

ZONING BOARD OF APPEALS

August 21, 2007

Present: Michael Dudick, Chairman, Gilbert Kortz, Joel Koval,
Christopher Lemire (for Dale Gleason), Jessica McCarthy
Eric Ophardt

Absent: Dale Gleason, Robert Ritter

Also Present: Joel Peller, ZBA Counsel
Steve Myers, Director, Building & Zoning

Mr. Dudick called the meeting to order at 7:02 PM.

NEW BUSINESS

1. An application from **Clifton Park Self Storage, Inc.**, requesting a variance from the required 130 ft. setback from the centerline of Ushers Road – proposed setback for Bldg. #1 = 127.8 ft. – variance requested = 2.2 ft.; proposed setback for Bldg. #3 = 114.2 ft. – variance requested = 15.8 ft.; proposed setback for Bldg. #4 = 114.9 ft. – variance requested = 15.1 ft.; proposed setback for Bldg. #5 = 117 ft. – variance requested = 13 ft.; a variance from the required 80 ft. setback from the centerline of Wood Road = proposed setback for Bldg. #11 = 70.4 ft. – variance requested = 9.6 ft.; proposed setback for Bldg. #12 = 78.6 ft. – variance requested = 1.4 ft, and a variance from the required 20 ft. side yard setback for Bldg. #11 – proposed setback = 19.4 ft. – variance requested = 0.6 ft. The property is located at 261 Ushers Road, Clifton Park. Permit #80663

The secretary read the legal notice as it appeared in the Daily Gazette on August 16, 2007.

Tom Andress, ABD Engineers & Surveyors, presented this application. He explained that this is an existing outdoor self storage that was purchased approximately 8-9 years ago. Unfortunately it was purchased without a survey and recently when doing some refinancing a survey was

completed and it was determined that the above variances are needed for the existing buildings. He explained that the site has been improved with landscaping and fencing. He explained that this is the last site in the B-3 zone, the adjoining property is zoned Industrial and the setback goes from 80 ft. to 50 ft. It is basically the corners of certain buildings that require the variances.

Ms. McCarthy asked if the buildings existed when the applicant purchased the property.

Mr. Andress stated that the applicant bought the property with most buildings existing. He did build some of the buildings along Wood Road. He built off the original site plan that was approved and did not realize that the building would be 0.6 ft. over on the side line. The variances needed along Ushers Road were all pre-existing.

Mr. Kortz asked if the applicant had a survey prior to building. Mr. Andress stated that a survey was not done at the time of purchase and the applicant was not aware of the encroachments.

Ms. McCarthy asked if a survey is required when you buy property with buildings on it. Mr. Andress responded it depends on the financing and purchase agreements.

Ms. McCarthy asked if the applicant had a building permit to build the additional buildings. Mr. Andress responded yes.

Mr. Dudick asked if it had been red flagged for encroachments when being built. Mr. Andress explained that you could only pick up the encroachments with a survey you would never be able to pick it up without one.

Mr. Dudick asked if the applicant owned the property to the east of the site. Mr. Andress responded yes.

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

Mr. Myers explained that this is a combination of errors and that a final "as built" is not required on commercial projects which is why this was not caught earlier on. He feels the Ushers Road improvements contributed to the problems on that side. Also 6-8 inches off in the field without having the property line staked out would not be caught. He has no problem with these requests because all the zoning will be complied with.

Mr. Dudick asked if he knew if the centerline of Ushers Road was moved during the improvements. Mr. Myers stated he does not think the centerline was moved but he feels they took more right-of-way. Mr. Andress agreed and noted that the edge of the pavement on the north side did move and theoretically the centerline may have also moved.

Mr. Ophardt asked when the new buildings were built. Mr. Address stated approximately four years ago.

Mr. Dudick explained that the applicant has done a good job with the site, there has been quite a bit of landscaping done and the property to the east was commercial but was “zoned down” by the applicant by putting up an office building and creating less traffic. He noted that this is mostly to clean up an existing non-conforming site.

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

2. An application from **Jill Romeo**, requesting an area variance from Section 208-12 from the required 80 ft. setback from the front property line for an accessory structure or 105 ft. from the centerline of the road – variance requested = 10 ft. The property is located at 14 Belott Drive, Clifton Park. Permit #80665

The secretary read the legal notice as it appeared in the Daily Gazette on August 16, 2007

Mr. Dudick noted that Mr. Lemire, alternate for the ZBA, is designated as sitting in for Dale Gleason.

Jill Romeo presented this application. She explained that they had an 8’ x 12’ pool shed and duplicated it and added on and are two feet short.

Mr. Dudick asked Mr. Myers why it is shown as a 10 ft. variance request. Mr. Myers explained that it is closer to 9 ft. She bought the house and built onto the shed without knowing the requirements. He explained that the property was not on a corner lot originally but is now due to the reconfiguration of Tanner Road.

Mr. Dudick asked for clarification on the site since there was not a plan submitted with the application. Mr. Myers explained that the variance is strictly for the shed.

Ms. Romeo stated that the shed will be used for a riding lawn mower and pool equipment.

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

Mr. Dudick noted that this is basically for a matter of clean up. It is a secluded property that drops down from Route 146A.

