

*Approved*

## ZONING BOARD OF APPEALS

September 3, 2013

Present: Michael Dudick, Chairman, Michael Bloss, Jerry Cifor, Chris Lemire (8:20),  
Doug Strother, Jennifer Vucetic

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

Absent: Randy Gifford, Mario Fantini

Mr. Dudick called the meeting at 7:09 p.m.

### PLEDGE OF ALLEGIANCE

Mr. Dudick explained there are seven voting members and an alternate and applicants must have four votes of out of the seven for approval. He informed tonight there are five members present, two members and the alternate are absent, and applicants must get four of the five votes for approval. He stated that anyone who feels they would like to wait until there are better odds, can defer to the next meeting, but he cannot guarantee how many members will be present at any meeting. He explained one additional member will be arriving later tonight.

### **OLD BUSINESS:**

None

**NEW BUSINESS:**

*The secretary read the legal notice as it appeared in the Daily Gazette on August 29, 2013.*

**1) An application from Ray Sign, Inc. (Red Wing Shoes) for a variance from Section 171 town law for a 2<sup>nd</sup> wall sign for new business @ Clifton Park Center. Per previous variance #80627 space is allowed of 40 sq. ft. maximum for wall signs. Applicant requests 2 signs @ 40 sq. ft. each. Variance required = 40 sq. ft.  
Property is located at Clifton Park Center Mall, Clifton Country Rd, Clifton Park, NY (Permit #80936)**

Mr. Tim Prescott, representing Ray Sign and Red Wing Shoes, presented the application. Mr. Prescott explained the store is located at the corner of the mall and that he had spoken to Mr. Myers who said they could put two signs on the building. He stated they tried to keep the sign size within code but found the sign originally planned for above the door was too small to see the letters and logo from Clifton Country Road. He informed they tried to comply but the Red Wing Corporate Office and the owner of the Red Wing business didn't think the sign was big enough for the wall. (He showed pictures of the smaller signs they had first considered.) He said there are only seven characters and a logo and they want people to be able to identify that side. He added they are landlocked because of the location on the side of the mall.

Mr. Dudick asked Mr. Myers about the agreement the town has with DCG as to the size of signs allowed. He said he isn't sure if it is 40 square foot per sign or 40 square feet. Mr. Myers informed it was 40 square feet per tenant. Mr. Dudick asked Mr. Prescott, if 40 square feet is the pre-agreed upon sign size why they are looking at the 20 foot sign.

Mr. Prescott explained that the 20 foot square sign was a test sign, not what they are asking for. He said they already have installed the 40 foot square sign (which is allowed) on the other side of the building. He said originally they attempted to stay within the 40 square feet and they tried to see how two smaller signs would look. He created a plan for one 28 square feet and one 14 square feet but the customer said it was too small. As a result they went with one 40 square foot sign on the one side and now are trying to get the variance for another sign.

Mr. Dudick asked Mr. Myers if there has been a precedent set to go beyond the signage size limit for businesses with corner offices in the mall.

Mr. Myers answered that Alpin Haus and World Class Gym might have larger signs, but added they have a larger square footage of building space and he does not recall variances for either of them.

Mr. Prescott pointed out that Ray Sign had made two signs for Hair Essentials. Mr. Myers said he believes that was prior to the mall sign package agreement but that it might have a variance on it.

Mr. Bloss asked Mr. Prescott why he didn't put the 40 foot sign on the side facing the road.

Mr. Prescott responded that the original door was on the other side. They want a bigger sign over the entrance.

Mrs. Vucetic referred to an earlier application (Prime) that the board had addressed. She asked what signs the board finally gave them.

Mr. Dudick responded to her question, informing they have a larger directional sign and one sign outside the entrance and something inside the mall.

Mr. Myers informed that the next application is also from Red Wing and, along with this sign; they want a full window mural. He suggested they might think about putting the Red Wing logo in the window along with the mural. He said he doesn't have a problem with what they are asking for, but they may want the sign there rather than another wall sign. He informed the mural will cover the whole window and suggested the board might want to think about the applications together.

