

Town of Clifton Park

One Town Hall Plaza
Clifton Park, New York 12065
(518)371-6651
Fax: (518)383-2668

Zoning Board of Appeals



Zoning Board of Appeals

September 15, 2015

Present: Michael Dudick, Chairman, Denise Bagramian, Michael Bloss, Randy Gifford, Tony Morelli

Also Present: Tom McCarthy, ZBA Counsel
Steve Myers, Director, Building & Zoning

Absent : Jerry Cifor, Mario Fantini, Chris Lemire

Mr. Dudick called the meeting at 7:10 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 regardless of the number of members present. There are five voting members present tonight so the applicant must receive four out of five yeas 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 has front facing Rt 146 Variances needed: 3 variances

- 1) 208-89 -130' bldg. front to centerline req; 117.5 avail; 12.5' variance required.
- 2) 208-38C - 80' to front prop line; 50.1' avail, 30' variance required.

- 3) 208-38C - 30' front parking req; 4.8' avail, 25.2' variance required (covers Vischer Ferry Road side)

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

- 1) 208-89 - 130' bldg front to centerline (VF Road) reqd; 49.6' avail, 80.4 variance required.
- 2) 80' to front property line req; 15.9' avail, 64.1 variance available.

General variances for plaza – 4 variances

- 1) 208-38G – Greenspace required 35%; 15.5% shown on print, 16.6% noted in text; 24.8% existing, 19.5% variance required.
- 2) 208-39 – Entrance/exit-1 per establishment- two proposed for Rt 146.
- 3) 208-40 – Buffer 10' required - east side 6' avail, south side 2.5' avail; north and west sides have 0' available in places.
- 4) 208-99B Parking needs 378 spaces including 8 handicapped, proposes 322, 56 space variance required.

Per allowed uses in Section 208-37 shopping center subject to provisions of Section 208-98 variances required by that section as follows: 7 variances

- 1)208-89A 10 acres required, 7.656 acres avail, 2.344 acres variance required.
- 2) 208-98E – 375 spaces required, 322 proposed.
- 3) 208-98G – 100' setback for buildings from all property lines

Price Chopper 31' = 69' variance.

Rite Aid 50.1 = 49.9' variance

Retail 15.9' = 84.1' variance.

- 4)208-89G – Parking shall be 50' from property lines.

Retail/Price Chopper 11.4' = 38.6 variance.

Rite Aid = 4.8' = 45.2' variance

Total variances required = 16

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

The application was presented by John Lapper, attorney for the applicant. He stated that on July 21, the board granted the variance requests. They had reduced some of the variance requests based upon what the board had asked them to do over the course of the hearings.

The board looked at all the standards required for the variances. The record is full with the reasons for the variances. The application requires them to go through the balancing test of town law and code, and the application form requires that the standards for area variances be addressed. He believes the Board did that when they passed the variances with amendments. Mr. Howard Carr and Whitney Lane Holdings has challenged the approval of the variances, they felt it was best to come before the board to make sure there is a complete record and to

reaffirm the explicit rationale for the granting of the variances. Previously, the applicant had made a request to the Town Board to rezone the area on the Northwest quadrant of Rt. 146 & Rt. 146A to build a new center, but comments from the Town Board and the public were made that Clifton Park Plaza might become empty and destroyed.

Mr. McCarthy asked if that feedback was from the Planning Board

Mr. Lapper stated it was the Planning and Town Board. Those issues were brought up by the Planning Board this April for a recommendation. It was also the reason the Town Board denied the rezoning at that time. The plaza is an older plaza that needs to be redeveloped. It does not meet any of today's current standards. It is a redevelopment project. There are constraints with the entrances, tenants, stormwater and site plan regulations. With the approval of these variances the project will improve the environmental and site conditions, traffic and pedestrian use. The goal is to have an efficient design that works for the site, tenants and town and implement stormwater facilities, landscaping and pedestrian access. They met with the Planning Board after the variances were granted regarding access and site issues and the Board was pleased with the direction it was going in.

Mr. Lapper proceeded to read the variances as described on the application. After the second meeting the board asked what other changes could be made. He explained at that time there was a debate over the access with the carwash. As a solution to that, the plaza will get additional land in the back of the carwash which increases greenspace and in return improved the access to the carwash. In addition, Price Chopper reduced their footprint by about 2,000 sq. ft. and reiterated why they met criteria for area variances as a result. The current variances are less than where they started. This will be a positive change for the neighborhood. There will be landscaping and architecturally improved buildings with full pedestrian and vehicular access. This was similar to the variances granted for Cumberland Farms in terms of the setback which is farther than where they are. He reiterated that stormwater improvements will directly aid the Dwaaskill and reiterated that the constraints come from the fact that this is an existing site.

Mr. McCarthy asked Mr. Lapper if he was referring to the factors taken from Section 267B of the New York State Town Law. Mr. Lapper stated yes.

Mr. Gregg Ursprung of Bergmann Associates went over the improvements to the landscaping both interior and around the perimeter of the project. They are proposing landscaping on the interior portion of the project on all the landscaped islands. They are working with DOT &

county DPW to provide landscaping in the right of way along Route 146 as well as along Vischer Ferry Road. He stated the landscaping will actually occur both on the property and in the highway right of way. Within that right of way they are also providing a sidewalk along Vischer Ferry Road for pedestrian access. Also, currently stormwater runs off untreated into the Dwaaskill which is an impaired water body. The project will provide water quality treatment so that if any water enters the Dwaaskill it will be of much higher quality because of the improved stormwater infiltration. Perculation tests have been done on the site and the soil is in good condition to accept stormwater runoff and infiltration into the ground. They provided reorganizing of the parking and internal traffic circulation. There is also an improvement to the ingress/egress along Vischer Ferry Road. He stated the current driveway entrance is about 80 feet wide. They will be making an entrance one way in with left turn and right turn exits. Then two lanes out of the plaza right or left hand turns, two separate lanes for exiting. For the eastern entrance on Route 146, there would be one lane coming in and two lanes exiting, one going left and one going right. From the western entrance on Route 146 there would be one lane in either from left or right and the exit lane would be a right hand turn only. He stated the proposed retail building with respect to the canopy for the drive thru on the building is aligned to the canopy of Cumberland Farms gas island. The Rite Aid building and Price Chopper are well within the set back from Rt. 146.

