

TOWN OF EAST BLOOMFIELD

Zoning Board of Appeals Minutes

July 17, 2014

Zoning Board of Appeals Members Present, Don Rimlinger, Art Babcock, Mike Long, Mark Thorn.

Absent: Sonja Torpey

Others Present: Andy Hall (CEO), Kim Rayburn (Secretary) Dianne Crowley (supervisor) Frank Fessner (Town board member) Todd Stuiwe (Exxel Engineering), Peter Oteszczuk (Midwest Exxel), Beverly Bailey, Curt Upham, Cathy Templar, Lynn & Will Tyler, Joel Steele, Jon Steele, Michael Huff, Dean Huff, Gary Fuoco, Christine Fuoco, Carol Creswell, Mary Menzie, Gail Ferris.

Rimlinger opened the meeting at 7:30pm and the public hearing was read and opened.

I. # SPL2-14 Area Variance Review, Exxel Engineering (Agent) Happy Acres, LLC (owner) Lands located on 5&20 Bloomfield, NY 14469 tax map # 80.00-1-9.000 proposed site of Dollar General requesting a Variance of 15 parking spaces. 48 are required per Article XII section 135-94 subsection H and Schedule II, 33 are provided on the Site plan.

Rimlinger asked Todd Stuiwe to explain the proposal; Stuiwe introduced Peter Oteszczuk as the future owner of the land and building, Dollar General will be a tenant and lease the building from Oteszczuk. Stuiwe stated that the proposed parcel is 1.48 acres of Community commercial land, with two hundred and sixteen (216) feet of road frontage and three hundred (300) feet deep. The Town Board granted a request to extend the CC District back one hundred (100) feet on the proposed parcel to match the existing CC District boundary line to the property to the West. They felt they could not have purchased more property from Huff as it would have reduced the required amount of road frontage for the remaining parcel to below what is required in that district and they felt that matching up the back boundary line to the parcel to the West made sense. Oteszczuk proposes to erect a 9,300 sq ft building to lease to Dollar General. The town ordinance is forty eight (48) parking spaces for a building this size, however Dollar General only requires twenty nine (29) spaces for this size retail building, they have done market research to obtain the number of spaces needed and have submitted a letter to the Board.

The request is being made to install fifteen (15) less parking spaces than what is required as the additional spaces are not needed and will not be utilized, the additional spaces would call for more hard surface and create more storm water run-off. They would like to leave the area where the spaces would be as green space. There is also a State ordinance that does not allow a building or parking area to be closer than one hundred (100) feet to the NYS right of way, which does impact the site and dictates where parking can be. Stuiwe stated that the Planning Board did review the parking Variance and has commented with their recommendation that the applicant provide a deferred parking plan. The Board reviewed the new map showing the deferred parking.

Stuiwe stated that they could get the additional fifteen (15) spaces on the site if another use ever deemed them necessary, but at this time they do not want to install them.

The only change to the original site plan is that the HVAC unit would need to be moved from the rear of the building to the west rear side of the building in case the deferred parking spaces were to ever be installed.

Rimlinger asked if the fifteen (15) additional spaces that are set aside as deferred parking comply with the Town regulations, Stuive stated they do and would if ever installed. Long wanted to be clear that if the additional spaces that are shown on the map were installed then a Variance would not be needed or required. Stuive answered yes that would be true. Long then stated that the reason a Variance is being proposed is to install less parking because it is not needed by Dollar General, to save green space and cut down on water run-off and expenses of additional asphalt. Stuive agreed and stated primarily because they would not be utilized, and it reduces run-off.

The Board considered the five statutory factors:

1. Undesirable change –The proposal to install less parking is not an undesirable change.
2. Alternative method– N/A, The proposal will be beneficial to the environment and no other options are available.
3. Substantial (minimum relief)- the Board feels the proposed is not a substantial request due to the pre-existing setback on 5 &20 and the fact that the spaces will not be utilized.
4. Adverse effect on physical or environmental conditions- n/a, beneficial
5. Self-created-. The Board feels that this is self-created as they can install the spaces however they are choosing not to. One Planning Board member felt this was self- created as they could have purchased a larger parcel, set the building back further, and installed the spaces required in the front of the building.

Rimlinger opened the meeting to the public; Carol Creswell wanted to say that she has lived approximately five hundred (500) feet from the property for thirty four (34) years and she welcomes Dollar General. She stated that it has been good for Naples, even though that they had to go through a lot of hoops to develop there. Her only concern is traffic and wanted to discuss the speed limit and access ways due to accidents at County Rd 40 and St Rt 5&20. Her main concern is travelers heading westbound and making a left turn. Babcock wanted to remind the public that the Zoning Board of Appeals is only looking at the request for a reduction in parking spaces, there job is to look at the number of required spaces vs. what the applicant is applying for. He stated that the Planning Board would be reviewing the site plan and the DOT would be the governing body on the entrance and exit plan on and off of Rts 5&20. Hall stated that the speed limit is thirty five (35) in that area, Rimlinger stated he felt her point is valid and if up to him the speed limit would be thirty five (35) up to Cannan Road.

