

ZONING BOARD OF APPEALS

October 6, 2015

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

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

Absent: Randy Gifford

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

PLEDGE OF ALLEGIANCE

Mr. Dudick informed the applicants this is a seven member board with one alternate. Tonight six members and the alternate are present. Mr. Fantini will sit in for Mr. Gifford. For approval applicants must receive 4 yeas votes regardless of the number of members present. There are seven voting members present tonight so the applicant must receive four votes of the seven.

OLD BUSINESS

None

NEW BUSINESS

The secretary read the legal notice as it appeared in the Daily Gazette on September 24, 2015

An application from Jenny & Michael Vidoni for a variance from Section 208-12A – Accessory structure front setback required = 80', 6' available, 74' variance required. Fence is 2' +/- inside property.

Property is located at 3 Saddlebrook Dr., Clifton Park, NY 12065 (Permit #81054)

The application was presented by Jenny Vidoni, co-owner of the home on 3 Saddlebrook Drive. Mrs. Vidoni informed they have a shed in the location mentioned and they would like to keep it where it is, explaining it is inside the fence. She communicated that the rest of the yard slopes and the people who installed the shed told them it was ok to put it there as long as there was a fence. She distributed pictures of the yard and shed.

Mr. Dudick announced the public hearing and asked for comments. There were none. He asked for board comments. There were no comments made.

Mr. Dudick indicated this is a corner lot, which is difficult. He asked Mrs. Vidoni if they had spoken to the neighbor on Lot 4.

Mrs. Vidoni answered they had, and the neighbor replied that “it is your yard, you do what you want.”

Mr. Peller inquired whether the shed has a foundation. Mrs. Vidoni replied it does not.

Mr. Lemire asked how she ended up at the Zoning Board. She responded that she had received a notice (from the Town) when the shed was put in.

Mr. Dudick asked when the shed was built. Mrs. Vidoni replied September 3, 2015.

Mr. Myers weighed in, saying this is a tough lot and because of the slope of the yard and configuration of the fence, they had to put the shed inside the fence. He added that it can barely be seen and it is the best location for it.

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

Mr. Dudick remarked he agrees with Mr. Myers, declaring it is not a big issue and they recognize a corner lot presents difficulties with setbacks. He said if the neighbor is ok with it he doesn't think it is a problem. He reminded the applicant she needs to receive four yes votes for approval.

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

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

The secretary read the legal notice as it appeared in the Daily Gazette on September 24, 2015

An application from Lauren Gay for a variance from Section 208-12A – Accessory structure front setback required = 80', 60' available, 20' variance required. Property is located at 17 Jarose Place, Clifton Park, NY 12065 (Permit#81055)

The application was presented by Lauren Gay, owner of the property at 17 Jarose Place.

Mr. Lemire informed he knows Ms. Gay from his son's sports team and asked if he should recuse himself.

Mr. Peller inquired whether he feels he can be impartial. Mr. Lemire answered he can be impartial. Mr. Peller then asked Ms. Gay if she is ok with Mr. Lemire remaining on the board for the application. She responded she is ok with it. Mr. Peller advised it is fine for Mr. Lemire to remain.

Mr. Dudick declared he has a connection with the applicant's husband who coached his son's baseball team a few years ago. He asserted he can be impartial. Mr. Peller inquired of Ms. Gay whether she has any object with Mr. Dudick sitting on the board and she again responded she does not. Mr. Peller stated there is no issue with Mr. Dudick sitting for the application.

Ms. Gay apprised the board that they also have a corner lot and if they meet the 80' setback they cannot put in either a pool or shed which is their intention. She said they have a rear drainage easement behind their yard which they can build on but it makes it tricky if the town needs to address drainage there. She asserted she had talked to the highway department about the issue. She apprised there is a development going up on the other side and there will also be a rear drainage easement there. She said the highway department told her they would not anticipate they will need the 30 feet there.

Ms. Gay said they are here because they have the difficulty of a corner lot and they can't turn the pool the other way because of the drainage.

Mr. Bloss inquired about the screen porch pictured on the drawing Ms. Gay had submitted and also asked where she planned to put the shed. Ms. Gay said the porch is already there and she isn't sure where they shed will go after the pool is in.

Mr. Peller asked what the highway department told her. Ms. Gay repeated that they went to them because they had concerns that if there was a problem it would affect the pool if the highway department needed to use that 30'. She related that the highway department got the map of the development behind them and looked at the slope and the fact that they have not had drainage problems in the past. That, plus the fact they are putting drainage and sewer drains on the side street next to them and also drainage on the back property line of the new development, they didn't anticipate needing to come that far into the property even if there is a problem based on the topography.

Mr. Peller asked if she understands that if the Town did have to enter the easement the pool would be affected. Ms. Gay replied she understands. Mr. Peller, addressing Mr. Myers, said his initial reaction is that the town would have to have some sort of agreement with them.

Mr. Myers answered he sent Ms. Gay to Highway and the issue is they are building a new subdivision behind them with significant drainage. He pronounced he does not think the drainage on her side is necessary because they will never need 60' of drainage system and with the new project going in he doesn't think there will be a problem. He added that is what Mr. Kukuk thinks as well.

Mr. Peller asked if it wouldn't be cleaner to change the bounds of the easement. Mr. Myers said he would talk to Mr. Kukuk and agreed it would be a good thing to do. Mr. Peller advised it would protect the pool and the Town.

Mr. Peller warned that the Town has the right to enter the easement and if they had to enter it, she couldn't move the pool. Ms. Gay agreed and said that is why they didn't do anything for so many years, until the development behind them. That is when they started looking into it and was guided to the highway department. She stated she wasn't aware that could be changed. Mr. Peller said it can't be changed but if both parties are in agreement it is no longer necessary it could be modified. Mr. Myers advised she still needs a variance because of the setback.

Mr. Peller suggested the board could adjourn and investigate having an agreement with the town or the board could vote on the 20' easement and make it contingent upon some future agreement. Mr. Myers asked if she is putting the pool in this year. She said it would be in the spring.

Discussion ensued as to whether, because of the easement, she could put the pool in with the variance. Mr. Cifor stated she could, but that the Town would still have the right to go into the easement.

Mr. Myers replied Highway told her she could put it in there and he doesn't see any reason why they wouldn't go along with an agreement.

Mr. Lemire suggested granting a bigger easement. Mr. Peller asked Ms. Gay if they are ok if they adjourn to discuss the easement. She agreed.

