

**Final - Approved August 18, 2015**

**ZONING BOARD OF APPEALS**

July 21, 2015

Present: Michael Dudick, Chairman, Denise Bagramian, Michael Bloss, Jerry Cifor, Mario Fantini, Tony Morelli

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

Absent: Randy Gifford, Chris Lemire

Mr. Dudick called the meeting at 7:07 p.m.

**PLEDGE OF ALLEGIANCE**

Mr. Dudick informed the applicants this is a seven member board with one alternate. Tonight six members are present, including the alternate who is sitting in for Mr. Lemire. To receive approval, an application one must receive 4 yea votes regardless of the number of members present. There are six voting members present tonight so the applicant must receive four out of six votes for approval.

**OLD BUSINESS**

**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)**

Mr. Dudick read a letter dated July 2, from Jason Kemper, Director of Planning for Saratoga County. The letter informed the application had been reviewed and approved by the Saratoga County Planning Board on June 18, 2015. The letter was placed into the record.

The continuation of the application was presented by Jon Lapper (Project attorney from Bartlett, Pontiff, Stewart & Rhodes, PC). Also present were Steve Powers (VP, NIGRO Companies), Chuck Ursprung (Bergmann Assoc) and Wendy Holsberger (Creighton Manning).

Mr. Lapper, Project Attorney for NIGRO, informed they have reached a settlement with their neighbors, the owners of the car wash. He informed they have accepted the change in the easement, which he asserted gives them better access. He also described the agreement as a “land swap” which gave the car wash a piece of land which squares out their property. The increase in square footage for this project results in its ability to increase the green space from 15.5% to 19.1%. They also changed the configuration of the Rite Aid drive-thru.

Mr. Lapper reminded this is a “tired” plaza and currently has virtually no green space and no storm water control. They believe the changes are all positive with brand new site design and buildings. He said qualitatively it will be much improved, referring to the landscaping in the right of way which will give it a softer, prettier sight than the current asphalt. He commented on the stormwater treatment they plan, suggesting they have worked with the constraints of the parcel to make it something the town will be proud of.

Mr. Greg Ursprung described the details of the site plan changes they have made and the land swap. He informed they have reduced the drive thru from three aisles to two which allows them to create more greenspace. Referring to the land swap, he explained that 18,922 sq. ft. was conveyed to the plaza and 2,472 sq. ft. was conveyed to the car wash. This increased the Price

Chopper plaza by 16,450 sq.ft. which is where they get the increase in greenspace. He demonstrated the changes on the map.

Mr. Peller asked Mr. Lapper to describe the variances they are now seeking as a result of the changes.

Mr. Lapper, referring to the 130' required setback for Rite Aid, said instead of 117.5' available, it is now 118.1' available, reducing the variance from 12.5' to 11.9'. With regard to 80' to the front property, it is 50' instead of 50.1' available and the variance is now 29.3' instead of 30'. Under 10,000 sq. ft. retail 130' setback, instead of 50.9 available, it is 49.6', reducing the variance required from 114.1 to 64.1'. For general variances, greenspace 15.5% is now 19.1% making the variance required to 15.9%.

Mr. Dudick asked Mr. Myers if he was in agreement with Mr. Lapper's calculations. Mr. Myers agreed, saying he has a few slight differences and the parking will be addressed by Planning. He added that the total variances were reduced to 14 from 16.

Mr. Lapper questioned whether the 10 acre requirement does not apply because it is a pre-existing condition. Mr. Myers agreed.

Mr. Dudick announced the public hearing and called for speakers.

Mr. Andy Brick, representing Whitney Lane Holdings LLC. He informed he is happy they have resolved the issue with the car wash.

He questioned whether the applicant has a revised environmental assessment form to show the changes to the application and the parcel, reminding the board cannot make a SEQRA declaration without accurate information. He asserted the changes do not address the central issue which, he opined, is the zoning board is not authorized by the county or town code to grant variances for the convenience of the applicant. He stated that is what the applicant is requesting and they haven't proved they cannot achieve what they want by other feasible means. He suggested they can demolish first and then re-build which would reduce the number of variances needed. He commented the applicant wants to keep Price Chopper open while they are re-building. He repeated this is not the role of the Zoning Board, nor are they authorized, to grant the variances for the applicant's convenience. He reminded the board they have not demonstrated how they would build after demolishing the buildings and how that would impact the variances, nor discussed reducing the size of the buildings which they are proposing to be larger than the current ones. He claimed there is no hardship and they have not met the required test. He said the extent of their argument is that they need every one of the variances or the project is dead and the site won't be re-developed, as if it would be the Zoning Board's fault if the project doesn't take place. He repeated it is not the Zoning Board's role to facilitate the convenient construction and re-development of the site. He said if they meet the criteria, the Board can grant the variances but in this case they have not proved hardship and want the variances for the convenience of their building schedule. He thanked the Board for the opportunity to allow him to express his concerns.

Mr. Lapper responded to Mr. Brick's concerns. He stated this was misleading because the hardship is the standard for a use variance. He reminded this is a problem site with many

constraints. He stated this is an existing plaza and it was no easy task to negotiate to acquire the site, work with the car wash people and existing tenants and come up with a plan. In terms of benefit vs burden it has been laid out in their application and they are not talking about hardship because this is a standard area variance where they are talking about the benefit vs the burden and they think it is all benefit. He repeated it is going to work great. He said he does not know what is going on with their neighbor who is protesting except that their site needs up-dating and suggested this is a commercial competitor. He claimed this is not about construction sequencing which has nothing to do with the variance. They are trying to re-develop the site, put in stormwater management, etc and he is sorry there is a problem with their competitor.

