

Town of Clifton Park

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

Zoning Board of Appeals



APPROVED
1-2-2018

ZONING BOARD OF APPEALS December 5, 2017

Present: Chairman Dudick, Jerry Cifor, John Klimes, Mario Fantini and Michael Bloss

Absent: Chris Lemire, Lisa McCoy and Terrance Cosgrove.

Also Present: Neil Weiner, Esq., ZBA Counsel
Steve Myers, Director, Building and Zoning

The Meeting was called to order at 7:04 p.m. by Chairman Dudick. Mr. Dudick announced that Alternate member, John Klimes would be voting in place of Chris Lemire.

PLEDGE OF ALLEGIANCE
ROLL CALL

OLD BUSINESS

1. **Application from Windsor Development for two (2) area variances from Chapter 171, Table I as follows: 1) 60SF of wall signs allowed; 253SF requested and 2) 18' height for wall signs allowed. 24' requested; 6' variance requested. Property is located at 19 Clifton Country Road, Clifton Park, NY 12065. (Permit #81139).**

This application was first heard on November 21, 2017, at which time the applicant was advised that because the variance requested was identical to a request made in 1988 which had been denied, they first needed to show there had been significant changes in circumstances in order for the Board to even hear the application and if such was determined, then the Board could make a determination on the requested variance on the merits.

The application was tabled until tonight, due to requests from various Board members to determine whether or not minutes from the 1988 meeting could be located and reviewed.

Mr. Myers began by advising that he had in fact been able to locate the minutes from the original variance requested in 1988 and confirmed that although 1 sign had been approved, the other sign has been denied. He added that the Chairman of the Zoning Board in 1988 just happened to be the Zoning Board's current counsel, Neil Weiner, Esq. and that the closing statement in the 1988 minutes was "Chairman Weiner

moved that the application cannot be granted at this time, without prejudice to renew a future application". Considering that statement on the record, Mr. Myers advised he is now under the impression that the applicant no longer needs to show there has been a significant change in circumstances in order to apply for the same sign again, but asked for clarification from Board Counsel.

Mr. Weiner agreed with Mr. Myers and explained that in Court, when something is dismissed without prejudice, it means you can bring it back on the same terms and grounds. He added the same standard would apply here and recommended the Board now treat this as a de novo application, only considering whether it has merit without having to first find that it is a significantly different application.

Bob Miller from Windsor Development advised that in accordance with Chairman Dudick's suggestion at the last meeting, he had spoken with Hannaford and they are willing to reduce the size of the sign by 10% and therefore, he requested to amend the application to reflect a sign of 227 SF which would still require a height variance. He pointed out that when you look at the size of this sign request and relate it to the size of the square footage of the building as a percentage, in comparison to the signage granted for the 2 other supermarkets in Town, which he estimated to be .78% for the Market 32 at Shoppers World and .80% percent for the Market 32 at Routes 146 and 146A, this request is still less at .71%.

Mr. Dudick opened the Public Hearing and asked for questions or comments. Being none, he made a motion to close the Public Hearing. Mr. Cifor seconded. All voted in favor and the Public Hearing was closed.

Mr. Bloss made a motion to approve the application as amended by the 10% reduction, for a 227 SF sign. Mr. Cifor seconded.

Mr. Bloss stated that he does not believe an undesirable change will be produced in the character of the neighborhood or that a detriment to nearby properties would be created by the granting of the variances and that the applicant's willingness to reduce the size of the sign is evidence of their flexibility and as such, he does not believe the benefit sought by the applicant can be achieved by some other feasible method. He added that the requested variance is substantial; that he does not believe the requested variances will have an adverse effect on the physical or environmental conditions of the neighborhood and that although the alleged difficulty was self-created, on the merits, he would still be in favor of approval.

Mr. Myers confirmed this is a Type II action and therefore no further SEQRA review by the Board is required.

Mr. Weiner inquired whether Mr. Bloss would agree to add to the record, that even though the requested area variance is substantial, because the area is now part of the Town Center area which is different than when the building was originally constructed, that this sign would be compatible with all of that new development.

