

# Town of Clifton Park

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## Zoning Board of Appeals



**APPROVED**

## Zoning Board of Appeals

August 18, 2015

Present: Michael Dudick, Chairman, Denise Bagramian, Michael Bloss, Jerry Cifor, Randy Gifford,

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

Absent : Mario Fantini, Chris Lemire, Tony Morelli

Mr. Dudick called the meeting at 7:15 p.m.

### PLEDGE OF ALLEGIANCE

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

**OLD BUSINESS** – None

### **NEW BUSINESS**

The secretary read the legal notice as it appeared in the Daily Gazette on August 13, 2015

- 1) An application from **Casco Hospitality, LLC** for new variances for hotel due to further subdivision of property than previously approved in Variance #80814

1. Section 208-50.3C: 30' side yard bldg.. setback reqd. ;(bldg. height (60') requires additional setback at 2' per extra foot of height over 35'.  $60-35=25 \times 2=50'$ . Worst case 29.8 available; variance required = 50.2'

2. Section 208-50.3C: 20' parking side setback reqd. ; 0' available; Variance required = 20'

3. Section 208-50.3C: 30' existing bldg. side setback reqd. ; 0' available; Variance required = 30'

4. Section 208-50.3C: 20' existing parking side setback reqd. ; 0' available; Variance required = 20'

5. Section 208-50.3B: New building front parking setback reqd. = 30', 0' available, Variance required = 30'

Property is located at 1747-1749 Rte. 9, Clifton Park, NY 12065 (Permit #81040)

The application was presented by Scott Lansing, Lansing Engineering, representing Casco Hospitality. He stated this is an application for a proposed hotel at 1747-1749 Rte. 9.

Joel Peller asked Mr. Lansing who the record owner of parcel is.

Mr. Lansing stated owner as Anthony Casale.

Joel Peller asked Steve if we have authorization from Scott or Casco to move forward with the application. He asked Mr. Lansing that he is binding the owner with the outcome. That the board needs to make sure the owner gave Mr. Lansing authorization to move forward.

Mr. Myers stated that Scott Lansing is the Engineer on record and has owner authorization.

Mr. Lansing discussed the history of the project and the nature of the variances required with town officials and the Planning board and the project was received well with both the town officials and planning board to present to the ZBA. He explained that the overall parcels there is approximately 11.11 acres, there are 6.9 acres in the Town of Clifton Park that are zoned B4A and there are 4.21 acres zoned C1 in the Town of Halfmoon in the back portion of the parcel. There was a subdivision in 2011 where there was three lots created, lots A, B & C. The subject being discussed tonight is lots B and C. There is a building that is currently being constructed on Lot B which is the front lot that the applicant tends to continue building as approved building and parking and won't be modified as part of this proposal. La Quinta Inn and Suites is franchised by Mr. Casale. It is a permitted use in the B4A Zone and will be a 104 room hotel

that is four stories high, 60 feet overall to the highest point on the structure approximately 73,000 sq ft overall or approximately 18,000 sq ft per floor and will include an indoor pool, outdoor patio, fitness room, meeting room and a porte-cochere. For the external site features it will include 113 parking spaces, with access from Route 9 through a shared access road that will be shared by the other uses by the project. It will be served by public water and sewer. Stormwater will be managed on site. Impervious area and stormwater impact is less intense than the previous building that was proposed as part of the original subdivision for the site. Traffic would be consistent going out through the shared access road to Rt 9. As far as traffic, the trips are similar to the previous proposal plus or minus one or two trips in the am or pm peak hours. La Quinta Inn & Suites does require a subdivision so that the building will be on its own individual parcel which is primarily for financing purposes so that it is not joined in with other buildings on the parcel. Lot B & C would be modified where there were two lots (B & C), there would be three lots so there would be one lot for the front building, a lot for the La Quinta Inn and one lot in the back for a potential future development in the Town of Halfmoon.

Mr. Lansing stated that there is seven variances on the plan. The first variance is in the porte-cochere by the shared access road, the lower portion of the structure, which will be less than the 35 ft. limit it will only require a 30 ft. setback. Will have an 80' setback which will be the same as the rest of the building. Anything over 35' in height requires for every foot over you are required an additional 2 ft. of setback. You go from 30' add 50' you get 80'. We are asking for 50.2 ft. of relief requested for that porte-cochere to the property line that was created that does not include the shared access way between the buildings and part of the La Quinta Inn.

Mike Duduck asked Mr. Lansing if including shared access as the property then the variance would be reduced down to what amount.

Mr. Lansing stated it would be 69.8 reduced to 10.2 ft.

