

Town of Clifton Park

One Town Hall Plaza
Clifton Park, New York 12065
(518) 371-6651
Fax: (518) 383-2668

APPROVED
9-20-16

Zoning Board of Appeals



ZONING BOARD OF APPEALS September 6, 2016

Present: Chairman Dudick, Lisa McCoy, Tony Morelli, Mario Fantini and Michael Bloss

Also Present: Joel Peller, Esq., ZBA Counsel
Steve Myers, Director, Building and Zoning

Absent: Jerry Cifor, Chris Lemire, and Randy Gifford

Meeting was called to Order at 7:11 p.m.

PLEDGE OF ALLEGIANCE
ROLL CALL

Chairman Dudick informed the public that this is a 7 member board with 1 alternate member and that in order for an application to be approved, 4 votes of approval are required. He designated Mario Fantini to vote in place of Randy Gifford.

OLD BUSINESS

1. **Application from Craig Werner for an area variance from Section 208-12A which requires 10' minimum setback from side or rear property lines for accessory structures, plus 1' for every foot the structure height exceeds 15' (taken at roof midpoint). Newest proposed structure requires 17' setback, 1' available. 16' variance required. Structure built in 1988 requires 12.5' setback. 7.1' available, 5.4' variance required. Applicant proposes to use easement area to meet setback requirements. Property is located at 677 Riverview Road, Rexford, NY 12148. (Permit #81080)**

Mr. Myers informed the Board that prior to the meeting, Mr. Werner had contacted him to request another postponement, because he had not yet heard back from Isabell Prescott.

Following a discussion, it was determined that although the application has been pending for approximately 4 months, consideration would be given to the applicant due to the Town Conservation Easement which is involved in the application, and the matter would be adjourned one last time.

Mr. Myers stated he would send Mr. Werner a letter advising him that the application will be heard on September 20, 2016 and that if he was present, he would be afforded an opportunity to present additional information, but that if he or his representative was not present, the Board intends to vote on the application in abstentia.

- 2. Application from Dan Lill and Thomas Lill for a use variance to construct multi-family dwelling units in a B4-A zone. 16 townhouses are proposed on a 1.56 acre lot, which is 2 lots combined. Allowed uses are anything permitted in a B-3 zone except dwellings which will not be allowed by special exception or otherwise. The area variances originally sought have been withdrawn from the application. Property is located at 13 and 15 Old Plank Road, Clifton Park, NY 12065. (Permit #81067).**

Prior to the meeting the applicant's attorney requested that the application be postponed until the September 20, 2016 meeting due to lack of full attendance by the Board Members.

NEW BUSINESS

The secretary read the legal notice as it appeared in The Gazette on September 1, 2016:

- 1. Application from Jonathan Messinger for an area variance from Section 208-12A which requires an 80' front setback for accessory structures. 50' available, 30' variance required for an above ground pool w/deck. Property is located 34 Country Club Drive, Rexford, NY 12148. (Permit #81106).**

Mr. Dudick and Mrs. McCoy disclosed that the applicant is a school teacher and both of their children had been taught and/or tutored by Mr. Messinger. Mr. Morelli also disclosed that the applicant will be teaching his daughter this year. All stated that they were able to vote on the application with impartiality and Mr. Messinger stated for the record that he had no objection to Mr. Dudick, Mrs. McCoy and Mr. Morelli hearing and voting on the application.

Mr. Messinger advised the Board that he is looking to install an above ground, oval shaped pool with a sitting deck. In talking with the Building Department, it was determined there is an 80' setback requirement because his property is considered a keyhole lot due to where the driveway is located, and therefore the back yard is really the front yard and the front yard is really the back yard.

He explained that because his back yard (which is considered the front) is only about 25', the proposed location of the pool is 50' from the front of the house (which is considered the back). He advised 6' fencing is already in place on three quarters of the property because they are adjacent to Route 146.

Mr. Peller asked the applicant if he would be installing the pool himself or if he would be using a vendor.

Mr. Messinger replied that he would be doing most of the work himself with assistance from family members.