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

3. An application from **Joseph P. Berlin**, requesting an area variance from Section 208-12 from the required 80 ft. front setback for an accessory structure – proposed setback = 45. ft. – variance requested = 35 ft. The property is located at 798 Plank Road, Clifton Park. Permit #80666

The secretary read the legal notice as it appeared in the Daily Gazette on August 16, 2007.

Joe Berlin presented this application. He explained that he would like to build a pole barn in the back of his property. He has lived there for 40 years and there is an existing driveway because that is where he had originally planned to build his home but due to previous mining on the site for molding sand there are a lot of pits. He bought additional land on the corner for a combined parcel of 1.9 acres of land and built his house. If he can place the pole barn in this location he will not have to go back into the pits or take down any of the oak trees on the lot.

Mr. Dudick inquired about the pole barn. Mr. Berlin explained that it consists of eight poles holding up a roof and has open sides. It will be 22' x 14'. He would like it to cover his boat.

Mr. Lemire asked why he cannot move the pole barn back. Mr. Berlin explained that he would run into the pits and would also have to take down a lot of large oak trees. He does not want to take away from the environment or change the cosmetic look of the property.

Mr. Lemire asked what is between where he wants to put the pole barn and the adjoining property. Mr. Berlin responded it is all woods. Mr. Lemire asked how close the barn would be to the adjoining house. Mr. Berlin responded it will be approximately 35 ft. to the property line and would be 60-70 ft. to the house next door.

Mr. Myers noted that it may require a second curb cut for the property and the applicant would have to contact the Highway Superintendent.

Mr. Berlin stated that there is an existing stone driveway that has been there for 40 years.

Mr. Myers explained that there may be some concern over having two driveways so close to the intersection. He also told the applicant to be sure his measurements are taken from the property line not the edge of the road. Mr. Berlin stated that he measured from the centerline of the road and it is approximately 80 ft.

Mr. Dudick asked if there is any possibility of putting the pole barn closer to the house and only having one driveway. Mr. Berlin explained that his house is only 47 ft. off the road and that driveway is banked on both sides and he would also like to keep the barn in the wooded area.

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

Mr. Kortz asked if the 45 ft. setback is to the pole barn itself. Mr. Myers explained that the proposal is 45 ft. off the property line to the front of the pole barn.

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

4. An application from **Lewis L. McNab**, requesting an area variance from Section 208-12 from the required 80 ft. setback from the front property line for an accessory structure – proposed setback = 68. ft. – variance requested = 12 ft. The property is located at 29 Boyack Road, Clifton Park. Permit #80667

The secretary read the legal notice as it appeared in the Daily Gazette on August 16, 2007.

Frank David and Linda McNab presented this application. Mr. David explained that they are requesting an additional 12 ft. variance for a pool deck. The pool and old deck were pre-existing. They removed the old deck and found out they needed a variance to replace it.

Mr. Kortz asked if the concrete slab is where the old deck was located. Mr. David responded yes.

Mr. Ophardt asked if they are just replacing what was there on the same site. Ms. McNab responded yes.

Mr. Kortz asked why they could not move the deck. Mr. David explained if it was moved back it would encroach on some trees and would be in the shade. Ms. McNab also explained that there are other existing structures in the back.

Mr. Myers explained that this is an existing non-conforming deck and if it is to be replaced they have to meet the current zoning standards.

Mr. Dudick asked how long the existing deck was at this location and if there have been any complaints about its location. Ms. McNab responded 35 years and no complaints.

Mr. Dudick noted that this is just a replacement of a deck that has been around for a long time.

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

Mr. Dudick noted that this request will not infringe upon other properties.

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

5. An application from **Raymond Diaz**, requesting an area variance from Section 208-12 from the required 80 ft. setback from the front property line for an accessory structure – proposed setback = 71. ft. – variance requested = 9 ft. The property is located at 7 Merrall Drive, Clifton Park. Permit #80667

The secretary read the legal notice as it appeared in the Daily Gazette on August 16, 2007.

Raymond Diaz presented this application. He explained that he would like to replace a shed that has been in this location for 38 years. He explained that if he moved the shed to any other place on his property it would still need a variance.

Ms. McCarthy asked if the new shed will have the same dimensions as the old shed. Mr. Diaz stated that the old shed was 8' x 12' but he would like to replace it with a 10' x 12' to be able to accommodate his tractor.

Mr. Ophardt asked if it would be built on the same footprint. Mr. Diaz responded yes.

Ms. McCarthy asked if he changed the dimensions would he have to change the amount of variance needed. Mr. Diaz responded no the front of the shed will be at the same location as the old shed, it would only affect the depth.

Mr. Lemire asked which structure on the plan submitted would be replaced. Mr. Diaz explained that it is labeled as a wood shed.

Ms. McCarthy asked for the current distance between the pathway and the footprint of the old shed. Mr. Diaz responded approximately three feet.

Mr. Dudick asked what prevents him from moving the shed away from McIntosh and closer to the walkway leading to the pool. Mr. Diaz responded that he would have to make the structure smaller. Mr. Dudick noted that the diagram seems to indicate that there is at least six feet between the shed and the walkway. Mr. Diaz explained that it is only three feet.

Mr. Peller asked if the bath house is still there as it was in 1969. Mr. Diaz responded yes.

