

Clifton Park Zoning Board of Appeals Meeting Minutes April 4, 2006

Present: Michael Dudick, Chairman, Dale Gleason, Gil Kortz, Joel Koval,
Eric Ophardt, Robert Ritter, Christopher Lemire

Absent: Jessica McCarthy

Also Present: Lou Renzi, ZBA Counsel
Steve Myers, Director, Building & Zoning

Mr. Dudick called the meeting to order at 7:04 PM.

OLD BUSINESS

1. An application from Timothy J. Snell, requesting an area variance of 24 ft. for access to a public road from a keyhole lot; and an area variance from Section 208-86D from the required 16 ft. width for a driveway – actual width = 15.34 ft. – variance requested = .66 ft. The property is located at Schauber Road, Ballston Lake. Permit #80589.

Tom Andress, ABD Engineers & Surveyors, presented this application. He briefly reviewed his presentation from the last meeting and noted that the Board had questions on the deed and access for the 2.8 acre parcel of land. He explained that it is approximately 450 ft. off the road and has a 15 ft. easement to Schauber Road. He submitted a copy of a deed for counsel's review for the adjoining parcel that indicates the easement. He explained that basically they went to the building department for a building permit and they had said they could not issue a permit because the lot did not meet the regulations. The lot would have to have at least a 40 ft. fee ownership strip and on that strip you must be able to make a drive at least 15 ft. wide based on the Town's requirements.

Mr. Andress noted that there were questions at the previous meeting regarding Mr. Snell's property to the east towards Eastside Drive. He referred to a map showing additional information indicating there is no access to Eastside Drive; it's based upon a legal right-of-way. He submitted a copy of the current tax map showing Eastside Drive stopping at Mr. Snell's property. He also stated that in doing additional research he did find an old tax map showing Eastside Drive going past Mr. Snell's property for 184 ft. There is currently a

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10 ft. lane that is actually used for a number of properties further to the north that goes into the Town of Ballston. People actually use it but it stops at Mr. Snell's property line and then there is a 15 ft. easement so this is a fee lane, it has not been determined who owns it but it goes into

Mr. Snell's property and is consistent with the two tax maps. Based upon the current tax maps they do not believe they have access through Mr. Snell's other property to be able to provide a 40 ft. strip of land to access this piece.

Mr. Andress continued, they have sent a certified letter to the adjoining owner to ask them if they could potentially buy the piece described as an easement and some additional land but they have not received a response, therefore they are back before the Board to see if they can get the variances needed to be able to build on the lot.

Mr. Renzi stated then to the west you clarified that you do not have access thereby necessitating the variance being requested tonight. Mr. Andress agreed. Mr. Renzi then stated they made an inquiry to the adjacent land owner about purchasing that strip of land and in fact if that response were affirmative that would negate the need for this variance. Mr. Andress stated it would but they have no way of knowing if they will ever respond to it.

Mr. Koval asked when the request was made. Mr. Snell responded he tried to contact them by phone and their number was disconnected and he sent the certified letter last week and the Post Office said it takes ten days before they will return it if it is not claimed.

Mr. Koval asked if they were local. Mr. Snell responded their address is 49 Schaubert Road but when he drove over there all the numbers were in the 400's. He could not find 49 Schaubert Road. Mr. Koval noted that an earlier tax map shows Eastside Drive extending up the west side to Mr. Snell's property and it makes sense because it is the only access for several lots beyond Mr. Snell and at one time was shown as a public road. Mr. Andress agreed but noted the problem is that the current tax map shows it ends and a survey done in 1980 shows that there is no ownership to that drive even though it is used by the residents for access. He also noted that it is the same with Westside Drive and when you go back to the deed research maps are referenced back to 1800 when the area was called Forest Park.

Mr. Kortz asked if there is no indication who owns it. Mr. Andress responded the Town maintains it.

Mr. Dudick asked if they access to the current home. Mr. Snell responded yes.

Mr. Dudick asked when the lot of 2.18 acres was purchased. Mr. Snell responded almost two years ago. He then asked why access cannot be created to that lot by cutting through his own property instead of through another property. Mr. Snell responded that would be fine with him but the question is if it is really a public road. Mr. Andress explained that they have no issue in creating a 40 ft. strip coming along the current property but unless counsel tells them

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different it will not give them access to a public highway.

Mr. Renzi asked if the Board granted the variance being requested would they continue to pursue their efforts to purchase that strip of land from the adjoining land owner. Mr. Snell responded if the variance is granted it would be unnecessary. Mr. Renzi stated that he is asking his intention, he understands what is necessary. Mr. Snell responded no he wouldn't if the variance was granted.

Mr. Andress explained that at the last meeting they indicated that they would probably not use the access from Schauber Road because of the topography so if you could use that it would be more of a reason to pursue it. They will end up coming in through Mr. Snell's other property using easements from a legal standpoint but the variance would satisfy the issue of the frontage.

Mr. Koval asked counsel what the Town's position would be in taking over this road since they already maintain it and it services five lots. Mr. Renzi responded that there is an argument to be made that by custom and usage, if no other reason, the Town now owns that road. It's the exact inverse of abandonment. This started out as a gravel drive that someone put in because they needed it and eventually the Town ends up owning it whether they wanted it or not. Mr. Renzi noted for the purposes of the Board and the record the applicant has made a good effort and has done due diligence in regard to determining whether or not he had the capability of avoiding this need for this variance, and has submitted for the record a copy of a deed dated May 4, 1979 between Edward Finnan and Michael Farinacci to George and Joan Lanham that relates to the parcel in question and a right-of-way is spelled out in the deed.

Mr. Lemire asked for clarification on the property owned by Mr. Snell showing the road and noted that if the Town does not own the road it appears to be Mr. Snell's property. Mr. Andress agreed.

Mr. Koval asked if the matter regarding the road should be cleared up for the future since there are five other properties involved. There was discussion on ownership of the road and if the Town would accept it.

At counsel's request Mr. Andress outlined the right-of-way referred to in the deed.

Mr. Ritter asked if they are still requesting the variance for access from Schauber Road. Mr. Andress responded yes it would allow them to build on the lot without any public frontage. Mr. Ritter noted that they have tried to contact the adjoining property owners to purchase the land to no avail. He also noted that the variance would not be necessary if they provided access from Mr. Snell's property fronting on Eastside Drive. Mr. Andress explained they will provide access through the Snell property but it would not satisfy the legal definition of frontage on a public road that has been determined to be necessary by the Building Director. Unless Eastside Drive is determined to be a public road where it runs along Mr. Snell's property a variance would still be needed.

Mr. Lemire asked if there is already a 40 ft. strip of land on Mr. Snell's property shown as Eastside Drive. Mr. Address responded no the 40 ft. has to be on a legal public road. It may be used as a public road but based on a current survey and tax map it doesn't show that it is owned by the Town. Mr. Lemire asked even to the point where it stops now, is it public access?

Mr. Address answered it is public access. Mr. Koval explained that it is access for the existing lot but you would need an additional 40 ft. for the other lot to make it legal.

Mr. Kortz asked for clarification regarding the variance request and Mr. Address explained that a driveway has to be at least 16 ft. wide and in one area it does not meet that width. He also noted that this is an easement, they have no ownership. He also explained that they are not asking for a 24 ft. variance because they do not own the easement. The request is for no access to a public road.