Mr. Lemire remarked the easement doesn't affect this board. Mr. Peller agreed. Mr. Lemire suggested granting this would be one less thing she would have to deal with. Mr. Myers recommended he could hold the permit until something was worked out.

Mr. Peller counseled he thinks it is important that even if the variance is granted it doesn't preclude the town going into the easement. Ms. Gay commented she didn't know there could be a change officially but if there is something to pursue they would be more comfortable. Mr. Peller observed that based on what Mr. Myers and the highway department maybe it is not necessary to make a change.

Mr. Dudick asked Ms. Gay why the pool couldn't be 10' closer to the house. She answered that they are trying to figure out the exact location and in terms of the scale they figured at most they would go "maybe" 5' but they need room for the concrete. She said the pool company has to come back and lay the forms but they are trying to tie it into what is already in place.

Mr. Dudick informed he has no problem voting on this now. Mr. Peller suggested he would be satisfied if either Mr. Myers hold on to the permit or the board makes it contingent on it.

Mr. Dudick asked where they will locate the shed. Ms. Gay wasn't sure, but said the idea was try to put some of the electrical equipment in it. Mr. Peller asked if it would be in the Town's right of way. Mr. Myers speculated it probably would be. Mr. Peller suggested they talk about the future shed as well.

Mr. Myers remarked the closest point is still the pool and the shed may not even be big enough to require a permit. He added if the variance is granted and the shed is at least 60' away, it doesn't matter. Mr. Dudick asked if they included the shed as part of the application or if she has to come back for another variance. Discussion ensued that the shed is on the application.

Mr. Peller commented it was not in the notice because the 20' required is for the pool. Mr. Myers noted he didn't think it had to be on the notice because the pool is the closest structure.

Mr. Dudick asked if they can include the shed as part of it. Mr. Myers said "not if it is not in the notice". Mr. Peller explained he brought it up because if she is going to go to the Town she might as well talk about the future. Mr. Myers insisted that it still doesn't affect this application and as long as she stays 5' off the property line she won't need a variance for the shed.

Discussion ensued with Mr. Dudick pointing out the shed was not on the notice. Mr. Myers said that is because it wasn't on the application but on the environmental form. Mr. Dudick disagreed informing that it is on page three of the application and it appears she asked for a pool and shed except that the shed wasn't on the notice. Mr. Lemire pointed out they are both accessory structures.

Mr. Peller advised the notice talks about one accessory structure and doesn't talk about the shed which may or may not need a variance depending upon where it is.

Mr. Myers agreed if it required a variance she would have to come back but said he would be very surprised if she had to come back for the shed.

Mr. Dudick explained that she put two things on her application, pool and shed and the Town noticed the pool and if she wanted to put the shed where it required a variance she would have to pay for another application when she actually put both in her first application. Ms. Gay said she did apply for both but they are going to put it next to the pool not in the easement.

Mr. Myers remarked this is just another corner lot and he has no problem with the application.

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

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

Mr. Fantini questioned as to where they needed to put a contingency about the easement. Mr. Dudick replied the easement is a non-zoning issue.

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

The secretary read the legal notice as it appeared in the Daily Gazette on September 24, 2015

**An application from Christina Goudard for a use variance from Section 208-10B permitted uses in an R-1 zone. Applicant proposes a multi-family (4-unit) apartment complex which is not an allowed use.
Property is located at 476 Moe Road, Clifton Park, NY 12065 (Permit #81056)**

The application was presented by Dana Salazar, Esq, and established she is the attorney representing Christina Goudard, owner of the property. She submitted proof of notification of neighbors for the record.

She stated the neighborhood is in transition and many of the houses in the area are built on keyhole lots, set back from the road. She pointed out that this parcel is a front lot right on the road, directly across from the library. She asserted the lights from the library reflect into the lot which makes it significantly less desirable as a single family home. She suggested the owners of the keyhole lots should be given consideration that their views are not interrupted and shouldn't be exposed to any more density than necessary.

She discussed the criteria required for approval of an area variance, informing this is addressed in the application and offered to go over them if requested.

Ms. Salazar specified the building can be compact and oriented a little bit closer to the road than a single home would be, which she advocated, protects the neighbors in the back and restricts the number of driveways on Moe Road as a single structure with four units would limit it to one driveway.

Mr. Cifor inquired how long Ms. Goudard owned the property. Ms. Salazar answered she does not know, but it was before the library was built.

Mr. Fantini asked if the property has been up for sale. Ms. Salazar replied she does not know but she has a letter from a realtor indicating what the returns would be if it was marketed. She pronounced she does not think the building is liveable and would have to be sold as a building lot and building torn down.

Mr. Peller asked if, to her knowledge, it is under contract for sale. Ms. Salazar responded she doesn't believe so.

Mrs. Bagramian inquired whether they have spoken to the neighbors. Ms. Salazar answered they have not directly spoken to them. Mr. Dudick asked if they had notified the neighbors and she said yes.

Mr. Fantini asked if she has proof from the building inspector that the house is not liveable or is a danger. Ms. Salazar responded they have pictures of it, informing it is pretty run down and is a single story on a slab.

Mr. Dudick asked how long has it been vacant. Ms. Salazar responded she does not know but her understanding is that it has been vacant for quite some time.

Mr. Dudick indicated he would like to hear Ms. Salazar go over each of the use variance criteria, asking about the alleged hardship she said is not self-created.

Ms. Salazar answered that nothing has been done to the particular lot that created a change to the neighborhood, maintaining that was done by other people when they built the library and other homes which increased the traffic.

Mr. Dudick commented that there is an issue with the library and its parking lot throwing light on the property. Ms. Salazar mentioned the increase in traffic, to which Mr. Dudick replied he doesn't disagree with that. He asked her to explain how a four family building would not alter the essential character of the neighborhood.

Ms. Salazar repeated it is a neighborhood in transition with a mixed area down the road. She referred to the drawing suggesting the proposed structure has a residential feel and can be built to look compliant with the neighborhood. She contrasted it with a duplex which she opined tends to be taller and squarer buildings. Mr. Dudick asked if it is one structure with four units. Ms. Salazar confirmed that is so, saying it is semi-detached.

Mr. Cifor asked if her client has had the opportunity to sell the property to a developer who is going to build this. Ms. Salazar answered she believes she has had some interest but she doesn't believe there is a contract. Mr. Cifor asked about the origin of the design. Ms. Salazar responded it is just for purposes of showing the board and neighborhood that it could be a nice development.

