

Town of Clifton Park

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Zoning Board of Appeals



APPROVED

6-21-16

ZONING BOARD OF APPEALS

May 17, 2016

Present: Michael Dudick, Chairman, Chris Lemire, Jerry Cifor, Anthony Morelli and Michael Bloss

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

Absent: Lisa McCoy, Mario Fantini

Mr. Dudick called the meeting to order at 7:08 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

Mr. Dudick informed the public that this is a 7 member board with 1 alternate member and votes and asked if any applicant present would like to postpone to a later date, that since there are only 5 voting members present, and therefore a vote of approval would require 4 out of the 5 votes.

Jackie Murray who was present on behalf of **Dan Lill and Thomas Lill for a use variance to construct multi-family dwelling units in a B4-A zone**, requested that their application be tabled, because the County referral denied the variance and now requires a super majority vote to pass, which is 5 votes instead of the normal 4 votes. Upon inquiry from Mr. Peller, Ms. Murray agreed to waive the 61 day requirement the Board has within which to make a decision on the application and advised she would like the matter placed on the Agenda for the next meeting.

Application postponed until the June 7, 2016 meeting.

OLD BUSINESS

1. An application from **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)

Mr. Dudick asked the applicant whether he had been able to obtain the additional information and documentation that had been requested by the Board at the last meeting. Mr. Werner advised that he had reviewed the records on file in the Saratoga County Clerk's office but could not find anything. He submitted to the Board a copy of an e-mail he had received from the Open Space Coordinator, Jennifer Viggiani which referenced an attached print screen showing where his parcel, (formerly the Lands of Yates F. Lansing, Jr.), has a 30' wide easement for parking and access on the Riverview Orchards parcel and which referenced an attached full survey of the Town's Permanent Conservation Easement. (A copy of the full survey was not attached to the e-mail Mr. Werner submitted to the Board). Mr. Werner pointed out that Ms. Viggiani's e-mail noted that the Town's Permanent Conversation Easement on the Riverview Orchard parcel, avoids the 30' wide easement for parking and access on his property.

Mr. Peller advised Mr. Werner that upon research of the County records, his Deed to the property from Mr. Lansing contained an easement for the use of the land in question, but it only ran to family members/relatives of Mr. Lansing. As Mr. Werner is not a relative of Mr. Lansing, the easement is extinguished by its terms. Mr. Peller stated that there are no documents of record in the County Clerk's Office which would give the applicant the right to use the land area contrary to the Deed language. Mr. Peller suggested he contact Mrs. Barrett-Prescott to discuss the easement area, but could not give him legal advice. Mr. Werner stated that Isabell had wanted to attend the meeting tonight because she had some questions for the Board's counsel, but she was not present.

Mr. Dudick asked Mr. Werner if he had obtained a letter of approval from Ms. Barrett-Prescott, to which Mr. Werner replied he had not. Mr. Peller clarified that even if Mr. Werner was able to overcome the issue of not being a family member or relative of Mr. Lansing and that he had the right to use the easement area, the next issue that would need to be addressed is what effect does the variance request have on the Town's Conservation Easement which Mrs. Barrett-Prescott has entered into. This second area cannot be encroached upon and there are other restrictions to the Conservation Easement that need to be reviewed. For instance, Mr. Peller stated that no construction can take place in the easement area. Further, the area should not be mowed as it was to be left in its natural state to encourage wildlife/insect habitats. Mr. Werner acknowledged that he had in fact been mowing the area, but stated he would no longer.

Mr. Peller then encouraged Mr. Werner to contact whatever attorney represented him at the time of his closing on his property in order to obtain a better understanding of what his rights are to use both easement areas. He went on to state that unless Mrs. Barrett-Prescott agreed to allow Mr. Werner to continue to use her property, the variance application is not properly before the Board right now. The Board cannot act on his application based upon speculation that the neighbors will enter into an agreement for him to either use the area or sell him the land in question.

Mr. Myers clarified that the matter would still need to be before the Board because there is still the setback issue to Mr. Werner's property line whether the Easement is involved or not. He stated that the easement issue first needed to be straightened out because Mr. Werner might just need a variance for his own property and that it will make a big difference if he has access to that easement area which would give him another 30' beyond where his property line is to use.

Upon inquiry from Mr. Dudick, Mr. Peller clarified that the parties are talking about 2 easements; one that Mrs. Barrett-Prescott allegedly has with Mr. Werner and one that the Town has, which is a 30' Conservation Easement beyond that easement. Mr. Myers stated that it may make a difference in the variance decision if

Mr. Werner has the ability to use the property directly adjacent to his property line and that from what counsel is saying now, Mr. Werner may not have that ability.

Upon inquiry from the Chairman, Mr. Werner stated he would like to postpone the application to the next meeting so that he could speak to Isabell again. At the request of Mr. Peller, Mr. Myers confirmed that the application references 2 different structures; one that was built previously in 1988 and the one that Mr. Werner currently has under construction; clarifying that the newer structure requires a 17' variance and the structure built in 1988 requires a 12.5' variance.

Mr. Dudick then requested the secretary to enter both the e-mail from Jennifer Viggiani to Mr. Werner that was handed out to the Board members by Mr. Werner into the record, as well as Ms. Viggiani's May 17, 2016 memo to the Town.

The application was postponed to the June 7, 2016 meeting.

Even though listed as old business, since it was the applicant's first time presenting, the secretary read the legal notice as it appeared in the Daily Gazette on May 12, 2016.

- 2. An application from Brooks Teele for a use variance from Section 208-53A, permitted uses in B-5 Zone. Residential is not a permitted use in this zone. Owners propose to develop property as a single family residential community. Property is located at Route 146, Tanner Road and Miller Road, Clifton Park, NY. (Permit #81085)**

The application was presented by Jon Lapper, Landscape Architect with the Bartlett Pontiff law firm in Glens Falls and Joe Dannible, a Landscape Architect with The Environmental Design Partnership. Mr. Lapper stated that this is a unique project, because the applicant had purchased the property in 1978 before the zoning was changed from residential to commercial and that they their application goes through in great detail, the standards they believe justify the relief requested. He then read the entire project narrative dated March 29, 2016, which was included with their application that was received by the Town on April 12, 2015, into the record.

Mr. Dudick advised Mr. Lapper that a lot of what he was going over would be in the purview of the Planning Board and not the Zoning Board of Appeals. Mr. Lapper responded that the argument they are making is that their project won't alter the essential character of the neighborhood, whereas building it zoning compliant might, because it would have such a dramatic impact due to the size of what would be allowed.

Mr. Lapper went on to state that there is a lot of residential use in this area and they would argue the issue is not self-created because the property was purchased in 1978 as an investment property when it was zoned for residential, assuming that the rapid growth occurring in the Town would continue to expand westward and that in the late 1980s the Town envisioned this as an area that would be a prime location for corporate headquarters and R&D facilities similar to GE or Knolls. He stated that shortly after the re-zoning the applicant immediately began actively and then passively marketing the property and that after nearly 10 years with no interest in the land, the applicant had decided to pursue more active marketing, had formally engaged a realtor and that the land has been listed for sale for over 12 years. He stated that over the years the asking price has been reduced to \$39,000 per acre and that although there are a lot of uses that are permitted in the zone, there has been no interest in the land and therefore, they feel they have an economic

hardship because they've owned the property for over 37 years without any offers. Mr. Lapper stated they believe the Board will agree that what they are proposing would be good for the neighborhood.

Mr. Lapper then asked Mr. Dannible to walk the Board through the proposed plan. Mr. Dannible presented some slides depicting the general area surrounding the site and showing a map that demonstrated what a full build out of the property under a zoning compliant use could provide, adding that such a project shows the significant impervious areas for parking and large scale buildings which would create a significant amount of increased traffic on the roadways. He stated they are looking to create a residential community, with single family attached dwellings or duplexes on the north side, compliant with The Vistas which is developed in the area and The Vistas Phase 2, which they had received some variances for from the Board last year to allow for duplexes on that lot as well. He explained that the southern side of the road is a single family cluster type development and that they would be again doing single family homes marketed toward the empty nesters and young professionals, which they feel is the type of housing that is needed in the community to keep the young people here and to keep the older people from moving away.

