

# Town of Clifton Park

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Zoning Board of Appeals



APPROVED

5-17-16

## ZONING BOARD OF APPEALS

May 3, 2016

**Present:** Michael Dudick, Chairman, Chris Lemire, Jerry Cifor, Lisa McCoy, Randy Gifford, Anthony Morelli and Michael Bloss

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

Mr. Dudick called the meeting to order at 7:04 p.m.

PLEDGE OF ALLEGIANCE  
ROLL CALL

### OLD BUSINESS

NONE

### NEW BUSINESS

NOTE: The applications of Dan Lill and Thomas Lill and Brooks Teele were postponed until the May 17, 2016 meeting.

*The secretary read the legal notice as it appeared in the Daily Gazette on April 28, 2016.*

1. Craig Werner for an area variance from Section 208-12A which requires 10' minimum setback from side or rear property lines for accessory structures, plus 1' for every foot the structure height exceeds 15' (taken at roof midpoint). Newest proposed structure requires 17' setback, 1' available. 16' variance required. Structure built in 1988 requires 12.5' setback. 7.1' available, 5.4' variance required. Applicant proposes to use easement area to meet setback requirements. Property is located at 677 Riverview Road, Rexford, NY 12148. (Permit #81080)

The application was presented by Craig Werner who purchased the property about 4 years ago from Yates Lansing. Mr. Werner stated the prior owner had built a pole barn and a steel building which was shown on a survey to be 11' from the property line. He said that he had a 30' easement from Isabel Shay (Barrett-Prescott) who owns the apple orchard behind his property. He explained that when he built the new structure which is to be 3 car garage, he had lined it up with the steel building at the opposite corner of the property so

the buildings were facing each other and had poured the foundation. When the Building Department came out he was told he should check to make sure he was within the property line. He then had a survey prepared which showed it was a little over 1' from the property line and he was told to stop work. He stated he then spoke to Isabel Shay and asked if he could buy the easement area. He indicated that Isabel told him she could not sell the property and he believed it was because it was forever wild.

Mr. Peller clarified that Isabel has a Conservation Easement with the Town.

Mr. Werner further stated that Isabel had advised him he could use the 30' easement area for access; that she had no problem with where he wanted to put the garage, and that she had suggested he approach the Town to ask for a variance. Mr. Werner said he has already poured the foundation and spent about \$20,000 on the site work, the foundation and the survey and that he could not afford to tear it out and redo it.

Mr. Peller asked if the easement area he was referring to in the back of the property with Mrs. Shay had been conveyed to him when he bought the property or if he had entered into an easement agreement with her.

Mr. Werner stated he had not bought the property or entered into an agreement with her, but that Mrs. Shay told him the Easement would carry to him.

Mr. Peller stated that the terms of the Easement may say that no encroachments can be in that area and if that was the case, that Mr. Werner could be making it void by doing so. He encouraged Mr. Werner to check the wording on the filed Easement of record and advised that in the event the Board decides to approve the application, there would need to be a contingency that he can't violate the specific terms of the Easement.

Mr. Werner stated the cement foundation is not in the 30' easement, but is 16" away from it as confirmed by the survey he had prepared by Flanders Surveying.

Mr. Cifor asked if he had anything in writing from Isabel stating that she has no problem with what he is doing. Mr. Werner responded that he did not, but that she had told him if the Board needed something, she would provide it.

Mr. Peller said that Mr. Werner should get something in writing from Isabel because if she sells the property then he might then have a neighbor that doesn't like the fact that he is that close.

Mr. Werner stated that Isabel told him she couldn't sell the property and Mr. Peller confirmed there is a term in which she had agreed not to sell.

Mr. Cifor agreed that he would like to see something in writing stating that Isabel has no problem with the fact that he is only 16" off the property line and that she is fine with where Mr. Werner is putting the garage, because she is the only person he would be impacting. Mr. Werner indicated he would talk to her.

Mr. Lemire asked about the pole barn and Mr. Werner confirmed it is closer to the property line than he was told. Mr. Lemire asked Mr. Myers if there was a variance for the pole barn. Mr. Myers advised there was not; that it was located incorrectly and not been caught when it was built; and that is why it is included in this application.