Mr. Bloss advised he does agree with that statement and addition to the record.

The secretary called the Vote:

Ayes: Mr. Cifor, Klimes, Mr. Dudick, Mr. Fantini and Mr. Bloss.

Noes: None.

Application approved as amended.

NEW BUSINESS

The secretary read the legal notice as it appeared in The Gazette on November 16, 2017:

- 2. Application from Environmental Design Partnership for an area variance from Section 208-33B which allows single buildings to be a maximum of 4800 SF. Pre-existing building built in 1981 is 7741 SF per application. (7960 SF per County records). Applicant requests variance for building addition which would raise building area to 9000. $9000\text{ SF} - 7741\text{ SF} = 1259\text{ SF}$ variance required. Property is located at 900 Route 146, Clifton Park, NY 12065. (Permit #81142).**

Mr. Bloss first noted that the secretary had inadvertently read into the record that the building maximum per Section 208-33B is 48,000 SF instead of 4800 SF as referenced in the legal notice.

Gavin Vuillaume, representing himself as a partner with Environmental Design, presented the application. He explained he is a landscape architect with the firm which has been in this location since 1981 when the building was first constructed. At that time, it was a totally different zoning district; their company occupied only half of the building and they had about a dozen employees at most. Since then the company has grown, they have approximately 30 employees and they are in desperate need of additional office space, which is the reason for their request to add a small 1259 SF addition towards the back of the parcel.

Mr. Vuillaume then described how he feels they meet the five (5) factors the Board considers for area variances. He explained that they have existing frontage on Route 146 with a driveway that loops around and that the addition is proposed to be tucked in the back corner of the existing L-shaped building and therefore, he does not feel it would be any type of change in the character of the neighborhood, since the addition would not be visible from street or from any of their adjacent land owners. As to whether the benefit sought can be achieved by any other feasible method, he advised the only other alternative would be to construct a totally different building at 4800 SF. He does not feel the requested variance is substantial because they are not talking about a very large addition and in relation to the rest of the building, it is only a 16% increase in the overall size of structure. Because of the very small footprint not being adjacent to other properties, he does not believe the variance will have any effect on the physical or environmental conditions of the neighborhood and considering the fact that the building was constructed prior to zoning going into effect requiring 4800 SF maximum building size, he doesn't feel that it is a totally self-created difficulty.

Mr. Myers stated that the Town Attorney had provided research to show that the 4800 SF building maximum standard first appeared in the Zoning Code for B-1 districts in 1996 when the Zoning Code was revised. As such, because the building was built prior to that standard being applied, it is considered a pre-existing, non-conforming use. He added that in his opinion, this would be a fairly minor change to the building to try to make it more compatible for them, rather than trying to build a new structure or moving somewhere else and therefore, he has no issue with the request. He also stated that this is Type II action and therefore, no further SEQRA review by the Board is required.

Upon inquiry from Mr. Klimes the applicant confirmed that the 1259 SF addition would be substantial enough for anticipated future growth and if additional space was found to be needed in the future, other tenants within the building could relocate, which would free up additional space.

Mr. Dudick inquired whether the building or the proposed addition can be seen from Route 146. Mr. Vuillaume replied that because they have been cutting some trees around parking area, the building can be seen from the road, but not very well. He added that the proposed addition will not be visible from the road.

Mr. Weiner inquired whether the company had any plans to remove any more trees and Mr. Vuillaume responded that in order to put in the addition, there may be a few trees in the back that would have to come down, but that no trees out by the road would have to be taken down.

Mr. Weiner inquired whether the applicant would be willing to agree to a condition that the existing trees between the road and where the construction will be, will not be removed and Mr. Vuillaume stated that he would agree to that condition.

Mr. Dudick opened the Public Hearing and asked for questions or comments. Being none, he made a motion to close the Public Hearing. Mr. Bloss seconded. All voted in favor and the Public Hearing was closed.

Mr. Cifor noted that a letter had been received from the Director of the Saratoga County Planning Board dated November 17, 2017 in which it was determined that there would be no significant county-wide or inter-community impact from this project.

