



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

ATTENDEES:

John Van Vorst, Chairman
Dave Blair, Vice Chairman
Andrew Collar, Board Member
Peter DiLorenzo, Board Member
Audeliz Matias, Board Member
Michael Zuritis, Board Member
Andrew Clark, Attorney
Jenny Lippmann, Engineer

ABSENT:

Ben Baskin, Board Member
Dale King, 2nd Alternate
Jeff Stickles, Code Enforcement Official

Call to Order

The meeting was called to order at 6:30 pm and the Pledge of Allegiance was recited.

Approval of Previous Minutes

MOTION: Mr. DiLorenzo made a motion to approve the December 28, 2022 meeting minutes as drafted. Mr. Blair seconded the motion. Ms. Matias and Mr. Collar abstained due to absence from the December meeting. All others voted in favor. **CARRIED.**

OLD BUSINESS

Burnt Hills Family Dental Site Plan (PB 2022-012)

154 Lakehill Road; SBL 257.10-1-75

Site Plan Review for proposed approximately 648 SF addition to existing dental clinic. SEQRA Unlisted Action, closed.

Mr. Patrick Mulkern of Colliers Engineering & Design.

Mr. Mulkern stated that he is here to hopefully finish site plan approval based on the documents submitted.

Chairman Van Vorst asked if Mr. Mulkern had anything new to present.



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

Mr. Mulkern stated that he received feedback from the Town engineer from the previous comments plus one additional comment regarding the site plans. All previous comments were addressed, and the new comment was regarding relocation of the existing handicap space within the parking lot, to meet code. They didn't have a chance to submit anything officially but believe there is room in an existing normal space next to the sidewalk that could be converted to a handicap space with the accessible aisle. The needed existing normal space could be relocated to where the existing handicap space is. Mr. Mulkern indicated the locations on the map. He stated that the proposed new handicap space location seems to be the best given that it's next to the sidewalk ramp, away from other traffic, and is close to the building entrance.

Ms. Lippman stated that that would be appropriate.

Mr. Mulkern stated that he wanted to discuss the waiver request that was submitted for the sidewalk escrow. At the November meeting the plan was discussed and there are a lot of conflicts that came up. He would like to discuss the possibility of waiving that requirement. It seems like it would be more fitting for a capital improvement project as opposed to this isolated installation.

Chairman Van Vorst asked Mr. Clark if that is a possibility.

Mr. Clark answered affirmatively and stated that he would need to confirm the discretion that the Planning Board has in waiving that requirement, to put the funds elsewhere.

Chairman Van Vorst polled the Board for opinions.

Mr. Zuritis stated that, after reviewing the location and the interferences, it seems like the Board should have an alternative to putting the sidewalk in.

Mr. Collar stated that he agrees; he drove by after the November meeting.

Chairman Van Vorst stated that Mr. Blair was pretty passionate about the sidewalks and asked for his opinion.

Mr. Blair stated that he thinks they have to start somewhere. He understands that there are some obstacles to it. He's not asking for the complete escrow for the whole sidewalk project. He wants to get going and make sure that they can get sidewalks for that whole corridor; they'll see what happens.

Mr. DiLorenzo stated that he doesn't think it's necessary to have the sidewalk there as there's one on the other side of the street, and as Mr. Zuritis stated during the agenda meeting, there's a telephone pole right there so the chance of having a sidewalk down the rest of that side of the street is unlikely.

Ms. Matias stated that she is in agreement with the waiver; she expressed that concern when the sidewalk was first discussed.



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

Chairman Van Vorst stated that he can't picture there ever being a sidewalk on that side of the road. He is in favor of the waiver as well. He asked Mr. Clark to find out whether that's a possibility and stated that the Board has to schedule a Public Hearing.

MOTION: Mr. Blair made a motion to schedule a Public Hearing for 154 Lakehill Road on February 22, 2023 at 6:30 pm. Mr. DiLorenzo seconded the motion. All in favor. **CARRIED.**

Mr. Mulkern asked if it is possible, after the Public Hearing is concluded at the next meeting, that a motion could be made for site plan approval at that point or if there is a delay between the Public Hearing and site plan approval.

Chairman Van Vorst stated that he doesn't foresee any obstacles, so he believes there is probably a 99% possibility; the Board members agreed.

Mr. Mulkern thanked the Board.

Foreverly House Site Plan (PB 2022-009)

1214 Saratoga Road; SBL 239.-1-10.111

Site Plan Review for two proposed buildings, each with two residential units, and additional parking. SEQRA Unlisted Action, open. Public Hearing continued.

Ms. Kara Tedford of The LA Group and **Mr. Ray O'Connor** of the Veterans & Community Housing Coalition.

