

## ZONING BOARD OF APPEALS

January 6, 2009

Present: Michael Dudick, Chairman, Dale Gleason, Robert Ritter, Christopher Lemire, Gil Kortz, Douglas Strother, Brian Telesh, Deborah Ferro (alternate member)

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

Mr. Dudick called the meeting at 7:04 p.m

PLEDGE OF ALLEGIANCE

### **OLD BUSINESS:**

- 1. An application from Kenneth Relation, requesting area variances from Section 208-12A to construct an accessory structure as follows: (1) buildings over 15 feet in height require 1 foot of additional setback for every additional 1 foot of height over 15 feet. Additional setback required from normal requirements = 10 feet. Applicant wishes to place building at normal setbacks of 5 feet side and rear. Variances requested = 10 feet side, and 10 feet rear. The property is located at 4 Wildberry Court, Clifton Park, New York. (Permit #80719)**

Mr. Kenneth Relation presented this application. As presented in the last meeting, he is applying for variances for a detached garage.

Mr. Dudick referred to the last meeting wherein it was requested that Mr. Relation notify his neighbors regarding this application and make them understand the scope of what he is trying to do. Mr. Relation stated that he notified his neighbors. Mr. Dudick asked about the result and Mr. Relation stated that he contacted four adjacent neighbors. Of the four, he received notices of no objection from three, and he provided those to the board. One of his neighbors is here to speak to the board.

Mr. Kortz stated that he was not present at the last meeting. It was discussed and decided that alternate member Ms. Ferro would hear this application in place of Mr. Kortz since she was present at the prior meeting.

Mr. Dudick also noted that at the prior application the public meeting had been closed. Mr. Dudick made a motion to reopen the public hearing. Mr. Ritter seconded. Approval unanimous.

Mr. Dudick asked for public comment.

Mr. Guy Guadagnino of 6 Wildberry Court, lives next door to Mr. Relation and spoke against the application. His biggest concern is the size of the structure. He does not think that the three people the applicant spoke with realize how large this structure will be. He stated that a 30 x 60 structure with two levels is huge and unusual. It is not a shed; it is a building. He is also concerned about what the building will be used for, will it be for commercial use. He does not think this cul de sac was built for this intent. He believes that it will destroy the integrity of the neighborhood and diminish property values. He is also concerned about air quality. He has worked in the automobile industry and does not want to come home to hear a lot of noise. Cars will be worked on. Pollutants might be involved. He is concerned about the storage of chemicals.

Mr. Dudick stated that with regard to Mr. Guadagnino's concern about what the building will be used for, this structure will be used for home storage. No use variance has been applied for. If the applicant is storing cars there, he might be doing work on those cars.

Mr. Guadagnino stated that this structure will be visible right outside his window.

Mr. Lemire stated that he has similar concerns about the size of the structure, but his understanding is that the only issue before this board is setbacks, not the size of the structure. Mr. Peller stated that this is correct.

Mr. Dudick stated that Mr. Relation is allowed to build this structure on his property but needs the board's permission to build it where he wants to. Mr. Peller stated that this is correct. Mr. Dudick asked Mr. Guadagnino if the location of the proposed structure is an issue to him. Mr. Guadagnino stated yes. There was further discussion regarding this structure being allowed, but permission is needed to build it where the applicant wants it.

Mr. Lemire stated to Mr. Guadagnino that he agrees this structure does not belong here, but he does not get to make that choice. Mr. Peller spoke to Mr. Guadagnino about his concerns that

this may be used for commercial, business, retail, or anything other than a residential storage facility. These other uses would not be allowed and would be a violation of the code.

Mr.s. Gleason stated that the other concern is the height. Mr. Dudick stated that the height is allowed, but it affects the setbacks. Mr. Myers replied that this is correct. Mr. Dudick stated that we are not judging the height except that it changes the requirement for setbacks. Mrs. Gleason asked why this is a two-story structure.

Mr. Guadagnino thanked the board for listening to him. He added that despite the variance and the legal right to build this, he would like the board to put themselves in his position and consider what he will be dealing with on a day-to-day basis.

Mr. Lemire asked Mr. Guadagnino if, from his second floor, there would be a straight sight line to this structure or would there be woods. Mr. Guadagnino stated that you would see it and it would not be shielded by anything.