Mr. Gerald Currier, 765 Waite Road, stated he frequents the Price Chopper and uses the bank and barber. He indicated he thinks it would be devastating to the jobs in the plaza and to the neighborhood if the whole thing was torn down.

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

Mr. Dudick commented the Zoning Board has very qualified people and a good understanding of their role and what is appropriate to vote on. Referring to Mr. Brick's comment regarding their not being able to vote on an application because of a matter of convenience, he stated he thinks every application has an aspect of convenience for it at some level, something that makes it easier for the applicant. He explained they are asking for relief from a burden, which he said creates a greater convenience for the use of their property.

Mr. Dudick said this application would be described as an unlisted action and there is no environmental impact that needs to be considered by this board and the board would then make a negative declaration. He repeated this board is completely capable of voting on this from a zoning standpoint. There are issues brought up with regard to parking, stormwater runoff and traffic which are considered by the town but not by the board as a zoning variance issue. He feels comfortable voting on the application. He indicated he is happy with the changes that have been made, the increase in green space and with the cooperation with the neighboring property owners. He asked if the stormwater runoff is being addressed on the site at this point.

Mr. Ursprung answered that there is no stormwater treatment now.

Mr. Dudick then commented this would be a vast improvement and very positive and he likes it.

Mr. Peller reminded he needs to accept a motion from the board to go forward.

Mr. Tom McCarthy advised the board needs to make a statement accepting the environmental short form. Mr. Dudick said, within the scope of the Board, the environmental impact has been reviewed by the Board.

Mr. Dudick made the motion that the Board acknowledges this as an unlisted action, a negative declaration with no environmental impact and the appropriate form will be the short form.

Mr. Bloss seconded the motion.

Mr. Cifor asked for the town engineer's opinion but the engineer was not able to attend the meeting. Mr. Scavo went to the podium to provide the information.

Mr. Scavo stated that, pursuant to a letter issued April 24, 2015 which was shared with Steve Myers, advisement was given by the town engineer (MJ Engineering) that the Planning Board, based on their information, advised this appears to be an unlisted action and the short form meets the minimum requirement. If anyone wants additional information they can request a long form but the obligation has been met with the short form.

Mr. Dudick, referring to his motion, seconded by Mr. Cifor asked the Board for their response. All were in favor, and the motion was carried.

Mr. Bloss commented he is happy the applicant worked with their neighbor and all the changes seem to be positive.

Mr. Dudick made the motion to approve the application, with the amendments made today. Mr. Fantini seconded the motion.

Ayes: Bloss, Morelli, Dudick, Cifor, Bagramian, Fantini    Noes: none  
Application approved as amended.

## **NEW BUSINESS**

*The secretary read the legal notice as it appeared in the Daily Gazette on July 16, 2015*

**1)An application from Stephen Nappe for a variance from Section 208-12A which requires 80' setback from front property line for accessory structure. 59' avail, Variance required =21'  
Property is located at 4 Teakwood Drive, Clifton Park, NY 12065 (Permit #81037)**

The application was presented by Stephen Nappe, owner of the property on 4 Teakwood Drive. He seeking the 21' variance to build a 24' x 24' detached garage. He informed he and his wife are competitive ballroom dancers and they wish to convert the attached 1 ½ car garage into a practice room. They want to put up a garage for one car and storage. He informed they have only one neighbor to the North and have spoken to him about it. The neighbor has no problem with it. Their home sits on a cul du sac and backs up to woods and won't interfere with neighboring properties. The structure will match the home with siding and roof.

Mr. Cifor asked the number of stories. Mr. Nappe answered it will be one story with no storage above, and no heat or water, only electricity. It will face the existing driveway so there will be no changes in the asphalt.

Mr. Dudick asked for public comments. There was none. He made the motion to close the public hearing, seconded by Mr. Morelli. All agreed, public hearing closed.

Mr. Myers commented this is a typical corner lot issue they have seen before and he has no problem with what the applicant is proposing. Mr. Dudick agreed it is a corner lot issue and he has no problem with it either.

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

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

*The secretary read the legal notice as it appeared in the Daily Gazette on July 16, 2015*

**2)An application from Clifton T Hilderley for a variance from Section 208-98, special setback lines which requires 100' setback from centerline of Grooms Rd. Structure proposed at 57' setback; variance required=43'**

**Property is located at 283 Sugar Hill Road, Rexford, NY 12065 (Permit #81038)**

The application was presented by Duane Rabideau, Van Guilder Associates, representing Mr. Hilderley. He described the location of the property as on the Southeast corner of Grooms Road, across from Grooms Tavern. The house is close to the neighboring parcel and is badly in need of repairs and needs to be demolished. The owner would like to take down the old home and build a duplex. The structure would be centered on the parcel. It has been before the Planning Board for review and for a special use permit. He stated the Planning Board feels it is a good use of the property if the variance is granted. The buildings on the other three parcels on that intersection are very close to the road and this building will be more conforming with what is already existing there.

Mr. Peller inquired whether there are historical preservation considerations before the building will be destroyed. Mr. Rabideau answered the Historical Preservation Commission will have access to the building before it is destroyed. They will get to see it first and to document whatever they need to before it is taken down. He added they will also have input into the design of the new building.

Mr. Dudick inquired as to how the setback was determined. Mr. Rabideau said it is measured from the centerline of the road.

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

Mr. Myers confirmed the Historical Preservation Commission has reviewed the structure and will have access to document anything inside it. He affirmed the building is not save-able, but the builder agreed to work with them to create a historical look. He explained there is a large setback requirement for Grooms Road and to meet that setback would make the lot unbuildable under the code. He informed Planning is ok with the idea.

