

ZONING BOARD OF APPEALS

June 5, 2007

Present: Michael Dudick, Chairman, Gilbert Kortz, Joel Koval, Christopher Lemire, Jessica McCarthy, Eric Ophardt, Robert Ritter

Absent: Dale Gleason

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

Mr. Dudick called the meeting to order at 7:10 PM. Mr. Dudick introduced Tom Paolucci, Town Board member.

Mr. Paolucci stated that he is here because there will be a discussion on the installation of communication towers and noted that it is an issue that is very important to the Town Board. Approximately six years ago they created some legislation that gave some guidance as where they should look to put communication towers. He noted that the Town Board with the previous application learned that there are some aesthetic issues that can arise if communication towers are not sited correctly. He stated that the reason for his coming this evening is because with this past application the town did not present any evidence, or have experts review the evidence that was presented by the applicants at the last hearing that was held by the ZBA. He introduced two experts that the Town Board has contacted to aid in the discussion of communication towers, Mr. Gregory Johnson, an attorney with Girvin & Ferlazzo, who has helped on other communication tower issues in the past, and is an expert in the field. He also introduced Mr. Richard Comey, an RF Engineer, who has decades of communications Experience and has done quite a bit with cell tower legislation.

Mr. Paolucci noted that he feels it is important to announce that both gentlemen are here because it is very important to the Town Board that they protect the interest of residents and make sure the right outcome comes out of these discussions. He explained that these gentlemen are here tonight to assist the Board in any way that is needed.

Mr. Dudick announced that there are several items on the agenda this evening. He informed those present that the application for Independent Towers on Sugar Hill Road has been adjourned at the request of the applicant and will be heard at the meeting on June 19th.

Mr. Dudick stated that the meeting will start with hearing the applications under Old Business.

OLD BUSINESS

- 1. An application from Independent Towers, LLC, requesting a Use Variance from Section 208-95B(2)(c) to construct a telecommunications tower within an R-1 (Residential) zone, and an area variance from Section 208-95(B)(9)(b) that a telecommunications tower be half its height from the sideline. The property is located at 953 Main Street (Jonesville Fire Company), Jonesville. Permit #80612.**

The secretary read the legal notice as it appeared in the Daily Gazette on August 10, 2006.

John Stockli, Stockli, Greene & Slevin, counsel for Independent Towers, presented this application. He explained that they are prepared to present alternatives to the site as requested by the town at the last hearing. He stated they have been doing an alternative analysis which included floating balloons, meeting with residents, and things of that nature.

Mr. Stockli stated that he just learned tonight that apparently the fire company, with whom they have a lease for this site, is taking the position that they are not interested in hosting the facility anymore. He explained that his client has been very cooperative in the process and has worked hard to satisfy the Board's request. With that being said they also are not interested in moving forward on a site where they have a landlord that is not interested and as a result are willing to withdraw the site with one contingency. The concern is that this site not then be used as a potential alternative in any future attempts to site the facility in this part of the town. In other words his client will leave the site voluntarily given these very recent developments but then doesn't want to be placed under their own petard and say later on, why don't you go to the fire department property. With that understanding, and an agreement from the Board that that won't occur, they'd be willing to stop their efforts with regard to this site.

Me. Dudick clarified the contingency, if and when Mr. Stockli's client comes before this Board again with an application for some other site in this area, and as we did with this application, we asked them to review other potential sites, we would not then say to them, why didn't you review the site of the Jonesville Fire Department.

Mr. Stockli responded correct. He explained that his clients have worked very hard and very cooperatively with the Town to try to come to a solution. They expended a lot of effort and monies in looking at alternatives since their last meeting. He noted that they are caught a little bit by surprise with these developments tonight but frankly they are not interested in being somewhere where the host landlord is not interested in having them. So that's what they would be willing to do but because they do have the lease right now they don't want to be held in the position to be held to a vote; well you walked away from what would have been the perfect site, they are just trying to be reasonable.

Mr. Kortz asked if they are saying that other cell companies would not have the right to try to come in and get a variance for that site.

Mr. Stockli responded that he does not know what other companies would be able to do.

Mr. Kortz asked if that is part of their condition. Mr. Stockli responded no his condition is just that they have been continuing on this long process and working very hard and you will see us again very shortly. As a result of this Board's input they have been looking at alternative sites for several months but they just are not interested in being in a place if the landlord does not want them and they can understand that so they will continue their efforts. He just wants to bring the protection into play that they not be somehow held to look at that alternative.

Mr. Koval stated that he cannot imagine a scenario where this Board would suggest that they go to a place that would require a Use Variance in order for them to do their business.

Mr. Stockli explained that he thinks you may find as this process goes forward that maybe the only feasible alternatives are Use Variance areas. They have some potential sites that they have been looking at thoroughly which may require some type of legislative action and/or variance. The conditions that the town placed upon citing really take a lot of areas out of the mix, the 500 ft. setback for example, so he can't tell us what they'll need but all he's saying is fine, to accommodate the Fire Department and he's sure there are many people here tonight that came on this project, they just want to make sure that if they do they are not held to have passed up the alternative that works down the road and so they want some kind of ok that it's not a feasible alternative because the landlord doesn't want us there.

Mr. Dudick explained if they were to present another application and you talked about all the different sites that you looked at certainly you could mention what you just said now and that would satisfy that he talked to the Jonesville Fire department people and they weren't interested in them using the space and would not be held it against them.

Mr. Stockli stated that he found out this information from the Town and from people who were contacted. He has not been directly contacted by the fire department but it is certainly enough for them.

He would prefer that the fire department contacted them directly but it is what it is. He does not want to be in a position, he thinks it is a fair comment because he can also hear someone saying you had a property right and you walked away from it so you walked away from a potential alternative. They are in an awkward spot where the actual host isn't excited about them being there. They would like to work productively and all he is looking for is some kind of affirmation that the Board understands that they are trying to cooperate and won't penalize them.

Mr. Dudick asked for comments from the Board. Mr. Koval asked for counsel's opinion. Mr. Kortz asked for strict clarification of what the Board will be agreeing to if they do that.

Mr. Renzi informed the public under full disclosure that the Town received this phone call today from the fire company. It was relayed from the Building Department to him that the fire company was not interested in pursuing this particular application. There was no opportunity to notify anyone that this was happening.

Mr. Renzi asked Mr. Myers if a representative from the fire company is available to clarify or to verify at this juncture. Mr. Myers responded not to his knowledge.

Mr. Renzi asked if he spoke directly to that individual. Mr. Myers stated that he did speak to him and was told that he told Independent Towers this morning on the phone.

Mr. Dudick asked that anyone who has any comment to please speak at the podium so their comments can be entered into the record.

Mr. Lemire asked if the applicant withdrew the application. Mr. Dudick responded that he is in the process. He is here to withdraw and has asked the Board a question before he withdraws.

Mr. Lemire asked isn't it the function of this Board just to merely rule on the application. He does not think we can make any firm assurances that at some point in the future we may or may not say anything about a future application.

Mr. Renzi explained that he feels in this circumstance we are talking about an applicant who at the present time has a verifiable and an enforceable property right. What Mr. Stockli is trying to communicate to us all is that if they wanted to they may very well be able to force the issue without regard to what the fire company says today because of a contract that has already been signed. He has indicated that his client is willing to walk away from all that if the condition that he mentioned is met and of course this Board would have to accept that condition.

Mr. Stockli indicated that from his perspective he does not think it is a lot to ask given that the alternative for them is to push ahead tonight and give the presentation. There are certainly a lot of people here that have a different opinion of the project. Independent Towers would be in the position of having to go battle a landlord that doesn't want them. This just doesn't make any sense so they would like the reality to be; ok sure you're doing something as a good neighbor, a good member of the community. He would like the clarity so that no one in the future can say you could have gone to the fire company and you walked away from that deal. They would not have spent a lot of the effort for this site had they known earlier that this was an issue. They understand it and just want to make sure that for future proceedings someone will not be able to say they walked away from the fire department.

Mr. Kortz noted that this Board has never voted on a condition for a withdrawal before.

Mr. Renzi explained that he believes this is essentially an offer by the applicant and what he will do when we're done is recommend to the Chair that the Chair either entertain or not entertain a motion to accept that offer and affirm the condition.

Mr. Dudick explained that his understanding is that there are certain rules and guidelines that the Board has to apply when they hear an application. As he sees it the applicant just wants to make sure that he's not going to be placed in a position of vulnerability that when he's making a future application the Board is not going to point to this one location that he's walking away from right now.

Mr. Kortz asked if this will only apply to Independent Towers. Mr. Stockli confirmed it is just for them.

Mr. Kortz asked how it will apply down the road if their company changes hands or names. Mr. Stockli responded they would not look at this site if the fire department does not want it.

Mr. Dudick stated that the Board would still follow the rules.

Mr. Kortz explained that he is just trying to get it clear about all the possible things that could happen. If they are not a company anymore or merge and are another name how would the condition be enforced?

Mr. Dudick asked counsel for clarification, if the Board accepts the condition that is being talked about would this prohibit them from making another application and trying again to have a cell tower at the fire house. Could they apply again because the application hasn't been denied, just withdrawn? He could make another application at another location if he wants to. He just wants to know that if he does go looking for another location that walking away from the fire house at this time would not be held against him. Is that correct?

Mr. Stockli stated that they would not reapply at the fire house.

Mr. Renzi stated that he is not sure that he understands all Mr. Dudick's question but will try to clarify. This application, if it's withdrawn, will be withdrawn with the condition should someday in the future the fire company and this applicant find middle ground again and want to come back with another application it would be treated just as any other application would be, entirely dinovo, all over again and new. They are not precluded by anything that's been said tonight from looking at that fire station as a potential site. What they are asking is that it not be held against them if they come back with an application for a different site in that part of the world, because under normal circumstances and under the Telecommunications Act the way it stands today, they would be held to that standard. The Board would have to ask why you didn't look at all the other potential sites in the area before you chose this one and quite frankly I believe that is what this Board said to them the last time they were here and that is what they have gone and done. As far as a successor company those things are proformer, if Independent becomes a different company but is essentially a successor to Independent there's no argument there, it's the same company.