Mr. Lapper stated he would like Ms. Wendy Holsberger to give her report of the traffic study.

Wendy Holsberger from Creighton Manning Engineering stated they completed a study based on standard traffic engineering procedures. They looked at the operation of the signalized intersection of Rt. 146 and Rt. 146A with the additional traffic from the expansion of the plaza. They looked at the increase associated with the increased square footage and found 161 pm peak hour trips and 200 Saturday peak hour trips. Those trips are distributed onto the roadway network so not all of those trips go through that signalized intersection. After the distribution they counted the driveways to get a feel for how the vehicles are distributing into and out of the

site to use those distributions to take the new traffic and distribute it onto the roadway network. So where there was an increase of 161 to 200 trips, there was not more than 36 additional trips on any approach to that signalized intersection once the trips were distributed. The results of their analysis indicated that there was going to be some minor increases in vehicle delay at that signalized intersection. Their recommendation is to change some of the signal timings to help minimize those small increases in delay. They didn't find that the improvements will significantly increase delays at the intersection. They looked at the site driveways which are unsignalized and operated adequately. They did receive comments from the Planning Board and

the MJ Engineering asking for more detail and they are responding. In the record of the Planning Board last week they both indicated that based on their conversations they were comfortable with how they were responding to those questions that they had.

Mr. McCarthy asked Ms. Holsberger whether based on their analysis, there was any decrease in the overall level of service at the intersection based upon the project.

Ms. Holsberger stated that during the pm peak hour that intersection did drop from a level of service from a C to a D which was associated with the minor increase in delay. They had asked DOT for an exception to that increase and asked for the town's input to help lessen the impact for that increase for future improvements. The increase they have doesn't show the need for them to do anything as far as impact.

Mr. McCarthy stated ok, that they expect to be in conversation with the Planning Board relative to some mitigation for long term.

Ms. Holsberger stated yes, that was one of the comments they had discussed with Planning Board. Also, the change in the signal timings they would need to coordinate with DOT.

Mike Dudick asked for comments from MJ Engineering.

Jaclyn Hakes, Director of Planning Services, MJ Engineers stated they have been the Town's designated engineer since 2011. They provide technical guidance and input with regards to SEQRA, subdivision regulations, site plan, storm water, & SWPPP items.

Mr. McCarthy asked Ms. Hakes for an overview on her background, education, training and experience. Ms. Hakes replied that she has been a professional planner for over 15 years, AICP

certified planner, currently the director of Planning Services for MJ Engineering. She has served as a consulting and municipal planner providing technical support to planning and zoning boards throughout the region.

Mr. McCarthy asked Ms. Hakes if she routinely reviews land use planning applications under the state environmental quality review act. Ms. Hakes stated she does.

Mr. McCarthy asked Ms. Hakes if she provides opinions with regards to the classifications of various actions and applications. Ms. Hakes stated yes.

Mr. McCarthy asked Ms. Hakes if she has an opinion as to the classification of the application for the area variances before this board tonight.

Ms. Hakes recommended that this be classified as an unlisted action. The following is the process that they utilized to get to that conclusion. Under SEQRA an action can be a type 1, type 2, or unlisted action. The SEQRA handbook provides guidance with regards to applying SEQRA for area variances. Certain area variances are classified as type 2 actions meaning there is no SEQRA review required. Type 2 actions including granting of individual setback lot line variances, granting of area variances for single, two family and three family residences, does not apply for this application before the board. They took a look at the type 1 list of actions, in part 617.4 of the SEQRA regulations and none of those actions appear to apply to the application before the board. Since it has not been identified as a type 1 or type 2 action, the action before the board as they would recommend it is an unlisted action.

Mr. McCarthy asked Ms. Hakes if that is right out of section 617.2 under the definitions section. Ms. Hakes stated yes.

Mr. McCarthy noted that If these variances are upheld tonight, the project moves to the Planning Board to conduct site plan review. For an unlisted action such as this, does she have an opinion as to whether an uncoordinated review is permitted.

Ms. Hakes stated yes. She went on to explain that under the SEQRA regulations for unlisted actions a coordinated review is not required. Mr. McCarthy then asked if she had an opinion if an uncoordinated review is appropriate in this case.

Ms. Hakes stated yes, that it would be appropriate for each of the involved agencies to do an independent review of the application before them. She stated that under the SEQRA handbook it indicates that coordinated review is only required when the unlisted action may have a significant adverse environmental impact or when a conditional negative declaration occurs. Based on previous actions of the Board this does not seem to be the case here.

Mr. McCarthy asked Ms. Hakes if she reviewed the short EAF Form that was filed. Ms. Hakes stated yes. Mr. McCarthy asked Ms. Hakes if she had an opinion on its accuracy and completeness. Ms. Hakes stated that based on their review and information provided it does appear to be complete and accurate. Mr. McCarthy asked Ms. Hakes if she believes the short form is sufficient to support this application.

Ms. Hakes stated yes that under the SEQRA regulations the short form is permitted as part of an unlisted action.

Mr. McCarthy asked Ms. Hakes if she reviewed the two separate notices of decision that were earlier issued on July 21, 2015 and one that was just amended. Ms. Hakes stated she had.

Mr. McCarthy asked Ms. Hakes if she found the Board had issued negative declarations on this application previously. Ms. Hakes stated yes.

Mr. McCarthy asked Ms. Hakes for her opinion on the appropriateness of the negative declaration in this instance.

Ms. Hakes stated that while it is obviously a Board decision. It is her opinion that it is appropriate.

