

**Approved**

**ZONING BOARD OF APPEALS**

June 2, 2015

Present: Michael Dudick, Chairman, Denise Bagramian, Michael Bloss, Jerry Cifor, Randy Gifford, Chris Lemire, Mario Fantini

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

Absent: Tony Morelli

Mr. Dudick called the meeting at 7:06 p.m.

**PLEDGE OF ALLEGIANCE**

Mr. Dudick informed the applicants this is a seven member board with one alternate. Tonight six members are present, plus the alternate. Mr. Fantini, the alternate, will be sitting in for Mr. Morelli, a new board member who was unable to attend tonight. To receive approval, an application one must receive 4 yea votes regardless of the number of members present. There are seven voting members present tonight so the applicant must receive four out of seven votes for approval.

**OLD BUSINESS**

None

**NEW BUSINESS**

*The secretary read the legal notice as it appeared in the Daily Gazette on May 28, 2015*

**1) An application from Fastsigns of Saratoga Springs for a variance from Chapter 171-Table II PUD commercial- office wall sign. 10' height allowed, 28'1" sign requested; variance required = 18'1".**

**Property is located at 648 Plank Road, Clifton Park, NY 12065 (Permit#81026)**

The application was presented by Rick Bult, owner of Fastsigns, representing First Columbia. He assured he has submitted authorization to represent them. He referred to the rendering of the proposed sign which goes on the side of the building, explaining that it is similar to other signs in the area and similar in height.

Mr. Lemire asked if the number 648 is the same size as the letters. Mr. Bult said it is. Mr. Lemire questioned whether any of the buildings in that area have signs other than numbers.

Mr. Myers answered he does not think so, explaining that the numbers are part of the building and not considered a sign. He clarified the numbers are identifiers and part of the building code.

Mr. Lemire asked if Seton Health has a sign. Mr. Bult answered they have a sign on the door. Mr. Myers expanded the information and indicated they have a couple of signs on doors and windows but none on the building.

Mr. Lemire wanted to know if the tenant is taking over the whole building. Mr. Bult denoted they are taking over the entire second floor and Seton Health has the majority of the first floor.

When Mr. Lemire inquired the square footage of the building, Mr. Bult said he does not have that information but said the overall footage of the sign is about 24 sq. ft. Mr. Myers advised that the square footage of the sign is well under the allowable size and this is strictly a height from the ground issue.

Mr. Lemire asked Mr. Myers if they could put the sign at any other allowable height on the building. Mr. Myers said the couldn't because of the tall windows in the front and it seems to work because the building is lower than the road so you would be looking down to see the sign.

Mr. Lemire asked if there are any other issues besides the height of the sign. Mr. Myers said that is the only thing. He informed Mr. Dudick he has no problem with the application.

Mr. Dudick asked for public comment. There was none. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Gifford. All approved. Public hearing closed.

Mr. Dudick commented that he doesn't have a problem with the height of the sign, and the size of the sign is within zoning code and therefore he is in favor of the application.

Mr. Bagramian made the motion to approve the application as submitted. Mr. Fantini seconded the motion.

Ayes: Bloss, Fantini, Gifford, Dudick, Cifor, Bagramian, Lemire Noes: none  
Application approved as submitted.

*The secretary read the legal notice as it appeared in the Daily Gazette on May 28, 2015*

**2) An application from Clifton Park Hotel Partners to build a 4 story hotel in TC-1 Zone (formerly B-4) Variances required:**

- 1)TC-1B: sidestreet setback 30' max required; Variance = 20'**
- 2)TC-1G: Street facades req in BT Zone for first 30' from corner, variance required**
- 3)TC-1 H: 3 stories maximum; 4 stories proposed, variance required**
- 4)TC1-P: 40' minimum rear setback for buffer; 12' proposed; variance = 28'**
- 5)TC1-J: 14' minimum clear height first floor, 11' proposed, variance = 3'**
- 6)TC1-I: 6" max above sidewalk for ground floor finish level; 2-4' proposed; variance required**
- 7) TC1-K: 9' min clear on upper floors; 8' proposed; variance = 1'**
- 8) Primary entrance required along front façade, front façade is side facing public road; variance required**

**NOTE: TC1-Q Per NYS fire code drive lane minimum width= 26 feet. As proposed is a Planning issue conflict with the building code and no variance is allowed.**

**Property is located at 627 & 629 Plank Road, Clifton Park, NY 12065 (Permit #81018)**

Mr. Dudick first read into the record a letter dated June 2, 2015 from Mr. John Scavo which indicated the Planning Board had approved the plan at their meeting on May 12, based on some recommended incremental changes. The letter indicated they feel it fits with and is more compliant with the newly adopted form based code. The letter was entered into the record.

Mr. Dudick also summarized a letter from the Environmental Conservation Commission dated May 19, 2015 (also entered into the record). The ECC letter recommended denial based on the environmental impact and substantial size of the change and the impact to the TC-1 zone and the potential precedent that would be established to overcome self- created difficulties.

Mr. Peller asked Mr. Myers to elaborate on the note he made regarding the minimum lane requirement based on the fire code. Mr. Myers explained the fire code requires a lane 26' wide, but the site plan indicates 24'. He said he believes it has been addressed in Planning but he just wanted to make the board aware there was another issue even though the ZBA has no control over that.

Mr. John Scavo reported it had been addressed by the Planning Board and they are confident if the variances are granted that the site issues could be worked through. He said the applicant has expressed a willingness to work through the concerns raised by the Planning Board.

Mr. Peller concluded that the board will just take this as a matter of education.

Mr. Lemire questioned if what had happened at Planning had any effect on the variances that are before the Zoning Board.

Mr. Scavo replied the variances that are in place are the result of the changes made to date so they are based on the siting of the building. Mr. Myers added that the building has already been moved as a result of the adjustments suggested. Mr. Lemire reiterated, in other words this is the latest permutation of what the Planning approved.

Mr. Scavo explained they are going to walk the board through the plans for the future build-out of the parcel, including a restaurant, noting that the ECC did not have the opportunity to see that presentation.

Mr. Peller asked if they had received conceptual approval. Mr. Scavo said they have conceptual approval but they cannot move forward with it or have preliminary approval without variances. Mr. Peller requested assurance that this is not premature before the board; that nothing during preliminary approval will change that would modify this request. Mr. Scavo assured that even if they shift the building it won't change any of the variances and they feel even minor tweaks will still work within the confines of the variances.

Mr. Joe Dannible, Environmental Design Partnership, representing Clifton Park Hotel Partners presented the application. He introduced the owner of the property, Paul Massaroni, and Dan Mahoney and Bill Gates, James Tripp HBT architects, and Jeff Campbell of BBL, contractor.

Mr. Dannible remarked there is a brand new town zoning and they are working with Planning and with a site that is not in compliance with any aspect of form based code. The first phase is the hotel which is being presented tonight and the future phases will continue to bring the site into compliance with the code.

He referred to the map and explained the location of the site. They propose a 130 room hotel and will subdivide the existing parcel which will contain a retail plaza. He pointed out Mr. Massaroni owns the adjacent parcel to the north. There will be shared parking, which is being worked on with Planning. Phase I is to take down the old Realty USA building and the other building and the hotel will be put in its place, closer to Route 146 and Plank Road. The next phase will be a restaurant with multiples stories for hotel units or suites and also additional retail spaces. Also part of Phase II is the retail plaza. He informed they started working on the project prior to the change in zoning. He reminded there is a section in form based code that talks about incremental change and how to get from a suburban oriented district into the residential community and they feel they are doing that.

Discussion ensued regarding a wedge of property adjoining the parcel. Mr. Myers recalled it was part of a right of way the town turned over to Mr. Massaroni. Mr. Massaroni explained he had come for a variance last year to build a building in the back corner for a prospective tenant, but that didn't happen.

Mr. Dannible addressed the variances: Variance 1) the sidestreet setback variance request has been reduced from 20' to 15'. He explained that the courtyard needs to be located within that area so inside rooms have access to it. They will construct a wall around the area to help mitigate the variance. It is thought that in the future it may extend either over or under the Northway to connect the east and west sides. He said from the intersection of Old Rt 146 and Plank Rd to the dead end there is an 8' change in grade. If they pushed the building into that zone it would hinder the ability to do any grading work going under or over the Northway and the building would then have to be removed or rennovated. He said there is an economic difficulty and no practicality in trying to install steps in a hotel building to have it above grade. He feels there is no detriment to public interest, hotels are an allowable use within that zone and positioning is needed to accommodate a courtyard and to build out to Old Rt 146.