Mr. Peller reminded the applicant that he would need to keep Mr. Myers and his Department involved because periodic inspections are required. Mr. Messinger agreed that he would.

Mr. Myers advised the Board that this is a unique lot which fronts on, but has no access to Route 146. He explained that there is a large setback requirement from Route 146 and therefore, what appears to be a significant variance really isn't, considering the layout of the lot. He further explained that the nearby lots are about 18,000 to 20,000 SF and that he has no issues with the application.

Mr. Messinger advised that there is about a 4' difference in elevation between his lot and the neighbor's lot, that he had sent out the required certified mailings to his neighbors and had received no objections to the proposal. He then provided the secretary with a copy of the letter he had sent, together with receipts for the certified mailings.

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

Mr. Myers advised that the area variance notification provisions of the law had recently changed and that although the applicant had notified all property owners within 500' feet of his residence of the proposal, a mistake had been made and he was only actually required to notify directly adjacent contiguous property owners.

Mr. Dudick made a motion to approve the application as submitted. Mr. Morelli seconded.

Mr. Dudick stated that he did not believe an undesirable change would be produced in the character of the neighborhood by granting the area variance for a swimming pool in a residential area; that he did not believe the benefit sought by the applicant could be achieved by some other method feasible to pursue other than the area variance; and that although the requested variance may seem significant, because the pool would still be located within the building envelope, he does not believe it is substantial. He added that he did not believe the proposed variance would have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district and that although the alleged difficulty is self-created due to the chosen location of the pool, it should not preclude the Board from approving the application.

The secretary called the Vote:

Ayes: Mrs. McCoy, Mr. Dudick, Mr. Morelli, Mr. Fantini and Mr. Bloss.

Noes: None.

Application approved.

The secretary read the legal notice as it appeared in The Gazette on September 1, 2016:

- 2. Application from Shenendehowa United Methodist Church for a use variance for installation of a digital / animated sign in a PIR zone. Section 171.4H(3)(n). Other current signs to be removed. Property is located at 971 Route 146, Clifton Park, NY 12065. (Permit #81108)**

Jay Dunkleberger, Chairman of the Board of Trustees of the Church, presented the application and advised that the Church is proposing to replace their existing sign with a sign of approximately the same dimensions in the same location. He explained that the existing sign is old and was initially internally lit and had flood lights on it, which have all rusted out and don't work anymore. He explained the proposal is replace it with an LED sign which would permit the Church to put messages out, letting people know about dinners and events the Church is having, as well as their service hours, which would be much more effective than replacing it with a similar standalone sign. He advised they had sent out the required certified mailings to property owners within 500' of the Church and that although they had received 2 telephone calls pertaining to issues unrelated to the sign, no one had objected to the proposal.

John Orton, one of the Trustees of the Church, advised the Board he had performed the mailing and provided the secretary with a copy of the letter sent, together with receipts for the certified mailings. Mr. Orton explained that the 2 telephone calls he had received related to the minister's boat and the sewer tax bill.

Mr. Peller inquired as to the relationship between the Shenendehowa United Methodist Church and the Upper New York Conference UMC, listed as the property owner on the application.

Mr. Dunkleberger explained that the Conference owns all Church properties.

Mr. Peller asked whether the Church had authority to present the application on behalf of the Conference.

Robert Atkinson, another Trustee of the Church who has also been a member of the Conference, confirmed that that the Church has exclusive use of the building, but because it is owned by the Conference, they cannot sell the building or modify it without Conference approval. He advised the Church had obtained Conference approval for the proposal and that they had received a letter advising they could move forward with the application.

Mr. Peller asked for a copy of the letter and Mr. Orton provided the secretary with a copy of an authorization letter the Church had received from the Upper NY Conference UMC.

Mr. Orton advised that the Church is aware of the Town's concerns over these type of digital signs, as well as the rules and regulations pertaining to them. He explained that they had first approached the Town Supervisor and the Town Board to request a review of the stipulations. He explained that the Town Supervisor had issued a letter modifying the rules and regulations for electronic signs for Churches and Houses of Worship.

Mr. Peller asked the applicants if they were in agreement with the new stipulations and Mr. Orton replied that they were. Mr. Dunkleberger confirmed the Church has no problem agreeing to the new stipulations.

