

## ZONING BOARD OF APPEALS

March 3, 2015

Present: Michael Dudick, Chairman (7:05), Denise Bagramian, Michael Bloss, Randy Gifford, Jennifer Vucetic (7:12), Mario Fantini

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

Absent: Jerry Cifor, Chris Lemire

Mr. Dudick called the meeting at 7:15 p.m.

### PLEDGE OF ALLEGIANCE

Mr. Dudick informed the applicants this is a seven member board with one alternate. Tonight six voting members are present, including the alternate. Mr. Fantini is sitting in for Mr. Cifor. To receive approval, an application one must receive 4 yea votes regardless of the number of members present. There are six voting members present tonight so the applicant must receive four out of six votes for approval. Applicants have the option to defer to another meeting in the hope there may be more members present, but there is no guarantee of the number of members present at any meeting.

### OLD BUSINESS

### NEW BUSINESS

*The secretary read the legal notice as it appeared in the Daily Gazette on February 26, 2015*

**1)An application from Matthew Sames for a variance from Section 208-11. Applicant wishes to construct addition to home proposing 9' extension over 50' required setback. Variance required = 10'.**

**Property is located at 19 Blue Jay Way, Rexford, NY 12148 (Permit #81010)**

The application was presented by Matthew Sames, owner of the property. Mr. Sames informed they wish to build an addition on their home for their disabled daughter. The footprint of the addition was recommended by their disability counselor and given to their architect.

Mr. Dudick asked for comments or questions from the Board and from the audience. No comments were made.

Mr. Myers commented he thinks this is a minor variance and a common occurrence on corner lots which requires a 50' variance on both sides. He said they actually need 9' but he wanted to give them a little leeway and made it 10'. He opined a ten foot variance is not large.

Mr. Peller inquired if there is going to be a road on the one side. Mr. Sames said there will be a road named Blue Bird Lane.

Mr. Dudick wondered if the variance would still be necessary if it were not a corner lot. Mr. Myers said it would still apply.

Mr. Dudick asked Mr. Sames if he could push the addition further back. Mr. Sames explained that was not recommended because the location they chose gives them access to the plumbing they need for the bathroom.

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

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

Mr. Dudick opined this is not a large variance and won't affect the neighborhood.

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

**2) An application from MJ Properties of Clifton Park for 14 variances to add five warehouses to current site. Variances required:**

- 1) 208-65E(1) 50' front setback req. Lot #5 has 25' available. Variance=25'
- 2) 208-65E(1) No parking allowed in front yard. Lots 2, 3, & 4 need variances to park in front yard (all are separate parcels)
- 3) 208-65E(2) 25' side & rear yard setback and buffer required. 0 setback available for lots 1 & 2, lots 2,3,4, & 5 (10 variances required, 5 for 25' setback & 5 for buffer requirement. Lot 4 needs relief for northern edge of parking area (will be covered by variances noted)

**Property is located at Fairchild Square II, Van Patten Drive & Mapleline Road, Clifton Park, NY 12065 (Permit #80993)**

The application was presented by Jackie Murray, attorney for MJ Properties.

Mr. Dudick read into the record a letter from John Scavo to Mr. Myers. The letter informed the Planning Board had not granted conceptual approval of the project and does not see the Planning Board approving the current plan. The letter suggests the Zoning Board not grant variances before Planning Board approval. (letter on record)

Mrs. Murray addressed Mr. Scavo's comments stating she did not know about the letter, this being the first she has learned about it. She informed there has been a lot of confusion as to what point the project plan is "ripe enough" for the ZBA's review. She said they have made varying requests both verbally and in writing to that effect. They ultimately invoked their right under Section 274-A(4) to appear before the ZBA without the building permit because they needed to get some certainty as to where they stand on the project. She asserted they do know where the Planning Board is drawing the line and they have submitted the additional data it requested to analyze their density issues. They are appearing before them on March 18. She mentioned the request was also for an additional traffic study which they have done. She informed the project meets the lot coverage requirements (regarding density) pursuant to the code and reminded they are appearing tonight for the setback requirements not the lot density coverage. She pointed out they cannot exceed 60% development for each lot, and they meet that requirement.