Mr. Dudick questioned the \$20,000 figure Mr. Werner stated had been spent so far. Mr. Werner clarified that number included the cost of having the foundation dug, formed, placement of foundation walls, steel reinforcement, rebar, footings and the survey, in addition to the foundation being poured.

Mr. Dudick announced the public hearing and asked for comments or questions. There were none.

Mr. Myers advised he also would like to see a letter from Isabel Prescott because the location represented to Town on the plans that were submitted is that the garage was going to be 10' off the property, which is obviously not the case.

Mr. Dudick asked if the 30' easement being discussed was Mr. Werner's property. Mr. Myers responded that it is Ms. Prescott's property, but that Mr. Werner may have the right to use it, and that it should be reviewed.

Mr. Lemire stated that he thought the plan showed a driveway in the easement area. Mr. Werner advised it was not a driveway, but that the former owner of his property had used it for parking.

Mr. Myers pointed out that if you look to the left side of the drawings there is a strip of land that runs up alongside the property which is also an easement that provides access to the other one. Mr. Peller inquired if that was as shown on the lands of Mr. Faulkner and Mr. Myers confirmed was correct.

Mr. Cifor stated that the usual purpose of an easement is for ingress and egress, which is not an encroachment. Mr. Peller stated that conservatively, the Easement language should still be reviewed.

The Board members agreed and again stated they would like to see a notarized statement from Mrs. Shay and Mr. Dudick asked Mr. Werner if he would be agreeable to coming back before the Board at a later date with such a letter in hand for the Board to review. Mr. Werner advised that he would.

Mr. Peller advised Mr. Werner that if was going to agree to adjourn the matter, he would also have to agree that the Board would not be making a decision on his application within the required 61 days. Mr. Werner responded that was agreed to and advised the Board he would like to come back for the next meeting on May 17, 2016 with the requested letter and a copy of the easement so the Board could review the language.

The application postponed to the May 17, 2016 meeting.

*The secretary read the legal notice as it appeared in the Daily Gazette on April 28, 2016.*

**2.Fisher Revocable Trust for an area variance from Section 208-12 which requires an 80' front setback for accessory structures. 5.8' available, 74.2' variance required. Property is located at 1567 Crescent Road, Clifton Park, NY 12065. (Permit #81082).**

The application was presented by John Stevens, P.E. of Infinigy Engineering. Mr. Stevens advised that he was requesting an area variance from the front yard setback for an accessory structure, pointing out that his application incorrectly noted it as a 50' requirement, but had been corrected to reflect the 80' required setback. He further stated the variance request is part of a larger 61 lot subdivision development project which is currently in front the Planning Board. He pointed out the existing house on the plan which has an existing in ground swimming pool, stating that house would remain.

Mr. Stevens explained that during the subdivision process which has been ongoing for a couple of years, the desires of the Planning Board were to leave the frontage without any homes along Crescent Road; that there be 2 separate entrances separated by 300' per the requirements of the Town Code due to the number of proposed lots; and the predominance of wetlands in the front. He explained that during the development of the project there have been numerous wetland crossings and that each crossing created a wetlands disturbance, which then entailed wetlands mitigation which they are currently negotiating with the Army Corps of Engineers. He explained that with the existing wetlands, the new wetlands and the location of the 2 roads, it has forced the one proposed road to swing up and then swing down, which he said frankly, is not an ideal situation. He said they could not get the road farther away from the garage shown on the plan without tightening the curve and that they have to make sure they have the proper turning curve for fire trucks without disturbing more wetlands. He stated it has been an iterative process over a number of years which has gotten them to the point they are at now, requesting an area variance for the front yard, because they are currently only 5.8' away from the property line. Mr. Stevens indicated that there are no homes across the street and that only 2 properties that would be affected by this variance would be one new proposed home and the existing home.

Mr. Cifor asked if he was talking about a garage or an in ground pool. Mr. Stevens confirmed it was an existing in ground pool which is currently 5.8' off the property line.

Mr. Cifor asked how far the pool was off the road, to which Mr. Stevens responded about 17'. Mr. Myers opined it was probably closer to 20' off the road and then asked how wide the right of way was. Mr. Stevens responded it was a 50' right of way. He further stated that although it is not ideal, it is in the front yard of Mr. Michael Scott's house, who is the owner of the entire property to be subdivided and that Mr. Scott intends to remain in the house.

