

Town of Clifton Park

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Zoning Board of Appeals



6-5-18
APPROVED

ZONING BOARD OF APPEALS May 1, 2018

Present: Chairman Dudick, Jerry Cifor, Lisa McCoy, David Donohue, Mario Fantini, John Klimes, and Michael Bloss.

Absent: Chris Lemire.

Also Present: Neil Weiner, Esq., ZBA Counsel
Steve Myers, Director, Building and Zoning

The Meeting was called to order at 7:01 p.m.

PLEDGE OF ALLEGIANCE
ROLL CALL

Chairman Dudick announced that alternate member, David Donohue would be voting in place of Chris Lemire.

OLD BUSINESS

N O N E

NEW BUSINESS

The secretary read the legal notice as it appeared in The Gazette on April 26, 2018:

1. Application from Prestige Commerce Center LLC for area variances for a 2 lot subdivision in LI-2 Zone, from Section 208-65E(2) which requires a 25' setback for parking and landscape buffers. 0' available for parking for both lots. 25' variance required for both lots. 0' available for landscape buffers. 25' variance required for both lots. Property is located at 1926 and 1928 Route 9, Clifton Park, NY 12065. (Permit #81162).

Tom Andress from ABD Engineering presented the application on behalf of the owners, Joseph and Sunday Verrillo and explained that this proposal, which has already been before the Planning Board, is now before this Board for area variances required to create a subdivision of the 3 ½ +/- acre lot. The subdivision will

create lots of 1.5 +/- and 2.2 +/- acres and each lot will contain one of the two buildings that presently exist. He added that proposals to add building additions to the existing two buildings were approved by the Planning Board, and that although they have not yet been built, when they are, they will be in conformance with the zoning requirements for setbacks.

Mr. Address pointed out where access and the parking area will be and advised they will be creating a common easement for utility access, parking, and for maintenance that will provide for maintenance of the asphalt parking lot and maintenance of the storm water management system. Each lot will have their own well and connection to the sewer system, but all the other common items will fall under the common easement, because there are a number storm lines that run through the site to a storm water management area. As to the requested variance for the landscape buffer, Mr. Address explained because the proposed lot line goes through the middle of the parking lot, it would be very difficult to put a buffer of 25' along that lot line and would negate the ability to utilize those lots.

Mr. Address noted that when this application was originally heard by the Planning Board, there were a number of points that were discussed and there was a concern raised by the Environmental Conservation Commission (ECC) in reference to some storm water issues. He then handed out a diagram and a copy of an April 27, 2018 memo he had received from John Scavo, the Town's Planning Director.

Chairman Dudick noted for the record that a memo from, Jason Kemper, the Director of the Saratoga County Planning Board had been received regarding this application, which indicated that following their review, they believe the proposal would have no significant county wide or intercommunity impact.

Mr. Address advised they are scheduled to go back before the Planning Board for final site plan approval if the Zoning Board decides to grant the requested variances. He pointed out that Mr. Scavo's memo provides a listing of concerns he intends to bring up at that meeting. He also pointed out that the ECC had advised they were recommending this Board not taking any action until some of the required storm water management work at the site was completed, citing erosion issues and the unique classification of the Dwaas Kill, which runs along the corner and curves through the bottom of the property.

In light of the Planning Board and ECC comments, Mr. Address indicated that he wanted the Board to feel more comfortable in reference to the storm water management area and therefore gave some background on the situation. He explained that although there is an existing storm water basin, it is not the full size that was approved. There is a proposal to construct an additional basin when the additions are complete, which will bring the basin into compliance. He explained that the reason it hasn't been built yet is because of various constraints and difficulties with the property slopes, elevation issues and fill issues. He added that they can't construct the remaining portion of the basin until the building additions are completed. He explained that the Verrillos are in the process of constructing one of the approved additions, but don't expect the additional one to be constructed this year. Therefore, they are looking to fill in various areas to stabilize them and then they'll be able to build the second approved addition.

Mr. Address noted that this information wasn't available to the ECC, it wasn't asked for nor were they contacted and therefore, feels there are misrepresentations in their statement that warranted this explanation to the Board.

