

ZONING BOARD OF APPEALS

July 20, 2010

Present: Michael Dudick, Chairman, Robert Ritter, James Whalen, Brian Telesh,
Douglas Strother

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

Absent: Christopher Lemire, Dale Gleason

Mr. Dudick called the meeting at 7:09 p.m.

Mr. Dudick welcomed Susan White as the new Zoning Board of Appeals secretary.

Mr. Dudick notified the applicants that there were five voting members of the board present instead of the usual seven. They were advised that four of the five members need to vote in favor in order to pass a motion to approve an application. Applicants have the option to table the application until the next meeting.

PLEDGE OF ALLEGIANCE

OLD BUSINESS:

Mr. Dudick stated that there are two items that were on the agenda as far as Old Business and one of them has been tabled leaving one item of old business which is an application from Jennifer Zaccaria. The secretary re-read the public notice that was printed in the newspaper.

- 1. An amended application from Jennifer Zaccaria, requesting variances for a subdivision in a B-1 zone at 932 & 934 Rt 146, Clifton Park, New York (Permit #80776).**

Variations requested as follows:

- 1: 208-35C - Required lot A width = 180ft, available = 160', variance required = 20ft.**
- 2: 208-86A - Keyhole lot formed by subdivision - not allowed per this section.**
- 3: 208-86B - Minimum setback for all sides = 50' in keyhole lot, available on east side = 34' plus lot B, variance required = 16' plus/minus.**
- 4: 208-35D.(3) greenspace required lot A = 50%, available = 45.9%, variance required= 4.1%.**
- 5: 208-35D.(1) no parking in front yard in B-1 zone. Lot B all parking in front yard - variance required.**
- 6: 208-35D.(2) no parking closer than 25' to side & rear property line. Lot A parking on side & rear property lines 25'. Variance required for both (2 variances).**
- 7: 208-35D.(4) 10' buffer required along side & rear property lines. Lot A requires variance for both west side and rear property lines (2 variances).**
- 8: 208-35C -40000 sf minimum required, available is 34,722 sf, 5,278 sf variance required.**
- 9: 208-35C required lot B width = 180', available = 40', variance required = 140'.**
- 10: 208-35D.(3) building & parking area maximum coverage = 50% of total lot area. Lot A = 54.1% variance required = 4.1%.**

Tom Andress, with ABD Engineers and Surveyors representing Jennifer Zaccaria, presented the application. Mr. Andress submitted a new package subdividing out a lot in the front and everything else behind it for a second larger lot. The first application to the board had the lot in the front with less than the 40,000 required and less than the 100' of frontage. He stated the application has changed for the front lot size so that it now meets the frontage requirements of 180' and it meets the area requirements. It makes the lot in the back (lot B) a little smaller but it is still over 4 acres, but cuts the frontage down to a little more than 20'. He stated they are proposing for the drive itself, an easement across it for the purpose of access through the property and parking. In addition, the changes will now meet the greenspace requirement with 53%.

He provided to the board a letter from the real estate company marketing the property showing the appraisals and offers and interest that have been coming in. He stated that they have not been interested in both of the buildings. The building in the front could be used as a daycare but is really set up for an office. The back building is being used as a daycare. People have been coming forward but are interested in the front. There was medical (facility) that was interested. Someone was interested in the daycare but didn't want to have the burden of the front piece. A summary was provided of the methodology for pricing the property and the reason why they are asking to subdivide it to be sold individually. Mr. Andress showed a map and indicated Blue Spruce apartments owned by Don Green. He said there are many that are not to code and several without frontage on 146 and that 10 individual parcels could be sold at any time. The applicant's

proposal is to create one lot in the front and a large lot in the back. He pointed out that next door almost the same thing was done except they created a huge number of lots internally within the complex. He gave the example of the corner of 146 and Ravenswood where the access to the medical buildings owned by Dr. Frasier come off the same access that goes next to the gas station. He stated that there are other similar lots that were created when there was not a restriction. He said what he wants is a little out of the ordinary, but fits in with what has been created in the area, immediately next door being the closest.

He stated that they would agree not to subdivide the rear lot into further lots, and would put into the restriction the ability to sell a portion of the rear lot only to an adjoining owner. It adjoins the school and parcels to each side, and the access would be through the adjoining parcels.

