

Clifton Park Zoning Board of Appeals Meeting Minutes

August 19, 2003

Present: Dale Kelley, Chairman, Michael Dudick,
Skye Heritage, Sandra Pace, Dale Gleason,
Donna Lawton, Gil Kortz

Also Present: Don Clemens, Building & Development
Louis Renzi, ZBA Counsel

Mr. Kelley called the meeting to order at 7:02 P.M. He thanked Mr. Dudick for standing in for him at the last meeting. He also noted that two Board members attended the training school at Newburg for Planning and Zoning. Mrs. Lawton stated that it seemed to cover more planning issues than zoning but that she found it worthwhile. Ms. Heritage agreed. She noted that it was very helpful to see how other Towns handle different problems.

Mr. Kelley informed the Board that the decision made by the ZBA on the Polsinelli application was upheld by the Supreme Court.

Mr. Renzi noted that the time has passed for the applicant to appeal this decision.

NEW BUSINESS

1. An application from Angelo & Josephine Piccirillo, Trustees, requesting an area variance from Section 208-11 from the required 200 ft. lot width - actual = 150 ft. - variance requested = 50 ft.. The property is located at 1549 Route 146, Rexford. Permit #80451.

The secretary read the legal notice as it appeared in the Daily Gazette on August 14, 2003.

Don DeAngelus, attorney, represented this applicant. He stated that they purchased the land in 1970 as a building lot that was 150 x 300 ft.. Since that time the zoning requirements have changed to 200 x 300 ft. creating a hardship because the applicant cannot purchase additional land to meet the zoning requirements. He explained that this was not a self-created hardship but will result in a significant economic loss because the applicant has a contract to sell this lot contingent on this

8/19/03 Page 2

variance being granted. He also noted that it will not change the character or be a detriment to the neighborhood.

Mr. Clemens stated that he has no objections to this variance. He noted that the two adjacent lots are the same size and have homes on them. He also stated that this variance

will not have any negative impact on the neighborhood.

Mr. Kortz noted that there is no feasible alternative.

There was no public comment. Mr. Kelley made a motion to close the public hearing, Mrs. Gleason seconded, approval unanimous.

Mr. Dudick made a motion to approve this variance as requested. Mrs. Gleason seconded. Ayes: Pace, Gleason, Lawton, Kortz, Dudick, Heritage, Kelley. Noes: None.

2. An application from William J. Temple Jr., requesting an area variance from Section 208-11 from the required 10 ft. side yard setback in a R-1 zone - proposed setback = 7.5 ft. - variance requested = 2.5 ft.. The property is located at 5 Heidi's Path, Ballston Lake. Permit #80455.

The secretary read the legal notice as it appeared in the Daily Gazette on August 14, 2003.

William Temple presented this application. He stated he needs a variance for 2.5 feet to allow him to put an addition on the south side of his property. He noted he has an architect that has reviewed the plan and this is the most economical means of achieving the addition on the house. The cost to do otherwise would be significantly higher, approximately \$30,000, and could not be justified because it would not add any value to the property. It would also require extensive structural, electrical, plumbing, and modifications to accomplish the same amount of work. This will enhance the appearance of the structure, improve the property value and contribute to the continued improvement of the neighborhood overall. He continued, the home was purchased new in 1978 and they plan to remain there until retirement.

Mr. Clemens noted that this request is for a modest variance and he does not feel it will have any significant effect on the neighborhood. He also noted that he has not received any objections from the neighbors.

There was no public comment. Ms. Heritage made a motion to close the public hearing, Mr. Dudick seconded, approval unanimous.

Mr. Kelley noted that this is a minimal variance and seems reasonable for the applicant to achieve what he wants to achieve.

8/19/03 Page 3

Mrs. Gleason made a motion to approve this application as submitted. Mrs. Pace seconded. Ayes: Kelley, Dudick, Heritage, Kortz, Gleason, Lawton, Pace. Noes: None.

