

Town of Clifton Park

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APPROVED

4-3-18

Zoning Board of Appeals



ZONING BOARD OF APPEALS March 6, 2018

Present: Chairman Dudick, Chris Lemire, Lisa McCoy, Mario Fantini, David Donohue and Michael Bloss.

Absent: Jerry Cifor and John Klimes.

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

The Meeting was called to order at 7:04 p.m.

PLEDGE OF ALLEGIANCE
ROLL CALL

Chairman Dudick announced that alternate member, David Donohue would be voting in place of Mr. Cifor.

OLD BUSINESS

NONE

NEW BUSINESS

The secretary read the legal notice as it appeared in The Gazette on March 1, 2018:

1. Application from Windsor Development for 3 area variances for building identification wall signs as follows: 1) Sign Law Chapter 171 Chart 1 allows for up to 60 SF of wall signage; 2 wall signs proposed for north and south ends of the building totaling 110 SF, 50 SF variance required; 2) Sign Law Chapter 171 Chart 1 allows for maximum sign height of 20'; 56' proposed, 36' variance required; 3) 9 SF sign proposed over south entrance door, variance required for 3rd wall sign and another 9 SF. Applicant also requests 6 area variances for tenant spaces as follows: Sign Law Chapter 171 Chart 1 allows 32 SF of wall signage for each tenant; 1) No. 4/19 = 45 SF requested, 13 SF variance required; 2) No. 5/18 = 81 SF requested, 49 SF variance required; 3) No. 6/17 = 81 SF requested, 49 SF variance required; 4) No. 9/14 = 81 SF requested, 49 SF variance required; 5) No. 10/13 = 81 SF requested, 49 SF variance required

and 6) No. 11/12 = 45 SF requested, 13 SF variance required. Property is located at 15 Clifton Country Road, Clifton Park, NY 12065. (Permit #81153)

Bob Miller from Windsor Development presented the application. He explained that the 60,000 SF building at 15 Clifton Country Road is the first building being built in the Town under the new Form Based Code, which is a Code that is looking to create vibrancy and activity along Clifton Country Road in the Town Center. He stated that the Code itself has forced a situation where the building is pushed up to the road and that there will be on street parking on Clifton Park Center Road which will be put in as part of development site work in the spring with a sidewalk. There is also the traditional retail parking on the west side of the building that faces Hannaford. He advised the application can be broken into two parts; tenant signage for the commercial tenants on the first floor which is 15,000 SF for retail and residential signage for 36 apartment units.

With respect to the signs for the commercial tenants on the first floor, he compared this application to what was previously done at 5 Southside Drive where Moe's and Jersey Mikes is, in that they are looking to obtain an overall sign package for the building which they will then control with their leases, so they don't have to keep coming before the Board to obtain variances.

Each tenant is allowed 32SF of signage and they are looking to get signage on both sides of the building for each tenant on the first floor. He explained this is a building they are developing on spec and they are looking to get 8 tenants.

Mr. Miller explained that for the one side of the building they are looking at a total of 238SF of signage for the 8 tenants. Therefore, the aggregate signage on the one side of the building is less than what is permitted by Code, because each tenant is allowed 32 SF. However, the variances are needed for each tenant's second sign on the other side of the building. He explained when they did Borders, there were comments from the public that the back of Borders looked like a warehouse because there was no signage. He added that the second wall signs are very important to their tenants, because they are all going to want a presence on Clifton Country Road as well as on the west side of the building facing Hannaford.

With respect to the residential tenants, the other half of the application is for two 55 SF building identification signs that will be on the north and south sides of the building, along with a 9 SF sign on the south side to illuminate the entrance to the residential component and a height variance will be required as well.

Upon inquiry from Mr. Lemire, Mr. Miller explained that this is really a two-fronted building and it will be up to each tenant to decide if they want to have two entrances or not. He added that the building next door which is under construction is going to have Blaze Pizza on the north end with an entrance to the patio on Clifton Country Road and Core Life Eatery on the south side, with parallel parking on Clifton Country Road, although there is currently a right in, right out, ingress/egress point between the two buildings that will stay.

Mr. Miller explained that Tenant #6 is the same as Tenant #17 on the plan because those two numbers coordinate when you flip the building around.

