

Clifton Park Zoning Board of Appeals Meeting Minutes
April 18, 2006

Present: Michael Dudick, Chairman, Gil Kortz, Jessica McCarthy,
Eric Ophardt, Christopher Lemire, Robert Ritter (arrived
7:20 PM)

Absent: Dale Gleason, Joel Koval

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

Mr. Dudick called the meeting to order at 7:07 PM.

NEW BUSINESS

1. An application from Capital District Contractor, requesting an area variance from Section 208-12A from the required 80 ft. setback from the front property line – actual front yard setback = 67.5 ft. - variance requested = 12.5, and an area variance from Section 208-12A from the required side yard setback of 10 ft. – actual setback = 4 ft. – variance requested = 6 ft. The property is located at 227 Lapp Road, Clifton Park. Permit #80593.

The secretary read the legal notice as it appeared in the Daily Gazette on April 13, 2006.

Joe Mertik, 227 Lapp Road, presented this application. He explained that he wants to add a detached garage for additional storage. He explained that this is a raised ranch with a very small garage that is not adequate for his storage needs. The new garage will be eight feet behind the existing house.

Ms. McCarthy asked why the front property line is measured from the centerline of the road versus the front property line. Mr. Mertik responded that the Town law states that you have to be 130 ft. from the centerline or 80 ft. from the property boundary.

Mr. Ophardt asked the applicant if he had a map indicating the proposed project. Mr. Mertik presented a map showing all distances and the proposed garage.

4/18/06 Page 2

Ms. McCarthy inquired about the wooded area shown on the south side of his property. The applicant explained that it is an 85 acre parcel belonging to his neighbor and the nearest house is approximately 600-700 ft. away.

Mr. Kortz asked if there is an existing garage. Mr. Mertik responded this is a raised ranch with a very small claustrophobic garage within the raised ranch. Mr. Kortz asked if he planned to keep that garage. He responded yes it will be a second car garage. It will be

only 14 ft. wide and will contain storage area. Mr. Mertik explained that the house as it sits today does not meet the current zoning laws.

Mr. Kortz noted that when the house was built it did meet the zoning requirements but due to changes in the law it currently does not.

Mr. Dudick asked the applicant to explain why he is not attaching the garage to the house.

Mr. Mertik responded the cost would be twice as much. The proposed garage will cost \$30,000 and the estimates he received for an attached garage would be \$60,000 due to the relocation of the electric, requirements for full footings, fire rock on the inside walls, etc.

Mr. Ophardt asked about the finished siding for the garage. Mr. Mertik stated it will be six inch wood frame construction with vinyl siding.

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

Mr. Myers stated that he has no concerns with this application. He had met with the applicant and explained the setbacks needed. The garage will be setback further than the house. He feels this is an insignificant request. He noted that he used the worst case scenario when figuring the variance amounts needed.

Mr. Dudick asked about the height of the structure. Mr. Mertik responded approximately 15 ft. at its highest peak.

Mr. Myers explained that the floor of this garage will be slightly higher than the existing garage but should be of no issue. He noted that the house is lower than the road. Mr. Mertik explained that there should be no runoff at all; there will be French drains on both sides and gutters along the roof.

Mr. Myers also noted that if the garage were setback any further it could encroach on his leach field and create other problems.

Mr. Dudick stated that there is no effect on the character of the neighborhood.

4/18/06 Page 3

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

2. A rehearing of a variance granted on February 28, 2006 for an application 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.

The secretary read the legal notice as it appeared in the Daily Gazette on April 13, 2006.

Mr. Dudick explained that this application was heard, voted on, and granted. Then issues were brought to the Board as to whether or not complete information was available and whether the public was given the opportunity to speak. A vote was taken at the last meeting so the public was allowed to come and speak and present their views on this application.

