

ZONING BOARD OF APPEALS

June 3, 2014

Present: Michael Dudick, Chairman, Denise Bagramian, Michael Bloss, Jerry Cifor,
Randy Gifford, Chris Lemire, Jennifer Vucetic

Also Present: Lou Renzi, ZBA Counsel
Steve Myers, Director, Building & Zoning

Absent: Mario Fantini

Mr. Dudick called the meeting at 7:08 p.m.

PLEDGE OF ALLEGIANCE

Mr. Dudick informed the applicant this is a seven member board with one alternate. Tonight all board members are present and the alternate is not needed. To receive approval an application one must receive 4 yeas votes of the seven members present.

OLD BUSINESS

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, 36' available
Variance required=44'**
- 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 req = 125 spaces

Property is located at Clifton Park Center Road, Clifton Park, NY (Permit#80978)

Prior to the presentation, Mr. Myers informed that, after consultation with counsel, and after consideration, he has removed three variances and modified one. Number one (#1) should read 44' variance required instead of 43'. He stated numbers 5, 7 & 8 will be removed explaining number eight (#8) is removed because the Planning Board has the right to amend the parking requirements and they are looking at the bigger picture, not just one site. Number five (#5) is removed because the roads in the parking lot are not public roads (#5); and number seven (#7) is removed because there is only one building so the code on "group of establishments" does not apply. Variances remaining are one, two, three, four and six.

The continuation of the application was presented by Joseph Dannible, Environmental Design Partnership, representing DCG. Also present was Don Green, Don McElroy and Josh Silver of the Murray Law Firm.

He reiterated that Mr. Myers had met with members of the Town and a few variances of previous concern have been removed, most significantly, the parking requirements.

He presented slides showing an overview of the site. He explained that the parcel was subdivided only for financial purposes. An aerial view of the parking lot showed that the parking for Olive Garden staff has changed and staff is parking on their own lot. The slide showed the 2 1/3 acres parcel, with shop fronts and the drive-thru and pick-up window.

He informed they are adding 10,000 square feet of green space which is more than 100% increase. He said the parcel currently has 8% of green space and they will increase it to 17.5% and are looking for a variance of 17.5%.

Referring to variance #3 (parking) for an 8' setback from Clifton Park Center Road Mr. Dannible pointed out the pre-existing condition exists now and they are looking to keep it.

Referring to the variance #6 (landscape buffers) he asserted there are no landscape buffers on the existing parcel, it is all parking lot. They propose to remove the parking spaces that back on to the main road to the mall and put in grass and plantings which will be an improvement.

He discussed the two remaining variances which are not existing conditions on the parcel: a front yard setback from 80' to 36' (44' variance) and a side yard variance of 21'. He pointed out the lot line and explained that up until 3 years ago, this was all one parcel and the only reason they need the variance is because it was subdivided. The setback along the northern side comes from the placement of the building.

Mr. Dannible discussed the overall master plan which was designed in 2006. He explained the intent was to turn the inside mall to outside store fronts with continuous sidewalks all around. He referred to it as continuous pedestrian circulation with centralized parking lots between all the buildings. Explaining that shoppers can see all the stores from the lot, he stated they would be able to walk to all of them without moving their car and all the sites will be pedestrian friendly.

In 2006 the initial mall was torn in half. The existing footage was 660,000 square feet and through negotiation with the Town, there was an understanding that when the mall was demolished 110,000 square feet of floor area was removed and replaced with parking. DCG had the ability to re-develop up to 100,000 square feet of pad sites. The 40,000 square foot pad site would become the parcel they are discussing along with the Olive Garden, and the 60,000 square feet in the rear of the site for the hotel. He repeated this was the agreed upon redevelopment scenario of the site, leaving the remainder of the mall at about 540,000 square feet.

Mr. Lemire asked, why, if the plan was approved by the Planning Board in 2006, are they at the Zoning Board. Mr. Dannible explained the building they are proposing has one encroachment into the setback, an 80' front setback to a 36' setback. He pointed out this is the only variance that is not a pre-existing condition on the plan.

He continued, pointing out they had their traffic engineer summarize all the traffic into the mall. He said there is still 79,000 square feet of retail that can be put on site after the construction of the hotel currently going in. He asserted they are still well below what was anticipated.

He presented slides of the changes made to the mall, showing front elevations which are keeping in character with the mall. He referred to the rear elevations which, he said, are designed to be in character with the remainder of the mall. He informed they will also have stone pillars and varying colors on the north side of the building facing Clifton Park Center Road.

