

**TOWN OF BALLSTON
ZONING BOARD OF APPEALS**

Regular Monthly Meeting January 3, 2018

Present: Michael Lesniak, Chairman
Marilyn Bell, Vice Chairwoman
Ellen Brown
Robin Kane
Stephen Merchant
Dan Mertzlufft
Daniel Russell
Tim Long, 1st Alternate
Joanne Hull, 2nd Alternate
Peter Reilly, Esq.
Members of the General Public

ABSENT: Brian Theriault, Building Inspector

Chairman Lesniak called January 3, 2018 meeting at 7:30 p.m. and Ms. Brown led the Pledge of Allegiance.

Chairman Lesniak asked for corrections to the December 6, 2017 Zoning Board of Appeals minutes.

Page 9, 1st paragraph change esthetics to aesthetics, Page 15 6th paragraph “per Ms. Brown Tracey Egan gestured toward Sarah “her (my neighbors) father (Sarah Stock), page 16 1st and 8th paragraph change “Eagan” to “Egan”.

MOTION: Ms. Kane made a motion to approve the December 6, 2017 as amended. Ms. Brown seconded the motion and all present voted in favor. **CARRIED.**

Stewart's Shop Corp
810 NYS route 50; 257.10-5-70
Area Variance (two front setbacks) for a new store

Chris Potter with Stewart's Shop Corporation presented.

Mr. Potter stated the applicant is proposing to redevelop the site and build a new 3,695sf convenience store with a 20' x 100' gas canopy located at 810 NYS Route 50 and on the corner of Lakehill Road.

Mr. Potter stated the existing structure on the site will be demolished to make room for the proposed store. The site grading does drop off in the back and will be brought up close to present grade.

The applicant is proposing one (smaller) curb cut on NYS Route 50 and on Lake Hill Road; a big wide open one with a utility pole in the middle, which will be restricted down. The speed bumps will be removed.

Ms. Bell stated there is green space between the Stewart's property and the existing CVS.

Mr. Potter stated we looked to do an inner-connect through there and could not come to terms with the property owner.

Mr. Merchant asked if the building next to CVS going to stay.

Mr. Potter stated yes, it would not be part of what we would be purchasing; just the strip mall.

Mr. Potter stated sidewalks are being added both on NYS Route 50 and Lake Hill Road and a substantial amount of landscaping out on the corner. In doing so, presented a lot of different options to the Planning Board, as far as layout, trying to get the building closer to the street, closer to the corner; was the best layout for the site. Mr. Potter stated getting a fuel tanker to

circulate through the lot. Mr. Potter stated that parking is not allowed except for a single row in the front yard where we have two rows of parking.

Chairman Lesniak stated the ZBA would not get involved with that and would be a waiver from the Planning Board from the Design Standards.

Mr. Potter stated the other question was relative to green space.

Mr. Potter stated the notes we received from Ms. Marruso stated that a variance from the ZBA would be required for the green space; requirement is 35%, applicant at 33%.

Mr. Reilly stated 35% green space is mandatory under the guidelines. Mr. Reilly said, "It was not advertised for green space; applicant will need to return when it's advertised. Mr. Reilly stated at the Planning Board meeting, it was an Unlisted Action under SEQRA and chose to treat it under a coordinated review with all the involved agencies. Under the SEQRA regulations once that has been done, assumes that the Planning Board will end up being the Lead Agency and doesn't think the other involved agencies will dispute that, but no involved agency can make an approval until they make a SEQRA determination and the Board cannot vote on the application tonight.

Mr. Potter stated that we would revise our application and resubmit for the next meeting.

Mr. Lesniak stated when the applicant returns, the ZBA can possibly handle everything at one time.

Mr. Reilly stated and re-advertises for the green space

Mr. Potter stated the first variance would be for the front yard towards NYS Route 50 and an additional 12' buffer that is allowed for buildings located at critical intersections; applicant has 82', requirement is 85'. Mr. Potter stated with the store having two fronts would need a variance on Lakehill Road. Mr. Potter stated at the last Planning Board meeting, the Board was in agreement with the layout as proposed.