Mr. Dudick explained that they will not actually use the access through the easement, they are only asking for it to satisfy legal requirements. When the property is developed they will access through Mr. Snell's original parcel. If the Town were to actually designate where Eastside Drive is in regards to Mr. Snell's property and through to the other lots, if that were officially done, it would negate the need for this variance. Mr. Address responded it would, assuming that the Town would allow them to subdivide the lot to add the 40 ft. strip to the second lot. There is a notation stating that there cannot be any further subdivision of this lot, but they would assume the Planning Board would not consider that a subdivision but more of a lot line adjustment because they are not creating a new lot.

Mr. Ophardt asked if they would build a separate roadway over to the second parcel of land and deed it to the Town. Mr. Address responded no they would not deed it to the Town they would create a new right-of-way with 40 ft. of road frontage.

Mr. Ritter expressed his concern over asking for a variance they do not intend to use only to obtain a building permit for the second lot. He explained that they had to know when they bought the property that they did not have access to it. Mr. Address stated that they did not know they could not get a building permit, they did know that there was no access other than the 15 ft. easement but it is being billed as a taxable residential lot under the tax bill. It was sold as a taxable residential lot and is being billed as a taxable residential lot. It is not being billed as a piece of surplus land that cannot be built on.

Mr. Snell explained when he purchased his original piece of land he had an option to buy the second piece but did not have the money at the time. The owner since approached him to buy the land at the original option price so he purchased the land.

Mr. Myers stated that someone should talk with the Highway Superintendent to see what can be done regarding Eastside Drive. He also stated that if it can be verified by deed that there would be 40 ft. of access from the lot out to a public road there would not be any more issues. He stated that he is not sure if that would then classify it as a flag lot but because of its size it should

not create any issues. There has to be 40 ft. of permanent owned land to assure access to the lot.

There was no public comment. Mr. Dudick made a motion to close the public hearing, Mr. Ophardt seconded, approval unanimous.

Mr. Ritter explained that he is uncomfortable with making a motion on this application in its current form; he would like a ruling from the Highway Department regarding ownership of Eastside Drive.

Mr. Ophardt stated he would like to see the situation with Mr. Palkovic clarified, if he is willing to sell 40 ft. of land to Schaubert Road it would render the whole situation nil.

Mr. Andress explained that it would be a many month procedure to see if the Town would take over the road.

Mr. Renzi stated that his belief of what it would take would be an article 15 brought in Supreme Court to settle the boundaries and ownership of all the tracts as to where they meet and don't meet because the legal issue is really rather or not Eastside Drive is a public road. It would be a very expensive and time consuming Supreme Court action to acquire title to a piece of land and he is not sure legally if that is warranted.

Mr. Lemire asked if the property is his that the road is apparently on can't he just say there is no issue. He would not contest that the road is the Town's. Mr. Kortz explained if he owns the road he would still need the variance. Mr. Renzi noted that the road serves several other properties. Mr. Andress explained that the road actually crosses onto other properties and it would end up having to have other agreements.

Mr. Kortz asked if they just pursued the ownership issue with the Highway Department how long would it take. Mr. Renzi responded that the Highway Department would have to pursue the same procedure.

Mr. Lemire stated that he is surprised the Town is maintaining the road and that this is the first time this issue has come up.

Mr. Andress explained that Westside Drive has a similar situation. Mr. Kortz asked what is the official source of ownership of a road. Mr. Renzi responded the deeds control, if there is a discrepancy between a tax map and a deed, the deed wins.

Mr. Dudick explained that there are many issues that the Board is considering in trying to decide on this variance request. There are questions about the property that make it convoluted. These questions are worthy of finding out the answers before granting any variances.

Mr. Ritter suggested a condition be added to the variance that the applicant outright purchase a 40 ft. strip of land for access from Schaubert Road. Mr. Andress responded that it would not be

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acceptable because they would be held hostage to the property owner. He explained that the easement is there to give legal access to the parcel of land. The Building Department has said that that legal access is not adequate to obtain a building permit even though they have legal access because of certain regulations and is grandfathered in. It is being taxed as a lot that has access. They will never use the easement because the topography does not warrant coming in that way. They are not asking the Board to grant anything for this because it is what it is. They are asking the Board to grant a variance to allow the use of an existing lot without access and a condition could be that they provide an actual 40 ft. right-of-way out to Eastside Drive through Mr. Snell's other property.

Mr. Koval asked if they would be willing to grant a permanent easement over his other parcel of land that goes right to the edge of the land that goes to Eastside Drive whether it is public or not. This would relieve any problems for future owners. Mr. Snell agreed to either an easement or he could deed over the land. Mr. Andress explained that an easement would be easier because they would not have to go through planning for a lot line adjustment.

Mr. Ritter asked if that would satisfy the requirements. Mr. Myers stated that it would still be an easement and would not be ownership. If somebody comes to buy the property and he does not want to continue the easement they would be right back where they are now. Mr. Koval stated it would be a permanent easement and part of the deed. Mr. Myers explained that they are granting a variance over two different parts of the code because one requires fee simple ownership of the property and the second is that it requires 40 ft. of access to a public road and neither one of them will be met by going out to Eastside Drive because it is not considered a public road at this time.

Mr. Koval explained that the problem will not be solved but having a permanent easement to Eastside Drive whether public or not there will be access to the lot.

Mr. Myers explained that the Town could say at some time that the road will end at the beginning of Mr. Snell's property and the remainder becomes a common driveway maintained by the property owners which is done in many other locations in Town and then it would never be a public road and there would not be any access to a public road. Mr. Andress explained that is the variance they are requesting; no access to a public road.

Mr. Koval made a motion to approve this application with the stipulation that Mr. Snell create a permanent 40 ft. wide easement to the edge of his property on the south side leading to Eastside Drive. Mr. Kortz stated he would second that but needs clarification on the exact variance request being made.

Mr. Andress explained that the application made to this Board is because there is no

access to a public road. The text in the notice is not what was made in the application. It was an interpretation made by the Town. The application asks for the 40 ft. because there is no access to a public highway.

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Mr. Ophardt asked if it could be possible to hear from the Highway Superintendent if they have any interest in acquiring this property or perhaps hearing back from Mr. Palkovic.

Mr. Andress stated they would like to move forward with this variance request tonight. He stated that they would have no issue with working with the Highway Department and he is sure Mr. Snell will commit to the Board at this time if the Highway Department wants to take it over he will convey the land to them. He would like to move forward because not only would the Highway Department be involved but the Town Board would have to take action.

Mr. Dudick asked if Mr. Kortz seconded the motion, he responded no

Mr. Dudick called for second on the motion. Mr. Ritter seconded Mr. Koval's motion.

Mr. Kortz asked for clarification on the motion, is it for a .66 ft. variance from the 16 ft. driveway width requirement. Mr. Andress responded that it is not necessary because it is not needed because the driveway width could be met when the 40 ft. easement is created on Mr. Snell's property. The variance should be for a lot that does not have access on a public highway. The variance will give the right to build on a lot without public access. There could be an amendment to the variance stating that if the Highway Department wants to take over that portion of Eastside Drive that runs on Mr. Snell's property he would dedicate it to the Town at no cost.

