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CLIFTON PARK  
TOWN CLERK

Zoning Board of Appeals  
September 20, 2022

**Present:** Michael Dudick, Chairman, Scott Styles (alternate), John Klimes, Lisa McCoy, Christopher Lemire

**Also Present:** Scott Reese, Zoning Administrator  
Neil Weiner, Esq., ZBA Counsel  
Cristi Shuhart, Zoning Board Secretary (alternate)

**Absent:** Jerry Cifor, Mario Fantini, Randy Gifford

Mr. Dudick called the meeting to order at 7:05 p.m.

Mr. Dudick advised that Scott Styles will be voting in place of Mario Fantini.

PLEDGE OF ALLEGIANCE  
ROLL CALL

**OLD BUSINESS** – None

**NEW BUSINESS**

The secretary read the legal notice as it appeared in the Daily Gazette on September 12, 2022.

**An application from Caryn Mlodzianowski requests an area variance from 1) 208-50.3.B from the required 30 feet front yard parking setback. Actual setback 13.7 feet. Variance required = 16.3 feet. 2) 208-50.3.C from the required 30 feet building side yard setback. Actual setback 23.8 feet (north), 24.8 feet (south). Variance required = 6.2 feet. 3) 208-50.3.D from the required 50 feet building rear yard setback. Actual setback 21.2 feet. Variance required = 28.8 feet. Property is located at 1739 Route 9, Clifton Park, NY 12065 (Permit #81338).**

The application was presented by Caryn Mlodzianowski of Bohler Engineering representing Alda Enterprises, LLC for a proposed redevelopment on 1739 Route 9, the former Giffy's property with a 7000 square foot two story medical building with 71 parking spaces. She stated the code does require a large amount of parking for this use so they calculate 94 spaces would actually be required, they are proposing 71 spaces. She stated that since 71 spaces are sufficient for the building size and use, they see the benefits in the greenspace that is achieved. They have balanced the amount of parking and building square footage needed.

Mr. Klimes asked if they were to go to the minimum greenspace requirement how much would that change the layout. Would they be closer and would there be less variances required.

Caryn Mlodzianowski stated it's more about the shape of the lot and the most efficient layout. They feel this was the best balance of building size along with greenspace as well.

Mr. Klimes stated that he understands the layout but if they were to mitigate down to 35% greenspace that this really wasn't looked at. That this was the best layout for their setup. If they went to the bare minimum of 35% greenspace, would you be closer within the envelope and less of a variance required.

Caryn stated not with this layout.

Mr. Klimes stated that if you were to change it and stay within that envelope using more of the Greenspace. Would that change the variances.

Caryn answered that with this layout they are meeting all the required parking setbacks with the exception of the 6 or 7 spaces in the front. In order to get the amount of parking they would need they would be encroaching into required parking setbacks.

Mr. Klimes asked Caryn that she had mentioned the requirement should be 94 spaces, that she is going with 71 spaces. If the requirement is 94 parking spaces and she is going with 71, that is inadequate based on the requirements. They already have an overage of greenspace so that should have been factored in.

Caryn stated that her clients would like to have more parking spots but there is just no other place to put them.

Mr. Lemire asked Caryn if they need 94 but you are proposing 71 where does that get addressed.

Caryn stated a waiver from the Planning Board.

Mr. Lemire asked Caryn that maybe one of the alternatives would be to make the building smaller to get more parking and you would need less of a variance.

Caryn stated that her client's target was 14,000 square feet. So, there is 7,000 square feet for two floors.

Mr. Weiner asked Caryn what is Alda Enterprises.

Caryn answered they are the owner of the property.

Mr. Dudick asked what kind of medical practice they are looking to put in this building.

Caryn answered that hasn't been determined yet what types. They are looking to get these variances first.

Mr. Weiner stated that they are trying to maximize rentable space.

Mr. Dudick stated that the code says 90 plus parking is needed for medical. There is no medical practice they currently have that they are seeking to place in the property. But whoever would seek to put a medical practice into the property would be dealing with roughly 20% less parking than code calls for.

Caryn stated yes but they would know that up front. The code also says 150 square feet for use of medical office space so they took the whole building as a worst case.