There was discussion between Mr. Lemire and Mr. Relation about the tallest portion of the structure being the tallest part because the ground slopes down to the northwest. Mr. Relation does not intend to perform any commercial activities. Collecting cars is a hobby of his.

There was discussion about access to the structure. Mr. Relation stated that there is a set of stairs from the upper to the lower level and an outside door. He was hoping to put in a retaining wall that would have stairs leading from the driveway down to the yard in the back, which is the lower level.

Mr. Dudick asked Mr. Myers for his comments. Mr. Myers stated that this is a large structure, but if he had put it 15 feet from the property line, there would be no variance needed. Mr. Relation stated that if he did this, he would actually be closer to his neighbors. Mr. Myers agreed.

Mr. Dudick asked Mr. Myers if he thought this proposal was reasonable. Mr. Myers stated that he feels this is a very large structure for the lot. Mr. Peller stated that pursuant to the code, however, it is legal. Mr. Myers replied correct.

Mr. Lemire stated that the size of the structure is irrelevant, that the issue is setbacks. Mr. Dudick agreed, but this is a rare request.

Mr. Guadagnino asked that if the variance is granted, can he be notified. Mr. Dudick replied that the board is about to vote on it.

Mr. Lemire asked Mr. Relation if the application were granted, would he be opposed to putting up some screening on two or three sides with plantings. Mr. Relation replied that he has every intention of landscaping his back yard. There is a fence between the properties and his intent is to line the fence line with some arborvites, but it will be years before any plantings will be large enough. There was further discussion about the plantings that would be used to screen some of the structure. Mr. Relation stated that part of the issue here is that his neighbor's home is a few

feet higher in elevation than his. Both houses sit high from the backyard. No matter what he puts there the structure would not be hidden. By placing the structure as proposed, it is actually the furthest into the woods.

Mr. Dudick asked Mr. Guadagnino asked if there were a row of arborvites would that make any impact. Mr. Guadagnino stated that the arborvites would not grow tall in a matter of a couple of years. He also stated that this structure is not secluded. If the variance is granted, this structure stays there, and thinks the impact on the well being of the neighborhood would be horrendous.

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

Mr. Strother made a motion to deny the application as presented. Ms. Ferro seconded. Ayes: Strother, Ferro. Noes: Gleason, Ritter, Telesh, Dudick, Lemire.

- 2. An application from GRJH, Inc., requesting a variance from the Sign Law, Chapter 171, Chart I, maximum allowable signage on business in B3 zone is 32 sq. ft., actual installed signage totals 68 sq. ft., variance requested = 36 sq. ft. The property is located at 1529 Crescent Road, Clifton Park, New York. (Permit #80721).**

The secretary read the legal notice as it appeared in the Daily Gazette on January 1, 2009.

There was discussion about the name of the company. It is GRJH, not GRSH.

Mr. Lloyd Helm representing GRJH presented this application. They are requesting a variance for 36 sq. ft. of signage for their building. At one point when they purchased the location there were two businesses in the building, a King Fuels convenience store and a Mr. Subb deli. They have opened it up into one store, but it is also two businesses. They operate a convenience store and have just invested in a Chester's Chicken franchise, which is the new sign they put up along with their Cobblepond Farms sign. The sign is on the east side of the building and is not directly in the face of the traffic. He feels it is necessary for them to gain exposure for their business and build up the Chester's Chicken franchise.

Mr. Kortz asked if this was only Cobblepond Farms before Chester's Chicken came in. Mr. Helm stated that before, it was Cobblepond Farms and a deli on the side where they are now putting the Chester's Chicken. The deli did not have its own sign. Before they purchased the building there was a Mr. Subb sign which they removed about four years ago.

Mr. Dudick and Mr. Helm discussed that there were previously two illuminated signs for King Fuels and a Mr. Subb. They put up a non-illuminated Cobblepond Farms sign and took down the Mr. Subb sign.

Mr. Kortz asked if the second sign for Chester's Chicken is already up. Mr. Helm replied yes.

Mr. Ritter asked Mr. Myers, for point of clarification, if when there were signs for King Fuels and Mr. Subb, were those signs greater than what was normally allowed. Mr. Myers stated that

he did not recall, but they were separate businesses so they would have been allowed 32 sq. ft. each. There was discussion about it being one building with two businesses and a wall between them. Mr. Myers stated that the Chester's Chicken sign that is up now is 38 sq. ft. The Cobblepond Farms sign is 30 sq. ft. The total signage is 68 sq. ft. They are allowed 32 sq. feet, which is why the 36 sq. ft. variance is requested.