Ms. Bagramian asked if Ms. Salazar if she is saying that if they knock the home down the property is not saleable. Ms. Salazar rejoined that is the opinion of the realtor who wrote the letter. Mrs. Bagramian contended there are single homes next to it and across the street which were sold and that it is possible to build a house. Ms. Salazar answered it is possible to build a nice house but the amount of money that would have to be put into it would not provide a financial incentive. She asserted there would be no return to build a less expensive house. She referred to the realtor opinion letter explaining it would have to be a low cost, low quality home in order to be saleable. She asserted you could get a higher quality, more attractive house with a rental.

Mr. Cifor asked how much the client paid for the property. Ms. Salazar responded she doesn't know. Mr. Cifor explained he defines a hardship as someone taking a loss on something and receiving less profit is not a hardship.

Mr. Dudick asked for details on other new construction close by or those sold on Moe Road. Ms. Salazar replied she does not have any details about that, and clarified she was only focusing

on what could be done with this property. Mr. Dudick asked rhetorically how she would determine a hardship if she is not sure what other houses are selling for. Ms. Salazar said she has the opinion of Mr. Rousseau who indicated that selling as a single family home would not provide a reasonable rate of return based on the side of the lot and cost involved. Mr. Dudick asked if there are any numbers. Ms. Salazar informed the last page of the letter details what the lot sale price and the cost of demolition and the cost of building would be.

Mr. Cifor commented the letter says it is a lot more valuable selling as a four family lot than as a single family lot. Mr. Fantini affirmed that the letter doesn't demonstrate it can't be sold as a single family lot, it just shows there is more profit with a four family units.

Ms. Salazar argued the standard is a reasonable rate of return and the reasonable rate of return of Clifton Park is \$40,000 which isn't consistent with the property value.

Mrs. Bagramian asked if they had a formal appraisal of the property. Ms. Salazar said they have just what is in the letter, but not a formal appraisal. She contended she doesn't think it would be helpful in this circumstance because this is a unique situation and there aren't other lots like it.

Mr. Cifor reiterated it is not a reasonable return, it is a better return. He gave the example if you bought a lot for \$30,000 and you sold it for \$45,000 that would be a good return. He said any lot in Clifton Park that was changed from a single family to multiple would be more valuable.

Mr. Lemire referred to Section 208.10B asking if a two family home would be permitted. Mr. Myers said that is correct, then explained the difference between a two family and semi-detached as one being up and down and the other side to side. Mr. Lemire listed all the uses allowed in the zone and asked if Ms. Salazar's real estate agent had evaluated all the uses for the property. Ms. Salazar answered he had evaluated the property for a single family home.

Mr. Lemire inquired whether they could subdivide. Mr. Myers said they could but they would not have the 100 foot frontage. Ms. Salazar argued if they did that, they would have one home behind the other and then need two driveways. She claimed the setback requirements for the second house would have to be closer to the other houses. She repeated that a four family home could be closer to the road.

Mr. Dudick advised that if they had asked for a two family they could have it with no variance necessary from the ZBA. Mr. Myers confirmed that is so, as long as they were granted a special use permit.

Mr. Lemire stated he is confused about the light from the library, asking if the light would not shine in four houses also. Ms. Salazar responded that the front of the four family house would be oriented to the side. Mr. Lemire asked why a single house couldn't be facing the same way. She said it could but people don't usually want a house facing sideways.

Mrs. Bagramian suggested planting arbor vitae.

Mr. Lemire asked if her client originally owned all the property around the house and then subdivided. Ms. Salazar answered she doesn't know. Mr. Lemire pointed out that would be

interesting to know because it would make the problem self-created. Ms. Salazar said even if she did that doesn't change the busy road but agreed she could have built a house further back.

Mr. Bloss asked if the homeowner lived in the house and how much she paid. Ms. Salazar answered she doesn't know. Mr. Peller asked how long Ms. Goudard has owned the property. Ms. Salazar responded "quite some time" adding it was before the library was built.

Mr. Dudick commented the library was built some date after 1990. Mr. Myers advised it was around 10 years ago.

A gentleman in the audience spoke out to provide information about the length of time the applicant owned the land and was informed he needed to wait until the public hearing.

Ms. Salazar then enlightened she believed her client bought the property time after WWII and it has been quite some time and didn't pay very much in comparison to today's dollar.

Mr. Dudick stated this is a unique situation that is across from the library and no other house has that situation but reminded there are homes around the library.

He quoted the criteria "cannot realize a reasonable return that can be shown by reasonable financial evidence". He pointed out the evidence presented is an opinion letter from a realtor who is not in attendance and did not attempt to sell the property. Ms. Salazar responded she does not know if he did and he may or may not but insisted he did lay out details. Mr. Dudick repeated he is not here so they cannot ask him questions.

Ms. Salazar argued he based it on the numbers, the neighborhood, and the desirability of property on a busy road. Mr. Dudick asked if she had traffic numbers to compare it with other busy roads to see what one acre building lots sell for on a busy road. Ms. Salazar said she does not have that information and countered saying a lot on a busy road is difficult to sell because there are plenty of other lots that are not on a busy road.

Mr. Cifor remarked the road is busy early in the morning with the school busses.

Mr. Dudick explained he is not disputing that it is a busy road, just that he is looking for the value of a lot on other busy roads by tangible numbers.

Ms. Salazar stated they did not expect they would need to bring this information tonight.

Mr. Dudick announced the public hearing, asking for comments.

Mr. Jim Romeo, 478 Moe Road, informed he lives directly behind the property. He stated the owner originally owned five acres and subdivided it. He said he has two acres and his neighbor has two and informed that all the parcels on the road originally had five acres and had been subdivided at some time. He described the one remaining acre parcel as a hovel.

Mr. Dudick asked Mr. Romeo if he had purchased the property from Ms. Goudard and Mr. Romeo affirmed he had. He said he is concerned with having people who do not have a vested

interest in property living in front of him. He disputed the property would be hard to sell saying it is a desirable piece of property on Moe Road.

Mr. Peller asked when he purchased his lot. Mr. Romeo answered he bought it in 1986 and built in 1987. He said she subdivided it in 1986.

