

# Town of Clifton Park

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## Zoning Board of Appeals



APPROVED

5-1-18

## ZONING BOARD OF APPEALS April 17, 2018 - draft

**Present:** Chairman Dudick, Chris Lemire, Jerry Cifor, John Klimes, Mario Fantini, David Donohue and Michael Bloss.

**Absent:** Lisa McCoy.

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

The Meeting was called to order at 7:06 p.m.

PLEDGE OF ALLEGIANCE  
ROLL CALL

Chairman Dudick announced that alternate member, David Donohue would be voting in place of Lisa McCoy.

### OLD BUSINESS

N O N E

### NEW BUSINESS

*The secretary read the legal notice as it appeared in The Gazette on April 12, 2018:*

- 1. Application from Hallmark Property Holdings for area variances for construction of 2 single family homes in B-1, Business Non-Retail Zone for Lot #1 as follows 1) front setback from centerline of Route 146 reduced to 98', additional 10' variance required per Section 208-35D(1); 2) 40,000 SF minimum lot area required per Section 208-35C. 25,105 SF proposed; 14,895 SF variance required and for Lot #2 as follows: 1) Lot width at building line reduced to 150', additional 0.5' variance required per Section 208-35C; 2) rear setback of 25' required per Section 208-35D(3). 5' variance required; and 3) 40,000 SF minimum lot area required per Section 208-35D. 22,500 SF proposed, 17,500 SF variance required. Property is located at the Corner of Arnold Drive and Route 146, Clifton Park, NY 12065. (Permit #81159).**

Chairman Dudick noted that a memo from John Scavo, the Director of Planning had been received, together with a copy of the March 27, 2018 Planning Board minutes, in which it is noted that following their review, the Planning Board is favorable in concept to the subject application and had advised the applicant to proceed forward with the area variances sought from the Zoning Board of Appeals.

Derek Miller, the owner of Hallmark Property Holdings presented the application and explained that the site, which is in a B-1 Zone, had previously been approved for a daycare center. When that project did not move forward he purchased the property and is now proposing a subdivision that's in general conformance with the R-1 space and bulk requirements, with lot sizes smaller than what is required in the B-1 Zone, but larger than what is required in the R-1 Residential Zone.

He reviewed the map contained in his application with the Board, pointing out there is a 20' easement to provide water and sewer service to properties owned by Vince Bonnanno and Shen Medical; that the Woodland Hills sign is on his property and that there is also a maintenance easement on the property.

Mr. Lemire inquired as to the relevance of the easements and commented that it appears his setback is part of one of the easements. Mr. Miller replied that he can't build over the easements and Mr. Myers confirmed a setback is allowed to be over an easement.

Mr. Fantini asked if the 40,000 SF minimum lot size requirement is because the applicant doesn't have public sewer or water. Mr. Myers explained that the even though the B-1 Zone allows residential uses, the Code still says 40,000 SF is the minimum lot size although you only need 20,000 SF if it were in a R-1 Zone. He added that they simply didn't note the reduction in the Code from business to residential and that for residential you follow the R-1 bulk and standards which is why the applicant needs the variance. He also advised that all of the lots beyond the applicant's lot on Arnold Drive are R-1 and are smaller than 40,000 SF.

Upon inquiry from Mr. Lemire, Mr. Myers confirmed that the B-1 Zone is a transition zone between residential and business uses, which is why the Code allows for both light business and residential.

Mr. Dudick asked what the likelihood would be if the Board granted the requested variances, of having someone come in, purchase one of the residential houses and then say they'd like to put a business in.

Mr. Myers advised that they would need to apply to Planning for approval if the requested variances were granted for residential purposes only. He added that because of the code requirements for structural, handicap accessibility, etc. most people find it's not financially feasible to convert a single family residence back to a business.

Mr. Cifor suggested making any approval conditional to residential use only.

The Chairman asked if the applicant would be willing to agree to such a stipulation and Mr. Miller advised he would absolutely agree to residential use consistent with the B-1 Zone.

Chairman Dudick opened the Public Hearing and asked for questions or comments.

