lot sizes to provide more buffer for the butterfly area.

Mr. Bloss asked if their intention was always to have the eight lots. Mr. Vuillaume answered that originally it was to be nine lots. He asserted there is plenty of room for the homes.

Mr. Myers informed he has seen other renditions of the plan and that the lots meet the minimum requirements, size-wise and they have public water and sewer. He said there is no problem with the size of the lots, just the way they have to be configured because of the property.

Mr. Dudick asked Mr. Myers if he thought it was too ambitious to get eight houses in there. Mr. Myers responded he did not think it is.

Mr. Dudick announced the public hearing and asked for comments. There were none. Motion to close public hearing by Mr. Dudick, seconded by Mrs. Vucetic. All approved. Public hearing closed.

Mr. Dudick summarized that they have been working on this project for a while with the issue with the Blue Karner and Frosted Elfin butterflies. He stated he thinks when they work in conjunction with the environmental groups to protect and still develop it is a win-win situation.

He said accommodations have been made for the endangered species and he has no problem with it now.

Mr. Renzi, Town Attorney, announced he had a disclosure. He spoke, informing for the record, that Debra Spellman is the current owner of the property and the wife of Mr. Peller, the attorney for this board. Mr. Peller has recused himself and for that reason, Mr. Renzi is sitting in for Mr. Peller tonight.

Mrs. Vucetic spoke, informing for the record, that as a realtor, she had once listed the property, but she is not representing Mrs. Spellman and does not have the property listed at this time and has no financial gain from it.

Mr. Dudick asked if anyone would like to make a statement from the audience with regard to this announcement, and if so, he will re-open the public hearing. No one indicated they wish to speak. Public hearing remains closed.

Mr. Bloss made the motion to approve the application as submitted, seconded by Mr. Cifor.

Ayes: Vucetic, Bloss, Fantini, Dudick, Cifor Noes: none
Application approved as submitted.

The secretary read the legal notice as it appeared in the Daily Gazette on August 15, 2013.

7) An application from Mark Ashman for a variance from Section 208-11 for (1339 sq ft 2 car garage); minimum side setback required=10', variance requested = 5'. Property is in B-3 Zone with underlying R-1 zoning and R-1 zoning adjacent. Property is located at 6 Heavenly Way, Clifton Park, NY 12065 (Permit#80933)

The application was presented by Matthew Chauvin, representing owner of the property at 6 Heavenly Way. Mr. Ashman requested a 5' variance to allow him to construct a two car garage with additional storage to the rear of the home. He informed he had consulted with his neighbors and their only concern was to ask that the garage be built to fire code. He passed out additional materials, a survey of the property and pictures of where the neighbor's homes are located. He explained the neighbor's home is 17 feet from the property line and the applicant's 5' encroachment in the setback would leave a 22 foot buffer between the two structures.

Mr. Myers offered his opinion that it is a large addition, but it will work.

Mr. Chauvin added that it will avoid needing any outlier buildings.

Mr. Dudick asked the number of garages the home now has. Mr. Chauvin answered it has two bays now. Mr. Dudick speculated that if the variance is granted, then it will have space for four cars.

Mr. Chauvin responded to his question that it would house up to four cars, but they are going to convert the present garage into living space, so they will only have a two car garage.

Mr. Myers offered there is a rough layout of the proposed plan, but there has been no building permit issued. Mr. Dudick summarized that it would house four cars and later two cars, and Mr. Chauvin agreed that is the intent of the applicant.

Mr. Fantini asked if they had looked at a different location for the living space where they would not need a variance.

Mr. Chauvin answered that the intention is to add the garage and storage space so the current garage may be used as living space because it is attached to the house. The only option would result in a separation of the garage from the house.

Mr. Dudick announced the public hearing and asked for comments. There were none. Motion to close public hearing by Mr. Dudick, seconded by Mrs. Vucetic. All approved. Public hearing closed.

Mr. Dudick stated it does not strike him as overly burdensome and the intention is to shift the garage to living space. He added he has no problem with the modification and asked why they are doing this. Mr. Chauvin answered the family has grown and need more space. Mr. Dudick announced he would be in favor of this.

Mr. Myers stated he has no problem with the application.

Mr. Cifor made the motion to approve the application, seconded by Mr. Bloss.

Ayes: Dudick, Cifor, Fantini, Vucetic, Bloss Noes: none
Application approved as submitted.

The secretary read the legal notice as it appeared in the Daily Gazette on August 15, 2013.

8) An application from Nathan Rey Whetten to demolish pre-existing non-conforming cottage on non-conforming lot. Proposal is to combine lots for future construction of one residence. Minimum lot size required = 40,000 sq ft, .64 acres (27,878 sq ft) available, variance required=12,122 sq ft. Property is located at 151 Eastside Drive, Ballston Lake, NY 12019 (Permit #80934)

The application was presented by Nathan Whetten, owner of the property, along with his wife Jenny, both residents at 159 Eastside Drive. He informed they had purchased two lots, each about 1/3 of an acre from the Hearst family. Each lot has a cottage on it, neither cottage is winterized, and one being in bad shape. He described the condition of the cottage as having sagging floors in the bedrooms. He stated the cottages have not been lived in for the last several years. He described his proposal to combine the two lots and eventually have one home on the combined lots. He admitted it would still be non-conforming which is why Mr. Myers advised coming for a variance. He further explained the intention is to demolish the cottage which is in

bad shape, keep the other cottage temporarily, and when his daughter retires in a few years, demolish it and build one new home.