Mr. Lansing went on to explain the second variance which is on the south side to the lands of Phoenix. There is 52.4 ft. proposed to their property line which would be an 80' setback required. We are asking for 27.6 ft. of relief. There is a structure on the lands of Phoenix of which we are approximately 260 ft. away from that structure. There is also a structure on the lands of Gazda, we are approximately 230 ft. to that structure and to the land of Gazda as far as the property line we are 150 ft. from that. The area from the lands of Phoenix is where we are

asking the relief from. Variance number three is the side yard bldg. setback which is the lands of Vucetic and Menetto, requesting 60.8 ft., 80' required, requesting 19.2 ft. relief for that  
ZBA Minutes August 18, 2015

side of bldg. This counts the shared access way and if that was included in that part of the parcel would be 115 ft. from Vucetic land and 110 ft from the Menetto property line. We would exceed 80' setback in both of those instances. Variance #4, area around the Porte-cochere which could be considered as part of the circulation path for vehicles to park within this area. This area requires a 20 ft. setback to the parking so vehicles can park. This area to be 4 ft. from property line, requesting a 16 ft. variance. If shared access way is incorporated as part of the parcel would achieve 44 ft. to that area. Would be exceeding 20 ft. setback. Variance #5 is for the side yard building setback for the front bldg. As part of the subdivision for La Quinta they have configured the lot which has a 40 ft stem going out to Rt. 9. That stem provides the legal access to a public thoroughfare with the incorporation that 40 ft. stem going out to Rt. 9, that line is on the edge of that bldg. We are proposing a 0' ft. setback from that new internal property line from the corner of the bldg. from the internal property line. We would be asking for 30' of relief. If portion was included and used for access, we would have 40' setback which would exceed 30' setback. Variance #6 which is side yard parking setback, it is the front western portion of the building. There is a parking lot to be constructed as part of the approved site plan. It is about 10.6 ft. from new internal property line as part of the flag lot that creates the property boundary, 9.4 of relief requested. If 40 ft. is incorporated as part of that setback then 50.6 ft. from lands to the south which would exceed the 20' setback.. Variance #7 which is the rear portion of the bldg. in the front. The back portion as part of the property line for the hotel there is some green space behind that bldg. We positioned that lot line to that we meet the greenspace requirements for the lot. The property line is right on the parking lot. We propose a 0' setback for that property line where a 30' setback is required. They are asking for 30' of relief. If that were considered one lot that parking would be 290 ft. from the property line the row line for Rt. 9 which would exceed the 20 ft. required.

Mike Dudick asked the board for any comments.

Mr. Cifor asked Mr. Lansing about the 5 variances being revised to 7 variances.

Mr. Lansing explained that he did submit revised material.

Mr. Myers explained that he takes the worst case scenario, if the variances are granted for side setback, the variance would apply to the whole parcel. The 30' ft. variance covers everything.

Mr. Dudick asked Mr. Myers if we publically noticed the 7 aspects of the variance.

Mr. Myers stated the notice he wrote was for five variances.

Mr. Peller asked Mr. Myers that #6 & #7 are not necessary because #5 is going to take care of everything. So based on that he has no issue with what was published.

Mr. Myers agreed.

Mr. Peller explained to Mr. Lansing because of that analysis if he is ok that the first 5 variances get discussed and/or approved but not #6 & #7 variances.

Mr. Lansing agreed.

Mr. Myers stated that they applied for the entire parcel.

Mr. Cifor asked Mr. Lansing if they foresee any other variance requests for signage.

Mr. Lansing stated they may see a potential variance down the road for a common sign for the front portion as opposed to multiple signs. It was not included in this application.

Mr. Cifor asked Mr. Lansing about signage on the building size and height.

Mr. Lansing stated that should meet the zoning requirements.

Mr. Gifford asked Mr. Lansing about the map area going into Halfmoon.

Mr. Lansing explained to Mr. Gifford about the potential future extension into Halfmoon. The shared access way would be something permitted for access into halfmoon.

Mr. Gifford stated at the time they did not want to do the processing of the Town of Halfmoon because it was landlocked.

Mr. Dudick asked Mr. Lansing that he believed the property in Halfmoon to be residentially zoned.

Mr. Lansing stated that the property is C1 commercial zoned.

Mr. Dudick asked Mr. Lansing if the applicant wasn't looking to have any development of one project in Clifton Park go into Halfmoon to lock the land down.

Mr. Gifford explained to Mr. Dudick that they didn't want to go to the town of Halfmoon because we said to them at the time why don't you go for the variances for zoning for everything. That the applicant stated they weren't going to do anything from Clifton Park into Halfmoon.

Mr. Peller explained to Mr. Gifford that the board doesn't take anything proposed on lot 3 into consideration. The board has no authority to do anything within the Town of Halfmoon.

Mr. Peller stated to Mr. Lansing that if the Town of Halfmoon doesn't approve the access driveway easement then it would be landlocked.

Mr. Myers stated that no development will occur in the Halfmoon portion without proper approvals from both Clifton Park and Halfmoon.

Mr. Peller stated that is what the law states anyway.

Mr. Dudick addressed the board with any other questions.

Mr. Dudick asked Mr. Lansing about the rationale of not developing the additional parking on lot 2 the southern portion.

Mr. Lansing explained it is the sloped area, as far as parking they did not want to go up the sloped area or disturb the vegetation at the top of the hill.