Mr. Koval amended his motion to include that Mr. Snell is willing to dedicate the strip of land known as Eastside Drive to the Town if the Town wants to take it.

Mr. Ophardt stated that he would like that issue clarified first. Mr. Koval noted that it would take considerable time for that issue to be resolved.

Mr. Ritter asked if Mr. Snell agrees to the amendment. Mr. Snell responded yes.

Mr. Ritter seconded Mr. Koval's motion.

Mr. Dudick explained that he understands the applicant's desire to build on this lot but there are a lot of issues that need to be cleared up.

Mr. Kortz agreed but stated that this is clearly a buildable lot and would have no impact on the neighborhood. It is a self-created hardship but that is not a condition that mandates not approving a variance. It is the minimum variance needed.

After having a discussion with the Building and Zoning Director Mr. Renzi clarified the variance request and motion that was made. A variance is needed from the definition of a keyhole lot which requires 40 ft. of access to a public road via a fee simple ownership, which is true proper ownership of a piece of land as opposed to an easement for right-of-way or any other kind of

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privilege that is less than full ownership. This Board is going to need to grant a variance from that requirement all together because no matter what action is taken tonight they will not create fee simple ownership of 40 ft. of access to a public road that they can be certain of. There is a large issue as to whether Eastside Drive is or is not a public road. If we were sure that it was all the problems would go away. Second, for purposes of legality is the .66 ft. variance on the western easement where theoretically you would put a driveway out to Schauber Road. The deeded right-of way is not quite 16 ft. wide and needs to be to satisfy the Town's requirement. Lastly, the Board would like to see as a condition of these two variances a deeded filed easement from the western portion across the eastern parcel of lands currently owned by Mr. Snell such that any future owner of the western parcel would have an absolute right to cross over and access Eastside Drive. Mr. Andress clarified that it would be the eastern portion would have the right to cross the western lot to Eastside Drive. Mr. Renzi noted that it would give the parcel, outlined in pink on the map before the Board, the benefit of permanent access across the other parcel to the left out to Eastside Drive.

Mr. Koval added that there was an addition to that motion that Mr. Snell would grant over to the Town that portion of his land known as Eastside Drive if they want it.

Mr. Kortz asked how that would work because the variance runs with the land not the person. Mr. Andress indicated that the owner of the land would be required at the time, if the town wanted to take it over, to deed that land over. It would be a deed restriction.

Mr. Dudick called for a vote on the motion. Ayes: Gleason, Kortz, Koval, Ophardt, Ritter. Noes: Dudick, Lemire.

NEW BUSINESS

1. An application from Daniel & Christy Lill, requesting an area variance from Section 208-86B from the required 50 ft. setback on all sides for a keyhole lot – new Lot #1 – actual front yard setback = 30 ft. variance requested = 20 ft., actual left side yard setback = 20 ft. – variance requested = 30 ft.; new Lot #2 – an area variance of 29.4 ft. for the right side yard setback and an area variance of 11.6 ft. for the left side yard setback. The property is located at 79A Southbury Road, Clifton Park. Permit #80590-1.

The secretary read the legal notice as it appeared in the Daily Gazette on March 30, 2006.

David Flanders, Land surveyor, presented this application. He explained that this is a

continuation of the last meeting. Mr. Lill owns approximately 1.9 acres as outlined in the subdivision plan and indicated the existing single family residence. He reviewed the items discussed at the last meeting. He explained that there are some issues that create certain conditions that need to be understood. One being that during construction Mr. Lill constructed his driveway in part across his neighbor's property, the Dobreffs. They have consented to and

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have signed a letter indicating that they are aware of the subdivision and are willing to convey 315 sq. ft. of land to him which creates additional frontage on the stub of Southbury Road for the proposed subdivision of the 1.9 acres. The second item discussed was a parcel of 2,968 sq. ft. in the back of the lands of Patterson that will be conveyed to them. He presented a letter from the Patterson's attorney indicating they are willing to accept that piece of property with the stipulation for a maintenance agreement for that small portion of driveway, which there is an easement over, and also for a grading plan and buffer between the proposed piece to be conveyed and the new lot. The property is part of the PDD created in the 1970's before the existing zoning that creates the requirement of 50 ft. setbacks on all sides for a flag lot. The PDD requires 10 ft. sidelines, 30 ft. front yard and 25 ft. rear yard setbacks, with the minimum lot size of 11,000 sq. ft.

Mr. Flanders noted that the setback request for Lot 2 on the right side yard should be 39.4 ft., not 29.4 ft. He stated the request, because of the zoning situation this is part of the PDD, the fact that all the lots in the development go under the 10 ft. side yard and 30 ft. front yard setbacks, all the neighbors have agreed to it, and it is not a detriment to the neighborhood, would be in keeping with the character of the neighborhood.

Mr. Ritter asked based on the Patterson's letter from their attorney are you going to do something other than the four pine trees and give consideration to the possible flooding in the back. Mr. Lill responded absolutely within reason whether it's to double the amount of trees and stagger them to make more of a wall effect. He lives in the home and wants to make everyone happy. They have actually solidified the conditions with the lawyers.

Mr. Flanders presented a letter from Mr. Lill's attorney to the Patterson's attorney indicating the proposal for grading and buffering. He also noted that if approved this will have to go through planning and the whole issue of buffering and grading will be addressed at that level also.

Mr. Renzi noted for the record that there was a submission by the applicant of a letter dated April 3, 2006 from Block, Colucci, Spellman & Peller, addressed to attorney E. Gray Watkins on the same matter.

Mrs. Gleason asked for clarification on the side yard setback request. The application was discussed and it was determined that the request for the side yard setback for Lot #2 on

the right side should be a variance of 39.4 ft., not 29.4 ft. as noted on the application.

Carol Dobreff, 79 Southbury Road, stated that they found out in November that Mr. Lill's driveway was on part of their property and agreed to not have him move the driveway but now she has concern over him taking part of their frontage. He was suppose to have a survey done and give them a copy but she has not seen a survey. She stated that he brought a letter over last week that stated that he is on 324 ft. of their land. She asked what is legally right as to how much he is taking and is he taking some of her frontage that she doesn't know about.

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Mr. Flanders indicated on the map the portion of land that is in question. He explained that it is 315 sq. ft., not 300 ft. of frontage. He explained to Mrs. Dobreff that her frontage is not really affected.

Mr. Lill explained that he is not planning on affecting her lot to the extent of having a negative impact, he was not aware of her concern over the issue. He did not plan on paving his driveway on a portion of her land, it was a mistake. As soon as he was aware of it he came over and explained the situation to see what could be done.

Mrs. Dobreff asked how she can find out if she has the right amount of frontage.

Mr. Myers explained that she will have over 100 ft. and the requirement is 70 ft.

Mr. Lemire asked if the property in question is already blacktopped. Mr. Lill responded yes.

Mr. Flanders explained that it is only a small corner of land and they can visually see it.

Mrs. Dobreff stated she is not giving her consent to this subdivision until she really sees what is going on because there is a lot of flooding.

