ZONING BOARD OF APPEALS

July 14, 2009

Present:	Michael Dudick, Chairman, Dale Gleason, Robert Ritter, Douglas Strother, Christopher Lemire, Brian Telesh, Deborah Ferro (alternate member)
Also Present:	Joel Peller, ZBA Counsel Steve Myers, Director, Building & Zoning
Absent:	James Whalen

Mr. Dudick called the meeting at 7:02 p.m.

Mr. Dudick explained that Ms. Ferro is voting in place of James Whalen.

PLEDGE OF ALLEGIANCE

NEW BUSINESS:

1. **An application from Belmonte Properties, LLC, requesting a use variance from Section 208-69(2) to construct a single family home in an LC zone of a previously approved subdivision, Oakwood Estates. (The entire proposed house was in the LC zone originally and due to a new delineation it appears that approximately half of the proposed house is now in the LC zone. (910 SF per the drawing) The size of the proposed structure is actually larger now (1829.1 SF) than was originally proposed (1800 SF))**

If use variance is granted, two area variances will be required as follows: (1) from Section 208-70(A), which requires a minimum lot size of 100,000 sq. ft., the proposed lot is 20,504 sq. ft., variance required = 79,496 sq. ft.; and (2) from Section 208-70(D), which requires a side setback of 20 feet, 10 feet is proposed, variance required = 10 feet. The property is located at 16 Bonneau Road, Clifton Park, New York. (Permit #80730)

The secretary read the legal notice as it appeared in the Daily Gazette on Thursday, July 9, 2009.

Peter Murray presented this application, along with Artie Tompkins of Environmental Design Partnership and Peter Belmonte of Belmonte Properties, LLC, in support of the applicant's application for three variances (two area variances and one use variance). Per Mr. Murray, the property involved is 16 Bonneau Road, in the southern part of Clifton Park off of Crescent Road. The underlying zone of that lot is R1; it is an approved subdivided lot pursuant to a 1987 and amended 1989 subdivision plan that went through the Town's Planning Board and was recorded in the Saratoga County Clerk's office. The specific area variances required – one is for lot size – result from the LC zone affecting a portion of the lot which is R1. There are wetlands to the north of the property and on an adjacent property, so measured with the 100-foot setback required by the LC zone. It covers a portion of the property. He described a map describing where the wetlands are located. Mr. Murray stated that as a result, they are constrained by some of the additional zoning requirements in the LC zone, specifically the lot size (100,000 is required and the lot they have is 20,504 square feet, and the variance required would be 79,496 square feet). The underlying zoning for the lot (R1) requires 20,000 square feet, so they are in excess of the underlying required lot size. With respect to the sideyard setback, the LC zone requires a 20-foot setback, they are proposing a 10-foot setback, which meets with the requirements of the underlying R1 zone. The use variance is needed because the location of a single family home in an LC zone is not a permitted use. A portion of the home (about 910 square feet) as proposed is lying within the LC zone, therefore necessitating the need for a use variance.

Mr. Murray stated he would discuss the overall project and the criteria needed for a use variance which he stated were laid out in the documents previously presented to the ZBA by Environmental Design Partnership as well as a letter from Mr. Murray addressing some of the criteria. He also would walk through the criteria for an area variance.

Mr. Murray feels that an important concept with this application is it's uniqueness in nature. This is important when compared with the LC zone district which requires the need for the variances. He feels that the proposal is going to result in better protections for the wetlands than the current use of the property in the LC zone. He stated that this is not just him and the applicant saying this, but also the Town Board of Clifton Park. He stated that, as the ZBA is aware, this matter was referred to them because it does encompass a use variance in an LC zone. Mr. Murray further stated that while the ZBA is not constrained by anything the Planning Board says, the Planning Board did come back with a unanimous positive recommendation. He feels that this is important because one of the specific criteria that the Planning Board had to look at on the referral was whether or not the plan and project submitted generally meet with the purpose and intent of the LC district. That LC district says that one of its purposes is to preserve and

protect DEC wetlands. According to Mr. Murray, the Planning Board found that the improvements that will be made to the site, in addition to taking away some of the detriments that exist on the site will result in a net benefit to the wetland and basically serve the purposes of the LC zoning district.

Mr. Murray stated that they are very pleased that the DEC had reviewed this project and come back with a conceptual approval for this plan, contingent upon getting the necessary variances, because of the net benefit that the project will have to protect the wetlands.

The current site is basically a clear lot. It has a lawn which is mowed more or less to the corners of the lot. However, there is an existing stockade fence in the northern portion of the property, as well as a shed at the property line. Beyond that you are possibly in the wetland where there are several 55-gallon drums. All of that will be taken out as a result of this project moving forward. Beyond that, the site engineering for the project addresses the protections to the wetland and, he feels, meet with the spirit and intent of the LC district. Specifically, there will be storm swales and a rain garden, which is like a mini storm water drainage facility. There will be plantings and the applicant will put in deed restrictions to further forever protect a large portion of the LC district.

Mr. Murray feels that the unique nature of this application, where the Board is given the opportunity to approve something that is going to go above and beyond and further protect the wetlands versus what is there already, is very unique and sets this apart from other applications that are similar.

Mr. Murray addressed the criteria for area variances. He feels that the requested variances will not result in an undesirable change to the neighborhood. This lot was part of a subdivision. It is on the plan as a subdivided lot and all the applicant is seeking to do is obtain area variances for sideyard setbacks which are the same as the required sideyard setbacks for the underlying R1 zoning district. With respect to the lot size, he feels that while the number itself (70,000 sq. ft. area variance) for lot size may sound large, the lot size they have (20,504 sq. ft.) exceeds the lot size required in the R1 district. He feels that this is important because all of the other properties in that neighborhood are in the R1 district. The benefits cannot be achieved by any other means. They are affected by the LC zone and therefore variances are necessary. He does not feel that the requested variances are substantial when looking at the circumstances and context within which this application is made, specifically in relation to the neighborhood. They are only asking for variances that meet or exceed the underlying zoning requirements. He does not feel that the proposed variances will have an adverse impact on the physical environmental character of the neighborhood or district. Again, the neighborhood is zoned R1, basically half-acre zoning. With respect to the environmental impact, he feels that the improvement in the site will result a net benefit and further protections to the wetlands. Mr. Murray does not feel that the hardship was self-created because he stated that prior to the purchaser acquiring this lot in the year 2000, the applicant exercised due diligence in determining what the zoning restrictions were on the property. He stated that the applicant went to the County Clerk's office, obtained copies of the filed subdivision maps which were approved by the Town of Clifton Park Planning Board. Mr. Murray stated that on the face of those maps it was correctly determined that the underlying zoning of the property is R1. Nowhere on the filed subdivision maps did it show any wetlands

on the lot at issue or any adjacent lands. The applicant further made site visits to the lot, saw that it was maintained and mowed. He thinks there was a fence at the time and some structures on there. Nothing that he saw would have given rise to any belief that there was further zoning restrictions on the property. He feels that the due diligence afforded and spent by the applicant is important because he said that New York Courts have held that in the event an applicant prior to purchasing a lot exercises due diligence to discover the zoning requirements of a parcel but does not discover everything prior to the purchase, it does not warrant a finding that the hardship was self-created.

Mr. Strother stated that the property was purchased in 2001, and the LC zone went into effect in 1998. Mr. Strother said that this goes directly to the hardship being self-created. Mr. Murray responded by stating that the applicant purchased the property after the LC zone went into effect, and that being said, what is important is that this was not a transaction where he was purchasing from an owner. There was no contract or opportunity to do any site access for survey work or wetland delineations. Mr. Murray further explained that this property was acquired at a tax foreclosure sale at the County, so the timeframe in which the due diligence can be done was not necessarily shortened but once you know what is on the tax rolls on the sale you can do your due diligence. However, there was not a relationship with the owner of the property where a contract could be entered into and wetlands could be studied. He had no right to step on the property and as a result, some of the due diligence that would have been reasonable in a different transaction were not available here. Mr. Murray again stated that the uniqueness of these facts and circumstances is that the zoning requirements creating the need for the variances is the LC zone. A purpose of the LC district is to preserve and protect wetlands. According to Mr. Murray, the DEC and the Planning Board have come back and said that this project will result in a benefit to the wetlands than what is there now. He thinks that it is unique that this Board can grant a variance in this type of situation and enhance and protect the wetlands.

At this time, Mr. Murray introduced Mr. Artie Tompkins to discuss the engineering issues. Mr. Tompkins is a wetland program manager for the Environmental Design Partnership. He started by reiterating what Mr. Murray stated about the purchase of the property in 2001, that even if Mr. Belmonte had gone to the County Clerk's office at that time to review what wetland mass they would have had on file, those maps would not have shown the wetland that comes down along the property because that was only mapped in 1999 and it was never formally filed by the DEC. The DEC attempted to file it in the Saratoga County Clerk's office, but the Clerk's office did not file them.

Mr. Lemire stopped Mr. Tompkins to ask who developed the street, Judith Drive, on the bottom of the picture. Mr. Tompkins replied Mr. Ohler. Mr. Lemire asked who built the houses there. There was a response from the audience that was inaudible. Mr. Tompkins stated that he did not know.

Mr. Strother referred Mr. Tompkins to what he was saying about the map and Mr. Tompkins stated that the County Clerk's office did not accept that they had the map but if you went there and asked what was on file for the DEC maps, they would have given you the maps prior to 1999 because they were the only ones that were formally adopted. Mr. Tompkins also said that there was a controversy in 1999 when the DEC proposed the map amendments. When Mr. Belmonte

went to purchase the property in 2001, he would have gone to the Clerk's office and asked for the DEC map, which would not have shown the wetland that they proposed to amend. This is what he was getting at when trying to establish hardship.