Mr. Dudick made a motion to approve the application as submitted, with the stipulation that no trees between the front of the building and Route 146 will be taken down. Mr. Cifor seconded.

Mr. Dudick advised that he does not believe an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties created by the granting of the variance, especially since a stipulation has been added and accepted that no trees will be removed between the building and Route 146 and that although the benefit sought by the applicant could be achieved by either moving to another location or constructing another building, the requested variance would seem to have the least impact as far as sight, finance and construction. He added that he does not believe the requested variance is substantial; that the proposed variance will not have an adverse effect on the physical or environmental conditions of the neighborhood or district with the stipulation that has been accepted and that although the alleged difficulty is self-created, that would not impede his decision to approve the application.

The secretary called the Vote:

Ayes: Mr. Cifor, Mr. Klimes, Mr. Dudick, Mr. Fantini and Mr. Bloss.

Noes: None.

Application approved with stipulation that no trees between the front of the building and Route 146 will be taken down.

The secretary read the legal notice as it appeared in The Gazette on November 16, 2017:

3. **Application from Columbia Development Companies for 3 area variances to demolish 3 existing buildings and construct 1 new building in a B-1 Business Non-Retail Zone as follows:**
 - 1) Section 208-33B requires 12% maximum coverage of parcel. 12.71% coverage proposed; .71% variance required;
 - 2) Section 208-33B requires maximum building size to be 4800 SF. Proposed building is 15,500 SF; 10,700 SF variance required and
 - 3) Section 208-99-B requires

one parking spot for every 150 SF of floor area for medical buildings. 104 parking spaces required per proposed SF; 95 spaces proposed; variance for 9 spaces required. Property is located at 989 Route 146, Clifton Park, NY 12065. (Permit #81144).

Chairman Dudick noted a letter had been received from Jason Kemper, the Director of the Saratoga County Planning Board dated November 17, 2017 stating that their review had found this project would have no significant county-wide or inter-community impact.

Upon inquiry from Mr. Cifor it was confirmed that the 3 existing buildings to be demolished total 14,400 SF.

Gavin Vuillaume from Environmental Design Partnership presented the application and advised that Richard Rosen from Columbia Development Companies was also present and available to answer any questions the Board or the audience may have. He explained that the Town Planning Board had asked them to present the project to their Board before making an application to the Zoning Board to get a pulse from Planning as to whether they felt the application had merit with regard to different type of layouts that could occur on the property. He stated that the variance is definitely self-created; involves the Shenendehowa Medical Park which currently has 3 medical tenants and is located on the north side of Route 146, just east of Arnold Drive, with the Woodland Hills Subdivision to the north and George Drive and other medical buildings to the east.

He stated that he believes the Zoning and Planning Boards would agree the character of the corridor has changed over the years; the goal of the original zoning drafted in 1996 was to get smaller medical buildings to have more of a residential character; that over time the residential character has changed; that there have been several other projects approved with larger buildings; that they feel this project is one that would receive the same merits of those larger buildings; that the applicant wants to redevelop the parcel because times have changed; that you no longer see the smaller medical offices which existed back in the 1990s; that there are now larger medical groups which require more intricate services and that Mr. Rosen can attest to the fact that most of the medical buildings that have recently been constructed are completely different than the small 4800 SF office buildings that currently exist at this site.

He explained that circulation within the property is difficult with the 3 separate buildings and that there is a shortage of parking and access into the buildings. He passed out to the Board Members a listing of benefits to having 1 structure, such as shared services within the building; collaboration between offices; new state of the art technology; new infrastructure both on the outside of the site such as lighting sidewalks and things of that nature and obviously more flexibility with regard to some of the space demands that a lot of the new medical professions require.

Mr. Vuillaume then passed out a sketch drawing to the Board Members, explaining that although they have already provided 2 different sketches (one for a single building in rectangular fashion and one they are calling a winged structure), because the Planning Board had asked them to look at another option, they are now providing a plan that is basically a mixture of those 2 designs, showing an elongated L-shaped building. He added that Planning felt this might be beneficial to present as another alternative option, because Planning had felt there were benefits and minuses with the 2 prior designs that were presented at the time.

