

Town of Clifton Park

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Zoning Board of Appeals



APPROVED
3-6-18

ZONING BOARD OF APPEALS February 6, 2018

Present: Chairman Dudick, Jerry Cifor, Lisa McCoy, John Klimes, Mario Fantini, Michael Bloss and David Donohue.

Absent: Chris Lemire

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.

PLEDGE OF ALLEGIANCE
ROLL CALL

Mr. Dudick welcomed the Board's newly appointed Alternate member, David Donohue and announced he would be voting in place of Mr. Lemire.

OLD BUSINESS

NONE

NEW BUSINESS

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

1. **Application from Abele Northside LLC for 3 area variances for a 3 lot subdivision for commercial buildings as follows: From Section 208-46A which requires minimum lot size of 43,560 SF in B-4 zone; 34,756 SF available for Lot #2; 8804 SF variance required and 30,492 SF available for Lot #3; 13,068 SF variance required and from Section 208-46D which requires 30' rear yard setback in B-4 zone; 15' proposed for Lot #2; 15' variance required. Property is located at 1712 and 1714 Route 9, Clifton Park, NY 12065. (Permit #81150)**

Mr. Dudick noted for the record that the Board had received a letter dated February 6, 2018 from John Scavo, the Town's Director of Planning, stating that the Planning Staff has no objection to the proposed 3-lot subdivision and that during the subdivision review process, the Planning Board will ensure reciprocal ingress/egress easements, utility easements and storm water maintenance agreements are assigned and recorded accordingly by the applicant.

He also noted for the record that the Board had received a letter dated January 19, 2018 from Jason Kemper, the Director of the Saratoga County Planning Board, stating the proposed area variances have been deemed to present no significant countywide impact.

Gavin Vuillaume of Environmental Design Partnership, representing Ed Abele and Firehouse Road Associates, presented the application and provided the secretary with proof of mailing of the required notice to the surrounding property owners.

He explained this is a commercial project which has been in construction since full site plan approval was received from the Planning Board in early 2017. The project involves the construction of one large 57,000 SF 3-story office building and one single story 3,800 SF retail and bank building. He explained that the applicant is in the process of obtaining financing for the project and would like to break up the original 6+ acre parcel lot into 3 lots so that each individual commercial building that's being proposed would sit on its own lot. The larger 57,000 SF building on 4 acres (Lot #1) does not require any variances. Referencing Lot #2, he explained there is a drive through canopy on the back of the building that is approximately 15' from the property line, and therefore requires a small variance for the rear yard setback as well as a variance for the overall square footage because the parcel is .08 acres instead of the required 1 acre.

Mr. Vuillaume advised that they had not received any site plan approvals for the remaining undeveloped parcel (Lot #3), explaining that half of the parcel is located in the Town of Halfmoon and because the other half of the parcel which lies within the Town of Clifton Park is less than an acre, they will require an area variance for the acreage. He concluded by stating there will be no physical changes to the neighborhood; they are not proposing any new construction; the requests are for financial purposes only; and that the current landowner will maintain ownership of all the parcels.

Mr. Fantini inquired why the applicant didn't combine the parcel outlined in pink with the parcel that's above the one outlined in blue.

Mr. Vuillaume explained that parcel is not currently owned by the applicant and that for purposes of future development, they're hoping if purchased in the future, it could be combined with the adjoining lot and be a developed parcel in the future. He added that the other reason it was done this way was to assign more greenspace to the larger parcel so that all 3 lots meet the current greenspace requirements, which is very important to Planning Board.

Mr. Dudick inquired about the parcel on the map noted to be lands of Jerome R. Sousa Jr., which appears to be a little island inside Lot #2.

Mr. Vuillaume explained that the portion of Mr. Sousa's parcel located within the Town of Halfmoon went up for tax auction, which is how Abele was able to acquire it. He added that the remaining portion of Mr. Sousa's parcel located within the Town of Clifton Park is .095 acres; is currently landlocked; sits as a parcel without frontage and is currently not owned by the applicant.

A discussion ensued about how Mr. Sousa would be able to access his land since there were no easements in place. Mr. Vuillaume stated he assumed ingress/egress could probably come from Northside Drive or from Route 9.

The Chairman opened the Public Hearing and asked for questions or comments. There were none.

