

ZONING BOARD OF APPEALS

April 15, 2008

Present: Michael Dudick, Chairman, Dale Gleason, Gilbert Kortz, Robert Ritter,
Christopher Lemire

Absent: Douglas Strother

Also Present: Lou Renzi, (for Joel Peller, ZBA Counsel)
Steve Myers, Director, Building & Zoning

Mr. Dudick called the meeting to order at 7:10 PM.

OLD BUSINESS:

1. **An application from F. R. Foote Company, Inc., requesting an area variance from Section 208-35C from the required 40,000 sq. ft. minimum lot size – proposed = 27,773 sq. ft. – variance requested = 12,267 sq. ft.; a variance from Section 208-35C from the required min. lot width of 180 ft. actual lot width = 172.32 ft. – variance requested = 7.68 ft.; a variance from Section 208-35D2 from the required 25 ft. side yard setback for parking – east side actual setback = 23 ft. – var. requested = 2 ft. – west side setback = 0 – var. requested = 25 ft.; a var. from Section 208-35D2 from the required 25 ft. rear yard setback for parking – actual setback = 11 ft. – var. requested = 14 ft.; a var. from Section 208-35D(1) from the required 70 ft. front yard setback from the property line – actual = 38 ft. – var. requested = 42 ft.; a var. from Section 208-98 from the required 130 ft. setback from the centerline of Rt. 146 – actual = 85 ft. – var. requested = 45 ft. The property is located at 898 Route 146, Clifton Park. Permit #80691**

Mr. Joe Dannible again appeared to present this application and he appeared with the owner of F.R. Foote company's President, Don Ferguson. Mr. Dannible presented an amendment to the

original application. Originally, the applicant proposed a 1,000 sq. ft. addition to the front of the building, which extended 31 feet from the front of the building, requiring a 45-foot front yard setback from the centerline of Route 146. He went back to the architect and they have reduced the size of the addition to the front of the building, from 1,000 sq. ft., to 400 sq. ft. This would extend 12 feet from the front of the building and reduce the front yard variance request to 26 feet, from the 130 foot setback requirement from the centerline of Route 146. He feels that this is the absolute minimum that the applicant can live with in order to proceed to develop his property and expand his business.

The only change in the application is the change in the front yard setback.

Mr. Kortz and Mr. Lemire questioned the map, and Mr. Dannible explained the map to them.

As in the last meeting, Mr. Dudick questioned why the addition cannot be to the east or west side of the building, that they already have a door. He thought that was a good way to extend. Mr. Dudick further questioned how this is cost prohibitive. Mr. Dannible explained that the existing furnace, chimney and utilities would have to be relocated. On the other side it would disrupt business because that is where the offices are. Additionally it would have to be a different level with the rest of the building.

Mr. Kortz asked about the natural gas, heating and insulation. Mr. Ferguson, the owner, stated that they wanted to use the existing heating system. Mr. Ferguson also explained that they wanted the least amount of disruption and also did not want to have to cut down trees.

Ms. Gleason asked for clarification on the change in the front yard variance request. Mr. Dannible explained that originally they needed a 45-foot variance; now they need a 26-foot variance. Ms. Gleason asked if the application needed to be amended to reflect this. Mr. Dudick said they would amend it when a vote is taken.

There was further discussion on the front yard setback and that the variance requested is listed twice. Mr. Myers stated that both are listed depending on which one is more restrictive. Mr. Dannible stated that it was 45 feet, now 26 feet.

Mr. Lemire asked about the elevation and Mr. Dannible stated that it would be relatively unchanged.

Mr. Dudick read the letter from the Saratoga County Planning Board, dated March 28, 2008, from Jason Kemper. Mr. Kemper in his letter stated that there would be no significant countywide or intercommunity impact in their view.

Mr. Myers stated that the building is currently nonconforming and that he thinks this is a better proposal than they came up with last time.

Mr. Myers stated that there is still a pending issue with the septic. Mr. Ferguson replied that originally he was going to add an additional bathroom, but it would be very prohibitive at this point to connect to the municipal sewer so he took out the additional bathroom and he will leave the current 3 bathrooms he has.

Mr. Kortz asked how many employees there are and how many there will be. Mr. Ferguson answered that there are currently 8 employees there and there will still be 8 employees after the addition. This will just add more room. It is an extension of his office and another small office for another employee who currently uses the copy room for his office.

Mr. Dudick pointed out that the Zoning Board of Appeals is a 7-member Board. There is one vacancy and one absent member. The number of votes necessary to approve an application would be 4 and there are 5 voting members present. He stated this to give the applicant the opportunity to wait until there is a full Board for a vote to be taken. He mentioned that the absent member expects to be at the next meeting.