Mrs. Murray commented regarding the Planning Board, repeating this is the first time they learned where they are drawing the line conceptually for review by the ZBA. Mrs. Murray requested, in the interest of efficiency, they have the opportunity to apprise the Zoning Board of the project so if/when they come back the meeting time was not wasted.

She informed there are five proposed buildings for a total of 106,430 square feet, designed in keeping with the development on the adjacent parcel. She asserted it will be a group of establishments in a park-like setting with a common access point as opposed to creating new access points off Van Patten and Maple Line Drive. The parcel is to be subdivided with a separate lot for each building, again reminding it meets the density code.

Mrs. Murray explained the variances requested are no different than those that had been approved for the first parcel, allowing the establishments to share a common driveway and access areas and limiting the disturbance and preserving the buffer perimeter of the parcel which meets the 100' setback from the residents. She reminded the setbacks are required only because of the subdivision and in order to have the benefit of a common access and driveway. She asserted it will preserve vegetative buffer and the existing drive to prevent the need for more curb cuts.

Mr. Peller inquired as to their purpose in subdividing the lots, asking if it is financial.

Mrs. Murray responded her client needs to create a supply for the demand and much of it is generated by Global Foundaries. She stated potential tenants want to ultimately acquire their own building. She pointed out the previous parcel subdivision created 225 jobs.

She highlighted the main point of their request: that there are no variances required from any lot line of a third party; that all variances requested are by virtue of the subdivision and are internal lot lines. With respect to anyone outside the area, they are not seeking any variances.

Mr. Dudick speculated that if they did not subdivide the parcel they would not need the variances. Mrs. Murray confirmed that is so. She stated that the previous parcel subdivision design was commended by the Town Board and the applicant received a Bronze Award from the Trails Committee at the Town Board meeting the previous night for preserving town activity. She asserted that without the subdivision, it would not have been possible because they would have had to put frontage driveways in for each parcel.

She introduced Tom Andress, ABD Design Engineers and Surveyors, to discuss the actual plans. He repeated the award would not have been given without the two variances the Zoning Board granted and stated it is the same variances they are asking for on this application. He said it is based on a group of establishments and being able to coordinate access between the points, made possible by having two entrances and not having individual lots on Van Patten and Ushers Road.

He presented a map of the first project which received variances in 2009 and 2010 and pointed out the proposed project. He showed the main access off Van Patten Drive and a secondary access off Ushers Road. He informed three of the lots have been sold in the first parcel project. He discussed the current project pointing out that when the residential area was built Maple Line Drive cut the industrial area into two pieces.

Mr. Andress discussed the two pieces, which he said were separated into upper and lower parcels. The Planning Board granted approval for the development of the lower parcel which did not require any variances and is currently under construction having its own access off Van Patten.

He stated the setback variances are internal and are not for the buildings (which meet the required setbacks), but for the buffer between each subdivided parcel which is required by code to be vegetative.

He pointed out the alternative to granting the variances which gives all parcels access off Van Patten Drive, is for a different configuration which would create a separate access off Van Patten Drive for every property. He said they discussed with the Planning Board the possibility of having an access on Maple Line Road but it was decided that the secondary emergency access to Van Patten Drive would be adequate. He promised they will make some additional buffers and berms on Maple Line because much of it was cleared during the construction of the residential neighborhood.

Mr. Andress asserted they wish to keep all the maneuvering in the center of the development rather than at the perimeter, suggesting it would reduce noise levels. He explained they need 25 feet on each side of the parcels for parking instead of the 25' vegetative strip. He argued this is exactly the same variances the Zoning Board granted for Fairchild I's development in 2009 and 2010 which allowed for the construction of the first phase. He pointed out that Mr. Rekuki purchased the corner piece of property at high cost to integrate it into the first parcel because the town was concerned the parcel would be developed separately with an access on to Ushers Road. He disagreed with Mr. Scavo's letter and opined that the internal design is independent of the variance and whatever the design, it doesn't matter. He asserted they are not asking for variances for external areas or for variances from the buildings, only for the access and buffer requirement.

Mrs. Bagramian asked if they have tenants. Mr. Andress answered the building currently under construction is already leased, but they cannot market the proposed buildings until such times as they receive Zoning Board approval. He said no attorney will allow a contract, rental or purchase, on something that is not yet approved.

