

Town of Clifton Park Zoning Board of Appeals

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Zoning Board of Appeals

June 20th, 2023

Present: Chairman Michael Dudick, Christopher Lemire, John Klimes, Scott Styles,
Chad Gregory, Lisa McCoy, Juliano Febo, Jensen Tate, (alternate)

Absent:

Also Present: Scott Reese, Zoning Administrator
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 stated that Mr. Lemire would be late to the meeting and until he is present Ms. Tate would be a voting member 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 7 voting members of the Board here tonight, so that 4 of the 7 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 of 7 votes need to be in favor of the application tonight.

New Business:

An application from AJ Signs requests a variance for a sign permit per town code Chapter 171- signs- Attachment 171c Chart II. The allowable wall sign area for a 4,980 sf ground floor area is 25 sf – 32 sf proposed – 7 sf variance required. The property is located at 780 NY Route 146A, Clifton Park, NY.

Applicant:

Carl Wheeler – AJ Signs – Mr. Wheeler stated that the sign is for Rivers Pools and that it is asking for a 7' variance for a wall sign. He stated that the sign will be lighted and about the same size and location as the banner hanging now.

Public:

Doug Neil – 45 Garnsey Road – Mr. Neil stated that he supports the application. His daughter, Jenifer Neil, from Schaghticoke stated that she is in favor as well as it is a family business, she is in relation to the owner.

Mr. Dudick moved, second by Ms. McCoy to close the public hearing at 7:13 p.m.

Board:

Mr. Dudick asked if this was a shared space and if so, they would share the sign. Mr. Wheeler stated it is shared with Blue Spruce and the signage would not be shared.

Mr. Reese stated that Saratoga County Planning Board stated that was no significant countywide or intercommunity impact. HE stated that this is an unlisted action pursuant to SEQRA, the proposed action will not result in any significant adverse environmental impact. Mr. Reese stated that all required mailings have been sent out and that this application is in the Hamlet Mixed Use Zone. Mr. Reese stated that as long as there is only one wall sign for the entire building, he has no problem with the application.

Ms. McCoy asked if there needs to be an acknowledgement from the business sharing the space that they agree if this is granted this would be the only allowable wall sign. Mr. Reese stated that he would need to investigate the space plan for the building.

Mr. Reese stated that the building footprint is 4,980 sf so if the building's occupants ever wanted to put up another sign they would have to come back for a variance.

Mr. Dudick stated that he feels that the application is not asking for a lot and is not a large reach out.

Mr. Klimes moved, second by Mr. Febo, to approve the variance as requested. The property is located at 780 NY Route 146A, Clifton Park, NY.

Mr. Klimes read the Sign Variance Criteria.

- a. Whether the proposed sign will not be detrimental to other property.
Response: No.
- b. Whether the proposed sign will create a hazard or a nuisance.
Response: No.
- c. Whether the proposed sign will not interfere with the use of public lands or highways. Response: No.
- d. Whether the proposed sign will be in harmony with the purposes of this chapter. Response: Yes, you could not tell the difference on the sign on the increase of the sign.

The Secretary called the Vote:

Ayes: 7

Noes: 0

Mr. Lemire arrives at the meeting and becomes a voting member, Ms. Tate excuses herself from the remainder of the meeting.

New Business:

An application from Thomas Dowling requests an areas variance from chapter 208-12 A. No accessory building shall be placed closer to a front property line than 80 feet or closer to a side-street line than a distance equal to ½ of the width of the lot at the front building line up to a distance which not exceed 75 feet. The proposed side-street line setback is 9 feet for the proposed swimming pool. The variance requested is 66 feet from the 75 feet side-street line setback. The property is located at 4 Hempstead Commons, Clifton Park, NY.

Applicant:

Thomas Dowling – applicant – Mr. Dowling stated that he is looking to have an in ground pool installed but is need of a variance due to electrical lines on his property. He stated that he has to get the electrical figured out so there may be a need for a second variance due to a direct line with National Grid. He stated that there needs to be a minimum of 10' between the pool and the electrical lines. Mr. Dowling stated that if the electrical is in a different position than the map shows he may need to come back for another variance. Mr. Dowling stated that he cannot put the pool behind the home as there are existing patios, trees and landscaping.

Public:

No public comment.

Mr. Dudick moved, second by Mr. Klimes, to close the public hearing at 7:43 p.m.

Board:

Mr. Dudick asked that if the pool were rotated 90 degrees there would be no variance needed. Mr. Reese stated that still would be for the side street setback. He stated that the applicant moved it to allow for more room.

Mr. Reese stated that they may need to push this hearing back to the next meeting if another variance is being requested. Mr. Weiner stated that it would be as this would be a greater request and the Board can only approve tonight the original application.

Mr. Lemire asked why the pool could not move closer to the home as it is now 15' from it. Mr. Dowling stated that there are existing trees and landscaping in the area as well as a patio.

Mr. Febo asked if the underground wires were traced. Mr. Dowling stated that it was professionally traced. Mr. Febo stated that he suggests that the applicant look at the code for the distance from the electrical lines as he thinks it may be 5' not 10'.

Mr. Lemire asked if the lot were not a corner lot, what the setback would be. Mr. Reese stated that it would be 5'. Mr. Lemire asked if the property was already fully fenced in. Mr. Dowling stated it was and is about 1' from the property line. He stated that a fence would potentially be around the pool as well.

Mr. Reese stated that this is a Type II action and that no further SEQR is needed. He stated that the Saratoga County Planning Board stated this is not applicable to them, and that adjacent property notifications have been sent. Mr. Reese stated that the applicant has a restrictive location of utilities, and this is why it cannot be put further back on the property.

