

May 2, 2005

ZONING BOARD OF APPEALS

Present: Dale Kelley, Chairman, Dale Gleason,
Michael Dudick, Jessica McCarthy,
Gil Kortz, Robert Ritter, Joel Koval
(arrived 7:03 PM)

Also Present: Don Clemens, Building & Development
Lou Renzi, ZBA Counsel

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

Mr. Renzi apologized to the applicants for any inconvenience caused by not having a full Board to hear applications at the previous two meetings.

OLD BUSINESS

1. An application from Anthony Vaccarielli, requesting an area variance from Section 208-11 from the required 20 ft. side yard setback in an R-3 zone – proposed setback = 17.9 ft. – variance requested = 2.1 ft.. The property is located at 20 Rustic Bridge Road, Rexford. Permit #80530.

The secretary read the legal notice as it appeared in the Daily Gazette on February 10, 2005.

Chris Meyer, Land Surveyor, represented the applicant for this application. He explained that he did the survey work on this property for Mr. Vaccarielli. He handed out copies of the new foundation location plan and explained the background and previous application for a variance for this lot. He stated that he established the property line after much research. In September of 2004 he was asked to locate a house on the property parallel to the left sideline and 20.5 feet from it. He staked the house, the foundation was put in, and a slab was poured.

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Shortly after that a neighbor submitted a map that he had in his possession to the building department showing a possible encroachment into the 20 foot side yard setback restriction. He explained that he made additional visits to the site, obtained a copy of the map from the building department and reanalyzed his comps and came to the conclusion that the map was from approximately 1992 and at that time there was more of the original information on the ground than when he did the survey. Some of the points shown on the earlier survey map were no longer visible when he did his work. He analyzed that survey and with what he found, it caused him to rotate his survey by one degree, so that what he believed to be 20.5 feet and parallel to the sideline is actually, in the front left hand

corner of the foundation 19.0 feet to the side line, and in the rear left hand corner 17.9 feet from the side line, which lead to this variance request.

Mr. Renzi noted that map #2, given to the Board tonight by Mr. Meyer, looks very much like the one submitted with the application except that it has a drawing number on it, 24A-67. He asked for identification of map #3 submitted this evening.

Mr. Meyer stated that there is no identification of the map that was presented to the building department (map #3, an 8 1/2 " x 11" sheet). This map was provided to the building department by the adjoining owner, Mr. Kwak.

Mr. Kelley asked Mr. Clemens if he knew where Mr. Kwak obtained the map. Mr. Clemens responded, no and he doesn't believe that Mr. Kwak remembers who the surveyor was.

Mr. Clemens stated his concern that Mr. Kwak, as of their last conversation, was still disputing the property boundary lines as laid out by Mr. Meyer and there is still a question if they agree where the property line is located. He questioned if the Board could actually know the amount of variance needed if we don't know for sure where the actual property line is. He also noted there is an issue of a well that was drilled by Mr. Vacarielli three to four feet on Mr. Kwak's property.

Mr. Meyer stated that the well is indicated on the survey map.

Mr. Pentkowski, attorney for Mr. Vacarielli, explained that Mr. Kwak's attorney, Mr. Frament, is present and that they are
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in agreement that the variance application is accurate and he stated that they are not looking for any relief in respect to the well being on Mr. Kwak's property.

Mr. Frament explained that Mr. Vaccarielli did go on his client's property and drill a well. They have been trying for months to resolve this issue and he explained that he believes this is relevant to the request for another area variance because it affects the community and neighborhood if the applicant trespasses on someone else's property. He also made the point that any hardship Mr. Vaccarielli is claiming is self-created by Mr. Meyer's survey. He explained that Mr. Vaccarielli will not encounter any financial hardship, it was an error in Mr. Meyer's survey so any hardship will not be on the owner but on the surveyor. He asked that the Board deny this application for an area variance on behalf of his client.

Mr. Frament referred to an earlier submission he made "In the Matter of Rosewood Home Builders, Inc. vs the Zoning Board of Appeals of the Town of Waterford" that went to the Appellate Division, Third Department, and was affirmed and the fact pattern is almost identical to this fact pattern as far as setbacks except in that case the house was

actually built and the hardship was \$161,000, but the Court said it had to be torn down and rebuilt. He submitted copies of the Memorandum and Order.

Mr. Renzi explained that in that instance the Third Department affirmed the Zoning Board's determination did not interfere with their finding of fact. He noted they could have gone the other way and the Third Department would as likely affirmed that as well.

