

ZONING BOARD OF APPEALS

January 6, 2015

Present: Michael Dudick, Chairman, Denise Bagramian, Michael Bloss(7:06), Jerry Cifor, Randy Gifford, Chris Lemire, Jennifer Vucetic(7:11)

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

Absent: Mario Fantini

Mr. Dudick called the meeting at 7:08 p.m.

PLEDGE OF ALLEGIANCE

Mr. Dudick informed the applicants this is a seven member board with one alternate. Tonight all members are present. To receive approval, an application one must receive 4 yea votes regardless of the number of members present. There are seven voting members present tonight so the applicant must receive four out of seven votes for approval.

OLD BUSINESS

None

NEW BUSINESS

The secretary read the legal notice as it appeared in the Daily Gazette on December 30, 2014

1)An application from AJ Signs for a variance from Chapter 171, Table I, sign law. 32 sq.ft. allowed. Requested = 55 sq.ft. for main tenant, variance= 23 sq.ft; Other tenants to remain at 32 sq.ft.

Property is located at 1750 Route 9, Clifton Park, NY 12065 (Permit #81005)

The applicant was presented by Tom Wheeler, AJ Sign, representing Hannoush Jewelers.

Mr. Dudick asked Mr. Myers if this application is significantly different than the previous application that had been denied. Mr. Myers informed this is the third submittal for the application and, although the 55 sq. ft. may not be significantly different than the last version of 60 sq. ft., he considered it is significantly different from the first application which was a request for 90 sq. ft. and therefore, worth the board to consider.

Mr. Wheeler reiterated that they had originally asked for 90 sq. ft. and then reduced it to 60 sq. ft. and now to 55 sq. ft. He informed all other tenants are not included in this application. He reminded the plaza is almost complete and the space designated for the sign is designed for a larger sign. He presented a sketch of the building, showing, in scale, the 55 sq. ft. sign. He said the channel letters are front lit with a gray background.

Mr. Cifor pointed out that the board actually voted on the 60 sq. ft. sign, not the 90 sq. ft. sign. He said they are stepping down 5 sq. ft. or a 10% reduction which he does not consider significant from the application that the board had voted upon.

Mr. Dudick commented that town law requires it must be significantly different than the previous application but he feels comfortable with Mr. Myers assessment and would defer to him. He told Mr. Cifor if does not feel it is a significant difference from the previous application he can vote accordingly. Mr. Cifor responded that he had actually voted in favor of the 60 sq. ft. sign but the issue he is addressing is that the board is not supposed to hear the same case again.

Mr. Peller advised that it is up to the board to decide whether or not they feel there is a substantial difference.

Mr. Gifford commented that, in his opinion, the size has come down considerably and the building is almost completed and now needs a sign. He added he would be in favor as long as the other tenants are limited to 32 sq. ft. signs.

Mr. Myers reminded they can make the stipulation to limit the other tenants to 32 sq. ft. but that doesn't eliminate their right to come to the board to ask for a variance for more.

Mr. Peller informed he had personally spoken to Mr. Hannoush who has agreed to place that restriction in the tenants' lease and he advised the board members it is ok to make that stipulation. Mr. Wheeler verified that he had received an e-mail from Mr. Hannoush to that effect and that he had planned to be at the meeting but could not attend.

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

Mr. Dudick commented that it is a beautiful building and he is sure Mr. Hannoush will be a good landlord. He said his perspective is that the sign law says 32 sq. ft. and there are multiple businesses up and down Route 9 which have 32 sq. ft. signs that people can easily see. He opined that there are circumstances where a larger sign is needed but in his mind saying a larger sign is needed because it looks better is a weak argument for designing a building with a large blank space and then saying that any other sign wouldn't look well. He explained that the usual

reasons for a larger sign such as building setback, building and business size and topography are not existent in this application but he is willing to accept the vote of the board.

Mr. Bloss made the motion to approve the application with the stipulation that the other tenants are to be held to the 32 sq. ft. sign size by the lease agreement. Mr. Cifor seconded the motion.

Ayes: Cifor, Gifford, Vucetic, Bloss Noes: Lemire, Bagramian, Dudick
Application approved with stipulation.

The secretary read the legal notice as it appeared in the Daily Gazette on December 30, 2014

2) An application from Jerry Zheng for variances for proposed subdivision. 1) Section 208-11C, 200 minimum lot width required for Lapp Road, proposed= 192.16', 102.01', and 105.82' 2) Section 208-86B requires 50' minimum setback for Lot C, proposed=45' and 34' setbacks, maximum 15' variance required. Property is located at 246 Lapp Road, Clifton Park (Permit#81006)

The application was presented by Duane Rabideau, from Vanguilder Associates, representing Jerry Zheng. He pointed out on the map that they are here tonight only for variances for the lot width, explaining they made some changes and are now able to meet the setbacks for Lot C.