Mr. Ray Lutz, 482 Moe Road, informed he owns 480 Moe Road, which is 60 feet from this property. He asserted he did not receive a notice about the application and learned of it by word of mouth. He advised he owns 25,400 sq. ft. of property and has a nice looking house on a little over ½ acre. He said his opinion is an acre is good for a house but not four apartments, adding he doesn't think it fits in there. He pointed out his lot on the aerial map.

Mr. Lutz said he has been in Clifton Park for 66 years and owns two houses on five acres. He pointed out water is there now and all they would need is septic, reiterating one house would go nicely there. He noted he wouldn't even oppose a duplex because it is just like a house. In answer to Mr. Dudick's questioning, he said he lives in the house closest to the property and had to go for a variance because the lot was less than 40,000 sq. ft. He added that Mrs. Goudard, who owns the property, lived in the house until six months ago.

Mr. Peller questioned whether he owns both houses in his name. Mr. Lutz replied they are in his and his wife's name. Discussion ensued with Mr. Peller regarding mailing addresses and distance from the applicant's property. Mr. Peller determined that Mr. Lutz lives within 50 feet and should have received a notice but there is no record of mailing advising it needs to be addressed by Ms. Salazar.

Mr. Dudick asked Ms. Salazar if she wished to re-but. Ms. Salazar indicated she would wait. Mr. Dudick informed the audience each person would receive five minutes to speak.

Ms. Carolyn Fabiano, 2 Tracey Court, asked if this application is approved and four units are built, would this set a precedent for other one acre lots to have four units on other roads. She indicated this is her concern and should be a concern about other somewhat busy roads. She commented this is not a good fit and she is apprehensive about setting precedent.

Mr. Dudick explained every application is unique and it is up to the applicant to make a presentation. He referred to the last applications which were on corner lots which were unique but considered individually. He agreed an applicant might look at the record and say we want to do what has been done somewhere else. He promised that the board looks at every application separately and if it granted four units on one acre it wouldn't mean every one acre lot could have four because the uniqueness of each situation is folded into their decision.

Ms. Ariel Gill, from Realty USA, living at 1267 Route 146, spoke regarding the value of property. She informed she had looked up property on 489 Vischer Ferry Road which recently sold for \$190,000 for a single family house. She opined as a real estate agent that this is a good comp. Mr. Dudick asked if there was a habitable home on it and she said there is.

Mrs. Jacqui Murray, Murray Law Firm, 10 Maxwell Drive, advised she is speaking on her father's behalf, Mr. Robert Phillips. She indicated she forwarded a letter from the Phillips to

the adjacent landowner. She stated that on the face of their application they admit there is a likelihood they can get \$65,000 for the property. She pointed out they have not demonstrated that \$65,000 is not a reasonable rate of return. She advised that to show a rate of return is not reasonable, as a matter of case law, they must show a disparity of return. Mrs. Murray alluded to the comments made by the neighbors saying it demonstrates this will create an adverse effect to the essential character of the neighborhood.

She referred to the case law pointing out that if they cannot meet one of the criteria for a use variance, they are not entitled to a use variance and she does not see how they can present any defense that would withstand up to an Article 78 proceeding. She submitted a copy of the law and passed out the letter. She brought attention to the realtor's statement on the last page of the letter, which she said is conclusory, and indicates the realtor thinks it is possible it could be sold for \$65,000 as a building lot. She asserted it doesn't demonstrate that is not in line with the market and commented the condition of the home itself is not relevant to the use variance criteria. She reiterated they have to prove they cannot receive a reasonable rate of return. She stated the lack of maintenance does not justify a use variance.

She addressed the questions the board asked the applicant's attorney which were not answered. With regard to whether there was a contract or offer on the home, she informed that the Phillips had made an offer to purchase the home with no contingencies. She offered to confirm that in writing.

Mr. Cifor asked the offer amount and Mrs. Phillips said it was a starting offer of \$50,000 with no contingencies.

Mr. Robert Phillips, who was in the audience offered further information. Mrs. Phillips repeated Mr. Phillips comments saying that he received a call three or four months ago from Mrs. Goudard's family asking if he wanted to purchase the property. The Phillips made the verbal offer. They did not put it in writing because the family was pursuing a different path.

Mrs. Phillips addressed the question regarding whether a builder had been contracted, saying that was not answered. She informed that Mrs. Goudard is elderly woman and she questions whether she is the developer and whether there is any offer with a contingency on it.

She submitted a copy of the Phillips letter for the record. She confirmed the letter can be placed in the record and does not need to be read into the minutes.

Mr. Dudick read aloud an e-mail from Dan DeSilva, 481 Moe Road, indicating he has no objections to a new multi-unit structure and that he thinks it would be a nice improvement to the existing structure. E-mail placed in the record.

Mr. Fantini questioned whether the board could hold a vote if one of the neighbors had not been noticed. Mr. Peller responded the answer is no and asked the applicant to overcome that. Ms. Salazar stated she does not have the list of notifications with her. Review of the submitted mailing records provided to the town showed no proof of notification of 482 & 484 Moe Road.

Mr. Peller advised the application is improperly before the board right now and according to the code 208-109D.3 the applicant must show satisfactory proof that all property owners within 500 feet of the perimeter have been notified in writing at the time of submission of the application. He announced the application is flawed and the board cannot vote on it so the question is whether the applicant should withdraw it, asking the board to give its opinion.

Mr. Dudick suggested that the application be postponed until the applicant can show proof of notification. Mr. Peller agreed and added if she cannot demonstrate it then the application has to be re-noticed to everyone. Mr. Dudick alluded to a few situations where the applicant did not have the proof but they were heard. Mr. Peller explained this is different because the applicants in that case testified they did do the mailing, but they did not have the proof at the meeting. He declared this is a different case.

Mr. Myers stated he assumes they got their list from Planning so he would expect that it is complete. Mr. Peller suggested Ms. Salazar withdraw the application and if they can show proof then they can re-apply. Ms. Salazar asked how long a delay that would be. Mr. Dudick answered it wouldn't be in time for the next meeting on October 20, and the one following would be November 17, 2015. Mr. Peller gave her the option of either choosing to withdraw or being held over for the next meeting if she can show proof.

Mr. Morelli asked if it would make sense that the board make comments about how they feel about the application so that when she re-applies she will have some idea. Mr. Peller said there is no right or wrong and he believes it would be helpful to the applicant. Mr. Dudick agreed and he has no problem with that because the board has enough information and there have been public comments.

Mrs. Salazar questioned whether it was possible the resident was not within 500 feet of the perimeter. It was confirmed the resident is within the 500 feet.