Mr. Frament agreed and stated that the Court did find it was not arbitrary or capricious.

Mr. Renzi asked for clarification on a point made earlier regarding the issue of the well. He noted that this issue is separate and apart from the issue of the location of the lot line. He wants the Board to be clear that counsel is here representing that the issue of the lot line has been resolved.

He asked if the dispute as to the location of the lot line has been settled.

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Mr. Frament stated that as far as he is concerned the surveyor for the survey submitted by his client cannot be located and to that extent they do agree that the boundary line is just about accurate between the two properties.

Mr. Pentkowski pointed out that the encroachment in this instance appears to be a 60 ft. easement on the tax map that runs along that side of the property. He also noted that it's not a situation where a structure will be one foot closer to another house or an existing house. He explained that if the property stays as it is the structure will be closer to a 60 ft. easement not to a structure that is there or will be built there.

Mrs. Gleason asked if the court case presented by the applicant's attorney is a similar situation.

Mr. Renzi responded that if the ZBA of the Town of Waterford held against the property owner in a similar circumstance and on appeal the Third Department Appellate Division upheld that decision as being not arbitrary or capricious but as a matter of fact in another case, at another time, that same Zoning Board could have made the exact opposite finding and the chances, just in pure law, are just as good that the Appellate Division would have upheld that had the record been flushed out enough to support that determination. He continued, what the Appellate Division does not like, and won't support, is a finding with absolutely nothing in the record to support it.

Mr. Meyer stated that he did work in that particular subdivision and was aware of that lot, their restrictions, they have lesser sideline and the encroachment was much greater than the encroachment here. They are twin homes and it was a series of twin homes built on consecutive lots so, yes it was in violation of a restriction line but is quite a different setting than what we have here.

Mr. Ritter asked for the concerns of the building department to date on this matter.

Mr. Clemens explained that he received a complaint from Mr. Kwak, the adjacent land owner, that he felt that when the foundation went in, it was too close to his property line. He brought in a copy of the map presented to substantiate his claim. At that time the Building Department issued a stop work
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order on the house so it wouldn't progress any further and to limit any potential losses by the owner if it had to be moved.

He pointed out that this is a lot that this Board already granted a variance on. It is a sub-standard lot in area and the Board granted a variance to allow Mr. Vaccarielli to build on the lot even though it is a smaller lot than is what is required now by the law. He continued, he believes that because of that he should almost be held to a higher standard for the setbacks

because it is a sub-standard lot to start with. Now to come back and ask for a variance on setback besides he feels it is asking a lot of the Board and he feels it could have an impact on the neighborhood.

Mr. Kelley asked in what regard. Mr. Clemens responded the Town zoning laws are designed to give certain special requirements between properties and the granting of variances on that does affect the neighborhood in some way. He noted that it is a rural neighborhood in that area, it is not like a housing development.

Mr. Koval noted that the map presented by Mr. Kwak indicates a 25 ft. side setback.

Mr. Pentkowski responded that it shows the proposed house, not the actual foundation location.

Mr. Koval asked what was the purpose of putting the foundation so close to the sideline.

Mr. Meyer responded that there was an issue, since its well and septic, of creating enough room for the septic. The back right hand corner, as you face the lot, is an area that has been filled, so by maintaining the minimum setback to the left side will provide the maximum usable area for the septic system to be installed.

Mr. Koval asked if the septic design has been done. Mr. Meyer responded he does not know. It was designed to be in that particular location.

Mr. Clemens said it had to be submitted with the building permit application.

Mr. Koval asked if in fact there was an issue that kept the 5/3/05 Page 6

house over to that side of the lot because of where the septic had to go.

Mr. Clemens said the septic design is in that back corner, he thinks there is ample room for the well and it should not affect the location of the house.

Mr. Kortz read the minutes of the previous meeting for the approval of the area variance where the applicant states that all other setback requirements will be met. He stated that it was the intent at the time and is why the area variance was granted.

Mr. Kortz asked if Mr. Kwak is against the house being so close to his property line.

Mr. Frament responded Mr. Kwak is against it because even though it is a right of way for a driveway someday he may maintain it and use it. He has issues with the frontage and the road being so close to that house, when in essence it could have been moved over a lot more. The initial plot plan showed 25 ft. and he had no issues with that.

Mr. Renzi asked if the applicant obeyed the initial stop work order. Mr. Clemens responded yes. Mr. Renzi asked if it was only a foundation at this time. Mr. Clemens responded yes.