He explained they need lot width variances for the four lots, A 192.16', B 102.01, C 100.01' and D 105.82', adding that all other special requirements are met. He pointed out the reason for the special 200' lot width requirement was to minimize the number of houses on Lapp Road which was a main corridor in town. He asserted that once they put in Exit 8A, traffic was diverted to other roads and the reason for the restriction is now not valid.

Mr. Lemire commented that Lot C was not listed on the agenda. Mr. Dudick asked the secretary to check to find out if Lot C had been left out of the legal notice and posting as well. A ten minute recess was called while she checked.

The secretary reported there had been an error in the legal posting and the Lot C had been omitted. Mr. Peller advised the application must be re-noticed in order to be heard. Mr. Rabideau will defer the application to the next meeting on February 3, 2015 after the application has been re-noticed.

The secretary read the legal notice as it appeared in the Daily Gazette on December 30, 2014

3) An application from Anthony Caruso, Caruso Home Builders for five variances to subdivide lot. 1) Section 208-16E(2)(a) req lots <3 acres but>20,000sf for one dwelling 2)Section 208-16E(2)(c) pre-existing lots can be subdivided if >10 acres 3) new lots must be for family members 4) new lot minimum of 2 acres (lot 1 =.83 ac; lot 2=.85 ac) 5) 50' required from property line, proposed = 42' plus or minus. Property is located at 701 Riverview Road, Rexford, NY 12148 (Permit #81007)

The application was presented by Mr. Luigi Palleschi, project engineer from ABD Engineers Surveyors. They wish to subdivide the lot for two homes, with Lot #1 being 37,125 sq. ft. and

Lot #2 will be 36, 044 sq. ft. The total parcel is 1.68 acres and they need an area variance because it is a conservation residential zone with a minimum of 3 acres to subdivide. He presented an aerial of the subdivision and homes of the neighbors reporting that the frontage for Lot 1 will be 142' and Lot 2 144'. He asserted that some neighbors have larger frontages but cited three others at 138', 150' and 155'. They feel the frontages proposed help to support the variance.

He said the existing homes on Riverview Road are hooked up to public water but have septic systems and informed both homes can be hooked up to public water and to the Riverview Landing sewer system.

Mr. Palleschi alluded to the conservation residential zone requirement for 50% open space and explained the way they have set up the two lots, only one driveway will be seen and trees separate the two lots to keep them private and retain the green space.

He pointed out drainage flows east to west and the ditch line will remain the same. He reiterated that connecting with public water and sewer and keeping the appearance within the character of the neighborhood gives them a chance to have the variances approved. He reminded they will need a variance of 8' from the 50' setback requirement as well as a family member variance explaining Mr. Caruso will be building on Lot 1 and Mr. Bob Abbatiello on Lot 2. (They are not family members and both are present at the meeting.) He asserted he had met with Mr. Scavo and Mr. Myers to discuss the application.

Mr. Lemire queried Mr. Myers about the CR Zone code, asking if the lot is smaller than 3 acres but bigger than 20,000 sq. ft. they are allowed one dwelling. Mr. Myers said that is correct. Mr. Lemire then asked for conformation that, if the pre-existing lot is not 10 acres or more, it cannot be subdivided. Mr. Myers agreed. Mr. Lemire said it is self explanatory that it can't be divided if they are not family members and the fourth point he asked was if the resulting lot after subdivision must be 2 acres. Mr. Myers confirmed that is correct. Mr. Myers added the 50 foot setback is for all sides.

Mr. Lemire asked when the conservation residential zone was created. Mr. Myers answered 2005, informing that the original lot pre-existed.

Mr. Lemire opined the town took some time to decide what would go where in the town. Mr. Myers said there have been houses built in this zone since, but only one dwelling on whatever pre-existing lot was there.

Mr. Peller asked Mr. Myers if the board has ever approved sub-division for a non-family members. Mr. Myers said they have.

Mr. Dudick inquired as to when Mr. Caruso purchased the property. Mr. Anthony Caruso came to the podium and answered he purchased it in October of 2014. He said he and Mr. Abbatiello purchased it together.

No one except the applicants were in the room. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Bloss. All approved. Public hearing closed.

