

Approved

ZONING BOARD OF APPEALS

May 19, 2015

Present: Michael Dudick, Chairman, Denise Bagramian, Michael Bloss, Jerry Cifor,

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

Absent: Randy Gifford, Chris Lemire, 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 four members are present. Since the last meeting, one member, Jennifer Vucetic, has resigned making the board six with one alternate. The Town and Board thank Mrs. Vucetic for her years of service. To receive approval, an application must receive 4 yeas regardless of the number of members present. There are four voting members present tonight so the applicant must receive a unanimous vote for approval. Applicants are offered the opportunity to defer, without penalty, to a later date where there may be more voting members present, but there are no guarantees as to the number of members present at any meeting.

OLD BUSINESS

An application from Dave & Melissa Scagnelli for a use variance from Section 208-37 A&B, permitted uses in a B-3 zone. Applicant wishes to continue to use the building for light manufacturing which is not an allowed use in a B-3 zone. Property is located at 821 Main Street, Clifton Park, NY (Permit #81024)

The applicant indicated he wishes to go forward with the members present. The continuation of the application was presented by Scott Ronda, attorney for the Scagnellis.

Mr. Dudick reminded that they had deferred from the last meeting in order for the applicant to send certified notification to their neighbors within 500 feet of 821 Main Street. He informed this requirement has been met.

Mr. Ronda listed the four elements needed for approval of a use variance, answering each one: 1)Undue hardship: They submitted documented proof the applicants cannot realize a reasonable rate of return on the property. The property had been leased for 3 years and in October 2014 the Scagnellis purchased it with the premise the zoning allowed light manufacturing. Mr. Ronda opined the property was listed incorrectly but for that mistake his clients would not have purchased it, or would have come in for a variance prior to purchasing. Prior to that, the property had been on the market for two years with no offers.

2)Changing the character of the neighborhood in B-3 zone: Mr. Ronda pointed out that of the 13 parcels in that area, only one (the restaurant) was a permitted use. He named the others as a landscaping business, lumber yard, stair manufacturing company, golf course, warehouse and other diverse uses. He asserted that light manufacturing fits right into this.

3)Uniqueness: Mr. Ronda stated 40 years ago the property was zoned light industrial and all the buildings were built for usage for that zoning.

4)Hardship is not self-created: He stated the Scagnellis are not real estate experts and purchased the property in good faith and relied on their attorney and real estate agents. He opined it was misclassified in the real estate sale document and the applicant did not know light manufacturing was no longer an allowed use.

Mr. Dudick referred to the last meeting, asking Mr. Scagnelli if he had been able to find proof that he had worked in that building during his college years. Mr. Scagnelli replied he had searched for proof, but it was 25 years ago and he did not have the tax returns from that long ago.

Mr. Dudick commented that the reason he had asked for that proof is it would show a good and reasonable argument there was no deception on his part, and that he had worked there, pointing out, unfortunately it cannot be proved. He informed that even when there is deception at the time of purchase, it is not required that the board to make up for the deception of realtors or failure of the attorney, saying that is a weak argument.

Mr. Ronda responded he is not trying to put the primary emphasis on deception but the element is that it is not self-created, and to show that somehow a mistake was made. He argued the applicant is not an expert and relied on the experts.

Mr. Dudick said he agrees it is a reasonable explanation that the agent and attorney had failed to do due diligence and failed to do the job he paid them for so it was a self-created act on behalf of the client. It was not something he did, but he paid people to do a bad job for them and the question is “should he be penalized?”

Mr. Dudick commented on the change to the character of the neighborhood and asked if there was anyone in the audience who has a problem with the variance. No one spoke up. He remarked that if the residents were against the variance it would weigh heavily on the board’s

decision because that person would have the right to maintain the zoning in their neighborhood.. He declared that because no one is here it is a key point.

Mr. Myers commented that the owner was blindsided. He repeated that the intent of zoning is to eventually remove all non-conforming uses. He opined this is a unique case and the operation was there before, although he cannot confirm it.

Mr. Dudick asked how long it has been since the zoning change. Mr. Myers answered it was in the early 90's with Snap Fitness occupying the building in between. He stated he has no problem with continuing the use variance as long as there is a sunset clause that if Mr. Scagnelli ever leaves, the use would no longer be continued.

Mr. Dudick asked for public comment. There were no comments. Mr. Cifor made the motion to close the public hearing, seconded by Mrs. Bagramian. All approved. Public hearing closed.

Mr. Cifor made the motion to approve the application for a use variance with the stipulation that it goes solely to the applicant and not to the building itself and expires should Mr. Scagnelli cease to own it. Mr. Myers questioned whether they want to say when he ceases to own it or when the operation ceases. Mr. Cifor corrected his motion, saying when he ceases his operation. Mr. Dudick said he could continue to own the building but it would have to be a conforming use. Mr. Dudick reiterated that the variance would sunset when that business no longer operates at that facility.