Ms. Tedford stated that she is here with Mr. O'Connor representing the Veterans & Community Housing Coalition (VCHC). They have appeared before the Board a few times and the only new information to present tonight is a letter from the New York State Office of Parks, Recreation and Historic Preservation. They ruled no effect after receiving an archaeological review from Ed Curtin.

Chairman Van Vorst polled the Board for questions or comments; there were none. He stated that the Public Hearing had already been started at another meeting.

Public Hearing re-opened at 6:38 pm.

No one wished to speak.

Ms. Lippmann recommended that the Board consider SEQRA before closing the hearing.

Chairman Van Vorst stated that the Board had previously established Lead Agency, so a determination is needed.



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

MOTION: Mr. Blair made a motion for the Negative Declaration on this SEQR Action at 1214 State Route 50, Ballston Spa. Mr. DiLorenzo seconded the motion. All in favor. **CARRIED.**

Public Hearing closed at 6:40 pm.

MOTION: Ms. Matias made a motion for Site Plan Approval for this Unlisted Action for the map dated November 3, 2022. Mr. Blair seconded the motion. All in favor. **CARRIED.**

The applicants thanked the Board on behalf of the Veterans & Community Housing Coalition and the moms and their kids that will be living in Foreverly House.

NEW BUSINESS

Goode Street & Orchard Terrace Lot Line Adjustments (PB 2022-021)

145 Goode Street, 149 Goode Street, 153 Goode Street, 4 Orchard Terrace, 6 Orchard Terrace
SBL 248.17-3-4, 248.-1-51.1, 248.-1-89.111, 248.17-3-2, 248.17-3-3

Multiple Lot Line Adjustments on five properties under the same ownership. SEQRA Type 2 Action.

Mr. David Bogardus of Northeast Land Survey and **Mr. Matt Duemler**, property owner.

Mr. Bogardus stated that he is representing Mr. Duemler.

Mr. Duemler stated that he appreciates the Board's time and attention to this matter.

Chairman Van Vorst asked if they had seen the engineering response letter.

Mr. Bogardus stated that he has not seen anything. He asked when it was issued.

Ms. Lippmann stated that it was issued yesterday; she was under the impression that Mr. Stickles talked with them.

Mr. Bogardus stated that he asked for a copy of the letter and didn't get anything.

Ms. Lippmann stated that upon review again of the proposed lot line adjustments there are two lots that would require area variances. The primary lot is 149 Goode Street. They are proposing a flag lot which would have the frontage along Orchard Terrace. Two things that would require attention on that proposal are that flag lots are not approved in this zone and then the width proposed does not meet zoning. There's a 60-foot minimum width requirement in the Town of Ballston which was also indicated in her previous letter and that flag lots are not allowed in this zone. The second parcel at 153 Goode Street does exceed coverage requirements. The maximum coverage allowed is 20% and they are proposing 28% for 153 Goode Street.



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

Mr. Bogardus stated that last year they met with two Code Enforcement officers to work this whole thing out, submitted it and got rejected. Two months ago, they met with the Code Enforcement officers, and they said this was good and exactly what they wanted; all conforming with no variances required. He submitted 15 copies. It was good until yesterday and then he got an email. He asked what is going on; he's spent \$6000 of his client's money and it's a simple lot line adjustment on existing lots with preexisting conditions. The lots were all developed 30 years ago; this stuff doesn't apply to them. They are taking a bad situation and making it very good by doing what they're doing here. He asked if the Board wants him to explain it.

Chairman Van Vorst stated that he understands what Mr. Bogardus is saying and he understands the chronology. In the last year the zoning has changed, so what may have been zoning compliant a year ago is no longer zoning compliant.

Mr. Bogardus stated that they came back and had another meeting with the staff. What the Board has tonight is exactly what they signed off on. Now the Town engineer says no. He asked who's running the code enforcement department, the Town engineer or the Code Enforcement officials.

Chairman Van Vorst stated that they work together as a team.

Mr. Bogardus stated that he's taking a beating.

Mr. Duemler stated that 149 Goode Street is preexisting. It has been there since the 1800s and has 15 feet of frontage with no driveway going to it at all. They are now giving enough room to create a driveway.

Ms. Lippman stated that that is correct. She stated that the property is now a flag lot because of the narrow strip that comes out to Goode Street. That is preexisting. You are modifying that lot configuration and now that frontage is proposed to be on Orchard Terrace. We can no longer consider a change in configuration as an existing nonconforming condition. She stated that she doesn't think anyone is disagreeing with what they are proposing but this Board cannot grant the approval without an area variance; that's not their jurisdiction. She stated that we're not saying that it's not an okay plan, we're just saying that it needs to go to the Zoning Board of Appeals (ZBA) to get those area variances first.