Mr. Lemire asked for clarification of the code. Mr. Dannible explained the code. Mr. Dudick added that they would have to build a larger building to build into the build out zone or they would have to move the building closer to the zone, but then it would not have a courtyard. He asked if they could turn the building 180 degrees. Mr. Dannible said they would still have to come for variances because the building façade would be further from Route 146 and they would have to step the building to have the units above the grade and it might not work for ADA accessibility.

Variance 2 - Street façade to be in the build to zone for the first 30 feet. They are not doing that because if they go back to the build out plan, they would not be able to get the street front façade in the front and would not be able to build the restaurant and shops in that building. They are intentionally pulling it back to leave the ability to come out in front of the building to build those which would comply with the form based code. Secondly it would cause the building to have an acute angle.

Variance 4 – Form based code requires a minimum of 40' rear setback from the property line for a buffer. In the current built environment, they have a pre-existing non-conforming setback in that area. To bring the site into compliance, he pointed out the economic injury would be the loss of 40 parking spaces and they would have to take out a retaining wall and take out the service area behind the hotel and replace it with landscaping. They would not meet fire code or have access around the building. He said it is no detriment to the area as it has been pre-existing for at least 30 years.

Variance 6 – Mr. Dannible said he is not clear to him that they even need a variance. Referring to the code which requires a 6" maximum difference between the sidewalk and the finished floor of the building, he proclaimed they are not clear which sidewalk they are supposed to take into account. If they were to bring the building down to the level of the sidewalk on Plank Road there would be no slope to get positive drainage away from the building. In addition they would have to lower the building 3-4 feet which would mean lowering the footings and reducing stormwater drainage by taking away three feet of sand they need for their stormwater management system. He asserted that future build out would put a building there and the floor would drop about three feet and would relate appropriately to the sidewalk and elevation on Plank Road.

Variance 3 – He referred to the building height, which is dictated by form based code to be three stories, and they are proposing four stories. He argued that all quality hotels in the area have been four stories or more over the past several years. He said if they were to make it three story they would have to increase the footprint to get 130 rooms. He believes shortening the building and making it wider contributes to urban sprawl and you can reduce that by minimizing the footprint and making the building higher.

Mr. Lemire argued that it is contrary to form based code and if they made the building wider it would potentially go into the build-to zone and you wouldn't need the variances. Mr. Dudick re-iterated Mr. Lemire's query, why is it not better to make the hotel wider and build into the build-to zone requiring less variances.

Mr. Dannible responded the building would not fit onto the property if they had to make up 35 rooms by having three stories, adding they would also be eating into their parking and cutting into their courtyard and acceptable room for fire trucks and safety apparatus.

Mr. Lemire commented they are doing that with the future build out anyway. Mr. Dannible said the future build out includes a parking garage that will be located behind the plaza.

Mrs. Bagramian asked if the Marriott is dictating they have must four stories. Mr. Dannible said the Marriott dictates the number of rooms on the site and the need for those units dictates the size of the building. He pointed out that directly across the road is a five story building in a TC-5 zone.

Mr. Dudick said they have had that issue before where something is allowed on one side of the road but not on the other and that is why there is zoning.

Mr. Dannible reminded that three months ago, when the planning started, the area was still under B-4 zoning and those buildings have been 75 feet tall. He stated they have done the visual simulations requested by the town to demonstrate that a four story building is not going to have a visual impact to the area. He pointed out that one of the peculiar things about the form based code is the specifics identified in the rules don't match up to hotel construction, although hotels are an allowed use. He cited as an example that the code requires 14' clearance on the first floor and a hotel room is 12' wide and a 14' ceiling puts the room out of balance as does walking down a 6' wide hall with a 14' ceiling .

Mr. Lemire asked the total square footage of the future restaurant and was told 8000 square feet. He informed the hotel will have a 20,000 sq. ft. footprint on the first floor and 18,000 sq. ft. for the upper stories.

Mr. Lemire asked why not make the restaurant into hotel rooms. Mr. Dannible explained you are not going to have hotel rooms with glass fronts facing the street. He pointed out that in any urban atmosphere, the hotel rooms are always on the upper level or pushed to the back with retail stores in fronts, which is what they are proposing. He explained to Mr. Lemire that form based code has specific requirements of a certain amount of glass and shop fronts. He said they have spent several weeks modifying the proto- typical Marriott courtyard to come more into conformance with the form based code. They have several meetings with the members of the Planning Board.

Mr. Jim Tripp, HBT, declared that four stories is the most efficient way to build a hotel rather than make it longer and bigger.

Mr. Gifford commented they want to put a restaurant and put rooms above it. Mr. Dannible corrected, they could be rooms. He explained it definitely would be a restaurant and shop fronts on the first floor but it is still up in the air what the upper stories would be used for. The need for more rooms will be market driven, or it could be office space, or it could be a one story building. Quoting a Planning Board member he said "you have to let form based code evolve" suggesting the build out of Clifton Park Town Center could be 30 years down the road. He suggested that with form based code the Planning Board recommendations should be taken into account.

Mr. Dannible presented pictures of the visual simulation of the hotel from different locations in the area, showing existing condition and built condition demonstrating that the hotel could not be seen, or barely seen.

Addressing variances 5 and 7 he referred to as dictating floor height of 14' on the first floor and 9' on the second floor. They are asking for a variance to reduce the first floor to 10' (down from 11' originally requested) and the second floor reduced to 8'. This would reduce the height of the building by approximately five feet. He said there will be 11' in the lobby area and pointed out that increasing the ceiling height means significant energy loss.

Mr. Lemire asked if the future restaurant and retail would be 14' ceilings. Mr. Dannible assured they would be 14' ceilings.

Mr. Cifor asked if the variances would apply to a future build out. Mr. Peller said he would say yes to future build out.

Mr. Scavo suggested "unless the board conditions it to just the first phase". He informed they have had internal discussions that, due to the newness of the code, they tried to anticipate every need but they still have to address the language to provide clarification.

Mr. Dudick asked what is the benefit of having 14' ceilings. Mr. Scavo explained if you look at the urban areas you will see lofts and gallery space with large storefront windows and older buildings retro-fitted to create a look and feel of a wider, open environment that adapts to different types of uses. He expounded they want to allow the ability for the first floor space to adapt to conditions. He said, with the 14' ceiling, they can control the visual aesthetics. He pointed out that the applicant, even if they don't achieve the 14', has the masonry lines throughout the building to give it that appearance on the outside.

Mr. Dudick said in his experiences are those retrofitted buildings are reclaimed industrial buildings and asked Mr. Scavo if that is the goal, for it to look like re-claimed industrial buildings.

Mr. Scavo said it is to set the standard for greater flexibility to market conditions, going forward. Mr. Dudick asked about the loss of energy efficiency for that aesthetic and remarking it seems the code is now requiring that anyone looking to do business in this zone might be forced into a higher energy cost, greater build out cost and a non-usable space for aesthetics .

Mr. Scavo said they are giving up design standards for more uniform standards.

Mr. Dudick mentioned he wonders if it was part of the plan to give up greater efficiency for greater flexibility.

Mr. Myers said you have to meet a standard for the energy code and it will be interesting to see how that works out with the 14' ceiling.

Mr. Dannible referred to the question about future build out and said their intent is to have the larger taller first floor for the streetscape.

Mr. Lemire asked if the board is supposed to consider the future restaurant. Mr. Myers said "no, just consider the present proposal, not what might be there".

Mr. Scavo quoted from the town plan which said having a shared vision for Clifton Park Town Center is important and the challenge is to guide incremental change without hampering the economic vitality. They understand that much of the area has been developed and future changes will be on properties which already have non-conforming structures on them and when renovating it might not always be economically feasible for them to fully meet the specific build out standards and may fall short of full compliance.

Mr. Lemire commented that the plan gives the Planning Board authority to approve little tweaks. He asked if the Zoning Board can make a variance contingent on the future build out. Mr. Peller counselled they can if they want to.

Mr. Myers disagreed, saying doing that would force them to build. Mr. Dannible said they are willing to say that the variances won't carry beyond the Phase I.

Discussion ensued with regard to going forward. Mr. Scavo reminded that this sets the stage for future projects. It doesn't all have to happen today, but it is a vision and they are moving in the direction of form based code.