Mr. Renzi asked counsel to speak to the issue of the measure of damages.

Mr. Pentkowski stated that there is nothing about the lot that could have prevented this from being built within the setback, it was an error. He emphasized that this was truly an error. If you look at the older maps it is a confusing piece, it is not just lack of attentiveness, it was just a mistake in the field.

Mr. Meyer stated that the estimate to move the foundation is \$8,000.00.

Mr. Frament stated that initially his client offered to pay \$1,000 to Mr. Vaccarielli to assist in the moving of the foundation. That was rejected by Mr. Vaccarielli and the offer has been removed from the table. He continued, there are no monetary damages that will be suffered by the applicant. The 5/3/05 Page 7

applicant is Mr. Vaccarielli, that applicant is not Mr. Meyer.
Mr. Meyer would be responsible for the financial damages.

Mrs. Gleason asked for clarification about the 60 ft. easement in connection with changing the character of the neighborhood.

Mr. Kelley stated that the point being made by counsel is that it is an easement and therefore not much can happen on the property anyway. It is not like moving closer to a structure.

Mr. Dudick asked about the concrete slab shown on the plot plan.

Mr. Meyer stated it is the remains of home that was on the property until 1992.

Mr. Dudick asked why the slab remains if the house was taken down. Mr. Meyer responded he doesn't know why or how the home was taken down, but the slab is still in place.

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

Mr. Kelley made a motion to approve this variance as submitted.
Mrs. Gleason seconded.

Mr. Ritter asked for clarification on the actual variance, is it 2.1 feet into the easement?

Mr. Kortz asked if between the disputed property line and Mr. Kwaks' property is there a 60 ft. easement?

Mr. Pentkowski stated that the property owner, Mr. Kwak, owns the easement, it is reserved as an access.

Mr. Kelley asked if everyone understands the motion made.

Mr. Frament clarified that the land is not an easement; Mr. Kwak owns the property out right.

Mr. Pentkowski agreed that it is a 60 ft. strip preserved as an access, it is not a building lot, and it would be used as a road.

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

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2. An application from Marshall Sign Corp. for Urgent Care of Southern Saratoga, requesting an area variance from Chapter 171 of the Town Code (Sign Law) from the maximum wall sign of 24 sq. ft. – proposed = 67 sq. ft. – variance requested = 43 sq. ft.. The property is located at 1770 Route 9, Clifton Park. Permit #80535.

Rick Marshall presented this application. He reviewed the presentation made at the last meeting stating that they have produced new drawings as a result of Board recommendations.

Mr. Marshall stated that one of the concerns of the Board was that they wanted to see a smaller wall sign facing Route 9. They reduced the original request from 67 sq. ft. to 38 sq. ft. and will be returning with a new request for a sign on the north side of the building for southbound traffic.

He explained the sign is necessary in order to identify the building as people pull into the lot.

Mr. Marshall stated that he is amending the request from 43 sq. ft. to 16 sq. ft..

He also explained that due to lease restrictions there would be no other tenant signs on the building.

Mr. Clemens had no comments.

Mr. Ritter did state that the Board had a lengthy discussion at a previous meeting and recommended that the applicant reduce the size of this sign and possibly put up a smaller sign on the north elevation of the building. He also noted that the Board requested documentation regarding no additional signage being put on the building for other tenants.

Dr. Fisher stated that the leases provide no additional signage for any of the tenants of the building will be granted.

Mr. Renzi noted that the language in the lease does not absolutely restrict tenant signs outside. He noted that if that is the intent the language needs to be adjusted to say so.

Mr. Koval asked if the Board could approve a request and put in restrictions on further signage. Mr. Kelley and Mr. Renzi 5/3/05 Page 9

responded yes.

Mr. Kelley stated that the Board could put on some restrictions that would strongly encourage the owner to put adequate language in the lease.

Mr. Renzi noted that any variance being granted could be conditioned on there being no other signs on the property.

Mr. Kortz stated that he would like to see the language that if they take the signs down this variance would become void.

Mr. Kortz noted that the front freestanding sign easily identifies the building. He expressed his concern with other businesses coming into the building and not agreeing with the restrictions of no wall signs.

There was discussion on the possibility of new tenants not agreeing with this condition.

Mr. Clemens explained that a sign variance dies with the business; it does not run with the property as land variances do. It is his opinion that all conditions would no longer exist.

