



PLANNING AND DEVELOPMENT AGENCY BUILDING & ZONING

CITY HALL, 62 WASHINGTON STREET RENSSELAER, NEW YORK 12144-2696 Planning (518)
465-1693 Building (518) 462-5489 Fax (518) 465-2031

Minutes of the Special Meeting of the City of Rensselaer Zoning Board of Appeals First Floor
Conference Room, Rensselaer Community Center, 62 Washington Street March 28, 2011

Members Present:

Chair – Gene Hilstro, Vice Chair – Bill Bulnes, Nancy Hardt, Terance Ruso,

Members Not Present:

Michael Scott, Paula Micheli

Staff Present:

Sarah Crowell – Director of Planning, Sharon Butler, Office Manager, Jack Spath
– Deputy Corporation Counsel

Others Present

Dave Gartner, Lou Lourinia, Marc Johnson, Joe Bianchini

Call to Order:

The regular meeting of the City of Rensselaer Zoning Board of Appeals was called to order at 6:04 PM. Roll call was taken and it was determined that there was a quorum.

Adoption of Past Meeting Minutes:

The minutes of the regular meeting of January 24, 2011 and the special meeting of February 7, 2011 were tabled until the next meeting due to omission in the January 24th minutes and no documentation of the February 7th meeting

Mr. Hilstro made motion to table the approval of the January 24, 2011 minutes of the regular meeting and the February 7, 2011 minutes of the special meeting
2nd by Bill Bulnes with no objections Motion carried

Old Business

NONE

New Business

Application submitted by Marc Johnson looking for relief on two variances: once from the maximum height requirement for a 6' fence and one for relief from the minimum open space requirement of 20%

Joe Bianchini from ABD engineering & surveyors introduced himself to describe the project the Mr. Johnson submitted for 44 Aiken Avenue. Mr. Bianchini stated that Mr. Johnson has a contract to purchase the land at 44 Aiken Avenue (behind Rite Aid & Aldi). He explained that Mr. Johnson wanted to construct a self storage facility and that they would need three variances-1 for the fence, 1 for the green space and 1 because the area

is in the Flood Plain.

Mr. Hilstro: does this mean the application is incomplete?

Ms. Crowell; no, this is just for 2 variance because we did not have complete information for the flood plain. Ordinarily that would go to the Planning commission for a special use permit for development in the flood plain; however, this is not going to meet the requirements of the flood plain ordinance so that it will require a variance for the construction of the units themselves.

Mr. Hilstro: ok

Marc Johnson then introduced himself stating that he has invested a tremendous amount of time and effort in investing in this community and trying to bring a project that is probably going to end up costing over a million dollars in Rensselaer. He stated that he has repeatedly gone through the process of filling out forms, having them reviewed in our planning department to see that all my t's are crossed and I's are dotted, what would you like to see in this project, what would make this project fit with what your looking for in this community? Apparently we did not fill out the forms properly in order to be here tonight to seek our variance in the flood plain, and when I go back and look at the information that is required to get that variance, it requires me to draw up engineer drawings to the specifications to which the planning board is asking either my facility has to be flood proofed at every door or my project has to be elevated 6' above what it is currently. I reviewed it, Luigi, and Joe reviewed it, we're not understanding what it is that is incomplete with our application, it would seem logical to me that I would come to you folks and say would you permit me to build a structure in the flood plain and if so I would gladly go back and invest all the time and money that it would take to provide engineer drawings, showing how we propose to do this; from how water would enter and not create hydrostatic floods on the building, If I'm misunderstanding something here I apologize. At this point it is up to you guys, I am just emotionally spent after being berated last Friday and that's not the kind of town I want to do business in.

Mr. Ruso to Mr. Hilstro; it was addressed in the notes that they would have to come back for the other variance.

Mr. Johnson: if someone could kindly shed some light on if we could obtain a conditional variance from the zoning board about this. If you guys don't want us to build in the flood plain just say so.

Mr. Ruso; asked the applicant if this was so he could obtain financing for the project, is it a restriction of your financing?