Mr. Bogardus stated that he totally disagrees; this has been in existence for 40 years.

Ms. Lippmann stated that they are changing it so it's not preexisting anymore; the current zoning is what we have to follow.

Mr. Bogardus asked if there is a grandfather clause.

Ms. Lippmann stated no.

Mr. Bogardus stated that it's ridiculous and is a disservice to the public.



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

Chairman Van Vorst stated that the Board may agree with him, but they can't change it. They make their decisions based on the law that's in existence.

Mr. Duemler asked if it's the fact that it's changing to a different road; he stated that there are only 15 feet on Goode Street. The exit is still on Goode Street.

Ms. Lippmann stated that if you're moving it, it's no longer existing nonconforming. So even if you were to move that driveway down Goode Street to the south, you would still need that area variance because you're not keeping the parcel the way it is currently.

Mr. Bogardus stated that that is ridiculous.

Ms. Lippmann stated that it's standard in terms of zoning.

Mr. Bogardus asked if the Board takes existing conditions into consideration.

Chairman Van Vorst stated that the Board can take that into consideration but has no authority to make a decision based upon preexisting conditions.

Mr. Duemler stated that the first engineering letter had eight preexisting things; he asked if the house location is considered preexisting.

Ms. Lippmann stated that there are several items identified in her comment letter that are considered existing nonconforming conditions, but they still need variances.

Mr. Blair stated that Ms. Lippmann is saying that the house is a preexisting condition within the road. If you were to try to put on an addition or move that house 3 feet forward, you're now changing the conditions so it's no longer a preexisting condition because you've moved that structure closer to the road. In essence, adjusting this flag lot now eliminates the preexisting condition because you're not using the exact same footing that was there. He asked if that makes sense.

Mr. Duemler stated that it makes sense but not common sense because they're making something better.

Ms. Lippmann stated that we agree you're making it better, but it doesn't negate the need for an area variance. You can make that exact same argument to the ZBA to get the appropriate area variances to move this project forward; the project just needs one more step.

Mr. Bogardus indicated one of the lots on the map and stated that this existing lot is substandard to begin with.

Chairman Van Vorst asked what number it is.

Mr. Bogardus stated that it's 6 Orchard Terrace.

Ms. Lippmann stated that they could leave that the way it is currently, and it would be fine.



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

Mr. Bogardus stated that it's .6 acres; it's an existing lot and asked what if someone wants to build a house on it.

Chairman Van Vorst stated that, as far as he knows, someone could build a house on that lot.

Mr. Bogardus stated that they're grandfathering it; he doesn't understand what the difference is.

Chairman Van Vorst stated it's because he has approval for that lot the way it exists; if it changes, the approval is void. He asked Mr. Clark if that is correct.

Mr. Clark answered affirmatively and stated that as unfortunate as it is, sometimes we are bound by preexisting nonconforming conditions, where any real modification or change to them is a change of the preexisting condition. Any enlargement or modification knocks you out of that grandfather period.

Mr. Zuritis stated that he thinks the takeaway here is that nobody is saying this is a bad thing. The applicant is at the wrong Board to start with; they must get the variance at the ZBA.

Mr. Bogardus stated that he would if he had gotten the information from the Town engineer. He's met with the Code Enforcement officers twice. He has wasted a year.

Chairman Van Vorst stated that the Code Enforcement officers are not here this evening; he can't tell them what the answer is. For some reason there was some misinterpretation, misunderstanding or miscommunication.

Mr. Bogardus stated that he got bad advice.

Mr. Duemler stated that this is definitely frustrating. He asked if they apply for a variance and it's approved, when they come back to the Planning Board would that be acceptable.

Mr. Blair stated that until those are resolved, the Planning Board can't give a determination.

Mr. Bogardus stated that the ZBA doesn't have to give the variances.

Mr. Blair stated that the ZBA members are logical people that look at what you're trying to attempt and how it's actually going to better the project. They'll look at it and potentially give you approval and then that gives the Planning Board the green light to even consider this.

Mr. Bogardus answered maybe.

Chairman Van Vorst stated that there is no absolute answer but Mr. Bogardus' anger at the Planning Board is not justified.

Mr. Bogardus stated that his anger is not focused on the Planning Board, it's focused on this Town and the way it runs. He's a professional and went to the Code Enforcement officials twice and took their advice.



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

Chairman Van Vorst stated that he can't defend them because he doesn't know all the circumstances. Maybe they made a mistake, he doesn't know.

Mr. Bogardus stated that to not get the information before the meeting is even worse.

Chairman Van Vorst stated that it is his understanding that the information was sent out yesterday.

