

**Approved**

## **ZONING BOARD OF APPEALS**

June 16, 2015

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

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

Absent:

Mr. Dudick called the meeting at 7:14 p.m.

### **PLEDGE OF ALLEGIANCE**

Mr. Dudick informed the applicants this is a seven member board with one alternate. Tonight all members are present. To receive approval, an application one must receive 4 yeas 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.

He introduced Tony Morelli, new Zoning Board member.

### **OLD BUSINESS**

**1) An application from Whitney Lane Holdings, LLC for a variance from Chapter 171 Table I. Applicant previously obtained variance for 233 SF freestanding sign, 150 maximum normally allowed, wishes to increase area of sign by 17 SF. Variance = 17 sq ft. Property is located at 1208 Route 146, Clifton Park, NY 12065 (Permit #81014)**

Mr. Howard Carr, Managing Agent of the North Country Commons, owned by Whitney Lane Associates, continued the presentation of the application. He reminded that they had deferred at a previous meeting to address the issue of a non-conforming pylon sign installed by the Northway Church.

He affirmed Mr. Myers had addressed the issue and the sign had been removed and now complies. Mr. Myers verified this is the case.

Mr. Carr discussed the need for a variance to add three panels to the existing sign to identify three tenants in the center. He said this will be temporary until such time as they re-develop the property.

Mr. Lemire asked about the iterations to the sign. Mr. Carr clarified he was referring to the iterations they went through with the Northway Church about their sign, not the signs they are requesting.

Mr. Dudick asked for public comment informing anyone who comes to the podium will have five minutes for discussion. There was none. Mr. Cifor made the motion to close the public hearing, seconded by Mr. Gifford. All approved. Public hearing closed.

Mr. Dudick asked about changes to the plaza inquiring whether there will be additional square building footage. Mr. Carr answered they are looking at re-development and there is potential for additional square footage but nothing is concrete at this point.

Mr. Carr said the additional footage is for existing tenants.

Mr. Dudick re-iterated that their contract with Ocean State gives them a larger sign and alluded to his suggestion they re-name the plaza after Ocean State so they would have the top signage and wouldn't need the current sign or a variance.

Mr. Carr declared that would throw everything out of whack because that sign would be 25% larger than what they have now. He reminded it would also mean re-development of the sign panels, saying their request is for a temporary basis and is not illuminated.

Mr. Carr responding to Mr. Dudick's question told him the Ocean State sign is 8' high and 13 ½ feet long and the North Country Commons sign is 4 feet larger on each end.

Mr. Dudick asked if he could move the Ocean State sign up. Mr. Carr said that would mean modifying the top of the sign and re-naming the plaza and when they re-develop the plaza they might re-name it. Mr. Dudick argued that if they re-name the plaza Ocean State, then all the space now occupied by their sign would be freed up for other tenants.

Mr. Carr agreed that would be the case, except that they would lose the identity of the property and the tenants would have to change the identity of where they are. He said it would be a trade-off and when they go through the re-development there will more than likely be a new sign anyway.

Mr. Dudick wanted to know how many tenants needed signage and asked if they would be upset if the name of the plaza changed. Mr. Carr said there are three and he doesn't know how they would feel about that as he has never asked them. He named the tenants: Chase Hockey, Cartwheels and the now vacant Vent Fitness building. Mr. Dudick pursued the questioning

about re-naming the plaza asking if this had been an option that had been discussed and Mr. Carr said it has not.

Mr. Myers reminded they need a new owner authorization form. Mr. Carr responded they had sent it in. Mr. Myers stated he had not received it and Mr. Peller requested Mr. Carr please submit it again, and he agreed to do so.

Mr. Myers commented the church sign was removed and the church went to an A-frame sign which is not considered a sign. He had not seen their signs along Vischer Ferry Road in a while and needs to look on the weekend.

Mr. Bloss made the motion to approve the application as submitted on a temporary nature. The motion was seconded by Mr. Cifor. Mr. Peller asked Mr. Bloss what he meant by temporary nature. Mr. Bloss explained he said that because the owner plans to re-develop. Mr. Cifor clarified that the motion was not made with restrictions. Mr. Bloss confirmed that is correct.

Mr. Myers said the additional square footage is 17 square feet.

Mr. Dudick remarked they look at things for the least possible variance necessary and in his mind the better choice would be to re-name the plaza but he understands the logistics. He asked Mr. Carr if he sees himself coming back in the next few months for additional signage. Mr. Carr said “no”.

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

*The secretary read the legal notice as it appeared in the Daily Gazette on June 11, 2014*

**2)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)**

Mr. Howard Carr, president of the Howard Group, spoke, representing the owners of the property on 602 Bruno Road. They are requesting a variance for modification of the use of 900 sq.ft. apartment from residential to special use. He reminded when they were previously before the board, they were asked for financial information. He presented an appraisal of the property with breakdown of financial details extrapolated from the rental market, explaining how they derived the expenses. He informed they used the owner’s tax return for information. He said they applied it to the whole building rather than the 900 sq. ft. as the expenses relate to the entire building.

Mr. Lemire asked the sizes of the office and apartment and was told the dental office is 2280 sq. ft. and the apartment is 912 sq. ft.

Mr. Carr asserted the operating expenses are \$7100 per year. He included in the report the unique history of the property and reminded that it is the only building on Rte. 146 that is zoned single family residence and that the neighbors have no objection to what the owner proposes. He added there are public safety issues with the traffic asserted the property is better used for commercial purposes.

Mr. Lemire and Mr. Carr spent considerable time conferring on the differences of the residential and practice use, market rate and expenses. It was discussed that the residential rate is \$.85 per sq. ft. vs \$12 sq. ft. for dental office rate. Mr. Lemire argued that this rate of profit is not in the negative.

Mr. Carr disagreed, saying if you take it all as a professional office the owner has a net loss of \$1000 per year.

Mrs. Bagramian pointed out that expenses would be off the owner and on the tenant. Mr. Carr agreed.

Mr. Lemire asked if they have tried to rent the residential portion. Mr. Carr replied it was rented but is not now. He explained they had a casualty loss when the pipes froze over the winter and it has now been "guttled out". He indicated it was rented when the owner purchased it but that person moved out and it has been empty for two years.

Mrs. Bagramian asked the rate they charged for rental and was told \$.85 per square feet with no lease, just month to month.

Mr. Lemire asked for checks or receipts or any competent financial evidence to show how much he was getting in rent for the apartment.

Mr. Carr said he does not have that and stated that he understood the request was to show the financial hardship based on the use for the current zoning and that is what he provided. He offered to provide other information if the board requests it.

Mr. Dudick verbalized they were asking them to verify the information and substantiate and stand by it.