There was discussion between Mr. Kortz and Mr. Helm about the two sides of the building and the two businesses.

Mr. Lemire asked about GRJH and if that is Cobblepond Farms. Mr. Helm stated that GRJH is a petroleum distributor with locations from Glens Falls down through Dutchess County. At one point a long time ago, they were all Cobblepond Farms stores and they ran them all themselves. Then, in the early 1990's, they began leasing them out and people starting putting their own names on it. When GRJH takes back a store, they run it under Cobblepond Farms.

Mr. Lemire asked if both Cobblepond Farms and Chester's Chicken are being run by GRJH. Mr. Helm replied that they were, currently. Mr. Dudick stated that this does not mean that in the future they cannot sell off each business. Mr. Helm replied correct.

Mr. Kortz asked if Chester's Chicken is a national franchise. Mr. Helm replied yes, but that they are more popular in the south.

Mr. Strother asked if this is created by the reacquisition by GRJH of both properties and running them under one business title. Mr. Myers stated that there is no distinction in the building like there used to be that there are two separate businesses. When they first opened there was a deli that was part of the convenience store. Now what they have done is take the deli out and move the chicken franchise into the same space. It is still part of the convenience store.

Mr. Strother commented that if this variance is granted and then somebody acquired this building and did not run two brands in the same building they could still have big two signs that said the same thing. This is a risk with the permanent nature of the variance.

Mr. Kortz stated that it is his understanding that if you cut off any connection between the Cobblepond Farms side and the Chester's Chicken side like it used to be and they had their own entrances, then it would be two separate businesses. Mr. Myers replied correct, and they would be entitled to the square footage each.

Mr. Dudick asked if there are two entrances and Mr. Helm replied yes. There is one entrance on the south side and one on the east. Mr. Dudick asked Mr. Myers if they put up a wall up like before and had two separate businesses with the same owner would there be a need for a variance. Mr. Myers stated they would still need a variance because the sign is more than 32 sq. ft.

Mr. Kortz asked if there was a freestanding sign. Mr. Myers and Mr. Helm both replied yes, for Cobblepond Farms.

Mr. Telesh asked if there has been a precedent, if this has been done before. Mr. Dudick stated that he can remember one, Taco Bell and Long John Silvers. The board told them to split the sign. They did not get extra signage. It is the same owner but they have their fish menu and their Mexican menu.

Mr. Kortz stated that if this sign was not already up he would prefer to not have them put up that second wall sign, but change the freestanding sign to advertise both businesses and have one wall sign with both businesses on it.

Mr. Kortz further stated that precedent is important but we must judge each situation individually. There was further discussion on this point between Mr. Dudick and Mr. Kortz.

Mr. Ritter stated to Mr. Kortz that a few months ago there was an applicant who put up a sign without a variance that was larger than what was allowed. The board denied the variance and the sign had to be taken down.

Mr. Kortz and Mr. Ritter discussed that there are other options for the sign. Mr. Kortz would prefer to deny this and then have the applicant come back with signage that might be more adaptable to the situation.

Mr. Dudick discussed the wall that was there to separate the two businesses and how that would have affected the variance requested. Mr. Helm stated he is not sure it was the right move to knock down the wall initially, but it convenient to the customers. There was discussion regarding how the building was formerly split and how other businesses are split.

Mr. Lemire asked about Chart 1. If the parcel is a restaurant then there can be one wall sign per tenant. If the parcel is a gas station then there can be a freestanding sign and a wall sign. This parcel is a gas station and a restaurant, so which one applies or do they both apply. Mr. Myers stated his interpretation is that a 32 sq. ft. wall sign for the business is what is allowed.

Mr. Strother stated that right now this is operating as one business, without respect to how many brands or products that business provides. There was discussion regarding this being one or two businesses.

Mr. Dudick states that in his own health care business he shares space with other doctors. He does not think each is entitled to their own 32 sq. ft. sign. The way this application is proposed, he would not be in favor of approving it.

Mr. Ritter made a motion to table this application. Mrs. Gleason seconded.

Mr. Dudick asked for public comment. There was none.