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

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

Mr. Dudick commented that as far as he can see everything seems to be in order. He said the setbacks create a problem with a corner lot.

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

*The secretary read the legal notice as it appeared in the Daily Gazette on July 16, 2015*

**3) An application from Amy Pollard for a use variance from Section 208-16D, permitted use in CR zone, for 2000 sq. ft. building (dog grooming, training, indoor boarding). Bordering properties zoned “HM” where use would be allowed. Wetlands on property makes majority of property unbuildable. Property is located at 1117 Rte 146A, Clifton Park, NY 12065 (Permit#81039)**

The application was presented by Mr. Gerald Currier, owner of the property at 1117 Rt 146A. The property is directly south of the Ballston Lake Fire Department and sandwiched on the other side by an asbestos abatement building and across from the junkyard. He explained he had purchased the property in October, 2006 and had the wetlands delineated. The parcel consisted of 2 commercial properties, road frontage of 289 feet and 30 acres in the back. He informed it took two years and \$25,000 to delineate the wetlands. They created two residential lots off Ashdown Road with an access point and sold them. They were required by the town to create a conservation easement for the remaining parcel of about 20 acres of the rear land. This parcel is zoned Conservation/Residential but he claimed, is not a good lot for a house.

Mr. Currier informed Ms. Pollard and Ms. Smith made a purchase offer on the property two months ago contingent on the variance being approved. He maintained it is the first offer since they owned it in 2006 and it has been marketed since 2009. He explained it is not a good location for a house because it has a commercial building on either side (firehouse on one side, asbestos removal company on the other.) He said the wetlands can't be used so it only leaves the frontage.

He introduced Amy Pollard and Samantha Smith, prospective buyers.

Mr. Peller inquired whether he had notified the neighbors of his intent. Mr. Currier answered that he had notified 35 people. The secretary confirmed she has proof of notification.

Mr. Currier informed the land on the adjoining lot required septic testing and hit solid slate 30” down. They had an offer on property 400 feet from this parcel and had a test dig and the contractor said it is not suitable for a home with a basement. He repeated it is a difficult place to build a house.

Mr. Dudick asked if he had proof of this. Mr. Currier responded he does. He stated there are 80 calls a year on the Fire Department and the lots on either side of the property are commercial. He emphasized he did not create the problem.

Ms. Samantha Smith, 10 Robinwood Dr and Amy Pollard, 2 Vista Court came to the podium.

Mr. Peller asked if they understand the effect the conservation easement has on the land they are intending to buy. Ms. Pollard answered they do. Mr. Peller explained he is asking because they do not want to come back to the board afterward and say they were unaware. Ms. Pollard replied they understand and it is well suited for their purpose and they intend to use the trails that are there.

Mr. Myers apprised the area is hamlet/mixed use which allows commercial use and the asbestos building was put in about five years ago.

Mr. Dudick questioned why, if hamlet/mixed use allows that building, it does not allow this use. Mr. Myers explained this parcel is zoned conservation/residential. Mr. Dudick asked why it is between two hamlet/mixed use parcels. Mr. Myers surmised it is because of the acreage and it connects to Ashdown Road, adding he was not involved in the re-zoning.

Mr. Dudick raised the question as to why the parcel could have farm animals but not dogs and cats as a commercial enterprise. Mr. Myers explained dogs are not farm animals and they are not proposing a farm, they are proposing a commercial business.

Mr. Currier commented the conservation area restricts 28 acres and you cannot clear it or build a structure on it.

Mr. Dudick asked for confirmation that it has been for sale since 2009, asking how it was marketed. Mr. Currier said his son carried it the first few years and then Red Door Realty has had it since 2012.

Mrs. Mary Zingerman, 190 Droms Road, Schenectady, said she has been marketing the property but as soon as prospective buyers find out it is next to a fire station and another commercial property they are not interested. She said it has always been a deterrent, as has the conservation easement which won't allow them to put a structure on it. Mr. Currier said he does not have any proof of marketing from his son as he was an intern.

Mr. Currier commented he lives near the property and when they bought it they had dreams for it that didn't work out.

Mr. Myers had received a letter from a neighbor **Joe Vialobvski**. Mr. Dudick read it, in its entirety, into the record. The letter indicated concerns over the possible impact for health, safety and welfare of his neighborhood. It also suggested the applicant has not shown hardship because she has not purchased the property so cannot show a loss. Concerns were expressed that it would change the essential character of the neighborhood and disagreement with the statement it is uniquely zoned because there are homes near and next to and across the street. In summary, Mr. **Vialobvski** requested the Zoning Board no grant the variance.

Mr. Dudick referring to the letter, pointed out this is not an application from the purchaser, but from the owner who would show the hardship. Mr. Currier informed they all have signed the application.

Mr. Currier stated they had lost an offer on the property nearest to the residential property. They had a deep hole test and found solid slate at 30' down and the buyer pulled out because they would not get good drainage.

Ms. Pollard commented on the concerns about loose dogs. She avowed they own the business in Schenectady and they have never had dogs running loose. Claiming that taking care of clients dogs is of the utmost importance to them, she said they do path walks daily and it is not their dogs, but neighbors dogs that run loose.

Mr. Cifor wanted to know what type of building they intend. Ms. Pollard answered it would be a barn type structure, one story. They want to get the look to fit into the agricultural theme. Ms. Smith said they would have indoor/outdoor runs but the dogs would be indoors at night.

Mr. Dudick asked for public comment, informing each speaker will have 5 minutes to speak.

