

## Town of Clifton Park Zoning Board of Appeals

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## Zoning Board of Appeals

June 4, 2024

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

**Absent:** Lisa McCoy, 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 in the absence of Ms. McCoy, 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 7 voting members of the Board here tonight, so that 4 of 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.

**Old Business:**

*An application from Schuyler, LLC requests an area variance from Chapter 208-98 special setback lines on Grooms Road – No building shall extend nearer to the center line of the street than 100 feet. The proposed front yard setback for the building is 43 feet – variance requested = 57 feet. The property is located at 862 Grooms Road, Clifton Park, NY.*

**Applicant:**

Michael Bouchard stated he is here tonight with the owner Mr. Vaccarielli. He stated they were last here in May and the Board had asked the applicant to seek a DEC permit to push the home into the buffer area. Mr. Bouchard stated DEC has declined the permit application and they are here again for an area variance without being in any buffer areas or wetlands. Mr. Bouchard stated this parcel is 1.34 acres and is an approved building lot. He stated the home is proposed to be at 43 feet off the road and away from wetlands. Mr. Bouchard stated criteria 1 for the variance has been met as well as criteria 2 as they cannot get a DEC permit. He stated that he feels the application is not substantial as the home would be the same distance from the road as the closest neighbor and it would not have an adverse effect on the neighborhood due to it being residential. Mr. Bouchard stated that this is not self-created as the applicant bought the property in 2019 and on a different lot was approved for a DEC permit so they thought this would be approved as well and stated this would be a reasonable assumption.

**Public:**

No public comment.

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

**Board:**

Mr. Lemire asked if all 3 lots sold on April 2019. Mr. Bouchard stated only lot 4 was sold in 2019. He stated lot 1 was bought by Mr. Schuyler in 2013, and the lot 2 was purchased a couple of years later.

Mr. Dudick asked if there were any changes to State regulations between 2013 and 2019. Mr. Bouchard stated he does not believe so. Mr. Dudick stated DEC reissued a permit that was granted in 2013 in 2019 so there could have been a change.

Mr. Lemire asked if lot 4 was an approved buildable lot when it was subdivided. Mr. Bouchard stated the lot size depth and frontage met the requirements but the wetlands did not. Mr. Lemire stated it was subdivided in 1980 and noted the lot 4 was marked as subdivision only and noting homes on the other 3 lots.

Mr. Febo asked if there have been any changes to this application since the last hearing. Mr. Bouchard stated the initial request was for a 4' variance and now the setback they are asking for is 43' to make it even with lot 3. Mr. Febo asked if there were any other approved uses for this lot that would allow building closer to the road without a variance. Mr. Reese stated this is in the CR zone so single family is allowed and other than this it is limited to agricultural use and noting

agricultural related could be done here with the wetlands so the parcel is limited. Mr. Febo asked if the existing home on lot 3 predates zoning. Mr. Reese stated that code was established in 1967 and Grooms Road has special setbacks which is 100' from the center line. Mr. Febo stated that the subdivision map indicates that lot 4 is for subdivision only and asked how this should be interpret. Mr. Bouchard stated he does not know why the language is on there.

Mr. Reese pulled up a copy of the minutes from 1980 for the Board to review along with the public.

Mr. Lemire asked if the prior application for this was pushed back or withdrawn. Mr. Febo stated that they saw this in 2023 for the same 48' setback and then again in May 2024 and at that time the Board and the applicant had spoken about DEC permits.

Mr. Brockbank asked if there were previously issued permits for this. Mr. Bouchard stated there was for lot 1.

Mr. Paul Male, engineer, stated he is with CT Male and was the Saratoga Springs engineer and is now with Stillwater. MR. Febo asked about the subdivision and if the lots shown were always assumed to be buildable. Mr. Male stated he thinks DEC has gotten more restrictive with granting permits and this one has not gone smoothly. He stated that they have done wells for lots 1 and 2 and they will be following the same procedure for lot 4 but DEC is not very understanding and has pushed the owner back to the Town to seek relief. He stated lot 3, if proposed today would be in a wetland area and the State is looking at this more closely than they did back when this was built and they have new people in the division with different outlooks. Mr. Male showed a map of the wetland area and stated that both DEC and ACOE have wetlands on the property.

Mr. Brockbank asked how 2 agencies have different requirements. Mr. Reese explained that one is federal and one is state and federal wetlands can be as small as a ditch line. Mr. Male stated there is a larger area that is buildable but they would also have to go through wetlands to access it on the property. He stated that they are proposing the home outside of the ACOE area and the buffer with septic included and this would support a 3 bedroom home and they tried to match the site next to this one.

Mr. Brockbank asked why the permits were given for the other lots but not this one. Mr. Male stated that there have been changes in personnel in DEC and the two other homes meet the setbacks. Mr. Reese stated that Droms Road does not have special setbacks but Grooms Road does so it is different. Mr. Reese showed a map of the wetlands and the buffer areas.

Mr. Febo asked if there was an application submitted to DEC. Mr. Male stated both DEC and ACOE have applications submitted and they are looking for Town relief but the applications have not been officially denied by either agency. He stated that if the ZBA approves this application tonight there is no need for DEC or ACOE permits.

Mr. Styles asked what part of the project falls into the DEC land and stated that the minutes from 1980 suggests all of the lots as buildable in his opinion.

