



# TOWN OF BALLSTON ZONING BOARD OF APPEALS MEETING

February 1, 2023  
7:30 pm

Town Hall Meeting Room  
323 Charlton Road, Ballston Spa, NY 12020  
[www.townofballstonny.org](http://www.townofballstonny.org)

## ATTENDEES:

Annetta Dunham, Chairwoman  
Patrick Whitton, Vice Chairman  
Tim Long, Board Member  
Steve Merchant, Board Member  
Dan Mertzlufft, Board Member  
Justin Zampella, Alternate Board Member  
Jeff Stickles, Code Enforcement Official  
Bill Keniry, Attorney

## Call to Order

The meeting was called to order at 7:30 pm and the Pledge of Allegiance was recited.

## Approval of Previous Minutes

**MOTION:** Mr. Whitton made a motion to approve the January 4, 2023, meeting minutes as drafted. Mr. Merchant seconded the motion. All in favor. **CARRIED.**

## OLD BUSINESS

### **Katz Outlet Road Area Variances (ZBA 2022-016)**

SBL 239.-1-8

Application for lot size and lot width area variances for a minor subdivision for four residential building lots. SEQRA Type 2 Action, exempt from review. Public Hearing continued.

There was no representation for the Katz Outlet Road project this evening.

Mr. Whitton read a comment letter received regarding the project:

I am writing to express my opposition to the Katz Road outlet proposal currently before the zoning board of appeals.

His project does absolutely nothing to benefit the surrounding area and his net usable acreage can only support two saleable lots with housing given the wetlands issues.



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I wish for this project to also be voted down because Mr. Katz appears to be trying to play the Planning Board and the Zoning Board of Appeals against each other.

I am puzzled why the Zoning Board of Appeals could not take the most direct course of action and deny the request at the January 4<sup>th</sup> meeting as well.

But I am sure the Board will get it right this time and issue the denial.

Samuel A. Dorsey, CT (ASCP)

Mr. Whitton stated that the Zoning Board has received the Planning Board's recommendation on this project. They recommended reducing the number of proposed lots to three versus four to be more consistent with the Town Code to reduce the density.

MOTION: Mr. Mertzlufft made a motion to table the application as Mr. Katz was not present.

Mr. Keniry stated that at the last meeting the Public Hearing was adjourned to 7:35 pm tonight. He stated that the Board would want to deal with that issue, and then Mr. Mertzlufft can get to the point he is making in terms of tabling. The option would be to adjourn the Public Hearing again, to close it, or open it at 7:35 pm.

Mr. Mertzlufft stated that procedurally, the Board must allow the public to comment tonight. He asked if the Board members had any issues with opening the hearing; no one did.

Public Hearing re-opened at 7:35 pm.

Mr. Scott Draina of 10 Outlet Road is opposed to the project and seconds Mr. Dorsey's comments that were submitted to the Board; they are aligned with the comments Mr. Draina made at last month's meeting. With the wetlands and 100-foot buffer, it doesn't support more than two building lots; four is out of line. He is opposed to the entire project and since the applicant is not here, he thinks the Board should be done with it.

Ms. Dolores Draina of 22 and 26 Outlet Road is opposed to the project. She doesn't want to look at four more houses across the road, especially if it doesn't meet Code. She shouldn't have to look at more houses than necessary; it's not appealing and is not rural characteristic. Based on the acreage she doesn't think it should go through. She supports Mr. Dorsey's comments.

Mr. Long stated that the recommendation from the Planning Board makes no consideration of the wetlands.

Mr. Whitton agreed and stated that he doesn't think they considered that net acreage is the metric, not total acreage.



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Mr. Long agreed.

Mr. Whitton stated that the challenge he has with this project is that the Board doesn't know how many acres there are with the wetlands; how much constrained land there is.

Mr. Long stated that the onus is on Mr. Katz to provide that information; the Board asked him to do that last month.

Mrs. Dunham stated that the Board's options are to table or to decide.

Mr. Keniry stated that the Board has options. They can adjourn or close the Public Hearing. If the Public Hearing is closed, SEQR is done and the Board would be in a position to make a final determination on the project. Or, the Board could close the Public Hearing and make a decision next month.