Mr. Lemire asked if the Planning Board is saying they conceptually have no problem with the project and it conforms with their vision for the Town Center. Mr. Scavo agreed, explaining they believe none of the variances will prohibit them from development on the existing plaza or the future restaurant would hinder the ability for re-development to better achieve the form based code going forward.

Mr. Peller recommended that anything the board decides to do should only be applicable to Phase I so as to not restrain their building rights in the future.

Mr. Dannible continued his presentation discussing the primary entrance which the code requires to be on the front façade (variance 8). He said the front façade of the building does not face the primary street but faces the north to the plaza area. He informed that the primary entrance of a hotel is always related to the drop-off area. Instead, they are providing an entrance at the end of the building which will look like the primary entrance but they are looking for the variance for a primary entrance that is not on the front façade. He said putting the primary entrance on the front of the building will hinder the walkable community and the ability to get involved in the master plan build out. The primary street is Plank Road.

Mr. Dannible again promised they will have no problem with the variances conditioned only to Phase I and not carried on to any other further phase.

Mr. Dudick called a ten minute recess to confer with counsel and the building department. (8:30)

(8:40) Mr. Gifford asked how many parking spots they will get with the hotel.

Mr. Dannible answered they have 131 spaces on the property and a shared parking agreement with the plaza to the north so there will be 180 spaces available. Mr. Gifford asked about assigned parking spaces for the employees. Mr. Dannible replied there is no designated parking for them, but with 130 rooms and 180 spaces available, there would be 50 spaces for employees although he doesn't think there will be that many employees.

Mr. Dudick asked whether this is an extended stay hotel and Mr. Tripp said it is not. Mr. Dannible explained they figure one parking space per room. Mr. Myers confirmed the requirement is one parking space per room and one for every two employees.

Mr. Dudick asked about the proposed parking garage and Mr. Dannible indicated on the map where it would be located.

Mr. Peller posed the question whether the hotel will have a ballroom or a large room for catering events. Mr. Dannible responded they will not have a room large enough for weddings but will have some meeting rooms. Mr. Dudick asked if there are parking requirements for special events and Mr. Myers responded he is not sure that is in the code.

Mr. Dudick announced the public hearing and asked for comments. There were none at that time.

Mr. Bloss asked to see the ECC memo to ascertain why they are not in favor of the project.

Mr. Myers stated this is the first application for the new zoning and obviously they have found a lot of potential issues. He opined he does not have a huge problem with the project and it comes down to dimensional issues which, he advised, is what the Zoning Board needs to think about and look at only what is proposed to date. If future projects need to come back for variances, they will, but it appears that the future project is going to meet the requirements. He summed up saying this is a good first time try.

Mr. Lemire commented that the normal zoning code has procedures for making a decision on variances. He questioned whether the new form based zoning code has a variance procedure and a section that gives the Zoning Board the authority to hear variances set forth in the code. Mr. Myers and Mr. Peller both agreed there is no special procedure and the board should go back to the standards used for variances. Mr. Scavo resolved the issue and referred to the code saying there is a section that says for area variances applicants need to come to the Zoning Board.

Discussion ensued between Mr. Lemire and Mr. Scavo regarding authority to modify. Mr. Scavo stated chapter 7 has a lot of “should” and “shall” which is where it gives the Planning Board latitude in architectural and site standards.

Mr. Peller said the code enforcement officer and town attorney both agree this board has jurisdiction to look at the variances that they requested. He again advised they look at the area variance criteria and anything the board decides should only follow through to Phase I of this project.

Mr. Lemire asked how the variances are not self-created. Mr. Dannible said the only way a variance is not self created is not to do anything on any site. He alluded to the build to zone along on side street saying in order to meet that requirement they would have to step the building every two rooms to match the grade and the cost of getting the handicap accessibility would be large (explaining they would need ramps and handrails).

Mr. Lemire suggested if the town wants a front façade they could build it facing Plank Road. Mr. Dannible argued the difficulty would be the drop off area. Mr. Lemire said you could have the front in the front and wouldn't have the courtyard. Mr. Dannible asked how you could have the drop off in the front. Mr. Lemire answered you wouldn't because it doesn't meet the requirements as the town wants it to be built because its supposed to be a walkable town center. Mr. Dannible reminded that hotels are allowed in this zone. Mr. Lemire said you could have a hotel but within the code. Mr. Dannible questioned how do you have a hotel without a drop off? Mr. Dudick said "like they do in New York City with no drop off". Mr. Dannible added that often those hotels you drive under the building and you don't even see the hotel because it is not in the front. He cited Saratoga Springs, where the hotel is in an alley that leads you to the back and the street fronts are all stores.

Mr. Lemire asked how the hotel as proposed is not an adverse physical and environmental effect to the proposed town center because physically it doesn't belong in the center the way its supposed to be built and doesn't meet the code. Mr. Dannible said it is not self-created because the town is telling them to put hotels in our town center and this is supposed to be an auto oriented development with suburban lock configurations and that is what they are proposing.

Mr. Lemire said he likes the plan, but he doesn't see how he is supposed to do what he is supposed to do within the confines of the code.

Mr. Dudick asked again for public comment. There was none. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Gifford. All approved. Public hearing closed.

Mr. Dudick said he agrees with Mr. Lemire, that the hotel is a good addition to Clifton Park and it is ideal and attractive but it misses on several different levels of what he sees the form based design plan to be. He pointed out this is a unique place for the code and the board. He agrees the hotel could be modified to fit the code but it would look like the hotels in New York and this town does not have anything like that now. He opined this is a transition time because two months ago this would have been an easier discussion and he doesn't think the form based concept addressed the building of hotels. The applicant started the project several months ago and the zoning changed.

Mr. Lemire disagreed, saying they knew the form based code was coming. Mr. Dudick argued they knew it was coming but it changed in the middle of their planning process.

Mr. Peller asked when the plan came before the Planning Board. Mr. Scavo supposed it was in March for April consideration because they have a 23 day submittal window. Mr. Peller asked if it was submitted before March 16. Mr. Scavo was not sure. Mr. Lemire interjected that it does not make it any less self-created because it is not within the town center's guidelines. Mr. Peller agreed but added that if you are looking at whether or not they are a victim of a code change, you could make the argument that they applied when there wasn't a code change and that could be taken into consideration.

Mr. Dannible referred to the question whether this can be developed in any other feasible manner, saying the answer is no. You can move the building and move the entrance, but is that feasible? Can you develop a 110 room hotel rather than 130 rooms and the answer is no.

Mr. Lemire and Mr. Dannible continued to disagree with Mr. Lemire offering suggestions of how he could move the building to make it compliant and Mr. Dannible making arguments as to why it is not feasible and how it would create other variances.

Mr. Dudick asked for a motion. Mr. Fantini made the motion to accept the application as presented contingent that any variances would only be subject to the Phase I of this project. Mr. Peller clarified that for any future build out and variances requested, they would have to come back if the Building Officer or Planning Board thought it was necessary. Mr. Gifford seconded the motion.

Mr. Dannible stated he agrees with the contingency.

Ayes: Bloss, Fantini, Gifford, Dudick, Cifor, Bagramian Noes: Lemire  
Application approved with contingency.

*The secretary read the legal notice as it appeared in the Daily Gazette on May 28, 2015*

**3) An application from Fred Ogle to put carport to north side of house. Section 208-11 requires 10' side setback from property line, 3.5' available; variance required = 6.5'. Property is located at 911 Main Street Jonesville, NY 12065 (Permit#81027)**

The application was presented by Mr. Fred Ogle, owner of the property on Main Street. Mr. Ogle stated the application speaks for itself. He said he has four licensed vehicles and does not have any place else to put them. He informed he has provided a letter from his next door neighbor indicating he has no objection to Mr. Ogle building the carport and informed there is a fence and pine trees between them.

Mr. Dudick asked for public comment. There were no comments.

Mr. Peller asked where the cars are now. Mr. Ogle answered he has property in Burnt Hills and they are there.

Mr. Myers said Mr. Ogle is here because he (Mr. Myers) had given him bad information and that is why he had to come in for a variance. Mr. Myers had no problem with the application and also mentioned the neighbor is ok with it.

Mr. Dudick made the motion to close the public hearing, seconded by Mr. Cifor. All approved. Public hearing closed.

Mr. Gifford asked what type of material he will use. Mr. Ogle said it will be pressure treated along with shingles.