Mr. Renzi explained the procedure that will be followed for this application. He explained that he has had conversation with representatives from both sides indicating that as it stands the variances is in place, the rehearing is for the purposes of allowing certain members of the public who asked for it, the opportunity to be heard based on their position that they hadn't gotten adequate notice the first time around. The issue of whether or not legal notice had been proper has long been resolved in favor of the Town, but Mr. Burnes and certain other neighbors wanted an opportunity to present to this Board their feelings and position with regard to the variance application. This Board on its own motion granted this rehearing and at this point the chair will recognize Mr. Burnes and his associates and give them an opportunity to be heard after which time if Ms. Murray wishes to be heard again she may and it is entirely optional, at her discretion. At the end of the hearing the Board may chose to not make any motion whatsoever, or any Board member may make a motion to modify or terminate the previously granted variance. If such a motion is made it has to be passed unanimously by all the members present and voting. There are six members present, there has to be a 6-0 vote for there to be any effect on this variance. If the Board does not make that motion or moves and doesn't achieve a unanimous vote then the variance stands as it was passed.

Mr. Ritter asked for clarification on the procedure. He asked that after hearing the whole case and this Board does not vote unanimously to overturn or modify by one person then what was passed originally stands in place. Mr. Renzi responded yes.

Bob Gauvreau, 13 Oakwood Boulevard asked, when a variance is passed does it take a unanimous vote of the Board? Mr. Renzi responded no, it is the majority of the members present and voting as would be the case in any meeting. This is a very special type of procedure as carved out in New York State Town Law as to how we got to this point tonight, which most of the folks here understand, and the fact that these votes have to be unanimous. That is not

4/18/06 Page 4

anything the Town made up, it is in State law.

Jim Burnes, 14 Oakwood Boulevard, presented aerial photographs of the area and requested the Board make a motion and unanimous vote. He spoke to his concern that Mr. Rabideau made claim at the last meeting that his sump pump discharge was the cause of the drainage issue. He stated he had a letter faxed for the Board. He hired Kim Copenhagen, consultant who used to be the Environmental Specialist for this Town

among other qualifications, to look at his property and offer her opinion if he is a big cause of the drainage issue and if he is how he can remediate that and to look at the whole block and offer her opinions. He highlighted some of her points. He stated that she indicates that his sump pump is probably one of the contributing factors, not the only factor. He explained that he moved his sump pump discharge to the front of his property away from the back. Fill was also advised to raise his backyard 1-11/2 ft., which he has not taken action on yet. He also noted that she looked at the whole block regarding the drainage issue. He noted that she feels the construction of a home will add some to the drainage issue. Rain will fall from the roof into the soil surrounding; removal of trees will affect the consumption of water by the trees and their evaporation process, so that construction in that area without any remedy taken increases the problem. He also noted that there is an existing drainage from the middle of the lot down towards Rioux Court that drains into a ditch on Boyack Road and she brought up the question if the project goes through who is responsible for that drainage and maintaining it. He also noted that she added the woodlands behind the house and a small seasonal pond is sort of an ecological niche that would be disrupted by the construction process. He noted that even though this may be more of a Planning Board issue he feels the Zoning Board does have some responsibility in evaluating the detriment to the neighborhood from the project.

Mr. Burnes stated that he looked into State law regarding the criteria for decision making and he feels on several counts this project fails those criteria. He referred to Section 267B under area variances and read the criteria that the ZBA should take into consideration in granting an area variance. He stated that he feels that this would not pass the test as outlined in those criteria.

He stated that he has seen discussions in the minutes that he researched and he feels that Board members were pretty well aware of that.

He stated that he would like to revisit the idea that this is sort of a significant action. He believes that he used the term extreme or atypical at the last meeting and Mr. Dudick explained that each case is unique but he still feels at times in the minutes the terms substantial request or significant request has come up and he feels that this does fall into that category. He reiterated the data he found in reviewing the Board minutes. He stated there were 46 setback variances granted over the years '02, '03, '04, and the first couple meetings of this year. Some of them were similar to the earlier application, adding a garage onto an existing structure, which he feels is considerably less intrusive than a new home where there has never been anything. In terms of the significance of the variance, 41 of the 46 variances were for a one side variance, this one is a three sided variance so he views it as significant or substantial in that regard. He also views it significant or substantial in the amount of the requirement that was relaxed, 36 of the 46 were a smaller percentage of relaxation.

