

Town of Clifton Park Zoning Board of Appeals

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Zoning Board of Appeals

March 19, 2024

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

Absent: Chad Gregory, Lisa McCoy

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 in the absence of Mr. Gregory, Mr. Brockbank would be a voting member.

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

Old Business:

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 a permitted use. The property is located at 87 Hubbs Road, Ballston Lake, NY.

Applicant:

Stephanie Bitter stated that she is here tonight with Mr. Glen and Henry Witecki for a use variance for 87 Hubbs Road to have a use variance for a professional office. She stated that the applicant has had the property in the family for almost 100 years and it was always used for business, farming, or as a sawmill but with the development of surrounding properties it is now wet and most of the land is unusable and protected. Ms. Bitter showed a map in the meeting with the wetland changes. She stated that the family cannot farm as they used to and that piping was done in the past to the property to help but it is still very wet. She stated that this is zoned CR and due to wetlands they are unable to utilize the land for anything allowed. Ms. Bitter stated that Mr. Kevin Weed delineated the land and found significant wetlands and nothing can be done on the property without DEC permits.

Mr. Reese asked if the applicant would be able to make lots from the existing land. Ms. Bitter stated that a biologist went out and stated that buffers and wetlands exist on the property. She stated that she is asking the Board to consider the variance as this is an unnecessary hardship and believes that the material provided to the Board prove this. Ms. Bitter stated that DEC involvement would be needed to do anything here and DEC is likely not to issue permits and she feels that the wetland analysis is sufficient evidence under NYS.

Ms. Bitter stated that they are proposing using an existing barn for office use of the land owner and this is what has been done in the past and that this would provide the owner with a reasonable return on the land. She stated that a home conversion had been asked about at the previous meeting and the applicant has shown that a reasonable return is not feasible. Ms. Bitter stated the hardship is not self-created but created by others on the surrounding lands. She stated that they believe that this will improve the area and not change the character as the property has always been used for economic purposes. Ms. Bitter stated that the Board should look at this as an individual case and the conversion to an office is most reasonable solution rather than the owner taking a loss. Ms. Bitter quoted a portion of the law and asked for approval tonight for an office on the land that has been owned by this family for 100 years.

Public:

No public comment.

Mr. Dudick moved, second by Mr. Klimes to close the public hearing at 7:59 p.m.

Board:

Mr. Lemire stated that he was not present at the last meeting but reviewed the minutes and feels that he is up to date on the application.

Mr. Febo stated that he had asked at the last meeting if the applicant could ask for a Special Use Permit for a home office. Mr. Reese stated they could ask for a Special Use Permit. Mr. Febo asked if he should be worried about the amount of cars that would be on the property due to the potential business. Mr. Glen Witecki stated there would be about 6-7 cars at any given time and that he works in an office with 2 people so there would be mostly 3 cars.

Mr. Dudick asked if down the road there would be any other businesses there that would increase the traffic or parking. Mr. Reese read from the Special Use Permit code for a home occupation which a law office falls under.

Mr. Lemire stated that 208-16 talks about permitted uses and stated that the Planning Board oversees PUS not them so should this Board consider this a SUP or not. Mr. Reese stated that any SUP would be up to the Board to make modifications or ask for buffering. Mr. Weiner agreed.

Mr. Lemire clarified that the only thing that can be done on the property without DEC permits is using the existing buildings and if the buildings were torn down they would still need permits to rebuild. Ms. Bitters stated that this is correct. Mr. Lemire asked if the applicant has put the land up for sale. Ms. Bitters stated they have not and that they do not have according to NYS.

Mr. Brockbank stated he has concerns about getting a variance or permit if there are significant wetlands.

Mr. Dudick stated he has the same concerns and the percent of wetlands on the property. He stated that the owner has had it in the family for many years and most other properties do not have this so he is looking at this as an individual parcel and application.

Mr. Lemire asked how the lands became so wet. Mr. Henry Witecki stated that a culvert was put in many years ago on Craig Landscaping property due to runoff from them. He stated that they then paved an area on Craig Landscaping property and the creek was altered over the years due to this. Mr. Witecki stated that their land has gotten worse due to this over the years and that there is also a pipe that drains water into the rear portion of their fields. Mr. Lemire asked why the applicant is not looking into putting homes on the property since there is a lot going up around them and that this may prove to the Board due to the wetlands the property is not developable. Mr. Lemire asked if the saw mill would be taken down as it is in front of the barn the applicant wishes to convert to an office. Mr. Glen Witecki stated this building will need to be fixed or it will fall down on its own.

