

# Town of Clifton Park

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## Zoning Board of Appeals



APPROVED  
2-6-18

## ZONING BOARD OF APPEALS January 2, 2018

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

**Absent:** Chris Lemire

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

The Meeting was called to order at 7:03 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 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).**

Gavin Vuillaume from Environmental Design Partnership was present with Columbia Development's representative, Richard Rosen. Mr. Vuillaume reminded everyone that the last time they were before the Board on 12/05/17, they had been requesting 3 variances; had presented several different alternatives for a reconstruction project on Route 146 known as the Shenendehowa Medical Facility and that the applicant is proposing to combine the 3 existing buildings in some fashion to make a more economical and functional site. He thanked the Board for giving them the opportunity to go back to the drawing board and passed out a sketch showing their newest design concept. He explained they now only require 1 variance because they have reduced the square footage of the proposed building to 14,400 SF; no longer exceed 12% maximum lot coverage; and that by adding a couple of parking spaces, they now meet the requirement of 1 parking space for every 150' SF of building area.

He explained that with the new design they will still have single access to the site; will now have 2 well defined parking areas on either side of the wings of the proposed 1-story building; all with a more modern look and more functional building which they feel would be an improvement to the site since the existing buildings were built almost 20 years ago.

He went on to explain that the new proposed building will have more of a sloped and flatter roof with some accent areas and suggested that perhaps the definition on how building area is described in the Zoning Code should be re-visited. He provided the Board with a diagram showing more detail on how the architect thinks the 3 buildings could be connected, which depicted 3 separate foundations connected by somewhat of a small breeze way and connected inside with a small hallway, further suggesting that this may be something to discuss as an alternative to the variance for the overall square footage of the building.

Mr. Bloss inquired as to whether the 3 separate foundations would define them as 3 separate buildings and therefore eliminate the need for the variance all together. Mr. Myers advised that because they would all be connected, it would still be considered 1 building.

Richard Rosen from Columbia Development advised that it is quite clear in the Town's definition of a building in its Codes, this would be considered 1 structure because it shares a wall, but that under the New York State Building Code, they would be defined as 3 separate buildings, because they would be separated by 10'; have fire walls in between and therefore, have a separation that would define them as separate buildings, much like a party wall in a condo.

Mr. Myers advised that a firewall is a 3-hour rated wall which extends from the basement floor to the roof line and that for fire protection purposes, they would in fact be considered separate buildings. However, he stated he was not sure whether they would be considered separate buildings as far as the Town Code because the buildings are all on 1 continuous foundation. Therefore, in his mind, it would still be considered 1 building per the Town Zoning Law.

Mr. Vuillaume advised that a building is defined in the Town Code as a structure wholly or partially enclosed with exterior walls or with interior or exterior party walls and a roof affording shelter to persons, animals or property.

The Chairman 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. Dudick commented that from an aesthetic standpoint, the proposal looks fine. However, from a Zoning perspective it would be a complete obliteration of the code to create building of this size, and therefore from his standpoint, it doesn't seem like an application for relief, as much as a request for something 3 times the size of the building square footage allowed in the zone.

Mr. Vuillaume stated that although they recognize that fact, they are not creating any more intensity of use on site; they would have the same overall amount of building square footage; it has more parking which is something the tenant desires in order to make the property function better; and that in his opinion, it would not create a detriment to the neighborhood and believes the proposal would fairly meet a lot of the other criteria for an area variance.

Mr. Dudick pointed out that his understanding of the zoning was to have an area of transition from the commercial section of Town to the residential zone as you go further west; that the Town had set up certain rules and criteria to create this zone; and therefore, the granting of this variance would completely ignore the intent of the Town Law made specifically for this transitional zone.

Mr. Vuillaume stated that from a numbers standpoint he would agree, but that from a physical and visual standpoint, he does not believe it does.

