

Town of Clifton Park
Clifton Park, New York 12065 (518) 371-6651
Fax: (518) 383-2668



ZONING BOARD OF APPEALS
MINUTES
June 19, 2018

Present: Chairman Dudick, Lisa McCoy, David Donohue, Mario Fantini, John Klimes, and Michael Bloss.

Absent: Jerry Cifor, Chris Lemire,

Also Present: Neil Wiener, Esq., ZBA Counsel
Steve Myers, Director, Building and Zoning
Meg Springli, Secretary

The meeting was called to order at: 7:01 pm

PLEDGE OF ALLEGIANCE
ROLL CALL

Chairman Dudick announced that Mr. Donohue will be the alternate sitting in for Mr. Cifor. The chairman explained that they were a 6 member board this evening, therefore a majority vote of 4 out of 6 would be needed to affirm a decision. Next, the chairman added that any applicant preferring to wait until there are 7 members present may postpone their review to another night. No one chose to reschedule.

OLD BUSINESS:

It was noted that the secretary read the legal notice at the last meeting.

- 1. Application from Exit 9 Self Storage, Inc. for a use variance from Section 208-45B, allowed uses in a B-4 Highway Business Zone. Self storage / warehousing is not an allowed use. Area was zoned B-2 when buildings on adjacent parcel were constructed. B-2 Zone at that time resembles the current B-4 Zone. No variances found. Property is located at 101 Sitterly Road, Clifton Park, NY 12065. (Permit #81165).**

Consultant:

Mr. Paul Goldman, the attorney for Exit 9 Self Storage at 2 Crossing Blvd. stated that the applicant was asking for a use variance on 101 Sitterly Road to then be merged into the Exit 9 Self Storage property, once ownership was consolidated. Mr. Goldman gave a history of the original family farmstead dating from the early 1900's. Mr. Kirk Stephen, realtor with Boyajian-Mann Land Realty and representative of the sellers, explained the attempts to sell the house. Mr. Goldman explained purchase price of property which was detailed on his memo dated 6/19/2018. Mr. Stephen then stated that since 2010 the family have tried to sell the property, but have had no serious offers on the table until the one from Exit 9 Self Storage. The asking price was originally \$990,000, which the consultant noted was considered fair market value after review of comparable properties in the area and consultation with the Town Assessor.

Mr. Goldman then reviewed the application, stating that the proposal would only work if they merge the properties and eliminated some of the setback requirements. Next, the attorney explained that it had been researched and found that self-storage was allowed in B-2 as it was considered retail at its time of approval. At some point, rezoning occurred and B-2 became B-4. Then, Mr. Goldman stated that in review of the other self-storage uses in town, two were permitted as of right, and two required a use variance. Mr. Goldman then polled the audience for opposition to proposal and there was none voiced. Mr. Goldman stated that he felt that the project was not a self-created hardship, and asked for an interpretation that the use can be expanded onto 101 Sitterly Road, subject to a lot merger with the property on Crossing Blvd. Then Mr. Goldman claimed that the existing self-storage use is permitted as of right. Furthermore, the attorney explained that the Sitterly Road Property cannot be developed separately. Mr. Goldman stated that it was actually serviced by water from the City of Troy and that they have advised that they will not allow any additional hookups. Mr. Goldman asks that the ZBA consider that this can be determined to be a permitted use, overturning the interpretation by the Chief Zoning Officer, or that they grant a use variance conditioned upon the lot merger.

Public Comment: None

Mr. Dudick stated that he felt Mr. Goldman made a good point. Mr. Meyers agreed that 2 Crossing Blvd. was granted a permit to build Exit 9 Self Storage, and and that he believed that it was an allowed use as a retail facility at the time. Mr. Myers stated that it could not be determined a "non-conforming use" because it was conforming at the time the permit was granted. Based on the history to date, Mr. Myers stated that he felt that is the only interpretation and that an approval can be conditioned upon merger of the two lots.

Discussion ensued about precedence being set in the interpretation of the B-3 Zone. Mr. Myers stated that each project would have to be interpreted on the merits of its own conditions in its location and particular set of circumstances. Mr. Fantini asked to clarify that the interpretation would be subject to this parcel only and how it would not affect the other potential users in a B-4 zone. Mr. Weiner and Mr. Myers stated that the approval would be consistent with other decisions granted by ZBA.

Mr. Weiner noted that he was not convinced that granting this variance would set a precedence for all future requests within the B-3 zone, adding that Section 257b allowed for circumstances that were unique and would not automatically apply to all parcels within the district.

Mr. Weiner stated that either the Zoning Board could choose to either make an interpretation subject to the lot merger, or the applicant would need a use variance to be granted. Mr. Goldman reiterated that either the interpretation of the Building Inspector be modified OR a use variance to be granted in order for the applicant to move forward with the purchase of the property and the planned improvements.