Mr. Merchant asked if the Board could vote on the two lots.

Mr. Keniry stated that the Board could, in terms of what relief if any, they are electing to grant. This application is on gross acreage. No one, including the Planning Board, knows what the constrained lands are. The submitted sketch is not signed by an engineer or a surveyor. There is a depiction of both US Army Corps of Engineers and New York State DEC (Department of Environmental Conservation) wetlands. Whether or not the relief he's seeking would result in the lots he's proposing is still to some extent an open question, as we understand it. He is allowed two lots by current zoning; his application is for four. The Planning Board has said, (remember that what they're doing is an advisory opinion to the Zoning Board of Appeals (ZBA) as it relates to the variance because they're thinking ahead to the subdivision application that is going to come to them) that their recommendation, advisory in nature only, is three lots.

Mr. Zampella stated that that is not taking into consideration how much of that property is left.

Mr. Keniry stated that that is correct; they don't know.

Mr. Long stated that the ZBA doesn't know how Mr. Katz would propose to use that net good acreage for two houses.

Mr. Stickles stated that that's correct; you can't technically say without an engineered survey with the house placement and building envelope, that he can even get two lots out of it.

Mr. Long stated that if the Board were to approve two houses, we have no idea where he would put them.

Mr. Keniry and Mr. Stickles stated that that's correct.

Mr. Keniry stated that Mr. Katz will have water, so he won't have the constraint of separating a well and septic and he won't have to pay attention to the elevations.



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Mr. Long stated that he has four percolation tests; he assumes Mr. Katz would put the houses to coincide with two of those.

Mr. Mertzlufft stated that to be fair to the applicant, his preference is to leave the Public Hearing available and to table the entire issue.

Mr. Long stated that he would not want to approve two houses and then not know where they're going to go.

Mr. Whitton stated that he doesn't see, in the application's current state, how the ZBA (Zoning Board of Appeals) can grant any relief at all. His feeling is to close the Public Hearing and deny the application; Mr. Katz can always file a new application with all the constraints met that he needs to file for. In its current form, without knowing what the wetlands are, the Board couldn't write the narrative for what relief they're giving him without knowing that number.

Mr. Zampella stated that Mr. Katz had the opportunity to have it surveyed and chose not to.

Mr. Long stated that that's on him. The Board has heard that excuse before, that he can't get an engineer to do it.

Mrs. Dunham polled the Board for additional opinions.

Mr. Mertzlufft stated that the applicant is entitled to not have the Board put words in anyone's mouth; maybe they'll come up with a different plan. Part of the success of this Board is the give and take that happens. He understands what Mr. Whitton is saying, that the Board could make a decision and Mr. Katz could reapply; that's only a procedural move because ultimately the surveys must be done and what the application is must be formulated. In the absence of that, then the Board could close it out.

Mr. Merchant asked how the Board would word the motion, so the project is limited to two lots, not three.

Mr. Keniry stated that a denial leaves it at two. Mr. Katz has that right under the current zoning, but he doesn't have a guarantee because nobody really knows if that can be configured. He has that right under the current zoning to pursue two lots without any relief from this Board. He stated that, to be clear, Mr. Mertzlufft's position is to adjourn the Public Hearing to next month's meeting.

Mr. Long stated that it is to give Mr. Katz the opportunity to amend his application.

Mr. Keniry stated that it is for him to do whatever he's going to do.

Mrs. Dunham polled the Board for opinions.

Mr. Whitton stated that he has no problem with that; he doesn't think that would change anything.



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Mr. Mertzlufft stated that the land isn't going anywhere. He gets one mulligan, and this is it. The path forward will be obvious by what Mr. Katz does between now and the next meeting.

Mrs. Dunham asked if someone would like to make a motion.

**MOTION:** Mr. Mertzlufft made a motion to adjourn the Public Hearing to the next month's meeting at 7:35 pm. Mr. Merchant seconded the motion. All in favor. **CARRIED.**

Mr. Mertzlufft asked if a motion is needed to table the issue.