Mr. Peller gave Ms. Salazar the code #208-109D.3. that applies.

Ms. Salazar explained the realtor's letter, saying the property's estimated value is \$65,000 after the house was demolished for \$20,000 to \$25,000, which makes it an estimated value around \$40,000. She clarified the question as to whether the property is under contract, saying the answer is "no" and then said she is unaware of one. She requested a copy of Mr. Phillips' letter and Mr. DeSilva's e-mail.

Mr. Lemire asked if they should reserve comments because the application is not actually here since it was improperly noticed. Mr. Peller advised that is one way to look at it and it is up to the board.

Mr. Morelli repeated he would like to give feedback. Mr. Dudick offered to take a vote from the board. Mr. Peller counseled that this would not be a formal vote if the board members decide they want to make informal comments. He stated he is not comfortable with any vote taken on an application that is not formally before the board.

Mr. Dudick made the decision to close the application and take no more comments from the board until the application is noticed and presented at a later date. Mr. Dudick explained to the audience the application will not have a decision tonight, the application is withdrawn and will start anew.

Mr. Bloss asked if the comments from the public would be in the minutes. Mr. Peller assured the comments would be in the minutes, and also a SEQR determination would be made next time.

The secretary read the legal notice as it appeared in the Daily Gazette on September 24, 2015

An application from Jack Levy Subdivision – for an area variance for townhouses: 7 single family residences allowed per 208-16E.(2)(b), variance required to base density = 6 single family dwellings. ZBA is to consider granting relief from the density requirement only. Division of property into parcels and acceptability of open space area will be determined by Planning.

Property is located at Route 146 & Tanner Road, Clifton Park, NY 12065 (Permit #81057)

The application was presented by Joe Dannible, Environmental Design Partnership, representing Jack Levy subdivision. He informed they are asking for an area variance for a 24 unit subdivision off Route 146.

Mr. Peller inquired as to whether he had notice of representation, notarized form signed by Mr. Addelman. Mr. Dannible declared it was given to Planning. Mr. Peller requested a separate one be given to Zoning as that is a different form and Mr. Dannible agreed to provide that.

Mr. Dannible first presented an aerial display of the proposed development showing the property and 2 man-made ponds. The second slide displayed the unique characteristics of the property which is in a CR Zone and adjacent zones to the north, the hamlet to the east (mixed use) and south R-1 residential, and to the west, a corporate commerce zone. He explained they are in the middle of several different zones. The third display was an environmental resource map showing 16 acres of constrained land and 21 acres of developable land and the delineated DEC and ACOE wetlands. The fourth display was of the Tanner Road area. The fifth slide showed the original application presented to Planning in August (a 22 unit subdivision with 11 lots each having 2 unit buildings.) The Planning Board commented they wanted them to connect the road to Tanner Road. Mr. Dannible said by doing that 20,000 sq. ft. of wetlands have to be crossed which requires wetland mitigation. He asserted this is a substantial cost. He informed the town also did not like the northern section with townhouses on Tanner Road.

The next slide presented the new application presented in September with 22 units that connect with Tanner Road and 2 mini farm lots on Tanner Road. He pointed out the higher density development to the south is a seamless extension of the similar subdivision next to it.

The next slide depicted a potential subdivision that would meet the current zoning. He described it as 4 lots on Tanner Road and 4 lots on Route 146 which would create a major disturbance because there would not be running water and sewer to this type of subdivision. He pointed out there would also be curb cuts on both roads. He explained they would have to put in septic systems for the separate lots but they would have sewer and water on the new proposal because it

is cost effective. He explained that seven lots on that property does not support the extension of any infrastructure.

Mr. Peller asked what a mini farm lot is. Mr. Dannible said that is their name for it and explained it would be property where they could put in fences and have horses or farm animals.

Mr. Lemire asked if there would be any buildings on Route 146. Mr. Dannible assured it would be open space and no building would be on Route 146.

Mrs. Jacqui Murray presented the rest of the application. She clarified that the original application had variances that are different than what Mr. Myers had originally determined. She said they are in agreement now with the variances and they are pursuing the variances Mr. Myers identified. Mr. Peller asked if those agreed upon variances were noticed and Mr. Myers confirmed they were.

Mrs. Murray discussed the code (208-16E(2)(b) which limits density in a CR zone district. Mr. Myers determined (and they agree) for this property this would be 21.8 buildable acres requiring 0.33 units per acre or 7.194 dwelling units or a combination of 2 single family homes with 5 semi-detached (the semi-detached would require a special use permit). She said the current proposal is positively recommended by the Planning board but requires a variance for an additional six semi-detached units.

Mr. Myers corrected Mrs. Murray saying the proposal before Zoning is to add six additional single family homes not semi-detached. He stated the semi-detached part has nothing to do with this hearing. Mrs. Murray confirmed that is true but said she wanted full disclosure, explaining they are before the ZBA for 6 single family units and thereafter they will go to Planning and ask for a special use permit to make the single units semi-detached. She didn't want it to be unclear about the end result if they get the variances requested and if they get the permits there will be six semi-detached units in addition to that which is permitted.

Mr. Peller asked if they are saying the six single family units are really six semi-detached. Mr. Myers interjected that is why he said she is allowed seven single family homes and wants an additional six single family homes and firmly stated that is the end of the discussion here. He continued; all the two family issues go to Planning with thirteen single family homes and she wants to make two single family homes and eleven semi-detached. He repeated the ZBA is looking at strictly six additional single family homes.

Mr. Cifor repeated they go to Planning for the special use. Mr. Myers said that is so and if Planning doesn't approve the two family homes, then they are done. Mrs. Murray explained she doesn't want the board to say they didn't know the end product they want will be semi-detached.

Mr. Lemire commented seven are allowed and they want an additional six. Mrs. Murray confirmed that is true which is why they went to Planning to get conceptual site approval before they came to the ZBA. She echoed she did not want the board to be unaware of the intended end result.

Mr. Lemire asked if it is one variance or six additional variances. Mr. Myers advised it is one variance because it is one parcel. Mr. Lemire commented one variance would be less than six questioning whether they could grant one additional lot instead of six if they wanted. Mr. Myers answered that they could theoretically. Mr. Peller counseled it is a density question.