Ms. Crowell; would it be helpful if I explained the flood plain ordinance because you as a board do not get a lot of request for variances in the flood plain? The board agreed and Ms. Crowell explained the criteria and regulations for constructing in a flood plain; stating that in order to construct commercial buildings in the flood plain they would either have to have the lowest floor elevated above flood level which is not quite 6' up or the building have to be water proofed so water can't enter. She explained that the new City library has gaskets which can be installed on the door to prevent water from entering.. The project that was recently permitted next to Hot Dog Charlie, what would be elevated, there are different way to go about it in this case; those are the 2 requirements. If this project were to meet either of those minimum standards then it would go to the Planning Commission for a special use permit, after it was reviewed by Dan Moore who is our flood plain administrator, and then he would make a recommendation to the Planning Commission and it wouldn't come to this board – the reason it needs to come here is because these structures don't meet the requirements of the flood plain ordinance. What you will have to do is follow the requirement; look at the criteria in the flood plain ordinance which talks about the various criteria that a variance could be granted; that is why this application will come before you if they so choose to.

Marc Johnson: but it can't get to you, were not going to do engineer drawings that meet the flood plain requirements, were not going to build structures on 6' piers next to Rite Aid, were not going to flood proof every door like your publicly funded library did, that's not going to happen. Anyone coming to this town having to do that is unrealistic and I apologize and I understand that why planning can not grant these types of variances and how I'm able to get to you to seek this variance, I'm still not clear on that. If you believe it is financially feasible for somebody to come in and build 300 water proof doors that function with flood gate controls on them automatically I would love to hear it.

Mr. Hilstro: this is here for a reason, flood plain prevention local law is here for a reason, we do have floods down in that area and it's for your protection and the public's protection

Marc Johnson: and I've taken the liberty to have my insurance person research that and you have had floods in the last 100 years in that particular area. He ran the reports on the different sites and that was the great flood that occurred back in Troy in the 1900's when the Adirondacks were clear cut and we had complete floods, since then implementation dam control systems and flood control systems have taken place to prevent such catastrophes from happening to municipalities' further south on the Hudson River corridors. I know it's in the flood plain; a lot of us live in the flood plain, its life. I tried to give reasons and I don't know if they were permitted to be shared with you folks. I can't very well sit here and waste my time and your time asking for a 6' fence made out of architectural wrought iron versus a 4' fence if I can't build there to begin with.

Ms. Hardt; so what are we approving or not approving tonight?

Ms. Crowell: we did not have the application in time to make it for the advertising as you know applications have to be advertised, there are public notices etc. The applicant application we did have were the fence and the open space, those are the two things you have on your agenda tonight.

Mr. Bulnes: so it will be one more month before we get all that other information?

Ms. Crowell; unless you want to have a special meeting you can do that, we would have to do two weeks or however long it takes to do the public notice

Ms. Hardt; so we could go ahead and make a decision on what we have in front of us now?

Ms. Crowell; yes

Marc Johnson: I'm going to have to walk away from this project and \$30,000 at this point... I have filled out the application that was thrown at me on Friday; it has already been filled out to whatever standards are to be...there's no engineer drawings' showing flood proof doors because we have no intention of building structures like that. Why should I expend such frivolous money on a project that's not going to be built that way?

Ms. Crowell; with all due respect, the flood plain application is not on the agenda tonight and the reason is that I have repeatedly explained to the applicant and the applicant's representative what the requirements are in the flood plain and when we had the first conversation we discussed it was in the flood plain and I was assured at that time that the plan would meet the requirements of the flood plain, however the buildings do not, Dan Moore said they don't and he needs more information; it's not on the agenda tonight.

Marc Johnson: this is the form that was thrown at me blank on Friday (held the form up). I submitted this form on 2/15/11, I believe it says flood plain development permit application; on the 2nd page, 3rd page, just an FYI, so we can eliminate confusion in the future, it is in big bold letters: to be completed by the local administrator, except for section 4, which also says to be completed by local administrator. We have to submit all these things in there and we did and I don't know, I've re-did this, so I'm not sure specifically which of these we are missing in this application

Ms. Crowell; this is actually not the zoning boards application it is a planning commission application

Mr. Hilstro: we need to stick to the agenda for tonight

Mr. Ruso: with that you will probably find us most agreeable in trying to work with people as opposed to other boards, so I know you said you want to walk away completely from this project, if you don't know if you can truly build but, when it comes before us you will have an open ear from us on the panel

Mr. Bulnes: part of me says we are putting the cart before the horse. You want approval to build and put fences and gate in but you don't even know if you'll pass the criteria for it.