4/18/06 Page 5

Lastly, he referred to how this fits in with overall Town policies particularly like open space. The Town has some initiative to preserve or maintain or gather open space for the public's benefit and obviously this is a small section of open space but it seems to be

pretty important to the community at large. He referred to a survey by the Open Space Committee in 2002 that asked if conservation of rural character and open space resources are important. He stated 92% of the respondents said yes so this is sort of contrary to some of the initiatives but in a larger view in the Town.

Mr. Ophardt referred to the Planning Board minutes of March 28th that refers to the power of the Board to add landscaping to screen views and handle drainage issues. He asked what

Mr. Burnes feels could be done by the applicant to satisfy his concerns.

Mr. Burnes responded that he is not sure what technically or physically could be done but his concern particularly with the house being closer to him than what normally the zoning would allow. He is concerned that it pushes the runoff closer to his house and he already has a moisture problem.

Mr. Ophardt explained that the Planning Board can address the issues of drainage and possible solutions. Mr. Burnes stated as it stands now he does not know what has been proposed or approved and he is concerned with the proximity. He stated that Ms. McCarthy visited the property and she could speak to the Board on her opinion. He asked if anyone else on the Board visited the site.

Mr. Ophardt asked if trees were preserved and drainage resolved would that help. Mr. Burnes responded it would alleviate some of his concerns. He noted that he looked at the map when he received the letter from Ms. Murray and looked up the zoning and thought 50 ft. would not be too bad, but in granting the extra 25 ft. variance it takes out most of the trees that would have been the buffer. Planting new trees would be an option that is not up to him.

Mr. Ophardt stated that he looked at the criteria in Section 267B and wrestled with the issue of whether an undesirable change would be produced in the character of the neighborhood or detriment to nearby properties would be created if the variance was granted. He explained that this is in character with the area; it is a house, even though it is a little closer than allowed, so the character is not changing. Whether the benefit to the applicant can be achieved by other means is self-explanatory, basically without granting the variance you are rendering the lot economically unviable.

Mr. Burnes referred to the applicant's investment in the property and he noted that they engaged a realtor to initiate a discussion on making an offer on the property but he does not know where that stands. He stated he feels that is a viable option that might make everybody happy. He stated there are several neighbors that would be interested in joining together to purchase the property to make it a permanent solution.

4/18/06 page 6

Mr. Kortz noted that would have been between him and the applicant and if that had it been done before tonight they would not be here.

Mr. Burnes stated that is another option relative to are there other options.

Mr. Ophardt stated in regards to the criteria he does not feel they have met what they are asking for. Whether there is an adverse affect on the neighborhood. He stated this is less than an acre lot and the applicant is using about 2,000 sq. ft., the rest could stay wooded, arrangements could be made to add trees and address the drainage issue. Mr. Ophardt feels there is more that could be done between the neighbors and the applicant to reach an agreement and address everyone's concerns.

Mr. Kortz stated that he looked at the property and having been on the ECC for many years, he looked at the whole area and it is obvious that a long time ago it use to be a part of a system but back when those subdivisions were built they did not pay as much attention to that as they do today, and it has now become a completely isolated pocket. As far as a large scale environmental impact, in his opinion, there is none because now it is an isolated pocket constrained to that lot. He realizes there are drainage problems. He shared additional information he received from Jason Kemper, Director of Planning, stating that typically on a project like this the Planning Board will require a grading plan as well as a storm water management report. The Planning Board will make sure that the drainage patterns will not cause a significant impact on the neighboring properties. Mr. Kortz explained that what he was looking at in granting the variance, since the ZBA is not here to actually recommend mitigations in that sense, because that is where Planning is expert, he was looking to see if it was possible to do without a substantial impact on neighboring properties. In his opinion he thinks it is possible and from what he's read and what he received from Planning, it may cost more and the applicant may decide she does not want to invest more, but they will really work to make sure there is no substantial impact. He continued, he is convinced the Town will work hard to make sure that the neighboring properties are not impacted.

Mr. Burnes stated that Mr. Bulger made some indications, in a very general sense, that if they are going to put a pond in your backyard they will not approve it but they directed us to pursue the issue of the variance with this Board.