Mr. Dudick asked for public comment

Mr. Andy Brick, Attorney for Whitney Lane Holdings, LLC, the adjoining property owner, stated that he reviewed the entire file and the application and testimony presented doesn't meet the elements in the statutory test for an area variance. All the benefits stated all the improvements stated by Mr. Urbsprung can be conducted tomorrow. They are not dependent upon the variances being submitted. When they speak to the statutory tests you are required to apply, they consistently refer to the project not being financially viable in the absences of the variances being obtained. On page 4 of the application it states that in order to make the project

financially viable. On page 5 of the application they reference the potential for significant economic injury. They state they can't do more parking because that would require building square footage to be reduced which would generate insufficient return to cover redevelopment costs. In feasible alternatives that can be pursued, they state a reduction in building square footage and/or parking to meet set back requirements existing code setback requirements would make the project financially not feasible. He feels the role of this Board is to not apply

and grant variances to make projects financially viable and benefit them. He feels these variances are only required to keep the existing Price Chopper open while they rebuild. He feels no one has asked the applicant how many of these variances would be required or be reduced if the building is demolished first. The footprint of the building could change and these variances could be eliminated or significantly reduced which is a feasible alternative. He also feels another feasible alternative would be to rehab the existing building which has not been investigated. He feels the applicant has never sufficiently addressed that element of the area variance test that there are other viable opportunities, other methods that they can achieve their objectives without the need for the level of variances they are requesting. He feels they are doing this to continue to make money by keeping the Price Chopper open. If it is demolished, and the footprint of the existing building is changed and the design is restructured, in that instance the variances could be eliminated or reduced.

Mr. Brick passed out to the Board an article from the Capital District Business Review dated 4/15/15 and stated where a principal of the applicant stated that it is actually more expensive and extensive a project than just taking the building down. He feels this creates an inherent conflict in the application, since without the variances the project is financially not feasible. He feels the applicant should show a plan that takes the building down and how many variances would be required then.

Mr. Dudick asked Mr. Lapper if he would like a rebuttal. Mr. Lapper stated yes.

Mr. Lapper stated that the test that has been discussed is a benefit to the applicant versus the burden on the neighborhood or community. There is no requirement that there not be a financial benefit in the balancing test. That is not the town law test for an area variance. It is a balancing test to benefit versus the burden. There is a benefit to the applicant to make this a brand new center which would benefit the town also. In order to do the stormwater, they have to rip up the parking lot and move the buildings.

Mr. Lapper then stated that Mr. Brick was incorrect in his statement about Price Chopper being open. Price Chopper will have to be closed in order to redevelop. They're trying to be as efficient as possible and only have Price Chopper closed for only six months. This was never about keeping Price Chopper open. He stated it is too big a building. It is not feasible with all the site work and there is not enough room to keep the building there and build a new one at the same time. He feels the neighboring commercial property is suing because they are upset they did not get the Price Chopper lease. He introduced Steve Powers to speak to that point.

Mr. Steve Powers, Vice President of Nigro Companies stated that they started on the northeast quadrant of Route 146 & Route 146A on a new project and we heard the Town and Planning Board and the neighbors to the West and to the North that they didn't want that green area to be developed. They wanted to have a redevelopment of the existing shopping center. They thereafter approached the existing owner of Clifton Park Plaza and asked if they would be willing to sell us this property to redevelop the property and accommodate Price Chopper and the other tenants. Clifton Park Plaza has owned this property since 1980's. They have been working with Nigro Companies for a year or so on plans to redevelop and improve the center. When they presented that plan, the neighbors to the West, Whitney Lane Holdings, LLC. felt they should have gotten the Price Chopper deal. When the attorney for Whitney Lane Holdings submitted their letter to the town, opposing the variances, he received a call from their managing agent Howard Carr saying he will drop the lawsuit if you bring Price Chopper over to us at North Country Commons. Both Nigro Companies and Price Chopper did not want to do that. If they are talking about economic impact, it is totally on their own. Nigro is trying to accommodate Price Chopper, Rite Aid and the existing tenants of Clifton Park Plaza by the redevelopment of the center, plus create a brand new center for the Town of Clifton Park. He believes that redevelopment is the right thing for the town.

Mr. McCarthy confirmed with Mr. Lapper that the Board needs to focus on the five factors that are in 267B(3)b, as that is the legal standard that applies. Mr. Lapper agreed, stating that they are addressing the balancing test.

Mr. Morelli asked Mr. Lapper if under the current plan Price Chopper will close for six months. Mr. Lapper stated yes. Mr. Morelli then asked Mr. Lapper if they completely demolish the building what will that result in further as far as Price Chopper being closed.

Mr. Lapper stated that it will be demolished. The six months will be the time it takes to get the old building down and the new one up.

Mr. Morelli asked Mr. Brick about his assertion that demolition would result in less variances required, and if there was a complete demolish of the building what kind of impact that closure would have.

Mr. Brick stated that one of the elements of the required test is, are there other feasible methods to obtain the same goal. If the existing building is knocked down first, then a redesigned site plan will eliminate or reduce the variances being requested. Another alternative is not knocking anything down and rehabilitating the existing building and improving the stormwater and landscaping, all the benefits that they listed can be obtained on site, they are not tied to the variances that are being requested.

Mr. McCarthy asked Mr. Brick if he agrees with their right to file the application for the variances and have those applications judged under 267B.

Mr. Brick stated yes. They have the right to have this Board apply the statutory test to and go through each and every element to determine if it is reasonable for this Board to grant these variances. The record of this proceeding, the filed record in the office and the all the testimony so far doesn't support all the elements of that test and it wouldn't be reasonable for the Board to grant these variances that is the basis of the lawsuit.

Mr. Dudick asked Mr. Brick to clarify if he was representing himself in this protest or someone else in this proceeding. Mr. Brick stated his client is Whitney Lane Holdings, LLC.

Mr. Dudick asked Mr. Brick is that was the plaza to the West. Mr. Brick stated correct. Mr. Dudick asked Mr. Brick if he knew when that plaza was built. Mr. Brick stated he did not. Mr. Dudick asked Mr. Brick if he knew if that plaza was older or newer than the Clifton Park Plaza. Mr. Brick stated that he did not know, that he has never been retained by them to obtain any variances or site plans.

Mr. Dudick stated to Mr. Brick that we are discussing as an option of refurbishing the current Clifton Park Plaza that goes back to the 1950's, a building that is 60+ years old. He then asked Mr. Brick if he agreed that sometimes a building gets so old that refurbishing isn't the best alternative in certain cases. Mr. Brick agreed.

Mr. Dudick asked Mr. Brick while he is talking about those being options. Would it be possible that the owners of the property knowing the cost of maintenance have maybe gone into looking at refurbishing or is there an assumption or knowledge that they haven't looked into refurbishing as an option. Mr. Brick stated he did not know. He then stated that there is nothing in the record before the Board either way on any alternatives.