Mr. Dudick asked Mr. Lansing if that is the area that is currently being excavated.

Mr. Lansing explained that the area has been excavated has been completed and been sloped down to the prescribed slopes that are required. There is a green area of approximately 50 ft. at the top of the slope that was maintained.

Mr. Donald Zee, Attorney for Casale stated that part of the reason that they did not place parking in that sloped area is under the franchise requirement of LaQuinta is that there is certain distances that they want limits of parking placement from the main entrances. They are the ones driving the design of the building as well as the layout of the site. Because they have certain requirements that have to be complied with even with the grading and slopes there.

Mr. Dudick asked Mr. Zee that for even the employees they wouldn't allow a further distance for parking.

Mr. Zee stated that was correct.

Mr. Dudick stated to Mr. Zee the limit of distance the proposed tenant would allow.

Mr. Gifford asked Mr. Lansing if the hotel has requirements for road signage in case they want a larger sign, because they said they have to have the sign on the main road.

Mr. Lansing stated as far as the signage on the building, that is the prototype for LaQuinta. As far as signage on the roadway they will have to discuss it with the applicant/developer and franchise.

Mr. Gifford asked Mr. Lansing if they will want a sign on Rt. 9 and if they have specs for that yet.

Mr. Lansing stated they do not. It will have to be looked into. As far as the zoning they are allowed to have a sign out on the main thoroughfare but it will have to be on the frontage. With all the buildings, the thought was to combine the signs into one sign instead of several signs along Rt. 9., and have one at the main entranceway and come back to the ZBA for a variance.

Mr. Peller asked Mr. Myers that the sign would not be considered an off premise sign if the subdivision goes through because they are retaining the 40 ft.

Mr. Myers stated to Mr. Peller if they put the sign in the 40 ft. it would not be an off premise sign. One sign for all three parcels which would then become an off premise sign which would need a variance.

Mr. Peller stated that was correct. He then stated to Mr. Lansing that it depends on their design. He agreed with Mr. Gifford that it would they may need to come back to the board for signage.

Mr. Gifford stated that the applicant probably knows what type of sign they want on Rt. 9.

Mr. Dudick stated that he would be surprised that anyone with keyhole lot with a large company and not want to have a sign off the road.

Mr. Dudick asked Mr. Lansing what is the distance from the eastern aspect of the property for the parking lot to the building where you can put the parking lot .

Mr. Lansing stated from the line to the parking lot is a 30 ft., we meet that setback.

Mr. Dudick stated to Mr. Lansing that the parking lot could move further to the east.

Mr. Lansing stated that the property lines are set close to the Town of Halfmoon/Town of Clifton Park lines. If it were to move, it would be an intermunicipal arrangement as far as setback.

Mr. Dudick asked Mr. Lansing if you could move the parking lot closer to Halfmoon.

Mr. Lansing stated that maybe it could be moved a couple of feet. It would still be within that 30 ft. setback.

Mr. Dudick asked Mr. Lansing If they were to move 5 ft. back would that give greater relief than to go up to the property line on the western part of the lot where you currently have a 0 ft. setback from the lot.

Mr. Lansing stated they could potentially push the whole thing back.

Mr. Dudick asked Mr. Lansing if that could be done without any hindrance to giving yourself off of the property line.

Mr. Lansing stated may squeeze the area where it angles in and adjust or lose a few parking spaces or make obtain a variance for that area.

Mr. Dudick stated to Mr. Lansing of just the concept of creating a minimal amount of variance necessary when the lots are going right up to the property line when on the other end you have 5 ft. of space you can use. Going to a 0 variance as opposed to having 5 ft. less request.

Mr. Lansing stated that he understands and that the lot for La Quinta does have a lot line in the area to separate it out from the building that lot line did push it back so they could maintain the greenspace for lot 1. We could move that lot line over and decrease the variance that we are asking for the parking. But then we would be in for a greenspace variance and we felt the greenspace was more important than an arbitrary line for finance purposes. That is why we positioned it the way we did.

Mr. Dudick asked Mr. Lansing on the southern portion the 40 ft. strip that creates the key of the keyhole, that it is currently part of the lot 2 if that will stay part of lot 2.

Mr. Lansing stated that it is proposed as part of lot 2 that does not exist right now.

Mr. Dudick asked Mr. Lansing that it still has a driveway for lot 1 so it will be used for lot 1, but considered part of lot 2 so that would be done with an easement.

Mr. Lansing agreed and stated that they do show an outline for a driveway easement conveyed to lot 1.

Mr. Dudick agreed and called for public comment.

Mr. Dudick asked Mr. Myers if the adjustments were necessary.

Mr. Myers stated that it might go from 30 ft. required variance to 28 ft. It may create other issues with the radiuses for the entrances to try to keep the whole configuration in the town. It is a minor modification the variances that were granted previously to make this fit. Other than the unusual 40 ft. leg that now goes out to make it a separate lot that was the only reason it was done because it was all one lot previously. The sign they will come back for in the future.