Mr. Dudick asked the secretary to read the second application, and for the sake of continuity, they will consider both applications simultaneously.

Mr. Strother stated he feels the second variance is in uncharted territory and he thinks this is an important time to evaluate this technology. Mr. Dudick repeated that, for continuity sake, he would like both applications to be considered simultaneously.

*The secretary read the legal notice as it appeared in the Daily Gazette on August 29, 2013.*

**2) An application from Ray Sign, Inc. for a variance from Section 171-6C.(1)(b) permanent window signs. Total area of window shall not exceed 50% of window area or 8 sq. ft., whichever is smaller. Variance required for 100% coverage, area estimated at 36 x 12 = 432 sq. ft.**

**Property is located at Clifton Park Center Mall, Clifton Country Rd, Clifton Park, NY (Permit #80937)**

Mr. Prescott informed he has a letter from DCG indicating they approve of the mural. He said when he first talked to Mr. Myers he was not clear if 50% of the window meant 50% of one window or the combined area of both windows. Mr. Myers clarified the code indicates they can have 50% of the window covered or 8 square feet whichever is smaller. He said 8 square feet is a lot smaller.

Mr. Prescott explained the reason they want to cover the window is to hide the back of the shoe racks so they are not seen from the outside and to keep the sun from coming in.

Mr. Dudick suggested another option would be to paint the windows black and asked Mr. Myers if that was allowed. Mr. Myers said that would not be a sign.

Mr. Myers informed there was a discussion between himself, Mr. Peller and Mr. Dudick to determine if the mural is a sign, per definition of the law. He said they determined it is a sign because it draws attention to the business.

Mr. Dudick offered an option to painting the windows black and suggested drapes. Mr. Prescott asked if it is allowed if they put a banner inside the store away from the windows. Mr. Dudick responded it would require legal and inspection opinions.

Mr. Peller stated doing that is still attempting to draw business to the store. Mr. Strother suggested it is circumventing the code.

Mr. Myers informed they could legally put the mural 3 feet from the window. Mr. Prescott asserted it would technically look no different. Mr. Dudick responded it would comply with code, but they would lose 3 feet of interior space and Mr. Prescott agreed.

Mr. Bloss referred to the picture Mr. Prescott submitted, asking if this is the mural they want to use. Mr. Prescott confirmed it is exactly the one.

Mr. Bloss asked what how will people interpret the mural. Mr. Cifor responded they would see a working man. Mr. Bloss commented that is a more attractive look than painting the windows black. He speculated what if there were drapes or pictures of flowers or whales in the window.

Mr. Strother said it is harder to adorn a window with a conventional coating than with modern printing technology. He suggested it is a great opportunity for the board to define the code.

Mr. Bloss suggested it is not a 400 square feet mural of the Red Wing logo but it could be.

Mr. Strother said this is preferable and has artistic value but the code on this is not well defined.

Mrs. Vucetic stated she would rather see a mural than a blacked out window. She asked if they could put something in the decision that murals could only be based on the Board's or Mr. Myers' approval. Mr. Myers responded he didn't think so because the Zoning Board of Appeals cannot change the law.

Mr. Myers informed it is a sign, but whether, in the future there is consideration to change the code because of new technology, he personally thinks the Town Board won't entertain change.

Mr. Cifor expressed he thinks its "neat" but his concern is that other businesses will want to do the same, and then asked if the board wants the whole town to look like that.

Mr. Strother suggested the board stay with the larger wall signs which are attractive and make sense, and defer the mural decision and suggested that it should sunset with a change of business. He clarified he is not making a motion. He repeated he wants to table the second application and go to counsel or do more research.

Mr. Dudick said the application was submitted for review so just to say that you want more time you can't do.

Mr. Cifor said it is attractive but the problem is if they approve this for this business, how can they turn it down for others. Mr. Dudick agreed that is something they must look at.

Mr. Myers reminded the board that with the digital sign, they had no way to stop the first one as they didn't have a code then. He suggested now this is the first one of these. (for a full window covering)

Mr. Dudick said this is a sign regardless of the technology. He is looking at it as simply a mural.

