

# Town of Clifton Park

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## Zoning Board of Appeals



APPROVED  
9-5-17

## ZONING BOARD OF APPEALS August 15, 2017

**Present:** Chairman Dudick, Chris Lemire, Jerry Cifor, Lisa McCoy, Terry Cosgrove, Mario Fantini and Michael Bloss

**Absent:** None.

**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 thanked Randy Gifford for his many years of service on the Zoning Board of Appeals and welcomed the newly appointed Alternate ZBA Member, John Klimes.

PLEDGE OF ALLEGIANCE  
ROLL CALL

### OLD BUSINESS – N O N E

### NEW BUSINESS

*The secretary read the legal notice as it appeared in The Gazette on August 10, 2017:*

1. **Application from Stewart's Shops Corp. for 10 variances for the construction of a 3,675 SF building with gas canopy as follows:**
  - 1) Section 208-98 requires 130' setback from Route 146 road centerline. 114' available from the north; 16' variance required;
  - 2) Section 208-38C requires 80' setback from north property line. 40' available on the north; 40' variance required;
  - 3) Section 208-98 requires 130' setback from Route 146 centerline; 76' available; 54' variance required; and 54' variance required from Vischer Ferry Road centerline;
  - 4) Section 208-38C requires 80' setback from property line. 53' available; 27' variance required;
  - 5) Section 208-98 requires 130' building setback from Vischer Ferry Road centerline. 98' available; 32' variance required;
  - 6) Section 208-39 requires one exit/entrance per establishment per road. Two exits on Route 146 proposed. Variance required for the second exit/entrance;
  - 7) Section 208-38G requires 35% greenspace. 20% proposed; 15% variance required;
  - 8) Section 208-40 requires a 10' landscaping buffer. Buffer not 10' wide in many areas; variance required;

- 9) **Sign Law Chapter 171 Chart 1 allows 32 SF of wall signage. 39 SF proposed; 7 SF variance required; and**
  - 10) **Sign Law Chapter 171 Chart 1 requires 15' setback for freestanding sign. 7' proposed; 8' variance required.**
- Property is located at 1206 Route 146, Clifton Park, NY 12065. (Permit #81136).**

Marcus Andrews of Stewart's went over the application that was previously presented to the Board on June 6, 2017. He reiterated they are seeking 10 variances for the proposed redevelopment of the existing Stewart's and adjacent hair salon at the corner of Route 146 and Vischer Ferry Road, with both buildings to be demolished for the construction of a new shop, a gas canopy and underground gas tanks. They are proposing a full access curb cut; both ingress and egress on Route 146; full ingress on Vischer Ferry Road; a right out only on Vischer Ferry Road; 6 fuel islands with 12 fueling points; a new building with 2 entrances; an exterior patio area, LED lighting; and advised they will have decreased green space due to the Planning Board requirement to add sidewalks and continue the multi-use bike path along Route 146.

He added that they have reached out to the neighbor behind the shop in an effort to obtain an easement for ingress and egress on the western side of the parcel in order to eliminate the furthest western curb cut, but have not heard back from them. He added that part of their plan approval provides that if the neighboring parcel (North Country Commons) comes to the Town for any improvements in the future, the Town will require shared access, which Mr. Andrews confirmed was acceptable to Stewarts and agreed upon consent that the western access to Route 146 shall be closed if an easement for ingress and egress is obtained in the future.

Upon inquiry from Mr. Cosgrove, Mr. Andrews reviewed how gas delivery trucks would enter, exit and move about the parcel and reiterated that delivering fuel between 11PM and 5AM would not be an issue for the applicant.

The Chairman inquired as to whether the Town could compel the neighboring property owner to allow gas delivery trucks to enter upon their property. Mr. Myers advised he anticipated all easement terms would be worked out through an easement agreement when and if the time comes.

Referencing a comment contained in the August 8, 2017 letter issued by the Saratoga County Planning Board, Mr. Bloss requested the applicant address the fact that various services would be on the west side of the building and therefore be visible from a major highway. Mr. Andrews explained that they are proposing trees along the back of the property, which would shield them from direct view.

Upon inquiry from Mr. Lemire, the applicant advised that reducing the size of the proposed building and gas canopy would not be ideal for the applicant due to the layout of the lot and the limited buildable area.

