

Town of Clifton Park

Clifton Park, New York



ZONING BOARD OF APPEALS

June 18, 2019

7:00 PM

Present: Chairman Dudick, John Klimes, Lisa McCoy, Jerry Cifor, Michael Bloss, David Donohue, alternate.

Absent: Mario Fantini, Chris Lemire

Also Present: Neil Weiner, Esq., ZBA Counsel
Steve Myers, Director, Building and Zoning
Meg Springli, Secretary

The meeting was called to order at 7:07 pm.

PLEDGE OF ALLEGIANCE

Mr. Dudick noted that Mr. Donohue would be a voting member in the absence of Mr. Lemire. Mr. Dudick reminded applicants that 4 out of 6 members would need to vote "aye" in order to pass any variance.

OLD BUSINESS:

- 1) An application from **Ryan Boni** requests area variances to subdivide 1 parcel of land into 2 lots and build a duplex on each lot. Another connected 7 acre parcel will be donated to the town as open space. The subdivision of Parcel #1 requires 3 variances. 1) Lot #1 of subdivided parcel requires 6 acres of unconstrained land, 1 acre of unconstrained land available, 5 acre variance required. 2) Lot #1 also requires 200' lot width at the building line, 120' proposed, 80' variance required. 3) Lot #2 also requires 6 acres of unconstrained land, 3.57 acres available, 2.43 acre variance required. Property is located at Route 146A, south of Legends Way, Ballston Lake NY 12019. Parcel #264.-3-66.11 and parcel 264.-3-67 (Permit #81213).

The secretary read the notice as it was published in The Daily Gazette.

Applicant:

Ryan Boni of Boni Builders, was the applicant and he stated that he was representing Boni Builders proposal for a subdivision on Route 146A. Mr. Boni explained that he had letters from the Planning Director, Sewer Department, and Clifton Park Water Authority regarding the project. Mr. Boni stated that 20.19 acres total were available, in an area that he stated was unlike any other location in the CR zone in Town, as it is surrounded by commercial properties and train tracks in the adjacent parcels. Mr. Boni added that he felt it was not a desirable location for a single-family home and that he felt it would be better suited for duplexes as rental units.

Mr. Myers stated that it was a Type II action pursuant to SEQR and no further action would be required. Mr. Myers then added that the applicant intended to donate the one parcel that is adjacent to the Woodcock Preserve to the town. The Chief Zoning Officer stated that in his opinion if there were no wetlands on the properties, it would not require a variance and would fit in the density of 1 unit per 3 acres. Mr. Myers reminded the ZBA that the issue of the duplexes was not under their purview and that issue would be decided as part of a special use permit application with the Planning Board.

Mr. Weiner asked if the applicant would be willing to stipulate the condition of the parcel being donated as part of the approval, and Mr. Boni responded that he would.

Susan Burton 338 Riverview Rd. representing Friends of Clifton Park Open Space, read from a letter (which will be placed in the file) opposition based on the following concerns:

- Erosion of CR zoning
- Variances are precedent setting
- Counters intent of Town Board with recent amendment to Sec. 208 Zoning Code
- Standing of Mr. Boni
- Amenity or zoning density requests to be decided by Town Board
- Contrary to Open Space Plan and Western Clifton Park GEIS

Jim Ruhl, 168 Wood Dale Dr, Ballston Lake continued the letter

- 5 factors to be considered for the area variance
- Health, safety and welfare of community
 1. Compromise character of neighborhood, single-family homes
 2. Alternatives to allow only dwelling units as allowed on the land. Felt that donated parcel was undesirable to the town.

Raymond Seymour, 7 Nadler Road, Clifton Park continued reading from the letter

3. Variance is substantial,
4. Impact on the environment, does not consider it highest and best use of the property, higher density in an agricultural setting.
5. Is a self- created difficulty as the lot has been in this configuration for many

years

- Goes against the Town Board's recent code change
- Extreme variances – consider them to be substantial

Margaret Catellier, 16 Parkland Ct. Clifton Park, continued the letter

- Dwelling units/ unconstrained land and open space requirements
- Hardship not proven
- Favors applicant over the community vision for the Western Section of Town

Mr. Boni, responded by showing his lots on an aerial map with neighboring properties. The speaker stated that there were 13 acres total, with 4.57 acres that were unconstrained. Mr. Boni explained that he did not feel that a single family residence would be a desirable investment with the nearby train tracks and power lines, but that he felt that he would be able to rent units there.

Bill Koebbeman, 861 Riverview Road, stated

- that he felt the Western GEIS and CR Zoning was a well-balanced plan that allowed residents to know what density might be expected in the area in the future
- One duplex might be justifiable but that he would consider two duplexes to be greedy.
- Wanted clarification on “precedence”

Frank Berlin, 980 Main Street, Jonesville, stated that he has been involved in the Open Space Committee and preserving lands within town for many years. Mr. Berlin said he felt that they represent people who couldn't be at the meeting. Then he added that he felt that homes near the train tracks were unsafe, and not desirable whether it was a single family or a duplex unit and he felt there could be better use of the land.