Mr. Cifor asked for confirmation that there would be no septic on the lots. Mr. Caruso stated he had spoken with Mike Obrien from the sewer department, who approved their request to connect both lots to the sewer and gave them a letter of agreement. Mr. Dudick requested a copy of the letter confirming both the water and sewer connection. Mr. Caruso informed he had spoken to the water department which also gave their ok. He agreed to supply letters from both the water and sewer districts.

Mr. Lemire asked if there is a home on the property now and was told there is not. He questioned whether Mr. Caruso had intended to put two houses on the lot when he purchased the property. Mr. Caruso said he did. Mrs. Bagramian asked if he had spoken to the Town previous to coming to the board. Mr. Caruso said he spoke with Mr. Myers who advised him to speak with the sewer and water departments as it would make it easier for him to make his case with approval of public utilities.

Mr. Lemire questioned Mr. Myers about the reason for the creation of a conservation/residential zone.

Mr. Myers explained the intent was to maintain the rural character of the western part of town, but it puts in options that it could be denser than the three acres, however it is usually for larger parcels of 10 acres or more. He added those options were to put houses on smaller lots as long as they gave the town open space or funds to offset the additional lots. Mr. Lemire clarified this kind of provision is separate from a variance.

Mr. Palleschi stated they are providing 50% of greenspace which will be deed restricted and pointed it out on the map.

Mr. Dudick asked the size of the lot. Mr. Palleschi answered it is 1.7 acres plus or minus. He said they would not be opening up the land in front of the road.

Mr. Myers and Mr. Lemire discussed the current code which states they can put one house on the property because it is a pre-existing lot.

Mr. Peller asked Mr. Myers if he was aware that the water and sewer departments have approved this. Mr. Myers answered he was not aware, but not surprised they approved it.

Mr. Cifor suggested they could make their approval contingent upon approval of public utilities. Mr. Myers said he is sure he can get letters from Don Austin and Mike O'Brien.

Mr. Dudick questioned whether there are other houses on lots this size. Mr. Myers responded most of the lots along there are small. Discussion ensued and several smaller lots were mentioned. Mr. Myers reminded the other lots have septic systems.

Mr. Lemire asked if the lots that are smaller existed prior to the CR zone. Mr. Myers confirmed that is so. He said only two other houses that have been built since then, on pre-existing lots with one dwelling with 40,000 sq. ft. minimum.

Mr. Dudick read the code, listing the requirements on the lot.

Mr. Myers stated he had spoken to the applicants early on and suggested that the public water and sewer makes it more palatable. He commented he does not think the request is too far out and he does not have a problem with it.

Mr. Lemire disagreed, stating that the new lots are supposed to be 2 acres minimum and this lot starts out at 1.68 acres. He opined that this is obliterating the zoning law in this area. Mr. Myers indicated he doesn't agree. Mr. Dudick commented the request is for relief and if this one doesn't meet code then each board member determines whether to grant the relief.

Mr. Lemire said you can't subdivide unless the lot is ten acres or more. He continued, it says if it is less than three but bigger than 20,000 sq. ft. you can put one on it, and it must be for a family member. He pointed out that the applicant is asking relief from everything that is in the zoning code. Mr. Cifor agreed that is true, except from the 50% of greenspace.

Mr. Dudick reiterated they are asking for relief from the code which is why they are here.

Mr. Myers said the law actually states both the newly created lots will be initially owned by family members at the discretion of the Planning Board. He reminded they had had the discussion in the past as to who is supposed to rule on this. He said his best answer is the law is confusing and they are trying to make sense of what the law is trying to do.

Mr. Dudick reminded they have had applications for different variances on this code. Mr. Lemire pointed out it is not the number of variances, it is basically re-zoning this piece of property different than the code. He listed: asking to subdivide something that is not sub-dividable and asking to make the resulting 2 pieces of property smaller than the minimum allowed. He made the comparison to taking a thimble and dividing it when the code doesn't want it.

Mr. Dudick answered that regardless of whether he agrees or disagrees it is up to the board whether the extent of the request is reasonably or overly substantial.

Mr. Myers commented he has no issue with it. He said it comes down to whether it is practical and whether it is reasonable for this property in this location and pointed out there are conflicts in the law within 2 different paragraphs. He alluded to one paragraph that indicates the new lots must be 3 acres, and in another paragraph they must be at least 2 acres. He added he thinks because they are having public utilities put in and it is substantially near the size of the other lots in the area, he doesn't have an issue.

Mr. Dudick read aloud the criteria to be considered by the Zoning Board in making its decision for an area variance. (1. Whether benefit can be achieved by other means feasible 2. Whether it is an undesirable change in the neighborhood character or to nearby properties 3. Whether the request is substantial 4. Whether the request will have an adverse physical or environmental effect 5. Whether the alleged difficulty is self-created.) He explained that each board member determines if he/she believes it is substantial or changes the character of the neighborhood, as well as the other criteria.