Mr. Kortz asked if we would be agreeing that this Board, if they were to come in for an application for a different site, would not force them to look at the Jonesville site.

Mr. Renzi responded absolutely.

Mr. Ritter asked counsel if it isn't putting the ZBA in an uncompromising position to ask to put a condition on the withdrawal, isn't it like setting a new precedent for this Board? This is an incredible new ground that this Board is going into by saying that we won't hold you accountable to a standard.

Mr. Renzi responded that it's not that you're not holding them accountable to a standard but you're carving out a very, very small exception in one particular case as to one site. There are two real issues; one is that the ZBA has always had the right by statue to place conditions on any variance it grants. Secondly, he does not think it a stretch to say that it could be allowed to place a condition on a motion to permit a withdrawal. He does not find that to be a legal stretch.

Mr. Dudick noted that this is a rare situation where there is a withdrawal in the middle of an application.

Mr. Ritter pointed out that it is not the issue of the withdrawal of the application it is the fact that the applicant is saying that they will withdraw this as long as you don't hold us harmless on other sites or use that Jonesville site as why didn't you go there knowing full well that they tried to go there, they couldn't work a deal out with the landlord so they couldn't do that. He does not feel comfortable asking the Board to do something like that.

Mr. Kortz stated that he had the same reservations but if counsel can assure the Board that this is legally within the power of the ZBA to do then he doesn't think he'd have a problem.

Mr. Renzi explained that he believes: A) that it is and B) that as a Board you would be on much thinner ice if you attempted to accept the withdrawal and not grant that condition

Mr. Lemire asked if Mr. Ritter's problem is that we would be voting on a condition in a withdrawal where normally we would not be voting when someone withdraws an application.

Mr. Renzi responded you are essentially voting to grant this particular applicant an exception, down the road, theoretically in consideration for, and consideration is a legal word meaning in exchange for something of value, in consideration for this applicant: A) withdrawing and walking away from a legal right that they already have, i.e. the contract they signed with the fire company.

Mr. Kortz explained that he can't say the Board will be actually voting on the application. We don't vote to withdraw applications, that's not what this Board does.

Mr. Renzi explained that the Board will be voting to accept the withdrawal and accept the condition.

Mr. Kortz stated that we don't accept withdrawals either; they just withdraw if they want, right?

Mr. Renzi responded he believes you can.

Mr. Stockli explained that the one distinction from Mr. Ritter's concern about other projects is that this is the one area where the alternative site issue has really come to the forefront on private projects. Typically for any kind of a SEQR analysis private applicants don't have to look at alternatives for any other projects, public applicants do. The whole wireless facilities law, now 15-20 years old is premised on this concept of private applicants looking at alternatives. It is a very long, can be very costly process. It's unique and that's why they have a unique request. He is just trying to give some protection to do the right thing which is not fight with the Fire Department. They are in an awkward spot they may have to fight with them to maintain the right to do it, there are a lot of people who don't want it, and they are trying to do the right thing and all they are saying is they don't want it tossed back in their face at some time, it's a little thing that they are asking.

Mr. Lemire asked if all they are asking for is for this Board to acknowledge that any applications from Independent Towers in the future for cell towers in that area will not be premised upon using the fire house as an alternative site. Mr. Stockli responded yes.

Mr. Koval explained that he does not feel the Board is arguing with the request they are just trying to define whether or not they have the legal right to do this and if Mr. Renzi says we do he's the person to make that decision.

Mr. Renzi stated that he does not have any problem with it he thinks it makes eminent sense.

Mr. Lemire made a motion to accept the applicant's application to withdraw the variance for the Jonesville Fire Department site contingent or with the understanding that any applications they may bring in the future, the ZBA will not use the Jonesville site as a viable alternative.

Mr. Dudick seconded.

Ms. McCarthy asked then if this site can never be considered an alternative site for any application. Mr. Dudick responded no, just for this applicant in that area.

Mr. Dudick announced that the applicant is withdrawing this application and asked if there is any public comment.

Gerard DeWolfe, a resident within 500 feet of this site, noted that earlier on counsel indicated that his concern was that a competitor may utilize that site on a subsequent application. He would suggest that in terminating the lease-hold agreement that there would be a condition of that termination barring the fire company from entering into a future lease so that this whole question is taken off the table.

Mr. Stockli commented that they do not think that can be done legally. Mr. DeWolfe responded that for the purpose of Independent Towers that they are indeed a party to a lease with the fire company. Mr. Dudick explained that it would be akin to you making a statement that you are going to prohibit some other person from ever buying your neighbors house

Mr. DeWolfe stated the point here is that there is a legally binding arrangement and that consideration for release of that legally binding arrangement would be some consideration from the fire company.

Mr. Dudick noted that the applicant cannot speak for the fire company. Mr. DeWolfe stated that the fire company has to execute a lease termination agreement and as a condition to that lease termination agreement the fire company can indeed commit not to lease this property to any future telecommunication company plain and simple.

Mr. Stockli stated that they will just terminate their lease.

Mr. DeWolfe asked about preventing competitors from utilizing the site. Mr. Stockli responded that he cannot speak to that he can only speak to Independent towers and what they are trying to do.

Mr. Dudick asked for any communication to be between the speaker and the Board instead of back and forth with the applicant. He thanked the speaker for his comments and stated that he does not believe that is an option the Board will consider in their vote to allow for withdrawal.

Mr. Dudick made a motion to close the public hearing, Mr. Ophardt seconded.

Jay Russell stated that there was an article in the newspaper today so someone had to know earlier than today. He asked Pam Allen where she got her facts. She replied yesterday from the fire department.

Mr. Dudick asked Mr. Russell to come to the microphone. Mr. Dudick informed everyone that he just found out about the withdrawal tonight. Mr. Renzi explained that Mr. Myers received a call this afternoon and e-mailed him the information at approximately 3:00 PM. He noted that if there was information out there before hand he's sorry but he did not see it.

Mr. Russell stated that he doesn't know if he should be for this or against this because either he looks at it out of the front of his house or he looks at it out the back of his house and he's invested a lot of money in his property and would like the Board to take consideration in the hamlet not only for him but for his neighbors no matter if it's a golfer or a person traveling through Main Street.

Matt Garabedian, 7 Castlegate, expressed his concern that we haven't heard directly from the fire company. We know that a call occurred to Mr. Myers and he does not know if we can substantiate who that call came from. He doesn't know if we're hearing that Independent Towers is going to release the fire company from its obligation contractually.

Mr. Koval explained that is not the issue. They are here before the Board to ask for a variance and if they are withdrawing it is the end of the deal as far as the ZBA is concerned.

Mr. Dudick explained even if there was no phone call the application can be withdrawn for any reason they wish to withdraw. They gave the reason that there was some change of heart on the part of the fire house. It could be any reason.

Mr. Garabedian urged the Town to look at a master plan for cell tower coverage so that other communities don't have to go through what this community has gone through for the last year and fight potential tower sites on a regular basis. He knows the folks at Wishing Well who are here tonight will probably be at the June 19th meeting because that will be in their backyard. He thinks there is a real need to have a master plan and a strategy for cell tower coverage and communication coverage as communication continues to evolve.

Mr. Paolucci stated to stay tuned on that one.

Mr. Renzi explained that is an issue that gets addressed at the level of the Town Board; it is not a ZBA issue. The master plan is a town wide big picture.

Adam Dean, 5 Edward Street, is concerned if we do accept this withdrawal and the company comes back with another viable spot in the same area this whole area of Jonesville is going to need to come back to this issue anyway so he does not know if anyone is concerned with coming back and fighting it all over again when it's just moved another 1,000 feet down the road because we said ok, they withdrew this one that's fine, but six months down the road we're going to be back where we are right now

Mr. Dudick explained that the alternative is to force the applicant to make his application and if he is denied that application he can still come back in six months for another application 500-1,000 feet away. An applicant has the right to make an application for a variance before the ZBA.

Mr. Dean stated that he does not think anyone still is not going to get their voice heard now on the issue but six months down the road the issue will have to be heard again.

Mr. Koval explained that there are sites where they can put a cell tower that would not require them to come before this Board. This particular site required a Use Variance; there may be sites that don't require a variance in which case it wouldn't involve the ZBA.

Mr. Dean asked in his area. Mr. Koval responded yes in your area.

Mr. Kortz noted that the constituency has made it clear on how they feel about having something like that right in the middle of the hamlet.

Tracy Picarillo, 947 Main Street, just bought the house right next door and only found out about the cell tower a couple of days ago. She went house to house and several people on Main Street did not know about the meeting and were really upset. She does not know why they did not know and she wonders if this comes about again how do people get notified.

Mr. Renzi explained that in the initial stage of an application the residents within 500 feet of the property line of what ever parcel is being considered by the Board for a variance is notified by certified mail and that applicant has to show the Board that they have in fact made those notices and they proved that they have done that so that the residents within a certain circle get a notice. Beyond that the application itself is published in the legal notices section of the newspaper. This is a continuation of an application and since he has not been on the ZBA Board for a while he is not sure what the requirements of the applicant are for an adjourned hearing.

Mr. Stockli stated that they re-noticed. He has the receipts.

Mr. Dudick also informed the public that the agenda is posted at Town Hall as well as on the Town's website (CliftonPark.org). He also emphasized that this is a Use Variance and residents within 500 feet of the property line would be notified by certified mail, neighbors can tell neighbors.

Ms. Picarillo noted that they are talking about putting a cell tower on the VanPatten Golf Course Mr. Dudick replied that there has not been an application presented.

Mr. Ritter asked if the Board is voting to accept their condition of withdrawal. Mr. Renzi responded absolutely.

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

A vote was called on the motion regarding the stipulation agreement with regard to the condition of withdrawal of this application. Ayes: Dudick, Kortz, Koval, McCarthy, Ophardt. Noes: None. Abstained: Lemire, Ritter.