He stated that the applicant feels the zoning criteria is still met with all 3 designs because they are essentially keeping the same square footage and are not increasing the intensity of use on the property. He advised they intend to add more parking, but essentially, it's the same doctors and the same number of patients coming into facility.

Upon inquiry from Mr. Cifor, Mr. Vuillaume confirmed there are 75 shared parking spaces, that they are looking to increase parking by at least 20 spaces and that there are currently 3 existing tenants.

Mr. Fantini pointed out that the difference between this application and the prior one by EDP is that these buildings were built in 1996 when the Zoning laws were updated with the requirement for a maximum building size of 4800 SF.

Mr. Weiner inquired whether the construction of new building would be completed before the existing buildings are demolished. Mr. Vuillaume replied that the plan was to try to keep at least 1 of the buildings, possibly 2 as the newer building is being constructed and that if the existing tenants had no building, it would be up to the owner to provide them with a temporary location.

Mr. Dudick opened the Public Hearing and asked for questions or comments. There were none.

Mr. Myers advised that this is unlisted action under SEQRA and that the applicant had completed the required short environmental form. He added that he does not believe there is any significant impact that is going to be created if this project is approved because basically, the square footage is the same no matter which way you look at it and although everything about functionality, getting all services in one place and things like that make sense, it would be a big leap as far as what zoning allows, but that it would be up to the Board to decide if they are okay with it or not, since we've been creeping up on the area in this zone for a few months now.

A discussion ensued as to what the largest variance was that had been granted in the B-1 Zone. Dr. Glasgow's building was mentioned as having received a variance of approximately 3,000 SF around 2005 for a building of just under 8,000 SF and Park Dental was mentioned as having been granted a variance for a 9,000 SF building, which had never been built because of restraints of the property.

Chairman Dudick pointed out that the variance requested by this applicant would be nearly triple the amount square footage allowed in the Zone. He added although he understands the applicant's rationale for the request, as well as the financial savings that comes from ownership and maintenance of 1 building as versus 3, from his perspective as a member of the Zoning Board, to completely throw out the zoning to accommodate a landlord's attempt to save money, blows away anything that he would consider reasonable relief. He concluded by stating this doesn't seem so much as relief from the Zoning Code as much as completely ignoring the intent of the zoning. He therefore advised he cannot be supportive of the application.

Mr. Vuillaume stated that the only other alternative would be move all the tenants to a different location, because they're not going to fit in a 10,000 SF building, which would not help the applicant at all.

Upon inquiry from Mr. Weiner, it was confirmed that the subject parcel is 2.80 acres and Mr. Myers confirmed that although the applicant currently has 3 4800 SF buildings which totals 14,400 SF now, zoning

states that in addition to the 4800 SF maximum building size, you also must be under 12% of lot coverage with the buildings, which requirement also limits the number of buildings you can build on a parcel.

Mr. Myers also confirmed that if the applicant was approved for a 15,500 SF building they would be .71 % over the allowable lot coverage, which is why both variances would be needed.

Mr. Vuillaume pointed out that they would still be providing 50% greenspace.

Mr. Cifor stated that although he agreed with the Chairman's perspective in terms of form over substance, in looking at substance over form, he would consider this as a net improvement for the Town because ultimately there would be less clutter, the parking and the building would be confined to an area and it would be a new building as versus an old one.

Mr. Dudick replied that if the Town wanted large office buildings in this Zone, then the Town could change the Zoning. He added that instead, the Town has specifically stated the limits they want for this area.

Mr. Fantini advised he also agrees with the Chairman's view that this variance is substantial and significantly more than anything else that has been granted in this area.

Richard Rosen then addressed the Board and advised that the current owner and occupant had come to them and advised that the 3 separate individual buildings were not working; that they needed a larger building; that they needed to update some of their technology such as x-ray and MRI equipment and had requested they find them a site. He explained that as you go west on Route 146, there's no property zoned to allow for a 15,500 SF building. He added that the farther out you go, the worse it gets from a location standpoint for a medical practice especially when you look at the zip code analysis studies, where the patients are coming from and the traffic flow. The only place they had found to possibly go would be east of 87 all the way out on the other side of town, which they had looked at and do have some options out there.