Mr. Rosen inquired whether there might be a way to word the variance “to connect” 3 individual buildings that meet the size requirement in the zone, so the Board would not be setting a precedent and could protect future development and zoning in the area, pointing out it is not like it would be 1 giant footprint.

Speaking to the precedent the granting of the variance would create, Chairman Dudick again stated this request is beyond relief from zoning in his perspective.

Upon inquiry from Mr. Cifor, Mr. Myers advised that the largest previously granted variances over the allowable 4800 SF building size in this zone was 3,073 SF for Dr. Glasgow's building back in 2003 and more recently, 2,100 SF for Dr. Galuzzo's building.

Mr. Myers clarified that 2 of the requested variances have now been eliminated because of the reduction in the square footage of the proposed building and the request presently in front of the Board is now for 9,600 SF instead of 10,700 SF. He added that this is an unlisted action under SEQRA and therefore, no further SEQRA review by the Board is required.

Mr. Myers further stated that to word the variance in the manner suggested by Mr. Rosen would be a legal question for Mr. Weiner and the Town Attorney, Tom McCarthy, but that he did not see how it could be done.

Mr. Weiner suggested that the applicant may want to try going to the Town Board to see if they would be willing to amend the Zoning Law, as he doesn't believe anyone is opposed to the concept in general, it's just that the Zoning Law constrains this Board, as this is a very substantial variance request.

Mr. Dudick inquired what happened with the discussion about a possible PUD and Mr. Vuillaume replied that the minimum lot size is 10 acres for a PUD.

Mr. Myers stated that with the right argument, it wouldn't be the first time a unique situation has arose, where Town Board has considered modifying the zone.

Chairman Dudick pointed out that when the Town created the Town Center Zoning, if they wanted it to allow for larger buildings he believes they would have made such an accommodation at that time.

Mr. Weiner suggested that the Town Board might possibly be receptive to the applicant's analysis of the Building Code in that if it works for fire code purposes maybe they would be willing to create an exception.

Mr. Myers agreed, adding that it could be as simple as adding a sentence along the lines that if the building is separated in accordance with the State Building Code for fire separation, the buildings can be considered 3

separate buildings. He also advised that this B-1 transitional zone had nothing to do with the creation of the Town Center Zoning.

Mr. Weiner suggested to the applicant they may want to withdraw the application rather than have the Board vote on it at this time.

Mr. Myers pointed out that the application could also be tabled, in case they need to come back again, because if it is withdrawn, they would have to submit something substantially different in order to come back before this Board. Mr. Vuillaume then asked to table the application until the next meeting.

### **Application tabled until the February 6, 2018 meeting.**

### **NEW BUSINESS**

*The secretary read the legal notice as it appeared in The Gazette on December 28, 2017:*

- 2. Application from Jamie Boisvert for an area variance from Section 208-11 which requires minimum of 40,000 SF for single family homes in CR Zone when public water and sewer are not available. Proposed new home = 19,166 SF; 20,834 SF variance required. Property is located at 136 Eastside Drive, Ballston Lake, NY 12019. (Permit #81146).**

Jamie Boisvert of 134 Eastside Drive presented the application. He explained that he purchased 136 Eastside Drive about a year and a half ago with hopes of growing his family and building a new house. He explained that although the application indicates he intends to build a 3-bedroom 3-bath house, he now intends to build a 2-story, 2800 SF A-Frame style 4-bedroom, 3-bathroom house with a 2-car attached garage, which would require the 20,000 SF variance. When he purchased the property the existing 900 SF house had been vacant for 20-30 years, was overgrown with trees and the floors and roof had caved in. He advised he intends to build the foundation into the incline which he believes to be about 20% and then build 2 stories above that.

Mr. Boisvert advised that sewer has been approved and is going to be installed sometime within the next year or two down both sides of Eastside Drive and therefore, although zoning requires a minimum building size of 40,000 SF when well and septic is available, once that public sewer is available, the minimum building size required would be reduced to 20,000 SF.