2. An application from Rafael Flores, requesting a Use Variance from Section 208-97B to allow for golf course & banquet house use in an R-3 zone. The property is located at 847 Riverview Road, Rexford. Permit #80629.

Frank Herba, consultant for Rafael Flores, presented this application. He explained that the applicant would like to add 6,200 sq. ft. to expand the banquet capacity and add an addition to the front of the pro shop for a pro shop and bar and tavern area for the golfers. He would also like to add rooms in the back of the existing building for people using the banquet facilities to have the opportunity to stay on-site. He explained that this addition is very small in terms of square footage. He referred to the previous zoning and noted that the applicant would have been allowed to put the addition on under that zoning but now a Use Variance is needed to expand the facility.

Mr. Herba referred to a photo of the entire project and indicated the proposed additions. He explained that the site is between Riverview Road and Appleton Road and is approximately 160 acres. He noted that the buildings have been in existence since the site was developed. There have been some additions over time. He noted that the pool has been removed and the building was renovated in 1999. He explained that they would like to put a 6,000 sq. ft. addition into the parking area. The tennis courts will be removed and expanded into a parking area. The addition to the front of the pro shop will not be more than 20%. He pointed out that even with the additions there will be very little impact on the entire site. He also noted that to maintain a golf course in the Conservation Residential zone is one of the accepted options for that particular zone.

Jim Trainor, counsel for Rafael Flores and the Mohawk Riverview Country Club, continued the presentation. He referred to his letter submitted as a supplement to the original application highlighting and detailing some of the considerations for the Use Variance. He referred to golf being a passive or active recreational activity and referred to a definition attached to his letter noting that in some areas it is considered passive recreation. He explained that he did not find a litmus test in the code on that point and emphasized the importance of passive recreation being permitted in the zone. He explained that active recreation is also permitted as long as it is a municipal facility, so if this golf course was owned by the Town it would be a permitted activity.

Mr. Trainor highlighted the elements of a Use Variance. He referred to the reasonable return issue and referred to the financial hardship that would be encountered without the expansion of the facility. He noted that this is a very competitive market and referred to lost revenue of \$600-700,000 incurred by the applicant without the expansion of the banquet space, golf shop and rooms for guests of the banquet facilities and golfing weekends. He explained that they are unable to effectively compete with other courses, particularly those right down the road. He pointed out that the golf course has been there for the last four years acting primarily as a golf course and club with some banquet facilities. They are talking about preserving hundreds of acres of open space which as an alternative could be developed as single family homes but that is not the preferred way to go. What they are proposing is a lot less intense than many of the uses permitted in the zone. He noted that the impact on the neighborhood would be minimal. The expansion constitutes less than a one percent change in the total property acreage. It is just a corner of the existing banquet facility, a little add out of the pro shop and the rooms would just square off a corner that doesn't exist on the banquet facility. There would only be positive impacts, there would no significant increase in traffic with guests that could stay over as opposed to leaving the facility at the same time. The last issue addressed is the hardship created by the zoning change. The Conservation Residential zone went into effect in 2005; the property had been used for a significant amount of time before that. There had been a lot of money invested prior to that time. The denial of this application will impair their ability to compete well into the future.

Mr. Koval noted that he does not recall the rooms being on the initial application and asked if they have been added. Mr. Trainor stated that they had not been on the initial application. He referred to his letter submitted noting the change and explained that the club has always anticipated having rooms, that is why it's called a chateau. They feel it is an ancillary use to what is already there. He noted that many of the clubs in the area have rooms for overnight guests. It would be just for guests to have the opportunity to stay over. He noted that many times groups or wedding parties will not rent the facility because there are no overnight accommodations. He noted that it has been detailed in his letter and he has documented the lost revenue.

Mr. Koval asked the total number of rooms. Mr. Trainor responded that they would like as many as 20 rooms and noted that they have documented the financial loss for ten rooms in the application.

Mr. Lemire asked if the Mohawk River Country Club is a private or public club. Mr. Trainor explained that it is a public facility; open to the public but they do have some memberships.

Ms. McCarthy asked if there can be a subsequent letter to an original application asking for something as substantial as rooms being added.

Mr. Dudick asked if this application had been re-noticed with regard to the change. Mr. Trainor responded that there was a notice sent out a couple of weeks ago including the provision for the chateau.

Mr. Dudick asked if it was publicly noticed. The secretary asked if an additional variance is needed. Mr. Dudick asked for Mr. Myers opinion regarding overnight accommodations being placed in this zone. Mr. Myers stated that he does not believe it is allowed. He referred to counsel's opinion as to whether this would be considered a major alteration to the application.

Mr. Trainor noted that the letters he sent to the adjoining neighbors included the addition of the rooms. Mr. Dudick noted that it was not noticed in the legal notices in the newspaper as required.

Mr. Koval explained that the Board is using the original application that did not make mention of the rooms. Mr. Trainor stated that all the affected neighbors did get notice. Mr. Koval pointed out that there is a legal requirement for it to be noticed in the newspaper. Mr. Trainor stated that he believes this is a continued hearing that was submitted sometime ago.

Mr. Koval again noted that it was not submitted with this change. Mr. Dudick explained that there may be someone who lives within the area but over 500 feet away that may now have a problem with this application and would not have the opportunity to respond.

Mr. Renzi stated that the question goes to the fact that this Board is empowered to accept or reject amendments to an application. It has been done many times and the question at this juncture is does the Board consider this to be a very material and substantial variation from the original plan or is it not. When the Board makes that determination they have to consider the size of the property overall and the impact that amendment may or may not have to the original application. Are the 20 rooms that big a change given the context of the entire project or are they not? That is the Board's call.

Mr. Trainor noted that bed and breakfast facilities are permitted as special uses in the district and this is essentially what they are talking about. It is an overnight accommodation, another benefit for an existing guest. The rooms would not be opened up in and of themselves for overnight accommodations.

Mr. Dudick referred to the statement that this is done at other locations. He noted that he is not familiar with any other golf course that has overnight accommodations. Mr. Trainor referred to his list and stated that they are not listed out with rooms but it's an accommodation that is

somewhat expected, maybe not in this immediate area, but in different parts of the state and the United States.

Mr. Koval stated that it seems like there would be an additional variance needed for these rooms. He noted that there is no mention of the actual square footage and he feels the Board is working with some limited information. He feels the addition of the rooms is significant, as a percentage of the whole property it may be small, but as a percentage of the variance requested this is essentially doubling it.

Mr. Trainor referred to the rendering and noted that it is not quite a double if you consider the banquet hall and pro shop. The corners already exist, it would just be squaring off the back of the facility.

Mr. Koval asked for the number of square feet in the addition. Mr. Herba stated that the addition would probably be 40' x 60' or approximately 2,400 sq. ft.

Mr. Koval asked if the Board could grant a variance without having the specifics as to the size of the variance. Mr. Herba stated that maybe it should be considered as Mr. Trainor stated, a bed and breakfast opportunity for those already at the facility, and does not need a variance at all. Mr. Koval explained that if that is the case he would not have a problem with it but there seems to be some dispute as to whether it's going to need one or not, it sounds like it does.

Mr. Myers explained that when he considered this application he did not consider it passive recreation because it falls under commercial recreational facility according to the definition in the zoning law and a bed and breakfast, as defined in the zoning law, is a house or portion thereof for short term lodging, rooms and meals provided for in-house guests, the operator of the facility should live on the premises. This to him does not qualify as a bed and breakfast either. He feels a variance is needed from Section 208-97 which is alterations to non-conforming uses. They are talking about a variance from 208-16 which is the Conservation Residential zone. There are some allowances that you can do repairs to something non-conforming in a zone. He does not know if we're talking about "apples and oranges" and now that they've added the rooms he does not believe this qualifies as a bed and breakfast and it is something that is not currently in the variance application. He did not modify the application after receiving the letter from Mr. Trainor.

Mr. Renzi asked why not. Mr. Myers explained that the application was adjourned and this would require almost starting over again.

Mr. Ritter explained that this was adjourned not for what they presented but because primarily there was no evidence of financial hardship and some related wetness issues stemming from improvements that were done.

Mr. Dudick stated that this is a substantial addition that has not been properly noticed and would require a Use Variance with regard to lodging on the site and asked counsel if a vote is needed not to accept the amendment being discussed in the letter since it is not a part of the application.

Mr. Renzi explained if the rest of the Board agrees with his characterization of the proposed amendment he has answered the question. He understands the lack of financial evidence and he went through and reviewed Mr. Trainor's letter and in his opinion he feels he has covered those bases. The amendment to the application he took as being accepted as a proposed amendment, he was not aware that Mr. Myers had not addressed that issue.

Mr. Trainor stated that if it is the Board's pleasure they could bifurcate the application, go back to what was originally applied for in terms of the expanded banquet facility and pro shop and make a separate application for the rooms.

Mr. Lemire asked if the rooms are located in the banquet facility section or are they a separate part of the building. Mr. Herba responded a portion of them would be.

Mr. Dudick referred to the original application for a Use Variance that talked about an addition to the banquet facility and an addition to the pro shop building and went back to the question of financial information being made available that could be reviewed that would show financial hardship and asked the Board if anyone had any questions regarding the information submitted.

Ms. McCarthy asked if the figures in the right column indicate a profit. Mr. Ritter noted that you would have to take out the rental projected as income for the 20 rooms in considering the financial information submitted. Mr. Trainor explained that they projected it at 10 rooms, \$172,800 or \$173,000, but it is for a four month period. His letter takes that over a course of a year.

Mr. Ritter stated that they documented some rental for overnight stays as part of the hardship argument so those dollars would have to be removed if the rooms are not being considered at this time. Mr. Trainor explained with it included they are between \$600-700,000 per year and in taking out the \$173,000 you are between \$400-500,000 of financial hardship over the course of a year because the other numbers are for a four month period.

Mr. Dudick pointed out that the financial hardship would actually increase without the rental income.