Mr. Dudick referred to Mr. Lapper's earlier statement that the property has in the past been refurbished. So that is an option that was already explored by the owner. Refurbishing is an option which has been looked at and done according to the application that was presented and on the record now.

Mr. Brick agreed that it was now, but it wasn't on the record when he was in the office looking at the file and it was not in the file.

Mr. Dudick said that the rehearing of this application was to try to satisfy some of the concerns that were expressed which has brought him to the point of the lawsuit pending. He stated to Mr. Brick that while he may not have known that refurbishing had been looked at, he now knows that.

Mr. Dudick asked Mr. Brick if he had an engineer look at other possible options for relocation.

Mr. Brick stated that his client isn't obligated to look at the other options. They are currently in litigation regarding the decision that the Board made. That litigation is based upon primarily the fact that the record of proceeding doesn't meet the statutory elements of the area variance.

Mr. Dudick said when he sees there is a discussion of lawsuit between two neighboring property owners and Mr. Brick has asserted that rehabilitation of the building had not been looked at, but now it is clear that it had been that had been looked at and actually executed.

Mr. Brick referred to the issue that was raised by Mr. Lemire at the previous hearing, if the Rite Aid stayed the same size it is now rather than being drastically increased how would the variances be reduced. Not only are they requesting a new design, they are requesting to expand some of the existing tenant spaces.

Mr. Dudick stated that was right. He also stated to Mr. Brick that it was his understanding that the rationale of the expansion was discussed for the Rite Aid was because of the contractual obligations with regard to prototype and standard formats with regard to Rite Aid a national chain store, and they are in a space now currently which is substantially smaller than spaces that Rite Aid normally

operates. Since they're going to be refurbishing the property they were discussing that they were going to go to the smallest possible refurbishing size that Rite Aid has in their prototype stores in order to be able to have lease agreements. They went to the smallest possible enlargement that they could in order to accommodate Rite Aid to get their permission to close them down because they currently have a lease. Your client has tenants, and there are certain contractual obligations in your plaza too.

Mr. Brick stated to Mr. Dudick his role is not to be convinced of whether or not they meet the elements of the variance test. He said the question is whether there is enough in the record to justify application of the area variance test. Mr. Dudick agreed.

Mr. Dudick then stated to Mr. Brick when he was talking about the expenses incurred, that he is not sure that is a measuring tool that this Board has to encounter as far as they consider a variance to be approved or not. He stated that there are different parts of expenses such as, demolition, rebuilding, insurance and water treatment and waste management. Where as there might be a greater expense as far as how to demolish and create construction there are advantages which then could justify those initial expenses later on in terms of income. To look at one portion of the expenses on a project and not look at the entirety of the project and weigh all the expenses against all the assets and increases of assets would be misleading.

Mr. Brick stated to Mr. Dudick that he only referenced and quoted from their application. The language he gave is directly from their application. When you look at the application filed in the ZBA office it specifically keeps reiterating that if you don't give it to us it's not financially feasible.

Mr. Dudick stated to Mr. Brick that it was brought up as part of the entirety of the project three different times that they met. Mr. Brick then countered to Mr. Dudick that it was stated three times, a reduction of building square footage and or parking to meet setback requirements would make the project financially infeasible.

Mr. McCarthy asked to Mr. Brick whether those are relative to three different setback variances which all have the same rationale. Mr. Brick stated he believes so. Mr. Dudick asked for any comments.

Mr. Morelli stated to Mr. Brick that his concern was that there was public comment about the demolishing not being feasible due to the displacement of the employees and the impact to the community. When he looks at this tenet of the town law he is looking at it from the view of the

community. From this section of town whether immediately demolishing the building is a feasible alternative to the community. He is part of the community, it is his primary shopping for pharmacy and groceries. So he would see anything other than the absolute minimum which was stated as six months for closure would not be a feasible alternative for the community. There are thousands of people and families that utilize this plaza during the very busy times of the day. He is not looking at it

as a Board member for economic feasibility or trying to help out the applicant. He is looking at it from a personal standpoint that he uses the grocery store, pharmacy and barber.

Mr. Bloss stated to Mr. Dudick that he is a neighbor of the plaza as well. When you look at leveling the plaza you have a number of small businesses that would not be businesses anymore if they were out of business for six or more months because they are single location businesses and those people are out of work which is not good from the community standpoint.

Mr. Powers stated to Mr. Dudick that they have tenants of the center with leases in place. They have the right to be there and operate and have a lively hood to maintain. They can't just throw them out and tear the building down and start over. They want to accommodate them and not take anyone's business away.

Mr. Urbsprung stated to Mr. Dudick that regardless of whether the Price Chopper were to close or not they looked at many options in designing the site. This was the option that was the most efficient. They looked at placing the Price Chopper building facing up towards Rt. 146, the problem being not sufficient room for parking in front of the store for the customers.

Mr. McCarthy clarified whether he was talking about rotating the building into the existing parking as shown on the sketch. Mr. Urbsprung stated correct. They also looked at putting the building in the back corner, which would then lead to not enough parking in front of the building for shoppers.

Mr. Dudick stated to Mr. Urbsprung if they looked at refurbishing the property again.

Mr. Urbsprung stated that they did look at an addition to the Price Chopper, but it wouldn't work with the rest of the site or Price Chopper. Mr. Gifford asked Mr. Urbsprung if he was concerned about the parking for Price Chopper than why are they asking for a variance of 50 spots.

Mr. Urbsprung stated because that is the most we can get on there with what's provided in terms of the building. They are also improving the parking ratio, which is currently about 4.1 per thousand.

With this layout it is actually increased to 4.4 per thousand, which will actually improve the parking from the current position.

Mr. Lapper than stated to Mr. Gifford that in terms of the proximity of the parking to the front door to make it convenient for shoppers but in terms of the overall number of spaces they are convinced with Price Chopper's history that they are providing sufficient parking for all the uses on the site.

They don't need any more spaces than what they're proposing, they need the spaces to be convenient parking spaces.

Mr. Gifford stated that they have zoning laws that state this is the number of parking spots you should have for the project. Mr. Dudick stated to Mr. Gifford that in the Zoning Board of Appeals where all applicants are asking for relief from the law. Every single applicant before them is asking for an extension beyond what the law does allow. Mr. Gifford agreed with that.