Mr. Bogardus stated that he didn't get it yesterday.

Ms. Lippmann stated that she apologizes for that.

Mr. Bogardus stated that the Town asks them to submit their materials 15 or 20 days ahead of time but I get my notes back one day before and I didn't even get those so how can a guy do business like that; that's why he's angry.

Chairman Van Vorst stated that he would like to express apologies for whatever part was played by the Town.

Mr. Duemler stated that there's enough frustration to go around; they submitted 15 days ago and got the email yesterday. They will take the next steps for the variance to move the process forward.

Mr. Bogardus stated that they sent the pdf weeks ago for the approval; he got an email that all was good so send 15 hard copies; no problem.

Mr. Duemler asked where to get the variance forms.

Chairman Van Vorst stated that they would have to talk to the Building Department.

Mr. Blair stated that they're on the website as well.

The applicants thanked the Board.

40 Hickory Grove Lane Lot Line Adjustment (PB 2022-020)

SBL 219.10-2-26, 249.10-2-1

Lot line adjustment. SEQRA Type 2 Action, exempt from review (determined by Zoning Board of Appeals).

Ms. Patricia Marcinkowski and Mr. Jan Marcinkowski, property owners of 40 Hickory Grove Lane.

Ms. Marcinkowski stated that they went to the Zoning Board of Appeals and their variance was approved at the last meeting. She noticed that the engineering comment letter mentions 40 Hickory Grove Lane at 1.21 acres and the other lot at 2.26 acres. The 2.26 acres is what it's going to be after the lot line adjustment. She stated



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

that the lots are currently at 1.21 acres and 2.54 acres so after the lot line adjustment they would be 1.42 acres and 2.26 acres.

Ms. Lippmann stated that from the plan submitted, 40 Hickory Grove is proposed at 1.21 acres and the other parcel ends up being 2.26 acres per the map submitted.

Ms. Marcinkowski stated that that's after the adjustment.

Ms. Lippmann answered affirmatively.

Ms. Marcinkowski stated that it will be 1.42 acres and 2.26 acres.

Ms. Lippmann stated that 1.21 acres is what they have on the map.

Ms. Marcinkowski stated that that is what it currently is; they're going to add roughly .21 acres.

Mr. Zuritis stated that there's just an error on the map.

Ms. Lippman stated that she did scale it because there was some confusion. The map says the existing acreage is 1.01 acres; the proposal is 1.21 acres.

Ms. Marcinkowski stated that the surveyor corrected it. She doesn't know if he submitted it.

Ms. Lippmann stated that that is not what we have. She scaled the map and the 1.21 acres checks out. She verified that the area variance was appropriate, as the ZBA meeting minutes from their initial meeting indicated that they were increasing the lot size to 1.41 acres. They do have enough variance at .79 acres; the Board just doesn't have the right map in front of them. The variance is okay for this map; everything checks out.

Ms. Marcinkowski stated that she just wanted to correct the numbers.

Ms. Lippmann stated that the Board doesn't have a map that says 1.41 acres so if this isn't the correct map, they would need to see that submitted.

Chairman Van Vorst asked if the Board can proceed, conditional on the correct map being submitted.

Mr. Clark stated that he thinks there's a concern where the Board wants to know what the final lot size will be in relation to the variance that was sought. The variance was granted for .79 acres; with that being approved it brings it up to the 1.21 acres.

Ms. Lippmann stated that that is correct; she did confirm it last week to make sure the variance jives with what was presented to this Board, which is the 1.21 acres.

Mr. Blair stated that the variance is for .79 acres, but they don't need to use it all because they only need .68 acres so it's a moot point.



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

Ms. Lippmann stated that they don't need to go back to the ZBA, which was her initial concern, but the Board doesn't have that map if what they're proposing is something larger. It's not just a typo; the map actually checks out, so if they wanted the line to be in a different spot that's not the plan before the Board so she wouldn't recommend proceeding with approval because they don't have the correct map, if that's indeed the desire of this applicant.

Chairman Van Vorst asked Mr. Clark if the Board can't do a conditional approval.

Mr. Clark stated that the only reason he would caution against that is because the Board doesn't have the final proposal at this point which is essential to the approval.

Ms. Marcinkowski stated that she responded to Ms. Mains regarding the discrepancy when she received the original agenda.

Ms. Lippmann stated that the Chairman must sign the map; the Board would need to have an accurate map. The ZBA application was for .79 acres.

Ms. Marcinkowski stated that that's okay as that was the non-conforming portion, so with the original 1.21 acres would bring it up to conforming to the 2-acre requirement. They're not going to use the whole .79-acre variance.