Mr. Dudick noted that even if the shed were moved up against the walkway a variance would still be needed. Mr. Diaz explained that to meet the 80 ft. the shed would have to be reduced to approximately 7' x 5' and would be too small to accommodate his tractor.

Mr. Dudick noted that this is a common request as far as corner lots are concerned.

Mr. Myers explained that this is another pre-existing condition and they have to meet the current standards. He noted that a building permit will be needed if the applicant is to build a 10' x 12'.

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

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

6. An application from **Philip & Lisa Zanella**, requesting an area variance from Section 208-12 from the required 80 ft. front setback for a pool – proposed setback = 66. ft. – variance requested = 14 ft. The property is located at 450 Miller Road, Rexford. Permit #80669

The secretary read the legal notice as it appeared in the Daily Gazette on August 16, 2007.

Philip and Lisa Zanella presented this application. Mr. Zanella explained that they are looking for a variance to put up a pool on their property. They have a corner lot and need a variance from Sandpiper Lane to the south. They need a variance of 14 ft. which would put the pool 66.2 ft. off the center of Sandpiper Lane. He explained that they would like to put the pool on the south side of their house because it would get the most sun and also there is a large tree that they do not want to remove.

Ms. McCarthy asked where the well line is in relation to the location of the pool. Mr. Zanella explained that the well is approximately 15 feet off the side of the pool and runs up to the house.

Mr. Dudick asked if the pool could be moved further back and deeper into the yard. Mr. Zanella responded that if they moved it back further to the west it would get closer to the well and that would be an issue. If moved to the other side of the well there is an existing swing set and the pool would not get as much sun.

Mr. Kortz asked why it could not be moved north of the well. Mr. Zanella explained that it is very treed at that location and has the swing set, shed, and septic system in that area.

Mr. Dudick asked how long they owned the house. Mr. Zanella responded 11 years. Mr. Dudick asked if Sandpiper Lane was there when they bought the house. Mr. Zanella responded no, it was constructed approximately a year after.

Mr. Dudick noted that it was not a corner lot when they bought the house and they could have put the pool in this area without a variance at that time.

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

Mr. Myers stated that the applicant mentioned that his measurement is 66 ft. off the centerline of Sandpiper Lane not off the property line as he thought it was which means that the variance application should be for 44 ft. instead of 14 ft. Mr. Myers explained that the 80 ft. setback is from the property line not from the center of the road.

Mr. Dudick noted that this is not a self-created hardship. The roads changed after the purchase of the property. He asked if this application had to be re-noticed.

Mr. Myers stated in his opinion the location of the pool is tied to a lot of other things going on in the yard but it is up to counsel if he thinks it is a significant change and has to be republished.

Mr. Peller responded yes because of the distance. Mr. Myers explained that because the application stated 66 ft., he assumed it was off the property line not the centerline of the road but the applicant stated in his comments that it was from the center of the road.

Mr. Lemire asked if a variance would have been needed prior to Sandpiper being put in. Mr. Myers responded no if Sandpiper was not there it would be far enough back from Miller Road and would not need a variance, it is a setback variance that he needs because it is a setback from the second front because of Sandpiper Lane.

Mr. Dudick explained that to be fair to the public a proper notice has to be published with regard to this application so that if one of the neighbors is against this they should have an opportunity to speak. The publication isn't correct because of the miscalculation. To be fair to anyone who may want to make a comment the proper thing to do is re-notice this application and have it heard at the next meeting.

Mr. Dudick tabled this application until the next meeting on September 4th.

It was noted that there will be a Town Board meeting held on that date in the Wood Room. Mr. Dudick explained that the ZBA will meet in Conference Room C on that evening.

7. An application from **Robert & Elizabeth Desbiens**, requesting an area variance from the required 50 ft. front yard setback for an addition – proposed setback = 43. ft. – variance requested = 7 ft. The property is located at 32 Valencia Lane, Clifton Park. Permit #80670

The secretary read the legal notice as it appeared in the Daily Gazette on August 16, 2007.

Elizabeth and Robert Desbiens presented this application. Elizabeth Desbiens explained that they would like to put an addition on their house going out towards Rodriso and Valencia Lane that will not encroach on their neighbors.

Ms. McCarthy questioned the way the application is written stating that a maximum variance of 7 ft. is needed on Valencia but on the other side it looks like 2.6 ft. variance is needed on Rodriso Court.

Mr. Myers explained that he looks at whatever has the biggest impact. The variance is on the property and as long as it covers whatever the worst case is it should cover everything.

Ms. McCarthy asked if a variance is needed from each side. Mr. Myers responded he does not believe so. Mr. Peller agreed.

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

Mr. Ophardt asked why the back is not suitable for the addition. Ms. Desbiens explained that where they would have to put the addition would be very narrow and the back has a walk out basement. It would also take up most of the backyard.

Mr. Dudick noted that this is another corner lot and the setback requirement is for two front setbacks. He noted this is not a substantial request.