It was asked when the map was filed in the Clerk's office. Mr. Tompkins replied that if you look on the County's website, it is listed at 2006 or 2007, GEIS mapping. They only show the former wetlands. They did not have the amended wetlands on there yet. He knows that they are in their system now, but based on projects Mr. Tompkins had worked on in 2006, they did not have the amended wetlands on there at that time. He could probably contact the Clerk's office to find out when the maps were filed. He did not have that information.

Mr. Ritter asked if at the time the applicant purchased the property he was totally unaware where the wetlands are. Mr. Tompkins replied yes. Mr. Ritter asked if the owner would have had access to find out what that information was, due to a beaurocratic issue with the filing of the amended wetland maps. Mr. Tompkins replied not without getting the DEC out there to tell him where the wetlands are.

At this time, Mr. Tompkins discussed the existing conditions. He showed a photograph taken in March of 2001, shortly after the snowmelt. He stated that if you went out to that site you would have no reason to believe there was a wetland there or adjacent to it. It is not what you would think of when you think of a protective 100-foot buffer. It is a small lot, an approved subdivision which is maintained by the adjacent landowner who was the former developer of the Judith Drive subdivision. It is basically a level lot. There is a stockade fence with three sheds and a 6-foot high fence which will all be removed. Additionally, they will remove the used oil tank and 55-gallon oil drums as well as miscellaneous debris that is right up against the wetlands as part of this project. Mr. Tompkins provided a more recent photo from June of this year showing what the site looks like. He said that there are no wetlands on the site. The adjacent area was gone into. They found the edge of the wetland and measured back 100 feet and flagged the actual limits of the LC zone and 100-foot adjacent area. Then, they had DEC come out and verify those limits. Mr. Tompkins stated that he believes they provided a letter of their jurisdictional determination. Basically, they are proposing to go in and avoid the LC zone. They propose to build an 1,829 square-foot home and attached garage. To handle an impervious surface, they are proposing two swales which would direct storm water to a rain garden. It will be landscaped with native plantings. In addition, DEC has asked that they plant a 10-foot wide row of shrubs along the back for water quality treatment. He described approximately 5,450 square feet which will be placed under deed restriction, which will be filed with the County Clerk's office and the Town of Clifton Park. It will exempt maintenance of the swales and rain garden which will be the responsibility of the future homeowner.

Mr. Ritter asked, if the house is constructed would any ancillary buildings or structures on the property have future zoning impacts, for example, if the homeowner wanted to put in a pool or shed. Mr. Tompkins replied that one of the reasons they have the building shown right at the 80-foot setback is to allow for a little bit of room behind the house outside of the setback area. There is a 50-foot rear setback, as well, in the event that the homeowner wanted a pool or something along those lines, so it should not require a variance. He also again described the area of restricted covenant.

Mr. Lemire asked Mr. Tompkins if he is with Environmental Design Partnership. Mr. Tompkins replied yes. Mr. Lemire asked if he knows Michael Hale. Mr. Tompkins replied yes, that Mr. Hale is not still working there and is now on the Clifton Park Planning Board but used to be a part of Environmental Design Partnership. Mr. Lemire asked Mr. Tompkins if he is aware that there was a prior application for a use variance by Belmonte Builders for Judith Drive requesting a single family residence in the LC zone back in 2002. Mr. Tompkins replied no. Mr. Lemire stated that Michael Hale, who at that time was employed by Environmental Design Partnership presented an application on behalf of Belmonte Builders in April of 2002. Mr. Lemire stated that Mr. Hale at that time gave some background of the site which seems somewhat different from the background that Mr. Tompkins just presented. Mr. Hale indicated that the property was purchased by Belmonte Builders in 1986. In 1989, the Judith Drive subdivision was started. In that subdivision there was a street that led to a 38-acre parcel representing the only public road access to the site. The public road was never built. Mr. Lemire further stated that in 1987, the Corps of Engineers established their guidelines for wetland delineations which are the same guidelines used today. In 1997, the NYS DEC established new guidelines that made their wetland delineation criteria more akin to the Army Corps of Engineers criteria. Mr. Hale went on to state that when they were approached by the applicant, the first goal was to conduct a feasibility study to determine what, if any development would be possible. In that light, they flagged federal jurisdictional wetlands. When that was completed they contacted NYS DEC to establish the lines where the wetlands are.

Mr. Lemire asked Mr. Tompkins to help him understand how, when these studies were done when the subdivision was started in 1989 to find out where the wetlands were, how they did not know that there were wetlands on that property.

Mr. Peter Belmonte of Belmonte Builders replied to this question by describing the property owned by the Jackeys. From that property line heading north, Belmonte owns a portion in between Jackie's parcel, the Latham Water District Parcel, and then they own a parcel on the opposite side of the Latham Water District Parcel. He explained that the portion that Mr. Hale had worked on is at the end of Judith Drive which is a paper street that many years ago was being considered to wrap around into the Jackeys' parcel to give them access. The parcel to the north of Jackey is landlocked based on the Latham Water District coming to a point at Jackeys' parcel. The thought at the time was that this would become access to a 10-acre parcel of land which then abuts the adjacent piece which Belmonte owns which then would cross and continue. Mr. Belmonte confirmed that that was the project Mike Hale was working on. Mr. Belmonte explained a parcel of land that they have never owned or attempted to purchase it other than to have phone conversations with Jackey. They have never done any wetland delineation on that parcel of land.

Mr. Lemire asked if Judith Drive was wetland delineated before the houses were built. Mr. Belmonte replied no. It was built back in the late 70's or early 80's. Mr. Lemire disagreed and said 80's or 90's. Mr. Belmonte acknowledged that he was ten years off, but that this was done considerably prior to the LC zone existed and prior to what we know today as wetland, both jurisdictional and non-jurisdictional rules existed. If you continue down, you get to Treemont

Woods which they are very familiar with because they probably built 40% of the homes there, and this was long before wetlands were talked about.

There was discussion among Mr. Belmonte and Mr. Lemire about the map and parcel under consideration with the wetland line and 100-foot buffer.

Mr. Ritter asked for a point of clarification if Mr. Lemire's question is totally separate from the property at hand now. Mr. Belmonte replied correct.

Mr. Telesh asked where they got the lists of plantings and if it was from DEC. Mr. Tompkins replied Paul Ohler the land did the design of the stormwater basin. He does not know if he got them from DEC, but DEC has reviewed the plan. Mr. Tompkins stated that if this goes forward they will have to get a permit from DEC and they will have to review everything, but they have conceptually approved it and stated that the proposed project would be an improvement to the site and would be a better protection and benefit to the wetlands. Mr. Lemire asked if this was because of the barrels and trash that are there, that once that is cleaned up it will be better, or is it the building of the house. Mr. Artie stated that it is also the shed removal. In addition, the restricted area will be vegetated naturally, so now there will be real buffer as opposed to a mowed grass buffer.

Mr. Lemire asked who is saying this will be an improvement, DEC? There was some discussion about this that was inaudible. Mr. Strother asked for a copy of the letter. Mr. Murray stated that DEC is saying that from an engineering standpoint the site's design in addition to the removal of the items will be a benefit, also because of the swales and rain gardens. The rain garden itself is a result of the development because they would be treating the new impervious surface. It is his belief, though, that the tree and shrub plantings that would otherwise not be there if the project did not move forward in addition to the debris and other structures right up against the wetlands, in his opinion, is the benefit. He has the jurisdictional determination from DEC but does not have the actual letter. He can certainly provide it, however.

Mr. Dudick mentioned the debris and oil drums and stated that they were not put there by the current owner. Mr. Murray agreed and stated that the three sheds are being used by the adjacent landowner, who is also using the land behind it. In fact, a couple of sheds encroach on the adjacent property, as well. Mr. Dudick stated that certainly any land conservation area and wetland area would be better if it did not have toxic chemicals stored on it. Mr. Dudick asked Mr. Myers if there is any requirement for a landowner to remove debris and toxic chemicals from a land conservation area even if they do not build. Mr. Dudick stated it sounds like the applicant is saying there are toxic chemicals and debris which they will only remove if they can build a house there. Mr. Myers replied that this meeting tonight is going to tell him who is going to remove it.

There was discussion about the removal of the debris, which, Mr. Murray stated is not actually on Mr. Belmonte's property. Right now he would need access to it. If the site were approved that would happen and nobody is saying they are not going to do anything to help unless they can build a house . It is part of DEC's conditional approval that all of that goes. Mr. Dudick asked if it is not on his property, what right would he have to remove the materials. Mr. Murray stated

that right now he does not think they can do that. If DEC issues a freshwater wetland permit that says they approve the project, get that out of this, then Mr. Belmonte can go to the adjacent landowner and say that DEC is aware of this and told them to remove it. There was further discussion about what debris is on the property and what is not and what they have the power to remove. Some of the debris is on Mr. Belmonte's property. Mr. Dudick asked if they are going to leave the debris that is on Belmonte's property if there is not a house built. Mr. Belmonte stated that to the best of his knowledge in the mapping that we are looking at, all of the barrels and drums are off of his property on the adjacent property owners land. What still resides on the his land are the fence and sheds. He believes that since they existed before the LC zone, just like the swimming pools and houses, they are not the item in question. They will remove those in addition to the barrels and drums if the project is approved. Mr. Belmonte further stated that as part of the project being approved, they will approach the adjacent property owner and give them the ultimatum. While they are there, they will be more than glad to clean up the site and remove that debris from their property as a courtesy to fulfill the expectations of the Town and DEC. If the adjacent property owner does not give him permission, however, then they will be obligated to do it themselves. Mr. Dudick stated that if there are any drums leaking right now, they should be removed now, even if the project does not get approved. Mr. Belmonte agreed and stated they are not there to strong-arm a decision from the Board, all they are doing is pointing out all of the substantial things they will do to further improve the site beyond its present condition and beyond what they are obligated to do.