Ms. Lippmann stated that she is not arguing that they need another ZBA referral; they have more than enough area variance. The concern is that the Board doesn't have a map that indicates that what the applicant is saying is what they desire to have.

Mr. Blair stated that he did not scale this and asked if Ms. Lippmann included the shaded are of the map in her scale proportion.

Ms. Lippmann answered affirmatively.

Ms. Marcinkowski stated that it's 1.21 one acres without that portion.

Ms. Lippmann stated that the applicant's engineer or land surveyor needs to submit a revised plan.

Ms. Marcinkowski stated that this is month three now that they have been going through this process. The Zoning Board didn't have the right map; they had the same discussion with the Zoning Board.

Ms. Lippmann stated that the variance is for what is shown on this map. She stated that, to further answer Mr. Blair's question, she definitely scaled the map because she was concerned. Ms. Mains provided her with the ZBA resolution. She was concerned about the discrepancy with previous meeting minutes, etc. With 99% certainty, the scale checked out with what is shown.



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

Mr. Zuritis stated that the Board can approve this map that was submitted, like it is, but if the applicant is saying this is not the right map, then they can't move forward.

Ms. Marcinkowski stated that it is the right map. The existing property, according to their deeds, tax bills, etc. is 1.25 acres. The surveyor came up with 1.21 acres so that is the existing lot and the additional area is .21 acres.

Ms. Lippmann referred to the map and stated that it is written 1.01 acres old, area 1.21 acres, proposed. It has the 2.26 acres in red and the 1.21 acres is in red; those are the proposed areas.

Ms. Marcinkowski stated that she corrected that with the surveyor; she didn't realize that's what the Board had.

Mr. Zuritis stated that a professional surveyor surveyed the property. Regardless of the taxes or what's on the deed, the boundaries are plotted and that's the actual. He stated that if Ms. Marcinkowski says that it's not right then the Board can't approve it. This is a certified map from a licensed surveyor.

Ms. Marcinkowski stated that the surveyor agreed that the map was wrong, and she thought it was corrected.

Ms. Lippmann stated that he did not resubmit the map. It's not what the Board is looking at and it's not what was approved at the ZBA; they referenced these areas for the ZBA approval as well.

Ms. Marcinkowski stated that she has the approval for the .79-acre variance. She asked if that includes the lot line adjustment.

Ms. Lippmann answered affirmatively and stated that the variance isn't for the existing condition, it's for the proposed condition. The lot at less than two acres as it exists today is grandfathered. The variance is for the proposed condition, which per the map and per the resolution from the ZBA brings the acreage up to 1.21. It's not in conformance now and isn't proposed to be in conformance but the applicant is making the nonconformance better, which is why the ZBA probably granted this variance even though it's still not conforming. The holdup here is that this Board doesn't have the correct map. If it's true that this is the wrong map, it would be wrong for this Board to approve the project because they're not looking at the right thing.

Ms. Marcinkowski asked that if she's wrong and the Board goes by the map, if it can be approved as is.

Ms. Lippmann stated that if what is presented here is good to the applicant, there's nothing holding the Board back from granting approval if that's what they choose to do. The SEQR is done, neither County referral nor a Public Hearing is needed; everything's in place so it's up to Ms. Marcinkowski.

Ms. Marcinkowski stated that she'll say she's wrong. If the Board is okay with what's on the map, she's okay with what's on the map.

Chairman Van Vorst polled the Board.



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

Mr. Zuritis stated that it's signed by a licensed surveyor; he's saying that it's correct. If it's wrong, they'll have to revise it and come back for another approval.

Ms. Lippmann answered affirmatively.

Chairman Van Vorst asked for Mr. Clark's opinion.

Mr. Clark stated that all of that is correct; the Board may proceed with the map that they have in front of them as it lines up with the variance and all the requirements. The Board can take action on the map as we have it here.

Chairman Van Vorst asked Mr. Clark if there's no consequence.

Mr. Clark stated that he's obviously not the applicant's attorney but based on the project the Board has in front of them, there's no adverse consequence.

MOTION: Mr. DiLorenzo made a motion to approve the Lot Line Adjustment at 40 Hickory Grove Lane with the map dated November 7, 2022. Mr. Blair seconded the motion. All in favor. **CARRIED.**

Ms. Marcinkowski asked if they are done.

The Board members answered affirmatively.

Ms. Lippmann stated that the surveyor must submit a stamped map to the Building Department. The Chairman will sign the map so the applicant can submit it to the County.

Mr. Zuritis stated that the stamped map must be identical to this map.

The applicants thanked the Board.

87 Scotchbush Road Minor Subdivision (PB 2023-001)

SBL 256.-1-6

Minor Subdivision to divide the parcel into three residential building lots, one with existing home and remaining two to have public water and private septic systems. SEQRA Unlisted Action, open.