3. An application from Northside Land LLC, Lot 1 - requesting an area variance from Section 208-46 from the required 30 ft. side yard setback for buildings - proposed = 0 -

variance requested = 30 ft.; a rear yard setback of 0 - required setback = 30 ft. - variance requested = 30 ft.; a variance from the 35% green space - proposed = 30% - variance requested = 5%. Lot 2 - an area variance from Section 208-46 from the required 30 ft. side yard setback - proposed = 0 - variance requested = 30 ft.; and a variance from the 35% green space - proposed = 34% - variance requested = 1%. The property is located at Shoppers World (K-Mart), Clifton Park. Permit #80445.

The secretary read the legal notice as it appeared in the Daily Gazette on August 14, 2003.

Tom Andress, ABD Engineers & Surveyors, presented this application. He explained that this variance request is similar to the Kohl's application that was submitted earlier this year and is basically for mortgage purposes. They would like to subdivide this property into two pieces, basically subdividing out the K-Mart side (lot 2) from the rest of the retail and Price Chopper side. The configuration of the lot line actually falls with the K-Mart side and does not split evenly from a green space standpoint thus the reason why the variances are needed for green space. It follows along the property and goes through the common wall between K-Mart and the retail stores creating setback variances, basically zero for the side and rear because it actually goes through the building. He continued, it is basically a paper subdivision only, no improvements are being made. They have been to the Planning Board for the first review and they did not have any problems with it. There is a note on the plan that even though this is being subdivided into two parcels, for planning purposes if either property was to be sold, the Planning Board has the right to always consider them together. From a hardship standpoint they really can't move anything, to make a subdivision line anywhere they have to go through the building, thus creating the need for the setback and green space variances.

Mr. Clemens explained that this is exactly the same as was done for the Crossings and is for financing purposes. The Town and the Planning Board do not have any objections to it. It will not change anything, it is still an integrated site plan and will remain so as long as the shopping center exists. He stated that he does not have any objections to this request. There will be no impact at all to the Town.

8/19/03 Page 4

There was no public comment. Mr. Kelley made a motion to close the public hearing, Mrs. Pace seconded, approval unanimous.

Mr. Kelley stated that he has conferred with the Planning Board about this request and they do not have any objections or concerns.

Mr. Kelley made a motion to approve this application as submitted. Ms. Heritage seconded. Ayes: Kortz, Heritage, Dudick, Kelley, Pace, Lawton, Gleason. Noes: None.

4. An application from Winfield LLC, requesting an area variance from Section 208-33B from the maximum building size in a B-1 zone of 4,800 sq. ft. - building requested =

7,873 sq. ft. - variance requested = 3,073 sq. ft.; an area variance from Section 208-33D from the mandatory architectural restriction in a B-1 zone of all buildings to be consistent with residential dwellings in character; an area variance from Section 208-33B from the required maximum lot density of 12% - proposed density = 12.5% - variance requested = 0.5%, and an area variance from Section 208-35D from the required 25 ft. side yard setback for buildings and parking in a B-1 zone - proposed east side setback = 21 ft. - variance requested = 4 ft., and proposed west side setback of 18 ft. - variance requested = 7 ft.. The property is located at 942 Route 146, Clifton Park. Permit #80447.

The secretary read the legal notice as it appeared in the Daily Gazette on August 14, 2003.

Mr. Kelley reviewed the zoning variance process for those in the audience that may not be aware of the criteria the Board must consider by law to grant an area variance. He stated the Board must balance the benefit to the applicant with the detriment to health, safety & welfare of the community, and they shall also consider whether the benefit can be achieved by other means feasible to the applicant; if it will create an undesirable change in neighborhood character or to nearby properties; whether the request is substantial; whether the request will have an adverse physical or environmental effect; and whether the alleged difficulty is self-created.

Mr. Kelley stated that he is delighted to see so many people out to listen, to ask questions, to speak in favor of or speak against, because it really helps the Zoning Board in making their decision.