Mr. Dudick then asked Mr. Belmonte, referring to what Mr. Tompkins stated, that if they had gone to the Clerk's office to check to see where the wetlands were would they have been able to (inaudible). Mr. Belmonte interrupted by stating that it is not an "if," that they did go, as part of their due diligence, and that the information that would have indicated that there was a wetland was not available to them and did not exist at the time they purchased the property, but they did go. Mr. Belmonte stated that they were looking at multiple parcels of land at the same time and exhausted all means of research that they could think of at the time to understand what the constraints of the land were.

Mr. Dudick referred to Mr. Murray's statement that the property was purchased at a tax foreclosure sale, and asked Mr. Belmonte how much he paid for this property. Mr. Belmonte said it was just shy of $20,000, because they felt that there was substantial value to the land. Mr. Murray stated that the current assessment records show an assessed value of $50,000, with an equalized fair market value of about $86,000. Mr. Murray stated that Mr. Belmonte has been paying taxes on a vacant residential building lot for eight or nine years.

Mr. Strother thanked the applicant for providing the letter from the DEC, which does say, in concept, that they approve it. However, Mr. Strother feels that there is room for interpretation and asked if they intend to put a 10-foot buffer of native shrubs and grasses at the north end of the property versus swales and rain gardens. Mr. Tompkins stated no, that they intend to build it as shown. Mr. Strother read from the letter wherein it states that the revised plans, in concept, are acceptable to them. "In addition please note that we prefer to see a 10-foot buffer of native shrubs and grasses at the north end of the property. The purpose of this is to provide a natural means of filtering runoff into the wetland, rather than swales and rain gardens that would require future maintenance." Mr. Strother asked what their plan reflects: a 10-foot buffer or swales and

rain gardens. Mr. Tompkins replied both, and the reason is that when they went out there with DEC, there was a slight miscommunication between DEC and Mr. Tompkins. Michael Montague, the liaison to the ECC was there as well, and he had said that all of this goes and you come up with a plan to treat the new impervious surface, so they went back and did a rain garden. Mr. Tompkins believes that at that point they had already submitted an application to the Town and it seemed as if the ECC was in favor of a rain garden so they left it on there. He referred to an email from Jed Hayden DEC, which he says said that if the Town likes the rain garden they would let them do it, but if they don't, they would rather they didn't put one in. Mr. Strother asked if they are going to do a combination. Mr. Tompkins said right now that is what they are going to do, in part because they thought that the Town liked it.

Mr. Strother asked what they estimate the cost will be for the cleanup and improvements. Mr. Belmonte stated he has not sat down with a calculator. Mr. Tompkins could not estimate the cost of the cleanup but believes the swales, rain garden and plantings may cost $5,000 to $10,000. He would have to look into it a little more. Mr. Strother tried to determine the cost of cleanup as well. Mr. Lemire stated that you can't just make up a number. Whatever they are trying to do, there has to be proof or evidence submitted by the applicant.

Mr. Lemire referred to the email from Jed Hayden of the Bureau of Wildlife, NYS DEC, and he has a different interpretation from reading the email than what was presented by the applicant's representatives. Mr. Lemire believes that the applicant's representatives said that there was a letter stating that the building would be an improvement. In Mr. Lemire's opinion, this email does not say that, but rather that they conceptually approve of the project but suggest doing something different than what is proposed. Their suggestion would be an improvement over what the applicant proposed by making the changes that they suggest in the email. Mr. Lemire does not believe that there is anything in that email to suggest that building on the property would be an improvement over a vacant lot. Mr. Lemire also referred to the planning board minutes of May 12, 2009, which to him suggest that the barrels would be removed from the site. Mr. Lemire stated that the barrels are bad, but if they are not part of this property then they shouldn't be considered part of the application. Mr. Lemire is not certain that the planning board was aware, because the representation made here by a photograph is, look at this mess that we will clean up if we get approval. However, as Mr. Dudick pointed out, it is not their responsibility. Mr. Dudick replied that not only is it not their responsibility, but it may not be legal to go on someone else's property if the person does not give them permission to do so. Mr. Lemire stated that his issue with the letter is, as indicated by Mr. Murray, that the improvements to the property would be better than leaving the lot in its natural state for purposes of the LC. The email from DEC does not say that.

Mr. Ritter referred to the email which stated that they would prefer a 10-foot buffer of native shrubs and grasses, but not versus something else. Mrs. Gleason added that it says the purpose of this is to provide a natural means of filtering runoff into the wetlands rather than swales or rain gardens that would require future maintenance. Mr. Lemire added that they did not like part of the proposal and were suggesting keeping it natural versus what is being proposed. Mrs. Gleason added that it does say that "I am writing to advise you that DEC has conceptually approved…" Mr. Ritter added that in the original record on the project, they documented DEC in terms of applying for a permit and delineation, so it is obvious to Mr. Ritter that on or about

March 17th, they had communication with DEC. The email is from April as a follow-up, and the plans were originally submitted on March 13th, so there has been active correspondence.

There was further discussion about the email, and so Mr. Lemire read it into the record. "Dear Mr. Tompkins: I am writing to advise you that the DEC can conceptually approve the project at 16 Bonneau Road, for an Article 24 Fresh Water Wetland Permit. This approval is based on revised plans submitted to this department dated March 13, 2009. In addition, please note that we would prefer to see a 10-foot buffer of native shrubs and grasses at the northern end of the property. The purpose of this is to provide a natural means of filtering runoff into the wetland, rather than swales and rain gardens that would require future maintenance. This layer would be an improvement over the existing lawn and structures for buffering the wetland." Mr. Lemire's point is that he does not read this to mean that putting a house there would be an improvement over what is there now.

Mr. Dudick asked for public comment.

Ms. Penny Kienast, who is the daughter of the owners at 14 Bonneau spoke against the project. Her father also developed Oakwood Estates in 1987. Her mother has owned this property for almost 50 years. It was originally 15 acres prior to being subdivided. Then, 14 acres was subdivided, leaving the 1 acre. She stated that the wetlands were delineated originally and mapped at that time in 1987 when the recorded subdivision was done; it had to be done at that time. There are a lot of wetlands surrounding it due to the fact that the Latham Water District has the reservoir close by. She knows that Mr. Belmonte owns multiple parcels in the area. She has a civil engineering degree and used to delineate wetlands. The concerns her parents have are that a side setback closer to their house is being asked for, and also that the water table is high in the area. She knows that a water table test was done and asked what the water depth results were. Mr. Tompkins replied that it was dry, but it is about 18 inches to 2 feet. Ms. Kienast said that her parents' are higher elevation wide than where this lot sits. She explained that the back portion of the lot is wet during the year. Her mother mows it but does not fertilize it. Most of the time she cannot mow it because it is wet. She explained where the structures were originally prior to the street being put in. In 1986 or 1987, her father moved the original shed and built the two structures. They were there and had been there prior to the LC zone being created. Her apprehension is that he has owned the property for 9 years, and if everyone is so concerned about the LC zone and wetlands why was this not cleaned up after the purchase of the property in 2001. Also, since Mr. Belmonte owns a lot of property in this area, he should have been very knowledgeable of the wetlands in the area. Ms. Kienast stated that because of her background she is very knowledgeable about the process. She is also concerned that the letter / email referred to by Mr. Lemire does not state that they would be happier with what is being proposed versus doing nothing. According to her runoff calculations, it is hard for her to believe that, an 1,800 square-foot home and garage is going to be a better benefit to the environment than cleaning up the area and having nothing at all. She is also concerned that more than half of the house they are proposing is in the LC zone. It might have been a residential building lot in 1988, but things have changed substantially since.

Ms. Kienast is also concerned about the deed restrictions and asked if the Town makes sure it is abided by. Mr. Dudick asked Mr. Myers if this is enforced. Mr. Myers stated it doesn't happen.

Mr. Peller stated that this is a private lot. The landowner who would have the issue would have to bring it to the Town.

Mr. Telesh said there is an enforcement clause in the deed restriction which grants DEC and the Town the discretionary right to enforce restrictive covenants in a judicial action against any / all owners or users of the property or any part hereof against any person or other entity violating or attempting to violate these restrictive covenants. Mr. Myers replied that the Town would probably have to sign off on that and he does not believe they would, and also that the LC zone is a requirement of DEC, so he would send everything to them.

Mr. Dudick asked if it is a redundancy to have a deed restriction in a land conservation area. To say that you promise, as a landowner, not to build in this area which already has covenants because you are not supposed to build in that area, you are creating a deed restriction to say you won't build, when currently that is the law.