Mr. Myers confirmed that sewer had in fact been approved for both sides of Eastside Drive, but that he did not know the date it is anticipated to be available.

Upon inquiry from Mr. Bloss, Mr. Boisvert advised once the new home is built, he is either going to sell or rent the home he presently resides in. Mr. Bloss also inquired whether he anticipated building the home and putting in septic before sewer becomes available to the road. Mr. Boisvert replied that because it is all rock and any digging would require jack hammering, instead of putting in a leach field he would put in a storage tank and get a maintenance contract to have it pumped out every month or 2 until sewer comes in.

Mr. Myers pointed out that there are other septic systems on Eastside Drive, but that most of them are fill systems because of the rock. He added that the Town has allowed a few places that have been done recently to put tanks in knowing sewer is coming and then they are required to provide him with a copy of their maintenance contract for the file, which states the tank will be pumped out on a regular basis. Rather than

spending \$20,000.00 to \$30,000.00 on a septic system, this has been agreed to recently, because once the sewer is available, they will connect and the tank will go away.

Upon inquiry from the Chairman, Mr. Myers again assured the Board that sewer has in fact been approved, which will go straight up Eastside Drive and connect to the trunk line in Malta and that it is simply a matter of awarding the contracts and getting it going.

Upon inquiry from Mr. Cifor, the applicant confirmed the property will still be serviced by the existing well. Mr. Myers advised the Town will not grant a Building Permit without proof of a viable well and septic.

Mr. Weiner inquired whether Mr. Boisvert would agree to a condition that requires him to hook up to the sewer when it becomes available and to a condition that would require him to provide a maintenance contract, acceptable to Mr. Myers, for the septic storage tank to be pumped out as needed.

Mr. Boisvert indicated he intends to connect to the sewer immediately because they have to in any event and agreed to the conditions suggested. Mr. Myers clarified that the applicant would want to connect to the sewer, as he would be required to pay the tax for the sewer once it is available.

Mr. Weiner inquired whether some sort of sunset provision would also be needed in case the sewer didn't get done.

Mr. Myers advised he did not believe so, because if for some reason the sewer becomes defunct, he would have to approach both Mr. Boisvert and a few others to advise them they would have to put in a real septic system. Mr. Myers also confirmed the requested variance is for 20,834 SF; that this is a Type II action and therefore, no further SEQRA review by the Board is required.

Chairman 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. Bloss made a motion to approve the application with the condition that the applicant must connect to public sewer when it becomes available and maintain a septic storage tank maintenance contract to pump out the tank as reasonably required. Mr. Klimes seconded.

Mr. Bloss 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 variance; that the benefit sought by the applicant cannot be achieved by any other method feasible for the applicant to pursue and that although the requested area variance is substantial in its current form, when the public sewer becomes available, it will not be. He added 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 because the applicant purchased the property knowing the condition, that does not overwhelm the other criteria.

*The secretary called the Vote:*

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

Noes: None.

**Application approved with the condition that the applicant will connect to public sewer when it becomes available and maintain a septic storage tank maintenance contract to pump out the tank as reasonably required.**

*The secretary read the legal notice as it appeared in The Gazette on December 28, 2017:*

- 3. Application from Guidarelli Construction Development Company LLC for an area variance from Section 171-4H(1) which states no off premises signs allowed. Property recently subdivided into 4 lots. Applicant proposes to place 1 freestanding sign for use by all 4 lots. Variance required for 1 freestanding, off premises sign for 3 of the 4 lots. Property is located at 2-8 Daggett Drive, Clifton Park, NY 12065. (Permit #81147).**

Chairman Dudick noted that by letter dated December 22, 2017, the Saratoga County Planning Board had decided that no significant county wide or inter community impact would be had by the granting of the requested variance.