Mr. Carr repeated the report is based on the facts of the property and they were asked for an evaluation based on its current zoning which is single family with a special use permit.

Mr. Dudick commented the owner says he is coming to the board with the claim of hardship because he has a property with a split use and the residential use has created a hardship. He explained they are exploring that hardship and asking if the space has been rented and if there has been an attempt to rent it. That is the question the board is asking.

Mr. Lemire pointed out this is part of the criteria of the use variance, to prove they cannot realize a reasonable rate of return as shown by competent financial evidence. He said he recalls asking last time whether or not the owner had tried to rent the property and the answer was "no". He summarized that is why in his mind there has not been any competent financial evidence produced.

Mr. Peller reminded Mr. Lemire that the owner had told him that he did not want to rent it because there are safety concerns and the owner himself didn't want to live there.

Mr. Lemire insisted the question is whether he tried to rent it to anyone.

Mr. Dudick asked if the new Clifton Park Town Center zoning with commercial space and apartments upstairs with a parking lot would be similar.

Mr. Myers said that is specifically for residences above commercial use and there is no residential use on the first floor in that zone and it is much more of an environment for walking than it is on Rte. 146.

Mr. Gifford commented he would not want to live there or see anyone with a child live there. He suggested the board think about their own families living on a busy corner suggesting they would not want their kids there.

Mr. Lemire asked if the use variance was granted and the whole building was, for example, a dental office, would the character of the structure change.

Mr. Myers answered that the exterior structure would not but they might modify the interior and maybe put in a handicap ramp outside. He said they are not planning to expand the dental office so they would make it an office and may have to change the carpet and handicap accessibility.

Mr. Lemire said it now looks like a house with an office in it, asking if the owner could put up an office building. Mr. Myers reminded that would require planning approval and the rest of the zoning law would take effect regarding size etc, but he supposed they could put a small office building some time down the road but it would still be no different than the other buildings along Rte. 146.

Mr. Cifor asked how this is not self-created because he purchased the property knowing it was residential. Mr. Carr disagreed, saying at the time of the acquisition the previous owner lived there. Mr. Cifor persisted, saying he bought the home with those restrictions in place asking again how this is not self-created. Mr. Carr said he did not create the zoning situation to begin with.

Mr. Cifor argued he didn't have to buy the property and he made the decision he didn't want a residential tenant there for various reasons. He repeated he looks at the situation as totally self-created. Mr. Carr repeated he doesn't agree.

Mr. Dudick asked what was the impetus that, after two years, has changed that made him want to do this now. Mr. Carr speculated it is probably because of the casualty loss from the burst frozen pipes and the space was damaged. He repeated this is a unique situation and the entire street is commercial except this one lot. He reminded the town created the zoning and can't change it or they would be guilty of spot zoning. Mr. Carr argued the variance is a reasonable accommodation that makes sense because it doesn't have an impact on other properties and this can be fixed and it would make it compliant with the other buildings on the street.

Mr. Lemire read the criteria regarding hardship needed for a use variance. He pointed out the applicant indicated on the form that the hardship was created as a result of an oversight, asking what he thinks that oversight was. Mr. Carr answered the oversight was not by the applicant, but by whoever established the B-1 zoning on this property and established commercial zoning on either side. Mr. Lemire rhetorically asked why the onus isn't on the applicant because the applicant didn't do his due-diligence before buying the property and now he can't do what he is trying to do. Mr. Carr disagreed saying he is allowed to do what he does and suggested Mr. Lemire was mixing two different elements.

Mr. Carr explained the applicant is not responsible for the zoning and did nothing to enact the zoning asking Mr. Lemire how he can say it is self-created. Mr. Lemire responded the real estate person should do due-diligence for the person to be sure they can use it as they want to use it asking if he had done that.

Mr. Carr repeated the issue is the unique situation that the property is zoned residential in a commercial neighborhood and the use permit has been there for a long time. He pointed out the special use permit was granted to expand the use suggesting they should have extended it to the whole building.

Mr. Gifford commented he would have bought the property on a contingency of being able to get the use variance. Mr. Carr said he doesn't disagree but he was not involved in the original transaction and suggested it could have been a simple misunderstanding.

Mr. Dudick weighed in on the comment that a landowner is not responsible for the zoning, pointing out they are responsible to adhere to the zoning and comply with it.

Mr. Myers informed at the last meeting the owner was present so the authorization form was not filled out, but now the owner is not present. Mr. Peller advised that they cannot accept implied consent and Mr. Carr needs to get a signed authorization form. Mr. Carr agreed he would do that if the owner does not come late to the meeting.

Mr. Myers informed the zoning was changed in 2005 and he cannot say why they left one parcel out but it may have been because it was partially residential so they left it that way. He pointed out that residential is still allowed in a B-1 zone so it could go either way.

Mr. Peller summarized that in 1989 they got the special use permit and 10 years later they zoning changed and it wasn't addressed. He said now the intent of the town board is that they wish the "residential look" to remain even though it is re-zoned B-1.

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

Mr. Bloss asked if they can add the restriction that the structure would not be changed.

Mr. Myers reminded the neighbor needed that assurance it wouldn't be used for a higher commercial use, not retail.

Mr. Dudick commented that some financial evidence they receive has been exceptional and some less than exceptional. The issue with regard to why this lot has a different zoning than the others creates a lessening of his personal requirement that the financial evidence to be strong. He asked if the 500 foot notice to neighbors had been sent, and was told it has.

Mr. Dudick made the motion to approve the application to grant the use (of the building) to a B-1 level with the condition the owner authorization be submitted. Mr. Gifford seconded the motion.

Mr. Lemire challenged the financial evidence but Mr. Dudick said that it meets his threshold for this property and this situation. Mr. Lemire wanted to debate and argued it is a "charade". Mr. Dudick said it is reasonable for any member of the board to come to that conclusion and vote as they see fit, reminding 4 votes are needed for approval.

Ayes: Bloss, Morelli, Gifford, Dudick      Noes: Cifor, Bagramian, Lemire  
Application approved with stipulation owner authorization form must be provided.

Mr. Dudick called a 5 minute recess (8:15 pm)

3)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 Rte. 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 parking 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 required; 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 Rte. 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)

Mr. Jon Lapper, Project Attorney, continued with his presentation. He reminded that Mr. Steve Powers (NIGRO) and Project Engineer, Greg Ursprung, architect, and Wendy Holsberger, Traffic Engineer, were also present.

He said this is an important project which will improve the landscaping, storm water management and traffic and the stream will be better protected. He referred to the current plaza as an eyesore that is badly in need of re-development. He reminded the plaza has existing tenants which they must accommodate and asserted that although the variances are substantial, they feel the project will look better and will be an upgrade.