Ms. McCarthy referred to the financial documents submitted and asked if the right hand column actually refers to a profit even though it actually says profit/loss and asked if the total profit for last year was \$333,824 without the rooms. Mr. Trainor explained that the numbers are actually over a period of December through March for the most part and yes the far right number is profit; the column two columns in from that is revenue.

Ms. McCarthy then asked if the profit for the last six months is \$333,824. Mr. Trainor responded no, it is the lost revenue. It is the projected profit and projected revenue from having the additional facility.

Mr. Dudick clarified that the numbers would have been the profits had the parties been booked, but they didn't book the parties because they didn't have the room available so the columns represent what they would have made if they had booked the parties. It is a lost opportunity.

Mr. Lemire asked isn't the standard that they cannot realize a reasonable return and if so the question would be this might be what they lost but what was the return and is it reasonable for what they have.

Mr. Kortz stated that he would like to clarify that this is not a vote for a Use Variance for a golf course because it is already an allowed use and is already there. Mr. Koval stated that it is an existing non-conforming use. Mr. Kortz then stated that the vote is for a Use Variance for a banquet house and an expanded pro shop. Mr. Dudick stated that is correct. Mr. Kortz then referred to the criteria that the applicant cannot realize a reasonable return provided the lack of return is substantial, and substantial is subjective and that is what the Board has to determine. He would like to know what is the annual profit with just the golf course the way it is now, the profit with the expanded pro shop, and the profit with the banquet house so he could see the difference between the three numbers so he could make a comparison of what is actually being lost by not having the Use Variance.

Mr. Trainor stated that he will have Mr. Flores respond to that but noted that the reasonable return also has to be compared to other nearby golf courses. They have a direct competitor right down the road that recently expanded their facility and has taken away a number of bookings for them.

Mr. Lemire asked if the nearby course was the Edison Club and isn't it a private facility. Mr. Trainor responded yes.

Mr. Flores did not understand the question. Mr. Kortz explained that he would like to see a profit statement of the current return for just the golf course for a base, what the profit increase would be with the Use Variances, and if there is no profit, what the loss would be.

Mr. Dudick asked during the same period of time as outlined in the financial sheet submitted showing the jobs you could have had but didn't do could you tell us what jobs you did do and how much money you made.

Mr. Flores stated that the banquet room they now have is not big enough to make enough profit to stay in business to fix the golf course and fix the club.

Mr. Kortz asked if he is saying that without the expansions he would begin to lose money on an annual basis. Mr. Flores responded not lose money but he would not be able to make any improvements. He explained that a large party is where the profit is made.

Mr. Dudick asked if he making any money or losing money on his banquet house. Mr. Flores responded he is not losing money but he is not making enough money to stay in business and make improvements.

Mr. Dudick asked for specific financial figures. Mr. Flores responded that he does not have his financial statements with him and would have to refer to them.

Mr. Herba clarified that the whole concept is an interface between a golf course and a banquet facility and they compliment each other. The money from one goes into the other. The golf course does not make enough money to make the improvements on the golf course so when talking about profit it may be going right back into the golf course.

Mr. Kortz asked for an explanation of improvements, are you referring to maintenance. Mr. Herba responded improvements meaning an irrigation system, rebuilding tees, rebuilding greens, etc.

Mr. Lemire asked if the golf course is a separate business from the banquet house. Mr. Flores responded no it is the same business.

Mr. Lemire asked how many people the banquet house can presently hold. Mr. Flores responded 140-150 people. They are losing the larger parties where they make the profit.

Mr. Dudick asked if the list of potential sales leads submitted with the financial information is a complete list. Mr. Flores responded it does not include phone calls.

Mr. Dudick asked what percentages of people that can be accommodated actually convert to a closing. Mr. Flores responded pretty much every one that comes in.

Mr. Lemire asked if a Use Variance was granted when the previous improvements were made to the building. Mr. Myers responded not that he knows of.

Mr. Herba noted that they were permitted uses prior to 2005.

Mr. Dudick listed the concerns of the public voiced at the last meeting regarding the increase to the banquet house and pro shop, that there is a lot of work being done, digging, heavy equipment and a lot of trees being destroyed, a lot of noise and water being diverted from the golf course into the neighbor's properties. He explained from that standpoint he and Mr. Myers walked the site and found a substantial amount of construction and digging and diversion of water towards the neighbor's properties. He presented photographs that were taken at that time.

Mr. Flores responded that they did drainage work to try to dry the greens because if you don't dry the fairways you cannot play golf after a rain storm. If they don't do the work they will not have anyone playing. He explained that it was drained into ponds on the golf course not the neighbors yards.

Mr. Dudick passed the photos to the Board members and noted that it looks like there is a substantial amount of wood chips.

Mr. Renzi asked who took the photos. Mr. Dudick replied Mr. Myers.

Mr. Ophardt asked if the water flowed naturally. Mr. Dudick explained that there was a lot of digging as far as drainage is concerned. The photos were taken in April.

Mr. Flores explained that in April they were working on the 10th hole that they did this year.

Mr. Myers answered an earlier question on prior variances. He stated that in 1999 a variance was granted for the renovation of the country club. Mr. Koval asked a variance or a permit. Mr. Myers responded a variance for approval of a minor adjustment to an existing non-conforming use, will not change the character of the existing neighborhood and was voted on and passed. It was when they redid the front and added about 400 sq. ft. to the building.

Mr. Lemire asked if it was non-conforming under the zoning at that time. Mr. Myers stated that according to his paperwork back in 1999 it was considered non-conforming as well, prior to the zoning change.

Mr. Lemire asked when Mr. Flores purchased the property. Mr. Herba responded he purchased the property in March 1999.

Mr. Koval asked if he needed to get a variance for the improvements to the current building. Mr. Flores stated that they applied and submitted the plans and received approval.

Mr. Lemire asked if he put on an addition and the front entrance. Mr. Flores responded yes.

Mr. Herba asked to see the pictures that were submitted.

Mr. Renzi asked if Mr. Myers had the earlier application. Mr. Myers asked if he knew who signed it. Mr. Renzi replied it probably would have been Mr. Kelley.

Mr. Herba stated that the Knott Farm facilities are off of Knott Road and what you have are areas of drainage basins that drain that area so that everything from up on top of the hill is coming at the golf course and there is also water coming from Appleton on the east. He is not sure if it was the county or DOT that put a drainage swale underneath the road so now all this water can get through and onto the property. He also indicated an adjoining development where all the water

is shedding off towards the golf course. They were finding that they had major collections of water that has created problems over the years. He referred to the 10th hole and 16th hole and explained that they ran a trench to try to collect the water and get it into the basin that naturally drains out onto the site which is the natural drainage for the entire area that heads down towards Grooms Road. Any drainage that is done should be relieving any excess water. He also noted that there are ponds off of Appleton that dump into the land. He explained that they have cleaned up some of the area and have had talks and agreements with some neighbors so that the drainage can be opened up and the water can move down towards Grooms Road. He explained that underneath Grooms Road there is a 60 inch drainage pipe that is designed to handle all the water that is coming through. It is currently not getting there. He noted that some of the work is considered maintenance of the golf course in order to keep it dry.

Mr. Kortz noted it should not be going on the neighboring properties. Mr. Herba stated that he believes they are relieving any additional water from the properties.

Mr. Flores stated that they opened the drain to go to the pond and collect the water and stopped the water from going on the neighbors yards.

Mr. Dudick asked if he is acknowledging that there was a problem with water coming off the golf course going to the neighbors and these pictures are your attempt to rectify that. Mr. Flores responded that they did not create any problems with water going to the neighbors. They are trying to solve a problem they had.

Mr. Dudick asked to go back to the zoning issue with the development of the additional buildings would that have any impact with water runoff going back toward the neighbors because that is the concern brought forth by the neighbors. Mr. Herba explained that with the additions going on to the existing buildings part of the package was that they had to create detention basins because the Town Building and Planning Departments want to see all the water in this area collected so it doesn't shed off of everything. What they are going to do is create detention basins that will go into the natural created basin around the golf course

Mr. Kortz asked if they have had conceptual approval before the Planning Board yet. Mr. Herba responded they tried to but were referred to the ZBA for the variance..

Mr. Trainor stated that in terms of any water that would be collected there it should be remembered that Mr. Flores owns the first house in that area and he certainly is someone with a vested interest in making sure that area is dry.

Mr. Dudick referred to the larger amounts of trash that would be added and asked where the dumpsters would be located and the buffering that would be proposed. Mr. Flores stated that they would be in the back and would be in a fence enclosure. Mr. Herba noted that the dumpsters have been moved from the site where you saw the wood chips, that was the complaint. It was never intended for that to happen. It was not a daily occurrence where people were coming in there

and dumping those out. They have been relocated on another portion of the site and will be properly screened.

Mr. Lemire asked how big the current banquet house is. Mr. Herba responded 18,000 sq. ft. It includes a small restaurant area, a sitting area for a pre-banquet cocktail area, a small banquet area and offices. It is also open to the public for all practical purposes.

Mr. Lemire asked if the last time construction was done was it in 1999 and was it part of the entrance.

Mr. Herba responded actually it was probably 2002-2003.

Pauline Boehm, three doors down from the golf course, referred to the statement that less than 1% if the property will be impacted but it just so happens that the 1% is the percent that is right near residential homes and there is a noise factor. She stated that she is confused about proving a financial hardship. It's not how much more profit you could make if you keep expanding because no matter how much you expand you could always say I could make even more money. She thought you had to show that you had a problem making a profit at all.

Mr. Renzi responded that it is more complicated than that. The standard isn't that the individual doesn't have to have a financial hardship the law says that they are entitled to make a reasonable return on any investment that is particularly important in the world of commercial enterprises such as this one. So what is a reasonable return is many things but among those things is where they stand relative to situated competitors in their area and is their rate of return sufficient to allow them to continue to exist and to continue to compete and to grow in a manner such as the others. In other words if I'm a golf course and I'm not permitted to do anything to improve my golf course and yet my competitors do and over the years I start losing more and more ground sooner or later I'm not going to be able to exist at all, it won't be a matter of how much money I can make. The standard definition of reasonable return has to be looked at with that eye. It isn't just a short term.

