

ZONING BOARD OF APPEALS

June 1, 2010

Present: Michael Dudick, Chairman, Dale Gleason, Robert Ritter, James Whalen, Douglas Strother, Brian Telesh, Deborah Ferro (alternate member)

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

Absent: Christopher Lemire

Mr. Dudick called the meeting at 7:05 p.m.

Mr. Dudick advised that Deborah Ferro will be voting in the place of Christopher Lemire.

PLEDGE OF ALLEGIANCE

NEW BUSINESS:

- 1. An application from Hanley Sign Co., requesting a variance from Chapter 171 Sign Law. Applicant request 138 sf for a wall sign for a commercial retail business. Two variances currently granted for location. Variance 80318 allowed 63 sf wall sign. Variance 80539 allowed 79 sf wall sign. Applicant requests 138-79 = 59 sf variance. (space = 30,000 sf and 60 sf wall sign without variance.) The property is located at 54 Crossing Boulevard, Clifton Park, New York. (Permit #80771)**

The secretary read the legal notice as it appeared in the *Daily Gazette* on Thursday, May 27, 2010.

Mr. Peter May of Hanley Sign Co. presented this application. They wish to install a 138 sq. ft. Big Lots sign at the location. Mr. May advised the board that it is possible to comply with the zoning regulations. However, the tenant wishes to use the sign as a marketing tool to present a strong image that would be prominent to passing traffic on Crossing Boulevard. He described Office Max which is nearby, has less square footage (approximately 23,000 sq. ft.) but their existing sign is 273 sq. ft. The space for Big Lots is 30,000 sq. ft. He also believes that Exit 9 Wines and Liquors, Michaels, Kohls, Target and Cracker Barrel have had variances granted.

Mr. May explained that the exclamation point in the proposed sign is larger than the rest of the letters which affects the measurement of the sign, and if it were the same size as the other letters, the sign would be reduced to approximately 118 sq. ft. Mr. May does not believe that the sign would have an adverse impact on the neighboring area as it cannot be viewed from Routes 9 or 146.

Mr. Ritter asked about the size of the Kohls sign. Mr. Myers replied they have two totaling 193 sq. ft.

Mr. Telesh asked Mr. Myers about measuring the sign with the exclamation point and asked for his opinion. Mr. Myers replied that if it was significantly larger, it could be separated out. The rest of his response was inaudible.

Mr. Ritter asked if the proposed sign would be in addition to the pylon sign. Mr. May replied yes, that they would be taking the Exit 9 tenant panels on the pylon sign.

Mr. Dudick asked Mr. May if he was offering to remove the exclamation point in order to reduce signage and Mr. May replied no. He clarified how the sign is measured with the larger exclamation point for Mr. Dudick and stated that if it were even with the other letters, it would bring it down to 118 sq. ft.

Mr. Dudick asked about the size of the sign previously at the location and Mr. Myers replied 79 sq. ft. Mr. Dudick recalled that the board approved a variance for the 79 sq. ft. sign. He believes that the current proposed sign's only limitation is the size of the façade, and that the applicant is sizing the sign to fill the façade. He is not inclined to grant a variance for a sign simply because there is space it can fill.

Ms. Ferro asked if the letters will glow. Mr. May replied that this is correct; they will be internally LED illuminated.

Mr. Whalen asked about the size of this Big Lots sign compared to other Big Lots stores. Mr. May's only knowledge is a new location in Colonie which has a 20 sq. ft. sign. They are looking to increase that signage.

Mr. Dudick stated that the previous tenant was so successful with their 79 sq. ft. sign that they had to move to a larger space, so signage size did not seem to have any detrimental affect. Mr. May agreed, but stated that the two businesses are different. Big Lots is more of an impulse shopping business.

Mr. Telesh would not have a problem with an increase of a couple of square feet. He feels that even if the size of the exclamation point were reduced so that the sign were 118 sq. ft., it would still be a significant difference from the 79 sq. ft. sign previously granted, and it does fill up the wall. The other signs for stores in the area are more proportional.

Mr. Dudick asked Mr. Myers for his opinion. Mr. Myers believes that this is a lot of signage for that space.

Mr. Dudick agreed with Mr. Telesh that a couple of square feet would not be significant, but this is a significant jump in size which he does not feel is necessary.

Mr. Dudick asked for public comment and there was none. Mr. Telesh made a motion to close the public hearing. Mr. Strother seconded. Approval unanimous.

Mr. Ritter asked Mr. Mays if he is willing to go back to his client for a revision. Mr. May replied that his client is prepared and produced an alternate drawing which reduced the sign size to have a 4' exclamation point and 3'6" letters, for a total of 82.94 sq. ft. If you even out the exclamation point the total would be 71 sq. ft., which would not require an additional variance. There was discussion about the alternate drawing.

At this point, Mr. Ritter made a motion to approve the 4 foot variance requested. Mrs. Gleason seconded. There was discussion about the variance requested, the possibility that no variance may be needed, and the motion and second on the motion made. At this point, Mr. Ritter withdrew his motion and Mrs. Gleason withdrew her second.

