

ZONING BOARD OF APPEALS

May 6, 2014

Present: Michael Dudick, Chairman, Denise Bagramian, Michael Bloss, Randy Gifford, Chris Lemire, Mario Fantini

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

Absent: Jerry Cifor, Jennifer Vucetic

Mr. Dudick called the meeting at 7:05 p.m.

PLEDGE OF ALLEGIANCE

Mr. Dudick informed the applicants this is a seven member board with one alternate. Tonight two of the board members are absent and therefore, Mr. Fantini, as alternate, is designated to sit in for Mr. Cifor. To receive approval an application one must receive 4 yea votes regardless of the number of members present. There are six voting members present tonight so the applicant must receive four out of six votes for approval. He explained the applicant has the option to defer to a future date when there might be more members present, but there are no guarantees how many members will be present at any meeting.

OLD BUSINESS

None

NEW BUSINESS

The secretary read the legal notice as it appeared in the Daily Gazette on May 1, 2014

1) An application from Keith Schrom for a variance from Section 208-12A which requires 80' setback from front property line. Applicant wishes to construct 12'x12' shed 25' from property line. Variance required = 55'

Property is located at 485 Moe Road, Clifton Park, NY 12065 (Permit#80974)

The application was presented by Betty Schrom, co-owner and resident of the home on 485 Moe Road. Mrs. Schrom explained that because of the way the home is set up, the driveway and garage are in front which is why they wish to construct a shed on the other side of their house. She explained they anticipate they will have grandchildren and this will leave the back yard free so they are not playing by the road.

Mr. Dudick commented there are aesthetics to consider if they put the shed between the house and road, explaining it puts the shed in the front yard where people will see it when they drive by. He asked if she is sure that is what is desired and questioned why they wouldn't want to put it in the back yard.

Mrs. Schrom answered there is a slope where the water drains and an area they are not allowed to touch (wetlands) in the back. She said they didn't want children there.

Mr. Dudick asked if there was a way to put the shed between the wetland area and the house and whether they would like to have the shed there. Mrs. Schrom responded they did not want it there explaining because there is a grinder pump and a slope they hope to put a deck on the back of the house.

Mr. Gifford asked if they plan to match the shed to the house. Mrs. Schrom answered yes and it is in the contract.

Mr. Dudick asked for the reason they are not moving the shed closer to the house. She responded they could move it closer, they just tried to center it in the drawing. She added they would put a blacktop patch so people could turn around.

Mr. Myers commented this is a more drastic setback for a shed than what they normally do. He continued; they never put a shed in front of the building line, except on a keyhole lot where the house is far back off the road. He repeated he has never seen a time it has been allowed in front, informing they can't put it closer than 10' from the house because of fire code.

Mrs. Schrom suggested they could put it closer to the house. Mr. Myers repeated it would be a unique situation if they allow it in front.

Mr. Lemire asked if they could place it next to the driveway. Mrs. Schrom said they would have to cut down the trees and there is a slope going up. She informed they had cut down some of them in the front so they do not block the view of the sidewalk in case children come by. Mr. Lemire asked the location of the trees and she explained.

Mr. Fantini questioned Mrs. Schrom as to why they do not want it on the other side of the house. She explained they want to leave room for the kids to play. Mr. Schrom stepped in to explain they only have about 50' to the end of the property line and they would lose 12', leaving 38' of the yard.

Mr. Dudick commented he appreciates they have topography problems, but referring to Mr. Myers comments, it is an unusual request to want the structure closer than the building envelope would allow. He suggested that either grading or cutting down some trees would allow for relief.

Mrs. Schrom explained the back has no trees until they get to the wetlands where they can't touch the trees and there is also a slope in the front.

Mr. Lemire asked the width of the back yard and the number of trees.

Mrs. Schrom answered there are no trees, it is all flat lawn which is why they want to leave it for grandkids. Mr. Schrom added it is about 75'.