Mr. Scagnelli agreed to the stipulation.

Mr. Bloss seconded the motion.

Ayes: Bagramian, Cifor, Dudick, Bloss Noes: none
Application approved with stipulation.

NEW BUSINESS

The secretary read the legal notice as it appeared in the Daily Gazette on May 14, 2015

An application from Frank Demetrowitz for a change to a use variance granted in 1984. Variance approved allowed a three family dwelling rather than two family dwelling with stipulation that it must be owner occupied. Applicant request stipulation be removed. Property is located at 489 Grooms Road, Clifton Park, NY 12065 (Permit #81025)

The application was presented by Mr. Frank Demetrowitz, owner of the property. He stated he received a variance 31 years ago and he doesn't remember why the board approved the change from a 2 family to a 3 family with the stipulation that he must reside in the home. He informed he had improved the home considerably and from the outside it looks like a single family home. He asserted he has reached the point he has to look at potential sale and would need to find someone who will be willing to live in the home which would cut down on the potential buyers. He said he hopes to find a buyer and he will be the third tenant but thinks there will be buyers

who are not interested in living there themselves. He appealed to the board to remove the stipulation.

Mr. Peller asked if the home was listed and if Mr. Demetrowitz had spoken to a real estate agent who informed him his options would be limited.

Mr. Demetrowitz said it is not listed but he had spoken to a realtor who told him it would be harder to sell with the stipulation on it.

Mr. Dudick questioned Mr. Myers about the zoning. Mr. Myers explained it is R-1 which is single family homes or 2-family with approval of the Planning Board. Mr. Dudick asked if there are any triple family homes in that zone. Mr. Myers said not to his knowledge.

Mr. Dudick commented it sounds as though, in 1984, they made a special allowance as long as the owner had the property and it was not intended to continue on for the benefit of property value, but just to allow him to continue to use it. He explained to Mr. Demetrowitz a use variance was usually given in special situations, for instance if a child or older parent needed to be within the home and the board allows for those circumstances. He commented that he has a unique situation because he has a triple residence and no one else has that because it isn't done in this town. He asserted that changes the character of the neighborhood and of the whole town.

Mr. Myers explaining more of the history, related that it appears in 1981 Mr. Demetrowitz was granted a special use variance for two families. Then, he referred to the minutes of 1984, there appears to be a breakdown and somehow it developed into three families which was unknown to those involved at the time. Once that was discovered Mr. Demetrowitz was told to come back for a use variance and a stipulation was put on it because three family homes were not allowed. He said he doesn't know of any other triplexes in town and there is no discussion about triplexes in the code.

Mr. Demetrowitz suggested that one of the reasons they went along with it was although it was R-1 there is a group home and a telephone building. Mr. Myers informed that both of which the town has no control over where they go. Mr. Dudick said a telephone building is not a commercial building but utility.

Mr. Dudick informed that the town has R-1 that is very rural.

Mr. Peller asked why, in 1981, he came in, was it for two units and then he came back three years later for three units.

Mr. Demetrowitz answered he can't remember, just that it grew. He said he was working on it and three seemed appropriate and the board went along with it.

Mr. Peller, speaking to the board, advised this is what it is before the board.

Mr. Dudick opined that two units is better than most and asked why he can't convert it to a two unit home.

Mr. Demetrowitz responded that he cannot do that because there is a dividing wall and separate entrances, saying it is three homes.

Mrs. Bagramian asked when the third one was built. Mr. Demetrowitz informed it was in 1984.

Mrs. Bagramian asked when he converted it from one family to the other two.

Mr. Demetrowitz responded the main one was a WWI old farmhouse with a nice attic and as he made improvements it seemed appropriate to make it two family. He explained there was a two car garage close by and they converted that to a 3rd unit and the board went along with it with the stipulation they wanted it connected to the house, which he did.

Mr. Myers explained that you can't have two residences on a single piece of property, which is why he was told to connect it to make it a duplex which they thought it was.

Mr. Peller asked Mr. Myers, if there is anything in the records as to what was the board thinking when or if it is not owner occupied.

Mr. Myers said the only thing it talks about in the records is that it is a two family home and in 1984 the special use came up because they found out it was a three family. He added it was apparent that the building department didn't know about it either so he had to come in and get approval to keep the three family.

Mr. Peller asked what the status would be if the building was not owner occupied. Mr. Myers answered that without the approval of this board or the planning board he would have to convert it to a duplex.

Mr. Peller concluded that at that point it would be considered a multi unit. Mr. Myers asserted that a multi-unit is definitely not allowed in an R-1 zone without a PUD, repeating it is not allowed in an R-1. Mr. Peller commented that there is a mechanism for it to become conforming, and Mr. Myers agreed.