Mr. Dudick stated that he wanted to make sure that whatever decision was made, that he felt a variance would be cleaner so that no other self-storage facility in a B3 zone would be able to just build, as of right. Mr. Myers stated he would not change his interpretation, but Mr. Weiner explained that the ZBA has the ability to overturn the interpretation.

Mr. Fantini stated he would be comfortable with the interpretation since it has been done before and there is precedence. Mr. Dudick explained that he felt that since the application was for a use variance, that the applicant should proceed with that review. The chairman added that if the variance was not approved, the applicant could then reapply asking for a new interpretation of the building permit.

Mr. Dudick asked if the applicant was granted the variance for this lot, if there any reason to be concerned that the merger of the two lots would not occur. Mr. Myers and Mr. Goldman stated that there was no impediment.

SEQR: A negative declaration on an unlisted action was declared at the first hearing.

Motion to close the public hearing at 7:45pm

Moved by: Mr. Dudick

Seconded by: Mr. Klimes

Ayes: All

Noes: None

Unanimous

Mr. Fantini stated that he felt the use variance must meet all criteria for a variance and in his opinion, this proposal does not, therefore he stated that he preferred to ask for a new interpretation rather than a use variance.

No reasonable rate of return - not convinced

Unique circumstance - yes

Does not alter char of neighborhood – yes, it does not

Not self-created – stated that they are not trying to sell as residential or any use allowed in the zone

Mr. Weiner explained that it was owned prior to zoning code being established, and stated that the hardship is therefore not self-created because their ownership predated zoning (having been farmsteaded almost 100 years ago). Mr. Dudick stated that he agreed.

Mr. Goldman then stated that the base value of the property based on the fair market value of comparable properties in the same zoning, adding that the property had been listed for \$800,000 for 5 years without movement.

Motion: To grant a use variance from Section 208-45B, allowed uses in a B-4 Highway Business Zone conditioned upon merger of the lots, 101 Sitterly Road and 2 Crossing Blvd., adjoining ownership under one ownership and one single parcel.

Offered by: Mr Dudick

Hardship – met standards

Unique and peculiar – met standards

Not change char of neighborhood – met standards

Alleged difficulty self-created – met standards

Seconded by: Ms. McCoy

Ayes: Donahue, McCoy, Bloss, Klimes, Dudick

Noes: Fantini

Application approved 5:1

The secretary read the legal notice.

- 2. Application from Tim Neet for 3 area variances for 2 additions to existing building. One addition is 20 x 24 = 480SF and the second addition is 16 x 50 = 800SF. 1) Section 208-65E(2) requires a 25' side setback for buildings in a LI-2 Zone. 14' proposed after addition built, 9' variance required; 2) Section 208-65B requires 40% green space in LI-2 Zone. 35% proposed; 5% variance required and 3) Section 206-65C requires 25' planted buffer along the side property line. Due to setback variance at least 9' of buffer will be eliminated, variance required. Property is located at 2043 Route 9, Round Lake, NY 12019. (Permit #81163).**

Consultant: Tim Neet, owner of Neet's Autobody stated that he was looking for some variances so he can erect some additions to his commercial autobody shop.

Discussion:

Mr. Myers stated that according to the site plan that was submitted today, the variance request # 2 will be eliminated from the application, and Mr. Myers added that he did not have any objections to the application.

Mr. Bloss stated that the problem was basically based on the addition in the lower portion of the plan. Mr. Dudick asked if the adjoining property owners had been notified and Mr. Neet stated that he had sent certified mail.

SEQR: Type II action, no further SEQR was required.

Public Comment: None

Mr. Dudick moved to close the public hearing at 7:53pm

Second: Mr. Bloss

Motion: Mr. Bloss moved to grant the area variance, with request # 2 redacted for the green space since it is no longer required

He outlined the criteria
Undesirable – none
Benefits can be achieved otherwise – no
Substantial – no
Adverse effect of neighborhood – no
Self created – yes, but not preclusive
Seconded by: Mr. Klimes
Ayes: Donohue, McCoy, Bloss, Klimes, Fantini, Dudick
Noes: None

Application approved 6:0

NEW BUSINESS

The secretary read the legal notice

1. Application from **Charles and Julie MacDougal** for an area variance from Section 179-37D which requires a 25' rear setback in a cluster subdivision. 17' requested. 8' variance required to expand existing deck to include a screen porch. Property is located at 9 Bramblewood, Clifton Park, NY 12065. (Permit #81170).

Owners Charles and Julie MacDougal represented themselves. Mrs. MacDougal noted that they bought the house with a pre-existing deck that needs maintenance and repair, and they would like to add a screened-in porch while they are having the work done. The owners noted that to their knowledge, no past variance was granted, and that they are not actually going to build any closer to the property line than the existing deck, but in order to proceed they need a variance at this time.

Discussion: Board members stated that they felt it was a straight forward request, and that they as long as they were not infringing any further into the setback, the variance request was reasonable.

