

Town of Clifton Park Zoning Board of Appeals

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Zoning Board of Appeals January 2nd, 2024

Present: Michael Dudick, Chairman, Juliano Febo, Scott Styles, John Klimes, Christopher Lemire, Mark Brockbank (alternate)

Absent: Lisa McCoy, Chad Gregory

Also Present: Scott Reese, Zoning Administrator
Neil Weiner Esq., Attorney
Cristi Shuhart, Alternate Secretary

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. Brockbank would be standing as a voting member for Ms. McCoy.

Mr. Dudick told the applicant that per town code, 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 6 voting members of the Board here tonight, so that 4 out of 6 members need to vote in favor tonight to grant the variance. He asked the applicant if she would like to come back at a later date or if she would like to proceed knowing the Board tonight needs to vote in favor of the application with at least 4 votes.

The applicant stated that she would like to continue with the variance tonight.

NEW BUSINESS – None

OLD BUSINESS

The secretary read the legal notice as it appeared in the Daily Gazette 12/22/23

- 1. An application from Pricilla Medina is asking for a front yard setback variance of 32 feet, resulting in a setback of 98 feet from the centerline of Vischer Ferry Road. Town Code Chapter 208-98 Special setback lines state, no part of building shall extend nearer to the centerline of Vischer Ferry Road than 130 feet in a non-residential district. The applicant is adding an addition to an existing structure. The property is located at 514 Vischer Ferry Road, Clifton Park, NY.**

The application was presented by Pricilla Medina, of 514 Vischer Ferry Road, Clifton Park, NY. They had an architect present a design to the building and codes and given the ok to start to build. They did a dig and poured the concrete and did the foundation. It was then brought to her attention that they may be too far out and that she would need a variance.

Mr. Reese stated that what happened was that he was driving by and saw the construction going on. He then inquired with the Building Department and found out that he was not included in the loop of the review of the building permit. He then stated to make sure this was done correctly, that this should be presented in front of the Zoning Board of Appeals and ask for a variance. Vischer Ferry Road has a special setback of typically of 100 feet. The lot is zoned B-1 and was a law firm and surrounding it is a residential area.

Mr. Weiner asked Mr. Reese if it used to be the Beebe Law Firm.

Mr. Reese answered yes that it used to be the Beebe Law Firm. He then explained the applicant has taken this over and built a garage as well as some other additions. On special setback lines on streets and roads no buildings or part of buildings other than steps or eaves or similar fixtures shall be extended nearer the center line of the street road than 100 feet in the case of buildings in a residential district or 130 feet in the case of a building in any other district. So, since this is in a B-1 District, it had to adhere to the 130 feet even though she is using it as a residence.

Mr. Dudick stated that was a big building for a residence.

Ms. Medina stated that it was indeed residential until the law firm took it over. She explained the front part of it was a law firm and, in the back, they had a doctor's office. They had built an extension there.

Mr. Dudick asked Ms. Medina if she owned the whole building.

Ms. Medina said yes.

Mr. Reese presented the structure where it stands alone to the Board on a GIS map. He explained that according to how things are laid out the center line of the road to the addition on the front. They are already putting an addition on the side. But the addition on the front, if this was residential, she would still need a two-foot variance but in this case, she still needs a 32-foot variance because the variance requirement would be 130 feet.

Mr. Lemire asked Mr. Reese if the front of the building that exists meets the setback.

Mr. Reese answered that the existing building does not meet the setback.

Mr. Brockbank asked Mr. Reese if the 20-foot porch on top of 98 feet is 118 feet.

Mr. Reese stated yes, it is 118 feet. It is an existing structure which is pre-existing non-conforming prior to that to when the structure was built.

Mr. Dudick asked the applicant, Ms. Medina, if she knew when the building was built.

Ms. Medina said during the 1800 's, she thinks 1880. One of the residents that came back after 30 years of living in this area grew up in the house. During the summer he came over and gave them a history of the building and how he grew up there and how it was a farm.

Mr. Brockbank asked Ms. Medina that the front porch is not what it currently looks like. That it already has concrete poured.

Ms. Medina said yes it has concrete poured in the front. The little awning in the front is down. They were digging for the foundation so there is already concrete there getting and ready to build on. Then they got a notice to stop work, that they may be out too far.