The board and the applicant agreed to table the matter to June 15th. Mr. Myers will measure and there is a possibility that no additional variance may be needed. The applicant withdrew the 61 days. The applicant amended the application to request a 4 sq. ft. variance, and per Mr. Peller, this will appear as old business at the June 15th meeting if a variance is still required after Mr. Myers discusses it with the applicant.

- 2. An application from Daniel Eldeen, requesting a variance for a residential garage. House is in a CR zone requiring 80' front setback for accessory structures. Variance requested from section 208-12A: 80' required - 22' available = 58' variance. The property is located at 17 Lee Avenue, Rexford, New York. (Permit #80773)**

The secretary read the legal notice as it appeared in the *Daily Gazette* on Thursday, May 27, 2010.

Mr. Daniel Eldeen presented his application for a single car garage.

Ms. Ferro asked where the septic is and Mr. Eldeen replied that it comes out of the left side of the house. The tank and leech field sits just behind where the garage would be built so he cannot build it any further back.

Applicant's father and builder, Mr. Daniel Eldeen, Sr. spoke. He explained that due to the septic tank and leech field there is absolutely no access from the left side of the house. From the right side of the house to the property line there is only 22 feet available so it cannot be built there.

Ms. Ferro asked about the height of the garage and Mr. Eldeen Sr. replied it would be 12 feet high.

Mr. Peller asked about the height of the existing house and Mr. Eldeen replied that the house is slightly higher than the garage.

Mr. Strother asked about the other structure in the picture. Mr. Eldeen Sr. replied that it is a temporary structure to keep items out of the rain.

Mr. Dudick asked Mr. Myers for his comments. Mr. Myers does not have a problem with it.

Mr. Eldeen explained that there is a chimney on the other side of the house so it cannot be built there.

Mr. Dudick asked when the house was built and Mr. Eldeen replied 1948.

Mr. Dudick asked for public comment and there was none. Mr. Ritter made a motion to close the public hearing. Mrs. Gleason seconded. Approval unanimous.

Mr. Ritter made a motion to accept the application as submitted. Mr. Strother seconded. Ayes: Gleason, Ritter, Whalen, Dudick, Strother, Telesh, Ferro. Noes: None.

- 3. An application from Lucia's Ristorante, LLC, requesting modification to existing variances 80210 (1999) and 80269 (2000) involving permitted uses in a B-3 zone, section 208-37B. Applicant proposes a new Italian restaurant tenancy that would occupy 2738sf. Currently available area per existing variances is 13,520 - 11,736 = 1784sf. Variance requested = 954sf. The addition of this restaurant will result in 5 restaurants total and 6 are currently allowed so no other modifications are needed at this time. The property is located at 1536 Crescent Road, Clifton Park, New York. (Permit #80774)**

The secretary read the legal notice as it appeared in the *Daily Gazette* on Thursday, May 27, 2010.

Mr. Nathan Schecter presented this application with his wife, Maria. Mr. Schecter explained that Mr. David Bruce, managing partner of Plaza 8 Associates requested that Mr. Schecter assist in presenting the application. The storefront in question is the endcap of the Plaza 8 retail plaza on the easterly side, just behind CVS. The name of the restaurant would be Lucia's Ristorante and Maria would be the owner. Thirty-one years ago, Maria's family founded and still operates D'raymonds Restaurant in Loudonville, named after her father. Lucia's would be named after Maria's mother.

Mr. Schechter explained that the 945 sq. ft. variance requested equates to 1.59% of the 60,000 sq. ft. plaza.

Mr. Schechter believes that this restaurant would be beneficial to the town and its residents in that this would be a fine, woman-owned Italian restaurant that would serve Clifton Park's residents with a formula that works.

There was a discussion about the five restaurants and variances previously granted. Mr. Myers stated that this restaurant would be no closer to residences than any previous variances granted. Mr. Dudick stated that he used to live close to the plaza when it was being built. He did not recall a problem and does not see an issue with granting this variance.

Ms. Ferro asked if the additional square footage being requested changes the footprint of the plaza. Mr. Myers replied no, except for possibly a patio.

Mr. Strother asked if there are any risks if a sixth restaurant is proposed. Mr. Myers replied that a sixth restaurant has already been approved for a variance. The difference is that he needs a little more square footage. The rest of Mr. Myers' response is inaudible.

There was discussion between Mr. Strother and Mr. Dudick regarding any possible extensions of the building down the line. Mr. Dudick advised that this is not being proposed by the applicant.

Mr. Telesh understands Mr. Myers' point that the sixth variance was approved but on a technical basis the square footage allowed was not proportionally increased to accommodate the sixth restaurant in the plaza. All that is being done here is matching the two variances. Mr. Telesh is excited to see a new restaurant plan for this site.

Mr. Dudick asked for public comment and there was none. Mr. Ritter made a motion to close the public hearing. Mr. Telesh seconded. Approval unanimous.

Mrs. Gleason asked about the picking up of trash. Mr. Myers replied that the site plan requirement from the original approval is that there be no trash pickup before 7am.