Mr. Kortz referred to the Planning Board minutes of 3/28 stating that there are apparently a number of issues regarding this application. The Planning Board is bound by the decisions that are being discussed tonight. He also noted that he asked that Clough Harbour investigate the drainage area and provide recommendations for improvement.

Mr. Burnes asked if Clough Harbour reviewed that and commented. Mr. Dudick responded there is no information from Clough Harbour but this Board has reviewed the minutes of the 3/28 Planning Board meeting, a letter from Mark & Danielle Emerle, and a copy of the report from Copeland Environmental.

4/18/06 Page 7

Mr. Lemire asked Mr. Burnes why he feels the variance granted is substantial. Mr. Burnes responded that in reviewing the data of the actions of this Board over the last

several years the majority of the variances granted, 41 out of 46 were for one side, based on the number of sides the variance was granted on is significant or unusual. He realizes that each variance granted is unique but he feels this is more unique than others. He also feels that 36 of the variances granted were for a lower percentage of the normal requirement.

Mr. Lemire asked if the variance is upheld is your position that it will be a detrimental effect on the surrounding properties and why. Mr. Burnes responded as it stands now yes. The drainage is the primary issue that a number of the neighbors are concerned about because at this point there are no guarantees that there will be a catch basin or town sewer for drainage. He also noted that in the 2/28 minutes of the Board there was discussion on the amount of room there was between this house and the neighboring houses and he is concerned that it may hinder his ability to add on to his house.

Mr. Renzi explained that if any addition to his house is within the envelope of what is allowed under the current zoning no variance would be needed. If you needed to encroach on your property line that would be taken into account at that time as any other application.

Mr. Dudick expanded on that stating that whether this variance is continued or not it would not have any effect on your ability to build, it goes to property lines issues.

Mr. Burnes asked why then does the distance from neighboring structures come up at meetings rather than distance to the property lines. Mr. Kortz explained it is brought up only to help the Board make a determination whether or not there is some effect on the character of the neighborhood. It is one of many factors to look at.

Mr. Dudick stated that even though we look at property line issues we do not ignore where other structures are and we look at height and size of structures, we look at the totality of the request for the variance as opposed to just looking at property lines. If you have a row of houses and one house is out of the row it creates a different appearance, so if a variance is requested that might not be that substantial but still puts one house maybe 50 ft. closer to the road than every other house on that street, even if the variance is not that substantial, it still has to do with the appearance of the neighborhood.

Mr. Burnes stated that is a good point, that applies here, you are going to have one house 150 ft. behind all the other houses on Boyack Road. Mr. Kortz explained that it really has to do with where they build within their building envelope.

Mr. Renzi stated he is getting the sense that you would like the Board to say that particular fact is irrelevant and the Board should not be considering it and from Counsel's position the Board is entitled to look at the entirety, the totality of the circumstances here that will involve distances from buildings to property lines, it will involve distances from buildings to adjacent buildings,

which is the circumstances you bring up, and virtually all of the site lines and any other fact that could be brought to bear in an application. These are all relevant inquiries on the part of the Board and they are entitled to make that inquiry and they should be making that inquiry because the bottom line is at the end of the day has to be a balancing. They are charged by State law, Town law and all the Court cases that come down under this umbrella to balance the interest of the applicant versus all the folks around that applicant. No one is pretending that there is not ever any effect. The question is whether that effect is so deleterious to the surrounding property owners that it calls out not to be granted. It is his job as Counsel to make sure that is the direction the Board and everyone before the Board stays in, that they don't get too far distracted into what tends to be minutia.

Mr. Burnes stated the Board has given him information that this would not inhibit him from doing something on his property within the current zoning he is happy with that.

Mr. Lemire asked what, if any, detriment would there be to the nearby properties. Mr. Burnes responded the drainage is the big thing. You are pushing that closer with the runoff from the roof will be 25 ft. closer than it would have been.

Mr. Kortz stated that he appreciates all the information that the Board was not aware of at first, but in rethinking about it all, looking at all the information, and balancing between the applicant and the neighboring properties, ironically granting the variance will not only allow the applicant to legally build there, it will allow for the positioning of house and some adjustments the Planning Board can make to further mitigate any situation, it grants more flexibility. He explained that when this gets to the Planning Board and the engineer gives them a follow up report, if they haven't already, they can recommend mitigations then he feels this Board is obligated to give the applicant a chance to use the property.

