

Town of Clifton Park

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APPROVED
1-3-2017

Zoning Board of Appeals



ZONING BOARD OF APPEALS

December 6, 2016

Present: Chairman Dudick, Randy Gifford, Tony Morelli, Michael Bloss and Mario Fantini

Absent: Chris Lemire, Jerry Cifor and Lisa McCoy

Also Present: Tom McCarthy, Esq., ZBA Counsel
Steve Myers, Director, Building and Zoning

Meeting was called to order at 7:04 p.m.

Chairman Dudick designated Mario Fantini to sit in place of Chris Lemire.

PLEDGE OF ALLEGIANCE
ROLL CALL

NEW BUSINESS

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

1. **Application from Windsor Development Group for an area variance from Sign Law Chapter 171 – Table I, maximum height for monument sign = 18'; 25' requested, 7' variance required. Property is located at 9 Clifton Country Road, Clifton Park, NY 12065. (Permit #81115).**

Bob Miller from Windsor Development Group presented the application and handed out color renderings of the proposed pylon sign. He explained that the existing monument sign in front of the Village Plaza had been taken down and they are looking to replace it with a 25' high pylon sign, containing the name of the plaza on top, an LED digital reader board component and 3 panels for tenants.

He advised that the purpose of the sign and the requested 7' variance is to provide their tenants with an easy way to advertise, necessary visibility to draw in and maintain successful businesses, as well as to generate new sales and impulse sales, particularly due to the number of people moving into the community. He referenced a table prepared by the Institute of Traffic Engineers which indicates about 25% of sales relate to impulse sales. He went on to explain that the sign is intended to function for the 181,000 SF Village Plaza; for the building that Uncommon Grounds is going into; for a new 7,000 SF building that is going in the front of Hannaford on property owned by the Plaza, just south of Uncommon Grounds; as well as for a new

60,000 SF building going in next to that. He advised that the applicant essentially has Planning Board approval for the 2 new buildings, but that there are some minor storm water issues to be worked out. Mr. Miller stated that a strict application of the zoning regulations would result in a practical difficulty because of the limits imposed on trying to comply with lease obligations to get their tenants on a sign that is only 18' high. He cited economic injury due to lost revenue because of the strict dimensional requirements and stated that because the proposed sign is located in a central business district where similar signs already exist; there would be no substantial detriment to the public interest.

Mr. Gifford asked what tenants would be going onto the sign. Mr. Miller responded they were not sure yet, but that Hannaford and Toys R Us have the right to go on it.

Mr. Gifford inquired as to what was intended for and how often the applicant intended to change the message on the LED display. Mr. Miller replied that the LED display would be for all of the tenants.

Following a discussion, it was confirmed that there is currently nothing in the Town regulations that speaks to the issue of how often messages on LED signs in commercial zones are to be changed.

Mr. Myers advised he believed most signs were changing every 8 to 12 seconds. Mr. Miller responded that it was not going to be less than every 6 seconds as that just wouldn't make sense.

Mr. Dudick asked the applicant whether the sign could be made any lower by taking space from the base. The applicant responded that they could not due to their lease requirements and the size of the placards only being 2' with 1' lettering. He added that they are trying to mirror their sign across the street and that site plan approval included landscaping and hardscaping requirements, some of which will hide the base.

Upon inquiry from Mr. McCarthy, Mr. Myers explained that originally the application was written up with both a use variance and an area variance required, but after discussion with the Town Attorney and in looking at the past history of these parcels, it was determined that because the sign had been used for years to advertise for the entire Plaza, a use variance was not required.

Mr. McCarthy confirmed that the application is going to be evaluated as an area variance because a sign is an allowed use on that lot.

The Chairman opened the Public Hearing and asked for questions or comments.

Benjamin Jacobson of 71 Spruce Street, inquired as to whether any trees had been taken down. He advised the Board that he is dismayed by the number of trees being cut down, with no additional trees being planted on public lands.

Mr. Miller responded that this is private land and that 2 spruce trees had been taken down where the proposed sign is going, which had been done as part of the expansion of the Uncommon Grounds parking lot. He added that as trees mature, they need to be taken down and replaced because visibility is extremely important in the retail world and that in this instance there, will be some of foliage put in per the site plan.

Mr. Dudick made a motion to close the Public Hearing. Mr. Morelli seconded. All voted in favor and the Public Hearing was closed.

Mr. Myers stated that this is a Type II action and no further SEQRA review by the Board was required. He added that he did not have any issue with the application because the sign is similar to the one the applicant has across the street, just a little shorter.