Ms. Boehm stated that improvements don't necessarily mean that you get bigger; it can be getting better also. Mr. Renzi responded that if you do something bigger and you do it poorly your right it won't. We do not legislate business.

Ms. Baum referred to the bar being proposed in the pro shop and asked if most golf courses are in residential areas and do they have all of that. Mr. Dudick noted that there is a golf course just down the street that has a restaurant facility and bar and is considered the same neighborhood. There are other golf courses also that have the same facilities.

Ms. Boehm read a letter from her neighbor, Gennady Khlyapov, who was unable to attend the meeting tonight. He expressed his concern about the additional noise, lighting, traffic and especially storm water runoff that will result from the larger buildings and parking lots. He feels

the applicant has contributed to the water problems on his property. He stated that the applicant does not own some of the property that he is filling and ditching. He has a video tape that is available for viewing. He urged the Board not to approve this variance.

Mr. Dudick asked Mr. Myers if he viewed the video tape referred to in Mr. Khlyapov's letter. Mr. Myers explained that he did and there are wet areas behind the houses but t he could not determine if the runoff was coming from the golf course or elsewhere.

Mr. Kortz noted that this neighbor is stating that the water from the golf course is draining on their property. Mr. Myers commented that he was not convinced that is the fact. When he was there the water was not moving. He was not out there in the rain. Mr. Dudick explained that it was after the snow stopped and everything was moist. The water was not moving so you couldn't see water flow patterns but there was a substantial amount of water on the golf course, there was a substantial amount of water on the borders of the golf course to what looked like other people's back yards.

Mr. Ophardt asked if he is saying that water is coming from work on the golf course or from the backyards. Mr. Dudick stated he is simply stating what they saw. According to the letter that was just read makes it sound as though the water is coming from the golf course, we couldn't determine that.

Mr. Kortz noted that what should be considered for this application is if the water is coming from the area around the banquet house because that is the area that will be affected.

Mr. Ophardt explained that the water from the banquet house will be contained with a detention pond. In essence any runoff from the banquet facility will be kept on site. Mr. Kortz referred to that as being an improvement.

Mr. Lemire asked if the parking will be right behind the addition. Mr. Herba referred to the current parking and explained that the parking will expand. Mr. Lemire asked if they will be adding parking. Mr. Herba responded yes into the tennis court area.

Mr. Ritter asked what the effect, if any, the new parking would have on the existing water issues. Mr. Herba responded there would be none at all because they would put a basin in that would collect all of it. Mr. Ritter then asked if all the improvements being made to this facility with regard to runoff will be contained in a new pond that will not further add to the wetness behind the homes. Mr. Herba responded that is correct.

Mr. Ritter asked if the water behind those homes came from a pre-existing condition unrelated to the proposed development now or before. Mr. Herba stated it is unrelated to the development of this area. You have a lot of activity going on around a low area for all the drainage, there is basin in the area that could use some work and Mr. Flores has done some repair work that has improved the drainage situation. He referred to the letter from Mr. Khlyapov and stated that he

put in drainage through his property into the DOT drainage system already so he does not understand if he has already put in a facility why he is still having a problem because the water from the course is not flowing in that direction.

Mr. Ritter asked if the plan that will eventually go to the Planning Board will show a total retention of water from all the proposed construction. Mr. Herba asked for clarification.

Mr. Ritter explained what you are asking the Board to consider in terms of the addition to the facility, with the parking lot as proposed, all the runoff of any new water will be going into a new retention system and will be documented on the new plans that will eventually be before the Planning Board. Mr. Herba responded correct.

Mr. Ritter asked are you saying there is no adverse affect of any new creation of any flooding potential northward of the proposed development. Mr. Herba responded correct.

Mr. Dudick asked if this has been presented to the Planning Board in any phase. Mr. Myers responded not that he is aware of. He thinks they went for some preliminary review and were told they needed the variances before they would proceed.

Mr. Dudick stated that he reluctantly talked about water retention and water flow issues because it is not really a Zoning Board issue but because it was an issue of concern and because we are talking about development for expansion for a Use Variance he wanted to at least address some of the concerns in that area.

Mr. Myers addressed Mr. Ritter's question by explaining that it will be required that the water from any impervious surface at that project will have to be contained and controlled on the site.

Mr. Dudick explained that it will be addressed at the Planning Board. Mr. Myers noted both existing and new.

Mr. Kortz stated that he feels we can be assured that this is not going to make matters worse.

Mr. Ophardt asked if they will be required to cut any kind of interceptor ditch behind the houses to collect the water. Mr. Myers explained that when they get further along with their concept, if we believe during the review whether it be Planning or his review of the storm water plans, if we believe there is something we can do to improve the drainage in the back of these properties we will require them to do it. He explained that there is a ditch there now that runs along the property lines but they do not know where it's being fed from. It does not appear to him that it is being fed from the course. They may be incorrect once they get all the contours shown on a map, which they have never seen, maybe they will determine that is the case and they need to do something different.

Mr. Koval explained that this is a good discussion and we want to satisfy people's concerns about this but this has nothing to do with the application being made right now. He has been to site and where they are proposing the addition has nothing to do with water runoff behind these houses.

Mr. Kortz asked for more clarification on the issue of financial hardship. He referred to a statement made that without the expansion they would not be able to make improvements to the golf course. He asked if they meant making it bigger or better, not keeping it the way it is or do you mean maintenance.

Mr. Flores explained that they do not have an irrigation system right now and it would cost about one million dollars to do something like that.

Mr. Kortz rephrased his question by asking if they didn't get these expansions could you continue to operate the business in the future for very long. Mr. Flores responded that he doesn't know about continuing but they would not be able to compete. Everyone else has an automatic system and we don't, we have a manual watering system.

Bill Koebbeman, 861 Riverview Road, thanked the Board for asking some very pertinent questions. He stated that this rehab was really a whole new construction of a club house that happened in 1999. It was a major redo. He asked how the Board could believe what is being said, he is astounded at the answers being given. He stated that he knows of no other golf course that has overnight accommodations. He stated that notices sent out did not mention overnight accommodations. He also referred to a statement regarding a second bar at the pro shop and he feels that is significant and has not been discussed. He feels there would be more drinking on site than with just the one bar in the banquet house that closes a lot of the time. He referred to the discussion on the drainage and noted that Alex Verrigini stated in the previous minutes that the drainage to her backyard was made worse by all the ditching. He agreed that it was not a topic for discussion here. He noted that one of the crucial things they were deceptive on in this application was that they said that this was a conforming use before the GEIS. The GEIS changed nothing in their situation. They would have had to come for a variance with or without that. He feels that is a way of trying to get some sympathy from the Board.

Mr. Koebbeman referred to the minutes and Mr. Koval's statement that the applicant is asking for a Use Variance for a non-conforming use. They were in conformance at one time and the zoning changed around them. He stated that they had to ask for that variance in 1999 and at that point why didn't they build a facility that would give them a reasonable rate of return. Now they are coming in with a second proposal and giving financial data that says they need this to get a reasonable financial return but then in six months they are asking for 20 rooms and a second bar and then they will be able to have a reasonable return. He feels the question is so pertinent can they get a reasonable return now. The whole question of competition is not addressed in the zoning law, it is all about can they get a reasonable rate of return or is their lack of return substantial. He stated what needs to be shown in their financial information is; are they making a

profit right now. He would question if their numbers are legitimate. He disagrees with the applicants statements made regarding the drainage and the affect on the neighbors backyards. He also stated that they are digging on Belmonte's property.

Mr. Dudick explained that as far as digging on someone else's property it can be addressed legally. Mr. Koebbeman stated that Mr. Belmonte did not know about it when they were dumping the construction demolition from the old club house. He stated that he talked with a representative for Mr. Belmonte and he said they had no agreement for Mr. Flores to use that land.

Mr. Dudick asked if his property is flooding. Mr. Koebbeman stated that he has some water problem but it is mainly Gene and Alex Verrigni and the next home down that gets the worst of it.

Mr. Dudick asked if he is speaking on behalf of neighbors that could not be here. Mr. Koebbeman responded that he is not; he does not want to speak about the drainage problems because that has been discussed a lot. He stated that the GEIS for western Clifton Park is relevant to this hearing for two reasons. During the workshops the residents of western Clifton Park overwhelmingly expressed their desire to limit development and maintain their town as much the way it is as possible. We are happy with the way it is and would like to keep it that way. The Town Board agreed with the residents and enacted legislation that reduced the potential build out of the area. Residential units were cut in half and commercial business space was cut to one-fourth of what it was originally. So the desire of the Town Board and the residents is to limit expansion of business properties. He pointed out that the club house was always a non-conforming use. He feels it was misrepresented in the application

Mr. Dudick explained that it has been clarified now. Mr. Koebbeman stated only after people asked. He continued that a non-conforming use may not be enlarged without the variance. He believes the Board was sympathetic to the idea that the zoning changed around them and really that's not what happened. It all comes down to one question, can Mr. Flores make a reasonable return on his investment with the current non-conforming uses. The applicant was asked at the last hearing to bring in information that he has a demand for parties of 350. He does not feel they need to have 350 to make more money is really a hardship, they need to show what they are making now and is that a good return on their money. If you grant the variance then that is saying this is what I need to make a reasonable return. There should be no need to come back with a third proposal. He feels they are making a reasonable return tonight and the issue of competition is a red herring because that could go on forever.

Mr. Dudick clarified one point, that the Town Board created the GEIS to limit expansion and development and he feels it's not so much to limit but to have more control over such things. It's for better planning.

Mr. Koebbeman pointed out that there was the potential build out of 5,000 residential units with the old zoning. Mr. Dudick noted that it is not relevant to this application.