Mr. Lemire speculated there is plenty of room in the back for a shed. Mr. Schrom explained he looks at it as having 50' and the shed would take up 12' which is what they were trying to avoid.

Mrs. Bagramian suggested they could put it in the back corner. Mr. Dudick informed if they place it on the other side, they would not need a variance. Mr. Myers agreed that a 12 x 12' shed does not need a variance but any shed still needs to meet the setbacks.

Mr. Dudick explained the board looks at granting relief when there are special circumstances. He suggested the special circumstances the Schrom's would want will have people driving by to see the shed so they can have a greater play area in the back yard. He discussed the building code that tries to avoid having structures close to the road which is why the building envelope and setbacks were created. He explained he does not see it as a relief situation as much as just wanting to maintain their back yard instead of the front yard. He suggested if the shed was in the back they could put kids' toys in it and not have to bring them into the front yard. He mentioned the possibility of making the shed more rectangular to preserve space along with putting it closer to the property line in the back yard. He summarized his opinion that there are other options available to them which wouldn't require a variance.

Mr. Lemire asked for further explanation of the map.

Mr. Fantini questioned Mr. Myers if the board had approved anything similar before. Mr. Myers responded the only time they have allowed anything like this was for keyhole lots because the houses are turned and the setback is different. He explained that the 50' setback surrounding the whole lot only applies to the main structure. He described a keyhole lot as having houses in front of the lot (meaning it is not on a main road) so that if you put something in front of the house, it doesn't really matter.

Mr. Dudick announced the public hearing and asked for comments. There were none. He made the motion to close the public hearing. Seconded by Mr. Fantini. All approved. Public hearing closed.

Mr. Dudick stated he would like to disapprove the application. Discussion ensued as to how the motion would be worded to avoid confusion.

Mr. Bloss made the motion to approve. Mr. Peller advised that if a member makes the motion to approve, they must vote yes. Mr. Bloss withdrew his motion.

Mr. Peller advised that if there is a motion to deny, an aye vote would mean a vote yes to deny.

Mr. Dudick made the motion to deny approval based on the opinion there are other more desirable options by Town perspective; options where the shed would not require a variance and would be less visually impacting and would not need great cost because it would not require grading or cutting of trees. Mr. Bloss seconded the motion.

A vote of yes would be a vote to deny the application.

Ayes: Bagramian, Fantini, Dudick, Bloss Noes: Lemire, Gifford

Application denied with four yes votes. Board members voting to deny elaborated on why they voted for denial:

Mr. Bloss commented the requested location is not the right place for a shed. Mrs. Bagramian said they could have tucked the shed into the back yard as it is not that big. She stated if they went to sell the house the placement of a shed in the front is not appealing. Mr. Dudick added it would impact other homes and the neighborhood. Mr. Fantini said the board, in the past, has not allowed sheds in front of the house, with the exception of keyhole lots.

Mr. Peller suggested board members should feel free to vocalize their opinions when they are voting to deny an application. Mr. Dudick explained the process of denying an application saying four votes would be needed to deny but if the vote had been three to two; the application would have not been denied or approved. Mr. Peller explained that, in that case, either another motion would be made or the application would be abandoned.

The secretary read the legal notice as it appeared in the Daily Gazette on May 1, 2014

2) An application from DCG Development for variances for 28,000 sq ft. mixed commercial.