Mrs. Jane Nye, Ashdown Road, has lived nearby since 1955. She pointed out the zone is CR zone. She presented a list of 31 signatures of residents within the 500 foot zone who are against the application. Mrs. Nye expressed her opposition. She informed she has talked to John Scherer and wants to speak with Fred Stevens. She asserted there is documented Native American presence on the site and it was probably used for portage to Ballston Lake. She claimed the adjoining property has evidence they were there on the shale cliffs and she herself has Native American heritage. She promised she will be contacting Mr. Fred Stevens (DEC) with regard to the Native American presence because there is a process they need to go through and she will request it be done before a variance is granted.

Mrs. Nye felt the area was protected when it was zoned Conservation/residential and she sees no need to change the zoning. She declared she has not talked to one neighbor who is in favor of the applicant.

Mr. Dudick asked her to explain the issue she has with regard to Native Americans. Mrs. Nye said that is just one issue because it has not even been considered and she brought it up because she has not had a chance to talk to Mr. Stevens and John Scherer, town historian, has been on vacation. She said the exact spot where evidence has been found is in an area included in this CR zoning and evidence has been found on the embankment. She could not tell how far that is from the parcel in question, but asks that the Town acknowledge this was present. She concluded by stating she is opposed to a change for any reason.

Mr. Cifor asked if she would take issue if a farm was put there. Mrs. Nye responded she would not, but she does object to anything in there for a commercial purpose. She pointed out the Town of Clifton Park owns some of the hamlet property because it was donated to the Town as it is contaminated by auto and chemical waste and no one wanted it.

Mrs. Nye presented the petition from 31 neighbors and also additional information for the record.

Mr. Currier introduced Duane Rabideau, Van Guilder Associates, who they had hired to identify all the wetlands and who arranged the jurisdiction from DEC and ACOE to designate wetlands as conservation easement.

Mr. Peller asked Mr. Rabideau if he knew of anything of state or government designation of Native American presence. Mr. Rabideau said he did not, suggesting the town can request to identify that or bring archeologists in or do testing on the area of disturbance. He said they couldn't do much with the conservation easement.

Discussing the subject with Mr. Peller, Mr. Rabideau said if they find something they could either do nothing, work around it or recover the artifacts and Mr. Scherer could sign off on it.

Mr. Dudick wanted to know when the zoning was changed. Mr. Myers said he assumes it was done with the rest of the town re-zoning in 2005 and probably the wetlands designation was done in 2009 when the subdivision was put in.

Mr. Peller asked if the subdivision was before the Planning Board and, if so, did they look at any Native American issues. Mr. Myers confirmed it was before the Planning Board but he does not remember if they looked for Native American presence, however assumes they did a full site review.

Mr. Peller speculated that the probability is pretty good that the Planning Board would have looked at it.

Mrs. Stacey Davis, 1124 Route 146A, commented she loves dogs which is why they purchased the property with land. She said whenever the fire siren goes off her dogs go crazy so she cannot imagine what it would be like with a kennel full of dogs barking. She pointed out they would be building close to the road because of the wetlands and that will make it closer to their house than any of the others. She believes it will be a nuisance.

Mr. Dudick asked how long she has owned her property. Mrs. Davis answered the house was built in 1879 and they purchased and renovated it 2 years ago. She informed they have no basement because of the shale.

Mr. Tony Solomon, 150 Ashdown Road spoke, informing he lives above the site. He stated he can hear any noise that rises up from 146A, including trains, traffic and noises from the junkyard. He expressed concern that he will also hear the barking dogs.

Mrs. Mary Zingerman (speaking as her designation as a real estate professional) referred to comments that a house can be built on the property. She agreed that a house can be built there, asking "will it ever?" and stated she thinks there is a 99.9% chance it will not. She said a residential owner will not want to live between two commercial properties when one of them is a firehouse.

Mr. Dave Pappas, 143 Ashdown Road, indicated he has talked to several of the neighbors and they like it quiet, as he does, and he would like to keep it quiet.

Mrs. Martha Corbett, 130 Ashdown Road, asked the applicants if they realize how much wildlife is on the hill, referring specifically to coyotes. She questioned what would go in the building if the kennel business fails.

Ms. Pollard answered regarding the future of their business saying they already have a business that is doing well as evidenced by their ability to purchase the property. She assured that the building would not be so unique that if they left no other business would be able to use it.

Mr. Bloss asked if they intended to discontinue their business in Schenectady and Ms. Pollard said they will.

Mrs. Bagramian wanted to know how they will deal with the noise. Ms. Smith admitted that dogs will bark and they will be outside at different times during the day but will be inside at night.

Mrs. Bagramian asked about the construction of the building. Ms. Smith told her it would be insulated and the daycare will be only for up to 15 dogs that are just there during the day.

Ms. Pollard explained they have a structured day for the dogs and focus on fitness. During the day they would be out for an hour long walk, then they nap and there is playtime. Ms. Smith added they also do training so they don't want dogs barking all day or night. If they have one doing that, they would address it.

Mr. Peller asked if they have had any noise code violations while in Schenectady. They said they have not.

Ms. Pollard pointed out they are currently near a railroad station and there is no problem with the dogs reacting to the noise. She admitted firehouse noise is something they might have to address and it might affect their boarding.

Mr. Dudick questioned Mr. Myers as to what would happen if this was built and then they vacated. Mr. Myers informed it would then go back to any other use permitted in the CR zone. He clarified they would not be changing the zone, which will stay CR, explaining they are asking for a variance to allow a use not allowed in the zone. He advised that if the business went under they could go back to an allowed use in the zone or this specific use could be continued, but anything different they would have to come back to the Zoning Board for permission. He promised it could not become a McDonalds or a convenience store.