Mr. Cifor inquired whether the applicant would eventually be combining the larger lot with the lot labeled as lands of John S. Dariano on the map and if so, whether the applicant would need a variance for greenspace in the future. Mr. Vuillaume replied that particular parcel is not currently for sale.

Mr. Myers advised he did not have any issues with the proposed variances and that this project is similar to what was done with the lots on Fairchild in order to achieve the required green space. He added that when the applicant decides to develop Lot #3, usually the Town that has the greater acreage would take over enforcement of the Code on the property. Mr. Vuillaume stated that the building for that lot would probably sit more within the Town of Halfmoon.

Mr. Myers also stated that this is a Type II action and therefore, no further SEQRA review by the Board is required.

The Chairman made a motion to close the Public hearing. Mr. Fantini seconded. All voted in favor and the Public Hearing was closed. He then made a motion to approve the application as submitted. Mr. Fantini 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, as this is exactly what the Town is looking to build in this area of the Town; that other than not subdividing the parcels, which would create a financial hardship, the benefit sought by the applicant cannot be achieved by any other method feasible for the applicant to pursue; and that the proposed variances are not substantial. He added that he does not believe the requested variances will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district and that all variance applications are self-created difficulties, but that does not impede approval of the request.

The secretary called the Vote:

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

Noes: None.

Application approved

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

- 2. Application from DCG Development Company for 3 variances from the Town Center Zoning for a proposed 4-story mixed use building in the TC-5 zone as follows: 1) Section 208-22.1A - 8' max. required in the build to zone (distance from the building to the property line), 25' proposed, 17' variance required; 2) Section 208-22.1A - 80% of building front at build to zone preferred, 17% (60') proposed, 63% variance required and 3) Section 208-22.1A – 3-story max.**

allowed; 4-stories proposed; variance for 1-story required. Property is located at 42 Clifton Country Road, Clifton Park, NY 12065. (Permit #81151).

The Chairman noted for the record that the Board had received a memorandum dated February 5, 2018 from John Scavo, the Town's Director of Planning, providing a positive recommendation from the Town Center Advisory Committee (TAC) to the Zoning Board of Appeals that the requested height variance be granted as requested. The memorandum also noted that other than height, the Planning Board is authorized to waive the additional dimensional requirements associated with the project.

Joe Dannible from The Environmental Design Partnership presented the application and explained the project is for a proposed 66,000 SF 4-story building that will include retail space and apartment spaces on the second, third and fourth stories. The application has been reviewed by the Planning Board and by the Town Advisory Committee, who has confirmed the layout of the property as proposed, meets the intent of the Town Center guidelines. The parcel is located within the TC-2 zone, which is designated as an edge zone and the maximum height allowed in that zone is a 3-story building, which is what they had originally proposed.

He added however, at the initial TAC meeting it was discovered that the location of the property being discussed is on the terminal vista of Clifton Country Road and as such, a tower design is recommended for this area. He advised that essentially the tower designs are to be put in locations to be a prominent feature at a prominent height within the Town Center Districts and as they went through the review with the Planning Board and the Town Advisory Committee, it was determined it would make sense and was the recommendation of the code to have this building be taller to allow for it to be consistent with the zoning and the buildings that are currently being constructed around it, which is why they are now seeking approval for a 4-story building.

Mr. Dannible explained that the bottom story of the proposed building will be retail space with 3 stories above that with apartment spaces. The building itself has the unique tower design with a round turret, which is consistent with several other areas within the mall and is being done intentionally to have uniform architecture spread throughout that area of the Clifton Park Town Center property itself. He added that they are asking for a 1 story increase over the allowed 3-story building, which is only a 33% increase and therefore they do not feel it is a substantial request and that it has been said that the zone in this location is currently under review by the Town and will likely be changed to allow for 5-story buildings in the future. He also stated that they have a pending project which is designed to be in a streamlined process as is the purpose of the Town Center Zone and to wait for the zoning to change or to apply for a PDD would significantly increase the timeframe to obtain approvals for this project. With the granting of the area variance tonight, the applicant will be in front of the Planning Board at the February 27, 2018 meeting and likely will obtain approval and be able to commence with construction of this project in March 2018. Without the granting of the variance, Mr. Dannible explained, the only other method available is a PDD or zoning change on the parcel, both of these processes would take a significant amount of time and would hinder and make this project infeasible waiting for the construction to start a year from now.

