

## 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

November 16<sup>th</sup>, 2021

**Present:** Chairman Michael Dudick, Jerry Cifor, Christopher Lemire, Randy Gifford,  
Mario Fantini, John Klimes, Lisa McCoy

**Absent:** YiFengWang (alternate)

**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 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 at least 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:**

*An application from Larry Boni, KLB Enterprises, LLC requests a variance from Section 208-11, 50' front setback required in an R-1 zone. Parcel 259.11-2-99 was a 60' wide lot left undeveloped as a paper street intended to be used as access to adjoining property in the future if needed. In 2015, declaratory judgment litigation determined the property was divided between the two adjoining properties (30' each). The applicant plans to combine this 30' with 30' of the front yard of his residence so that a road could be built to access an adjoining parcel which he also owns. The required setback if the town were to accept the road is 50'. 26.3' is available, the variance required is 23.7'. property is located at 161 Wood Dale Drive, Clifton Park, 12065 (Permit#81308)*

**Applicant:**

Ryan Boni – Mr. Boni stated that he is here tonight representing his father Larry Boni who owns 161 Wood Dale Drive. Mr. Boni stated that the home at the address is pre-existing and he would like to keep the home as is and add egress to the rear of the of the property in order to access the rear parcel which he also owns. Mr. Boni stated that there is no other way to access the approximately 30 acre property to the rear of the home unless the existing garage is removed from the home. Mr. Boni stated that he feels the variance requested is not substantial as the home faces Wood Dale now, and there would be no physical impact to the home as it would remain as would the driveway. Mr. Boni stated that he feels that this is not a self-created situation as the property divide was court ordered.

**Public:**

James Ruhle – 168 Wood Dale Drive – Mr. Ruhle handed out to all of the Board members papers that are his testimony tonight as well as the letter that Mr. Scavo recommended the ZBA review this before the Planning Board and specify the 5 points. Mr. Ruhle stated that the 2 driveways are close together, 161 and 159, and stated that the road would go between them. Mr. Ruhle stated that this may be a small change but he feels is a precursor to a larger development in the future. Mr. Ruhle stated that he feels that there should be lot line adjustments and that the Planning Board should be hearing this application for a site plan or subdivision before the ZBA should be making the decision on the road. He stated that he feels that this is unsafe as there is a curve in the road that is sharp and there are indicators of this as well as limited site distance. Mr. Ruhle stated he would like to see the ZBA table this application until after the Planning Board has reviewed this.

Jack Rajeski – 173 Wood Dale Drive – Mr. Rajeski stated that this is being considered a corner lot. He stated that he feels this is not a corner lot until the Town accepts the road as a town road. Mr. Rajeski stated that he fully supports Mr. Ruhle's comments as well and would also like to see the Planning Board review the project first.

Resident - 861 Riverview Road – Resident stated that there is a lot of information to be looked at as the actual development project has not been looked at yet, he stated that he is more concerned for the process rather than the actual application. He stated that he feels that the Planning Board should look at this first as well.

Frank Berlin – Main Street – Mr. Berlin stated that this is a buyer beware situation and that he feels that the lawsuit was a positive compromise and now 161 wants to bring in a road. Mr. Brewin stated that neighbors need to be compassionate to others as this is discouraging.

Carol Schafer – 158 Wood Dale – Ms. Schafer stated that she lives near this and stated that cars go fast around the bend and there is limited sight going up a hill so there is a safety concern. She stated she feels this would make a change to the neighborhood.

Mr. Boni stated that the road was on the master plan from Van Patten so the neighbors should have always known there could be a roadway there.

Mr. Dudick asked for a recess so that he can get some clarification on the application from Mr. Myers and the applicant.

George Capsimalis – 179 Wood Dale Drive – Mr. Capsimalis stated that he lives on the road near to the applicant. He stated that he feels that it is the applicant's right to make a business, get counsel, and take a chance to develop his land. He stated that he feels that the applicant is trying to go around the steps that in place to ensure the proper development of the land. He stated that this will be detrimental to the environment as the traffic coming off the corner will affect the entire neighborhood. Mr. Capsimalis asked why there was a need for a private meeting that the public could not be a part of. Mr. Dudick stated that he had questions that he wanted addressed.

**Board:**

Mr. Dudick asked how many acres behind 161 the applicant owns. Mr. Boni stated it is about 28 acres and he has owned this prior to the court order. Mr. Dudick stated that the applicant then had the expectation of having access. Mr. Boni stated he did expect to have access to the property. Ms. McCoy verified that the applicant is being taxed on the entire 60' of the previous paper road. Mr. Boni stated he is paying taxes on all of it. Mr. Dudick stated that taxes are not a part of the variance approval. Ms. McCoy asked the applicant if the home was occupied. Mr. Boni stated that it is occupied. Mr. Boni showed a picture of the home as it is now and what it would look like if the garage would be removed.

Mr. Lemire stated that the applicant has no right to access until he purchased the home in August as a paper road is not an actual roadway and before August, the applicant had no access to his property.

Mr. Dudick verified that if the application for a variance were to be denied, the applicant could still put in a road. Mr. Lemire stated that he would still be able to. Mr. Lemire stated that the applicant could build a private road without a variance. Mr. Myers stated that the applicant could build a driveway leading to the rear property as access; if they decide to build a road then the applicant is responsible for maintenance unless the town takes over.

