

ZONING BOARD OF APPEALS

October 5, 2010

Present: Michael Dudick, Chairman, Deborah Ferro, James Whalen, Douglas Strother, Christopher Lemire (7:20)

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

Absent: Brian Telesh, Robert Ritter

Mr. Dudick called the meeting at 7:12 p.m.

PLEDGE OF ALLEGIANCE

Mr. Dudick informed the applicants the ZBA board ordinarily has seven members. Ms. Gleason had resigned and Ms. Ferro, who is the alternate member, is taking her place and one member will be delayed. Two members are unable to attend.

OLD BUSINESS:

1. 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. The property is located at 6 Hilltop Court, Rexford, New York. (Permit #80775)

Mr. Myers informed that a letter had been received requesting that the application be tabled until the next meeting of October 19, 2010.

2. An application from **One Fairchild Square, Inc.**
The property is located at 1 Fairchild Square, Clifton Park. (Permit #80792)

The applicant was not yet present. Mr. Myers informed that they had communication with them today and they had indicated they would attend.

- 3. An application from Robert Mackey requesting two variances; First variance is a setback from Section 208.11 for attached garage addition. Fifty feet (50') required in R-1 zone. Variance required = 11'. Second variance is for accessory structure; new carport not attached to the house. Setback required from Section 201-12 is 80' feet, proposed setback is 18', 62' variance required. The property is located at 40 Male Drive, Clifton Park. (Permit #80795)**

Mr. Myers informed the board that Mr. Mackey had come to the office that day and indicated that if he was not at the meeting tonight, he would like to table the application as well.

Mr. Dudick stated the board would proceed to the three items of new business.

NEW BUSINESS:

Mr. Dudick explained that in order for an application to be approved, the applicant must receive four votes out of seven. At the last meeting, only four members attended, and the applicants who had appeared with old business on September 19, 2010 had elected to table the vote until the meeting of October 5, 2010. He informed that today there are only four members now, but one member will be arriving soon. He asked each applicant if they wished to proceed or wait the ten minutes until he arrived. Saratoga Sign Pro chose to wait, and the next applicant, Elaine Allen, opted to present.

The secretary read the notice as it appeared in the *Daily Gazette* on September 30, 2010.

- 1. An application from Elaine Allen for setback variance from Section 208-12 accessory buildings requiring 80 ft setback from front property line(s). Property on 25 Hemlock Dr has 2 fronts since it is a corner lot on Cedar Lane side. Applicant wishes to place shed 47ft from property line. 33ft variance required. Property is located at 25 Hemlock Drive, Clifton Park, NY. (Permit #80799)**

Rodney Akers, owner of the property at 25 Hemlock Drive, Clifton Park, presented her application. Mr. Akers stated that placing the shed 80 feet from the property line puts it in direct line of 3 back yards. By moving the building to the 47 foot mark puts it behind a grove of trees and to the side of the neighbor's property. Placing it there makes it less obvious to the adjacent neighbors and from the road.

Mr. Peller asked if the building is a kit. Mr. Akers told him it is stick built.

Mr. Dudick asked how far from the property line and how large is the shed. The answer was 47 feet and 10 feet away from the closest neighbor's property line. The shed will be 12 ft by 12 ft.

Ms. Ferro asked why he was placing the shed in that area rather than where indicated he could put it on the map drawn by the building department.

Mr. Akers answered that putting it where the setback allows puts the shed in direct line of sight of all three residents.

Ms. Ferro asked if he had thought about plantings around the shed. Mr. Akers said “no” because it is 12 x 12.

Elaine Allen, resident of 25 Hemlock Drive, also spoke. She stated the area indicated is very park-like with all the trees, and they do not want to disturb that and spoil the view for themselves and neighbors.

Mr. Lemire asked if the birch tree behind the area is theirs or the neighbors. Ms. Allen indicated she believed it is theirs.

Mr. Dudick clarified it is a corner lot.

Mr. Dudick asked for public comment. There was none.

Mr. Myers said he has no issue with the placement of the shed.