Upon inquiry from Mr. Dudick and Mr. Lemire, Mr. Miller advised it is not their intent to split the two corresponding spaces to have 2 different tenants. Their intent is to subdivide the building with the walls running east and west and the spaces running north and south, with deliveries to be made on the Hannaford side.

Mrs. McCoy commented that with the signage on both sides of the building, it will look like the front of the building from Clifton Park Center Road and from Hannaford, rather than looking like the back of building.

Mr. Miller replied that was correct, as they believe one of the best ways to make the back of a building look like a front is to sign it and put awnings up, which is what they are doing on the east side of the building facing Clifton Country Road and there will be awnings running all along the building. He further clarified that all the requested signs are 2' 3" in height, they just vary in width.

The Chairman opened the Public Hearing, asked for questions or comments, and advised all comments would be limited to 3 minutes.

John Ryan from Clifton Knolls acknowledged it had been stated there is no intent of splitting the stores, but inquired what would happen to traffic if they did decide to split them in the future. He also commented there is not much room and they would have to encroach on Hannaford for parking.

Mr. Dudick pointed out this building and Hannaford have the same landlord and therefore, they wouldn't be encroaching.

Mr. Miller stated later on in the meeting, the applicant does also own Hannaford; there are several reciprocal easements for parking that exist; and that this project is parked to Code for the uses that are in this building. He also added that there is going to be restricted parking for the residential component and they may have 1 or 2 designated parking spots for specific commercial tenants, but other than that it's going to be park where ever you want.

Mr. Myers advised that he doesn't see an issue as far as the requested signage but questioned whether the applicant is going to restrict the tenants to a sign that's no larger than 2' 3" tall, pointing out if they wanted anything beyond that, they would have to come back before this Board. He also advised this is a Type II action and therefore, no further SEQRA review by the Board is required.

Mr. Miller replied that they would be restricting tenants to that height.

Board Counsel inquired whether the applicant would agree to a condition that the height of each commercial sign shall not exceed 2' 3". Mr. Miller stated they would absolutely agree to that.

The Chairman made a motion to close the Public Hearing. Mr. Bloss seconded. All voted in favor and the Public Hearing was closed.

The Chairman then made a motion to approve the application as submitted, with the condition that the commercial signs shall not exceed 2' 3" in height.

Mr. Bloss seconded.

Mr. Dudick stated 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 area variances; that he does not believe the benefit sought by the applicant can be achieved by any other method feasible for the applicant to pursue other than the area variances and that the requested variances are not substantial because if the building was one sided, it would conform with the Code. He added that he does not believe the granting of the variances will have an adverse effect on the physical or environmental conditions of the neighborhood or district, because we are going to have new buildings along the side of the road as part of our Form Based Code, which is the desired effect and that although all variances are self-created, it is not detrimental to approval.

The secretary called the Vote:

Ayes: Mr. Lemire, Mrs. McCoy, Mr. Dudick, Mr. Fantini, Mr. Donohue and Mr. Bloss.

Noes: None.

Application approved with the condition that no commercial sign will exceed 2' 3" in height.

The secretary read the legal notice as it appeared in The Gazette on March 1, 2018:

- 2. Application from Joseph T. Scalia, Jr. for an area variance from Section 208-11 which requires a 25' rear yard setback in an R-1 zone; 21' 8" requested for deck; 4' variance required. Property is located at 33 Gretel Terrace, Ballston Lake, NY 12019. (Permit #81154).**

Joseph T. Scalia, Jr. and his wife, Rita presented the application, explaining they currently have a stone patio in their wooded back yard which they wish to change to a deck. The deck will be 15' deep from the top of the porch at approximately the same height. They advised that Cloverleaf Farms owns the property behind them, that the required notice was sent and that there is a stream that separates their respective properties.

The Chairman 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. Myers stated that he has no issues with the proposal and that this a Type II action and therefore no further SEQRA by the Board is required.

Mr. Bloss made a motion to approve the application as submitted. Mr. Fantini seconded.

Mr. Bloss stated that he does not believe an undesirable change in the character of the neighborhood would be created by the granting of the variance; that the benefit sought cannot be achieved by any other method feasible for the applicant to pursue; that the requested variance is not substantial; that he does not believe the proposed variance will have an adverse effect on the physical or environmental conditions of the neighborhood or district and that although the alleged difficulty is self-created, that does not overwhelm the other criteria.