Mr. Dudick advised that from his stand point, he does not think the requested variance is substantial or that it would have an adverse impact to the character of the neighborhood. Mr. Morelli concurred with this comment.

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

Mr. Gifford stated that because the applicant is simply replacing the old sign, an undesirable change would not be produced in the character of the neighborhood and that the benefit sought by the applicant could not be achieved by some other method feasible for the applicant to pursue. He added that he did not believe the requested variance was substantial; that the proposed variance would not have an adverse effect on the physical or environmental conditions of the neighborhood and that the alleged difficulty was not self-created, as the applicant is simply updating the sign to meet the needs of the community.

The secretary called the Vote:

Ayes: Mr. Bloss, Mr. Morelli, Mr. Gifford, Mr. Dudick and Mr. Fantini.

Noes: None.

Application approved.

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

2. **Application from Bryan B. Bagstad for 6 variances from Section 208-11 to subdivide existing lot into 2 parcels so that another residence can be built in R-1 Zone. 1) Minimum lot size without sewer = 40,000 SF. Lot 1 = 18,710 SF; 21,290 SF variance required; 2) Lot 2 = 29,910 SF; 10,090 SF variance required; 3) Minimum lot width at front building line = 100'. Lot 1 width = 81.36'; 18.64' variance required; 4) Lot 2 width = 25.57'; 24.43' variance required. 50' front setback required to property line for R-1 zone. Main Street is a "special road" per Section 208.98 which also requires a 100' front setback from the road centerline. 5) Lot 1 = 18.9' available to property line; 31.1' variance required; 59' available to road centerline; 41' variance required; and 6) Lot 2 = 37' available to property line; 13' variance required; 69.7' available to road centerline; 30.3' variance required. Property is located at 944 Main Street, Clifton Park, NY 12065. (Permit #81116).**

Duane Rabideau from VanGuilder and Associates presented the application. He explained that the subject parcel is located on the west side of Main Street in the hamlet of Jonesville, just south of the Jonesville Fire Station No. 1 and that they are proposing to subdivide a 1.2 acre parcel into 2 single family residential lots. He advised that Lot No. 1 would consist of 18,710 SF which would encompass the existing house and most of the improvements. He showed the Board on the site plan the location of the onsite septic system for Lot 1 and advised that both parcels have public water.

He went on to explain that they are proposing to create Lot 2 for a new single family home, which would be a 29,910 SF lot; reconfigure the existing driveway for the new house and install a new onsite septic system. He added that Harold Berger, Professional Engineer had gone out, performed tests on the site and stated that because it is all sand there, the ground qualifies for a conventional septic system.

Mr. Rabideau advised that it had come to his attention that there is a seasonal drainage issue in the back of the lots that occurs during snow melt when the ground is frozen and during torrential rainstorms which creates ponding and seems to be coming from the Van Patten parcel, but that Mr. Berger had indicated he could take care of that situation and that there is drainage out in the front which he can potentially tie into.

Mr. Myers asked whether Mr. Berger thought he could remedy the drainage issue on the subject parcel without going onto Van Patten's parcel. Mr. Rabideau replied that Mr. Berger had mentioned some sort of retention basin or a dry well to remedy the situation.

Mr. Myers reminded the applicant and the Board, that the drainage issue would be part of the site plan review and subdivision approval and is not a zoning issue.

Mr. Rabideau went on to explain that the applicants have outgrown their house; that trying to find another house in Clifton Park is cost prohibitive and therefore, their only other option is to try to utilize their own property and subdivide to build a new house in character with the Jonesville hamlet. They propose to position the new house on the line between their existing house and the house on the north. He added that although the requested variances appear to be excessive, the required 100' setback from the centerline of the road would result in the house being too far back and that the hardest requirement to meet is the 200' required lot width.

He went on to state that with the exception of one lot located 4 lots down from the subject parcel on the west side of the road which meets most of the required standards, but is too close the road, conservatively, 80% of the parcels on Main Street do not meet the standards of an R-1 Zone and that since the Board is normally concerned about setting precedent, this is a very unique and limited situation and therefore would not open the door to setting a precedent.

Mr. McCarthy commented that that door is already open based on the fact that all of the other homes in the area don't meet the existing zoning.

Mr. Rabideau responded that they believe their proposal fits in with and would actually enhance the character of the hamlet because they are all narrow lots and with the type of house proposed to be built, it would fit the character of the hamlet.