Mr. Klimes asked Caryn that in a roundabout way the builder decided that 14,000 square feet is where he is going to get a return on investment. So, he is trying to maximize the space and that is where we came to the 7000 square foot building.

Mr. Dudick stated it was a 7,000 square feet foot print, 14,000 total.

Caryn also stated they are maximizing the parking and they feel 71 spaces is sufficient.

Mr. Klimes asked if no variances were granted how would this affect this plan.

Caryn stated they would have to do a compliant plan and change the layout. The building would stay the same size but they would lose roughly at or under 50 parking spaces.

Mr. Klimes asked Mr. Reese if there were any approved variances for this lot already.

Mr. Reese stated that existing building was placed closer to the property line. When Giffy's was put in there it was a different zone at that time and had a different setback at that time which had a 20 ft side yard setback. This area was rezoned to B4A which the setback changed from 20 to 30 feet. So there was no variances for that building placed there.

Mr. Klimes asked Mr. Reese that being this is a new building not on an old a new footprint there's no grandfather clause. Mr. Reese answered yes.

Mr. Lemire asked Caryn about the layout with the building turned will that also require variances. Caryn answered that they would have to draw it up. The plan that was approved for this lot with the building on the footprint on the survey map. That plan did not have any variances to her knowledge. The difference is it only had 30 parking spots. The building was about the same size but a different use. Their parking requirement must have been less.

Mr. Dudick asked about the size of the property. Caryn stated it was 1.2 acres.

Mr. Dudick asked the board for any other comments or questions then opened the application for any public comments or questions. There were none. He then made a motion to close this public hearing. Mr. Klimes seconded the motion. All five members were in favor. None opposed.

Mr. Dudick asked Mr. Reese if there was anything he wanted to add to this application.

Mr. Reese stated the SEQRA was a type 2 so no further action was needed for this application. The Saratoga County Planning Board also said no significant county wide impact. The site was rezoned. One resident stopped in to take a look at the plans (the northeastern corner) to find out there was a proposed retaining wall to preserve some existing vegetation.

Mr. Dudick asked Mr. Reese what his take on this application was. Mr. Reese stated it was up to the Planning Board because the parking is going from 90 to 70 spaces. As far as zoning they don't have much of an impact. It's part of a commercial location. Mr. Reese discussed the parking logistics and uses and square footage of building of this location with the Zoning Board.

Mr. Klimes had a following question for Caryn that if the Planning Board doesn't give them a waiver for the 94 spaces based on the 71 what is the maximum square footage building you can have on this lot tied to the 71 spaces? What is the bottom line for the builder that he can do for a building size?

Caryn states the 7000 square footprint is really the bottom line of what they want and to go two stories for 14,000 square feet. If they went to one floor of 7000 square feet would that change the Board's mind.

Mr. Klimes stated that by going up you are gaining, that it's not the total it's the base footprint which is affecting their variance. The two-story structure is in line with all the other buildings on that along that stretch as the town is growing. He was concerned about the front setback which is there for a reason. If you have to have 94 and you only have 71 spaces, then you have to reduce the building footprint to equal what your space is allowable.

Mr. Lemire asked Mr. Klimes how big of a building can you build with 71 parking spaces Mr. Klimes stated that was correct.

Mr. Klimes asked Caryn 150 square foot per parking space if that was correct. Caryn stated that was correct. Mr. Lemire asked  $71 \text{ parking space} \times 150 = 10,650$  which is 5,325 per floor if that is what the applicant is asking.

Mr. Dudick stated that there was a similar issue with a building on Route 146 where the size of the building was so great, and they talked about the need to have a large footprint for the use. They made the second floor smaller therefore reducing the total square footage of the whole building but still have the full size on the first floor. He then asked Caryn if she would be interested in that. Caryn stated her client may be interested in that. Mr. Dudick asked that 7,000 square foot first floor and then what ever you can meet with zoning requirements for the second floor. Caryn agreed.

Mr. Dudick stated that if there is less square footage for the building there is less requirement for the parking.

Mr. Lemire stated the 71 parking spaces that they can get in there with variances. If you reduce the footprint of the building you need less variances. Mr. Klimes agreed.

