

Clifton Park Zoning Board of Appeals Meeting Minutes

January 6, 2004

Present: Dale Kelley, Michael Dudick, Dale Gleason,
Gil Kortz, Donna Lawton, Jessica McCarthy,
Robert Ritter

Also Present: Don Clemens, Building & Development
Louis Renzi, ZBA Counsel

Mr. Kelley called the meeting to order at 7:02 PM. He welcomed the two new Board members, Jessica McCarthy and Robert Ritter.

Mr. Kelley noted that the application before the Board tonight is for a Use Variance. He reviewed the criteria the Board must follow to consider the granting of a Use Variance.

NEW BUSINESS

1. An application from Navion Development Corp., requesting a Use Variance to build an animal care facility in a B-5 Corporate Commerce zone per Section 208-53 of the Code of the Town of Clifton Park. The property is located at 100 & 102 Route 9, Clifton Park. Permit #80477.

The secretary read the legal notice as it appeared in the Daily Gazette on January 1, 2004.

Anthony Ianniello, attorney for the applicant, presented this application. He explained that this parcel is zoned Corporate Commerce and noted that some of the allowed uses would be for high tech office parks, R & D, and corporate headquarters. He explained that under the current zoning an animal care facility is not a permitted use nor is it allowed by Special Use Permit.

Mr. Ianniello stated that the owner has been unable to achieve a reasonable return on this property and he presented an affidavit from the Comptroller of Navion Development showing the expenditures incurred to be over \$500,000. He noted that they have a contract of sale, contingent upon this Use Variance being granted, for \$175,000.

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Mr. Ianniello informed the Board that the owner had two offers less than the original purchase price in 1998 but they were also not permitted uses.

Mr. Kelley asked if the property had been formally listed for sale. Mr. Ianniello responded yes and that marketing activities had been undertaken.

Mr. Ianniello continued, stating that there are unique circumstances and it is not

economically feasible under the current zoning law. He noted the zoning changed from Light Industrial to Corporate Commerce. He indicated the unique topography noting that the Dwaas Kill Creek runs through this property limiting the facilities that can be constructed on the site. He also addressed the issue of the character of the neighborhood. He noted that the Light Industrial zone surrounds this property and therefore there would be no adverse effect on the character of the neighborhood. He stated that this is not a self-created hardship, the zoning changed during the ownership of the property. He noted this would have been an allowed use with a Special Use Permit under the previous zoning, but is not allowed under the current zoning.

Howard Rubinger, Realty USA, discussed the marketing tactics for the sale of this property. He noted that this site went through Planning Board site review as Oakwood Corporate Plaza with two buildings to be constructed on the site. He stated they started marketing the site through MLS for four or five years and no contracts were received due to the topography. He continued, three years ago they thought they had a deal with Saratoga Sweets and a Use Variance was granted, but the deal was never completed. The property has been back on and off the market. They now have a contingency offer for \$175,000. He explained the owners want to sell and cut their losses.

Rob Osterhout, Boswell Engineering stated that they have been working on the site since 1994. He explained that they received approval for office buildings to be erected on the site which would require more substantial parking than this proposed use but that project was never brought to life. He also noted that this site had received a prior Use Variance for a candy making facility but that project was never completed.

Mr. Osterhout indicated that the animal care facility will be 11,350 sq. ft. with a second floor to be used as an employee lounge with a kitchenette, bath, shower, sleeping quarters, and a sitting area which will afford the employees an area for rest. He noted that the first floor will have office space, a visitation area, and indoor kennels. He noted that the site is over nine acres and is divided between the Town of Clifton Park and a small triangular piece of the property is in the Town of Halfmoon. He also noted that the Town of Halfmoon has maintenance jurisdiction

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over old Route 9. He explained that the proposed plan will meet all other zoning requirements. The greenspace will be approximately 90%. He also stated the height of the building will be 30 ft., the allowed height is 35 ft.

Mr. Osterhout explained that the site will have private water and sewer. He noted that the public water is over one mile away and he stated that the public sewer runs through the project site on the east side of the Dwaas Kill. He explained that they had previously incorporated a sewer hook-up for the proposed office buildings that were approved because there would be greater usage than this proposal. He stated there would be a maximum of eight employees for this proposal. The animals will be kept indoors, but there will be an outdoor area. The kennels will be surfaced with a concrete slab covered with millings, which will be picked up, bagged, and removed by a trash facility.

Mr. Kortz inquired about the outdoor areas. Mr. Osterhout responded they will be treated in the same manner.

Mr. Osterhout continued, there will be 22 parking spaces, 1.8 parking spaces per 1,000 sq. ft., the storm water runoff will be intercepted with a storm water management area on the north side of the building.