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

8. An application from **Andrew S. Levine, DDS**, requesting a variance from Section 208-35C from the required 150 ft. width at the building line – proposed width = 130 ft. – variance requested = 20 ft.; a variance from Section 208-35D(2) from the required 25 ft. setback for parking – proposed setback = 10. ft. on the east side – variance requested = 15 ft.; proposed setback 10 ft. on the west side – variance requested = 15 ft.; a variance from Section 208-98 from the required 130 ft. front setback from the centerline of Rt. 146 – proposed setback = 95 ft. – variance requested = 35 ft.; and a variance from Chapter 171 (Signs) from the required 15 ft. front setback – proposed setback = 2 ft. – variance requested = 13 ft. The property is located at 983 Route 146, Clifton Park. Permit #80671

The secretary read the legal notice as it appeared in the Daily Gazette on August 16, 2007.

Francis Bossalini presented this application. He explained that this is an existing non-conforming lot on Route 146. the existing zoning requires a width of 150 ft. at the building line and this is an existing lot with a width of 130 ft. He explained that the renovation of the existing house is to better suit use as a dental office. It will include the removal of the garage on the west side and then an addition on the east side. The building's existing setback is 12 ft. and the intention is to add an addition on at the same building line that will not encroach any closer to Route 146. The garage on the west will be removed and will bring that side into compliance with the side yard setback. The additional variances are for parking and access ways. The

parking will be moved to the rear of the lot and will need a variance from the 25 ft. side setback for parking but will maintain the 10 ft. requirement for the vegetative buffer.

Mr. Bossalini noted that the sign will be in compliance with the zoning.

Mr. Bossalini explained that this plan has been presented to the Planning Board and they have given a positive nod to the concept plan. He noted that the properties to the east and west are both commercial in nature, a medical office to the east and noted that parking lot encroaches on the 10 ft. buffer and to the west is a child care center which is part of the reason they put the driveway to the east side of the lot.

Mr. Peller asked if he is going to withdraw the part of the application for the sign variance. Mr. Bossalini responded that is correct, they will comply with the setback on that.

Mr. Dudick asked if the parking complies with the size of the building. Mr. Bossalini responded they calculated 19; the total size of the building is 2,980 sq. ft.

Mr. Kortz asked if the proposed asphalt driveway goes over to the property line on the east side. Mr. Bossalini explained from the property line there will be a 10 ft. vegetative buffer, 22 ft. driveway, and a landscaped area around the building of approximately 8 ft.

Mr. Kortz asked why they did not want to move the driveway closer to the building. Mr. Bossalini explained that it would encroach on the parking spot and they are compliant with parking now.

Ms. McCarthy asked why they are moving the driveway to the other side of the building. Mr. Bossalini explained mostly because it would encroach on the 10 ft. vegetative buffer zone and by moving it they can maintain the 10 ft. buffer zone on both sides.

Ms. McCarthy asked how close the driveway is to the driveway of the dental office on the east side. Mr. Bossalini responded they are 10 ft. from the property line and the parking on the adjacent property is very close to the property line.

Mr. Koval noted that driveway comes in off of George Street.

Kirk Gleason, 981 Route 146, expressed that he had concern over the sign variance, but it has now been removed from the application. He noted his concern with the driveway being moved and the closeness to the intersection. He explained that a lot of the problems are due to the buildings being there for a very long time and the changes in the town during that time have created many of the needed variances.

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

Mr. Myers addressed the driveway issue and noted that the applicant will have to get a curb cut permit from DOT and he is sure Planning will take a look at the effect it will have on the intersection and if anything needs to be done as a result. He noted that this is all proposed now and Planning may have other issues when they take a harder look at it.

Mr. Dudick asked if they are moving the driveway so that it is not next to the day care. Mr. Bossalini agreed and also noted that it would encroach on the 10 ft. buffer and they thought it important to maintain the buffer zone.

Mr. Dudick noted that up until this point this was a real estate office. Mr. Bossalini explained that they parked in the front.

Mr. Dudick clarified that this property has been used for commercial use with a curb cut off Route 146 with a parking lot in the front and they are just looking to move where the curb cut is and move the parking lot to the back.

Mr. Ophardt asked if they considered a right in/right out onto Route 146. Mr. Bossalini responded they have not considered that but it would make it more difficult.

Mr. Lemire noted if the proposed addition were made smaller the driveway could be moved towards the west. Mr. Bossalini explained that the size of the addition is based on several things primarily the ability for the doctor to operate at a level he needs to operate. Were they to reconfigure the addition to the rear of the property there would be issues with the parking and encroaching into the buffer on the back against the residential zone. It would require a different variance, a variance against a residential property versus against a commercial property.

Mr. Lemire explained that his point with regard to the variance requested to the east is that it is necessitated by the desire to make the building bigger than it already is. If the building stayed the same and there was no addition then the driveway to the east could be moved to the west and the variance to the east could be lessened or not needed at all.

Mr. Bossalini explained that is correct if there were no addition they could move the driveway, but if there were no addition they probably would not be here tonight.

Mr. Dudick stated that there is going to be demolition on the west side of the building with the removal of the garage. He asked if the demolition included a few more feet of the building to make it more square on that side would there be enough space to put the driveway in on that side.

Mr. Bossalini explained that the proposed building walls would be right on the building setback which is 25 ft., were they to put the driveway there they would still require a variance for the 10 ft. buffer.

Mr. Koval noted that there is a playground almost on the east property line behind the day care and it makes sense to have the driveway on the other side of the building.