Ms. Misty Jacobs, 131 Ashdown Road, commented that justifying changing the use because of the fire station on one side and the asbestos company on the other doesn't help their concerns. She said with grooming, boarding and training there will be a number of cars coming and going which will affect the neighbor across the street. She pointed out the firehouse and asbestos company don't have a large amount of customers coming in all day.

Ms. Pollard responded, saying they have set periods of traffic, citing the "drop-off" time of between 7 and 9 am and "pick-up" from 4 to 6 pm on weekdays and it would not be busy like a McDonald's drive-thru. Grooming clients are dropped off at the same time because they sometimes do both, grooming and boarding for the day. She said daytime boarding is only 10-15 dogs.

Mrs. Dolores Fragomeni, 148 Ashdown Road, expressed her bewilderment as to why someone would buy that land as an investment, knowing the restrictions. She pointed out the zoning occurred before he purchased the land so he had to be aware of it. She reminded they haven't addressed that. She expressed concern that the business would expand into selling dog accessories which would mean delivery trucks. She contended this is an unnecessary use of that particular land.

Ms. Pollard disagreed, promising it won't be a PetSmart and if they sell anything retail it would be dog collars which they receive by mail or UPS, not by delivery truck. She revealed they already had tried some retail sales but found it does not work with their business.

Mr. Myers informed he has discussed this with Planning and they are aware of the property and the length time on the market and the restrictions on the site, as well as the adjoining uses. Knowing all that, he continued, they don't have an issue with it because it is light usage. He pointed out if this was proposed for the property next door it would be allowed. It doesn't seem it would affect the wetlands and it would make it a viable property for the town. Planning thinks it is ok.

Mr. Fantini stated he is in favor of the application because he thinks it meets the four criteria of a use variance. He bases hardship on the real estate agent's testimony, it cannot obtain a reasonable rate of return and, in his opinion, it is unique because the properties on both side are commercial. He opined it doesn't change the character of the neighborhood because of the adjoining property and the hardship is not self-created because the owner was not aware of the limits of the wetlands.

Mr. Fantini stated he is in favor of the application and made a motion to approve.

Mr. Cifor argued his biggest issue is that it was zoned Conservation/Residential when Mr. Currier bought it so he doesn't see how this is not a self-created situation.

Mr. Dudick reminded there was a motion before the board and no one had seconded it. Mr. Peller advised the motion is not carried since there is no second of the motion and therefore there is no motion.

Mr. Dudick asked Mr. Currier if, when he bought the property, he subdivided it into three lots. Mr. Currier confirmed that is so, adding it was two residential lots off Ashdown and one large 28 acre lot.

Mr. Dudick asked the original purchase price of the entire property. Mr. Currier said it also included the asbestos abatement company building and 600 feet next to it. Mr. Currier informed it was divided into 6 lots. Mr. Dudick named the asbestos abatement building, two residential lots and two vacant lots for sale asking if the zoning was Conservation/Residential and also commercial. Mr. Currier agreed and said the purchase price was \$255,000 for the land and the building.

Mr. Dudick inquired about Mr. Currier's realized in gross revenue. Mr. Currier explained he got \$152,000 and for the lots 52,000 and 57,000. He said they invested over \$30,000 for the survey

and paid taxes on the land for nine years. He stated if this sale consummates they will break even with two lots left which are difficult to sell. He asserted they were not aware of the wetlands or soil conditions that made it detrimental to build a house when they purchased it.

Mr. Dudick listed the criteria to be considered for a use variance.

- 1)property cannot realize a reasonable rate of return with financial evidence (he explained that would be tax returns, affidavits, etc.)
- 2)unique situation
- 3)will not alter the essential character of the neighborhood
- 4)what is it that created the hardship for the owner. He explained the hardship is borne by the owner of the property not the person purchasing it.

Mr. Dudick, referring to the “reasonable rate of return”, said he would leave that for each board member to decide for themselves if they have enough evidence. He explained he considers it was difficult to sell and they had a real estate agent provide evidence.

Considering the uniqueness, he said he thinks it is unique because he doesn’t know other areas of town that have a residential parcel bordered by commercial.

Addressing the alteration of the essential character of the neighborhood Mr. Dudick feels is more difficult but overall he doesn’t think it alters it because of the existence of the asbestos company, firehouse and junkyard.

Mr. Dudick then referred to the question as to whether the situation was self-created considering the zoning. He said it is a problem because it is not a requirement of the Board to help generate a profit. He alluded to other properties that have been purchased where some make a profit and some don’t and it is not the Board’s responsibility to make sure the profit is there. He reminded that all four criteria need to be met for a use variance and this one creates the issue that he sees as the greatest hurdle for the property owner.

Mr. Morelli said he agrees on the four points and agrees with Mr. Dudick on the first three. He explained that he does not see that the hardship as self-created because the owner did not know of the existing difficulties until the survey was done and the property was on the market for several years. He affirmed that he is in favor of the application.

Mr. Dudick again asked for public comment.

Mr. Chris Jacobs, 131 Ashdown Road, addressed the proposed hardship stating they are not here to follow the education of a property owner in finding out that something was not of the value he thought it was. He reminded they are not here to “pay off” his learning and it is not the role of the Zoning Board. He rejected Mr. Morelli’s conclusion.