However, he explained, the issue is if the applicant leaves, there will be a piece of property that needs to be redeveloped and with the change in medical practices, if everyone is under one roof, you can then have shared services, update equipment to be state of the art and 2 practices can share that technology. If the practices had separate x-ray and MRI capabilities, then the patient would need to either walk across the parking lot or get in their car and drive over to the other building. As such, there are a lot of benefits to having multi-specialty groups under one roof, which is the desire of the private physicians currently at this site.

Mr. Rosen went on to explain that in his opinion the issue here really isn't the square footage, it's the connecting of the 3 4800 SF buildings, because there already is 14,400 SF of density on the site, which is why they came up with the design where it looks like 3 buildings, but allows for people to pass through under a covered roof, opens up the parking and the entries so patients can get there, park conveniently and access the building from several different locations, and thereby allows physicians and patients to flow freely between the 3 buildings. He added that this was their attempt to say okay - we understand that you're only supposed to have 3 buildings on the site – but can we connect them?

Mr. Rosen then referenced the various designs pointing out which one would not be much of a change architecturally, which one would cost the least to construct and which one would cost the most to construct when you consider the lineal footage, foundation, amount of exterior walls, amount of windows required,

etc. He advised that when these were shown to Planning and it was explained why the practices feel it would be beneficial to them to be all under one roof, there were many practical comments about parking, centralized drop off areas, etc. They were then asked to come up with something different in between, which they did, but what they are really asking here is - can they connect the 3 buildings as versus building 1 big massive building, because again the square footage impact sticks to the zoning requirements, it's really just the shape and the connection of the 3 buildings that is the variance.

Mr. Weiner inquired whether the option with the pods is going to look like 3 separate buildings from the street. Mr. Rosen replied that only 2 of the pods would be seen from the road.

Mr. Weiner asked whether that was the design they were going to go with. Mr. Rosen replied he would guess it would be up to the Planning Board and Mr. Vuillaume agreed.

Chairman Dudick also brought up the issue of precedent, advising if this Board granted a variance for a 15,500 SF for a building in this Zone which only allows for 4800 SF buildings, what could he possibly say to another applicant who requested the same relief.

Mr. Dudick then made a motion to close the Public Hearing. Mr. Cifor seconded. All voted in favor and the Public Hearing was closed.

Mr. Bloss inquired whether Columbia Development owns the property, and if not, whether they would be seeking to own it in the future. Mr. Rosen replied they do not currently own it, but that because the tenants want one landlord who is not a physician to own the property, if the variances were granted, they would buy the property, develop it and lease it back to the tenants.

In response to Mr. Weiner's inquiry on how they would assure that the tenants would share x-ray and MRI facilities, Mr. Rosen replied from a leasing standpoint, the tenants would have to have their own internal agreements.

Mr. Bloss stated that although he agrees with the Chairman's assessment that this request is far beyond reasonable relief from the Zoning Code, he does appreciate the facts put forth by the applicant about shared services and ease of going between offices and inquired whether there are any other avenues the applicant could pursue that would get them over the hump.

Mr. Dudick suggested that perhaps the buildings could be connected underground. Mr. Myers replied he did not know, but that the square footage of the building is the same whether its above ground or below ground.

Mr. Bloss suggested that perhaps if the applicant were to apply for a PUD, that would get them out of this particular zoning box.

Mr. Myers advised that was correct because PUD legislation would be very specific and might allow the applicant to do what they want to do. Mr. Dudick and Mr. Weiner agreed.

Mr. Vuillaume asked if it would be possible to table the application for another meeting to allow them to look at some other building alternatives.

Mr. Dudick expressed concerns on whether the Board should set an expiration date of some sort, in case the applicant doesn't come back before the Board. Mr. Myers stated the applicant would only have to waive the 62-day requirement for the Board to decide the application and could come back for the January meeting if that was enough time.

Mr. Vuillaume agreed to table the application until the January 2018 meeting, stating at that point they can either withdraw the application or request a vote on it.

