

Town of Clifton Park Zoning Board of Appeals

One Town Hall Plaza
Clifton Park, New York 12065
(518) 371-6054
FAX (518) 371-1136



Zoning Board of Appeals

January 4th, 2022

Present: Chairman Michael Dudick, Jerry Cifor, Christopher Lemire, Randy Gifford, Mario Fantini, John Klimes, Lisa McCoy, Scott Styles (alternate)

Absent: Jerry Cifor, Randy Gifford

Also Present: Steve Myers, Director, Building and Zoning
Paula Cooper, Secretary
Neil Weiner Esq., Attorney

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

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

Mr. Dudick appointed Mr. Styles as a voting member in the absence of Mr. Cifor tonight.

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 6 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 at least 4 votes.

The applicants stated they would like to continue tonight knowing 4 out of 6 votes need to be in favor of the application tonight.

Old Business:

None

New Business:

An application from Paulsen Development of Albany, LLC requests variances from Section 208-33B, B-1 zone which requires buildings not to be greater than 4,800 sf and lot coverage not exceed 12% of the lot size. Proposed 26,000 sf, variance required = 21,200 sf. Proposed 14.6% coverage, variance required = 2.6%. property is located at 303 Ushers Road, Clifton Park, NY 12065 (Permit #81311)

Applicant:

Gavin Vuillaume – EDP – Mr. Vuillaume stated that he is here tonight with Mr. Paul Goldman representing 303 Ushers Road between Pierce Road and Van Patten Road, and Northway Church is to the south, borders I-87 to the east and Northway Executive Park to the west. Mr. Vuillaume state that the application is before the ZBA because the zoning B-1 is for a nonretail business on a wooded property with a home and a utility easement on it. He state that the surrounding properties are light industrial and commercial and there are no other residences around this property. Mr. Vuillaume stated that there is a proposed single access drive with a medical building on site with a medical entrance for drop offs and handicapped parking in the front and general parking on the side and rear of the building. Mr. Vuillaume stated that there is 56% green space and 160 parking spaces with possible land banking for some of them. He stated that sewer is available off site and water is available. He stated that stormwater management will be on site as well.

Mr. Paul Goldman – Mr. Goldman stated that 4,800 sf allotted for this application is a big problem and is outdated. Mr. Goldman stated that medical practices used to have only one or two providers on site but the times have now shifted to consolidation of providers and service. He stated that if they were to build to 4,800 sf would not be efficient for a practice and that for this application a GI practice would be occupying most of the space and providing outpatient services such as colonoscopies and endoscopies. Mr. Goldman stated that this is the only B-1 zoning in the area when looking at the areas zoning map and that this is a fairly commercial area. He stated that this use is lower than other commercial business that could potentially go on the property. Mr. Goldman stated that this cannot be achieved by any other method as 4,800 sf is not feasible,

this is not substantial as it is asking for 2,000 over the allotted and it would not create an adverse impact as the use is tamer than other potentials for the property.

Public:

James Ruhl – Wooddale Drive – Mr. Ruhl stated that he would like to read the comments from the ECC but stated that his opinions are his and do not represent the ECC. Mr. Ruhl read from the ECC comments, stating they would like a traffic study done by the Planning Board and that they felt the variance is substantial and does not fit the area. Mr. Ruhl then stated that he felt that the Planning Board has more to handle on this application and that the design does not fit the area. He stated that the applicant should be required to make the building fit the zoning and not have the zoning change to fit the building. Mr. Dudick stated that he welcomes anyone representing the ECC to attend the meetings and give their recommendations to any application. Mr. Myers stated that the ECC and Mr. Ruhl's comments are for the ZBA and the Planning Board; however the comments are more of a Planning issue.

Mr. Daniel Mathias stated that he lives west of Ushers Road and the project. He stated that he feels that the application is substantial as the lot size coverage is 12% and 21,000 as per the zoning law. He stated that the applicant can establish what they want by other means such as creating multiple smaller buildings, and that this area was designed for an office park like look and this would change the area. Mr. Mathias stated that this would create a significant traffic change and that this was self-created by the applicant as he know what was allowed before applying for the variance. Mr. Dudick explained that the ZBA is here for relief of the Zoning Code where it is applicable and that traffic is a Planning issue as well as placement of the buildings and entry.