Mr. Dudick asked Mr. Myers that the 40 ft. strip would then be given an easement to the other lot and would not be a concern. Mr. Myers agreed and stated it was the same owner.

Mr. Dudick asked Mr. Myers if there were any concern with the requested variances. Mr. Myers stated no.

Mr. Dudick asked for comment from the board.

Mr. Peller asked Mr. Myers what his thought was that if the board approved this they are landlocking lot #3. Mr. Myers stated no, that the access is part of that lot. Mr. Peller stated that the access is proposed, that it is not in effect right now. Mr. Myers agreed. He then stated that the 40 ft. access will exist so you won't be landlocking, it will always have that access. You can put a driveway in La Quinta up that 40 ft. strip. That is the intent of the 40 ft. Mr. Peller stated that it would be speculative what Halfmoon would do. He then asked Mr. Lansing if he had any reason to believe if Halfmoon would not approve the access driveway easement. Mr. Lansing said not to his knowledge, that they went in for site plan review before. Mr. Myers than asked Mr. Peller if Halfmoon cannot approve a driveway easement that is not in their town. Mr. Peller stated it could stop at the line. That we are saying that we will approve it up to the line. He asked Mr. Lansing that he sees from the map that he moved it a little bit, that it is not exactly on the town line. Halfmoon is not obligated to let it continue into their town. Mr. Dudick then stated that we can't have say as to any zoning in Halfmoon, that we cannot zone based upon what Halfmoon would do. Mr. Myers asked we could speculate on what Halfmoon may or may not do as part of this. Mr. Peller asked Mr. Lansing that it was up to him, that he could not let this board do something that will affect the possibly of this parcel in another town without some direction from the other town that they are for it or not. If Halfmoon doesn't allow it, then how is lot 3 useful. Mr. Dudick asked Mr. Peller if Halfmoon were to deny access on this roadway wouldn't the property owner then have legal recourse against the town that denied access. Mr. Peller stated that the denial of access is not necessarily from a town road

into a town, it is from a private land owner. He can't address the regulations in Halfmoon. He brought up that maybe there should be a contingency that if the board goes through with this it will be contingent upon Halfmoon allowing access. We should not be put in a position where we are landlocking another parcel.

Mr. Zee stated that he has done a few projects in the Town of Halfmoon where they allow private driveways on subdivisions, that we received an approval on a project in the Town of Halfmoon in the past three months where access to subdivided lots was by private roadways. He feels that Mr. Peller is raising an issue that is for The Planning board to decide because they haven't granted the subdivision and they still have to appear before them. They are only here for the issue of the variances. If the town of Halfmoon decided to land lock that piece the applicant would have certain remedies available to it. Mr. Dudick stated to Mr. Zee that the property owners for lot 2 & 3 are the same. Mr. Zee said that was correct. Mr. Dudick stated could Halfmoon say that a person couldn't get to one part of their property to another if it wasn't two separate lots. Mr. Peller stated it is currently owned by the same person. Mr. Dudick stated that if Halfmoon denied access along that roadway and all legal remedies were not achievable then the property owner would not be able to subdivide the lot 2 & 3 and still have access because the town couldn't deny a person from driving across their own land on one lot. It would create the problem of subdivision.

Mr. Peller asked Mr. Myers that when this was approved previously it was two lots, one in Clifton Park and one in Halfmoon, the issue didn't come up because it wasn't applicable then. Mr. Myers stated that was not true. That it was three lots previously but the common driveway ended in a cul-de-sac at the town line. It could have been extended through. Mr. Peller stated ok. Mr. Myers stated that he felt this was more a Planning Issue. Mr. Peller agreed, but that there was no guarantee. Mr. Myers stated that if they want to develop it then they would need to run an egress through Clifton Park. Mr. Peller asked Mr. Lansing what they rezoned it that it was no longer R1 that is C1. Mr. Zee stated it was C1. Mr. Peller stated that per the applicant that Planning needs to address it. Mr. Zee stated that the remedies he has perceived from the applicant that if the Town of Halfmoon were to deny that access via that private driveway would be to come before the town of Halfmoon & Clifton Park to annex that land, since they are landlocking it and creating no value for it. They would be condemning the value of the property and the applicant would be coming back for an annexation of that piece into the Town of Clifton Park so the town would get an additional piece of property for commercial

development potential in it. Mr. Gifford stated to Mr. Zee that when this was discussed the applicant didn't want to do anything at this time. Mr. Zee understood.

Mr. Bloss asked if this subdivision plan is not approved than the variances would not work anyway. That everything is contingent on Planning with the approval of the subdivision. Mr. Peller agreed. Mr. Dudick asked if the applicant would agree to that. Mr. Lansing stated yes. Mr. Dudick stated if they were to approve it would be contingent upon Planning as well. Mr. Peller agreed.

Mr. Dudick asked for public comment. No one commented. He made a motion to close the public hearing. Mr. Gifford seconded the motion. All approved. Public hearing closed.