Mr. Dudick explained the issue tonight is in regards to zoning issues. If approved this will have to go to the Planning Board and they will deal with wetland and drainage issues. He stated that even if the approval is granted for the variance and the applicant does not satisfy the requirements of the Town with regard to drainage, topography, etc. he still would not get the approval to build.

Mr. Kortz asked if the conditions are made any worse or better by the conveyance of this piece of land. Mrs. Dobreff responded no.

Chris Scanlon, 83 Southbury Road, stated that he lives next to the Pattersons and asked why he was not notified of this application. He stated that he is also concerned about a buffer zone.

Mr. Flanders indicated the placement of the proposed house on the lot. Mr. Lill explained

that he has been to the Planning Board and did not realize he needed a variance and has not had a public hearing yet. The Planning Board requirement is to notify all property owners within 500 ft.

Mr. Dudick explained that the only requirement for notification of ZBA issues is publication in the legal notice section of the Daily Gazette.

Mr. Lill stated that if trees or an additional buffer are a concern it would not be a problem.

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Mr. Scanlon stated his concern regarding the placement of the house. Mr. Flanders explained it will be approximately 107 ft. from the property line. Mr. Dudick explained that placement of the house is a planning issue.

Mr. Ritter made a motion to close the public hearing, Mr. Ophardt seconded, approval unanimous.

Mr. Koval stated that Mr. Lill will have to assure Planning that he can obtain the land for his driveway from Mrs. Dobreff. The decisions being made tonight are for the setbacks only.

He will also have to satisfy the concerns of the Pattersons.

Mr. Renzi explained that this Board is only considering a simple area variance application and is the only thing this Board should be addressing. All the other issues, if a home could be built, lot line adjustments, grading, drainage, etc. are subsequent to any act of this Board and are not part of this deliberation except to the extent that if it were clearly an ingenious situation.

Mr. Ritter stated his appreciation for the applicant addressing all his concerns from the previous meeting.

Mr. Kortz asked if the area variances would still be needed if the small piece of property for the driveway is not conveyed. Mr. Koval stated that if they do not get the conveyance of that small piece of property they cannot do the project. Mr. Flanders stated they cannot do the subdivision without the variances and they cannot do anything without the conveyances. They would not have to convey the portion to the Pattersons but they have to acquire the driveway piece. Mr. Kortz asked to make it a condition of approval that the piece of property for the driveway must be conveyed.

Mrs. Gleason noted that the Dobreff's submitted a signed letter stating that they agree to transfer the triangle of land for the driveway.

Mrs. Dobreff confirmed that they agreed to sell the piece of land to the Lills.

Mr. Dudick explained that he feels it does not have to be made a condition of approval because if the property is not sold, even if the variance is granted they cannot proceed with the project. He feels the application is satisfactory as submitted.

Mr. Dudick made a motion to accept the application as submitted. Mr. Ritter seconded. He also noted that there was an error in the right side yard setback request for Lot 2 – it should be 39.4 ft. not 29.4 ft.

Mr. Dudick called for a vote on the motion. Ayes: Dudick, Gleason, Kortz, Koval, Lemire, Ophardt, Ritter. Noes: None.

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2. An application from J. Michael & Patricia Twinam, requesting an area variance from Section 208-98 from the required 100 ft. front yard setback from the centerline of Route 146A – actual setback = 75 ft. – variance requested = 25. ft.; and an area variance from Section 208-11 from the required 50 ft. front yard setback from the property line in an R-1 zone – proposed setback = 36 ft. – variance requested = 14 ft.; and a front yard setback variance of 26 ft. to allow for a porch addition. The property is located at 703 Route 146A, Clifton Park. Permit #80591.

The secretary read the legal notice as it appeared in the Daily Gazette on March 30, 2006.

J. Michael Twinam, owner of the property and architect that did the drawings, presented this application. He explained he would like to add a porch unto the house and a handicapped addition to the house. The porch will replace an existing porch and will encroach into the setback. This is an older house that was grandfathered in. The drawings show the existing and proposed new porch. The new porch is on the front of the house facing Route 146A. He indicated the shaded area on the site plan that shows the existing house. He is adding one bedroom, first floor with a master bathroom, and a porch that will be a second means of access. He has to relocate downstairs because of his handicap.

There was no public comment. Mr. Ritter made a motion to close the public hearing, Mr. Ophardt seconded, approval unanimous.

Mr. Myers explained that there are some issues with setbacks. This is a pre-existing house and he has no problems with this request. He noted that the variance request for front setback from Route 146A is 25 ft.

Mr. Dudick asked how old the house was. Mr. Twinam responded he's not sure it is at least 100 years old.

Mr. Dudick made a motion to approve this application as submitted. Mr. Ritter seconded. Ayes: Dudick, Gleason, Kortz, Koval, Lemire, Ophardt, Ritter. Noes: None.

3. An application from Provident Development Group, requesting an area variance from

Section 208-50.3B from the required 80 ft. front yard setback from Old Route 146 – actual setback = 18 ft. – variance requested = 62 ft.; an area variance from the required 80 ft. front yard setback from Old Plank Road – actual setback = 5 ft. – variance requested = 75 ft.; an area variance from Section 208-50.3C from the required 30 ft. side yard setback – actual setback = 15 ft. – variance requested = 15 ft.; an area variance from Section 208-50.3B from the required 30 ft. setback for parking – proposed setback = 7 ft. – variance requested = 23 ft. from Old Route 146, and an area variance of 15 ft. for parking from Old Plank Road; an area variance from Section 208-50.3A from the required 87,120 sq. ft. lot area – actual = 31,926 sq. ft. – variance requested = 55,194 sq. ft.; and an area variance from Section 208-50.6

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for lot width and lot size for group establishments – 400 ft. width and 5 acres required – actual = 178 ft. (Old Route 146) and .73 acres. The property is located at 39 Old Route 146, Clifton Park. Permit #80592.

The secretary read the legal notice as it appeared in the Daily Gazette on March 30, 2006.

Gavin Vuillaume, Environmental Design Partnership, presented this application. He also introduced Tom Petersen, local architect, who is interested in developing the parcel and plans on occupying an office on the premises.

Mr. Vuillaume explained that they are requesting area variances to construct two small offices within a B-4A zoning district. He stated that there were several variances granted to this parcel that are very similar to this one in 2002. The plan presented in 2002 showed one office building on this parcel and several variances were granted that are very similar to the ones being requested this evening. The original building on the property would have been demolished. When they proceeded to the Planning Board there was considerable concern in trying to preserve the existing building. They worked with the Planning Board and came up with a site plan to keep the front portion of the existing building and also provide the office building. At that time Peter Belmonte was the applicant. He presented pictures of the building and stated they will keep the building as mandated by the Planning Board. During the application submission to the Planning Board they realized that the variances would need to be updated. The site went from a B-3 zone to a B4A zoning district which is more restrictive as far as setbacks. He reviewed the variances being requested. The front yard setbacks are due to keeping the existing building. Also two of the variances are new and deal with having more than one building on a site. In the B4A zone it is considered a group of establishments and also requires a minimum lot area and lot width which this site does not meet. They feel the request is justified mainly because these variances were already granted and the zoning changed prior to them getting an opportunity to build the project. The setback requests are consistent with others in the area and fits in with the same character that is there today.

