

Town of Clifton Park Zoning Board of Appeals

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Zoning Board of Appeals

March 5, 2024

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

Absent: Christopher Lemire, Chad Gregory

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 in the absence of Mr. Gregory, Mr. Brockbank would be a voting member of the Board 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 6 voting members of the Board here tonight, so that 4 of the 6 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 6 votes need to be in favor of the application tonight.

New Business: Carry over from 2/6/24

An application from Henry Witecki is requesting a use variance to convert a barn structure to a law office in the Conservation Residential Zoning District (CR). Town Code Section 208-16D does not have professional offices as a permitted use. The property is located at 87 Hubbs Road, Ballston Lake, NY.

Applicant:

Mr. Glen Witecki stated that his is the property owner and he is here with his son tonight Henry Witecki, and Ms. Stephanie Bitter, attorney. Mr. Witecki stated that this application is on a 77 acre parcel that has been in his family for 100 years. He stated that he has no reasonable return on the property with other uses and showed a map of the property from Gilbert Van Guilder indicating wetlands on the property covering most of it. Mr. Witecki stated that they would like to convert the existing barn with a concrete base, heat and a 0.5 bathroom to an office space.

Mr. Witecki stated that that he has computed financial evidence, practical difficulty to develop the property and that they cannot do anything on the property without permits which would include up to \$100,000's in costs. He stated that if he would convert it to an apartment with 2 bedrooms and 1.5 baths it would rent for about \$1,200 per month and cost \$90,000 - \$128,000 to convert. He stated that it needs a driveway as well and all of this would lead to a \$12,000 per year income so that would not be making a profit or be able to pay off a loan to build this.

Mr. Witecki stated that he feels that this is a unique situation as he showed the map with all of the constraints with the wetlands and boundaries. He stated that the land cannot be walked without getting wet and the stream has been dammed up by a neighbor when they developed in 2007. Mr. Witecki stated that there is no reasonable way to return profit on this land practically and that due to the wetlands he has a unique situation.

Mr. Witecki stated that he feels the application will not change the character of the neighborhood as he is taking an existing barn and replacing windows and doors and repainting it. He stated that he would have 3 employees on site and 1 remote and the office would generate 7-10 client visits per week. Mr. Witecki stated that he runs his business mostly remotely with clients and showed another out building on the property that he had just redone last year.

Mr. Witecki stated that this was not self-created as he did not arrange the wetlands on his property and that he cannot live financially on 30 acres of farm land financially. Mr. Witecki stated that he feels that the Board can use their digression and limit this application to the barn and other restrictions that they may feel is fit, and he will work with the Board to meet them or come to an agreement.

Stephanie Bitter stated that some of the items that have been submitted are from Kevin Weed, a wetland specialist. She stated that this parcel is wet and that she was told by Beth MacAfee that they will not be issuing any permits for wetland disturbance. She stated that for 100 years the family has farmed the property and that they have preserved it. She stated that they are looking to use the existing buildings on the property for their own economic gain like the family has in the past.

Public:

No public comment.

Board:

Mr. Febo asked if there were any finished areas in the barn. Mr. Witecki stated that it is sheet rocked, has a furnace and a bathroom with a toilet and sink. He stated that they need to be replaced and that he wants to add a small kitchen in the plans. Mr. Febo asked if there was hot water in the barn. Mr. Witecki stated that it has a pump for a well and needs a new hot water tank.

Mr. Dudick asked what the original purpose was of the barn. Mr. Witecki stated that his uncle used it for spending time working with mechanical agricultural things and storage. He stated that there is no home on the property.

Mr. Reese stated that some items in the packet have been received today and the packet was sent on February 28th for Board review. Mr. Dudick stated that since he has new material he has not been able to review yet he does not feel that he can make a decision tonight. Mr. Dudick stated that these guides have deadlines and if the applicants would like materials reviewed he would like to table the remained of the hearing until the next meeting. Mr. Witecki stated that he is willing to push the decision to the next meeting but he would like to answer any questions the Board may have tonight.

Mr. Styles asked what the front of the barn would look like and if there would be any paving or parking provided. Mr. Witecki stated that there is a loop road around the property and he would add millings to what's already there. Mr. Reese stated if this was granted, he would have to go to the Planning Board for site plan approval. Mr. Reese stated that there are a lot of rules and regulations to convert a space to commercial so it may need to be looked at closer by the applicant as well. Mr. Witecki stated that they could not compare and that he has seen litigation on approvals and denials similar to this.

Ms. McCoy stated that she also thought there were litigations to converting to commercial and materials can be provided as applicable.

Mr. Dudick asked of the property was developable without a variance. Mr. Reese stated that as a quick look it could only be used for maybe solar. Mr. Witecki stated that he was approached by a solar company before and after speaking they looked into the wetlands and access to the site and then he never heard from them again. He stated that another company stated that the transmission was not adequate and that the companies shy away from wetlands.

Mr. Reese stated that the wetlands on the property were delineated but they were never adopted. He stated that due to wetlands the property is not buildable for residential use and that the area was farmed in the past, but he is familiar with the pipe that was installed with adjacent development and he can understand the applicant having a moist field.