Chairman Lesniak asked Mr. Reilly if a 3' setback is all that is required.

Mr. Reilly said, "It was something that came up at the Planning Board was advertised as a 15' setback.

Mr. Potter stated yes, that was in Ms. Marruso's comments – a 12' allowance for critical intersection improvements.

Mr. Reilly would defer that to Ms. Marruso for any comments.

Mr. Reilly asked the distance from Lake Hill Road.

Mr. Potter stated 128' and 46' of relief is requested.

Mr. Reilly said, "The whole thing has to be re-advertised to make it correct."

Mr. Reilly stated if the applicant were to bring that building 70' from NYS Route 50 and 70' from Lakehill Road, would assume your traffic pattern would not work getting vehicles in and out of the site.

Mr. Potter stated yes, that is correct.

Ms. Bell asked if 70' would essentially bring it where about where the parking spaces end.

Mr. Potter said, "Yes, it would probably be something in this area and 85' to the building and the sidewalk on the side is 16'".

Ms. Bell stated the space behind the building to the east is where the delivery trucks are located.

Mr. Potter stated yes, delivery area and dumpster.

Chairman Lesniak asked how that will impact the neighbor.

Mr. Potter said, "The neighbor's house is about 3' higher than the proposed store.

Mr. Reilly stated there were discussions about that issue at the last Planning Board meeting.

Mr. Potter stated a white vinyl stockade fence is proposed to go down the property line.

Mr. Russell asked the distance from the gas pumps and the canopy from the road.

Mr. Potter stated the gas canopy is 27' to NYS Route 50 and 22' from Lakehill Road.

Mr. Russell asked if that meets all setbacks.

Mr. Reilly stated to build-to line.

Mr. Russell stated the septic system appears to be in a paved area in the back corner.

Mr. Potter stated it will be somewhere existing pavement is; nothing that is proposed over it.

Chairman Lesniak stated a 3' setback is being proposed on NYS Route 50 and 128' on Lakehill Road needing 46' of relief; provided the 12' allowance for critical intersection of improvements.

Mr. Russell asked what type of fence is being proposed to the east and is there any noise abatement.

Mr. Potter stated a 6' white vinyl privacy stockade fence.

Ms. Bell asked if this store will be a similar style as the one in Clifton Park on the corner of Vischer's Ferry Road and Route 146.

Mr. Potter stated yes, very similar to the layout of the gas canopy.

Chairman Lesniak stated there are a new store on the corner of NYS 147 and NYS 67.

Mr. Potter stated that is a much larger site; the building about the same size, but the parking lot is larger and the gas canopy.

Ms. Bell asked if the Stewart's in the Village of Ballston will stay open and will be closing the store further down NYS Route 50.

Mr. Potter stated he is not sure what their plan is; keep everything open and see what happens and go from there.

Chairman Lesniak asked if anything is going to be done on Usher's Road.

Mr. Potter stated we looked at doing stuff there, but there is something to the proximity to the neighborhood behind the store that is preventing us to so anything.

Chairman Lesniak opened the public hearing at 7:58 p.m.

Tim Bachand stated he owns the property that is adjacent to the back portion of this property.

Mr. Bachand said, "This was a fire pond behind this thing and the elevation changes are huge. They are proposing a huge drop off to meet the existing CVS." The Planning Board had other layouts that they reviewed and this layout was the best Stewart's could come up with. Mr. Bachand is concerned with the elevation changes particularly with that house to the east. Mr. Bachand said, "A white cheesy fence really is not going to cut it." Mr. Bachand said, "We just went through this with CVS and they are proposing a nice stone curbed retaining wall." Mr. Bachand does not want to see a white fence along that wall. Mr. Bachand asked for the benchmark of the opening of the front door for the proposed store.

Mr. Potter stated the finished floor elevation is 391.77.

Chairman Lesniak stated all these concerns relate to Planning.