Mr. Dudick mentioned that was a request for financial information.

Mr. Andress agreed that there was a request and that they had asked counsel if that would remain private and was informed that once that was put in, it would become public record. He told the board that the applicant did not want that information within the public record.

Mr. Dudick stated that in his memory the request was based on hardship and instead of addressing that issue, Mr. Andress is talking about restricting this to a two lot division as opposed to the previous application where he was talking about possibly of having subdivisions for additional buildings. He asked if that is now off the table.

Mr. Andress states it is off the table and instead of supplementing the application with financials they supplemented it with information from the real estate agent showing the difficulty in marketing the property as a single property.

Mr. Dudick informed Mr. Andress that normally this is a seven person board and in order for an application to be granted you have to have four yes votes and there are five voting members. This would mean that he would need four out of five votes. He informed Mr. Andress that he could come back to present at a later date. Mr Andress said he would like to continue presenting and when they hear comments they may elect an option to continue to another meeting.

Mr. Telesh asked if the board could restrict further subdivision with the stipulation of selling to adjoining properties. Mr Andress answered yes to any restriction they would like.

Mr. Dudick asked if there are four adjoining property owners. Mr. Andress said yes, but there is actually only 3 - the school is the one in the back, there is a very small residential lot and large residential lot.

Mr. Dudick asked about Lot 15 & 16, whether it is part of Blue Spruce and was told yes, it was.

Mr. Meyer stated his concern was that developing the lots might require more variances. He said that restricting further subdivision by selling to adjoining lots only would remove a lot of that concern that another keyhole lot would be created.

Mr. Dudick stated he likes that idea to prevent multiple keyholes.

Mr. Meyer mentioned that it would create some concern because the lot in the back will never be able to have a sign on Rt 146 because all the property is pavement and it can't make the setbacks. A variance to put a sign on the lot in the front has never been done. He states that if this happens the daycare sign goes. He said you can't put the building in the rear with a sign in the front. Mr. Dudick stated that it would be precedent setting.

Mr. Strother asked if you are heading east on 146, is the lot exposed, and wanted to know how they find the daycare now. He was informed there was a sign now. Mr. Meyer stated that the sign must meet the setbacks when you have only 20 feet.

Mr. Andress asked if it was possible to come back and ask for a variance for the sign. Mr. Meyer stated there was a small strip alongside the pavement and you might be able to get 15 feet off the road or property line and would need a variance. He stated for example Parkwood Plaza where there are 30' frontages for the lots that are keyhole lots and are all blacktop.

Mr. Ritter asked if you separate out the front property, are the daycare building and all the properties behind it all one parcel and was told that is correct. He asked if the daycare could be sold separately and if it could be separated out from lots 3 & 4. Mr. Andress said the daycare would have to be sold with all the rest and if one of the adjoining wanted to buy it, it would be a subdivision, but it would have to go to the adjoining properties.

Mr. Ritter asked, would it become its own parcel. Mr. Andress stated it would, with it large land area for playground and that it couldn't become smaller than the minimum size.

Mr. Ritter asked if there has been any interest expressed from the adjoining owners. Jennifer Richer, representing the listing agent of the property, informed the board that they have not approached any of the adjoining owners and will not do so until they know it is a possibility.

Mr. Dudick notified the room that this is a public hearing and asked if anyone would like to speak. There was no one who wanted to speak and the public hearing discussion was closed by unanimous decision.

Mr. Strother asked would lot 3.69a be eligible to purchase property. Mr. Andress stated that it would and so would the one behind it 16.3 as they are all part of Blue Spruce.

Mr. Strother asked about the access to the back and if lot 15 would have to take the whole piece and wanted to know who holds the title for each lot. Mr. Andress stated that the lots have internal access and although he didn't do the research as to who owned the titles, they are all under DCG, but technically they could be titled differently. Mr. Peller stated that if an adjoining landowner wanted to buy, it could not be subdivided and it would be one parcel.

Mr. Dudick asked for clarification as to whether, if the property was divided into two properties, would it become three properties if part of the back property was sold. Mr. Strother stated that the lot would shrink.