Christopher Longo from Empire Engineering presented the application on behalf of the applicant. Property owner, Anthony Guidarelli was also present. Mr. Longo explained that this is a recent 4 lot subdivision which created a private roadway with reciprocal easements for each of the 4 parcels rather than creating a new Town Right of Way which would have to be owned and maintained by the Town. There are currently 2 vacant parcels; 2 parcels specific to each building and all 4 lots have access onto the one common private roadway.

He further explained that the applicant would like to put all 4 business on a sign that would ordinarily meet the area requirements to have a centralized sign for all business to be shown on, which would also help to guide people to the one main entrance. He believes it will create a nice focal point to the entrance of the community which is proposed to be called Rexford Square.

Upon inquiry from Mr. Dudick and Mr. Weiner, Mr. Longo confirmed the property was subdivided in May or June of 2017 by the previous owner of the property and that the vacant wooded lot in the back has 50' of frontage, the brick building has 50' of frontage and all 4 parcels have access over that 100' to include the roadway.

Property owner, Anthony Guidarelli clarified that he had purchased the property contingent upon the owner developing it into a 4 lot subdivision. He also advised he envisions the freestanding sign to be front lit.

Mr. Bloss commented that the drawing shows 6 blocks for business names on the proposed sign and inquired whether the applicant would come back in the future to request a bigger sign.

Mr. Myers advised he has a permit application ready for the sign and described it as being very modest at only 28 SF. He opined that the applicant could probably get a bigger sign without having to come back before the Board. He added that this request is similar to one that was granted on the other end of Town and that if the owners are willing to do it, it seems logical to have 1 sign rather than 4 signs 50' apart, as it will be a better view for the public. He also stated that this is a Type II action and therefore, no further SEQRA review by the Board is required.

Chairman Dudick expressed a concern about whether a stipulation should be placed on the variance in the event the lots were ever sold, since each lot is entitled to 1 sign. Mr. Myers believed that could be handled through deed restrictions if the lots were ever sold.

Mr. Dudick opened the Public Hearing and asked for questions or comments.

Board Counsel inquired whether every subsequent owner of the 4 lots would have the right to have their identification on the off premises sign. Mr. Longo replied that was correct and confirmed Lot 3 would have the freestanding sign on it.

Mr. Myers confirmed that each lot would still be allowed to have wall signs on their buildings and pointed out to the applicant that the lot numbers shown will not be the actual addresses for the properties because Daggett Drive is a private road and as such, the lots will actually have a Route 146 address for 911 purposes.

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

Mr. Weiner asked the applicant if they would agree to a condition that states the freestanding sign will be on Lot 3; that all future owners of Lots 1, 2 and 4 shall the right to have their businesses identified on that sign; and that Lots 1, 2 and 4 shall not be permitted to have a separate freestanding sign.

Mr. Longo agreed, as long as the conditions did not include wall signs or directional signs. Mr. Myers confirmed those were separate issues.

Mr. Dudick made a motion to approve the application as submitted with the above stated condition. Mr. Bloss seconded.

Mr. Dudick advised that having 1 sign instead of 4 will not produce an undesirable change in the character of the neighborhood or detriment to nearby properties; that the benefit sought by the applicant could not be achieved by any other method feasible for the applicant to pursue other than the area variance; and that he does not believe the requested variance is substantial. He added that he does not believe the proposed area variance 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, he believes the request is reasonable.

*The secretary called the Vote:*

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

Noes: None.

**Application approved with the condition that the freestanding sign will be on Lot 3; that the future owners of Lots 1, 2 and 4 will have the right to have their businesses identified on that sign and that Lots 1, 2 and 4 shall not be permitted to have a separate freestanding sign.**

*The secretary read the legal notice as it appeared in The Gazette on December 28, 2017:*

- 4. Application from Pogoda Associates LLC for 2 area variances for the construction of 2 new duplexes. Section 208-11c requires 200' lot width at building line in R-1 Zone along special roads as noted in Section 208-98 (Grooms Road). Lot widths proposed at building line = 123.9' (Lot 532A) and 125' (Lot 532B). Variances required = 76.1' and 75' respectively. Property is located at 532 Grooms Road, Clifton Park, NY 12065. (Permit #81148).**

Dwayne Rabideau from Van Guildler & Associates presented the application. Ed Pogoda was also present. Mr. Rabideau explained that Lot 532 Grooms Road is part of the Rucinski subdivision which was subdivided last year for estate purposes; that the proposed lots meet all the other underlying R-1 zoning requirements; and that if the Zoning Board approves the variance request, the project will still be subject to subdivision and site plan review by the Town Planning Board.

