

Town of Clifton Park

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Zoning Board of Appeals



ZONING BOARD OF APPEALS June 6, 2017

Present: Chairman Dudick, Chris Lemire, Terry Cosgrove, Mario Fantini and Michael Bloss

Absent: Jerry Cifor, Lisa McCoy and Randy Gifford

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

The Meeting was called to order at 7:05 p.m. by Chairman Dudick and he designated that Terry Cosgrove will sit in for Jerry Cifor.

PLEDGE OF ALLEGIANCE

ROLL CALL

OLD BUSINESS – N O N E

NEW BUSINESS

The secretary read the legal notice as it appeared in The Gazette on June 1, 2017:

- 1. Application from Ann M. Tremblay for an area variance from Section 208-12 which requires an 80' front setback for accessory structures. Property has 2 fronts (Southbury and Mohawk Trail). 39' available, 41' variance required for a shed. Property is located at 1 Mohawk Trail, Clifton Park, NY 12065. (Permit #81129)**

Ann Tremblay and her sister, Paula Jackson, presented the application. Paula explained that her sister wants to take down her existing 8' x 8' shed and replace it, in the same spot, with a 10' x 16' shed. Mrs. Tremblay explained that she obtained the property as the result of her mother's passing and that a larger shed is needed for storage purposes.

Mr. Myers clarified that the requirement for the variance is strictly based on the front setback requirement caused by the corner lot having two fronts and not because of the size of the shed.

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

Mr. Dudick pointed out that public notice was required for the application, no one has come forward with any issues and that from his prospective, it is not a significant request.

Mr. Bloss made a motion to approve the application as submitted. He stated that he does not believe the variance would produce an undesirable change in the character of the neighborhood because the applicant is replacing an existing shed; that the benefit sought by the applicant cannot be achieved by any other feasible method because the shed is located in the farthest corner of the property; that given the corner lot, the requested variance is not substantial; that the proposed variance would not have an adverse effect on the physical or environmental conditions of the neighborhood and that although the alleged difficulty is self-created, it does not overwhelm the other criteria.

Mr. Fantini seconded the motion

The secretary called the Vote:

Ayes: Mr. Lemire, Mr. Cosgrove, Mr. Dudick, Mr. Fantini and Mr. Bloss.

Noes: None

Application approved.

The secretary read the legal notice as it appeared in The Gazette on June 1, 2017:

2. **Application from Satin Beak LLC for 3 area variances from: 1) Section 208-33B which allows maximum area of a new building to be 4800 SF. Applicant requests 6,961 SF single story building; 2,161 SF variance required; 2) Section 208-35D(2) which requires a 25' parking setback. 0' proposed; 25' variance required; and 3) Section 208-35D(4) requires a 10' buffer along the property line. 0' proposed; 10' variance required. Property is located at 950 and 954 Route 146, Clifton Park, NY 12065. (Permit #81132).**

Prior to the meeting the applicant's attorney requested that the matter be postponed until the June 20, 2017 ZBA Meeting because Saratoga County Planning had not yet had an opportunity to review their application.

The secretary read the legal notice as it appeared in The Gazette on June 1, 2017:

3. **Application from Stewart's Shops Corp. for 10 variances for the construction of a 3,675 SF building with gas canopy as follows:**
 - 1) **Section 208-98 requires 130' setback from Route 146 road centerline. 114' available from the north; 16' variance required;**
 - 2) **Section 208-38C requires 80' setback from property line. 40' available on the north; 40' variance required;**
 - 3) **Section 208-98 requires 130' setback from Vischer Ferry Road centerline; 76' available; 54' variance required;**
 - 4) **Section 208-38C requires 80' setback from property line. 51' available from the east; 29' variance required;**
 - 5) **Section 208-98 requires 130' building setback from Vischer Ferry Road centerline. 98' available; 32' variance required;**
 - 6) **Section 208-39 requires one exit/entrance per establishment per road. Two exits on Route 146 proposed. Variance required for the second exit/entrance;**
 - 7) **Section 208-38G requires 35% greenspace. 20% proposed; 15% variance required;**

- 8) Section 208-40 requires a 10' landscaping buffer. Buffer not 10' wide in many areas; variance required;
- 9) Sign Law Chapter 171 Chart 1 allows 32 SF of wall signage. 39 SF proposed; 7 SF variance required; and
- 10) Sign Law Chapter 171 Chart 1 requires 15' setback for freestanding sign. 7' proposed; 8' variance required.

Property is located at 1206 Route 146, Clifton Park, NY 12065. (Permit #81131).

Mr. Dudick disclosed that two months ago he had been retained by Stewart's to emcee a meeting and although he attended the meeting, he did not actually emcee. He added he does not believe that will have any impact on any decision he would be making on the application.

Marcus Andrews of Stewart's Shops Corp. presented the application. He explained they are seeking a number of variances for the proposed re-development of the existing Stewart's Shop located on the corner of Route 146 and Vischer Ferry Road, which does not currently have gas. He explained that they currently own the hair salon next door (Zen) and are proposing to demolish both buildings and construct a new Stewart's Shop with a gas canopy. He explained that because Route 146 and Vischer Ferry Road are in the Highway Overlay District, a 130' setback from the centerlines of both roadways is required. They are proposing a right out only exit/curb cut onto Route 146 and a second, right out only exit/curb cut onto Vischer Ferry Road, which they feel is essential for the flow of gas customers.