Mr. Dudick suggested to keep a 7000 square foot base. Mr. Klimes is suggesting to making the footprint smaller to allow for greater parking.

Caryn discussed the possibilities of the layout and shrinking the building on the property with gaining parking with the board.

Mr. Klimes asked Caryn if there will be a basement or will the mechanicals be on the first floor. Caryn stated first floor. Mr. Klimes then asked if she has a basement where the mechanicals go you actually gain square footage; you reduce the building envelope as a mitigation strategy. He feels they can still bring the building down and still get within the total envelope.

Mr. Dudick then asked for a 5-minute recess to for some legal questions to discuss with counsel with the application that they can and can't do. Time of recess 7:25 pm.

Back in session (7:30pm) Mr. Dudick stated that with his experience with health practice that there are always cars moving in and out. That while the board isn't considering parking, this is a large amount of building to be placing in there for the space which creates an issue for him. This will be affecting the neighborhood and causing a problem. He feels it could be solved if the building were smaller and might make him more comfortable coming in front of the board for granting.

Mr. Lemire stated to Mr. Dudick that it doesn't do away for the need of the variances. Mr. Dudick agrees but feels that this is such a substantial request that it would affect the character of the neighborhood and create adverse physical environmental affects because of how much building is being placed on this property. He then asked comments from the other board members.

Mr. Klimes suggested to Caryn that she can request to table this and take another look at this differently to see if there are other mitigation strategies. He agrees with the chairman. There are multiple ways to do this and shrink the building a little bit to stay with the envelope and meet the parking requirements. He suggested to have a conversation with the builder and find out what the bottom line is. The front setback is there for a reason.

Caryn stated that without that front setback variance they lose seven spaces.

Mr. Dudick stated that the front and rear setbacks aren't the real issue as it is the volume of the whole project. He asked Caryn if she wanted the board to vote on this application tonight or table it and look at other options.

Caryn asked that it sounds like it's the size of the building that's the issue, total square footage. What if she came back with a plan that fit in the setbacks and had more parking.

Mr. Dudick explained that it sounds like she is significantly off with square footage and parking Spaces. This would impact the character of that neighborhood and create an adverse physical or

environmental affect by trying to place so much building.

Caryn asked for the rest of the board's thoughts.

Mr. Dudick asked for the other board member's thoughts.

Mr. Klimes suggested to Caryn that he felt this could be mitigated somehow.

Mr. Weiner stated to Caryn from the sense of the board you need four votes, two are concerned. A vote seems unlikely so she might want to request an adjournment for up to 62 days. If you do decide to come back the same board members may not be here others that were absent may be here so you may be starting from scratch again.

Mr. Dudick stated to Caryn the board members that weren't here would read the minutes and bring themselves up to speed as far as the application is concerned. He then asked Caryn if she wanted the board to vote on this today.

Caryn stated she wanted to adjourn. Mr. Weiner stated that will give her 62 days. If she is not back within that time frame they would have to vote which could be a negative vote and then she will have lost. Caryn said she understands.

Mr. Dudick stated to Caryn that there are two options, if they don't here from you within 62 days then the board makes a vote. Or you can ask for an extension given an extenuating circumstance that they get to review.

Mr. Weiner stated they meet on the first and third Tuesdays of the month of October. One meeting in November and December.

Caryn stated she would like to be at the next available meeting, October 4<sup>th</sup>.

Mr. Reese stated it is up to the board on how comfortable they are since submittal for October 4<sup>th</sup> is September 13<sup>th</sup>. But since they have already seen this plan, it is up to the board of how comfortable they are on a leeway of time for them to look at the plan.

Mr. Klimes stated that if they reduce the footprint then they don't have to re-notice. Mr. Dudick agreed and said not for reduction.

Mr. Weiner stated that if they are not changing any applications for variances then they don't have to re-notice. Mr. Dudick agreed.

The secretary read the legal notice as it appeared in the Daily Gazette on September 12, 2022.