Mrs. Gleason informed the Board that she will recuse herself and will not be taking an active part in hearing this application due to a personal relationship with the applicant.

8/19/03 Page 5

Mr. Kelley also noted that he is a long time friend of this applicant and asked Counsel if he should recuse himself also.

Mr. Renzi advised him to recuse himself.

Mr. Kelley noted that there will be five members hearing this application.

Mr. Clemens advised the applicant that they would have to have four positive votes from the five members hearing this application to obtain the variance.

Nick Papa asked how the conflict, so to speak, arises, are his children still seeing the doctor, perhaps that could be the definitive, if they aren't perhaps he could still hear this application, if they are then he could recuse himself.

Mr. Kelley noted his appreciation of the input but the decision is up to legal counsel.

Mr. Renzi noted that under these circumstances, and any circumstance of a public forum

like this, you need to avoid any appearance of impropriety and if there is a personal relationship between any member of the Board and an applicant, whomever that may be, his advice is to have the Board members recuse themselves.

Chris Smith, Engineer with C. T. Male Associates, is representing Dr. Glasgow and Dr. Styles on this application.

Mr. Papa asked if it takes four yes votes and three or four of the Board members are recusing themselves does that percentage change?

Mr. Kelley responded no.

Mr. Papa stated that doesn't seem fair. What if five members excused themselves, there would only be three left.

Mr. Kelley responded there couldn't be a vote. Mr. Papa stated that doesn't seem right

Mr. Smith continued with his presentation. He noted that Dr. Glasgow has had a pediatric medical practice for over 35 years. She has been at the current facility for over 23 years. He noted that the current zoning did not exist when she purchased this property and that she has been put in a legitimate hardship in that the zoning has changed such that it does not allow her to expand her practices such as she could have before. He noted that Dave Pentkowski, attorney for the applicant, is present to address this issue later in the meeting.

He reviewed the variances being requested. He noted one is for a building of size that exceeds the maximum allowable of 4,800 sq. ft., they are proposing a building of 7,873 sq. ft.. He noted

8/19/03 Page 6

that the design justifies exactly what is needed for the practice. He stated this is the minimal amount of variance that they need. He continued, the maximum lot density that is allowed is 12% of the total area of the site and he noted that they are at 12.5% which equates to a little over 500 sq. ft. of building area. This is because when you add the total area of the proposed building to the existing building, which they intend to keep and re-rent as office space, the total square footage is more than what is allowed by code.

Mr. Smith also noted that the Town has identified two additional variances that they feel are necessary. One is that they request relief from the architectural design of the building. He noted that the Town has interpreted that it will not be residential in character and the Town requires that these buildings be residential in character and the last variance is for side setbacks. One is for the existing building to simply correct a pre-existing non-conforming condition due to a zoning change. The second is along the east side of the property. It is important because it creates green space along the proposed building that they feel is more effective within the property as opposed to putting it on the side of the

property.

He continued, the existing building is 5,300 sq. ft. and is two levels. They have expanded over time to take over the basement of that building due to growth and the new HIPPA requirements instituted by the medical profession which requires more space to have private areas. He also noted that due to growth they need to provide additional programs for their patients. He also noted that the new NYS Building Codes are having a tremendous effect on how buildings are designed, they require more space.

Mr. Smith pointed out that the applicant could develop three buildings that would comply with the zoning requirements and referred to a site plan showing this alternative. He noted that this does not satisfy the doctor's needs to operate within one building. He noted there are several doctors that need to interact with each other. They need to have one contiguous space on one floor in order to operate their practice efficiently.

Mr. Smith pointed out that they exceed the minimum green space requirement of 50% and also noted that they are proposing extensions of the sanitary sewer and water that currently exist across the street. He stated they met with the Planning Board and presented a conceptual site plan similar to this and they were quite favorable to the application. He stated that they did have some minor comments about the layout and landscaping that they are more than happy to address with the Board. He noted they have a good start with the Planning Board and they have not raised any major concerns.

