

Town of Clifton Park

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Zoning Board of Appeals



APPROVED
8-15-17

ZONING BOARD OF APPEALS June 20, 2017

Present: Chairman Dudick, Jerry Cifor, Michael Bloss, Lisa McCoy, Chris Lemire, Terrance Cosgrove

Absent: Gifford, Fantini, Smith (Secretary)

Also Present: Neil Weiner, Esq., ZBA Counsel
Steve Myers, Director, Building and Zoning
Meg Springli, Secretary pro tempore

The Meeting was called to order at 7:05 p.m. by Chairman Dudick and he designated Terry Cosgrove as a voting member in place of Mr. Gifford for the evening. Mr. Dudick also noted that Meg Springli would be the alternate Secretary in the absence of Kathy Smith.

PLEDGE OF ALLEGIANCE
ROLL CALL

Mr. Weiner, Zoning Board Attorney, explained that Satin Beak, LLC would need to be reviewed tonight on its merits as a new variance application and not as a revision, due to a technicality. The attorney noted that at the time of the denial in February, the Saratoga County Planning Board had not received the application per Municipal Law 239m for a 30-day review period. Mr. Weiner then stated that case law would require that, in this instance, the application would be treated as if it were brand new, therefore the past decision is nullified. Chairman Dudick asked to clarify why the County Planning Board must be asked to weigh in prior to the decision by the ZBA. Mr. Weiner explained that when an application was adjacent to County or State owned parcels and/or highways, the Saratoga County Planning Board must be given the opportunity to review the application and that they in turn have a 30-day review period in which to offer their recommendation. Mr. Myers explained that the SCPB had been told earlier that the project was on hold, and due to an oversight, they were unable to review the application as it was voted on by the ZBA on 2/7/17. The Chief Zoning Officer added that, for that reason, the last application was considered null and void and that the SCPB sent a review letter dated June 19, 2017, therefore, the Zoning Board of Appeals would be reviewing it as a new application based strictly on the merits of the present application.

NEW BUSINESS –

Mr. Dudick reminded the applicant that the ZBA Alternate would be voting a voting member for the night and that 4 out of the 6 votes would need to pass a resolution or motion. Mr. Andress stated that applicant would like to continue with the meeting.

The item was carried over from June 6, 2017 at the request of the applicant's attorney that the matter be postponed until the June 20, 2017 ZBA Meeting because Saratoga County Planning had not yet had an opportunity to review their application.

The Secretary read the legal notice as it appeared in The Gazette on June 15, 2017:

- 1. Application from Satin Beak LLC for 3 area variances from: 1) Section 208-33B which allows maximum area of a new building to be 4800 SF. Applicant requests 6,961 SF single story building; 2,161 SF variance required; 2) Section 208-35D(2) which requires a 25' parking setback. 0' proposed; 25' variance required; and 3) Section 208-35D(4) requires a 10' buffer along the property line. 0' proposed; 10' variance required. Property is located at 950 and 954 Route 146, Clifton Park, NY 12065. (Permit #81132).**

Tom Andress of ABD Engineers and Peter Murray, Attorney, represented the applicant, Satin Beak LLC (Sal Galluzzo) in this request for area variances to construct a 6,961 SF single story building in a B-1 zone. Mr. Andress described the application as it was shown on an aerial map situated on New York State Route 146 bordered by property owned by the Shenendehowa Central School District, a commercial building and a medical complex with a smaller building up front and an 8,000 sf building in the rear which had been granted variances in the past. Mr. Andress also indicated where the variances for parking would be located along the entry drive along the property line. Mr. Andress noted that with parking abutted to the property line required the 3rd variance that would eliminate the 10' buffer along the property line. Next, the consultant explained that the lot could meet the overall density requirements in the zone, but that Code dictated the maximum square footage allowed for any one building, therefore they were seeking an area variance for a larger building. The square footage on the entire lot would be increased by 13.9%. Then Mr. Andress discussed alternative scenarios which had been considered and ultimately deemed not to be acceptable to the client.

Board members stated that they felt the proposed size of the building would not affect the character of the neighborhood.

Mr. Lemire asked for and received clarification on the density calculations as indicated on the application. Mr. Andress explained that the other building to the rear had been a daycare center for many years. Then the consultant stated that a parking agreement and cross access easement with the parcel next door would allow the project to reach the required parking spaces. Mr. Lemire then asked how that might carry with the land. Mr. Andress explained it would be a permanent deeded easement. Mr. Dudick asked if a lot line adjustment were feasible and Mr. Andress responded that it would not be.