**An application from United Construction & Forestry & United Ag & Turf requests an area variance from Chapter 171 for 1) wall sign of 150 sq. ft.-Max allowable = 60 sq. ft. Variance requested = 90 sq. ft. 2) Wall height of 22 feet-Max allowable-20 feet. Variance requested = 2 feet. Property is located at 20 Deere Lane, Clifton Park, NY 12065 (Permit #81339).**

Marshall Schneider, Chief Business Officer for United Ag & Turf stated they inherited the John Deere project. They purchased Nortrax out. They are trying to comply with John Deere rules with what they allow them to do and the town's rules. He has spoken with Mr. Reese and others and has been told the town allows one sign on a building. John Deere will not even approve the design of the sign United Construction presented. He explained that they are a John Deere subsidiary company. John Deere will not allow a John Deere logo that they presented to them to be connected to their individual signs to the companies that they own which is United AG and Turf and United Construction & Forestry. They do not own John Deere. John Deere will not let this be one sign. How does he mitigate what John Deere and the Town of Clifton Park allow.

Mr. Dudick stated that the town will allow no more than two signs on a building. Ms. McCoy Asked Mr. Schneider that if United Construction & Forestry breaks apart the signs they will have Three signs because they can't be connected. Mr. Schneider stated that is correct. Mr. Lemire asked Mr. Schneider if they are three separate businesses. Mr. Schneider stated that is correct and explained that one company, Fernandez Holdings, owns United Ag & Turf and United Construction & Forestry. The sign is the exact same sign broken apart. They reduced the square footage of it to 137 square feet. Since they have two different companies that are occupying the same space. Mr. Dudick asked what the two companies are. Mr. Schneider stated United Construction & Forestry deals with the industrial side of the John Deere network. They are a John Deere Franchisee. John Deere is the product that they sell and service. John Deere doesn't sell and service their own equipment, they got out of it. Ms. McCoy asked Mr. Schneider if that is the only product they sell is John Deere. Mr. Schneider replied that John Deere is the only major equipment they sell. The Ag & Turf side deals with the residential side.

Mr. Dudick asked Mr. Schneider how separate the two United businesses are physically in the Building. Mr. Klimes wanted to clarify legally if they are separate companies based on an EIN (Employer identification number). Mr. Schneider stated yes, they are. Mr. Klimes stated that is two separate businesses because they each have an EIN. Mr. Schneider answered yes and that they are two separate businesses operating under one roof, one is residential, and one is commercial. Mr. Dudick was conferring with counsel to get some clarification unless the Building Department wanted to add to this. He stated to Mr. Schneider that he has two businesses and each business get 60 square feet without variance. That he would be allowed four signs.

Mr. Klimes asked Mr. Schneider what the square footage of the building is. Mr. Lemire also asked if there were two different entrances. Mr. Schneider stated only one. Mr. Reese stated from code that one per tenant having direct customer access to the out of doors must be placed on store front of the tenant identified by the sign. Mr. Dudick asked if they had two entrances, then you can be two businesses in the building. Mr. Klimes stated another consideration to, is because you mitigated based on the signs the mounting bracket can make this one contiguous sign. Even

though it gives the appearance of separate signs the mounting bracket unifies them all together. Mr. Dudick stated that hypothetically if you have a building with multiple entrances because there are multiple businesses and each of the businesses has their own entrance then we are talking about each business is allowed 60 square feet of signage. Mr. Reese answered it's a maximum 60 square feet per sign and one per tenant having direct customer access to the outer doors. Must be placed on the store front of the tenant identified by the sign. Mr. Klimes stated that it doesn't talk about shared store fronts. Mr. Klimes asked Mr. Schneider that when you go in you have the store front, parts sales and service. Mr. Schneider answered yes. Mr. Klimes asked Mr. Schneider that there is no delineation between the two businesses inside other than if you were to go buy something. Mr. Schneider said it would be discernable by signage, without the signage you would be walking up to a parts counter. Mr. Dudick asked if a customer walked in to grab a few things from United AG & Turf then take the cart and grab a few things from United Construction & Forestry go to one check out. They don't have to go to two separate check outs. Mr. Schneider stated that they are going to have to figure out how that is going to work.