Mr. Dudick summed up the discussion regarding selling part of the back lot. He reiterated that there would only be two lots, regardless of whether part of the back lot is sold because that parcel would become part of the adjacent property.

Mr. Address stated they wanted to have the option to be able to sell part of the back lot if the school wished to purchase. Mr. Dudick clarified that that portion would only become a third lot for the brief time it took to transfer ownership to the purchaser.

Mr. Telesh stated they could prevent landlocking the purchased adjacent property by putting the stipulation that the easement must come from the adjoining owner purchasing the property. He asked Mr. Peller if that would take care of it. Mr. Peller stated that you can't landlock a parcel. The question is what would the adjoining landowner do with the property, why would they want it, would they build on it? Mr. Meyer stated that as long as it met the minimum requirements of 40,000 sq ft. The apartment might be able to expand into there. Mr. Peller stated that you can restrict any ingress and egress to the adjoining lots by stipulating that it would have to come from their lots. Mr. Address said he would give Mr. Peller the revised application to review before submitting.

Mr. Ritter stated they are talking about someone potentially buying a lot that would have zero signage on Rt 146. He said if you separate this out, the daycare will lose the sign, and anything behind that building will never have a sign. Mr. Address stated that is correct, but anyone buying the property behind the daycare wouldn't want to utilize the property from the front and wouldn't want a sign. The daycare would have to come back for a variance. Mr. Meyer said the distance is 15 feet front, but if it is 5-10 feet you will have a problem.

Mr. Telesh said the probable potential buyers would be the school district or the apartment complex and they already have their signs. He stated that when it comes to off premises sign a tiny sign that fits within code would be unprecedented and informed him that it is all part of the process. Mr. Address said it wouldn't be an off premise sign because they can meet the front distance. Mr. Meyer informed that the side yard setback for two tenants is 15 feet and for single tenant is 10 feet. It is feasible to get the sign in as it sits now with the single tenant.

Mr. Dudick asked the board how it stands now with the subdividing the two lots with the keyhole as we perceive it right now, would allow it for both lots to have signage. He asked for further questions.

Mr. Telesh stated he would be comfortable supporting it with the stipulations put into it.

Mr. Ritter said he is uncomfortable with it. He respects that the owner does not want to give up the financial hardship information, but he feels that, even with the modification and the changes, the hardship has been the anchor of the application. He states that the application maintains they cannot sell this lot because it is linked with the two buildings plus the vacant lot behind it. He feels that without the appropriate data for the board to evaluate, whether this is a hardship issue or not, without the data, a decision will eventually set the precedent for other lots on that corridor to do the exact same thing. He cannot accept the application because the applicant does not want

to disclose financial hardship when other businesses in the community have been asked to provide it and have done so.

Mr. Strother stated he thought there is some leeway in exposing certain financial information when it would have a significant effect on the privacy of the individual. Mr. Peller stated that anything that goes into the file such as information provided for the board to make a decision can be FOILED. The town does not have the right to redact anything from its files other than attorney client privilege. Anything that is presented, the public is entitled to see.

Mr. Telesh stated he doesn't look at this as a financial hardship alone but how it looks in concert with the adjoining properties. It isn't going to be a change on the tax map.

Mr. Strother asked Mr. Address if he was willing to drop the financial hardship as an issue and whether it is part of the case?

Mr. Dudick informed that the board has denied other applicants who applied under financial hardship and did not provide financial information. The board must review all information and decide how much they need. He stated he is not sure whether to support it or not because the applicant is filing on hardship but isn't telling what the hardship is. He stated that he would call for a vote now if Mr. Address would like. Mr. Address stated that the hardship is because they cannot sell the property in one piece, not because of the applicant's finances. He believes the information provided and the restrictions agreed upon creates a tax parcel similar to what is immediately adjoining it. Mr. Dudick informed him that the board is not required to guarantee a certain amount of profit.

Mr. Ritter stated the issue is the hardship application, not the rest of the criteria. He made the motion to decline the application. Mr. Telesh asked Mr. Ritter to withdraw that motion so that the restrictions can be added to the application. Mr. Ritter withdrew the motion.

Mr. Telesh made the motion to accept the application with restrictions for no subdivisions of the property except for adjoining parcel purchase with no access of the subdivided parcels.