Mr. Lapper stated they had also talked about a there is a shared parking concept with Price Chopper, the bank and Rite Aid which justifies some leeway as well because there is multiple tenants on the site. That's another reason they believe the spaces that are provided will be sufficient.

Mr. Dudick asked for comments and questions.

Mr. Howard Carr, President of Howard Group who is the managing agent for the property on 1206 Rt. 146, also known as North Country Commons. The lawsuit was filed on August 21, 2015. He stated that he has never had any conversations with Mr. Powers since August 21, 2015. There was an offer made to Mr. Powers to solve the problem before the lawsuit was filed. The concept that was never discussed was rebutted and refused and they were not interested. He wanted the Board to know there was an alternative.

Mr. McCarthy asked Mr. Carr if that it was after his counsel had submitted correspondence opposing the project. Mr. Carr stated that was incorrect.

Mr. Dudick stated that applicant can rebut.

Mr. Powers then rebutted that he did not recall the date of the letter that was submitted by Mr. Brick, but it was that day or the day after that the offer was made to rescind the opposition to the

application which would have been before June. He certainly has not had any discussions with Mr. Carr since he filed the lawsuit, but that was the day or day after that they filed their opposition.

Mr. Frank Berlin, of 980 Main Street Jonesville, stated he has lived here since 1964. He is the president of the Clifton Park Friends Open Space. He stated his group supports the idea of what Clifton Park Plaza is doing rather than just leaving the building there. They are very involved with the water quality. The Dwass Kill has over 15 tributaries. They did write a letter to them stating they support the project. This will give people jobs in the community where they live and not have to commute 50 miles. It is the grocery store where he has always gone to. He feels the parking is sufficient.

Mr. Steve Weeks, who resides at 541 Clifton Park Center Rd has stated he uses the Plaza and is looking forward to the redevelopment of the Plaza. He also feels the variances requested do not impact the community in a negative way. He then stated as the owner of the car wash business next door to the plaza, he purchased the business with a partner Peter Rosenfeld wash. They also own the car laser wash at exit 8. When he was last before the Board he was not against the project, but had an issue with how his ingress/egress easement were going to be impact with the plaza development. Since then he and the applicant has talked consistently and have come to a complete agreement. As a property owner next door to the property, none of the variances requested tonight will have an negative impact on his business or property, He remembers Mr. Carr receiving a sign variance for North Country Commons which did not meet all the specific requirements. He feels the completed project for the applicant will be a big win for the town and residents.

Mr. Mike Dudick asked for any additional comments or questions.

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

Mr. Dudick stated that he would like to renew their SEQRA determination from July 21, 2015 and also note that the Board is acting as lead agency for the sole purpose of reviewing the area variances before them. He then made a motion to declare the ZBA lead agency for reviewing the application for these area variances only that we acknowledge and adopt professional staff recommendations that we conduct an uncoordinated review for SEQRA purposes. He also made a motion that they declare the application before us to be an unlisted action, issue a negative declaration and adopt a short form EAF that is in the record. The motion was seconded by Mr. Bloss.

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

Mr. McCarthy stated to the Board that if they call on a motion for the variances, that this is a unique proceeding. Two weeks ago the Board agreed to rehear this under the proceeding provided for in 267A-12 of the New York State Town Law. To rehear that required the unanimous votes of all the members of the Board present and that occurred. This Board now had the legal power to reverse, modify or annul their original order decision or determination or they can uphold the original determination. Any vote to reverse, modify or annul the July 21, 2015 decision would have to be unanimous.

Mr. Dudick clarified to Mr. McCarthy that unless the Board comes to a unanimous decision on whatever they decide, the decision that they had previously stands. Mr. McCarthy stated that was correct.

Mr. Dudick asked the Board for comments as to how the application is being represented.

Mr. Morelli commented that the benefit relative to traffic safety is critical to him. This project will provide crosswalks in a safer parking lot. The improvements to the aesthetics and landscaping and the modernization to the car wash, Price Chopper and Rite Aid are all critical since this plaza is not up to the standards. The stormwater improvement is critical in this day and age where environmental impact is critical to all of us. As a Board member they look at requests for variances to make sure they are only granting the minimum necessary. They did ask the applicant to come back and revisit this application and they did come back and were able to minimize some of what they were requesting.

Mr. Dudick asked for comments for in regards to this application.

Mr. Dudick then stated that he has lived in town for over 25 years. Looking at the plaza of this kind that date back 40 years or older, codes and requirements were different back then. The attention to water, run off, environmental issues really did not become an issue until about 40 years ago which this plaza even predates that. In regards to greenspace, water treatment and runoff into the Dwass kill, this is clearly an improvement. This is also an improvement from an aesthetics and environmental standpoint. He has heard discussion on an increase in traffic and any traffic studies would go to Planning during site plan review. From his perspective he sees the increased use of shopping at the

Price Chopper and other establishments taking some of the traffic away from the congestion further east. He doesn't believe this is a self created hardship. This is a refurbishing of a property that has been owned since the 1980's, an old property that has come to a point that needs to be taken care of.

Mr. Dudick asked for further comments.

Mr. Myers stated that he wanted to remind the board that although 16 variances were advertised, two were taken out, the parking variances, because Planning has a final say and they have the ability to modify it as they see fit. So there are only 14 variances. The variance for the size, 10 acres required, they have less than that because of the pre-existing condition. But they have acquired the Pizza Hut property, so they are making the property less non-conforming during the process.

Mr. Dudick asked if anyone would like to make a motion in regards to this application.

Mr. Morelli stated he would like to make the motion to approve the variances as they was issued on the July 21, 2015 meeting. He stated each reason from 267-b(3) of the New York State Town Law.

