

Town of Clifton Park Zoning Board of Appeals

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Zoning Board of Appeals

July 20th, 2021

Present: Chairman Michael Dudick, Jerry Cifor, Randy Gifford, Mario Fantini, John Klimes, Lisa McCoy, YiFengWang (alternate)

Absent: Christopher Lemire

Also Present: Steve Myers, Director, Building and Zoning
Paula Cooper, Secretary

The meeting was called to order at 7:00 p.m.

All stood for the Pledge of Allegiance. Roll call was taken.

Mr. Dudick stated that in the absence of Mr. Lemire, Mr. Wang would be a voting member for tonight's meeting.

Mr. Dudick told the applicant that per Town Code that the applicant would need 4 out of 7 of the Board members to vote in favor of the application to pass. He let the applicant know that there are 7 voting members of the Board here tonight, so that 4 members need to vote in favor tonight to grant the variances. He asked the applicant if they would like to come back at a later date or if

they would like to proceed knowing the Board tonight needs to vote in favor of the application with 4 votes.

The applicants stated they would like to continue tonight knowing 4 votes need to be in favor of the application tonight.

Old Business:

None

New Business:

An application from D, K & S Enterprises, INC requests a variance from Section 208-38H which requires a 100' buffer when abutting a residential zone. Property is bordered on three sides by R-1 zone. Proposed new building setbacks 30' north, 70' variance required and 40' west, 60' variance required. Property is located at 871 Main Street, Clifton Park, NY 12065 (Permit #81289)

Applicant:

John Hitchcock – ABD – Mr. Hitchcock stated that he is here tonight representing Clifton Park Rental. He stated that the company has been at that location for many years and does rentals for parties such as tents, music equipment, stages, etc. Mr. Hitchcock stated that there is an existing 24,800 sf of office space, retail space, and storage and warehouse spaces. He stated that there was a temporary tent to the rear of the property that was used for storage but collapsed under the weight of the snow over the winter. Mr. Hitchcock stated that even though the site is surrounded by residential it is wooded area and screening is available. He stated that the closest home is 178' away to the south and to the north, 212' away. Mr. Hitchcock stated that the building would be to help protect the existing equipment that is stored on the property.

Public:

No public comment. There being no public comment Mr. Dudick moved, second by Mr. Klimes to close the public hearing at 7:16 pm.

Board:

Mr. Dudick asked when this business was started. Mr. Hitchcock stated 1973, and Mr. Myers stated that it was approved to be there by the Town. Mr. Dudick asked how long the tent was there before it collapsed. Mr. Hitchcock stated that he believes it may have been a few years. Mr. Myers confirmed it has been there for a period of time. Mr. Dudick asked how late the location is open until. Mr. Hitchcock stated that typically 5 pm to the public and workers on location would be 8 or 9 pm.

Ms. McCoy asked how the big the tent was. Mr. Hitchcock stated he does not recall but it was slightly smaller than the proposal for the structure. Ms. McCoy asked if there was any exterior

lighting on the tent and how high the structure would be. Mr. Hitchcock stated that there was no lighting on the exterior of the tent but there will be down mounted lighting on the proposed building and it would be about 29' from the ground to the peak and proposed to be a single story structure. Mr. Hitchcock stated that the lights would not be on 24 hours.

Mr. Myers stated that he does not know of any variances granted previously to have the business there but it is in the location legally. Mr. Myers stated that this is a Type II action and that no further SEQR is required. He stated that the tent was put up for temporary use so it was not considered permanent and no variance was required for it. Mr. Myers stated that he has no problems with this application, but needs proof that notification went out to neighbors. (After the meeting it was determined the public notices had not been mailed out and the application would be on the next agenda again as a result)

Mr. Fantini asked if this new structure would increase traffic in the location or if it would impact neighbors. Mr. Hitchcock stated that it is not intended to grow business but to protect the inventory he has now.

Mr. Dudick stated he is not excited about the expansion but understands that this is a long standing business in this location and the tent was in place for an extended period of time as well and if neighbors had a problem they would have come forth.

Mr. Cifor asked if there would be green space elimination if this application were to be approved. Mr. Hitchcock stated it would not be impacted.

Mr. Dudick moved, second by Mr. Cifor, to approve the area variance. The property is located at 871 Main Street, Clifton Park, NY 12065.

Mr. Dudick read the Area Variance Criteria, Mr. Dudick answered in favor to all 5 criteria.