Mr. Bachand stated he is just expressing his concerns.

Chairman Lensiak stated the ZBA is not going to vote on anything tonight.

Mr. Bachand asked if a variance is needed from the canopy to that property line.

Mr. Reilly stated to a build-to line as opposed to a setback line.

Mr. Bachand asked what the difference is.

Mr. Reilly stated a build-to line would have to build a building closer to the road and that is why the applicant is in front of the ZBA for a variance.

Mr. Bachand asked what happens if the town wants to expand that turn there.

Mr. Reilly stated that is an issue with build-to lines.

Mr. Bachand will take up his comments with the Planning Board.

Mr. Bachand said, "You are going to give them that setback and expose that ugly CVS property; no one from the Town Board has reached out to CVS to see what is going to happen with that.

Chairman Lesniak asked Mr. Bachand to attend the Planning Board and express his concerns.

Dan Knapik, stated the applicant is requesting setback and green space variances and there seems to have deficiency in both areas. There is a property with a single-family dwelling at 115 Lakehill Road and asked Mr. Potter if Stewart's has contacted the owner of that property to identify if there was interest in selling the property. This would maybe be a way alleviate that and help with the aesthetics of the Stewart's on the corner.

Mr. Potter stated he was not sure and would have to check with legal department.

Mr. Knapik stated there was a pond back there and a creek that runs through the intersection.

Mr. Knapik said, "We have through some gravel and blacktop on top of the pond and still have water migrating underneath that area and does Stewart's have any concerns with the channel of water that is going through. Mr. Knapik stated we can cover up that water, but cannot eliminate that water going through there.

Chairman Lesniak asked where the water ends out.

Mr. Knapik said, "Your guess is as good as mine."

Mr. Bachand stated it's a 4' culvert and where Stewart's property ends, there is a whole where you could flip over a VW car that is caved in; the old cast iron well pipe and no one wants to take responsibility.

Mr. Bachand stated his survey map from C. T. Male states "Mutually beneficial unplotable waterways may be present."

Mr. Bachand stated he has a county easement that goes to his property that dumps county water from Kingsley Road to that basin. Mr. Bachand stated the Town certainly does not want to take any responsibility.

Chairman Lesniak asked Mr. Reilly if this should be discussed at the Planning Board meeting.

Mr. Reilly stated yes, Mr. Bachand was at the last the Planning Board meeting and will most likely attend others.

Mr. Reilly stated that C. T. Male has certainly looked at that drainage extensively with the new CVS and with this project and is a Planning issue that has been looked at.

Mr. Bachand invites anyone to look at that area and will discussing his concerns with the new Chairman of the Planning Board.

A further discussion was held on the drainage area.

Mr. Knapik asked about sidewalks being constructed on Lakehill Road between Kingsley and NYS Route 50. If you put a sidewalk in front of Stewart's without continuing the sidewalk to Kingsley Road, it would end and take all the pedestrian traffic and push it down onto Lakehill Road.

Chairman Lesniak said, "I don't know how that would be addressed because you are talking about other people's property and is sure that Stewart's is not responsible."

Mr. Knapik stated he is aware that Stewart's does not own up-to Kingsley Road, but if you are going to create a sidewalk that dead ends on a front lawn.

Mr. Reilly stated it's a Planning Board issue not before this Board and cannot make the applicant do anything more than with their property. If the Town wants to have a sidewalk district, would have to get the Town Board involved; it's not an unusual planning process when the applicants come in to require the sidewalk on their property and just hope that it goes in with projects that come up through the years.

Mr. Potter stated what we have done in other towns is not construct a section of sidewalk, when others do, then we would construct the sidewalk.

Mr. Reilly stated this is not an issue before the Zoning Board of Appeals.

Mr. Bachand said, "Since you are the Town Attorney can the Planning Board say to Stewart's, go after the homeowners and ask them for permission for a sidewalk – it looks like the setbacks on Lakehill Road in that section are further back."

Mr. Knapik stated he has queried all three property owners who are amendable to sidewalks.