He summarized that they are looking for the variances, the majority of them which are an existing condition. He added it would be a financial hardship to remove the existing asphalt and take out parking spaces to meet the green space requirement, and reminded the Board it had already been approved by the Planning Board.

Mr. Cifor asked the purpose of the existing drive-thru. Mr. Dannible responded they want that ability suggesting it could be for any establishment that requires one, with fast food restaurant being a possibility.

Mr. Dudick expressed concern about the drive-thru, saying there are a lot of lanes between there and 99 Restaurant. Mr. Dannible said the existing edge of pavement is the drive-thru and they are not looking to change that. He cited as an example Panera in Glenville as to how it would look.

Mr. Dudick said from his perspective he thinks that area is intensely developed and it seems burdensome with a lot of cut-thru and drive-thru.

Mr. Dannible answered that the only other option which was explored and abandoned was to have a separate curb cut on Clifton Park Center Road for a drive-thru. He said no one wanted

that. He again reminded that the existing edge of pavement is 8' from the property line and they are not looking to increase that.

Mr. Dannible clarified the location of drive-thru and side yard for Mr. Lemire.

Mrs. Bagramian indicated she is very happy they added green space. Mr. Dannible responded they went from 8% to 17.5%. He suggested going from a parking lot to an architecturally appealing building that has new trees, lawn, and landscaping will be more aesthetically appealing to the passerby.

Mr. Dudick commented they could have more green space if there was not a drive-thru and the building could still be the same size. Mr. Dannible responded that without a drive-thru the project would probably not move forward and it would still be a parking lot.

Mr. Dudick questioned if there would be a lack of desire to build without a drive-thru. Mr. Dannible answered Clifton Park is a commuter oriented suburban area which means having a drive-thru is desirable and attracts other tenants. He suggested the majority of the buildings in this area have a drive-thru.

Mr. Gifford asked, if they put a drive-thru in, what other stores would be attracted to, for example, a dry cleaner. Mr. Dudick commented that a drive-thru is more oriented to a drug store, food service or bank.

Mr. Don McElroy stepped to the podium and informed they are dealing with a national anchor client who makes a drive-thru a requirement and the building would be fashioned to accommodate their need.

Mr. Myers stated the drive-thru lane is more of a Planning purview, informing that if they decided to eliminate it, they would get the green space back. He offered the opinion that he thinks this is a very good use of the site especially if there are tenants waiting to move in.

Mr. Lemire asked what is considered to be the front of the building. Mr. Myers answered that it is always the side that is facing the main road which makes it consistent across the board. Mr. Lemire commented they have the front facing inward. Mr. Myers responded it is keeping the parking together which makes sense and it is not an issue.

Mr. Lemire continued to express concern driving by a side that isn't the front, citing Staples. Mr. Myers assured that the tenants may want to put windows facing the road but they won't know yet until they start on it.

Mr. Dudick commented it is a Planning decision what the exterior will look like. He suggested they could have an entrance on both sides. Mr. Myers said he is sure there would be rear entrances to the store for the employees.

Mr. Lemire asked why they couldn't push the building back to meet the variances. Mr. Dannible pointed out they would then have parking on both sides of the building and it would not fit with the overall plan. Mr. Myers said that all things considered this is the best way to do this.

Mr. Lemire discussed the need for variances if the parcel had not been subdivided. Mrs. Vucetic asked if this parcel is one owner. Mr. Dudick commented the owner could sell the parcel. Mr. Myers informed the current owners are the same and subdividing it was strictly driven by the banks and financing.

Mrs. Vucetic asked if there was a green space bank that could be used. Mr. Myers responded that the green space bank is owned by the development across the street.

Mr. Dudick announced the public hearing and asked for comments. There were none. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Cifor. All approved. Public hearing closed.

Mr. Lemire asked if it is one building. Mr. Dannible said it is.

Mr. Gifford asked where entrances would be located. Mr. Dannible responded it will have multiple entrances and that it will depend on the tenants. He said the dividing wall could be any number of places depending on the leasable spaces.

Mr. Dudick commented he is still not a fan of the drive-thru.

Mr. Bloss made the motion to approve the application as amended. Mrs. Vucetic seconded the motion.

Ayes: Lemire, Bagramian, Cifor, Dudick, Gifford, Vucetic, Bloss Noes: none
Application approved as amended above.

Mr. Dudick read into the record a letter from Saratoga County Planning Board, Jason Kemper, Director. With regard to the application, the letter stated they have found the project will have no significant impact to the county or community.

NEW BUSINESS

The secretary read the legal notice as it appeared in the Daily Gazette on May 29, 2014

1) An application from DeSalvatore Building & Carpentry for a side setback variance from Section 208-11 for a garage. Side setback required in R-1 zone is 10'; 7' proposed, Variance requested = 3'.