Mr. Dudick asked if the applicant really wanted an office in an area so wet. Mr. Witecki stated that the barn floor has remained dry.

Mr. Febo asked if they could condition the variance to the one building. Mr. Witecki stated that he would be willing to restrict it to the one building and a max of 6 cars on the property. Mr. Febo asked if there were any professional office within a one mile radius. Mr. Witecki stated that Craig Monroe has a landscaping business but it may be considered a part of the farming operations and there may be home offices but he is unsure. Mr. Witecki stated that he has helped the community for years volunteering for free consults at the Senior Center. Mr. Febo asked if the applicant would have a sign for their business. Mr. Witecki stated that he would have whatever is permitted by the use.

Mr. Dudick stated that this is now being proposed for a legal business but the variance runs with the land not the business.

The application will be heard again on March 19, 2024.

New Business: Carry over from 2/6/24

An application from Komp's Quality Auto Works requests a use variance to convert an accessory barn structure to an automobile repair shop in the Conservation Residential Zoning District (CR). Town Code Section 208-16D does not have an automobile repair shop as a permitted use. The property is located at 683 Riverview Road, Rexford, NY.

Applicant:

Rick Miller – Mr. Miller stated that after hearing the first application, he would like to request an adjournment until the April 2 meeting.

Old Business:

An application from AJ Signs requests a sign area variance for a sign permit. Per the Town Code Chapter 171 – Signs - Attachment 171C Chart II the allowable wall sign area for a 7,426 square foot ground floor area is 37 square feet. The proposed area for sign is 68 square feet – Variance requested is an additional 31 square feet. The property is located at 1208 NY Route 146, Clifton Park, NY.

Applicant:

Tom Wheeler from AJ Signs stated that they were here at the last meeting to request a sign for Clifton Park Beverage Center. He stated that he now has photos that were requested from the Board from the road, from 1/2 way in the parking lot and from 50' away. Mr. Wheeler stated that the sign is 16'x16' and the variance requested is 38 sf. Mr. Wheeler stated that from the photos shown you cannot read the sign from the end of the parking lot. He stated that the façade has changed and a larger sign makes sense here.

Public:

No public comment.

Mr. Dudick moved, second by Mr. Klimes to close the public hearing at 8:15 p.m.

Board:

Mr. Brockbank asked if there was a sign there now. Mr. Wheeler stated that there is one as they needed a temporary sign for the liquor license.

Ms. McCoy stated that the façade is large and looks nice but she cannot read the temporary sign from the road.

Mr. Reese stated that the applicant has 6,500 sf which would have the sign at 37 sf that is allowed and the proposal is for 68 sf so there would be a 31sf variance requested.

Mr. Brockbank asked if there is a sign on the road, why the wall sign need to be bigger. Mr. Wheeler stated that the customer needs to find the business in the large parking lot.

Mr. Dudick stated that the view from the back of the lot is hard to see.

Mr. Febo stated that he feels that the building is not conducive for signage for the roadway, and that there is not a lot of deep parking around the area like this location.

Mr. Klimes thanked that applicant for the photos and stated that it helps with his decision making. He stated that he feels that it fits the building and serves the intent.

Mr. Styles stated that he feels that this fits well and that it is large but the whole building is thriving.

Mr. Dudick asked if the floor space is later split into 3 businesses, what would happen to the variance as it is based on the 7,500 sf that the applicant has now. Mr. Reese stated that the sign is based on the internal square footage. He stated that it would probably need to be resized but if the square footage is changed then the variance will not carry.

Mr. Febo asked if this would be the same as the off premises sign approval that they had recently or if they can sunset the variance. Mr. Weiner stated that if the applicant maintains floor space the variance would stand regardless of the tenant. Mr. Febo stated that he feels this is a unique space with a unique parking lot.

Mr. Klimes asked if there were a change in floor space whether positive or negative, then the variance is negated and the tenant needs to start over? Mr. Klimes asked if the applicant would be willing to make the sign smaller or if the owner would concede 10%. Mr. Wheeler stated that he feels the sign is small now but they may be able to go smaller. Mr. Shaw, partner to the Business, stated that they would shrink the sign if it was the only option. He stated that his business is older and mature and if it was closer to the street they would not be asking for a variance.

Mr. Febo stated that he would consider a sunset clause for this. Mr. Weiner stated that they can do this but then it opens the door for others to come in and ask for the same.

Mr. Styles stated that the gaming business is 2,800 sf and this application is 7,500 sf. He stated that this request does not seem too outlandish to him and the name of the business cannot be seen until you are half way into the parking lot. He stated that this is not unreasonable to him.

Mr. Reese stated that this is an unlisted action pursuant to SEQRA and that the Saratoga County Planning Board stated that there is no community impact. He stated that mailings have been sent out accordingly and that he has received no phone calls about the application.

Mr. Dudick asked how big the storefront is for the space. Mr. Wheeler stated that the sign is almost center to the storefront.

Mr. Febo asked what Market 32 visibility from the road compared to this. Mr. Reese pulled up a Google view.

Mr. Styles stated that the tenant next to his can also ask for the same variance. Mr. Shaw stated that there is a vacant space between him and the smoke shop.