Mr. Ferguson asked if the application only received 3 votes tonight would they be able to re-present the application to a full Board. Mr. Dudick referred the question to Mr. Renzi. Mr. Renzi replied not without significant modifications.

Mrs. Gleason stated that she believes the applicant did a good job with the changes to the application.

Mr. Kortz stated that he thought the reason for the addition was to expand business, not to create more office space. Mr. Ferguson replied that the original larger addition would have added more offices but he cut the size of the addition down.

Mr. Dudick stated that he is aware that the building is nonconforming but there are other options. He is pleased that business is growing but he does not like the idea of adding to the front of the building. He would rather see the expansion to the east or west.

Mrs. Gleason stated that people who own businesses on Route 146 used to own a lot more property in the front but NYS took that away, so that is why a lot of business owners there are already nonconforming, through no fault of their own. She further stated that we live in a community that wants to foster business and if you drive from Pizza Hut to Moe Road you will see at least 8 "for lease" signs on office buildings. We have a business here that is doing well, that wants an addition and is willing to cut back. She sees this as meeting the Board halfway. She likes the compromise.

Mr. Kortz mentioned that the front yard variance request is now 23 feet from the property line; 26 feet from the centerline of Route 146, which he doesn't consider to be all that substantial.

Mr. Dannible stated to add to Mr. Kortz's point that if you drive from Clifton Park Center down to Moe Road, there are many existing buildings that exceed the front yard setbacks more significantly than what their proposed addition would. He feels that this is not substantial to be a detriment to the surrounding area.

Mr. Ritter stated that he agrees with Mrs. Gleason that this is a good compromise.

Mrs. Gleason and Mr. Dudick discussed that the person who is absent from the board has not heard any of this testimony. Mr. Dudick stated that if there is a vote taken today that is a non-issue. There was discussion about closing the public hearing and Mr. Dudick stated that he

would like to leave the public hearing open if there was not going to be a vote taken tonight. Mrs. Gleason asked for further clarification on the voting process if another member were to be absent next time, and then another person the time after that. Mr. Renzi responded that he has only faced that with one adjournment so he could not answer her question.

Mr. Dudick reiterated to the applicant that there is no guarantee because there is not a full board and asked if he wanted a vote tonight. The applicant stated that in light of the effort put in he would like a vote tonight.

Mr. Ritter made a motion to close the public hearing. Mr. Lemire seconded. Approval unanimous.

Mr. Kortz made a motion to approve the application as amended, the amendment being the front yard setback variance changed from 42 ft. to 23 ft. from the property line; 45 feet to 26 feet from the centerline of Route 146. Mr. Ritter seconded. Ayes: Gleason, Kortz, Lemire, Ritter. Noes: Dudick.

NEW BUSINESS:

- 1. An application from Joseph H. & Sunday B. Verrillo, requesting a Use Variance from Section 208-64 to allow for automotive sales in a Light Industrial zone. The property is located at 1928 Route 9, Clifton Park. Permit #80692**

The Secretary read the Legal Notice as it appeared in the Schenectady Gazette on April 10, 2008.

Mr. Dudick read the letter dated March 28, 2008, from the Saratoga County Planning Board pertaining to this application. The Saratoga County Planning Board stated that they feel there is no significant countywide impact with regard to this application.

Tony Ianello, Esq., presented this application on behalf of Joseph and Sunday Verrillo, who are the owners of the property located at 1928 Route 9, Clifton Park. He provided proofs of mailing notifying property owners within 500 feet of the site of the property. He introduced David Bogardus, from Northeast Land Surveying, and Fernando Bruno, from Realty USA, Real Estate Consultant. He explained that the Verrillo's submitted an application for a Use Variance which would permit them to sell cars and trucks on the property in question.

Mr. Ianello provided the Board with an overview of the project and the Town's zoning laws. The property is zoned Light Industrial – 2, and is subject to Section 208-64 of the Zoning Code. That section contains 3 subdivisions: A, B and C, setting forth permitted uses in a Light Industrial (LI) district. This divided further into an LI-1 and an LI-2 Zone, and examples are given of prohibited uses in either LI-1 or LI-2. Among permitted uses which are germane to this application are the permitted uses listed under LI-2, being auto and truck rental facilities, public garages, auto repair shops and body shops. This section of the zoning law was amended on May 16, 2005, by local law 6-2005, and does not list vehicle sales as a permitted use - nor are vehicle sales listed as a prohibited use. Vehicle sales were permitted prior to this amendment. The

owners have been in the business of selling and servicing specialty vehicles for over 20 years at their current location on Route 9 in Halfmoon. They purchased the Clifton Park property in 1999 or 2000 with the express intent to construct a facility for the service, sales and storage of these vehicles.