Bob Gaverau, 15 Oakwood Boulevard, stated he is concerned about zoning changes in the Town. He asked Mr. Lemire if he considered this a substantial variance since he had asked

Mr. Burnes if he thought it was and he said yes.

Mr. Lemire responded it is his understanding that Mr. Burnes needs to define or present evidence to meet certain criteria and that is why he asked him that question.

Mr. Gaverau stated that Mr. Dudick used the term substantial variance so evidently it is a term that is common, so he would just like a yes or no if he considers this is a substantial variance.

Mr. Lemire explained that it is one of the criteria that he needs to think about in granting or in this case "un-grant" a variance, it's one of several things that need to be discussed that is why he asked Mr. Burnes about it. If you think it is a substantial variance, he would like to hear why he thinks it's a substantial variance. Mr. Gaverau responded he thinks it is a very substantial variance. Mr. Lemire asked why. Mr. Gaverau responded his second question is if this variance, which he considers substantial, he asked if

everyone on the Board walked the property. Not all
4/18/06 page 9

Board members had walked the property. Mr. Gaverau stated that he received a letter in the mail stating that he was within 500 ft. of the property but there was no map attached. After looking at the map he feels they are trying to “shoe horn” in this house. He stated that at one time the neighbors were offered to buy this section of property; all they had to do was pay lawyer fees. Not all neighbors were interested. He feels this is no place to put a house.

Mr. Kortz explained that in granting the variance it does not lock in the exact location of the house. The map shows a proposed location. It is a Planning Board issue.

Mr. Renzi explained that procedurally, if the variance stands, the matter will be handed back to the Planning Board, there will be one or more work sessions addressing all the details, i.e. the size, location, height, drainage issues, etc. The public will be invited to be a part of the hearing.

Mr. Gaverau stated that if the map was a part of the letter from the applicant he would have paid more attention to it. Mr. Renzi responded that is why there is a rehearing. He asked what the vote was on the approval of the variance. Mr. Renzi stated he does not remember. He explained that this is not an opportunity for him to cross examine the Board members. If he has information that speaks to the application itself it should be presented to the Board.

Mr. Ritter stated in fairness to the Board he did review the property prior to the initial vote on the application and he thought the entrance to the property should come from Crescent Road, not Boyack and he still feels it should go that way, but if it did go that way the question of this being a substantial variance would go away. They would not need the setback variances. He stated in the original vote he voted no because he did not like the entrance off Boyack Road, it had nothing to do with any of the other issues.

Mr. Renzi responded to the question of the vote on the original application. He stated there were five ayes, two noes.

Mr. Gaverau asked if they entered from Crescent Road what variance would change. Mr. Dudick explained that it would not be considered a keyhole lot and would create different issues.

Mr. Myers explained that the keyhole lot issue would be eliminated but there is a 200 ft. lot width at the building line that would be required. The setback issues would go away. The requirement would be 10 ft. side yard setbacks.

Pat Campoli, 3 Boyack Road, submitted pictures of the site. She explained that her property will be affected on two sides. The north side will be affected by the driveway. She indicated her driveway and noted that the proposed driveway will go along her whole

side yard and the house will be in the back of her property. She requested that the variances be denied for Lot 1B. She referred to the requirement that 50 ft. setbacks for keyhole lots ensure that homeowners do not have to endure encroachment and loss of privacy. She is concerned about the safety of her
4/18/06 page 10

children with the addition of a driveway along side her home. She also noted she is concerned with her property value. The characteristic of the neighborhood is large front yards and large backyards that allows for privacy. She also noted that her rights and those of her neighbors not be compromised by one individual whose variance request has the potential to adversely effect the characteristics of their neighborhood.