Mr. Telesh asked the applicant if he would come back with a different plan. Mr. Helm's response was inaudible. Mr. Kortz discussed tabling the matter and what does the board expect the applicant to come back with. There was further discussion on whether to table the matter.

Mr. Myers stated that in consideration of the big picture, he does not really have a problem with the sign, but he had to do a lot to get the applicant to come here. Over the course of several weeks or months he red tagged and wrote him a ticket to get him to come in for a variance. The applicant was told by Mr. Myers if he did not come in, he would be taken to court. Mr. Myers stated he does not think the applicant can come back and get this modified with a sign that will meet code. Mr. Kortz agreed with Mr. Myers, but maybe it could be smaller. There was discussion about this. Mr. Myers stated if we grant the variance and they get the 68 sq. ft., then the next place that comes in can have one large sign if they want.

There was further discussion regarding possibly tabling this matter. Mr. Dudick does not see a benefit to tabling this matter. Whether we vote no or table it, the sign that is up there has to come down.

Mr. Kortz asked what if the applicant comes back with something completely different, like something with the freestanding sign. Does the applicant have to reapply. Mr. Myers stated yes.

Mr. Dudick stated that he would like the board to vote on this and that he is inclined to make a motion to deny the application. If there was different sized sign or a partition to create two separate spaces, he would look at that.

Mrs. Gleason referred to Mr. Myers comments where he stated he does not have a problem with the sign. Mr. Myers does not really have a problem with the sign. There was much discussion between Mr. Strother, Mr. Kortz and Mr. Myers about this being one or two businesses. Mr. Strother stated that it is one business, and asked Mr. Helm if that is correct. Mr. Helm stated yes, it is one business and there are two franchises being operated by one person. There was discussion regarding whether the variance would run with the business or with the property. Mr. Myers stated it runs with the property.

Mr. Peller asked Mr. Myers if he red tagged the sign and ticketed the applicant. Mr. Myers replied yes. Mr. Peller asked Mr. Myers about the status of the ticket. Mr. Myers stated that he pulled the ticket when the variance was applied for. There is nothing pending in court.

Mr. Kortz asked for clarification regarding a variance running with the property or business. Mr. Peller stated that it runs with the property. Mr. Ritter discussed approving the application with conditions. He is suggesting that the 68 sq. ft. run as long as the chicken concept is in that building.

Mr. Ritter withdrew his original motion to table the matter. Mrs. Gleason withdrew her second.

Mr. Strother discussed financial hardship. Mr. Kortz stated that that guideline does not apply for sign variances and read the paragraphs of the sign law that apply.

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

Mr. Strother made a motion to approve the application as submitted, with the stipulation that there be two signs, one at 30 sq. ft., and one at 38 sq. ft., for a total variance of 36 sq. ft. Mr. Telesh seconded. Ayes: Gleason, Telesh, Kortz, Strother. Noes: Ritter, Dudick, Lemire.

There was a brief recess taken from 8:30pm to 8:35pm.

**3. Application from Windsor Development Group, Inc., proposing to construct a 14,800 square-foot pharmacy with a drive-through lane, a bypass lane and parking, requesting area variances on two lots as follows:**

**Lot #1:**

- (1): Variance from Section 208-46B – required front parking setback = 30 feet, variance requested = 30 feet;**
- (2): Variance from Section 208-46C – required side parking setback = 20 feet, west side parking setback variance requested = 20 feet;**
- (3): Variance from Section 208-46C – required side parking setback = 20 feet, east side parking setback variance requested = 20 feet;**
- (4): Variance from Section 208-47 – Not more than one entrance and one exit per public road allowed – variance requested for 2 entrances and 2 exits along Park Avenue;**
- (5): Variance from Section 208-48 – 15 feet green buffer required along property lines, variance requested on east side = 15 feet.**

**Lot #2:**

- (1): Variance from Section 208-46C – required side building setback = 30 feet, west side building setback variance requested = 30 feet;**
- (2): Variance from Section 208-46C – required side parking setback = 20 feet, west side parking setback variance requested = 20 feet;**
- (3): Variance from Section 208-46D – rear building setback required = 50 feet, rear building setback variance requested = 40 feet;**
- (4): Variance from Section 208-46D – required rear parking setback = 30 feet, rear parking setback variance requested = 30 feet (driveway along east side of building);**
- (5): Variance from Section 208-46F – 35% greenspace required, proposed greenspace = 23%, variance requested = 12%;**
- (6): Variance from Section 208-48 – 15 feet green buffer required along property lines, variance requested on west side = 15 feet.**

**The property is located at 121 and 125 Old Route 146, Clifton Park, New York.  
(Permit #80723)**

The secretary read the legal notice as it appeared in the Daily Gazette on January 1, 2009.