Tom Ruchlicki, an adjoining property owner in the Town of Halfmoon, expressed his concerns with the runoff and the drilling of a new well and its effects on his well. He noted that the topography is unique for this site and stated he can understand why other projects never came to be.

Mr. Ruchlicki also expressed his concerns with noise and property values. He noted that this is a mixed use area because of some residential properties in the area. He also noted his concerns for his family's safety, the lighting, and hours of operation.

Mr. Clemens stated that the issue of this variance is the first hurdle. He noted that this was not self-created, in this case it was due to a zoning change. He also noted that from this property to Kinns Road there has been no development in the last 13 years. He explained that compatible use is the issue to contemplate. He noted that Mr. Ruchlicki's concerns will be better addressed by the Planning Board.

Mrs. Gleason asked about the issue of distance from well to well.

Mr. Clemens responded there is no law for a set distance between wells, there is a set distance separation between well and septic. He noted it is very hard to predict the effect of the drilling of one well on another.

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Mr. Ruchlicki stated that he believes the intention of Joseph Noradki, previous owner of the property prior to subdivision, is to return to the area. He stated he is currently living out of state but returns several times a year.

Mr. Ianniello noted that Mr. Noradki subdivided the property knowing that it was zoned Light Industrial and the types of uses that would be allowed. He referred to the character of the neighborhood, he explained this property being on Route 9 between two Northway exits, is more industrialized than residential. He noted that the property is not marketable as residential. He stated the zoning change makes the property more valuable in the future with Route 9 being a major highway.

Mr. Ianniello introduced the owners of the project, Matt Sames and Dr. Tom Brown, Veterinarian. Dr. Brown stated that the facility will be open 8 AM to 6 PM weekdays.

Ms. McCarthy suggested putting the outdoor kennels being in a minimal area.

Mr. Sames addressed the safety issue. He noted they will not accept dangerous dogs.

There was no public comment, Mrs. Gleason made a motion to close the public hearing, Mr. Ritter seconded, approval unanimous

Mr. Kortz asked if an animal care facility was allowed prior to the zoning change to Light Industrial. Mr. Clemens responded yes, with a Special Use Permit.

Mr. Kortz asked how much of the area changed zoning. Mr. Clemens responded approximately 1/4 mile square.

Mr. Dudick inquired about the listing price for the property since its topography is so unique. Mr. Rubinger stated it has been listed between \$270,000-\$300,00. They now have an offer for \$175,000 if this variance is approved.

Mr. Dudick asked if the waste products are considered bio-hazardous. Mr. Osterhout responded no.

Mr. Osterhout referred to the Town zoning map identifying the parcel and explaining its uniqueness due to the impact of the Dwaas Kill on this property.

Mrs. Gleason commented on the need for this type of facility.

Mrs. Lawton inquired about the allowed uses for this zone.

Mr. Clemens responded office buildings, research and development facilities, retail sales, but primarily office buildings.

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Mr. Renzi asked if the contract is contingent upon the granting of this variance. Mr. Ianniello responded yes.

Mr. Kelley read the County Planning Board's decision stating that there is no significant County Wide or Inter Community Impact if this variance is granted.

Mrs. Gleason made a motion to approve the Use Variance as requested. Mr. Ritter seconded.

Mr. Kortz stated he would like to add conditions to the motion. He noted his concerns with the animal waste and ground water contamination.

Dr. Brown explained they use Simple Green, all biodegradable chemicals.

Mr. Ritter also noted his concern with the animal waste.

Mr. Kortz also stated he would like a condition to address the noise issue. The Board recognized that the Town already has an existing noise ordinance. The applicant spoke on the issue and indicated that the facility is enclosed and the noise would not be apparent from outside.

Mrs. Gleason amended her motion to approve the Use Variance with the condition that the animal waste be removed on a regular and timely basis from the site. Mr. Ritter seconded. Ayes: Kortz, McCarthy, Dudick, Kelley, Ritter, Lawton, Gleason. Noes: None.

Mr. Dudick stated he would like an amendment to the motion cancelling the previous Use Variance. After some discussion the Board decided not to require the applicant to forfeit the previous Use Variance related to a candy making facility.

Mr. Kelley made a motion to approve the minutes of December 2, 2003, Mrs. Gleason seconded. Ayes: Lawton, Gleason, Kortz, Kelley. Noes: None. Abstained: Dudick, McCarthy, Ritter.

Mr. Dudick made a motion to adjourn the meeting at 8:45 PM, Mr. Ritter seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb
Secretary

cc: Town Clerk, Zoning Board Members, Louis Renzi, Counsel,
Don Clemens, Department of Building and Development, Planning Board, ECC,
Assessor