Mr. Bloss asked if the parcel was rezoned like a cluster subdivision like its neighbor would this be before the board. Mr. Myers responded that area is hamlet mixed use, which is why they were allowed to do what they did and this is CR. He explained that hamlet mixed use allow much smaller lots and the problem is that the two zones are different. Mr. Dudick commented the town made this area CR (Conservation Residential) to keep the density as low as possible. Mr. Myers said it is more about why they made the other parcel hamlet because all the other parcels are CR.

Mr. Dannible remarked this is the only parcel east of Waite Road that is zoned CR that fronts on Route 146. He said he thinks it is very unique situation with the zones around them and the fact that they are extending a road from a townhouse community into this parcel.

Mrs. Murray alluded to the five criteria to support granting the area variance for this application.

- 1) She addressed the criteria of unnecessary hardship by stating it was established that this element need not be demonstrated for an area variance
- 2) Answering whether or not granting the variance would create an undesirable change in the character of the neighborhood, she pointed to the map showing this is a continuation of what is already there. She argued this is actually improving the area because in granting the variance it can be more dense and continue what is already there. There are funds available to create a secondary access to Tanner Road.

She stated that creating the road through the wetlands is going to be costly and in order to meet conceptual plans the Planning board has recommended this is one of the deciding factors for increasing the density. She again suggested to the board that this will not change the neighborhood but will extend what is there and create a secondary access.

She alluded to the seven single family lot plan which would not need a variance but would require curb cuts on to Route 146. She also pointed out this new plan will preserve some land and prevent any further development in the future.

Mr. Lemire asked if the Planning board liked the plan to put the road through to Tanner Road, stating that is changing the character of the neighborhood. He asked if there is proof of that approval. Mr. Dannible answered it will be in the Planning board minutes of those meetings and Planning board recommendations were that they obtain the necessary variances. Mr. Lemire said putting a road through the CR zone to Tanner Road, which he called a country road, seems to add to it.

Mr. Myers advised the board the applicant would not have been able to build the court because it is more than 18 units on a dead end street which is not allowed by town law. Mr. Dannible added that the other side of the court had a special emergency exit on to Route 146 which the Planning board and Mr. Myers did not want.

- 3) Mrs. Murray continued by addressing the question as to whether the benefits could be achieved by other means than granting the variances. She alluded to the meetings with

the Planning board where they added the access driveway to Tanner Road to make it all work. She stated there is no other alternative. She agreed it increases the density but reminded there are 16 acres that will never be developed due to wetland constraints.

Mr. Lemire commented that it is his understanding that the CR zone is sacrosanct and suggested alternatives to keep the density down. Mrs. Murray explained the road construction and permitting process will be very costly (\$300,000) which is why they need to increase density to support the cost of the road the Planning board wants. Mr. Lemire asked why they couldn't do what they did off Vista Drive with one curb cut off Route 146 into Vista Court with the density that is allowed and then they wouldn't have to incur the cost of ACOE and building the road to Tanner Road.

Mr. Dannible argued that access to Route 146 is discouraged by the DOT and they try to restrict the number of curb cuts allowed. He claimed when Vista was developed it was assumed this would be developed in a similar manner and that was one of the thoughts in the Planning process.

Mr. Fantini pointed out that whether or not the Planning approves the special use for semi-detached, they are still asking for the same variance from the Zoning board.

4) Mrs. Murray referred to the criteria which considers whether or not the variance is substantial suggesting substantial is a simple number of %. She informed case law says a board can look at the totality of circumstances. She alluded to the number of iterations of the conceptual site plan with the Planning board and they have reached a point where they commended this site plan.

She added the density supports the financial impact of having the long access road without having to access Route 146 and going through the wetlands.

5) The criteria whether the variance will impact on the physical conditions or environmental conditions in the area was discussed. She said that will depend on the SEQR determination by the lead agency however the Planning board looked at the plan and gave a positive recommendation to it.

6) As to whether the hardship is self-created, Mrs. Murray admitted the developer wants to develop the parcel so confirmed it is self-created. She pointed out this is a unique CR district surrounded by four other districts so there is an element that that is also created by the zoning in the area.

She commented this is a balancing test and the board has the discretion to weigh some criteria more than others and asked that the board grant the area variance.

Mr. Dudick, referred to the last slide (plan for four homes on 146 which he said would not need a variance). He observed they would need four curb cuts. Mr. Dannible informed there are other considerations beside the DOT. He explained the homes would be larger but they are near a large scale commercial headquarters. He opined it is not feasible for the developer because it is an undesirable layout for that community.

Mr. Dudick stated it was the town's decision to put the corporate commerce zone surrounded by the CR zone and that is the way they drew the line, knowing they would have residences around it. He told Mr. Dannible if they think the way he suggested, all of the residences should be foregone because of the corporate commercial area.

Mr. Dannible described the location which is abutted by the corporate commerce on the west and on the south is abutting a state highway and two hamlet mixed use zone and also on the east which is also hamlet mixed use. He repeated this is the only piece of property fronting on Route 146 and is zoned CR which makes it unique.

Mr. Dudick asked for agreement that four residential homes can be put on Route 146. Mr. Dannible confirmed it is. Mr. Dudick asked what is it that is undesirable to stay with the allowed zoning of the property to continue on with the Vista Court extension putting two residences to the south and two to the north with no curb cuts on Route 146 and not having to spend \$300,000 to go across the federal wetlands. He pointed out it meets all the criteria that they are trying to accommodate without a variance, other than 22 units are more than 4.

Mr. Dannible said the four units would not meet the necessary infrastructure that would have to be built: the public road, water and the gas line extension. Mr. Dudick argued they wouldn't need to do that. Mr. Dannible said they don't have the frontage and in order to put four units they would have to construct an extension of the road because they only have 55 feet of road there. He said with 4 lots they would have to extend the road 400-500 feet which would not support a reasonable return on the investment.

Mr. Lemire suggested they could get five houses in there. Mr. Dannible argued they would have to construct 900 feet of road and it costs them \$400 a linear foot. Mr. Dudick acknowledged his proposal would be a substantial cost to build the road and pointed out on the map another alternative way of putting the lots, asking about putting in long driveways. Mr. Dannible answered it would be 500 foot driveways and Mr. Myers told him they have to be built to a town road. Mr. Myers interjected that it would be more expensive for four long driveways than to build the road.

Mr. Dannible explained that once you have over a 500 foot driveway it must be 24 feet wide. Mr. Myers commented he is not sure the DOT would allow one, let alone four curb cuts so close to Tanner Road because of the accident history at that intersection.