Mr. Schneider then passed out to the board a sample on paper of a wall sign that has United and has the John Deere logo and John Deere has approved that on the building. The wall sign is 54 square feet. Mr. Dudick stated that if he does that, he doesn't need a variance. Mr. Schneider then asked if he could do a freestanding sign on the ground. Mr. Reese stated to Mr. Schneider that for the maximum he can do for a freestanding sign is 60 square feet. He would have to reduce it by 4 square feet or request a variance. Mr. Dudick stated that the freestanding sign is not on the variance application right now. He would have to amend his application. Mr. Weiner stated to Mr. Schneider that if he is reducing his application requested than the board doesn't need to readvertise. But if you are adding a freestanding sign and a variance for that, that is not before the public yet. He would have to submit a new application for that variance. Mr. Schneider asked if he needed any variances for the building signs. Mr. Dudick stated that he could go up to 60 square feet without a variance.

Mr. Weiner asked Mr. Schneider if he would like to table this for up to 62 days. Mr. Dudick stated to Mr. Schneider that if you decide to go for a freestanding sign that doesn't need a variance, then he can withdraw the application.

Mr. Schneider stated he would like to table his application for up to 62 days.

The secretary read the legal notice as it appeared in the Daily Gazette on September 12, 2022.

**An application from AJ Signs requests an area variance from 1) Chapter 171-4H(1) no off- 2) Chapter 171-freestanding sign area existing sign existing sign area 90 sq. ft. and relocated sign area 33 sq. ft. = 123 sq. ft. – max allowable = 60 sq. ft. – variance requested = 63 sq. ft. 3) Chapter 171-6B. (1) No freestanding sign may be located less than 50 sq. ft. from any other freestanding sign – requested 0 ft. – variance requested = 50 ft. Property is located at 1023 Route 146, Clifton Park, NY 12065 (Permit #81341)**

Tom Wheeler from AJ Sign Company is representing this application. The roadway that the sign is on is going to turn into a town road which is going to connect to a development that is

behind Ravenswood (1021 Route 146). The sign is in the middle of the road. The plan they came up with is to move the sign in front of another sign on the parcel next door (1023 Route 146) which is next to a parking lot which Ravenswood rents part of that parking lot. This is only solution for Ravenswood to keep a sign on Route 146. It's technically a separate sign on the property there is no way to join the two signs. Ms. McCoy asked if they could put the sign on the other side of the road (East). Mr. Wheeler stated that there's a gas station there with an embankment so there is no place to put the sign there.

Mr. Lemire asked Mr. Wheeler about the driveway into Ravenswood turning into a town road. Mr. Wheeler stated yes that road will lead into the condo complex. Which Mr. Reese stated to Mr. Lemire is under construction. He then explained that road is not turned over to the town yet but eventually will be. Mr. Lemire asked Mr. Reese who owns that driveway now. Mr. Reese stated that right now the owner is Scott Earl. Mr. Klimes asked Mr. Reese that the patch of grass that the Ravenswood sign is on is owned by Scott Earl. Mr. Reese stated yes. Mr. Dudick asked Mr. Reese that the sign already is on a different property and is out of compliance with zoning. Mr. Reese responded yes. Mr. Dudick asked how did the Ravenswood sign end up not on their property. Mr. Weiner stated that possibly it could have been there before zoning code, predated sign codes. Mr. Styles asked Mr. Wheeler if he could add Ravenswood sign to the existing sign that is right across from it. Mr. Dudick stated to Mr. Styles that he is still putting signage on property that isn't owned by the business. Ms. McCoy asked Mr. Wheeler that the property owner (1023 Route 146) is ok putting the Ravenswood sign on their property. Mr. Wheeler stated yes.

Mr. Reese then showed the board on a map the roadway into Ravenswood with the lot that will be turned over to the town. Mr. Dudick stated to Mr. Reese that Ravenswood has an off premise sign now which, where it is, will be turned into a road. Why can't Ravenswood put the sign on his property. Mr. Wheeler stated you won't be able to see it from the road (Route 146). Mr. Dudick stated to Mr. Wheeler that the Ravenswood property is not on Route 146. Mr. Reese stated that he has an easement (connection from Route 146) that goes through the road. Mr. Reese stated that Ravenswood will have public access once the road going into the condo project goes to the town.

Mr. Dudick asked Mr. Reese who owns the property to the right of the gas station. Mr. Reese stated it is 146 & 146A Properties.