Mr. Tompkins responded to Ms. Kienast and agreed that there is a high ground water table. The site of the proposed house is getting filled to match the existing grade of 14 Bonneau Road. All of the runoff will go to the rain garden. Mr. Tompkins said this will not impact the existing water levels in anyone's basements. Ms. Kienast has told him that their house at 14 Bonneau has the existing leech field from a septic system that is partially on this property, so with the high ground water table, another benefit of the project is that this would have to go. He also wanted to reiterate that this plan as proposed would be a condition of DEC's permit, so they will have the right to come in and enforce it if someone is not in compliance.

Mr. Peller asked Mr. Tompkins to clarify what Ms. Kienast told him about the leech field. Mr. Tompkins replied that from what Ms. Kienast has told him, their house is on a septic system and the leech field is somewhere on this property. This is going to have to go and they are going to have to tie into the public sewer system. This would be an ecological benefit of the project.

Mr. Strother stated for clarification that the deed is enforceable by DEC. There was further discussion about the deed restriction and its enforceability by the Town or DEC.

Mr. Lemire stated that in the proposed deed it says that prohibited uses are filling, draining, flooding, dredging, impounding and clearing. To him it seems that all of the things that are prohibited are things that would be done when the house is built. Mr. Tompkins stated that the house is being built outside the wetlands. Mr. Lemire asked if the deed restricted area is the northern part. Mr. Tompkins replied yes, and this is where the rain garden would be. Mr. Lemire asked if DEC is going to be the enforcing body and Mr. Tompkins replied yes. Mr. Lemire asked who enforces the care of the lawn / fertilizing and Mr. Tompkins replied the Town.

Ms. Kienast clarified what is being mowed and what is not. The only portion getting mowed is the back corner. Behind the fence is a garden and that has not been mowed. The wetlands are not being affected. She discussed where the septic and leech field are. Her parents are on public water as of a month ago and she plans to get them on public sewer, whether or not this project is approved.

Mr. Peller asked Ms. Kienast why her mother mows the neighbor's property and why their garden is on Mr. Belmonte's property. She said Mr. Belmonte gave them permission to use it. He knows her father. Her mom would never not mow the lawn.

Mr. Dudick asked Ms. Kienast if her parents would be interested in purchasing the Belmonte property. Ms. Kienast said it is a possibility.

Mr. Dudick asked for public comment and there was none. Mr. Ritter made a motion to close the public hearing. Mrs. Gleason seconded. Approval unanimous.

Mr. Ritter asked Mr. Belmonte if he has a prospective buyer or if he is under contract. Mr. Belmonte said they do have a contract to purchase.

Mr. Dudick asked Mr. Myers for his comments about the project. Mr. Myers stated that he does not believe the lot should be built on. It is too wet a property. They talked about ground water within 2 feet. He should know by the end of the evening who will clean it up, but someone will one way or the other. He may call DEC and have the people ticketed for what they are doing. This is not a good place to build, according to Mr. Myers. It sounds like they would have to put in well points just to put the foundation in and get the water down far enough to pour concrete. Mr. Myers believes, as others have said, that this is the reason for the LC zone.

Mr. Belmonte commented on Mr. Myers' points by stating that this is a residential home, not a commercial building. Good practices that a homeowner can live up to need to be placed. They would never put footings or a foundation floor below a water table. They will never excavate below groundwater, not consciously.

Mr. Dudick discussed the 100-foot buffer and whether building should be avoided there. Mr. Murray responded by referring to the language of the LC zone and purpose of the LC zone, which is to preserve and protect the wetlands. He feels that clearly to do that, there is a general scope which says a line needs to be picked, in this case 100 feet. Where that is in place, certain things can be done like boat launches, parks and nature preserves. Mr. Murray thinks that the intent of the LC zone was not to prohibit the use of the underlying zoning district of a parcel, which in this case is R1. The Town added provisions specifically for use variances in an LC zone and the planning board unanimously positively recommended this. He also referred to the email from DEC and they have given their preliminary conceptual approval for the project. The LC zone only affects DEC wetlands. For DEC to say they will give a permit for the project is telling. They may like the 10-foot buffer better than the swales and rain garden, but they are doing it all, which is, he feels an extra precaution for additional protection. Planning liked the swales and the rain garden. He does not feel that the intent of the LC zone is not to build there but rather not to do anything detrimental to the wetlands.

At this time, Mr. Dudick read section 208.69 for the record, stating that the purpose of the LC zone is to delinate, preserve, protect and conserve wetlands and streams and their respective regulated adjacent areas as designed by the NYS DEC and to preserve natural floodplains as designed by the Town of Clifton Park. Mr. Murray agrees and thinks that this holds in what what they are saying, and that DEC has given conceptual approval for this.

Mr. Strother asked where the comments from planning are. Mr. Dudick reminded the board that the fact that the Planning Board may or may not be in favor of an issue or planned development should not decide how the Zoning Board decides zoning issues. Planning issues would be a separate thing. It would be used as a guide.

Mr. Dudick asked about how to enforce whether fertilizing in an LC zone is or is not permitted. To Mr. Dudick's knowledge, this property never had a building permit issued. It was a subdivided lot.

Mr. Telesh asked about the validation of the wetland mapping issue. He has a hard time considering this because he does not know. He is hearing hearsay stating that the County did not have that. Mr. Telesh asked if we have some type of documentation or something to substantiate that if he went to the County Clerk's office would he not have known when the property was purchased that the wetland is there. Mr. Murray suggested that the way they would present that or provide that to the board would be to go back to see if they can obtain the wetland maps filed in the County Clerk's office which would be identified by a date stamp as to when they were filed. Mr. Tompkins stated that he would have to go to the County Clerk's office and verify that information. He deals with wetlands all the time and for the longest time when you looked at the wetland maps in the County office, which is where DEC recommends you go or to Syracuse blueprint, the County Clerk would show you the maps prior to 1999. Mr. Telesh stated that he would like to see that because he is inclined to consider that, but he has heard disputed testimony where the other landowner says the mapping was done and he is saying it was not. Mr. Telesh feels that if they went to a government authority were shown a map that was not correct when they purchased the property, he would place some weight on that when making his decision, but today, he is not satisfied with the information presented as a fact.

Mr. Ritter added that on the reverse side of that, if a previous owner has already gone to the extent and expense of something and has not produced those documents to say it was done in the 1980's, then it equals out. Mr. Ritter is on the trusting side, that if the County Clerk's office did not have the information available, and the purchaser of the land was buying that land, then they buy it as is, doing everything they could. Mr. Dudick asked the board to ask themselves the question when voting, if you want to give the best possible scenario for the applicant saying that he had no way to find out and that the hardship was not self created, the fact is it is in an LC zone now and do you want development in the LC zone.

Mr. Telesh feels that this is a very complicated application because there is the LC issue, the DEC opinions and unique circumstances. He wants to look at all of the facts and various portions of the application.

The way Mrs. Gleason understands it, it was delineated, but was not available in the County Clerk's office. Mr. Tompkins stated that he could not speak for Mr. Belmonte, but if in 2001 you went to the County Clerk's office and asked to see the DEC freshwater wetland map for the Niskayuna quad of Saratoga County, they would have shown you the maps that the DEC had approved prior to 1999. It was not until 1999 that the DEC went back in and proposed all of the amendments. Mr. Tompkins is not sure if they amended it as a result of the 1987 delineation.

Mr. Murray added that if this is an issue, they would be willing to table this matter so that they can provide the information on record in the County Clerk's office as of the date of the purchase.

Mr. Strother stated that even if this information is provided this variance request is substantial – 75% of the target property.

Mr. Dudick polled the board to see if they would be in favor of postponing this matter pending additional information. Ayes: Gleason, Ritter, Telesh. Noes: Ferro, Dudick, Strother, Lemire.

Mr. Lemire stated that the unfortunate part of the law is that people who might not know what the law is are still responsible for it. Law in Clifton Park in 1998 concerned the boundaries of an LC zone. The Town knew what the boundaries were when they issued this law then. Mr. Lemire presumes that Mr. Belmonte and his group were building homes in that area in 1998, in 2000 and 2001, and he needed to go to the Town of Clifton Park, which is the entity who wrote the law and knew the boundaries of the LC zone. Mr. Lemire sees nothing in this application that shows that the applicant asked the Town about the boundaries of the LC zone. Mr. Lemire feels that regardless of what the County maps say, the Town should have been asked. Mr. Lemire also stated that even if it comes back, there are other issues regarding the use variance that have not been met by the applicant. This, in and of itself, would enable Mr. Lemire to decide this tonight.

Mr. Murray wanted it to be noted that the applicant is requesting the opportunity to provide that information because the issue of where the wetlands are has been raised several times in this discussion.

Mr. Peller asked Mr. Murray if he wanted to rebut anything Mr. Lemire stated concerning why the Town of Clifton Park was not consulted. Mr. Murray replied that with some of this they are going back 8 or 9 years and that the information provided to the board by the applicant is nothing but truthful. At the time this process was going on, Mr. Belmonte and a gentleman who is no longer with Mr. Belmonte did their due diligence for this piece of property. Mr. Murray did not have a specific recollection of going to the town. The other individual is no longer with the company and Mr. Belmonte could not make a representation one way or another regarding that. According to Mr. Murray, from discussions with the planning department, his understanding is that the planning department would not have been able to provide any information by which they could have made that decision. He would expect that the applicant was aware of the LC zone but its points of application are based on different things, such as DEC wetlands, and they did not have them. The zoning map at the time just shows that it is an R1 district.