Mr. Dudick asked if there is any concern with height. Mr. Cifor reminded that the neighbor had given his blessing for it.

Mr. Cifor made the motion to approve the application as submitted. The motion was seconded by Mr. Fantini.

Ayes: Lemire, Bagramian, Cifor, Dudick, Gifford, Fantini, Bloss Noes: none  
Application approved as submitted.

*The secretary read the legal notice as it appeared in the Daily Gazette on May 28, 2015*

**4) An application from S & J Associates of the Capital District LLC for a use variance to convert vacant apartment to professional space. (SUP granted 1989 to allow professional office in building) Section 208-10B professional offices not an allowed use or avail for consideration as a special use in an R-1 zone. Use variance required to convert remainder of building to office space.**

**Property is located at 601 Bruno Road, Clifton Park, NY 12065 (Permit#81028)**

The application was presented by Brett Baxt, commercial real estate professional with the Howard Group and representing S & J Associates of the Capital District LLC as well as Advanced District Advanced Dental Arts and Dr. Scott Zitofsky.

Mr. Baxt said the application speaks for itself. He summarized they want to convert the vacant apartment to allow for professional office use as allowed with most of the neighboring buildings. He said they had spoken with the one neighbor directly behind them (north) and they seem to be on board with it.

Mr. Peller asked if the space would be for a dentist. Mr. Baxt said Dr. Zitofsky might one day expand and there might be a need for it. Currently they are looking to lease it out as professional office space because it has a separate entrance and separate parking and is only 900 square feet.

Mr. Peller asked Mr. Myers about the code which defines a professional office as requiring a certification by the NYS Dept of Education, which also includes attorneys. He suggested it is a limited use so the applicant can only rent it to someone who is certified by the Education Department. Mr. Myers agreed. Mr. Peller asked how are dentists are licensed.

Mr. Dudick advised that all professions are licensed by the Department of Education except for physicians who are licensed by the Department of Health. He informed that includes professions such as dentists and massage therapists.

Mr. Peller suggested just calling it office space. Mr. Baxt agreed that was their intent because they don't have to get that specific. Mr. Peller uttered why limit it if you don't have to. Mr. Baxt agreed they don't want to limit it. Mr. Peller advised the board to be clear they are talking about office space, not just for someone who is a professional .

Mr. Baxt said the previous owner lived in the apartment and had his practice in the other half of the building.

Mr. Dudick said this is zoned R-1 with .5% allowable use for professional use. Mr. Myers reminded he had a special use permit. Mr. Dudick said any residence in town a doctor can set up a home office.

Mr. Myers pronounced the intent here is to allow full commercial use of a building in an R-1 zone. He stated that the thing to consider is that it is the only building anywhere nearby on Route 146 that is zoned R-1 and every other building is zoned B-1 or B-3. Why it was done that way he didn't know because the building on the other corner is B-1. He informed that the concern of the neighbors is that it never be allowed to become fully commercial and that it be kept under the auspices of something like B-1.

Mr. Myers also mentioned the neighbors would like screening of the properties around it. He said it is really not viable living space and the upstairs would always be storage space. If they wanted to expand it they would have to come back for a variance.

Mr. Peller asked for clarification whether in 1989 when they got the special use permit it was not a home based business. Mr. Myers confirmed it was. Mr. Peller concluded the special use permit was to allow for a professional office. Mr. Myers said he thought it was granted because the owner lived there and he might have exceeded the percentages which is why he needed the permit. He thinks if it is limited to what it is allowed to be used for it will work out as long as it is not allowed to expand.

Mr. Peller questioned whether Mr. Myers is ok with the whole building being used. Mr. Myers said the upstairs would have issues with handicap access so he is not sure if it could ever become commercial but they could use it for storage. Mr. Peller asked if it is ok if it is just office space for the entire building, meaning it doesn't have to have a dentist there. Mr. Myers agreed.

Mr. Cifor concluded that Mr. Myers is saying a B-1 classification would be appropriate, and Mr. Myers said "correct".

Discussion ensued regarding the home across the street which is in a B-1 zone and there had once been a site plan for building a large dental office there. To the east of the property is also zoned B-1.

Mr. Baxt submitted a copy of the zoning map and presented for the record, proof of certified mailing to all neighbors within 500 feet.

Mr. Fantini asked how long they had been trying to rent the apartment. Mr. Baxt answered they haven't been trying to rent it. They had gone to Mr. Myers for a building permit to do some renovations and it was denied and they were told they needed a variance.

Mr. Fantini asked if there was any other use for it. Mr. Baxt responded it is not a very practical use for a residential location. He asserted there are concerns because of the sensitive nature of a medical practice because the dentist stores pharmaceuticals and there strict HIPPA laws and protocols he must adhere to. He does not feel it is appropriate for someone to be living there. It was noted there is a separate entrance and a firewall between the two.

Mr. Fantini said doesn't understand how this meets the criteria of no reasonable return if they have not tried to rent it.

Their position is, for whatever reason, when Rt 146 was zoned B-1 this parcel was skipped over and kept in the residential zone. Mr. Myers informed that there were many other residential parcels on Rt 146 that were rezoned B-1 and B-3, or something other than residential. A suggestion was made that the Town Board might want to re-zone it. Mr. Myers reminded they cannot do that because it is spot zoning. Mr. Dudick protested that they had inadvertently created a spot zone by having one corridor of business except for one spot on the map that is zoned residential.

Mr. Peller advised they can amend the 1981 special use permit or give them a variance from the current zoning. Mr. Myers said because you are asking to make the whole building for commercial use is not really amending the special use because it wasn't intended to cover that.

Mr. Dudick asked for public comment.

Mr. Tyler Hurst, 609 Bruno Road, expressed concern if this would be classified as commercial hoping that it wouldn't be turned around and sold and made into a Starbucks or something similar.

Mr. Dudick explained that this isn't about giving a variance to make it a commercial use because commercial is a different zone and this would be for office use only. Mr. Myers reminded that retail is not allowed in a B-1 zone.

Mr. Hurst asked if the granting of the variance would be contingent on them not being able to come back and ask for more. Mr. Myers said if they wanted to expand they would have to come back to the board. He said based on the zoning no retail is allowed and it wouldn't happen, but he reminded they are always allowed to ask for it, but doesn't mean they would get it and he doesn't believe it would happen. He explained that every time a building is sold, they have to come to the building department so they would always know what they are doing.

Mr. Peller read off the B-1 uses: general business offices, medical and dental offices, (excluding overnight offices), attorney offices, professionals, architects, accountants, engineers, psychologists, optometrists, chiropractors, insurance offices of independent or general agents, mortuary or funeral homes, daycare of children, real estate offices, financial or tax services, private school, non profit institution, charitable or religious offices, animal or veterinary offices without runs or kennels, etc. Mr. Peller summarized that anything else the applicant would have to come back.

Mr. Baxt said there are things within the B-1 code Para B under 208-33 states no pre-existing building can be remodeled or reconstructed etc, saying there are specific regulations within the B-1 zone that will alleviate his concerns that they are not going to build retail and the site is only an acre and doesn't lend itself to a large scale development.

Mr. Lemire asked how many rooms for the dental practice. Mr. Baxt answered "four".

Mr. Lemire asked if the intent on purchase in 2013 was to use all the first floor as office space. Dr. Zitofsky described the house as L shaped with the dental office taking up one part of the L and the other closed off is where the previous owner was living. He said he did not intend to live there because he has small children. He bought the property because of the location and the other space could be used if his business expanded but it hasn't grown that big.

Mr. Lemire asked if he knew what the zoning was when he bought the building. Dr. Zitofsky said he did. Mr. Baxt reasoned doctors' offices are always evolving and who knows what will happen and maybe he will eventually take on a partner.

Mr. Lemire proposed a scenario asking what if a house on Bruno Road had a dental office with a special use permit and ten years later it was sold and the new owner wanted to make the whole house an office, asking what would be the difference.

Mr. Myers responded the applicants house is on Route 146 and is a very unique case. He opined someone in the middle of the neighborhood is a different scenario, even if it was one space in. He reminded that everything around this house seems to be commercially based. Mr. Dudick agreed and discussed an application of a chiropractor whose home was one space in from the B-1 zone and that was not granted. He said this one is sandwiched in by B-1 commercial, across the street and to the left and to the right and that is the difference.

Mr. Lemire said the hardship is unique to this property which satisfies one of the four elements.