Mr. Harold Berger, project engineer, and **Mr. Brian Gould**, property owner.

Mr. Berger stated that he is the project engineer and Mr. Gould and his family are the owners of this parcel. It is approximately 3.33 acres with one existing home, Mr. Gould's homestead. They are proposing a subdivision of two additional lots with zoning-compliant public water and septic systems that Mr. Berger will design. There is an existing 8-inch water main on the opposite side of the street that the house is tied into and he would propose



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

the other two lots be tied into it. This zone requires 100 feet of frontage and all three lots exceed that. He believes there is a small patch of USACE (United States Army Corps of Engineers) wetlands in the corner which is still undefined; he will make sure it is delineated and shown on the drawing. The percolation tests indicate a loamy, sandy soil. The systems will be conventional systems with septic tanks. Mr. Gould represents his family, consisting of three brothers, a sister, and himself.

Chairman Van Vorst polled the Board for questions or comments.

Mr. Collar asked why Mr. Berger thinks there are USACE wetlands.

Mr. Berger stated that the surveyor is Mr. Drew Schaufert, of Santo Associates Land Surveying and Engineering, P.C., who has that program and has indicated that it's a small patch. It's in the corner and will be out of the way; they won't encroach on it and will delineate it and show it.

Mr. Blair stated that Mr. Berger said there will be public water but if the neighbors have wells, they should be identified on the drawings as they may play into the septic system on the south side.

Chairman Van Vorst stated that it looks like there are substantial slopes on lot three and he assumes there will be a lot of grading. He asked if the soil will be removed or just redistributed.

Mr. Berger stated that there will be no soil removed from any lot. He hasn't gotten into that specifically yet; they may add soil but will not remove it. Mr. Gould is not a home builder so he'll probably make these lots available for sale. Mr. Berger stated that he can do a grading plan.

Chairman Van Vorst polled the Board for questions or comments; there were none. He stated that the Board will see them again when they have another map.

Mr. Berger stated that the game plan is to finalize the drawing; they still have to do some test holes and have a few things to show on the map. He stated that they'll be back when it's done.

Mr. Zuritis asked Mr. Berger to include the proposed house locations, septic, etc. on the map.

Mr. Berger stated that he will do all of that. He will show the house, driveway, septic tank, leach field, and if there's any change in grade he will show that appropriately as well.

The applicants thanked the Board.

Katz Outlet Road (PB 2022-015 and ZBA 2022-016)

SBL 239.-1-8

To discuss request of the Zoning Board of Appeals.



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

Chairman Van Vorst stated that the last agenda item is to discuss the Katz Outlet Road project and whether the Board feels, if Mr. Katz receives the variances, if they would support the project. He asked Mr. Clark if that is correct.

Mr. Clark answered affirmatively and stated that Town Law §277 (6) Subdivision Review says: notwithstanding any provision of law to the contrary, where a plat contains one or more lots which do not comply with the zoning regulations, application may be made to the Zoning Board of Appeals pursuant to a variance. In reviewing such application the Zoning Board of Appeals shall request the Planning Board to provide a written recommendation concerning the proposed variance. He stated that the intent behind the statute is, presumably, since granting the variance would equal the applicant coming back to the Planning Board to proceed with a subdivision that, while not technically noncompliant, is but for the variance, so it wants to see what the Planning Board's recommendation is for that entire subdivision.

Chairman Van Vorst stated that he hasn't seen the application before the ZBA, so he doesn't know what the variance is that they're looking for. His understanding is that there is probably lot size and lot width. His other question is the 250-foot buffer from active Agriculture (Ag) lands and whether the Ag lands on the north side of Outlet Road qualify as active. He doesn't know what triggers that threshold.

Ms. Lippmann stated that the other item is density; it's not just area and width, it exceeds the allowable density for the existing parcel size.

Mr. Blair stated that that's under the current zoning.

Ms. Lippmann answered affirmatively and stated that he is subject to the current zoning.

Mr. Blair stated that he understands and asked if it was fine under the previous zoning.

Ms. Lippman answered affirmatively and stated that he subdivided part of the property previously. Mr. Katz says he's continuing this project, but he didn't subdivide these lots originally. There's been no grandfather provision with the new zoning; she doesn't know when the last time the project was proposed but it was many years ago.

Ms. Dolores Draina was present at the meeting and stated that Mr. Katz hasn't done anything with the property for at least 10 to 15 years.

Chairman Van Vorst stated that the Board must discuss and see how they feel about the project.