Mr. Lemire asked Ms. Medina if it is an addition or a porch.

Ms. Medina stated that it is a porch, an enclosed porch.

Mr. Lemire asked Ms. Medina if this porch would be heated so you could sit out there in the winter.

Ms. Medina answered yes, they will put heat in there.

Mr. Styles asked Ms. Medina if they are putting a business in there.

Ms. Medina said no. It is commercial back to residential.

Mr. Lemire asked Mr. Reese why this needs a 130-foot setback if it's in a non-residential zone.

Mr. Reese answered that the theory was the district that it's in. On the zoning map it's a B-1, a business district. It's adjacent to a residential district.

Mr. Lemire asked Mr. Reese what's the theory behind other than a residential district needs to be 130 feet.

Mr. Reese answered if you are in a business district, for example, a duplex built on Main Street across from Main Street Grill. That was a hamlet mixed use, that needed a 130-foot setback

even though it is a duplex. There are certain roads in town that require more than your typical front yard setback than what's listed in a certain zone.

Mr. Lemire asked Mr. Reese why that was.

Mr. Reese stated he is only assuming that the amendments were made back in 1967 to possibly preserve the Main Street character.

Mr. Febo commented that it was probably made to keep the rural look.

Mr. Lemire commented that businesses on Route 9 are more than 130 feet closest to the road.

Mr. Weiner stated to Mr. Reese that Mr. Lemire pointed out that most businesses on Route 9 are closer than 130 feet. Even in a busy commercial section.

Mr. Reese stated that those businesses have also asked for a variance if they are any closer than 130 feet. This is also from the centerline of the road so for New York State Route 9 they have a much wider right of way than most other roads, so you are still doing the distance from the centerline of Route 9 so that 130 foot is not as impactful as if you are going down Grooms Road for example which is a two-lane road.

Mr. Dudick commented about Ms. Medina's property being in a business district. The term district being to describe the one lot as a business district seems to him to be the best description of spot zoning. He then asked Mr. Reese to point out on the GIS map Ms. Medina's property.

Mr. Reese said to Mr. Dudick that he is right in that this lot is adjacent to other zones. He then pointed out where the lot is on a zoning map to the Board. It is part of the Vischer Ferry Corridor overlay.

Mr. Febo asked where the next closest B-1 zone is.

Mr. Reese pointed to a zoning map, down the road.

Mr. Weiner asked Ms. Medina how many acres her parcel was.

Ms. Medina said about 5.9 acres.

Mr. Lemire asked Mr. Reese to reference on the GIS map by the north side of the creek if there is there a dentist's office, childcare and bank.

Ms. Medina stated yes. There is a KinderCare daycare and a dentist.

Mr. Styles answered the dentist office is MaiAn Vu-Chauvin Family Dentistry.

Mr. Lemire asked Mr. Reese what the light pink zone on the zoning map is.

Mr. Reese answered B-3.

Mr. Lemire asked Mr. Reese would those businesses need variances as well.

Mr. Reese answered they would if they were within 130 feet of the centerline of the road.

Mr. Brockbank asked Mr. Reese if this district gets rezoned to a residential district, and if you build a porch that is only 18 feet then would you need a variance.

Mr. Reese said it would need a two-foot variance. It's a 100-foot setback from Vischer Ferry in a residential zone. Since this was a commercial site, he had to refer this to Saratoga County Planning Board for their review, but they gave it back to him saying this is a residential variance. They weren't looking at this as a commercial variance, they were looking at this as a residential application.

Mr. Dudick commented that everything about this seems like a residential application, it's a residential zone. The applicant lives there. It was a residence when it was built.

Mr. Lemire stated that the applicant doesn't live there yet. That the applicant is working on it.

Ms. Medina stated that they are still working on it.

Mr. Dudick asked Ms. Medina where they were living now.

Ms. Medina answered they live in Halfmoon.

Mr. Lemire asked Ms. Medina if there was a reason she couldn't put the addition on the back of the house.

Ms. Medina answered that they put the addition on the side of the house. They put a three-car garage back there. It would be a little congested and wanted to leave some of the land in the back of the home.