Mr. Lemire stated the map of the subdivision shows "lot 4 for subdivision only" so to him it means that it is not buildable. Mr. Male asked why the lot would have been created if it was not

intended for build. Mr. Lemire stated that he has not seen any language like this in other subdivisions he has reviewed before. Mr. Reese stated that he had talked to the Planning Director and that Mr. Scavo believed that this was a non-buildable site as well.

Mr. Dudick stated this is listed as a lot with other 2 lots listed and a home on the fourth and subdivision only is only on the one lot so it does raise question.

Mr. Febo stated in 100 years wetlands change and this could be a result.

Mr. Lemire stated that he believes this may have been a tax relief subdivision. Mr. Male stated that the lands were delineated in 2023 and the wetlands have changed.

Mr. Brockbank stated that this restriction is unfortunate and he is sympathetic to the applicant due to the practicality of the uses and this land is useless but has value.

Mr. Lemire asked how much 1.34 acres of land would sell for in Clifton Park as he believes the applicant bought this for \$15,000. Mr. Febo stated that this could go for about \$750,000 when developed and he is sympathetic to the applicant as well but the Board has a hard time setting precedence on a regularly travels road in Clifton Park and feels this would open the door for more similar requests. Mr. Febo stated the DEC has not formally responded to the application before them except for the recommendation to come back to the Town. Mr. Male stated that he does not believe the DEC will budge on this and they need a carefully crafted resolution due to this being a unique lot.

Mr. Brockbank asked if the neighboring home would be closer or further from the road from this application. Mr. Male stated it would be the same distance.

Mr. Reese stated this application is a Type II action pursuant to SEQR, in September of 2020 the Saratoga County Planning Board stated this would have no intercommunity impact and on February 15, 2023 notifications to neighbors were sent out and to date there have been no inquiries.

Mr. Dudick stated that the home down the road has a 44' setback and the home next door is 43' so this will not be any closer to the road than neighboring homes. He stated that the applicant took a risk but he feels the time and money he put into this increases the value. Mr. Dudick stated the home is out of the wetlands and the buffer so this is an improvement. Mr. Dudick stated he feels this property is unique as well.

Mr. Febo stated that the DEC was looking for revised plans and if they approve tonight the DEC will not see revised plans and if they sent the applicant back to the Town why would they request a revision. Mr. Male stated if the Town approves, yes there is no need for DEC.

Mr. Klimes stated he feels the applicant has addressed concerns they requested.

Mr. Lemire stated the applicant in 2020 asked for 48' and I was not in the DEC wetlands then. Mr. Male stated it was not in DEC but it was in ACOE wetlands and they submitted to both entities. Mr. Lemire asked how this is different now. Mr. Reese stated the well location is now shown and there is public water is across the road. Mr. Male stated there are more specific plans

now along with the change in the home size, location, the grading is shown, and the location of the septic is now shown as well.

Mr. Dudick asked if the home was now smaller than it was previously. Mr. Male stated it was previously larger and they took square footage off the home.

Mr. Febo stated he is always willing to work with an applicant and decrease what they need. He stated that not considering DEC the plans have not changed and the character of the neighborhood would change just by building the home.

Mr. Lemire asked if the DEC wrote to the applicant why they would not approve. Mr. Styles stated that he sees the plans were revised in 4/24 and DEC last saw the application on 1/2024.

Mr. Febo asked if the DEC saw in the 100' and still asked for a revised drawing and stated that no one else on Grooms Road can buy a new home 48' from the road. Mr. Styles stated this is staying within character of the neighborhood if the variance is granted.

Mr. Dudick stated that looking to the neighbor to the right and left of the application it is keeping with the character.

Mr. Febo asked if the applicant would be willing to amend the application to 75' and send the applicant back to DEC to see if they would approve with this change as there is no hard answer from DEC as to whether or not they would approve this.

Mr. Dudick stated that he has reviewed this with Town Council and Town members and they seem to be going back and forth. He stated that some Zoning Board members want sealed answers from the State but he feels the state does not like to give them.

Mr. Dudick asked if the applicant would like to withdraw his application and go back to DEC.

Mr. Male stated he can go back if it is needed.

Mr. Febo asked what the purchase prices were for the property. Mr. Reese stated he can look them up and then stated that lot 1 was assessed at about \$20,000 and lot 2 was assessed at \$26,000 for the intent of subdivision.

Mr. Lemire stated that the map from 1980 shows lot 4 as a vacant lot and lots 1 and 2 with a proposed home on them.

Mr. Klimes asked how far back the home can be pushed if the 57' variance is not approved. Mr. Male stated he can push the corner of the home to the DEC buffer line but then the size would shrink to more of a trailer home size and they would still be able to get the required 50% expansion for the septic

Mr. Dudick moved, second by Mr. Brockbank to approve the variance as requested. The property is located at 862 Grooms Road.

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

The Secretary called the Vote:

**Ayes:** 5

**Noes:** 1, Mr. Lemire stated he felt the Variance was substantial, would have an adverse effect on DEC land, and stated that he felt this was self-created.

The chairman made a motion to approve the minutes from the May 21, 2024 meeting. All who were present at the May 21, 2024 meeting voted in favor and the meeting minutes were approved.

Mr. Dudick, Chairman, made a motion to adjourn the meeting, Mr. Lemire second, all voted in favor and approval was unanimous. The meeting was adjourned at 8:53 p.m.

The next scheduled ZBA meeting will be held on June 18, 2024.

Respectfully submitted,

*Paula Cooper*

Paula Cooper

Secretary, Zoning Board of Appeals