Mr. Dannible showed the Board slides containing some of their supporting financial documentation which was also included in the project narrative. One slide contained a chart showing that they have been decreasing the asking price over the years significantly to almost half of what its original asking price was. Another slide was shown with copies of real estate contracts demonstrating that the property has been marketed for the time they say it has, and further stated that 2004 was the first record they had of a real estate person being involved, although they believed it was actually earlier than that. He also presented a slide which listed 4 properties within the area, which allow for similar uses, that have recently been sold for \$100,000 per acre, \$340,000 per acre; one that sold in 2014 for \$400,000 per acre and one that is currently listed at \$112,000 per acre, pointing out that even though their current asking price of \$39,000.00 per acre is significantly below the market value of similarly zoned properties, they are still getting no offers on that land.

Mr. Dannible presented a slide showing recent tax bills, indicating that a significant amount of money is being spent every year on this property and that on average the school and the town and county taxes are about \$40,000 per year on this land, which have been continuously paid over the 37 years.

Mr. Dannible presented a slide showing the traffic improvements that he said would be required if they did a zoning compliant use, which they believe would be a detriment to the project, in that building a round-a-bout at the intersection of Routes 146 and 146A where the new Price Chopper is going in, would cost roughly \$3 million dollars. Mr. Dudick asked whether such a round-a-bout had been approved and Mr. Myers advised it had not.

Mr. Dannible stated it had not been approved, but that such improvements would be necessary to support a zoning compliant project on this site. He further indicated they had reviewed the Town GEIS that was developed for the corporate commerce zone, which he said stated that certain levels of development would trigger improvements and that both the Town and the CDTA had determined that in order for this type corporate commerce development to proceed, they would have to develop at certain thresholds, a round-a-bout at the intersection of Routes 146 and 146A; traffic lights; lane widening and turning lanes at Miller Road, Tanner Road and Route 146, as well as widening of Route 146 from Tanner and Miller Roads to that intersection to make it 3 lanes.

Mr. Dannible went on to state that the round-a-bout was estimated in the Town GEIS study to cost around \$3 million dollars; that the intersection and signals at Route 146 and at Miller and Tanner Road were estimated to cost roughly \$1 million dollars; that the lane widening from Miller Road to Route 146A were estimated to cost somewhere in the \$3 to \$5 million dollar range and in fact, could be a lot more because they don't know what they would encounter. He advised they had worked on these numbers with a traffic engineer, who provided them with estimates showing that the overall necessary improvements would cost about \$8 million dollars, of which the subject property could be responsible for up to 80% of that cost under a zoning compliant use.

Mr. Dannible concluded by showing a slide of a zoning map on which the red area indicated the corporate commerce zone; the yellow area are indicated the R1 zone; the green area indicated the Conservation Residential zone and the orange area in the middle lot indicated a Conservation Residential Zone that was recently approved for variances to allow a use compatible with its surrounding area. He pointed out the subject parcel on the slide, explaining that immediately across the road, a higher density residential development exists that had been approved and that on the southern lot in the area they are currently developing a higher density, moderate density R1 residential development.

Mr. Lemire opined that all of the information presented in both the project narrative and the slide presentation were declaratory and conclusory statements and asked where the information came from and where the actual evidence of what they had presented was. Mr. Dannible replied the evidence was with the taxes and that he could provide the Board with actual real estate contracts.

Mr. Lemire pointed out that the applicant had stated they had 2 real estate contracts, one in 2014 and another in 2013 and Mr. Dannible indicated they actually had multiple contracts over the years that he could provide to the Board.

Mr. Peller and Mr. Myers then checked the application to determine whether an owner authorization form was provided with the application. Mr. Dannible indicated they had provided a signed and notarized form and could produce a copy if necessary. (The owner authorization form was provided to Mr. Myers on or about June 2, 2016)

Mr. Dudick commented that the round-a-bout that was referenced by the applicant to be required for the intersection of Route 146 and Vischer Ferry Road if a zoning compliant project was developed, seemed implausible to him, as there are already businesses in place there that have just recently been upgraded and built. Mr. Lapper explained that the legal argument for that assertion is that such a project that was compliant with the current zoning would require that type of traffic mitigation and that such information was contained within the Town study that was called for when the zoning was changed.

Mr. Dannible confirmed that the information Mr. Dudick was looking for is available within existing Town documents and the Environmental Impact Statements on file with the Town and that is why they had not provided that specific documentation. Mr. Lemire stated that doesn't do the Board any good because they can't look at it and Mr. Dannible advised he could certainly provide the Board with a copy of the final GEIS.

Mr. Lemire further stated that a round-a-bout would not be needed to put a day care operation at the property. Mr. Lapper agreed, but pointed out with 67 acres, a daycare was not the highest and best use for the property.

Mr. Dudick asked if the type of use that would complaint per current zoning is appropriately described as Light Industrial and Mr. Lapper responded it would include uses such as corporate headquarters or light industrial offices. Mr. Dudick pointed out that the applicant's presentation talks about the fact that there's competition in the Town of Clifton Park for that type of business and that the other properties they have shown for sale or that have been sold are all much closer to the Northway. He also mentioned that the light industrial complex in the Town of Halfmoon is also competing for sites as far as availability and that no round-a-bouts have been created in that area.

Mr. Lapper stated that information had come from the GEIS that was prepared for the Town at the time that this zone was created and had called for that type of mitigation, which they are just referencing. He also stated that nobody is looking to locate and develop similar uses on their property as there has been no interest at all in the site, even at a price far less than what people pay for other Light Industrial properties. Mr. Dudick suggested that perhaps the lack of interest might have more to do with the location and proximity of this site to the interstate. Mr. Lapper stated even so, that would justify a use variance, because there is still no interest in doing that type of development away from the interstate on Miller and Tanner Roads. Mr. Dannible stated that the other industrial developments don't have these required traffic improvements, again pointing out that they are only referencing what is contained in the Town documents.

Mr. Dudick inquired as to whether the owner had attempted to sell the property as one 67 acre parcel or if there was any consideration for possible subdivision of the lot. Mr. Lapper responded the property had been listed for sale like any other parcel would be and that no one has come in and said they'll take a piece of it. Mr. Dannible advised the property is currently listed as 2 separate properties; 22 acres on the north and 47 acres on the south.

Mr. Peller asked if the property was under contract now and if so whether it was contingent upon residential development being approved. Mr. Dannible advised that there are interested parties, but that he did not know the exact status and that there is nothing that he has seen, but that he could find out if it was just verbal or if it is a real contract, adding that there is definitely interest in the property for residential use.

Mr. Dudick stated that development in Clifton Park has had a bit of an upsurge in the last 5 or 10 years and mentioned business on Route 9 and north of Route 146 which have come about within the past 2 years, which indicates that type of development is starting to happen. Mr. Lapper pointed out that the business Mr. Dudick had mentioned were all close to the Northway.

Mr. Dudick then stated that those particular lots weren't in development 2 years ago and to say that the applicant has been trying to sell their lot for 34 years, looking back it was not a function of the zoning inasmuch as it is a functions of things such as economics of 10 to 15 years ago where nobody was building these large industrial type things and that the Town is reaching a saturation point where development like that is starting to happen. Mr. Lapper replied even so, there have been no offers in the last 2 years.

Mr. Dudick further stated that people weren't even building houses in and around this area 10 or 15 years ago and that is also something that has had an uptick over the last few years, which goes to the fact that such development wasn't occurring because Clifton Park was a different place in the 70s. Mr. Dannible disagreed stating that in the 1970s there was a significant amount of residential development within the Town of Clifton Park and that the current owner of the subject property, Brooks Teele and Tim Mitchell, had developed many, many single family residential lots in the 70s and 80.