1. There will be no overall negative impact to nearby properties as the project anticipates an increase in aesthetics and landscaping, more efficient internal traffic and parking patterns.
2. The project area is an existing shopping center with existing commercial leaseholds. I don't believe that tearing down the entire shopping center before embarking on a re-build is a feasible or desirable alternative, considering the displacement of so many employees and the disruption of service, including groceries and pharmacy service.
3. Yes, the variances taken together are substantial. The variances have one common theme however, to reduce setbacks and required greenspace to provide for adequate parking and internal traffic patterns, and to provide for storm water treatment on site. Considering the actual setbacks of the buildings east and west of the plaza, and the reasons given for these requests, as well as the existing conditions at the site, we find the variances justified on the entire record.
4. The Board finds that the addition of storm water to current standards provides a substantial environmental benefit.
5. The site is an existing shopping center site which has been there for many years, and we find that the requirements of national or regional retailers such as Rite Aid and Price Chopper, who currently have leases and leasehold rights, and who may only wish to construct new stores of a certain dimension and layout impact the applicant's options. The record also contains

information on the applicant's earlier request for a Planned Development District on vacant land on the opposite corner which would have abandoned this site, and which did not advance through the Planning or Town Boards, in large part because the community asked that this site be re-developed, and not abandoned to blight.

Because of these findings, Mr. Morelli moved to approve the variances as they are written at the July 21, 2015 meeting without change.

Mrs. Bagramian seconded the motion.

Mr. McCarthy stated with regard to the request that the applicant made is to reconsider the motion. If the Board finds it appropriate to re-affirm it on a record that specifically touches on the 267 factors. Mr. Dudick agreed.

Ayes: Bagramian, Bloss, Dudick, Gifford, Morelli
Application approve

Noes: None

Mr. Dudick called a five minute recess at 8:30 pm.

Mr. Dudick started the meeting back to order at 8:35 pm.

NEW BUSINESS

The secretary read the legal notice as it appeared in the Daily Gazette on September 10, 2015

An application from Windsor Development Group, Inc. for an area variance for a new freestanding sign for Shopper's World Plaza. Sign is in B4 zone which allows digital signs. Only variance needed is for size. Per Chapter 171, Table 1 maximum freestanding area = 150 sf, 231 sf requested, 81 sf variance required.

Property is located on 15 Park Avenue, Clifton Park. NY 12065 (Permit #81049)

The application was presented by Mr. Bob Miller, Jr., Vice President for Windsor Development. He stated that he is looking for an area variance for 81 sq. ft. They want to take down the pylon sign that was constructed as part of Shopper's World in 1989 and replace it with a new pylon sign. He stated that Market 32 has redone their store. They were at the Planning Board and Technical Advisory Committee working on the redevelopment of the K-Mart parcel. They asked their architect to take a look at what Price Chopper has done and incorporate some of those design components into the re-

development of the K-Mart parcel. They then hired another architect to take a look at the 75,000 sq. ft. of interior space between Market 32 and K-Mart and tie it all together. The pylon sign is part of

the re-development of the entire center. The whole interior space will be redone and will be constructed of wood and metal panels, efface and stone, except Dollar Tree with their green awnings because of a lease obligation.

Mr. Miller stated that the retail business is highly competitive, so signage is very important to the tenants. Signage is instrumental to impulse stops. For shopping centers of this size between 100,000

to 400,000, 25% of the stops were impulse stops. Better signage generates more sales which is more sales tax for the town. They are trying to create the greatest amount of signage to the tenants through the least amount of signage. They are taking 231 sq. ft. and attempting to get 236,000 sq. ft. worth of tenants up there. When you look at the sign that is what the digital component's doing, they look at the blades. Some of those are required under existing leases. They have to provide individual signage to some of the tenants. Some they are reserving for potential future national tenants.

Mr. Miller wanted to go through some legal standards as they apply to this application. He stated Town Law 267B it sets forth the five standards, the balancing test the Board needs to look at where they are weighing the benefits to the applicant versus the detriment to the health, safety and welfare of the neighborhood and community.

1. The granting of the variance will not compromise the area of the neighborhood. They are talking about replacing an existing pylon sign.
2. Both modifications are aligned with the existing retail climate. The redevelopment of the center and the future tenants they are looking to attract and the redevelopment of Market 32 and K-Mart.
3. The required area variance is not substantial. They are talking about 81 sq. ft. of variance.
4. The replacement of an existing pylon sign is in keeping with the other signs in the area and will not have an adverse impact on the any environment conditions such as drainage, traffic, circulation
5. It is relevant in the use area, it's not detrimental to the decision of the Board with respect to an area variance. It's the redevelopment of an existing project so they feel it is not self-created. They are trying to redevelop and trying to react to the changing environment of the retail business and shopping

Mr. Dudick asked for comments from the Board.

Ms. Bagramian asked Mr. Miller how they were going to plan on dividing up the signage. Is the top all Price chopper or is it going to rotate it through.

Mr. Miller stated they are going to rotate it through.

Ms. Bagramian asked If Price Chopper will be three bars or five bars.

Mr. Miller stated that this application has the five and they are reserving two for future use.

Ms. Bagramian asked Mr. Miller if they have leases already that require signage on the outside, like Dollar Tree. Mr. Miller stated that was correct.

Mr. Miller stated that there was a situation in which a tenant that they were dealing with, if they redeveloped the K-Mart piece a certain way, the Price Chopper has expanded and taken what was the K-Mart panel and the price chopper panel. So where Price Chopper and Market 32 goes there is a timing thing that needs to be worked out with them on the digital and the blades.

Ms. Bagramian stated ok.

Mr. Gifford asked Mr. Miller if the top digital sign which is Market 32 will keep changing.

Mr. Miller explained to Mr. Gifford that yes, the digital would rotate.

Mr. Gifford asked Mr. Miller if Price Chopper will have a permanent plate.

Mr. Miller stated that yes, they will.

Mr. Dudick asked Mr. Miller if Price Chopper, having the biggest sign, is ok with their signage being reduced down to a single blade.

Mr. Miller stated that they have to work out the details with them. If they provide them space on the digital reader board, they should be able to get through that.

Mr. McCarthy asked Mr. Myers if there is a standard for how often digital signs can change messages per minute.

Mr. Myers stated that the Board has made as part of their decision how often they can change their message. In this zone where these signs are allowed, we have had people testify about the national standard which the town has never fully adopted. There is national standards as to how often the sign should change which is 5 to 8 seconds. If the sign is allowed in the zone, the Town has never gone down that road as far as regulating the frequency of change.

Mr. McCarthy asked Mr. Myers that those have been restrictions that are placed on when he has granted use variances in site residential zones.