Next Peter Murray of Murray Law Firm, then spoke on behalf of the applicant, and noted that there was some administrative precedent from a prior Zoning Board of Appeals decision. Mr. Murray explained that 942/942A, also in the B-1 zoning district, received an area variance of 3200' sf for building an 8000+/- sf medical building in 2003. Mr. Murray also stated that New York State Town Law affords the board the opportunity to mitigate self-created hardship and that the Board should use the 5 criteria as a balance test of

the benefit to the applicant versus the health, safety and welfare to the surrounding neighborhood. Mr. Murray offered the following responses to the criteria:

- A. No negative impact to the character of the neighborhood.
- B. Alternatives considered to area variance being sought –goals cannot be reached without increasing the size of the building and rearranging parking.
 - a. Existing practice is growing and needs more space.
 - b. Existing tenant has stated that they would leave without being able to increase space.
 - c. A new tenant seeking this location in Clifton Park, needs space.
- C. The hardship may be considered self-created but due to the applicant owning the adjoining parcels, the shared parking agreement will alleviate issues within the complex itself.
- D. No impact to physical and environmental conditions in neighborhood.
- E. 45% was not substantial compared to the 68% increase granted to nearby medical building (942/942A Rt 146) in 2003 ZBA decision. Parking variance would be substantial but the unique arrangement with the neighboring lot which was owned by the same owner and shared access already existed in the office complex.

Mr. Dudick noted that the lot was 2 acres so that by zoning code, two 4800 sf buildings would be allowable.

Mr. Bloss stated that he felt that this application was less substantial than an earlier version.

Mr. Myers informed the Board that this application had eliminated one variance from the prior submittal and that he felt that this current application was a good fit in the neighborhood, especially when taking into consideration the earlier ZBA variance granted to the nearby medical building.

Board members asked if a cross access easement and shared parking could be made a condition of approval. Mr. Murray explained that it would be written and filed with the County in the event of a change of ownership. Mr. Andress noted that an agreement was already in place and only needed to be amended.

Mr. Weiner explained that the ZBA would be able to place conditions on the approval.

Mr. Dudick asked if car sales were to be part of the business on this property, and if the applicant would be willing to agree that a vehicle that advertised car sales be removed from the property. Dr. Galluzzo stated that he had a lease to place that vehicle on the property and that he would be in breach of a contract, but that he could agree to move the vehicle with the sign wrap so that it would not be visible from Route 146.

Mr. Dudick asked for a 5 minute recess to confer with counsel and the Chief Zoning Officer, and then they returned. [Taping was paused during this brief recess]

Mr. Murray remarked that his client would agree to move the car to any spot on the property and it was agreed by Board members that this was an issue that would be resolved to the satisfaction of the Director of Building and Zoning, and need not be a condition of approval of the variances.

Mr. Lemire moved, seconded by Mr. Cifor to close the hearing at 8:11PM. The motion was unanimously approved.

Mr. Weiner noted that any action taken at this meeting would not be deemed to allow illegal signs on the property.

Mr. Myers noted that it was a TYPE II action and no further action would be required pursuant to SEQR.

Mr. Cifor moved, seconded by Mr. Lemire to accept the application for three variances as submitted, with the condition that the cross access easement and shared parking agreement be formalized and filed with the Saratoga County Clerk.

Mr. Lemire stated that he had seconded the motion based on the five criteria for area variance review.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - a. Response: No undesirable change
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - a. Response: It appears that the applicant has studied the alternatives
3. Whether the requested area variance is substantial
 - a. Response: yes
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
 - a. Response: No adverse effect
5. Whether the alleged difficulty was self created;
 - a. Response: Yes, however on the balancing test of the criteria, it is felt that 3 positives outweigh the negatives.

Ayes: Lemire, Bloss, Cifor, McCoy, Cosgrove, Dudick

Noes: None

The application was unanimously approved with conditions.

Mr. Dudick stated that the stipulation for a parking easement would be that 950/952 Route 146 would grant an easement to 954/956 Route 146. Mr. Dudick also noted that the final number of parking spaces would be determined by the Planning Board during site plan review and that the ZBA variances would sunset if the Planning Board ultimately denied site plan approval. Mr. Murray remarked that the Easements would not be filed until site plan review was approved by the Planning Board

Mr. Dudick then noted that the Board was pleased that the applicant had made a reduction to minimize the size of the variance, and that it found that precedence was not an issue.

Chairman Dudick then made a motion to approve the minutes from the June 6, 2017. Mr. Dudick, Mr. Lemire, Mr. Fantini, Mr. Cosgrove and Mr. Bloss, who were present at that meeting, all voted in favor and the meeting minutes were approved as written.

The meeting minutes from the May 16, 2017 meeting were not approved due to the absence of one of the attendees.

Mr. Weiner explained that the June 6, 2017 variance for Stewart's needed to be nullified based on 239m of General Municipal Law due to the fact that the SCPB did not review the project prior to the ZBA meeting and that the decision was made before their 30-day review period had expired. Mr. Kemper, the Saratoga County Planning Director noted that the Planning Board had some issue with the project that needed to be considered, and that plans submitted to the County were apparently different from the plans submitted to the Town. Mr. Myers explained that he had a conversation with the representative from Stewart's, so they were aware they may need to reappear before the Zoning Board. Mr. Weiner read a note from the SCPB Director that was shared with Board Members. It was explained that the decision was now null and void.

Mr. Myers explained that there would be some changes in the submittal process to guarantee SCPB review in these matters henceforth.

Mr. Dudick made a motion to adjourn the meeting. The motion was seconded by Bloss. Approval was unanimous. The meeting was adjourned at 8:21 p.m.

The next scheduled meeting is July 18, 2017.

Respectfully submitted,



Meg Springli

Secretary pro tempore, 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