Ms. Campoli responded to a comment made by Mr. Dudick at the previous meeting, he suggested that they should be tolerant of what neighbors want to do on their property. She stated that she fully concurs. Had Ms. Murray asked for a few feet there would be little or no opposition to her request but in truth she is asking for 50% more than allowed and she feels this is unreasonable. She also stated for the record that she has photos to document her claim that she has endured debris, old tires, a rusted swing set and other discarded items in direct line of site from her property. She stated that good fences make good neighbors but good ordinances make better ones.

Christine Izzo, 16 Oakwood Boulevard, thanked the Board for having this rehearing. She explained that she has no personal issues with Ms. Murray or her family. Her issue is with the subdivision, lot line adjustment, variances and the project itself. She feels there are other options that the applicant can consider and the benefit sought by the applicant can be achieved by some other method. She explained that she has initiated discussion regarding the purchase of this property per a letter to Ms. Murray sent on April 12, 2006. She stated that there is no significant investment in the property, the cost of the parcel was \$1.00, and the land is assessed for \$4,800, total property and school taxes paid over 22 years total less than \$3,340.00 and this is calculated according to current tax amounts of \$30.91 and \$120.91 times 22 years. She asked if anyone had any information to add about the history or intent of the original landlocked property. She explained that it is her understanding that the original lot lines were made by the developer, Rosen & Michaels, as a landlocked parcel. She feels the developer could have drawn it differently and built another house for his own profit if that was the intent of the property, thus it seems that the original intended use of the property was for open space buffer and/or for drainage. She continued, this original landlocked lot was offered to adjoining neighbors years ago for lawyer's fees only. She noted that there is significant community opposition to this project as demonstrated by a petition of individuals in the neighborhood. She submitted the petition for the record. She noted there are 48 signatures representing 35 homes, most in the immediate area of the lot in discussion.

Ms. Izzo continued, the requested area variance is substantial. It is a 50% variance on three sides as well as subdivision and lot line adjustment in a keyhole lot that is abutted directly by ten other properties for the purpose of building an entirely new structure where none currently exists. She stated the spirit and intent of the 50 ft. setbacks for

keyhole lot setbacks is exactly to prevent what is proposed here. What is the purpose of having setback regulations if such substantial variances can be obtained that directly affect so many other properties whose owners are opposed for many valid reasons. A significant and undesirable change will be produced in the character of the neighborhood in regard to density, aesthetics, and privacy. This project will
4/18/06 Page 11

have an adverse impact on other homes in the neighborhood especially troubling is the effect on physical and environmental issues do to the drainage problem, which has been brought up previously and continues to be a valid concern. She also noted there are issues regarding property values, construction noise, and safety. She asked for a unanimous vote for a reversal of the original decision on this area variance tonight for the above reasons.

Mr. Kortz asked if she has received any response regarding the discussion initiated about the purchase of the property. Ms. Izzo responded that a letter was sent from Rainey, as an intermediary, and asked if the Board has received any information. Mr. Renzi responded there is nothing in the record. He asked if there was a proposed purchase. Ms. Izzo responded not a proposal but opening discussion about purchasing the property.

There was discussion regarding the numbers presented by Ms. Izzo regarding the applicant's investment in the property. She reviewed the figures. Mr. Renzi asked if she examined the tax stamps. She responded no.

Mr. Ophardt referred to her statement that there could be another use for the land. He asked

Ms. Izzo what she thought the applicant should do with the land. Ms. Izzo responded it's not so much another use for the land but she feels there are a lot of homes for sale and land available in the area where the applicant could relocate.

Mr. Ritter asked if she knew what the fair market price is that was offered or is on the table.

Ms. Izzo responded there is none on the table and she is not sure how that is going to work out it depends on the variance. She stated they would be willing to purchase it but a fair price to them is probably different than what a fair price to the applicant would be.

Larry Williams, 5 Boyack Road, expressed his concern with the drainage issue and overall appearance of the neighborhood. He stated that after talking with a real estate agent if this project is approved and he were to sell his house next year he would get \$30,000 less for it.

Mr. Lemire asked if he spoke with a real estate agent. Mr. Williams responded yes, it was a friend of his. His opinion was that this project would affect the value of their homes. Mr. Williams stated that it will not look right.