Mr. Bob Miller presented this application. He stated that this project is in keeping with businesses in the area. Mr. Bruce Secor, Civil Engineer with Stantec Consulting discussed the site plan. He stated that if these two lots were one, they would meet all of the setbacks except two.

Mr. Lemire asked if both lots were owned by the same owner. Mr. Miller replied yes.

There was discussion about a 1987 K-mart lease. Mr. Miller stated for the record that there is a declaration that these parcels would function as one. They can never be separated from each other. Mr. Peller stated that Mr. Miller provided a copy of this and he has no objection to it.

Mr. Secor stated that they have been working with the Planning Board. There is an existing sidewalk along Park Avenue. They will provide a connection to that. The sidewalk is along the building. There will be a new sidewalk along Route 146 near McDonalds. They are reusing the 3 access points that are there.

Mr. Secor then discussed each variance requested. Most of the setbacks are not met because of the lot line in the middle of the parcel. They are met along the sides of the property, however. The green buffer is met along the sides of the property.

Mr. Secor discussed the driveway and two access points. Mr. Miller explained that back in 1987, they were pursuing approval of Shoppers World and Village Plaza, at the same time, and in conjunction with those being approved and constructed, Maxwell Road, Park Avenue, Southside Drive and Wall Street were built. The Town stated that when they built Park Avenue, there needed to be access provided to landowners. He found an agreement which he stated he provided to Mr. Myers and then he also pulled Planning Board minutes with respect to McDonalds where this was discussed and approved to the Planning Board.

Mr. Secor discussed Lot 1, variance #4, and asked Mr. Myers if he should leave it in there since it is a preexisting condition. Mr. Myers replied that because the Planning Board ordered that access to McDonalds be there he does not have much of a problem with it. He still thinks it is considered two access points to Park Avenue, which does not meet the code, but he understands why it is there now.

Mr. Secor pointed this out to the Board and discussed the access to McDonalds. They are proposing to reuse entrances and exits. They are not asking for any change. The only thing the Planning Board asked is that they slide it over a little bit so that lanes line up better and they have agreed to do that.

Mr. Myers stated that depending on what happens with traffic at this location, there may have to be a traffic device put in at some point. Right now it is all lined up so at least it can be controlled somewhat.

There was discussion between Mr. Kortz, Mr. Secor and Mr. Miller about the entrance close to lot 1 off of Park Avenue. Mr. Secor said there is a cross easement and the Planning Board wants people to be able to drive between businesses without going back on the street. They have asked to consider a cross easement.

Mr. Kortz stated that it appears they have actually increased the greenspace in lot 1 from what was already there. Mr. Secor replied yes.

Mr. Secor stated that the lot line in between the two parcels is causing a majority of the variance requests.

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

Mr. Dudick asked where Capital Bank is going. Mr. Miller replied 7 Southside Drive.

Mr. Kortz asked where this is at with the Planning Board. Mr. Miller replied it is in the conceptual phase.

Mr. Strother asked Mr. Peller if the issue of the lease restriction with K-Mart is relevant. Mr. Peller stated that it is relevant to the fact that they cannot combine this as one lot. Mr. Dudick asked for an explanation. Mr. Miller stated that there is a restriction in the K-Mart lease which states that you cannot have a building over 5,000 sq. ft., or greater than 18 feet in height. It affects the KFC lot and a few other lots. This building is 14,800 sq. ft. Mr. Dudick asked if the restriction stated that the building is not supposed to be over 5,000 sq. ft., what does the lot size have to do with it. Mr. Miller stated that it is on a different lot and is not affected by the restriction.

Mr. Strother asked for further clarification, which Mr. Peller and Mr. Lemire provided.

Mr. Peller stated that if the Board approves this and the Planning Board approves it, what Windsor will do is file restrictions so that it will run with the land and the lots will never be divided again.

Mr. Dudick read a letter from Saratoga County Planning with regard to this application, dated December 22, 2008, which stated no significant county-wide or intercommunity impact.

