

May 6, 2020

Zoning Board of Appeals

Proceedings by Authority

State of New York,
City of Jamestown, ss:
Via Zoom

The regular meeting of the Zoning Board of Appeals of the City of Jamestown, New York, was held on Wednesday, May 6, 2020 at 5:00 p.m.

Members Present: Ellen Ditonto, Robert Kenyon, Michael Panebianco, Maria Jones, Stephen Sorg, Stephanie Camay

Members Absent: Timothy Smeal

Others Present: Larry Scalise, Crystal Surdyk, Benjamin Haskin

Mrs. Ditonto called the meeting to order.

Mrs. Ditonto: We have one petition on the agenda today. We do have a quorum, more than a quorum. What we'll be doing, is we will review the petition and we will have an opportunity for those who are representing the petitioners to speak, questions from the board, there is also public comment and in order for this petition to be read, it first has to be taken off the table because the Zoning Board did table it recently. Our first order of business is to see if somebody would like to make a motion to remove this from the table.

Mrs. Jones moved that the petition be removed from the table, seconded by Mr. Kenyon.

Carried: 5 – 0

Mrs. Ditonto: That will give us five members voting to take this off the table, so at this time I will have the clerk read the petition again.

EDMUND SCHOBER, LABELLA ASSOCIATES D.P.C., 500 E. SIXTH ST. JAMESTOWN, NY 14701 387.39-3-2

The petition of Edmund Schober, LaBella Associates D.P.C., 500 E. Sixth Street, Jamestown, NY 14701, representing The Greater Chautauqua Federal Credit Union, 51 E. Main Street, Falconer, NY 14733, for an area variance for parking area setbacks on parcel 387.39-3-2 in a C-2 zone. Section 300-0502 Design and Layout Standards: minimum setback for automotive use – required is 15', proposed is 7.02' on the east side (Clinton Street), 4.22' on the west side (Martyn Alley) and 7.0' on the south side.

The original petition was tabled at a meeting held by the Zoning Board of Appeals on March 4, 2020 and has since been amended from its original form.

Mrs. Ditonto: Thank you very much, Jennifer. At this point we will allow those representing the petition to discuss the changes that have been made from when we first tabled this. And, we will then have an opportunity for the board to ask further questions. Just as a matter of information, Mr. Panebianco has joined us. He is also a member of the Zoning Board and we have somebody on the phone and I can't identify who that is.

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Mr. Turner: Tom Turner. Can you hear me?

Mrs. Ditonto: Yes, thank you Mr. Turner. When it is time for public comment, we will allow you time for that. Ok?

Mr. Turner: Sounds good.

Mrs. Ditonto: At this point again, I'm going to turn it over to LaBella and it would be to Mr. Schober. Please identify yourself, Mr. Schober, by name and address if you would.

Mr. Schober: Hello everyone. Edmund M. Schober of LaBella Associates, 500 East 6th Street, Jamestown, New York, 14701. I'm not sure if you're aware that Kelly Haaksma, the CEO has also joined us as well. Just to pick up on what you suggested where I start. This was tabled due to some information at the last meeting that arose just prior to the meeting. Our plans had shown at that time that we were going to have an exit only onto Martyn Alley. We learned that Martyn Alley was no longer a public street, that it was privately owned. So, the plans to exit onto Martyn Alley were eliminated. Because it's privately owned, it was no longer a public street, therefore the setbacks for the building changed. It was no longer a front yard but it was a side yard. So, we are no longer requesting an area variance for the building setback, only for the three sides of the parking lot. Did you have any questions for me before I go any further?

Mrs., Ditonto: I think that there was some concern at the last meeting about the number of parking spaces for that particular location. Do you want to review that again?

Mr. Schober: I believe that the minimum code requirement for our lot was nine. And, maybe if Larry recalls he can correct me if I'm wrong. We have thirteen spaces on the lot, so we meet or exceed the code. We expect this location to be busy and to use the parking spaces that we can get and put as may off the street as we can.

Mrs. Ditonto: Ok.

Mr. Schober: In other words, put as many on our own site rather than relying on street parking. You do have some parking along Clinton Street, but we did want to maximize our parking on site, but still retain some green area and landscaping and so forth.

Mrs. Ditono: Ok. Thank you for that update. Ms. Haaksma, is there anything that you wanted to add from the perspective of the business?

Ms. Haaksma: No; I would like to say though, that we're working very hard to put as much as we can possibly in the site and have it still look very, very nice and be accessible to our members and community as we can continue to grow.