Mrs. Bagramian questioned if they are being built to size for a specific potential. Mr. Andress confirmed that is exactly what they want to do. He explained that the building that houses the brewery sat vacant for a year before they found a tenant, because it was a larger building and it didn't have a loading dock. He said the desirable methodology is what they are doing now, explaining that each of the proposed buildings can be broken up for four different tenants. He claimed there isn't a demand for 25, 000, 35, 000 or 45,000 sq. ft. users but there are more for 5,000 – 10,000 sq. ft. such as engineering companies or specialty type items.

He explained the brewery has the option to rent out part of their building and are also looking to purchase one of the new buildings. He said these buildings will be set up for four tenants as office warehouses (1-2 people in the office) and overhead doors and loading docks. He described the design of a few of the buildings and discussed that Mr. Rekuki originally considered a 100,000 sq. ft. building but decided that is not what he wants there as it would be much more intensive usage.

Mr. Andress informed they have done three traffic studies which show there is very little usage and the largest usage has been the Helping Hands school, adding they are all out by about 4pm before the evening peak traffic.

Mr. Gifford inquired about the location of the school and expressed concern about the extra traffic and congestion around the school.

Mr. Andress explained the circulation pattern so the busses can drop off the children, as do the parents. He commented the children are each walked by hand into the building and they had spoken to the parents about walking the children around the construction.

Mr. Gifford asked about play areas for the children and if it is fenced in. Mr. Andress explained there is a play area in the back and the children go out at specific times. He said the area is designed so the school stays separate and although there is no fence, it is a hand to hand school where the children never walk in alone.

Mr. Gifford suggested they construct a fence and Mr. Andress promised they could do that and make it either temporary or permanent.

Mr. Dudick announced the public hearing and asked for comments, informing each person would have five minutes to speak.

Mr. Ralph Morris, 12 Maple Line Drive, voiced his opposition to the site plan. He informed he has lived there for 13-14 years and much of the commercial development has happened over the last 5-6 years. He expressed concern about the aesthetics and the property values of the residential homes. He lives close to Lot #2 and is currently living through the new construction.

He said the proposed buildings will be on land that is higher and will be less aesthetically pleasing and a bigger concern for the neighborhood. He also expressed concern for public safety with the increased road traffic from construction on Van Patten and Ushers Road and he doesn't think they can accurately predict the amount of truck traffic the new buildings will generate. He indicated they would be very much against a driveway coming out on to Maple Line Drive. He related he had driven by the Helping Hands school and commented that the single drive, with all the snow piled up on the intersection there is barely room for one car to go through.

He referred to Mr. Scavo's letter, commenting on the density of the development. He related that the first phase of the development contains 5 buildings with each having about 2.4 acres but the second phase has five buildings with each parcel only having 1.6 acres, making it greater density. He suggested that because the first phase received an award doesn't have an impact on the current proposed development.

He summarized his concerns about the layout, the density, the public safety and the traffic flow patterns and the buildings encroaching on the residential neighborhood. He asked the Zoning Board to respect the neighborhood concerns and pointed out that zoning laws are put in for a reason to keep things in check to keep the town the way we want it.

Mr. Fantini asked if he has a concern with Lot #2. Mr. Morris said it is definitely going to be more of an aesthetic issue for the neighbors and they have to do a lot of lot clearing. Mr. Dudick pointed out that the landscaping is the Planning Board's responsibility.

Mr. James Ruhle, 168 Wood Dale Drive, approximately ¼ mile from the proposed development. He asked the board members to take a bird's eye view rather than a bug's eye view because Mr. Scavo has made a reasonable request based on the expertise of each body. He summarized Mr. Scavo has asked the Planning Board not have its prerogatives usurped and not have the Zoning Board grant variances at this time. He thinks the Planning Board and Fairchild should design this in its totality and then go to the Zoning Board, if necessary, to complete the design. He said the request for variances first is backwards.

Mr. Ruhle also referred to a memo he had submitted to the Planning Board on October 21 outlining problems of density and defoliation and the interaction of the two sites. He alluded to the residential impact and the storm water drainage which he pointed out had not been discussed and is a significant issue. He said because of the initial design factors, causal factors and interactive factors that have not been resolved he is asking the Zoning Board to defer and not act on any requests this evening. He suggested the Board let the Planning Board first do its work and then work in concert with Planning to come up with something that is design viable and neighborhood friendly.