He reminded they had had an issue with regard to the easement for the car wash and informed they have made an offer to provide better easement accessibility closer to the front of their facility and expect they will be able to work it out.

He referred to the SEQRA requirement mentioned by Attorney Brick at the last meeting, and informed it is an unlisted action and there is no significant environmental impact to the site because they are improving the property.

Mr. Gifford asked if the easements offered are satisfying the car wash owners. Mr. Lapper answered he does not know that yet but they are speaking with them.

Mr. Peller counseled that the issue with the easements cannot be legislated by the zoning board. He advised the town cannot be involved with it as it is an issue between two landowners which has to be resolved by them or in a court under the Real Estate Actions and Proceedings Law. He reminded there is nothing in their code that allows them to comment on that, or make contingencies on it.

Mr. Lemire asked if the board is able to grant variances on property covered by an easement asking if they should ignore that easements exist when granting the variance. Mr. Peller responded they shouldn't ignore it but they should go under the representation of the applicant that those issues will be resolved. He repeated the town can't grant a variance that would somehow preclude a landowner's right to use a granted access easement but you must go under the assumption it will be resolved.

Mr. Lapper informed that they have the right to re-located under the law but they would not be here if they didn't believe they have the right to re-locate the easement under NYS law and it is more beneficial and they will resolve it. He reminded it is governed by the Real Properties and Proceedings law so if they wanted to go to court it would have to be resolved in state or county court.

Mr. Lemire repeated his question asking how they make a determination on a variance for a piece of property that has a potential claim. Mr. Lapper responded that it is a State or County Court issue.

Mr. Dudick clarified his understanding, that, in the event this goes to court and is negatively ruled against the applicant it could possibly require additional variances or modification of variances that have been granted. Mr. Lapper agreed adding he hopes it doesn't get that far and they can work it out. He advised they have made a proposal and they will see how that goes.

Mr. Cifor asked about traffic studies. Mr. Lapper said they have done that and have Wendy Holsberger, Project Manager of Creighton Manning, here tonight to explain it and answer questions. He listed a few things they will be doing. Mr. Cifor questioned whether Mr. Lapper believes the project will make the traffic better, pointing out it will increase business with a brand new Price Chopper.

Ms. Holsberger introduced herself and clarified she believes Mr. Lapper is referring to some of the improvements they are proposing such as the modification of some of the driveways. She agreed the plaza is being expanded and there is going to be additional traffic generated. Mr. Cifor asked if they are proposing changes to the infrastructure such as traffic lights. Ms. Holsberger said their proposal is being finalized.

She discussed the access points informing the westerly driveway (Vischers Ferry) will be an entrance only to prevent exit movement close to the traffic signal. They will reduce the width (now 90ft) of the driveway and move it away from the signal.

They did a traffic study and found 35% of traffic is coming from Vischers Ferry and 25% from Rte. 146. She informed their study showed there is a high percentage of traffic coming to and from that does not go through the intersection. She explained the delays are minor (2-6 seconds or less) and they are suggesting minor changes to traffic signal timing assuring that DOT and County will be involved.

She reminded the study is not finalized and explained sometimes it is done with the Planning Board before the study is finalized and sometimes it is not but promised it will be done within the next week.

Mr. Cifor expressed concern about the increase in traffic and if it will impact the neighborhood adversely. He asked if they had looked at the incremental draw when they open up new stores and whether they assessed it. Mrs. Holsberger said it is done by calculating the size of the buildings and they use a trip generation manual which uses data and counts from all over the country and also traffic counts at peak periods. She explained how they calculated the increase based on the existing plaza compared it to the future and adjusted and computed for the additional square footage of the stores.

Mr. Cifor persisted, asking if she is going on record saying there will be no material impact to the traffic based on the result of their studies. Mrs. Holsberger said that is so, based on their analysis which will be included in an impact study adding there will be some small delay. She said in traffic engineering terms they are not recommending geometric changes to the intersection, only minor timing changes to mitigate the increase in traffic.

Mr. Dudick asked if the changes in traffic are what they would present to the Planning Board, and she confirmed.

Mr. Cifor repeated he is bringing it up because he is concerned with undesirable impact on the neighborhood with the increase in traffic. Mr. Dudick commented the changes in traffic will be looked at by the Planning Board and this board is only looking at undesirable impact as a result of function and use. Mr. Lemire pointed out that may be so unless this board is a lead agency for SEQRA in which case, traffic is an element.

Mr. Lapper claimed at the end of the day this would be a major improvement to this part of town and said Ms. Holsberger is going on record with the board saying the traffic will be mitigated.

Mr. Myers pointed out that, on the environmental short form, it clearly states there will not be a substantial increase in traffic. Mr. Peller explained Mr. Myers comments and the short form to Mr. Lemire.

Mr. Myers added that the board doesn't have to fill out Part 3 of the form unless there is a low to moderate impact and there is not. He promised if there was an impact, he would bring it up.

Mr. Lemire asked how the proposed project is not affecting the use of the land. Mr. Myers explained it is the same use as it is now. Mr. Lemire argued it is more use than it is now. Mr. Myers pointed out it is the same amount of stores except that they have more land to work with because of the Pizza Hut property so it is not a greater intensity use. He repeated it is the same usage, only spread out differently.

Mr. Cifor mentioned the grocery store might have a restaurant. Mr. Myers said it is not as large as the other store in Clifton Park so he can't see they will have everything they have. Mr. Cifor asked if there will be a Starbucks.

Mr. Chuck Chisolm, Director of Real Estate for Price Chopper, responded, saying he is not sure what will be there, pointing out that Market 32s are not all the same. He reminded this is a satellite store but he is hoping people will use it to do all their shopping.

Mr. Dudick announced the public hearing reminding each person has a five minute limit.

Mr. Andy Brick, attorney for Whitney Lane Holdings on behalf of North Country Commons, spoke. He said he is pleased to see they are in agreement that this is an unlisted action however if the board is going to declare itself lead agency under an uncoordinated review they are under obligation to take a hard look at all aspects of potential environmental impact.

Mr. Brick asserted that if the board makes a negative declaration about traffic impact after listening to an engineer talk about a report that they do not have, it does not constitute taking a hard look. He reminded that as lead agency the board has to analyze every single environmental aspect, and saying the Planning Board will look at the final report would be segmentation which is illegal under SEQRA. He repeated, as lead agency the Zoning Board has an obligation to review the final report before making a determination under SEQRA.

He referred to the process, telling the Board that Mr. Myers is acting as the Board's agent in filling out the form, but the Board is responsible. With regard to whether there will be a significant increase in traffic, it is not in a position to make a determination of significance without the report.