Mr. Ianello stated his intention to show that the amended zoning code has caused unnecessary hardship for the Verrillos. He will provide testimony from the Verrillos, their land use planner and expert in local real estate matters to demonstrate the hardship suffered by the Verrillos in accordance with the statutory elements as set forth in NYS law and in the applicable sections of the zoning codes of Clifton Park. He stated that the Verrillos were granted site plan approval for the sales of automobiles and trucks on this site in 2001, with an extension that went into 2002. He intends to show that the applicant (1) cannot realize a reasonable return from the permitted uses; (2) that the unnecessary hardship created by the zoning code amendment is unique to this property and does not apply to other portions of the district or neighborhood; (3) that the use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the unnecessary hardship created by the zoning code amendment is not self-created.

He began the hearing with a presentation from Mr. David Bogardus of Northeast Land Surveys, who is a consultant for land use planning.

Mr. Ritter asked if auto sales were a permitted use when the Verrillos purchased the property. Mr. Ianello responded that they were.

Mr. Kortz asked about the extension approval in 2001. He wanted to know why they were trying to sell. Mr. Ianello stated that after the extension expired at the end of February of 2002, the applicants went through a long process of pricing the structures and gathered information relating to their financial capabilities. At that time, they felt that they were under capitalized they sought alternatives.

Mr. Lemire asked if vehicle sales were expressly permitted in the law or just not excluded. Mr. Ianello responded that they were expressly permitted.

Mr. David Bogardus of Northeast Land Surveys identified himself and stated he has been working on this project for about a year. They have presented their conceptual plan to the Planning Board on March 25, 2008. He explained where the property is, and stated that the two parcels purchased total 3.76 acres. The property is vacant. The property is constrained as far as development. He explained the wetland constraints as well. He stated that due to the front setbacks and the wetlands there is approximately 1.59 acres of developable property.

Mr. Kortz stated he was confused about the number of parcels purchased – was it 2 or 3? Sunday Verrillo identified herself and stated that she believes it was an adjoined deed, that she only purchased 2 parcels.

Mr. Bogardus stated that the project is serviced by Saratoga County sewers, not by municipal water. The project proposed has low water use. There are 7 or 8 employees. Two 9,800 sq. ft. buildings are proposed. The goal is to have automobiles indoors, and out of the weather. He stated that the site plan approved in 2001 allowed for 3 vehicle display areas in the front with

rows of parking in the front. They are not proposing that.

Mr. Bogardus further explained about the inventory of the neighboring properties and their surrounding uses, as they appear on the map. He noted that there is quite a bit of retail in the surrounding area. He believes that none of these businesses actually fit the uses listed in the current L2 zoning.

Mr. Ianello asked Mr. Bogardus if the use being sought by the applicant present any topographical dilemmas or problems, for example, drainage. Mr. Bogardus replied, no.

Mr. Ianello asked Mr. Bogardus if he is familiar with a letter dated July 13, 2004, from Thomas Endress, P.E., of ABD Engineers & Surveyors. Mr. Bogardus replied yes. Mr. Ianello presented this letter to the Board for their record. He asked Mr. Bogardus to read the first sentence of the last paragraph, which stated, "It is my professional opinion that there is no evidence of any drainage crossing onto the Park Pools property and no evidence of any damage to the Park Pools property."

Mr. Ianello asked Mr. Bogardus if, in his professional opinion, he agrees with the opinion in the letter, to which Mr. Bogardus responded yes. He does not see any current drainage problems and will certainly comply with all of the on-site and off site regulations regarding water discharge. He mentioned that per DEC law they are required to keep all of the storm water on their property.

Mr. Ianello presented as Exhibit "A," a copy of Town Code Article 9. He and Mr. Bogardus discussed in detail, the permitted uses under LI-2. Mr. Ianello asked Mr. Bogardus to comment on the permitted uses, and on the uniqueness of this particular parcel with respect to each of the permitted uses.