Mr. Blair asked if the Board is saying that as long as the ZBA approves the variances and the Planning Board doesn't find anything that Mr. Katz is requesting to be egregious, there is potential that they would approve it. If the Planning Board states that they're not going to approve it at all then it's a moot point to the ZBA and they're not going to bother proceeding.



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

Mr. Zuritis stated that in terms of approving or not, the Planning Board doesn't really have a choice to say they don't like it and aren't going to approve it. If the ZBA grants the variances to say that this minimum lot size or these setbacks are acceptable, there's no other avenue for the Planning Board to say Mr. Katz doesn't meet the requirements any longer. The Board would be legally liable for denying approval.

Ms. Lippmann stated that unless there's some other site constraint indicating that the plots aren't buildable, Mr. Zuritis is right. If it's legal by zoning with a variance, then it's hard to deny.

Mr. Zuritis stated that he thinks it's impossible to deny without a potential legal battle. He stated that it sounds like it's more for the Planning Board to say they don't like it and then tell the Zoning Board that we wouldn't recommend they approve it, even though if they do approve it, the Planning Board pretty much has to approve it. This is the Board's opportunity to say whether they do or don't like it.

Chairman Van Vorst stated that the Planning Board didn't write the code, so they don't have much say in determining whether somebody is compliant or not. The Planning Board is required to come up with a written conclusion as to their position.

Mr. Zuritis stated that they could say that if the ZBA approves all the needed variances we feel that it's consistent with the existing development in the area or we could say that we think this is not meeting the Town's intent and recommend that they don't approve the variances.

Mr. Blair asked which variances are being applied for.

Ms. Lippmann stated that there is lot size and frontage.

Mr. Clark stated that he had the Zoning Board of Appeals application dated October 18, 2022 and stated that the minimum lot size is five acres per dwelling and he's seeking to build four homes. He has 14.58 acres, so pursuant to Code he can only do two houses on that; he's seeking a variance for that density to build four on 20 acres. There are four lots all with a lot width requirement of 250 feet; lots one and two only have 175 feet of width so that would be two lot width variances of 75 feet. There's nothing else on the application for any other variances.

Chairman Van Vorst asked who makes the determination as to what qualifies as active farmland; there's a 250-foot buffer which would impact this property as well.

Mr. Zuritis asked for an explanation of the buffer.

Chairman Van Vorst stated that the new zoning requires a 250-foot buffer.

Ms. Lippmann stated that that could go down to 150 feet with appropriate buffering. The Town Code outlines what a buffer can be, whether it's a mound or trees; that setback can be reduced. She stated that the Board would have to confirm what's active farmland.



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

Chairman Van Vorst asked who makes that determination, if it's the Code Enforcement Officer.

Ms. Lippmann stated that she would defer to him.

Mr. Zuritis asked where the buffer is.

Mr. Blair stated that there are farmlands to the north.

Ms. Lippmann stated that it would be to the dwelling as well; that's what the Code indicates.

Chairman Van Vorst stated that they could move the dwelling on the lot.

Ms. Lippmann answered affirmatively.

Ms. Draina stated that if you take the wetlands into consideration, Mr. Katz only has 10 acres of unconstrained property.

Mr. Zuritis stated that Mr. Katz could meet the five-acre requirement; he could add the wetlands to lots one and two and extend those. He asked if there is a reason Mr. Katz is trying to maintain the 10 acres on lot three.

Chairman Van Vorst stated that there may be. There's also the concern that the frontage isn't adequate; he's looking for at least two variances. The Board must decide whether we agree it's appropriate.

Ms. Lippmann stated that at least three of the properties need an area variance because they're not five acres.

Mr. Zuritis stated that he could make two lots.

Ms. Lippmann stated that the Board could give him two lots; they have say in the sizes.

Chairman Van Vorst stated that with the density he could only put two houses there.

Ms. Lippmann stated that Mr. Katz could revise this, so he has only two nonconforming lots versus three, in terms of area.

Mr. Blair asked what the mindset is of requiring two-acre lots on the lake versus five-acre lots three minutes from there.

Ms. Lippmann stated that she can't speak for the Town Board's intent. There was a concerted decision to "down zone," which is to go from the two-acre lot, which was the rural district minimum lot size, to five acres to reduce density in the Town. It was an intentional decision by the Town Board when they adopted the zoning. It's her understanding it was to reduce density.

Mr. Zuritis stated that it's not the Planning Board's job to rewrite zoning; they are trying to comply with the existing zoning. He would be more comfortable with three lots.



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

The other Board members agreed.

Mr. Collar asked if Mr. Katz is going for five lots.

Ms. Lippmann stated that he wants four. He's just shy of being able to achieve three under the current zoning.

Mr. Blair stated that he would be comfortable with the acreage shortage for three lots.