Mr. Myers asked Mr. Prescott if you can see out through the mural. Mr. Prescott answered you could not see through it, and pointed out there will be shelves there anyway.

Mr. Dudick stated he can't imagine that it would be expensive or difficult to put in a fake wall to covering over the window to create an image of a flat surface.

Mr. Prescott said he doesn't need a permit for covering 50% of the window. Mr. Myers said he would still need a permit. Mr. Prescott said he would not need a variance though. Mr. Myers agreed it would be 50% of the window or 8 square feet, whichever is smaller.

Mr. Prescott explained he has to answer to his customers tomorrow.

Mr. Dudick announced the public hearing and asked for comments about both sign requests, maximizing of signage for this tenant. He asked how large the store is. Mr. Prescott answered he doesn't know.

Mr. Cifor informed he had driven by the store and he does not think it is more than 4000 square feet.

Mr. Dudick explained signage is done for identification and location. This would make this unique to all businesses, and added he doesn't know of any other. Mr. Prescott answered he doesn't know of others either.

Mr. Dudick said it would be 50-60% of side of the building which is a big jump. Mr. Prescott reminded there is no logo or copy on the mural. He added you want to call it a mural or painting but it doesn't look like a sign.

Mr. Dudick asked if he is saying the mural has nothing to do with the business.

Mr. Prescott said "no" but people would see it as something else.

Mr. Dudick commented that if he drove past McDonald's and saw a picture of a salad he would think of food and he would think of McDonald's as a restaurant.

Mr. Prescott argued that gas stations advertise products and push it to the limit, advertising everything like coke, beer and cigarettes. Mr. Dudick said that would be a product as opposed to a store and businesses are allowed to advertise products they sell. He asked Mr. Myers if businesses are allowed promotional signs in their windows.

Mr. Myers answered they need a permit.

Mr. Cifor opined that the mural is attractive, but expressed concern it will set a precedent and reminded it might cause issues because others will request the same.

Mr. Strother said the mural is his anchor for this application and it is one big mural.

Mr. Dudick suggested they go back to the original application for the additional 40 square foot sign. He stated the 40 square foot sign looks fine but he again said he doesn't understand Mr. Prescott's intent showing them picture of the smaller sign and asked if that is what he wants.

Mr. Prescott said it is not what he is asking for and explained the picture was simply to show the board they tried to comply with a smaller sign and this is how it looked.

Mr. Dudick said he appreciates the graphics and asked what he is asking for. Mr. Prescott answered he is asking for another 40 square foot sign. Mr. Bloss pointed out the first was approved. Mr. Prescott agreed, it was approved and going up tomorrow.

Mr. Dudick asked if he didn't want to try for two smaller signs. Mr. Prescott repeated they had tried different layouts but the owner didn't approve the signs so they made the case to make the one for 40 square feet and try for another sign of the same size.

Mr. Bloss asked if the signs match, and Mr. Prescott confirmed they will look symmetrical.

Mr. Cifor said you would have to actually be in the mall to see the sign. Mr. Strother agreed it is a tricky location.

Mrs. Gina Briscoe stated she thinks the symmetry looks good and look nice. She added she tends to agree with Mr. Cifor about the mural, that if they do it, others might want the same.

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

Mr. Strother made the motion to accept the additional 40 square feet for the sign with the stipulation that the variance expires (sunsets) if the tenant leaves the location. Mr. Cifor seconded the motion.

Mr. Prescott agreed with the stipulation.

Mr. Myers offered his opinion that he has no problem with the second sign, saying it is a corner building and most tenants with corner buildings have two signs whether they have a variance or not. He added it is not unique to the plaza.

Mr. Peller informed that Mr. Prescott had signed the authorization form as the owner, but DCG needs to sign it authorizing Mr. Prescott. Mr. Prescott agreed to get the signed paperwork to Mr. Myers.

Ayes: Bloss, Vucetic, Dudick, Cifor, Strother    Noes: none  
(Mr. Lemire was not present for the vote)

Mr. Dudick then addressed the second application, for the mural overlay of men at work.

Mr. Peller advised they would not necessarily call it a mural and the word mural is not in the code. He suggested the board look at it as a permanent window sign.

