

Approved

ZONING BOARD OF APPEALS

November 19, 2013

Present: Michael Dudick, Chairman, Michael Bloss, Randy Gifford, Mario Fantini, Chris Lemire, Doug Strother, Jennifer Vucetic

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

Absent: Jerry Cifor

Mr. Dudick called the meeting at 7:10 p.m.

PLEDGE OF ALLEGIANCE

Mr. Dudick informed all present that the application from Kilmer Funeral Home has been temporarily pulled from the agenda and will not be heard tonight.

He informed the applicants this is a seven member board with one alternate, Mr. Fantini. To receive approval an application must receive 4 yeas regardless of the number of members present. There are six members present and Mr. Fantini will be sitting in for Jerry Cifor making a full board of seven.

He requested everyone to turn off cell phones as they affect the sound system.

OLD BUSINESS:

None

NEW BUSINESS:

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

1) An application from Corpus Christi Church for two variances from Section 171, Table I; 1) a use variance for an animated sign which is not an allowed use in a B-3 zone. Sign size exceeds allowable 24sq ft. requested =48 sq. ft., variance required = 24 sq. ft.; 2) Setback required = 15'; 0' requested; variance required = 15'. 2 freestanding signs erected illegally must be removed. Property is located at Ushers Road & Rt 9, Clifton Park, NY (Permit#80953)

Mr. Lemire informed he is recusing himself as he worships at the Corpus Christi Church. Mrs. Vucetic and Mr. Strother stated they also worship at the church, however both indicated they feel comfortable hearing the application and will remain.

Mr. Dick Coty, member of the church and responsible for Building and Grounds, presented the application. He introduced Pastor, James Clark and trustee Bob Abermites.

Mr. Coty informed there were two large trees in front of the buildings which have been removed by National Grid and they have re-sided the old church. He stated the church has 1500 active members and they feel it is critical to be in constant communication with them, alluding to their website and e-mail. They chose the electronic sign with the goal of keeping members informed because they have 79 active ministries. He added they had looked at other churches with digital signs and explained the temporary sign helped them make the decision where to place their own sign. He admitted the temporary signs are not aesthetically pleasing and not what they want to use.

James Clark, pastor, promised the two temporary signs will be replaced by the new sign, and the size of the new sign is less square footage than the temporary signs combined. He added this will clean up the appearance of their property.

Mr. Myers informed, to correct the record; the application had been mistakenly classified as a use variance. He explained it is actually an area variance for the size and setback of the sign, and not a use variance because digital signs are allowed in that location. He referred to the existing signs, saying he was the one who told them the signs had to come down as soon as the new sign was installed. He discussed the setback, which thinks might be a little more than the 0 foot requested because of the location. He informed that the church had already installed the concrete base of the sign and he had told them they had to proceed at their own risk, adding they wanted to get it in before the cold weather. He repeated it is not a use variance, strictly an area variance.

Mr. Fantini queried that the difference is they don't have to follow the tenants of the use variance to grant it, and Mr. Myers agreed.

Mr. Strother asked what the frequency of the sign change would be.

Mr. Myers said he had told the applicants that he believes, for use of the sign, that they should apply the same restrictions to them as the other churches.

Mr. Dudick added that if they did not have the same restrictions, others churches would question it. Mr. Myers informed the response of the applicants was they would accept that.

Mr. Dudick explained that other churches are allowed one message change every 24 hours but that change does not have to be one message per day. He discussed they could do that by changing messages at noon, and having different ones on each side of the sign, giving them four messages a day.

Mr. Fantini asked why, if it is an area variance, they need a variance. Mr. Myers explained they still need it for the size of the sign and setback, adding that the setback is no more of a variance than the other churches were granted, due to the width of the DOT right of way.

Mr. Strother stated that although they had granted 0' variance setbacks to other applicants with a DOT right of way, they had reminded the applicant that if the DOT widened the road, they would have to move their sign.

Mr. Myers suggested the instructions (stipulations) should be included with the decision letter if the variance is approved.