Mr. Peller wanted to be clear on the question of tabling, asking the members who voted no, are they saying that if they had the map in front of them, that would not affect their decision on which they are about to vote. Mr. Peller wanted to be clear that the board always encourages the applicant to provide whatever evidence they want, and certainly we are not here to shun the applicant from providing anything, but what we are saying is that based on the evidence it does not matter whether or not they had a time stamped map in front of them from the Clerk's office. Ms. Ferro stated it is even more than that. She is prepared to vote based on the fact that she is assuming this in favor of the applicant.

Mr. Murray again requested that this matter be tabled so that they can provide that information and feels that they should be given that opportunity prior to rendering a vote.

Mr. Dudick agrees with Ms. Ferro. He does not have a problem assuming it is exactly is the applicant says. Making that assumption that they could not have the delineation of the LC zone by the County at the time the land was purchased, there are people who had owned properties 50 or so years ago prior to those maps being available but lost the ability to build on those properties, and at this time if they were to make an application for a building project, they would not be able to say that they could have built on it 60 years ago because now it is designated an LC zone. The argument could then be made that the ownership goes back prior to the creation of the LC zone. This does not have that. He did not own the property prior to the development of the LC zone.

Again, Mr. Murray requested that this matter be tabled in order to provide more information. Based on this, Mr. Peller recommended to the board that this matter be tabled to allow the applicant to submit a time stamped copy of the map. Mr. Murray agreed.

Mrs. Gleason stated that there could be a clearer communication from the state. When she reads the email, she is inclined to vote yes. Not that there aren't some troubling issues, but that is what we pay experts for. She agrees with a lot of what the Board is saying, but having been on both the Zoning and Planning Boards, she is usually inclined to vote yes when an authority like that gives a communication, but this email could have been clearer. She is in favor of more information being provided and tabling this matter.

Mr. Ritter stated that if the applicant wanted to provide any additional information, such as hardship, he would be in favor of that. Mr. Dudick agreed. He does not want to limit the applicant as to what he can bring or discuss.

At this time, Mr. Dudick tabled this matter to September 1, 2009. The applicant waived the 61 day period.

Mr. Dudick reopened the public hearing. Mr. Strother seconded. Approval unanimous.

Ms. Penny Kienast stated this matter has been on several times and this is the first time that this is being brought up that the maps did not exist and that we are also going on Mr. Tompkins' hearsay that when he went to look for these maps they were not available. This is a big stretch for her since she has done this a lot and has contacted the DEC every time she has started to build in the area. She has also contacted the Town and spoke at length with the environmentalist regarding where wetlands and the LC zones are located. She understands Mr. Peller's recommendation that the applicant should be given their opportunity to present their information but she feels they have had ample opportunity. She feels that it is the applicant's responsibility to show that this hardship is not created and they should have known to come with it this time. Additionally, this was scheduled to be on several other times and other neighbors may have wanted to speak.

There was discussion about neighbors appearing at the meeting and Mr. Dudick advised the applicant to renotice the neighbors for the September 1st date. Mr. Lemire also requested that the use variance application from April 16, 2002 be located. This is a different part of the parcel, but maybe the maps that are a part of that application would show whether the wetlands are delineated on that.

Mr. Ritter stated that there has been an open dialogue on this application between the applicant and DEC which goes to the heart of the law, that it is DEC that makes the determination. It is DEC's enforcement, DEC's wetlands, so the applicant should get a stronger statement from them, if they are willing.

At this time, there was a brief recess.

2. **An application from <u>Gerald Currier</u>, requesting a use variance from 208-43.2 (permitted uses) to allow a business involving boat sales and service, construction equipment sales and service in a hamlet / mixed use zone. They are believed to be a heavier commercial use than the zone was intended for. The property is located at 1111 Route 146A, Clifton Park, New York. (Permit #80736)**

The secretary read the legal notice as it appeared in the Daily Gazette on Thursday, July 9, 2009.

Mr. Gilbert VanGuilder presented this application for a use variance on behalf of Gerald Currier. The application is for a use variance. The property was previously used by a masonry contractor for their construction office and storage of their equipment. That company operated from the 1960's up through a little after the year 2000. The property was on the market after one of the owners of the property died. Mr. Currier purchased the property in 2006. He has been trying to actively market the property. Just last fall, they subdivided a portion of the property which is in the CR zone that has frontage on Ashdown. It was subdivided into two residential lots that are keyhole lots with access over a single driveway. As part of that application there was area reserved as permanent open space, which Mr. VanGuilder referenced on the map. He discussed the portion of the map which is not restricted by the land conservation area. Adjacent to the property is the Ballston Lake Firehouse. Across the property there is a junkyard that has been active for many years. Further to the house there are residences on both sides of Route 146A.

Mr. VanGuilder explained how Mr. Currier marketed the property and he believes a synopsis of that was given to the Board. Mr. Currier has been marketing it basically since he purchased it because he purchased it as a real estate investment property. According to Mr. VanGuilder, Mr. Currier's initial thoughts were to try, at least in the hamlet mixed use area, some sort of artisan village where there would be retail shops on the first floor and apartments on the second floor. This would be consistent with the zoning. The problem is, however, that there is no public water or sewer available in that area. Mr. Currier had an engineering firm investigate the soils, which are heavy and would require raised septic systems for all of the residential uses. Without having public sewer in the reachable proximity, this took that idea out of the possibilities of development. In the process of it being on the market for more than a year actively, Mr. Currier has had several inquiries about the property, but all of the inquiries were related to construction type activity, which was its prior use. Mr. VanGuilder stated that Mr. Currier listed all of the

inquiries, fourteen in total, one of which was a used car sales operation. Most of the other inquires were either repair facilities or were construction related. What became obvious to Mr. Currier is that there just is not a market in this particular area for offices and things that would fit into that hamlet mixed use definition of available uses. Because of all of the responses that Mr. Currier has had to the real estate advertisements for construction-related businesses, he is asking the board to consider opening up that type of use to this particular area. The main reason is lack of public utilities. They do not see public utilities going in that direction because it is so close to the Town of Ballston. The other detriment to the property is the fact that there are two active junkyards in the area, one of which is right across the street which is a preexisting non-conforming use and there is no indication that this is going to change. The junkyard is not as active as it used to be but there is still new material being brought in and left by the roadside on a continual basis. Additionally, the Ballston Lake Fire Department is right next door. One of the things that Mr. Currrier has actually discussed with the Fire Department is conveying a portion of the property. There has also been discussion of them taking stewardship of that large land conservation area in the rear and making it into an interpretive type area for wetlands. There are existing pathways and roadways throughout that area that the construction company had put in and this was discussed openly with the Planning Board when they did the two-lot subdivision on Ashdown Road. The main issues that Mr. Currier has faced is that the hamlet mixed-use restrictions do not seem to be working in this area and are not allowing him to market it for those uses.

Mr. Lemire asked about the size of the whole parcel. Mr. VanGuilder stated that the whole parcel was 34 acres. There was discussion about an 8-acre portion of the property. Mr. VanGuilder discussed the property by referring to the map. There was discussion about the upper left portion of the parcel being the portion where they are asking for the use variance. Another portion is in a CR zone. They wish to do a comprehensive application but he does realize that this was not addressed in the application. The application specifically addresses the hamlet mixed-used area. Mr. Lemire asked how the rest of the 34 acres is zoned. Mr. VanGuilder said that part of it is residential. The discussion about the rest of the property was discussed by referring to the map.

Mr. Ritter asked for clarification from Mr. VanGuilder by stating that Mr. Currier bought the parcel as an investment property thinking that he could get a reasonable return on his investment as the zoning currently exists and that the inquiries coming in are for uses other than what is permitted in this zone, and, also that he is asking to the board to consider making it so that Mr. Currier could use that parcel for the uses that people are expressing interest in. Mr. VanGuilder replied yes, for a small construction business. There is not enough area for it to be a large construction company, but rather, for something like what used to be there.

Mr. Ritter asked if the applicant is a licensed realtor. Mr. VanGuilder replied no. Mr. Ritter asked if he has solicited any help from licensed brokers / commercial brokers in this parcel. Mr. VanGuilder replied yes. There are submittals that it has been on the MLS listings for sometime.

At this point, Mr. Currier, the applicant, said since March 6, 2009. Mr. VanGuilder asked if it was listed with a realtor prior to that and Mr. Currier replied no.

Mr. Strother asked when the prior business ceased operation. Mr. VanGuilder and Mr. Currier replied, but the response was inaudible.

Mr. Ritter asked what is the heart of the financial hardship on the property. He would like to see documentation of that, which is required for the use variance process. He has read the summaries but is looking for documentation. Mr. VanGuilder discussed supplemental documents with Mr. Currier but much of this discussion is inaudible. Mr. VanGuilder said that this gives a little more history about the marketing and reductions in prices.

Mr. Dudick stated that he understands that the property was listed for $250,000 and the price was slashed to $184,900. He asked what the original purchase price was. Mr. Currier stated that the property was purchased in October of 2006 for $255,000. This included the building and 34 acres. Mr. Dudick asked if he sold the residential lots. Mr. Currier stated no, that they are for sale right now. Mr. Dudick asked how much is asking for each of the residential areas. Mr. Currier replied $199,000 for each. Mr. Dudick asked when he put those on the market. Mr. Currier replied about two months ago. Mr. Dudick asked about the size of the residential lots. Mr. Currier replied that one is about 5 ½ acres and the other is about 2 ½ acres, roughly. Mr. Dudick asked that, assuming those two lots sell, he would be able to recoup about 80% of his investment. Mr. Currier replied that he has had no offers and he expects to have to reduce those substantially. Those are keyhole lots. Of the acreage on the lots there is not that much that is usable because there is a steep bank. They have spent a couple of years to delineate the wetlands on this parcel. They had DEC and Army Corps involved. It took a long time and was expensive.