Property is located at 11 Lace Lane, Clifton Park NY 12065 (Permit#80981)

The application was presented by Ryan DeSalvatore, owner of DeSalvatore Building & Carpentry representing the owners of the property, David & Joyce Fifield.

He referred to the application saying they wish to build a simple 12' x 20' single bay garage with doors on either ends to get into the back yard. He presented the elevation plan showing the front, rear and side elevation. The garage would be in keeping with the house and the rest of the houses in the neighborhood with vinyl siding and roofing to match.

Mr. Gifford asked if they have a garage now and would it be added to the house. Mr. DeSalvatore responded they have a single garage and this would be a little shallower than that garage.

Mr. Myers said the application is straightforward. For the record, he informed that the owner authorization is not signed because the owner is present at the meeting.

Mr. Bloss asked why the garage is offset to the front and doesn't go all the way to the back. Mr. DeSalvatore explained there is a room behind the garage of the existing house and referred to the side elevation.

Mr. Dudick announced the public hearing and asked for comments.

Mr. Fifield, owner of the property, commented the home was built in 1962 when one car garages were the standard, whereas now two car garages are more standard. He said he has lived in the house for 41 years.

Mr. Bloss asked Mr. Fifield if he had spoken to his neighbor and he said he had.

Mr. Dudick made the motion to close the public hearing. Mrs. Vucetic seconded the motion. All approved. Public hearing closed.

Mr. Cifor made the motion to approve the application as submitted. Seconded by Mrs. Vucetic.

Ayes: Bloss, Vucetic, Gifford, Dudick, Cifor, Bagramian, Lemire Noes: none
Application approved as submitted.

The secretary read the legal notice as it appeared in the Daily Gazette on May 29, 2014

2) An application from Massaroni Builders for a front setback variance from Section 208-11 to build a residence in R-1 zone. 50' front setback required; 25' requested; variance required = 25'.

Property is located at 12 Stoney Heights Court, Clifton Park, NY 12065 (Permit#80982)

The application was presented by Dave Massaroni, owner of Massaroni Builders. He explained the property is located adjacent to an originally approved road that was never built. There is a 70' easement owned by Van Patten and Van Patten had no interest in letting the road go through.

Mr. Massaroni said he is requesting the variance so he can get the house to face into the cul du sac rather than facing the woods and he needs to turn the house to make it fit. He asserted most of the houses have a fifty foot setback with the exception of two, which have thirty foot setbacks. He informed it is a \$500,000 home and he is working with a customer and in doing this he would put the house on lot 10 back so it blends.

Mr. Lemire commented he wants a setback variance from a road that doesn't exist. Mr. Myers responded that the property line does exist.

Mr. Myers asked if the right of way was ever dedicated to the town.

Mr. Massaroni answered he isn't sure. Mr. Myers said the road never went through, although the intent would have been to dedicate it to the Town. He commented if, for some reason the road went through, the driveways would become much shorter. He said he didn't think the Town took possession of the property because the road did not go through.

Mr. Massaroni asked who owns it, and if it isn't going to be a road, could he go back and claim the land.

Mr. Myers said he hadn't looked at the site plan to see who owns the road.

Mr. Dudick asked Mr. Massaroni if he would like to table the application so he could research it. He answered he would not, as he is dealing with a customer and is comfortable with where the house is, even if the road did go through.

Mr. Renzi suggested that if the variance were granted and at some future date the parties decided the road wasn't needed, it would just be moved.

Mrs. Vulcetic commented that a person who owned a \$500,000 house would not like the road to go through. Mr. Massaroni responded "yes and no" and cited an example where residents did want a right of way.

Mr. Myers suggested they push things forward and if things change and he thinks they need to come back to the Board that is what they will do.

Mr. Renzi stated that if there is nothing before the board to say the variance is not needed, then they should go forward.

Mr. Dudick announced the public hearing and asked for comments. There were none. Mr. Dudick made the motion to close the public hearing and Mrs. Vucetic seconded the motion. All approved. Public hearing closed.

Mr. Dudick made the motion to approve the application as submitted. Seconded by Mrs. Vucetic

Ayes: Bloss, Vucetic, Gifford, Dudick, Cifor, Bagramian, Lemire Noes: none
Application approved as submitted.

Mr. Dudick made the motion to approve the minutes from May 20, 2014. Members present at that meeting approved. Mr. Cifor, Mrs. Vucetic and Mr. Gifford abstained. Minutes approved.

The next meeting is June 17, 2014.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mr. Lemire. The meeting was adjourned at 8:03 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