Upon inquiry from Mr. Gifford, Mr. Bagstad confirmed they are currently living in the existing house which is approximately 1,500 SF and that the new house would be approximately 2,000 SF.

Mr. Bagstad explained that although it would not be a huge increase in square footage, the new house would allow them to go from a very chopped up, old style floor plan which does not suit their needs, to a new house where they would have the ability to do something to the basement to make that useable space as well. He added that they currently have a basement with a stone foundation, partial dirt floor and very low ceilings. He indicated that he has been renovating the existing house himself over the last 8 years without any contractors and that upon deciding their current home does not work now that they have had a child, they had looked at the potential of adding on to the back of the house, which would involve the removal of a small addition that was put on 100 or so years ago, but once they looked into the details and obtained cost estimates, had determined it just wasn't practical and their best option would be to stay, as they would basically be losing all of the equity they currently have in the house

The Chairman inquired as to whether he had examined the possibility of taking the existing house down and building a new one.

Mr. Bagstad replied that would result in the removal of a 150 year old house from the street, which he does not want to do and that with the substantial amount of equity they have in the house right now, they could more easily on the existing property.

Mr. Dudick opened the Public Hearing and asked for questions or comments.

Susan Nowik who has resided at 946 Main Street for 26 years, adjacent on the north to the applicant's property, spoke in opposition to the proposal. She advised she does not agree that crowding 2 houses onto lots that are inadequately sized will enhance the character of Jonesville. She pointed out that while many of the other lots in the hamlet do not meet the existing zoning codes, her property included, they were there before the zoning codes existed. She also expressed concern about the issue of water drainage and explained that almost every spring, with the exception of last year when there was no snow, the property where the proposed house would be built has been flooded and that snow melt and spring rains cause drainage issues and even during and after heavy thunderstorms drainage in that area can be compromised. She expressed concern that any construction could divert the water onto her property, adversely affecting her foundation, basement and shed and that the proposed construction may also compromise her septic system which runs along the south side of her home.

Mrs. Nowik went on to state that although the applicant cites undue economic injury in his application, that is a very personal, but not a civic concern. She indicated she would also suffer economic injury if the variance was granted, as by necessity she will be putting her house on the market in the spring and that the granting of these substantial variances, will adversely affect her ability to sell her home and adversely affect the sale price. She added that the proposal calls for only 18' between the proposed new house and her property, yet 30' between the new house and the existing house, which will dramatically decrease the sense of privacy her property affords, which is part of the charm and value of it.

In reply, Mr. Rabideau stated that although the requested variances do seem excessive by the numbers, the zoning in the hamlet of Jonesville is flawed as no one can meet the requirements. He opined that as proposed does meet the character of the neighborhood because it is a narrow lot and that as far as detracting from the value of the neighboring parcels, they believe it will enhance it and again stated that although Mr. Berger cannot eliminate the pre-existing drainage conditions, he can address it.

Mr. Fantini questioned what the consideration was for proposing the new house only 18' away from Mrs. Nowick's property, but 30' away from the existing house. Mr. Rabideau explained that it was to get a driveway through to the back for a detached garage, as the house currently does not have one.

Mr. Myers pointed out that the 18' does in fact, meet the side setback requirement.

June Lajeunesse, the applicant's neighbor to the south, who resides at 942 Main Street, advised her only concern is with the water drainage that comes from Van Patten's Golf Course in the back which creates a pond between her house and the house at 940 Main Street, which results in her sump pump running for 2 months in the spring and in the winter.

Mr. Rabideau responded that the biggest problem with the flooding is when the ground is frozen, the water runs on the top and ponds until the frost melts and then it sinks in because it is all sand in that area. He added that he believes the dry well system proposed by Harold Berger will eliminate the majority of the problem because any water will go directly into the dry well below the frost level instead of sitting on top of the ground.

Benjamin Jacobson of 71 Spruce Street questioned whether the paving proposed for the driveway would create ephemeral type water or additional run off that would contribute to the drainage problem and the problem of wetlands.

Mr. Rabideau pointed out there no wetlands on the subject site, that the proposed paving falls way below any of the standards for storm water management practices, and again advised that when Mr. Berger addresses the problem, they will actually be minimizing runoff impact.

Mr. Dudick made a motion to close the Public Hearing. Mr. Gifford seconded. All voted in favor and the Public Hearing was closed.

Mr. Fantini questioned whether a septic system could still be placed in the proposed location if the issue regarding the standing water was not fixed.