Mr. Myers stated that was correct the message can only change once a day.

Mr. Miller stated there may be some standard with DOT.

Mr. Myers stated that there is.

Mr. Dudick stated that if the sign was changing once every two seconds, it's almost not readable so it doesn't serve any purpose.

Mr. Myers stated that was correct.

Mr. Bloss asked Mr. Dudick as far as the sign that this will replace, is it different in size with the variances they have.

Mr. Myers answered that the variance is strictly limited to the area of the sign. There have been previous approvals from years ago about the location and height from the Highway Superintendent approval. The sign sits in the town right-of-way.

Mr. Dudick asked Mr. Myers if there was a need to have the sign moved further back out of the right-of-way.

Mr. Myers stated that you can't without getting on someone else's property and or raising the height.

Mr. Miller then stated that land was originally all part of Shopper's World. Most of the town's roads in that area were built by Windsor, Park Avenue, Clifton Country Road extension, Maxwell Drive, 30% or so of Clifton Country Rd & Wall Street and then were turned over. As part of the agreement to turn over the road this was part of the agreement.

Mr. Myers stated he actually has the letter from Lou Girard, Highway Superintendent.

Mr. Dudick stated ok.

Mr. Dudick asked for public comment and or questions. There were no comments. Mr. Dudick made a motion to close the public hearing. The motion was seconded by Mr. Gifford. All approved. Public hearing closed.

Mr. Dudick asked for further comments from the Board.

Ms. Bagramian asked Mr. Miller if they were in talks with Price Chopper, did he have plans to come back if there wasn't an agreement with Price Chopper.

Mr. Miller stated that they did not have any plans. They felt they could work through any issues with Price Chopper.

Mr. Myers stated that if he is granted the variance tonight and he stays within the square footage allowed, if he changes the size of one blade it won't matter because the square footage is the same. Ms. Bagramian stated ok.

Mr. Dudick asked for further comments. He then stated if anyone would like to make a motion in regards to this application.

Mr. Gifford make the motion to approve the application as submitted. The motion was seconded by Ms. Bagramian.

Mr. Dudick stated that this is more of a utilization of the freestanding sign and space as opposed to an increase. He then asked Mr. Miller about the height.

Mr. Miller stated that the height is the same.

Ayes: Bagramian, Bloss, Gifford, Dudick, Morelli

Noes: None

Application approved.

The secretary read the legal notice as it appeared in the Daily Gazette on September 10, 2015

An application from Fast signs of Saratoga Springs for a use variance from Section 171-4H(1). No of premises signs allowed. Applicant requests to install one freestanding sign for 3 contiguous parcels. All parcels to have tenant space on sign.

Property is located on 713 Pierce Road, Clifton Park, 12065 (Permit #81051)

The application was presented by Rick Bolt, owner of Fast Signs, He is the vendor for Dr. McDonnell who owns the properties at Pierce Rd. He stated that there are three lots there. There is only the Smile Lodge, which is a pediatric dentist office constructed to date. Dr. McDonnell is trying to make it a very family friendly environment for daycare, pediatric dentistry and other similar related businesses. He has gone above and beyond to make this a kid friendly Adirondack lodge environment. There are three more buildings scheduled to be built on the property which will all have the same Adirondack lodge façade.

Mr. Bolt stated that in the packet he handed out is the site plan showing the area off Pierce Road to give the Board a perspective. Currently the Smile Lodge is located on lot 2. Lot 2 runs parallel to an entrance road. Lot 3 has two buildings to be developed. Lot 1 has yet to be developed, but that has the majority of the road frontage on Pierce Road. Each of the three properties does have frontage on Pierce Road, so by standard application they could have a sign on each of those three lots. The variance they are applying for is for one single sign for all three lots. There will be a shared monument sign for all three lots and four buildings, as opposed to three individual signs. The current temporary sign that is out there does fall on the lot that is for the Smile Lodge. The sign they are proposing will fall on lot 1 & lot 2. The final determination is going to be dictated by the telephone poles and the lighting that is currently there. They will need to work around those utilities. Having done a survey with their engineer and Dr. McDonnell they determined the best approach is to put a V shaped sign that angles to face North and South so there is better visibility on Pierce Road. Regardless if the sign goes half on lot 1 and half on lot 2, they would still be in violation without this variance because the sign on lot 1 is falling on lot 2 and visa versa. Because the intention of this sign is to cover all three lots, he proposed to Dr. McDonnell to get the variance now so that we are covered for the future moving forward as the development continues.

Mr. Bolt also stated that going with the theme Dr. McDonnell has now, they are proposing a Adirondack style sign that would have all natural timbers, a wood background with a bear as the logo.

Then have room down below for new tenants as they come in that they can add on to. The sign does fall within the height requirement, it's less than 18 ft. and less than 150 sq. ft. in size. The only thing

not included in the packages is a way finding device which will simply be an illuminated number on a manmade concrete stone block that will be put in front of the signs. There will be signs on the North and South side. They will be illuminated at night for EMS vehicles. They will be raised about six feet above Pierce Road to be very visible. As the buildings expand, they will be changing the number from 713 to 711-713, 711-715, eventually to 711-717 which are the four addresses assigned by the US postal service. So, they are looking for a single monument as opposed to three monument signs to replace the current temporary sign.

Mr. Dudick asked for public comments. There were not comments. He then made the motion to close the public hearing. The motion was seconded by Mr. Bloss. All approved. Public hearing closed.

Mr. Dudick asked Mr. Myers for comments in regards to this application.

Mr. Myers stated that they discussed this and they have some problems because of the minimum frontage he has on a public road which was required when they did the subdivision. He stated that usually the Board doesn't entertain off site sign variances . But, he is entitled to a sign on each piece of property. This seems to cover all the bases doing this once upfront plus leaving room for tenants in the future.

Mr. McCarthy asked Mr. Myers would the applicant object to the Board specifically noting that the right on each lot is being waived in lieu of this application.

Mr. Bolt stated there is no problem with that.

Mr. Myers stated that he can still come back for signs on the buildings as needed down the road, but no one else will be allowed to have a freestanding sign.

Mr. Bolt stated that was correct. Mr. McDonnell's intention was to have the rock in the front driveway area to designate the entrances to each individual building.