Mr. Koval asked for clarification is it the Planning Board request to maintain the original building which necessitates the variance from 80 ft. to 9 ft. on the one side. Mr. Vuillaume responded yes.

Mr. Dudick reviewed the prior application request and approvals granted. He explained that do to a historic preservation issue, even though the building was not considered of historic proportion but was in photographs that were considered significant, it was felt that destroying the building became an issue. He explained that Mr. Belmonte agreed to preserve the building as Planning had asked and now they are looking to do the same with a new developer.

Mr. Vuillaume stated yes the site plan itself is still the same it just needs to be updated do to a more restrictive zoning change.

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There was no public comment. Mr. Lemire made a motion to close the public hearing, Mrs. Gleason seconded, approval unanimous.

Mr. Lemire asked the number of variances being requested. Mr. Vuillaume responded seven. He stated there are two front yard setback variances mainly for the existing structure, one is for a 5 ft. setback along Old Plank Road and one for an 18 ft. setback for Old Route 146; the next one is for the side yard setback and is associated with the new building; the next two are for parking setbacks from Old Plank Road and Old Route 146; and the last two for lot area, in the B-3 zone a 40,000 sq. ft. lot area was required and the B-4A zone requires 43,000 sq. ft., and as pointed out by Mr. Myers there are two buildings on the lot and one acre may be needed for each building. They have not determined that yet.

Mr. Myers explained that his interpretation is that an acre is needed for each building and therefore he suggested going for the variance for the two acres.

Mr. Koval asked if that variance is part of this application. Mr. Vuillaume responded yes. He continued, the last variance is for a group of establishments which is defined as a group of buildings, not the use itself. He continued that there are requirements in planning that will require them to make sure the architectural siding fits, the site amenities work as a conjoined site plan, utilities all brought in together, etc. This requires a five acre minimum and 400 ft. of width, which is not the same as frontage.

Mr. Ritter asked about the usage of the front building. Mr. Vuillaume responded both will be offices. Mr. Ritter asked if they are going to preserve the back of the building. Mr. Vuillaume explained they will be removing the back portion of the building, it was an addition added at a later time.

Mr. Renzi asked about signage. Tom Petersen responded it will all be office space and he feels a joint sign will take care of both buildings. They are not quite sure at this point.

Mr. Ritter asked if he is willing to commit at this time to some sort of signage. Mr. Renzi stated it was just a general question that called for a general answer.

Rainey Littman, Chair of the Historic Preservation Commission, explained that she was not part of the project to rally for the building in 2002. Now the building qualifies because it is a survivor in that area whereas before, six years ago, there were a couple of examples that had been mutilated or changed to the point that you couldn't tell the character existed any more. The building is prominent in its location, hasn't been used to the best of her knowledge in six years, and was used as office space and a rental unit. She is thrilled that they are willing to take it over and she has discussed with them the possibility of Federal grant money that may be able to assist them. She feels the design will fit in well with what already exists and enhance it and really create a better conception of that area. The rear portion of the building is not to period it was probably put on in the 20's. She stated her support for this project.

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Mr. Ophardt asked as long as they maintain the exterior of the structure it qualifies. Ms. Littman responded correct, they follow the State and Federal guidelines as to what qualifies as historic in Clifton Park. As far as the State is concerned it is exterior only unless you are applying for tax easements. Clifton Park does offer tax easements for properties on the register but generally residential only. It's exterior only, they can retrofit the inside any way they want.

Mr. Ritter asked if they were applying for State and National registry designation. Ms. Littman responded no. She explained that a commercial building can be on the Town register and qualify for some grants.

Ms. Littman also noted that there are grants out there through the National Trust and HGTV, Restore America Project, where if you are using it to serve the community in some form they give you grant money to restore the building if you meet their application requirements.

Mr. Ophardt asked if an office qualifies as serving the public. She responded yes if they are saving the building it's serving the public to maintain its preservation front.

Mr. Kortz asked about comments from the Environmental Specialist. Mr. Dudick read his comments into the record. The ECC has expressed concern regarding the status of existing mature trees along the site. The proposed variances allow for loss of additional trees. Each variance should be reviewed for its impact on old growth trees.

Mr. Vuillaume responded the ones of most concern are the ones on Old Plank Road and they are saving all those trees. There is one in back of the existing building that would have to be removed. He pointed out that there is one off Fire Road that could be preserved and a large Spruce tree that could be preserved. There is a smaller evergreen, a larger evergreen, and a maple tree for a total of three trees that would be affected.

Ms. Littman stated the concern is with the maple trees along the roadway and they will be saved, they are actually part of the plan.

Mr. Kortz stated that the concern is for the preservation of the building and what about the lot around it. Ms. Littman responded that they are not only preserving the character of the building but will keep the whole thing in focus.

Mr. Dudick made a motion to approve this application as submitted. The applicant has worked with the ZBA and the Planning Board. Mr. Ritter seconded. Ayes: Kortz, Lemire, Ophardt, Dudick, Ritter, Koval, Gleason. Noes: None.

Mr. Dudick adjourned the meeting at 8:58 PM and reconvened at 9:07 PM. Mrs. Gleason left the meeting as she did not participate in the hearing for the application for Phyllis Murray.

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4. A request to hear arguments to re-open an application previously heard and approved by the ZBA on February 28, 2006 from Phyllis Murray, requesting an area variance from Section 208-86B from the required 50 ft. setback on all sides for a keyhole lot – variance requested = 25. ft. on the north, east, and west side setbacks. The property is located at 1598 Crescent Road, Clifton Park. Permit #80585.

Members of the public are present who wish to comment on the request to re-hear this application.

Jim Burnes, 14 Oakwood, referred to his letter that has been distributed to the whole Board and copies to Ms. Murray. He stated that approximately one year ago he received a letter from

Ms. Murray stating her intention to build a house with the statements that she intends to build within the Town guidelines and preserve a good amount of distance between the new home and the closest homes and leave many of the trees to ensure each homes' privacy. He stated he referred to the zoning laws requiring 50 ft. setbacks on all sides for a keyhole lot and checked distances from his property line to the proposed home with the required setbacks and felt it was a reasonable zone of privacy. He checked the Planning Board agendas but was not aware that they would be requesting zoning variances.

The next thing he realizes was a Planning Board meeting with the VanGuilder firm on December 13, 2005 of which he did not receive any notice. At that meeting it was determined that 50 ft. setbacks were required. The next thing that happened was a ZBA meeting on February 28, 2006 at which the variances were requested. His understanding is that a legal notice was put in the paper, which he understands fits the legal requirement of notification to the neighborhood. He has a couple issues with the legal notices. There was a level of communication established with the hand delivered letter stating that they will abide by the Town guidelines all he can safely assume it was the Town guidelines as written, he did not understand they would try to change them. He asked for a ruling from Mr. Renzi regarding an error in the legal notice one of the bordering neighbors was not included in that legal notice. It lists the variances being requested and supposedly all the

bordering neighbors.

Mr. Renzi asked if he is referring to the public notice published in the newspaper. Mr. Burnes responded the legal notice published in the Gazette on the 23rd, Mr. Williams was not included.