Mr. VanGuilder, land surveyor, responded for the applicant. He submitted for the record an updated map indicating the actual size house and approximate location on the lot. He

stated that the house will be in the 1,500 to 1,700 sq. ft. range. He stated that variances requested were to allow for adequate room to position a house that had not been chosen yet. The house shown on this lot is the actual footprint that is being considered. The rear yard will be approximately 41 ft. from the Burnes' property. It will be built as close as possible to her own property. He referred to the discussion regarding access from Crescent Road and reiterated that if a variance was granted for the 200 ft. width at the building line the side yard requirement would then become 10 ft. from the adjoining properties, so the house could be built closer to the existing residences than

4/18/06 page 12

this would allow. He stated that he is not requesting that variance be considered he is just bringing the issue up in front of the Board. He also asked everyone to consider the overall lot sizes in the area. He noted that the larger lot sizes are .46 acres, and .45 acres, the remaining lots are .37 to .34 acres, the proposed lots for Ms. Murray are .76 and .828 acres, more than twice as large as any of the lots that currently exist in the neighborhood. Mr. VanGuilder acknowledged that there is a drainage problem in the area and Ms. Murray expects to work closely with the Planning Board to any resolve to that problem that can be met with possible granting of easements from the neighbors. He noted that there is an existing pipe; he believes was installed on Ms. Murray's property, by someone other than herself. There is a stoned entry to an underground that runs out to Boyack Road. If there is anyway to enhance that drainage the applicant is willing to work with the Planning Board through the site planning process for the positioning of the house. She wants to work with the neighborhood; she has been a member of this neighborhood for more than 20 years. She bought the original house from Rosen & Michaels, she was the original owner, she wants to stay in the neighborhood, and she has a son that will be in the Shenendehowa school system for another five years. This is a viable option for her to exercise to stay in the neighborhood.

Mr. Kortz referred to the drainage problems and the possibility of a catch basin. Mr. VanGuilder responded that the attempt that was made has been effective. It is somewhat effective but he believes it can be made more effective with a little bit of remedial work. He explained that the piping goes across other people's property to Boyack Road, so any work that would have to be done would require easements.

Mr. Kortz asked if the catch basin might replace the ponded area and asked if anything could be done to maintain the benefit the neighbors see from this area. Mr. VanGuilder stated that he doubts if that area is ever scenic or if it's anything other than a mosquito breeding area.

Mr. Kortz asked about buffering for the neighbors and if the driveway can be moved away from the Campoli property. Mr. VanGuilder stated that the driveway can be pulled away from her property it was only shown this way for schematic reasons. Some of the trees will have to be taken down because of the grading necessary to take the mounds of material away. He noted that CPWA has requested that they move the driveway a little bit to the north because there is a water shutoff for the existing house in that area. They will pursue that as part of the site plan process.

Ms. Campoli asked how far the house will be from her property line. Mr. VanGuilder responded it will be approximately 27 ft. from her property line.

Mr. Gaverau referred to the comparisons of lot sizes in the area and stated that it was eluded that this lot is bigger than the lots in the area. He asked if he included the useless pieces of the property in his .8 acres. Mr. VanGuilder responded yes. Mr. Gaverau noted that he feels there is no comparison to a regular lot. Nothing could be done in most of the area.

4/18/06 Page 13

Ms. Campoli asked how far the driveway would be from her property. Mr. VanGuilder responded at least ten feet away from her property and stated that they would like to preserve as many trees as possible along the driveway strip. He explained some of the smaller trees would have to be removed due to the removal of the fill.

Ms. McCarthy stated that she visited the Burnes' property and measured 25 ft. from the back of his property line and felt it did not look great. She noted that she visited Ms. Murray's property and after seeing the new plan presented, the proposed house will be 41 ft. from Mr. Burnes' property line and feels it is now doable.

Ms. Campoli noted that it will only be 27 ft. from her property line. Ms. McCarthy stated that her backyard seemed to be larger than Mr. Burnes'.

Ms. McCarthy responded to the comment that this is a useless piece of property and stated that it could be a very useful piece of property to the person who owns it.