Mr. Dudick read the restrictions and guidelines aloud:

*Stipulations:

- 1) Text only display; background with two colors
- 2) 3 line message limit
- 3) no flashing, scrolling or moving text or images
- 4) automatic light dimming at 0.3 footcandles above ambient light
- 5) sign/message will not change more than once every 24 hours
- 6) no messages other than church related events
- 7) hours of operation 6am to 11pm
- 8) eliminate the use of any other temporary banner on the property
- 9) agree to allow town to post an emergency announcement if needed

Mr. Dudick informed Mr. Coty that there are numerous houses of worship and the board is receiving more and more requests for the signs. He explained that the use of the signs needs to be controlled because houses of worship are unique in that they are usually located in residential areas and many flashing signs are distracting and unattractive. He said the signs are an evolving technology and speculated that the restrictions could change some day.

Mr. Coty informed they had planned to have their sign go dark at night.

Mr. Fantini asked why the church couldn't have flashing signs if it is in a zone which allows them.

Mr. Myers responded that even in allowable commercial areas there is no flashing. He explained to Mr. Fantini that they need to establish consistency between houses of worship. He added that if it were a business, even if they didn't have to come to the board for a variance, he is sure he would still put restrictions on the use of the sign as he had other businesses.

Mr. Dudick pointed out that Kulak nursery had an approved sign but they still placed restrictions on it.

Mr. Myers informed there are only two signs in town without restrictions, and those signs were put in place prior to the change in code.

Mr. Coty asked for clarification as to how they could have four messages a day. Mr. Dudick repeated there could be a different message on each side and it can change in the middle of the day instead of at night.

Mr. Fantini asked about the size of the sign. Mr. Myers indicated the sign is smaller than Christ Community Church's sign.

Mr. Dudick announced the public hearing and asked for comments. There were none. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Bloss. All agreed. Public hearing closed.

Mr. Bloss made the motion to approve the application as submitted with the acknowledged agreement of the conditions and protocol previously discussed. Mr. Strother seconded the motion.

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

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

**2) An application from Gail D. Barber for variances from Section 208-16E.(2)(a) requiring lots to be 3 acre minimum. Applicant proposes to subdivide existing single parcel of 6.35 acres into 2 parcels at 3.19 acres and 3.16 acres. Lot 1 (3.19 acres) has 1.72 acres of constrained land (wetlands) leaving 1.47 acres unconstrained. Lot 2 (3.16 acres) has .62 acres constrained leaving 2.54 acres unconstrained. Variance required Lot 1 = 1.53 acres; Variance required Lot 2 = .46 acres. Property believed to be in historic Grooms Tavern district.
Property is located at 266 Sugar Hill Road, Clifton Park, NY (Permit#80956**

The application was presented by Duane Rabideau, Van Guilder Associates, representing Gail Barber, owner of the property.

He informed the 6.35 acre parcel is located about ¼ miles south of Grooms Road and explained Ms. Barber is requesting an area variance from Section 208-16E(2)(a) which requires 3 acres of unconstrained land per dwelling unit. The applicant wishes to subdivide the parcel into two building lots. He related that Lot 1 (with an existing home on it) would end up with 3.2 acres with 1.72 acres of wetland and 1.5 acres of unconstrained land and for Lot 2, to create a proposed single family residence with 3.2 acres of land with less than half an acre of constrained land and 2.5 acres of unconstrained land. He stated they are requesting relief from the 3 acre minimum requirement in the CR zone.

Mr. Dudick asked Mr. Myers why it has to be only unconstrained land counted in the property size.

Mr. Myers answered the code applies more to larger subdivisions that leave a lot of open space deeded over to the town. He added this is unique and the first time this has come to zoning. He asserted this is usually worked out in Planning, but this is an existing property. He said it is difficult when talking about one or two building lots at a time. He indicated he does not have a problem with this as it is a large area, adding that they only need an acre for a septic system and they will have separation distance for the well. He suggested it guarantees a lot of space for the wetlands which change over time and it will still be two large lots.

Mr. Dudick questioned if it could be changed from two to four lots.

Mr. Myers answered they could not do that without a variance.

Mr. Rabideau informed the land is not viable for four lots.