Under Article 208-64 A1A, Mr. Ianello asked Mr. Bogardus his opinion on the usefulness of this property for assembly and fabrication. Mr. Bogardus replied that he does not believe that the useable amount of land on this property is large enough to support any major assembly and fabrication, and he is concerned about the availability of sufficient water. Mr. Ianello asked Mr. Bogardus if an assembly and fabrication facility would generally require more employees than the 7 or 8 that are going to be working, to which Mr. Bogardus replied yes. Mr. Ianello asked Mr. Bogardus if he feels there would be more problems with more employees. Mr. Bogardus again replied yes. He would also be concerned about the leakage of chemicals like antifreeze into the Dwaaskill, and that their plan is to keep most of the automobiles stored inside. He stated that the plan is set up to prevent pollution and he mentioned that the Verillo's recycle their batteries and metal products and coolants. He feels that any type of assembly and fabrication facility would likely cause pollution problems. Mr. Ianello asked Mr. Bogardus what size building he feels would be necessary to conduct assembly and fabrication, given the size of the property and its constraints. Mr. Bogardus replied that he did not feel a building could be constructed that would be any larger than the 19,000 or so square feet currently proposed.

Mr. Dudick commented that there are numerous things that could be assembled or fabricated. Mr. Ianello stated that he was referring to the size of the structure that could be built on the property. Mr. Dudick stated that he understood.

Mr. Ianello brought attention to the second permitted use for the property, that being storage and warehousing and distribution of manufactured products. Again, Mr. Bogardus mentioned that they could not build anything larger than that which is proposed, and he does not feel that is ample enough for a warehouse. Mr. Bogardus would also be concerned about fire protection in this case.

Mr. Ianello went into the third permitted use for the property, animal care facilities. Mr. Bogardus replied that he feels an animal care facility would require a lot more parking for employees and customers.

Mr. Kortz asked Mr. Bogardus how many parking spaces are proposed in this application? Mr. Bogardus replied that he believes 28. Mr. Kortz asked Mr. Bogardus if there was evidence that the property was attempting to be sold to someone who would use it as permitted, and Mr. Bogardus' response was inaudible.

Mr. Kortz also stated he was confused the parcels, were there 2 or 3. Mrs. Sunday Verrillo explained that they only purchased 2 parcels. There was discussion between Mr. Renzi and Mr. Kortz about an affidavit and deeds, and documents contained within the application package, but much of this is inaudible. Mr. Renzi did state that the 3rd deed referred to is a deed that shows the title into the grantor in the second deed. Mrs. Verrillo said that she purchased it at an estate and she thinks that is why the deed is listing the parcel twice. Mr. Ianello explained that there are 3 deeds because the first deed just demonstrates the title going into the grantor of the first parcel from James Tasjian. That deed is a referee's deed from Steven Rodriguez, referee, into James Tasjian, and then the two parcels are from Mr. Tasjian to Mr. and Mrs. Verrillo, the first parcel, and then the second parcel is from William Panich into Mr. and Mrs. Verrillo.

Mr. Kortz asked if \$8,000 was the sum of money paid for these properties? Mr. Ianello explained that the parcel from Mr. Panich is conveyed as an executor of a deed, and when there is a conveyance through an estate, the actual consideration is set forth in deeds from a grantor to a grantee, normally. Mr. Kortz asked if there is evidence of how much the property was purchased for. He asked for evidence of figures. Mr. Ianello stated there is a cover sheet, with the transfer tax, a referee's deed with a transfer tax of \$550, and that transfer tax represents 4\$ a thousand.

Mr. Kortz stated that if the property was purchased for \$128,000, he is trying to see where the financial hardship is. Mrs. Verrillo replied that she paid \$137,500 for the property.

Mr. Dudick asked Mr. Renzi to summarize the transaction of the property, to which Mr. Renzi explained the \$137,500 purchase from James Tasjian.

Mr. Ianello further discussed the remaining permitted uses for the property, but did not go into great detail here.

Mr. Lemire asked if they restore vehicles. Mrs. Verrillo responded yes.

Mr. Ianello called up his next witness, Mr. Fernando Bruno. Mr. Bruno has been a Realty USA

agent since 2002. He is an engineer from Tufts University. He is acting for clients in Clifton Park, representing them on commercial sales and leases. He stated that he is familiar with this property. In his opinion, if the property is used as permitted, the broad question is what is the value of the land based on what can be built on it. The highest use for this property would be for warehousing. With a building of 20,000 square feet, at \$7 - \$10 per square foot of buildable land, that would yield \$140,000 to \$200,000. An animal care facility would yield a little higher use value, but would still not pass the \$10 mark, so he thinks that would yield about \$100,000.

Mr. Lemire asked what the property value would be, as is. Mr. Bruno replied between \$150,000 and \$200,000 in its current condition.

Mr. Lemire asked if it would be valued higher if it were used for office space. Mr. Bruno replied that it would, but that it is not a permitted use.