Mr. Wheeler asked the Board that even if he connected the Ravenswood sign to the 1023 Route 146 sign, it's still an off-premise sign. Mr. Dudick explained it is an off-premises sign now on property that is turning into a town road which will make that sign right on a town road. Every other business puts their sign on their own property on the road that they border. Mr. Dudick stated to Mr. Wheeler how did his sign get on property he doesn't own. Mr. Reese talked about the history of the Ravenswood sign on the location where it is now.

Mr. Dudick stated that if the sign pre-dates zoning, then they can work with the owner because of grandfather issues. If it turns out that owner of the property (where the Ravenswood sign is) decided that they were going to sell it to Scott Earl so he could develop the condos knowing full well, he is selling the property where his sign is, that is a self-inflicted harm.

Mr. Dudick stated to Mr. Wheeler that he would really like to know how the sign got placed that is not owned by the business. The off-premises sign sounds reasonable if the signage that existed prior to the zoning. It's not the fault of the property that its business goes back prior to zoning and now is becoming a town road. It wouldn't be self-created because it goes back before the zoning laws. He would give relief based on history.

Mr. Klimes stated to Mr. Wheeler if Ravenswood was a tenant on the 1023 Route 146 property, he could put a sign there. Mr. Weiner asked Mr. Wheeler if they rent parking on that parcel. Mr. Wheeler stated there is some agreement for parking. Mr. Wheeler asked Mr. Reese if they could join the two signs with a retaining wall. Mr. Reese says it depends on the size of the sign. Mr. Dudick clarified with Mr. Reese that the road is an easement for now. Mr. Reese stated that yes, it is an easement. Mr. Dudick asked Mr. Reese why not keep it like a boulevard and not touch it. Mr. Reese stated that the easement has been designed for a town road and the town does not want to take over the sign. Mr. Wheeler asked Mr. Reese if the town can give him an easement for the sign in a boulevard situation. Mr. Reese stated to Mr. Wheeler that the town road is not designed as a boulevard. Mr. Klimes stated the volume of traffic will increase also. So as a public entrance the boulevard would not make sense.

Mr. Weiner stated that the board is entitled to grant variances under undue hardships. This might be an example of one because it pre-dates the sign code.

Mr. Wheeler stated to the board that he could get some history on this on how this happened. Mr. Weiner asked Mr. Wheeler to try to find out when that sign was originally constructed. Mr. Reese went over some photos of the sign from 2001.

Mr. Klimes asked Mr. Reese if the road in the photos was a paper road. Mr. Reese stated he would have to look at it. Mr. Reese stated he can look at the history of the signage and the lot, subdivisions, etc. Mr. Reese then went over lot lines with the Board on a map on the computer.

Mr. Dudick stated the owner of the property would have information about the deed of the property.

Mr. Reese showed the Board some aerial photos of the property.

Mr. Dudick stated they will table this application for more information.

The secretary read the legal notice as it appeared in the Daily Gazette on September 12, 2022.

**An application from David & Lisa Hodgkinson requests an area variance from Chapter 208-12A from the required 5 ft. side yard accessory building setback – Proposed side yard accessory building setback 2 ft. – variance requested = 3 ft. Property is located at 5 Raphael Court, Clifton Park, NY 12065 (Permit 81342).**

David Hodgkinson of 5 Raphael Court presented the application. He is looking to build a garage on the back side of his property. He wants to have access for his vehicles to the back of the property. Mr. Dudick asked if it was a detached garage. Mr. Hodgkinson stated that it is a detached garage. He wants to seek the minimum variance. In the back of his property there is a hill and trees. The house has a sprinkler system. This plan is the least disruptive to the hill and back as well and sprinkler system in the back. He is trying to build this to house a truck and a boat. The idea is to not have these out in the neighborhood. Make the garage look nice, similar to the house. To make it look nice so it's not an eyesore to the neighborhood.

Mr. Dudick asked for any questions or comments.

Mr. Lemire asked Mr. Hodgkinson if he has deed restrictions that you need to follow. For Example, he has deed restrictions so if he wanted to build a garage. It would have to match the siding and façade of his house. Mr. Hodgkinson stated that he was not aware of any deed restrictions. Mr. Lemire stated to him that he may want to check your deed. Mr. Hodgkinson stated that he is looking to build a steel building so the paint color is close within the manufacturing options to match the house.