Mr. Dudick made the motion that the application be approved as submitted. The motion was seconded by Ms. Bagramian

Ayes: Bloss, Gifford, Dudick, Cifor, Bagramian Noes: none

Mr. Dudick stated that counsel made a good point with regard to the fact there is property that crosses into town line. When there is a lot that has multiple towns involved there should be communication with the property owner and all towns and municipalities of their property. It seems like a good fit for the property.

Mr. Cifor asked about SEQRA.

Mr. Peller stated that the board needs to make a motion for a negative declaration unlisted action, therefore we can go forward with the variances. Mr. Myers stated it has been short formed. Mr. Dudick and Mr. Peller agreed.

Mr. Dudick made a motion to make a negative declaration with regards to SEQRA based upon this would be a short form application. The motion was seconded by Mr. Cifor.

Votes based on a full environmental assessment form negative declaration with regards to SEQRA. Mr. Dudick made the motion for that to be into the record. The motion was seconded by Mr. Cifor

Ayes: Bloss, Gifford, Dudick, Cifor, Bagramian      Noes: none

The secretary read the legal notice as it appeared in the Daily Gazette on August 13, 2015

- 2) An application from Peter Voss for a use variance from Section 208-97B to rebuild dwelling on pre-existing, non-conforming parcel. Structure will increase from 1188 sq. ft. to 1668 sq. ft. Variance may be required for septic system which must be minimum of 100' from high-water mark of Ballston Lake.**

**Property is located at 111 East Side Drive, Ballston Lake, NY 12019 (Permit #81043)**

The application was presented by Peter Voss owner of 111 East Side Drive. He stated this is an application to rebuild dwelling on pre-existing, non-conforming parcel at 111 East Side Drive, Ballston Lake, Ballston Lake.

Peter Voss explained that home is 95 years old. When he bought the property he started remodeling and has been remodeling the interior for 15 years. He found out there are some structural problems with the foundation. He had a person come in and take a look at the property and give him some advice as far as what he should do with it and he said the best thing to do would be to demolish what he had there and build something new because of the structural problems with the foundation. There is also a problem because the structure is so close to Ballston Lake.

Mike Dudick asked Mr. Myers about this because of situations like this on East Side Dr.

Mr. Myers stated that he had extensive conversations with Mr. Voss about this property. One of the concerns was the septic system. The other concern was that you can't increase a non-conforming use without a use variance, which is why he is here. A 1200 sf. ft. house as it exists is small by current standards. Mr. Voss would like to increase the structure minimally by 400 ft. or so. They also had a discussion about the septic system. Everyone is hoping there will be a sewer system there. Mr. Voss will be putting in a holding tank in and giving him a maintenance contract to take care of his sewage until public sewer is available. It has been acceptable in other cases on east side Dr. for lack of ability to do anything else with the property, they have done this in a couple of spots. As long as there is a legal contract he will accept it, he does not feel this is a big issue. This is one of the larger lots on East Side Dr., but it is non-conforming because of the septic issue. If public sewer comes through the lot size requirement becomes

much less according to the code, which is currently 40,000 and would go down to 20,000 with sewer.

Mr. Bloss asked Mr. Myers how big the lot is. Mr. Myers state it is about 28,000 to 30,000 sq. ft. It could become conforming with the sewer in.

Mike Dudick asked Mr. Myers about the items discussed with regards to the use variance. Mr. Myers states the house can't be saved due to the numerous issues Mr. Voss has run to. He has owned the property for some time, and not being able to make it a habitable structure there would create a financial hardship which is not self created and it is an old house. It will not create an effect on the neighborhood.

Mr. Dudick asked Mr. Voss how long he had the property. Mr. Voss stated 34 years. Ms. Bagramian asked Mr. Voss if this was his primary residence. Mr. Voss stated yes.

Mr. Dudick stated that the issue he sees is that the alleged hardship has not been self-created. A 95 year old house that Mr. Voss owned for 30 years is not self-created. Mr. Myers stated that it has been there. Mr. Dudick stated time has taken its toll on nearly 100 year old structure. He doesn't think it will alter the essential character of the neighborhood. The alleged hardship is unique and doesn't apply to substantial course to the neighborhood.

Mr. Myers stated that many people think they can buy these properties and save them.

Mr. Dudick stated he does not have an issue with reasonable return. He asked Mr. Voss if he has any financial evidence or paperwork that the property would not be inhabitable without a restructuring of the property. Mr. Voss stated no.

Mr. Myer stated that if Mr. Voss could provide records of the repairs he has done to date to salvage what is there unsuccessfully. Mr. Dudick stated that would meet the requirements for him to see if there was evidence of financial encumbrance for repairs that has been described as too much. He doesn't see any competent financial evidence. There is no actual evidence being presented.