Mr. Ritter asked if they have tried to sell the land. He asked if there was any documentation and asked where the evidence of financial hardship is. Mr. Ianello responded that he would present testimony from Mrs. Verrillo which would answer those questions. Mr. Ianello asked Mr. Bruno if the Verrillo's consulted with him regarding the possible sale of the property for uses other than that applied for in this application. Mr. Bruno replied that they had consulted him about 18 months ago. They consulted him about what the value of the property would be at the time and they had no knowledge regarding the change in zoning. They presented an 18,000 square foot building. Since then, there have only been preliminary discussions. Subsequent to the change in zoning they discussed the marketability of the property, but they never got into details other than them knowing that the value was more. He explained to the Verrillos that if they were to sell the property for the uses permitted, it would be a prolonged process. He did not recommend selling the property for under \$199,000.

Mr. Ianello asked Mr. Bruno why the Verrillo's did not list the property. Mr. Bruno stated that the Verrillo's contemplated reevaluating if they could use it. They were not happy with the sale price suggested.

Mr. Lemire asked if the property is located in LI-2. Mr. Ianello responded that it is.

Mr. Ritter asked about the differences between LI-1 and LI-2. Mr. Ianello responded that they are similar. Mr. Myers responded that everything except sales is allowed in LI-2.

Mr. Dudick asked if Park Pools is in LI-1 or LI-2. Mr. Myers responded that Park Pools is located in LI-2. Mr. Dudick asked if Park Pools sells pools. Mr. Myers responded yes. Mr. Kortz responded that Park Pools has been there for a long time.

Mr. Lemire asked if LI-2 is restricted to not include any retail. Mr. Myers responded that he did not believe that is the case.

Mr. Ianello stated that based on the uses of the surrounding properties, he does not believe that granting this use would alter the essential character of the neighborhood.

Mr. Verrillo questioned Sunday Verrillo, who identified herself and husband as being the owners

of Prestige Motor Co. They have resided in Clifton Park for 11 years. Their business has been located on Route 9 in Halfmoon since 1984. They want to bring their business to Clifton Park. Mr. Ianello asked Mrs. Verrillo if she brought an affidavit, which she did. He asked her about her recollection of the purchase of the property in question. She responded that the purchase price was \$149,500. Mr. Ianello asked Mrs. Verrillo if she investigated the zoning at that time. She responded that she had, because she had always intended to put her business there. At the time, the area was “shaded” and “unshaded.” She found a shaded area that was applicable to their business. She found through a lengthy discovery process as well as driving up and down Route 9 and looking at vacant land, with the intent of purchasing land for them to operate their business. They finally discovered this property that was fit for a business. She then contacted the Town and spoke with Don Clemens at the time. She claims Don Clemens advised her that the property was suitable for her business. She then forwarded Mr. Clemens a letter and asked for a response as to whether the property would fit their needs. Mr. Clemens did provide a written response which stated that automobile sales and repairs were allowed this LI zone, which was unshaded.

Mr. Ianello submitted copies of correspondence to Don Clemens as Exhibit 3, copies of a response from Don Clemens as Exhibit 4, and a letter from Jason Kemper confirming the extension of the site plan as Exhibit 5.

At this time, Mr. Dudick called for a short break.

When the hearing resumed, Mr. Ianello asked Mrs. Verrillo to summarize the above, regarding her conversation with Mr. Clemens and their written correspondence. Mr. Ianello asked Mrs. Verrillo to read the handwritten portion of correspondence, which she read, “Per Section 208-64C of the Town Code, automotive sales and repairs are allowed in a Light Industrial unshaded zone.”

Mrs. Verrillo stated that subsequent to this correspondence, she purchased the property in the amount of \$149,500. Her closing costs were approximately \$12,000 to \$15,000. She stated that there then came a time when she submitted an application for site plan approval. She was approved. She requested an extension and was granted one. Mr. Ianello asked Mrs. Verrillo if she ever commenced construction and applied for a building permit pursuant to those approvals. Mrs. Verrillo replied, no. Mrs. Verrillo stated her reasons for not proceeding with an application for a building permit. She stated that from the time they purchased the property until the time when they could commence construction (around 2000), building costs had gone up to the point that construction would cost triple the value of the building. It was unaffordable and their business could not support the building that they intended to build. At some point thereafter, she considered selling the property. She placed a sign on the parcel, contacted local realtors and had one-time showings. She did not receive any offers.

Mr. Ianello then asked Mrs. Verrillo if there ever came a time when she decided to renew her application for site plan approval. She stated that it was never her intention not to do the project.