8/19/03 Page 7

Dave Pentkowski, attorney, continued with the presentation. He noted that visually from Route 146 you will only see the existing building. The proposed building is setback sufficiently that you really will not notice it. He continued the plan is to modernize the exterior of the old building to blend in with the construction of the new building.

Mr. Pentkowski explained that this application sounds like the applicant is asking for 3,000 sq. ft. of variance when in reality it is more like 500 ft.. The reason it reads that way is because they would have to divide this building in two to bring it down to 4,800 sq. ft.. He noted that he realizes that the Board is concerned with precedent but he feels this situation is unique.

Dr. Glasgow purchased the property 23 years ago with the hope and understanding that they would develop the practice and keep it there until she retires. The hardship is no one could have foreseen that the Town would re-zone this property to make this expansion impossible without a variance. He stated they have asked Dean Taylor, a local realtor, to search the area to see what options would be available if this variance is not granted to somewhat keep the practice in close proximity to the campus. He came up with nothing. He basically recommended that they would have to go into Halfmoon to find a site that would accommodate them. Having devoted 23 years at this site and some 30+ years to Clifton Park, Dr. Glasgow is not interested in doing that.

Mr. Pentkowski continued, the hardship was created because the zoning changed over

time and while there are also financial issues if she had to relocate the practice, the real hardship is wanting to keep it were it's been and the impossibility of doing that in two new buildings, side by side, just because of the nature of her business. He continued, the site could be developed economically if they wanted to leave the practice, take it out of there, and rent out the office space of the two 4,800 sq. ft. buildings. From a community standpoint he feels the community, in applying a balancing test, loses a great deal. They think there is great value in having this high quality medical practice in close proximity to where most of the kids are much of the day. Having this practice close to the school serves not only the children, but the parents as well.

He stated there is nothing in this application itself which would suggest that there is any hardship to the community. The same number of vehicles will come in and out of this site as if there were two buildings built at 4,800 sq. ft.. The only difference is the people will get better care, they will get more privacy when they are in the office, and we won't lose this practice

From the community.

8/19/03 Page 8

Mr. Kelley noted that on advice of counsel, he can still procedurally run the meeting, he just will not vote.

Mr. Clemens pointed out some inaccuracies in the presentation. The fact of the matter is that when Dr. Glasgow purchased this property it was zoned R-1 Residential. She applied for and received a variance to construct a one story small medical office on the property, which expired, and was reapplied for in 1980. At that time it was still R-1. Since that time it has been zoned

B-1, which is a commercial designation, so they certainly have never been harmed by the Town and its zoning law because the property actually transformed from residential to a commercial property over that period of time. He also pointed out that the Town zoning law for the B-1 zone requires a minimum of 40,000 sq. ft. per building, this is a 2.4 acre property, 104,000 sq. ft. which means you could put only two 4,800 sq. ft. buildings on the property, you do not get any partial credits, you need an entire 40,000 sq. ft. to put a building on it. He continued, the maximum building size in a B-1 zone is 4,800 sq. ft., therefore they would be allowed two 4,800 sq. ft. buildings. The existing building is 5,300 sq. ft. which is a little large than what is allowed by itself, so the maximum they could build under the Town zoning law is one more 4,800 sq. ft. building. Mr. Clemens continued, the B-1 zone is intended to be a step-down or buffer area between the higher commercial zones and the residential zones that surround it that's why the Town Board enacted this and created the zone and put the limits on the building size so that people living near by will not be living next to a large office building. These buildings by law are to keep a residential flavor and blend in with the residential community around it. When Dr. Glasgow received the variance it was stated in the variance that the building was to maintain a residential character. The building proposed and its size certainly does not reflect what is intended in the B-1 zone.

Mr. Kortz asked for clarification on where the current practice is located, in the existing building? Mr. Kelley responded that is correct.