Mr. Dudick inquired as to why they had not developed this particular lot during that time and Mr. Dannible responded they had not because of lack of access at that time to sewer and water and that there was not as much interest in this area of Town back then. He added that since the development of the corporate commerce zone, sewer and water have now been extended out to the area and there have been connections to the Rexford Water Department. He further stated that the applicants have been paying part of the debt service for their property that has access to that sewer since that time.

Mr. Dudick opined that the way he understands it, when the property was originally purchased back in the 70s there was no sewer and water and there was no interest to develop the property for residential and that the owner was developing residential properties elsewhere where sewer and water did exist. He further opined that with the change in zoning now, which brought the sewer and water out to the area and has increased the value of the land, now the owner wants the advantage of the sewer and water to develop the property for residential. Mr. Dannible stated he did not believe it was that simple, because the property has had sewer and water there now for nearly 20 years, since it was re-zoned as commercial.

Mr. Lapper stated that the reason they are requesting residential use is because there has been no interest in commercial development there over all of these years, adding that is the reason they are requesting the use variance.

Mr. Lemire asked the difference between passively and actively marketing the property. Mr. Dannible responded that passively marketing is when you are a builder and you know other builders in the area, you are marketing it to them and talking to people behind the scenes. Mr. Lapper responded that actively marketing is when there is a listing contract with a realtor or broker and the property is listed with the MLS. Mr. Lemire asked if they retained a real estate agent to sell the property for one of the permitted uses and if so, what the real estate agent had done to actively try to sell the 2 parcels. Mr. Dannible replied that they had and that the agent had listed the property in the MLS; had placed large signs on the property; and that although he is not the realtor for the property and was just speculating, he was sure the real estate agent was contacting other people to market the property as well. Mr. Dudick asked if he had any letters from any of the realtors, talking about the different things that were done to market the property and Mr. Lapper indicated they did not, but could try to find those people and see what they could come up with to present to the Board.

Mr. Peller asked if the applicant had been before the Planning Board and Mr. Lapper replied they had not because they had to get the use variance first. Mr. Peller further stated that the Zoning Board would need to do a SEQRA review at some point and asked Mr. Myers to comment on that. Mr. Myers confirmed that the Board would need to act on SEQRA before taking action on the variance and that a full environmental assessment form had been submitted with the application, which was as complete as it could presently be, based on the fact that this is not an actual project yet. Mr. Myers went on to say that the numbers required to be input into SEQRA don't really exist yet, because there is no preliminary approval. He further stated that based on what was submitted to date; both he and the Town Engineers believe there would be no significant environmental impact and that there should be a negative declaration declared by the Board.

Mr. Dudick asked what the original investment for the property was, because the applicant had mentioned, the owner was unable to obtain a reasonable return on investment. Mr. Dannible indicated he did not know, but could get that number for the Board. Mr. Dudick stated that if the applicant is making a claim they cannot obtain a reasonable return, they could just say that they were trying to sell the property for \$1 million or \$5.5 million dollars. Mr. Lapper replied there is no return when there is no one interested, but that they would provide the original purchase price. Mr. Dudick agreed with that statement, but advised that just because no one had purchased the property, in and of itself, would not be justification for a variance and that

any property that is not sold is not giving a reasonable return until it sells. Mr. Lapper stated there is more to it than that; that there is case law on that issue; and again stated they would provide the requested documentation. Mr. Dannible stated that there is also no reasonable return because the applicants are marketing the property significantly lower than other properties are selling for in the area.

Mr. Cifor inquired as to whether the applicant foresees future requests for any area variances for the project if the use variance was approved. Mr. Dannible replied that they would be proposing and talking to the Town about moving forward as a residential use, but expected it to be a cluster development so that the Planning Board would have the ability to provide relief from the setbacks requirements to the minimum lot areas in order to accommodate a more appropriate residential use. Mr. Lapper also advised they didn't expect to require any further variances from the Zoning Board for the project if the use variance was approved.

Mr. Lemire pointed out that if the applicant's argument is that the use limitations on their property are unique because they have large 67 acre parcel, other property owners in the zone have the same problems. Mr. Lapper replied that was correct, but that with 67 acres, this applicant has different problems. Mr. Dannible replied that would be correct, but only if that owner had the same amount of developable land.

Mr. Lapper stated that in terms of the hardship, if the applicant purchased the property knowing what the zoning was now, then it would be a self-created problem. However, he reiterated that his clients purchased the property when it was zoned residential and therefore, it is not a self-imposed hardship, adding that the Board wouldn't be able to justify a use variance for someone who bought it after the zoning was changed to corporate commerce.

Mr. Dannible then presented a slide which showed that the developable land on the applicant's property is significant in comparison to the other surrounding parcels. He again stated that the majority of this land is referenced in the Town's own GEIS documents which show that the majority of the zone is wetlands and stated that close to 80% of the developable land in this area is located on the applicant's property. He again encouraged the Board to review the full GEIS for the zone and offered to provide the members with link to the GEIS document on the Town website. Mr. Lemire stated he appreciated being advised that all of this information is in Town documents, but stated this is the Zoning Board of Appeals and we review what the applicant brings to us, adding that that all of things the applicant is saying are probably true, but that the evidence needs to be here in front of the Board to support their statements. Mr. Lapper agreed and advised that although they have referenced the town documents, they will now supply them.

Mr. Lemire asked about a parcel shown on the slide north of the applicant's parcel and Mr. Dannible explained that parcel is currently farm fields and is smaller than the subject parcel with wetland fingers that encompass a good portion of the land. He stated that he believed the parcel to the north represented only 20% of the developable area in the zone and therefore, the applicant's property, which represented 80% of the developable area in the zone, would be responsible for the majority of any required road improvements.

Mr. Dudick asked what percentage of the applicants 2 lots is usable and what percentage are wetlands. Mr. Dannible replied there is about 55-60 acres of developable land and there is about 12 acres of wetland. Mr. Dudick opined that clearly the amount of wetlands is not something that changed when the zoning changed. Mr. Lapper advised they are proposing to use that wetland area as green space, to which Mr. Dudick responded it would have to be green space no matter what type of development was there, as that area would not be useable. He further stated that he sees this as a big change as far as what Town Planning had intended for this part of the Town and would, in effect, be a reversal of the Town Zoning. Mr. Lapper replied that

what the Town had envisioned for the new zone hasn't been successful, for this parcel at least, because there is no interest in the applicant's land. Mr. Dannible stated that Town Planning had projected that this zone would be at least 50% built out by 2015 and completely built out by 2025, none of which has occurred.

Mr. Myers stated that he disagreed with Mr. Lemire's opinion on the Town documents as he felt the Board members should have some knowledge of them, but that if the Board wanted the applicant to supply the documents so the Board can review them on their own, that would be up to the Board. He then stated that the SEQRA declaration does not necessarily move forward to approval or denial of the variance, as they are 2 separate issues. He went on to state that what he was hearing is that the Board wants more information to base their vote on and have better knowledge of what is being proposed.

Mr. Dudick indicated that from his prospective, he is just trying to get clarification as far as some of the information presented and that he would like to see competent financial evidence, such as the original purchase price showing that the applicant cannot realize a reasonable return, which is one of the requirements that the Board must review when considering a use variance.

Mr. Lapper stated that they had tried to present the simple case which is that no one is interested in the property and that there is case law which talks about a reasonable return which they will provide as well.

Mr. Dudick further indicated he would like to see something from the real estate agents showing the marketing history; showing their attempts to sell; how they marketed the property; whether it was marketed as 67 acres; whether there was a restriction of no subdivision; opining that no one would make an offer if it is stated up front that there are not going to subdivide. Mr. Lapper indicated that would find that information.