Mrs. Ditonto: Thank you. At this point, its time for members of the Zoning Board to ask questions of either Mr. Schober or Ms. Haaksma. Just to be fair, if you would raise your hand, it makes it a little bit easier if you want to ask a question just so that we aren't speaking over each other. Members of the board, do you have questions?

Mr. Sorg: I do. In addition to not exiting on to what was Martyn Alley, are there any other modifications from the March 4th date?

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Mr. Schober: No. Since that time, we did present for the site plan review and we did receive approval. That was in April.

Mr. Sorg: Ok, but there was not a Planning Commission meeting or approval prior to the March 4th meeting. Why was that?

Mr. Schober: We did meet. We had the pre-conference meeting with the city in regards to the site plan review.

Mr. Sorg: Ok, but now we do have a site plan approval for that property now. It's gone through the Planning Commission.

Mrs. Ditonto: Mr. Sorg, let me ask Ms. Surdyk just to chime in on that because she is representing the city and the Planning Commission. Crystal could you talk about the March meeting and also what happened at the Planning Commission after that?

Ms. Surdyk: Sure. So the Planning Commission met, April 21st and this was brought before the Planning Commission on that date and it was approved. Prior to that being presented to Planning Commission, it was scheduled for the March Planning Commission meeting but of course that meeting was canceled due to the current public health crisis. From staff level though, myself, Larry Scalise and Jeff Lehman all met on a number of occasions with Mr. Schober and Ms. Haaskma in advance to work through some of the details of the site layout. So, they did have a staff recommendation and that was prior to our knowledge of the ownership of the alley.

Mr. Sorg: Great, thank you. The short environment assessment form. I didn't see that as part of our package for May 4th. It appears that there is one now that has been filled out, unsigned. Can you give me some information on that?

Mrs. Ditonto: Are you addressing Mr. Scalise or Ms. Surdyk?

Mr. Sorg: Either one.

Mrs. Ditonto: Ok. Who would like to answer that question?

Mr. Scalise: I think Crystal is the appropriate one. I know she did that to take it to Planning and I didn't have much involvement in filling the form out itself.

Ms. Surdyk: The form would have been signed by Greg Rabb, who is the chairman for the Planning Commission so apologize if you didn't receive a signed copy of that. But there is a signed copy.

Mr. Sorg: Ok, so that box can be checked, we're all set on the environmental assessment form. Good. Thank you very much.

Ms. Surdyk: No problem.

Mrs. Ditonto: Other questions from members of the board on this petition? Again, there has been a change from the original request that was brought to us in March. Other questions? Clarifications? Ok, seeing none, at this time what we normally do is we ask two questions. Has there been any correspondence and can you answer that, Jennifer?

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Clerk/Treasurer Williams: I can. The only correspondence that I had received was an email from Mr. Turner's office, along with, he forwarded me a copy of the tax bill for that portion of the alley to show that it had been paid and that he was the owner of that lot. I don't know, Mr. Turner if you'd like me to read your email that you had submitted?

Mrs. Ditonto: I think we should read it into the record, yes.

Clerk Treasurer Williams: So, this was sent from someone in his office. It says; Good afternoon, please see attached correspondence from Tom Turner. We own the alley to the west of the proposed development. I have attached our city tax bill as we pay on it. We strongly oppose to this variance as it will hinder, if not make snow removal impossible. I would like a Zoom conference access. Please let me know if we can get a Zoom set up. And then it says; Thank you, Kate Burnett, Century 21 Turner Brokers with their phone number.

Mrs. Ditonto: Thank you, and can you tell me, because I can't see that document, is Mr. Turner personally the owner or is Century 21 the owner of that property?

Clerk/Treasurer Williams: It's actually not visible on this, I don't know if I hold it up, it's just...

Mr. Turner: I can answer that question.

Mrs. Ditonto: Ok, hold on Mr. Turner, just so we have this done in the correct order. Ok, I will let you speak, we are almost ready for the public component, but I did want one more opportunity, again to ask if there are any other correspondence, any other changes that were made between the time that we originally saw this petition and today. The only change that we are seeing is now we have just the side of the property; side variances for not Martyn Alley any longer, am I correct.

Mr. Scalise: Well, you've got the parking area but the building itself which was the issue before is no longer an issue because its not a public street, it's a private side property line so the variance went from fifteen to six.

Mrs. Ditonto: Larry, we're not exiting onto Martyn Alley any longer.

Mr. Scalise: No; but that was part of the issue that was being raised, the addition was too close to the property line.

Mrs. Ditonto: And that has not come up today. Its just again, the set backs for the side lots. Unless you're telling me that...