Mr. Lemire asked if it is the middle portion that is not usable and Mr. Currier replied yes. Mr. VanGuilder replied that it is a permanent conservation easement.

Mr. Peller asked Mr. VanGuilder if he notified his neighbors within 500 feet. Mr. VanGuilder replied yes. Mr. Dudick asked when it was filed. The secretary replied that it was stamped Friday, July 10th, four days prior to the meeting. Mr. Dudick referred to an email received by Mr. Myers asking for sufficient notice so he can prepare to be here.

Mr. Peller asked Mr. Myers how much time is needed to notify neighbors, is it fourteen days. Mr. Myers replied that he did not know. There was discussion about the email from the neighbor. Mr. Dudick stated that he is inclined to agree with the neighbor, that more time is needed, and that insufficient notice was given.

Mr. Dudick at this time tabled this meeting, and gave the public an opportunity to speak.

Mr. Wayne Bull spoke against the application. He has resided on the property to the south side of the property in question for 34 years. He stated that when the masonry company was there they did not have a lot of equipment there. There were no big trucks, no backhoes and no big construction equipment. Mr. Bull also stated that when Mr. Currier was about to purchase the land, he stopped by and asked Mr. Bull about the septic and water and Mr. Bull advised him that there is none. Mr. Bull stated that this is the worst part of the Town of Clifton Park and that everybody there has no water. They take care of what they do have.

Ms. Fatima Massoudi lives across the street from Mr. Currier and spoke against the application. She has 24 acres of beautiful property with wetlands. She bought her property so she can build a home for her children. The neighbor to her left is the junkyard. She does not want to see heavy equipment in front of her house.

Mr. Dudick tabled this application to August 18th. The applicant agreed to waive the 61 days.

Mr. Peller asked Mr. Myers to notify the neighbor who sent the email that the matter will be tabled. Mr. Myers replied yes.

3. **An application from <u>David W. Bathrick</u>, to build an accessory structure in a CR Zone, 10-foot setback is required for structures up to 15-feet high, proposed structure is 24 feet ± with a setback of 10 feet. Section 208-12 requires 1 additional foot of setback for every foot over 15 feet – variance requested = 9 feet. The property is located at 447 Schauber Road, Ballston Lake, New York. (Permit #80737)**

The secretary read the legal notice as it appeared in the Daily Gazette on Thursday, July 9, 2009.

Mr. David Bathrick owns this property and presented this application along with his fiancé. They wish to construct a garage. Mr. Bathrick bought this piece of property in order to cut his commute time down. He is a teacher in Rotterdam and is looking for a property to have their horses. One of the liabilities of this property is that it does not have a garage structure and they have a lot of agricultural tools. The property is 248 feet wide and about 1,960 feet deep – about 10.8 acres. The layout of the property is that there is an existing home, a barn, and two fenced-in pastures. Due to this layout they only see one logical location to place a garage that would make it convenient to store hay in the loft and store their vehicles and equipment.

Mr. Bathrick and his fiancé moved in in November of 2008. They called the Town and confirmed that they are in a CR zone and that a 10-foot setback is required for a garage. In January, he called again just to check and he was told a 10-foot setback off the property line and 10 feet for the existing barn. He had VanGuilder Surveyors put stakes in the ground for the builders to work off of. At 10-feet off the property line it would come up to the edge of the existing asphalt driveway. He had an engineer design a 32’ x 48’ wide structure. Over the center of the structure they would like a hay loft. There is a large hay field in the back of the property and they need convenient storage for it. The design of the building puts the peak of the building at about 23 feet high. With the grading away from the foundation walls, it would be about 24 feet above surface level. Mr. Bathrick was unaware that when he called to get the verbal instructions about the 10-foot setback that there were setbacks for heights above 15 feet as well, and when they applied for a permit, they were denied. If they were to move the building to conform, it would be right in the center of the asphalt driveway, which would not work. Alternate locations would be difficult, as well, with the fenced in pastures being there.

Mr. Bathrick feels that the property line has tall trees and this garage would not obstruct anybody’s view. The unusual thing about how their home is situated is that it actually faces

away from Schauber Road. The side of the house closest to Schauber Road is the rear of the house.

Mr. Lemire asked if there is a garage currently attached to the house and Mr. Bathrick replied that there is not.

There was discussion about the barn and what is stored in it. Mr. Lemire asked if he could construct the garage by attaching it to the rear of the barn. This would be a problem because then the car would have to be put in the driveway. It would be a long walk and it is wet back there. The general drainage of the property is that the house sits fairly high. It slopes down toward the barn. Behind the barn it slopes further away.

Mr. Strother asked about locating it near the wood frame shed. Mr. Bathrick stated that this would be an alternate location. What they do not like is that it would put the garage far away from the home. It would also block the view to the pasture.

Mr. Dudick asked about connecting it to the barn because of runoff issues. Mr. Bathrick explained that the existing barn is a dirt floor pole barn. What they are proposing to build would have a frost wall, poured foundation with a concrete pad, so it is a considerably more substantial structure. It would be possible to combine, but unusual.

Mr. Dudick asked Mr. Myers for his comments. Mr. Myers does not really have an issue with the application. He feels that the applicant made a reasonable argument. Besides, the house is far back from the road and he does not feel this would have an effect.

Mr. Lemire asked where the neighbor's house is in relation to the building. Mr. Bathrick replied that the Langans are the closest neighbor and their home is probably 120 feet from the corner of the proposed barn to the back of his home. There is a tree line as a buffer, as well.

Mr. Strother asked if any neighbors came back with any comments. Mr. Bathrick stated that he spoke with the Goodwills and they had no problem.

Mr. Dudick asked for public comment and there was none. Mr. Dudick made a motion to close the public hearing. Mrs. Gleason seconded. Approval unanimous.

Mr. Telesh asked how tall the existing barn is. Mr. Bathrick replied that it is probably about 15 or 16 feet tall.

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

4. **An Application from <u>Clifton Park Container Return</u>, requesting a use variance from A217-296 – permitted uses for a planned development (PDD) district no. 38, known as North Country Commons, for a bottling can redemption center. The redemption center is believed to be too heavy a commercial use and not allowed in this PDD per the legislation. The underlying B-3 Zone (and B-1, B-2, R-1 and R-3)**

also does not support this use. The property is located at 1208 Route 146, Clifton Park. (Permit #80738)

The secretary read the legal notice as it appeared in the Daily Gazette on Thursday, July 9, 2009.

Before the application was presented, Mr. Dudick read the recommendation letter from the Saratoga County Planning Board dated June 24, 2009, which stated that they request additional information be provided prior to the rendering of a decision on this application. Clarification should be provided on the type of activities that would be occurring as part of the redemption center, including hours of operation, traffic that will be generated, activities and procedures that will occur within the facility. The Saratoga County Planning Board was uncomfortable making a decision without being able to review the additional information on the facility. Mr. Dudick reminded the applicant that he can provide that information to the Zoning Board, but if that information is not available to the County, they are uncomfortable.

Mr. Howard Carr, president of the Howard Group which is the managing agent of the property, presented this application. He asked if this Board requires the recommendation from the Saratoga County Planning Board before it can grant a variance. Mr. Dudick stated that this board likes to work with them but it can make a decision contingent upon what the County comes up with, as Route 146 is a state road. Mr. Peller stated that we have a memorandum of understanding with the County that we ask the County if there are any county-wide impact on any application in the Town of Clifton Park.

Mr. Carr stated that he is trying to make a determination on a procedural issue. He asked if the board is restricted as a result of a statute to render an approval without the County Planning Board's approval. Mr. Peller replied no.

Mr. Carr was comfortable going ahead with the presentation as he felt he could address all of the questions that have been brought up. Mr. Carr stated that they have been involved with this property for about two to three years with the ownership for the purposes of both fiscal and physical management of the property as well as handling the leasing. They have been reasonably successful in making some improvements in terms of getting some occupancy into the center. They have had numerous discussions with the township as it relates to the existing PDD legislation on this property. Mr. Carr went on to explain to the board, as the board may or may not recall, that this property was rezoned under a PDD action by the Town Board, specifically under the request of the former owners Littlefield who operated an RV sales and repair business there. Unfortunately, Mr. Littlefield sold the property and the current owners do not operate an RV business. They have not found one to go into the space. They have been attempting to find what they would consider typical retail use for this building which is really a retail facility. Mr. Carr stated that they have made substantial improvements in executing a sale of the business interest of Northern Lights, which has made a substantial difference in the nuisance level as far as the Town and police are concerned. The property has been substantially cleaned up and improved by the new owners of Northern Lights according to Mr. Carr.

Mr. Carr wants to make the board aware that this application is for a use of approximately 3,000 square feet. He described a rendering of plan that was submitted to the Town in an application in

order to be able to build and develop a Dunkin Donuts on this site whereby it was going to be reflected in the new site plan to modify the traffic flow within the center because the drawing that was approved back in 1986 to allow Mr. Littlefield to operate the RV Center. You have the current drive situation now that enters from Route 146 and goes in a westerly direction and establishes a main entrance drive in the property. Their proposal based on bringing in the new Dunkin Donuts was to take that same curb cut, but instead of having the curved formation, to bring it down and create a straighter entrance into the property. He explained that they have some operational difficulties with parking and property damage accidents. This property was originally owned by the Ginsberg family who owned a department store. He described all of this on the rendering. He described where Northern Lights is and a proposed gymnastics facility, and a Dollar General.

