

Town of Clifton Park Zoning Board of Appeals

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Zoning Board of Appeals

October 3rd, 2023

Present: Chairman Michael Dudick, John Klimes, Scott Styles, Lisa McCoy, Juliano Febo

Absent: Chad Gregory, Christopher Lemire, Jensen Tate, (alternate)

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 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 of the 5 votes need to be in favor of the application tonight.

Old Business:

None

New Business:

*An application from **CT Solar 3, LLC** requests an area variance from Town Code chapter 208-80C. (2) Space and bulk standards for Tier 3 solar energy systems require the side yard setback in the CR Zone is 100'. The proposed side yard setback is 39 feet. The variance requested is 61'. The property is located at Blue Barns Road, Clifton Park, NY.*

Applicant:

Matt Mihaly stated that this application is for a community solar developer and that this is the second project for them in Clifton Park. He stated that the previous array was approved last year. Mr. Mihaly stated that this would be a 3.5 megawatt facility with no battery storage and 19 acres of disturbance. Mr. Mihaly stated that this would cause minimal traffic and minimal disturbance, and they have a decommissioning plan that is attached to the application. He stated that they have tucked back the solar array so that there is a decrease in visual impact from the road and the parcel is split between the Town of Clifton Park and Ballston, but the development is in Clifton Park only. Mr. Mihaly stated that he is hopeful the Planning Board will declare lead agency at the next meeting and that they can have approvals by the end of the year.

Dan Krzykowski stated that setbacks are being proposed at 100 feet for the front side and rear, they are complying with the front and rear setback, but need relief for the side setback as they are trying to keep the array away from neighbors and keep closer to the railroad tracks that are adjacent to the property. Mr. Krzykowski stated that this would not cause a detriment to the neighbor and went through the 5 criteria for the variance. He stated that this array will help the stat transfer to renewable energy and that there is no detriment to the neighborhood and is actually a benefit as they are keeping it away from residents. He stated that there is time for the Board to decide as the Planning Board needs to declare lead agency before decisions are made.

Public:

Juliette Swartz – 110 Ashdown Road – Ms. Swartz stated that she owns the property at the corner of Ashdown Road and 146A, Maple Hill Farm and that they are in the process of selling the development rights to the farm to Clifton Park. She stated that they are trying to preserve the view shed and that they can see into the hills of Glenville. Ms. Swartz stated that she feels their farm is an important part of Clifton Park and if you look to the west, she would be 64' above the solar farm proposal. She stated that with leaf off conditions the solar array would be fully visible and this is a concern for her. She state that she sent a latter but EDP has yet to address her concerns. Mr. Dudick stated that the concern is with an adjacent property and not the resident's property so the view would change with the panels.

Kurt Swartz – 110 Ashdown Road – Mr. Swartz stated that he had written a letter and that once the development rights are complete it means that his farm can only be used for open space or agricultural use, and this would mean tree farms would be a use. He stated that they want to preserve the land and the view shed needs more examination.

Board:

Mr. Dudick asked how many panels are being proposed and if they are not all guaranteed could they fit all of them. Mr. Krzykowski stated that if they removed panels they could still do the project but they would have to look at the full viability of the site. He stated that they could come back with a number if needed. Mr. Dudick asked why the applicant cannot put the panels further out rather than closer to the property line. Mr. Mihlay stated that there are wetlands on the property that prohibit some placements. Mr. Klimes asked if cutting out some of the array is a deal breaker for the project. Mr. Reese showed a map on the screen showing the DEC wetlands and the 100 foot buffer.

Stephanie Alessandrini, with applicant, stated that the trees are about 40-60 feet high so there would need to be further clearing so pushing the array closer to the railroad tracks would be more beneficial and would have less impact on the wetlands. She stated that they were in direct discussion with DEC and this is what they had found. Mr. Dudick stated that the options are closer to residential, wetlands, or railroad tracks? Ms. Alessandrini stated that this is correct and that there are additional wetlands going into the Town of Ballston and DEC will not issue them a permit to go into the buffer.

Mr. Dudick asked about the noise generated from the rotating panels. Ms. Alessandrini stated that it is about 86 decibels at the pad and 40 decibels further out. She stated this is the same noise that you would find in a library and that there is movement about every 15 minutes.

Mr. Styles stated that there was a letter written from resident mentioning electric magnetic dangers and people should be away at least 1.3 miles. Ms. Alessandrini stated that studies have been done in North Carolina and found that cell phones emit more than the panels. Mr. Styles stated that the letter said that the poles are along the resident's property line as well. Mr. Styles asked if there was a flood report done here. Ms. Alessandrini stated that they are in flood zone X which is beyond the 100-year flood plain.

Mr. Dudick stated that in Clifton Park there is an easement for power line that is 15' so homes can go that close to them and are also certain EMFs generated from them. Mr. Reese stated that 100' is a buffer for development. Mr. Krzykowski stated that he is hearing the concerns and that they are trying to be good neighbors and why they are asking for the variance. Mr. Dudick stated that would like to see a comparison of cell phones vs. the closest home to the array proposal.