Mr. Ritter made a motion to close the public hearing,
Ms. McCarthy seconded. A vote was not taken because there was additional public comment.

Nick Palmetto, one of the owners of the building, stated that if a new tenant came in he would instruct them that they have to approach the Town regarding signage.

Dr. Fisher explained that the signs are needed for identification, people cannot find the building, they drive around the back of the building.

There was no further public comment, a vote was called and a unanimous vote was made to close the public hearing.

Mr. Dudick asked for the size of the pylon sign. Mr. Marshall responded approximately 56 sq. ft..

Mr. Ritter made a motion to approve this variance as amended.
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Mr. Dudick seconded.

Mr. Koval made a condition that there be no additional tenant signage on the building.

Mr. Ritter stated he agrees with the condition except he would allow the applicant to submit the additional variance request as stated earlier for a sign on the north elevation.

Mr. Dudick asked for clarification on placement of this sign. Mr. Marshall stated it will be on the front of the building facing Route 9. He will be returning at a later date with a new application for a sign on the north side of the building as recommended by the Board at a previous meeting.

Mr. Dudick asked why the allowed 24 sq. ft. wall sign is not adequate. Mr. Marshall responded it is not an adequate size to be seen from the road.

A vote was called. Ayes: Ritter, McCarthy, Kortz, Koval, Gleason, Dudick, Kelley. Noes: None.

Mr. Clemens asked for the actual square footage to be put in the motion to avoid any confusion.

Mr. Marshall stated that the actual sign requested is 38 sq. ft.

NEW BUSINESS

1. An application from Clifford Down, requesting a Use Variance from Section 208-10 to operate a riding stable in an R-1 zone. The property is located at 121 Hubbs Road, Ballston Lake. Permit #80540.

The secretary read the legal notice as it appeared in the Daily Gazette on April 28, 2005.

Mr. Renzi entered into the record that Mr. Dudick will recuse himself from hearing this application because he has a personal relationship with this applicant.

Mr. Down presented this application. He explained that he would 5/3/05 Page 11

like to build an indoor riding facility at 121 Hubbs Road. He explained that he purchased the property in 1984 and gave a history of improvements made. He explained the issue with wetlands and site distance on Hubbs Road that would prevent him from developing this property. He explained that the only way to utilize the property due to the wetlands is to use the 25 acre parcel as one lot.

Mr. Down explained that he had the property for sale for a year. He did have two offers, one for the property to be used for a dog kennel and one for stock cars. He decided to keep the property and see if he could use it for an indoor stable.

He investigated the proposed use and was told by the building department that he would need a Use Variance. He noted that the zoning changed for this area in 1996. He explained that this corridor of Hubbs Road should remain open space.

Mr. Renzi asked if the stable proposed would be for personal or commercial use. Mr. Down responded not commercial, just for boarding in the "U" classification.

Mr. Renzi asked for an explanation of the "U" classification.
Mr. Down stated it refers to a building code classification.

Mr. Kelley asked if he is going to be renting space out in the barn. Mr. Down responded yes, basically all he can do is rent out space and board horses, he cannot have rodeos.

Mr. Renzi asked the total number of horses. Mr. Down responded he has ten stalls proposed, twenty would be the maximum.

Mr. Renzi informed the Board that an indoor horse-riding arena for the use of the people boarding their horses on said farm is classified as a "U" occupancy.

Mr. Down explained that this lot cannot be further subdivided due to a condition of the Planning Board.

Mr. Clemens explained that there is only one access driveway due to site distance and wetlands on the property.

Mr. Down noted that this would not change the character of the neighborhood and submitted signatures and letters in support of
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his request.

He also noted that this request is due to a change in the zoning law during his ownership of the property.

Mr. Down stated that a neighbor, Ronald Ochrym, has expressed some concerns but he has met with him and addressed those concerns.

Mr. Clemens stated that this is a good use of the property and is in keeping with the rural atmosphere of the Town. He noted that the previous zoning would have allowed this use.

Ronald Ochrym, 986 Hatlee Road, explained that he owns approximately 40 acres and shares approximately 1,500 feet of property line with Mr. Down. He referred to his property on a map and indicated the area of his concern.

He explained that he is concerned with drainage and indicated an 8 ft. drop off in elevation. He noted that he met with Mr. Down and his engineer, Steve Lamb, and they have mediated a solution to his concerns. He asked if an approval is granted he would like it conditioned that a swale be put in and approximately 30 pine trees be replaced in the slope area, and that the septic be at least 100 feet from his property line.