Mr. Cifor asked about fencing around the pool and Mr. Stevens indicated it would be a solid slat fence that had to be relocated on the corner.

Mr. Bloss asked if this is all being created because of the cutting of the new roadway, which Mr. Stevens responded was correct.

Mr. Lemire requested the applicant point out where the road was on the plan and asked if the existing driveway crosses over wetlands. Mr. Stevens responded it did not and pointed out on the plan that it runs between the wetlands shown and is where the new trail will be. He explained that the road could not be relocated because it would impact more wetlands

Mr. Dudick opined that the problem would be eliminated if the pool was moved and that it is the owner of the entire property who owns the pool which is creating the problem. Mr. Stevens agreed that was correct.

Mr. Peller asked if once the Town Road is in, with the right of way on each side, whether the pool would be in the right of way. Mr. Stevens replied the edge of the pool would be 5.8' away from the property line which is the right of way and would be entirely on the subdivision owner's property.

Mr. Bloss opined that it would be tough plowing snow up against the fence.

Mr. Dudick opened the public hearing and asked for comments or questions. There were none.

Mr. Myers pointed out that the Zoning Board has never allowed an accessory structure in the front yard and has never allowed a setback less than the main building. He stated this is a substantial variance that would affect the character of the neighbor because the pool will be in the front yard and that nobody else in the neighborhood would be able to do that.

Mr. Myers also stated that in his opinion, the applicant's request is too early, because the subdivision and the final road location haven't been approved. He further stated that he believes the lots are unbuildable and that until the plans are approved and stamped by the Planning Board, it is not approved.

Mr. Stevens advised that although he understood Mr. Meyer's comment, the Planning Board did not want to act on their further consideration of the project until they had resolved the variance issue and said the Planning Board had sent him to the Zoning Board. Mr. Myers stated that was the first he has heard that, but that he could find that out tomorrow.

Upon inquiry from the Board's counsel Mr. Stevens confirmed they have conceptual approval, but not preliminary approval.

Mr. Dudick stated that this is a significant proposed development of an entire subdivision and they are talking about the location of a road to accommodate a swimming pool in a front yard, which is an unusual situation as Mr. Myers had pointed out. He further opined that it would be cheaper if the pool were filled, relocated or removed all together and that would allow for greater flexibility as far as development of the road.

Mr. Stevens responded that the main design factor of the road was the turning radius and getting around the wetlands and that even if the pool wasn't there, he was not going to be able to remarkably change the road configuration, because they still have the existing house to contend, even if they didn't have the pool there.

Mr. Cifor commented that the pool is pre-existing; that the existing owner of the pool is fine having the pool in his front yard 14' off the road and that anyone who is going to buy the houses in the new subdivision is going to see that there is a pool there, and therefore would be buying the house with the knowledge that someone has a pool in their front yard.

Mr. Dudick responded that was true, but that it isn't up to the homeowners who are going to buy, it was up to the Zoning Board as to whether they want to allow a pool in the front yard.

Mr. Lemire asked where the front of the house was. Mr. Stevens pointed it out on the plan and Mr. Lemire stated that before this development went in, this particular house was quite a ways back off of Crescent Road and nobody knew or cared about the pool being in the front yard. Mr. Stevens responded that was correct.

Mr. Dudick stated that in his mind, this was a substantial development which will have costs associated with it such as tree removal, excavating and things of that nature, and that he would consider the swimming pool to be just as much of an obstacle to get around as a tree or a large boulder and that sometimes things have to change with the development of the property such as moving or removing a pool. Mr. Stevens stated that he understood Mr. Dudick's position.

Mr. Dudick then made a motion to close the public hearing. Mr. Gifford seconded. All voted in favor and the public hearing was closed.

Mr. Cifor again stated that he personally did not have a problem with the application and that he doesn't see the impact to the neighborhood because people purchasing would be accepting that there is a pool in the front yard if they buy a house in the subdivision.

Mr. Dudick stated that if someone decided that they wanted to build a house 10' off the road they would have to come to this Board for a variance even if all of his neighbors were okay with that and that we as the Board get to decide how things are built and how things look in our Town. He further pointed out that was the reason Mr. Stevens has come before them and that if the Board is okay with an in ground pool being less than 6' off the property line, then certainly the Board could approve it, but it would create a precedent.