Mr. Dudick asked about the cost to build. Mrs. Verrillo replied that it was \$300 / square foot. The building that they were going to build at the time was 18,000 square feet – almost \$1.6 million at the time. She stated that when they initially started out to build, the high end was \$80 /

square foot. Then it went up to \$300 / square foot. Builders were so busy at the time that they did not need the work. She went to several local builders. Mr. Dudick asked what the current building cost would be. She replied that they can now build the building for \$50 / square foot, which would be about \$700,000 + for the buildings.

Mr. Ianello asked about other cost Mrs. Verrillo has incurred in addition to the purchase price, such as the engineering surveys, preparing the application, etc. Mrs. Verrillo responded that they had to do wetlands delineation, topographical surveys, regular surveys, engineering costs by ABD Engineering. They have invested over \$100,000 in getting the property approved. There were also issues with wetlands, which meant extra costs. Mrs. Verrillo stated that her total investment so far has been \$275,000 to \$300,000.

Mr. Ianello asked Mrs. Verrillo when she became aware of the zoning law change which precluded automotive sales, to which she responded June of 2007. She did not receive a notice of the zoning change. At this point, Mr. Ianello concluded this part of the testimony. He summarized the criteria for granting a use variance. He stated that they cannot realize a reasonable return because the value of the property is less than their investment, the investment being \$275,000 to \$300,000. He stated that the hardship was created by the zoning amendment. He stated that the granting of the use variance would not alter the essential character of the neighborhood because surrounding properties are engaged in retail sales.

Mr. Kortz brought Mr. Ianello's attention to Section 208-109(c), wherein it states that the board shall grant the minimum variance necessary and adequate to address the unnecessary hardship proven by the applicant. He wanted Mr. Ianello to answer about the health and safety aspect – what would be the impact on wetlands, and also what would be the impact on neighboring properties with respect to drainage / excavation. Mr. Ianello asked Mr. Bogardus to answer that one. Mr. Bogardus responded that they have designed this project so that there is no impact to the wetlands or LC Zone. He explained that they discussed the plan with the Planning Board and the Town's Environmental Commission, and that with the exception of some minor comments like moving the dumpster, they were very happy with the concept. He explained how they recycle. He stated that they will be in compliance with DEC stormwater regulations. There will only be 3 automobiles displayed out front. He explained that if they were ever to sell the property there would be a deed covenant restricting the display of vehicles on Route 9.

Mr. Kortz asked Mr. Bogardus to answer his question about drainage issue with regard to neighboring properties. Mr. Bogardus replied that the only neighbor who may have an issue would be Park Pools, but they do not anticipate that. He explained the designing of a swale in between the building and the property which will direct drainage to a storm water management area. The back of the building will have gutters which will also direct drainage to the storm water management area. He would not anticipate any runoff issues whatsoever. He explained that the old parking lot with impervious pavement will be gone, as well.

Mr. Ritter asked about the pond in back. Mr. Bogardus explained where the storm water management would be. He explained the aesthetics / fire protection, as well.

Mr. Ianello asked Mr. Bogardus what size warehouse can be built. Mr. Bogardus replied 20,000 square feet. He stated that he originally misstated 15,000 square feet.

Mr. Lemire asked Mr. Myers about Don Clemens' written response in 1999. He asked if Mr. Clemens was correct about the zoning at that time. Mr. Myers stated that he believes so, but he could not positively confirm that. Mr. Dudick tried to clarify this stating that the shaded / non-shaded areas were vague as to the zoning impact of these areas. Mr. Lemire again stated that he wanted to know if Mr. Clemens was correct in 1999. Mr. Myers again responded that he believes so. Mr. Ianello stated that he believes the site plan approval answers that question.

Mr. Ritter stated that this was a permitted use when the Verrillo's purchased the property. Mr. Ianello responded yes.

Mr. Lemire asked about other retail establishments in the area – if they came before Dave Bogardus would they be preexisting nonconforming uses in the LI-2 Zone, and would they need use variances? Mr. Myers replied that so long as the nonconforming use continues it is okay.

There was discussion between Mr. Kortz and Mr. Ritter about the written correspondence, the purchase of the property and the subsequent amendment to the zoning.

Mr. Dudick asked Mrs. Verrillo with regard to financial hardship, she contacted four different realtors but stated she had no real intention of selling. He asked why she listed it if she did not intend to sell it. Why is there no one here from those realtors who failed to sell the property – did she really try? Mrs. Verrillo responded that she listed with Dean Taylor, Remax, but was not comfortable. She ended on a bad note with the other two realtors. Mr. Dudick asked how much she tried to sell the property for. Mrs. Verrillo stated \$299,000. She received no offers.