Mr. Keniry stated no.

### **Astro Chemical Area Variance (ZBA 2022-018)**

3 Mill Road Extension; SBL 257.16-1-13

Application for a commercial building footprint area variance for the construction of a building addition. SEQRA Unlisted Action, complete. Public Hearing continued.

**Mr. Jay Arnold** of Astro Chemical Company, Inc. and **Mr. Gavin Vuillaume** of Environmental Design Partnership, LLP.

Mr. Vuillaume stated that they have been before the Board twice and are waiting to hear back from the County; they assume the County has weighed in on the project and they are here to answer any questions.

Mrs. Dunham stated that the Board has receive the County response letter. She asked if they had received it.

Mr. Arnold stated that he was read the letter over the phone but hadn't received a copy.

Mr. Mertzlufft stated that the letter has an error in the assignment of the town, but he doesn't think that changes the fit, form, or function of the letter.

Mr. Vuillaume asked if they mistakenly wrote Clifton Park.

Mr. Mertzlufft answered affirmatively.

Mr. Vuillaume stated that the County was talking to Clifton Park. He spoke with John Scavo in Clifton Park and they basically said they had no issues with the project; there was some back and forth between those two agencies.

Mr. Mertzlufft stated that the underpinning thing is that it's Saratoga County.

Public Hearing open at 7:48 pm.



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No one wished to speak.

**MOTION:** Mr. Whitton made a motion to close the Public Hearing at 7:49 pm. Mrs. Dunham seconded the motion. All in favor. **CARRIED.**

Mr. Whitton polled the Board for additional questions; there were none. He stated that the only thing the County response letter suggested was to work with Clifton Park's Planning Department.

Mrs. Dunham stated that the Zoning Board can only approve what's in the Town of Ballston; the other Board members agreed.

**MOTION:** Mr. Whitton made a motion that Astro Chemical Company at 3 Mill Road Extension receive a building footprint variance; 33,900 SF is the difference and the requirement is 2000 SF; for their expansion of offices and break room project. Mr. Long seconded the motion. All in favor. **CARRIED.**

The applicants thanked the Board.

\*\*\*Mr. Keniry recused himself from the following application for Morris Ford Signage Variance (ZBA 2022-020) and moved to the back of the room.

### **Morris Ford Signage Variance (ZBA 2022-020)**

872 State Route 50; SBL 248.-2-40

Application for a signage variance for number and square footage of signs. SEQRA Type 2 Action, exempt from review. Public Hearing scheduled.

**Mr. Tom Wheeler** of AJ Signs.

Mr. Whitton stated that the Morris Ford application is for a signage variance.

Mr. Wheeler stated that he was here two meetings ago and tabled the application for the last meeting while waiting for the County referral response. He asked if the Board had gotten that back from the County.

Mr. Whitton answered affirmatively and stated that the response says that they see no significant or community wide impact.

Mr. Wheeler stated that two meetings ago he and the Board discussed measuring the sign as individual letters, but he has since learned that it will not be measured as individual letters. They're going to draw a box around the sign, which is how the application was originally submitted; the original measurements on the application are correct. They are proposing to replace the "Morris" letters on the south side of the building with some new



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illuminated letters, as well as installing a “Parts & Service” sign on the north side of the building. Morris Ford has made some improvements to the dealership; various things that Ford required. The final step in this process is to update some of the building’s signage to bring it more into compliance with the newer Ford dealerships.

Mr. Whitton asked how the sign compares to the size of the one that’s currently on the building.

Mr. Wheeler stated that the sign they are proposing on the south side of the building would be the same size as the sign that faces Route 50, so they will match. There currently is no sign for Parts & Service; people frequently can’t find the parts and service department.

Mr. Long asked how it changed from measuring the letters individually to drawing a box around them.

Mr. Stickles stated that that is how it’s stated in the Town Code; that’s why the letter went out to everyone.

Mr. Whitton thanked Mr. Stickles for sending that out.

Public Hearing open at 7:54 pm.

No one wished to speak.

