

Town of Clifton Park Zoning Board of Appeals

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Zoning Board of Appeals

June 6th, 2023

Present: Chairman Michael Dudick, John Klimes, Scott Styles, Chad Gregory,
Juliano Febo

Absent: Christopher Lemire, Lisa McCoy, Jensen Tate, (alternate)

Also Present: Scott Reese, Zoning Administrator
Paula Cooper, Secretary
Neil Weiner Esq., Attorney

The meeting was called to order at 7:12 p.m.

Mr. Dudick stated that the meeting started late as to give council time to arrive.

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

Mr. Weiner arrived 7:14 p.m.

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 5 voting members of the Board here tonight, so that 4 of the 5 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 5 votes need to be in favor of the application tonight.

New Business:

An application from Anthony DeProperty requests an area variance from chapter 208-12. No accessory building shall be placed closer to a front property line than 80' or closer to a side street line than a distance equal to 1/2 of the width of the lot at the front building line up to a distance which not exceed 75 feet. The proposed front property line setback is 56 feet for the proposed swimming pool. The variance requested is 24 feet from the 80' front property line setback. The property is located at 184 Moe Road, Clifton Park, NY

Applicant:

Anthony DeProperty – applicant – Mr. DeProperty stated that he is looking to install a pool and needs a variance from the front property line on Moe Road. The house accesses a side private road with Moe Road being on the side yard and his rear yard is also along Moe Road.

Public:

No public comment.

Mr. Dudick moved, second by Mr. Klimes, to close the public hearing at 7:24 p.m.

Board:

Mr. Reese stated that the rear yard of this property is along Moe Road. The front of the home faces a shared private driveway and Moe Road is the frontage of the plot.

Mr. Gregory asked if the front of the home was the front property line if this would be allowed without a variance. Mr. Reese stated it would be allowed. Mr. Gregory asked if the applicant would have the room to go to the required 80' from Moe Road. Mr. DeProperty stated that if they did then the pool would not be centered a placed much closer to his neighbor's yard. Mr. Gregory asked if there was a fence on the Moe Roadside. Mr. DeProperty stated that the entire yard is fenced and shrubbery that gives the property privacy and that he maintains it.

Mr. Reese stated that the Saratoga County Planning Board stated that they have no further review and that this is a Type II action for SEQR and there is no further action needed. He stated that the neighbors have been properly notified and he does not see a problem with the application.

Mr. Febo asked for a visual of how many feet from the edge of the road it is to the property line. Mr. Reese stated it is about 35'.

Mr. Klimes asked if the pool proposal is sufficient room from the neighbor as required. Mr. Reese stated that the code says 5' is required.

Mr. Dudick stated that he does not feel this application is significant and the bushes give a nice buffer from the roadway.

Mr. Klimes moved, second by Mr. Gregory, to approve the variance as requested. The property is located at 184 Moe Road, Clifton Park, NY.

Mr. Klimes read the Area Variance Criteria,

- A. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. Response: No.
- B. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance. Response: The pool could go to the setback line, but it would not fit the yard and impact the neighbors.
- C. Whether the requested area variance is substantial. Response: No
- D. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Response: No, the homeowner has a mature hedge line along the front of the property.
- E. Whether the alleged difficulty was self-created. (Note, this consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance.) Response: Yes, this is self-created, pools are not required however it does not preclude granting of the variance.

The Secretary called the Vote:

Ayes: 5

Noes: 0

Old Business:

*An application from **E. Stewart Jones Hacker Murphy, LLP- Benjamin Neidl** requests an area variance from Town Code Chapter 208-16 D.(1)(a)[3] the keeping of livestock or poultry, such as hogs, cows, horses, goats, or chickens, with a lot of a minimum of five acres. Existing lot size 2.63 acres. Variance requested 2.37 acres. The property is located at 43 Garnsey Road, Clifton Park, NY 12065 (Permit #VAR23-000456).*

Applicant:

Benjamin Neidl – Mr. Neidl stated that he has more to add to the application since it was last seen. He stated that they have received a letter from the vet stating that no harm would affect the horse if it were moved to the home and that the horse would have more room at the DiCocco's home than it currently has at the boarding facility. Mr. Neidl showed the design for the enclosure and stated that he would like to ask for the variance to expire when his client moves from the property. He stated that there would be no undesirable change to the neighborhood as Predel's Ranch is down the road and has been there for years. He stated that they are asking for one horse on 2.6 acres, the code states there needs to be 5 acres for horses but does not specify how many horses for 5 acres.

Mr. DiCocco, applicant, showed pictures to the Board of the views from the road front as well as from the side of his property to his home and the neighboring one. He stated the pictures show the vegetation buffers the adjacent neighbors.