Ms. Allen stated they were trying to take all properties into consideration which is why they want to nestle it in the trees.

Mr. Dudick made the motion to close the public hearing. Mr. Whalen seconded. All agreed.

Mr. Dudick said he does not have a problem with it as far as size and location and made the motion to accept the application as presented. Mr. Strother seconded.

Ayes: Whalen, Dudick, Strother, Lemire Noes: Ferro

Application approved as presented.

Mr. Dudick stated the board would go back to the first applicant, Saratoga Sign Pro, Inc, since the fifth member of the board has arrived.

The secretary read the notice as it appeared in the *Daily Gazette* on September 30, 2010.

- 2. An application from Saratoga Sign Pros Inc for variances from sign setback requirements of Chapter 171, Chart I. Required front setback = 15 ft, 12ft requested for a variance of 3ft. Required side setback = 10ft, 2ft requested for a variance of 8ft. Application based on best available property line information. Property is located at 520 Vischer Ferry Road, Clifton Park, NY. (Permit #80798)**

Judith Frolish, president of Saratoga Sign Pros, Inc presented the application and introduced Irvin Hilts representing TCT Credit Union.

They are asking for relief in the location of a freestanding sign. The size is not an issue, but the location is a challenge due to narrowness of the front of the lot (40'). The driveway takes up 24' leaving them only 8' for the sign. The other issue is visibility. They wish to locate the sign in such a way that it is visible from both directions on Vischer Ferry Road to give a driver stopping distance to make a determination to turn in the driveway.

Mr. Hilts stated that the building is on a keyhole lot and when built they did not have a sign. Members go past the driveway several times because they cannot see it until they are almost on top of it. He stated that the branch has not grown as it should and they are not getting the business they expected. People cannot see the sign

Mr. Peller asked if the driveway is a common drive. Mr. Hilts confirmed that it is, and the driveway is part of TCT property and where they want to place the sign is their property.

Mr. Hilts said they originally did not know they owned that part of the property and checked with Sipperly who agreed to it, and as did Mr. Myers. Mr. Myers indicated he agreed.

Mr. Strother asked if the original boundaries are now established and no longer in question. Mr. Myers stated the map he showed them is correct and the other adjacent property signs are at legal setbacks. Mr. Dudick asked if the other signs are on their own properties. Mr. Myers said “correct”.

Mr. Strother said he had visited the property and he felt the front setback is not a problem and the property is tricky because it is narrow. He feels it is a good opportunity to do the right thing and is in favor of supporting the application.

Ms. Ferro referred to one picture showing the tree which could block the sign and asked if that is the view which causes a problem. She stated it looks like if they moved the sign back, the TCT would still be visible. Mr. Allen said from farther back down the road they couldn't see it. They would like it to be seen from 400 ft back. Mr. Hilts informed they took the pictures driving 40mph and the actual speed limit is 45 mph.

Mr. Dudick asked who owned the property where the tree is located. Mr. Hilts answered it is owned by Kindercare. Mr. Dudick asked if they had spoken to them about removing the tree to solve the site line problem. Mr. Hilts said they have not. He said they have spoken to the dentist about putting the sign on his property, but he did not want to do that. He said the tree has always been an issue.

Mr. Strother informed he had paced the property and feels the sign would be in line with the other signs. He felt that pushing the sign back would not improve the appearance since there were two other signs already. He didn't feel it was an issue of front setback.

Mr. Hilts stated that there is an ATM in the building and no one knows it. If the sign is moved back, that portion of the sign won't show up. He said members did not know there is an ATM because there is no sign.

Mr. Lemire asked how much space is there between the sign and driveway and how much of their property on both sides. The answer was they own the property and have 8' on both sides, they are proposing 4'6" from the driveway to the edge of the sign, and an 18" sign.

A discussion ensued regarding land ownership and transfer, that the dentist sold them the land. Mr. Myers stated that because of the group of trees that is on the Kindercare property, he believes the tree is part of the landscaping package and was required by the site plan.

