

# Town of Clifton Park

Clifton Park, New York



## ZONING BOARD OF APPEALS

July 16, 2019

7:00 PM

Present: Chairman Dudick, John Klimes, Lisa McCoy, Jerry Cifor, Chris Lemire, David Donohue, alternate.

Absent: Mario Fantini, Michael Bloss

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

The meeting was called to order at 7:02 pm.

### PLEDGE OF ALLEGIANCE

Mr. Dudick noted that Mr. Donohue would be a voting member in the absence of Mr. Fantini. Mr. Dudick reminded applicants that 4 out of 6 members would need to vote "aye" in order to pass any variance. All applicants indicated that they would like to proceed with their application at this time.

### OLD BUSINESS:

- 1) An application from **Jack Osmanecvic**, requests a use variance from Section 208-86A which does not allow duplexes on keyhole lots. Lot 489 Moe was created 10/14/2011 by subdivision. Group home 485B Moe was completed 8/28/2013. Applicant purchased 489 Moe Road 12/5/2014. Applicant completed his residence at 487 e Road 1/18/2018. Lot purchased for \$70,000. Section 208-68A last modified in 2006. Property is located at 489 Moe Road, Clifton Park, NY 12065 (permit #81191).

Mr. Cifor recused himself due to a conflict of interest. Mr. Dudick noted that 4 out of 5 voting members would be required to vote positive.

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

**Applicant:**

Dave Pentkowski represented the applicant Jack Osmancevic. The speaker described the location of the lot in question relative to the adjoining properties. Mr. Pentkowski stated that Mr. Osmancevic has observed that the activity at the Saratoga Bridges property has dramatically increased over time, adding that the activities included multiple vehicles overflowing on the shared driveway, and sanitation collection trucks that cannot drive through but must back into the adjoining driveway to turn around and exit the site. The consultant noted that it has been observed that the number of cars/vans in the driveway of the neighboring group home has risen from 3 vehicles to 8 at any given time. The consultant stated that these issues make it difficult to sell the lot #489, and then claimed that potential buyers have expressed that they do not desire purchasing this lot due to the level of activity in the vicinity of the lot.

Frank Lee, with Keller Williams stated that he has been marketing the property for the past year. Mr. Lee stated that the potential buyers like the location, but they feel that the neighborhood is busier than they would desire, especially during off peak times.

Mr. Pentkowski stated that he had spoken to Valerie Meritori, the operator of the Saratoga Bridges facility and that she had no objection to the proposed use. And he added that the other adjacent neighbor had already stated for the record that they had no objection.

Mr. Osmancevic added that he felt that the consultants had explained most of his difficulties in trying to market the property. Mr. Osmancevic stated that he felt that the Saratoga Bridges house was a good neighbor and that he would propose creating a turn-around area for the users of the shared driveway in order to ease congestion and improve traffic flow in the neighborhood. Mr. Osmancevic described the surrounding area and noted that the library and school as well as wooded lands and duplexes were nearby.

**Board Discussion:**

Mr. Lemire asked Mr. Osmancevic to clarify that the group home was already in existence at the time he purchased his properties.

Ms. McCoy stated that the Zoning Board of Appeals must meet all the criteria in order to grant a use variance. She said that her concern is that the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

Mr. Lee confirmed that the property was not now or ever officially listed with Keller Williams. Mr. Osmancevic stated that he networked with Mr. Lee, who added that he has connections with the Chinese community who work for GE or Global Foundries. Mr. Osmancevic stated that he has had a sign on the property for the last four months but only received 4-5 inquiries.

Mr. Dudick asked why it was not formally listed. Mr. Lee responded that Mr. Osmancevic did not want an exclusive listing contract until a client was found, but that there were showings of the property by Mr. Lee and other agents well.

Ms. McCoy remarked again that the board needed more data on whether or not the owner could realize a reasonable rate of return under the current use. Discussion ensued about marketing and plans for development and plans for the property. Then board members explained that the difficulty is that the Zoning Board of Appeals was required to make a judgement on whether financial hardship was being demonstrated with data and not simply anecdotally.

Mr. Dudick then questioned whether the duplex would do anything to improve the traffic complaint. Mr. Pentkowski explained that the traffic wasn't a problem to those living there, it was a concern because the prospective buyers don't find that it was desirable for a single family residence. Mr. Weiner noted that it was required to prove a financial deficit that shows that Mr. Osmancevic was unable to realize a reasonable return.

Mr. Pentkowski responded that if it can't be sold as a single family lot, his loss is 100%. Then the consultant also noted that he understood that the applicant may not have proven that fact to the ZBA's satisfaction.

Mr. Myers said that at the time the group home was built, a determination was made by the State, that it was a residential property and not a commercial entity. Mr. Myers also questioned whether the group home had been approached to remedy the parking/traffic issues on their property. Mr. Myers then stated that he had ask the Director of Planning to offer an opinion regarding the proposal. A letter from Mr. Scavo noted that the Planning Board did not support anything other than single family homes on a keyhole lot.

Mr. Weiner stated that Mr. Cifor would be allowed to speak as a member of the public. Jerry Cifor, of Rexford stated that he and his wife had built the group home and that he felt that the fact that keyhole lots could only house single family homes. Their daughter has been a resident of the home and the same 5 residents have been in the house since its inception. Mr. Cifor stated that the intensity of use had not changed although there are seasonal activities which periodically increase traffic in short term. Mr. Cifor also offered to purchase the property from Mr. Osmancevic.