He referred to the turning lanes which will be in the DOT right of way advising the board it should seek their input prior to determination. He urged the board to contact the DEC with regard to moving the building closer to the stream.

With regard to determining whether or not there is a detriment to nearby properties, he suggested they defer to the people who own the car wash and ask them what they think.

With regard to whether there are other methods to achieve the goal, he opined they could build smaller buildings and NIGRO claiming they must honor their leases doesn't fly because they are proposing larger square footage locations. He pointed out that to honor existing lease obligations means giving them the same square footage they now have not giving them larger buildings.

Mr. Brick maintained that the variances are for the applicant's convenience and what they are doing is requesting the variances so they can remain open while they build the new Price Chopper. He asserted if the building is demolished it could be placed farther from the stream and if the Rite Aid is removed or reduced in size many of the variances could be eliminated. He reminded the ZBA is supposed to consider hardships and repeatedly asserted these requests are for the convenience and to maximize the profitability of the applicant. He summarized this is ten pounds of project on a five pound property.

Mr. Lemire referred to the size of the buildings and to Mr. Brick's comment about ZBA if it declares itself lead agency. He alluded to whether it is responsible for the ten questions on the form Mr. Myers filled out. He asked Mr. Brick to talk about the intensity and use of the land and how that applies to the square footage of the buildings. Mr. Brick said, in his opinion, he thinks the project is big enough to require a long form. He explained how he would add in the square footage of the Pizza Hut parcel and take a ratio of the square footage of existing to proposed to determine how much of an increase in intensity it is.

Mr. Brick asserted they could build the Price Chopper and probably the larger Rite Aid without the need for a majority of the variances if they demolish the building first and then rebuild. He repeated they want this project so they can keep the existing Price Chopper open and this is not the role of the Zoning Board to make it better for them for their convenience and profit.

Mr. Cifor asked what the issue the property owners at North Country Mall have with the project.

Mr. Brick explained their issue is fundamental fairness across the board with all business owners. He opined that if the board grants the 16 variances for their business convenience, it is putting all the other businesses at a competitive disadvantage because there is no guarantee they will grant 16 variances for his client to maximize his profitability when he improves his plaza. He asked the board for a level playing field and not to grant a wish list to improve the property when there are many other feasible designs that will not require such substantial variances.

Mr. Dudick questioned whether Mr. Brick believes that this design will have an effect on the desirability of the businesses on this lot that it will make it more attractive than other businesses.

Mr. Brick said “no” that he believes the primary rationale for this design is so the Price Chopper can stay open and he can think of several other ways they could design it to reduce the number of variances. He suggested eliminating the Rite Aid building, or put it in with the bank and it will still have more square footage than it does now, but it will reduce the number of variances.

Mr. Lapper responded he thinks their neighbor is disappointed because their site has tenants and they have a mostly vacant plaza.

He said they will make sure there is no adverse environmental impact. He disputed Mr. Brick’s claim about the traffic report saying a traffic study is not required on every project. He reminded Mr. Myers said he is comfortable with it. He opined that it is misleading to say the DEC and DOT need to coordinate with the town as it is not a coordinated review. He pointed out the idea of keeping the Price Chopper open is not a bad thing for the convenience for the residents. He asserted that the requirement to prove hardship is for a use variance and this is an area variance.

Mr. Lemire asked about the location of the dry cleaners. Mr. Lapper responded it will be in with the Trustco building and presented an overlay of the project.

Mrs. Bagramian questioned why they don’t put the Rite Aid in the empty spot with Trustco. Mr. Lapper explained the Rite Aid needs a drive-thru so it needs a freestanding building. The Trustco also needs a drive-thru and they need to accommodate all the other existing tenants.

Discussion ensued regarding the length of leases of tenants, which Mr. Lapper explained varies asserting that even one with a two year lease can stop the re-development.

Mr. Dudick inquired about the square footage of existing vs proposed including the Pizza Hut.

Mr. Greg Hirsh, Professional Engineer, responded the total parcel is 7.66 acres with 49,200 sq. ft. retail space existing (including the Pizza Hut) and proposed is 75, 400 sq. ft. Mr. Dudick commented that is about 50% increase in density.

Mr. Dudick asked for public comment.

Ms. Maureen Di Maria, resident of Clifton Park, stated she frequents the stores there and uses Price Chopper as a convenience store. She hopes the town and NIGRO will work together in a cooperative effort to approve that end of town because they desperately it. She indicated she knows there will be more traffic, asking both parties to address the issue and “make it work” because it’s a good thing, asking again for both to “cooperate”. She admitted the variances are extensive and it should be give and take but wants them to make it happen because not making it happen keeps “ghetto chopper”. She repeated she understands both sides, she just wants them to make it happen.

Mr. Dudick said the size of the Price Chopper is the size they used to make them when they were first built and times change.

Mr. Lemire asked about internal traffic flow, specifically whether there might be issues with internal flow with people walking from Price Chopper and Rite Aid across the parking lot. Mr. Lapper pointed out they have added sidewalks, at the request of the Planning Board, showing their location on the map. Price Chopper will have parking in front of their building and the retail over to the side. He explained the interior drive aisles and how the trucks will come in and out.

Mr. Lemire asked about the traffic flow. Ms. Holsberger said 35% of the traffic is coming from Vischers Ferry from the south and 25% from Rte. 146.

Mr. Dudick reminded traffic patterns and traffic flow are Planning Board issues and not within the purview of the Zoning Board. Mr. Lemire asked how that was so if the Zoning Board declares itself lead agency.

Mr. Peller advised this is an uncoordinated review and the Planning Board makes its own determination about SEQRA. The point is this board does not look at site plans.

Mr. Lemire protested it is relevant about whether a building does or doesn't exist and all the options are about driving through crosswalks where pedestrians will go as opposed to a contiguous parking lot in front of a building.

Discussion ensued regarding internal traffic and walking in parking lots. Mr. Lemire opined he thinks it makes for a more dangerous situation with internal traffic flow.

Mr. Cifor asked what the increase in square footage will be for Rite Aid. Mr. Ursprung answered it will go from 1100 sq. ft. to 6500 sq. ft. Mr. Cifor asked why they are relocating them with a 70% increase. Mr. Ursprung responded that they actually wanted 14,000 sq. ft. Mr. Cifor asked why they deserve more than they already have and Mr. Ursprung defended the size, saying that is their prototype. Mr. Cifor pointed out they are giving up greenspace of 15% to accommodate them and creating variances that don't need to be there.

Mr. Lapper repeated if they can't pull it together and accommodate the tenants to make this work then the plaza stays the way it is. He said they are trying to make this work.

Mr. Gifford asked why they don't just find a smaller tenant. Mr. Lapper contended it is because they are already in the plaza and have to be accommodated and they have the right to stay where they are.