Mr. Lemire indicated that an example of the statements in the presentation he didn't understand were about the required traffic improvements and cost thereof. Mr. Myers reiterated that information does in fact come from a Town document, which study had determined that if this zone was developed as the Town believed it was going to be, these road improvements would be required and that the Town had projected what they felt the road improvements to support develop of that zone, would require.

Mr. Dudick stated that he has a comfort level in referring to Mr. Myers as a source of information and that if he says the Town has already looked the traffic mitigation requirements and costs, he wouldn't hold the applicant to provide the pages from the Town documents supporting the applicants declaratory statements, as he considers Mr. Myers an expert with regard to those Town documents. Mr. Myers stated that if the Board wanted to see the documents, that perhaps the applicant could just supply copies of the pages specifically referred to, rather than provide a copy of the entire document.

Mr. Dudick opened the public hearing and asked for comments or questions that were not related to planning, as that is not what the Zoning Board of Appeals considers.

Mr. Myers stated that the Zoning Board will be doing a SEQRA review as a part of the use variance because it is required, but that it is not a coordinated review with the Planning Department, as Planning will do their own SEQRA review. Mr. Peller added that Planning will do their SEQRA review and look at the density, the number of units and how it is proposed to be laid out, stormwater and things of that nature.

James Ruhle of 168 Wooddale Drive, Ballston Lake, NY spoke in opposition to the proposal and handed out a copy of a November 16, 2015 letter from the Friends of Clifton Park Open Space in support of the entire

area in the B-5 Corporate Commerce Zone being updated and rezoned by the Town Board after a linkage study by the Planning Board. Mr. Ruhle indicated that he had previously seen this proposal before the Planning Board on October 27, 2015 and that the consensus then was that the B-5 Zone should be updated and rezoned by the Town Board. He further stated that the B-5 Zone is surrounded by conservation residential lands and that the Friends organization, which he is representing tonight, strongly advocates that the Conservation Residential zone district densities criteria requirements and procedures be an integral component of any linkage study. Mr. Ruhle stated the he felt this whole application is putting the cart before the horse, in that the Planning Board has design issues and the Town Board has permission to rezone the area or to zone it. He stated that the applicant is asking the Zoning Board of Appeals to provide a use variance for a fundamental change for use in the zone and change in the zoning law, which he believes is not the proper prerogative of this Board. Mr. Ruhle begged the Board not to try to do something here because the Town Board is the duly elected body to make law in this Town. He concluded by stating this is an overreach by the applicants and asked the Board not to take the bait.

Mr. Lapper responded that their proposal provides a lot of open space. He suggested that another way someone could approach this would be to go to the Town Board and ask to change the zoning in the whole area. He explained they are not saying this is specific to their property and it is totally appropriate under these facts with the applicants having purchased the property in 1978, to ask this Board to grant a use variance, as this Board has the right to grant use variances.

Mr. Cifor inquired as to whether the applicant's 80% of usable acres in the zone, carried the entire area. Mr. Lapper responded that was correct, but that there is other land in the zone, which doesn't mean it has to be a legislative act by the Town Board and again stated it is appropriate for this Board to review it as a use zoning variance.

William Koebberman of 861 Riverview Road, Rexford, NY 12148 commented that although it was a fine presentation, he also believes it is being made to the wrong Board. He stated he agreed with the previous speaker that what the applicant is trying to get what amounts to a change of zoning and that he thought a lot of the discussion about the market value is irrelevant, because it isn't for the Board to determine a good rate of return for the applicant. Mr. Koebberman stated he would like to see the Board look at the big picture because the next item on the agenda was also about a use variance in a business zoning area and this has happened previously. He read an excerpt from a document he indicated was called The Zoning Board of Appeals Technical Series, which he said includes all statutory changes through 2005 and states that the Board must also consider the effect of the grant of the use variance on the zoning law itself. He stated that the big picture within the Town is that the zoning law was developed to balance various land uses and for tax implications. He went on to state that the Court of Appeals had pointed this out in the *Clark* decision, stating that no administrative body may destroy the general scheme of a zoning law by granting variances indiscriminately and therefore, he believes this application is something for the Town Board to consider.

Mr. Peller asked Mr. Koebberman if he would like to put the document he had read from into the record and he replied that he would, but would to make a copy first. Mr. Peller suggested he deliver a copy to Mr. Myers.

Mr. Morelli asked counsel what the mechanism would be if this Board finds that the application needs to go before the Town Board. Mr. Peller stated that the applicant is presenting before this Board and therefore this Board has the right to make a decision on the application, adding that although this Board could make an

agreement as to a postponement of the application, there is no mechanism for this Board to send an applicant to either the Planning Board or the Town Board.

In response to the comments made by last two speakers, Mr. Dudick advised that under our Town Law, a property owner with a significant piece of property has the right to ask for a variance and the Zoning Board of Appeals would be the appropriate Board to apply to for relief with regard to zoning. He further noted that although the Zoning Board of Appeals are not elected officials, they are appointed by the Town Board, who are elected, to hear specific arguments on behalf of the Town as appointed volunteers with the scope of the Town Law. He further indicated the process is not set up to go to the Town Board in this situation, although it is a reasonable argument that because this particular property represents such a large portion of the zoned area.

On May 26, 2016, Mr. Koebbeman delivered the above described document to the Town with a cover letter requesting it be entered into the record of the public hearing. Mr. Koebbeman's cover letter also states in part that what he "meant to communicate was that the applicant is asking for a change of land use for 80% of a zoning district which in effect amounts to a change of zoning for that district and should properly be decided by the Town Board. The question I hope you will consider in this case is; when does a use variance affect such a large portion of a zoning district that it in effect becomes a change of zoning".

Anthony LaFleche of 21 Wheeler Drive, Clifton Park, NY asked the Board if they were to approve the use variance, what Board would handle it next. Mr. Peller advised it would then go to the Planning Board. Mr. LaFleche then asked if the Planning Board said yes, whether the applicant would then have to go to the Town Board for the formal change of the zoning? Mr. Peller advised that the zoning would stay what it currently is, that this Board could grant a variance from that zoning and then the Planning Board would review the site plan and other factors.

Mr. Dudick added that the zoning would stay the same for the property owner's individual property, but they would be granted a special use based upon their application pointing to their special, unique circumstances as to why the current zoning for this property would not be appropriate for them particularly.

Mr. LaFleche then asked if this Board were to approve and the Planning Board were to approve at some point in time, if it was conceivable that the Town Board would be out of the process of making any changes on their own. Mr. Dudick responded that this Board could grant a use variance, Planning could then approve the development of the housing project and then at some point the Town Board may look at the Town Law and then decide to legislate to change the zone here, which would then make this use variance more of a historical footnote as opposed to anything else and that the Town Board could change the zoning by their process of legislation after environmental studies, engineering studies, public hearings, etc.

Mr. LaFleche then asked if the Zoning Board and/or the Planning Board say no, if the applicant would have recourse to go to any future Board. Mr. Peller stated that although there is no direct appeal process, the only recourse in the event of denial would be for the applicant to bring a lawsuit in the form of an Article 78 proceeding against the Town to somehow show that the Board made a decision which did not support the evidence or that was arbitrary or capricious.

Mr. LaFleche went on to state that because there was no water for several years when the property owner had purchased in 1978 and that considering any major project like this, whether it be under the current zoning or under their proposed zoning of single family housing, would most likely require public water. Therefore, he

said he feels that the Board should take that into consideration in terms of some of the hardships that the applicant is talking about. He concluded by stating that his main concern is the integrity of the zoning process and that even though it was zoned for corporate commerce after the applicant had purchased it, the applicant still had many years between the time that they purchased and the time the zoning was created.

Mr. Dannible responded that under its zoning back before it was zoned corporate commerce, with or without sewer, the property would support a density of 60 to 65 residential units with septic and well.