Mr. Dudick asked Mr. Bolt how big the rock is.

Mr. Bolt stated it is about three feet high by five feet wide.

Mr. Myers then stated that the addresses don't count in the sign areas because they are required no matter what by the code.

Mr. Bolt stated that for EMS purposes they try to keep it at least two feet above grade for snow. That is why they went at least three feet high.

Mr. Bloss stated that if the only way this fails to be a good idea is if these lots are sold down the road and the sign falls on the lot the doctor doesn't own. He then asked if there was any reason to think this might happen. Was it done for financing purposes.

Mr. Myers stated that he had to subdivide the parcel so he could finance each building as they go. The Board could put a condition into the variance that says these three parcels will always have to have the ability to have signs at this site.

Mr. Dudick stated his concern about having a sign on two different parcels.

Mr. Bolt stated that currently the way it is placed now, Dr. McDonnell's Smile Lodge is on lot 2.

Mr. Dudick asked if anyone had an issue that the sign is over more than one lot.

Mr. McCarthy stated the variances run with the land. So if lot 2 is sold, the rights to this signage run's to the buyer.

Mr. Dudick asked if they are granting a variance for all three lots.

Mr. McCarthy stated yes.

Mr. Myers stated that the stipulation that all three lots have rights to signage on this sign.

Mr. McCarthy also stated they have waived any right to an individual sign.

Mr. Dudick stated he is ok with this.

Mr. Gifford asked if the sign is on two different lots and he sells the one lot and the new owner does not like the sign, what then happens to the sign.

Mr. McCarthy stated the ability to have the sign encroach onto lot two runs with the land. The variances run with the land, they attach to whoever owns it.

Mr. Dudick stated that the Board was normally against the idea of off premise signs. He mentioned off premise signs for Delmonicos & Chilis.

Mr. Myers stated that the Kohl's sign is an off premise sign when they expanded that use because they divided that parcel into several lots. He then stated that Kohl's is on that sign at the entrance of Rt. 146, but that sign is not on the Kohl's parcel.

Mr. Dudick stated that was right but the subdivision of Kohl's property was done after the sign. It became an off premise sign after the parcel was split.

Mr. Myers stated that was correct.

Mr. Dudick stated that he was talking about an off premise sign with regard to Delmonico's where there was an allowed opportunity to set up three separate signs on three different parcels, but they condensed all of that so that they could be on one pylon like being proposed here.

Mr. Myers stated that was correct.

Mr. Bolt stated that this application would be beneficial solution for the town.

Mr. Dudick asked for comments. There were none. He made a motion to approve the application with a stipulation.

Mr. McCarthy stated to Mr. Dudick that if he wants to include a specific condition of granting this variance that the as of right signs of all three lots are waived and consolidated into the application being made here. That the independent as of right signs on the other lots are waived.

Mr. Dudick asked if this is agreed upon by the applicant.

Mr. Bolt stated he didn't see why not.

Mr. Myers stated to Mr. Bolt that the condition of the variance will be that the other lots will not be allowed to have their own signs. Mr. Bolt stated ok, he can agree to that.

Mr. Dudick Made a motion to approve the application with the stipulation that all properties waive their right to individual signs so that this one sign can be used for all three lots. Motion is seconded by Mr. Gifford.

Ayes: Bagramian, Bloss, Dudick, Gifford, Morelli Noes: None
Application approved with stipulation

The secretary read the legal notice as it appeared in the Daily Gazette on September 10, 2015

An application from Sheldon & Nicole Taft for an area variance from Section 208-12A. 80' setback from property line (front) required for accessory structures. Corner lot, 58' available, 22' variance required.

Property is located at 307 Moe Road, Clifton Park, NY 12065

The application was presented by Nicole and Sheldon Taft, owner and applicant of 307 Moe Road. They stated they were hoping to get a pool when they discovered there were different requirements for a corner lot. They put forth their application and had trees cut down and a new patio installed and they received word that they needed to change the location of where they were planning to put the pool.

Mr. Dudick stated to Mrs. Taft that realizing with side yard setbacks for a corner lot they have different requirements than if you had homes next to you.

Mr. Taft stated yes.

Mr. Dudick asked Mrs. Taft if there was anything else she would like to state in regards to the placement of the pool.

Mrs. Taft asked Mr. Dudick if she should state where they would like the pool.

Mr. Dudick stated that was correct. Why couldn't you put the pool somewhere else.

Mr. Taft explained to Mr. Dudick that they could, but they would have to cut down more trees. It would be the lowest part of their lawn and they would have to build it up which would require triple the budget that they were expecting. It is also very far from their electrical box and would require more costs to bring that around. He stated there is already a fence there and they could put up arborvitaes.

Mrs. Taft stated that they have a young son. If they put the pool where it would be allowed now by variance, they wouldn't be able to see it from their house it would be behind their garage where there is no windows. The portion of the yard where they would like to put it is outside of the kitchen where the windows are for safety.

Mr. Dudick asked Mr. Myers for any comments.

Mr. Myers stated this is a typical corner lot problem that didn't exist until they built Carlson Farms.

Mr. Dudick asked Mrs. Taft if they owned the property before Carlson Farms.

Mrs. Taft stated that they only have been there for one year.

Mr. Dudick asked Mrs. Taft if it was a corner lot the whole time they owned it. Mr. & Mrs. Taft stated yes.

Mr. Dudick asked for comments from the Board. There were none. He then asked for public comment. There were none. He then made a motion to close the public hearing. The motion was seconded by Mr. Morelli. All approved. Public hearing closed.

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Mr. Dudick stated this was an excellent point to be made in regard to safety because of being able to keep an eye on the pool from the current location. The additional costs mentioned of taking down more trees. He doesn't see any problem with this application being approved as submitted.

Mr. Morelli made the motion to approve the application as submitted. Seconded by Ms. Bagramian.

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


Application approved as submitted

Mr. Dudick called a vote to approve the minutes for the August 18, 2015 meeting. All approved. Minutes for August 18, 2015 were approved.

The next meeting is October 6, 2015

Mr. Morelli made the motion to adjourn. The motion was seconded by Mr. Gifford. The meeting was adjourned at 9:45

Respectfully submitted,


Cristi Shuhart
Acting Secretary/ZBA

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