Mr. Koval stated that this Board is familiar with the GEIS and explained that the issue is very specific here. The western GEIS study took into account a large portion of the western part of town and he can appreciate your concern but this is a very specific case.

Mr. Koebbeman agreed but at the last hearing you said it was mainly about open space and it really is about quality of life in western Clifton Park.

Mr. Renzi addressed the issue of the return. If you read the statute and stop there it's very easy to get a misapprehension of what it is all about. There is a very, very large and long body of case law that interprets that statute in this state and he stands by the interpretation he offered this Board as counsel. It's more than just did the man make a profit this year and can he make one next year. If you invest millions of dollars in a project who is to say what the number should be? It has to be taken into context in the industry. If you would like to see examples of that come here every time there is a sign variance application by anyone on Route 146 or Route 9 and you'd hear a lot of conversation about the ability to make a return and to compete with their competitors, other folks in their industries. This application isn't any different. It is important to understand that.

Mr. Koval explained that when this initially came before this Board the things being asked for were pretty reasonable and we asked Mr. Flores for more information on the financials.

Mr. Renzi explained one issue would be the application of facts to the law and what he wanted to do was to clarify what the law is and what the definition ought to be

Mr. Koval stated his concern is that we still don't know what the return is right now so how do we know what is reasonable. There has been no evidence presented. He noted that use variances require a higher level of proof. He does not doubt the numbers of what he didn't make but he has not shown any current financial figures.

Mr. Kortz also noted that the Board shall grant the minimum variance necessary and how is the board to know what is the minimum variance necessary in relation to what a reasonable return is. It all connects together.

Arthur Glaude, 867 Riverview Road, sixth house up from the country club, stated he feels it was disingenuous of them to say that this land only covers 1% of their total property. He referred to the water problems in the area. He has been here for 30 years and had to bring dirt in to cover the back because of all the water. He noted his septic system is ruined because of the water. He noted that by covering the tennis courts with asphalt will increase the storm water. He referred to the quality of life issue with additional trash and water problems. He stated that in looking at return of investment you have to look at the purchase price. He would like to keep Rexford rural and by putting in this kind of a development you are not keeping it rural.

Mr. Dudick asked if the water issues on his property have changed since Mr. Flores took over the golf course. Mr. Glaude responded yes, they brought in dirt a couple of years ago. He stated that it has always been wetlands or a swamp but has gotten worse over the years.

Ms. McCarthy asked if the cosmetic upgrades to the property have improved the area. Mr. Glaude responded that he has improved it by putting in trees and barriers so you can't see the property and the façade is much nicer. He has taken away the tennis courts and swimming pool and it was a country club at one time now it's a banquet hall.

Mr. Ophardt asked if the improvements made by Mr. Flores have been a benefit to him as a property owner aside from water issues. Mr. Glaude responded yes, it has increased the property values of the houses next to it.

Mr. Kortz asked why he is against additional improvements. Mr. Glaude stated there would be more traffic, more noise, more trash, more people, and more water runoff.

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

Mr. Dudick referred to the financial information presented by the applicant and stated his surprise that the applicant does not know how much money he makes but without knowing that he knows he needs to make changes and expand. Mr. Flores stated that he knows how much he makes a year but not to the penny.

Mr. Dudick explained that you stated that you need to expand the banquet aspect in order to be more competitive but you don't know how much money you are making with the banquet house and pro shop now. How did you determine that you needed to do the expansion if you don't know how much money this part of your business is generating?

Mr. Flores stated that if they have the larger parties they are going to make more money. He knows they are not making enough money. He files a tax return every year and can provide it to the Board.

Mr. Koval explained that the application was tabled the last time for you to provide additional financial information and you did not provide that information. If that information is not provided everything else is a moot point.

Mr. Flores replied that he only makes \$400,000 a year and it is not enough to expand the building and expand the golf course.

Mr. Dudick rephrased his question, since you're not sure of the income you are generating from your banquet facility and your pro shop but you know how much money overall the whole operation is making and you know what you made last year or the year before it's then equally

possible that it has nothing to do with your banquet output and nothing to do with the pro shop but has to do with the number of golfers and maybe your attention should be to improving the facility of the golf course.

Mr. Flores stated that the golf course is making the same amount of money every year, they haven't made anymore or less money on the golf course. They have improved it and are starting to get some golf outings and with the golf outings they get the banquets, before they didn't have the facilities for the banquets.

Mr. Dudick stated that you can still provide food services to large numbers of people without increasing your banquet house. Mr. Flores explained that he would like to attract upscale outings.

Mr. Kortz explained that there has not been enough information submitted so that he can actually judge whether there is a reasonable return here even in terms of competition nor whether there is a minimum variance necessary.

Mr. Dudick asked if the Board would like to move forward on this application or table this to allow the applicant to provide additional financial information.

Mr. Lemire made a motion to vote on this application, Ms. McCarthy seconded.
Mr. Dudick explained that he is asking for input.

Mr. Ophardt asked how long it would take to assemble the information needed by the Board.
Mr. Flores stated that he could have his tax returns by tomorrow. He was not aware that is what the Board wanted.

Mr. Trainor stated that they could provide the raw data fairly quickly.

Ms. McCarthy stated that the applicant as a business owner should know that he had to produce some documents showing his income.

Mr. Kortz explained that it's not just what he made, you have to know profit margin, improvements, how is the business doing, not just a tax return.

Mr. Ritter stated a reasonable return should be based on the other similar businesses because you have to assume that another course within a mile or two of this facility, that has made improvements, has increased their capacity, which has also increased their profits. His point is that more data is needed to determine if Mr. Flores is at a competitive disadvantage if he does not make these improvements.

Mr. Dudick again asked if the Board wants to grant additional time for the applicant to provide proper financial information. Mr. Ritter stated only if a specific time limit is set. If the applicant

does not provide the information the Board will take a vote. He feels he would benefit from additional information. He feels after all the effort put into this application the applicant would not be seeking the variance if he doesn't have some sort of information that says he needs to do this. So if we want to reject this application because he failed, and it might be a misinterpretation that he failed to provide that for a lack of understanding of what is really required under the reasonable return in making a use variance, then we grant him additional time. He would be in favor of additional time with the condition that a limit is set.

Mr. Dudick explained that this is an application that was made several months ago with certain requirements for that application, stated as part of the requirements that financial information be provided. It wasn't provided the first time. Additional time was given, financial information was provided but several Board members are stating that they don't feel that this is substantial financial information so this would then be a second opportunity to provide financial information that we can review. The question is then do we give a third opportunity. There is also the issue to consider of neighbors who have given input with regard to this. They came to the first part of the application, now they are here for the second part of the application and do we then ask that they come for the third part of the application. At this point he is of the opinion that we should make a decision now so that we can put an end to the application process. We either make a decision to vote saying that this is satisfactory and substantial enough for us to make a decision or we don't believe that there has been enough information provided. He feels an application should not be allowed to go on meeting, after meeting, after meeting.

Mr. Trainor responded that they would be happy to provide additional financial information within two weeks or thirty days, whatever the Board would like to have.

Mr. Koval stated that it can't be the next meeting, there is not enough time but the meeting after. We asked for this before and here we are five months later, but he is inclined to say come back the meeting after next, July 17th, and if it is not sufficiently provided at that point that's the last opportunity because the people have had to come back twice, they had to keep track when this was back on the agenda, they want to have their say, and he does not want to drag them back a fourth time, it's not fair to them.

Mr. Kortz stated if they make a request as to what do we need to make a judgment on what is a reasonable return and a minimum variance necessary what kind of information do we need.

Mr. Ophardt asked if we need to be specific as to what kind of information they need to provide.

Mr. Lemire stated that he has a problem telling an applicant what their job is. People make an application, they research whatever the Town regs are, they do the research on the law and put an application in. Then we are here, the public comes and brings their evidence, and we're suppose to rule on what is presented to us.

Mr. Dudick explained that the purpose of this Board is not to try to gather as much information as possible so that we can approve an application but to review the information that is provided to determine if we should approve an application.

Mr. Renzi disagreed. Mr. Dudick asked should we give every opportunity to an applicant to keep providing additional information until we finally approve it. Mr. Renzi responded no. Those are two opposing polls and he thinks this Board, on many occasions said to an applicant we don't have enough information to make a decision because you didn't put enough in your application, go back and do this, as has been done here. The applicant has clearly misunderstood what you were looking for or he would have brought numbers, they might not have been the numbers you wanted to see or the numbers he wanted to show but it is obvious that there was a misunderstanding, or a lack of communication of some kind. With regard to the convenience of neighbors and other folks that want to testify, the public hearing is closed. The folks who have been noticed and are here had an opportunity to speak. The Board is now in its fact gathering mode. He does not think the Board is precluded from reaching out and gathering more facts, you're not required to either.

Mr. Lemire responded to the public portion of the meeting being closed and stated that he is absolutely against giving the applicant another opportunity to present additional information because if the Board is going to give the applicant additional time to present additional information the public should be granted the same courtesy.

Mr. Renzi stated he believes you could reopen the public hearing, he doesn't remember that ever being done.

Mr. Ritter stated that if we are going to allow the applicant to come back he would prefer to reopen the public hearing so the public has an opportunity to rehear it if we go that route.

Mr. Koval made a motion to reopen the public hearing and allow Mr. Flores to present at the July 17th meeting additional financial information that would demonstrate the hardship he claims to have. Mr. Ritter seconded.

Mr. Trainor asked if the information is to be provided by July 17th. Mr. Dudick asked to have the information in advance for the Board's review.

Mr. Dudick amended the motion to reopen the public hearing to include that all information be provided to the secretary of the ZBA by June 18, 2007. Mr. Ritter seconded. Ayes: Dudick, Kortz, Koval, Ophardt, Ritter. Noes: Lemire, McCarthy.

Mr. Dudick adjourned the meeting at 9:20 PM and reconvened at 10:10 PM.