Kip Jogle (Planning board member) stated that he felt this Variance is self- created because there was an alternative before the lot was subdivided, he stated that it was made clear to the applicant that if the lot could have been deeper it would have gave them the room they needed in front of the building for parking and the plan would have met all of the Town requirements.

A Variance would still be needed as they do not wish to utilize the spaces but you would not have the concept of land banking. He stated that when this Variance gets approved the lot will have only the number of spaces allowed by the Variance.

Cathy Templar from Cannan Rd stated that she would rather see parking away from 5&20 and is in favor of land banking to keep green space if the spaces will not be utilized. She asked if the parking spaces were to ever be installed how it would affect their percentage of green space. She also asked where the mechanicals were and if there was a concern of parking near them. Stuve stated that the mechanicals are in the rear, there is no concern for parking and the green space percentage would not be affected.

Beverly Bailey from Elm Street commented that she agrees with fewer parking spaces and saving green space.

Rimlinger stated if there were no other public comments the public hearing would be closed, there were none, public hearing was closed and all Board members agreed.

Hall stated that there was a comment from the Ontario County Planning Board; the comments were read by Rayburn, Rimlinger asked for further comments from the Board. Thorn asked how the process would work and who would be in charge of enforcement if the spaces were found to be needed by Dollar General or the next tenant. Rimlinger stated it would be the Code Enforcement Officer. A Discussion was held regarding the enforcement and Hall stated that a complaint may come in his office or the State would come to him with an issue. He would then go to the applicant and state that we have an issue with parking and all or some of the parking would be required to be installed. Currently there are twelve thousand stores they took their data from so Hall does not feel it would be an issue, but if it does become a problem then we have the ability to require the additional spots by the motion that will be set forth. Babcock stated that our Town code does not specifically deal with land banking currently; we have discussed it with a Special Use Permit which requires an annual review by the Code Enforcement Officer, therefore it would be looked into at least once a year. Long asked if the ZBA would give an Area Variance or if the Planning Board would handle the land banking as the County suggested. Rimlinger stated that an Area Variance would be given because the proposal would be easier to handle through a Variance with specific requirements. Stuve stated that an Area Variance would be needed because the Town does not have any current regulations on land banking. Stuve stated that there can be an agreement with the Town on the parking spaces that will be more than just the conditions of the approval.

Babcock asked about the percentage of green space because there was not a number listed on the map, Stuve stated that they were not even close to going over, Babcock stated the Board would have to take his word for it that if the additional spaces were installed the percentage would not be reached.

ZBA Decision:

Babcock made a motion and Long seconded the motion to approve the Area Variance of fifteen (15) parking spaces, allowing the initial installation of thirty three (33) spaces where 48 are required per Article XII section 135-94 subsection H and Schedule II for project # SPL2-14, Exxel Engineering, Midwest XX, LLC (agent) Happy Acres, LLC (owner) Lands located on 5&20 Bloomfield, NY 14469 tax map # 80.00-1-9.000.

Whereas:

- 1. 33 spaces are allowed initially, increased to 48 spaces if determined to be necessary by the Code Enforcement Officer by an annual review.**
- 2. Site Plan map will show that the required amount of 48 spaces can fit on the site and comply with Town regulations.**
- 3. Specific to the proposed use of a Dollar General Retail store, if the use changes the parking will be required to be reviewed by the Zoning Board of Appeals.**
- 4. Proposed is not an undesirable change to the character of the neighborhood.**
- 5. The change is not substantial, and it will save on unnecessary hard packed surface area, which will be good for the environment.**
- 6. Benefit will not be achieved in another way, but proposal is self –created**
- 7. In the absence of Town regulations for land banking the ZBA feels an Area Variance is necessary to prevent future complications although the Ontario County Planning Board recommended against the Variance and recommended the Town Planning Board allow the applicant to show the required 48 spaces on the site plan but install only 33.**

Record of Vote:

Don Rimlinger Nay
Art Babcock Aye
Mike Long Aye
Mark Thorn Aye

All Board members present voted Aye, with the exception of Rimlinger who voted Nay. Vote was carried.

II. Minutes of April 23, 2014

Long made a motion and Thorn seconded the motion to approve the minutes of April 23, 2014 as written. All Board members present voted Aye, Vote was carried unanimously.

III Meeting Adjourned

Babcock made a motion and Long seconded the motion to close the meeting @ 7:42 pm. All Board members present voted aye, Vote was carried unanimously.

Respectfully submitted,

Kim Rayburn
Planning & Zoning Board Secretary