Susan Burton of 238 Riverview Road, Rexford, NY 12148 commented that she did not think anyone was questioning the Zoning Board's authority to grant a use variance, but that her concern is if the applicant is putting 75 houses on 67 acres and its 80% of the developable land in an existing zoning plot, in her mind that is more than a variance and would be a substantial change in the use of the zoning. She was therefore concerned with what impact that would have on the purpose of the original zoning in conjunction with the other properties in the area and believes it would be a question of whether a variance application is the proper application considering the size and the scope of what is being requested.

Mr. Lemire asked if Ms. Burton was suggesting that the density of the number of houses which are being proposed would alter the essential character of the neighborhood. Ms. Burton replied this is a corporate commerce zone and residential is a disallowed use on this property and stated that the Board would be granting a use that is completely prohibited and would be applying that variance to 80% of the land in the zone, which again would have an impact on the existing zoning and the purpose of the existing zoning, as well as what was originally intended for that space.

Mr. Dudick asked if Ms. Burton would be more comfortable if the property was developed with corporate commerce type buildings and structures and Ms. Burton replied that was not the point. She indicated the point was that if someone wanted that big of a change in the zoning, they should go through the process to change the zoning and that in her opinion, she thought a better process for the Town in general, would be a change in zoning.

Mr. Lapper replied by stating that if the applicant was here with a proposal for a large corporate office building, the room would be filled with people that would be worried about impacts on traffic and everything else, further stating their proposal is a much softer and greener use than what could be done under the current zoning.

Mr. Morelli pointed out that if that was the sort of use being proposed, the applicant would be at the Planning Board, because the zoning would already support that use.

Mr. Myers asked Mr. Dannible whether he had heard back from County Planning and Mr. Dannible responded he had not because they meet Thursday night. Mr. Myers further stated that he did not believe the Board could vote without County Planning's input.

Mr. Bloss stated that he would also like to hear from the County and see some of the other supporting documentation, adding that he understood the case that has been made and believes the declarative statements can be backed up, but that to have that additional documentation in black and white in front of the Board, as well as the input from the County, would be in the Board's best interest.

Mr. Lemire advised he would like to see whatever the applicant wants to provide as far as additional evidence and documentation to support the application, adding that it is not the Board's job to tell the applicant what evidence they should produce.

Mr. Morelli stated that he agreed with Mr. Bloss as to wanting to hear from County Planning and that as Mr. Lemire had mentioned previously, presenting a case specifically to the active marketing of the parcel and whether it has been done as a whole or partitioned would be important for him to see in order to consider giving an approval to this application.

Mr. Cifor stated that he believes the package is thorough and complete and that he did not need any additional information.

Mr. Dudick reiterated that regardless of what was presented, having certain items such as the competent financial evidence in writing, being made available would help him make a decision and asked the applicant if they would you like to postpone in order to produce such additional information or if they would like the Board to vote tonight.

Mr. Lapper stated that their job is to answer the questions the Board has and when the Board requests more information, they will put that together, make a resubmission and come back to the Board as soon as possible. Mr. Peller asked Mr. Lapper if he wanted the matter placed on the Agenda for the June 7, 2016 meeting or if he wanted to wait. Mr. Dannible asked that the matter be put on for the June 7, 2016 meeting, adding that it may take them a little while to get the information from the realtors, but that they would advise if they needed to table it before June 7th. Mr. Peller asked Mr. Lapper if he was okay with waiving the 61 day requirement and Mr. Lapper responded, absolutely.

Mr. Dudick announced that the public hearing is being postponed to a later date, which means the public hearing will remain open so that the public can come back and speak or ask questions at the next meeting. Upon inquiry from Mr. Dudick, Mr. Peller advised that if new evidence was being presented at the next meeting the members of the public that spoke at tonight's hearing would have another opportunity to comment at that time.

Application postponed to the June 7, 2016 meeting.

NEW BUSINESS

The secretary read the legal notice as it appeared in the Daily Gazette on May 12, 2016.

- 1. An application from Peter Schermerhorn for an area variance from Section 208-12A which requires an 80' front setback for accessory structures. 53' available, 27' variance requested. Property is located at 14 Bear Brook Court, Clifton Park, NY 12065. (Permit #81088).**

The application was presented by the property owner Peter Schermerhorn, who stated he is applying for an area variance to place a shed on his property, which is very hilly and steep as shown on the pictures submitted with the application. He explained when they originally started work on the structure, they had kept it within the setbacks for the house and he was not aware of the additional setback requirement for detached structures until he was presented with a stop work order on April 18, 2016, which he has complied with. He stated that he is requesting a 27' variance, that the shed itself was less than 144 sf and that the

structure was going to be 53' back from the front curb. Mr. Schermerhorn advised there is no other optimal place for the structure to be placed on the property due to the contiguous topography of the slopes around it being greater than 15 degrees and the conservation easement restrictions for Robinwood Estates subdivision which run along the side of the property. He explained that one his proximal neighbors, Paul DeStefano had originally expressed some concern about the project, but they had discussed it and when Mr. DeStefano learned he was going to be fully matching the aesthetics of the house, which is a Teele Mitchell contemporary, and that he was willing to plant some additional evergreen trees to further obscure the structure from the road, which has already been done, Mr. DeStefano is now comfortable with the plan. Mr. Schermerhorn presented the Chairman with a copy of an e-mail from Mr. DeStefano substantiating what had been discussed and agreed to. He further submitted to the Chairman, a letter from their neighbors at 17 Bear Brook Court, Donald and Annette Morere, in support of their project. Mr. Schermerhorn advised that he had also personally discussed the plans with other proximal neighbors and they were all supportive. He reiterated that the shed itself will have the same siding and color as the main house, as well as the same roof shingles and that his project was specifically planned to not cut down any additional trees on the property on that side of the house.

Mr. Peller asked if he was unaware that there was a setback requirement at all. Mr. Schermerhorn replied that when he had called the Town about the size of the structure, he was told that if it was less than 12' x 12' a permit was not required; that he was instructed to follow the setbacks; that he pulled his property plot which had setback back lines on it for the house; and that he had originally started the structure within those lines. He stated he had not been aware of the additional requirements until he received the stop work order. Mr. Peller asked if he had a vendor building the shed for him and Mr. Schermerhorn advised that his father was doing the work and was in attendance to provide additional detail on the structure itself if necessary.

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

Mr. Myers confirmed that it was brought to the Town's attention that the shed seemed too close to the road and when they went out and checked it, it was. He confirmed that Mr. Schermerhorn had stopped the work and that even though the shed doesn't meet the requirements to require a permit, it still has to meet the setback requirements of the zoning law. Mr. Myers further indicated it was not a substantial variance and that if the applicant really tried he could probably get the shed somewhere else on his property, but that the lot is a very tough corner lot. He further stated this is a Type II action and no further SEQRA review by the Board was required.

Mr. Dudick made a motion to close the public hearing. Mr. Morelli seconded. All voted in favor and the public hearing was closed. Mr. Dudick stated that he personally can't see any problem with the application; that it was well presented with supporting graphics; that it doesn't seem substantial and that the neighbors were notified and letters of support have been presented.

Mr. Morelli made a motion to approve the variance request as submitted. Mr. Cifor seconded the motion. Mr. Morelli further stated that he believes the applicant has demonstrated that the shed would not produce an undesirable change in the overall character of the neighborhood or detriment to the nearby properties, as further amplified by the correspondence submitted from adjacent property owners. He stated that the pictures further demonstrate it is a tough lot with the topography to build on and therefore he did not believe the benefit sought by applicant could be achieved by some other method feasible for the applicant to pursue and he believes the requested variance is not substantial. He went on to state that based on the aesthetics, the trees and shrubbery and the overall effort to assure that the shed matches the overall house and

neighborhood, 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. Mr. Morelli concluded by stating that he did not believe the difficulty was self-created due to the challenges with the topography of the lot.

Mr. Dudick then made a declarative statement that this is a Type II action and no further SEQRA review by the Board was required.

The secretary called the Vote:

Ayes: Mr. Lemire, Mr. Cifor, Mr. Dudick, Mr. Morelli and Mr. Bloss.