NEW BUSINESS

- 1. An application from Salvatore A. Falco, Sr., requesting a Use Variance from Section 208-10B for a business use (office/medical/dental) in an R-1 zone. The property is located at 94 Sitterly Road, Clifton Park. Permit #80651**

The secretary read the legal notice as it appeared in the Daily Gazette on May 31, 2007

Salvatore Falco, owner, presented this application. He explained that he purchased the property in 1999. Since that time he has seen the destruction of Builder's Square, the destruction of the Grand Union, the resurrection of Home Depot, Lowe's Boscov's, they were happy to see it come but are not so happy it's there. They had the town put up a red light to help them exit their driveway. Since the time of purchase the traffic on Sitterly Road has become atrocious because of the expansion and development. He noted that he has commercial property all around him. The point he is trying to make is that the situation has become a lot worse and he going to be loosing value. He had his house on the market for three months with no residential offers. The feedback was that the street is too busy and there is too much business in the area. His proposal is to turn his house into a business use. He noted that he has been approached by a dentist, a chiropractor, an accountant and the problem is it is a residential property. He proposes not to change the structure or the aesthetics of the property at all but to allow a business to operate from the premise. He explained that his fence has been hit numerous times by speeders. He would like to be able to offer his property to a 9-5 or 9-6 business that he feels will not impact the traffic or surrounding existing residential property in the area.

Mr. Falco presented pictures indicating commercial property in the area. He noted that he cannot sell his house for any kind of recoupment or even the value he has put into it because no one seems to want it as a residence.

Mr. Ophardt asked what he paid for the house. Mr. Falco responded \$93,000 but has put approximately \$70-75,000 in changes and improvements since he has lived there in just materials because he did the work himself. He stated that he had the house appraised four years ago at \$270,000 but as a residence it is not an interesting piece of property because of the location.

Mr. Dudick asked if he is looking to sell the property. Mr. Falco responded yes. He listed with Assist 2 Sell and they were approached by a dentist that was interested in the property.

Mr. Dudick asked what it was listed at. Mr. Falco responded as a residence \$289,000.

Mr. Lemire asked how long the house was on the market. Mr. Falco responded 90 days, they did nothing to promote the sale of the house except to put it on the MLS.

Mr. Koval stated that it was not on the MLS. Mr. Ophardt asked if he tried to lower the price. Mr. Falco responded no because he was told it wasn't the price it was the location.

Mr. Falco stated that he was told by a couple of agents that the house would sell quicker if it was zoned as a B-1 usage, not altering the structure, not altering the exterior, not altering the aesthetics, but just being able to operate a business out of there rather than to sit on the house for six to ten months.

He stated that he offered the house to the dentist at the asking price if he went and got the variance but he said if I got the variance he'd buy it. I applied for the variance and he backed out.

Mr. Ritter asked if the letter submitted with the application from Coldwell Banker Prime Properties from Maria Mancuso is from a friend. Mr. Falco stated that she represented the seller of a house they had put a bid on. He explained that he also lost a second house because he could not get a commitment because he did not sell his house.

Mr. Dudick referred to the letter and the fact that it states that the fair market value is approximately \$50,000 lower than the asking price. Mr. Falco explained that is what the comparative analysis came back at.

Mr. Dudick pointed out that he is asking \$50,000 more than he has proof that a house of his kind would sell for and the reasons you couldn't sell it was not because of the price but because of the zoning. Mr. Falco responded no, she told me that if it was commercial property or business property it would sell for much more.

Mr. Falco stated that what he is trying to do is to get out from under the house, out from under his mortgage and get another house.

Mr. Koval explained that in looking for a Use Variance you have to prove a financial hardship and you have a letter stating your house is worth \$240-250,000 dollars and you just told us you paid \$93,000 for it eight years ago and put some money into it, but you are trying to triple that money based on your asking price.

Mr. Falco asked if his time is worth money. Mr. Koval responded it is absolutely worth money but the letter says it is worth \$240-250,000 so it sounds like you have a return based on what you paid for it and what you put into it.

Mr. Falco asked isn't he entitled to whatever he could get out of it. He does not feel what he paid for the house and what he put into the house has anything to do with it. He stated he is talking commercial property as opposed to residential property because he cannot sell it as residential property.

Mr. Lemire stated that he has not shown that yet. You listed with Assist 2 Sell and they didn't show the property and you fired them. It sounds to me that there hasn't been sufficient time with the house on the market as a residential property so that you can come here and tell us that you can't sell it as a residential property.

Mr. Koval agreed and explained that if it had been on market for \$240-250,000 for three to six months and nobody wanted it that would be one thing. Mr. Falco stated that is less than he owes on it. Mr. Koval explained that what he pulled out in home equity isn't something that the Board would address. We address can you get a reasonable return on your investment when you're looking for a Use Variance.

Mr. Falco stated it would be no different if he wanted to operate a business out of the property he would need a Use Variance. He does not see a major problem with that. He wants the opportunity to operate a business out of the property.

Ms. McCarthy explained that a Use Variance is changing the character of the neighborhood it is like spot zoning. Mr. Falco stated that the character of the neighborhood has already changed.

Mr. Koval referred to his neighbor behind him that bought their house for \$310,000 two years ago with the assurance that your house was a residential home and that was what the zoning provided for. We are here to grant variances and don't strictly look at that but they made their decision based on what your home was so we can't just arbitrarily change the zoning just because you would like to make more money on your house.

Mr. Falco referred to the property across the street and stated that if a convenient mart or strip mall goes in over there it will adversely affect his property. Mr. Dudick explained but technically it really does not because that is already commercial property. He stated that Mr. Falco is making some good points but the fact that directly across the street from you the property is zoned commercial that property was like that when you bought your house.

Mr. Falco explained that when he bought his house the land was owned by Twin Lakes and was vacant land and was not for sale. Mr. Koval explained that it was always vacant commercial land whereas the people directly behind you that have an issue with this made their decision on your land being residential and that is a big difference.

Mr. Dudick explained that there are areas in the town that are set aside for offices and those places have been part of the plan for the town, every once in awhile variances are granted for a little bit of a change and there has to be a compelling reason why that change should take place, the fact that you're trying at this time, and not being successful, to sell your land for \$40-50,000 more than your evidence shows it's worth and then claiming a hardship is not a compelling argument.

Mr. Kortz referred to the section of the town code referring to whether the hardship is unique and does not apply to a substantial portion of the district or neighborhood and stated that the hardship he is defining applies to every house in that neighborhood. It is not unique in his opinion.

Mr. Dudick explained that there is always a portion of property that is transitional. He explained that the Board is here for a unique lot by lot assessment and that is what we are trying to judge by. He explained that his evidence is saying the house is worth \$240-250,000 and if you made an attempt to sell it at that price and there was still difficulty it would make a much stronger argument.

Mr. Ophardt asked if he lowered the price of the house at all. Mr. Falco responded no he is waiting to see if he can get this variance. He has potential buyers for the house as long as they can operate a business.

Al and Sherry Weber, 92 Sitterly Road, explained that they bought the property in November 2005 and their house sits back in the woods behind Mr. Falco's house. They realized the traffic congestion when they bought the house. They are objecting to this request because their driveway borders Mr. Falco's driveway and if a business was to move in there it might create a hazard. He also feels that traffic coming out of the Crossings and turning left would create an additional hazard if they were trying to enter this property. He also noted that there is a business down the road but the bordering properties were zoned residential. He feels that a small business on this site could create a parking problem as well as a reduction in green space. They also have a concern with the resale value of their house if a business or commercial property moves in front. They also have a concern for the safety of their children.

Mrs. Weber asked the Board to refer to the photos and explained that their front yard is directly in his backyard. She explained that when they bought their house they realized the property across the street was commercial but they never expected the house in front of them to be zoned commercial.

Mr. Myers explained that Mr. Falco came to him a couple of months ago and explained what he wanted to do and this is one of the few options available to him. This is a tough area and perhaps in the future should be considered for rezoning perhaps to B-1 as a transition area between heavy commercial and residential.

Mr. Lemire asked why 100 Sitterly Road is commercial. Mr. Myers stated that he believes that when the zoning changed it was already a commercial property and also because it is right along the Northway.

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

Ms. McCarthy stated that she does not feel the property has been on the market long enough and \$290,000 is not a reasonable price to be asking for this property.

Mr. Kortz commented that the additional parking will change the look of the property. Mr. Falco responded that there is enough room for parking and should not be a problem.

Mr. Koval noted that this is a 1,600 sq. ft. property with one bathroom and you're asking \$290,000 for it. Mr. Falco responded that he does not know where he got his information. Mr. Koval explained that is what it shows on the tax roles and asked if there have been changes made that do not show up on the tax roles, it is listed as 1,600 sq. ft., three bedrooms, one bath. Mr. Falco responded that it is a 2,300 sq. ft., three bedrooms, two baths with a den.

Mr. Ritter explained that the Board has a precedent on how it makes a decision regarding a Use Variance and the biggest area of concern is that in order to grant a Use Variance the applicant must meet all of the four conditions: 1) no reasonable return; 2) unique circumstances; 3) no self-created hardship; and 4) it would not alter the essential character of the neighborhood and in order to grant the Use Variance you must meet all four and provide substantial evidence for all four, case in point the applicant before you. This Board is very serious about meeting all the conditions and in his estimate you may meet one, but not all four.

Mr. Falco asked what would be the situation if he wanted to operate a business out of the house himself. Mr. Dudick explained that legally he would have to get a variance and meet the criteria for that variance.

Mr. Dudick explained that if his house was on the market for a year at a fair appraised market value and you couldn't find anyone interested in the house as a residence and there was a letter from a licensed realtor stating that they made every attempt to sell the house as a residence there would be a huge improvement to the argument you are making.

Mr. Falco thanked the Board for its time and left the meeting.

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

2. An application from Boni Builders, Inc., requesting an area variance from Section 208-11 from the required 40,000 sq. ft. minimum lot size in a CR zone for a house without central sewer – proposed lot size = 16,500 sq. ft. – variance requested = 23,500 sq. ft. The property is located at 13 Blue Barns Road, Rexford. Permit #80652.
3. An application from Boni Builders, Inc., requesting an area variance from Section 208-11 from the required 40,000 sq. ft. minimum lot size in a CR zone for a house without central sewer – proposed lot size = 16,500 sq. ft. – variance requested = 23,500 sq. ft. The property is located at 15 Blue Barns Road, Rexford. Permit 80653.