Mr. Lemire commented that Mr. Stevens had said that the Planning Board sent him here to deal with the variance, which he presumes is a part of the greater subdivision and therefore, the benefit is to the applicant who not only wants the subdivision to go through, but also wants his pool. He stated in his opinion, he believes the benefit of the subdivision could be achieved by the pool being removed. Mr. Lemire agreed with Mr. Myers' assertion that the variance is substantial, adding that it is certainly self-created because the applicant owns all of the property that is being subdivided and developed and knew where his pool was when he decided to develop this piece of property. He further stated there would be an adverse change in the character of the neighborhood, because the Board has never approved an accessory structure in the front of a property or closer to the road than the main house.

Mr. Peller asked Mr. Stevens if he wanted the Board to forward and make a decision, to which Mr. Stevens responded yes.

Mr. Cifor made a motion to approve the area variance requested. The motion was not seconded and therefore did not carry. Mr. Dudick then made a motion to deny the application as submitted. Mr. Gifford seconded the motion.

Mr. Dudick stated that although there is no nearby neighborhood right now, he believed the requested variance would produce an undesirable change to the development if it existed in any other area of the Town. He stated the benefit sought by the applicant could be achieved by some other method feasible for the applicant to pursue by the road not being placed where it is proposed. He stated that the proposed variance was substantial; that the requested variance would have an adverse effect on the physical conditions of the neighborhood or district and that the alleged difficulty was self-created because of the additional development of the property by the owner. Mr. Dudick concluded by reminding the Board that a yes vote in support of his motion would be a vote to deny the application.

*The secretary called the Vote:*

Ayes in favor of denial: Mr. Lemire, Mrs. McCoy, Mr. Dudick, Mr. Gifford, Mr. Morelli and Mr. Bloss

Noes opposed to denial: Mr. Cifor

**Application denied.**

*The secretary read the legal notice as it appeared in the Daily Gazette on April 28, 2016.*

3. **Lisa C. Garrison Robbins for an area variance from Section 208-12A which requires an 80' setback from property line for accessory structures in an R-1 Zone. 49' setback available. 31' variance required. Property located at 3 Bent Pine Hollow, Clifton Park, NY 12065. (Permit #81083).**

The application was presented by Richard Green, the property owner's father. Mr. Lemire disclosed that his daughter has played softball with the applicant's daughter for many, many years and that he knows the applicant's family very well. He stated that he felt he could rule on their application fairly, but wanted to advise the Board of that issue.

Mr. Peller asked Mr. Green if he had any issues with Mr. Lemire ruling on his application, to which Mr. Green responded he did not.

Mr. Green started by saying when his daughter Lisa originally bought the property there was a swimming pool in the backyard, but that last year the motor gave out and 2 months after that the water was in the street. He indicated Lisa had decided that the next proposal would be to put an in ground pool in and the side of the house was determined to be the best flat location. A survey was then prepared showing all of the contours and grades and it was determined that 10' feet more property would be required to place the pool in the desired location. Mr. Green indicated that Lisa and the neighbors at Lot 5 shown on the plan had entered into an agreement and that he prepared the land description for the conveyance. He indicated a 16' x 36' in ground pool is being proposed and that an existing shed that was put in last year will also have to be moved and is therefore, part of this application. He clarified that they were seeking a variance for both the shed and the pool, both of which are 49' from the right of way.

Upon inquiry from Mr. Dudick, Mr. Green confirmed the subject house is noted as Lot 3 on the plan submitted and that the pool cannot be located behind the house due to a very steep hill, which runs all the way across the back of Lots 1, 3 and 5 and that those backyards have approximately 20.5' of land before the slope changes drastically. Mr. Green further stated that the proposed location of the pool would require a 4' retaining wall which was also shown on the plan submitted.

Mr. Bloss asked why the right of way boundary shown on the plan is so far into the property, stating it appears to be 30' from the property line if he was interpreting it correctly.

Mr. Green stated that he had taken a transit and set it down in the middle of the road and then measured the location of the street in 3 different places from the transit and had tied it into both houses and that evidently its 30', and therefore there must be a larger right of way than a 50' in that area.

Mr. Bloss opined that if the right of way was a normal depth into the property line, the request would be a lot smaller and asked Mr. Myers if he had any information on why the right of way is so far up into the property. Mr. Myers responded he did not and suggested perhaps the house plans would tell him more, but that it did seem quite significant.