There being no further comment, Mr. Lemire made a motion, seconded by Mr. Bloss to close the public hearing at 7:55 pm. All in favor, none opposed.

Chairman called 10-minute recess to confer with Counsel and the Director of Building and Development.

Board Discussion reconvened at 8:10 pm

Mr. Dudick stated that the ZBA was designed to grant relief to zoning code and that anyone could request a variance. Then the chairman explained that as for the potential for precedence, almost everything could be considered as “setting a precedent”, but most things are not actually precedence setting based on their own unique circumstances. Mr. Dudick then said that he felt the applicant had such exceptional characteristics unlike almost every other lot considered by the Zoning Board of Appeals in the past 18 years. Mr. Dudick also stated that “substantiality” would be considered by the ZBA but that

there was no set number. Finally, the chairman stated that the Planning Director had offered his opinion in support of two duplex structures at this unique location.

Mr. Dudick asked Mr. Boni if it was not viable at all to subdivide into two parcels with single family residents and Mr. Boni responded that he would possibly not proceed with pursuing the project at all, if the variances were not granted.

Mr. Bloss questioned if the applicant had considered other uses, and Mr. Boni stated that residential use was an allowed use for the property, and that was all he was considering.

Discussion ensued whether the variances could be conditioned with a sunset clause, and Mr. Boni stated that he would be willing to accept as a condition of approval.

Mr. Myers noted that authorization had been filed allowing Mr. Boni to represent Country Club Acres as the contract/vendee of the application.

Mr. Dudick then stated that he felt there were unique circumstances surrounding this application. He then added that the support from the other agencies was positive and that he was willing to consider approval based on a sunset clause whereby the ZBA Application is conditioned upon the applicant obtaining

1. approval of the Planning Board AND
2. Completion of the purchase of the real property within 2 years of ZBA approval. AND
3. That the 7.12+/- acre parcel to be offered to the Town within the 2 years of ZBA approval

Mr. Dudick moved, seconded by Mr. Bloss, to approve the request for area variances as described based on the conditions noted above.

Mr. Dudick stated that the area variance would not create undesirable change, and that it would not be obtrusive to nearby properties. Then he stated that there were other reasonable methods of achieving the result, and he felt that the property was unusual, but the proposal was not substantial considering the circumstances; nor would it create an adverse effect on the environment. The board member also noted that he felt the hardship was self-created but not preclusive.

Roll Call:

Ayes: Chairman Dudick, Mr. Bloss John Klimes, Lisa McCoy, David Donohue

Noes: Chris Lemire

The motion was passed 5 votes to 1.

NEW BUSINESS:

- 1) An application from **Mark Pollack** requests an area variance from Section 208-12A which requires 80' setback for accessory structures. Property is a corner lot with two front yards. Setback from Woodland Drive appears to be met. Location proposed scales to 58' from property line to pool on Southbury side. 80' required, 58' available, 22' variance required. Property is located at 22 Southbury Road, Clifton Park, NY 12065. (Permit #81215)

The secretary read the notice as it was published in The Daily Gazette.

Applicant:

Mark Pollack, resident of 22 Southbury Rd, stated that his family would like to construct an above-ground pool. Mr. Pollack described the property and its boundaries that isolate the backyard from its surrounding neighbors, and stated that it would have minimal impact.

Mr. Myers stated that it was a Type II action pursuant to SEQR and no further action would be required. Mr. Myers then added that this was a typical corner lot and no problems associated with the variance application were anticipated.

There being no further comment, Mr. Dudick made a motion, seconded by Mr. Cifor to close the public hearing at 8:32 pm. All in favor, none opposed.

Discussion ensued and board members appeared to agree that this was a reasonable request.

Mr. Klimes moved, seconded by Mr. Dudick, to approve the request for area variances as submitted.

Mr. Klimes stated that the area variance would not create undesirable change, and that it would not be detrimental to nearby properties. Then he stated that there were no other reasonable methods of achieving the result, and he felt they were not substantial; nor would it create an adverse effect on the environment. The board member also noted that he felt the hardship was self-created but not preclusive.

Roll Call:

Ayes: Chairman Dudick, John Klimes, Mr. Bloss, Lisa McCoy, Jerry Cifor, David Donohue

Noes: None

The motion was unanimously passed.

Mr. Dudick moved to accept the minutes of 6/4/2019

Ayes: Chairman Dudick, John Klimes, Lisa McCoy, Jerry Cifor, David Donohue

Noes: None

Abstained: M. Bloss

The motion was passed.

Mr. Dudick moved, seconded by Mr. Donohue to adjourn the meeting at 8:31 pm

Respectfully submitted,

Meg Springli