Mr. Dudick questioned the value of the property. Mr. Ianello stated that Mr. Bruno testified that the value of the property is related to the investment. The zoning change diminished the value of the property greatly. There was further discussion regarding the value of the property and the investment in it. Mr. Ritter stated that he believed Mrs. Verrillo did not want to sell, but that she was forced to based on other conditions. Mr. Kortz stated that he did not feel the applicants would get their money back. Mr. Dudick asked if the current value of the property is \$199,000. Mr. Bruno replied that it is even lower. With a smaller 15,000 square foot building, he estimates \$150,000 to \$200,000 – more, if retail.

Mr. Dudick opened up the public hearing.

Mr. William Engleman of 6 Partridge, Ballston Lake, commented on this application. He questioned the topography of the part of the land in the LC zone. Mr. Bogardus replied that it is a gentle slope, and explained the contours on the map. Mr. Engleman stated he is not clear about the issue of the time between the expiration of the site plan approval extension and the zoning amendment. Mr. Dudick answered that during that time he believes the building costs went up. Mr. Engleman then stated that he was concerned about the LC zone and wanted to know if there would be any impact of this use variance. Mr. Myers stated that he did not believe it would impact the LC zone. Until he receives something beyond this concept, he cannot be sure.

Mr. Engleman asked if this were not the case, would they have to submit a request for a use variance in the zone. Mr. Renzi replied that the use variance touches the 4 corners of the parcel.

He stated what he believes was Mr. Engleman's concern that the LC zone not be affected in a negative way. Mr. Renzi explained the limitations of the LC zone itself are superimposed on the parcel and on any variance that this board may offer. While there is a use variance that, in his opinion, affects the entire parcel, the applicant would still not be permitted to do anything in the LC zone that he cannot do today.

Mr. Engleman stated he believes the Board has granted use variances in LC zones before. There was discussion on that point. Mr. Dudick could not recall in the years he has been on the board where the board approved a use variance in an LC zone. Mr. Renzi stated area variances, maybe, but he did not have any recollection, either.

Mr. Kortz asked if LC zones had permitted uses. If somebody wanted to do something in an LC zone that was not permitted, they would still need a use variance. There was no response.

Mr. Engleman stated that he agrees with Mr. Renzi that the project affects the whole site including the portion that is LC zoned. He showed a picture that he printed from the Town website which shows this site and adjoining sites which shows the existence of the LC zone in the portion of the town at and immediately south of exit 10, including the property and adjacent properties to the eastern boundary with the Town of Halfmoon. His concern is that none of the prohibitive activities be allowed in the LC zone as a result of either this variance being considered, or, ultimately, the site plan approval being considered. He is familiar with the site because a friend of his owned the property years ago. There was more than one restaurant located on t his property over more than 20 years. He discussed the imagery of the LC zone on the map. He asked if this is considered federal wetlands and if it was going to be retained. Mr. Dudick replied that some of these issues will be resolved by the planning board, and that as he is hearing this application, he does not see that anything is being done in the area of the LC zone.

Mr. Engleman stated that based on the history of many applications in the Town, there have been applications for federal wetlands disturbance permits. Mr. Kortz asked if the applicant has been asked to apply for a permit for federal wetlands disturbance from the Army Corps of Engineers. There was inaudible discussion on that point. Ms. Gleason asked for clarification of the map.

Mr. Engleman further stated that he is not necessarily opposed to any retail in the area since he did very much appreciate the existing of the prior restaurants that were there. He is sorry that the Town Board did not allow that to be continued as a permitted use. He was not sure if the proposed pavement is smaller than the pavement that was left behind.

Mr. Dudick asked if an application was made for a federal wetlands disturbance permit. Mr. Bogardus replied no, and he explained that the map Mr. Engleman presented was the satellite imagery from the GEIS. What the applicant has provided is an actual field survey of the high bank of the Dwaaskill, which the buffer zone is 100 ft from that. The wetlands boundaries are marked out by North Country Ecological Services, which are DEC registered and qualified wetland biologists. The reason they are not asking for any wetlands permits is that they are not disturbing any wetlands. As to the question of the proximity of the 100-foot buffer, as they pointed out to the Planning Board this is a sketch plan. Engineering has to be done. They are very cautious about the disturbance of any wetlands.

Mr. Dudick asked if the map on the bulletin board shows a more specific delineation of the wetlands. Mr. Bogardus responded yes.

Mr. Renzi stated that he is more interested in the legal point that Mr. Engleman made. Since the applicant is not going to disturb or otherwise do anything to the LC zone or federal wetlands, could the application be amended to exclude those areas specifically. Mr. Ianello does not think so, and the reason is that the issue would not be related to this use vis a vie a permitted use. The same constraints would apply so that if this applicant were before just the Planning Board seeking site plan review for a permitted use, all of the same constraints would apply. They are here not for a site plan, but for a use variance, and whatever the inherent topographical constraints are for this or any parcel, there are no specific issues related that are not covered within the planning process.