Mr. Peller asked Mr. Green where Bent Pine Hollow was located and if it was part of a larger subdivision, to which Mr. Green responded it is off Plank Road and is not part of a subdivision.

Lisa Garrison Robbins stepped up the podium and advised the Board that Mr. Green is not only her father, but is an engineer as well. She stated that in addition to the slope in the backyard, another reason they could not go farther back is because there are 60' to 70' pines that cannot be disturbed or they would have problems with all of the neighbors. She indicated they had addressed the issue with all of their neighbors and that no one had an issue with it.

Upon inquiry from Mr. Lemire, Mr. Green pointed to the 10' strip of land that was purchased on the plan and pointed to the properly line as it existed prior to the purchase and to the property line after the land had been purchased.

Mr. Dudick inquired as to whether that property had already been purchased or if it was contingent upon the Board's approval. Mr. Green advised that the land had already been deeded.

Mr. Dudick opened the public hearing and asked for comments or questions. There were none.

Mr. Myers advised that he really didn't have an issue with what was being proposed and that he would perhaps look into it further to see if there is something amiss with the right of way width. He advised that if he did find something that says that the variance would actually be reduced as a result of his findings, he would let the Board know.

Mr. Dudick made a motion to close the Public Hearing. Mr. Cifor seconded the motion. All voted in favor and the Public Hearing was closed.

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

Mr. Bloss stated that he did not believe an undesirable change to the character of the neighborhood would be created because of the fact that the front yard is very large. He stated that based on the engineering provided, this appeared to be the best location for the pool and therefore he did not feel that the benefit sought by the applicant could be achieved by another feasible method. He stated that pending a review of the right of way width, the requested variance did not seem substantial; and that there would be no adverse effect on the physical or environmental conditions of the neighborhood if the variance was granted. He concluded by stating that although the alleged difficulty was self-created, the other factors outweigh that situation.

*The secretary called the Vote:*

Ayes: Mr. Lemire, Mr. Cifor, Mrs. McCoy, Mr. Dudick, Mr. Gifford, Mr. Morelli and Mr. Bloss

Noes: None

**Application approved.**

*The secretary read the legal notice as it appeared in the Daily Gazette on April 28, 2016.*

4. **Michael Mangino for an area variance from Section 208-12A which requires 80' front setback for accessory structures. 45' available, 35' variance required. Property is located at 37 Damask Drive, Clifton Park, NY 12065. (Permit #81084).**

The application was presented by the owner of the property, Michael Mangino who stated he is looking to put an accessory structure in what he originally thought was the back of his house, but has since learned that he has 2 fronts because he is on a corner lot. He stated that he wants to place a 10' x 20' structure facing Damask Drive which turns out to be the front of his house, and in order to do that he needs a 35' variance. He further stated the structure would be on blocks and not on a foundation.

Mr. Dudick asked what the proposed structure was and Mr. Mangino stated it was going to be a shed or a garage. Mr. Dudick asked if he was planning to put a vehicle in it and Mr. Mangino responded, yes at times.

Upon inquiries from Mr. Lemire and Mr. Dudick, the applicant clarified that the word "front" on the plan submitted is where the front door of his house is which faces towards Damask Drive; that the garage door on the garage that is currently existing as part of his house faces Lace Lane; and that the new structure he is looking to put in would face Damask Drive so it would be a right hand turn into the new garage.

Mr. Dudick stated that the Zoning Board routinely hears this exact scenario with people who own corner lots as far as setbacks because there are 2 fronts of the property.

Mr. Dudick opened the public hearing and asked for comments or questions. There were none. Mr. Dudick then made a motion to close the public hearing. Mr. Gifford seconded the motion and the public hearing was closed.

Mr. Myers stated that this is a normal corner lot issue and that for what the applicant wishes to use the structure for, it would make sense to put at the end of the driveway so that Mr. Mangino could drive in and out of it and therefore, he did not see any real problem with what was being proposed.

Mr. Lemire asked Mr. Mangino if he was planning on fencing it in. Mr. Mangino responded yes, he has to because he has a pool. .

Mr. Dudick stated this is a Type II action and no further SEQRA review was required as determined by the head of the Building Department.