Chris Smith asked what section of the zoning law is Mr. Clemens referring to regarding the number of buildings and the 40,000 sq. ft. lot size. Mr. Clemens responded Section 208-33B - no single building is to have a maximum square footage exceeding 4,800 sq. ft. - multiple buildings are allowed as long as the overall density limitations of this article are not exceeded.

Mr. Smith asked if the previous zoning contained any restrictions as to the maximum size of the building? Mr. Clemens referred to

8/19/03 Page 9

the previous minutes stating that the office will be used as a pediatricians office and will be a one story building of residential character.

Mr. Kelley asked if that was a variance that was granted or a Special Use Permit. Mr. Clemens explained that in the minutes in one section they refer to it as a variance and in another section they refer to it as a Special Use Permit. He stated he would have to go back and research the law at the time to see which one it really was. He stated he believes it was a Use Variance that was granted at that time. The first variance was granted in November 1978 and that approval apparently expired because Dr. Glasgow never constructed the office at that time and then she came back in September of 1980 and asked to have it approved.

Mr. Pentkowski stated that it would have been a Special Use Permit in 1980. Mr. Clemens responded that in 1980 they are referring to it as a Special Use Permit, perhaps in 1978 it was a Use Variance.

Mr. Pentkowski stated that by 1980 that strip was all zoned where this was a permitted use by Special Use Permit without limitations to size of building.

Mr. Renzi noted that in 1978 there was a lot width variance granted as well as a Special Use Permit. Mr. Pentkowski emphasized that it was a permitted use in this area on this site, so it was something that was allowed and there was no limitation on the size of the structure, so when we say the zoning changed afterwards they had a permitted use on this site when it was constructed and there was no limitation on the size of the structure, subsequently the zoning imposed that limitation which created the hardship.

Mr. Kelley asked if the zoning never changed and it remained residential would your client be better off with residential zoning than what it is today?

Mr. Pentkowski responded in 1980 it was residential but it was a permitted use with the granting of a Special Use Permit.

Mr. Smith apologized for the misinformation presented. He stated he certainly did not intend to present any incorrect information. He continued, he coordinated with the Town staff as much as he could. All the information presented tonight is new to him. He has been working in a cooperative atmosphere with the Town in trying to put this application together. If there are things that came up since then, the staff has done additional research and he can understand that but there has been no intention to deceive anybody or present any wrong information. We have been communicating with the Town in trying to get the proper interpretations and now they are being presented with new information.

8/19/03

Page 10

Mr. Kelley noted it is not new information, it's always been part of the zoning law. Mr. Smith responded it's new information that's been presented to him after requests to Town staff to understand the situation, in that respect it's new information.

Mr. Dudick inquired of Mr. Pentkowski is the hardships of finding another site being the costs of relocation?

Mr. Pentkowski responded one of the hardships is not being able to continue a practice that's been in place for 23 years and in 1980, when they set up there, the restriction that is preventing that, basically the size of the building, was not in place.

Mr. Dudick stated that the practice has grown and there is a need for more space. Mr. Pentkowski responded this is something they could have done in 1980. They could have gotten the larger building on the site, there was no restriction as there is today.

Mr. Dudick asked, didn't you say there was a cost of relocation if she had to move her practice off this site? Mr. Pentkowski responded yes. Mr. Dudick followed up - are you also talking about having the doctor move the practice from the front building to the new building? Mr. Pentkowski stated that costs is readily accepted to get this done. The problem is there is a real financial hardship if they are not able to construct this because they have to relocate elsewhere in the community and do something with their property. He continued, they are not looking for a Use Variance, that standard is a lot higher. He explained, he is suggesting that they would meet that anyway because this is not a self-created hardship, it is something that's been imposed on them and it's a significant loss to them if they can't stay at this site. Because we're not talking about Use Variances, but area variances, the balancing tests, which Mr. Kelley laid out so clearly, is easier to meet because when you start balancing any detriment to the community and the value of keeping this practice that's been here for 23 years in the same location, but not only keeping it there but providing a better service. The balancing I'm talking about, there's a lot of hardship associated with moving this practice not only to them financially but to the community as well, there is a lot of benefit to keeping it there.