Mr. Lemire stated that the 60' is what is needed for the right of way for the road and the applicant could build a 26' driveway and keep the home and garage in place and not need a variance. Mr. Lemire asked if since right now no road is needed and if the home is removed from 161 then the road could go anywhere on the property. Mr. Myers stated that yes this is true. Mr. Lemire stated that if the variance would be granted this would change the character of the neighborhood.

Mr. Myers stated that if the town decides to accept the road then a variance would be needed. He stated that the road is not going before Planning for the road but plans to for the subdivision of the rear property. Mr. Myers stated that the Town would generally take over a roadway after 80% of the homes are built in the subdivision. Mr. Myers stated that a private road would not have to be 60', this is only town code. He stated that if the road was built to 30' then it would not be up to town standards but no variances would be needed. Mr. Myers stated that the town may decide to construct the access road in the current location of the paper street.

Mr. Dudick stated that the Town would not promise to take the road ahead of time so a condition may be able to be made. Mr. Boni stated that Planning asked for the applicant to go before the ZBA before going to the Planning Board.

Mr. Klimes stated that 26' is what is needed to access the rear property and develop it so he feels the variance is not needed today and is not required. Mr. Klimes stated that the applicant has the means to do what he wants to on his property without a variance. Mr. Boni stated that he is looking to make this easier on the neighbor by putting the road solely on his property and that he is here upon the request of the Planning Department.

Mr. Weiner stated that he has spoken to the Town's attorney and the Town was not approached during this court hearing about taking over the road. Mr. Lemire stated that the court documents stated that the Town was involved. Mr. Myers stated that the Town requested that the courts decided on the paper road.

Mr. Fantini stated that either way, approved or not, the applicant is going to build access to his property to the rear of 161 Wood Dale.

Mr. Dudick stated that the question is whether the Planning Board or the ZBA should be first in the hearings. He stated that he has tried to listen to the public's concern and to ensure the process is done properly. Mr. Boni stated that he will be going to the Planning Board first and would like to table this application for now. Mr. Weiner stated that this can be tabled and no date for completion to be made as the public hearing is still open.

**New Business:**

*An application from Rosegate, LLC requests a variance from the sign law Chapter 171 of town law table 1 which requires a 15' front setback from the property line for freestanding signs. Sign installed 3.9' from property line. 11.1' variance required. Property is located at 3 Maxwell Drive, Clifton Park, NY 12065 (Permit #81310)*

**Applicant:**

Paula Goldman – Mr. Goldman stated that he is here tonight representing the applicant. He stated that the affidavit for his representation and the mailing verification have been submitted along with a letter from Mr. Scavo. Mr. Goldman stated that this sign is for a 56,000sf apartment building in the TC2 zoning district, and due to the zoning the signage conflicts with laws. Mr. Goldman stated that the sign is currently in place where they are asking for the variance and he handed out photos of it. He stated that this is the only location that the sign can go in due to the topography of the land and the retaining wall. He stated the sign cannot be closer to the building as it would be blocking the view of a common area inside the building and that the exterior has fencing around it. Mr. Goldman stated that building is attractive as is the signage but there is no other place to put the sign so he is asking for a variance.

**Public:**

No public comment.

There being no public comment Mr. Dudick moved, second by Mr. Fantini to close the public hearing at 8:21 p.m.

**Board:**

Mr. Gifford asked why he sign did not go where the fencing is now. Mr. Goldman stated that if it were placed there it would not be visible from Maxwell Road and would block the windows of the common area of the building. Mr. Gifford asked how far back the property goes. Mr. Goldman stated the lot is smaller and there are wetlands behind the building. He stated that the sign could have gone on Mooney Way but then it would not be seen by traffic driving by on Maxwell. Mr. Gifford stated as this is a clean sign why the building and signage was put so close to the road. Mr. Goldman stated that this is criteria for the TC2 zoning.

Mr. Dudick asked how many apartments are in the building. Mr. Goldman stated here are 38 apartments.

Mr. Myers stated that this is a Type II action and no further SEQR is required. Mr. Myers stated that there are about 40-50 parking spaces on the property and that this is a part of the new Town Center zoning which calls for buildings to be close to the roadway. Mr. Myers stated he feels it fit in character with the zoning and the area

Mr. Cifor asked if the sign could have been built into the retaining wall. Mr. Myers stated it could have been but then it would be flat on Maxwell and now it is visible to traffic going in both directions.

Mr. Dudick read aloud the letter from Mr. Scavo stating due to the topography the placement of the sign is in the best place and it does not conflict with other signs on Maxwell Road.

Mr. Dudick moved, second by Mr. Mr. Klimes, to approve the variance as requested. The property is located at 3 Maxwell Drive, 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**

The chairman made a motion to approve the minutes from the October 19<sup>th</sup>, 2021 meeting. All who were present at the October 19<sup>th</sup>, 2021 meeting voted in favor and the meeting minutes were approved.

Mr. Dudick, Chairman, made a motion to adjourn the meeting, Fantini second, all voted in favor and approval was unanimous. The meeting was adjourned at 8:33p.m.

The next scheduled ZBA meeting will be held on December 7<sup>th</sup>, 2021.

Respectfully submitted,

*Paula Cooper*

Paula Cooper

Secretary, Zoning Board of Appeals