Mr. Lemire asked if the proposed sign would be closer to the road than the others there. Mr. Myers stated it would be 3-4 feet closer than the Kindercare sign. Neither the Kindercare or dentist needed a variance. Ms. Ferro mentioned that it would be “sign creep”. Mr. Strother

stated he didn't realize the sign was closer to the road than the others when he indicated his support.

Mr. Whalen had no problem with the side variance, but felt the front is more of a concern. He asked how has the branch performance decreased relative to what it used to be. Mr. Hilts indicated that this branch is the newest building, but is not getting the traffic. He cited that other branches might be doing 40 loans a month and this branch is doing 12. He states they have not done a formal survey, but members are saying it is hard to find.

Mr. Dudick suggested that if they were to give up the front setback, maybe they could offer Kindercare something to prune the tree rather than take the tree down.

Mr. Dudick asked Mr. Myers if he had anything to add. He did not.

Mr. Dudick indicated this is a public hearing and asked for comments. There were none.

Mr. Dudick made the motion to close the public hearing. This was seconded by Mr. Strother.

All were in agreement.

Mr. Dudick stated that there is no problem with the side yard setback, but the board appeared to have a problem with the front setback. He asked Mr. Hilts if he would be willing to amend the application so it is a side yard setback and not a front yard setback. Mr. Hilts stated he would.

Mr. Dudick made the motion to accept the amended application for a side yard setback with a variance of 8' and no front yard setback variance. Mr. Lemire seconded. Mr. Whalen asked if they needed approval from the National Credit Union Association. He was informed they did not.

Call for a vote: Ayes: Ferro, Whalen, Dudick, Strother, Lemire Noes: none

Amended application approved for side yard setback variance only, no front yard setback variance

Mr. Dudick stated Mr. Address for Fairchild Square (old business) was now present. Mr. Address stated he would concede his time slot to James Marzano and present after that.

The secretary read the notice as it appeared in the *Daily Gazette* on September 30, 2010.

- 3. An application from James F. Marzano, Jr. for a variance from Chapter 171, Chart I. Maximum allowable sign size = 32 sq ft. Applicant requests 66 sq ft, variance required = 34 sq ft. Property is located at 821 Main Street, Clifton Park, NY. (Permit #80800)**

James Marzano Jr presented the application. He said he is in the process of purchasing the property and planning to put a fitness center (SNAP franchise) in the building. He handed out a site plan. He stated they own another fitness center and the members tell them that the sign is important as it is seen when they drive by. He pointed out that the building is stand alone, and a sign needs to be visible and is key to their business. He presented pictures showing how the sign

would be seen. He said they won't have a pylon or free standing sign. It will be the only sign on the property. The neighborhood is commercial. He indicated they are relying on a sign to attract prospects for drive by business especially when they start up the first two years.

Mr. Peller asked if the building is under contract and there is a contingency clause for the sign. Mr. Marzano said there is not.

Mr. Strother said he spent some time out there. He said that variances stay with the building. He asked if they had considered putting two smaller signs for the same total square footage. He mentioned that the traffic would be from Ballston Lake, that people have to slow down in that area and would see the sign. He asked if Mr. Marzano had considered that.

Mr. Marzano said there are a lot of trees on 146A and common land where the trees can't be cut down.

Mr. Lemire said he drives by there and no one knows what that building is. If you put any sign on it, people will see it. He stated he doesn't think a big sign is needed because it is not in a strip mall. Any sign will direct people to the building as they pass by. If the sign is made bigger it won't attract any more business because it is the same people passing by.

Mr. Marzano said he spoke with sign experts and they told him a bigger sign is better. Mr. Lemire responded that if they were in a strip mall, that would be true because people are hunting for the sign, but in this case you are the only one there.

Mr. Peller asked Mr. Myers if he has something from the owner consenting to the application. Mr. Myers said he does not. Mr. Peller told Mr. Marzano he should get something from the owner consenting for him to be at the ZBA meeting because the variance runs with the land and building. He advised the board that any action it takes should be contingent upon some approval from the owner.