Mr. Gifford made a motion to accept the application as submitted. Mr. Morelli seconded the motion.

Mr. Gifford stated that he did not believe an undesirable change would be produced in the character of the neighborhood or that a detriment to nearby properties would be created because this is a corner lot. He stated he did not believe the benefit sought by the applicant could be achieved by some other method because he has a corner lot and therefore, the requested variance was not substantial. Mr. Gifford also stated that he did not believe the proposed variance would have an adverse effect or impact on the physical or environmental conditions of the neighborhood and the alleged difficulty was not self-created.

*The secretary called the Vote:*

Ayes: Mr. Lemire, Mr. Cifor, Mrs. McCoy, Mr. Dudick, Mr. Gifford, Mr. Morelli and Mr. Bloss.

Noes: None.

**Application approved.**

*The secretary read the legal notice as it appeared in the Daily Gazette on April 28, 2016.*

**5. Michael J. Hill for an area variance from Section 208-12A which requires a front setback of 80' for accessory structure. 18' available, 62' variance required. Property is located at 192 Moe Road, Clifton Park, NY 12065. (Permit #81087)**

The application was presented by Michael J. Hill, who has owned the property for 3 years. He stated that when he first came in to get a building permit for a 16' x 10' shed on the southeast corner of his lot, he was advised that it was not the side of his property, but was actually was the front, due the key shaped lot he has. He stated he was here tonight to ask for a variance from the 80' setback requirement and that he wants to put the shed 18' from the property line and 5' from the easement as shown on the drawing.

Upon inquiry from Mr. Peller and Mr. Gifford, Mr. Hill confirmed the shed was not to be located in the easement and would be on left hand side of his house, beyond the end of the driveway in a slightly wooded area and that he would have to remove 2 shrubs the previous homeowner had put in, as well as a small tree. Mr. Hill further indicated that he had talked to his neighbor Mr. Testa, at 190 Moe Road which is Lot #5 on the plan submitted, to advise him what he was planning to do and that Mr. Testa was okay with it.

Mr. Lemire asked if lots 5 and 6 were developed to which Mr. Hill responded that they were and that the neighborhood was about 10 years old.

Mr. Myers clarified this was a private road and not a Town Road and that all of the homes have 40' of frontage on Moe Road which is why they all have Moe Road addresses. He stated that when it was developed it was decided to keep it a private road, so it was not built to Town standards and they had kept this configuration with all of the key hole lots.

Upon inquiry from Mr. Lemire, Mr. Myers confirmed the 80' setback is from the front line that faces Moe Road, further stating that although all of the houses face the private road, the front line of each lot is the front line facing Moe Road and that the required setback would be 80' from Mr. Hill's property line and not from all the other lots.

Mr. Lemire asked if this was a Town Road whether the applicant would be okay, to which Mr. Myers responded that was correct.

Mr. Dudick asked Mr. Myers what he meant by the private road not being built to Town standards. Mr. Myers explained that the width of the road is not correct, the drainage structures are not correct and that he did not believe the material used under the road was correct.

Mr. Peller asked Mr. Myers whether Mr. Hill had originally asked for interpretation and if the application had been converted into the area variance request. Mr. Myers stated that was correct and that Mr. Hill had submitted the application with just the bottom of page 2 filled out.

Mr. Peller stated he was concerned that there was not a properly filled out application and that for the record, Mr. Hill should fill out the entire application.

Mr. Hill apologized, stating he originally thought it was an interpretation when he first looked at it. Mr. Myers advised Mr. Hill he could fill out the application he has and he would make the required copies.

Mr. Dudick opened the public hearing and asked for comments or questions. There were none. Mr. Dudick made a motion to close the Public Hearing. Mr. Lemire seconded. All voted in favor and the public hearing was closed.

Mr. Cifor made a motion to approve the area variance as submitted. Mr. Lemire seconded.

Mr. Cifor stated he did not believe an undesirable change would be produced in the character of the neighborhood or detriment to nearby properties created by the proposed variance and that the benefit sought by the applicant could not be achieved by some other method feasible for the applicant to pursue. He stated that although he did not believe the requested variance was substantial, it could be considered substantial due to the distance from Moe Road. He also stated that the proposed variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district and that the alleged difficulty was self-created because the applicant doesn't have to build a shed.