What they are proposing to do is to take approximately 3,000 square feet on the front corner and establish a bottle redemption center. The purpose of this relates to the current bigger better bottle bill that is under injunction by a judge at this time but got passed through the legislature to increase deposits on certain returnable items and then to levy a deposit on others that are not currently returnable. This would simply be a private enterprise whose primary function is to take in the product and sort the bottles, as long as there is a deposit. The primary function of the business, which will be run by tenant, Mr. Ouderkirk, is to take in the bottles, sort them according to how the recyclers require them to be sorted, redeem them to the customer for cash. His other purpose is to do this as fundraisers for local community elements such as high school football teams, church groups, and charities. If a customer wishes, they do not have to redeem the money but can donate it to a charity.

Mr. Carr explained that this is not an industrial use in any way, shape or form. There is no processing, no shredding, no chipping of plastic, no meltdown, no recycling function here at all. All that happens is sorting and bagging which awaits the recycling people on the wholesale side who come and pick up the product. He feels that this no different from what PriceChopper does. They take in bottles, too. As far as the County is concerned about traffic, Mr. Carr believes that there will be substantially less traffic than there would be in any sort of typical retail, as people don't bring bottles back every day. He feels that once this business gets up and running, there will be even less trips because people will bring in more at once.

Mr. Carr also explained that on the east side of the building there are a series of overhead doors and explained the area where the RV business repaired vehicles. Right now there are doors that run from the front corner of the building back which will be eliminated with the exception of one. They require one overhead door to be able to load the bottles out of the back of the business to be put on the trucks and taken away. The current fencing and sliding gates on the north and south will all be removed and the area will be cleaned up. Mr. Carr wanted to make sure the board understands that the use for a bottle recycling center is not something that we have seen here because the financial side did not make sense, previously. The main thing this business will do, according to Mr. Carr, is give a purpose to clean up the community.

Mr. Carr stated that there will be one or two trucks that will come in on a daily basis depending on the volume. There will be typical retail traffic that will come through the shopping center.

Mr. Strother asked if everything will be stored within the 3,000 square feet. Mr. Carr replied yes. Nothing will be stored outside.

Mr. Telesh asked how the bottles will be sorted – mechanically or by hand. Mr. Carr replied both.

Mr. Carr added that they have made a lot of attempts to rent the facility. In terms of economic hardship, these landlords have had substantial hardship in that they have owned this property for almost five years. Numerous alternatives have been presented but nothing has moved.

Mr. Strother read from the application wherein it stated that the redemption center is believed to be "too heavy a commercial use and not allowed in this PDD per the legislation," and asked for clarification regarding that decision or judgment. Mr. Myers stated that based on what he has read in the PDD leglislation, it is very specific – banks, restaurants, and an RV place are allowed in a B-3, B-1 or B-2. It is all very light uses. Mr. Myers has spoken to Mr. Peller about this and Mr. Myers believes it is a heavier commercial use than intended in any of those zones. Mr. Strother asked about a grocery store. Mr. Myers replied that a grocery store is an allowed retail use. Mr. Myers stated that Mr. Carr explained this application very differently from what he expected. Mr. Myers expected the yard to be full of pallets of bottles. When the application was submitted, Mr. Myers believed this to be too heavy a use.

Mr. Strother asked if a beverage distributor, as an example, would require the same scrutiny. Mr. Peller replied that the primary objective of that operation is to sell beverages, so what is being done by accepting bottles is secondary. Mr. Strother stated that this activity is conceivably going on in every convenience store and shopping center / food store in town. Mr. Myers agreed.

Mr. Strother believes that this would provide a community service, not just from a fundraising perspective, but from a convenience one as well, due to its location and proximity being ideal.

Mr. Carr wanted to address the issue of the hours of operation, which he stated would be typical retail hours, he would say Monday through Friday from 9am until about 7 or 9pm, depending on the volume level. On the weekends, the hours would be a little bit longer, meaning earlier in the morning.

Mr. Lemire asked Mr. Myers if it would be fair to say that this business is not an allowed use in any district in the town. Mr. Myers replied that he believes it would be an allowed use in a light industrial zone the way the Town's laws are written now. To Mr. Myers, this fits more in with manufacturing, processing operations than it does to retail.

Mr. Telesh asked Mr. Myers, for point of clarification, if he was thinking recycling vs. returning when he made that determination for its use. Mr. Myers does not know for sure, but he thinks it is more of what the process was as he understood it, that since they were collecting and shipping it out without any sales it did not fit into the retail category. To Mr. Myers this seems like more of an industrial process than it does a retail operation. Mr. Myers feels that the board can look at this from two perspectives, one is Mr. Myers' determination correct – is it really a retail

operation? If it is, then this is an allowed use. If not, and Mr. Peller can answer this, can the zoning board put an allowed use in the PDD legislation that is not there. Mr. Peller replied no, that the zoning board does not have the authority to do that. Mr. Myers replied that the zoning board does have the authority to determine whether his determination was correct or not, that it is a retail operation or not. Mr. Peller agreed, and said that the zoning board has the ability to approve a variance from the PDD leglislation. Mr. Dudick added that the best the board can do is interpretation, that is, if the board interpret this business to be a retail business and not an industrial business, then there is no variance necessary. Mr. Peller replied correct.

Mr. Dudick asked if this type of enterprise exists anywhere. Mr. Carr replied yes, all over New York State. Mr. Telesh gave examples of where he has seen them. Mr. Dudick asked Mr. Telesh if these establishments strike him as being industrial in nature. Mr. Telesh replied no. Mr. Telesh stated that he is surprised that this is not a permitted use with all of the environmental things that we are trying to do as a town and government. Mr. Telesh feels that this type of business should be encouraged because it gets litter off of the street and gets the stuff returned. Mr. Telesh is intimately involved because he works for McDonalds and is dealing with this legislation, but there is a stay in effect, because New York wanted a different UPC bar than every other state and this violates interstate commerce regulations. However, Mr. Telesh said that in 2010 this is going to be a reality; the date has been pushed back and the injunction is there, but eventually he thinks New York is going to require our redemption on it.

Mr. Ritter stated that if we chose to call this the Clifton Park Beverage Center, we probably would not be sitting here because that would be considered a retail operation. He added that if you chose to add the sale of beverages to his operation, there would be nothing prohibiting them from collecting returnables, as a beverage center. Mr. Ritter feels that the board is caught up in the name, but that it is retail in nature. He does not necessarily think you have to issue a use variance because he views this as a retail operation, which is already permitted.

Mr. Peller asked Mr. Ritter what the retail product is that they are selling, because retail, by definition, is the sale of a product and there is no sale of a product here. Mr. Carr answered by saying they are selling a service. Mr. Peller replied that it is important to understand what the code enforcement office is saying, and why we are here. Mr. Ritter stated that it is a service that is being provided.

Mr. Strother stated that this goes to Mr. Myers' point. There is nothing under permitted uses that really fits this precise service, and that is why we are here. Mr. Carr stated that he had a similar problem with zoning ordinances when he tried to open an OTB. They run into this problem because the retail environment that we live in morphs into something more. Things keep changing.

Mr. Lemire's problem is that if we say as a board that we are empowered to issue a use variance, we have four very specific criteria which the board needs to adhere to. We need to ask ourselves if the applicant (the business owner or owner of the property) presented sufficient evidence to meet each and every one of those elements. This is all the board can ask themselves. Mr. Lemire does not think the board can question if whoever made the towns laws missed this new business opportunity when they wrote the zoning law. Mr. Ritter agrees and does not think that

the applicant has justified the uses on a use variance, and therefore, any interpretation of what this business entity is, he views it as a professional / community service. Mr. Lemire told Mr. Ritter that he does not get to make that decision. Mr. Ritter stated that he views this as a retail operation; Mr. Lemire said that is not his choice, unfortunately.

Mr. Peller asked Mr. Myers if, based on what Mr. Carr presented, he has changed his mind or revised his opinion as to whether or not this would be considered a permitted use of the PDD. Mr. Myers asked for time to think about this.

Mr. Dudick clarified Mr. Lemire's point about who is being represented. Mr. Carr is representing the landlord, and the tenant is there as well.

At this point, Mr. Dudick announced that there will be a five-minute break. When the meeting resumed, Mr. Dudick stated that after speaking with Mr. Peller and Mr. Myers, and based upon information that has been presented by Mr. Carr, it appears that the need for a variance is not necessary, which means that this application is being heard by this board unnecessarily. Mr. Dudick stated that it was explained to him that this is a personal services business venture, which would be an allowed use. There are still concerns about this being an enclosed business where there would be no storage outside and Mr. Carr stated that there would be no storage outside whatsoever. Mr. Carr was also asked and answered that there would be no manufacturing, no recycling, no shredding, no processing of the product, other than sorting, bagging and removing.

Mr. Dudick stated that this is not an application that the board is going to hear from this point forward, because of the interpretation from a legal standpoint from the head of the building department. Mr. Dudick understands that there are people who came to the meeting who wanted to speak or ask questions, but he wanted to make clear what the board's legal obligations are, which is to grant variances. He allowed public comment even though a vote on this application will not be taken.