Mr. Voss stated that he is not sure what he would need to come up with to provide financial evidence. Mr. Dudick asked Mr. Voss if he has doing on any repairs on the property. Mr. Voss stated that he has doing repairs for 34 years. Mr. Dudick asked Mr. Voss if he had any receipts. Mr. Voss stated he had many receipts. He had a contractor come in and say the foundation problem is a big problem. Mr. Cifor added if he could get that statement from that contractor. Mr. Dudick agreed. He added he needs something tangible to describe the financial

encumbrance, something of evidence that the foundation would no longer support the current restructuring of the house. Mr. Voss agreed

Mr. Myers stated if that could be a contingency of the approval. Mr. Peller agreed. He then asked Mr. Voss if he could provide that evidence within 30 days. Mr. Voss agreed. He then stated he was trying to demolish what he has there now as soon as possible. He is hoping to construct something by January. (The letter was received and put in the file)

Mr. Peller asked Mr. Myers if he could issue a demolition permit. Mr. Myers stated he could grant the demolition permit without the variance.

Mr. Voss stated he could contact the remodeler that came to look at the structure give him a statement and then submit it to the board. Mr. Peller agreed and asked Mr. Voss to make sure it is on the remodeler's letterhead with his professional opinion and to submit it to Steve Myers. Mr. Voss agreed.

Mr. Dudick asked for the boards' opinion if the letter is sufficient for financial evidence. The board stated that was fine. He then stated to Mr. Voss that as far as demonstration of competent financial evidence that cannot realize a reasonable rate of return substantial as shown by confidential evidence, that letter you can provide to Mr. Myers. Mr. Voss agreed to that.

Mr. Dudick then asked for public comment. No one commented. He then made a motion to close the public hearing. Motion was seconded by Mr. Bloss. All approved. Public hearing closed.

Mr. Dudick asked Mr. Myers if he had anything else to add. Mr. Myers stated no.

Mr. Gifford made the motion that the board accepts this application as submitted as long as Mr. Voss submits a letter from the remodeler that it is better to tear the house down than put any more money into it. Mr. Dudick stated that it would better to state that the current foundation would not support a rebuilding of the structure, that it would be unsafe to keep the current structure as a contingency. Mr. Gifford agreed. Mr. Voss agreed.

Mr. Dudick asked the board to accept the application with a contingency of a letter stating the regards of the current safety of the rebuilding on the current foundation.

Ayes: Bloss, Gifford, Dudick, Cifor, Bagramian, Noes: none

The secretary read the legal notice as it appeared in the Daily Gazette on August 13, 2015

**3) An application from Susan Hoffman for variances to expand retail store. 1) Section 208-50.3B: Front yard setback required = 30', 4' available, variance required = 26'. 2) Section 208-50.5: 15' landscape buffer required, 4' available on N side, 0' available on S side, variance required = 15'. 3) Section 208-50.2B: 30,000 sq. ft. max building area required, proposed 13,315 sq. ft. expansion results in 30,285 sq. ft. (town records) or 30,389 sq. ft. (county records) variance required = 389 sq. ft. Variance may be required for greenspace. Property is located at 1762 Route 9, Clifton Park, NY 12065 (Permit #81044)**

Mr. Gavin Vuillaume from Environmental Design representing the applicant stated that this project was last expanded back in 2011. There was a 5,000 sq. ft. building addition which was the most recent change to that site. There was a restaurant at the front of Wits End. That restaurant has been removed. For the last 4 to 5 years there has not been any activity there. The applicant would like to make an expansion of the Wits End boutique. The building would be expanded 13,300 sq. ft. Ms. Hoffman would occupy 9,000 to 10,000 sq. ft. The site plan was presented to the Planning Board and they were fine with the addition and the associated parking and sidewalks. They will need a couple of variances for some of the existing conditions. The first one will be for the 15 ft. landscape area. The buffer is maintained along the side yards. There is an existing access road that runs right down the middle of the one side yard so there is no room for landscaping there. On the North side there is an existing condition where there is a service drive that runs parallel to the side yard and it is very limited to being able to provide the 15 ft. there. The second variance is for the existing parking along the front of the parcel which was associated with the restaurant and they will keep the parking where it is. They will need a

variance for that existing condition. The third variance is for a clarification based on what the actual size of the building is. They measured the building as 16,685. Mr. Giullme asked Mr. Myers that the town has a record of 16,900. Mr. Myers stated yes. The county has a bigger number of about 17,000.

Mr. Cifor asked about Mr. Vuillaume about the greenspace requirements.

Mr. Vuillaume stated that they will meet the 35% greenspace.

Mr. Myers stated the stormwater area in the back qualifies as greenspace. He then asked Mr. Vuillaume if they wanted to eliminate the last variance and stay within the 30,000. Mr. Vuillaume stated that it was up to the board if they want to approve it. Mr. Myers state that the board doesn't want to approve any more variances than they have to. Mr. Vuillaume agreed to eliminate the last variance.

Mr. Peller asked Mr. Vuillaume if the applicant intends on having another tenant.

Mr. Vuillaume stated that the applicant does intend to have another tenant along the front of the building. There will be a couple more doors to provide access to that tenant.