9:16 pm Mr. Dudick called for a five minute recess.

9:23 pm Mr. Dudick re-opened the meeting articulating his questions had been answered. Mr. Dannible announced the owner of the property, Jack Levy was now present. Mr. Dudick called for public comment informing each person they had five minutes to speak and asked them to sign in with name and address.

Mr. Bill Koebbeman, 861 Riverview Road, Rexford, reminded the board that a lot of work went into doing the GEIS for Clifton Park. He stated the residents are happy with the results and the main object of the CR zone is protect the natural resources like water sources and wetlands of

Clifton Park and to protect the rural character of the town. Two mechanisms the town employed: to employ the CR design, looking at the natural resources and come up with a plan to protect them. He said first you do the plan then you do your development. He was confused about the two family homes, pointing out they have the means of incentive density in the CR zone which he thinks it is good because you can have heavier density in one area and preserve land in another. He pointed out the hamlet mixed use also has a means of incentivizing additional density. He suggested when you double the number of families on a lot, it has an impact and you can see it by the fact they are going through the wetlands to build a road so they can increase the density. He hopes the Zoning board will look at the issue of two family homes in the CR zone and consider there should be a means for an amenity because it is an oversight in the zoning law. He said the applicant claims building the road is creating a hardship but the reason for it is because they want a higher density because they want 18 units. He stated he has a concern with the future projects and setting precedent in other areas in CR zoning. He said if there is something unique about this property, so be it.

Mr. Dudick asked Mrs. Murray if she wanted to do a rebuttal. Mrs. Murray indicated she would wait.

Ms. Susan Burton, 338 Riverview Road expressed her concern about giving variances to increase density in western Clifton Park. She implored the board to make sure that, if they go ahead with the variance, they make sure they make it clear, on the record, why and about all of the qualities of the uniqueness of the property so they don't set a precedent and open the floodgates to other properties that will try to make the same case.

Mr. Dudick asked the number of acres in this parcel and Mrs. Murray answered 38 acres. Mr. Dannible added they are allowed 1 unit per 1.5 acres.

Ms. Ariel Gill, 167 Route 146, informed this development will be in her back yard (as well as another resident also in attendance) saying they do not want this in their back yard and they don't want to see it built behind them. She suggested the board would not want it in their back yard. She informed no one received a notice in the mail. She referred to the ponds, which she said the applicant claimed were man made, asking who made the ponds because they are overgrown and don't look man-made to her.

Mr. Dudick advised Ms. Gill this is an area variance and the applicant for an area variance is not required to notify neighbors (within 500 feet) by mail. He explained the previous application was for a use variance which requires that. He further explained that area variances are noticed in the Gazette newspaper, on the town website and the agenda is posted on town bulletin boards.

Mrs. Murray addressed the public comments. She explained that in terms of the CR zone and the GEIS, semi-detached homes are permitted by special use permit granted by the Planning board. She reminded this is an area variance.

Addressing the references to the incentive zoning, she alluded to their application in which they had listed suggested contingencies where the applicant is willing to provide some type of amenity. She explained the reason it is voluntary, and Mr. Myers put it in as a contingency, is because under the incentive zoning 208-43.15 (b) & (c) it is not available in the CR zoning for

semi-detached units. That is why the applicant made the offer voluntarily. She acknowledges the public's concerns and said they recognize an amenity need and it is part of their application and Mr. Myers recommended there would be a condition on the approval.

Mr. Dudick asked what the amenity is. Mrs. Murray said it is noted in the application what it would be had there not be the limitation for zones on which district the incentive zoning is applicable. Mrs. Murray explained the number is based on the equivalent to the per unit cost that would be required for incentive zoning had the town allowed it for CR district. \$130,000 was suggested and Mrs. Murray responded that number is based on the formula that is already in the incentive zoning. (page 2 section 3b in the application Section 208.43.15)

Mrs. Murray addressed the concerns of the residents bordering the property. She stated during the Planning process the Planning board will have the ability to respond to adjacent neighbors with required buffers from existing zones along Route 146.

Mr. Lemire asked what is a dwelling unit. Referring to Mr. Koebbeman's suggestion the board may want to consider the semi-detached nature of the dwelling because it increases the density. He referred to 208.16E and the definition of a dwelling unit which is described as occupancy by one family, summarizing that is what the ZBA is dealing with. Continuing with his thoughts, he said then it needs to go to the Planning board for a multi dwelling unit.

Mrs. Murray agreed, quoting the code 208.16D(3)(a). Mr. Lemire questioned if the applicant is telling the ZBA it is going to double the density with multiple family residences, why wouldn't the ZBA consider that. Mr. Myers responded it is because the ZBA does not have jurisdiction to grant 2 family approval so therefore they are here to grant six single family homes.

Mr. Lemire summarized what is allowable now is seven dwellings seven single family homes and we are only allowed to consider and vote on six additional single family homes. Mr. Myers confirmed that is correct. Mr. Lemire pointed out what they are proposing on the map is 24 dwelling units (when they split them in half) and what they are allowed is 14. Mrs. Murray confirmed, adding "if they are all semi-detached by special use permit" or you could look at it as all single family and seven are allowed.

Mr. Myers interrupted, advising he really thinks Mr. Lemire should stop considering these two family and look at specifically what they are supposed to be considering for the zoning.

Mr. Lemire referred to what he called the "basic" zoning for CR zone which allows one home for every three acres. He speculated if he wanted to buy a lot and build a house in a CR zone, without a variance, he would need three acres to build a single family home. Mr. Myers confirmed that is correct. Mr. Lemire pointed out they are asking for homes on 1.5 acres, which is cutting that in half. Mr. Myers told him Zoning is not making a determination on the lot size. Mr. Lemire maintained that is the net result. Mr. Myers agreed saying "if you want to look at it that way." Mr. Lemire repeated it is decreasing the lot sizes.

Mr. Myers contended they could go to Planning and ask for a quarter acre lot, repeating you are not determining the lot size here, Planning is determining the lot size. He reminded they had talked about this for hours and this is what it comes down to.

Mr. Lemire referred to the substantial extent of the variance, saying it is 85%. Mrs. Murray said that is what it comes down to, but this is a unique parcel and they are not proposing building on 16 acres out of the 38 acres which is why she is asking the board to look at the totality of the circumstances. She alluded to case study for fair review in determining the substantiality criteria. In terms of assessing the density she claimed there will be a lot of vacant land.