Mr. Donald Mccune, 605 Bruno Road, asked if their request is not a change to the existing zoning but a change in the use permit. Mr. Dudick explained that property is zoned for a residence which prohibits that from becoming an office. This is a request for relief by a process of a variance. Mr. Myers said the zone stays the same and the request is to allow a use that is not currently allowed there.

Mr. Mccune opined that as long as it is not changing the zoning, he thinks this is a good thing. He related that when the other doctor was there someone with children was living in the apartment . He said they were in the driveway with people coming in and out and it is not a good place to have children. He said he supports the application.

Mr. Hurst queried whether this is strictly zoning and not allowing modification like construction or taking down trees.

Mr. Myers responded that anything that modified it as a commercial site would have to come back to request permission.

Mr. Dudick asked for more public comment. There was none. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Gifford. All approved. Public hearing closed.

Mr. Fantini commented this meets three out of the four criteria but the applicant has not shown he cannot get a reasonable rate of return because he hasn't tried to rent it. Mr. Dudick said that

would be an issue, and explained the reason to Mr. Baxt, and the question is whether that space is usable for tenant use. He asked if it is an issue of safety.

Mr. Baxt agreed it is an absolute issue of safety, and the fair housing laws in the US and NYS prohibit them from discriminating against a tenant with children and there is an increased liability issue for the property owner. He said it is not a safe environment and reminded the previous owner had tenants with children playing in the parking lot. He also reminded of the HIPPA laws and strict security that Dr. Zitofsky has to keep patient records and pharmaceuticals.

Mr. Lemire asked if they have any competent financial documents to show that the tenant can't realize a reasonable rate of profit. Mr. Baxt said he has no hard numbers.

Mr. Dudick advised it doesn't have to be numbers, that a letter from a realtor would be ok. Mr. Baxt said he is a registered real estate broker in NYS. He asserted it is a unique site, but even though you might get a reasonable rent it would be hard because it is on a main road because there are businesses on either side and it is not a mixed zone.

Mr. Lemire queried whether they had attempted to rent it. Mr. Baxt said they had not since the doctor bought it.

Dr. Zitofsky informed the previous owner had it rented and was using the revenue to help him pay for expenses. He personally does not feel comfortable putting a family there and would not put his own family there. He said the traffic is bad and he can't say yes to a single person and no to a family and that is why he has not rented it.

Mr. Fantini asked if he knew that when he purchased the property. Dr. Zitofsky said he did.

Mr. Baxt alleged the ultimate hardship is the insurance cost and financial liability that the doctor would be under if something happened to one of his residents.

Mrs. Bagramian inquired whether he believes he would get more rent for an office than an apartment. Mr. Baxt agreed he believes he would and it would offset operating expenses.

Mr. Fantini asked if other dentists have home offices posing the question "wouldn't they have the same concerns". Mr. Baxt replied most home offices he has seen don't have street parking and their yard is not a blacktop parking lot. Mr. Dudick said he has seen home offices like that but the issue goes to where this building is on State Route 146 with businesses on the left and right and across the street, insisting this is different.

Mr. Lemire said the applicant has to address all four criteria and he has not presented any evidence that he cannot realize a reasonable rate of return shown by competent financial evidence. It is not that they didn't bring it, it doesn't exist, suggesting they need to try to rent it for 6-9 months and then come back.

Mr. Dudick said the question goes to suppose he is successful in getting a tenant. Mr. Lemire suggested the problem would be solved. Mr. Dudick pointed out that then he has the issue of

liability. Mr. Lemire argued he would have the liability whether it was a commercial or residential tenant.

Mr. Cifor, addressing Mr. Lemire, asked if he really wants to put a resident in a commercial use area. You are putting a square peg into a round hole. Mr. Lemire reminded the law says the applicant has to satisfy the elements even though it is a unique situation.

Mr. Dudick posed a suggestion to Mr. Lemire that the financial evidence doesn't have to be numbers, but it could be estimates.

Mr. Cifor argued that if they are not going to rent for residential use they can say they are losing that revenue that could be otherwise generated if it were zoned residential or office B-1. Mr. Fantini repeated the other owner was able to rent it.

Mr. Dudick asked if the applicant had a letter from an insured real estate agent that discussed the higher probability of liability with children on the lot vs business, would that be satisfactory? Mr. Lemire said "no" because with other applicants they made them come in and present the data.

Mr. Peller advised Mr. Lemire that something is different here, reminding that in 1989 the board granted a special use permit so this is a very different scenario than if he was just coming in here asking to change it from residential to use. Mr. Lemire didn't agree.

Mr. Peller said originally the owner lived there in 1989 and in 1999 they got B-1 zoning and life is different now than it was in 1989. Mr. Myers commented that is an issue with all of the zoning to try to keep up with what is going on in the town.

Mr. Peller repeated this is different than someone coming in from an R-1 zone just wanting to change the use. He asked Mr. Myers if he could amend the special use permit. Mr. Myers said that would be Planning. Mr. Peller suggested he could recommend it as the code enforcement officer and then they wouldn't have to meet the strict guidelines of the use variance. Mr. Myers agreed, and suggested that this should be tabled until they get some financial information and in the meantime he can speak with Planning. Mr. Peller agreed tabling would be a good idea.

Mr. Myers informed Mr. Scavo is well aware of the situation because he has been involved in earlier events tonight.

Mr. Baxt agreed to table the application until the next meeting.

Mr. Dudick pointed out that providing hard numbers would be helpful.

Mr. Peller explained the need to waive the 61 day rule, to give them time in case they can't make the next meeting. Mr. Baxt agreed to waive.

Mr. Mccune asked to speak one more time. He said he has lived there for years and there is a long walkway to the apartment to the corner and there is a lot of traffic on Rt. 146 so it is not a desirable place for someone to want to live.

*The secretary read the legal notice as it appeared in the Daily Gazette on May 28, 2015*

**5) An application from Sign Studio, Inc (Ron Levesque) for 2 variances from Chapter 171 Sign law 1) Table I of Chapter 171 allows 20' max height for wall sign, 35' requested, variance required =15' 2) Request for use variance from Section 171-4H(3)(n) for animated sign which is only allowed in B-3 zone for gas station pricing  
Property is located at 1220 Route 146, Clifton Park, NY 12065 (Permit#81029)**

The application was presented by Ron Levesque, owner of Sign Studio, Inc, representing the former Golds Gym, now Vent Fitness.

He informed they want to put up a sign comparable to the sign that had been there for Golds Gym, which would mean replacing the 60 square foot sign with a 50.6 square foot sign at the same height. He described the look of the sign with corporate colors, lime green and white. The second part of the application is requesting the freestanding sign by Rt 146, utilizing the same existing structure and replacing the top portion with the Vent Fitness sign, which is well within the code. They want to replace the manual portion on the bottom (with the same square footage) with a digital message board.

Mrs. Bagramian asked if he means manual is replacing letters by hand. Mr. Levesque confirmed that is what he meant, and they want to now do it by computer. Mr. Cifor questioned if it is a use variance.

Mr. Myers confirmed it is because it is not an allowed use in a B-3 zone, pointing out that the only digital signs allowed were for churches.

Mr. Levesque compared churches to businesses saying they all take in money and everyone should have the same level playing field. He asserted they are all competing for the same capital going after the disposable dollars and suggested that codes and laws should be looked at to see why non-profits and churches should have a competitive advantage over others.

Mr. Gifford asked what they would put on their message board. Mr. Levesque answered the same that is on there now, about membership, pizza night, special events, etc. which he claimed is no different than a church on a night they have yoga class. Mr. Gifford responded, saying you can't compare a church seeking parishioners with the signage of going after customers.

Mr. Levesque argued he works with churches and he hears how they attract new parishioners with their signs. He said he is talking about dollars and all it is doing is replacing a manual message board with a digital.

Mr. Dudick clarified that he understands Mr. Levesque is saying there is a finite number of dollars the signage goes after and he would like to have an equal playing field with people who have electronic signs, such as churches.

Mr. Levesque pointed out the manual boards are outdated and businesses must use modern technology.

Mr. Fantini asked if the sign would be flashing and how many times it would change. Mr. Levesque indicated you can do whatever you want with it, but it can be controlled by how many times it is changed. He rhetorically suggested you can change the same message manually but you can't do it electronically by computer.

Mr. Cifor reminded that there are four strict criteria that must be met for a use variance and they don't meet most of it.