Mr. Lemire asked if this is an all or nothing and if they are saying if the zoning board doesn't give them what they want then it all goes away.

Mr. Lapper said "yes" adding the deal will die because NIGRO has carefully put it together to make it work. Mr. Lemire commented he is saying there is no "wobble room" if they don't get the variances.

Mr. Steve Powers, NIGRO Company, said they have gone through about 15 different designs to limit impact on the site and Rite Aid wanted 14,600 sq. ft. explaining it has two prototypes, 11,115 and 14, 600 but they can only do the 14,600. He admitted Rite Aid looked at going across the street or down the road but they have a lease and they are trying to accommodate everyone.

Mrs. Bagramian asked the length of their lease and Mr. Powers told Mrs. Bagramian the new lease for Rite Aid and Price Chopper will be 20 years with 29 years of options.

Mr. Gifford commented they get a new lease but they can't get out of the old lease. Mr. Ursprung said yes, that is the negotiation part.

Mr. Dudick suggested they put Rite Aid contiguous with the Price Chopper. Mr. Powers disputed they couldn't accommodate the drive through and it would be in the DOT right of way. Mr. Ursprung contended there is limited space. They both claimed limited space and it wouldn't fit.

Mr. Lemire pointed out they have zero buffers on the North side now and it looks awful. He asked about the buffers on the DOT property. Mr. Lapper responded they would get a DOT permit. Mr. Lemire said he was not satisfied with that.

Mr. Cifor probed how they are improving the impact to the Dwaas Kill. Mr. Ursprung recounted that the sediment and oil from surface runoff is now going untreated directly into the stream. He promised they would comply with the DEC requirements in terms of storm water runoff and there are additional requirements.

Mr. Cifor asked where the trash compactor will be placed, asking about if it will be in the back corner. When told it would be inside, he said he has never heard of a grocery store that does not have an outside compactor. Mr. Ursprung admitted it would probably go somewhere in the back but it would be completely sealed and no leakage. Mr. Cifor informed he is talking to a man who has been in the trash business for many years and it is not true and there still is spillage. Mr. Ursprung promised it would not be an open dumpster. Mr. Cifor reminded it is on the back corner near the Dwaas Kill, asking where the surface water from that corner will go.

Mr. Ursprung retorted they will collect the surface water from all the impervious areas and direct it into a treatment system. He explained it would be underground storage and an infiltration system with a mechanism to take out the oil and sediments.

Mr. Howard Carr, representing North Country Commons, pointed out that if the board acts tonight it will be too hasty because the County Planning Board has not acted on it yet. He added he wants to know how they are going to plow the corner behind the building so it does not go into the Dwaas Kill. He pointed out a snow plow driver will not plow it up against the building which leaves it only one place to go – into the Dwaas Kill.

Mr. Hirsh responded the snow will be grated so it drains to a drain before it goes into the Dwaas Kill.

Mr. Gifford asked if that is in the plan. Mr. Ursprung admitted they have not completed it yet but they have to comply with the DEC and work with the town and it will be addressed.

Mr. Dudick commented the current building and the new building will be close to the Dwaas Kill. Mr. Lemire corrected him saying the new building will be closer and there is nothing there now because it is a wooded area and undisturbed property that will be disturbed. He contended there is no blacktop there now so nothing is flowing into the Dwaas Kill. Mr. Ursprung argued that now it is not being treated and all the water flows in that direction.

Mr. Dudick made the motion to close the public hearing. Mr. Lemire seconded the motion. All agreed. Public hearing closed.

Mr. Myers advised the board has too many questions to make a decision tonight, suggesting that the application be tabled.

Mr. Dudick asked if there should be public discussion again, Mr. Myers said “perhaps”.

Mr. Lemire speculated if there is a possibility the board could have some sort of workshop or interaction with the applicant outside of this forum to find out what they are trying to accomplish.

Mr. Myers said he did not think so but the board can put its questions to him or Mr. Scavo and they could meet with the applicant again. Mr. Peller counseled it is the purpose of the professional staff to meet with the applicant to work through those issues.

Mr. Dudick agreed saying that although a workshop might help work things out it would not be as public as they have always maintained.

Mr. Peller asked Mr. Lapper whether they were on the agenda for the next Planning Board meeting. Mr. Lapper said they were not because their goal was to first get the variances.

Mr. Peller solicited Mr. Myers opinion if his suggestion would be for the board to table it so the Planning Board can become more actively involved. Mr. Myers said that is correct. He advised the Planning Board can only go so far without the variances but it appears the Zoning Board does not want to go forward without the Planning Board working out some of the details. He explained he thinks that the SEQRA review from this board only deals with the variances requested and not traffic or site plan because that is the Planning Board’s purview.

Mr. Gifford commented he understands what the applicant wants to maximize profit but pointed out that if they reduced the size of buildings they would not need all the variances.

Mr. Lapper asserted that because of all the other things they are doing to improve the site, 1000 sq. ft. here or there won’t matter because if the deal dies, the town will not achieve the benefit.

Mr. Lemire asked why the current owner doesn’t have the obligation to mitigate the storm water. Mr. Lapper elucidated enlightened the current owner is grandfathered before storm water regulations existed. Mr. Dudick commented they can’t force the current owner to change their buildings to comply with current law.

Mr. Lapper pointed out that is the benefit for re-development so they have to comply with environmental standard. Mr. Myers clarified that the regulations apply to new work, but with re-development they aren't quite as stringent. He repeated you can't retroactively make the owner comply.

Mr. Lemire questioned if they took down the Pizza Hut would they have to comply and Mr. Myers said for that site, they would. Mr. Lemire commented he thinks the applicants are holding it over their heads that if they don't get what they want, they won't do it at all. Mr. Lapper said they are not holding it over their heads; they are coming in to buy the site.

Mr. Dudick called for a poll/vote, asking the board if he/she feels they have enough information before them to go ahead and make a decision on the application. Mr. Dudick reminded the County Planning Board comment had not been received yet. Mr. Bloss commented that the County Planning Board's recommendations are not binding on this board, but only a recommendation to which Mr. Dudick answered their input might be helpful.

A yes vote means the member wishes to vote today a no vote means that person does not have enough information to vote on the application.

Ayes: Dudick, Lemire            Noes: Bloss, Morelli, Gifford, Cifor, Bagramian

Mr. Peller asked Mr. Lapper if he is willing to table his application and waive the 61 day rule. Mr. Lapper agreed saying he would go back to the Planning Board and ask if they would like to act as lead agency if the Zoning Board is not feeling comfortable with that or they can go to them for another preliminary meeting and make any changes they ask them to make.