Mr. Renzi responded that it would be his issue to address.

Mr. Burnes continued, he has some issue as to the notification process while he understands from the Board's perspective what they did follows the letter of the law, there was some misinformation. Because they were not at the meeting it denies their ability to present their side. There were some misstatements of fact at the February 28th meeting, which he feels if he could he could have refuted if he had been there. First, Mr. Rabideau indicated that there were no objections from the neighbors. At least two of the neighbors did object directly to the applicant and they are here to testify as such.

According to the minutes Mr. Lemire asked if the neighbors

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would be notified at the Planning Board level and Mr. Rabideau responded yes. They received no notification of the December appearance before the Planning Board and while he understands it's not this Board's problem he is trying to show there is some sort of pattern where they were denied the opportunity to be heard. Further, for the Planning Board meeting last week, that they stumbled on and found out about, what they received in the mail is not a notification of a meeting, it does not come by certified mail, it comes by regular mail and all it really says is that there is an application and if you wish to find out about the process call Town Hall. To him a notification of a meeting is we are going to have a meeting on this issue at this day and time, place. This may be more of a Planning Board issue but in terms of a pattern of them not being able to be heard.

Mr. Renzi noted that Mr. Burnes is submitting a copy of the notification he received from the Planning Board with the envelope. Mr. Burnes noted that he received it on March 11th. He commented that to him this is not a notice of a meeting it refers to procedures.

Mr. Burnes also commented on the minutes of the meeting of February 28th and Mr. Rabideau's statement that the 50 ft. setbacks for keyhole lots are mostly for new lots being developed so there is more area in subdivisions. He stated he read Section 208-86 and it does not state any reference to new lots or old lots. This does not match with the letter of the law.

He continued, in light of these issues he did a somewhat thorough review of the minutes of this Board for the last three years except the minutes for 2005 were not available on line. They did 2002, 2003, 2004 and the first couple meetings of this year to see what kind of actions the Board has taken on setbacks to see if it was a typical action or atypical action and he feels it was an atypical action and in light of the other issues that is why he is asking the Board for a rehearing of this application.

Mr. Burnes continued, he did a filter on setback variances on homes as opposed to businesses, etc. He did not look at unique situations. His findings were 46 setback variances were granted, of these 41 were on one side, 3 were on two sides, and 2 were on three sides, so in his opinion granting setback variances on three sides is maybe more extreme, trying to shoe horn something in than if you were granting a setback variance on one side. In terms of the vote, 45 were unanimous and one was split, this decision. It indicates that there was some concern on the part of some Board members. Mr. Burnes submitted a print out showing the date, the setback in feet, the setback in percentage and the vote. He noted that 36 of the 46 variances granted were for a smaller percentage relaxation. He also noted that in reading the minutes of the meeting some Board members appeared to have some of the same questions they are concerned about.

Mr. Renzi asked who objected directly to the applicant. Pat Campoli, 3 Boyack Road, stated that she called her after she sent the letter and expressed her concerns over privacy and safety issues.

Lawrence Williams, 5 Boyack Road, stated that he also contacted the applicant with concerns.

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Mr. Burnes asked the Board to make a motion to have this application reheard.

Lawrence Williams stated that he has a problem with the notification received. It states that the applicant wants to build on the northerly side of her house but it really is on the southerly side. He also noted that the lot floods heavily. He presented pictures for the Board's review but did not submit them for the record and explained the history of the area as concerned with drainage issues. He asked if anyone has looked at the lot.

Mr. Dudick stated that he was there prior to tonight but was unable to find anyone home to get permission to go onto the property.

Mr. Renzi asked if he was aware of who owned the property. Mr. Williams responded yes.

Mr. Ophardt asked if there were any designated wetlands. Mr. Burnes responded no.

Mr. Koval asked if anyone has approached Ms. Murray to purchase this land. Mr. Williams responded they would be willing to discuss that option.

Mr. Kortz asked what percentage of the lot has drainage issues. Mr. Burnes responded approximately one-quarter. There was discussion on the drainage in the area.

Mr. Lemire asked if Mr. Williams received notice of the Planning Board meeting. He asked if perhaps the map was labeled as Lawrence instead of Williams. It was noted that

the property is shown as Lawrence instead of Williams. The secretary explained that the names of the abutters are provided by the applicant.

Pat Campoli, 3 Boyack Road, voiced her concern with the affect on the north and east sides of her property. She has been there for 19 years and has concerns with privacy and safety issues. She talked with the applicant and also called the Town. She feels she was misdirected, she was told she would get something in the mail. She did not know she should be checking the newspaper for legal notices. She also stated that she called Ms. Murray when she received the letter in March 2005. Ms. Murray responded that she did not feel it was a privacy issue; this is the best situation for her.

Mr. Dudick asked if the driveway came off Crescent Road would it make it a non-issue. Ms. Campoli stated it would not make it a non-issue it would be more desirable for her from a safety issue but it does not change the issue of privacy and the closeness of this house compared to the other homes in the neighborhood.

Mr. Burnes stated that the applicant's representative responded to that issue of coming off Crescent Road at one of the meetings and there was some discussion that it made it unfeasible.

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Christine Izzo, 16 Oakwood Boulevard, also stated that she was not notified of the Planning Board meeting in December and if she had been she would have attended and made public comment and would have been aware of the zoning issue. She noted that she does not receive the Gazette and does not know why it is in that paper. She also noted that the letter from the applicant stated that she would follow the Town's guidelines, which are 50 ft. setbacks, so they were not expecting a variance. She stated she would have attended the meeting if she were aware of it. She also noted that she would like the opportunity to make public comment on this application.

Mr. Renzi noted for the record that Ms. Izzo has submitted a letter to the ZBA regarding this application.

Mr. Kortz responded to the concern regarding notification by Planning. He stated that typically the applicant goes to Planning, and then a public notice is sent. The first meeting that takes place is not typically the public hearing. You are notified of the public hearing. He also stated that most of the issues brought up are Planning issues. The ZBA is addressing the setbacks only. Planning looks at most of the concerns expressed tonight.

Mr. Dudick informed those present that the Daily Gazette is the official newspaper for the Town and also noted that the agendas are posted at Town Hall.

Mr. Renzi read the Town Code as it pertains to notification required from the zoning end, it is simply publication. If it is a concern the Town Board would deal with that issue. The actual notice to individuals within 500 ft. comes at the Planning Board level. He

explained the notice received is adequate notification.

Ms. Izzo responded that they got in at that point and went to the Planning meeting a couple of weeks ago but they did not know about the zoning meeting a month ago.

Mr. Koval noted that zoning does not grant them the ability to build a house, there is still another level for them to go through, zoning can grant a variance but unless Planning says you can build the house, there isn't going to be a house there.

Mr. Burnes noted that the December minutes just said that the applicant was notified of the keyhole lot requirements and the only involved agency was expected to be the Planning Board.

Mr. Renzi noted that's when the statute comes into play, the application for the subdivision of lands within 500 ft. of your property is being proposed that application will be filed with Planning and may be reviewed by you during normal business hours at Town Hall. That is what the statute calls for and that formality apparently was observed. He wants to make it clear what the requirements are between zoning and planning. The zoning variance is a very preliminary step in any building project.