Application tabled until the January 2, 2018 meeting.

The secretary read the legal notice as it appeared in The Gazette on November 16, 2017:

- 4. Application from Rick Peabody to subdivide existing lot into 2 parcels in an R-1 Zone. One parcel with existing house will be 20,000 SF and require no variances if property is connected to public water and sewer. The newly created parcel will require 2 area variances as follows: 1) Section 208-11 requires minimum lot size of 20,000 SF. 19,731 SF available; 269 SF variance required and 2) Section 208-11 requires 100' lot width at building line. 99.81' available, .29' variance required. Property is located at 757 Carlton Road, Clifton Park, NY 12065. (Permit #81145).**

John Petrucco from Advance Engineering and Surveying presented the application, advising Mr. Peabody is requesting variances for the second lot of a 2-lot subdivision. He explained that the lot on the easterly side with the existing house will have the required 100' of frontage, 100' width at the lot building line and will be 20,000 SF; whereas the second lot is .019' short of the 100' required frontage requirement; is 0.16' short of the 100' width at the building line requirement; and will be 269 SF short of required 20,000 SF.

Mr. Petrucco added that they are proposing to service the 2 lots with a 1 ½" pressure sewer which would run along Carlton Road up to Torrey Pines and tie into a manhole there and that there is a water main located on Carlton Road which could be tapped into for water service for the lots as well.

Mr. Weiner inquired whether the applicant was willing to make those connections a condition if the variances were granted and Mr. Petrucco advised that he would.

Mr. Myers advised that although these are fairly small variances, they all depend on both properties being connected to water and sewer, which should be a stipulation to any variances granted. He added that Mike O'Brien, the head of the Town Sewer District was aware of and is okay with the proposal. He also confirmed this is a Type II action and therefore, no further SEQRA by the Board is required.

In response to inquiries from Mr. Cifor and Mr. Dudick, Mr. Petrucco confirmed the existing house is currently serviced by a septic system located behind the house and a well.

Chairman Dudick opened the Public Hearing and asked for questions or comments. Being none, he made a motion to close the Public Hearing. Mr. Fantini seconded. All voted in favor and the Public Hearing was closed.

Mr. Klimes made a motion to approve the application with the condition that both lots be connected to public water and public sewer. Mr. Fantini seconded.

Mr. Klimes stated that he does not believe an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the variances; that although they applicant does not have to build a second lot, the benefit sought by the applicant cannot be achieved by some other method feasible for the applicant to pursue and that the requested variances are not substantial. He added that he does not believe the proposed variances will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district and that although the alleged difficulty is self-created, that is only a consideration which does not overwhelm the other criteria.

The secretary called the Vote:

Ayes: Mr. Cifor, Mr. Klimes, Mr. Dudick, Mr. Fantini and Mr. Bloss

Noes: None.

Mr. Myers noticed that an Owner Authorization form had not been completed. The property owner, Rick Peabody, who was present in the audience verbally stated for the record that he did in fact authorize Mr. Petrucco to present the application on his behalf and signed the required form for the Town's records.

Application approved with the condition that both lots be connected to public water and public sewer.

The Chairman and Mr. Weiner then addressed the students present in the audience and explained to them the function of the Zoning Board of Appeals and the differences between area variances and use variances.

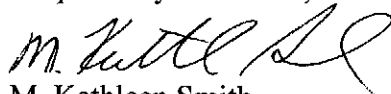
Mr. Dudick made a motion to approve the minutes from the November 21, 2017 meeting. Mr. Dudick, Mr. Klimes, Mr. Fantini and Mr. Bloss, who were present at that meeting, all voted in favor and the meeting minutes were approved.

Mr. Cifor made a motion to adjourn the meeting. Mr. Fantini seconded. Approval was unanimous and the meeting was adjourned at 8:30 p.m.

Chairman Dudick reminded everyone of his invitation to attend his annual Holiday lunch on December 13, 2017.

The next meeting is scheduled for January 2, 2018 and will be held in the meeting room upstairs.

Respectfully submitted,



M. Kathleen Smith

Secretary, Zoning Board of Appeals

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