- 1) Section 208-50.3B - 80' front yard building setback required, 37' available
Variance required=43'**
 - 2) Section 208-50.3C - 30' building side yard setback required, 9' available
Variance required=21'**
 - 3) Section 208-50.3D - 30' parking setback required, 8'+/- available; Variance
required=22' on south side**
 - 4) Section 208-50.3F - Green space required=35%, 17.5% proposed; Variance
required=17.5%**
 - 5) Section 208-5.4 - Only one entrance and one exit allowed, 7 proposed; Variance
required for 5 additional**
 - 6) Section 208-50.5 - 15' landscaping buffer required, 0' available, Variance
required = 15'**
 - 7) Section 208-50.6 - Group of establishments requires 400' width and five acres,
360' and 2.52 acres available; Variance required = 40' and 2.48 acres**
 - 8) Section 208-99B – Parking requirements: one per 200 sf of floor area retail, one
per 75 sf for restaurant. Required parking = $27,200/200=136$; $27,200/75=363$; 125
spaces proposed. Average of two requirements = 250 spaces; Variance required
=125 spaces**
- Property is located at Clifton Park Center Road, Clifton Park, NY (Permit#80978)**

The application was presented by Joe Dannible from Environmental Design Partnership, representing DCG. He introduced the proposed project for a 28,000 mixed use retail building at Clifton Park Center. He informed it was presented to the Planning Board on April 24, 2014 and it was received favorably. He said they identified how the plan can be turned into and comply with the future Town Center Plan. He described the Town Center Plan as having buildings close to the street with sidewalks and shared parking. Patrons should be expected to walk up to ¼ mile to get to the shops and employees walking up to ½ mile. On the drawing posted on the board, he pointed out the specifics of the building plan, how it could be converted to comply with the Town Center Plan. He repeated the Planning Board loved it.

He explained they are trying to finalize the plan at Clifton Center Mall. DCG bought the property in 2005 and in 2006 started the conversion, stores which were internally accessed. He discussed the new plan which is pedestrian centered, adding this is the last piece on the northern part of the mall. Referring to the map he described the storefronts and the sidewalk surrounding the parking lot and how it will tie into the new plan. He asserted the Planning Board is ready to move the project forward and they only need to get a few variances in place.

Mr. Lemire asked whether it is a separate lot from the rest of the mall, and Mr. Dannible said it is. Mr. Lemire referred to the Form Based Plan he had mentioned, stating it has nothing to do with the Zoning Board tonight. Mr. Dannible agreed, but said the Planning Board has asked them to do everything in their power to comply with the Form Based code. Mr. Lemire repeated it is not the law today. Mr. Dannible agreed but said the Planning Board asked them to comply with it.

Mr. Gifford asked who owns the 99 Restaurant property and was told DCM Associates of Clifton Park is the owner.

Mr. Gifford informed he has observed at least 25 cars from 99 Restaurant parking in the area they are proposing and another 25 to 40 cars that come in from Olive Garden. He asked Mr. Dannible where he proposed those people will park if they give a variance for 150 cars.

Mr. Dannible pointed to the map and answered they will park on their own site stating any time of day that area is never used. Mr. Gifford questioned why employees don't park there now.

Mr. Dannible responded that since the proposed building area has been vacant they haven't objected to them parking there, but the plan is for them to shift to the other area. (he indicated on the map).

Mr. Gifford commented that the 99 Restaurant does not have enough parking and patrons park in the JC Penney parking lot. Mr. Dannible responded that is why the whole issue of parking is about managing it and they will continue to do it and it will mean shifting employee parking to areas that are available.

Mr. Gifford repeated that he sees cars parked in the area he is referring to, and expressed concern again for giving a 150 car parking variance.

Mr. Dannible asserted it will be one continuous parking area and they have been watching the lots for several years and have never had a time when they have not had enough parking available. He added that with the plan, people may have to walk ¼ mile. He said it is their responsibility to keep their merchants happy and that is to manage parking and for the most part, managing where employees park. He repeated they have an area for 99 Restaurant parking and for Olive Garden parking.

Mr. Dudick asked Mr. Myers what is the guide the Planning Board is using, whether they are following the Town Law or following a plan for Form Based zoning, which is not the law.

Mr. Myers answered that he can't speak for Planning, and firmly asserted that he does not even consider Form Based until such time it is codified into law.