The secretary called the Vote:

Ayes: Mr. Lemire, Mrs. McCoy, Mr. Dudick, Mr. Fantini, Mr. Donohue and Mr. Bloss.

Noes: None.

Application approved.

The secretary read the legal notice as it appeared in The Gazette on March 1, 2018

3. Application from Robert L. Phillips for a use variance to renovate a pre-existing, non-conforming use office building to apartments. Pursuant to Section 208-10B multi-family residences are not allowed use in an R-1 Zone and Section 208-97B(1)(a) does not allow an existing non-conforming use to be changed to another non-conforming use. Property is located at 1 Barney Road, Clifton Park, NY 12065. (Permit #81155)

Jacqueline Phillips Murray, Esq., thanked everyone for taking time out of their schedules to be here and advised they've observed the articles in the paper, the petitions and understand there is a lot of public interest in this project. She explained she is the daughter of the applicant, Robert and Sylvia Phillips who have owned the building since 2001 and has also been a resident of the Town since 1977 and as such, is very familiar with the property, understands the importance of the property to the neighborhood, as well as the role that it filled when it was originally built and what it was intended for.

She explained that the building as it currently exists, is not operating as a permitted use. It is a pre-existing, non-conforming use that was built in 1972. She advised they had submitted a report comparing it to other buildings in the Town and the area that are used for commercial office space, which report concludes that the building has become functionally obsolescent and that it cannot compete in the commercial office market. She added that her family has made a go of it since 2001 operating it as a commercial office space and that over the years, they have suffered many vacancies, reduced rents and in good faith have tried to make go of it in its pre-existing, non-conforming use, but the numbers aren't there.

Ms. Murray advised that they had met with neighborhood leaders back in December of 2015 in an effort to reach out to the community, let them know the situation regarding the building and that's its current use is not sustainable for the long term from a financial prospective. She added the building does have debt associated with it and therefore, it is not a simple fix because the numbers just aren't there and the numbers keep getting worse.

She noted that when they met with the community leaders in December of 2015, they had presented a proposal to completely re-develop the parcel with 55 apartment units, which would have changed the building to 3 stories and extended the footprint of the building. When they met with the community leaders, from her vantage point, there was an appreciation that the building didn't fit into the residential neighborhood as a commercial use. She opined that the biggest room would be for improvement of the aesthetics of the building because of its age, structure and design. That said, what they heard loud and clear in their 2015 meeting was not an objection to changing the use to be residential which is more consistent than the commercial use that currently exists there, but concerns about density, traffic and largely about extending the building footprint in a fashion that would change the aesthetics, change the view that people currently enjoy when they drive down the street; change the view that's above the two story building if they extended the height to three stories; and change the views when you're looking across from the pool or from the golf course. She advised that they took all of that into consideration and threw the 55-unit plan in the garbage.

Ms. Murray advised that what they learned from reading the petitions and the comments online is that they need to do a better job communicating more concrete details of the plan to the residents because they are not here to try to do something that diminishes the quality or aesthetics of the neighborhood. She added that the reason they are here is because they can't sustain the building based on the rental income that it generates in

a fashion that is going to be aesthetically pleasing that will keep the building to a decent standard. Taking into consideration what community leaders told them at the end of 2015, they have come to this Board for a use variance. The use variance application is to not change the footprint of existing building. The plan is to stay within the four corners of existing building footprint and change the use so that its consistent with the residential use in the neighborhood and by no means can they fit 55 units in that footprint. She explained that they realize they need to give the Board and the public more details about the project and they would like to seize this opportunity to arrange a meeting with members of the public and with the same civic association or any new civic association leaders in the community, sit down, listen to their comments and concerns and determine how they can address them, because they believe their objective will better the neighborhood.

Ms. Murray indicated they've heard from several residents that they are ready to downsize and would love to be able to move into an apartment in this community and still stay in their neighborhood and they see that as a great opportunity for people. They think this project could be done in a way that meets the needs of the community, meets the needs of the residents who want to stay in the neighborhood but don't want to maintain their homes anymore and also create a beautiful place for people to live because of the infrastructure that surrounds the building.