John Hill, Hubbs and Schauber Road, spoke of Mr. Down being a good neighbor and encouraged approval of this request. He noted that it is in keeping with the character of the neighborhood.

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

Mr. Kortz asked if there are currently horses on the property. Mr. Down responded he has horses on another adjacent 21 acre parcel that he owns. Mr. Kortz noted that he is allowed to have horses but not a riding stable. He asked if the land were subdivided would the variance be null and void because it is no longer the parcel that the variance was granted on?

Mr. Down noted that he cannot further subdivide the land.

Mr. Renzi stated he did not know the answer. He noted that he

believes that if the use variance is granted on this parcel of land it becomes an entity onto itself and later on it could not be subdivided. Discussion continued on the subdivision possibility and if the variance would continue. Mr. Renzi noted that this property cannot be further subdivided and therefore it is not an issue. He noted he will further research it for the future.

Ms. McCarthy asked if the conditions about the trees and swale are agreeable to all parties. They replied yes.

Mr. Kortz noted that these issues are really Planning Board issues and he is uncomfortable with locking in the conditions.

Mr. Kelley noted that this Board could strongly recommend that adequate buffering be included in their approval.

Mr. Kelley stated that recommendations would be forwarded to the Planning Board.

Mr. Ritter made a motion to approve this variance with recommendations as agreed to by both parties. Ms. McCarthy seconded. Ayes: Kelley, Gleason, Ritter, Koval, Kortz, McCarthy. Noes: None. Abstained: Dudick.

2. An application from Deborah Welsh-Pailley, requesting a Use Variance from Section 208-10B to allow B-1 uses in an R-1 zone. The property is located at 466 & 466A Moe Road, Clifton Park. Permit #80544.

The secretary read the legal notice as it appeared in the Daily Gazette on April 28, 2005.

Deborah Welsh-Pailley presented this application. She explained that she moved into 466 Moe Road in October 1992 and bought the lot behind her house in 1997 hoping her children would move in there. Since the library vote she decided she did not want to live there. In 2004 she put her house on the market. The only interest she had was from people that wanted a professional office. She noted that the character of Moe Road is mixed with a Church, offices, school entrances, day care center, etc..

She feels the hardship is that no one wants to live across the street from a library.

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Ms. McCarthy noted that she lives in the area and there is quite a bit of residential building in the area.

Mrs. Welch-Pailley replied that there has been no residential building in her end of Moe Road. She stated she is only talking about her area of Moe Road, near the library.

Ms. McCarthy stated that there are residences in that area and there are residences being built in the area of the library.

Mr. Clemens noted that this is a Use Variance and the applicant has to prove a unique hardship. He asked how long the property was for sale.

Mrs. Welch-Pailley responded from March to September of last year.

Mr. Clemens stated that there is no reason given why the property did not sell, it could be due to the price, also there is a significant portion of these two lots that are wetlands or a portion of the buffer zone, which may be a bigger issue why the property did not sell.

Mrs. Welch-Pailley stated that it was not a problem for people who wanted to buy it commercially. No one came to buy it as a residence.

Mr. Clemens stated that you cannot build in the buffer zone if it's commercial or residential.

Mrs. Welch-Pailley stated there is a letter from the realtor in the packet.

Brad Schofield, 525 Clifton Park Center Road, stated that the back of his property directly abuts this property and expressed his concern over this request. He noted that if this property becomes a professional business the parking lot would be in his backyard. He continued, he has lived there for 14 years and this request would change the character of the neighborhood. He stated that he is not in favor of this use variance. He is concerned for the safety of his children if this becomes a public parking lot.

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Mr. Kelley entered into the record letters from Marlin & Kathleen Rhine, 468 Moe Road, and Darren McGee, 470 Moe Road, opposing this variance request.

The letters were given to the Board members for their review.

Mrs. Gleason noted that Mr. McGee appeared at the last meeting, not knowing that this application was adjourned, and regretted that he would be out of town tonight. He was encouraged to write a letter stating his opposition.

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

Mr. Kortz noted that there is a subdivision across the road by the pump station that apparently had no trouble selling. He stated that he believes there is sufficient evidence on the reasonable return issue to support this request. He stated that there are a lot of nice houses in the area and he feels this would be a dangerous precedent. He also stated that the character of the neighborhood should be maintained.

Mr. Dudick asked for information on the sale of the house, the length of time on the market, the price, etc..