Mr. Robert Cohen, 181 Wood Dale Drive, indicated he has questions referring to 14 variances. He asked what the actual variances are in terms of the amount and is it all or nothing. Mr. Andress said the request is to remove the 25' buffers between the property lines so they can have parking.

Mr. Cohen opined the Zoning Board is the safety valve, with regard to the zoning ordinance of the town and does not have jurisdiction to re-write the ordinance. He said a large percentage variance should be something that the Board should take a look at very carefully.

Mr. Ray Seymour, 7 Nadler Road, has lived in Clifton Park since 1968 and commented he understands many things have changed since then. He said this is a density issue and there wouldn't seem to be a need for variances if there were not so many buildings in the proposal. He commented he thinks the jist of Mr. Scavo's letter is that the Planning Board has not gone through all of the steps and hasn't completed its work to come up with a plan that would be suitable for the neighbors and the community. He understands the needs of the developer but also understands that there is an impact when converting forest land to very porous land. He suggested storm water management is a big issue, and asked if the project was not so dense, would there be a need for the variances.

Mr. Dudick asked Mr. Myers if the developer would need variances if they were not planning to subdivide into separate lots. Mr. Myers answered in theory, they would not.

Mr. Dudick commented the issue is the owner is not only looking to develop it but also to subdivide to sell different lots to different owners rather than rent which makes for better financial maneuverability.

Mr. Seymour asked if Fairchild I was originally one lot and now is individual lots. Mr. Dudick confirmed it was, but then because they were having financial difficulty, they needed to subdivide.

Mr. Seymour asked, rhetorically, if they want to subdivide to sell with all the issues involved, wouldn't you have more space to work with if you had fewer lots. He said it is his understanding that, if you have an eight acre parcel and you want five buildings, that with all the attenuating requirements, water, parking lot, tractor trailer turnaround etc. it would be easier to subdivide into workable units of geography with more space to work with. He summarized he has a problem with the density.

Mr. Frank Berlin, 980 Main Street, Joneville, asked if the Zoning Board sends notices to residents of zoning changes near their property. Mr. Peller advised that the applicant is responsible for that.

Mr. Berlin pointed out that, when the applicant addresses the Board and shows maps, the people in the audience cannot see it and he hopes that some day the Town will get something so that the audience knows what is going on. He said he likes the idea of having five minutes to speak.

Mr. Berlin opined that a lot of zoning laws are decided with many of hours of input from residents as to what they would like to see in their town. He hopes the applicants don't hold it against the residents when they come up and say they have a problem with something the applicant wants to do that is against the code. He commented that when a person buys the property, they know what is there and then they try to fit their dream into what is there even though it is against the code. He asserted there are reasons for the codes, such as buffer zones

for streams, and residents think the code is there and then someone comes along and wants to change it. He appreciated all the work the applicant does, but there is a problem sometimes.

Mr. Dudick pointed out that some people come to the board and ask that a wooded commercial area not be developed and refer to it as forever wild because it has always been wild. He advised that if something is zoned for commercial use, just because it is not yet developed, doesn't mean that some day someone will not eventually develop it. He commented that buying land next to an industrially zoned area which might eventually be developed you have to hope for the best possible planning the town can offer.

Referring to storm water management he said Planning takes that into consideration, and especially if it borders a residential zone and it would be part of the Planning process.

Mr. Fantini asked if this is the same as Fairchild I. Mr. Andress answered it is, and Zoning granted the variances. He related the history of the purchase of the first parcel. He stated it was the beginning of the organized development and the condition was an internal design with no additional access to Ushers Road and that the buffer would be high. He pointed out the building is built into the slope and retaining wall so it is not seen from the road. Mr. Andress went on to explain that the design for Fairchild II was to buy additional land and tie it in to Fairchild I so there would be little traffic on Ushers Road. He reminded they received a variance of 25' on each side of the buildings for parking and the development potential for the current parcel is the same. He said they could have developed it without the variances with frontage lots and driveways directly on Ushers Road and the development potential for this lot is the same way. He reminded the houses in the residential neighborhood are next to commercial property. He said they could do without the variances and make four lots with the driveways coming out on Van Patten and Maple Line Road and take all the trees down with the parking in the front. He said they designed it the opposite way so everything is on the inside and they provided the additional buffering areas to the Planning Board so they can maintain certain amount of trees.