Mr. Myers said it might be as simple as putting a door in one wall to connect them from two into three. He said the worst case scenario would be to convert it to a duplex.

Mr. Dudick questioned why it couldn't be combined into two units and why Mr. Demetrowitz says it is impossible.

Mr. Demetrowitz answered because it is an up and down, two story home with two units in it and an attached a 1400 sq. ft. L-shaped ranch with its own separate entrance. Mr. Dudick asked why the downstairs residences couldn't be combined making an upstairs unit and one downstairs.

Mr. Demetrowitz argued that it would mean breaking down a wall and the unit would be enormous, combining 1300 sq. ft. and 1400 sq. ft.

Mr. Dudick commented it would be 2700 sq. ft. downstairs and 1300 upstairs and asked if the real estate agent said that would be hard to sell. Mr. Demetrowitz said they didn't talk about that, just about the way it is now.

Mrs. Bagramian asked if they talked about who would move into it, adding her opinion that families would like something like that.

Mr. Demetrowitz answered they didn't get into it, just that the realtor said it would limit sales to get someone who would be willing to move into it.

Mr. Peller asked the size of the parcel, and was told it is 1 1/3 acres. Mr. Peller commented that the original was ten acres and asked if he subdivided it and sold it off. He was told he had. He read a paragraph of the minutes from 1984 which explained the circumstances leading to the request for a variance for the third residence. (letter to the record)

Mr. Dudick informed Mr. Demetrowitz that the town had done him a favor by not letting him waste the \$150,000 he had spent on the building, by adding the stipulation that it would be as long as he would be living there.

Mr. Bloss asked if it was a sunset clause or not. Mr. Myers answered it was specified until it was no longer occupied by the owner. Mr. Bloss asked if the building is sold, would it have to become a duplex, or if the new owner lived there, could it remain three apartments. Mr. Dudick said he thought as long as it is owner occupied, if the new owner lived there, it could be three.

Mr. Peller pointed out that it would depend because if the building is sold, then technically Mr. Demetrowitz would be considered a tenant not the owner. Mr. Dudick said, for example, if he purchased the property, as long as he (Mr. Dudick) moved into the premises, it would still be owner occupied. He suggested to Mr. Demetrowitz that if he found someone who was willing to move into one of the apartments then he has a sale. He informed that if a person wants three rental units, that is a no-go.

Mr. Demetrowitz replied he is asking them to change that. Mr. Myers advised it would have to go to the town board for a PUD. Mr. Peller agreed that is what the issue comes down to – whether or not this board has the ability to do that because technically it was originally on ten acres and now it is on a little over one acre.

Mr. Peller offered options: whoever was going to purchase the building would come to the board (with Mr. Demetrowitz' approval) and say it is a hardship because they wanted to buy it as an investment. He pronounced it is speculating because he could also find someone who wanted to move in.

Mr. Dudick reminded he hasn't listed the property so it is hard to say hardship when he hasn't made any attempt to sell it yet. Mr. Demetrowitz says he understands but he hopes to find a buyer who wants him to stay. Mr. Dudick reminded that you can't say what will happen because you don't have a buyer.

A five minute recess was called by Mr. Peller so he could meet with Mr. Myers.

Upon return, Mr. Peller stated he had had the opportunity to meet with the applicant. He had explained to him, that, if the board made a decision tonight and it was not favorable to him, he would not have the ability to come back in the event he tried to sell the property and couldn't or that he had a potential buyer. Mr. Peller indicated Mr. Demetrowitz feels he would like to withdraw the application and leave the door open and come back to the board if necessary. Mr. Dudick explained to the people in the room that if the board had voted on the application and it was denied, the applicant could not come back unless the application was substantially different.

Mr. Cifor suggested Mr. Demetrowitz look at converting it into a duplex because a triplex is really outside of the bounds in Clifton Park. He reminded that even if he comes back, there is no guarantee he will get a variance even if he adds another element to the application.

Mr. Demetrowitz argued that trying to rent a 2700 sq. ft. apartment for \$2700 to \$3000 a month is hard to pay for and his apartments rent for \$1000 a month. Mr. Cifor recommended it could be a family with a mother-in-law and Mr. Dudick suggested employees from Global Foundaries have the money and are willing to spend it.

The record shows the application was officially withdrawn.

The application from Fastsigns of Saratoga Springs was deferred to the June 2, 2015 meeting.

Mr. Myers said he received the minutes for May 5 late but was comfortable with the board voting for approval. Mr. Dudick made the motion to approve the minutes for the May 5, 2015 meeting. The motion was seconded by Mrs. Bagramian. All approved.

The next meeting is June 2, 2015.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mr. Bloss. The meeting was adjourned at 8:05 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