Noes: None.

Application approved.

The secretary read the legal notice as it appeared in the Daily Gazette on May 12, 2016.

- 2. An application from Amie LeMieux for an area variance from Section 208-12A which requires and 80' front setback for accessory structures. 22' available, 58' variance requested. Property is located at 15 Oakwood Boulevard, Clifton Park, NY 12065. (Permit#81089)**

The application was presented by the property owner, Amie LeMieux who stated she is requesting a 58' variance for a 22' above ground pool on her property, which is a corner lot between Oakwood Boulevard and Lawrence Drive. She advised to install it without the variance would require the removal of a 5' to 6' rise in the back corner of the property; leveling of the area; removal of 2 existing sheds; and that it would encroach on the neighbor's property. She stated that removal of the rise and the sheds would be a cost prohibitive venture and that they are requesting to be allowed to install the pool in the middle of the property, where it will cause no harm to the surrounding neighborhood.

In reviewing the pictures, the aerial view of the neighborhood and sketches of what the back yard would look like that were submitted with the application, Mr. Lemire asked whether the front door of the house faced Oakwood Boulevard and whether the driveway faced Lawrence Drive. Mrs. LeMieux responded that was correct and identified the red dot on the attachment to be the proposed pool.

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

Mr. Myers stated that this is a Type II action and therefore no further SEQRA review by the Board was required. He further indicated that this is a typical corner lot issue and if it wasn't for the second street this hearing wouldn't be necessary, because the pool would be in the back yard and would probably be far enough back and. He added that he did not have a problem with the application.

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

Upon inquiry from Mr. Morelli, Ms. LeMieux advised that the back yard is completely fenced in completely on the Lawrence Drive side with a black chain link fence and that there is a buffer of several trees and flowers planted along the fence to add additional privacy. Mr. Myers confirmed that the pool is 4' from the ground to the top and will not require any additional fencing. Mr. Dudick stated this is a Type II action and

no further SEQRA review by the Board is required. He then made a motion to approve the application as submitted. Mr. Lemire seconded the motion.

The secretary called the Vote:

Ayes: Mr. Lemire, Mr. Cifor, Mr. Dudick, Mr. Morelli and Mr. Bloss.

Noes: None.

Application approved.

Mr. Dudick stated that he did not believe an undesirable change would be produced in the character of the neighborhood or detriment to nearby properties created and that although the benefit sought by the applicant could be achieved by some other method feasible for the applicant to pursue other than the area variance, it would be at significant cost and inconvenience. He stated that he did not believe the requested variance was substantial; that the proposed variance would not have an adverse effect on the physical or environmental conditions of the neighborhood or district; and that although the alleged difficulty was self-created, he felt it was a reasonable request.

The secretary read the legal notice as it appeared in the Daily Gazette on May 12, 2016.

3. **An application from Casco Hospitality LLC for area variances from Sign Law Chapter 171 – Chart I: (1) Maximum allowed wall signage = 60 sf; 650 sf requested; 590 sq. ft. variance required. (2) Maximum wall signs allowed = 2; 3 requested; variance required = 1 sign; and (3) Maximum allowed wall sign height = 20', maximum height requested = 57'2 ½", variance required = 37' 3". Property is located at 1749 Route 9, Clifton Park, NY 12065. (Permit #81090)**

The application was presented by Scott Lansing of Lansing Engineering who advised he was representing Casco Hospitality LLC. He also stated that Tony Casale from Casco, as well as Krishna Paliwal from LaQuinta Inns and Suites were also present and explained that the LaQuinta Inns and Suites is franchised by Mr. Casale and the hotel is a permitted use in the B4(A) zone. Mr. Lansing went on to state that LaQuinta is a 104 room hotel, four stories and approximately 60' high, with overall square footage of approximately 73,000 sf, with about 18,000 sf per floor. He indicated the hotel includes an indoor and an outdoor pool, a fitness room, meeting room, a port de cache and that they meet the required number of parking spaces. Mr. Lansing advised they have a shared access way to the site connecting to Route 9 and have public water and sewer with stormwater mitigated on site. He advised the project was approved by the Planning Board and is under construction now, but that as a part of the project, they were requesting wall mounted signage for the building. He indicated the signs are very important for the facility, that there is corporate branding and that they want to get the name of the franchise out to the public, which has advertising associated with it as well as the obvious need for identification to patrons of the hotel.

Mr. Lansing pointed to poster boards he had placed in the front row showing what the typical prototype and branding was for LaQuinta and which also showed how their typical signage looks on their buildings. Mr. Lansing indicated that the applicant had compared their branding with what is permitted under the zoning code and that it does exceed the code by a significant amount. He advised they had modified their plans and are here requesting 3 signs for the site and that the hotel is located approximately 350' back from Route 9. He advised they were proposing a 250 sf sign to be located on the north side of the building, a 250 sf on the

west side of the building and a 150 sf sign on the southern side, to basically try to get the identification toward Route 9.

Mr. Lansing advised there are several variances required for the requested signs; the first being the number of signs, as the Code allows 2 and they are proposing 3 so the signage would be visible on the structure by northbound and southbound traffic. He stated that the second variance being requested is relative to square footage allowed for the signs, explaining that the 3 proposed signs total 650 sf and that they are roughly 590 sf over that requirement. The third variance he stated is relative to the height of the signage, indicating the code allows a maximum height of 20' for the signage, adding that they are requesting 57' 2 1/2" and 53' 7" for the 2 signs and are over the height maximum.

Mr. Lansing stated that the applicant wanted to demonstrate to the Board how the scale of the proposed signage relates to not only the mass and scale of the building, but to the distance and visibility from Route 9. He pointed to renderings of the elevation of the building, showing each of the 3 signs on the building, which in his opinion seems appropriate in mass and scale for the overall building. He further stated that they wanted to provide the Board with a representation of how the parcel looks from Route 9, advising that he had taken photos while traveling northbound and southbound this afternoon. Mr. Lansing pointed to the enlarged photos he had taken and suggested that if the Board could envision the signage on the building that is being constructed, he believes they will agree it is appropriate as far as the mass and scale of the building.

Lastly, Mr. Lansing talked about the signage on the retail building in front of the hotel advising that if you were to project the signage on the back building, from the distance and scale, it is relatively the same size signage as the retail building in the front has and that is it going to look about the about the same, given the distance of the signs.

Mr. Cifor pointed out that the public is never going to see the third sign going down Route 9 and that it would mainly be seen by people who are already parked at the hotel. He added that he believes the public will mostly see the sign on the end of the building. Mr. Lansing replied that they felt the sign on the north was appropriate for the internal drive, so that when someone is driving in they can look up and know that is their destination.

Mr. Lemire asked Mr. Lansing to clarify where on the building the signs are proposed to be placed. Mr. Lansing advised there would be a sign on the upper right corner of the north face of the building, pretty much in the center of the west side of the building and on the upper left corner on the southern side, basically all around the sides facing Route 9.

Mr. Peller asked Mr. Lansing if he wanted the Board to consider the variances requests separately or as a package because of the franchise agreement.

At that point Krishna Paliwal, Senior Vice President of the LaQuinta corporate office in Dallas, Texas advised that he had traveled here today to make sure they present to the Board that they are building a beautiful property in partnership with the Casale family. He stated that LaQuinta had made a huge change when they presented this new prototype about 2 years ago and that they are building more hotels now all the way from San Jose, California to New York and are currently looking into locations in Boston.

Mr. Paliwal advised the Board that the sign sizes stated in the application come from drawing a rectangle around the largest letter which is the "Q" and that the signs therefore are really not 250 sf or 150 sf. He

indicated that according to the franchise agreement, they would like to get the signage so that the guests can find the facility, adding that most of the check-ins happen after 5 or 6 o'clock at night and that they would like to sure the signage will identify the building to the guests arriving.