Mr. Hilstro to Mr. Johnson; you don't own the property right?

Marc Johnson: I'm scheduled to close on it tomorrow. I'm sorry this had to get to the 11th hour, I've been working to provide you the project and the fact that what I've submitted is not suitable for you, I apologize it not fair for me to put you under this but...

Mr. Ruso: but there was not public notification

Marc Johnson; and it was never mentioned to me with all this, that I keep getting directed to the web site, well I can tell you, your website has lots of information that just not there and if there is some form I'm supposed to fill out or mail out to adjacent property owners...

Ms. Crowell; that is not your job that happens after we do the public notifications

Mr. Ruso; so lets assume that they did get that approval so now were dealing with the other, we might as well address these issues while you're here.

Marc Johnson; I would like to know your position because if I'm correct sir, if I come back to the planning board, it still comes to them to approve zoning/ building in a flood plain

Ms. Crowell: they need, unless you are going to build these, as many of the newer buildings are, to meet the flood plain requirements, yes you need to come to this board for a variance.

Mr. Bianchini; lets deal with the fence first. We are proposing a 4' fence around this along the font. We would have ornamental iron fence along Aiken Avenue

Ms. Crowell; correction it is a 6' fence

Mr. Bianchini; yes 6' fence and then a 6' chain link around the back and sides which would be similar to what already here. Bargain Outlet has a 6' theirs is a 6' in poor condition along National Grid property. The other one is the green space, this site is pretty much paved now there is just a little bit of what I call green space, trees in the back and we are proposing just a little less than 10% versus 20% that's required, that's essentially so we can get the build out that Marc need on the property.

Mr. Bulnes: what percentage of this lot would you say is green space now?

Mr. Bianchini; now we have 2.9% green space

Mr. Bulnes: you are proposing about 10%?

Mr. Bianchini: yes it's an increase in what's there

Mr. Ruso; there's not much frontage on the property

Mr. Bianchini: there is a lot of frontage what we are going to do is dress up the front when you come into the property and then leave some areas in the back as green space basically for snow storage

Mr. Hilstro: that equals 9.6% as opposed the 20%

Mr. Gartner asked to have the sketch moved so they could see it in the audience

Mr. Ruso: is the light green; is that green space even in the back corner?

Mr. Bianchini; the back is not going to be landscaped, just green for snow storage

Mr. Hilstro: you can meet the 20% why?

Mr. Bianchini: because it would cut down on the building square footage on the site that Marc needs to get this site to make it economically feasible

Marc Johnson: a critical mass is necessary, in time I would like to have on site management, an office, but in order to make those numbers work you have to meet a critical mass of 40,000 sq. ft. of storage

Mr. Ruso: you will be having an office facility there?

Marc Johnson; not in the first phase of the project and the other part is we have...this is a preliminary on the sketch plan as you know, the old toys joy store back there we maybe utilizing that existing slab and build a large 2 story climate controlled facility or utilize it for one large single level storage facility so we don't get pushed into a whole storm water SWPP on the property. It's a pre existing site it's almost 100% impervious and we are trying to create more beauty in it, some more green space with hedge rows in the front and side.

Mr. Ruso; will you be paving Aiken Ave, isn't that pretty torn up?

Mr. Bianchini; it is in pretty rough shape, the only area we are using is the entrance into the facility so that would be the only area we would pave.

Mr. Ruso; was there something about a sign?

Mr. Bianchini: showed the board where the sign would be on the sketch

Mr. Ruso; in that district we can have free standing signs?

Ms. Crowell; no free standing signs, it's not the overlay district that would also require a variance, and that would come next month

Mr. Spath: what is the size of the lot?

Mr. Bianchini: the lot is 2.2 acres

Mr. Bulnes: are we addressing the signage?

Mr. Hilstro: no, only what is on the agenda

March Johnson; does the zoning board have a position that we can discuss things for future meetings, so

perhaps I can get an extension?

Mr. Hilstro: there isn't anything like that. There are certain codes for signage and everything that you're going to do on this site and that is what you should be following, anything that you deviate from, that is when you try to go for a variance. You need to come down here and plead your case.