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Dwayne Rabideau, VanGuilder & Associates, responded to the issues raised. He referred to the public notice issue. The first step was Ms. Murray's letter to the neighbors informing them of her hope to build a house, it was very factual and there was nothing misleading about it. They prepared the subdivision and presented it to the Planning Board. In the application they stated that it met all spatial requirements of the R=1 zone. Originally there was 100 ft. at the building line, met the area, met the side setbacks in the R-1 zone, 10 ft. side yards, 25 ft. rear yards and 50 ft. front yard. As they configured it it met all those requirements. When they went to the December 13th meeting they thought they had a legal lot with no problems. At that point in time Mr. VanGuiler was told that this was interpreted by the zoning administrator, Steve Myers, that they are considering this a keyhole lot. He noted that was their first indication of that. In order to continue they would have to get a zoning variance, which they complied with. Therefore, Ms. Murray's letter of the 27th was factual because up until nine months later they were not aware that the subdivision would require any variances.

Mr. Rabideau referred to comments made about the ZBA meeting minutes and he feels there is a misinterpretation of what he said or how he meant it. He referred to the notification of the neighbors and stated the legal notice meets all the Town's requirements for the ZBA. He also referred to Mr. Koval's comments regarding a lot line adjustment and if the neighbors would be notified and his response that he believes they would be. It was decided not to go through a lot line adjustment. He feels there is word terminology here. Surveyors look at a property line change as a lot line adjustment and the Town looks at it as a land transfer. In this case since the Murray's own two separate deeded parcels, she was trying to make the rear parcel meet the requirements of zoning

and in order to do that they would do what the Town calls a subdivision, they call it a lot line adjustment. The lots already existed; they are basically trying to make a lot to meet current zoning.

Mr. Renzi asked if it is his understanding that under those circumstances the adjacent neighbors would be notified at the Planning Board level. Mr. Rabideau responded yes after the first meeting is for conceptual approval to make sure there are no outstanding major issues that the Board has, then they would set a public hearing for the following month and that is when they would be notified with the letter that is required to be sent out.

Mr. Renzi asked if his answer is that a lot line adjustment wasn't going to happen. He referred to the minutes stating that Mr. Rabideau stated that he believes it would be but they decided not to go through a lot line adjustment. Mr. Rabideau responded that does not make any sense just by the nature of their action, they were doing a lot line adjustment.

Mr. Rabideau referred to Mr. Lemire's question regarding the lot being landlocked at purchase. He responded yes it was, that is why they are going through a lot line adjustment but they are two separate deeded parcels.

Mr. Renzi asked how long the applicant owned the parcel. Mr. Rabideau responded 1984.

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Mr. Lemire referred to his statement, when he first started out he thought there was 100 ft. of frontage so you didn't think there was a problem, where is that frontage. Mr. Rabideau responded off Boyack Road. Since it is now classified as a keyhole lot there is a 60 ft. strip of access to the lot, but the original application brought to the Planning Board basically had set up a 100 ft. at the building line, so that at 50 ft. back they were able to extend out and come down at an angle to meet that requirement and it was not considered a keyhole lot, they could get their building line of 100 ft. with the rear yard of 25 ft. and the side yard setbacks of 10 ft. With this being a keyhole lot the setbacks are more favorable to the neighbors.

Mr. Lemire asked if the original intent was that it was not a keyhole lot. Mr. Rabideau responded yes. He explained how he came up with 100 ft. at the building line. He stated that apparently off Crescent Road there is a 200 ft. requirement.

Mr. Koval explained his reasons for approving this variance request. The laws in regards to keyhole lots came into effect long after Ms. Murray purchased this property and so he wouldn't be looking at this in the same way with regard to keyhole lot setbacks had she done this in 1990 as opposed to today. The law went into effect after she owned the property.

Mr. Rabideau referred to the comment by Mr. Ophardt of his concern about neighbors

being notified of this request. He noted there seems to be a general concern.

Mr. Ophardt responded that there was some confusion on his part as to why there wasn't notification of the first Planning meeting. Mr. Rabideau responded that it is just to get the Planning Board and applicant up to speed to see if there is something majorly wrong with this that needs to be resolved prior to a public hearing. Generally if you are accepted to go before the public hearing it is implied that there may be some minor details but they can be worked out.

Mr. Kortz asked if he is referring to conceptual review. Mr. Rabideau responded yes. Mr. Kortz noted that there is no requirement to notify the public at that point. Mr. Rabideau stated it is more of an administrative issue at that point.

Mr. Rabideau asked to see Mr. Williams's photos of the site. He presented photos of his own

Mr. Ritter explained why he voted no on this application. He had concerns for the access to the property from Boyack Road.

Mr. Myers stated that it was his understanding in initial discussions with Mr. VanGuilder about this lot that the 200 ft. requirement from Crescent Road was not the route they wanted to take and that is why the lot is set up this way. The keyhole requirements were the variances they wanted instead of the 200 ft. off Crescent Road. If they come off of Crescent it would be one variance for the 200 ft. width, there would be no other variances required. It would not be a keyhole lot because it does not set behind another property. It would be a long narrow lot and would require only 10 ft. side setbacks and 25 ft. rear setback and 100 ft. setback off Crescent

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Road. Mr. Myers noted that plan would conflict with the existing house.

Marion Pedersen, Rioux Court, expressed her confusion about this application.

Mr. Renzi disclosed that he is a long time family friend of the Pedersens.

Ms. Pedersen stated that when the property was acquired by the applicant she knew that it was land locked and she couldn't build on it. She asked when the property was acquired.

Mr. Rabideau responded it was purchased from Rosen & Michaels in 1984. They bought both parcels on the same day.

Ms. Pedersen stated she feels it was offered by Michaels just to get rid of it. They knew it was land locked. Mr. Koval explained that you have to own a piece of property that is connected.

Mr. Koval asked what the assessed value of the parcel is. Mr. Burnes responded 4,800, residential vacant.

Mr. Lemire referred to questions about the minutes. He referred to Mr. Dudick's question asking if there were any letters or comments from the neighbors and Mr. Rabideau's response of no.

Mr. Rabideau explained he was not aware of any comments, he is not sure he said no.

Mr. Ritter inquired about the difference in lot area shown on the new map presented (35,828) and the original map (37,387). Mr. Rabdieau explained the reduction is do to a request by Mr. Myers to allow for the required setback for the deck on the existing property.

Mr. Rabideau addressed the question of flooding or ponding of water. He stated the real question to be asked is why does it pond there; is it surface runoff or is it ground water driven.

He noted that looking at the terrain around the entire site and knowing that it is basically sand and percolation is good so there is very little runoff so basically water collecting there is ground water driven. He also noted that in the photos from the ponded area heading in a northeasterly direction toward Mr. Burnes' lot there is a swale that obviously is wet because

Mr. Burnes is pumping his cellar water onto Ms. Murray's property to make the ponding worse.

Mr. Burnes responded that he has a sump pump that discharges in the middle of his backyard.

There was discussion on the drainage issue and the contributing sources.

Mr. Rabideau explained that where they are going to build the house will not contribute to the drainage problem.