As no members of the public were in attendance, Mr. Dudick make a motion to close the Public Hearing. Mr. Cifor seconded. All voted in favor and the Public Hearing was closed.

Board counsel inquired as to whether the size of the required variance for the landscape buffer needed to be defined for purposes of approval and Mr. Myers suggested using 10' because the buffer varies considerably from one end of the parcel to the other.

Mr. Myers advised that this is an unlisted action under SEQRA and that in conjunction with John Scavo, he had prepared a determination of non-significance, which is a overview of the requirements from the short form environmental assessment form. He recommended a negative declaration be adopted by the Board.

He added that this application is similar to the one previously heard and that there had been some administrative issues relative to timely review of applications by County Planning, which have now been resolved. He informed the Board that from this point forward, if an application is required to be reviewed by County Planning, the matter will not be placed on the ZBA Agenda until their review is completed. He explained that County Planning has 30 days from receipt to review the application.

Mr. Myers further noted that he does not have any issues with the proposal and assumes the Town Planning Board will continue to work with the applicant on the traffic issues, details about the exits and the entrances, screening for the building and things of that nature.

Mr. Lemire requested Mr. Myers to put the August 8, 2017 letter from the County Planning Board into context for the Board. Mr. Myers responded that the Director, Jason Kemper had wanted to provide some direction to the Town without directly saying it to both the Zoning Board and the Planning Board. He added it is really not in Mr. Kemper's purview to do such a thing and that the Town understands what needs to be done, both by the Zoning Board on how the requested variances are affected by Zoning Laws and by the Planning Board for traffic and other related issues.

Mr. Lemire pointed out that when the Board went forward on this application in June and approved it, the ZBA did not have a recommendation from the County and it appears the ZBA still has no recommendation from the County.

Mr. Myers responded that although the County Planning's August 8, 2017 letter does not contain a recommendation for or against the project, we do have the County's response and the 30 day period within which they have to review the application has now expired .

Although County Planning's August 8, 2017 letter states that if the applicant wishes to submit additional layouts for consideration, Mr. Weiner reiterated that the ZBA can still move forward with the application whether County Planning gives an opinion or not, as their letter addresses matters that are not applicable to the ZBA.

Mr. Myers clarified that the approval from June had to be voided because the Town did not give the County enough time to review the application.

Mr. Lemire questioned how narrowly the Board is supposed to read health, safety and welfare of the neighborhood if traffic is not included in the review. He added that as representatives of the Town, the subject intersection is a mess as it is and if the Board moves forward and does not consider the traffic implications, knowing that its probably going to increase the mess, he believes the Board is shirking their responsibility of balancing the health, safety and welfare of the neighborhood and the citizens with the benefits to the applicant.

Mr. Myers pointed out that the short form environmental assessment form only contains one question about traffic which is, will the proposed action result in a substantial increase in traffic above present levels. In his opinion, the answer is no, because there is already a Stewarts and a Cumberland Farms at that intersection.

Mr. Andrews advised that no traffic study was warranted by the Town Planning Board and therefore they did not do a traffic study on this project

Mr. Lemire commented that it's a crazy intersection; that kids walk from the school to Cumberland Farms and now we're enticing them to go to Stewarts without taking into consideration restricting some of the traffic flow to make it safe. He added that the Town knows its an unsafe situation and if the Town allows it to become more unsafe, that could potentially be a problem.

Mr. Myers commented that the left only turn you'll be able to make out of Stewarts would be at the most westerly portion, and therefore he believes it is going to make the traffic pattern better than it currently is. He added that hopefully when DOT gets around to making improvements to the intersection, some of it will get restricted better and between it being a county and state road, the Town doesn't have any control to try and do something about it.

Mr. Lemire again questioned how the ZBA can address the balancing act of health, safety and welfare without having a traffic expert opinion. Mr. Myers reiterated that Planning didn't request a traffic study and that MJ Engineering had looked at the site and determined the project is not going to increase traffic.

Mr. Weiner advised that the ZBA only has the opportunity to address the traffic issues if this was a Type I action under SEQRA, which it is not.

Mr. Lemire advised that in his opinion, although he does not believe there will be an undesirable change to the neighborhood, the alleged difficulty is self-created; the requested variances are substantial and the benefit sought by the applicant can be achieved by building a smaller building. He went on to state that the Board would effectively be creating an attractive nuisance which is going to increase the traffic.