Anthony LaFleche, 21 Wheeler Drive requested clarification of the easements being requested and inquired whether the structures to be built would be 1 or 2 stories. Mr. Miller replied that 2 stories would be the maximum, but he does not know for sure at this time.

Mr. LaFleche asked whether the long row of tall trees that have been there for decades were on the applicant's property. Mr. Miller replied that although he did not know for sure because the whole lot is wooded, he assumes they are, pointing out that Mr. Bonnano also has a buffer he had to retain.

The Chairman pointed out the applicant has the right to keep or remove any trees on this property and that if the property is wooded, it is probably hard to tell whose property they are on without staking the property, adding that when people develop property, sometimes trees have to come down.

Mr. Miller advised that he had put up a split rail fence once they cleared the lot next door for construction and also had planted 25 Colorado blue spruce trees.

Mr. LaFleche also inquired whether the setbacks for the 2 structures would be consistent with the existing setback at #8 Arnold Mrs. DeRusso has. Mr. Miller advised he believes it's consistent and pointed out this is an established setback and he is not asking for a variance for that.

The Chairman pointed out that would be more of a Planning issue unless the applicant was looking to go outside of the building envelope and Mr. Myers confirmed the applicant's proposed setbacks are consistent with what is already on the street

Mr. Dudick made a motion to close the Public Hearing. Mr. Bloss seconded. All voted in favor and the Public Hearing was closed.

Mr. Myers advised this is an unlisted action under SEQRA, which doesn't require a coordinated review and based upon a review of the short form environmental assessment form, he recommends the Zoning Board of Appeals take Lead Agency status and declare a negative declaration for environmental issues on this proposal. He added that he does not see any issues with the proposal, as the structures to be built are consistent with the rest of the neighborhood and disclosed that Mr. Miller is a 30+ year employee of the Town of Clifton Park who works for him in the Building Department.

Mr. Bloss inquired whether the Planning Board had already dealt with SEQRA. Mr. Myers advised they had only done a preliminary review and that they will make their own SEQRA determination.

Chairman Dudick made a motion to declare the Zoning Board of Appeals as Lead Agency for SEQRA purposes. All voted in favor and Lead Agency status for this application was declared. Mr. Bloss seconded the motion.

Chairman Dudick then made a motion to accept a negative declaration under SEQRA, meaning there are no further environmental issues. All voted in favor and a negative declaration was declared. Mr. Bloss seconded the motion.

Mr. Cifor made a motion to approve the requested area variances subject to residential use only. Mr. Fantini seconded.

Mr. Cifor stated that he does not believe an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variances, as the project is more consistent with the neighboring properties; that the benefit sought by the applicant cannot be achieved by some other method feasible for the applicant to pursue other than the area variance and that although the requested variance is substantial in terms of lot size, it is consistent with R-1. He added that he does not believe the proposed variances will have an adverse effect on the physical or environmental conditions of the neighborhood or district and that although the alleged difficulty is self-created because the applicant could only request 1 house, that is only a consideration which is not relevant to the final decision.

*The secretary called the Vote:*

Ayes: Mr. Lemire, Mr. Cifor, Mr. Klimes, Mr. Dudick, Mr. Fantini, Mr. Donohue and Mr. Bloss.

Noes: None.

**Application approved with the stipulation that the structures to be built will be for residential purposes only.**

The Chairman made a motion to approve the minutes from the April 3, 2018 meeting. Mr. Lemire, Mr. Donohue, Mr. Cifor, Mr. Fantini, Mr. Klimes and Mr. Bloss, who were present at that meeting, all voted in favor and the meeting minutes were approved.

Mr. Fantini made a motion to adjourn the meeting. Mr. Klimes seconded. All voted in favor and approval was unanimous. The meeting was adjourned at 7:34 p.m.

**The next scheduled meeting will be held on May 1, 2018.**

Respectfully submitted,



M. Kathleen Smith  
Secretary, Zoning Board of Appeals

Cc: Town Clerk  
Town Board  
Zoning Board Members  
Neil Weiner, Esq.  
Steve Myers, Department of Building and Development  
Town Assessor  
Town Highway Department