

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

September 21st, 2021

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

Absent: Christopher Lemire, Randy Gifford, YiFeng Wang (alternate)

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

Mr. Dudick told the applicants 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 5 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. Mr. Dudick stated he would be recusing himself from the first two applications so both applications would need all 4 Board members voting in favor of the application.

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

Old Business:

An application from Allison Colgan requests 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)

Applicant:

Daniel Persing— representing applicant – Mr. Persing stated that this came about around a year ago when Mr. Myers notified the applicant that there was a deed restriction on her property for the rear setback and access and requested for the fence to be removed. Mr. Persing stated the fence has been up for about 4 years and he has not been able to validate the deed restriction as it is not in Ms. Colgan’s deed, but it is in the Town Law. He stated that the applicant has amended the variance request for a 5’ variance. Mr. Persing stated that the applicant would like a fence in her rear yard due to a neighbor at 84 Tallow Wood Drive has put an addition on their home which he believes without permission, and it is 2’ off of the property line so if the fencing was to be removed his client, the applicant would be able to see into the home. Mr. Persing stated that there are many other homes in the deed restricted area that have fences in their rear yards so if the variance were to be granted it would not change the character of the area.

Public:

No public comment.

There being no public comment Mr. Cifor moved, second by Ms. McCoy to close the public hearing at 7:16 p.m.

Board:

Mr. Fantini asked if the fence remained how the center homeowners would gain access to their rear yard as there is no way to get a lawn mower back there and they shouldn’t be prevented from accessing their property. Mr. Fantini stated this is a 4 unit townhome layout and the middle homes would not be blocked if there is no rear fence. Mr. Persing stated that the original concern was for the emergency personnel access and this was not brought up previously as a concern however, other neighbors have the same layout and stated that 5’ is sufficient for emergency personnel to gain that access. Mr. Fantini stated that they look at the character of the neighborhood and if there is insufficient room to access the rear then it impacts the character. Mr. Persing stated that there are a number of homes in the neighborhood that have the same fencing layout. Mr. Fantini stated that it was said that Mr. Myers pursues these as they are brought to him. Mr. Fantini stated that if the fence only had one side blocking the view he would be amenable to this application. Ms. McCoy stated that she agrees with Mr. Fantini’s comment and stated that she still has concerns for the emergency access.

Mr. Myers stated that there have been other complaints from interior neighbors as they could not access their rear yards. Mr. Myers stated that letters were sent to other neighbors and fences were removed as he had requested. Mr. Myers stated that most comply but he has had to go to court before for this and a Judge ruled for the homeowner to remove the fence. Mr. Myers stated that he feels that this request, if approved, would be changing the Town Law, and he is treating this situation the same way he has the others.

Mr. Cifor asked if there is any action for the neighbor to remove the addition. Mr. Myers stated that he is going to complete this and then pursue the addition. Mr. Cifor asked Mr. Myers asked if there has been a variance granted like this in the neighborhood. Mr. Myers stated there has not been a variance granted before. Mr. Cifor stated that if they grant this then they would have to provide for anyone else that would ask for this and the purpose is for special circumstances and this is a neighborhood problem not a specific one, and this would be changing the law and as a Zoning Board they cannot do this. Mr. Persing stated that relief from zoning is to help with laws that may be outdated.

Mr. Fantini asked if the fence could be moved the 10'. Mr. Persing stated that if the fence would be moved in to the required 10' it would be 2'-3' off the rear of the home.

Mr. Klimes agreed that the fence is to obscure the neighbors view and if the fence were to be moved in from the property line it would still serve a purpose. Mr. Persing stated that a fence 2' from the home would not be beneficial. Mr. Klimes stated that he would like to see ADA accessible be kept as if there were a fire this would be very helpful.

Mr. Weiner asked if the a panel of fencing or 2 would be considered, that way the view would be screened but the rear yard would be accessible to all the homeowners and emergency personnel. He stated that he has asked the Town Attorney to consider bringing this to the Town Board to amend this code. Mr. Myers stated that if anything is in the path it would be breaking the law so a variance would still be needed and issues arise when people complain that they have no access to their yard. Mr. Weiner asked if the neighbor who complained would consent with the 5' variance to reconcile the issue. Mr. Myers stated that he does not release the names unless ordered to do so by a judge. Mr. Weiner suggested adjourning the hearing for another meeting so that maybe this can be worked out with a neighbor and other options can be looked at as well. Mr. Persing stated that they would be open to any suggestions.

Mr. Frank Colgan – Mr. Colgan asked if unsafe conditions are able to exist unless they are reported. Mr. Myers stated that this is untrue and each complaint needs to be looked at and submitted to him. Mr. Myers stated that there are complaint forms available and he must react to them. Mr. Myers stated that he cannot change the law but needs to follow what it says.