Mrs. McCoy opined that because people won't all be trying to get in and out of one exit or entrance onto Vischer Ferry Road, perhaps the traffic might be disbursed.

Upon inquiry from Chairman Dudick as to whether traffic is an issue the ZBA should address, Mr. Myers responded that it doesn't appear to be an issue because of the two existing businesses and obviously Stewarts already has a traffic flow. He added that if we control access to this parcel better than what it is now, he believes it may actually make it better.

Mr. Weiner pointed out that even if the applicant proposed a smaller building and canopy thereby reducing the required variances, it would not change the traffic situation at all.

Mr. Fantini pointed out that the Board has never considered traffic in any of the other applications reviewed in the last 3 or 4 years and inquired of Mr. Lemire what made this application any different.

Mr. Lemire responded that each application is unique and different and this particular application is different because it is at a site which is a mess already, which the Town is aware of.

Mr. Fantini pointed out that typically the Planning Board determines whether a traffic study needs to be done and reiterated that Planning has evaluated it and said one is not needed.

Mr. Lemire stated that it is not a good spot in town for traffic and likened the Board's review to sticking our heads in the sand if we are not going to consider that.

Chairman Dudick disagreed, advising that he would be comfortable calling for a vote based upon his understanding of what this Board does and based upon his view of the traffic as a resident and the description of what is going on as far as Planning as described by Mr. Myers. He added that he doesn't feel an obligation to require the Town to give him an engineering report if the town's own engineer does not feel one is necessary.

Mr. Cifor pointed out that ultimately it's going to come down to each members own judgment on whether they believe this is going to be make traffic worse or better.

Mr. Andrews stated that ultimately this is not what the applicant want. He advised they would prefer full access here, but agree the intersection is screwy. However, he pointed out that they have stipulated to a right out only onto Vischer Ferry Road to help with traffic and have gone back and forth with Planning as far as the location and design of the curb cuts.

Mr. Dudick made a motion to approve a negative declaration on this unlisted action under SEQRA. All voted in favor and a negative declaration was adopted.

Chairman Dudick then made a motion to approve the application as submitted, with the stipulation that the landscape buffer pursuant to Section 208-40 10' shall be a 10' area variance. He stated that he does not believe the granting of the variances will produce an undesirable change in the character of the neighborhood or detriment to nearby properties; that despite considerable discussion with regard to reduction of the size of building and canopy, the benefit sought by the applicant cannot be achieved by some other method feasible for the applicant to pursue other than the area variances; that he would describe the requested variances as moderately substantial; that he does not believe there will be any adverse effect on the physical or environmental conditions of the neighborhood or district as he believes that this will relieve some of the traffic issues at this intersection and that although he believes all requests for variances are self-created, that factor is not prohibitive of approval of this application.

Mr. Fantini seconded the motion

*The secretary called the Vote:*

Ayes: Mr. Cifor, Mrs. McCoy, Mr. Dudick, Mr. Fantini, Mr. Cosgrove and Mr. Bloss.

Noes: Mr. Lemire,

**Application approved with the stipulation that the landscape buffer required pursuant to Section 208-40, shall be a 10' area variance.**

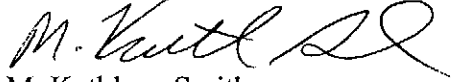
Chairman Dudick made a motion to approve the minutes from the May 16, 2017 meeting. Mr. Dudick, Mr. Cifor, Mr. Fantini and Mr. Bloss, who were present at that meeting, all voted in favor and the meeting minutes were approved.

Chairman Dudick then made a motion to approve the minutes from June 20, 2017 meeting. Mr. Dudick, Mr. Lemire, Mr. Cifor, Mrs. McCoy, Mr. Bloss and Mr. Cosgrove, who were present at that meeting, all voted in favor and the meeting minutes were approved.

**Mr. Dudick made a motion to adjourn the meeting. The motion was seconded by Mr. Cifor. Approval was unanimous. The meeting was adjourned at 8:03 p.m.**

**The next scheduled meeting is September 5, 2017.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Kathleen Smith". The signature is fluid and cursive, with a large, stylized "S" at the end.

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