Katarzyna Petronis of 11 Oakhurst Court is a property owner adjacent to the property of the proposed business. She stated that she was relieved when Mr. Carr stated that there will not be any processing because that was her main concern. Her other concerns are the traffic volume and hours of operation. She prepared a letter based on this use being of a light industrial nature, not necessarily retail. She still does not see how this can be considered retail as there is no sale of anything, but she will take his word for it. She is also concerned about the unknown, because in the past, when the credit union was approved she thought it was a very benign business, only to find out that their generator goes off at 7am in the winter and 8am in the summer. This lasts for one-half an hour every Wednesday. The noise is deafening and is placed closest to the residential property lines, not closest to the retail areas where there really would be no disturbance. Mrs. Petronis said that this is an example of not knowing a lot – that it seems benign on the surface but there may be more than we know about. As far as the hours of operations, she feels she will not have any relief on the weekends. If she wants to do her gardening she cannot because she will hear trucks and machinery that will generate noise. Ms. Petronis also mentioned that she has made numerous complaints about Northern Lights but nothing is being changed.

Mr. Dudick stated that this is a retail plaza so there will be traffic. He does not foresee a line of cars. As far as noise is concerned, Mr. Dudick believes that the Town addresses these issues.

Mr. Dudick asked Mr. Carr if there will be any noise generated that can be heard outside the building. Mr. Carr replied no. Mrs. Petronis was relieved, but she is concerned about the noise created by trucks coming and going. To close, Mrs. Petronis asked to have residents' interests and quality of life in mind.

Terese Khoury lives across the street and came to the meeting because she was concerned that this is going to be a recycling center. Now that she knows it is going to be a collection center she is pleased, because she feels the environment is important. Also, the deposits people are going to get back are important because of the state of the economy. Ms. Khoury also likes the decision that some of the donations would be made for the community. She has concerns regarding noise, traffic and light pollution, but now that she has a better understanding of the intent, she likes the idea, as long as it is not a processing center.

Jim Ouderkirk spoke about the business that will be there. He explained that he had helped a friend in the same type of business and decided to start one himself. Mr. Ouderkirk stated that with regard to hours of operations on the weekends, he thinks he will be done at 4pm. His son will run the business with him. He feels that this business is good for the community. This will be a full service operation; you will not need to feed a machine with bottles. They will take the bottles, count them and give you your deposit. Mr. Ouderkirk stated that if any neighbors have any issues he will be there. He is not absentee; he will be living in Clifton Park and working there.

Mano Obessis did not know he was a neighbor of this property. He resides at 12 Oakhurst Court. He came to the meeting because of the previous determination that it is a light industrial use that is not permitted. Now that this has been explained, Mr. Obessis thinks this is a great idea and a great service, which he feels Clifton Park is lacking. Mr. Obessis' question for the board is that although he believes the truthfulness of the statement that there will be no manufacturing or storage outside, what happens down the road. Mr. Dudick replied that if there is a problem, Mr. Myers would visit him.

5. **An application from <u>Justin M. Miazga</u>, requesting an area variance of 40 feet for an above-ground pool at his residence which is in a PUD (Country Knolls West). Per 208-12, an 80-foot setback from the front property line is required for accessory structures. House is on a corner lot with two fronts. The property is located at 17 St. Andrews Drive, Clifton Park. (Permit #80739)**

The secretary read the legal notice as it appeared in the Daily Gazette on Thursday, July 9, 2009.

Mr. Justin Miazga presented this application. He wishes to place an above-ground pool on his property. He gave a background of the property, which is a corner lot. When he bought his home, there was an indentation from a previous above-ground pool. He was thinking about getting a pool when he bought his home four years ago. When going through the application process he found out that there had to be an 80-foot setback. If the pool met the setback

requirements there are large trees in the way which are not his. The neighbor to the left of him has a satellite dish in the front yard adjacent to his property because those trees are so large he can not place the dish on his roof. Those trees would cause the pool to be shaded and may cause damage if large branches fall in.

Mr. Dudick commented that he is very familiar with sideyard setbacks in corner lots, so he understands the situation.

Mr. Dudick asked for public comment and there was none. Mr. Dudick made a motion to close the public hearing. Mr. Ritter seconded. Approval unanimous.

Mr. Ritter stated that this is standard procedure concerning a corner lot and he recommends that we accept the application as presented by the applicant. It was discussed that this is not a motion, but a recommendation.

Mr. Dudick asked Mr. Myers for his comments and Mr. Myers stated that he really does not have a problem with the application, but the applicant should be aware that when Mr. Myers looked at the property he did not believe that the current fence would meet the pool enclosure law. Depending on what type of pool he gets he may have to do something along those lines. The New York State law concerning pool enclosure fence was discussed. Mr. Miazga stated that it will be high enough to comply.

Mr. Dudick advised the application that if he ever wanted to put a deck by the pool that may have some influence on where he locates the pool. Mr. Miazga asked if there are laws regarding where decks can be placed. Mr. Telesh said it is an accessory structure so he would need a variance. Mr. Myers clarified this by stating that if he placed the deck closer to the road than the pool a variance would be required. There was further discussion on this point to clarify this for Mr. Miazga.

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

6. **An application from <u>Boni Enterprises, LLC</u>, requesting an area variance from 208-11 which requires a 10-foot side setback for a primary structure (single family detached home). Applicant requests a reduction to a 6-foot side setback, variance requested = 4 feet. The property is located at 61 Blue Jay Way, Rexford. (Permit #80740)**

The secretary read the legal notice as it appeared in the Daily Gazette on Thursday, July 9, 2009.

Kevin Daly who is representing Mr. Boni, presented this application. He gave a background about Blue Jay Way and the lots of record in that neighborhood. He explained about a lot that exists in Peacock Glen phase 4, which was a subdivision approved in 1987. Maps were filed and at that time there was some controversy between the developers and the Corps of Engineers. There were a lot of wetlands in the neighborhood on existing lots and what the Corps of Engineers demanded was that a number of lots be used for wetland mitigation purposes. There

were fingers of wetlands in the neighborhood which were allowed to be filled in but certain other lots had to be given over entirely to wetland mitigation. This was done, except that to keep the wetlands going, it was totally reliant upon local hydrology in the neighborhood in phase 4. Although some plans were approved and wetlands were created there just was not enough water to sustain the wetland mitigation areas that were created. In particular, in lot 61, the wetlands never took. So, over a period of years, the Corps of Engineers addressed this issue. Mr. Daly referred to a letter in the packet dated December 18, 2007, from Chris Mallory of the Army Corps of Engineers relative to an enforcement proceeding. What the Corps directed them to do in the case of three lots in Peacock Glen was to create the wetlands that they were due, promised and owed -- except that they could not create them on site at Peacock Glen because there was not enough water. Mr. Daly stated that made an arrangement with a neighboring farm that abuts the same larger DEC Corps of Engineers wetland and won. They have been directed to create wetlands at the farm to satisfy what is owed to the Corps of Engineers. The result of that, however, was that three of the lots that existed in Peacock Glen phase 4 no longer were needed for wetland mitigation purposes.

The effect was that they got the lots back to use as building lots, and as far as the Town of Clifton Park is concerned, they are lots of record. They are part of a subdivision, existing in separate legal entities, and are eligible for building permits within certain limitations. Mr. Daly explained the limitations: The Town exercises certain setbacks and there is always a setback from the road. The Town does also not allow building within wetlands or within the 100-foot buffer zone from a DEC wetland. There is a building envelope that can be used in this case, but it is very small. It is the desire of the builder to build a house within the building envelope that is of the same size and character as the existing houses in the subdivision.

Mr. Daly explained that when they measured out what they felt they could fit in, they came up with a main portion of a house that is 30 feet x 47 feet. They are asking to move the house somewhat toward the sideline between the boundary line lot 61 and lot 59. There is a 10-foot side setback requirement in the zoning law between lots. However, in the case of lot 59, there is no house there, or in lot 57, 55 or 53. From that point there are lots that were dedicated to the Town of Clifton Park for forever green purposes. So there is no neighbor on that side and there never will be. They are hoping to move the house and get a 4-foot variance toward the setback line on that side of the house, which will allow them to build a full-size house rather than a reduced-size house.

Mr. Dudick referred to the drainage issues and the three lots reclaimed that were wetlands but no longer are, this being one of them. He asked if lot 59 is still wetlands and Mr. Daly replied yes, used for wetland mitigation purposes. Mr. Peller asked if this has been conveyed to the Town already and Mr. Daly replied yes, that the Town owns that property. Mr. Daly stated that he spoke to the Town Supervisor about this and he did not have a problem with it.

Mr. Daly stated that there is a house at lot 63 and there is room to put full size houses on lots 85 and 87, so he would not anticipate any variances needed there.

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

Mr. Strother asked about the SEQRA assessment form and there was a mistake about the amount of footage variance that was needed. It is only 4 feet.

Mr. Dudick asked Mr. Myers for his comments and Mr. Myers stated that he really does not have a problem with the application.

Mr. Strother made a motion to approve the application as presented. Mr. Telesh seconded. Ayes: Gleason, Ritter, Dudick, Strother, Lemire, Telesh, Ferro. Noes: None.

At this time there was discussion about an application that was pulled from the meeting (permit #80735). Mrs. Gleason and Mr. Lemire asked for more documentation which Mr. Myers stated will be provided separately.

Mr. Ritter made a motion to approve the minutes of June 2, 2009. Mrs. Gleason seconded. Ayes: Gleason, Ritter, Dudick, Strother. Noes: None. Abstentions: Ferro, Lemire

Mr. Ritter made a motion to adjourn the meeting at 11:14 p.m. Mr. Dudick seconded. Approval unanimous.

Respectfully Submitted,

Jessica McCarthy
Secretary

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