*The secretary called the Vote:*

Ayes: Mr. Lemire, Mr. Cifor, Mrs. McCoy, Mr. Dudick, Mr. Gifford, Mr. Morelli and Mr. Bloss.

Noes: None.

#### **Application approved.**

Mr. Hill completed the application in Mr. Myers' presence prior to leaving the meeting.

*The secretary read the legal notice as it appeared in the Daily Gazette on April 28, 2016.*

- 6. Ray Sign for area variances from Chapter 171 Chart I which requires: (1) maximum wall sign area of 60 sq. ft. Area of wall sign proposed = 120 sq. ft. and 80 sq. ft. = 200 sq. ft. 140 sq. ft. variance required; (2) a 15' setback from the property line for a freestanding sign. Setback proposed = 6.7', variance required = 8.3'; and (3) Maximum wall sign height of 20'. Proposed height = 50' +/- front and 45' +/- rear. Maximum variance required = 30'. Property is located at 627 Plank Road, Clifton Park, NY 12065. (Permit #81086)**

The application was presented by Russell Hazen of Ray Sign Company on behalf of the Courtyard Marriott Hotel. He stated that they are looking for a variance for a road sign, which would be setback about 6.7' from the property line. He pointed to a mark on the plan where the proposed sign would begin and said there would still be at least 25' to the curb of the road, which is pretty much in line with the Best Western sign which is south of their property on Plank Road. He stated if the sign were placed at the required setback it would not be seen as you were going down Plank Road and that this building will not have a sign on the west side of it and therefore it was really the best spot for a monument sign.

Mr. Dudick asked Mr. Myers if what Mr. Hazen was saying was accurate in that people wouldn't know where to turn as far as the directional signs and if that was even an allowance.

Mr. Myers stated there has been no directional sign discussion for that area to date, but that he doesn't think there is any issue with where the applicant wants to put the sign, considering the setback of the building.

Mr. Lemire asked if this property was in the Form Based Code Area and Mr. Myers responded it was, but that the setbacks and variances being proposed are in conjunction with the Sign Law, which was not changed by the Form Based Code.

Mr. Lemire inquired as to whether the sign setbacks are still the same in this pedestrian friendly area and asked if the applicant's concern about not being able to see the sign from the road because the building was in the way, was a legitimate concern. Mr. Myers responded yes to both inquires and further stated that people parked in the parking lot would block the sign and therefore, the sign would be better closer to the road.

Mr. Lemire inquired as to whether the applicant was entitled to a freestanding monument sign and whether needing the sign closer to the road was a function of the building being closer to the road, and if that was due a variance that the Board had previously granted.

Mr. Myers stated that was correct and that the new code required it. He further stated he believed the Board had granted a variance for this building in the past, but that he was not sure if it was for the current building or for a possible proposed addition to the front of the building in the future.

Mr. Cifor stated there was also a parking variance and Mr. Myers confirmed that variances had been granted to get everything closer to the road because of the Form Based Code

Mr. Lemire asked whether the Form Based Code had essentially created this potential issue and Mr. Myers responded that was correct.

Mr. Dudick made a motion to close the public hearing since there was public present. Mr. Lemire seconded. All vote in favor and the public hearing was closed.

Mr. Myers asked Mr. Dudick if he was going to do the other 2 sign variance requests separately, suggesting he do them all at once.

Mr. Lemire stated that Mr. Dudick had only closed the public hearing because there is no public present.

Mr. Peller advised Mr. Dudick if he was going to take the variance requests one by one, he would need to reopen the Public Hearing.

Mr. Dudick asked Mr. Myers if the proposed sign was in fact in line with the Best Western sign.

Mr. Myers stated he believes its pretty close, but that the Best Western sign is going to be moved because it sits on property owned by the Marriot. He further stated that he believes the proposed sign is in line with what is desired for the model code in that everything is pedestrian friendly and closer to the road, adding that this is not an exotically large sign. Mr. Hazen confirmed the proposed sign was low to the ground.

Mr. Dudick asked whether there would be any issues as far as pulling in and out of the parking area or having sight line blocked because the sign is so close to the road. Mr. Myers stated that he did not believe so and that the location Mr. Hazen is proposing takes care of all that.