Mr. Dudick asked about the size of the building and what is the current business. Mr. Marzano informed it is 6500 sq ft. The current business is an imaging company.

Mr. Whalen asked why he did not consider a free standing sign. Mr. Marzano stated there is very little place for it.

Discussion ensued regarding painting or staining the building and Mr. Strother said that would help. He feels that the business is good for the area, despite the size of the sign.

Mr. Dudick asked for public comments. There were none. Mr. Dudick made the motion to close the public hearing. Mr. Whalen seconded. All in favor.

Mr. Myers offered the opinion that a sign double the allowable size at the entrance to Jonesville is setting a bad precedent as there are no other signs that size. He said he would expect the residents to complain. He thinks doubling the size is not a good idea.

Mr. Dudick asked if they plan to occupy the entire building. Mr. Marzano said they will occupy 4500 sq feet and the rest they will rent to the current occupant.

Mr. Dudick reminded that variances go with the property and if a few years from now the other occupants move out and a new occupant moves in, they might also want a sign.

Mr. Dudick asked for comments. Mr. Lemire said he would be opposed to the application as presented. Mr. Whalen didn't think the application presented sufficient justification for doubling the sign size. He indicated that the sign is not consistent with Jonesville's historic character and appeal. He would be opposed to the application as well.

Ms. Ferro made the motion that the application be denied. Mr. Lemire seconded the motion. (A vote of yes is to support denial of the application.)
Yeas: Ferro, Whalen, Dudick, Lemire No: Strother

Application is denied.

OLD BUSINESS

**An application from One Fairchild Square, Inc. requesting variances to further subdivide property into 5 parcels (currently 3 parcels) 1. Section 208-65E(1) No parking allowed in the front yard, Lots C,D & E all show parking in the front yard (3 variances)
2. Per 208-65C and 208-65E (2) there shall be a 25' buffer of vegetation along the side and rear property lines. Variances required.
Lot C – East & west sides of property (2 variances)
Lot D – West side & rear of property (2 variances)
Lot E – North side of property (1 variance)**

**Notes: Only one curb cut is allowed per lot per 208-661. The same curb cut is proposed for all 3 properties. Access is provided per a common roadway.
The property is located at 1 Fairchild Square, Clifton Park. (Permit #80792)**

Tom Andress, ABC Engineering, representing One Fairchild Square, Inc and the owner, Mark Rekucki, presented the continuing application. He provided additional information in the form of a letter from the SEDC. Mr. Dudick read the letter into the record. The letter indicated they had referred a client to the Fairchild Square, however it was not shovel ready and the client went elsewhere. The letter stated it encourages the development.

Mr. Andress referred to Mr. Strother's concern at the last meeting regarding his stating the Planning Board was in favor of the project. He submitted the minutes for the June 8, 2010 meeting. Mr. Andress indicated that the planning board had issues of discussion, but that the general overall tone was that the project is something that the planning board is looking for. He said a lot of items of discussion have been addressed before the application went to the ZBA. He mentioned discussion with Mr. Scavo regarding the 150 foot setback from Van Patten. It is actually a 50 foot setback and a 150 foot width further back. The building is further back than required and Mr. Scavo said he would correct that at the next meeting before the board. Mr. Andress had a discussion with Mr. Scavo whom, he said, assured him that the Planning Board

was in favor of the project and wants it to go forward. They want to review everything, including traffic. Mr. Scavo is going to have a discussion with Mr. Myers. As of today, he has not spoken with him.

Mr. Andress spoke about the variance criteria and read from the legal regulations the five factors the board must consider:

1) “Whether an undesirable change will be produced in the character of the neighborhood or a detriment to neighboring properties.....” He stated they do not feel it will create an undesirable change, and, in fact feel it will be an improvement to the area because the configuration by having internal roads will eliminate the possibility of the existing lot, just purchased, which could have had an access to Ushers Road. It limits the rest of the access to Ushers Rd.