Mrs. Welch-Pailley responded six months and was originally asking \$235,000 then reduced to \$225,000. They originally were only selling the back lot first then the house.

Mr. Koval asked for the particulars of the house. Mrs. Welch-Pailley responded 1,800 sq. ft., one bath, and three bedrooms.

Mr. Dudick asked what similar houses sold for the area.

Mrs. Welch-Pailley responded there have not been to many houses for sale in the area.

Mr. Pailley responded there is a new development in the area and the houses are starting at \$305,000.

Mrs. Gleason noted that there have been new houses built within one-half mile in both directions on Clifton Park Center Road and 5/3/05 Page 16

have sold with no problem.

Mr. Pailley referred to the letter from the realtor stating that the only interest was for a commercial use.

Mr. Koval noted that it could be a function of the price.

Mrs. Welch-Pailley responded that they hired a professional to do a market analysis.

Mr. Kortz made a motion to deny this request. Ms. McCarthy seconded. Ayes: Kortz, McCarthy, Dudick, Kelley, Ritter, Koval, Gleason. Noes: None.

Mr. Kelley adjourned the meeting at 8:45 PM and reconvened at 8:52 PM.

3. An application from Randall Gifford representing the Route 9 North Independent Retailers, requesting an area variance from Chapter 171-4H(1) to allow an off-premises sign for the Route 9 North Retailers at Exit 9 and Route 146. The property is located at Fire Road Plaza, Clifton Park. Permit #80538.

The secretary read the legal notice as it appeared in the Daily Gazette on April 28, 2005.

Randall Gifford presented this application. He explained that he was before the Board about one year ago for an off premise sign for Giffy's Barbecue that was denied. On the Board's recommendation to involve the Chamber of Commerce there are now 10 independent businesses that would be involved in the sign. The sign is to identify independent businesses on Route 9 north. There would be a waiting list and as one member goes off a new one would be able to be placed on the sign. The sign will be 56 sq. ft..

Mr. Clemens noted that the previous sign request was for an individual business and this request is being proposed for a group sign and, in his opinion, is significantly different from the first request. This is a big change to have ten retailers get together and advertise a business community rather than just advertise their own individual business.

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

Mr. Kelley noted that this is an unusual request for an off premise sign. The applicant did do quite a bit of work and has returned with a new proposal.

Mr. Kelley asked if the rendering submitted is actually what the sign will look like.

Mr. Gifford responded that it will be in colors matching the signs now in Clifton Park, burgundy and gold, it will be very tastefully done. There will be a spot light on it. It will be located directly across from the Northway exit 9 on the Fire Road Plaza. He continued that the Route 9 North Retailers have entered into an agreement with Mr. Pu to pay him \$200 a month rent if this variance is approved.

Ms. McCarthy noted that the sign does not direct anyone to the retailers.

Mr. Kortz noted that the independent smaller retailers goal is to take advantage of the major access of the Northway versus the larger retailers that have the location right off the Northway.

He questioned other retailers on Route 9 south, and 146 east wanting the same exposure. He agrees that the smaller independent businesses need exposure but he questions if this is the proper method.

Mr. Renzi noted that the zoning code forbids off premise signs with the exception of the area known as the off site sign overlay district. He explained that the district is north from Route 146 to the Dodge dealership. He noted that Mr. Gifford's business is within that area.

Mr. Gifford responded that he has tried to purchase space on the billboards but they are taken until 2009.

Mr. Clemens explained that there cannot be any additional signs put up in that district.

Ms. McCarthy stated that she feels this application is very similar to the last application submitted by this applicant

except for the number of retailers on the sign.

Mr. Gifford responded the Board asked him to go to the Chamber of Commerce and get their endorsement, which he did, and he also got nine other businesses to put the sign together, it is not being done as an individual business but as a collective bargaining of Chamber members.

Mr. Kortz stated that he agrees with the concept but it favors certain businesses.

Mr. Ritter stated that we denied the first application for an individual business for fear that more individual businesses would come and do the same, so the effort of the applicant for this particular sign. for this particular issue, is certainly credible because at the Board's suggestion to organize and work with DOT, which he did, he would tend to think that the other businesses in the other districts would need to do the same.

Mr. Renzi explained that the applicant was asked to speak to the Town Board about perhaps changing the statute.

Mr. Gifford responded that he was not aware of that request or he would have done it before filing this application.

Mr. Ritter noted that his opinion for the record is that he is supportive of this based on the reasons stated above.