Mr. Fantini asked if there could be 2 sides and no back. Mr. Persing stated that the fence also helps to keep a dog in the yard and there was a side fence with no back when the applicant purchased the property.

Mr. Persing asked for the application to be tabled so that he can look further into a resolution. Mr. Cifor stated the next meeting will be held on October 5, 2021.

Old Business:

An application from AJ Signs requests variance from the sign law, Chapter 171 of town law, Chart II which allows 60 sf maximum for freestanding sign. Requested 109 sf, variance required = 49 sf. Property is located at 900 Route 146, Clifton Park, NY 12065 (Permit#81301)

Applicant:

Tom Wheeler – AJ Signs - Mr. Wheeler stated that this is the EDP office building with 3 new buildings in the rear of the property. Mr. Wheeler stated that they are requesting a new monument sign to advertise tenants in the buildings as the new ones are set back to the rear of the property and this will allow.

Public:

No public comment.

There being no public comment Mr. Cifor moved, second by Mr. Klimes to close the public hearing at 7:35 p.m.

Board:

Mr. Myers stated that this is a Type II action and no further SEQR is required. Mr. Myers stated that the buildings are numbered 900, 904, 908 and 906 is a shed on the property. Mr. Myers stated that they are multiuse buildings on the site and the property is of significant size. Mr. Myers stated that construction is still ongoing on the property. Mr. Myers stated that the rear buildings are not visible from the road and there are other significant signs along Route 146 in that area, so he does not see a problem with the request and feels it would not be out of character.

Mr. Cifor stated that he did not know about the construction as he was driving by so he feels signage is not an issue. Mr. Cifor stated he would like it to look like the submission being presented tonight.

Mr. Klimes moved, second by Ms. McCoy, to approve the variance as requested. The property is located at 900 Route 146, Clifton Park, NY 12065.

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

The Secretary called the Vote:

Ayes: 4

Noes: 0

New Business:

*An application from **Susan Sutherland** proposes a subdivision of existing lot. 1. Section 208-11C requires 200' lot width at building line per Section 208-98. Proposed lot width at building line = 159', 41' variance required. 2. Section 208-98 requires 100' front yard setback from property line. Lot #1 53.9' available, 46.1' variance required. Lot #2 52.6' available, 47.4' variance required. Property is located at 625 Kinns Road, Clifton Park, NY 12065 (Permit #81303)*

Applicant:

Duane Rabideau – Van Guilder Assoc. – Mr. Rabideau stated that the request tonight is to subdivide the parcel due to two single family homes already on the property. He stated that the subdivision would have one exiting home on each lot and the 2 proposed lots meet underlying codes for the R-1 zoning but before the Planning Board can vote on the subdivision, variances are needed. Mr. Rabideau stated the Kinns Road is a special road so setbacks are diffident, and this is why he is asking for variances.

Public:

No public comment.

There being no public comment Mr. Dudick moved, second by Mr. Fantini to close the public hearing at 7:40 p.m.

Board:

Mr. Dudick stated that this is currently 1 lot with 2 residences on it, and asked the applicant when the more recent of the 2 homes were built. Mr. Rabideau stated that it was prior to 1960. Mr. Dudick asked why the applicant is asking for a subdivision now. Mr. Rabideau stated that Ms. Southerland had lived in one home, and her father in the other. She stated that her father has passed and she is looking to subdivide the property so that her brother will buy and can live in one of the homes. Mr. Rabideau stated that lot 1 would be 3.55 acres and lot 2 would be 5 acres.

Mr. Myers stated that the application is to make the property compliant and that this is a Type II SEQR and no further action is required. Mr. Myers stated that the application was submitted to the County for review since this is a County road and they did not feel a need to review it.

Mr. Cifor asked if there is septic for the homes. Mr. Myers stated there is on both homes.

Mr. Dudick asked what makes Kinns Road a special road. Mr. Myers stated that there are certain roads within the town that are considered special and require setbacks to make the land available for possible expansions. Mr. Dudick stated that he feels that the subdivision makes sense and cleaning up the property seems reasonable.

Mr. Cifor moved, second by Mr. Klimes, to approve the variance as requested. The property is located at 625 Kinns 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: 5

Noes: 0

The chairman made a motion to approve the minutes from the August 17th, 2021 meeting. All who were present at the August 17th, 2021 meeting voted in favor and the meeting minutes were approved.

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

Mr. Dudick, Chairman, made a motion to adjourn the meeting. The meeting was adjourned at 7:50 p.m.

The next scheduled ZBA meeting will be held on October 5th, 2021.

Respectfully submitted,

Paula Cooper

Paula Cooper

Secretary, Zoning Board of Appeals