Mr. Neidl said the reason why they are here is if the benefit can be achieved by a more feasible method and the answer is no. Dr. Cunningham provided a letter that the client qualifies as disabled under the American Disabilities Act. She needs the emotional support animal, only the horse can provide the emotional support. The commercial stable hours don't benefit the client when they have attacks at night or when they are severe. These are the reasons for the benefit to be sought to be achieved. The substantiality is the normal requirement is 5 acres and there is 2.6 acres which is over 52.8% of what is required variance is 47.2%. Mr. Neidl referred to past granted variances by the ZBA that had higher percentages. Per the reasons stated, this variance request doesn't have an adverse effect on the physical or environmental conditions in the neighborhood or district. Mr. Neidl said that the plans would also need Site Plan approval by the Planning Board, where the plans would be reviewed by an Engineer and could address any environmental concerns. If this is the alleged difficulty was self-created – it is a factor but non-preclusive. This is a rare case, that the client has a disability that is not self-created and for those reasons they believe this application be granted.

Discussion on the 50-foot setback for the fence was required. Mr. Neidl referred to Town Code Section 208-85 There shall be no stabling of animals, storage, or use of manure within a distance of 50 feet. The location of the stable building is more than 50 feet. The manure will be kept at a location more than 50 feet from the property line and removed once a week.

Discussion of the interpretation of what an area of a stable is and if that included the area up to the fence or just the structure ensued.

Public:

Doug Neil – Mr. Neil stated that he is a neighbor of the applicant, and he passed out materials for the Board to review and asked them to read thru the material for his allotted 5 minutes. The Board passed around the material and read.

Michael DiCocco – Mr. DiCocco stated that the applicant is his mother and that her mental health is important. He stated that he feels that he has not seen her as happy since she got the horse. He stated that the Neil family wanted horses as well but never pursued them and that his family was ok with this.

Anthony DiCocco – Mr. DiCocco stated that he is a neighbor of this property and that he cares for his neighbors but worries that his bedroom window would face where the horse would be and that he has small children and a pool, so the risk is concerning to him. Mr. DiCocco gave the Board printed materials for review.

Olga DiCocco – Ms. DiCocco stated that she is a neighbor of this property, and she handed out to the Board papers for their review. She stated that she was asked to bring in the papers and that she had not fully read them.

Johanne Morne – Ms. Morne stated that she is related to the applicant by marriage and has training in education and counseling. She stated that she had known the applicant for 12 years

and that she had noticed an increase in anxiety and depression. She stated that she has seen other interventions tried but nothing works as well as the horse. She stated that she feels the relationship is therapeutic to both the horse and the owner all while recognizing the law and the neighbors.

Teresa DiCocco – 26 Balltown Road – MS. DiCocco stated that she has been a nurse for 20 years and is the daughter of the applicant. She stated that it is hard for her to see her mother the way she has been for the past years and does not know what else to do for her. She stated that medications did not help her mother and since the horse came along her mother has since come off her medications and she has had a decrease in troublesome phone calls from her for help. Ms. DiCocco stated that there are other concerns for small children in the area besides a horse such as pools, ponds, and streams.

Robin Neil – 45 Garnsey Road – Ms. Neil stated that she is sympathetic, but 5 acres are required then they should abide by it. She stated that Saratoga County has identified their area as a priority to decrease the impact of septic going into the waters. She stated that she has owned horses and when it rains the manure runs off. She stated that she has a call into DEC as she believes that the yard of the applicant is forever wild land.

Jennifer Neil – Ms. Neil stated that this application is not about empathy but about the five factors that the Board has to review it by. She stated that she feels this is a detriment to the character of the neighborhood as this is a residential area with a barn thrown in and the residents behind this property would be greatly impacted. She stated that Mr. Anthony DiCocco's wife has anxiety as well and that this would increase it for her, knowing that the fence could be broken, and the horse will be blamed for any injury or damage. She stated that she feels that this is self-created as they chose to have a horse as a therapy animal that is not recognized as a service animal. Mr. Neidl stated that there is a difference between a service animal and an emotional support animal and that a horse can get out of enclosure on any amount of land. Mr. Dudick stated that variances are weighed as substantial and unique and that they need to look at the specific examples for each application.

Mr. Febo asked Mr. Weiner if he had ample time to review the sunset case that the applicant's lawyer submitted to the board. Mr. Weiner said this aspect of this is being requested based upon presentation of a disability and an accommodating animal that makes it unique enough that I don't think we have to see this as a template for future applications without similar circumstances. If the board wants to consider and research additional information, they don't have to decide on this application tonight. Which would allow him to investigate the case further. Mr. Klimes was inclined to a more legal review. Mr. Weiner recommended adjourning the meeting, closing the public hearing, and talk amongst the board members at the next meeting.

Mr. Weiner stated that it is not ideal for papers for review to be given at the meetings and this is an opportunity for the public to speak. Mr. Weiner stated that documents can be given to Mr. Reese ahead of time for both the applicant and the Board to review.

Mr. Dudick moved, second by Mr. Klimes, to close the public hearing at 8:42 p.m.