Mr. Strother speculated the constrained property would remain constrained and Mr. Myers agreed. Mr. Strother asked if the owner is going to rebuild or keep the home already on the lot. Mr. Myers said he is not sure if they can save the house.

Mr. Rabideau asserted that there has been discussion. He continued; if they can save it, they will but the structure is deteriorating. Mr. Myers opinioned the house is in bad shape.

Mr. Rabideau informed the house is 113 years old.

Mr. Myers said they had done some preliminary work and repeated it is in "rough shape" and whether it can be salvaged or not, they don't know.

Mr. Strother offered the opinion it is still two building lots which will be in compliance with the exception of the constricted property.

Mr. Dudick indicated he has no problem with the application. He announced the public hearing and asked for comments. There were none. He made the motion to close the public hearing, seconded by Mrs. Vucetic.

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

Ayes: Lemire, Fantini, Strother, Dudick, Gifford, Vucetic, Bloss Noes: none

Application approved.

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

3) An application from Chris Zimmerman for a variance from Section 208-12A, accessory building front setback. Required = 80' from property line; sited currently at 58' from property line; Variance required = 22'. Shed placed without permit. Property is located at 4 Equinox Court, Clifton Park, NY 12065 (Permit#80957)

Mr. Chris Zimmerman, owner of the property at 4 Equinox Court, presented the application, requesting a setback variance for an accessory building.

Mr. Dudick asked Mr. Zimmerman if he wished to make a presentation or let the application stand on its own merit. Mr. Zimmerman responded he will let it stand on its own merit.

Mr. Dudick asked the size of the shed, and Mr. Zimmerman answered it is 12 x 14'. Mr. Myers informed it was placed without a permit and he told Mr. Zimmerman he needed a variance to leave it where it was and it needed a setback variance from the house. He added other than the requirements of the law; he has no issue with the location of the shed.

Mr. Lemire asked if the only issue is the 22' variance. Mr. Myers affirmed that is the case as the only other issue is a building issue. Mr. Zimmerman stated he has filed the permit but just didn't go through with the variance.

Mr. Strother said it is a challenging lot. Mr. Zimmerman responded the back part of the property is drainage and slopes down. Mr. Dudick asked how long the shed has been there and Mr. Zimmerman answered it was built in August.

Mr. Dudick asked if he had received any complaints from anyone. Mr. Zimmerman said that he had not, and in fact, the neighbors told him they like it because it blends in with the house.

Mr. Gifford asked if he was told he needed a permit. Mr. Zimmerman answered yes. Mr. Dudick asked if it is behind the garage. Mr. Zimmerman responded it is as there is a jog in the house.

Mr. Dudick asked for public comments, there were none. Mr. Fantini made the motion to close the public hearing, seconded by Mr. Lemire. All approved. Public hearing closed.

Mr. Strother questioned whether there were any consequences regarding being in violation for not obtaining a permit. Mr. Zimmerman corrected him saying that he has applied for a permit and it is in process.

Mr. Dudick said he shouldn't have done it and maybe he thought it wouldn't be noticed. He reminded of the code. Mr. Zimmerman responded he put the shed in that location because he feels it is the best place for it.

Mr. Strother pointed out that applying for and receiving a variance gives him a certificate of compliance for the future.

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

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

The Board recognized a student, David Sagan, who was attending the meeting as a class assignment in National Issues.

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

4) An application from Masullo Brothers Builders for a variance from Section 208-86B requiring 50' setback for main building from all property lines on keyhole lot. Maximum change proposed = 42', variance required = 8'. Property is located at #45 Tipperary Way, Clifton Park, NY (Permit#80954)

Mr. Steve Masullo, owner of Masullo Builders, presented the application. He informed he has building in the development for the last five years and they are in the last phase. He is seeking a setback variance for a keyhole lot at #45 Tipperary Way, explaining it will have egress further south on Tipperary Way on a common drive which services three lots. He described it as a 1.95 acre lot located about 600 feet off the public road. He proposes to angle the house on the property to give it more back yard and keep it away from the wetlands.

Mr. Lemire asked about the location of Lots #43 and #29. Mr. Masullo explained their location in relation to Lot #45.