Therefore, Ms. Murray advised what they are proposing tonight is, rather than delving into the use variance application when they believe there is a lack of information about the project out there, they would like to table the application this evening so they can have an opportunity to arrange a meeting with the community, get their comments directly on the project, and give the community the details of the project and then come back before the Board.

On a procedural note, she added that they are here tonight on a very narrow issue and the Zoning Board's role is to decide whether there is a justifiable reason to allow a change in the use as compared to the uses that are permitted. She explained that the building has significant constraints because of the parking on each side of the building, over which the Town has easements due to the existing waterways around it, and as such there are not permitted uses that will easily fit on the parcel.

Ms. Murray explained when they come back before Board they will have to demonstrate criteria that are mandated by State Law that will justify any decision regarding a use variance. Thereafter, the process is not over. The process then will entail that the Planning Board will have to review the site plan design issues.

The Chairman pointed out to Ms. Murray that typically applicants address the Board and the audience gets to observe, but for the last few minutes she has been addressing the public and the Board has been the observers. He added that if the Board is not going to hear her application today, it does not need to hear the details of her meeting with the public.

Ms. Murray agreed that was a fair point and concluded by reiterating they plan to do some outreach with the civic association leaders in order to coordinate their dialogue with the community and the reason they are asking the Board to table the application from review, is because they would prefer to revisit the application with the Board after they have had a meaningful opportunity to engage in some outreach with the community and further refine the details of the project.

Chairman Dudick inquired whether the applicant would be willing to waive the 62-day rule within which the Board is required to come to a conclusion on the application and Ms. Murray advised that they would.

Mr. Weiner inquired if Ms. Murray would be willing to voluntarily notify the civic association when they plan to come back in and she advised that she absolutely would.

The Chairman reminded the public that if they wanted to check to see if the matter was on the Agenda, there are postings on the bulletin boards in the Town Hall, there are postings on the Town Website and a legal notification is published in the Schenectady Gazette.

Upon inquiry from Mr. Myers, Ms. Murray indicated their goal would be to come back before the board within the next 60 days.

Mr. Myers requested that she please contact him about the required notices to the surrounding property owners prior to coming back and Ms. Murray agreed.

Application tabled.

Mr. Bloss inquired whether the application would be required to be re-noticed to everyone within 500' of the subject property when the applicant decides to come back.

Mr. Myers advised re-notification would be required which is one of the reasons he had requested Ms. Murray contact him and then suggested that the Board expand the distance of the notification requirement because of the water on one side of the building and the nature of the application. He further advised he doesn't really have a number, but that if the Zoning Board doesn't have a problem with him coming up with one, he would do so.

Mr. Dudick indicated he would not have a problem with Mr. Myers doing that, but Mr. Weiner advised he had discussed that issue with Tom McCarthy, Esq. and it was questionable whether the Board can compel going beyond the radius distance outlined in the Town Code. However, he added that the Board could ask for voluntary communication by the applicant but opined going through the civic association might be the most effective way of communicating to the mass number of people.

Mr. Dudick inquired how many people were notified within the required 500' radius and Ms. Murray replied they had sent out certified mailers to the 24 residents that were provided to them by the Town and had supplied an affidavit of such service. She also pointed out that one of the properties was the golf course which creates a significant amount of area where no notice is being required to a resident.

Mr. Dudick inquired whether the applicant would be willing to voluntarily expand the notification radius to 1000' feet. Ms. Murray agreed to do so, but requested that the Town provide her with the addresses and requested permission to supply the notice to the required residents within 500' by certified mail and the supply the notice to the residents within the additional 500' by regular US mail and provide an affidavit of such service. She further agreed to notify the civic association as well.

Mr. Weiner then explained the four criteria under McKinney's Town Law, the applicant must meet in order to achieve a use variance which the Board will consider to determine if they have met them all, which are:

1. The applicant cannot realize a reasonable return provided that lack of return is substantial and demonstrated by competent financial evidence;
2. That the alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood;

3. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
4. That the alleged hardship has not been self-created. There are aspects to each of these that would be developed during the presentation by the applicant for the Board's consideration.