Mrs. Gleason asked for clarification on the rental issue. She asked if they are renting the land to put the sign on.

Mr. Gifford responded yes, they would pay monthly for its use.

Mr. Kortz referred to the record for the last application stating that the applicant was encouraged to work with the Town and the State. He applauded the applicant's efforts but noted his concern that if there is a town-wide need to advertise independent retailers it is outside the scope of the sign law and really should be a Town Board issue. He believes it is policy, not a unique need of an individual where a variance can be issued.

Mr. Dudick stated that when a business is set up location is taken into consideration. There are many advantages and disadvantages weighed in any business and it is a product of the 5/3/05 Page 19

situation set up by location. He feels this would set a precedent.

Mr. Gifford explained that he spent \$60,000 on advertising last year and people still don't know where he's located.

Mr. Clemens asked the size of the sign. Mr. Gifford responded 56 sq. ft..

Mr. Kelley asked if there is any criteria for off premise signs. Mr. Clemens responded no because they are prohibited so there are no guidelines.

Mr. Clemens pointed out that Route 146 south is in the Town of Halfmoon and our concern would be north in the Town of Clifton Park.

Mr. Ritter made a motion to approve this application as submitted. Mr. Koval seconded.

Mr. Dudick pointed out that retailers south of Route 146, even though in the Town of Halfmoon may still want placement on a similar sign directing them to their location.

Mr. Kortz again noted that he feels this is definitely a Town Board issue.

Mrs. Gleason noted that she totally supports Mr. Gifford's efforts but this is a broader issue that should be considered by the Town Board.

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

Mr. Gifford asked what he could do now. It was suggested that he approach the Town Board.

4. An application from Marshall Sign Corp., representing Exit 9 Wine & liquor Warehouse, requesting an area variance from Chapter 171 of the Town Code(Sign Law) from the maximum allowable sign of 60 sq. ft. – proposed sign = 79 sq. ft. – variance requested = 19 sq. ft.. The property is located at 54 Crossing Boulevard, Clifton Park. Permit #80539.

The secretary read the legal notice as it appeared in the Daily 5/3/05 Page 20

Gazette on April 28, 2005.

Rick Marshall, Marshall Sign Corp., presented this application. He introduced the owner, Mark O'Callahan, and explained that he recently moved the location within the Crossings Mall to the TJ Maxx location and increased his square footage from 10,000 sq. ft. to 30,000 sq. ft.. He stated they would like to add a box sign of 19 sq. ft. He presented a picture of the proposed sign and noted that the mall owner redid the front of the store. The current box sign is very small and they would like to make it larger for balance. It would just be the "Exit 9" portion of the existing sign.

Mr. Kortz inquired about the current configuration of the "Exit 9" sign. Mr. Marshall responded it is approximately 4 sq. ft., they would like to increase it to 19 sq. ft..

Mr. Marshall stated that he presented the variance for the TJ Maxx sign a few years ago and he believes that sign was larger than this request. He also noted that there was a variance granted for a second wall sign on the back of the building. He stated they do not want any signage on the back of the building.

MR. Kortz asked what is the current configuration of the sign. Mr. Marshall responded 60 sq. ft., which is the maximum allowed.

Mr. Clemens stated that he did not look up the variance granted to TJ Maxx. He knows that they were granted a variance at the time. He noted that given the proportions of the

façade he does not think this variance would be out of balance with the rest of the shopping center. He stated he does not have any problems with this request.

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

Mr. Kortz stated that he does not think this is a substantial request.

Mr. Dudick noted that the previous sign was not a problem, business is good, and they are still in the same plaza, he asked why do they want a larger sign.

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Mr. O'Callahan responded it is really due to the façade of the building it makes it look empty.

Mr. Kortz noted that it is basically for aesthetics.
Mr. O'Callahan agreed.

Mr. Kortz agreed and stated that there is really no major impact from this request.

Mr. Koval made a motion to approve this variance as requested. Mr. Ritter seconded.
Ayes: Ritter, Kortz, Koval, Gleason, Kelley. Noes: Dudick, McCarthy.

5. An application from Jonathan Trager for JET Enterprises LLC dba Moe's Southwest Grill, requesting an area variance from Chapter 171 of the Town Code (Sign Law) for a second wall sign facing Route 146 (north elevation) of 30 sq. ft.. The property is located at 5 Southside Drive, Clifton Park. Permit #80541.

The secretary read the legal notice as it appeared in the Daily Gazette on April 28, 2005.