Mr. Myers said he has no problem with it once he understood why they needed it. He added that if DCG had come to them and said they were doing it there would have been no problem because there was no business associated with it. He added the caution that because it is associated with a business, you have to call it a permanent window sign.

Mr. Myers and Mr. Dudick discussed the difference between DCG putting it up, as it is not associated with a business, and a business putting it up.

Mr. Peller said it depends on the purpose of the sign.

Mr. Myers argued it is a sign but there is good reason for it and it is not like it is the only window. He stated most tenants have only one window and they wouldn't want to cover the only way to see into the store. He asserted this is a unique case. Mr. Myers read the exact wording of the code. Discussion ensued as to what is a sign.

Mr. Bloss asked what was in there before Red Wing. Mr. Myers answered he does not remember but it had been empty for a while.

Mr. Prescott speculated what would happen if he had a florist and he put trees and flowers in the window.

Mr. Strother commented the rationale is to conceal the racks.

Mr. Dudick asked if he were to put the same picture up in a florist, would it be a sign. Mr. Myers said it is still a sign. Mr. Peller commented it draws attention to the window to bring in business.

Mr. Strother made the motion to deny the application, seconded by Mr. Cifor.

Mrs. Vucetic asked if the denial would be because of the definition of a sign puts it outside the code. Mr. Dudick said every application they have is outside the code so it wouldn't be a reason to deny.

Mr. Myers suggested to Mr. Prescott that he table the vote, explaining that if the board turns it down he cannot bring it back. He mentioned if they bring it back there might be more board members or maybe he will present other reasoning for it.

Mr. Prescott agreed he would like to do that.

Mr. Myers suggested that maybe DCG could tell them why they are not going to take the windows out.

Mr. Dudick explained he is looking at 4 people out of the 5 who could say no, as opposed to the seven members that could be present.

Mr. Prescott repeated he wishes to table the application and let the customer know and they can talk to DCG.

Mr. Strother withdrew his motion and Mr. Cifor withdrew his second.

Mr. Dudick asked Mr. Prescott if he would waive the 61 day period, and Mr. Prescott agreed. Mr. Myers informed he would be on the next agenda, September 17.

Mr. Prescott asked what will happen when he comes back if there are not enough members to vote for it. Mr. Dudick responded he could table and come back again, informing there are seven voting members and one alternate and tonight two members and the alternate are missing. He reminded Mr. Prescott he received approval for the first one so he is just coming back for the second application.

Application tabled to the meeting on September 17, 2013.

*The secretary read the legal notice as it appeared in the Daily Gazette on August 29, 2013.*

**3) An application from Brian H. Glick for a variance from Section 208-86B. Keyhole lot requires 50' setback from property lines. Setback requested = 45', variance required = 5'. Property is located at 96 Hubbs Road, Ballston Lake, NY (Permit #80938)**

The application was presented by Brian H Glick, co-owner, with his wife, of the property on 96 Hubbs Road. He explained they wish to build a three season room on the back of the house. The size is approximately 16' x 20'. He submitted a plot plan of the three lots, explaining they are the middle house, on a keyhole lot. They have 40' frontage on Hubbs Road. They are the only house in the back. He presented a picture of the rear of the home and views of the property. He said they propose to take out the window and, on a slab, put in the room which will have siding to match. He presented professional drawings. He explained there is a patio next to the proposed room, which is not on the plot plan and is difficult to move. The room will be in line with the patio.

Mr. Peller asked Mr. Glick if he owns #94, and Mr. Glick said he owns it, and it is vacant land. They live on #96. He stated it is not their intent to develop #94 in their immediate future.

Mr. Glick explained they want to add the room but it goes over the 50' building envelope, and explained on the map. He showed it goes over on the left corner by 5'. Mr. Glick presented pictures from all angles showing all neighboring properties and the wetlands in the area.

Mr. Strother stated this is easy to support as it is a question of compliance and it is a minimal variance.

Mr. Dudick agreed adding it has minimal impact to neighbors and other properties.