Mr. Myers promised he would speak to Mr. Scavo, Director of Planning, on Wednesday and see how he wants to handle it.

Mr. Peller asked Mr. Brick if he wanted his letter read into the record. Mr. Brick said it was not necessary but asked it be placed in the record. A letter dated June 16, 2015 from John Scavo was also placed into the record.

## **NEW BUSINESS**

*The secretary read the legal notice as it appeared in the Daily Gazette on June 11, 2014*

**1) An application from The Great Discovery Childcare for variances to build 4800 sq. ft. daycare center. Section 208-35D(1) 4 variances: 1)Front yard setback, 70' required (bldgs.& parking), variance reqd. = 35' from Arnold Dr.; 2) 130' required from Rte. 146 centerline, 108' avail, variance req=22'; 3) Play area: 44' from Rte. 146 required; variance reqd. = 26'; 4) Parking: 19' from Arnold Dr., variance reqd.= 51'; Section 208-35D(2) 25' side yard setback required, 10' avail, variance reqd.=15'; Section 208-35C 180' lot width required, 150.5' avail, variance reqd. = 29.5'; Section 208-35A; one curb cut per lot allowed, two requested, variance reqd. = 1 curb cut  
Property is located at 1001 Route 146, Clifton Park, NY 12065 (Permit #81033)**

Mr. Dudick read into the record a letter from the Saratoga County Planning Board, signed by Jason Kemper, Planning Director, which indicated it finds no significant impact.

The application was presented by Tom Andress, ABD Engineers and Surveyors, representing Jennifer Zaccariah owner of Great Discovery Childcare. He stated this is an application for a proposed child care facility at the corner of Route 146 and Arnold Drive.

He informed Mrs. Zaccariah has sold the property where the current childcare facility is located and she wishes to purchase this parcel and build a new facility so she can own the building.

He explained the application was before the Planning Board and there was a recommendation to modify the plan, recognizing the modifications would require some variances. He showed the original site plan with the 4800 sq. ft. building sitting within the setback area (which has a defined envelope). It placed a large parking lot in the front and there were Planning Board concerns that driving by one sees the parking lot, and it is unattractive because the parcel is located at the entrance to a residential neighborhood. Recommendations were to move the building to the front and put the parking in the back. They informally went back to the board and they indicated this is generally what they were looking for.

Mr. Cifor asked about the large parking lot. Mr. Andress explained that up to 60 children of different ages are allowed and that requires 12 staff. He said most of the time the children would be dropped off but when there are activities they need the parking because they don't want parking on the street.

Mr. Andress explained to Mr. Lemire the location of the building and the needs for the setbacks. The parking lot is being pushed back and allows for more buffering. He said the concerns of the residents were to not have a big long building along their entrance to the development and it also puts the play area out to the front rather than along the residential area.

He described the original design as having a long skinny building and a play area along the residential line with the entire parking lot in the front yard. It would have needed a variance for the parking, but the new design, by recommendation of the Planning Board will require the variances they are requesting because they don't want the parking lot in the front yard.

Mr. Lemire asked if the residents prefer having the parking lot along their border rather than the play yard. Mr. Andress said that hasn't been discussed with them, and their concern was they didn't want to drive by a long building and didn't want the parking lot in the front. With the new design, they created a 26 foot buffer along the residential houses.

Mr. Dudick called for public comment. No one commented. He stated he would hold the public hearing open temporarily.

Mr. Peller asked about the Woodlawn Hills sign, if it is in the right of way. Mr. Andress promised they would grant an easement for that. Mr. Myers advised those signs are usually put into the right of way. He said if there is an easement it would go to the town because the town usually takes care of that type of sign.

Mr. Peller asked Mr. Address if they will need a sign for the childcare facility. Mr. Address responded they will but it will be located further back.

Mr. Myers opined this seems to be what the Planning Board is looking for and is acceptable to the neighbors so he thinks it will work well.

Mr. Dudick asked why that much parking is necessary. Mr. Myers confirmed it is, if there are 60 children and there is an event they need the parking.

Mr. Bloss asked if the building is single story and was told it is.

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

Mr. Dudick informed he has no issue with the project and because it is more attractive and desirable to the neighborhood he is in favor of it.

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

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

*The secretary read the legal notice as it appeared in the Daily Gazette on June 11, 2014*

**2)An application from Sunoco, LLC for 6 sign variances and 11 site and building variances to build new Sunoco station:**

**Signs:**

**Freestanding sign:** 1) 11.5' setback variance required from property line

2) proposed sign=77 sq. ft., variance required = 35 sq. ft.

**Canopy/other:** 3 Sunoco signs (69 sq. ft.) & 2 NASCAR signs (30 sq. ft.) – 99sq. ft. proposed – 8 sq ft. previously approved; variance required = 91 sq. ft. 10 canopy signs proposed vs 4 approved

**Wall signs:** Proposed 40 sq. ft. wall sign plus 2<sup>nd</sup> seasonal wall sign at 24 sq. ft. (previously denied)

**Site & Building Variances:**

1)Section 208-38B: 40,000 sq. ft. reqd., 31,478 avail, variance required = 8,522 sq ft

2)Section 208-38C: No commercial encroachment in front yard: pump canopy is 18.8' from property line

3)Section 208-38C: 80' reqd. front setback to bldg.; 60.3' avail; variance reqd. from Lapp Rd =19.7'

4)Section 208-38C: 80'from front property line reqd. to canopy; 58.1' from Lapp, 18.8' from Crescent; max variance = 61.2'

5)Section 208-38G: 35% greenspace reqd; 20.8% avail; variance reqd = 14.2%

6)Section 208-39: One entrance, one exit allowed; 4 proposed; variance reqd. for 2 extra

**7)Section 208-39: 100' separation min bet exit/entrances, 43.6' avail; 56.5' variance required**

**8)Section 208-40" 10' buffer reqd. on side property lines, 0' avail on E side; variance reqd.=10'**

**9)Section 208-93: 50' setback from prop line to gas pumps, 21.4' avail, 28.6' variance required**

**10)Section 208-98: 130' front setback reqd. from road centerline, 86.8'avail, 43.2' variance required**

**11)Section 208-99: parking required =29 spaces, 11 proposed, variance required=18 parking spaces**

**Property is located at 1545 Crescent Road, Clifton Park, NY (Permit #81032)**

The application was presented by Jennifer Knarich, from Price, Meese, Shulman & D'Arminio, counsel for the applicant, Sunoco. They are present tonight for variances for re-development of the property which would consist of demolition of the existing Sunoco station and improvements to include a convenience store. The building will be 2900 sq feet with a pump canopy with 6 pumping stations, 2 underground storage tanks and associated parking and landscaping and supporting infrastructure.