Mr. Dudick agreed and noted that he was looking at options and possibilities. He noted it makes sense to keep the driveway away from the day care.

Mr. Bossalini explained that it is their intention to maintain the buffer as much as possible coupled with the fact that you still could not put a driveway there that would not require some kind of a variance.

Mr. Lemire noted that if the proposed addition was moved 7 ft. to the west a variance would not be needed on the east side because you would have the 25 ft. Mr. Bossalini explained that the statement is correct but there are other issues that would have to be considered, first of all if that addition would be the proper size for the operation, and Planning would likely have some concern with the driveway being right up against the building face. If you have building, wall and driveway you have no room for maneuvering for snow storage and landscaping.

Mr. Lemire explained that one thing the Board has to look at is whether some of the variances are self-created and whether there is a less invasive way to do what they want to do.

Mr. Koval explained that the self-created issue is a consideration in an area variance, it is a must meet criteria in a use variance.

Mr. Bossalini explained that there are some other site plan issues, the Planning Board wants the parking in the rear so that limits their ability to expand to the rear, they are already encroaching on the front setback so that limits their ability to expand further to the front, on the west side they are at the 25 ft. setback line for the building so that limits their ability to expand to the west without applying for a variance. They are here asking for consideration for the driveway access. If the Planning Board allows them to narrow the driveway they could move the driveway to a narrower width and perhaps could move over a couple of feet. They would be willing to consider those modifications if the Planning Board allows it but it would not eliminate any variances.

Mr. Dudick explained that this seems reasonable because of the way the property is laid out, the arguments being made regarding placement and the applicant is addressing the Board's concerns and the parking is ample. The buildings have been here a long time and the road has changed making variances necessary. This was a residence a long time ago, this is a very busy road with a lot of traffic and it's good for business.

Mr. Dudick made a motion to approve this application with the amendment that the variance request for the sign be removed. Mr. Ophardt seconded. Ayes: Ophardt, McCarthy, Lemire, Koval, Kortz, Dudick. Noes: None.

The meeting adjourned at 8:28 PM and reconvened at 8:35 PM.

9. An application from **Michael DeMarco**, requesting a variance from Section 208-38C from the required 80 ft. front setback from MacElroy Road – proposed setback = 40 ft. – variance requested = 40 ft.; a variance from the required 80 ft. front setback from Hatlee Road – proposed setback = 41 ft. – variance requested = 39 ft.; a variance from the required 30 ft. setback for parking from MacElroy Road – proposed setback = 15. ft. – variance requested = 15 ft.; a variance from the required 30 ft. setback for parking from Hatlee Road – proposed = 17 ft. – variance requested = 13 ft.; and a variance from Chapter 171 (Signs) from the required 15 ft. front setback from Hatlee Road – proposed setback = 13 ft. – variance requested = 2 ft. The property is located at the corner of MacElroy Road and Hatlee Road, Clifton Park. Permit #80672

The secretary read the legal notice as it appeared in the Daily Gazette on August 16, 2007.

Francis Bossalini presented this application. He explained that they are here strictly at the request of the Planning Commission. The initial site plan presented for this project was a fully compliant site plan with respect to building and parking setbacks. Upon presentation of this plan to the Planning Commission they requested they prepare a plan that reduced the setbacks to be more compliant with some adjoining properties to maintain the character. They requested them to prepare a plan showing reduced setbacks and apply for the required variances based on that plan. He referred to the plan showing the original submittal complying with the 80 ft. setback on two sides and the 30 ft. setbacks for parking and then referred to the plan asking for the variances for the building and parking.

Mr. Bossalini stated that they will be compliant with the sign ordinance and withdrew the request for that variance setback.

Mr. Bossalini noted that the proposed use is for a funeral parlor which is an allowed use in this zone (B-3) and is otherwise compliant with parking spaces and the ability to construct storm water onsite and hook up with the municipal water supply. He again noted that the Planning Board has reviewed this plan and are generally in favor on a concept plan level.

Ms. McCarthy asked if the Planning Board wanted the parking in the back. Mr. Bossalini responded they had some discussion in the minutes that he thought this Board might have, they referred to the general store across the street that has the hamlet type of feel and they would like this building closer to the road which would move the parking into the rear.

Mr. Kortz asked if the parking setbacks are now due to the driveway being closer to the road. Mr. Bossalini responded correct. He explained the parking areas themselves are within the 30 ft. area and have a drop off circulation pattern that goes around the front in the parking setback area.

Mr. Lemire asked to see a copy of the original plan for the Board to look at. Mr. Bossalini indicated that he would pass around the copy on the board.

Mr. Dudick asked Mr. Myers for some input as to why Planning wants these variances applied for.

Mr. Myers responded that he is not sure if he has all the information but it's been his experience that Planning will look at something preliminarily but they require all the variance necessary be obtained prior to them going beyond preliminary approval. He stated that he does not have all the information as to why they wanted the building moved other than what has been presented. They wanted the changes so it would fit into the neighborhood.

Mr. Ophardt asked if they are doing anything with the character of the building itself to fit in. Mr. Myers responded that he is sure they will want the exterior to fit in with the neighborhood. Mr. Bossalini explained that they have instructed them to present building elevations for the next meeting.