Mr. Dudick announced the public hearing.  
Mr. Garth Briscoe stated he agreed.

Mr. Myers confirmed he has no issues.

Mrs. Vucetic made the motion to close the public hearing, seconded from Mr. Strother. All approved. Public hearing closed.

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

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

Application approved as submitted.

A break was called between 8:15 and 8:20.

*The secretary read the legal notice as it appeared in the Daily Gazette on August 29, 2013.*

**4) An application from Schuyler LLC for a variance from Section 208-11 which requires 40,000 sq ft. minimum lot for septic systems. Available = 32,050 sq ft., variance required = 7,950 sq ft.**

**Property is located at 81 Droms Road, Lot 1, Clifton Park, NY (Permit #80939)**

Mr. Dudick announced Mr. Lemire has come to join the board as the sixth member.

The application was presented by Paul Male, Design Engineer, representing Schuyler LLC. He related that the four lot project was approved by the Planning Board on September 10, 1980. He informed that at the time the lots met the zoning requirements and for some reason only one lot was built on. They are now trying to build on lot #1 which is smaller than the 40,000 square feet required by the new code. They have gone to the ACOE and DEC to get permits to build a house.

Mr. Peller added they need a septic system so the lot size is an issue.

Mr. Myers informed Mr. Dudick that the current regulation requires a minimum of 40,000 square feet for a lot that has no water or sewer. He stated the lot that was built on is pre-existing non-conforming.

Mr. Dudick asked how long the owner has had the property and Mr. Male responded "three years".

Mr. Myers stated he does not have a problem with the application, informing the problem was with the wetlands and that has been resolved.

Mr. Dudick asked Mr. Myers if the septic would have an impact on the wetlands and Mr. Myers said it wouldn't.

Mr. Peller noted it is important to mention that if the lot had water and sewer or had been built prior to the new coding, this would not have been an issue. Mr. Myers said that is correct.

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

Mr. Peller asked if the parcel is zoned CR and Mr. Myers said it is and that if it had water and sewer it would only have needed to be 10,000 square feet.

Mr. Dudick informed he has no issue with the application and is not going to overtax the area and is in favor of approving it.

Mr. Bloss inquired about the other two lots.

Mr. Male said one lot is built on, one is 59,000 square feet and the other is 33,000 square feet so that one would have to come back for a variance.

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

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

Ayes: Bloss, Vucetic, Dudick, Cifor, Strother, Lemire Noes: none

Application approved as submitted.

*The secretary read the legal notice as it appeared in the Daily Gazette on August 29, 2013.*

**5) An application from Gina Briscoe for a variance from Section 208-11C which requires 200' of frontage at building line on Grooms Road. Applicant requests subdivision of lot into two 1.1 acre lots with 150' frontage each.**

**Property is located at 557 Grooms Road, Clifton Park, NY (Permit #80940)**

The application was presented by Gina Briscoe, co-owner of the property at 557 Grooms Road along with her husband, Garth. She stated when they purchased the property the owner told them it was originally two 1.1 acre lots, as shown on the deed. She stated when she purchased the property she thought she had plenty of frontage and didn't know that the (frontage) requirement for Grooms Road is different than most of the rest of Clifton Park. She said the two lots are 150 feet wide and the other 4 or 5 surrounding homes on that road are also 150 feet wide and one is a little bit less. She included in the packet some of the printouts from the tax department.

Mrs. Briscoe informed she has a letter from the Planning Department Director stating he is not opposed to the 150 foot frontage because it would fit in with the other homes.

Mr. Strother asked what they are going to do with the lot. Mrs. Briscoe responded they may want to sell the other lot. Mr. Strother asked about the frontage. Mrs. Briscoe explained it is currently one lot with 300 foot frontage but was originally two lots with 150 feet of frontage each and the lots were combined.

Mr. Peller stated they were two lots in 1964. Mr. Lemire asked if it is now one single lot and Mr. Dudick commented it is a single lot substantially larger than any of the other lots.

Mr. Garth Briscoe spoke, saying they want to put it back the way it was, namely two lots of 150 feet each.