Mr. Dudick inquired how many apartments/units there will be and where parking for the units would be located. Donald MacElroy from DCG Development advised there may be as many as 17 units and Mr. Dannible replied that the parking would be shared with the rest of the parking at Clifton Park Center mall and that from a site plan standpoint, they have more than ample parking for the allowable square footage, including parking for the apartments they are proposing.

Upon inquiry from Mr. Dudick, Mr. Myers confirmed he had received proof of mailing of the required notice to the surrounding property owners.

Mr. Bloss inquired whether the Board would only be voting on the requested height variance because of the comment in Mr. Scavo's memorandum that the Planning Board is authorized to waive the additional dimensional requirements associated with the project.

Mr. Myers stated that the applicant would like the Board to believe that the Planning Board has said they will waive the other 2 requested variances, which they can do, but that the he currently doesn't have correspondence from Mr. Scavo saying they are going to do it. He added that from the recent meetings, one would believe they were going to waive them, but they haven't done it as yet, which is why all 3 variances appear in this application.

Mr. MacElroy advised that he had met with Mr. Scavo around 4:45 p.m. this afternoon to discuss that very issue and advised Mr. Scavo indicated to him he had covered that issue in his memo and that if there is any question, it was reflected in the minutes of the TAC meeting. He added that based on that conversation, he would be comfortable if the Zoning Board was to table the other 2 variance requests and simply act on the request for the additional story.

Mr. Dannible advised that if the Board thinks the other 2 variance requests are appropriate, they would be open to the Board granting them all tonight as presented.

Mr. Weiner inquired whether a variance for the height, conditioned upon Planning Board approval of the other 2 variance requests would work for the applicant.

Mr. Dannible requested that they receive a definitive approval for the building height variance tonight because that is the only dimensional requirement the Planning Board cannot waive.

Mr. Myers suggested that the applicant could withdraw the 2 dimensional variance requests from the application, have the Board only vote on the additional requested story, because everyone is fairly comfortable that the Planning Board is going to approve those requests, although he doesn't have that in writing yet. He added that the worst-case scenario would be that Planning says the applicant has to come back to the Zoning Board to get the other 2 variances, but he doesn't see that happening.

Mr. Myers added that he was at the Technical Advisory Committee meetings and it was agreed the building should go up the additional story because it fits better in the overall picture of what the Town is looking to do in the Town Center area. He concluded by stating this is a Type II action and therefore, no further SEQRA review by the Board is required.

The Chairman opened the Public Hearing and asked for questions or comments.

Following a discussion, rather than withdraw the other 2 variance requests, it was agreed that they would instead be tabled, reserving the applicant's right to come back before this Board if they were required to do so.

Mr. Dudick advised he was not going to ask the applicant to waive the 60 day rule within which the Board is required to act, because if Planning hasn't made a decision within the 60 days, he assumes the applicant will be back before this Board quickly. Mr. Dannible agreed.

The Chairman then made a motion to close the Public Hearing. Mr. Fantini seconded. All voted in favor and the Public Hearing was closed pending being reopened if the applicant needs to come back.

Mr. Dudick made a motion to approve item #3 on the agenda as to the additional building story and table the other 2 variance requests. Mr. Fantini seconded.

Mr. Dudick 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 area variance; that he believes the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than the area variance, but that the applicant is actually accommodating the requested development as the Town had seen fit and therefore, it is for the benefit of both the Town and the applicant. He added that a 33% increase is not overly substantial and is a reasonable request based upon the proximity of another taller building in the same complex; that he does not believe the proposed variance will have an adverse effect on the physical or environmental conditions of the neighborhood or district as this fits in line with what the Town looking for and that although by definition, all area variances are self-created, that does not prohibit approval.

The secretary called the Vote:

Ayes: Mr. Cifor, Mrs. McCoy, Mr. Klimes, Mr. Dudick, Mr. Fantini, Mr. Bloss and Mr. Donohue.
Noes: None.

Application for additional story approved and other 2 requested variances tabled.

Mr. Dudick made a motion to approve the minutes from the January 2, 2018 meeting. Mr. Dudick, Mr. Cifor, Mrs. McCoy, Mr. Klimes, Mr. Fantini 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. Bloss seconded. Approval was unanimous, and the meeting was adjourned at 7:59 p.m.

There will be no meeting on February 20, 2018 as no new applications have been received. The next meeting is scheduled for March 6, 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