

Clifton Park Zoning Board of Appeals Meeting Minutes

June 3, 2003

Present: Dale Kelley, Chairman, Skye Heritage,
Sandra Pace, Gil Kortz, Michael Dudick

Absent: Dale Gleason, Donna Lawton

Also Present: Louis Renzi, ZBA Counsel
Don Clemens, Director Building & Development

Mr. Kelley called the meeting to order at 7:02 P.M.

OLD BUSINESS

1. An application from Harinderpal S. Kingra, requesting an area variance from Chapter 171 of the Town of Clifton Park (Sign Law) for a freestanding sign for Parkwood Restaurant. The property is located at 1760 Route 9, Clifton Park. Permit #80437.

Mr. Kelley noted that there was one item of old business and that the public hearing was closed at the last meeting. This item was adjourned to discuss the subdivision issue on this piece of land.

He stated Mr. Clemens, Counsel, and the Planning Board looked into this issue.

Mr. Clemens presented some background on this matter. He stated Parkwood Plaza was approved as a shopping center including the restaurant and other stores on this site. A few years ago they came before the Planning Board to subdivide the site into six distinctive lots. This does not change the fact that this is a shopping center, was approved as a shopping center, and will stay that way until it no longer exists. He continued, under the Sign Law a shopping center is allowed one freestanding sign of 120 sq. ft., which currently exists on the site. Individual businesses are not allowed a freestanding sign on their own.

Mr. Clemens noted that the subdivision is not all that unusual. The Crossings is an example with Kohl's and the Target store. Shoppers World is doing the same thing but they remain a shopping

6/3/03 Page 2

center with an integrated site plan and they relied on that. They must live within the guidelines of a shopping center.

Mr. Renzi, ZBA Counsel, presented the Board members with a copy of the tax map indicating the site in question. He explained that in essence a transfer of property subsequent to the original site plan, whether this was a PDD or not, it was an integrated

site plan taken as a whole by the then Planning and Zoning authorities and was granted a specific zoning scheme. A later transfer amongst property owners or with a new owner, as a matter of law will not affect any change in that zoning scheme. From the point of view of an applicant trying to affect a zoning change you can not make happen through the back door what would not have happened through the front door. He presented case law and statutory authorities for the record. He summed it up, that essentially you cannot change by means of a property transfer amongst private parties what was originally ordained by the Municipality.

Mr. Renzi continued, as Counsel he would have to advise this Board that they are not in a position to grant this variance but must deny it as a matter of law.

Mr. Kelley expressed that this Board does not like to send applicants away unhappy and disappointed but in this particular instance with the recommendations of the Planning Department, Code Enforcement Officer and Counsel he cannot make a motion to grant the variance at this point.

Mr. Renzi pointed out two further issues, he believes that this is not the first such request and knows of no such variance ever being granted, and the second issue is of traffic safety, it has not gotten any better but has gotten worse.

Mr. Kingra made an offer to remove the two building signs for the freestanding sign. Mr. Kelley stated that he knows that offer was made at the last meeting but due to the recommendations given to the Board that is not possible. Mr. Kingra noted that the Parkwood Plaza freestanding sign is maxed out.

Mr. Clemens stated that he has suggested to the Plaza owners they put up a new sign indicating more of the businesses in the plaza but nothing has ever been done.

Mr. Kortz stated that due to the integrated site plan he cannot see a freestanding sign being granted for just one of the businesses in the plaza. It would seem out of line. He continued, if the business was part of the original integrated site plan for the whole plaza that the conditions that were set at the time the site plan was approved supercede all the others. Virtually nothing has changed.

6/3/03 Page 3

Mr. Kelley made a motion that this application for a freestanding sign for Parkwood Restaurant be denied. Mr. Kortz seconded. Ayes: Kortz, Heritage, Kelley, Pace. Noes: None.

NEW BUSINESS

1

An application from Darrel & Debbie Bessette, requesting an area variance from Section 208-11 from the required 25 ft. rear yard setback for a deck - actual setback = 18 ft. -

variance requested = 7 ft.. The property is located at 13 Montgomery Way, Clifton Park. Permit #80439.

The secretary read the legal notice as it appeared in the Daily Gazette on May 29, 2003.

Darrel Bessette presented this application. He stated he would like to replace an existing deck that is 16' x 22' with one 16' x 27'. The problem is with the 16 ft. side. He noted that on that side there is a common area owned by the Town between his property and the next door neighbor.