Conditions:

1. Down mounting shield for lighting on east side of building
2. Neighbor notification is received by Mr. Myers
3. All external lighting turned off by 10:00 pm

The Secretary called the Vote:

Ayes: 7

Noes: 0

New Business:

An application from Nolan Engineering, PLLC requests several variances for an addition for storage in a B-3 zone. Variances required: Section 208-38B: 40,000 sf lot size required, 20,411 sf available, 19,589 sf variance required. Section 208-38B: 150' width required at front of building line, 115' +/- available, 35' variance required. Section 208-38D: 20' building side

setback required, existing west side of building 16.8', 3.2' variance required. Proposed side setback of building = 13', 7' variance required. Section 208-38E: rear setback required 30', existing building 24.8', 5.2' variance required. Proposed rear building setback 3.2', 26.8' variance required. Property is located at 1543 Crescent Road, Clifton Park, NY 12065 (Permit #81291)

Mr. Myers stated that the application has changed and that the variance size has changed to 17.2' from 26.8', and the change in green space is zero and will remain at 21.7% per the prior variance that was granted.

Applicant:

Jason Singer – Nolan Engineering – Mr. Singer stated that the current owner had taken over the business about 5 years ago and he needs more room to run the business. Mr. Singer stated that there is already storage in the rear of the building and he would like to go further back to extend. Mr. Singer stated that the original extension would be 20' and it was brought to the applicant's attention there is a water main behind the building and the addition was changed to 12' as a result maintaining the same width of the building extension. Mr. Singer stated that this is less of a variance now and the roof will remain the same height and all same materials from the current building would be used.

Public:

Mr. Dudick stated that the Board has received a letter of concern from Mr. Ralph Reale. Mr. Dudick read from the letter that stated that the 20% green space is not appealing and had concerns about overhead wires. Mr. Myers stated that there is no concern for fire truck access and that the wires have no effect to the rear of the building.

There being further public comment Mr. Dudick moved, second by Mr. Gifford to close the public hearing at 7:42 pm.

Board:

Mr. Myers stated that this is a Type II Action and that no further SEQR is required. Mr. Myers stated that he has no concerns with the existing business and the reduction is due to the water main.

Mr. Fantini asked where the placement of the dumpster would be if the variances are granted. Mr. Myers stated that the Planning Board would work that out with the applicant. Mr. Fantini stated that the variance for green space has been previously granted so there is no current decrease and the applicant is within that variance.

Mr. Klimes stated that this applicant is an independent owner and building and feels it is important to support. He stated that the decrease due to water lines are not a requirement of the applicant but is a benefit.

Mr. Klimes moved, second by Mr. Gifford, to approve the variance as requested. The property is located at 1543 Crescent Road, Clifton Park, NY 12065.

Mr. Klimes read the Area Variance Criteria, Mr. Klimes answered in favor to all 5 criteria.

Conditions:

1. Approved with modifications to the building length of 12' and all other modifications presented to the Zoning Board

The Secretary called the Vote:

Ayes: 7

Noes: 0

New Business:

*An application from **Phillip Ballard** requests variances from Section 208-11C which requires 200' lot width at building line. Proposed subdivision would require variance for both lots. Lot #1 variance = 90', 110' available. Lot #2 variance = 16', 184' available. Property is located at 1640 Crescent Road, Clifton Park, NY 12065 (Permit #81292)*

Applicant:

Phillip Ballard – property owner – Mr. Ballard stated that he purchased the property in 2018. He stated that the traffic has increased and he now has a small child and is concerned with the frontage of his home. Mr. Ballard stated that he would like to subdivide his property and build a new home behind the original. M. Ballard stated that the home on the road front would go to his sister to live in.

Public:

There being no public comment Mr. Dudick moved, second by Mr. Klimes to close the public hearing at 7:53 pm.

Board:

Mr. Dudick asked how long the applicant has lived there. Mr. Ballard stated that they purchased the property in 2017. Mr. Dudick asked what was on the bottom of the property. Mr. Ballard stated it was an arm of the property about 3 acres and most is wetlands.

Mr. Klimes asked if there was already a variance for the lot with the existing home. Mr. Ballard stated he bought the property with it in place.

Mr. Myers stated that this is a Type II action and that no further SEQR is required. Mr. Myers stated that he has no problems with this application. Mr. Myers stated that this property was a part of another subdivision and was a preexisting lot prior to Mr. Ballard's purchase.

Mr. Dudick moved, second by Mr. Cifor, to approve the variance as requested. The property is located at 1640 Crescent Road, Clifton Park, NY 12065.

Mr. Dudick read the Area Variance Criteria, Mr. Dudick answered in favor to all 5 criteria.

The Secretary called the Vote:

Ayes: 7

Noes: 0

New Business:

An application from Allison Colgan requests a variance from A217-76K which requires free space around each building in Northcrest Village. Applicant has built fence to property line and has been directed to remove it. Property is located at 82 Tallow Wood Drive, Clifton Park, NY 12065 (Permit #81293)

Mr. Dudick recused himself from this application as he has known the applicant outside of the application. In his absence Mr. Cifor led the application hearing.