Mr. Dudick agreed, commenting that the Town Board has the right to float, turn and change the law and code until the time they vote to change the code. Speaking to Mr. Dannible, he said he understands he might be having conversations with the Town Board and Planning Board but as far as what is coming, but for now the Zoning Board has to go with today's law.

Mr. Myers said he doesn't know if the Form Based law passes, whether it will look like the plan they see today. Mr. Dudick agreed that is the point. Mr. Myers informed that there has been a large section of the Form Based plan removed.

Mr. Peller asked if the 8 variances are from the code as promulgated by the Town Board. Mr. Myers said that is correct. Mr. Peller stated that it seems a little illogical they are asking this Board to put something together that is not following the code and give a variance for that.

Mr. Myers asserted he thinks the board has to use what the code is today and not consider Form Based code.

Mr. Dannible informed this is not what Planning is saying and not what the Town Board is saying. He said they let them know the Form Based code is going to move forward and the new code was going back for a final draft and then will go up for public comment. He stated they have been told they will be working with this code in the future and the Planning Board has asked them not to make irrevocable commitments which will be contrary to Form Based code. He said this design is driven not only by not making it contrary to future Form Based code but also in keeping with lease restrictions they have to work with JC Penney, Marshalls, Boscov's and Regal Cinema. He informed the anchor tenants have absolute veto power over what they do and they want to make sure the cross traffic opportunities are there. He said where the stores are facing now would not pass muster with JC Penney, Marshall's and Boscov's, meaning if they were to build this as lining the streets they would be at odds with the anchor tenants.

Mr. Peller asked if they weren't talking about the Form Based code, would they have a different plan.

Mr. Dannible answered it is pretty much what they have to do to satisfy their anchor tenants.

He explained that originally they proposed to incorporate the new hotel into the mall with the intention that hotel guests would circulate through the mall and bring business. He related that two out of the three anchor tenants turned it down because they didn't like the mix. He said the concept was put together in 2006 where they removed footage from the mall with the idea of creating a more desirable layout and they have had great success with it, having attracted significant tenants.

Mr. Dudick commented this Board grants relief where relief is necessary. He indicated he understands that now they are in a time of change as the Town Board has indicated its intention to change the zoning. The Board knows that, but the question is that although they recognize that change is coming but they also have the current law.

Mr. Dannible responded they are trying to create something that works and respond to the multiple masters.

Mr. Fantini asked if it is a separate lot, why the tenants have a say. Mr. Dannible answered that it is a separate lot for financing purposes only, but it is all part of the shopping center that shows on their site plan. They can do subdivisions but it does not take it out of the realm of their site control.

Mr. Myers asked if the Form Based code was law today, would they have reversed the building. Mr. Dannible responded they would have made the argument that since they are under control of the anchor tenancies this is what they have to do. They tried to lay it out with the setbacks and orientation so that in 5-10 years it could be turned around. Mr. Myers asked if the anchor tenants lose control, would they turn the building around. Mr. Dannible said that it could be done, but Mr. Myers added it would not be likely assuming they wanted to keep their tenants.

Mr. Peller asked if they are committed to this diagram, irrespective of what happens with the Form Based plan. Mr. Dannible said they are. Mr. Peller questioned if they would have come to the Zoning Board with a different plan because of their anchor tenants and other reasons. Mr. Dannible said no, the reason they made reference to the Form Based code is to show the Planning Board they are not going to irrevocably commit the area to something that was contrary.

Mr. Don McElroy stated they would still need parking setbacks and green space variances regardless. He said they are increasing the green space, going from the current 8% and increasing it to 17 1/2%.

Mr. Dannible commented that the curb cuts already exist and expressed his opinion the curb cut code doesn't apply because it is not a public road. Mr. McElroy said there are some variances they don't believe pertain to this project, one of them being the curb cuts. He pointed out that there are only two curb cuts that specifically go to a public thoroughfare, namely, Clifton Country Road. He claimed the variance which refers to a group of establishments per lot doesn't apply because it is only one building. Mr. Myers disagreed, stating it looks like two buildings on the plan and with two separate walls. Mr. Dannible disagreed with Mr. Myers, arguing it is two different footages but only one continuous structure.