Mr. Dudick asked whether there was a plan for a freestanding sign and Mr. Paliwal stated they will have a joint, shared sign with the retail building in the front, which is going to be a monument sign containing a plaque or a cabinet and that all the signs on the building will be done in channel letters. Mr. Lansing explained that the freestanding sign in front of the facility would be in accordance with the zoning code and that they would not need any zoning variances for it, but would provide a permit application to Mr. Myers.

Because everyone left in the audience was a part of this application, Mr. Dudick made a motion to close the public hearing. Mr. Morelli seconded. All voted in favor and the public hearing was closed.

Mr. Dudick stated that this would be a significant variance in terms of size compared to the size of the signs that have been approved in the Town over the last few years for hotels and asked Mr. Myers if he knew of a similar sized hotel that the Board could reference as far as the size of the signs.

Mr. Myers started by advising he does not have an owner authorization form for Mr. Lansing and Mr. Paliwal to proceed. Anthony Casale stepped up to the podium and upon inquiry from Mr. Peller advised that he is the owner and sole member of Casco Hospitality LLC and verbally authorized Mr. Lansing and Mr. Paliwal to present the application on his behalf. Mr. Peller asked Mr. Casale to provide the proper form for the Town file and Mr. Casale said he would take care of that tomorrow. (The owner authorization form was delivered to Mr. Myers at a later date)

Mr. Myers then inquired as to whether the actual sizes of the letters and the signs that are noted on the original sign permit application were correct, indicating he is showing 102 sf and 176 sf as versus 250 sf and 150 sf. He further inquired if the Board what the Board was considering as a 250 sf sign was actually 176 sf if they did it with just the channel letters. Mr. Lansing replied that was correct, with the channel letters and the sun burst.

Mr. Myers explained that if the actual sizes of the signs are the 176 sf and the 102 sf, it makes the variance the Board has to consider a lot different, pointing out that the total square footage becomes 454 sf instead of 650 sf, which is almost 200 sf less. He further stated he would have based the sign permit on the actual size of the channel letters because there is no box around the sign.

Mr. Cifor asked Mr. Myers how these signs compared to the Marriott Courtyard signs that had recently been approved by the Board.

Mr. Peller asked Mr. Myers to first conclude what he was saying about the size of the variance being requested.

Mr. Myers advised that based on what he is hearing for the first time tonight, he thinks the variance can be reduced to 454 sf instead of 650 sf and therefore, the actual variance we are talking about is 396 sf instead of 590 sf.

Mr. Peller asked Mr. Lansing if he was okay with amending the application from 590 sf to 396 sf.

Mr. Paliwal confirmed that if just the channel letters were measured, that would be the right size

Mr. Myers went on to state that the Hilton Hotel has 3 signs with a total of 195 sf ; that their highest sign is 72' and that although the extra sign and height had been approved before, this applicant is still requesting more square footage. He advised that he had also looked at the Mooradian signs for comparison and that they had originally requested 3 signs, but changed it to 2 signs which are 75 sf each. He further stated that the only place he was aware of that had more signage than what is being proposed by this applicant is Boscov's. He added that the other thing that is not being considered here is that as far as he knows, LaQuinta will be coming in sometime in the future to request a freestanding sign, but that he believed their intent is to include the small plaza out front all in one sign, which would then actually give LaQuinta 4 signs on Route 9 besides the 3 being considered tonight.

Upon inquiry from Mr. Dudick, Mr. Myers confirmed that the strip mall and LaQuinta are on separate parcels and that LaQuinta has road frontage on Route 9, but that the last he knew, they were talking about combining the 2 into 1 sign for their variance request to the Board, but that has not happened yet.

Mr. Paliwal advised the Board that are there certain requirements to make the signs internally illuminated with LED lights and that the 75 sf or 65 sf signs which used to be done with the fluorescent bulbs are not even feasible in today's day and age with the LED lights, because you need a certain depth to mold the LED and make the sign more viable. Mr. Dudick asked for further clarification of that statement. Mr. Paliwal stated that if you divide the Hiltons 195 sf of total signage by 3 signs it comes out to approximately 65 sf per sign and that his sign suppliers have indicated with the channel letters, LaQuinta's branding is almost impossible to do with an internally illuminated LED behind each and therefore, they cannot physically make a sign that is 65 sf.

Mr. Lemire asked for clarification of what variances are now being requested. Mr. Myers confirmed the applicant is now requesting 3 signs; two at 176 sf and one at 102 sf, adding that he didn't believe the number of signs or the height was an issue, but that the square footage being requested is significant. He further stated that the property is located pretty far back from the road and that the Sign Law allows him to grant an extra 10% of wall signs for every 500' off the road the property is located, but that even if he added 10% the 60 sf allowed, that would give them much and therefore, it's a matter of how far the Board is willing to go because this is a pretty significant change.

Mr. Dudick stated that his recollection was that the Hilton was granted 3 walls signs with the understanding that they would never request a freestanding sign.

Mr. Myers advised that he does think LaQuinta needs a freestanding sign on Route 9 because of where the hotel sits and that he believes it's a good idea to put it in combination with the strip plaza. He further advised that he agreed with Mr. Lemire in that the sign they would be putting on what would be the southbound face of the hotel where the port de cache is, would not be very useful, but that the one on the end and maybe the one on the northbound side are the 2 real signs that would be the real attractors. Mr. Dudick stated he agreed with that as well, but that it would be up to the applicant.

Mr. Lansing then stated that the applicant had indicated that he would be okay with the Board considering each one of the signs individually and is willing to work with the Board

Mr. Casale stated that as the property next door to them develops, it is going to change the whole landscape there and that is what they had looked at. Although it is the Board's decision, Mr. Casale said that he would have no problem with a smaller sign on the front of the hotel, which is where every guest will enter.

Mr. Dudick pointed out that it is actually Mr. Casale's decision and that if the Board were to approve 2 signs, then it would be up to him as the applicant, as to where to place those 2 signs, because the Board wouldn't be able to tell him what side to place them on, adding that they were just discussing what they thought would be a good idea.

Going back to the issue of the monument sign, Mr. Casale stated that when they were before the Board previously, they had talked about what would happen as they develop the second parcel and he believes at that time, they assured the Board that they would be putting in a joint sign, which is why there is no sign there now. He stated they wanted to wait and make sure because they were asked the last time if they were going to have a sign south of where there is no entranceway and if the Chairman remembers, at that time we said we would have one sign, not 5 signs on the road,

Mr. Dudick pointed out that issue is not being discussed right now as it is not on the Agenda. He stated that the applicant has road frontage for LaQuinta and the question is really not granting an off premises sign as much as allowing for the off premises sign in exchange for not placing the road sign, which has been done before, rather than having a bunch of signs allowing the off premise to create less signage. Mr. Casale stated that is what they tried to do because they had to.

Mr. Dudick advised that from his viewpoint he doesn't believe the height is a problem because the building is far enough back from the road and is high enough, but that the size of the signs is so much more than has been approved in the past. He stated that the variance size goes down significantly if they are looking at 2 signs instead of 3 and that trying to get 3 signs, all of significant size, creates a big problem. He advised he was not sure how the numbers would break down if it were reduced down to 2 signs, but that it would probably take out a 1/3 of the variance volume.

Mr. Casale stated that it would be 102 sf if they took out the 3rd sign. Mr. Dudick asked what size they would be looking at if they just did 2 signs and Mr. Paliwal responded 76 sf times 2.

Mr. Lemire asked about the development north of the subject parcel and Mr. Casale advised that the driving range is their north neighbor, but their theory is that as the driving range develops, what is going to be seen in the front?

Mr. Lemire asked if the side sign on the north side and the sign on the west side of the building were basically right next to each other as shown on the proposed plan. Mr. Paliwal clarified that the façade is about 80' long and the size of the sign is 24' and therefore the one sign will end almost to 1/3 of the tower and the other sign will be on the other side of the building, so they will not be next to each other. Mr. Lemire asked if the drawing was inaccurate, because it has them on the right corner and Mr. Casale stated it should be more to the right.