Mr. Dudick asked Mr. Hodgkinson that if he did have deed restrictions that he would still want to know the requirements of the property. Mr. Hodgkinson stated that he may have gotten a deed. Mr. Lemire asked Mr. Hodgkinson when he bought the house. Mr. Hodgkinson stated August 29<sup>th</sup>. Mr. Lemire said to him to check his deed. Mr. Weiner stated to Mr. Hodgkinson that his neighbors can enforce the deed. That neighborhoods have deed restrictions to maintain the quality of the neighborhoods. That Mr. Hodgkinson has a couple of neighbors who are objecting to this.

Mr. Weiner stated to Mr. Hodgkinson that if he had an attorney assist him in the purchase, have your attorney check the title records. Mr. Weiner then said that deed restrictions are not something the ZBA enforces.

Mr. Lemire asked Mr. Reese that the variance is for the proposed side yard setback. Is there a variance needed for the size of the garage or the height. Mr. Reese stated that the garage does not exceed the height requirement. Mr. Klimes asked Mr. Hodgkinson that the variance is a 2 ½ foot setback what is to stop it from going the other way. Mr. Hodgkinson then explained his answer from a plan that he had in front of the Board. Mr. Klimes stated it is a greater distance it's more than 9 feet from corner house to corner proposed garage. Mr. Hodgkinson stated yes, to the house.

Ms. McCoy asked Mr. Hodgkinson what if he were to move the garage slightly back before the hill. Mr. Hodgkinson stated because of you are starting to dig into the hill and push the garage into the incline instead of being on flat. You may have to dig out the hill, and trees. Plus

the sprinkler systems are back there.

Mr. Dudick asked Mr. Hodgkinson that reason he can't move it away from the side yard is because if he moves away from the side yard, he doesn't have the access between the house and the garage. Unless he moved it also backwards. Mr. Hodgkinson explained that if he moved it backwards then he is digging into a hill.

Ms. McCoy asked Mr. Hodgkinson if the garage could be built smaller as opposed to a 30 x 40 foot structure. Then there would be more mobility to move it around. Mr. Dudick asked how many vehicles he was planning to keep in it. Mr. Hodgkinson stated it could be up to three vehicles. He then stated he wasn't looking to reduce the size. This was the structure he was hoping to build. He needs the space to store the boat trailer. It leaves enough space to leave another vehicle in the back.

Mr. Klimes asked Mr. Hodgkinson if he had staked this out where the building footprint would be. Going back 3 feet would allow him to go to the right 3 feet and keep the distance he wanted to keep. Mr. Hodgkinson stated that he did measure this out and that his measurements were the key distance he wanted to keep without getting into the hill. He then showed a drawing regarding his measurements. He also has a shed on property.

Mr. Dudick stated to Mr. Hodgkinson that on his photograph there is a shed directly behind the his driveway where he wants to build his garage. It looks like he is avoiding trying to move the shed. Mr. Hodgkinson stated that the shed is further back.

Mr. Lemire asked Mr. Reese that if there is a shed there already and they want to put a second accessory structure on the property, is there an issue with that. Mr. Reese stated that he didn't know there was already a shed there. Mr. Reese will need to check the code on that.

Mr. Weiner asked Mr. Hodgkinson how big is the shed he has on his property now. Mr. Hodgkinson was not sure of the exact measurements. Mr. Dudick asked Mr. Hodgkinson to show him where the shed is in the picture he submitted for his application.

Mr. Reese asked Mr. Hodgkinson if he had the surveyor come out there and that was the property line right on the fence line. Mr. Hodgkinson said yes and that the fence is on his side and he marked it on his side. Mr. Reese stated that he can't measure out the fence line to tell you how far he wants to do his setback from. He has to find his property line. Mr. Hodgkinson said he paid the surveyor to mark it so he knows where the line is.

Mr. Dudick asked Mr. Hodgkinson is there any relief that can be gained if he simply moved the back of the proposed garage to angle it away from the property line. Mr. Dudick showed on the map what he was talking about if the garage was angled instead of parallel to the property line.

Mr. Dudick invited the public for comment.