Mr. Lemire asked Mr. Reese what is at the back of the house.

Mr. Reese stated that they added a garage. He then asked Ms. Medina if there were any kind of pipes coming out of the back of the house.

Ms. Medina answered not that she was aware of.

Mr. Dudick stated that the problem that this would even be an issue is if the applicant built the porch on the front of the house and then the applicant decides later, they want to make it a business again, then it is in violation of the zoning of about 30 feet. But if the applicant maintains it as a residence and it stays a residence from hereon in then this would not be an issue.

Ms. Medina stated that she had no intentions of doing any type of business there.

Mr. Lemire stated that the variance runs with the land and that a business could go in there. It could be a business based on a B-1 zone. If they decide to sell one day and the next person who buys it is a chiropractor who wants to put a practice in. So that variance needs to be there.

Mr. Febo asks the Board if you can condition the use of the porch.

Mr. Weiner stated that you could and that the condition is the use would remain as a residential use and not a commercial use.

Mr. Febo asked Mr. Weiner what if at some point it becomes a business.

Mr. Weiner stated that then they lose the variance.

Mr. Lemire asked the Board what that meant.

Mr. Febo stated that you are only voting on a 2-foot variance because you are treating it as a residential application.

Mr. Lemire asked the Board if she wants to sell to a chiropractor and if the chiropractor wants to buy the building that's built, does the porch have to come down.

Mr. Brockbank asked the Board if that wasn't included in the deed.

Mr. Weiner answered it could be, but usually isn't. You would have to research the zone.

Mr. Dudick stated that the Board could pass the application conditional that it remains as a residence and if someone decided that they wanted to use it for business, then they would have to come back to the Board because even though the porch is there and they use it, it is in a B-3 Zone.

Mr. Weiner stated the use is changed. It's a use that is permitted, but it's a changed use. He then asked Ms. Medina regarding Mr. Brockbank's point, would she be willing to put on a deed which would alert any future owners to this restriction. Would she be willing to refile a deed with a supplemental footnote that it is subject to a zoning restriction and not to be used as business premises unless the porch is removed. He explained that she would have to record that deed so there is an expense to that.

Ms. Medina answered she would be ok with that.

Mr. Febo asked Mr. Reese to go back to the GIS map overhead.

Mr. Brockbank asked Mr. Reese about the process of changing a zone.

Mr. Weiner answered that it would go through a process with the Town Board with notice and public hearings.

Mr. Febo asked the Board if someone wants to make this into a home into a business again, is it detrimental that the front porch is encroaching on the middle of the road based on the other businesses in the area.

Mr. Reese stated he was looking into the definitions of front setbacks for steps, eaves, if they are subject, not subject to that front setback. He is trying to verify if an open porch is also subject to those setbacks.

Mr. Weiner stated that this is not an open porch.

Mr. Reese stated that it is not an open porch but would need to be discussed about the whether it is a three season or an open porch.

Mr. Febo stated that you still have the building footprint.

Mr. Reese stated that the subject would not be part of that 130-foot setback. The building has already been there so that's a pre-existing non-conforming.

Mr. Dudick asked Mr. Reese how many square feet the building is.

Mr. Weiner stated about 4,000 square feet.

Mr. Dudick asked Mr. Reese if the building is about 4,000 square feet what do we do in the situation of a residence that is allowed 25 percent in residence home business. How would that factor in with the 25 percent rule. We allow residential properties to have 25 percent of the space to be used for business.

Mr. Reese answered that home occupation allows 10 percent.

Mr. Dudick stated that at 4,000 she would get a 400 square foot office in a residential.

Ms. Medina asked if that were the case would it have to be in the front of the building or the back of the building.

Mr. Weiner answered anyplace within the building.

Mr. Dudick stated that they have had this situation with doctors, dentists, lawyers, accountants, where they will do business out of their home allowed in a residential zone. In residential zones subject to residential rules, you can still have a little business, but the percentage is 10 percent of the residence or structure. He then asked the board to be sure that wouldn't be an issue for some future owner having a business in a residence. If the Board does approve this variance, this aspect of home business would not be affected.