Mr. Trevor Stay, who lives directly across from the property, informed he and his wife purchased his home two years ago and spent a lot of time making it a peaceful place even though the railroad is close by. He advised his front window faces the parcel. He commented he cannot imagine the trucks, traffic and dogs, asserting that despite soundproofing, they have dogs on their

property so every time a dog barks it is going to make their lives miserable. He pointed out that right across from their driveway they will have all the traffic and dogs barking.

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

Mr. Dudick asked for a motion, reminding that for approval, four votes of the six are needed.

Mr. Morelli made the motion to approve the application. Mr. Fantini seconded the motion.

Ayes: Morelli, Fantini            Noes: Bloss, Dudick, Cifor, Bagramian

Application denied based upon a review of the presentation and evidence provided by the applicant and/or the applicant's representative(s), and of the public, and the laws governing such an application as known to this board at the time of this application, taking into consideration the standards the Clifton Park Zoning Board of Appeals uses in making decisions.

At 9:15 pm Mr. Dudick called for a five minute recess.

The meeting re-convened at 9:20.

*The secretary read the legal notice as it appeared in the Daily Gazette on July 16, 2015*

**4)An application from Robert & Philomena Tabone from Section 208-11 & 208-16 for a 2 lot subdivision in the CR Zone**

- 1)208-11: 40,000 SF req for septic system; 21,849 avail., variance required =18,151SF**
- 2)208-11C: 200' frontage req on Vischer Ferry Rd; 110' avail. Variance required=90'**
- 3)208-16E.2(a) if < 3 acres, 1 dwelling allowed; proposed to subdivide 1.5 acres into 2 lots**
- 4)208-16E(2)(c ) one time exception for family members, need 10 acres, variance required**
- 5)208-16E(2)(c ) new lot needs to be a min. of 2 acres; .5 acres proposed; variance required =1.5 acres**
- 6)208-16E.(2)(c ) new lot must be a minimum of 50' from all property lines; proposed=13';variance required =37'**
- 7)208-16E.(3)(a) permanent open space must be 25% unconstrained land; 22.7% proposed; variance required =2.3%**

**Property is located at 1 Clute Circle, Rexford NY 12148 (Permit #81041)**

Mr. Fantini asked if he should recuse himself because he knows Mr. Greensit. Mr. Peller advised him that Mr. Greensit is not the applicant, but an interested party, so unless it will prejudice him against the applicant, he does not need to recuse himself. Mr. Fantini said he does not know the applicant.

Mr. Dudick put into the record letters submitted by Mr. Donahue and Mr. Greenslit, both of whom requested the application be denied.

The application was presented by Mr. Duane Rabideau, VanGuilder Assoc, on behalf of the applicants Robert and Philomena Tabone. He informed they wish to subdivide the property on the corner of Clute Circle Road and Vischer Ferry Road into two separate parcels and build a small house facing Vischer Ferry Road. He described how the home would be placed and asserted it would be a very minimal impact lot. He reminded this application comes after a previous application a few months ago for a similar request in a CR zone (Caruso) which was rejected by the Zoning Board.

He informed they have the same issues as that application (needing three acres) but separate scenarios.

He reminded the CR zone was intended to protect open space in the southern part of the town and included the hamlet areas. He asserted that it does not reflect the build-out or character of Vischer Ferry hamlet.

Mr. Rabideau related that he had explained to the Tabones that the Planning and Zoning boards base their decisions on the zoning regulations and unfortunately not on the personal misfortune of the people coming before the board. He also said they do listen to each situation but it would be an uphill battle with many steps involved.

He stated the first step was to determine if the new lot would support a house, which they have done. The second issue was wetland and environmental constraints. They went out on the parcel and made sure the home would not interfere with the wetlands, describing on the map the location of the wetlands. The third step was to determine if the parcel would support a standard septic system. They had an engineer come out and he agreed it would support a septic system. The property will have public water.

They then looked at community character and Mr. Rabideau asserted that because of the layout they are minimizing streetscape issues and suggested that as far as lot size, because of the build-out of the hamlet it fits the character of the neighborhood better than three acres.

Referring to the area variances, if they get them, then they will go before the Planning Board for building approval. He claimed this fits the character of the neighborhood and the lot pre-dates the CR zoning. When the Tabones bought the lot, the zoning was not in effect. He informed they presented it to the Planning Board as a discussion item and it was ok with it if the variances were granted. The only comment they had was they wanted the house to face directly on Vischer Ferry Road.

Mr. Dudick asked how long the Tabones have owned the property and was told 16 years.

Mr. Dudick questioned why they want to subdivide now.

Mr. Rabideau explained they have a family issue and they are trying to address a handicap issue for their daughter-in-law. They have been looking around the area trying to find a home they could retrofit and found this would be the best option, cheaper and more financially do-able.

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

Before comments were heard he read and submitted for the record the following:

1)A referral from the Environmental Conservation Commission, which recommended the CR zoning be upheld and other viable options be pursued. It expressed concern that if the variances were approved a precedent would be set and would weaken the CR zoning code.

2)A letter from George and Karen Donahue, 6 Vischer Ferry Road, dated July 15, 2015, expressing their opposition to the variances requested and asking the Zoning Board to deny the application because of inadequate road frontage, square footage, setback footage, lot footage, and open space.

3)A letter from Ed and Marsha Greenslit, 19 Vischer Ferry Road, dated July 20, 2015 stating their opposition to the application. They reside next to the parcel and outlined their concerns regarding the proximity of the proposed septic system to their property, drainage issues, proximity of the building to their property line and also the possibility of setting a precedent if the variances are granted.

Mr. Dudick also had a letter from the Planning Board. Mr. Myers summarized that the Planning Board had done a preliminary review and was ok with the concept of the proposal.