Mr. Bachand asked if that is something that the Planning Board as the Town Attorney or can't you say.

Mr. Reilly stated for clarifications he is not the Town Attorney. The Town Attorney is Debra Kaelin, Esq. He (Mr. Reilly) is the Planning Board and Zoning Board of Appeals attorney. Mr.

Reilly stated that you cannot make this applicant put sidewalks in front of other people's property; there is no legal recourse or are they required to do that – the Planning Board cannot make them do off-set improvements such as sidewalks.

Mr. Reilly said, "He is not a planner and was curious about sidewalks to nowhere. The theory is to put them in when you can in hopes that in the future other projects will come up and make the connection to those sidewalks. There comes a certain time when a Town has the legal ability to take it upon ourselves and want to put in sidewalk and create a sidewalk district and tax the homeowners and put the sidewalks in; it's not done in growing suburban towns, but with larger population that the Town of Ballston.

Mr. Bachand asked Stewart's daily traffic count.

Mr. Potter stated he would have to look at the traffic study.

Chairman Lesniak closed the public hearing at 8:18 p.m.

Chairman Lesniak asked Mr. Bachand to attend the Planning Board meeting.

Mr. Reilly stated that Mr. Potter return with a complete application.

Ms. Bell stated the Town has a 32 sq. ft. sign ordinance and asked the size of Stewart's proposed sign.

Mr. Potter stated proposed are two building signs totaling 17 sq. ft., 3 price signs at 9.5 sq. ft. each totaling 28.5 sq. ft., the total sign is 68 sq. ft. – gas canopy sign shall not exceed 100 sq. ft.

Mr. Potter stated this application does not propose a free standing sign.

Chairman Lesniak polled the Board about this proposed project – variances and green space.

Mr. Russell stated he likes what they are doing and does not see a problem with it.

Ms. Kane stated she has no problems.

Ms. Brown stated as a Zoning Board member, has no problems with the additional setback and feels pulling in and out of that intersection is a poor location for Stewart's.

Mr. Mertzlufft stated he has to see what the final requests are for variances; for the record he used to catch snapping turtles in that pond back there.

Mr. Merchant stated he is alright with it and the further back the better with the amount of traffic at that intersection at certain times of the day is brutal; if there is a way to lessen that somehow – the farther back it is the better it will be.

Ms. Bell stated she is in agreement with being setback from off of the two roads is going to be a problem; still a little concerned and would like more information on why you cannot meet the 35% green space.

Mr. Potter stated that goes into parking requirements – 37 parking spaces required, if a variance was granted for a reduction, then we could meet the green space requirements, but the Planning Board expressed wanting the 37 parking spaces. Mr. Potter stated we did get a waiver for parking spaces at the Church Avenue store and feels does not have enough parking.

Chairman Lesniak agreed with Mr. Potter, there is not adequate parking at the Church Avenue store.

A further discussion was held on the size of the Church Avenue store and the total number of parking spaces.

Mr. Potter stated there is only 15% green space and will be increasing by 50% - bring it up-to 33%.

Chairman Lesniak stated he agrees with Ms. Brown that it's a very busy intersection however; Stewart's has done a real good job on their other shop. Chairman Lesniak stated he is in agreement with putting a Stewart's at that location and would not mind it going back further.

Ms. Bell stated she has not heard if there is anything being proposed at the former CVS and has been at Dino's and has tried to walk from Dino's to CVS and back again; refuses to go back out onto NYS Route 50 only to do that turn – it's not any better when you can sneak through all those places either, but not a pretty situation when you got that many cars and cannot walk from one place to the other.

MOTION: Ms. Bell made a motion to table the Stewart's Shops application. Mr. Russell seconded the motion and all present voted in favor. **CARRIED**
Application tabled.

Chairman Lesniak thanked Mr. Potter.

Jeffrey Hansen

3 Tomaselli Court; 228.6-2-3

Lot area& Lot width variance to allow a new home to be built

Duane Rabideau with VanGuilder & Associates was present on behalf of the applicant.