Mr. Lemire asked if they cross the shared driveway and Mr. Masullo responded they do. Mr. Lemire continued, asking if they have a driveway. Mr. Masullo answered they do not; they have a common drive which was approved by the Planning Board.

Mr. Lemire questioned if the setback variance is needed because Mr. Masullo plans to turn the house on the lot. Mr. Masullo replied to the affirmative, adding that to meet the setbacks he would have to push the house back further toward the wetlands and it wouldn't be a usable backyard.

Mr. Dudick said skewing it will face it toward the cul du sac and mentioned this is a similar case as the Semenza application. Mr. Myers agreed it is very similar to the two houses they approved for Semenza.

Mr. Bloss asked Mr. Masullo if the house would fit if he changed the direction of the house so it is parallel to the property line. Mr. Masullo responded they would have to push it back because the house is wider than the front part of the envelope.

Mr. Dudick summarized they can build this house with this shape on this lot, but not in the exact location without a variance. Mr. Masullo agreed.

Mr. Lemire questioned if the wetland is part of the lot. Mr. Dudick asked how wet are the wetlands. Mr. Masullo answered it is defined as a true wetland.

Mr. Dudick asked for public comment. There was none. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Bloss.

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

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

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

**5) An application from Masullo Brothers Builders for a variance from Section 208-56B requiring 50' setback for main building from all property lines on keyhole lot. Max change proposed = 20' setback, variance required = 30'.
Property is located at 47 Tipperary Way, Clifton Park, NY (Permit#80955)**

Mr. Steve Masullo, owner of Masullo Brothers Builders, presented the application, similar to Lot #45. He described the location of the property at 47 Tipperary Way informing it is one of the 3 lots with a location facing a cul du sac. He said the challenge is because the land bisects the common drive of #43 & #29 and the shape forces the house against the wetlands. He said he wants the variance to move it forward and re-locate the house away from the wetlands and closer to the common driveway, adding that the closest distance to other homes would be about 150 feet away.

Mr. Lemire mentioned the land has a five sided shape.

Mr. Masullo asserted he wants to re-locate the house and explained the location and required setbacks. He added the two slivers of land forces the house away from the cul du sac and the two other lots. Mr. Lemire asked for an explanation of the location of the front of the house and why it could not be turned south and move it west toward Tipperary. Mr. Masullo answered it would be too close to the wetlands and he does not want the house to face the other houses, but face the cul du sac. He explained to Mr. Lemire the location of the other homes.

Mr. Dudick opined that if it is turned clockwise as Mr. Lemire suggested, the side yard would face the back yard of the other houses which wouldn't be desirable.

Mr. Lemire reminded he is trying to meet the goal of the board which is to have a minimum variance.

Mr. Masullo repeated it would move it too close to the wetland which runs through the building envelope in the back.

Mr. Myers stated the crux of the problem is that too many lots were approved in the subdivision and they were trying to get as many houses in it as possible. He added he does not have a problem with what Mr. Masullo is trying to do with the setback, as it is the optimum use of the property without being on top of the wetlands. He repeated it goes back to a different issue which goes back a long time ago. He summarized it is the best they can do to maximize the use of the back yard.

Mr. Lemire asked more information about the property and what is behind the cul du sac.

Mr. Myers said he assumes the crossings of property is all taken care of in the deed and buyers would know that.

Mr. Dudick summarized that regardless of whether the board agrees or disagrees on how this was planned every person purchasing a lot goes in with their eyes wide open and realizes the configuration of the driveway and all the things that come with the development. He asserted it

is the choice of who chooses to buy the home. He said they must look at it with a zoning perspective.

Mr. Lemire asked again if it would fit within the 50 foot setback in any manner. Mr. Masullo again responded that it would fit but it would be right up against the wetlands.

Mr. Dudick asked for public comment. There was none. Mr. Gifford made the motion to close the public hearing, seconded by Mrs. Vucetic. All approved. Public hearing closed.

Mr. Myers commented that the house could fit within the envelope as its shown, but it is more of a choice for the best orientation for the owners to optimize the use of the property. He repeated it is more of a Planning issue stating that as long as it doesn't get too close to their neighbor's house he has no issue with it.