**MOTION:** Mr. Whitton made a motion to close the Public Hearing at 7:55 pm. Mr. Merchant seconded the motion. All in favor. **CARRIED.**

Mr. Merchant asked if the new sign will be the same size as the existing signs.

Mr. Wheeler stated that the proposed sign for the south side of the building is a little bit larger, not a lot. It’s internally illuminated; it needs to be a certain size for the LED modules in the letters. They also wanted to match the sign on the front of the building.

Mr. Zampella asked what the size is of the current, larger sign on the site.

Mr. Wheeler stated that he’s not 100% positive.

Mr. Whitton asked if the sign on the Route 50 side of the building is the same size as the proposed sign.

Mr. Wheeler answered affirmatively.

Mrs. Dunham asked if Mr. Stickles has any recommendations; or just the letter that was sent.

Mr. Stickles stated that he had nothing additional; just the letter.

Mrs. Dunham polled the Board for further discussion.

Mr. Mertzluft asked if the sign is mounted to the building; it’s not a freestanding sign.

Mr. Wheeler stated that it’s mounted.



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Mr. Whitton asked if it's mounted to the roof.

Mr. Wheeler answered affirmatively and stated that on an angled roof the letters are mounted vertically with a frame, similar to what's there now.

Mr. Mertzluft stated that that's more palatable than if it was a standalone as they're asking for 28.8 SF more.

Mr. Merchant stated that it's the same size as the other existing sign; the Board doesn't want it to be inconsistent with different sizes.

Mr. Wheeler stated that they are trying to get the building looking more consistent.

Mr. Zampella asked for a printout of the visual; Mr. Wheeler provided one for the Board.

**MOTION:** Mr. Whitton made a motion that Charlie Morris or Terry Morris Inc. at 872 State Route 50 receive two variances. One is for the main sign which requires 50 SF and they are seeking 28.8 SF of relief to go larger than that. The second is for number of signs and the difference of that relief is 41.77 SF for that sign. Mr. Long seconded the motion. All in favor. **CARRIED.**

Mr. Wheeler thanked the Board.

\*\*\*Mr. Keniry returned to the meeting.

### **Wellnow Area Variance (ZBA 2022-009)**

1508 Route 50, SBL 216.-1-35

Application for a front setback variance for the construction of a healthcare facility. SEQRA Unlisted Action, closed.

**Mr. Jason Dell** of Lansing Engineering.

Mr. Whitton stated that the Wellnow area variance project at 1508 Route 50 is applying for a front setback variance for the construction a healthcare facility. He asked Mr. Dell to summarize the project.

Mr. Dell stated that he is here on behalf of the applicants of the Wellnow site plan, to update the Board as well as request that the Board schedule a Public Hearing for the project, which is located at 1508 Route 50 on a little over an acre. The parcel is zoned Mixed Use Center North. The applicants are looking to construct a 3,500 SF Wellnow facility with associated parking. There are two access points; one from Route 50 and one from Route 67. The Planning Board has issued a negative declaration for the project and they have received feedback from the Department of Transportation (DOT) that they have conceptually approved the locations of the accesses. He





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is seeking one zoning variance for the front yard setback. The minimum requirement is 20 feet and the maximum is 70 feet. They meet the setback on Route 67 but not on Route 50 due to the configuration of the property. From Route 50, the edge of the building is at 159 feet, so they are seeking an 89-foot area variance for the front yard setback on Route 50. They can't possibly meet both setbacks with the proposal for the building. He is here to answer any questions and ask that the Board schedule a Public Hearing.

Mr. Long asked if, on the map, the building is the brown block.

Mr. Dell answered affirmatively and referenced the map. He stated that the building is set back 20 feet from Route 67. They couldn't possibly meet the setback on Route 50.

Mr. Long asked what if they turn the building to be parallel to the other two property lines.

Mr. Dell stated that if they switched the building and put it in the middle, they may still not meet the setbacks and wouldn't meet the required parking. This is the way the site lays out best to allow for the circulation of customers.

Mrs. Dunham stated that in previous meetings, one question that arose was traffic. The Board had specifically requested that the applicant provide the traffic studies; she doesn't see them anywhere.