Marc Johnson; but I'm trying to get input, I tried to meet with the variance board, I'm told you have full time jobs and that is not feasible, I might have dialog with you and certainly what I'm trying to put together is a nice proposal and it would be helpful when you can get some thoughts and input from the board and what their look for.

Mr. Hilstro; whoever your engineer is (Marc pointed to Mr. Bianchini) then you should know the codes, in order to draw this plan up. It is up to you to follow the codes in drawing up the plans for this project. It's not up to the board to tell the applicant what you need to do to get a variance, or what we want. We don't want anything; we don't even want to see you down here. We want you to be able to do this project without coming down here.

Marc Johnson; I understand you don't want a 50' sign there with lights. Do you folks feel that I am on target with what you see here, I don't think that is an unreasonable question, to ask a board who is deciding the fate of a project whether it is reasonable in your eyes. Is this in line with what your thinking, if not we will come back?

Ms. Crowell; this is the zoning board

Mr. Hilstro; this is the zoning board we're not the planning commission, the planning commission is different what you come to the zoning board for is to do something that is not code

Marc Johnson; correct and we know that our sign is not code

Mr. Hilstro; that is not on our agenda tonight, we are on tangents now, we're off on flood plain, now we're off on signage, our main object tonight is a variance for relief on a fence and relief on open space. If on my agenda was flood plain and signage that is what we would address.

Marc Johnson; but my sign is going to be denied by the planning commission because it is a monument sign

Mr. Bulnes; then you already know you need to make adjustment right from the get go

Mr. Hilstro; whatever the code is, that is what you should be following

Marc Johnson: right, I'm trying to come up with something you like because you are the one deciding whether the sign gets built or not, no the planning commission

Mr. Bulnes: you can speak with the planning department and building department and find out about the sizes of signs that we allow and how they would like to see it constructed.

Marc Johnson; I did that but it doesn't meet the criteria because it is supposed to be bolted on the building. I would like to do a nice monument sign and that requires me to come to you folks to talk about, that is where I'm going to end up and I would like to get a sense from the zoning board if they like the design.

Mr. Ruso; we have become much more liberal with our signs than what has been done in the past, look at that as a positive

Mr. Hilstro; we can't tell you what kind of sign to put up. We are already 35-40 minutes into this meeting and we're not even sticking to the agenda. I understand what you are trying to say, but I'm trying to stick to what's on our agenda for tonight, so we can conduct our business. I can't say anything to you about flood plains or signs or anything else because it is not on our agenda.

Mr. Spath; how many units are planned?

Mr. Bianchini: it doesn't show how many units on this because they vary depending on the demand, some of them will be 5'x10', 10'x10' and 10'x20', you usually build a couple of buildings and see what the market is, then you adjust the floor plan based on that.

Mr. Spath; you were saying earlier with needing the green space variance was based on economic reasons so you must have...

Mr. Bianchini; you need so many square feet; you need 40,000 sq. ft. build out to make it economically

Mr. Spath; with variances one of the key components to getting a variance is it is not self created hardship, how is this not self-created?

Mr. Bianchini; Mar looked at the site and the site was almost entirely paved, there was 2.9%...

Mr. Spath; there isn't anything there now, no structures

Mr. Bianchini; no nothing there, no structures, everything has been torn down and level. We are looking at it that we are increasing your green space from 2.9% to 9.6%; we can't get to the 20% that is required because that would severely cut back our foot print and the amount of buildings that we can build. We are less than the 40,000 sf that Marc would like to see but we would have to cut probably another 4,000-5,000 sq ft out of the site, in terms of that it would make a hardship on him economically

Mr. Hilstro; the site hasn't been used commercially in years, so anything that was there before was probably grandfathered in, since these codes came out, that changes everything.

Chair Hilstro opened for public comment at 6:39PM

Dave Gartner: I think that if the man wants to build the thing down there and from what I can see, as long as the fence is not a chain link fence like galvanized that is going to rust and look bad or a stockade fence if he's willing to put the money into it and at the very minimum make it a black vinyl coated chain link fence and landscape it nice so it looks like the one that is up on 9 & 20, I say let him do it. God knows we need the business here, it going to bring in tax money. And as far as reducing the green space how much green space is there now? It's concrete and rocks any bushes or anything he does in landscaping its going to look better than what is there now. I know you're not supposed to talk about the elevating in the Flood Plain, but did anybody mention to this man that there's a brand new building that they just built over by the Police Station that meets the flood plain requirements? Maybe they should go over and look at that one-environmental services

Mr. Hilstro: anyone else to address the board?