Mr. Myers commented the reason they are here is that Grooms Road is considered special by the town and has the requirement of 200 foot frontage. He explained that most lots require 100 or 150 feet of frontage.

Mr. Peller asked the Briscoes what did they thought they were buying. Mrs. Briscoes answered they thought they were buying one lot that met the requirements to be subdivided into two. She asserted they didn't know that Grooms Road was special until they called the surveyor.

Mr. Dudick asked if they had discussed their intention to subdivide with their attorney. Mrs. Briscoe answered "probably not".

Mr. Dudick summarized that it was something they had thought about but didn't stipulate. Mrs. Briscoe agreed and said they had actually thought about a third lot.

Mr. Myers said normally that wouldn't have been an issue, but it is Grooms Road.

Mr. Strother commented this is not a greedy request.

Mrs. Briscoe informed there is now public water and sewer for the lot.

Mr. Lemire asked the Briscoes to describe the lot. Mrs. Briscoe informed there is a brick home and a large pole barn 30 x 50 feet on the other lot.

Mr. Dudick asked if the land could be divided down the middle or does the house location prevent that.

Mr. Myers answered that the house is a brick ranch that appears to be fully on the one lot. Mr. Strother asked if there are setback issues and was told there are not.

Mrs. Briscoe said they are requesting a variance for the subdivision tonight so they have two lots of 150 foot frontage each, which is putting it back the way it was.

Mr. Peller summarized they have no plan for the other half now but could sell it as a buildable lot. Mrs. Briscoe agreed.

Mr. Dudick said, without knowing anything about wetlands, it would make the lots the same size as the other lots. He commented he does not have a problem with it if the pole barn is taken down.

Discussion ensued regarding the pole barn, whether it would be removed or not. Mr. Peller asked if they will take the barn down and keep the foundation and re-build. Mrs. Briscoe informed the barn is far back on the lot.

Mr. Myers stated it is not a good idea to stipulate they have to take the pole barn down but if they leave it up and someone wants to put up a house, they might have to come back for a variance to meet setback requirements.

Mr. Lemire commented that when they bought one lot and wanted to subdivide and then found out they can't. He asked the Briscoes how is that not self-created.

Mrs. Briscoe said she checked road frontage requirements but didn't realize that Grooms Road was different until she talked to the surveyor.

Mr. Lemire said they live in Malta and commented that this is an investment. Mrs. Briscoe answered yes. Mr. Lemire stated they are never planning on living there, and Mrs. Briscoe agreed that is what they factored into their offer.

Mr. Lemire suggested they bought the property to double their money. Mrs. Briscoe disagreed that she didn't think they would double their money. Mr. Lemire reworded it to say, they want to increase the value of their investment by dividing the property and Mrs. Briscoe agreed that was their intent.

Mr. Dudick said it was speculative on their part, with no guarantees of what the board would decide.

Mrs. Briscoe admitted that the price they paid was based on the thought they would subdivide and sell off the other lot at some point. Mr. Dudick questioned if they did it as a stipulation of purchase and Mrs. Briscoe said they did not.

Mr. Peller mentioned that they paid \$120,000 for it and it is assessed at \$145,000. Mrs. Briscoe agreed that was what they paid. She answered it is currently 2.2 acres to Mr. Lemire's question of size.

Mr. Lemire asked about the four bedroom ranch on the property. Mr. Briscoe said it is now one big building they are renovating, that it had been gutted.

Mr. Dudick made the motion to close the public hearing (no audience present), seconded by Mr. Bloss. All agreed. Public hearing closed.

Mr. Myers said it is his belief that when the whole area was subdivided all the lots had 150 foot frontage and the previous owner bought a double lot. He indicated that in a normal district they wouldn't be having the conversation because Grooms Road requires double what is ordinarily required. He said he doesn't have an issue putting it back so it matches the other lots. He added he doesn't know about the barn, whether it has value or not because he hasn't seen it.

Mr. Peller asked Mr. Myers if, without looking at a survey, he is ok and doesn't feel dividing the lots would have any encroachment with that ranch. Mr. Myers said his belief is based on the drawing. He added the existing house doesn't meet the current setback requirements of Grooms Road.