Mr. Kortz asked Mr. Clemens for clarification on when they bought the property and are

they now allowed to do more commercially than when they bought the property? Mr. Clemens stated he is not actually sure when the property was purchased. They first received a variance in 1978. In 1980 it was an allowed use with a Special Use Permit. Mr. Kortz asked if they could have done this in 1980. Mr. Clemens responded it is hard to say, with a Special Use Permit a lot of it becomes subjective

8/19/03 Page 11

and it would be within the Planning Board's domain of what they would want to approve.

It is very hard to predict what could have been approved then.

Mr. Kortz stated that what he is trying to evaluate is if this is self-created. Mr. Clemens stated it certainly was not guaranteed.

Mr. Pentkowski noted that in 1980 there wasn't a 50% green space requirement, it was a permitted use, and there was no legal impediment to the size of the building, granted it would have had to have an approval from the Planning Board as to the site plan, but the size of the building itself could have been built.

Mr. Kortz stated that he is not just talking about the one building, he talking about going from one building to two buildings and the whole complex. Mr. Pentkowski noted that in 1980 if they came in and said they wanted to build a building of 7,800 sq. ft. without any other requests that is something they could have done without any prohibition by the Zoning Board. They had an absolute right to the use and an absolute right to the size. The setbacks they would not have had a right to without your permission.

Mr. Kortz asked if the practice will be located in both buildings. Mr. Pentkowski stated the practice will be moved to the new building in the back. The building in the front will be available to be leased out.

There were seventeen people that spoke in favor of this application (list attached). They all stated that this practice is a vital part of the community and they would not like to see it move. They all felt it would be a great loss to the community. They spoke highly of Dr. Glasgow and the quality care she provides to the community.

A question was raised as to why this hearing is being held.

Mr. Kelley explained that this Board is bound by the zoning laws of the Town. He noted that the town has very well thought out planning laws, subdivision laws, and zoning laws. One of the laws is the zoning law creating the B-1 zoning area that was created in 1990 as a step-down zone from the commercial areas and it would blend in with the residential areas off Route 146. The law is to protect and maintain the residential characteristic of the area. The ZBA is charged by the Town Board and State law to look at each case to grant or deny variances based on the information presented to them by the applicant and the public. This is all part of the democratic process and that is what this hearing is about. He continued, Dr. Glasgow is coming before

this Board to ask for a larger than allowed building in this zone.

Erin Assini, Manager of Dr. Glasgow's office, spoke in support of this application on a personal level as well as on a professional level. She noted that there are many problems due to the volume of patients they care for. They have tried to rearrange the office to accommodate the needs of the patients but there is just not enough space available. Privacy is needed for the patients and their needs are not being met.

Seven employees of Dr. Glasgow also attested to the hardship encountered by the lack of space and privacy.

Mr. Kelley stated that there has been considerable information received this evening and he suggested tabling this application so that the Board members can review all pertinent information and be prepared to act at the next meeting.

A question was raised on the recusal by two Board members from voting on this application. Mr. Kelley stated he is acting on the advice of Counsel.

It was then asked if there is a basis for his advice because this is a small community and it would be impossible to get any business done if they don't somehow know someone in some capacity and it is unfortunate.

Franklin Fong asked what is the cost benefit analysis for the variance versus the benefit of all the testimony heard here today.

A question was asked on how the decision will be made.

Mr. Kelley stated the Board will consider all the information provided and further deliberate at the next meeting and in all probability make their decision at that time. It was asked if it will be a public meeting. Mr. Kelley responded it will be.

A question was asked on what's the big issue versus the variance versus the benefit to the community?

Mr. Kelley responded that is what will be deliberated. The Board has to weigh the benefits to the applicant, the benefits to the community, and many other issues must be considered.