Board:

Mr. Gregory asked what the neighbor's biggest objection is with the application. Mr. DiCocco stated everything. Mr. Neidl stated that the horse achieves the goal of assisting Ms. DiCocco and that they have had other animals and they have not helped like this one has. Mr. Neidl stated that the Board has approved other variances that have been over 500% of what is allowed by code and law and stated that this also is doing the same and the applicant has ½ of what is required. Mr. Neidl stated that the Planning Board would still need to approve the site plan if the variance is approved.

Mr. Febo stated that the last time this application was reviewed he felt that the fencing did not meet the 50-foot setback. Mr. Neil stated that he feels that the fencing is not a building and that the manure and the stable need to be 50' from the property line. Mr. Neidl stated that the applicant has agreed to have the manure removed every week. Mr. Febo stated that the applicant has to meet the code as if there was 5 acres of land and according to Chapter 208-85 they are not within the 50' required.

Mr. Dudick stated that there appears to be no limit on horses per 5 acres. Mr. Reese stated that commercially the allotted amount is 2 horses per 1 acre, but nothing for private land in the code. Mr. Neidl stated that Dr. Cunningham stated that they are not willing to come to the meetings but stated that he had not spoken to anyone but Mr. Neidl or his client.

Mr. Dudick asked if there could be a sunset clause to the variance as this has never been done. Mr. Weiner stated that the variance runs with the land not the resident. Mr. Neidl stated that there was a case with an individual with a disability that was granted a sunset clause and referred to the case.

Mr. Styles asked what type of fencing would be around the perimeter. Mr. DiCocco stated that they would put in whatever was required. He stated that generally it is a fence that is 4 slats high and that they would be willing to put an electric fence on top if required. He stated that he would never intentionally put children into harm's way. Mr. Styles asked if the applicant would agree to an electric fence. Mr. DiCocco stated he would on the 2 sides facing the other home. Mr. Styles asked how many acres of good pasture the applicant has. Mr. DiCocco stated that they have 1.5 acres of good land. Mr. Styles asked how old the horse was; Mr. DiCocco stated it is 16 years old.

Mr. Gregory asked if he was correct in seeing that there would be a fence and then a 60' drive before the adjacent property. Mr. DiCocco stated this was true. Mr. Gregory asked what the current zoning for the property is. Mr. Reese stated it is in the CR zone.

Mr. Febo asked how far away from this property Predel's was. Mr. Neidl stated it is 2 lots away. Mr. Febo asked who owns the pond seen on the map. Mr. DiCocco stated that they own the pond. Mr. Febo asked about the renderings of the stalls and stated that he has concerns if another horse that is more active and younger would come to the property. Mr. DiCocco stated that it would be closed for the winter months and open during the nicer months and that the horse would be locked in the stall during the night but able to wander during the day. Mr. Febo asked how large the property to the south of this was. Mr. Reese stated it is 5.23 acres and has a shed on it. Mr. Febo asked if it was developable and if a home could be built next to this proposal. Mr. Reese stated that it could be developed and that a home could go next to this application. Mr. Neil stated that this application is for a therapy horse with a sunset clause that could be

consensual and that this is a person with a disability like one that was one in federal court. Mr. Febo stated that he would like the Planning Board to weigh in on how they feel about the application. Mr. Reese stated that he can talk to the Planning Director, but they have spoken and that they agree that the stable and manure would need setbacks but not the fence. Mr. Reese stated that the Planning Board would look at drainage and runoff with the site plan review, and the ECC would look at the project as well.

Mr. Klimes asked if the neighbor had been approached about leasing their land since it is 5 acres. Mr. DiCocco stated that he had and that the neighbor has no interest in leasing the land but has no problem with the horse going onto the applicant's property. Mr. Klimes stated that he has reservations regarding this application as it will open up more applications and doors. Mr. DiCocco stated that he wouldn't be here if it was not beneficial to his wife.

Mr. Reese stated that this is a Type II action and that no further SEQR is required. He stated that the Saratoga County Planning Board has waived their review of the application and that he feels the applicant is within their rights to request an application and Mr. McCarthy, attorney for the Town would be consulted as well.

Mr. Klimes stated that he would like counsel to follow up on the case that the applicant referenced and provide more feedback. He stated that he needs more time to review the materials presented tonight.

Mr. Neil stated that he can talk to the Planning Board or see if an application can be filed with them to get their feedback before the Zoning Board decides.

The chairman made a motion to approve the minutes from the May 5th, 2023, meeting. All who were present at the May 5th, 2023, meeting voted in favor and the meeting minutes were approved.

Mr. Dudick, Chairman, made a motion to adjourn the meeting, Mr. Styles second, all voted in favor and approval was unanimous. The meeting was adjourned at 8:53 p.m.

The next scheduled ZBA meeting will be held on June 20th, 2023.

Respectfully submitted,

Paula Cooper

Paula Cooper

Secretary, Zoning Board of Appeals