Mr. Febo asked if this is approved if it would have to go to the Planning Board for site plan approval. Mr. Reese stated it would go to the Planning Board.

Mr. Lemire asked what was in the other barn on the property. Mr. Glen Witecki stated it is an old shop that is holding farm equipment.

Mr. Dudick stated that the applicant had stated they had already redone a building and asked why they don't use that as the office. Mr. Glen Witecki stated that the building does not have a bathroom or foundation.

Mr., Febo asked if the variance would be for the entire property or just the specific building and if the Board could condition it. Mr. Dudick asked if the applicant was ok with them conditioning it to the one building and no enlargements. Mr. Glen Witecki stated that he just wants to operate his business so one building would be fine.

Mr. Reese stated that if this was granted the applicant would be eligible for a business sign and up to 32 sf would be allowed. Mr. Glen Witecki stated he would bring a smaller sign to the property.

Mr. Lemire asked when the property was last used for agriculture. Mr. Glen Witecki stated it was about 8 years ago Mr. Lemire stated that looking at the allowed uses family/agriculture is listed first and that he feels that all uses need to be looked at before a variance can be granted. Mr. Henry Witecki stated that they had contacted Cornell Cooperative and they stated that if nature reclaims the land as it has then agricultural use needs permits as well since it is deemed wetlands.

Mr. Lemire stated that the family stopped farming so the land got wet. Mr. Glen Witecki stated that it was not true, the land got wet so they had to stop farming. Ms. Bitter stated the land is saturated and that structures, equipment and animals would sink in the ground. Mr. Glen Witecki stated that the land can be used for walking or snowmobiling but that is not profitable. Mr. Lemire asked if could be park land use. Mr. Glen Witecki stated it could not because they are not looking to give the property away and there is a legal memo stating they are not required to do so. Ms. Bitter stated that the items that are listed do not bring a profitable return the landowner.

Mr. Dudick stated that the reasons need to be reasonable to the land owner. Mr. Lemire asked why some feel that they do not have to show profit return like other applicants in the past. Mr. Dudick stated that this applicant has held the land for a significant period of time and the longer they own it should be taken into account.

Mr. Febo stated that the prior application for a daycare was approved and that it could not sell with the use within the zoning, and they approved it. Mr. Lemire asked how someone knows it won't sell if they don't put it on the market.

Mr. Dudick stated that the sale of the property is not always the way to determine the value.

Ms. Bitter stated that the applicant has to utilize the self-created character but not be penalized for it as an owner of 98 years.

Mr. Lemire stated that they are bound by the CR zone not by being the property owner before zoning. Mr. Henry Witecki stated that there is little marketability based on the Class I wetlands on the property. Ms. Bitter stated 98 years of ownership is part of the uniqueness of the lot and that there are 4 criteria to be looked at not just the one.

Mr. Febo asked what is deemed a reasonable return. Mr. Dudick stated that he couldn't imagine 4 generations and the land becoming wet. Mr. Glen Witecki stated that the worth is about \$560,000 then add 7% of that.

Mr. Dudick stated he understands Mr. Lemire's concerns but value is not always monetary and asked how long Mr. Lemire would like to see this for sale before it is considered. Mr. Lemire

stated he has no answer for this to be considered reasonable but it needs to be a significant period of time.

Mr. Klimes stated that the applicant is paying taxes and has been on this property and this will help keep the land in the family and find relief. Mr. Klimes stated he feels this is conservative and that Craig's Landscaping is near his home as well so he understands the terrain. Mr. Klimes stated that he feels the applicant is trying to respect the land and keep it undeveloped.

Mr. Dudick stated that he did not think at first that this was a reasonable request but as information provided by the applicant was gathered and reviewed, along with the applicant's story he feels this is someone who needs relief.

Mr. Dudick moved, second by Mr. Febo, to approve the variance as requested. The property is located at 87 Hubbs Road, Ballston Lake, NY.

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

Conditions:

1. No enlargement of the building
2. No additional buildings on the property shall be used for an office space

The Secretary called the Vote:

Ayes: 5

Noes: 1, Mr. Lemire

New Business:

*An application from **Steven Smith** requests an area variance from Chapter 208-12. No accessory building shall be placed closer to a front property line than 80 feet. The proposed front property line setback is 55 feet for the proposed car port. The variance requested is 25 feet from the 80 feet front property line setback. The property is located at 994 Hatlee Road, Clifton Park, NY.*

Applicant:

Mr. Steven Smith stated that he is the owner of 994 Hatlee Road and he is proposing a car port/shed to house his boat as well as lawn mowers. He stated that he is unable to go back any further on his property due to the septic and leech field placement on the property. He stated if he moves the car port back it would ruin the leech field from the runoff. He stated he has a pond to the rear of his property so it is wet there as well and that he has spoken to his neighbor and they have no issues with the application.