Mr. Koval noted that at that intersection and along Main Street everything is up front, close to the road and he feels that is what is in keeping with what is existing and what's been there. He stated that it makes sense and is architecturally pleasing to have a building up front opposed to a parking lot.

Mr. Dudick noted that it seems like a good idea if they wanted to create a hamlet type of appearance, one that maybe even the Town Board would adopt for that area and then it wouldn't have to go back to zoning.

Mr. Myers explained that this area is not zoned as a hamlet and if it was changed to a hamlet zone it would modify the setbacks required but most of Jonesville is zoned R-1, with "B" zoning in this area.

Frank Berlin, 980 Main Street, expressed his concern with one of the assistant fire chiefs that lives in the area being able to get out of his house for a fire alarm with all the cars lining up for a funeral. He also noted that firemen come from all directions to get to the fire house and the traffic for a funeral would be a problem. He is concerned with the EMT's being able to get to an emergency. He also noted that adequate parking will be a problem. Where will the overflow cars park. He noted that even if this is zoned properly consideration should be given to the type of business that will be there.

Mr. Koval stated that these are good arguments but they do not apply to the ZBA. This application does meet the current zoning.

Mr. Berlin referred to the septic system and his concern for pollution from this business. He asked who will control waste material from getting into his water system. He has concerns with diseases that may be transferred. He has three concerns, one with the safety for the fire department and EMT's, traffic, and he feels there will be problems in the winter time. He feels a funeral parlor is not needed in the hamlet of Jonesville.

Mr. Kortz asked if he has expressed his concerns to the Planning Board. Mr. Berlin stated that he did talk about this before when he was here. Mr. Dudick explained that this is the Zoning Board and Planning is a totally different board and will be more equipped to handle his concerns. He also noted that this site has the proper zoning and explained that this board does not look at an application and make an assumption that an applicant would go forward and break the law, i.e. improper disposal of waste products. He explained that there is no reason for this board to make that assumption without some prior evidence.

Mr. Koval explained that this is a properly zoned site and they are only looking for setback variances.

Mr. Peller explained that the Planning Board will have a copy of the minutes of this meeting and will be aware of his concerns.

Ron Enfield, Dyer Drive, asked why the ZBA would be moving forward on this application if the Planning Board is not done with their part of this proposal, meaning that if there are waste management problems and similar issues, wouldn't it be better to hold off on granting the variances until the Planning Board has determined, if there is not sewers and there is only a septic tank system here, we wouldn't be here right now if the Planning Board hasn't approved it, so we shouldn't even be here until the Planning Board has said yes it's a go or no, it's not a go, because of again the waste management. There are embalming fluids, and body fluids that have to go somewhere. There are septic tanks and they have to be drained somewhere. He feels this should still be at the Planning Board level, not the variance level.

Mr. Koval explained that this will have to go back to the Planning Board but their procedure in this type of manner, when there are variances that are needed, when they are trying to accomplish what they are trying to accomplish, they send it down here for the variance because if we say no to them, they cannot go any further anyway, if we say yes to them then you can bring all your arguments to them and they can still say no.

Mr. Dudick noted that in this case the applicant can actually put the funeral home on the property without any variance whatsoever and it wouldn't necessarily kill this project even if the variances are not granted, but before they go further beyond the conceptual review they want to see if the variances are granted and it can go beyond the conceptual review. It is not uncommon for someone to make an application to zoning and then go to planning, sometimes they go to

planning and then to zoning and back to planning. We are addressing different issues.

Mr. Kortz noted that there are a lot of valid issues that have been brought up and those would be conditions that planning could put on any approval, also the issue of hazardous waste.

Mr. Enfield noted that there are valid concerns in particular the waste disposal. Mr. Dudick explained that this town would not want to see a facility like this established if there wasn't a proper established waste management and disposal situation set up.

Mr. Lemire expressed his concern with not knowing why the Planning Board has forwarded this application to this Board first. He feels there is a balancing test when considering an area variance and this board has to balance the benefit to the applicant with the detriment to the health, safety and welfare of the community and he is unsure how to do that without knowing the Planning Board's rationale in referring the applicant to the ZBA for variances before they consider what they need to consider to put this building on the lot. He does not know how to do that.

Mr. Bossalini explained that the points brought up here had been brought up at the conceptual review particularly with waste disposal, traffic issues, etc. and they are being addressed as comments the Planning Board has directed them to do. One suggestion was no parking signs be installed along the road. With respect to waste these are not toxins that will leak into the ground water and contaminate the ground water. The Funeral Parlor Directors Association, a national, professional society has a lot of documentation and has done a lot of studies regarding the disposal of embalming byproducts into septic systems and they have determined they are actually quite safe. The embalming process is a disinfecting process in itself so the pathogens that one might associate with that kind of processing are eliminated. They are providing the appropriate documentation to the Planning Department for those concerns. It is also a regulated industry so what might be classified as medical waste would be required to be disposed of in a proper manner.