Mr. Lemire inquired as to the size of the buildable area show on the drawings and whether the proposed 3696 SF building could fit within that area. Mr. Andrews did not know the exact dimensions of the buildable area, but advised the proposed building would not fit within it.

Mr. Andrews stated they currently have 22% green space and are proposing 20% greenspace which is below the 35% required. There will also be approximately 2500SF of additional green space in the DOT right of way which is not part of that number. He added that at the request of the Planning Board, they will be extending the multi-use path along Route 146 and extending a sidewalk into a patio area to their shop.

Mr. Andrews explained that the reason for the lack of required buffer and the requested 10' buffer variance is because they are looking to place trees in the back area and the space is needed to maneuver through the lot.

Mr. Andrews stated that they are also proposing a 17 SF sign on the front of the building and a 22 SF sign on the side. He explained that the reason the larger sign will be placed on the side of the building is because there will be a porch there and with the size of the gable end, the larger sign fits better and looks more proportional there. They are also seeking a setback variance for the proposed freestanding sign because they are limited by turning movement inside of the lot, which dictates where the edge of the pavement is and where the property line is.

He concluded by pointing out that variances #2 and #4 are superseded by Section 208-98, because the Highway Overlay District requires 130' setback from the centerline of the roads.

Addressing Mr. Lemire's earlier question, Mr. Myers advised that the buildable area is somewhere between 6,000 SF and 6,500 SF.

Various Board members questioned the applicant as to whether the building could be rotated or situated differently on the lot.

Mr. Andrews replied that he did not believe so due to issues with the delivery area and employees being able to see the gas pumps from inside the building. He added that they had reached out to the establishment behind the Stewart's lot, but that the number they had given them just wasn't reasonable for them to purchase it.

Mr. Andrews advised that at the request of the Planning Board, they had also reached out to the owners of North Country Commons to see if they could share their existing curb cut, but they had not received any return calls, which is the reason for the requested variance for the second exit/entrance.

Mr. Myers advised that in the event North Country Commons comes to the Town for anything requiring that entrance to be addressed, it was his understanding the Town intends to place a condition on them and require it to become a shared curb cut.

Upon inquiry from Mr. Weiner, Mr. Andrews advised they were agreeable to that.

Mr. Dudick indicated he had heard rumors that a traffic circle was planned sometime in the future for the intersection of Route 146 and Vischer Ferry. Mr. Myers advised he had heard the same rumor, but had no justification for it yet.

Mr. Dudick inquired whether the Board should take the possibility of a future round-a-bout into consideration and Mr. Myers advised the Board should not and should only consider the application before them.

Mr. Andrews advised they had already met with DOT regarding the possibility of a future round-a-bout and from what he understood, they have the money to do the research on it and are currently in the stages of considering the feasibility of it. He added that in consideration of that possibility, they had moved everything as far back into the far corner of the lots as possible in case DOT did want to take some of the corner and so their gas canopy would not be affected. Mr. Andrews stated that in the event a round-a-bout was constructed, they would love to reconsider all of the curb cuts at that time.

Upon inquiry from Mr. Lemire, Mr. Andrews confirmed the 2 lots would be combined into 1 lot if they haven't been already.

A discussion ensued relating to concerns about the ingress and egress of gas delivery trucks; shop delivery trucks; where delivery trucks would park within the lot; the possibility of restricting the times gas deliveries can be made, as well as concerns about cars blocking traffic.

Mr. Lemire opined that this project will only compound the absolute mess on this particular corner which is his main concern, not only as a Board member, but as a citizen of the Town who drives that corridor multiple times a week. He indicated that he has almost been killed there several times and has witnessed numerous accidents exactly where the applicant is trying to put curb cut onto Vischer Ferry Road.

Mr. Myers advised that he had addressed Mr. Lemire's exact concerns with the Planning Board over a considerable length of time and that based on Planning's take on traffic safety, they believe this is the best solution right now.

Discussions were had regarding whether the applicant could reduce the number of gas pumps or rotate the proposed building on the lot and it was agreed those were planning issues and the Board should only consider the application for the variances in front of them.

Comparisons were made between this project and the Cumberland Farms across the street and Mr. Andrews stated that Stewart's feels the layout and internal circulation throughout the lot with gas customers and shop customers, will be much better than at Cumberland Farms.

Discussions continued and concerns regarding current problems with traffic flow and traffic backups were had.

Mr. Myers confirmed that although all required variances are noted in the application, the variance for the 130' setback from the centerlines of the roads always takes precedence over the property line variances, even though the requirement for property line setbacks are still present. He added that if one is granted it, covers all of them.

Discussion were then had as to whether gas deliveries could be restricted to between 11PM and 5AM. It was decided that would not be a required or enforceable condition, as this is a commercial zone.