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Mr. Dudick explained that these issues are not typically a Zoning Board issues. They are good points that should come before the Planning Board.

Mr. Renzi explained that designated wetlands or LC zones would come under the prevue of this Board in granting a variance.

Mr. Dudick disclosed that he purchased property in Halfmoon and VanGuilder Associates did the survey. It is near a small stream and because just there is moisture it does not disallow a house being built there.

Mr. Kortz noted that it is always an issue on whether this Board believes that it doesn't

have a detrimental effect on the health, safety, and welfare of the public. In those cases a judgment has to be made as to whether more information is needed.

Mr. Koval reminded everyone that we are here to make a determination whether or not to rehear this application.

Mr. Rabideau referred to Mr. Burnes' letter stating assuming that the setback variance is withdrawn do to the fraudulent matter. He asked fraudulent matter to whom.

Mr. Burnes responded that he is willing to retract that statement. He feels the letter was misleading.

Patricia Murray stated that her intention was not to upset the neighbors. She went to VanGuilder to do it properly. She thought it was a friendly gesture to give the letters to the neighbors, she didn't think it was required. She is sorry it caused conflict. She is just trying to resolve a situation in her life for her family.

Mr. Dudick asked if she would be willing to sell the property to the neighbors. She responded it never entered her mind.

Mr. Lemire asked if some of the neighbors talked to her after she sent the letter. Ms. Murray responded Mrs. Campoli called her. She talked to Mr. Williams that day but not after.

Mr. Renzi asked if she knew what she paid in property taxes over the past 20+ years. She stated she had no idea.

Mr. Burnes stated with a \$4,800 assessment they could not have been that high.

Ms. Izzo noted that the purpose of the 50 ft. setback is to avoid just what this is creating. She referred to the minutes of the meeting and expressed concern over future subdivision of the lot and why the 50 ft. setbacks refer to newer subdivisions.

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Mr. Rabideau responded the minutes do not reflect the general confusion as to why the setbacks went from 25 ft. to 50 ft. No one really knew the answer. The general concept was that people were having issues with houses being to close in the back so they went to 50 ft. all the way around. He explained it was not a factual thing, old versus new.

Mr. Renzi referred to correspondence he had with Mr. Burnes regarding the procedures to be followed this evening and asked if he shared that information with his associates. Mr. Burnes responded he thinks he did.

Mr. Renzi stated for the record this hearing is at the pleasure of the Board to give everybody an opportunity to have their say to convince this Board if they could that the

Board ought to reopen this application and rehear it from the beginning. The initial request was that the Board withdraw the variance and start over. There is no provision in law for the Board to do that. We cannot withdraw a variance that was granted, however, Town Law, Section 267A, does contain a provision which allows the Board, on its own motion, to rehear a matter that it believes ought to be reheard. Why you are here tonight is to convince the Board to make that motion and pass it, and according to law, not Town Law, it's State Law, that motion has to pass unanimously. That merely opens the door for a subsequent rehearing of the entire application which requires a new publication in the newspaper, and a new public hearing as if the first one had never taken place. At that rehearing both sides will get to make their case, the applicant will come in first, present their reasons for needing the variance and the opposition will get their chance and after all is said and done, the Board will again vote as to whether or not to uphold, modify, disclaim, or take away the original variance. That vote, unlike any other that the Zoning Board needs, also has to be unanimous. So that the opponents of this application need to achieve a unanimous vote of the Board as it sits, twice in a row, on two separate occasions. That is State Law. A unanimous vote is to overturn at the other end the variance. If the vote is 5 to 1 the variance stands, it has to be all or nothing. If you are unsatisfied with the action the Board takes your next step would be to bring an Article 78 to the Court. The individuals will vote as they see fit based on the record before them.

Mr. Dudick referred to the sheet of statistics presented by Mr. Burnes and explained that each application is judged on its own merit and sometimes the variance requested would be one percent and could go as high as fifty percent, so to say the average is twenty and what does it indicate if someone is asking for more than the average, each application is unique and the body of this Board changes membership from year to year which also creates some dynamic as to how Boards vote. He addressed the issue of taxes paid by the applicant for the last 22 years and noted that it is taken into consideration when addressing the hardship factor. She has owned the property longer than the current zoning has existed. Referring to the statement that the Board took an atypical action when granting this variance, each application is judged and granted, or not granted, on its own merits so to say that one variance is atypical than any other, they are all unique. He stated he has never felt that any one variance that came in front of the Board was atypical from any other variance. They are all unique. He explained that the Board is looking now to make a decision to rehear the entire application and that vote needs to be unanimous.

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Mr. Lemire made a motion to rehear the application from Phyllis Murray. Mr. Ritter seconded.

Mr. Koval asked what he should base his decision on to rehear. Is there a reason that they should be saying yes to rehear this application.

Mr. Dudick responded there should be a logic that each Board member has when making decisions if he/she wants to rehear the application. If they feel that something has happened or been said, that had they been aware of it, they would have come to a

different conclusion. If everything you're hearing, had you heard, you would have come to the same conclusion and nothing has been brought forth to make you feel something new and different is being presented, that there is no new knowledge that would have any bearing or effect on it, then you would make the vote appropriate to that. The question is, is there a new and different argument that's being presented or some information that seems to be apparent that would create a possible different outcome of the vote.

Mr. Lemire stated his rationale for making the motion is that in reviewing the minutes there seems to be some information provided or statements made that may have been refuted by some of those present tonight and may not have been said by the applicant's representative if delved into further after questioning or would have been clarified. He feels there is enough information in the minutes to warrant giving the applicant another opportunity to come in and present her case and to allow those affected by the application an opportunity to come in and present their position.

Mr. Ritter noted that new issues have arisen, not that we need to overrule the decision that this body has made, but if in order to truly come to a due process of the decision that was already warranted, based on the evidence that was presented tonight, based on the evidence in the minutes, other than the cost of rehearing the application, this applicant is still involved in the planning process, there is still no strong commitment either way to build the structure should it go through, he does not necessarily think that if they have a clear objection, right, wrong, or indifferent, that we should at least honor that concern and let the voices be heard from that perspective. He would hope that as a body that does things in fairness for all residents that the Board would at least entertain that process to happen.

Mr. Dudick added that the Board is made up of Clifton Park residents, it is a voluntary board, we are all your neighbors and we try to use that criteria, in other words what would happen if this were my neighborhood, by the same token we have to weigh back and forth if we were in your position and if we were in Ms. Murray's position. The Board has to consider what's fair to the owner of the property making the application as well as what's fair to the people around it within the scope of the law as we see it.

Mr. Dudick called for a vote to rehear this application. Ayes: Dudick, Kortz, Koval, Lemire, Ophardt, Ritter. Noes: None.

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Mr. Ritter made a motion to approve the minutes of March 21, 2006, Mr. Ophardt seconded. Ayes: Dudick, Ritter, Kortz, Koval, Ophardt, Lemire. Noes: None.

Mr. Ritter made a motion to adjourn the meeting at 10:35 PM, Mr. Dudick seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb
Secretary

Cc: Town Clerk, Zoning Board Members, Louis Renzi, Counsel, Steve Meyers,
Department of
Building and Development, Planning Board, ECC, Assessor