Mr. Levesque uttered they are allowed the same messages on the board as the electronic board which has the same capability but it is not allowed. He made the analogy of a car that can go 100 miles an hour but only allowed to do it in certain zones.

Mr. Dudick informed it is the same with electronic message boards that they can go only in certain zones. Mr. Levesque promised they would agree not to have to have animation and he doesn't understand why they can't do the sign electronically.

Mr. Dudick announced the public hearing asking for comments. There were none. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Gifford. All approved. Public hearing closed.

Discussion ensued regarding the fact that there is an area variance request and a use variance request. Mr. Peller advised the board can approve one without the other. Mr. Dudick asked the applicant if he wants to tie them together or do one variance at a time.

Mr. Levesque said he did not want to tie them together.

Mr. Myers weighed in saying the only animated signs that have been approved in a B-3 zone were for churches. Mr. Peller explained that a Federal Court of Appeals had ruled that houses of worship should receive special consideration.

Mr. Dudick asked Mr. Myers if he had any issue with the area variance. Mr. Myers responded he has no problem with it because they had the same thing before. Mr. Dudick agreed that he has no problem with the area variance either because it is a reasonable request.

Mr. Myers and Mr. Dudick both indicated they had no issue with the height or square footage.

Mr. Myers commented regarding the electronic sign, and explained the town has indicated it wants minimum usage of those signs but it is bound by the ruling on house of worship. He reminded that a use variance requires evidence of financial hardship, which they don't have and it is not considered a unique hardship and approving it would set precedent.

Mr. Peller suggested Mr. Levesque withdraw the use variance because if an application is voted down, he could not come back to the board. He reminded that the owner might want to come back at a later date.

Mr. Levesque stated he would withdraw the use variance.

Mr. Dudick made the motion to approve the area variance only. Mr. Fantini seconded the motion.

Ayes: Lemire, Bagramian, Cifor, Dudick, Gifford, Fantini, Bloss Noes: none  
Area variance approved.

*The secretary read the legal notice as it appeared in the Daily Gazette on May 28, 2015*

**6) An application from Glen & Alison Brust for a lot size variance for septic system from Section 208-43.3 & 208-97 E(b) Lot is pre-existing and may be used as residential. Location Hamlet Mixed Use zone. Using requirements of Hamlet Residential, minimum lot size required = 40,000 sq. ft.; 25,265 sq. ft. avail; variance required = 14,735 sq. ft. Property is located at corner of Glenridge Road and Madison Avenue, Rexford NY 12148 (Permit #81030)**

The application was presented by Alison Brust, owner of the property. She stated what was read for record speaks for itself.

Mr. Peller informed, for the record, he and Mr. Myers had looked at the code for Hamlet Mixed Use and it didn't have any requirements they could look so they went to Hamlet Residential. Mr. Myers added that the minimum lot size for anyplace else in town for a septic system is 40,000 sq. ft. and for Hamlet Mixed Use is 6,000 sq. ft. but there is nothing mentioned about having a septic system. He said they used the best version they could find, the Hamlet Residential.

Mr. Dudick asked if it is an accepted building lot. Mr. Myers confirmed it is, saying any lots existing are acceptable building lots since the zoning changed. He informed there are several other lots of similar size in this area that have septic.

Mr. Lemire commented that if they want to market the property for sale, they need a variance for a septic system. Mr. Dudick agreed, adding "or if they want to live there".

Mr. Peller asked Mrs. Brust if she has a contract for the property. She answered she has someone interested in it.

Mr. Dudick asked for public comments. There were none. Mr. Dudick made the motion to close the public hearing. Mr. Bloss seconded the motion. All approved. Public hearing closed.

Mr. Fantini made the motion to approve the application as submitted. Mr. Gifford seconded the motion.

Ayes: Bloss, Fantini, Gifford, Dudick, Cifor, Bagramian, Lemire Noes: none  
Application approved as submitted.

*The secretary read the legal notice as it appeared in the Daily Gazette on May 28, 2015*

**7) An application from Clifton Park Plaza Associates, LLC for 16 variances for commercial shopping center redevelopment of existing Clifton Park Plaza.**

**Rite Aid (front facing Rt 146) – 3 variances**

- 1) 208-98 – 130' bldg front to centerline req; 117.5 avail; reqd variance = 12.5'
- 2) 208-38C - 80' to front prop line; 50.1' avail, reqd variance=30'
- 3) 208-38C – 30 'front pkg req; 4.8' avail, reqd variance =25.2'

**10,000 sq.ft Retail (front facing Vischer Ferry Road) - 2 variances**

- 1) 208-98 – 130' bldg front to centerline (VF Road) reqd; 15.9' avail, reqd variance =114.1'
- 2) 80' to front property line req; 15.9' avail, variance reqd = 64.1'

**General variances for plaza – 4 variances**

- 1) 208-38G – Greenspace required 35%; 15.5% shown on print, 16.6% in text, 24.8% existing, variance reqd = 19.5%
- 2) 208-39 - 1 entrance/exit per establishment; 2 proposed for Rt 146
- 3) 208-40 – 10' buffer required; east side 6' avail; south side 2.5' avail; north and west sides 0' avail in places
- 4) 208-99B – 378 spaces needed for parking; proposed = 322, variance reqd = 56 spaces

**Per allowed uses in Section 208-37 shopping center subject to provisions of Section 208-89. – 7 variances**

- 1) 208-98A 10 acres required; 7.656 acres avail, variance reqd = 2.344
- 2) 208098E 375 spaces required; 322 proposed, variance reqd = 56 spaces
- 3) 208-98G – 100' setback for bldgs. from all property lines
  - Price Chopper 31'; variance reqd = 69'
  - Rite Aid 50.1'; variance reqd = 49.9'
  - Retail 15.9'; variance reqd = 84.1'
- 4) 208-98G – Parking shall be 50' from property lines
  - Retail/Price Chopper 11.4'; variance reqd = 38.6'
  - Rite Aid 4.8'; variance reqd = 45.2'

**Property is located at 1028 & 1016 Route 146, Clifton Park, NY 12065 (Permit #81031)**

The application was presented by Mr. Jon Lapper, Esq from Bartlett, Pontiff, Stewart & Rhodes, PC, representing Clifton Park Plaza Associates and the NIGRO Companies. He introduced Mr. Gregg Ursprung, PE from Bergmann Assoc (architects for the project) and Mr. Steve Powers, VP from The NIGRO Companies. He informed this is an extremely important project for NIGRO and for the town, to clean up and re-develop the plaza. Explaining the history, that they originally applied to the town for a PUD to develop the northwestern quadrant of the area, but there was opposition from the Planning Board and residents. They then acquired rights to the property across the street in the Price Chopper/Pizza Hut shopping center with the intent to re-develop it which, he opined, would be in the better interest of the town and would prevent commercial sprawl.

Mr. Lapper asserted they had presented their plan to the Planning Board which received a positive response and admitted they do have the need for several variances. He informed the

plaza is “a tired center with bad traffic on the inside” and needs improvement, but they have several constraints and tenants to accommodate in order to re-develop it. He informed they came up with what they think is the best design internally and externally, stating the Price Chopper would be larger and all current tenants such as Trustco and Rite Aid would be accommodated. He re-iterated the project would be a major improvement and they would deal with the stormwater management, the Dwaas Kill and also the traffic. He emphasized that the town will be impressed with the quality of the care they will get from Nigro with regard to the maintenance of their centers.

Mr. Bloss inquired if the gas station is part of the project and was told it is not and there is no access to it.

Mr. Dudick asked what will happen to the other tenants. Mr. Lapper replied they will all be accommodated.

Mr. Steve Powers, VP Nigro, approached the podium and informed Mr. Dudick all the existing tenants would be moving into the new building adjacent to Trustco.

Mr. Peller queried Mr. Powers as to whether the Nigro Group had any other projects in Clifton Park and asked him to name some of their projects. Mr. Powers answered they did not have any in Clifton Park but named several projects in other towns: Shops of Malta, Queensbury, Hannaford Plazas in Saratoga and Albany, Wilton Plaza, Rensselaer County Plaza in E Greenbush.

Mr. Lemire inquired about the size of the Price Chopper. Mr. Powers informed the current building is 30,000 sq. ft. and the new one will be 54,000 sq. ft.

Mr. Dudick asked about the signage and was told it would also be Market 32.

Mr. Bagramian wanted to know if the Nigro Group owns the plaza. Mr. Powers answered they have a long term ground lease.