Mr. Address pointed out that there has been a fair amount of work done since they initially came in years ago looking for a variance and therefore, he takes exception to the ECC's comments in reference to sediment

control. He described the prior condition of the storm drainage which was before DEC even became involved in wetlands and before there were wetland permits, explaining it was piped through the property directly to the Dwaas Kill. That storm pipe is still there at the top of the slope, which slope is extremely eroded down to the bottom and into the Dwaas Kill. Discussions were had at that time with the ECC on how to improve the poor condition of the soils and since the approval for Prestige to build the 2 buildings that exist now, some modifications were made. He explained they had some roof drains set up, they had removed some areas of the existing drainage system and made them run into the storm water management area instead of going directly to the Dwaas Kill and diverted it to the large wetland area. He added that the wetlands act as a cleaning agent and together with the re-piping that had been done, it helped to clean up the flow that was coming through the site. He stated these are things the ECC certainly did not look at.

Mr. Andress added that from a sediment control standpoint, they have actually taken what was a direct discharge down a slope that was eroded away and have controlled it through the basin and the wetlands. Although he understands the ECC comments that sediment is there for the Dwaas Kill, he believes this applicant has gone out of his way to make sure that he's reduced the sediments as much as possible. He added that when the addition is done, there will be additional piping that will run underneath the building that will then pipe some of the roof drains into the basin and therefore, they feel the basin that's been built certainly meets the requirements of what is currently needed. It is the intention to finish it off as soon as they get the required areas filled.

A discussion was had regarding the location of the storm water for the original development and an old pond that was required by the Fire Code. Mr. Myers confirmed there had been a fire pond in the front, which was later determined could be filled in because it was no longer necessary for that use. A large dry well and heavy stone fill was put in underneath what is the pavement now and the storm drains from that building now all feed into the subsurface drainage system in the front.

Mr. Andress mentioned a collapse that had occurred about a year or half a year after the Verillos had paved, which happened because the dry wells had not been installed correctly. Thereafter, the applicant changed the direction of the flow and piped it back over into the basin. He added that you can still see this pipe, which goes into dry wells, but now has an overflow back as opposed to the overflow that was going directly down.

Upon inquiry from the Chairman, Mr. Andress confirmed that the 2 additions had been approved in 2013 and as part of that approval, the storm water management area was to be changed and developed. He reiterated they are working through the additions and have the storm water management done to a certain point, except that they can't build the one section right now because they need to get it set so that it's at the same elevation, which will require a lot of fill.

Upon inquiry from the Chairman, Mr. Andress also confirmed there is no room to move the storm water basin on the parcel and that if they build the extensions, they will go right up against the basin and there is no extra room, as every foot of the property has been set aside for its task. He also confirmed that although they are not claiming a financial hardship, for the owner to be able to have the funds to make this work, he's been trying to rent out the building that's too large for his use, so he can move his facility into the smaller building, but he hasn't been able to rent it out. He has had a lot of inquiries to purchase, which prompted the request to subdivide the property into 2 pieces, in order to allow them to sell a portion of the property.

Mr. Dudick pointed out that if the owner hadn't taken on the financial constraints of having to build the extension, he wouldn't have the issues with regard to the storm water. In other words, the problem with the financial hardship is that the owner wants to build something he can't afford so he's asking for a variance

Mr. Andress disagreed, stating that the owner is asking for the variance to be able to subdivide the property to make it work financially for him, so that he doesn't have to sell the whole thing. He agreed that the basin they have right now would be adequate if it wasn't for the planned extension and that as you create additional impervious area you need a larger basin.

The Chairman inquired whether the applicant would be willing to forfeit the planned extension approval for the variance, so they could subdivide the property and Mr. Andress replied he didn't think they would agree to that.

Mr. Dudick stated that it seems to him like there is so much planned development that the owner can't afford to do and now he's looking to subdivide to afford to do the development, but the storm water which was approved 5 years ago still hasn't been done. He added that if the property was in compliance, he would be more likely to agree that it's just a line in the property

Mr. Andress pointed out those approvals were not subject to this Board for variances and therefore only the area variance criteria should be considered here. He added that there is nothing out of compliance with the property. The approvals don't say they have to build it all at once. It has to be built in sections and the basin needs to be able to compensate for what is out there now and that if they had gone through in Phases, it may have resolved this issue.

Mr. Myers stated that this is a Type II action and therefore, no further SEQA is required. He commented that the application was going to be pulled from the Agenda, but that after several conversations with Planning and Scott Reese today about project, Mr. Scavo felt that if this Board approved the variances, the storm water issues could be addressed at the Planning level prior to their approval. He did however suggest that if the Board did decide to approve, it should be approved contingent upon Planning Board approval of whatever storm water corrections are needed. He added that he has to believe the storm water system was designed to handle when its fully built out, which is why when its only partially built at this point in time. However when they build either one of the 2 additions the system is going to have to be enlarged to handle the additional runoff.