Mr. Dell stated that the traffic study was performed and reviewed by DOT; they agreed with the study. He believes that it was submitted to the Planning Board; he can get a copy to the Zoning Board. It was reviewed by DOT who would have jurisdiction on both of those roads.

Mrs. Dunham asked for the study to be submitted before the next meeting.

Mr. Long asked if the traffic study indicates what time of day the study was performed and at what time of year; if school was in session.

Mr. Dell stated that when it was done will be in the report. It would have adhered to all required industry standards and was reviewed and approved by DOT.

Mr. Merchant stated that the original proposal talked about three businesses in that area and the Board had a problem with that. He asked if the Wellnow facility is the only business going in there.

Mr. Dell answered yes, on this particular parcel.

Mr. Long asked if they have two more parcels.

Mr. Dell stated that, as far as this application goes, no, just this parcel.

Mr. Mertzluft asked if they are seeking relief for the other parcels.

Mr. Dell stated that at this time they are just here for this parcel.



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Mrs. Dunham asked if there will be entrances to both streets.

Mr. Dell answered affirmatively and referenced the entrance locations on the map, on Route 50 and Route 67.

Mr. Long stated that if they were to combine two parcels, they could probably meet the setback.

Mr. Dell stated that they could not meet the front yard setbacks with the current building.

Mr. Whitton stated that he thinks the issue with the setbacks is that they are measured from both streets so they overlap; the applicant couldn't put the building anywhere on the site and not require the setback variance.

Mr. Stickles stated that that is correct.

Mrs. Dunham polled the Board for further questions.

Mr. Long asked if there are any plans to inhibit traffic on the road they're making between Route 50 and Route 67.

Mr. Dell stated that he doesn't believe so.

Mr. Long stated that it's going to be a road and people will take that road to avoid the traffic light.

Mr. Dell stated that he doesn't know how they could possibly limit people from making that maneuver.

Mr. Long stated that they could discourage the traffic if there were stop signs.

Mr. Dell stated that there will be stop signs.

Mr. Long stated that they could discourage traffic if there were speed bumps, or by making the path curved rather than straight.

Mr. Mertzluft stated that they could put bollards right in the middle of the two ingress and egress points in the parking lot; it can be done.

Mr. Dell stated that they can certainly talk about that with the Planning Board; there will be stop signs on either side.

Mr. Mertzluft stated that he doesn't think the issue stops the Board from scheduling the Public Hearing; other Board members agreed

**MOTION:** Mr. Whitton made a motion to schedule a Public Hearing for the Wellnow area variance project for March 1, 2023 at 7:40 pm. Mr. Merchant seconded the motion. All in favor. **CARRIED.**

Mr. Dell thanked the Board.



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### NEW BUSINESS

#### **357 Hop City Road (ZBA 2023-002)**

SBL 226.-1-62

Application for an area variance for additional horses.

**Mr. Lance Evans**, property owner of 357 Hop City Road.

Mr. Whitton stated that the 357 Hop City Road application is for an area variance for additional horses. The applicant is seeking relief because there has been a change in zoning that restricts how many animals you can have on this property. They are seeking a variance which will remove the grandfather practice and make it a permitted practice.

Mr. Evans stated that he understands that the zoning was changed last April. His employment has changed; he's working out of the area and would like to move closer to that area. They are leaving their place that they built up to make it what it is today. A selling point for the house is the four-stall horse barn that they built; they bought a couple of acres to make a pasture. He thought that the new owners might be able to stable four horses there, then found out that they couldn't. He understands that if he stays, they are grandfathered in and don't need to worry about the new zoning until they would leave. He would like the variance to be for four horses and maybe even two small minis, or something similar. He does have a buyer that this is contingent on; that's why he's before the Board. He wasn't aware of the change until people started looking at the house and calling the Town.

Mrs. Dunham asked how many horses they have on the property now.

Mr. Evans stated that they currently have one adult horse and two miniature horses. They have had as many as four horses and two miniature horses.

Mr. Mertzlufft asked if they have ever boarded somebody else's horse.