Applicant:

Daniel Prissing – representing applicant – Mr. Prissing stated that this application is due to a violation. He stated that they are seeking a variance for the fence due to a neighbor putting a permanent structure within 2 feet of the fence line. Mr. Prissing stated that this is a law within the PUD legislation stating that there needs to be 10 feet of free space on each the side of the town homes for emergency access. He stated that if the fence is required to be moved it will do nothing to allow emergency vehicles in the area. He stated that there has been vegetation overgrowth in that area and other properties so access is restricted even without the fencing. Mr. Prissing stated that are other homes in the Village that violate this law and he has a list of them if the Board would like to see them. Mr. Prissing stated that when his client purchased the property there was already a fence along the side. He stated many of the properties have a tree growing or other obstructions that would not allow for vehicles. Mr. Prissing stated that the problem is the permanent obstruction that was added to the dwelling that would otherwise have access if it was not there.

Public:

No public comment.

Board:

Mr. Myers stated that this is development was built in the 70's and the restriction has been in place since then. Mr. Myers stated that there needs to be 10 feet of free space at each building for fire personnel, not necessarily vehicles, to be able to access. Mr. Myers stated that there has not been a blanket survey of the development but have had about 6 of these issues since he has worked in his current position and all residents or owners are expected to follow this. Mr. Myers

stated that this law should be included into all the deeds of all the homes in the development. Mr. Myers stated that 84 Tallow Wood has an illegal structure. The addition of the neighbor, on the property was built without a permit and since it has now been brought to my attention I will have to address it. He stated that this is a Type II action and that no further SEQR is needed.

Mr. Cifor asked the applicant how long the fence has been in place. Mr. Prissing stated that the fence was there when she purchased it but she enclosed it. Mr. Prissing stated that he believes that no other resident has applied for a variance and this needs to be looked at.

Ms. McCoy asked what part of the fence the applicant installed. Mr. Prissing stated that the existing fence ran along the side of the home toward 84 Tallow Wood.

Mr. Klimes asked if there are any other variance requests for this. Mr. Myers stated that there have been no other variance requests like this. Mr. Myers stated that 72 Tallow Wood was required to remove a fence as well. Mr. Klimes asked if there is a fence between 82 and 84 Tallow Wood Drive. Mr. Myers stated that the fence between the two run all the way to the back.

Mr. Fantini asked about the access of fire vehicles to the rear of the properties. Mr. Myers stated that the access is for personnel not vehicles and that owners are to keep 10 feet clear from their property line to the building. Mr. Fantini asked if the front of the fence is removed would that solve the problem. Mr. Myers stated that the rear fence would have to be removed as well. Mr. Prissing stated that the deed that the applicant has does not have this restriction. Mr. Myers stated that it is in the deed the Town has and in the law for the development of the PUD so it needs to be followed and should be in all the deeds. Mr. Prissing stated that the fence has a door and if it not locked it is accessible and could be a compromise. Mr. Myers stated no, according to the legislation.

Mr. Weiner asked if there would be any compromise available. Mr. Myers stated that compromise would be for the Town to change the law. Mr. Myers stated the illegal addition violates the laws as well.

Mr. Myers stated that he would speak to Mr. Tom McCarthy, Town Attorney, and see what he suggests, as the same thing has happened and Mr. McCarthy was in attendance in court when this was heard. Mr. Myers stated that this is a not a zoning law but a Town law.

Mr. Weiner asked the applicant if he would like to table the application so that some research and consulting can be done by both parties. Mr. Prissing stated that this is acceptable to postpone the hearing.

Mr. Cifor stated that they have 62 days to close the public hearing and make a decision on the application. Mr. Cifor stated that this will remain open until the August 17th, 2021 meeting.

New Business:

An application from Vischer Ferry Fire District for proposed construction of a new fire station requires the following area variances: 1.) Section 208-70B requires 80' front setback, 28'

proposed, 52' variance required. 2.) Section 208-11 requires 50' front setback, 25' proposed, 25' variance required. Property is located at 276 Moe Road, Clifton Park, NY 12065 (Permit #81294)

Applicant:

Joe Dannible – EDP – Mr. Dannible stated that the application is for the facility at the bend on Moe Road and has been publically approved. He stated that the plan is to demolish the existing fire house and rebuild another one in its place on the same parcel. Mr. Dannible stated that the fire house site plans have been established and the Planning Board has given comments and the engineering has started. He stated that there are setbacks from the LC and R1 zoning for the front yard that applies to zoning so they are here for the needed variances. Mr. Dannible stated that the new building would be closer to Moe Road to allow for a pull through around the rear of the building and there are DEC wetlands to the south of the site that need to be preserved with a required 100' buffer and the current building already encroaches in the buffer area, but the new building would be away from this but would need the setback variance.