Mr. Dudick asked if the panels were reflective and if these solar arrays are considered farms. Mr. Reese stated that solar arrays are not considered agricultural and that no solar farms could be developed on Ms. Swartz's farm if she sells the development rights. Mr. Dudick asked to see how this project compares to others in Clifton Park. Mr. Dudick asked if the panels reflect light. Mr. Day stated that the panels are made to absorb light and that the ones proposed here do not reflect the light.

Mr. Klimes asked how many megawatts are required to keep the project running.

Mr. Styles asked if the power generated here would be going to Clifton Park or Ballston. Mr. Andrew Day, Source Renewables, stated that it would go to the local community, both residential and commercial that chose to buy into solar. He stated that they would receive a discount on their energy bill but ultimately the power would go into the grid.

Mr. Febo asked what the proposed life span of the panels is. Mr. Day stated that they are warranted for 35 years and would be decommissioned after about 50 years and that there is a decommissioning plan in place. Mr. Febo stated that the applicant should go to the corner of Ashdown Road and 146A to feel out the resident concern.

Mr. Reese stated that this application needs to go before Planning Board and Lead Agency needs to be established before this Board can make any decisions so the applicant can come back and address questions that were asked. He stated that neighbors were notified and that he received 3 responses from neighbors relating to the view and the poles. Mr. Reese stated that the Saratoga County Planning Board found no community impacts.

New Business:

*An application from **M & M Food Mart** requests the following area variances:*

- A. Per Town Code Chapter 208-97: any structure or use demolished intentionally must meet all current requirements of the Zoning Law when rebuilt requiring the following variances:*
- B. Per Town Code Chapter 208-38 (B): the minimum net land area per establishment shall be 40,000 square feet, existing land area is 26,572 square feet. The variance for the net land area requested is 13,428 square feet.*
- C. Per Town Code Chapter 208-38 (C) front yards. There shall be a minimum front yard of 80 feet, into which space there shall be no encroachment of structures other than a fence, a wall, or a sign not larger than 20 square feet and no encroachment of commercial usage other than parking space. The gas canopy is located 30 feet from the front lot line. The variance for a front yard setback is 50 feet for the gas canopy.*
- D. Per Town Code Chapter 208-38 (C) front yards. There shall be no parking allowed within 30 feet of the front lot line. The parking area is located 5 feet from the front lot line. The variance for parking setback is 25 feet from the front lot line.*
- E. Per Town Code Chapter 208-38 (D) side yards. No automobile parking space shall extend nearer to a side property line than 20 feet. The parking area is located 10 feet from the side lot line. The variance for parking setback is 10 feet from the side lot line.*
- F. Per Town Code Chapter 208-38 (E) rear yards. No building shall be placed closer to the rear property line than 30 feet with no encroachment by structures or parking. The proposed rear yard setback for the building is 10 feet. The variance requested is 20 feet from the rear lot line setback.*
- G. Per Town Code Chapter 208-38 (G) green space shall be 35%. The proposed green space is 29%. The variance requested is 6% of the total green space required.*
- H. Per Town Code 208-93 (C) public garages and automobile service stations, no gasoline pump shall be placed closer to any property line than 50 feet. The proposed gasoline pump setback is 35 feet. The variance requested is 15 feet.*
- I. Per Town Code Chapter 208-98 Special setback lines, no building or part of a building, other than steps eaves, and similar fixtures, shall extend nearer to the center line of the street or road than 100 feet in the case of a building in a residential district or 130 feet in the case of a building in any other district. The proposed gas canopy setback is 100 feet. The variance requested is 30 feet from the center line of the street setback.*

The property is located at 1019 Route 146, Clifton Park, NY 12065

Applicant:

Jason Singer, Nolan Engineering, stated that they came in a few weeks ago and since then has been before the Saratoga County Planning Board and they are finished with the application. Mr. Singer showed a map with locations and the convenience store with 2 pump stations. He stated that Ravenswood is behind this property and their parking is along the property line. He stated that they are asking to use setbacks for redevelopment of the site and that the applicant owns 40 gas stations in NY State. He stated that the owner is looking to make the property like his others and redo the convenience store and add more gas pumps. Mr. Singer stated that the Planning Board has made a comment about closing the second entrance to the property and making another entrance off of the proposed public road. He stated that they are looking to push the store back 10 feet and that it would be 27'x100' and the existing store now is 50'x70', it being similar square footage but laid out differently. He stated that by pushing the store back it would help make more room for larger trucks to come onto the site. He stated that he could decrease parking but he is trying his best to keep this looking nice for long term community use. Mr. Singer stated that the financials have not yet been worked out for the project so this may end up being smaller but this is what the proposal is currently.