4. An application from **Boni Builders, Inc.**, requesting an area variance from Section 208-11 from the required 40,000 sq. ft. minimum lot size in a CR zone for a house without central sewer – proposed lot size = 18,228 sq. ft. – variance requested = 21,772 sq. ft. The property is located at 7 Blue Barns Road, Rexford. Permit #80654.
5. An application from **Boni Builders, Inc.**, requesting an area variance from Section 208-11 from the required 40,000 sq. ft. minimum lot size in a CR zone for a house without central sewer – proposed lot size = 18,234 sq. ft. – variance requested = 21,766 sq. ft. The property is located at 1563 Route 146, Rexford. Permit #80655.
6. Also to be heard is an application from **Boni Builders, Inc.**, requesting an area variance from Section 208-11 from the required 40,000 sq. ft. minimum lot size in a CR zone for a house without central sewer – proposed lot size = 18,257 sq. ft. – variance requested = 21,743 sq. ft. The property is located at 9 Blue Barns Road, Rexford. Permit #80656.

The secretary read the legal notices as they appeared in the Daily Gazette on May 31, 2007.

Kevin Dailey, attorney, presented the applications. He explained that the addresses in the notice are postal addresses and differ from those referred to in the applications that are identified by section, block and lot and also by the lot numbers shown on the subdivision map.

Mr. Lemire asked to have each lot identified with the address in the notice and the lot number on the map, i.e. 13 Blue Barns Road is lot 34 on the map. Mr. Dailey explained that he did not realize that the vacant lots had postal addresses. Mr. Myers stated they are required for 911. Mr. Dailey apologized for the confusion.

Mr. Dailey explained that Mr. Boni has these lots under contract from Robert VanPatten, Jr., President of Country Club Acres, Inc. He gave a brief history of the subdivision and reviewed the changes in the zoning laws since the subdivision map was filed in 1957. He explained that Mr. VanPatten Sr. built the homes in this subdivision with the exception of seven lots.

M. Dailey explained this is a filed subdivision map in the County Clerk's office. He explained that the town adopted its first master plan in 1965 and adopted its first modern zoning law in 1967 which essentially divided the town in half, the eastern portion being R-1, the western portion being RR. At that point these lots became non-conforming because a minimum of 30,000 sq. ft. was required in the western part of town. That was changed in 1996 by the new zoning law which was subsequently changed in 2005 with the CR zoning with a minimum lot size of 40,000 sq. ft. The existing Country Club Acres subdivision is more in line with the R-1 zoning.

These are pre-existing non-conforming lots that are on the tax rolls and taxes have been paid on them for 40 years. They are in the Rexford water district and since the 2005 change in zoning they cannot be built on.

Mr. Dailey stated that in 1996 the town board decided they wanted to do away with non-conforming lots and put in a sunset provision that after 6 years all the non-conforming lots went away.

Mr. Lemire stated that the lots don't really go away; there was a six year period that the town gave where the land owner could build on those non-conforming lots. After the six year period they were non-conforming and had to apply for variances in order to be built on.

Mr. Dailey explained that the zoning law goes on further to say if you have adjoining non-conforming lots they must be combined. He explained that by doing so in this case they would still have a non-conforming lot. The only thing that would conform is if you took the four lots on the corner you would get one conforming lot.

Ms. McCarthy asked if the non-highlighted lots on the map had homes on them. Mr. Dailey explained that it is all completely developed out. The lots that he is requesting the variances for are just like all the other lots in the subdivision that already have houses on them.

Mr. Dailey explained that in 2005 this Board granted an area variance for lot 21 that is a 16,500 sq. ft. lot.

Mr. Kortz asked when the lots actually became non-conforming. Mr. Dailey responded actually in 1967 with the modern zoning law requiring 30,000 sq. ft. but even though they were non-conforming they were pre-existing non-conforming lots of record and you could get a building permit for them.

Mr. Koval explained that until 2002 you could have built a house on these lots. Mr. Dailey explained that the sunset provision ended in 2002. He noted that Mr. VanPatten was not aware of that provision.

Mr. Lemire asked if the CR zoning was in effect when the variance was granted for lot 21. Mr. Dailey responded that he does not know the exact date for the CR zone but he has a modern map that is dated 11/20/06.

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

Mr. Kortz noted that the CR zone was added 5/09/05. Mr. Dailey stated that the variance for lot 21 was granted on 7/19/05.

Mr. Dailey addressed the requirements for granting an area variance. He stated that they are proposing to build exactly the same types of homes already existing in the neighborhood, on lots that are comparable to those already existing so there will not be any undesirable change to the character or detriment to the neighborhood. He explained that the only way to proceed is with an

area variance. The variances may be substantial due to the changes in the zoning laws over the years. The character of this neighborhood is more in line with some of the residential neighborhoods in the eastern part of town. There is public water from the Rexford Water District. Septic tanks will be used and percolation tests have been conducted on each lot and when applications for building permits are made there will be engineered, stamped septic plans for each lot individually.

Mr. Dailey continued that there will be no adverse affect or impact on the physical or environmental conditions of the neighborhood. He addressed the issue of self-created hardship and noted that the changes in the zoning law effected the change and therefore this is not self-created.

Mr. Dailey explained that the homes to be built will be a credit to the neighborhood. They will be moderately priced and available to middle income young families.

Mr. Dailey explained that they have an application before the Planning Board to consolidate and re-subdivide four lots on the corner into three lots. They feel this is a much better plan.

Mr. Lemire asked for the square footage of the lots starting with lot 33 (north to south). Mr. Dailey responded 16,500, 16,500, 18,257, 18,228, and 18,243.

Mr. Ophardt asked if there is access onto Route 146. Mr. Dailey responded they actually have access on route 146 and you could apply to DOT for a curb cut but it is too busy of an intersection. The proposal is for an easement for the driveways to access onto Country Club Lane.

Mr. Dudick asked why they are not combining the two lots on Blue Barns Road. Mr. Dailey explained that they are probably the two best lots. They are nicely wooded; they set up from the road, are very attractive and probably are the most valuable lots. They have been paying taxes on seven lots. They will be combining four lots into three.

Mr. Myers explained that the addresses in the applications are based on the 911 requirements. He explained that he talked with Mr. Dailey at some length and asked Mr. Peller some very pointed questions when the applications first came in. One being if the variances are not granted and they combine the lots that are adjacent to each other and they still don't conform to the size requirements can they still build on them. The answer was yes.

Mr. Lemire asked without a variance. Mr. Myers responded yes. He also asked if it would be changing from one non-conforming use to another non-conforming use if they did that and Mr. Peller stated no.

Mr. Myers explained that if the variances are denied and the adjoining lots were combined they could be built on without any variances and they still would not be the required size.

Mr. Koval pointed out that they would have to combine all four lots into one and would only have a total of two lots.

Mr. Myers noted that if that is the case and the lots were combined they would not fit in with the character of the neighborhood. His biggest concern is with the septic systems and he has been assured that engineered systems can work on these lots.

Mr. Boni responded that they have been done. Percolation tests have been done and there is no problem with having septic systems.

Mr. Myers stated that he is fine with the five lots.

Mr. Lemire referred to combining the lots and noted that they would still not meet the area requirements.

Mr. Koval explained that in this location you would have to sell inexpensive homes.

Mr. Boni stated they will be three bedrooms, two baths, approximately 1,600-1,700 sq. ft., a starter house.

Mr. Lemire explained that he looked at all the criteria necessary to grant an area variance and he is concerned with granting the minimum variance necessary and perhaps a variance for three lots versus five would be closer to meeting the current zoning.

Mr. Dailey stated that the zoning was created with very broad strokes for the western part of town and to take two or three, or four or five of their lots away after they are lots of record and taxes have been paid on them for 45 years would be a hardship.

Mr. Lemire stated absolutely except when the law was changed in 1996 there was a six year window that the owner of the property was given in order to build on those lots. For whatever reason the owner chose not to build on them so now you are here asking for the variances. All he is saying if the variance is to be granted one of elements we have to look at is to grant the minimum variance necessary.

Mr. Kortz also referred to the minimum variance and asked if there is any way to negotiate less of a variance request.

Mr. Koval explained that they have done something to reduce the variance by making four lots into three and the value declines dramatically if they are forced to combine the lots any further. They have been paying individual taxes, individual water fees, etc. even since the 2002 zoning change. He noted that they would not be able to build anything reasonable because of the location on a busy street. He agreed that you have to give credence to the minimum variance criteria but you also have to look at the hardship issue and it is unique in this situation.

Mr. Dudick stated that there has to be balance and also consider the character of the neighborhood. This is a well established neighborhood of smaller homes and smaller lots.

Mr. Ritter left the meeting at 11:05 PM.

Mr. Myers explained that if these lots had water and sewer you would only be looking at a variance from 20,000 sq. ft. Currently there is no allowance in the zoning law for public water. If they have engineered septic systems that will work he has no issue with the applications.

Mr. Dudick noted that he supports the applications as presented, there has been compromise, and the owner has owned the property for a long time.

Mr. Dudick made a motion to accept the five applications as submitted. Ms. McCarthy seconded.

Mr. Kortz asked if the proposed houses will be consistent with those in the neighborhood. Mr. Boni responded yes, three bedrooms, two baths.

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

Mr. Dudick made a motion to approve the minutes of May 1, 2007, Mr. Koval seconded. approval unanimous

Mr. Dudick made a motion to adjourn the meeting at 11:20 PM, Mr. Koval seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb
Secretary

Cc: Town Clerk, Town Board, Zoning Board Members, Joel Peller, Counsel, Steve Myers, Department of Building and Development, Planning Board, ECC, Assessor, Highway Superintendent