Mr. Peller asked Mr. Myers if Planning was aware of this. Mr. Myers stated that this was the first he had heard of it, he was not sure if Planning knew. Mr. Vuillaume stated that the applicant will want to use the whole building.

Mr. Peller stated that he was concerned about signage. Mr. Vuillaume stated that the board did grant a variance for signage at this site, a location of an LED sign at the front corner of the entrance on the site plan. He agreed with Mr. Peller that if there are additional users, there will be an additional sign variance that will be needed.

Mr. Dudick asked Mr. Vuillaume about the LED variance was approved for which lot. He thought the Parkwood restaurant had a separate lot. Mr. Vuillaume stated that those were two separate lots, but they were combined into one. Mr. Dudick asked Mr. Vuillaume which lot. Mr. Vuillaume stated the restaurant lot.

Mr. Myers stated that Mr. Vuillaume provided proof that the two lots were connected at the time of the variance legally. Mr. Dudick agreed. He then asked if the variance was granted on the restaurant lot which no longer exist as a separate lot does the variance continue on for the physical space even though there is no lot there. Mr. Myers and Mr. Vuillaume both stated that it runs with the property. Mr. Myers stated that they were legally connected properties. Mr. Dudick agreed.

Mr. Dudick asked Mr. Myers to explain the 30,000 sq. ft. maximum building area issue and how Clifton Park had the smallest of the three numbers. Mr. Myers stated that he asked the applicant if he wanted to remove the third variance. He could do that by assuring he stayed at

30,000 or below, if he provides him with actual dimensions of the building that shows that the addition will keep it 30,000 or less than it is acceptable. Mr. Myers stated that something needs to happen with the town and county numbers to get the correct one. Mr. Myers stated that as soon as Mr. Vuillaume provide that to him he will forward it to the proper departments. Mr. Dudick agreed.

Mr. Bloss asked Mr. Vuillaume if this will be a two story structure. Mr. Vuillaume stated it will be one story.

Mr. Myers stated that when Wits End put the last addition on, they got halfway through and decided they wanted a basement in there. It wasn't in the first plan that was submitted it was added halfway through. Mr. Dudick asked that would be the problem with that. Mr. Myers stated that it would be additional square footage.

Mr. Peller stated that it counts towards the square footage.

Mr. Dudick asked in the 30,000 the basement is included. Mr. Vuillaume stated that it does not that it is not rental space it is all storage. Mr. Myers agreed and added that the building was already being built and they decided they wanted to put a basement in. This was more of a construction issue not a zoning issue at the time. Mr. Dudick agreed.

Mr. Dudick asked the board for any comments or questions.

Mr. Dudick asked for public comment.

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

Mr. Dudick asked for any more questions from the board. He asked Mr. Myers for any questions. Mr. Myers stated no.

Mr. Dudick made a motion to approve the application as amended with two variance requests. The motion was seconded by Mr. Gifford.

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

The secretary read the legal notice as it appeared in the Daily Gazette on August 13, 2015

**4) An application from Carmina Miller for variances for a 12' x 20' single car garage. Section 208-12A requires 80' front setback; lot is 96' deep, proposed location puts rear of structure at 80'; Variance required = 20'**

**Property is located at 36 East Haystack Road, Clifton Park, NY (Permit #81045)**

The application was presented by Carmina Miller, the owner of the property at 36 East Haystack Road. She stated she has two cars and has a one car garage she would like to put in a one car garage separate from the town house. The only space she has to do that would be with a 20' variance.

Mr. Dudick asked for comments and/or questions from the board.

Mr. Peller asked Ms. Miller if she has any covenants or restrictions which would prevent this. Is there something in her deed that says this is acceptable or is there a homeowner's association. Ms. Miller stated no. Mr. Peller stated that he understood but asked her to check and make sure that there is no restriction on doing something like this because it's a townhouse.

Mr. Peller asked Mr. Myers if he knew of any restrictions. Mr. Myers stated he knew of several townhouses there with accessory structures. Mr. Peller stated that he understood.

Mr. Cifor asked Ms. Miller what was on Lot #38, it looks like around the circle from where the garage is going to be. That the house is on #36 and then it says lot #38.

Ms. Miller stated that her townhouse is on the end and then there is her yard and then the townhouses start again. Mr. Cifor agreed

Ms. Bagramian asked Ms. Miller if she checked with her neighbor on #38 to see if they were ok with it. Ms. Miller stated she had and that they were ok with it.

Mr. Bloss asked Ms. Miller if there was a wooded area between along the property line. Ms. Miller stated the woods go behind their townhouses and around and extend behind the other set of townhouses so there is just her yard between her townhouse and #38.

Mr. Dudick asked for public comment.