Upon inquiry from Mr. Dudick, Mr. Myers opined that the Hilton is probably 1,000 feet or more off Route 146, but that it is only about 40 or 50 feet off Clifton Country Road. Mr. Peller asked how far off the road this property is and Mr. Lansing responded 454' from the edge of the road

Mr. Peller asked Mr. Lansing if based on what he was hearing, he wanted the Board to continue to go forward based on this application or if he wanted to adjourn to rework the proposal to be something more in line with what the Board has done in the past.

Mr. Casale asked if the Board would entertain 2 signs of 150 sf and 250 sf, advising they do make a 200 sf sign which is 139 sf x 2 for a total of 278 sf, which means they would only need a variance of 218 sf. Mr. Dudick stated that he has seen LaQuinta signs before and that he didn't think that the signs were that big.

David Kellam, Director of Franchise Design and Development for LaQuinta who arrived from Dallas during the meeting, stated that as Krishna was trying to explain, a traditional sign is a cabinet and used the Town flag as an example, stating that would be a cabinet sign and the channel letters are just the emblem letters in the middle, so you don't have the exterior, which is typically just color, to light and illuminate. He advised that an older LaQuinta sign would be a green square with LaQuinta letters in the middle, explaining they are taking out all of the green and just putting the letters on.

Mr. Lemire asked if this is a new style. Mr. Casale responded that this Spanish type is the future of the brand and that there are only 8 of these in existence right now, adding that the new design is a lot more contemporary. He stated that this is going to be the first one in the northeast and is going to be a showpiece, which is how he got 2 guys to fly in from Dallas Texas to present this new prototype.

Upon inquiry from Mr. Dudick and Mr. Lemire, Mr. Paliwal advised that the smallest sign they could make would be a 100 sf sign, but that would be the bare minimum for tightening all of the LED ropes.

Mr. Casale pointed out that the design for the back side of the hotel has a small mantel or parapet and that because the face of the area is so large, a smaller sign would be lost on it.

Mr. Myers advised that the 2 signs at 139 sf is only a 218 sf variance.

Mr. Lemire asked if they had to have 2 signs with 1 sign bigger than the other, whether they would prefer it on the west side of the building or the north side or that ideally they would be same size. Mr. Paliwal responded that ideally they would be the same size, but that they cannot just have one sign bigger because you will see both of the signs at the same time when approaching the building.

Mr. Lemire suggested that if the applicant requested 2 signs of 139 sf and 102 sf, they could put the bigger sign on the front facing the road to attract the weary traveler easier to the property and could put the smaller sign on the other side to identify the front, which is the south side, as he assumes most of the business will be coming from the south. Mr. Paliwal stated that he agreed with Mr. Lemire, because the 139 sf sign and 102 sf sign will not be so visibly different by the naked eye and in fact, would almost look the same.

Mr. Myers advised that before the Board moved forward, they would have to determine what size signs are to be voted on. Mr. Peller asked Mr. Casale if he wanted to amend his application and if so, what size signs he is requesting.

Mr. Casale stated he would amend the application to request 2 signs, one being 139 sf and the other being 102 sf. Mr. Myers stated that was fine, but that they would also have to include the request for the height variance as well, even with just the 2 signs.

Mr. Peller asked Mr. Myers to confirm that if the Board is looking at signs of 102 sf and 139 sf, subtracting out the 60 sf allowed, that they would be requesting a variance of 181 sf. Mr. Myers confirmed that was correct.

Mr. Dudick advised that he personally has discomfort with the idea that the applicant is telling the Board that the smallest possible sign they could manage to create and put on this structure would require the greatest variance that this Board has ever given and that there is no sign that they could make smaller than 102 sf, when there are national chains of hotels already in our Town, that have been able to accommodate what the Town's signage law is.

Mr. Lemire pointed out that Mr. Paliwal had mentioned that there is not an appreciable difference from the 139sf sign and the 102 sf sign when they were on the building. Mr. Paliwal agreed that visually when you are looking at the signs from 400 feet away or from 60 feet below, a normal guest would not be able to notice a difference between them size wise. Mr. Lemire then asked if the applicant would be willing to consider 2 signs at 102 sf each, if they are not visually different.

Mr. Lansing stated that he thought the pictures he had taken today were really valuable as far as perspective of what the sign looks like on the retail building in front, compared to what the signs would look like on the hotel building which is set back 454' from the Route 9, but that obviously the bigger the sign, the better as far as visibility from Route 9. He stated even a 250 sf sign in his opinion would not be overwhelming for the mass and scale of the building and would not be overwhelming in comparison to the smaller signs on the retail building in the front, which obviously are closer, so they appear larger, adding that either the 250 sf or the 150 sf signs would look appropriate when you put them that far back from Route 9 when considering the scale of the retail building in the front.

Mr. Casale said they would entertain that because they are trying to balance what is visually going to be seen, although he added that he doesn't know if it would be better to have 1 sign on the end or 2 smaller ones on each side, but that they wanted to do what is right for the Town and for their business.

Mr. Dudick stated that one of the things that this Board has been given the task of is to keep the signage down to a smaller size. He indicated he has been to many communities that don't like signs and only have very small ones, but that this Town is not like that. Mr. Paliwal indicated he had done a hotel where the town had come back and told them they could only put a sign on a wooden plaque with the word LaQuinta and a little light on it, which is what they approved. He advised they respect what each community says and that is why they are coming up with different options, further advising they would like to come up with a final conclusion today so that they can begin to build the signs in the next 8 weeks.

Mr. Peller asked Mr. Casale if he was now at requesting 2 signs at 102 sf each and Mr. Casale confirmed that he was.

Mr. Morelli made a motion to approve the application as amended, specifically for 2 signs at 102 sf each. Mr. Cifor pointed out that the Board has a couple of variance requests, one being 144 on the total square footage and the other on the height that also need to be approved.

Mr. Dudick commented that the height variance requested does not need to be amended. Mr. Peller again asked Mr. Casale if he wanted the Board to vote on all of the requests or look at each individually.

Mr. Casale asked if they were approved for 2 signs at 102 sf each and were to decide tomorrow that the one sign on the front of the building is too small, whether they could go to 1 sign instead, without coming back before the Board. Mr. Dudick advised that if the Board approves up to 2 signs at 204 sf, the applicant can decide how to split that up.

Mr. Myers and Mr. Dudick both stated this is a Type II action and no further SEQRA review by the Board is required.

Mr. Dudick then made an amended motion to approve an amended variance of up to 2 signs for total of 204 sq with total height of 57' 3" and 37' 3" over the allowed maximum height. Mr. Morelli seconded the motion.

Mr. Dudick stated that he did not believe an undesirable change in the character of the neighborhood would be produced or detriment to nearby properties created by the granting of the area variance. As to whether the benefit sought by the applicant could be achieved by some other method feasible for the applicant to pursue other than the area variance, Mr. Dudick stated that based on the information presented, he believes it is the best possible option available. He added that although the requested area variance is substantial, he did not believe the proposed variance would have an adverse effect or the impact on the physical or environmental conditions of the neighborhood and went on to state that the property and the location creates unique circumstances which are not self-created, but that the logo and signage itself are self-created difficulties, but that he appreciated the applicant accommodating the concerns of the Board by amending their application to request smaller signs.

The secretary called the Vote:

Ayes: Mr. Lemire, Mr. Cifor, Mr. Dudick, Mr. Morelli and Mr. Bloss.

Noes: None.

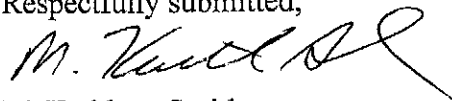
Application approved.

Mr. Dudick then made a motion to approve the minutes from the May 3, 2016 meeting. Mr. Dudick, Mr. Lemire, Mr. Cifor, 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 10:19 p.m.

The next meeting is June 7, 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