Public:

Mr. Reese stated that he received a letter from resident with concerns. He read the letter submitted by Mr. Ralph Reale. Mr. Klimes stated that kids walk the sidewalk all the time here and that there are concerns about them not using the crosswalks. Mr. Febo asked to make a recommendation of looking into sidewalk viability to the Planning Board is this is in walking distance of the schools.

Mr. Dudick moved, second by Ms. McCoy to close the public hearing at 9:05 p.m.

Board:

Mr. Klimes stated that he would like justifications for all of the variances requested. Mr. Singer went through all of the variances asked for, A-I to justify the request. Mr. Klimes stated that he would much rather see a decrease in the variances and maybe take out a corner of the parking. Mr. Singer stated that the property line is away from the road so it is not impactful visually and that they would like 22 spots. Mr. Klimes stated that he would like to see concessions for the application. Mr. Singer stated that he would be willing to reduce parking to increase green space. Mr. Febo stated that if 2 parking spots are removed than the applicant would be closer to the greenspace requirements. Mr. Dudick stated that if spots 9 and 10 are removed than it would help with variance G.

Mr. Singer stated that the use for the building needs to face the road. Mr. Reese stated that the old building predates code but if it is demolished then a new one would have to adhere to current codes. He stated that the building meets the 80' setback but the canopy for gas does not. Mr. Reese stated that the Planning Board can count parking spots at the pumps which would cut down on the parking.

Ms. McCoy stated that the site plan the Board has is different from what is being shown tonight. Mr. Singer stated that the Zoning Board should have gotten the updated plan that was modified based on Planning Board feedback.

Mr. Klimes stated that the proposed road is not an official road and these plans reflect it being a road and how it would affect the plans. Mr. Reese stated that if it were a public road the setback would be 30' not 20'.

Mr. Weiner asked the applicant if they had an easement since it is not a public road yet. Mr. Singer stated not yet. Mr. Dudick stated that an easement to access is still needed. Mr. Reese stated that the island that is currently in the roadway is being proposed to be removed here but does not belong to the applicant.

Mr. Dudick stated that access cannot be established until an easement is granted so they cannot approve or deny the application without one and that variance F is asking for a 20' setback. Mr. Dudick stated that he feels that the applicant should move the access to allow for better circulation.

Mr. Reese asked about an easement for the storm line. Mr. Singer stated that they do not have an easement and it as it could not be found with the deed or associated paperwork. Mr. Singer stated that the greenspace variance is for 15' but they could eliminate 2 parking spots to achieve. He stated that they are looking for a 15' variance for letter H. Mr. Klimes stated that comparing this site to Cumberland Farms and Stewart's the applicant seems to be in line with them. He stated that if the applicant stays in line with Stewart's than he is fine with this variance.

Mr. Reese stated that there are special setbacks that are used with certain roads and this is why they have a special setback variance request. Mr. Weiner asked how far the canopy is from the road now. Mr. Klimes stated that the proposal is 10 feet closer than the original.

Mr. Febo stated that the applicant seems to be willing to add more green space up front and add more gas pumps at the same time. Mr. Singer stated that they are willing to take out the 2 front parking spots and do a 35' front setback. Mr. Dudick stated that he is ok with eliminating 2. Mr. Klimes stated that he is in favor of this because it adds to the greenspace.

Mr. Febo asked who maintains the tree line. Mr. Singer stated that the tree line is on Ravenswood property.

Mr. Dudick stated that the applicant is looking to improve upon a longstanding garage in the community and that he is looking to improve a sub-sized lot that was created before the code. He stated that he feels that the applicant needs to work with what is there and is willing to amend the variances requested.

Mr. Febo stated that he has concerns regarding the well on site. Mr. Singer stated that it has been abandoned but he is unsure if it was decommissioned. He stated that the current building is hooked up to public water and sewer. Mr. Febo stated he would like it addressed by the Planning Board.

Mr. Reese stated that neighbors were notified, and resident concerns were announced. He stated that this is an Unlisted action pursuant to SEQRA and Saratoga County Planning Board has found

no community impacts. Mr. Reese stated that he has concerns with the private roadway as well as DOT connections.

Mr. Klimes moved, second by Mr. Styles, to approve the variance as amended. The property is located at 1019 Route 146, Clifton Park.

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

Amendments:

1. All variances being granted are contingent upon easement for access to the current private road adjacent to the lot
2. Variance G - Applicant will remove parking spots 9 and 10 and amend the greenspace needed for the variance to reflect 5%
3. The Planning Boar shall address the concern of an active or abandoned well.
4. Variance D – the parking decrease and so front yard setback variance is now 7’.

The Secretary called the Vote:

Ayes: 5

Noes: 0

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 9:19 p.m.

The next scheduled ZBA meeting will be held on October 17th, 2023.

Respectfully submitted,

Paula Cooper

Paula Cooper

Secretary, Zoning Board of Appeals