Mr. Lemire asked if they subdivided would they not be creating an additional variance. Mr. Myers responded they wouldn't require a variance unless they expanded the house but any new house would have to meet the setbacks.

Mr. Myers said all they are doing is granting the application for the 150' frontage so they can subdivide the lot. He informed Planning sent the Briscoes here to get the variance before they hear it.

Mr. Dudick referred to Mr. Lemire's comment that it is a self-created hardship and said it depends on the interpretation of the creation of it. He said he doesn't think of it as a prevention of the variance but a risk the buyer takes. He explained the risk is what this owner took, knowing that it was something that had to be divided and all the risks involved with such.

Mr. Lemire questioned whether it is or isn't a self-created hardship or not. Mr. Dudick answered it is an interpretation that they were unaware there were special circumstances on Grooms Road but that they should have been more diligent in determining that. It is a degree of how culpable they are, and that they should have known.

Mr. Lemire stated the board should look at whether someone who buys something for an investment should have done due diligence before they bought.

Mr. Dudick said the way he looks at it is, if the previous owner came to the board and wanted to subdivide and make the lots similar in size to the other lots, would this be a reasonable request.

Mr. Lemire said if the previous owner wanted to divide it to build a house for a member of his family he would look at it differently. He referred to the five elements to consider for the variance.

Mr. Bloss asked if this is a use variance. Mr. Myers responded it is an area variance. Mr. Dudick added for an area variance they do not hold the self-created hardship requirement to as high a standard as they do for a use variance.

Mr. Lemire said in his mind the intent is to be considered.

Mr. Cifor asked the Briscoes if they knew they would need an area variance. Mrs. Briscoe answered they did not know until after they purchased it and called the surveyor and he obtained a printout from Planning department which showed the requirement for frontage.

Mr. Peller asked them if they had talked to Kevin Daley (their attorney) about it. Mrs. Briscoe answered they did not.

Mr. Strother queried about their real estate experience and if they had ever run into this before and Mrs. Briscoe said she is a real estate broker and her husband is a builder but they don't usually buy homes like this. She said this is the first time.

Mr. Strother informed the tipping point for him is that this will eventually restore the original scenario and if anything solidifies the character of the neighborhood.

Mr. Lemire asked Mrs. Briscoe, since she is a broker, does she know what a 1.1 acre lot would cost. Mrs. Briscoe said she is not sure.

Mrs. Vucetic (who is a broker) responded that with water and sewer the value would be \$80 - \$100,000 for a lot that size.

Mr. Strother reiterated Mr. Lemire's point that they could probably sell the whole lot without dividing it and still realize a reasonable profit.

Mr. Briscoe disagreed, saying that, as is, they couldn't sell it as a rehabilitated home with a buildable lot without the variance. He explained they have gutted the home and are investing over \$100,000 to rehab it and it would not be profitable if they didn't sell the lot.

Mr. Peller asked if they purchased the home through Multiple Listing Service and Mrs. Briscoe said they bought through For Sale by Owner. Mr. Briscoe said the owner put a sign in the yard and added that the owner told them it used to be two lots.

Mrs. Briscoe stated she thought the lot would go on the market for \$40,000 - \$50,000 because it is on a busy road. Mr. Dudick said it is worth whatever it sells for as a buildable lot if the variance is approved.

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

Ayes: Strother, Cifor, Dudick, Vucetic, Bloss Noes: Lemire

Application approved as submitted.

The board approved the minutes for the August 20, 2013 meeting, with Mr. Strother and Mr. Lemire abstaining as they were not present at that meeting.

The minutes from July 16, 2013 were approved by Mr. Dudick, Mr. Cifor, Mr. Lemire and Mr. Strother.

Still outstanding are the June 4 minutes which could not be approved as there were not enough members present at that meeting to vote. Mr. Dudick made the request for the secretary to send an e-mail to the members present at that meeting and ask them each to send an e-mail approving the minutes. (This was completed and the minutes were approved by e-mail on September 4, 2013.)

The next meeting is September 17, 2013.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mrs. Vucetic. The meeting was adjourned at 9:00 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