Mr. Koebbeman asked where does it come from that they can only consider a duplex as one dwelling unit. Mr. Myers corrected, saying a duplex is two dwelling units. Discussion ensued regarding consideration of units and incentive. Mr. Myers informed he came to different numbers than the applicant did regarding the incentive and they didn't like his numbers.

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

Mr. Myers offered his comments. He confirmed that Mr. Lemire is correct that they cannot consider the 16 acres of wetland as developable property. He said Mrs. Murray has related that part of the hardship is the way the zoning law is written but he is not sure that is so. He indicated this is a very unique parcel and it was always intended something like this was going to happen. They went through it several times with different results and finally decided they had to remove all the two family and incentive zoning considerations because those had nothing to do with the Zoning board. They decided to consider it as what it is; the addition of six single family homes for the density that is allowed. He explained the reason there are proposed conditions to the variance is to ensure the project goes down the road as it is going to and goes to Planning. It has to get the SUP and Planning to determine open space where it should be.

Mr. Myers reminded they did not have to offer incentives, and they didn't have to in order to make this go forward. He said he agrees with the conditions and that they should be in the variance. He believes it is the right answer for the property, confirming that although they could build seven homes there he doesn't think the DOT will allow them to put the curb cuts on Route 146. He stated he doesn't think seven houses is worth the investment for them.

Mr. Dudick asked if they divided the parcel into seven units for homes whether the DOT could deny the curb cuts. Mr. Myers confirmed it can and they could say there is another way. Mr. Myers summarized he thinks this is the best answer for the parcel for what they want to do. He reminded it is surrounded by "not matching" zones that are going to do "who knows what" down the road. This plan makes the property viable for what seems to be a great demand.

Mr. Dudick alluded to the incentive. Mr. Myers said that will be determined along the way and when he did the calculations himself he came up with different numbers than the developer. He repeated he thinks these conditions should be in the variance.

Mr. Lemire advised he has five points to make.

- 1) He understands Mr. Myers' point they are only considering six additional single family lots but, given the representation of what it will be when the Planning board approves it, it is his opinion that it will create an undesirable change to the character of the neighborhood. He opined that, because it is a CR zone and the intent of that is to protect

the environment, whether it is six or twelve, it flies in the face of the purpose of the CR zone.

- 2) Referring to whether it could be achieved by other means, he reminded that both he and Mr. Dudick suggested alternate options which will allow for the development of the property without curb cuts on Route 146.
- 3) With regard to the extent of the variance, he knows they are allowed 7 units and are asking for six more which is essentially doubling it, which he considers a large variance.
- 4) With regard to whether the variance will have an adverse impact on the environment he opined that depends on what district you are looking at. Indicating this is a CR district then the answer to that question is “yes”.
- 5) Asking the question of whether this is self-created, he answered “yes” because they are asking for more than is allowed in the district. His indicated his position is that they haven’t met the elements of an area variance.

Mr. Myers advised the Planning board is taking lead agency so this board does not have to make a SEQR determination here. Mr. Peller counseled that he agrees with that.

Mr. Cifor asked Mr. Myers if the Planning board has given them a positive recommendation of the project. Mr. Myers said they have.

Mr. Cifor addressed Mr. Lemire’s comment regarding changing the character of the neighborhood. He reminded it is not changing the character of the zoning but the character of the neighborhood and this is clearly a continuation of the neighborhood and in the character of the neighborhood.

Mr. Fantini made the motion to approve the application as submitted contingent on the three conditions listed on the application. Mr. Dudick read the conditions:

- 1) Division of lots, size of lots and determination of permanent open space to be controlled by Planning.
- 2) Applicant must apply for and have approved by Planning, SUP’s for Lots 1 thru 11 to become 2 family semi-detached.
- 3) Applicant agrees to pay incentive as determined by Planning for variance relief.

Mr. Fantini opined he does not think this changes the character of the neighborhood; he thinks the mini farms meet the character of the rural area and he also recognizes that building individual houses is economically unfeasible. He added this is a unique circumstance with different zoning around it.

Mr. Cifor seconded Mr. Fantini’s motion.

Mr. Lemire disagreed, saying there was no financial evidence presented as to the financial unfeasibility of building single family homes.

Mr. Dudick responded the criteria for an area variance doesn’t talk about financial criteria. Mr. Lemire disagreed quoting one of the criteria questions “could the benefit be achieved by other means feasible to the applicant” and added “without asking for an area variance”. He remarked

he assumes there are some other methods and they have not produced any evidence that another method is not financially feasible. Referring to the five elements, he said when you balance the benefits of the applicant with the purpose of the CR zone, and not having met the five elements it is his understanding the board should weigh in favor of the zoning (code).

Mr. Dudick commented there are many moving parts to the application. He declared his questions have been answered as far as other options regarding roads because of the unfeasibility of long driveways or road. Referring to changing the character of the neighborhood he alluded to the greater density to the south and smaller to the north, partially because of constraints of the wetlands and the size of the property. He said argument was made that this is the only CR zone east of Waite Road on Route 146. He summarized that all this makes compelling arguments as to why this is a reasonable, noting it is not ideal, but still the best argument as why this could be approved. He recognizes there is an industrial border next door and finds it to be an interesting mix to have corporate commerce and residential side by side, pointing out it is not an ideal way but he sees it as reasonable. He indicated he plans to vote to approve.

Mr. Lemire referred to his comment about changing the character of the neighborhood, pointing out there are two neighbors here who are not in support of it. He accused that what they (board members) are saying is the larger neighborhood trumps the two ladies who have taken the time to come here.

Mr. Dudick answered that this board is not approving a multi-family unit only the lots for single family from a zoning perspective. He stated their argument about increasing density should be taken to Planning, but he is ok for single family which is what they are deciding here.

Mr. Jack Levy, owner of the property, thanked the board for analyzing the data and whatever the board decides, he feels they have listened. He acknowledged the concerns of the neighbors pointing out he has 38 acres and could put more homes. Mr. Lemire reminded that he has only 21 acres of developable land.

Ayes: Bagramian, Cifor, Dudick, Fantini, Morelli, Bloss Noes: Lemire
Application approved with contingencies.

The board approved the minutes for September 1, 2015 and September 15, 2015.

The next meeting is October 20, 2015.

Mr. Morelli made the motion to adjourn. The motion was seconded by Mr. Fantini. The meeting was adjourned at 10:25 pm.

Respectfully Submitted,

Susan White
Secretary

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