Mr. Dudick inquired if the car wash is part of the plaza and Mr. Powers said it is not.

Mr. Lemire asked about the size of the parcel, commenting the numbers they gave did not match the sizes on the map. Mr. Lapper explained that Pizza Hut is located on a separate tax parcel and when you add that in, it is 7+ acres.

Mr. Peller speculated that it might be a subdivision. Mr. Lapper corrected, saying it is the opposite, they are combining them.

Mr. Lemire expressed concern because he had counted 19 variances, not 16. Mr. Myers explained that, although there are three side setbacks, because once you grant a variance for a side setback, they all count as one.

Mr. Lapper again stated even though there are a lot of variances this design is the best of what they can for all the constraints as well as having two fronts.

Mr. Dudick asked for an explanation as to the amount of greenspace, referring to the two different numbers. Mr. Lapper said it is 15.5% and they considered adding another 1% but with the turning radius of the trucks needed for Price Chopper they were unable to do it. He asserted to justify that in terms of permeability, the stormwater now flows into the Dwaas Kill untreated because it was built before the regulation. He emphasized that, although they have less greenspace, it will be better utilized and there will be infiltration in the parking lot and greenspace. He claimed that some of the landscaping can be on the state right of way and pointed out they will have islands in the parking lot.

Mr. Myers offered his opinion, that even with a large amount of variances, he thinks it's a good idea for a start, especially with the stormwater drainage currently going into the Dwaas Kill. He expects that will be addressed fully by the end of the project. He understands Price Chopper needs to grow and this is a good re-development of it and it will improve the traffic flow and accommodate everything that is there. He referred to a letter from Planning that supports it.

Mr. Peller asked if this might not be premature, looking for re-assurance that the site will not change after the board makes a decision. Mr. Myers indicated that there won't be any shifting of buildings to his knowledge.

Mr. Dudick referred to a letter dated June 2 from Mr. John Scavo, signifying he believes it is within current regulations and will provide more quality for the Dwaas Kill.

Mr. Cifor asked Mr. Myers if there is board precedent in approving less parking spaces than required for a shopping center. Mr. Myers answered that, in this case, it involves several hundred parking spaces and he doesn't see it will be much of a problem. He suggested that because of the revolving traffic he doubts they will all be filled.

Mr. Cifor repeated he is more concerned about precedent and asked if the board has ever approved other shopping centers with 50% less. Mr. Myers reminded that parking spaces are within the zoning law but it also says Planning has the right to modify.

Mr. Lapper said they are increasing the number from what is there now. Mr. Cifor argued they are also increasing the size of the buildings and his overall impression is that they are improving the site, but they are jamming too much into it.

Mr. Lapper, disagreeing with Mr. Cifor, stated Nigro has a great deal of experience and Price Chopper wouldn't have signed the lease if they thought there was going to be a problem with parking spaces. He promised they are confident it will not be a problem. Mr. Cifor commented that now a lot of people don't go to that store, when they re-vitalize the store they are going to get a lot more traffic and it is already an extremely bad intersection for traffic.

Mr. Lapper argued that many towns have gone to 4 spaces for 1000 and he thinks that Clifton Park's code is a little outdated in terms of the requirement.

Mr. Gifford said he agrees with Mr. Cifor about the parking and he has a problem with having a parking space code, which has been enforced for some asking why we bother to have the law enforced.

Mr. Myers reminded this is just a guide to the plan and the Planning Board reserves the right to modify based on conditions but because it is a Zoning law, that is why he put it in the application. He added that even if the Zoning Board denied that variance, the Planning Board could say ok.

Mr. Bloss questioned the number of current parking spots. Mr. Powers said there are now 200 and they will have 322. He repeated that because of Nigro's experience they are confident it will be sufficient.

Mr. Lemire asked about the variances for the perimeter, if they are pre-existing. Mr. Lapper explained that the Planning Board asked them to change that along Vischers Ferry Road, adding greenspace, and they lost a row of parking. Mr. Myers agreed that it had been changed somewhat.

Mr. Lapper explained that now it is an ugly drainage ditch, and when they finish with it, it will be greenspace, even though it is in the right of way. He explained people will not know where the property line is. Mr. Myers expounded it is cleaning up stuff that is already there and currently it doesn't meet the standard.

Mr. Dudick called the public hearing.

Mr. Andy Brick, attorney representing Whitney Lane Holdings LLC (Country Commons) the property across Vischers Ferry Road from the parcel.

Mr. Brick informed it is not that his clients oppose improving the property which would benefit the area but they have identified some concerns about the plan.

Mr. Brick stated they are concerned about the extent of what is proposed and the number of variances and intensity as well as the environmental impact which he said hasn't been sufficiently addressed at this point.

He commented that he is not sure if the Planning Board has declared itself as lead agency on the project. He pointed out the Zoning Board has variance requests before it, some Type 2 actions under SEQRA and some which are unlisted actions under SEQRA. He stated that if the Planning Board has declared lead agency on this, the Zoning Board would be precluded from taking action in advance of them making a determination under SEQRA. He continued: if there are going to be uncoordinated review then it would be up to this board to declare itself lead agency and make its own determination under SEQRA.

He pointed out that there are a number of agencies that the Planning Board identified that should be consulted prior to an environmental determination. He identified one as the DEC as related to the proximity to the Dwaas Kill which is a 303D stream.

Mr. Myers spoke up, saying "not in that area and the 303 designation is north of Kinns Road".

Mr. Brick referred to the Army Corps wetlands information based on the concept plan he received that was submitted to the Planning Board.

He concluded he does not think they can take any action tonight because the SEQRA process has not been completed and it is clear under the Environmental Conservation Law that no agency can take an action until the SEQRA process is complete.

Mr. Peller asked Mr. Myers if he agrees that the Planning Board hasn't designated itself? Mr. Myers answered he does not know.

Mr. Brick admitted he is not sure if they have declared themselves, or if they have made a negative determination. He stated this requires referral to the County Planning Board and he is not sure if it has been referred or if they have made a response, reminding they have 30 days to respond which would preclude them from taking action this evening.

Referring to SEQRA, he commented it appears they propose moving the access point to the car wash and he isn't sure if that would require a revision of the site plan approval on file and whether or not they would have to come to the Planning Board for revision because their access point is changing. He said if that is the case it has to be analyzed according to SEQRA to avoid an argument that they are segmenting the various projects, admitting he is not sure about that one.

He expressed concern for the housekeeping procedures. Referring to the concept plan put before the Planning Board was not based on a survey, and if it is not, then it is just an approximate. He said granting variances on an approximation does not make sense and he asks that they make sure the numbers are based on a property line survey.

He referred to Town Code 208-97B, which prohibits the expansion of non-conforming use parcels. He said this is a non-conforming use parcel which is already deficient in greenspace and what is now proposed is a 15% greenspace which is expanding the non-conformity of already non-conforming aspect of the parcel. He referred to the greenspace in the DOT right of way, admitting he is not sure if that is included, but pointing out they would need a use and occupancy permit from the State to manage and control it and therefore he is not sure if they should count that as greenspace.

He referred to their plan to move the larger building closer to the creek and he has seen nothing on the plans to identify snow storage or removal areas. He asserted that snow runoff can go into the creek and that is something that must be taken into account for environmental impact.

He named other concerns which he said are part of the health, safety and welfare considerations part of the area variance test. He commented he believes there are a number of traffic conflicts: People coming in while a truck is backing into a loading zone while cars are backing out, the existence of a dumpster which may be in a front yard on the blind turn for people coming in to use the drivethrough, which he pointed out as a pedestrian/traffic conflict. He pointed out on the map where they have an exit with an "in" and "right and left only" where, he says he believes there is traffic across the street. He questioned how they would prohibit exiting traffic from going straight across, other than with signage. He suggested an island might work but then they

would not be able to have the truck movements behind Price Chopper. He reminded the board that although they are site plan issues, they have an obligation to ensure that there is no detriment to the health and safety of the community.

Referring to the area variance criteria test the board is required to apply, he said it cannot be answered if there will be an (1)undesirable change or detriment to the nearby properties because you don't know what the potential affect to the stream will be because DEC has no weighed in so you can't answer that.

(2)whether the benefit can be achieved by the applicant by some method feasible other than the area variance. Mr. Brick asserted that can be done by eliminating the 11,000 square foot building in the middle of the property and most of the variances would go away and reduce the need for parking. He opined that is feasible but the applicant wants to build "this site plan". He lectured that the variances are supposed to be minimal and the board can say the minimum variances would be to eliminating that building and most go away.