Mr. Lemire reminded they have talked about precedent in the past. He asked, if this is a CR zone and the board approves these variances, what is to stop every other person who owns six acres, from coming to the board and asking for approval to subdivide it into 6 one acre lots, not for family members. He explained this is the reason he asked Mr. Myers the purpose of the code, suggesting that if the goal is to keep the western part of the town rural, they have to take that into consideration regardless of whether there are similar size lots that pre-existed the zoning.

Mr. Dudick suggested that whether he personally agrees or disagrees with Mr. Lemire's comment he wants (the board) to be clear what they are looking at. He said this is a lot for one home in an area where the town says it wants larger lots. He continued: the new owner of this property did not own the property prior to the zoning going into effect. He explained that under the criteria to look at is if this is a self-created hardship because when the property was purchased the current owner should have been aware that zoning allowed the building of only one house, not two. He reiterated that the purchase was made knowing only one house was allowed and now he wants to make two building lots. He commented there are reasonable aspects with regards to water and sewer but taking into consideration all the houses around it, these would be the smallest lots in the area. He alluded to Mr. Lemire's comment about the six acres, and asked what would be the logic of saying they could make 6-7 building lots in an area that they know the town wants to see one house on three acres. He summarized that the town gets to decide what the laws are and the board gets to make their own interpretation. He stated that, from his standpoint, this is a substantial change from what the zoning in that area would be and it is going from a lot that is smaller than allowed and making it extra small. He does not believe that this fits the intent of the zoning law in that area.

Mr. Cifor asked Mr. Caruso if he had spoken to the neighbors. Mr. Caruso answered he had spoken to them on both sides and had discussed water table, green space, not taking down trees and they did not have a problem.

Mr. Dudick asked why they were proposing a shared driveway. Mr. Myers answered they had done that strictly for the visual effect from the road. Mr. Dudick asked if he would have a problem if they created two driveways. Mr. Myers answered he doesn't have a say in the matter as it is a curb cut issue with the highway department. He understands they did it to make the visual change as you drive down the road as minimal as possible. Mr. Caruso added they did it because they felt the board would appreciate the fact they would keep as much green space as possible along the front of Riverview Road so they thought one cut would be best.

Mr. Bob Abbatiello, co-owner of the property, asserted that when you drive down Riverview Road you see the driveways with all the trees are cleared and you see a big house. They personally felt this was more of a CR zone feel because, although those houses are on two or three acre lots, it doesn't feel rural.

Mrs. Vucetic asked why they did not come first to the board before they purchased the land. Mr. Caruso said he doesn't have a logical answer why except that having the public utilities, keeping the buffers and green space and speaking with the town, sewer and water district and building inspectors and neighbors they didn't think it would be an issue. He added they were not aware of the number of variances they would need and many came by surprise. He said there is no

logical answer to why they didn't come to the board first, repeating he didn't think it would be an issue.

Mr. Dudick asked Mr. Caruso if he was a builder and he responded he is. Mr. Dudick questioned if he had built any other homes in Clifton Park, to which Mr. Caruso said he had just finished a home for Bill Mackey in April and has a subdivision in Rotterdam. Mr. Dudick asked, being a builder, does he check zoning to find out how many homes are allowed on a piece of property. Mr. Caruso said he did for major subdivisions. He said they did some homework on this and talked to people and didn't realize it would be any issue. Mr. Dudick continued his questioning, asking if a piece of property that allow for more houses would be more valuable. Mr. Caruso said it all depends. Mr. Dudick clarified, asking if he had five acres of property and in one scenario he could only build one house and the other he could build five houses, which would be worth more. Mr. Caruso answered from a developer's standpoint it would be the one where he could build five houses. He explained that this property is not that case, because is for him and his good friend and they are not looking to build the homes and move on.

Mr. Cifor made the motion to approve the five variances with the stipulation that both houses are connected to town water and sewer. Mr. Gifford seconded the motion. Mr. Caruso accepted the stipulation.

Ayes: Bloss, Gifford, Cifor, Bagramian Noes: Vucetic, Dudick, Lemire
Application approved with stipulation.

Mr. Dudick made the motion to approve the minutes for the December 2, 2014 meeting, seconded by Mr. Gifford All approved with Mrs. Vucetic and Mr. Cifor abstaining as they had not been present at that meeting.

The next meeting is February 3, 2015.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mrs. Vucetic. The meeting was adjourned at 8:25 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