Mr. Cifor noted that a letter dated December 21, 2017 had been received from Jason Kemper, Director of the Saratoga County Planning Board, stating that there would be no significant county wide or inter community impact by the granting of the requested variance.

However, as Mr. Cifor pointed out, Mr. Kemper's letter also states that: "The board noted that the parcel being proposed for the duplex was part of a previously approved subdivision. The approved subdivision plans illustrate the development constraints on the parcel and as such, one dwelling was proposed on the 2.61 acre parcel. The proposed plan shows a significant intrusion beyond the original limits of the disturbance".

Mr. Myers advised that although the original subdivision did show 1 house, it is not an issue for this Board to consider. He explained that the applicant must obtain site plan approval from the Planning Board since they are proposing to change from 1 lot to 2 lots and in addition, they need a special use permit for the duplexes. As such, this Board is strictly looking at the lot width requirements along Grooms Road as it is considered a special road. He also mentioned that ECC had issued a letter recommending signage and split rail fencing to delineate the wetland boundaries, so the prospective buyers and residents know the limitations of the lots, which again he explained would be Planning Board issues. He added that when the subdivision was originally done, the Zoning Board did grant a setback variance for the existing house because it was too close to the road.

Mr. Dudick inquired why the applicant was now looking to build duplexes.

Mr. Myers reiterated that was a Planning Board issue, adding that Planning may say the applicant can only build single family homes and not duplexes. He clarified that if the variance is granted it will either apply to the proposed duplexes or to single family homes, whichever is approved by the Planning Board.

Upon inquiry from Mr. Bloss, Mr. Rabideau confirmed there will only be one curb cut and that both lots will share a common driveway out to Grooms Road.

Chairman Dudick referenced a letter Mr. Rabideau had provided to him prior to his presentation dated December 31, 2017 from the owners of 534 Grooms Road, Karyn Lynn Connors and Rajesh Bandaru, indicating they have no objection to Mr. Pogoda's proposal.



Mr. Myers advised that he has no problem with the requested variance and that this is a Type II action and therefore, no further SEQRA review by the Board is required.

Mr. Weiner inquired whether the applicant would agree to a condition that there will only be 1 driveway for access from Grooms Road to both lots. Mr. Rabideau advised that was agreeable.

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

Mr. Dudick made a motion to approve the application as submitted with the condition that both lots would share 1 common driveway. Mr. Cifor seconded.

Mr. Dudick advised that he does not believe an undesirable change will be produced in the character of the neighborhood or district by the granting of the area variance; that the benefit sought by the applicant cannot be achieved by any other method feasible for the applicant to pursue; and that he does not believe the requested variance is substantial. He added 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 by definition, the alleged difficulty is self-created, it is not preclusive to the granting of the variance.

*The secretary called the Vote:*

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

Noes: None.

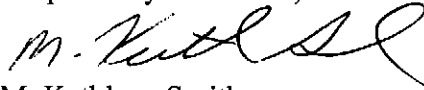
**Application approved with the stipulation that the 2 lots will share a common driveway.**

The Chairman made a motion to approve the minutes from the December 5, 2017. Mr. Dudick, Mr. Cifor, Mr. Klimes, Mr. Fantini and Mr. Bloss, 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. Mr. Cifor seconded. Approval was unanimous, and the meeting was adjourned at 8:26 p.m.

**The next meeting is scheduled for February 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