Lou Louriana: I'm concerned about reducing the green space-that whole corridor is suppose to be done as a boulevard gate way to the city, it's supposed to be nice looking to be the key entrance to the city. Reducing the green space and a sign that is out of code doesn't do anything for that gateway. The other thing is what about the nice people that have their stuff stored in there and they have a flood? You are obligated to that flood plain compliance period. If you don't become obligated, the City can become—fines increased, increase in premiums, or no flood plain coverage at all and that is why environmental services elevated because DEC did a windshield inspection and that why that building is elevated, you need to protect those buildings and the people have a right to have their belongings protected in your structures. Two variances the fence; I agree with Dave the fence should be half way decent, if you go to East Greenbush or even Green Island there's probably 15 pine trees 20' tall on the street side of that development hiding it. When you drive past the one in East Greenbush it's a nice looking development, it's greened out and it has nice roofs, nice buildings, these things are less than attractive. If you look at the variance test-I'm going down to #3 the variance is substantial, he is decreasing the green space by 1/2; that's significant—whether a variance will have an adverse impact, on physical or environmental conditions in the neighborhood or district he doesn't do the green space – If he doesn't comply with the flood plain that's a significant impact. #5-hasn't been self created difficulty. It is self created, all his variances are self created. I don't think Rensselaer should be the catch all of a cheap development. You want to develop here, make it conform to the code; make it look good because that is our future gateway blvd. I'm for development, but I'm for compliance also.

Mr. Hilstro: anything else?

Mr. Ruso; Lou when you say reduce its actually going to increase the green space at this point as there is only 2.9% there and they are going to a 9.6%

Mr. Spath: no, there's no development on that site there so there is no type of grandfathering in. any new development has to conform to meet the requirements so it would be a reduction. If there was a prior existing structure on there that was just being converted and within the year time frame and the green space was at that minimum level it would be different but there hasn't been anything there for years so there is no type of grandfathering in. Any new construction on there is required to have 20% green space.

Mr. Hilstro; closed the public comment period at 6:49 pm and entertained a motion

Mr. Ruso: as for the first issue with the fence, I could definitely go for granting him that variance and that the type of facility he has would have a necessity for security more than others. The 2nd issue I think is probably of a greater importance. I can't really see where we would want to require any additional in any area that...its ridiculous for us to tell him to put trees in the back of here that would never be exposed. I don't really know

where I concur with what the other people have said here even publicly. My view point it's only in a certain point, and that point is all covered entirely in green space, I can't see where else we would put green space; do you want trees in between the garages?

Mr. Hilstro; it is not up to us where to put it

Mr. Ruso; no, but we have sometimes asked people to maybe tailor it to a greater percentage. I'm just trying to get what your view point may be expanding or...

Ms. Hardt; I agree that the only visible green space would be in the front here, which they agreed to dress up with plants

Mr. Ruso; what I'm saying is if we were to require him to have the other 10% where would he put the 10%, I don't see that.

Mr. Hilstro; it's not up to us to decide that...

Mr. Ruso; I know I'm just saying logistically trying to work this out

Mr. Hilstro; I believe the green space issue is self created. You can put green space anywhere, there is a number of ways he can do this, they can put the green space wherever they want.

Mr. Spath; the board has to look at the balancing test the 5 point test, you need to look at each of those...

Mr. Ruso; I'm saying that the unique shape of the property should carry some weight in this

Mr. Spath; personally I don't think that is a consideration

Mr. Hilstro; I make a motion that we grant a variance for the 6' fence and that we deny the variance for the open space because it is self created

2nd by Mr. Bulnes, all in favor motion carried.

Other Business:

NONE.

Adjournment:

Hearing no objections, Mr. Hilstro adjourned the meeting at 6:59PM.

Next Meeting:

The next regular meeting is scheduled for April 25, 2011 at 6:00 PM.

Record of Decisions:

An official record of decisions noting the details of motions from this meeting along with conditions & stipulations has been filed with the City Clerk and a copy maintained in Planning Department records.

Respectfully submitted,

Sarah Crowell Secretary