There being no further comment, Mr. Dudick made a motion, seconded by Mr. Klimes to close the public hearing at 8:08 pm. All in favor, none opposed.

Mr. Myers stated that it was a Type II action pursuant to SEQR and no further action would be required.

Mr. Dudick asked for a motion to approve the application. No one moved to approve. Discussion ensued to clarify if a no vote was a failure to approve.

Mr. Dudick moved, seconded by Mr. Lemire, to deny (not approve) the request for area variances as described. It was added that a vote of “Yes” would be to deny the application.

Mr. Dudick stated that the use variance application:

1. Did not demonstrate that the applicant cannot realize a reasonable return, nor was competent financial evidence provided.
2. Did not prove that the hardship was unique
3. The use variance would create a change in the character of the neighborhood of single-family residences
4. The alleged hardship was self created

Roll Call:

Ayes: Chairman Dudick, John Klimes, Lisa McCoy, Chris Lemire, David Donohue

Noes: None

Application was unanimously denied.

- 2) An application from Michael Scott, Trustee/Fisher Revocable Trust requests two area variances from Section 208-98. The new lot is proposed to be 186.7’ wide, 13.3’ variance required (variance #1). The house on the new lot is 95.6’ from the road centerline, 4.4’ variance required (variance #2). Property is located at 1573 Crescent Road, Clifton Park, NY 12065 (Permit #81211)

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

Applicant:

Michael Scott, owner asked Kevin Dailey to represent the project for the evening in the absence of the other consultants. Mr. Dailey explained that the applicant had an active subdivision application with the Planning Board. Then, he stated that the Michaels Group was intending to develop the subdivision, but they are proposing to build a model home and offices for the new subdivision, which required them to request a variance. Mr. Daily then described the existing conditions of the application as submitted. Mr. Myers then showed the lots to be created on a subdivision plan and further explained that a cluster subdivision approval before the Planning Board would eliminate the need for variance #1, so the applicant was revising their request at this time for the board members to only consider variance #2, the 4.4’ setback variance from the center of the road on Crescent Road, a pre-existing, non-conforming condition.

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 he had no problems with the request.

There being no further comment, Mr. Dudick made a motion, seconded by Ms. McCoy to close the public hearing at 8:27 pm. All in favor, none opposed.

**Board Discussion:**

Mr. Dudick stated that he was satisfied that all the requirements had been met for this application and that this was a minor request

Mr. Cifor moved, seconded by Mr. Klimes, to approve the request for an area variance as amended to a 5' variance from the centerline of the road.

Mr. Cifor 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 no other reasonable methods of achieving the result, and he felt that the proposal was not substantial; nor would it create an adverse effect on the environment. The board member also noted that he felt the hardship was not self-created because it was a condition that existed prior to zoning in Clifton Park.

**Roll Call:**

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

Noes: None

Unanimously approved.

**NEW BUSINESS:**

- 3) An application from **AJ Signs, 6 Fairchild Square** requests a variance from Chapter 171, Table 1 which allows only two wall signs per business at 60 sf maximum total. Currently two wall signs totaling 55 sf. Applicant requests a third wall sign at 10sf. Variances required 1) One additional wall sign. 5 sf over 60 sf maximum. Property is located at 6 Fairchild Square, Clifton Park, NY 12065. (Permit #81216)

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

**Applicant:**

Emma VanVorst, of AJ Signs represented the client, who has approval for the two signs on the building. The applicant would like to post a third wayfinding sign for the retail entrance. Discussion ensued about the proportions of the existing signs. Ms. VanVorst stated that the applicant was entitled to a freestanding sign of 150sf but they were not proposing one. Mr. Myers noted that they could probably be entitled to a 150sf free standing sign, and that he felt that 5sf was not substantial. Mr. Dudick asked if the applicant would be willing to make that a condition of the approval.

Mr. Dudick asked for a 5 minute recess to consult counsel. They returned at 8:46.

Ms. VanVorst was able to provide some sketches illustrating the façade of the buildings and the proposed locations of the signs.

Mr. Myers explained that there were 3 separate uses per code under the same owner at the location and that was what required three signs to clarify the locations each of the separate uses.

Then Mr. Myers stated that it was a Type II action pursuant to SEQR and no further action would be required.

There being no further comment, Mr. Dudick made a motion, seconded by Mr. Cifor to close the public hearing at 8:51pm. All in favor, none opposed.

**Board Discussion:**

Mr. Dudick stated that he had no objection to the request as submitted, and he was not going to propose that it be conditioned upon not building a freestanding sign. Mr. Lemire questioned the necessity for a third sign and whether the applicant could accomplish the same result within the parameters allowed per code.

Mr. Dudick moved, seconded by Mr. Cifor, to the request for sign variances as described in the application 1 extra sign and 5sf extra signage overall.

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, but it 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. Cifor John Klimes, Lisa McCoy, David Donohue

Noes: Chris Lemire

Approved 5 to 1.

Mr. Dudick moved, seconded by Mr. Lemire to adjourn the meeting at 8:56 pm

**Respectfully submitted,**

  
Meg Springli