Mr. Gifford asked about the space in the corner and was told it was a service area. Mr. Gifford said he concludes it is two buildings.

Mr. Dannible explained that when you drive into the parking lot, although it may or may not be described as a public thoroughfare, people can back out into the road and there are 27 parking spaces that will be eliminated. He asserted it is substantially better and more attractive.

He referred to 2010 when it was originally subdivided for the Olive Garden. He asserted they submitted for all the variances at that time.

Mr. Myers interceded, stating that very clearly the Notice of Decision said nothing would be considered on this property because no building was proposed. Mr. Dannible agreed, but said it was also discussed in the minutes that variances on this lot are anticipated for the future which is why they are here today. He argued that in 2006 they tore out square footage, saying the approved site plan for the town identified up to 40,000 square feet and 60,000 square feet out back on different pad sites.

Dudick asked the square footage of the mall when they purchased it and Mr. Dannible replied 656,000 square feet. Mr. Dudick asked the square footage if they take into consideration the multilevel aspect of the hotel that is now there as well as the proposed hotel and all the storefronts (leased and not leased). Mr. Dannible answered he does not know the exact square footage but argued that the impact considered for traffic by the Planning Board still allows them to build an additional 75,000 square feet on this property.

Mr. Dudick said he recognizes there is a difference between hotel and retail traffic but knows there is an impact on traffic. Mr. Dannible informed it is decreased because 30,000 footprint of retail has close to 120 trips generated whereas the hotel (Hilton Gardens) that is on that footprint generates 40 trips arguing they have actually decreased the trip generation during peak hours.

Mr. Dudick pointed out that with the hotel parking, the customers don't leave, so they are parking there longer. Mr. Dannible responded they would arrive at 7-8 pm and be there overnight and leave early, describing it as shared parking. He asserted this is preferred by municipalities in Saratoga County and they have tried to add mixed uses which require different peak parking hours.

Mr. Peller commented someone had mentioned when they bought the mall to reconfigure it there was an understanding there would be an exchange, that they would have less square footage but have additional square footage outside the mall.

Mr. McElroy explained they demolished some square footage and put in more parking, with the intention of re-locating that square footage at strategically selected locations on the property. He described it would spread it out rather than concentrating it in the mall.

Mr. Peller questioned if there was a formal agreement with the Town, meaning was it a condition?

Mr. Dannible answered it is labeled on the site plan at the time the mall was split, which shows square footage allocation and pad sites. Mr. McElroy stated it was an approved site plan and several determinations by the Planning Board under the SEQRA process indicated they could continue.

Mr. Peller reiterated it was clear back then and the site plan is on the map.

Mr. McElroy explained that the plan shows the square footage allocation for the area which is 40,000 square feet, with the Olive Garden as 7500 square feet, leaving 32,500 square feet. They are at 28,000 square feet which is 4500 square feet less than what the approved plan called for.

Mr. Lemire asked if that information is in their material. Mr. Dannible answered it is not, but it is on file with the Town and with the County. Mr. Dudick asked Mr. Myers to provide that information to the Board so it can be used as part of their decision making.

Mr. McElroy informed they can provide two pieces of information ; one being the site plan and the other being the study from Clayton Manning showing the removal of footage and putting it back in, and the impact on the traffic.

Mr. Peller said his intention in asking the questions was so it would help the Board, for their understanding since many of them were not sitting on the Board then.

Mr. Dannible commented that another point to look at is the reciprocal easements for parking, explaining that people using different establishments can cross over property lines and park and walk to a different store.