Mr. Orton stated that they believe their request is reasonable because they are essentially in a commercial corridor and that they do not believe any residents or neighborhoods will be effected by the new sign. He confirmed that the Church intends to abide by the stipulations the Town has put into effect.

Carl VanTine, the only remaining person in the audience, introduced himself and confirmed he was in attendance on behalf of the Churches application.

Inasmuch as there was no public present, Mr. Dudick made a motion to close the Public Hearing. Mr. Morelli seconded. All voted in favor and the Public Hearing was closed.

Mr. Bloss asked whether the new electronic sign guidelines were going to be sent to the other Churches.

Mr. Myers advised it was his understanding they have already been sent to the other Churches.

Mr. Fantini inquired as to whether any of the other Churches would be required to come back before the Board.

Mr. Myers advised they would not and pointed to the last sentence of the Town Supervisor's letter of August 2, 2016 which states that "Churches which have installed electronic signs under former guidelines may upgrade their message to be consistent with the above criteria." He further advised the new guidelines would apply to all Houses of Worship and not just Churches.

Mr. Morelli advised that even though he is very sensitive to over signage in the Town, providing deference to Churches makes sense and that he believes the proposal is in line with what the Board has done with other Churches in the past.

Mr. Morelli made a motion to approve the application as submitted. Mr. Fantini seconded the motion.

Mr. Myers advised that because the proposed sign is located on a State Road, it is still subject to approval by the Saratoga County Planning Board. (NOTE: Although Mr. Myers stated that he had forgotten about sending the application to the County, the application was in fact, already mailed to County Planning by the ZBA Secretary on August 18, 2016.)

Mr. Myers went on to explain that 5 years ago the Town started the digital sign process and as a result of a meeting of the professional staff from the Town, the Town Attorney, Town Planning and the Town Supervisor, they had formulated and modified the Town's guidelines strictly for Houses of Worship to be more in line with the Federal guidelines. He stated that although the new rules and regulations are still a bit harsher than the Federal guidelines, everyone believes it's a better standard to use a basis.

Mr. Dudick mentioned the electronic sign at the Shenendehowa High School and the fact that application did not need to be sent to County Planning for approval.

Mr. Myers explained that the school is separate government entity and that although the Town has influence on what they do on the public roads as far as setbacks, size and how many lines of text the signs contain, the school is a very unique situation. He further advised that the school intends to do a trial period to determine how often the message would change and how many lines of text would be shown.

Upon inquiry from Mr. Dudick, Mr. Myers confirmed that the school was not planning to put any electronic signs on their rear entrance or at any of their off campus sites.

Mr. Dudick then went through the criteria the Board must consider for a use variance. Of the applicable provisions, he stated that the alleged hardship is unique as it relates to a House of Worship and does not apply to a substantial portion of a district or neighborhood; that the requested variance will not alter the essential character of the district or neighborhood and that the alleged hardship was not self-created by the applicant, because the Town regulated digital signs out of the zone.

The Chairman clarified with the applicants that the Church has agreed to remove all secondary signs, with the exception of the non-digital, directional wall sign in place for the secondary business for the Samaritan Counseling Center located at the property, which is allowed by Code.

The secretary called the Vote:

Ayes: Mr. Bloss, Mr. Fantini, Mr. Morelli, Mr. Dudick and Mrs. McCoy.

Noes: None.

Application approved.

Due to lack of attendance, the Meeting Minutes from the July 19, 2016 and the August 16, 2016 ZBA meetings were not able to be approved and therefore, approval of the minutes was tabled until the next meeting.

Mr. Morelli made a motion to adjourn the meeting. The motion was seconded by Mr. Fantini. Approval was unanimous. The meeting was adjourned at 8:14 p.m.

The next meeting is September 20, 2016.

Respectfully submitted,

M. Kathleen Smith
Secretary, Zoning Board of Appeals

Cc: Town Clerk, Town Board, Town Attorney
Zoning Board Members, Joel Peller, Esq., Steve Myers
Department of Building and Development
Town Assessor, Town Highway Department