Mr. Andrews explained that their gas trucks fill up at the Port and deliver to shops as needed off the Northway and return to the Port. When taking a left into the proposed shop, because of the wide median, he opined that cars would be able to get around the trucks and Mr. Myers agreed.

Mr. Lemire again opined that if the applicant flipped the entire site around and put the shop where the gas canopies are now proposed and put the gas canopies where the shop is now proposed, the trucks would be able to enter and make its delivery in the back and then leave through the other entrance, which would close off Vischer Ferry Road and eliminate the traffic concerns and number of accidents.

Mr. Andrews responded that would be completely opposite of what the Town zoning is, would require more variances and place their proposed building completely outside of the buildable area of the lot.

Chairman Dudick again pointed out that the Board is reviewing the applicant as presented and opened the Public Hearing.

Salvatore Galluzzo, 1371 Route 146, Clifton Park, NY asked how large the proposed building is in comparison with the Stewart's Shop on Sitterly Road. The applicant responded that the proposed building is 3696 SF and the building on Sitterly Road is approximately the same size, has 12 gas pumps and 2 gas canopies.

Mr. Galluzzo inquired if the combined Stewarts and Zen hair salon lots are more than 2.2 acres. The applicant responded that combined, they are less than 1 acre.

Mr. Lemire asked the size of the current Stewart's shop and Mr. Andrews advised it is approximately 2400 SF.

Mr. Fantini inquired whether reducing the number of gas pumps to 4 would decrease the variances required and potentially increase green space, but not necessarily improve the flow.

Mr. Andrews agreed that the flow is the biggest concern and that it would help green space and variance wise. He then advised the Board that he believes variance #3 has typographical error and should reference Route 146 instead of Vischer Ferry Road. (NOTE: In accordance with Mr. Myers' review following the meeting variance #3 is for the gas canopy setback from Route 146 and variance #5 is for the gas canopy setback from Vischer Ferry Road)

Mr. Dudick commented that in reviewing the aerial view provided, the proposed site appears to be significantly larger than Cumberland Farms and therefore, he disagrees with Mr. Lemire as to the density issues and opined that since it was a larger lot, it would not have the same density problems as Cumberland Farms.

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

Mr. Myers advised that he believes the letter from Mr. Scavo addressing Planning's concerns about the variances and that because of the amenities being created, show that Planning feels it is a good project. He again pointed out that the discussions about changing entrances and switching the building around on the should not be considered. He added that the Board has granted similar variances in the past and he does not believe it will be overly dense.

Upon inquiry from Mr. Dudick, Mr. Myers confirmed that the applicant is going from 22% greenspace to 20% and pointed out that the lack of required greenspace is because of the amenities requested by the Planning Board, such as the sidewalk and trail.

Mr. Andrews also confirmed that there is approximately 2500 SF of pavement in the right of way area that will also be greenspace, which is not included in their 20% because it is not on their property.

Mr. Myers confirmed the requested sign variances were for two wall signs and that a variance was needed for the freestanding sign solely to meet the required setback. He also advised that the Planning Board had declared itself lead agency for any required SEQRA review of the project.

Board counsel inquired as to whether dimensions were required for the access easement for ingress and egress. Mr. Myers advised those numbers would be worked out by Planning.

Mr. Fantini made a motion to approve all variances as submitted, with the condition that the western curb cut on this site shall be eliminated in the event North Country Commons creates a curb cut to the west.

Mr. Cosgrove seconded.

Mr. Fantini stated that he does not feel the granting of the variances will produce an undesirable change to the character of the neighborhood because it is a commercial lot which is about the same size as the gas station across the street and that he does not believe the benefit sought can be achieved by another method feasible for the applicant to pursue because the Planning Board has found that this is the best configuration of the lot. He added that although he believes the requested variances are substantial, that does not overwhelm the other criteria; that he does not believe there will be an adverse effect on the environmental conditions of the neighborhood because the intersection has gas stations and that although the alleged difficulty is self-created, that does not outweigh the other criteria.

Mr. Myers advised the Board that the requirements for storm water and environmental protection are significantly better now than when the Stewart's shop was originally built.

The secretary called the Vote:

Ayes: Mr. Cosgrove, Mr. Dudick, Mr. Fantini and Mr. Bloss.

Noes: Mr. Lemire

Application approved with the condition that the western curb cut on this site shall be eliminated in the event North Country Commons creates a curb cut to the west.

Due to a question raised by the Board Secretary earlier in the week, it was decided that the Board will not agree to allow meeting minutes to be approved by e-mail.

Chairman Dudick made a motion to approve the minutes from the May 2, 2017. Mr. Dudick, Mr. Lemire, Mr. Fantini, Mr. Cosgrove and Mr. Bloss, who were present at that meeting, all voted in favor and the meeting minutes were approved.

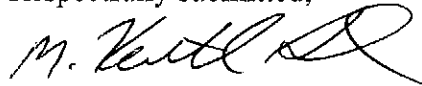
The meeting minutes from the May 16, 2017 meeting were not able to be approved due to lack of attendance.

The Chairman officially welcomed Neil Weiner, Esq. as the Board's new counsel and acknowledged the 73rd anniversary of D-Day.

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

The next scheduled meeting is June 20, 2017.

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