SEQR: Type II, no further SEQR required.

Motion: Mr. Dudick moved to close the public hearing at 8:01pm
Mr. Fantini seconded

Mr. Fantini moved to approve the area variance as requested examining the criteria
Other method - no
Substantial - no
Impact to character - no
Self-created - yes but not preclusive

Seconded by: Mr. Klimes

Ayes: Donohue, McCoy, Bloss, Klimes, Fantini, Dudick

Noes: None

Application approved 6:0

The secretary read the legal notice

2. Application from **Truman Renz** for an area variance from Section 208-12 which requires an 80' front setback for accessory structures. 59.9' available. 21' variance required for new 24' x 40' garage. Property is located at 18 Old Schaubert Road, Ballston Lake, NY 12019. (Permit #81171).

Owner Truman Renz stated that he had an existing garage in rough condition and would like to demolish the older one and erect a new one that is slightly deeper. Mr. Renz added that the footprint will not be any closer to Schaubert Road.

Discussion:

Mr. Donohue asked if the new garage would be a taller garage and the applicant stated that it would be. Mr. Myers stated that was not an issue. Zoning Board members appeared to find the request reasonable and an improvement.

Public: no comment

Motion to close public hearing at 8:09 pm: Mr. Dudick

Seconded by: Mr. Bloss

SEQR: Type II no further SEQR, cant push farther back due to growth and obstacles in yard and felt that it was best possible location and old one needs sig

Motion: to approe as requested

Klimes

Undesirable change – no, improving

Other method – yes, could move back but replacing existing structure no issue

Substantial - no change

Adverse of neighborhood – no it is improving

Self-created – not but not preclusive

2nd Bloss

Ayes: Don, MCCoy Bloss, Klimes, Fantini, Dudick

Noes: None

Application approved 6:0

The secretary read the legal notice.

3. Application from **Franca DiCrescenzo** for an area variance from Section 208-16E(5)(c) which requires 30,000 SF lot minimum. Applicant wishes to subdivide existing duplex into 2 non-conforming lots. Lot 1 to be .94 acres (no variance required) and Lot 2 to be .67 acres. 30,000 SF required for lots with water only. 29,185 SF available. 815 SF

variance required. Property is located at 49 Bradt Road, Rexford, NY 12148. (Permit #81173).

Consultant:

Ms. DiCrescenza presented the application for the owner Mr. Petraczoni. The consultant explained that the owner had purchased the property last year and that it was a 50 year old 2-family residence and had been used as two dwelling units since that time. The speaker then stated that the owner Mr. Petraczoni explained that this has been a duplex unit for approximately 50 years, it had been in an estate for 25 years and had deteriorated and that he intended to repair and renovate the property. Ms. DiCrescenza added that in order to ensure financing for future buyers, the lenders would prefer to have the units subdivided. She added that there are no comparables for the sales of two units under separate ownership on a single parcel.

Discussion: Mr. Myers explained this is a pre-existing lot in the CR Zone and that he applied the standard that was in existence at the time the property was developed. Then the Chief Zoning Officer explained that DOH would not require separate septic systems at this time, as long as it was working. Mr. Myers stated that if the septic fails in the future, the Town could require that each lot have its own separate septic.

SEQR: Type II no further SEQR required

Motion to close the public hearing at 8:16pm

Moved by: Mr. Dudick

Seconded by: Mr. Bloss

Mr. Myers noted that he felt this was similar to industrial subdivisions done for financing reasons, that it was an insubstantial variance and it is a unique case in that this is one of the older, original homes on Bradt Road.

Motion to Grant the area variance application as written

Moved by: Mr. Bloss who outlined the criteria

Undesirable change to neighborhood – no

Other method – no

Substantial – no

Adverse effect – no

Self-created – yes, but not preclusive

Seconded by: Mr. Klimes

Mr. Fantini noted for the record that he felt that creating substandard lots was undesirable

Can be achieved by changing the lot lines

Substantial – no

Adverse effect – no

Self-created – due diligence was lacking

Ayes: Donohue, McCoy, Bloss, Klimes, Dudick

Noes: Fantini

Application approved 5:1

Minutes Approval - June 5, 2018

Moved by: Donohue

Seconded by: Klimes

Present at meeting: Chairman Dudick, Chris Lemire, David Donohue, Mario Fantini and Michael Bloss

Voted in favor: 4 ayes

Minutes approved were approved as written.

Adjournment at: 8:30pm

Moved by: Dudick

Seconded by: McCoy

Ayes: All

Noes: None

Next meeting: July 17, 2018

Next application deadline: June 26, 2018 for July 17, 2018 meeting

Respectfully Submitted,

Meg Springli

Secretary, Zoning Board of Appeals

Cc: Town Clerk
Town Board
Zoning Board Members
Neil Weiner, Esq.
Steve Myers
Town Assessor
Town Highway Department