2) “Whether the benefits could be achieved by other methods feasible for the applicant to pursue other than an area variance”. They feel they don’t have the ability because it is internal variances and there is no other way other than to remove the lot lines. It could be marketed as a single building but he doesn’t think there are potential buyers for a 100,000 sq ft building. It would be difficult to market. Constructing the buildings without property lines could be done, but there would be no financing for this type of loan in this economy. Most financial institutes require 70-80% commitment.

3) “Whether the area variance is substantial”. He states it is substantial because they are requesting a complete variance. However in context for the internal design and doesn’t affect anyone but the internal workings of the property.

4) “Whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district” This has been designed with Planning Board to make sure the loading docks are away from the residential area. They are keeping all the noise to a minimum. By going with this design which goes with smaller buildings, there is less potential for a large around the clock type of operation.

5) “Whether the alleged difficulty is self created which considerations.....but shall not necessarily preclude the granting of the area variance.” He stated variances are almost always self created by virtue of the language that has been put into the light industrial zone, which was purchased after that was put in place.

Mr. Lemire asked if the board (ZNA) has the new revised layout made after the Planning Board meeting. Mr. Andress answered it does and certain things were re-designed. He described the changes.

Mr. Strother re-stated that he is in support of granting the application because by not granting the variances, it would not solve the concerns they have. He feels the concerns would be addressed by the Planning Board. He stated that Mr. Andress telling the board that the Planning Board and Mr. Scavo are in favor of the project is still heresay and he sees nothing definite in the minutes of the PB meeting.

Mr. Lemire asked if he has been back to the Planning Board for approval.

Mr. Address stated he has not because it needs ZBA action first and then he fully expects the Planning Board will approve the project.

Mr. Dudick stated this is the third time he has appeared before the board. There has been an issue that the full board has not been in attendance. The board expects that one more member will be added. He mentioned that the vote could be tabled again, but asked the board to make comments so Mr. Address could determine the feel of the board's opinions.

Ms. Ferro stated that her position has not changed and is in sympathy with Mr. Lemire. She said she feels it produces an undesirable change in the neighborhood with one vast area of parking lots and warehouses with nothing separating them. She stated he has eliminated all the vegetative buffers and have admitted that the alleged difficulty is self created because they want x# of buildings on the lot.

Mr. Lemire asked what the traffic study (mentioned in the Sept 7 meeting) showed. Mr. Address stated that the study showed that there is absolutely no change at all in any of the level of services and is a small generator of traffic. He mentioned the nature of office warehouses generate very little traffic.

Mr. Lemire asked when it was done. Mr. Address said it was done in the first phase for the first two buildings.

Mr. Address mentioned that there is a large residential project planned for the north side of Ushers Rd will create a need for a light at that intersection. He states this project does not require changes to Ushers Rd or Van Patten Drive.

Mr. Lemire read from the Planning Board minutes a statement by Mr. Romano from Clough Harbor (town engineer) indicating that the proposed project along with the two previously approved buildings will increase traffic along the Ushers Rd and Van Patten Drive corridors. Mr. Address stated that anything is an increase. He said Mr. Romano was not aware the traffic study was already done. He stated that if the PB requires them to update the traffic study, they would.

A discussion ensued regarding the different designs that had been proposed. Mr. Dudick summarized that there will be three buildings instead of 4 because lot D that had just been purchased could have had a building on it, if it had been separately owned. Mr. Address agreed and added that it also could have had access to Ushers Road.

Mr. Dudick asked Mr. Address if he would like to have the board vote or table it, considering there is one open position and two members not in attendance. Mr. Address stated he would like to table it until October 19, 2010 and will waive the time period.

The next meeting is October 19, 2010 with four new and three old business applications.

Mr. Dudick discussed the method the secretary was using to distribute the agenda to the board. It was decided she would e-mail the agenda, but also include it in the packet of applications which are mailed.

The minutes of September 7, 2010 were approved.
The minutes of September 21, 2010 were approved.

The meeting was adjourned at 8: 50 p.m.

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