Mr. Dudick asked for clarification as to why they are asking for a variance. In response, Mr. Myers explained that the end proposal would be for both cottages to come down and build one home on the combined lot. He stated he advised them to get a variance now rather than down the road. He said the combined lot would still be non-conforming as it is less than 40,000 sq ft and has a well and septic, so they would need a variance to build. Coming for the variance now gives him permission to demolish the one and in the future the next one. He added that if, for some reason, he wants to expand the one that is still there, that is fine also.

Mr. Dudick queried whether it is a use variance. Mr. Myers corrected by saying it is an area variance because he is making the lot less conforming (like the last application) but all he is doing is demolishing the house now. He explained that the previous applicant wanted to expand the non-conformity by building a larger home on his lot making it a use variance. In Mr. Whetten's case, unless he wants to build a huge home, the home he will build will not go over the square footage allowed for the property, which is the area of the two cottages combined making it an area variance. He added both cottages have to come down to build the house.

Mr. Dudick summarized that if he built something bigger than the square footage of the two cottages, then it would be a use variance, and Mr. Myers said that is correct.

Mr. Dudick asked Mr. Whetten if he intended on building something larger and he answered "no".

Mr. Bloss asked what would happen if the property changed hands in the future. Mr. Myers informed the variance runs with the property and the area variance would still be in place.

Mr. Dudick announced the public hearing and asked for comments. There were none. Motion to close public hearing by Mr. Dudick, seconded by Mrs. Vucetic. All approved. Public hearing closed.

Mrs. Vucetic made the motion to approve the application, seconded by Mr. Fantini. Mrs. Vucetic asked Mr. Myers if she needs to put a stipulation on it that the second house has to come down. Mr. Myers responded it isn't necessary and if he wants to keep the second house the applicant does not have to come back for a use variance unless they go over the square footage.

Mr. Renzi asked if the deed is filed as one lot. He was told they would be combined.

Mr. Dudick summarized that this is to combine the lots for future consideration of one residence with the understanding there will only be one structure on the combined lots.

Ayes: Cifor, Dudick, Fantini, Vucetic, Bloss Noes: none
Application approved as submitted.

The secretary read the legal notice as it appeared in the Daily Gazette on August 15, 2013.

9) An application from SmartEarly Clifton Park, LLC for a variance from required setback for a freestanding sign. 15' setback required, 2' available, variance required = 13'. Property located at 39 Old Route 146, Clifton Park, NY 12065 (Permit#80935)

The application was presented by Nicholas LaFountain, project manager for Providence Development Group, and the tenant John Miller. He informed they are transforming the building to a daycare facility. He said they are looking for a 13' setback variance for a freestanding sign. There is a large right of way on the edge of the property. He referred the board to the site plan.

Mr. Dudick asked if the sign is the same size but the location is inadequate. Mr. Myers answered that the sign that used to be there is gone and the SmartEarly sign is there in the location. He explained that they feel because of the visibility between the trees and the traffic direction that this is a better location to identify the facility.

Mrs. Vucetic asked Mr. Myers opinion. He answered that he believes he has a point because it is more in the line of site of the drivers. He added that there are some trees that will significantly block the sign if they move it back where it is supposed to be.

Mr. Dudick asked about the former location of the sign. Mr. Myers answered it was right in the middle of the grassy area next to the parking lot. He stated he has no problem with the application. He explained that Mr. Miller is not here and Mr. LaFountain does not have authorization to represent the application only because the change occurred late this evening. The owner, Mr. Miller will be in the building office will be in tomorrow to sign the authorization form.

Mr. LaFountain explained he did not know about this until about six pm this evening. Mr. Myers informed that if they receive approval of the variance, it will not be approval until the form is completed. Mr. LaFountain said Mr. Miller is the tenant of the building.

Mr. Fantini asked why they don't cut down the trees. Mr. Myers answered it is because the Planning Department probably doesn't want them to cut down the trees. He added the tree is very large. Mr. Myers explained to Mr. Fantini there is a significant right of way through there because it used to be a state road so it goes considerably into that space. Mr. Dudick asked if it is still a state road and Mr. Myers said the town owns it but they never changed the right of way.

Mr. Dudick made the motion to close public hearing, seconded by Mr. Cifor. All approved. Public hearing closed.

Mr. Fantini commented it is a large variance.

Mr. Myers explained to Mr. Fantini that to really appreciate it, you have to be out looking at it. Mrs. Vucetic volunteered she often drives that way and it is a tricky corner. Mr. Dudick added there is a lot going on in that area, citing three different roads, a church, a firehouse and a glass business. He asked Mr. Myers if there is a site problem and Mr. Myers answered there isn't and the sign is back far enough.

Mrs. Vucetic made the motion to approve the application, seconded by Mr. Cifor.

Ayes: Bloss, Vucetic, Fantini, Dudick, Cifor Noes: none
Application approved as submitted pending Mr. Miller signs the authorization form.

The board deferred voting for approval of the June 4, 2013 and July 16, 2013 minutes due to lack of quorum of members present at each meeting.

Mr. Dudick requested the secretary e-mail board members and indicate their attendance is appreciated at the September meeting in order to clear up minutes approval.

The next meeting is September 3, 2013.

Mr. Fantini made the motion to adjourn. The motion was seconded by Mrs. Vucetic . The meeting was adjourned at 9:25 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