(3)whether the proposed variance is substantial. Quoting from the agenda, he read Rite Aid 1- 9.6%, Rite Aid 2- 37.5%, Rite Aid 3- 84%; Retail 1 – 87%, Retail 2 – 80%, general variances -1- 19.5% reduction in greenspace but actually 56% reduction than what is required, general variance 2- 50% increase in entrances; general variance- 3 – 40%, 75%, and 100% variance on the west side; 4 - 15% reduction in parking; 1 - Acreage = 23% ; 2- 15% 3- Price Chopper 69%, Rite Aid 49.9%, Retail 84.1%; parking variances – Price Chopper 77.2%, Rite Aid 90%.

He summarized that the variances are substantial and the board should consider whether they want to approve that.

4)whether it will have an adverse affect on the physical and environmental conditions of the neighborhood. He suggested he doesn't know how the board can consider to address that when there has been no SEQRA conducted, no negative determination and the DEC has not weighed in.

Mr. Dudick interrupted Mr. Brick explaining that typically they allow five minutes per person for public comment and he has gone well over that. He asked that the secretary start the clock. Mr. Brick continued:

5) whether the alleged difficulty is self created. He said this is the project they want because they want to put three building on the property and if they put two, most of the variances would go away if they eliminate the building in the middle.

Mr. Lapper responded to the Mr. Brick's comments.

He asserted that this is not a Type 1 action and they had spoken to Mr. Scavo and it was decided that each board would make a SEQRA review and determination.

With regard to the other agencies mentioned, he agreed they will need some permits but it doesn't mean they have to wait for DEC and the County. He reiterated they had listed the reasons they would not have a negative impact on the neighborhood because they are improving the existing stormwater issue and traffic. He said he thinks the boards are capable of making a determination .

He informed the plan is based on a survey. He said they will put in quality and landscaping. Agreeing that they will need a highway work permit with the DOT, he said they are working on that and are confident they will receive it. He added that they had not included the DOT area in their %'s of greenspace and claimed it will look better once they get approval.

Referring to the comments about the Dwaas Kill, he reminded that water now is flowing into it untreated and when they complete the project the water will be treated.

Mr. Cifor question if he is talking about passive treatment.

Mr. Gregg Ursprung, Senior Project Manager from Bergmann Associates, Architects and Engineers, introduced himself. He advised it will be a combination of treatments and are looking at bio-retention areas for water quality. Mr. Cifor asked if it is passive treatment and if they are going to treat the water. Mr. Ursprung said they are not and can use some of the non-standard treatments for water quality.

Mr. Bloss asked what the plans are for snow storage. Mr. Ursprung replied they will look at that as part of the stormwater management plan and would comply with DEC requirements.

Mr. Lapper added they would not pile it by the stream.

Mr. Dudick questioned Mr. Myers whether this is considered an expansion of a non-conforming site or a re-development project, suggesting they are taking the buildings down.

Mr. Lapper commented the Clifton Park code says they cannot expand without board approval area variances which is why they are there. Mr. Myers advised it is a non-conforming site but the use is allowed.

Mr. Lapper argued that yes, there are significant variances, but suggested they take a step back and see that it is a significant upgrade to what is there now. He reminded that they can't eliminate a tenant because Nigro had to negotiate with the tenants for their existing leases and the tenants have rights. He said it is not self-imposed because they had to step into a situation that already existed.

Mr. Cifor asked how this is not self-created because they stepped into the situation and Nigro did not have to lease the property. Mr. Lapper answered by saying they had gone to the town and the town said they would rather they stay on that property and re-develop it instead of building across the street. He said they think they are doing what the town wants and based on the Planning Board meeting, the town wants it there.

Mr. Lapper discussed building size saying Trustco is 3000 sq. ft. now and will be 1800 sq. ft., and the rest will be the same size. Mr. Lemire asked if the buildings could be made smaller to meet the goal of the development and eliminate some of the variances. Mr. Powers said they need what they told them they need to make the deal and they think it is a vast improvement over what is there now.

Mr. Steve Weeks, 541 Clifton Park Center Road, spoke. He and his partner, Peter Rosenfeld, own the Exit 8 Car Wash, and purchased the car wash adjacent to the parcel in September. He said he shops in the plaza now and he thinks re-developing the plaza will be good because it is a “pig sty” now and all the trash blows onto their lot.

Mr. Weeks said they will make the car wash bigger and new. He said there is one big problem with the project. He said they have two existing plotted easements verified and certified by VanGuilder and a third unplotted easement.

Mr. Peller asked if they are using them now. Mr. Weeks said they are being used. He said the easements were granted by the Planning Board on the original site approval for ingress and egress. He said they have been there, are maintained and are used today. The applicant has made no meaningful conversation on moving them except to threaten to sue them on four occasions. He informed the last time was from Mr. Lapper before the Planning Board, summarizing that things are not going well.

Mr. Weeks commented that moving the easements cannot be done unilaterally by the applicant and they have had no meaningful conversation with them and it requires both parties. He claimed this is a large financial impact to them.

Mr. Dudick asked what they propose for abatement. Mr. Weeks answered he would like the applicant not to build on their easements. Mr. Dudick asked what impact that would have on their property. Mr. Weeks claimed it impacts the value of their property for ingress and egress and the vision of the property. He re-iterated that the easements are permanent plotted and granted to the car wash property, conveyed in the deed. He asserted they have the legal right to use them and they should never be obstructed and the applicant cannot just move them without their permission.

Mr. Peller advised that the zoning board cannot ask or give them permission to do that. He said the board cannot assist them, but if the easements are on record, they clearly cannot be violated by anything this board does without having court authority or an agreement to move them. He said he wants them to know that anything the board does pre-supposes the fact that the board is legally entitled to do it.

Mr. Weeks responded he understands that, but he wanted to inform the board officially about the situation. He said they would send the board a letter as the letter he had sent to the Planning Board was not forwarded to Zoning.

Mr. Peller informed that the Planning Board, in their site review, would make sure than no agreements are being violated, but the Zoning Board cannot assist in that. Mr. Weeks said he is not expecting anything tonight, but wanted them to be aware that, as of now, there has been no meaningful conversation with the applicant about the impact to their property. They have no intention of agreeing to have their easements moved so the site plan is impossible.

Mr. Peller asked if they have an attorney, and if the attorney had provided Mr. Pellagalli with the information. Mr. Weeks said they have provided a whole packet to him. Mr. Peller promised he

will follow up with Mr. Pellagalli to make sure that anything either board does does not violate any of their rights that are on record.

Mr. Lapper responded that it is their position that these types of easements can be re-located legally and there is plenty of case law on that. He said where they have relocated the easements is to their advantage because it is at the front of their line. He said where it is now is in the back of the Price Chopper and is all dirt and can't be used as an access point. He re-iterated that they have provided them with a suitable access point.

Mr. Peller asked if this had been discussed at the Planning Board meeting and Mr. Lapper said it has been. Mr. Peller advised Mr. Weeks this is not an issue for the board to decide although they are sympathetic.

Mr. Lapper said the re-development will be advantageous to the car wash in bringing in customers and if this doesn't work and Nigro has to walk away it is a lost opportunity for them and the town. He maintained the result will be spectacular for the town, good for the environment functionally and visually.

Mr. Myers notified he had spoken to Mr. Scavo and the Planning Board had determined there are no Type 2 actions and the zoning board can make their own declaration if they want to go forward or they can table it if they wish to discuss the issues and get them ironed out.

Mr. Dudick called a five minute recess at 11:10 to confer with counsel and Mr. Myers. Upon return Mr. Peller informed that, due to the site issues, the board suggests that the application be tabled until the next meeting, June 15, 2015, to allow time for research on the issues.

Mr. Lopper agreed to table and waived the 61 day rule.  
Mr. Dudick reminded that the Public Hearing will remain open.  
Application deferred to June 16, 2015.

Mr. Dudick made the motion to approve the minutes for the May 19, 2015 meeting. Mr. Cifor seconded the motion. Mr. Dudick, Mr. Cifor, Mrs. Bagramian and Mr. Fantini who were present at that meeting approved the minutes.

The next meeting is June 16, 2015.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mr. Cifor. The meeting was adjourned at 11:25 pm.

Respectfully Submitted,

Susan White

Secretary

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