Mr. Klimes asked if the applicant could take out landscaping if the variance is not approved. Mr. Dowling stated that he could, but it is not ideal.

Mr. Dudick stated that he feels that the applicant is trying to fit a lot on his property but does not see the application as large.

Mr. Dudick moved, second by Ms. McCoy, to approve the variance as requested. The property is located at 4 Hempstead Commons, Clifton Park, N.Y. 12065.

Mr. Dudick 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: No, with the conflict with the electrical line and items such as concrete patio, deck, gazebo, and shed.
- C. Whether the requested area variance is substantial; Response: No, in consideration that this lot is a corner lot.

- 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.
- 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, but not preclusive.

The Secretary called the Vote:

Ayes: 7

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 they have been before the Board 2 times and that additional materials have been submitted including a letter from the veterinarian and a site plan. Mr. Neidl stated that at the last meeting they were asked to postpone the vote and to adjust the application. Mr. Neidl stated that the applicant is willing to accept a sunset clause and that he and the Zoning Board Counsel have differing opinions. He stated that they are here tonight to answer any further questions and clarify if needed.

Board:

Mr. Dudick asked the name of the horse and how long it has been in service to Ms. DiCocco. Mr. DiCocco said his name was Shane and he had been with his wife for 2 years. Mr. Dudick asked if anything had changed, now, compared to two years ago? Specifically, why is that not an acceptable option. Mr. Neidl stated that Ms. DiCocco’s doctor recommends it to be on property. Mr. DiCocco stated that the proximity of the horse is important to her, two issues in particular, she has her episodes sometimes late at night when the commercial stables are closed, she cannot get access to the animal then or when her anxiety is too high for her to drive to the stable. Mr. Dudick asked if the therapy from the horse over the last two years has not been satisfactory in taking care of the physical and mental issues. Mr. Neidl stated its satisfactory except for the times over the last two years when she cannot get access to the horse when she needs it.

Mr. Lemire asked how the horse would be transported if it ever needed. Mr. DiCocco stated that they would have to hire someone to do this.

Mr. Weiner stated that he is not confident with a sunset provision would work in this regard however asked the applicant if they would agree with the condition that this variance is for Shane only and if they wish to get another horse they would have to come back for another variance. Mr. Neidl stated that they would be comfortable with this.

Ms. Cooper read aloud the letter submitted from the Planning Director.

Mr. Weiner stated that a motion would include the variance limited to one horse Named Shane and in the event that Sandra DiCocco no longer lives at the residence, or the horse expires so shall the variance and that adequate fencing is provided.

Mr. Neidl is requesting consideration from the board approving that the applicant would consent to a sunset provision whereby upon Mrs. DiCocco no longer residing there on the premises or the horse.

Mr. Dudick inquired if the applicant wanted to sell the property ten, twenty years down the line and that you can have a horse on this property and how the sunset provision can be enforced?

Mr. Weiner is not confident that the sunset provision is enforceable.

Mr. Febo asked which pen the applicant is now asking for, either the 1.5 acres or the 0.55. Mr. Neidl stated that Ms. DiCocco would like the entire property fenced for the horse, which is 1.55 acres. Mr. Neidl stated that there are 3 hearings tonight where there is concern for public safety. Mr. Febo asked which plan the veterinarian look at and approve of. Mr. Neidl stated that he can ask for clarification.

Mr. Lemire asked why the applicant has not looked into purchasing a property that they can reside at and have a horse without variances. Mr. Neidl stated that the applicant have lived in their residents for 32 years. Mr. Lemire stated that he feels it is unfair to disrupt an entire community when the applicant can seek other land and asked if they have looked into this. Mr. Neidl stated that he did not know if they had considered this.

Mr. Dudick asked about which pen would be used for the horse, the 1.5 acres or the 0.55 acres. Mr. Neidl stated that the applicants want to give the horse options to roam.

Mr. Reese stated that if the variance is approved that this would then go to the Planning Board for a site plan review, and they would look at fencing and stable areas as well as waste storage. He stated that the ZBA is only looking at livestock on the property.

Mr. Dudick stated that he feels if the service of the horse is currently beneficial and satisfactory to the applicant there is no need for variance. He stated that he also feels if no benefit could be proved then he feels the variance should not be granted.

(Insert first motion by Mr. Styles)

Mr. Lemire moved, second by Mr. Febo, to deny the variance as requested. The property is located at 43 Garnsey Road, Clifton Park, NY 12065.

Mr. Lemire read the Area Variance Criteria; Mr. Lemire answered against all 5 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: Yes, putting a horse on a property less than 5 acres as set forth in the Zoning Law will make an undesirable change in the neighborhood and a detriment to the character of the nearby properties.

- 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: Yes, the applicant can still travel to the horse as she has been doing for the last two years.
- C. Whether the requested area variance is substantial; Response: Yes, a 2.37-acre variance is substantial.
- D. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; Response: Yes, that the request in this zone the property is located in and would have an adverse physical and environmental effect.
- 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 application is self-created and while that's relevant but not determinative in this case is just one of the five factors that puts the motion forward to deny the application.

The Secretary called the Vote:

Ayes: 5

Noes: 2

Mr. Dudick, Chairman, made a motion to adjourn the meeting, Ms. McCoy second, all voted in favor and approval was unanimous. The meeting was adjourned at 8:24 p.m.

The next scheduled ZBA meeting will be held on July 18th, 2023.

Respectfully submitted,

Paula Cooper

Paula Cooper

Secretary, Zoning Board of Appeals