Mr. Cifor inquired whether the storm water management was typically built out first in a development and if there is a sunset provision on an approval such as this. Mr. Myers replied it is usually done that way, but this has been a little different because of the financial restraints of the owner and that there is no sunset provision, but the site plans can be renewed periodically if they aren't making any changes.

Upon inquiry from Mr. Bloss, Mr. Myers also confirmed that the additions have been approved by Planning and the only plans the Building Department currently has are for addition currently under construction and no variances are required for the additions.

Mr. Dudick commented that there are finances available at this time for construction, but there's a claim for financial difficulty in constructing the storm water aspect of the property.

Mr. Andress took exception to that pointing out its more the ability to construct it based upon the slopes on the site.

Mr. Myers commented that because the Dwaas Kill is a rated trout stream, there are severe protections required to do anything in the vicinity of the stream. The owner has stabilized the system now and if they go in now and start digging again to move to a bigger system, he'll have to do significant protections to ensure nothing gets into the stream

Mr. Dudick stated that he can't help but feel this is a self-created hardship. Mr. Andress disagreed, stating they are meeting the requirements of phased construction and the Planning Board will certainly made sure they're satisfied before they give a full approval.

Chairman Dudick opened the Public Hearing and asked for questions or comments. Being none, he made a motion to close the Public Hearing. Mr. Bloss seconded. All voted in favor and the Public Hearing was closed.

Mr. Dudick related a past issue with the site when the Times Unions was renting space and there were bales of newspaper that were being dumped out the building and down into the Dwaas Kill. He had seen the bales during a visit to the site and although the owner kept saying they were taking care of it, the dates on the newspapers were only a couple of weeks prior to when the application was being made, which gives him pause to move forward with a subdivision of the property when they still haven't gotten to the point where the storm water management area was completed.

Mr. Bloss stated that he understands the Chairman's concerns about the storm water but has full confidence in the Town Building Department to make sure the storm water business will be handled. As such, he made a motion to approve the application as submitted with the additional language provided by Board counsel relative to the storm water management area approval by the Planning Board.

Mr. Weiner clarified that the motion to approve would be contingent upon the acceptance and approval of the storm water management area, in accordance with the previous approval by the Town Planning Board in 2013, or any amended determination by the Planning Board.

Mr. Cifor seconded.

Mr. Bloss then stated that he doesn't believe an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties created by the granting of the area variances; that the benefit sought by the applicant cannot be achieved by some other method feasible for the applicant to pursue other than the area variances and that the requested area variances are substantial. He added the parking and buffer variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district and that although the alleged difficulty was self-created, it is not an overwhelming concern.

Mr. Andress suggested that perhaps the Board might have more of a comfort level if a time frame was put on the variance. Mr. Dudick and Mr. Weiner disagreed because the applicant won't be able to go forward and have a subdivision unless the storm water was brought into compliance.

The secretary called the Vote:

Ayes: Mr. Cifor, Mrs. McCoy, Mr. Klimes and Mr. Bloss.

Noes: Mr. Donohue, Mr. Dudick and Mr. Fantini.

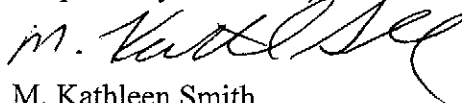
Application approved contingent upon acceptance and approval of the storm water management area in accordance with the previous approval by the Town Planning Board in 2013, or any amended determination by the Planning Board.

The Chairman made a motion to approve the minutes from the April 17, 2018 meeting. Mr. Dudick, Mr. Cifor, Mr. Klimes, Mr. Fantini, Mr. Donohue and Mr. Bloss, who were present at that meeting, all voted in favor and the meeting minutes were approved.

Mr. Dudick made a motion to adjourn the meeting. Mr. Cifor seconded. All voted in favor and approval was unanimous. The meeting was adjourned at 7:58 p.m.

The next scheduled meeting will be held on May 15, 2018.

Respectfully submitted,



M. Kathleen Smith

Secretary, Zoning Board of Appeals

Cc: Town Clerk, Town Board
Zoning Board Members
Neil Weiner, Esq.
Steve Myers, Department of Building and Development
Town Assessor, Town Highway Department