Mr. Febo asked the Board if they needed to break this out into two parts. It's a minimal ask if it's a residential application, it's two feet. But we are thinking to the future of setting a precedent in general. Is it detrimental to have a business 98 feet from the centerline of Vischer Ferry Road.

Ms. Median asked the Board if she were to sell in the future, would she have restrictions.

Mr. Febo answered he didn't want to vote on something that might restrict her twenty years from now.

Ms. Medina said to the Board her thought was that the property remains residential. Keep the integrity of what it once was.

Mr. Lemire stated that would reinforce her to change her deed.

Mr. Weiner stated that she would have to file it before she gets the building permit.

Ms. Medina asked the Board if there was any way around that.

Mr. Weiner answered that it puts any prospected buyer on notice clearly. Most people don't know to search all these requirements out and if you didn't alert your buyer that there is a restriction on this porch if you are going to be in there as a business, which is permitted under the zone, but you haven't told them that the porch may have to come down. The buyer would find out about it after the transaction.

Mr. Dudick stated the porch would need to come down or turned into a three-season porch.

Mr. Weiner said an open porch.

Mr. Weiner explained the advantage of having it in the deed is it's on record. So that person would know, it's not being withheld purposely. By putting it in the deed if you make that a condition for the variance just to alert some prospective business owner in a business zone that there is this issue.

Ms. Medina asked Mr. Weiner what the turnaround time was for that.

Mr. Weiner answered probably about a week.

Mr. Dudick told Ms. Medina, the lawyer, that helped with the closing of the property for her could help with the deed.

Mr. Weiner explained to Ms. Medina that it could be a supplemental deed with no transfer tax because you are not changing ownership. There would be a recording fee at the Saratoga County Clerk's office. Depending on the number of pages of the deed determines the actual cost. He's estimated about \$25.00 for the instrument and about \$5.00 per page. A two page deed could cost her \$35.00 to record it but there would be an attorney's fee to prepare it unless she prepares it herself.

Ms. Medina agreed with the terms of the deed.

Mr. Brockbank asked Mr. Reese about the open porch and if it matters.

Mr. Reese stated that it pertains to the front yard where you can have open porches, but on the side or rear it didn't matter if they were enclosed or not so that open porch is not considered part of that setback requirement if it's in the front. If a commercial business was going there,

one of the requirements would be to create that as an open porch which would be less amount of impact than trying to take down the whole addition in the front.

Mr. Weiner asked Ms. Medina to get the deed to Mr. Scott Reese so he can send it to him to make sure the condition is correct. The Board will recite the condition on record for her. He then asked her how long it will take to for construction.

Ms. Medina said they are constructing now.

Mr. Reese asked Mr. Weiner if he wants that wants that on the building permit to lift the stop work order or would that be part of the Certificate of Occupancy.

Mr. Weiner said they could make it part of the Certificate of Occupancy. You won't get a Certificate of Occupancy without it, but that will give her more time.

Mr. Reese stated that they could start sooner, and during the process of the deed paperwork it won't hold up the contractors.

Ms. Medina stated she was ok with it.

Mr. Dudick then asked the Board if there were any other comments and or questions. He then asked Mr. Reese what type of action this was.

Mr. Reese stated the mailings were sent to the residents in November and there was one inquiry call about it and they were satisfied with that it was a variance for a porch. It was advertised in the papers on November 29, 2023. Saratoga County Planning Board, the action was waived because it involves single family construction. SEQRE is a type 2 action, so there is no significant adverse impact on the environment. No further review is required.

Mr. Dudick asked for any further comments or discussion. He then made a motion to close the public hearing.

Mr. Klimes seconded the motion.

All Board members said aye. None opposed. The public hearing is closed.

Mr. Dudick asked if anyone had comments or questions. Would anyone like to make a motion regarding this application.

Mr. Brockbank made a move to accept the application with the deed conditions.

Mr. Dudick asked the applicant Ms. Medina if she was ok if they read the amendments.

Ms. Medina said that she was.

Mr. Weiner than read the conditions:

The condition is that the owner will file an amended deed to reflect the zoning limitation should the premises be used for a permitted business purpose. The enclosed porch may be required to come down or be transformed to an open porch.

Mr. Weiner stated to Ms. Medina that he would write it out for her.

Mr. Reese said to Mr. Weiner there is a definition of an open porch.