Mr. Dudick asked if there are any variances currently on two other properties for KFC or Rockaway Bedding that need to be cleaned up. Mr. Myers replied not that he is aware of. Mr. Dudick asked for Mr. Myers' opinion regarding the application. In general, Mr. Myers has no problem with the application. He feels the applicant has done everything they could to make this viable, based on the conditions they had to work with.

Mr. Dudick asked if there is a drive-through. Mr. Miller replied yes, a single lane on the side of the building and a bypass lane.

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

- 4. An application from DCG Development, proposing a 4-story hotel above an existing retail building, requesting an area variance from Section 208-46B, front parking setback requirement = 30 feet, variance requested = 30 feet. The property is located at Clifton Country Road, Clifton Park, New York. (Permit #80724)**

The secretary read the legal notice as it appeared in the Daily Gazette on January 1, 2009.

Mr. Joe D'Annibale of Environmental Design presented this application on behalf of DCG Development. DCG proposes to construct a 4-story hotel over the existing mall with an entrance, two-way traffic, sitting patio and dining patio. They would also renovate the 55,000 sq. ft. existing vacant building which is the old Steinbecks building. They would create new storefronts consistent with the current renovations underway at the mall. Mr. D'Annibale passed out color renderings of the proposed project.

Mr. Lemire asked if the current traffic flow at the main entrance is one way. Mr. D'Annibale stated yes, to a point by the movie theater when it becomes two-way traffic. The plan, as they have discussed with the Planning Board on two separate occasions, is have a single one-way in, as it exists today, and then a two-way. Mr. Myers stated that it is a two-way now. There was further discussion about the roadway. There is an existing road that runs adjacent to Clifton Park Center Road which is designated to be one-way. Mr. D'Annibale stated that the one-way is not enforced. Mr. Myers stated he did not recall ever seeing a do not enter sign, even now.

Mr. D'Annibale discussed the service area in the back of the mall, the landscaping and storefronts. They will provide greater curb appeal along Clifton Country Road.

Mr. D'Annibale referred to a diagram and discussed parking, specifically in the area in front the front of the hotel. In order to accomplish the franchise's needs and maintain adequate parking and two-way traffic flow in that area, they need to move the parking 10 feet to within 1 foot of the existing parking lot. The two-way traffic flow and parking in front of the building are crucial to the successful redevelopment of this area. They did several design studies so that they would not need variances, and in each instance they lost parking spaces.

Mr. Lemire asked how close the marquis / entrance canopy is to the road. Mr. D'Annibale replied about 44 feet.

Mr. Lemire and Mr. D'Annibale discussed the diagram. Mr. Lemire asked if the trees and vegetation presently there will be gone. Mr. D'Annibale replied yes, but there will be landscaped trees and shrubbery.

Mr. Dudick asked if the goal is to have storefronts along Clifton Country Road. Mr. D'Annibale added that the hotel with grand entrance and outdoor dining also will face Clifton Country Road. He stated that they have been in front of the Planning Board three separate times and they advised combining the two applications into one in order to move forward, because the traffic patterns all affect each other. They have gone through conceptual and have submitted preliminary but cannot move further until they appear before the Zoning Board.

Mr. Kortz asked for clarification of the entrance, which Mr. D'Annibale provided.

Mr. Strother asked about the issue of headlights shining into the roadway. Mr. D'Annibale stated that that is the current condition as it exists today. Mr. Lemire disagreed and stated that there are

currently trees and bushes that separate the parking area from the road. There was discussion regarding the current distance to the road. Mr. D'Annibale's response is inaudible.

Mr. D'Annibale stated that there are six current areas around the mall where the parking is less than 10 feet, and one specific area in between 99 restaurant and JC Penney's where it is less than 1 foot.

Mr. Strother asked Mr. Myers for comment and Mr. Myers stated that there is no variance in existence for what is at the mall today, whether it be building or parking setbacks. If this variance is granted, it applies to the whole mall and all the setback problems they have with parking go away because there we will give them a zero variance for all of the parking since it is one parcel.

Mr. Kortz and Mr. Myers discussed the 10-foot right-of-way between the parking and the road.

Mr. Kortz was concerned with the impact of the other side of the mall if this variance is granted. He was interested in considering that this variance only apply to this side of the mall, or what is adjacent to Clifton Country Road. Mr. Dudick agreed.