Mr. Evans stated no.

Mr. Mertzlufft asked, if that were a stipulation, what effect it would have.

Mr. Evans stated that for the buyers of the property, or other potential buyers, he doesn't think that would be an issue. The property is not set up to board horses. He laid it out himself; the barn is close to the home, which is where he wanted it. If someone was to board horses, it would be obtrusive. He doesn't think his neighbors would like to have boarders coming in that they don't know.



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Mrs. Dunham stated that on the application, for questions 10 and 11, the indicated answers are no but the second part of each question requires an explanation if the answer is no; no explanations are provided. Question 10 asks: will the proposed action connect to an existing public/private water supply? Question 11 asks: will the proposed action connect to existing wastewater utilities?

Mr. Evans stated that he may have misunderstood the question, but he can describe the setup. Regarding water, there is a dug well on the property that was there for many years that supplies the barn. There is a drilled well also, that the previous owners had drilled, that supplies only the house. Regarding wastewater, the barn has no need as there's no restroom. The septic system is for the house.

Mrs. Dunham stated that the documentation provided includes an unsigned, unrecorded copy of the deed from Shorkey. She asked if the deed has been recorded with the County.

Mr. Evans answered affirmatively and stated that it is a fairly new purchase of two acres, in the fall of 2021.

Mrs. Dunham stated that the Board needs complete information and asked Mr. Evans to supply a copy of the recorded instrument before the next meeting.

Mr. Merchant asked if Mr. Evans could get a couple more acres from his neighbor, Mr. Curtiss, next door.

Mr. Evans stated yes, if he would sell it.

Mr. Merchant stated that there is an open field next to Mr. Evans' property.

Mr. Evans stated that Mr. Curtiss leased the two acres behind Mr. Evans' property to him before he was able to purchase them. It would be up to Mr. Curtiss. Mr. Evans stated that he thinks somebody could buy into the woods. He didn't go that route because it's expensive and he didn't need the land into the woods. Mr. Curtiss lets him compost manure and put it in the woods; they have a good relationship.

Mrs. Dunham stated that there is an easement in the deed and asked Mr. Evans to describe it.

Mr. Evans stated that on Mr. Curtiss's farm, Willow Marsh Farm, they have an ag easement on most of the farm. When he purchased the property, the easement came with it. From what he understands, it dictates that no dwelling, such as a home, could be built. One of the attractions when they bought the place ten years ago with just the .66 acres was that it would be limited for development. The easement came with the purchase of the two acres; they could put agricultural buildings on the property but that's it.

Mrs. Dunham polled the Board for questions or comments; there were none. She asked Mr. Keniry if the Board should classify the project under SEQR as a Type 2 Action and if a motion is required.

Mr. Keniry stated that DEC's position is that a note can be made in the file. Mr. Keniry stated that he thinks the right thing to do is to make a statement at the meeting. If there's any potential for disagreement between people,



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the Board can vote; there's no harm in voting. He recommends a statement that's it's a Type 2 Action, exempt from review, at a minimum.

Mr. Whitton stated that this is a Type 2 Action under SEQR and is exempt from review.

**MOTION:** Mr. Whitton made a motion to schedule a Public Hearing for 357 Hop City Road for March 1, 2023 at 8:00 pm. Mr. Mertzlufft seconded the motion. All in favor. **CARRIED.**

Mr. Whitton asked if the project will need County referral.

Mrs. Dunham answered affirmatively, as the project is on a County Road.

Mr. Evans thanked the Board.

Mr. Whitton stated that one of the last County response letters stated that the Town has reciprocity on residential projects and didn't need to file for County referral for residences; he asked Mr. Keniry if this project will fall into that category.

Mr. Keniry stated that it may; he would submit it because it's jurisdictional in terms of the Board's ability to act. If not done, the Board would be inhibited from acting; we want to see what you get in terms of a response. Generally, we err on the side of caution and don't want to risk it because of that significance.

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

Meeting was adjourned at 8:20 pm.

Respectfully submitted,

*Kerri Mains*

Kerri Mains  
Zoning Board Secretary