Mr. Dudick moved, second by Mr. Fantini to close the public hearing at 8:08p.m.

Board:

Mr. Lemire asked if the building would be similar the medical buildings on Route 9. Mr. Vuillaume stated it would be similar to Ortho NY and the CDPHP buildings, which are both 40,000 sf. Mr. Rick Paulsen (builder), stated that the footprint would be large for this because of the ambulatory surgery that would be there. He stated that the practice would see about 4 patients every 30 minutes, and so far they have no tenants for the second floor. Mr. Paulsen stated that that like the CDPHP building, it will be owner occupied, by Albany GI. Mr. Lemire asked if Albany GI owns the property now, Mr. Goldman stated not yet, that the current owner has had the property in the family since 1956 and it has been on the market for 1,235 days.

Mr. Klimes asked if there was a traffic study done for the proposal. Mr. Paulsen stated that there has not been yet but Albany GI will have 20- 25 employees and 5-7 staggered patients, with an average of 4 per every 30 minutes, and 55 per day. Mr. Klimes asked if the traffic could multiply if due to the upstairs tenants. Mr. Paulsen stated that the patients could double or triple, and currently they have a dermatologist interest but nothing concrete yet. Mr. Klimes stated he feels this would create more of a traffic problem with the Northway and Pierce Road. Mr. Goldman stated that this is a Planning and DOT decision. Mr. Klimes stated that traffic does impact the character of the neighborhood. Mr. Goldman stated that medical use is by right and they are just looking for consolidation. Mr. Klimes stated that even if the 4,800 sf were divided up into 5

buildings, the applicant would still be 500 sf over the allotted sf. Mr. Lemire confirmed that 5 buildings would be allowed on the property. Mr. Goldman stated that yes about 4.5-5 buildings.

Mr. Fantini stated that there was a proposal for a medical building on Route 146 that needed a variance and asked what happened to that application. Mr. Myers stated that the applicant decided to split up the buildings so no variance was needed, he stated that this was the same zoning as this application but different scenario due to the location of the application. Mr. Myers stated that he feels that 26,000 sf would be ok here but not on Route 146. Mr. Fantini asked for clarification on the 21,000 sf vs. the 24,000 sf. Mr. Myers stated that 12% coverage multiplied by 4.1 acres gives you the allotted sf coverage. Mr. Myers stated that it would be about 4,800 sf buildings. Mr. Fantini asked if the sf or the 12% would have to be met or if both. Mr. Lemire stated both would have to be met and the allotted amount would be 4 4,800sf buildings and 1 2,400 sf building.

Mr. Myers stated that this is a Type II SEQR and that no further action is required. Mr. Myers stated that he received a letter from the County stating that this has no further impact. Mr. Myers stated that there was a letter written from a Mr. Henry Brewin with concerns but all of his concerns would be for the Planning Board and that a traffic study would be done as a part of their review.

Ms. McCoy asked if Mr. Myers knew how big the building to this application's left is. Mr. Myers stated that it is about 4,000 sf and the zoning is B-2.

Mr. Dudick asked if the application has been considered by the Planning Board first. Mr. Goldman stated that 13,000 sf are required for Albany GI but seeing Planning before ZBA makes no difference as they need both approvals and that he knows that a traffic study will need to be done.

Mr. Lemire asked if there are 4 buildings if a traffic study would still need to be done. Mr. Goldman stated it would be but not from this buyer and the seller would have to find another buyer and this has been for sale for almost 4 years now.

Mr. Fantini stated that if the applicant is able to only have one variance and bring the lot coverage to the allotted 12%, he would be amenable to this application.

Mr. Dudick stated that he would also like a sunset clause for this so that the variance is not continued if the Planning Board does not approve the project. Mr. Weiner stated that 2 years should be enough time for the Planning Board to make a decision. Mr. Dudick stated that 4,800 sf for a transition from a residential to a business is called for but they have granted larger variances on 146 for larger buildings such as 10-12,000 sf. Mr. Weiner stated that B-1 zone is more specific to 146 than it is to this location. Mr. Fantini stated that he is in favor of the sunset clause. Mr. Goldman stated that he would agree to 12% coverage and a 2 year sunset clause.