Mr. Scalise: We don't need a variance for the building set back. Because it's in within the regulation it's just the parking areas.

Mrs. Ditonto: Alright, very good. Alright, at this point then we will open this for public comment. It is always possible at a Zoning Board meeting for anyone from the public to have up to five minutes to speak either in favor of or in opposition to a variance request. You must state your name, home address and limit your remarks to five minutes or less and they must be related to the question of the petition. It appears from this meeting, that we only have one member of the public who is here. And, that is Mr. Turner. Mr. Turner do you want to speak? If you would please, identify yourself, name and address.

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Mr. Turner: My name is Tom Turner. I live at 33 East Lake Street in Lakewood, New York, 14750 and for the record and clarification, the building is technically in the name of a company called Allen Street Partners LLC, of which I'm a managing member.

Mrs. Ditonto: Ok, thank you.

Mr. Turner: The zoning request, it changed and you can talk to your DPW workers about snow congestion in the area. And while there's no longer a building set back request that's necessary, the problem is, I'd like to see the zoning regulations. It's only a six-foot set back, commercial to commercial doesn't seem to make any sense to me, but how would anybody do anything? But, with that being said, assuming that's even the case. If you're going to create parking, I'm pushing snow in one direction toward their site and that's always been the issue. And they're going to push the direction of their snow in one direction toward my site. So, if you take the parking places initially, the 18 through 22 foot and you push the snow toward me, and I take the 16-foot alley and I push the snow toward you, there's going to be two major questions. One is going to be, where does it melt, where does it drain, where does it go? Number two, we're going to be fighting for the same amount of space to push our snow because there's not going to be enough room for me to get my people out of my building and around the side, and not be enough room for those people to have, without their cars getting pushed five or six foot back into their, whatever their through lane is in the winter time. It's just not enough space in the world according to Tom Turner.

Mrs. Ditonto: Ok, Mr. Turner, are you asking us to address again the issue of, you think it's too close to that alley because of the snow and the need to remove snow during the winter months and that that would eliminate maybe some possible parking spaces on the property for the credit union? Is that your concern?

Mr. Turner: I believe that it could, there's so much snow by the time they push their snow and I push mine into, four, five, six foot. If any of you have a personal driveway, you know, four, five, six foot of snow takes space. I need to be able to get people to come behind my building, turn around the corner on a sixteen-foot alley, get to 5th Street. By the time they're pushing their snow toward me, and I'm taking my snow toward them, four to six foot doesn't go over pretty far. What I'm saying is, without loader coming in there every week and taking their snow away, they're not going to be able to have parking spaces that are correctly utilized.

Mrs. Ditonto: Ok, thank you Mr. Turner. At this point I think I am going to have to ask Mr. Scalise or Ms. Surdyk if you can comment on the concern about snow removal and how that might impact this request.

Mr. Scalise: I'll speak to that. I mean, they do have extra spaces on the bank side so that does come into play for extra space for them to put snow. And, if they don't have enough room on their site, then obviously they have to have it removed. What Mr. Turner is proposing is actually pushing his snow onto the bank property. I do have a picture showing from the last meeting that that was what's happening. Unfortunately, Mr. Turner is going to have to make arrangements to deal with the snow on his side because its not legal to push snow from one side to the other.

Mrs. Ditonto: Ok, are there other questions based on the public comment? I don't see anyone else who would like to make a public comment at this time. Mr. Schober would you like to restate some information?

Mr. Schober: I think just kind of emphasizing what Larry just said. We wouldn't be pushing our snow to the alley. We would be containing it all to our own site, within our own property. We have a

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fair amount of lawn space on our property. The whole northeast corner of our property is all grass. We have more parking spaces than we technically need by code. We could designate a parking space or two for snow removal if we needed to push it somewhere. It wouldn't be going toward Mr. Turner's property nor would his be allowed to go toward ours.

Mrs. Ditonto: You are right. You did state that you have thirteen parking spaces and you're only required to have nine, so in the winter you may have to give up a parking space or two if there is a lot of snow to be pushed in your parking area.

Mr. Schober: Yes. That is the way the Greater Chautauqua Federal Credit Union handles it at other locations quite successfully, as well as we do have lawn space. We're not land locked by just building and parking, we do have lawn area.

Mrs. Ditonto: Ok, thank you. Mr. Scalise, you have reviewed these plans and the revisions? And are you in favor of this in terms of the way that they made the provisions so that they can have parking and not have the alley as an exit, so that this project would be able to go forward?