Public:

No public comment.

Board:

Mr. Dudick asked how long the applicant has lived at the home. Mr. Smith stated he has been there for 3 years.

Mr. Brockbank asked if the septic could not be built over or if the building could go on the left side of it. Mr. Smith stated that it cannot be built over and that the lands is not wide enough as it is only 26' and if it was lined up with the home to the south it would be on a slope.

Mr. Dudick asked the applicant to show on the photos presented where the boat is now and where the applicant is proposing to put the carport. Mr. Smith did so. Mr. Dudick asked if the home was angled from the road. Mr. Reese stated that it was slightly angled and stated it would still be in front of the home.

Mr. Lemire asked why the applicant cannot move the car ort back towards the corner of the home. Mr. Smith stated there are slopes in the area as well as the septic that he are trying to stay away from.

Mr. Dudick asked if the applicant could angle the carport more to make it more in line with the home. Mr. Smith stated that the optic look of this suggested layout is not pleasing and that turning it would not be possible.

Mr. Febo asked if there were drawings on record of where the septic is located on the property. Mr. Reese stated that he does not have any but there is not fill allowed 50' from the stream due to buffering.

Mr. Klimes asked if the applicant could go out 20 ft from the tank and put the car port between the proposed are and the shed. Mr. Smith stated that swinging the boat in that direction would out the trees on the property in the way and make it too difficult.

Mr. Febo asked if the applicant could drive over the inlet so he would like to see the location of the septic tank and asked if the carport could be placed next to the home. Mr. Smith stated if he puts the car port next to the home he would not be able to get his mower into the rear yard.

Mr. Klimes stated that the applicant is looking to put the structure in front of the building line. He stated that the Board struggles with this and there is a possibility that the applicant could see the boat in a year and now there is a structure in an area that they do not like to see. He stated that the biggest question the Board has is where the septic is on the property. He stated that he feels the Board is looking for reasonable and not optical views. Mr. Smith stated he has paving around the home and that the cars in his photo are parking in front of the kitchen window and the garage is in the other side of the building.

Mr. Lemire asked if there would be a foundation for the car port. Mr. Smith stated there would not be and the structure has legs and a roof with concrete footings and trailer anchors. He stated it would match the home for the roof and siding. Mr. Lemire asked if it would be one where the boat is parked. Mr. Smith stated it would be. Mr. Lemire stated that the Board typically does not approve accessory structure in a front yard. Mr. Lemire stated that the trees in the front yard may have to be removed.

Mr. Febo stated that he would like to provide relief but where the backing of the boat occurs is not as significant and is unsure of all of the relief being requested is necessary since they do not have a location of the septic.

Mr. Lemire asked what the side setback is for a CR zone. Mr. Reese stated it is 10 feet. Mr. Smith stated that the car port is about 45'x16'.

Mr. Klimes stated he would feel better with measurements for the well and the septic to provide relief.

Mr. Dudick stated that the Board is trying to help the applicant in suggesting different locations and gathering more information. Mr. Smith stated that he understands this.

Mr. Febo asked why the applicant cannot put it next to the home on the well side of the property and back away from the road. Mr. Smith stated that he would end up hitting the well.

Mr. Klimes stated that the applicant may get more relief from putting the port next to the home as it would be less of a variance. He stated the smaller the request for the relief the better.

Mr. Brockbank asked if a carport was a necessity.

Mr. Klimes stated the applicant could get a bigger boat and then come back asking for more. He stated he would like to see the applicant come back with the distances for the well and septic system.

Mr. Febo asked if the applicant has tried to configure backing up from the road. Mr. Smith stated that he and his neighbor have issues so he would not want to create more.

Mr. Dudick asked how many times the boat would be stored and removed from the port. Mr. Smith stated that he puts his boat in the water and takes it out regularly. He stated he does not have a boat slip and this would save him money from having one or his boat growing mold from being covered.

Mr. Weiner asked the applicant if he would be willing to table the application tonight and come back April 2 with the distances of the well and septic as requested by the Board as well as looking at alternatives that the Board had suggested. Mr. Smith agreed he will come back on April 2.

The chairman made a motion to approve the minutes from the March 5, 2024, meeting. All who were present at the March 5, 2024 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 8:59 p.m.

The next scheduled ZBA meeting will be held on April 2, 2024.

Respectfully submitted,

Paula Cooper

Paula Cooper

Secretary, Zoning Board of Appeals