Mr. Bossalini emphasized that they are only here to consider the area variances that the Planning Commission has asked them to come and apply for so depending on what this Board says is whether the applicant proceeds with the original application that is compliant with the zoning or the application that is the preferred layout of the Planning Board. Their rationale beyond trying to be compliant with the hamlet character in that area is more or less what it was. They are trying to maintain the aesthetics that has been established in that area that is not necessarily replicatable by strict application of the current zoning criteria, i.e. the 80 ft. setback. They asked them to try an alternate plan that would be more fitting with the area. This was discussed with the applicant and we came up with the plan presented tonight and they think it is a good compromise.

Mr. Lemire asked for the number of viewing rooms. Mr. Bossalini responded two. The proposal of 75 parking spaces is in line with the one per three chair requirement. He noted that there are

no funeral parlors in Clifton Park. There are two in the Town of Halfmoon and one has approximately the same amount of parking and one has substantially less.

Mr. Bossalini explained that at 225 chairs, at one per three, requires 75 parking spaces which the Planning Board agreed with.

Nancy Bellamy, 147 East Side Drive, Ballston Lake, stated that there are lines outside funeral parlors because there is not enough room inside to hold all the people and cars are everywhere. She cannot image that intersection if there are two funerals going on at the same time. She has concerns for safety. She feels the neighbors should have been notified of this hearing.

Mr. Koval explained that the board is only addressing the setback variances. He suggested that she bring her concerns to the Planning Board.

Mr. Dudick explained that the hearing was legally noticed as required by law. He explained that the question is not if a funeral home is allowed, that has been established by law, the question is the placement of the building. The issues brought up are planning issues.

Margaret Catellier, 26 Royal Oak Drive, asked if there are any variances along the back of the property and asked what is along the rear property line. Mr. Bossalini responded no variances are required and that there is a house and Church property that abuts the site at that location.

Richard Horstman, MacElroy Road, stated that he would like to see the architecture of the building conform to the hamlet atmosphere. He also stated that he is a volunteer fireman and is concerned with the traffic interfering with responding to fire emergencies.

Mr. Kortz noted that he feels the setbacks do not have a detrimental affect on the neighborhood and is in favor of this application.

Mr. Peller asked the board to make any approvals contingent on Planning Board approval.

Mr. Dudick explained that he understands the public concern with the building design, traffic, and how the business will be operated, and these are concerns of the establishment and development of any business but these are concerns for planning.

Mr. Peller asked for clarification, have they been for conceptual approval not preliminary. Mr. Bossalini responded they have submitted a concept plan, they raised their concerns regarding the building setbacks, they submitted a second concept plan for their comments and they are here now, the next step is preliminary plan review and that is when they will act on SEQR.

Mr. Peller asked if they knew when they would be on the agenda. Mr. Bossalini responded no they are waiting for this matter to be resolved.

Jay Russell, Main Street, stated that he thinks the plan is great bringing the building forward towards the roads but if granted you are locking them into access only on MacElroy Road and not on Hatlee Road because it is too close to the intersection.

Mr. Kortz stated he does not see how they will be locked into that. Mr. Russell stated you are if you allow the building to be placed where it is on the plan it makes it accessible only from MacElroy Road.

Mr. Koval explained that granting the variance does not mean they have to put the building there, it would allow them to but planning could still say they want it someplace else.

Mr. Peller explained that they may be back here as well if the building is moved someplace else and another variance is needed.

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

Mr. Dudick noted that he does not have a problem with the placement of the building, it makes sense to keep it with the hamlet-like appearance and not granting the variance does not put an end to this project because they could still build the building with the original plan so it is really about an aesthetic approach. The questions raised will come under planning.

Mr. Dudick made a motion to approve this application as submitted contingent upon Planning Board approval and with the withdrawal of the sign variance. Mr. Ophardt seconded. Ayes: Ophardt, McCarthy, Koval, Kortz, Dudick. Noes: Lemire.

10. An application from **Fire Road Associates II, LLC**, requesting a variance from Section 208-46C from the required 20 ft. setback for parking on the west side – proposed setback = 10 ft. – variance requested = 10 ft.; a variance from Section 208-48 from the required 15 ft. landscaping buffer on the east side of Chili's restaurant – proposed buffer = 0 – variance requested = 15 ft.; a variance from Section 208-48 from the required 15 ft. landscaping buffer on the west side – proposed = 10 ft. – variance requested = 5 ft.; a variance from Section 208-49, Group of Establishments – 400 ft. frontage required on Route 146 at building line – proposed = 350 ft. – variance requested = 50 ft. The property is located at 5 Northside Drive, Clifton Park. Permit #80673

The secretary read the legal notice as it appeared in the Daily Gazette on August 16, 2007.

Gavin Vuillaume, Environmental Design Partnership, presented this application. He explained the applicant is requesting four variances as part of the construction of a multiple building facility which is a mixed use and has been before the Planning Board and reviewed as far as layout and several variances are necessary for the project to move forward. The site is just west of Chili's restaurant. The only building on the site is Chili's and the parking lot. They are

proposing two new buildings, one a mixed use with two types of uses in the front and perhaps a proposed bank in the rear. He presented elevations for the coffee shop, Starbucks, with a drive-thru and perhaps a second drive-thru for a bank. The variances are needed to clean up the site plan. They previously received a variance for parking five feet along the property line. The approval was mistakenly granted for the east property line and should have been for the west property line. The plans always showed parking along the westerly edge. They want parking within 10 feet of the property line for a small section, a portion of four parking spaces along the westerly edge of the property. They are looking for a non-conforming existing use along the Chili's parking lot on the east side from the 15 ft. landscaping buffer and a variance is needed from the minimum lot width for a group of establishments.