Janet Foster stated she would like them to weigh a comparison of justice to the law. She stated justice gives heavy weight to what is said here and even greater weight to what is being said here then maybe what is in the statute. She noted she has never seen Clifton Park act as a community as they have tonight.

Mr. Dudick inquired about Dr. Glasgow's practice being a part of a large medical corporation called Capital Care and stated there has been much talk about having the doctor close to this site, he asked is the decision as to the location of the practice made by the corporation, of which she is a part, or is it made by the doctor?

Erin Assini responded absolutely not, there is not one representative from Capital Care here. The only affiliation is that Capital Care is a physician owned practice with a central billing office where they do purchasing and billing but the practice is independently run. It is composed of several physicians but each office is run on its own.

Dr. Glasgow thanked all those who came here this evening to support her request to enlarge her building. She also thanked the Zoning Board for being patient and listening to her request. She addressed the concern that there is a larger corporate entity involved in this and she stated that is not so. Capital Care comprises about 50 physicians but each particular office works as a separate entity. As a separate entity they are the ones who decide where their office will be located. The whole corporate entity of Capital Care has nothing to do with that at all. In fact she did not ask anyone from Capital Care to be here tonight because it really does not involve them.

Mrs. Pace made a motion to table this application until the meeting of September 2nd, Mr. Dudick seconded.

A question was asked why this is considered an emotional issue. There were other variances earlier this evening and they were not considered emotional.

Mr. Kortz explained that this is a very substantial variance and the Board tries to keep fairness between everyone in the town, in the same zoning areas, so that one business does not have an unfair advantage over another, and also to maintain the character of a residential neighborhood. So normally if it's a small variance that is inconsequential and has no impact on the character of the neighborhood and meets all the other guidelines it's not a problem. If this was any other case, we would look at the size and characteristics of the building as almost double what is allowed and that is substantial. He continued, if you want us to be fair I am going to be asking the same questions here as I would of anybody else who isn't as highly regarded because I believe that is being fair and I want to be fair. The consideration the gentleman was talking about cost benefit, we have to consider. So if we want to grant this variance, where we might not grant it to someone else, we have to consider all the factors of the hardships. I want to hear the questions and

I want to know the right questions to ask so I can make a fair and objective decision. I don't want to see this practice leave obviously it's very important to the community, but I want to look at some compromise, at least on the residential characteristics of the building because everybody else is subject to the same thing. That should not effect

whether the practice can stay there or not. This application should be treated just as we would treat any other application.

A question was asked because other practices have put in multiple smaller buildings that's ok, but because this is a larger building there's an issue?

Mr. Renzi and Mr. Kelley responded that that is an issue.

Mr. Kelley noted that the other projects constructed on Route 146 are 4,800 sq. ft. buildings in a cluster. He stated these are the things that have to be looked at.

The vote was taken to table this application until September 2nd. Ayes: Kortz, Dudick, Heritage, Pace, Lawton. Noes: None.
Abstained: Kelley, Gleason.

The meeting adjourned at 8:50 PM and reconvened at 8:55 PM.

5. An application from Pearl Partners LLC, requesting a Use Variance from Chapter 208-37 to allow retail sales and service of recreational vehicles in a B-3 zone. The property is located at 202 Ushers Road, Clifton Park. Permit #80448.

Mr. Kelley announced that this application has been withdrawn by the applicant.

6. An application from Interstate Sign Company for Mark Carroda, requesting an area variance from Chapter 171 of the Town Code (Sign Law) for a 2nd, 3rd, and 4th wall sign of 17 sq. ft. each. The property is located at 1019 Route 146, Clifton Park. Permit #80449.

No one was present to present this application. It was adjourned to the next meeting to be held on September 2, 2003.

7. An application from Lawrence Boni, requesting area variances from Section 208-86 for lots #2-7 from the required 50 ft. front, rear, and side yard setbacks for keyhole lots - proposed front and side yard setbacks = 10 ft. - variance requested = 40 ft.; and proposed rear yard setbacks of 25 ft. = variances requested = 25 ft.. The property is located off Moe Road, Clifton Park. Permit #80450.