Mr. Scalise: Yes. As far as the layout design, it works, so there's no issue there. There's no safety concerns or anything along those lines. It should function adequately.

Mrs. Ditonto: Are there questions from the other members of the board?

Mr. Sorg: I have a question Larry. Steve Sorg. Is there any opportunity for Mr. Turner to move the snow from his parking area, across Monroe Street onto that grass area across from his entrance to that parking area?

Mr. Scalise: That would be a question to run by the Department of Public Works, but the answer to a similar question would be no, because they would be pushing snow across the city right of way. And that island that you're talking about over there is a city property as well. Again, you'd be depositing their snow on someone else's property so I would have to believe the DPW would say no, that would not be an option.

Mr. Sorg: Thank you.

Mrs. Ditonto: Are their other questions from members of the board? Seeing none, at this point I would be looking for a motion on the petition of Edmund Schober for an area variance for the parking area setbacks that are stated in the petition request for the side properties, the east side required is fifteen, proposed is 7.02 feet, on the west side it looks like it is, oh no, 4.22 feet and on the south side its seven feet. Again, the zoning code is for fifteen feet so there are three different proposed amounts there in terms of where those side properties would be needing the area variance. So, if there is somebody who would like to make a motion so we could vote on this I would appreciate it.

Moved by Mr. Panebianco

Mrs. Ditonto: Thank you, Mr. Panebianco. Is your motion to accept the area variance for those three side lots?

Mr. Panebianco: Yes.

Mrs. Ditonto: Is there a second?

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Seconded by Mrs. Jones.

Mrs. Ditonto: We have a motion and a second. Are there questions on the motion? Again, its an area variance for the setbacks on the three existing south, east and west sides of that property.

Mr. Sorg: Ellen, this is Steve Sorg once again and I guess I would just like to share some of my perspective on the petition. The Zoning Board of Appeals must balance the benefits that are being realized by the applicant, the bank here, against the potential detriment to the health and safety and welfare of the neighborhood and community if the variance was to be granted. I guess the factors that I look at when I'm weighing this, is one, will an undesirable change be produced in the character of the neighborhood or a detriment to the nearby properties. So, my opinion, it does not. The subject is located in a mature mixed land use neighborhood that was the site of a drive up back. The use is permitted by the current zoning. The nearby properties, Rexel, Landmark and Mr. Turner's office building all set within four feet of the former Martyn Alley, therefore the position of the building would conform to the neighboring properties. The second question I guess I hadn't looked at. Can the benefits sought by the applicant be achieved by some other means? The applicant stated at the March 4th meeting that this was the best design considering the proposed building, the size of it, the shape of it, the drive thru ingress, egress, the parking, and I accept that. He did not state that there was not a design that would not require an area variance. Based on the site the building reached, I feel like there might have been an alternative design that would have worked, but I trust his judgement on this that this was the best design. And the third thing I had, is the required area variance substantial? In my opinion, its not. We're looking at distances from four to seven feet and it appears that the petitioner is exceeding the parking requirement. Number four, will a proposed area variance have an adverse effect on the physical or environmental condition of the neighborhood. I guess that short environment assessment addressed that. I feel that there will be no negative impact on the neighborhood or adjoining property owners and would conclude that this is the highest and the best use of the site so I will be voting in favor of it.

Mrs. Ditonto: Thank you for your clarification Mr. Sorg. That is important; again, those are the criteria that we must look at for area variances and the key one is that it is not changing the character of the neighborhood. Thank you very much for your explanation and your research on that. I appreciate that. Any other clarifications from members of the board?

Mr. Sorg: I guess I should have one other, and I disclosed at the last meeting that I am a New York State certified real estate appraiser, but I also have a real estate license, a broker's license, associated with Century 21 Turn Brokers, which Tom Turner is the principle. Again, I'll state that I have not financial interest in the adjoining office building nor in Century 21 Turner Brokers so I will be voting on this petition.

Mrs. Ditonto: Thank you Mr. Sorg. Again, as a member of the Zoning Board we must state to make sure there is no conflict of interest or any financial gain on any of the variance requests, so I appreciate that. Any other clarifications? If not, I'm going to ask, Jennifer, if you would please call the roll on the petition. Again, the motion is to approval of the petition as its written for today's agenda.

Carried: 6 – 0

Mrs. Ditonto: The petition has been approved. Mr. Schober, Ms. Haaksma, at this point we're going to turn you over to Mr. Scalise and make sure that things are in order so that you can begin construction on your project. Thank you very much.

There being no further business, the meeting was adjourned.
Jennifer R. Williams, Secretary

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