Mr. Peller stated he is fine with the motion as long as the board and Mr. Address understands the intent of it. They can work out the wording.

Mr. Whalen stated he can't support the application. He does not think the applicant has satisfied its statutory obligation looking at the criteria as far as a significant economic injury. He is hesitant granting a variance without evidence explaining what the financial situation is now.

Mr. Address stated he would like to table the application until the next meeting. Mr. Telesh withdrew his motion. Mr. Dudick stated that there is no motion but there is a closing of the public hearing, which can be reopened again. Mr. Address stated he would like to table it to the August 17 meeting. The 51 day time period is waived. There is not a need for another public notice.

Mr. Strother asked to clarify the financial situation. Personal finances are not required. Mr. Whalen would like to see the information that economic injury is demonstrated. Mr. Ritter what is provided is entirely up to the applicant's discretion.

2) An application from Melissa D. Lescault, Esq., for a variance from Section 208-86B, for a front (not side) setback for an existing addition to their home (front faces the street). Fifty (50') feet required, 41' available, 9' variance needed. (Note: addition does not appear to have building permit) The property is located at 6 Hilltop Court, Rexford, New York. (Permit #80775)

Mr. Dudick informed that the applicant has requested a postponement until the August 17, 2010 meeting

NEW BUSINESS:

The secretary read the legal notice as it appeared in the *Daily Gazette* on July 15, 2010.

1. An application from Paul Lattan, in conjunction with SUP 80759, requesting a variance from Section 208-98. Special setback lines Main St in Jonesville require 100' setback from the road centerline for residential, 82.9' available; 17.1' variance required (use 18'). The property is located at 876 Main Street, Clifton Park. The property is bounded on the north, by Quillinan; on the south, by Yeager and Country Club Acres; on the east, by Main Street; and on the west, by Country Club Acres. (Permit #80784)

The secretary read the notice as it appeared in the *Daily Gazette* on July 15, 2010.

Mr. Paul Lattan presented his application. He resides at 876 Main Street, Jonesville. He asks for a variance approval for a setback for an addition for what was an in-law apartment into a two family house.

Mr. Ritter asked if this was going to be used by family and Mr. Lattan answered that it was. Mr. Ritter asked why it has to go from an in-law apartment to two family. Mr. Meyer answered that there is no such thing as an in-law apartment in the building code. He defined a two family house as one with separate eating, sleeping, cooking, bathing and separate entrance. An in-law apartment is an extended house such as extra bedroom and bath without kitchen.

Mr. Strother stated that the size of the variance is minimal and the building exists. Mr. Meyer stated Mr. Lattan is there to put an addition on.

Mr. Dudick asked Mr. Meyer if there are any issues. Mr. Meyer has no issues. Mr. Dudick asked if there are comments from the board. There were none. He asked for comments from the public. There were none.

Mr. Strother mentioned that if he ever wanted to sell the property, he would have not problem because, upon approval, it will be in compliance.

Mr. Ritter made the motion to accept the application and Mr. Telesh seconded. Ayes: Ritter, Whalen, Dudick, Strother, Telesh. Noes: None. Application was approved.

- 2. An application from Prestige Motor Car Co., Inc., requesting a variance from 208-65E.(1) "No parking or maneuvering area shall be allowed in the front yard" (Section 208-98 not applicable since variance requested is not for a building). Previous use variance (80692) approved allowing auto sales in zone. The property is located at 1926 Route 9, Clifton Park. The property is bounded on the north, by Railroad-Boston and Maine Co.; on the south, by Park Pools and Donald J. Neilson; on the east, by RKS Holdings Corp.; and on the west, by Charles Mahserjian. (Permit #80785)**

The secretary read the notice as it appeared in the *Daily Gazette* on July 15, 2010.

Ms. Sunday Verrillo presented her application. Ms Verrillo and her husband own the property at 1926 Route 9, Clifton Park, which is an automobile dealership. The application requests an area variance to be able to maneuver and display vehicles in the front yard. Current compliance with zoning regulations as they are now makes it impossible for them to do so. This reduces competition with other dealerships on the same road which are able to display their cars in the front. She states there would be no harm to neighbors as all other businesses park in their front yards. She stated that there is a pond in the front yard that was required by fire code at the time they first applied. The pond has now become a nuisance and is no longer a requirement for fire code. It is a maintenance and safety issue and takes up the front yard.