She stated they are also seeking relief for signage for the freestanding sign, the current one being 42 sq. ft. which they want to increase to 76.9 sq. ft. She indicated it will be in the same place as the existing sign but noted there is land dedication to the county which increases the setback.

With regard to the canopy they are looking for a single canopy which will include two internally lighted Sunoco signs of approximately 23 sq. ft. and two non-illuminated NASCAR signs of approximately 34 sq. ft.

They wish to swap out the building (wall) signage. They currently have an A+ art sign and a seasonal advertising sign (24 sq. ft.) both of which they propose to have again.

Speaking of the area variances, she admitted they have quite a few setback variances and an entrance and exit variance and the parking proposed is deficient in terms of the number of spaces.

Joseph Staigar, Professional Engineer, detailed the plans. He explained the sign will stay in the same location and the two existing canopies will be removed and replaced with one 1563 sq. ft. canopy with 12 fueling positions, three rows of 2 pumps and a 2900 sq. ft. convenience store.

The driveway locations will stay the same but they will be making modifications, restricting left turns on the exit closest to the intersection and on Lapp Road one entrance will be right turn in only. They have shared access with Stewarts of the driveway on Crescent Road.

Mr. Staigar reminded they need 40,000 sq. ft. and they have .75 acres which has been reduced to .72 acres due to the dedication of property to the county, which moves the interior property line. Referring to the front yard setback from Lapp Road which requires 130' and they have 86.8 feet because of the property dedication. He pointed out the frontage is only 179 feet and they are

trying to pull the building as far as they can from the road. He informed the greenspace has been reduced .6% by the dedication of trail property to the county.

He discussed the need for relief for parking spaces saying they are supposed to have 23 spaces and are asking for 11. He justified the need for fewer spaces saying the reason is because this is a smaller convenience store.

Mr. Cifor asked the size of the current convenience store. Mr. Staigar answered it is 1400 sq. ft. Mr. Cifor commented they are doubling the size of the store. Mr. Staigar said the point is no one is in the store for that long.

Mr. Bloss inquired about the number of parking spaces there now. Mr. Staigar responded there are now 11 so they are only asking for the same number of spaces. He pointed out they don't have a parking deficiency now and don't anticipate one. He explained they estimated a parking space turns over every ten minutes so they could accommodate 80-90 people per hour with the 11 spaces.

Mr. Gifford questioned why are they doubling the size of the building inquiring what extra product they will be offering that they don't now. Mr. Staigar answered "a lot of reasons, one of which is ADA requirements". He said they will provide the same products but more variety of products in different sizes and more aisle space.

Mr. Cifor asked if they plan on co-habiting with another store such as Dunkin Donuts. Mr. Staigar said no, not to his knowledge.

Mr. Dudick speculated if that would even be allowed. Mr. Myers said it would not be allowed as it is a change in occupants.

Mr. Gifford reiterated they are offering the same line of products, just more sizes but they are still expanding.

Mr. Dudick wanted to know if they would be providing coffee and a place for eating. Mr. Staigar said they would not because that would be encouraging people to stay in the store and they want it to be a convenience store where they go in and go right back out.

Mr. Myers said there is a discrepancy in the number of pumps from what he has and what they have.

Mrs. Knarich explained how they did their calculation. Mr. Myers commented the difference is he did his calculation by the number of nozzles, not pumps. He stated it won't make or break the application either way.

Mr. Dudick read the letter from John Scavo, Planning Director, dated June 15, 2015, indicating the Planning Board has no objection to the area variances on the site noting they have incorporated the Crescent Road Trail project into their design and the applicant agrees to pay for the trail property.

Mr. Lemire went through the eleven variances to determine what is pre-existing, asking questions and receiving explanations and clarifications on each from Mr. Myers.

Mr. Dudick announced the public hearing and asked for comments.

Mr. Ralph Real, 13 Hiawatha Drive, stated his concerns with the number of variances that seem excessive to him: 1) he has a concern with signs, pointing out Stewart's has a much smaller sign and the Las Vegas size sign they are asking for is out of character with the area 2) he believes this is very dense for such a small parcel 3) he expressed concern with the reduction in greenspace saying when you come off the Northway there is a lot of greenspace now and he feels it should be kept in that character. He asked if they can make it more desirable to match what is in the area. 4) He asked if the setbacks are because of the trail and was told it is 5) he stated his belief and concern that Crescent Road will be widened eventually and asked if that should be a consideration by the Board.

Summarizing, he indicated he feels it is too much for the property and would like to see more greenspace and there are too many variances.

Mr. Cifor told Mr. Real that most of the variances are already there and exist already in place and they are not incremental to the project. Mr. Dudick explained that if they were to re-build the exact same thing they have now, the variances would still be required to get it up to code.

Mr. Real answered he understands, but he would like to see more greenspace to make the area look nice.

Mr. Staigar informed they had information from the County and there is to be no widening of Crescent Road. Responding to Mr. Real's comment about the greenspace he said he appreciates his concern and they want it to look nice as well. He informed they are putting in a row of 17 pine trees and will landscape in the corner to enhance the site with shrubbery and plantings. He defended the need for a larger sign saying the sign needs a brand and also pricing to attract impulse decision making on both sides. He promised to landscape the corner around the sign.

No other public comments. Mr. Dudick made the motion to close the public hearing. Mr. Gifford seconded the motion. All approved. Public hearing closed.

Mr. Gifford acknowledged he has a problem with the signage and pointed out that is a very busy intersection and it has backed up traffic and he doesn't understand why they need a bigger sign which is a 35% increase in size along with all their other signs. He argued that people will see the station on that busy intersection.

Mr. Dudick said he agrees with Mr. Gifford, adding that the neighborhood knows where they are. If they are looking for a convenience store they will go there. He said he understands they want the larger sign so they can attract the Northway traffic but they don't necessarily need bigger signs to let the neighbors know you are there. He reminded this is a neighborhood with a certain character.

Mr. Myers advised the setbacks are what they are and this is just making them legal but the signs are a different story.

He agreed they need a setback variance for the freestanding sign due to the County taking some land. He said they changed the sign to digital without a permit and they are asking for a 35 sq. ft. increase in size from a sign that has already been approved by a variance. He referred to the Cumberland Farms sign on the corner which is the required size with only one gas price on it but they didn't need a variance reminding it can be done. Mr. Dudick said Stewarts is the same size.

Mr. Cifor asked the size of the current signage allowed. Mr. Myers said they have a variance for 42 sq. ft. which they have now and they want to go to 77 sq. ft. He added that they have a Price Chopper sign attached to the freestanding sign for which they have no permit so that increases it another 10 sq ft. He suggested that any approvals granted should include anything they do for Price Chopper.