Mr. Styles moved, second by Mr. Febo, to approve the variance as requested. The property is located at 1208 NY Route 146, Clifton Park, NY.

Mr. Styles read the Variance Criteria, Mr. Styles answered in favor to all criteria.

The Secretary called the Vote:

Ayes: 6

Noes: 0

Old Business:

*An application from **Environmental Design Partnership LLP** requests an area variance to propose a cluster subdivision on a 6.1 parcel. Town Code Section 179-35B. (1)(a) Total land area included in the proposed subdivision or contiguously held by the owner, whichever is greater, is 20 acres or more. The current lot size is 6.1 acres – Area variance requested is 13.9 acres. The property is located at 377 Moe Road, Clifton Park, NY.*

Mr. Reese stated that the application has been moved to the March 19, 2024 meeting.

Old Business:

*An application from **Continuum Commercial Realty** is requesting a use variance to have a Day-Care Center in the Country Knolls West Planned Development District. Per Town Code Chapter A217-106 A the area will consist of up to 524 single-family residences, up to 80 twin houses in 40 buildings, and up to 168 four-plex's in 42 buildings. There will be approximately 34.5 acres of parkland and 28.5 acres of open land. Town Code Chapter A217-106A does not have Day-Care Centers as a permitted use. The project is located at 1 Van Patten Drive, Clifton Park, NY.*

Applicant:

Dave Pentowski stated that he is here tonight with Dean Taylor whom is listing the property. Mr. Pentowski stated that when he was last here the Board had asked when the last tenant was in the building. Mr. Pentowski stated that he has found out that the last tenant had left the building in April of 2023. He stated that since then efforts have been made to find another tenant for the property as an office use. He stated that daycare is in demand and that this would be a nonconforming use but unique.

Mr. Dean Taylor stated that there is a lack of need for office space in the area and this would help fill a void in the area. He stated that there is nothing in the area for employees to do on breaks such as run to get lunch, do errands, or go the bank so he feels that this is not right for office space. He stated that this is in a residential area and that if they pursue the office use it may stay vacant for a while longer. Mr. Taylor stated that they have decreased the rental space to \$10 and utilities are separate so feels the community would benefit. He stated that the current owner of the daycare at a different location gets 10 calls a day; looking for placements for children.

Public:

No public comment.

Mr. Dudick moved, second by Mr. Klimes to close the public hearing at 8:39 p.m.

Board:

Mr. Reese stated that this is an unlisted action pursuant to SEQRA and that the Saratoga County Planning Board found no community impact. Mr. Reese stated that mailings have been sent out accordingly and he has received no phone calls regarding the application. Mr. Reese stated that this was a sales office for the homes built in Country Knolls West and then it was an engineering office. He stated that it has been under the radar for residential and that if the variance is granted then the Planning Board would look at the site plan for approval. Mr. Reese stated that traffic and noise should be considered.

Ms. McCoy asked if the last tenant was long term. Mr. Taylor stated that they had been there for 10-15 years. Ms. McCoy asked what the hours would be. Ms. Kayla Tischone, daycare owner, stated that she currently owns Creative Sprouts and that the hours would remain the same as her location now, being 7:30 am – 5:30 pm Monday through Friday. She stated that there would be no bus pickup as she will not have school aged children. She stated that there would be staggered drop off and pick up as parents schedules are different

Mr. Reese stated that there may be traffic concerns but the Planning Board would look at this.

Mr. Styles asked what the age of the children would be. Ms. Tischone stated they would be 6 weeks to 5 years old and the amount of children allowed would be given to her by the fire inspectors.

Mr. Febo asked if they could get a round number of children. Ms. Tischone stated between 45 and 50 but dependent on the fire department and 12 would be the max amount of employees.

Mr. Dudick stated that they would need parking for the employees and the parents Mr. Febo stated they would need room to accommodate the parking.

Mr. Dudick stated that he has no issue with the application as it is an unusual lot with unusual history. He stated that he likes the idea of a daycare in a residential area.

Mr. Febo stated that he is willing to vote for the application as long as it is for a daycare only. Mr. Weiner stated that the application is for a daycare so that is what they would be approving.

Mr. Dudick moved, second by Mr. Febo, to approve the variance as requested. The property is located at 1 Van Patten Drive, Clifton Park, NY.

Mr. Dudick read the Variance Criteria, Mr. Dudick answered in favor to all criteria.

The Secretary called the Vote:

Ayes: 6

Noes: 0

The chairman made a motion to approve the minutes from the January 2, 2024, meeting. All who were present at the January 2, 2024 meeting voted in favor and the meeting minutes were approved.

The chairman made a motion to approve the minutes from the February 6, 2024 meeting. All who were present at the February 6, 2024 meeting voted in favor and the meeting minutes were approved

Mr. Klimes, made a motion to adjourn the meeting, Ms. McCoy second, all voted in favor and approval was unanimous. The meeting was adjourned at 8:55 p.m.

The next scheduled ZBA meeting will be held on March 19, 2024.

Respectfully submitted,

Paula Cooper

Paula Cooper

Secretary, Zoning Board of Appeals