8/19/03 Page 15

The secretary read the legal notice as it appeared in the Daily Gazette on August 14, 2003.

Kevin Dailey presented this application. He explained that they have worked with the Planning Board and Town Board to come up with these requests. As a result of the negotiations there are eight lots in the subdivision. The Planning Board has granted final subdivision approval contingent upon the Zoning Board's approval of the setback

variances. There are two lots with road frontage and six keyhole lots. The keyhole lots require 50 ft. setbacks on all sides. If the setback requirements were met there would only be three lots that would be buildable but they would have building envelopes that are too narrow to accommodate a house.

Mr. Dailey stated that the proposed setbacks are the same as for R-1 type setbacks. These setbacks really do not work because the building would be too close to a wetland. He proposes an alternative that he has submitted to Jason Kemper at the Planning Board last week. This addresses the needs of the Town and the needs of the builder. The setbacks are identified as north, south, east, and west setbacks for each lot. These setbacks move the building envelopes away from the wetlands and give more room on the side to create building envelopes that will actually fit a house.

Mr. Dailey presented a list to the Board showing the north, south, east, and west setbacks. He stated he has shown them to Jason and he agreed that they will work.

Mr. Renzi questioned lot 7 and the LC boundary going through the house. Mr. Dailey explained the background for this site and the result of an agreement and compromise with the Town and Planning Board. A stipulation will be signed at the time the subdivision plan is signed.

Mr. Kelley asked if the amendments are within what was publicly noticed. Mr. Clemens responded that they are equal to or less than what was applied for and the variances can be listed lot by lot and therefore can be acted upon this evening.

Mr. Dailey stated that the setbacks will be put on the final subdivision map.

Mr. Renzi stated the list presented will be marked as Attachment A and made part of the resolution.

8/19/03 Page 16

There was no public comment. Mr. Kelley made a motion to close the public hearing, Mr. Dudick seconded, approval unanimous.

Mr. Kelley made a motion to approve this application as amended in Attachment A. Mr. Kortz seconded. Ayes: Gleason, Pace, Kelley, Dudick, Heritage, Kortz. Noes: Lawton.

Mr. Kortz made a motion to approve the minutes of July 15, 2003, Mrs. Gleason seconded. Ayes: Gleason, Kortz, Dudick, Heritage, Pace, Lawton. Abstained: Kelley.

Mr. Dudick made a motion to adjourn the meeting at 9:15 PM, Ms. Heritage seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb
Secretary

cc: Town Clerk, Zoning Board Members, Louis Renzi, Counsel,
Don Clemens, Department of Building and Development, Planning Board, ECC
Members

ATTACHMENT "A"

PERMIT #80450

PROPOSED SETBACKS

LOT 1 N 25'
S 20'
E 50'
W 20'

LOT 2 N 25'
S 25' FROM WETLAND
E 25' BOUNDARY
W 25'

LOT 3 N 25' FROM WETLAND BOUNDARY
S 20'
E 25'
W 25'

LOT 4 N 50'
S 25' FROM WETLAND BOUNDARY
E 25'
W 25'

LOT 5 N 10'
S 50'
E 20'
W 20'

LOT 6 N 10'
S 50'
E 20'
W 20'

LOT 7 N 10'
S 50'

E 20'
W 20'

LOT 8 N 10'
S 50'
E 50'
W 10'

ATTACHMENT

SPEAKERS - 8/19/03

Patty Ellis
Deborah Williams
George Smith
Karen Quinn
Richard Mater
Collette Fong
Jane Stephan
Jeff Ward
Dan Cuttita
Nancy Hogan
Osborne McKay
Dr. Gatin
Patty Timpanero
Kimberly
Judy Mayfield
Lori Weiss
Mike Papa
Franklin Fong
Janet Foster