Chairman Lesniak read the applicant's narrative. (see below)

Gilbert VanGuilder
Land Surveyor, PLLC

988 Route 146, Clifton Park, NY 12065
383-0634
FAX 371-8437

Members:

Gilbert G. VanGuilder, PLS
Robert A. Wilklow, PLS

Associate:

Duane Rabideau, PLS

December 12, 2017

NARRATIVE
TOWN OF BALLSTON
VARIANCE LOT 3 TOMASELLI COURT

The applicant, Jeffrey Hansen is the purchaser of Lot 3 Tomaselli Court (T.M.P. #228.6-2-3), a 20,071 sq. ft. vacant lot. This lot is part of a previously approved subdivision and shown on a map entitled "Tomaselli Estates Lands of Liberato Tomaselli", dated July 10, 1978, prepared by Robert John MacFarlane, PLS and filed in the Saratoga County Clerk's Office as Map No. T-15. This lot was approved for construction of single family residence. The existing lot area, lot width and front setback of 40 ft. were approved at that time. Approximately 60% of the subdivision lots are built on with single family homes according to the previously approved lot sizes and layouts.

The applicant proposes to construct a single family home on Lot 3. There has been a change in the zoning regulations, therefore the applicant is seeking area variances for lot size, lot width and front setback to construct a single family home. This will not create an undesirable change or detriment to the neighborhood since this will be constructed as planned on the previously approved subdivision for this neighborhood. There is no other method or relief, other than an area variance, since the applicant does not own or control any adjoining lands. The requested variance is not substantial since it will allow the applicant to construct a home in accordance with the intended layout of the neighborhood. The construction of a single family home will not have any adverse effects in the neighborhood since the neighborhood is intended for single family homes. This difficulty is not self created. It was created from a change of zoning regulations by the town.

If the variance is granted the applicant will construct a single family home on Lot 3 with an onsite septic system to be designed by a N.Y.S. Professional Engineer and connect to the existing water main on Tomaselli Court.

Mr. Rabideau stated the zoning has become more restricted.

Mr. Rabideau stated in the Hamlet-Residential District with one public utility (water)

Minimum lot area 30,000sf – this lot is a little over 20,000sf

Minimum lot width 150ft. - this lot is a 145.5'

Minimum front setback 60ft. - the applicant is asking with a variance of 16'
totaling 44'.

Mr. Rabideau stated a couple things that really drive where the house is being proposed is the terrain.

The septic system is being proposed in the front of the parcel.

Mr. Rabideau stated Lansing Engineering looked at the location and feels with soil conditions being sand at the site, feels the septic systems works where it's being shown.

Mr. Rabideau stated this allows the house to be kept closer to the road, which matches most of the other existing homes in the subdivision.

Mr. Rabdieau stated if you go back 30 to 50' it does goes up 5' to 10' buffer and is actually a good place for a house as close to the road as possible.

Chairman Lesniak asked Mr. Reilly is that the reason why he is in here is because they did not build within a couple years of the approved subdivision.

Mr. Reilly stated they did not build when these lots dimensions would allow them to build any type; it's a substandard lot and has become substandard with the zoning change; it has been assessed as a building lot for all these years; it's a case of a lot that has become substandard going through zoning changes.

Mr. Rabideau stated the actual build out of the actual houses to hold near the 40' setback line. One reason is because where the lawns end, it does drop off. This subdivision was basically designed to be on a plateau so that is why the lots are deeper on the south side. Mr. Rabideau stated we feel the house would fit into the general character of the neighborhood.

Chairman Lesniak stated years ago a lot of the subdivisions were building on 40' setbacks.

Mr. Mertzluft stated next door is Lot #5 and if that house were not there, would this proposal need the exact same variances they need for Lot #3.

Mr. Rabideau stated they would have to have the area variance, lot width variance and could go with a 60'; presently 64' back – the applicant needs two out of the three.