Mr. Bob Carillo who lives at 3 Raphael Court and lives right next door to 5 Raphael Court.

He wrote a letter to the board which states his objections of granting the variance two feet from his property line. He has a document that addresses the issue about the neighborhood requirements. The document talks about the requirements, that any alterations that affect the aesthetics and property values in the area. He and others feel that building a structure like this, 1,200 square feet, right at the front of the property is going to affect the entire way the block looks. It may affect the property values. In addition, when Mr. Hodgkinson first approached him about this he did suggest to him that his need for emergency vehicle access could be achieved by moving the garage back. There is enough room to move this garage back without excavating the hill. He showed the Board the room on the map. There is a document which is a declaration of restrictions and covenants in the neighborhood. That he would have to present his plan to the neighborhood for approval and vote on.

Mr. Weiner reiterated to Mr. Carillo that the Board can't enforce any restrictions the neighborhood could and that is something Mr. Hodgkinson needs to be aware of because even if he got approved by the Zoning Board for the variance if you are subject to declarations and restrictions that are enforceable he may have to take the garage down. So, he needs to look into that. Mr. Hodgkinson asked if that would be attached to a deed. Mr. Weiner stated that it would be part of the title. He advised Mr. Hodgkinson to have the attorney who assisted him with the closing to see if they have that information.

Mr. Lemire asked Mr. Reese if the side yard setback is 10 feet. Mr. Reese said it is 5 feet for R1.

Mr. Dudick stated to Mr. Hodgkinson that one of the issues he sees is stormwater runoff from the roof. Mr. Hodgkinson stated he will have gutters to abate the water not going onto his property. Mr. Dudick said that unless they made that as a requirement of the application so there is no chance of runoff. The Board could stipulate that as a requirement if it's granted. He asked if he would have a problem with that. Mr. Hodgkinson said no.

Mr. Dudick made a motion to close the public hearing.

Mr. Lemire seconded the motion.

All in favor. None opposed. Public hearing is officially closed

Ms. McCoy asked Mr. Hodgkinson that with the Board looking at his plans and making different suggestions. Their goal especially when they see that neighbors have negative response to minimize the variance as much as possible. Are there any concessions that he is looking at or entertaining to reduce that 3-foot variance you are requiring to get yourself off your neighbor's property.

Mr. Hodgkinson stated that he was told it should be a minimum disturbance. The safety thing where he wants to make sure there is an access by tilting it.

Mr. Klimes asked Mr. Hodgkinson that when he said minimum disturbance did, he interpret that to mean not digging the hill into the hill in the back. He understands that to mean from their prospective you are granted the minimum variance necessary to do what you want. If you go back and move the garage to the right 2 ½ feet, you don't need a variance. That's the minimum

you would need us. I'll go back 5 feet or make the garage 5 feet shorter. Then you don't need a variance.

Mr. Dudick said his angling suggestion was to give some relief to the neighbor. Make it more parallel to the driveway.

Mr. Dudick asked for anymore comments or questions.

Mr. Dudick stated that in order for this application to be approved four votes for the affirmative must be given. Is there a member of this board that would like to make a motion to accept the application as submitted.

Mr. Dudick stated that no one made a motion to approve. Is there anyone who would like to make a motion to deny.

Mr. Weiner suggested to tabling this application.

Mr. Weiner asked Mr. Hodgkinson if he would like to table his application.

Mr. Hodgkinson stated he would. He can try to come up with a different plan.

Mr. Weiner suggested Mr. Hodgkinson table it and try to look into the restrictive declarations.

Mr. Dudick stated to Mr. Hodgkinson that will give him 62 days. If they don't hear from him at All, they will vote on it whether he is here or not.

Mr. Hodgkinson stated he will table his application.

Mr. Dudick stated next meeting is October 4<sup>th</sup>.

Mr. Dudick made a motion to adjourn the meeting. Mr. Klimes seconded the motion.

All in Favor. None opposed. The meeting was adjourned at 9:25 p.m.

The next schedule ZBA meeting will be held on October 4<sup>th</sup>, 2022

Respectfully submitted,

*Cristi Shuhart*

Cristi Shuhart, Alternate Secretary  
Zoning Board of Appeals