Mr. Lemire asked if they are only considering this lot when making their decision. Mr. Dannible suggested they have to consider the shared parking and ingress and egress. He pointed out that although they are considering this lot, it is part of the Center so you have to think about the entire center.

Mr. Dudick reminded that the Hilton Hotel is on a separate lot, but it does not have any parking associated with it. Mr. McElroy informed it has about 7-8 spaces. Mr. Dudick said the agreement was that hotel customers would use shared parking in other lots and suggested this is the same situation.

Mr. Lemire asked if the variances for that building were specific for that parcel for shared parking and was told they were. Mr. Lemire pointed out the agreements with anchor tenants do not have anything to do with the variances requested from Town law, reminding that Form Based code is not the law. He summarized the only thing the Board is here to do is consider relief from Town law.

Mr. Dudick responded “yes and no”, and explained his viewpoint that this is one parcel in a series of parcels which make up the mall complex.

Mr. Lemire expressed that he believes they only have to address the variances as they apply to that parcel.

Mr. Dannible requested a five minute recess. The meeting recessed at 8:05 during which time Mr. Peller, Mr. Dudick and Mr. Myers left the room and met separately from Mr. Dannible and Mr. McElroy who also left the room to confer.

The meeting reconvened at 8:13.

Mr. Fantini asked if the mall was one big parcel, would they need a parking variance. Mr. Dannible guessed it would not. Mr. Myers agreed, explaining that because this is a separate parcel, this is why the parking is considered.

Mr. Dannible requested to table the application for two weeks and come back to the next meeting to provide additional information. (May 20, 2014) Mr. Dudick agreed this would be a good idea to give the Board more time to consider.

Mr. Peller asked him to provide the original map. Mr. Dannible agreed, and said he would, along with a traffic analysis. He asked if there are any other issues. He referred to the variances required. Mr. Peller commented that Mr. Dannible had expressed the belief that two of the variances are unnecessary: namely the “group of establishments”. Mr. Dannible confirmed and added #5 access to a public thoroughfare was also in question.

Mr. Dudick commented the building is L shaped and asked the reason why they wouldn't put the L shape the other way with the larger part on the other part of the parcel, the benefit would be greater ease of access from Olive Garden. Mr. Dannible responded the Planning Board asked them to encourage safe crossings. Mr. McElroy pointed out the design with sidewalks and crosswalks.

Mr. Dudick asked if flipping the building was considered to decrease the safety access. Mr. Dannible said they would lose their ability to have the service area accessible to both establishments.

Mrs. Bagramian questioned if they would have one dumpster, and was told they would. Mr. McElroy informed this is the 10th -15th version they have considered.

Mr. Bloss asked if they want the building along the roads, rather than the spaces. Mr. Dannible explained they want the majority of the front of the building along the roads.

Mr. Lemire asked for the North elevation. Mr. McElroy cited Panera on Glen Ridge Road as an example of what they would like to do. Mr. Lemire commented that if there is a drive through he assumes there will be a restaurant. Mr. Myers responded they have no idea what is going in there. Mr. McElroy informed they anticipated they could have 5000-6000 feet “quick casual” restaurant such as Panera.

Mr. Dannible said they will discuss: the two building setbacks (front and side), the seven entrances and group of establishments, whether or not they are needed and the variances 1) parking setbacks 2)green space 3)landscaping buffer.

Mr. Dannible agreed to waive the 61 day rule.

Continuation of the hearing of the application will be on May 20, 2014.

Mr. Dudick submitted for the record a letter from the Saratoga Planning Board, signed by Jason Kemper, pertaining to the Price Chopper application heard on April 15. The letter indicated the Board found no significant county or community impact.

Mr. Dudick made the motion to approve the minutes for the April 15, 2014 meeting. All approved. Mr. Gifford abstained as he had not been present at the meeting.

The next meeting is May 20, 2014.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mr. Fantini. The meeting was adjourned at 8:28 pm.

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, -, ECC, Assessor, Highway