



Friends of Clifton Park Open Space, P.O. Box 821, Clifton Park, New York 12065

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June 18, 2019

Re: Zoning Board of Appeals Area Variance Application # 81213- Two Parcels, Route 146A

To: Clifton Park Zoning Board of Appeals

As Friends of Clifton Park Open Space, we come here tonight to express our opposition to the area Variance #81213 for the two parcels on Route 146A. We oppose these variances for several reasons:

1. The continued requests for variances in the Western GEIS area only serve to erode all the past work done establishing the Conservation Residential (CR) Zoning in this area.
2. The continued granting of variances in the CR District will serve as precedents for the granting of future variances and the continued erosion of the goals and protections for western Clifton Park.
3. The continued granting of variances abrogates the intent of the Town Board's recent zoning legislation which requires more acreage for approving duplex housing.
4. NYS Zoning Guidelines for municipalities require consideration of whether the variance is too substantial, i.e. "whether the nonconformity being proposed is too great".

Additionally, FRIENDS questions whether Mr. Boni has standing to make this request since he is not the owner of the land and therefore cannot be "aggrieved" even acting as an agent of the actual owner—Country Club Acres. And since this project has not become before the town's Planning Board, there can be no grievance to be appealed. Neither would it be appropriate for the ZBA to grant a variance that includes consideration of a donated parcel since that donation can only be approved by the Town Board, especially to address density issues or amenity bonus incentives.

FRIENDS believes that the present request should be refused on all these particular criteria, as well as the other requirements outlined in the NYS Division of Local Government Services Zoning Board of Appeals Technical Series. We would like to speak to each of these four points.

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1. The continued requests for variances in the Western GEIS area only serve to erode all the past work done establishing the Conservation Residential (CR) Zoning in this area.

Our first point concerns the long and public process which took place from the first steps of the Open Space Plan in 2001 to the latest Clifton Park Town Board Resolution No. 290 amending Chapter 208 of the Town Code regarding two-family dwellings, Article III, Residential Districts R-1, R-3, CR and HR (Hamlet Residential), adopted December, 2018.

The public interest in protecting open space in Western Clifton Park was identified in a town-wide survey in 2001. The study had an extremely high response rate with 90%+ public support for drinking water quality, open space and rural character, and natural areas and wildlife habitats. As a result, an Open Space Committee was formed and after much public involvement and comment, the Town Board adopted a formal Open Space Plan in May, 2003.

Subsequently, the Town Board voted for a building moratorium for Western Clifton Park and commissioned a Generic Environmental Impact Study or GEIS of Western Clifton Park. That study was completed and presented to the Town Board in 2005. After formally accepting the study, the Town took a second step of creating the Western Clifton Park Land Conservation Plan in 2005.

That Plan included the ***Western Clifton Park Design Guidelines***. Those Guidelines included:

- Designing for the Rural, Scenic Landscape Character of Western Clifton Park--Guiding Principles
- Open Space Conservation Designs and examples
- Hamlet Residential and Hamlet Mixed-Use Designs for the area's traditional hamlets.

The principles outlined in these guidelines were codified in the Clifton Park Zoning Code-Chapter 208 cited above. Overall, the ***Land Conservation Plan along with the Conservation Residential (CR) Zoning*** changed the character of development in Western Clifton Park by:

- Reducing development potential from 7500 residential units to 2500
- Requiring 1 home / 3 acres of base density as a general concept
- Providing for a new green space calculus requiring minimum of 25% of the developable land in a parcel be retained as open space
- Including new Amenity Zoning for the Purchase of Development Rights

These changes occurred as a result of a long and public process that has continued into 2019 including the creation of the Town Open Space, Riverfront and Trails Committee, the hiring of an Open Space Coordinator, a second public survey in 2007 with nearly identical priorities, the growth of a Green "C"—that is a corridor of contiguous green space through the GEIS area, to the clarification for greater open space requirement for duplex housing just passed by the Town Board last year.

The intent of both the citizens of Clifton Park and the Clifton Park Town Board are clear. Open space protections have been recognized, codified and clarified for Western Clifton Park. This current area variance works against all that history and law.