Mr. Myers pointed out that is not a zoning issue.

Mr. Rabideau advised that because the septic system is 2 feet below the surface where there is no frost, the drainage issue would not affect the functionality of it.

Mr. Myers stated that this is a Type II action and no further SEQRA review is required. He agreed that there are several lots in Jonesville that do not meet any of the current zoning requirements, but that the Board had recently granted similar variances for a house that was torn down and rebuilt on Main Street, although that particular lot was not subdivided. He again stated that the flooding issues have nothing to do with zoning and that the engineer will have remedy that problem via his design, which may require getting Mr. Van Patten involved, as he has recently built a brand new house behind the parcel. He added that he did not believe the applicant's request is unreasonable in comparison to the rest of the homes in the area.

Mr. McCarthy asked Mr. Myers whether he would have any authority or jurisdiction to remedy the drainage issues if there wasn't a variance application in front of the Board and such a complaint came in. Mr. Myers responded that unless it was Town property or he was able to prove that somebody was doing something to create the problem, he would have no authority or jurisdiction.

As such, Mr. McCarthy pointed out to the Board that in terms of zoning, this is an area variance and therefore the Board is limited to only consider 5 factors; that being whether the variance will cause an undesirable change in the character of the neighborhood or a detriment to nearby properties; whether the benefit sought can be achieved by another method that is feasible other than the granting of a variance; whether it is a substantial variance; whether the granting the variance would have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district; and whether the difficulty was self-created, in which case, the Board could still grant the Easement.

Mr. Rabideau mentioned that the Dupree parcel, which is 2 houses down from the applicant's parcel, had been subdivided, had met all of the criteria of the zone and the "special road" requirements, except that the house was too close to the road which they were able to obtain a variance for.

Mr. Morelli inquired whether Mr. Myers knew how many lots in the hamlet had previously been granted variances as versus how many of the homes pre-dated the code. Mr. Myers advised about 90% pre-date the code.

Mr. Dudick stated that from his prospective, the Town came up with zoning for this neighborhood and as such, could have set the minimum lot size to be smaller, but decided against it. He added that in his mind, this would be the creation of sub-standard lots for financial benefit; that the requested variance is substantial; that he doesn't believe drainage issue would be improved by building more; and that because the applicant purchased knowing the zoning restrictions, the issue is self-created.

Mr. Fantini stated that he agreed with the Chairman, adding that there are additional options the applicant could pursue, such as moving, tearing down the existing house and building another one or expanding the current house.

Mr. Morelli advised that he is looking at the application differently. He stated that the water drainage issue has been established not to be a zoning issue and therefore that should not be debated either way. He added that there are multiple lots in this area that do not meet the current standard and understands that many of them pre-date the code. However, he believes precedent matters and that quite often, the Board looks at precedent when reviewing the different the different projects that have come before it. He added that when considering the 5 factors, he believes that the proposed schematic fits in exactly with the aesthetics of the street and that although the requested variance is substantial, with so many other lots that don't meet the standard already in existence, precedent has to be considered. He added that he does not believe this Board should read into what the Town's thought process was for enacting the zoning in the area and that it doesn't make sense to him to deny the partition of this parcel when all of the other lots are approximately the same size. For these reasons he indicated he was in favor of the proposal.

Mr. Fantini advised he would agree with Mr. Morelli's comments if this Board had granted variances to the other parcel, but stands by his position because the others homes in the area pre-date the code.

The Chairman asked Mr. Rabideau whether the applicant wanted the Board to move forward with a vote or if they wished to table the application.

Following a discussion with applicant, Mr. Rabideau advised they would prefer to table the application and come back with some more information. Upon inquiry from Mr. Dudick he agreed to waive the 62 day requirement within which the Board is required to make a decision on the application.

Application tabled.

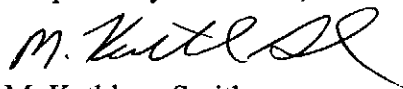
The meeting minutes from the November 15, 2016 meeting were not able to be approved as not enough of the members present at that meeting were in attendance.

The Chairman wished everyone a safe finish to 2016 and a Happy New Year.

Mr. Dudick made a motion to adjourn the meeting. The motion was seconded by Mr. Gifford. Approval was unanimous. The meeting was adjourned at 8:32 p.m.

The next meeting is January 3, 2017.

Respectfully submitted,



M. Kathleen Smith
Secretary, Zoning Board of Appeals

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