Due to number of residents present in the audience, Chairman Dudick announced he would be willing to take questions, but cautioned that because the application had been tabled, he would only take questions about process, procedure and general matters and would limit such questions to 3 minutes.

At this point several residents of Clifton Knolls inquired and/or commented as follows:

- Josh Kaplan inquired whether it was common practice to hold a hearing such as this to rescue someone from a bad investment and whether it is common practice for a civic association to have an attorney on retainer, to which Mr. Dudick replied that the Board gives everyone who is a property owner in the Town an opportunity to make their argument and that it was certainly within their rights to do so;
- Jim Taylor, an attorney residing at 38 Beechwood opined that it would be appropriate for all of the residents on the 7 major exit roads from the neighborhood to be on notice of these proceedings and inquired what vehicle the Town has in place to notify all the parties if there are amended submissions made prior to the next hearing; to which Mr. Myers replied that the applications are always available in his office for review by anyone;
- Sherry Kearns of 10 Barney Road stated that she had an addendum attached to her deed that specifically states that the parties of the first part will layout said proposed subdivision in a manner so that any house, building or other structure is separated from the 3 ponds by a road or recreational area and that in any event, no house built or other structure shall be located within 125' of the 3 ponds, except the proposed club house. Furthermore, the parties of the part hereby grant and release to the party of the second part, a permanent easement for ingress and egress to said ponds and for the purpose of maintaining the same in the event the parties of the first part fail to do so. Mr. Dudick advised that information should be supplied to the Building Department.
- John Seaman inquired whether the Zoning Board acts on assertions of financial hardship or if they look to have actual documentation of a condition and when the SEQRA review would be done; to which Mr. Dudick replied the Board looks for tangible documentation and that the SEQRA review would be done when the application was presented.
- Suzanne Moore inquired whether the Board looks at the applicants history in the town and prior previous experiences with them when reviewing an application and what recourse people have if the Board makes a determination that the residents of the development don't agree with; to which Mr. Weiner replied, generally no and that Article 78 proceedings can be initiated if someone wants to challenge a determination made by this Board.
- John Ryan commented that notifications to residents within 1000' is not sufficient and that a lot of people don't belong to the civic association.
- Randall Ezick advised that he believes the public hearing notice provisions contained within Article 7 of the Public Officers Law apply due to the public interest and use of the golf course, park and swimming pool surrounding the subject property; to which Mr. Weiner replied that he would review that Article;
- Ray Zanta inquired whether residents of the dwellings or the owners of the property within 500' were required to be notified; to which Mr. Weiner replied the owners.
- Paul Yager suggested that the public would prefer a meeting with the applicant, rather than the applicant meeting with the civic leaders; to which Ms. Murray replied that they are proposing to use

the civic association as the avenue to get the word out, but that she would welcome any comments, again pointing out her personal contact information is included in the application materials;


- Bill Kellar of 2 Barney Road inquired where he could get information about the Town's understanding of the easements on the property; to which Mr. Myers replied John Scavo in the Planning Department;
- Marlys McGinniss, the Chairman of the Clifton Knolls Park District suggested tearing down the building and putting a park there with the applicant's name on it;
- Rob Brown inquired whether the applicant could continue to table the application indefinitely; to which Mr. Dudick replied it would be very unusual;
- George Kenyon who owns 15 A&B South Barney Road stated that it was poor planning to have the applicant get everyone together here tonight and then not even have an application to present and that he would like to see quality senior housing in the building;
- Paul Yager commented that property owners apparently don't have the same rights because if he doesn't pay his bills he's out of his house, but if the applicant doesn't pay his bills he comes in for a variance to change their entire neighborhood and stated the property is dilapidated. Mr. Dudick inquired how he came up with that conclusion and Mr. Yager replied because Ms. Murray had stated there was debt associated with the property. Mr. Dudick pointed out that all property has debt.

The Chairman made a motion to approve the minutes from the February 2, 2018 meeting. Mr. Dudick, Mrs. McCoy, Mr. Fantini, Mr. Donohue and Mr. Bloss, who were present at that meeting, all voted in favor and the meeting minutes were approved.

The Chairman made a motion to adjourn the meeting and Mr. Fantini seconded. Approval was unanimous, and the meeting was adjourned at 8:55 p.m.

The next scheduled meeting is scheduled for March 20, 2018.

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