Mr. Myers discussed the canopy signs most of which were never approved but were put up anyway. He recounted they were approved for 8 sq. ft. of sign previously and they now want 99 sq. ft. He asserted they want 10 canopy signs vs the 4 previously approved. They also want 940 sq. ft. of color logo never approved or variance requested. He said this is obviously a significant change.

Discussion ensued regarding the number of signs currently on the site.

Mr. Myers referred to the wall signs, informing there was a variance granted for 39 sq. ft. in 2000 and they were denied a variance for other wall signs which are now in place anyway, including the seasonal sign. They proposed a 40 sq. ft. wall sign plus a second wall sign which was previously denied and they are proposing it again.

Mr. Dudick asked the allowable wall signage and Mr. Myers answered 32 sq. ft. and they have a variance for 39 sq. ft. so giving them 40 sq. ft. is not a big deal. He said they want a second wall sign which has been denied once, reminding an applicant has to make it significantly different in order to return.

Mr. Peller asked Mr. Myers if he thinks this is substantially different. Mr. Myers said "no". Mr. Staigar speculated that it is a bigger building which allows for a bigger sign. Mr. Dudick responded "not by town law" explaining it is an argument which is made often but a bigger building doesn't mean a bigger sign.

Mr. Staigar informed the large band on the building is being removed and they are putting an 8" red stripe saying it is subduing that aspect. Mr. Myers said he is not counting the color on the building as part of the signage. He was talking about the band running around the canopy which is multicolored with names on it.

Mr. Gifford pointed out the red lights on the building which will be turned on. Mr. Staigar said they are to light up the walkway. He opined they have a much more stylish building than what is there now.

Mr. Lemire asked how many signs on the canopy. Mr. Staigar answered there are eight now and they are asking for five. Mr. Myers said the four canopy signs on the canopy are existing signs and were approved and now they want five and the colored stripe around the canopy is

about ½ of what he wrote down. He commented although this sounds like a lot, this is more about the wall signs that are not supposed to be there.

Questions arose about the company and digital signs. Mr. Myers said the Stewart's sign is 32 sq. ft. He advised that gas stations are allowed to have digital signs for gas prices, but his opinion is this is too big.

Mr. Dudick asked the applicants if they want an all or nothing vote or have the Board vote on some of the variances separately.

Mrs. Knarich said they can discuss going down on the size of the sign and indicated they have an alternate detail of a sign that would be to 52 sq. ft.

Mr. Dudick explained he was asking if they are willing to have the board break down the variances rather than all or nothing. Mrs. Knarich agreed to break them down.

Mr. Cifor said they currently have a 42 sq. ft. sign, asking why do they need a bigger sign. Mr. Staigar responded it is a standardized format but they can take the prototype and make it a smaller version to knock it down to 52 sq. ft.

Mr. Cifor asked why they should allow them to have something they don't give to the other gas stations.

Mr. Myers said Stewarts only has one price on their sign. Mr. Staigar argued that not many stations have diesel. He explained they will not have tractor trailers on that site because of the canopy and they would need a high speed pump.

Mr. Lemire wondered what the town's position is on multiple digital price signs. Mr. Myers answered gas stations can have digital price signs. He said they could have three price signs, like the Dunkin Donuts on Route 146 as it is the size of the sign that is the issue.

Mr. Dudick announced the board will vote on the area variances for the setbacks and then vote on the various signs.

Mr. Dudick made the motion to close the public hearing. Mr. Lemire seconded the motion. All approved. Public hearing closed.

The board first voted on variances #1 - #11. Mr. Dudick said he sees no issue with those as far as the building and setbacks being affected by the trail. He suggested it will be clearing up the non-conformance and the greenspace is essentially the same, landscaping is somewhat different than greenspace and the owner may choose to plant trees.

Mr. Dudick made the motion to approve variances 1-11. Mr. Morelli seconded the motion.

Ayes: Bloss, Morelli, Gifford, Dudick, Cifor, Bagramian, Lemire Noes: none  
Setback variances and green space approved.

Mrs. Knarich announced they can get the sign down to 42 sq. ft. and take that variance off the table. Mr. Myers reminded they still need a vote on the setback variance which is mostly to blame because of the County taking some property.

With regard to the freestanding sign setback, Mr. Lemire made the motion to approve and Mr. Gifford seconded the motion.

Ayes: Bagramian, Cifor, Dudick, Gifford, Morelli, Bloss, Lemire Noes: none  
Setback variance for freestanding sign approved.

With regard to the canopy, Mr. Myers reminded it is a bigger canopy and four signs have already been approved. Mr. Myers said the four signs were approved on two different canopies but the signs are larger so they still need an area variance for the size. Discussion ensued. Mr. Dudick said it is a lot of branding and advertising and every gas station has a canopy and everyone wants to wrap around with advertising.

Mrs. Knarich said they are willing to work within what was previously approved but she isn't sure what that is. Mr. Myers explained if it had been four canopy signs he wouldn't have asked for the variance except they want them bigger area-wise.

Mr. Dudick asked Mr. Myers if they went for four signs but a little bigger, would he be ok with that on the bigger canopy. Mr. Peller counseled that if they are going from 9 sq. ft. to 11 sq. ft. it could be under Mr. Myers discretion and they wouldn't need a variance. Mr. Myers said it is 25% which is a little beyond his discretion. Mrs. Knarich agreed they could go with four signs. Discussion ensued regarding the wrapping in color; it is not an issue unless it is rainbow because it becomes part of the signage.

Mr. Peller asked if they think it needs a variance. The board was polled. A vote of no means the member does not think it needs a variance.

Noes: Bloss, Morelli, Gifford, Dudick, Cifor, Bagramian Yes: Lemire  
Variance not needed, Mr. Myers will use his discretion on canopy signs.

Mr. Lemire why the NASCAR sign isn't considered to be an offsite sign. Mr. Dudick said it is not advertising something at a different location. Mr. Lemire disagreed.

With the regard, the second wall sign had been previously denied so it will not be voted upon again.

Mrs. Knarich asked if there was an issue with the arch, and was told there was no issue.

**~~3)An application from Northway Nine Plaza Associates for a variance from the Sign Law, Chapter 171, Table I. Allowable signage = 43.75 sq. ft., 48.85 sq. ft. installed, variance required = 5.15 or 6 sq. ft.~~**

**Property is located at 805 Route 146, Clifton Park, NY 12065 (Permit #81035)  
Deferred to the next meeting**

Mr. Dudick made the motion to approve the minutes for the June 2, 2015 meeting, seconded by Mr. Gifford All approved.

The next meeting is July 21, 2015.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mr. Cifor. The meeting was adjourned at 11:20 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