Mr. Lemire asked why there was a letter submitted to the ZBA for another application tonight but there is no letter for this application. Mr. Myers stated that the Planning Board has not yet seen this application/ Mr. Lemire read into record what the B-1 Zoning Law, Section 208-30 states and stated that a large 21,000 sf building does not fit into this as a residential area.

Mr. Goldman handed out a zoning map showing that surrounding properties are all B-2 and this is the only B-1. Mr. Dudick asked why this property was different and surrounded by another zoning. Mr. Myers stated that there was a court case years ago about the zoning and this is what was settled on. Mr. Myers confirmed that this application is surrounded by B-2 zoning and stated that B-2 has more restrictions.

Mr. Lemire stated that B-2 does not provide the buffers or the transition to residential like the B-1 zoning does. Mr. Myers stated that it does not have a maximum building size and the coverage is 50% for the B-2. Mr. Lemire stated that it does create an undesirable change due to it possibly being the largest building in the area and stated he feels this also makes it substantial and is self-created. Mr. Klimes stated he feels it is self-created as the applicant could have requested a zoning change.

Mr. Dudick stated that there is no residence in the area that would be able to see this building from their property and that the lot is surrounded by all B-2 zoning which would fit the area.

Mr. Dudick moved, second by Mr. Fantini, to approve the variance as amended. The property is located at 303 Ushers Road.

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

Conditions:

1. The variance will be for 21,400 sq to decrease the density percentage to reflect 12%
2. The variance shall expire on December 31st, 2023 if site plan is not yet approved by the Planning Board by then

The Secretary called the Vote:

Ayes: 4

Noes: 2 - Mr. Klimes, Mr. Lemire

New Business:

*An application from **Gabriel T. Allen** owns 2 separate parcels on East Side Drive. Both are pre-existing, non-conforming lots and neither qualify as keyhole lots since they do not front a public road. The required setbacks in the CR zone appear to be met by the proposal so only a lot size variance is required. 40,000 sf minimum lot size in the CR zone required for parcels without public water and sewer (water and sewer will be available in future) 17,572 sf available 22,428 sf variance required.*

Applicant:

Public:

No public comment.

Mr. Dudick moved, second by Mr. Klimes to close the public hearing at 8:38 p.m.

Board:

Mr. Myers stated that this is a Type II action and that no further SEQR is required. Mr. Myers stated that neither lots meet requirements without public water and sewer. He stated that sewer will be available in the future. Mr. Myers stated that 22,000sf variance is needed if they connect to sewer as they would only need 30,000 sf. He stated that this would decrease the variance needed and make the lot closer to conforming. He stated that the Town allows the resident to live in the old house while the new one is being built before removing the old one. Mr. Myers stated that he has no concerns with the variance.

Mr. Klimes stated that he feels that the applicant is improving the character of the neighborhood.

Mr. Klimes moved, second by Mr. Fantini, to approve the variance as requested. The property is located at 36 Eastside Drive.

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

The Secretary called the Vote:

Ayes: 6

Noes: 0

New Business:

*An application from **Le Hockford** requests variance to subdivide an existing 7.157 parcel into two parcels. Lot #1 proposed to be 2.115 acres, lot #2 proposed to be 5.042 acres. Existing two family residence is on lot #1. A single family dwelling is proposed on lot #2. Per Section 208-16E.(2) three acres of unconstrained land per dwelling is required. 7.157 acres – 1.94 acres wetland = 5.217 acres available. 9-5.217 = 3.783 acres variance required.*

The application has been postponed and will be heard first at the next scheduled meeting on February 1st, 2022.

The chairman made a motion to approve the minutes from the December 7th, 2021 meeting. All who were present at the December 7th, 2021 meeting voted in favor and the meeting minutes were approved.

Mr. Dudick, Chairman, made a motion to adjourn the meeting, Mr. Fantini second, all voted in favor and approval was unanimous. The meeting was adjourned at 8:45p.m.

The next scheduled ZBA meeting will be held on February 1st, 2022.

Respectfully submitted,

Paula Cooper

Paula Cooper

Secretary, Zoning Board of Appeals