Mr. Dudick asked if this is a separate residence for a family member, why isn't an addition to the current home an option.

Mr. Rabideau responded an addition would have more of a visual impact from Clute Circle and the advantage of the proposed home is the 10-15 foot elevation would not be seen from Clute Circle. He demonstrated on the map the gravel embankment of 10-15' would also block the home. Mr. Cifor commented the house would be in a gully.

Mr. Rabideau countered the concern about the septic system saying it is designed to work.

Mr. Dudick stated the argument that it couldn't be seen from Clute Circle doesn't answer the question as to why they couldn't put an addition on the house. Mr. Rabideau agreed it could be done and they wouldn't need a variance, only a special use permit. He argued this is a better scenario and the issue is the CR zone going from 3 acres to the hamlet.

Mr. Bloss asked about the size of the lots across Vischer Ferry Road asking if Mr. Rabideau is suggesting this lot size fits better with the Riverview Road hamlet lots. Mr. Rabideau said most of them are around Riverview Road. Mr. Bloss pointed out the house would be built closer to Mr. Greenslit's home than the Tabone's home. Mr. Rabideau said it is an 1800's home.

Mr. Myers opined it would not be precedent setting because the Board has done this before with CR zone lots, some smaller than this one. The size of this lot exceeds some of them on Vischer Ferry that have septic systems. He said it comes down to the character of the neighborhood because this whole area has a mixture of lot sizes. He said there are no variances they haven't looked at and granted in the past. He said what they propose works, but he understands the arguments also.

Mr. Bloss questioned whether the other small lots are on septic systems. Mr. Myers said they are, and some are very unusual septic systems. Mr. Dudick wanted to know if any of them have

been built since the CR zoning went into effect. Mr. Myers said he wasn't sure about being built, but some have been re-modeled.

Mr. Myers informed the CR zone was set up to create a more rural feel and that is why larger lots are required. He said from a zoning standpoint and what they have done in the past, he thinks it is a do-able project.

Mr. Dudick asked Mr. Myers to explain the one time family subdivision rule. Mr. Myers advised it is one time subdivision allowed for a family members only in the CR zone and it allows less than a three acre lot, but it still requires 2 acres if you do that. He gave the example that if you have a five acre lot you can keep three acres and give two to your son, but when you don't start with three acres in the first place it is an issue. He reminded that one of the variances addresses that because the one time family member is allowed but the lot they are creating is ½ acre, not two acres. He added the lot they are starting with is only 1.6 acres.

Mr. Fantini expressed concern with the fact that many of the properties around that area have larger lots and subdividing this will not be consistent with the neighborhood.

Mr. Rabideau said what mitigates that is because of the elevation difference and the vegetation you will not see the house. They will move the shed and pointed to an area on the map which he said would be deed restricted.

Mrs. Bagramian asked about adding on to the house questioning the square footage of the current and proposed homes. Mr. Rabideau said it is a fairly large house and adding to it will make a lot of vinyl.

Mr. Tabone answered the current home is about 2500 square feet and the proposed is 1500 on the blueprint, but they can make it smaller.

Mr. Dudick called for public comment.

Mr. Ken Tyberson, 3 Clute Circle, informed they purchased the property because they have large lots. They looked for years until they found this one with 1.5 acres. He stated in the winter they will have a view of their back yard. He said the map is not to scale. He has never seen anyone come for so many variances and being an architect he would be surprised if someone told him they wanted to go for 75% of the acreage. He suggested they do the math, saying they are going for a 45% variance. He pointed out the area in the back is all wet and there is a pond, waterways and buffer zone. He explained the math, that they are looking for 75% on the acreage, 74% on the setbacks. He reiterated the reason they bought the property was for the rural character. He suggested there are other homes in the area with additions and are many large houses. He indicated he is not in favor of the application.

Mr. Rabideau rebutted Mr. Tyberson's comments about the wetlands and said they have walked the site and said all that area is upland and the septic area will work for the house. He said the reasoning for the house is not for investment or profit, but something they are trying to do for their children.

Mr. Charles Smith, 8 Clute Circle, informed that he and his wife bought the property and reclaimed the land and were proud that it was SR zoning and required an acre of land. He explained the history of the land and discussed the size of the properties. He discussed the history of two smaller lots on Riverview Road, saying one lot was already developed and the land was given to a son and that was approved. The other one, he said is more recent, a vacant lot next to the old firehouse and variances were given and a home built. He pointed out it infringes on the firehouse and they now have drainage problems with the water draining on the firehouse property. He suggested that eventually the homes would be sold and then someone would want to put an addition on the smaller house and they would have more problems. He asked the Board to please go back to the zoning and preserve the rural character of the area. He reminded he could have made a lot more money on the development (Clute Circle) if he put more houses in there, but they like this. He stated he would like to see an addition put on their house.

Mr. Rabideau countered the visual impact will be minimized because of the elevation.

Mrs. Betsy Smith, 8 Clute Circle, she and her husband developed Clute Circle. She spoke with the Greenslits and the water situation is very concerning to them. She insisted the area is very wet and floods in the spring. When they built the development they were required to run 24 hour tests to make sure they didn't interfere with the village. She said when someone flushes the toilet their neighbor's water table goes down. They had to put in a drainage across the street from the Tabones, but it does not address the runoff from the creek and pond area behind the Greenslits. The gravel pit of the whole subdivision drains nicely except for the wetland areas and if you change the flow of the water you will find the other neighbors will have it flow back into their land. She informed the Greenslits are on a shallow well and putting in a septic system to fit the lot is not a good idea.