Mr. Renzi then asked if Mr. Ianello is not disagreeing with Mr. Renzi's earlier opinion that the overlay of the LC still prevents anything from happening here that couldn't happen today without this variance. Mr. Ianello agreed. Mr. Kortz added that this is treated like any zoning classification that if you didn't do something to that you would have to come back for another use variance. Mr. Ianello responded yes. Mr. Ianello further stated that it would not even get to that point because if there was a site plan based on this use for which there might be a variance, or any permitted use during that site plan process the Town engineers, Planning Board attorney and planners would automatically require evidence to be submitted as to the boundaries and there would be an absolute prohibition against any of these...Mr. Kortz interjected that the disturbance of the LC zone would apply whether it is a permitted or non-permitted use. Mr. Ianello replied yes.

Mr. Don Neilson, the owner of Park Pools, commented on this application. He has been there for 10 years and stated that up until 5 years ago they had no problem. His main issue is the drainage. He explained that there is an area that had been disturbed. He stated that a perched wetlands had been damaged. Once it breaks off it cannot be put back on, so the water now continues to flow. A pipe was put in that goes across to the Dwaaskill which directed the water off the hill, but continues to flow and it brings silt and stone with it. He thinks this is a temporary repair at best. He thinks there was originally a pipe that went from the wetlands directly across and under his building and right into the Dwasskill. A sinkhole has developed. He feels that the water continues to collect and build up. He loves the plan and welcomes the Verrillos as neighbors. He has been looking at a vacant lot for 10 years and is not opposed to any development. He is just concerned with a certain area.

Mr. Dudick mentioned if the application is approved, the planning board will address any drainage issues. Mr. Kortz stated that he wants to make sure that the drainage issue is corrected now so that nothing more happens. He stated that this is a tough site, that when you have underground water as opposed to surface water, you cannot anticipate what the effect is going to be, even if you're not on wetlands. There are drainage patterns.

Mr. Dudick asked Mr. Neilson if he is involved in a lawsuit. He responded that he believes they still are. He has incurred some expenses and the applicants had proposed to clear up the problem. They have underground water issues. Mr. Dudick asked if the Verrillo's developed the property with planning board contingencies and the water issues were resolved would Mr.

Neilson be satisfied. Mr. Neilson responded, he thinks so, yes.

Mr. Myers added that he is concerned that if the Verrillo's do everything they are supposed to on their property would it solve the problem with Park Pools. It may not, because it may be beyond what they can do. It may not resolve. Mr. Renzi added that the Town has made no assurances that it will. Mr. Myers referenced that Mr. Dudick made a point that the Planning Board will address all of these things, it sounds like a guarantee they are going to fix the problem and he doesn't think that this is the case. Mr. Renzi agreed with Mr. Myers' point. Mr. Myers added that even they will do everything that is required by law but it doesn't necessarily mean it will fix the problem.

Mr. Bogardus stated that they have to abide by all of the rules of DEC, the Town Regulations, go through the Planning Board and site plan approval, consultants review. He stated that we have his assurance that he will go above and beyond whatever they can to address a problem.

Mr. Renzi stated that this is the ZBA, not the Planning Board. The ZBA has little or no control over what the Planning Board may or may not require if this application is approve. With regard to topography and drainage and concerns that they have, the granting of this application will have no effect whatsoever. Even if the application is granted, there is still no assurance that they will actually be able to construct what they intend to construct.

Mr. Lemire asked Mr. Neilson if he had any objection to the intended use. Mr. Neilson replied no. He welcomed the business.

Mr. Dudick made a motion to close the public hearing. Mr. Ritter seconded. Approval unanimous.

Mr. Lemire asked if the use variance ran with the land. He asked if the land were sold would another applicant have to apply for a different non-allowed use. The response was yes.

Mr. Dudick stated that if this use variance were granted he wanted it to be specific to be only for the sale of automobiles. Mr. Myers stated that this is what was on the application.

Mr. Kortz just wanted to note for the record that he feels the applicants adequately proved that they met all the conditions to be considered for a use variance. Mr. Dudick agreed, and stated that the use was permitted when the property was purchased so the hardship was created through no fault of the owners. He feels the applicant explained their position adequately.

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

Mr. Ritter made a motion to approve the minutes of April 1, 2008. Ms. Gleason seconded. Approval unanimous.

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

Respectfully Submitted,

Jess McCarthy
Secretary

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