Public:

No public comment.

There being no public comment Mr. Dudick moved, second by Mr. Cifor to close the public hearing at 8:35 pm.

Board:

Mr. Weiner stated that there is a balancing obligation presentation done by attorney that was distributed to the members for review. Mr. Weiner stated that in this it is stated that even if there is zoning restrictions, the municipal function of the applicant is more important than the zoning. Mr. Weiner stated that this applies to the fire house but if it was a pavilion for example, may not be given the same consideration as a pavilion does not directly serve the public.

Mr. Cifor stated that he had lived near the fire house for years and sees no issue with the application and the drive through would be an improvement. Mr. Cifor asked if there would be a retaining wall to keep disturbance out of the wetlands. Mr. Dannible stated the wall would keep disturbance out of the wetlands.

Mr. Klimes stated he liked that the building was pulled more forward giving both the fire department and traveling public more visual.

Mr. Myers stated that this is a Type II action and that no further SEQR is required. Mr. Myers stated that this is a safety improvement and would keep the voting center separate from the fire department and other public areas. Mr. Myers stated he is in favor of the application.

Mr. Cifor moved, second by Mr. Mr. Gifford, to approve the variance as requested. The property is located at 276 Moe Road, Clifton Park, NY 12065.

Mr. Cifor read the Area Variance Criteria, Mr. Cifor answered in favor to all 5 criteria.

The Secretary called the Vote:

Ayes: 7

Noes: 0

New Business:

*An application from **AJ Sign** requests variance from Chapter 171, sign law Chart 1 which allows one freestanding Sign per parcel. There is an existing freestanding sign on the parcel for complex identification (Fairchild Square). The business on the parcel requests their own sign (Singlecut). Property is located at 6 Fairchild Square, Clifton Park, NY 12065 (Permit #81295)*

Mr. Dudick recused himself from this application as he has ongoing business with the applicant. In his absence Mr. Cifor led the application hearing.

Applicant:

Emma Van Vorst – AJ Sign – Ms. Van Vorst stated that the property was purchased by the applicant with an existing sign on it for the complex and not the business specifically and the business is not associated with the complex either. Ms. Van Vorst stated that the applicant is looking for their own sign, a second freestanding sign on the property, that would have internal lighting and be 47.57 sf on the corner of Van Patten Drive and Fairchild Square and the proposed sign would be about 150' away from the existing sign. She stated that this business has three entrances so the purpose would be for the front of the building to direct customers to a future tap room.

Public:

There being no public comment Mr. Cifor moved, second by Mr. Klimes to close the public hearing at 8:52 pm.

Board:

Mr. Cifor asked if there would be any other signage or variances needed for the side of the building. Ms. Van Vorst stated at this time there would not be but the applicant may want to add down the road.

Mr. Myers stated that they have a wall sign now but another sign location has been tabled 2.5 years ago and they are working now to open a tap room. Mr. Myers stated that this is a Type II action and that no further action is required. He stated that making the front area a tap room makes it seem like it is going to be a bar, but signage for the business makes sense. Mr. Myers stated that if other wall signs are going to be requested that the applicant put together a full plan with all proposed signs before coming back for another approval. Mr. Myers stated that the existing sign does not help the applicant but the 1 freestanding sign per parcel limitation per this zoning law made the applicant have no other choice but to ask for a variance.

Mr. Klimes asked if it is a directional sign, does it change anything. Mr. Myers stated it is too large for a directional sign. Ms. Van Vorst stated that the sign on the building sits in the middle of both parking lots and the wall sign would make more sense.

Mr. Klimes moved, second by Mr. Gifford, to approve the sign variance as requested. The property is located at 6 Fairchild Square, Clifton Park, NY 12065.

Mr. Klimes read the Area Variance Criteria, Mr. Gifford answered in favor to all 5 criteria.

The Secretary called the Vote:

Ayes: 6

Noes: 0

The chairman made a motion to approve the minutes from the June 15th, 2021 meeting. All who were present at the June 15th, 2021 meeting voted in favor and the meeting minutes were approved.

Mr. Dudick, Chairman, made a motion to adjourn the meeting, Mr. Klimes second, all voted in favor and approval was unanimous. The meeting was adjourned at 8:56 p.m.

The next scheduled ZBA meeting will be held on August 17th, 2021.

Respectfully submitted,

Paula Cooper

Paula Cooper

Secretary, Zoning Board of Appeals