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- 2. The continued granting of variances in the CR District will serve as precedents for the granting of future variances and the continued erosion of the goals and protections for western Clifton Park.**

The granting of any variance has the potential to set precedents upon which future requests may expect to also be granted. However, all NYS Zoning Board of Appeals operate under the requirements of the NYS Department of State, Division of Local Government Services regulations.

In this document, the granting of area variances must consider 5 factors: Undesirable change in the neighborhood, Alternative to variance, Substantiality, Impact on environment, and Self-created difficulty. As you know, the document also states, "The rules laid down in the statutes and in the applicable cases are *requirements*. They *must* be used by zoning boards of appeals in reviewing applications for use variances. Furthermore, the board must find that *each* of the elements of the test has been met by the applicant." (Italics emphasis from the original document). The board must balance the benefit to the applicant against the health, safety and welfare of the community.

Taken individually, the five criteria are clarified below.

- 1. *Undesirable Change in the Neighborhood:*** Appeals Court cases on this criterion upheld the case in which a town claimed reducing lot sizes from 6,000 to 4,000 sq. ft. would seriously compromise the character of the neighborhood and refused the area variance. The lot sizes requested in the current variance are much greater than those rejected on appeal in similar cases. Further, the CR district, especially in the vicinity of the proposed project, is overwhelmingly single family homes and requires 3 acres lots. Duplexes are only allowed by special use permit. A special use classification is equal to a legislative find that if the exception conditions are met, then the use will not adversely affect the neighborhood and the surrounding areas. A duplex on 1 acre versus a single family home on 3 acres is easily an undesirable change in the neighborhood.
- 2. *Alternative to Variance:*** Here, the board should consider alternatives open to the applicant that are lawful under the zoning. For these parcels, the underlying Conservation Residential zoning should be respected. Two duplexes are defined as 4 dwelling units in the zoning code and require 12 acres of unconstrained land. Ignoring this math is not a viable solution. Respecting the existing zoning by building a single family home on the 4 acres of unconstrained land is a viable alternative.

Furthermore, the non-adjacent parcel which is being proposed as a donation raises issues. First, the donated land is in the wrong place to directly benefit the town. Although it is adjacent to the Woodcock Preserve, it is a landlocked parcel only accessible through another landowner's property or the Saratoga P.L.A.N. preserve. Given this, it technically has no value to the town's citizens. The owner might better consider a donation directly to Saratoga P.L.A.N., but then the proposal would not meet ANY open space requirements of the zoning code.

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3. *Substantiality:* The board should make a reasoned judgment as to whether the nonconformity being proposed is too great. Appeals Court cases have upheld denials that exceeded the allowable lot coverage by only 15%. In the current situation, the existing CR zoning requires, not only 3 acres of unconstrained land per dwelling unit, but also counts each 2-unit duplex as 2 dwelling units. Therefore, a minimum of 6 acres of unconstrained land is required per duplex in this case. It also requires a minimum of 25% of the parcel's unconstrained land for permanent open space. By the applicants own Narrative, Lot #1 has exactly one acre of unconstrained land and Lot #2 has 3.57 acres of unconstrained land. The requirements are substantially unmet and pose an extremely bad precedent.
4. *Impact on Environment:* Here the applicant claims his is likely the highest and best use of the property. FRIENDS would contest whether this development proposal is indeed the highest and best use of the property. The Clifton Park CR Zoning District was established to provide and maintain land area to promote and support ongoing open space and agricultural uses and activities to sustain the rural character of this predominantly natural, agricultural and low-intensity residential setting. It also outlines ways to provide for well-planned new development that complements the traditional settlement pattern, while protecting the economic base and quality of life in Western Clifton Park for all of its residents. This duplex project ignores the density regulations and goes against this objective.
5. *Self-Created Difficulty:* The CR Zoning code was adopted almost 15 years ago. The 2018 Clifton Park Zoning Law Resolution was specifically put into place to clarify the area requirements for duplexes under this code. The applicant also cites the adjacent railroad tracks, power station, state highway, etc. But all these conditions have been adjacent for some time. Additionally, considering the proximity to the highway and, especially, the railroad, the granting any area variance should stipulate specific set-backs that are at a truly safe distance from the railroad right-of-way.