Mr. Russell stated the original layout of Tomaselli Estates it indicates for individual water wells and asked if there are any water wells on any of the properties; any within proximity to 3 Tomaselli Court.

Mr. Rabideau stated he is not sure and there is public water and would like that most, but not all the houses are tied to public water.

Mr. Russell stated even if they are tied to public water, you will need to consider if a well still exists and make that requirement through NYSDOH and the building permitting process.

Mr. Merchant stated the house across the street is within 100' of that lawn.

Mr. Rabideau stated 70'; the well would have to be in front of the house.

Chairman Lesniak asked if that is all looked into.

Mr. Reilly stated yes, by the Building Department.

Chairman Lesniak stated they have to meet that 100' separation.

Mr. Rabideau stated if that were the case could locate the septic system in the rear of the parcel.

Chairman Lesniak opened the public hearing at 8:40 p.m.

Valerie Robinson, 5 Tomaselli Court stated she is very familiar with the rise in the property in the back end and asked if there is any plan to level that area or leave it as is.

Mr. Rabideau stated he is not sure and feels it would be good to leave it as a buffer; less impact they do the better.

Mr. Rabideau stated that is one of the reasons why they want the septic system in the front to minimize any potential disturbance in the back.

Ms. Robinson stated she has a retaining wall there.

Mr. Rabideau stated the initial subdivision indicated they were going to leave that "hill" in the rear and one of the reasons for having 40'; keeps us away from that hill.

Mr. Russell asked the neighbor if they have a well.

Ms. Robinson stated we had a well and do not use it anymore, but some of the neighbors have active wells.

Chairman Lesniak closed the public hearing at 8:42 p.m.

Ms. Bell asked if #1 Tomaselli Court is still vacant.

Ms. Robinson stated yes.

Ms. Bell asked what is there prohibiting adding onto this property so it would meet the extra roughly 10,000 sq. ft. for 3 Tomaselli Ct. and reducing the lot size it's on NYS Route 50 (1 Tomaselli Court) the other vacant lot.

Mr. Rabideau stated that would cause an issue from the front lot and have an area, but pushing the building closer to NYS Route 50.

Ms. Bell asked if Lot#3 has been sold off in 2007.

Mr. Rabideau stated yes.

Chairman Lesniak stated the only thing they can do is purchase that lot entirely; if not would be making a substandard lot even more substandard.

Mr. Rabideau stated you have the same situation potentially with Lot #7 and Lot #4; they have the same two out of the three issues that we have without lot.

Mr. Reilly stated adjoining lots with common ownership.

Mr. Rabideau stated yes, that is correct.

The subdivision as stated on the map is zoned Hamlet-Residential, but the front lot is zoned Retail Business B.

Ms. Bell went through the five criteria of an Area Variance:

- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. Ms. Bell stated she did not think so. Ms. Bell stated she did not believe so. The Board concurred no.
- 2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. The Board concurred no, there is no land.
- 3) Whether the requested area variance is substantial. The Board concurred yes.
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Board concurred no.
- 5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. The Board concurred no.

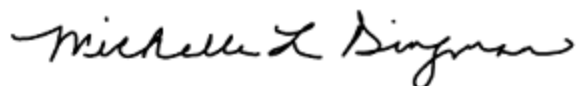
MOTION: Ms. Bell noted that this is a **Type II action** under the SEQRA process therefore exempt from further review.

MOTION: Ms. Bell stated pursuant to §138-8.1 for the property located at 3 Tomaselli Court for the construction of a single-family residence. Ms. Bell proposes a 9,929 sq. ft. area variance, 4.5' lot width variance and a 16' front yard setback variance. Ms. Kane seconded the motion and all present voted in favor. **CARRIED.**

MOTION: Mr. Merchant made a motion to adjourn. Mr. Russell seconded the motion and all present voted in favor. **CARRIED.**

Meeting adjourned at 8:55 p.m.

Respectfully submitted,



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Town of Ballston
Zoning Board of Appeals
January 3, 2018

Michelle L Dingman
Zoning Board of Appeals Secretary