Mr. Ophardt asked if there is anyway the proposed house could be shifted north. Mr. VanGuilder responded that they worked with Mr. Myers to try to work out some of these issues. The applicant wants to build a modest house that will fit in with the area. They are not trying to shoe horn in a large house that will not fit in environmentally or aesthetically.

Mr. Ophardt asked if there is any way to offset the amount of the house that is behind the Campoli lot. Mr. VanGuilder responded that Mr. Myers made the determination that the property line had to be 25 ft. from lot 1A and they are currently 25.5 ft. from that line.

There was continued discussion on the possibility of shifting the proposed house to the north. It was determined that it was not possible.

Mr. Dudick asked if they would keep as many trees as possible. Mr. VanGuilder responded yes.

There was discussion on the possibility of access to the lot from Vischer Ferry Road and the variances that would be needed. Mr. VanGuilder explained that he and Mr. Myers

tried to resolve some of these issues and it was decided that the variances requested would have the least amount of impact.

Mr. Kortz asked if there could be a solid hedge line along the driveway for safety reasons for

Ms. Campoli's children. Mr. VanGuilder responded that the bigger problem would be Boyack Road. There is a 10 ft. wooded strip of land between their property line and the driveway.

Mark Silverman, 7 Boyack Road, asked the height of the proposed house. Mr. VanGuilder responded it would be a two story house, it will be one story over the garage, pending Planning Board approval.

4/18/06 Page 14

Mr. Williams stated he has some answers regarding the drainage in place. He believes it was put in by original developer, some of it is on Ms. Murray's property; about 90% runs across his property.

Mr. Dudick made a motion to close the public hearing, Ms. McCarthy seconded, approval unanimous.

Mr. Dudick asked if anyone would like to make a motion to modify or vacate the existing variance or not make any motion at all.

Mr. Renzi again noted that it must be a unanimous vote of all members.

Mr. Lemire made a motion to vacate the previously granted variances. He stated he believes those present tonight presented an argument and a position and evidence that the variance presented by the applicant is substantial, that it has a detrimental effect to the surrounding property owners, that it has an adverse effect physically and environmentally to the neighborhood and that in reviewing the criteria the difficulty in some degree is self-created and he does not think this is the least invasive possibility to achieve what the applicant wants to achieve. Therefore he thinks there should be a vote to vacate the previously granted variance.

Mr. Dudick asked for a second on this motion. There was no second for this motion. Mr. Dudick stated the motion to vacate the variance fails.

Ms. McCarthy made a motion to modify the variances granted. She stated that the second map showing that the home that will actually be built is between 1,500-1,700 sq. ft., and gives

Mr. Burnes 40-41 ft., that the driveway would be moved slightly and that all the drainage issues can be addressed and approved by the Planning Board. Mr. Renzi explained that you cannot make a motion dependant on a future action of the Planning Board. Mr. Dudick noted that the position of the house and driveway would also be Planning issues.

Mr. Renzi explained that her motion would have to change the 25 ft. variance granted to another number. Ms. McCarthy stated she wants it to be 41 ft. from Mr. Burnes' property or a variance of 16 ft. instead of 25 ft. on the east side.

Mr. Kortz noted that he would like the Planning Board to have as much flexibility to reposition the house after they investigate all issues and with this motion it would lock them into a position.

Mr. Dudick also noted that the new plan presented allows for more space between the proposed house and Mr. Burnes' house which would require the need for a smaller variance. He asked if she wants to reduce the variance granted. Ms. McCarthy responded yes.

Mr. Dudick asked for a second on this motion. There was no second for this motion. Mr. Dudick stated the motion to modify this variance fails.

4/18/06 Page 15

There were no other motions made. Mr. Dudick made a motion to close the hearing on this variance, Mr. Lemire seconded. Mr. Renzi noted that there does not need to be a motion to close the hearing. Mr. Dudick stated that the variance stands as originally approved. He thanked those present for coming and making their presentations.

Mr. Ritter made a motion to approve the minutes of April 4, 2006, Mr. Lemire seconded. Ayes: Dudick, Ritter, Kortz, Lemire. Noes: None. Abstained: McCarthy, Ophardt.

Mr. Dudick made a motion to adjourn the meeting at 9:03 PM, Mr. Ritter 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