Furthermore, the applicant is creating this problem by subdividing the land into two plots—one that could meet the requirements for a single family home and one that does not. Then the request seeks to incorporate another non-contiguous, land-locked plot into the application to justify the open space requirement. The town agencies should not be in the position of guaranteeing investment for individual applicants, nor has the Town Board accepted this argument in other similar situations with development proposals.

3. The continued granting of variances abrogates the intent of the Town Board's recent zoning legislation which requires more acreage for approving duplex housing.

As noted previously, the Town Board clarified the intentions of the CR zoning with regard to two-family dwellings last year. That Resolution defined two-family dwelling units as two separate units for purposes of space and bulk standards. So those requirements for acreage and open space apply to this application. To approve an area variance in such direct opposition to this recent

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statement of intent on the part of the Town Board is uncalled for and immediately thwarts that Board's intent.

4. NYS Zoning Guidelines for municipalities requires consideration of whether the variance is too substantial, i.e. "whether the nonconformity being proposed is too great".

The area variances requested in this case are extreme. As noted above the Appeals Court in Heitzman v. Town of Lake George Zoning Board of Appeals upheld the denial of a variance based in part on the showing that construction would have exceeded the allowable lot cover by only 15%. In this case the variances requested exceed the allowable lot coverage by 500%--Lot#1 requires 6 acres, 1 available, and 40%--Lot#2 requires 6 acres, 3.57 available. Those differences are very substantial.

Additionally, the applicant asserts that they will be donating all of the 7.12 acres of a non-adjacent parcel they reference as the Country Club acres parcel. However, they want this land to be included as part of the acreage being considered for subdivision while it has no direct access to town residents and would be of benefit only to another non-governmental organization. This too appears to be a substantial stretch for the requested variance.

Finally, the CR Zoning code is very specific about how to count constrained land and unconstrained land with constrained land requirements being outlined in detail in numerous sections of the Article III Residential Districts Zoning Code for Clifton Park. Dwelling unit acreage is spelled out in terms of unconstrained land and open space percentages are specified. Yet the applicant's Narrative and variance request only identifies 4.57 acres of unconstrained land. The requirement for this type of residential construction is 12 acres in addition to the unconstrained open space requirements. This again makes the area variance request a very substantial one.

Therefore, FRIENDS is asking the Zoning Board of Appeals to reject this area variance to:

1. Protect against any more erosion of the Conservation Residential Zoning Codes
2. Avoid future conflicts by setting unwarranted precedents for future projects
3. Endorse the Town Board's clearly stated legislative intentions just recently clarified
4. Recognize the substantial modification of the existing zoning standards requested in this case.

Any Zoning Board of Appeals must consider variances with an eye to the underlying zoning and the town's existing planning documents. Variances are meant to be used sparingly; otherwise they undermine the goals of the underlying zoning. A hardship is not just an ordinary inconvenience or difficulty, and the owner must be able to show that there is an inability to make reasonable use of the land. This is not the case here. Any hardship or difficulty must be unique and should not generally apply to other properties. Otherwise, there is no valid enforcement of the town's zoning, or public confidence in its fair application to everyone.

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NYS's zoning enabling statutes require that zoning laws be adopted in accordance with a comprehensive plan. Clifton Park's 2006 Comprehensive Plan provides the backbone for our local zoning law and is intended to maintain the diversity, economic vitality and environmental quality of the community. One of the goals of that plan states, "Maintain the diverse character of the community through proper location of business, industry and residences in the eastern corridor of the Town with specific recognition of the rural and agricultural nature of the western section of Town." The ZBA should not overturn the community vision for Western Clifton Park that is embodied in our Comprehensive Plan.

A decision by the ZBA to grant this variance would ignore the findings of the Western Zone GEIS, countermand the goals and objectives of the Town Comprehensive Plan, contravene the legislative intent of our Town Board, and favor the applicant over the health, safety and general welfare of the Clifton Park community. It should not be granted.

Respectfully,
Friends of Clifton Park Open Space