Mr. Dudick asked for questions or any public comments. There were none. Mr. Ritter made a motion to close the public hearing which was seconded by Mr. Telesh. None opposed.

Mr. Dudick asked about the requirement of having the pond. Mr. Meyers stated that in 1999 there was a variance approved with the condition they put in a fire pond due to lack of hydrant service there. Since then the code has changed so ponds are no longer required. The pond was for fire protection and stormwater control. The pond can be filled in and still have the stormwater control underground. There is now the option of parking in the front which is in line with many other businesses in Rt 9, he does not see an issue with it.

Mr. Peller asked if a customer could park in the area. Mr. Meyers stated they could and he would not have a problem with it.

Mr. Dudick did not feel this was a problem.

Mr. Strother stated the parking by customers is not a significant issue.

Mr. Dudick asked if there needs to be a stipulation for the number of cars in the area. Mr. Meyers does not feel this is an issue.

Mr. Ritter made the motion to approve the application and Mr. Strother seconded.
Ayes: Mr. Ritter, Mr. Whalen, Mr. Dudick, Mr. Strother, Mr. Telesh Noes: None

- 3. An application from Parkway Music, requesting a variance from from Section 208-50.4 which allows only one entrance and one exit on any individual public thoroughfare. Two entrance/exits are proposed for Biette Road. The property is located at 14 Biette Road, Clifton Park. The property is bounded on the north, by Bentley & Bentley; on the south by Green; on the east, by Biette Road; and on the west, by US Route 9. (Permit #80786)**

The secretary read the notice as it appeared in the *Daily Gazette* on July 15, 2010.

Tom Andress of ABD Engineers and Surveyors representing Mr. Hatfield, the owner, presented the application. Mr. Strother recused himself on the grounds that he is acquainted with the applicant. Mr. Dudick informed Mr. Andress that this is a seven person board and because one of the five members present has recused himself, all four of the remaining sitting members must be unanimous in their decision to approve. He informed Mr. Andress that he could table the application if he wished. Mr. Andress indicated he wanted to proceed.

Mr. Peller disclosed that he had represented Mr. Hatfield in a legal matter and told Mr. Andress if there was a problem, he would recuse himself. Mr. Andress indicated he did not have a problem with his remaining.

Mr. Andress informed the board that the issue is the ordinance which allows no more than one exit that has ingress and egress on a road. The current situation is not working for the applicant. Use of the entrance from Biette Road, which is a small town road, would allow customers to exit and also allow access for the occasional tractor trailer to enter. He stated that if they didn't have this entrance, the customer would have to go back on Route 9 and come around to pick up purchases. He feels it will not have any affect on the neighborhood.

Mr. Dudick asked about the first iteration of the building when there was a loading dock coming off Biette Rd behind the building and wanted to know if that was now gone. Mr. Andress said that it is gone and there is no issue with trucks or cars sitting on Biette Rd. Mr. Dudick reminded the board that the proposed access off Rt 9 and off Biette Rd would be the same as Rusty Nail next door currently has.

Mr. Meyers stated that this issue is one that was missed and they want to clean it up.

Mr. Dudick stated he sees nothing that makes him uncomfortable. Mr. Ritter made the motion to close the public hearing and Mr. Telesh seconded. All were in agreement.

Mr. Ritter than made the motion to approve the application and Mr. Whalen seconded. Ayes: Ritter, Whalen, Dudick, Telesh. Application approved.

Mr. Dudick made a motion to approve the minutes of June 15, 2010. Mr. Ritter seconded. Ayes: Ritter, Whalen, Dudick, Telesh, Strother. Noes: None.

The next meeting is August 17, 2010.

Mr. Dudick made a motion to adjourn the meeting at 9:08 p.m. Mr. Ritter seconded. Approval unanimous.

Respectfully Submitted,

Susan White
Secretary

cc: Town Clerk, Town Board, Town Attorney, Zoning Board Members, Joel Peller, Counsel, Steve Myers, Department of Building and Development, Planning Board, ECC, Assessor, Highway