Mr. Cifor asked if the LED channel letters proposed for the sign are standard and Mr. Myers responded they are allowed in that area.

Mr. Lemire asked whether there is sidewalk going between the sign and the road and Mr. Myers advised there is already a sidewalk along Plank Road and showed it to him on the drawing.

Mr. Lemire asked if there is going to be a crosswalk and Mr. Myers advised there were no sight issues.

Mr. Dudick then stated the Board would hear the rest of the variance requests and then vote on everything at one time.

Mr. Hazen stated the second variance request was for 2 building signs, one on the front of the building and one on the rear elevation of the building. He stated the desired signs are above the allowable height for wall signs, which seems to be the norm with hotels today, but that he didn't believe they would be doing anything unusual or setting any precedent as far as the heights were concerned. He stated when you look at the square footage of the proposed signs in proportion to the building, they don't appear that large as compared to some of the other hotels in the area. He added that the square footage requested includes the air space between the words and that if you eliminated that and just measured the physical signs themselves, they only come up to about 155 sq. ft. of actual signage on the building. He further stated that the signs were not going to be a detriment to the neighborhood; that neither sign was going to face Route 146; that this is not a residential area and that he feels the signs fit the building well as far as the proposed height and proportion.

Upon inquiry from Mr. Lemire, Mr. Hazen advised the rear sign was going to face the Northway and that the proposed signs are different heights. Mr. Myers advised that the front sign is on a bit of a parapet, whereas the rear sign is just above the windows of the building.

Mr. Cifor asked Mr. Myers if he saw any material differences from the other variances the Board has approved for other hotels. Mr. Myers responded that these are actually on the smaller side compared to some of the other ones the Board has approved, both in size and in height. He stated that the sign for the Hilton is over 70', but that the Hilton is 5 stories high and this hotel is only 3 stories, and therefore is minor compared to the other ones they have approved.

Mr. Dudick opined that it would make sense to put the signage for the hotel near the top of the building as opposed to the bottom, but that if it was kept in line with Town Code, the signage would be required to be closer to the second floor. Mr. Myers stated that would be in the middle of the building

Mr. Hazen stated he believed the code might have preceded the new hotels coming in and didn't have the foresight then to think about these tall buildings, advising he didn't know what year the Sign Law was written.

Mr. Lemire asked if the Board had dealt with the height of the building in the past. Mr. Myers responded no, that he believed the height of the building was fine as far as the Code.

Mr. Dudick made a motion to close the public hearing. Mr. Morelli seconded. All in favor and the public hearing was closed on all parts of the application.

Mr. Morelli made a motion to approve all 3 variance requests as submitted. Mr. Lemire seconded the motion.

Mr. Morelli stated that he did not believe an undesirable change would be produced in the character of the neighborhood due to the surrounding properties. He stated that the benefit sought by the applicant could be achieved by some method other than the area variance because there could be other signage. He stated he did not believe the requested area variance was substantial based on the character of the neighborhood and that he did not believe the proposed variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. He concluded by stating that although the alleged was self-created, he did not think that should negatively affect this submission.

*The secretary called the Vote:*

Ayes: Mr. Lemire, Mr. Cifor, Mrs. McCoy, Mr. Dudick, Mr. Gifford, Mr. Morelli and Mr. Bloss.

Noes: None.

**Application approved.**

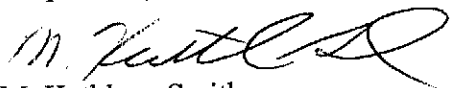
Mr. Dudick then made a motion to approve the minutes from the April 5, 2016 meeting. Mr. Dudick, Mr. Lemire, Mr. Cifor, Mrs. McCoy, Mr. Gifford, Mr. Morelli and Mr. Bloss, who were present at that meeting, seconded the motion and the minutes were approved.

**Mr. Dudick made a motion to adjourn the meeting. The motion was seconded by Mr. Cifor. Approval was unanimous.**

**The meeting was adjourned at 8:34 p.m.**

**The next meeting is May 17, 2016.**

Respectfully submitted,

  
M. Kathleen Smith  
Secretary, Zoning Board of Appeals

Cc: Town Clerk, Town Board, Town Attorney  
Zoning Board Members, Joel Peller, Esq., Steve Myers  
Department of Building and Development  
Town Assessor, Town Highway Department