Ms. Draina stated that the net acreage is 10 acres if the wetlands are taken into consideration.

Ms. Lippmann stated that the Board doesn't have to take that into account for a minor subdivision; if it were a conservation subdivision they would.

Chairman Van Vorst stated that we have a consensus that we agree as a Board to reduce the proposed application to three instead of four. He asked Mr. Clark what the next step is.

Mr. Clark stated that we draft a written recommendation outlining that recommendation and submit it to the Zoning Board of Appeals.

Chairman Van Vorst asked if that meant he and Mr. Clark.

Mr. Clark stated that he would be happy to draft a letter for Chairman Van Vorst's approval, representing the Board's feelings on the matter, for Chairman Van Vorst to tweak in any way he sees fit to accurately capture it.

Chairman Van Vorst asked if the Board must vote on that.

Mr. Clark stated that it's not explicitly required but it would be good to have for the record.

Mr. Blair asked if bringing the project down to three lots would eliminate the frontage issue.

Ms. Lippmann stated that it might; they would have to see how he proposes it.

Mr. Clark stated that the other consideration is that the statute does not require the Zoning Board to definitively follow the Planning Board's recommendation one way or the other.

Mr. Zuritis stated that the Zoning Board could give Mr. Katz all the approvals to do this, and it will come back to the Planning Board.

MOTION: Mr. Blair made a motion to draft a letter to the Town of Ballston Zoning Board of Appeals recommending that the Katz project on Outlet Road be reduced to three lots while attempting to get each lot as close to five acres as possible, while also attempting to minimize any needed variances from the Zoning Board of Appeals. Mr. Zuritis seconded the motion.

Discussion:



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

The Board discussed the specifics of the motion, including whether to include the frontage and/or lot size requirements. They decided that “minimizing any needed variances” encompassed their concerns.

Ms. Matias asked if the request was to have a statement about the number of lots we will approve, or it was to discuss the situation; it sounds like telling the ZBA what to do if numbers are included.

Mr. Zuritis stated that the intent was to say what the Planning Board would be comfortable with.

Ms. Matias stated that that’s the way to frame it; it was discussed and based on the situation this is what the Board would be comfortable with.

Mr. Clark stated that the request was as vague as the statute; all of these considerations are perfectly in line with the letter of the statute and the intent.

The Board discussed if they were satisfied with the motion; they discussed other options then agreed that they were satisfied with minimizing needed variances.

Ms. Lippmann stated that the density of the rural district is one dwelling per five acres meaning that the acreage divided by five is how many dwellings you can have, but with a minimum lot size of one acre without water and sewer. Mr. Katz could have one 12-acre parcel divided into one-point-somethings without needing an area variance.

The Board members stated that that doesn’t make sense.

Ms. Lippmann stated that she thinks the idea is that it’s better from a planning perspective to have dwellings clustered; it’s better for things like utilities, transportation, etc. Trying to reduce the density, which is where the five-acre density threshold comes into play versus the actual lot size; it ends up becoming like a cluster subdivision or a conservation subdivision approach where you end up with green space.

Mr. Zuritis stated that you could end up with a 10-acre lot that someone wants to subdivide in the future.

Ms. Lippmann stated that if zoning were to change in the future, that could happen.

Chairman Van Vorst polled the Board for further discussion.

Mr. Zuritis stated that it’s a recommendation and the Zoning Board is going to do what they want to do, and the Planning Board will make their approvals or disapprovals based on what’s approved or not.

Mr. Blair stated that if they go with the Planning Board recommendation, that prevents that 10-acre lot being subdivided again in ten years.

Mr. Zuritis stated that he was thinking that too; he’d almost rather see two one-acre lots take up some of the space, so you don’t end up with one large lot.



TOWN OF BALLSTON PLANNING BOARD MEETING

January 25, 2023
6:30 pm

Town Hall Meeting Room
323 Charlton Road, Ballston Spa, NY 12020
www.townofballstonny.org

Ms. Lippmann stated that if it comes back to the Planning Board, they can put restrictions on the extra land on that subdivision map that gets filed so it's always there into the future, whether it's deed restricted, etc.; that can be in the approval for the subdivision.

Chairman Van Vorst stated that that doesn't go into this recommendation.

Ms. Lippmann stated that it would be something the Board would entertain if and when it comes back to them.

Vote:

The Board voted on the above motion. All in favor. **CARRIED.**

MOTION: Mr. Blair made a motion to adjourn the meeting. Mr. DiLorenzo seconded the motion. All in favor. **CARRIED.**

Meeting was adjourned at 7:37 pm.

Respectfully submitted,

Kerri Mains

Kerri Mains
Planning Board Secretary