Mr. Frederick Bloom of 34 East Haystack stated that his concern was from his tenant. One concern he had was that the plot plan that was submitted was not informative of where the placement of the building is and its dimensions. The other concern is there that is not shown on the plot plan is that there is a fairly substantial shed that is built between the house and the proposed garage. He is not sure if this shed has met the town's requirements without having an inspection. He has noticed an external light on this shed which means it must have electrical power. He is concerned there is electricity run without a permit or inspection. His tenants in order to get to the rear of their property to take care of their landscaping have to go around Ms. Miller's end unit to get there with a lawnmower. He is concerned if there is any electrical problems that she may be running across with her lawnmower. Other than that he feels it has minimal impact on observation, it is a beautiful lot and would hate to see it cut up, but will have minimal effect financially on the valuation of his property. He just wanted to bring that to the board's attention.

Ms. Miller stated that the area that she wants to put the garage, there was a shed there that she took down, it was there when she moved in. She has lived there 9 1/2 years and she has tried to improve the property. The other tenants do come through her yard, but that she doesn't mind.

Mr. Dudick asked if she allows them to do that so that they can bring their lawn mowing equipment instead of going through their townhouse.

Ms. Miller stated that both ends have a variance of some sort. Mr. Dudick corrected her stating an easement. Ms. Miller agreed it was an easement.

Mr. Dudick asked that she is required to let them have access to their backyard. Ms. Miller stated that was correct.

Ms. Miller stated that the area that she wants to put the garage is over as far over as she can get it so that it won't block any access through. It will be set in the back corner. Mr. Dudick agreed.

Mr. Cifor asked Ms. Miller that there is no shed today just a garage.

Ms. Miller stated that the old shed was taken down, that is where she wants to put the garage. She did put up a shed towards the woods across the living room.

Mr. Dudick asked Ms. Miller how big that shed was.

Mr. Myers stated that the shed wasn't big enough to require a permit.

Ms. Miller stated that when she purchased the shed she had to call town hall and was told she didn't need a permit.

Mr. Myers asked Ms. Miller if the new garage was going to have electricity.

Ms. Miller stated it was so that she could have an electric garage door opener.

Mr. Myers stated that will be part of the permit required. You will need a building permit for the new garage including electricity, then we can check for electricity for the other one at the same time.

Ms. Miller stated that was ok.

Mr. Dudick asked for public comments

Mr. Dudick asked Mr. Myers for any comments

Mr. Myers stated that it is a very unusual situation as to where she can put the shed because the access to the road is limited up front. This is the best configuration.

Mr. Dudick asked Mr. Myers that putting on an attached garage is not very viable.

Mr. Myers stated that would not be very viable, it would block access to around the side for the neighbors so this variance would be a viable option.

Mr. Bloss asked Ms. Miller if she was going to do an Amish shed with a wood frame and bottom.

Mr. Myers stated that he discussed this with Ms. Miller. He suggested concrete and/or gravel for the bottom so the car will not go through.

Ms Miller stated that she was going to have concrete put down.

Mr. Dudick asked for Public Comment. There were none.

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

Mr. Dudick made a motion to close the application as submitted. The motion was seconded by Mr. Gifford.

Ayes: Bloss, Gifford, Dudick, Cifor, Bagramian Noes: None

Mr. Dudick made a motion to look at the draft meeting

The next meeting is September 15, 2015

Mr. Dudick made the motion to adjourn.

Mr. Dudick stated in review of the last minutes from the last meeting the notice of decision, was an issue with the negative declaration was not made with the notice of decision but was something that they had seen. He would like to have the minutes reflect that there was a negative declaration made under SEQRA.

Mr. Cifor stated that they voted on that separately. Mr. Dudick agreed.

Mr. Myers stated that it was included in the minutes.

Mr. Dudick stated it was included in the minutes, but it wasn't included in the Notice of Decision. Mr. Myers stated that was correct.

Mr. Dudick stated that he would like to rectify that so it was clear that it was part of our process that we did.

Mr. Dudick made a motion that he looked at the draft minutes from July 21, 2015 meeting and he also looked at the Notice of Decision prepared by our secretary Mrs. White. I believe we filed in the clerks' office in comparing the minutes on the SEQR motions and Notice of Decision since he did not see all the reference to the all the motions actually made. He would like to reflect that the minutes tonight to reflect that the motion was included in the decision of the board action as an unlisted action and acknowledgement and acceptance of the short environmental impact that was prepared by Mr. Myers from the Building Department and the issuance of the negative declaration when the SEQRA was made.

Mr. Dudick asked Mr. Myers if they vote on this as a separate issue.

Mr. Myers stated to Mr. Dudick that they need to vote to modify the notice of decision to reflect on what he just said.

Mr. Dudick stated he would like to call for a vote to modify the previous Notice of Decision which was previously prepared for the Price Chopper Plaza at 1028 Rt. 146. Mr. Cifor seconded the motion.

Ayes: Bloss, Gifford, Dudick, Cifor, Bagramian      Nones: none

Mr. Dudick called for a vote to approve the minutes from the last meeting on July 21, 2015 which was reviewed. All approved. One abstention from Mr. Gifford.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mr. Gifford. The meeting was adjourned at 8:45 pm.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Cristi Shuhart".

Cristi Shuhart

Acting Secretary

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