Mr. Fantini asked about the property which has a higher topography. Mr. Andress agreed this parcel is higher and the buildings will be level with Maple Line Road but they would have to remove the trees to lower it. What they did was set it at the elevation at existing ground and maintain as many trees a possible on Maple Line Road.

Mrs. Bagramian asked about the variances and the number of buildings.

Mr. Andress said the variance has no meaning as to the size of the building explaining they could have put a 100,000 sq. ft. building in, and had a tenant, but they need the variance to develop it in a logical manner which the Planning Board asked them to develop. He claimed that 100,000 sq. ft. building brings a lot of truck traffic with a lot of parking and Mr. Rekuki wants to sell it for the same kind of use as Fairchild I. He said the large building on the first site has more traffic.

Mr. Ralph Morris questioned whether the Zoning Board had approved the variances for Fairchild I before or after the Planning Board approved the design. Mr. Myers responded they had at least concept approval when the Zoning Board granted the variances.

Mr. Dudick read an e-mail from a resident into public record. The e-mail was sent to the Zoning Board by Mr. Jay Kopek, 10 Maple Line Road, expressing strong objections to the project. 1) applicant presented several concepts to Planning Board where it was repeatedly noted the density was too great and too much of an impact on the Maple Line Road residents 2) applicant stated they paid too much for the property and had to have the density in order to make it profitable 3) the Planning Board members repeatedly expressed concern about the rear and side setback to residential property and the clearing and disturbance to existing topography. He mentioned variances are granted to applications that demonstrate a hardship and do not affect quality of life.

Acknowledgement was expressed that the applicant could, by zoning law, erect a large single building on the site and expect a reasonable plan without affecting the neighborhood. Objections 1) developers never pay too much for land and are trying to maximize return on investment and there is no financial hardship and financial hardship itself imposed on the basis of greed and return on investment. 2) applicant has been awarded numerous exceptions allowing them to overdevelop the existing Fairchild Phase I and increasing existing commercial traffic and diminishing their quality of life 3) the sheer quantity of 14 variances further reinforces the argument that these are for financial gain/self imposed hardships and not an individual project of building hardship 4) the buildings proposed on a lot for one building greatly diminishes the quality of life in our neighborhood 5) Maple Line development was designed with thoughtful planning and they do not wish to enter their homes through the back side of an industrial development. In summary the e-mail requests the Zoning Board reject the 14 variances. (e-mail on record)

Mr. Dudick called a recess for discussion with counsel. (8:40 pm)

Upon return, Mr. Peller addressed the applicant informing at this point they have a choice, either have the Board deliberate and make a decision or table the application so the Planning Board can hear it. He informed if they table the application, the public hearing will remain open and the applicant would need to waive the 62 day rule.

Mrs. Murray stated the first they heard of the Planning Board's memo was this evening. In deference to the Planning Board they will table the application and are meeting with them at the next meeting. She thanked the Board for hearing the discussion and agreed to waive the 62 day rule.

Mr. Dudick explained to the audience that the Board will not vote yes or no on the application and the applicant has tabled the application. He stated it is neither a win or loss, and the applicant is going back to the Planning Board to discuss issues such as storm water management, density, etc.

Mr. Peller advised the public hearing is still open and Mr. Dudick told members of the audience they are welcome back when the applicant returns and would be granted an additional five minutes to speak if they wished. No date has been set for the applicant to return.

Mr. Dudick made the motion to approve the minutes for the February 17, 2015 meeting, seconded by Mrs. Vucetic. All approved with Mrs. Bagramian and Mr. Lemire abstaining as they had not been present at that meeting.

The February 3, 2015 minutes were approved by Mrs. Bagramian, Mr. Bloss, Mr. Gifford and Mr. Fantini with the other members sustaining.

The next meeting March 17, 2015.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mr. Vucetic. The meeting was adjourned at 8:55 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