Mr. Rabideau informed they are not cutting the septic system down just because the lot is smaller. He explained the zoning requires a 40,000 sq. ft. and they are asking for 22,000 sq. ft. but that has nothing to do with the septic system.

Mr. Cifor clarified it is the same size septic system but on a smaller lot. Mr. Rabideau said it has been qualified as a standard system. Referring to the wetlands, he showed on the map how they will minimize runoff and are not add to runoff. He said they specifically looked at the wetlands.

Mrs. Collette Tyverson, 3 Clute Circle, stated the DEC maps are notoriously wrong. She stated there is a pond less than 50 from where he is proposing to put the septic system. Her understanding of the town code they need a letter to put that in.

Mr. Myers stated that is only if there is a designated wetland, and there is not to his knowledge. Mrs. Tyverson said she would like to challenge that as her brother works for DEC and he walked the land and said it is wetland. Mr. Myers disagreed saying he would depend on Mr. Rabideau's contact with DEC and the ACOE which say there is not.

Mrs. Tyverson suggested that putting in septic system changes the drainage pattern, the plant life and water flow which will be diverted on to their property which is already soaking wet year

round and saturated in the spring. She said there is a pond and a free flowing spring ¾ of the year and taking out the trees will visually change their view. She suggested it is easier to take care of a person in your own home than it is to build a separate building for them.

Mr. Rabideau said the county GIS shows the wetlands in the upper area, not where people are indicating and he pointed out the pond is located in a different area than where they are saying. Referring to the septic system saying according to the ACOE they can put the septic system right up to the pond, and that is the regulation so it is a non-issue.

Mr. Rabideau pointed out this is two separate families who want two separate houses. Mr. Robert Tabone came to the podium to explain his situation. He explained that adding on to the house was his first solution and they went to a builder who drew up a good plan. He referred to their letter (on record with the application). He asserted they went to his son with the plan but he and his wife are independent people and didn't want it. Mr. Tabone clarified they have been looking for a house for them but even house that indicate they are handicap equipped are not. If they can build, they will save money on the land and will put the money into the house. He revealed that they (his son and daughter-in-law) did not even know about the house plans until they had to go to the Planning Board.

Mr. Cifor made the motion to close the public hearing. Mr. Fantini seconded the motion.

Mr. Dudick recapped the issues pointing out the person who helped set up the development, lives in the development and there are large lots and small lots in the area.

Mr. Fantini made the motion to disapprove the application. Mr. Dudick commented a disapproval motion is difficult to administer because you have to say yes to say no. He asked for a second to the motion. There was none so the motion does not carry.

Mr. Peller advised Mr. Dudick to ask if there is more information the Board needs to make an affirmation either way.

Mr. Cifor said this is a tough situation either way because it is a hardship involved and he understands because he has a child who is mentally impaired but he also understands the impact on neighbors. He added he would generally not want to do anything his neighbors did not support. Mr. Dudick concurs its 50/50 but he thinks we should have a vote.

Mr. Bloss made the motion to approve the application. Mr. Cifor seconded the motion. A vote of yes is to approve and four are needed.

Ayes: Cifor, Bloss    Noes: Fantini, Bagramian, Dudick, Morelli

Application denied based upon a review of the presentation and evidence provided by the applicant and/or the applicant's representative(s), and of the public, and the laws governing such an application as known to this board at the time of this application, taking into consideration the standards the Clifton Park Zoning Board of Appeals uses in making decisions.

*The secretary read the legal notice as it appeared in the Daily Gazette on July 16, 2015*

**5)An application from Stephen Murdza for variance to subdivide 2 acre parcel into 3 single family building lots. Section 208-11 requires 50' front setback in R-1 zone. 30' available, variance required=20'. Reason for variance request is presence of wetlands at rear of created lots.**

**Property is located at 269 Lapp Road, Clifton Park, NY 12065 (Permit #81042)**

The application was presented by Duane Rabideau, VanGuilder Associates, representing Mr. Stephen Murdza for an area variance. He explained the applicant wishes to divide a 2 acre parcel into 3 building lots on the Northeast corner of Lapp Road. He informed the reason they are asking for the variance is because there are wetlands in the back making it difficult to have a reasonable rear yard. The parcels will have public sewer and public water. There is enough room for a house and a septic system is not needed.

Mr. Dudick inquired as to why the B lot is significantly smaller. Mr. Rabideau responded it will have more rear yard.

Mr. Myers weighed in, saying this matches with the subdivision and makes the lot viable. He said depending how wet it is, the back yard may be able to be expanded, but he has no issue with the application.

Mr. Rabideau mentioned that if the board approves it, they will go before the Planning Board and they will require them to put some sort of a physical barrier to keep incremental encroachment in to the wetlands from happening.

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

Mr. Murdza, owner of the property, related the history on the land, which he said was purchased originally by his inlaws in the 1950's. At the time they bought the house, there were no wetlands on the property but when they built the development it created the wetlands. They believe it is a nice piece of property but they want to get rid of some of it so he doesn't have to mow it.

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

Mr. Dudick commented this is not a complicated issue and because there are no neighbor protests, he is in favor of the application.

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

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

The application from Northway Nine Plaza Associates was withdrawn.  
The application from Casco Hospitality, LLC was deferred to August 21, 2015.

Mr. Dudick made the motion to approve the minutes for the June 21, 2015 meeting, seconded by Mr. Cifor. All approved.

Mr. Dudick placed into record four letters from the Saratoga County Planning Board for previous applications already heard by this board.

The next meeting is August 18, 2015.

Mr. Morelli made the motion to adjourn. The motion was seconded by Mr. Fantini. The meeting was adjourned at 10:30

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