Mr. Lemire questioned the variance for the landscaping buffer on the east side of the property, it is stated as 15 ft. and Mr. Vuillaume referred to 8 ft. Mr. Myers explained that a 15 ft. variance would cover the total area.

Mr. Vuillaume explained that there is not 400 ft. of frontage along Route 146 as required there is only 350 ft. and noted that they have ownership of 102 ft. on Fire Road and another 60-70 ft. along Route 9 but it has to be continuous so the variance is needed. The site is large enough for the three buildings and it meets all the green space requirements. It will be a unified site plan with shared access, shared utilities, and shared storm water management which are all the things a group of establishments looks for on the site plan.

Mr. Kortz asked if the frontage variance was considered when Chili's was built. Mr. Vuillaume responded probably not.

Mr. Dudick explained cumulative buildings is the issue, you only had the one building at that time. Mr. Myers explained that a group of establishments refers to putting multiple buildings on one lot.

Mr. Peller explained that he and Mr. Myers discussed the contiguous frontage idea versus looking at it cumulatively and there is case law that suggests it should not be cumulative.

Mr. Myers stated he did go back and ask planning to find out, including the hotel when it was one lot, if they discussed the group of establishment's principal then and they could not confirm that was done. If it was done before they started subdividing it, it would not be here now. It was not discussed.

Mr. Lemire asked what is the purpose of having 400 feet for a group of establishments. Mr. Myers explained that he feels it is setting some minimum land area requirements for being able to get multiple buildings on one lot.

Mr. Dudick also commented that the concept of 400 feet of frontage would not take into consideration that there would be access from other road. Mr. Myers agreed.

Mr. Dudick stated it will not have access from Route 9. Mr. Vuillaume responded not necessarily they are proposing right in/right out on Route 9 right now and they have some correspondence from DOT that that might be allowed. It will be a good idea because anything that takes traffic away from that intersection is going to be a good thing.

Nancy Bellamy stated she was at the Planning Board meeting and there was concern mentioned regarding access onto Route 9 because of it being so close to the intersection.

Mr. Peller explained that that portion is in the Town of Halfmoon and would need to go before them, Clifton Park has no jurisdiction.

Mr. Ophardt asked if the variance on the west side for parking is only at one point. Mr. Vuillaume responded yes they changed the building orientation due to a suggestion by the Planning Department and therefore the variance is needed.

Mr. Ophardt asked what the dimension for a parking space is. Mr. Vuillaume responded 18' depth x 9' width.

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

Mr. Myers noted that the sign at Fire Road is to be modified so he does not know if any other variances will be needed. The sign on Route 9 is not in our jurisdiction. He has several concerns about parking and traffic flow for this site and he will bring those up at the Planning Board. He also has concern with emergency access which will be addressed later.

Mr. Peller recommended two separate motions, one to clean up what was done in error and a motion to vote on the rest of the application.

Mr. Lemire asked if an 8 ft. variance is needed on the east side for the landscaping buffer not 15 ft.

Mr. Peller asked what the original variance called for. Mr. Myers responded it was for when the property line went between Chili's' and the new place. Mr. Myers stated that he is not sure how consistent the 7 ft. is along the property line. He stated that he does not have a problem reducing the variance request, perhaps 10 ft. instead of 15 ft.

Mr. Peller suggested making a motion to correct the record and grant a new variance and also change it to 10 ft. not 15 ft.

Mr. Kortz made a motion to approve the variance from Section 208-46C for a 10 ft. variance for parking on the west side of the property to correct the record.

Mr. Peller stated that the motion will be amended.

Mr. Dudick amended the motion to withdraw the previous variance granted stating that the parking variance was on the east side. Mr. Lemire seconded.

Ms. McCarthy noted that she thought Mr. Kortz' motion corrected the error. Mr. Dudick explained that he is correcting a variance that was misstated and he wants to make part of the vote that the pervious variance is abolished.

Mr. Dudick made a motion to approve a variance of 10 ft. on the west side of the property with the abolishment of a previous variance that granted a 10 ft. variance on the east side of the property. This motion is made with the approval of the applicant's representative. Mr. Lemire seconded. Ayes: Kortz, McCarthy, Ophardt, Dudick, Koval, Lemire. Noes: None.

Mr. Dudick made a motion to approve the application for a variance of 10 ft. for the landscaping buffer on the east side of Chili's restaurant, a variance of 5 ft. for the landscaping buffer on the west side, and a variance of 50 ft. to allow for 350 ft. of frontage at the building line on Route 146 for a group of establishments. Mr. Lemire seconded. Ayes: Kortz, McCarthy, Ophardt, Dudick, Koval, Lemire. Noes: None.

The approval of the minutes of July 17, 2007 was tabled until the next meeting on September 4, 2007.

The Board adjourned into Executive Session at 9:50 PM and reconvened at 10:25 PM.

Mr. Kortz made a motion to adjourn the meeting at 10:26 PM, Mr. Ophardt 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