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

Ayes: Dudick, Strother, Fantini, Bloss, Vucetic, Gifford Noes: Lemire
Application approved.

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

**6) An application from Masullo Brothers Builders for a variance from Section 208-86B requiring 50' setback from all property lines for main building. Minimum setback requested = 30'; Variance required = 20'.
Property is located at 14 Fairleigh Way, Clifton Park, NY (Permit#80958)**

Mr. Steve Masullo, Masullo Brothers Builders, presented the application indicating the location of the lot on #14 Fairleigh Way explaining it is the last piece of property in the development. He informed it is a keyhole lot with a private driveway. He described it as having the tightest envelope with 1.1 acres. He explained they want to reorient the house, eliminate the cut through drive and will put a berm on two sides. He explained the structure they plan to build will not fit on the envelope.

Mr. Gifford asked the size of the proposed home and was told it will be 3200-3500 square feet. Mr. Gifford asked Mr. Masullo if a smaller house would fit better. Mr. Masullo answered it would and he had tried that and had a permit to build on speculation. He advertised it for a year, but did not get any buyers. He asserted the home that would fit would be small and not match the rest of the homes in the neighborhood.

Mr. Strother asked if the house will jut out into the driveway. Mr. Masullo said they are going to eliminate the driveway. He explained the positions and driveways of the surrounding homes.

Mr. Dudick asked if he were to get rid of the cut through, build a bigger home and turn the home 30 degrees, would it fit under any circumstances.

Mr. Myers commented that he would have to reduce the size of the house for it to fit on the lot, and that it would have to be a square box adding his opinion that they don't build houses in that shape any more.

Mr. Strother said the diagram is misleading.

Mr. Dudick asked Mr. Masullo if he had ever had an intention to build a square house. Mr. Masullo answered the plan is boilerplate footprint that is put on the map.

Mr. Myers reminded they should reference his previous comments about how Planning looks at this. He agreed it is the square house is the standard size they put on all lot plans.

Mr. Dudick questioned Mr. Masullo what size house he asked for at the Planning Board. Mr. Masullo said he built the roads and the subdivision was planned before he bought the property. He informed the property was developed by Country Club Acres and was developed by Van Patten who proposed the plans.

Mr. Masullo explained the average size of the homes, and the size of the lots and backyards.

Mr. Myers stated he has no issue with what Mr. Masullo is trying to do. Mr. Dudick asked him his opinion of why the drive through was planned, questioning if was for fire safety. Mr. Myers answered not that he was aware of and he wasn't sure why it was there originally.

Mr. Masullo speculated the two lots were connected in the phasing, and it might have been to connect the two roads.

Mr. Dudick asked Mr. Myers if he thinks there is a fire access problem. Mr. Myers said there is not, because the houses are set back so far they have to make the road extra wide for the fire trucks. Mr. Masullo informed there are residential sprinklers in the homes set back from the road.

Mr. Dudick asked the lot size and was told it is 1.1 acres with the house setting about 500 feet off the road.

Mr. Dudick asked the benefit of moving the house.

Mr. Masullo asserted the re-orientation of the house is to give it a bigger back yard and to put in berms and screen the driveway so you can't see the overhead door.

Mr. Bloss opinioned the house would be more typical size for the subdivision.

Mr. Dudick asked for public comment. There was none. Mr. Dudick made the motion to close the public hearing, seconded by Mrs. Vucetic. All approved. Public hearing closed.

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

Mr. Dudick expressed his concern over the logic of squeezing in more homes and rotating them. Mr. Myers commented the house won't fit in the envelope and the orientation of the home makes it more aesthetically pleasing to drive up to the front of the house instead of the side.

Ayes: Bloss, Vucetic, Gifford, Strother Noes: Dudick, Fantini, Lemire
Application approved by four to three vote.

The board members present at the October 15, 2013 meeting voted to approve the minutes for that meeting.

The next meeting is December 3, 2013.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mr. Lemire. The meeting was adjourned at 8:45 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, Planning Board, ECC, Assessor, Highway