Mr. Clemens explained that the area is a Town owned right-of-way for drainage and would offer more of a buffer. If that was included he would have the 25 ft.. He noted he has no objections with granting this variance. It's in keeping with the spirit of the law.

Mr. Bessette noted that he also included with his application letters from the surrounding neighbors stating they have no objections to the deck.

There was no public comment. Mrs. Pace made a motion to close the public hearing, Ms. Heritage seconded, approval unanimous.

Ms. Heritage made a motion to approve this variance as requested. Mrs. Pace seconded. Ayes: Pace, Kelley, Heritage, Kortz. Noes: None.

2. An application from Mark Simpkins, requesting an area variance from Section 179-26C from the required minimum 40 ft. of frontage on a public street to subdivide a lot - proposed frontage = 30 ft. - variance requested = 10 ft.. The property is located at 674 Bruno Road, Clifton Park. Permit #80440.

The secretary read the legal notice as it appeared in the Daily Gazette on May 29, 2003.
6/3/03 Page 4

Mark Simpkins presented this application. He stated his wife's mother wants to subdivide land at 674 Bruno Road which ends at the cul-de-sac on Walsh Lane in Woodland Hills so they can build a house at the end of Walsh Lane. The problem is there is only 30 ft. of frontage on Walsh Lane not the 40 ft. required.

Mr. Clemens noted they will end up with a 5.9 acre lot and therefore the 10 ft. variance for frontage is well justified with the size of the lot. He noted there is probably no way that lot could ever be further subdivided because there is no additional frontage. He sees no objections the Town should have in granting this variance.

Mr. Kelley asked for some clarification. He asked if the property would be entered from Walsh Lane.

Mr. Simpkins stated yes that will be the driveway. It is currently a field.

Mr. Renzi asked Mr. Clemens if there is any way the lot line could be moved for the applicant to obtain the 40 ft. needed.

Mr. Clemens responded no because there is already an existing lot along side the property line. This is not a self-created problem. Mr. Clemens noted that the property goes all the way to Bruno Road and the current frontage on Bruno Road is approximately 300 ft. This lot will be cut off from Bruno Road. The frontage on Bruno Road will stay with the existing house. The only frontage the new house will have is the 30 ft. on Walsh Lane. At the point where the home will be built will be well beyond the 100 ft. lot width. The only thing they need will be the 40 ft. on a Town Road.

Mr. Clemens asked if there were any future plans to subdivide the property. Mr. Simpkins stated no. The idea is to keep the land in the family.

Mr. Kortz asked what is east of the lot. Mr. Simpkins stated the land keeps running to Bruno Road. He presented a larger copy of the site plan and explained the proposal.

Mr. Clemens gave some background on this parcel of land noting that only 30 ft. remain for access on Walsh Lane.

Mr. Kelley stated that Counsel suggests that a condition be put on this variance stating that there would be no further subdivision of this land.

Mr. Clemens stated that he believes this would be an unfair condition. This family owns land further north and perhaps a road could be brought in off of Bruno Road and they could sell a couple of one acre lots.

Mr. Kortz noted that that would be a subdivision of lands and
6/3/03 Page 5

would have to come before other Boards.

Mr. Kelley noted that he would like to let that process work itself out if it were to arise. He thanked Counsel for his suggestion.

There was no public comment. Ms. Heritage made a motion to close the public hearing, Mr. Kortz seconded, approval unanimous.

Mrs. Pace made a motion to approve this application as submitted. Ms. Heritage seconded. Ayes: Kelley, Kortz, Heritage, Pace. Noes: None.

Mr. Kelley noted a correction for the pending minutes. The number of horses was omitted from the motion for the Hill application. The secretary also noted that it should also state that the waste material should be removed "from the site" as soon as practicable. All

agreed on the changes.

Mr. Kelley made a motion to approve the minutes as amended for May 20, 2003. Mrs. Pace seconded, approval unanimous.

Mr. Kelley noted that he will not be available for the July 16, 2003 meeting. He will ask Mr. Dudick to Chair the meeting.

Mrs. Pace made a motion to adjourn the meeting at 7:42 PM, Mr. Kortz seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb
Secretary

cc: Town Clerk, Zoning Board Members, Louis Renzi, Counsel,
Don Clemens, Department of Building and Development, Planning Board, ECC
Members