Mr. Weiner recommended to Ms. Medina that before she files the deed to send a copy to Mr. Scott Reese so he, Mr. Weiner, can review it.

Ms. Medina then asked Mr. Weiner that to continue with the enclosed porch, she will have to update the deed.

Mr. Weiner explained that no, to get the certificate of occupancy after the porch is built. That will give her more time to get the deed done.

Ms. Medina then asked if it is an open porch, then she doesn't have to do the deed, but if it's a closed porch, she will have to do the deed.

Mr. Reese asked if she builds an open porch, would she need the variance. In the front yard an open porch is not to be included in the front yard setback. She would not need a two-foot variance because the building is already there.

Mr. Dudick explained to Ms. Medina that what is causing the problem is that she is enclosing it and putting heat into it.

Mr. Weiner then explained to Ms. Medina if she didn't have it as an enclosed porch, she wouldn't need the variance. Mr. Dudick agreed.

Ms. Medina asked what the difference is between the two.

Mr. Weiner explained to Ms. Medina that an open porch has no sides or windows at all. When it is closed, you open a window or door.

Mr. Dudick said that screens are allowed on an open porch. Windows mean an enclosed porch.

Ms. Medina stated the point was being able to go out on the front porch and enjoy the front without bugs and snow.

Mr. Brockbank asked Ms. Medina if she wanted an open porch.

Ms. Medina said not really.

Mr. Weiner stated to Ms. Medina she didn't have to commit to that, if she decides on an open porch, you can skip this process and let Mr. Reese know.

Mr. Dudick stated to Ms. Medina if she is going for an open porch, the Board can table this application. She can withdraw this application.

Ms. Medina said he didn't want to withdraw the application.

Mr. Dudick said that she doesn't need a variance for an open porch.

Ms. Medina said she knows and explained she is not keen on the open porch. She explained that the way that the house is built is old school. There is no closet space, no place for shoes, boots, coats. When you walk in, you need a place for those items in the front. She can't have that option with an open porch area. She explained to the Board that the rooms are small.

Mr. Weiner asked Ms. Medina if the kitchen was remodeled.

Ms. Medina said the kitchen needs to be remodeled again.

Mr. Dudick said that the building is 5,000 square feet.

Mr. Weiner stated to Ms. Medina with that condition, with her accepting, she can still sell to someone else who could turn it back into a business if they open the porch or take it down. The condition being: Prior to the Certificate of Occupancy being issued, the applicant shall file an amended deed to clearly state that the premises is subject to a zoning condition that should the premises be used for a permitted business use, the enclosed porch shall be removed or transformed into an open porch.

Ms. Medina said yes.

Mr. Dudick then made a move for a motion. He asked for a second motion.

Mr. Lemire seconded the motion.

Mr. Dudick was asked for the criteria points by the Board member Mr. Brockbank who made the motion.

Mr. Brockbank then read the decision based on the following 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- No. B. Whether the benefits sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance- No. C. Whether the requested area variance is substantial- No. D. Whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district- No. Whether the alleged difficulty was self-created-No. 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-No.

Mr. Lemire asked Mr. Brockbank if all his answers are based upon the variance which we granted with the condition.

Mr. Brockbank said yes.

Mr. Dudick called for the vote. For this application to be approved with the conditions Ms. Medina has accepted, she needs four votes of approval.

Mr. Febo – Yes

Mr. Styles – Yes

Mr. Klimes – Yes

Mr. Dudick – Yes

Mr. Lemire – Yes

Mr. Brockbank -Yes

Mr. Dudick presented the vote for the last meeting minutes for 12/05/23 which is himself, Mr. Lemire, Mr. Febo, Mr. Brockbank. All those in favor of voting for approval the meeting minutes from December 5, 2023. All said Aye. None opposed. The next meeting is February 6, 2024.

Mr. Dudick asked if anyone had anything to officially say for the record. No one did. He then asked to make a motion to close the meeting. Mr. Febo made a motion to close the meeting. Mr. Lemire seconded the motion. All in Favor to close, all said aye. None opposed.

Meeting adjourned at 7:45 pm.

Submitted respectfully,

Cristi Shuhart, Alternate Secretary