Mr. Lemire asked if there are any issues with greenspace requirements. Mr. Myers replied that this is another issue that is not before the board. Mr. D'Annibale stated that the application as proposed adds a few thousand square feet of greenspace to the overall mall property.

Mr. Dudick asked if the hotel is above the storefront or is the ground floor part of the hotel. Mr. D'Annibale replied that that the ground floor is part of the hotel, and described the hotel.

Mr. Lemire stated that his understanding of the need for the variance is the location of the awning and parking being close to the front of the hotel. Mr. D'Annibale replied yes. Mr. Lemire asked if he felt the parking presently in that one or two-lane area is limited versus the other parcels of the mall where there is ample parking. Mr. D'Annibale replied correct, parking is limited. Mr. Lemire stated that the existing old Steinbecks building is 55,000 sq. ft. There can be an awning and parking on the interior of that and they would not need a variance. Mr. D'Annibale stated that that building and redevelopment is not attached to the internal mall corridors. The proposed tenant is drawn to the proposed location because it is connected to the internal corridors of the mall and provides much more flexibility and access to stores and restaurants without having to leave the building.

Mr. Kortz made a motion to close the public hearing. Mr. Strother seconded. Approval unanimous.

Mr. Dudick asked if they could move closer to Boscovs. Mr. D'Annibale stated that Boscovs has a very restrictive lease.

Mr. Ritter and Mr. D'Annibale discussed the greenspace in front of the building.

Mr. Kortz asked for clarification regarding the right-of-way along Clifton Country Road, which Mr. Myers explained. They discussed the greenspace in the right of way.

Mr. D'Annibale stated that in the previous application with the Planning Board which allowed for the construction of storefronts, the applicant had been approved to remove 20 – 25 trees associated with the right-of-way which have not yet been removed, but which can be removed regardless of what happens with the variance.

Mr. Dudick read a letter from the Saratoga County Planning Board which stated no significant county-wide or intercommunity impact.

Mr. Lemire stated that he feels the request is substantial and the difficulty is self-created. He thinks the request will have adverse physical and environmental effects as it will wipe out any a lot of the greenspace along that road. He thinks the benefit can be achieved by other means.

Mr. Dudick asked for Mr. Myers' comments. Mr. Myers stated that he does not feel this will be significantly different from what is there now. Even though the variance appears to be significant in size you are actually talking about a fairly small area when compared to the entire mall lot. He feels the general overall improvements at the mall far outweigh what this is going to do to it.

Mr. Lemire stated that he feels there will be a change to the character of a main thoroughfare that runs through the town. Mr. D'Annibale stated that what is currently the back of a building with steam pipes and gas meters will have storefronts and landscaping consistent with the rest of the mall which he feels will enhance the area. Mrs. Gleason agreed, and stated that what is there now can be improved.

Mrs. Gleason asked if they will replant trees. Mr. D'Annibale replied that they would, as well as shrubbery. He further discussed the landscaping plans.

Mr. Lemire asked if part of the old Steinbecks building will be removed. Mr. D'Annibale replied yes. He also stated with regard to the removal of a portion of the building that in the current economic climate the applicant cannot find a tenant to lease a 55,000 space. They are proposing to chop that up into storefronts. Mr. Lemire asked why they cannot do that without removing part of the building. Mr. Myers replied because there are no sidewalks there. Mr. D'Annibale stated that parking is an issue as well.

Mr. Kortz made a motion to approve the application with the condition that the variance only apply to properties located along Clifton Country Road. Mrs. Gleason seconded. Ayes: Gleason, Ritter, Telesh, Dudick, Kortz, Strother. Noes: Lemire.

Mr. Dudick made a motion to approve the minutes of November 18, 2008. Mrs. Gleason seconded. Ayes: Dudick, Gleason, Ritter, Lemire, Strother, Telesh, Ferro. Noes: None.

Mr. Dudick thanked Mr. Kortz for his years of service to the Town of Clifton Park: 12 years on the Zoning Board and all of his years on the ECC. Mr. Dudick stated that Mr. Kortz has been an asset and will be missed.

Mr. Kortz made a motion to adjourn the meeting at 9:53 p.m. Mr. Ritter seconded. Approval unanimous.

Respectfully Submitted,

Jessica McCarthy  
Secretary

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