6. An application from Derek Brown for SPD Sub Ventures IV, LLC dba Quiznos Sub, requesting an area variance from Chapter 171 of the Town Code (Sign Law) for a second wall sign facing Route 146 (north elevation) of 31 sq. ft.. The property is located at 5 Southside Drive, Clifton Park. Permit #80542.

The secretary read the legal notice as it appeared in the Daily Gazette on April 28, 2005.

Dave Pentkowski, attorney, presented both applications. He explained that the purpose of this request is obvious, they are both small business operations, tucked in the corner, competing against larger businesses that are visible from Route 146. If you drive on Route 146 you don't know they are there.

Mr. Kelley stated that this Board discussed previously that there would be no signage on the back of the building facing Route 146. He noted that there was one exception, Nationwide Insurance, because they had no exposure on the front of the

building and there are some extenuating circumstances. The other occupants have the larger signs on the front of the building and once you are inside the complex they are very visible. He recalls that it was made clear to the applicants at that time that no additional signage would be allowed on the back of the building.

Mr. Kortz agreed and he noted that there is no public access to those businesses from the north side of the building.

Mr. Pentkowski asked who made the previous applications for these businesses. Mr. Kelley stated they were corporate signs and the Board granted variances for them.

Mr. Clemens stated that both businesses received variances for their signs on the front of the building.

Mrs. Gleason referred to the minutes of the previous meeting when the variance was granted for Moe's stating that the signage on the front of the building on Southside Drive is sufficient.

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

Ms. McCarthy made a motion to deny the request for a sign variance from Jonathan Trager for JET Enterprises for Moe's Southwest Grill. Mr. Dudick seconded. Ayes: Kelley, Dudick, McCarthy, Kortz, Koval, Gleason. Noes: None. Abstained: Ritter.

Mr. Dudick made a motion to deny the request for a sign variance from Derek Brown for SPD Sub Ventures IV for Quiznos Sub.

Mr. Koval seconded. Ayes: Kelley, Dudick, Gleason, Koval, Kortz, McCarthy. Noes: None. Abstained: Ritter.

6. An application from Clifton Hospitality, LLC, requesting an area variance from Chapter 171 of the Town Code (Sign Law) to allow a wall sign of 98 sq. ft. – maximum allowed = 60 sq. ft. = variance requested = 38 sq. ft. and a height variance from the maximum 20 ft. allowed to 42 ft. – variance requested = 22 ft.. The property is located at 18 Clifton Park Village Road, Clifton Park. Permit #80546.

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8. An application from Clifton Hospitality, LLC, requesting an area variance from Chapter 171 of the Town Code (Sign Law) to allow a second wall sign of 98 sq. ft. and a height variance from the maximum 20 ft. allowed to 36 ft. – variance requested = 16 ft.. The property is located at 18 Clifton Park Village Road, Clifton Park. Permit #80546.

An applicant or representative was not present to present the Clifton Hospitality LLC applications. The secretary will contact the applicant.

9. An application from Gretta Mawad, requesting a Use Variance from Section 208-69-2 to build an 18,222 sq. ft. office/warehouse building in the Land Conservation zone contrary to the permitted uses allowed. The property is located at 2041 Route 9, east side, north of Ushers Road, Round Lake. Permit #80548.

Mr. Kelley informed the Board that Kevin Dailey, Esq., has requested an adjournment for this application until the next Board meeting.

Mr. Renzi reviewed the recent settlement terms with IWO.

Mr. Kortz made a motion for the Board to authorize Dale Kelley to sign the stipulation of agreement with IWO, Mr. Ritter seconded, approval unanimous.

Mr. Kelley stated that the Board needs to pass a resolution for a Memorandum of Understanding with the Saratoga County Planning Board.

Mr. Ritter made a motion for the ZBA to enter into a Memorandum of Understanding with the Saratoga County Planning Board,

Mr. Koval seconded, approval unanimous.

Mr. Ritter made a motion to approve the minutes of April 5, 2005, Ms. McCarthy seconded. Ayes: Ritter, Dudick, McCarthy, Koval, Kortz. Noes: None. Abstained: Gleason, Kelley.

Ms. McCarthy made a motion to approve the minutes of April 19, 2005, Mrs. Gleason seconded. Ayes: Gleason, Dudick, Kortz, McCarthy. Noes: None. Abstained: Kelley, Koval,

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Ritter.

Mr. Dudick made a motion to adjourn the meeting at 9:45 PM, Mr. Kortz seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb
Secretary