Mr. Ritter made a motion to approve the application as presented. Mr. Strother seconded. Ayes: Gleason, Ritter, Whalen, Dudick, Strother, Telesh, Ferro. Noes: None.

- 4. An application from Melissa D. Lescault, Esq., for a variance from Section 208-86B, for a front (not side) setback for an existing addition to their home (front faces the street). Fifty (50') feet required, 41' available, 9' variance needed. (Note: addition does not appear to have building permit) The property is located at 6 Hilltop Court, Rexford, New York. (Permit #80775)**

This application was not heard on June 1st and has been moved to June 15th, per a request from the applicant prior to the meeting.

5. An application from Jennifer Zaccaria, requesting variances for a subdivision in a B-1 zone at 932 & 934 Rt 146, Clifton Park, New York (Permit #80776).

Variances requested as follows:

- 1: 208-35C - Required lot A width = 180ft, available = 160', variance required = 20ft.**
- 2: 208-86A - Keyhole lot formed by subdivision - not allowed per this section.**
- 3: 208-86B - Minimum setback for all sides = 50' in keyhole lot, available on east side = 34' plus lot B, variance required = 16' plus/minus.**
- 4: 208-35D.(3) greenspace required lot A = 50%, available = 45.9%, variance required= 4.1%.**
- 5: 208-35D.(1) no parking in front yard in B-1 zone. Lot B all parking in front yard - variance required.**
- 6: 208-35D.(2) no parking closer than 25' to side & rear property line. Lot A parking on side & rear property lines 25'. Variance required for both (2 variances).**
- 7: 208-35D.(4) 10' buffer required along side & rear property lines. Lot A requires variance for both west side and rear property lines (2 variances).**
- 8: 208-35C -40000 sf minimum required, available is 34,722 sf, 5,278 sf variance required.**
- 9: 208-35C required lot B width = 180', available = 40', variance required = 140'.**
- 10: 208-35D.(3) building & parking area maximum coverage = 50% of total lot area. Lot A = 54.1% variance required = 4.1%.**

The secretary read the legal notice as it appeared in the *Daily Gazette* on Thursday, May 27, 2010.

Mr. Tom Andres presented this application on behalf of the applicant. The existing site is a 5-acre parcel that was developed in 1988 with two buildings. The front building was used as an office and the rear was set up as a daycare center. The intention was to build a drive along the side and continually place buildings further back. Due to changing economic times, the applicant wishes to sell the front building which would require a subdivision. Because everything is set up with a single entrance with shared parking, subdividing triggers all of the variances requested. The property is a little over 200 feet wide but 180 feet of frontage is required because it is along Route 146. Mr. Andres proposes either a flag lot and a 160-foot lot or a 160-foot lot and a 40-foot lot. The flag line brings up other issues because it brings up all of the 50-foot setbacks for a flag lot.

Mr. Telesh asked if any consideration was given to selling the property with the drive and having an easement granted to that property owner. Mr. Andres is not sure that this is a preferred method. They would like to create frontage.

Mr. Telesh asked Mr. Myers about further subdivision on the back property. Mr. Myers replied that it could not happen because the back property would not have access to the public road.

Ms. Ferro asked for clarification about the owner's intention regarding the flagship lot, which Mr. Andres provided.

Mr. Dudick asked Mr. Andres why the variance is necessary. Mr. Andres replied that the applicant wishes to sell the front parcel. He is unsure if it is economic situation or if she just wants to sell the front parcel. She did have her own business in the front.

Real estate agent, Jessica Richer of the Realty USA commercial division spoke with colleague, Anthony Sabatino. They are the listing brokers who are trying to sell this property. They have had it listed for over two years. They have shown it to a number of people but it has been unsuccessful as a bundle. Ms. Richer feels it would be much more feasible for her client if it were broken up. Mr. Sabatino stated that their client has been a victim of the economy and her business has dropped off due to parents not being able to afford daycare. She is using the rear building only at this time, but she is still carrying the debt for both buildings and it is becoming impossible for her.

Mr. Dudick asked about the size of the property and Mr. Andres replied it is 5.2 acres. Mr. Dudick asked about the listing price. Mr. Sabatino replied that it was originally listed at \$1.2 million and they have substantially reduced the price. The appraisal just performed appraised it at \$1.75 million. What Mr. Sabatino and Ms. Richer have done is take the square footage compared to other properties in the area and came up with a purchase price for the front property, which is \$839,000.

Mr. Strother asked when the applicant purchased the property. Mr. Andres replied that they did the work in 1998. Ms. Richer explained that the applicant has had her business for almost 10 years and her business was very strong at one time.

Mr. Ritter would like to see documentation of economic hardship since this seems to be the reason for the subdivision request. Mr. Strother disagreed with Mr. Ritter and thinks that this is a very aggressive variance request. He believes that a hardship would be self-imposed on the back lot as a result of the creation of a keyhole lot. Mr. Strother is also concerned about parking and the burden this will place on the new owner as a result of any subdivision. As it stands, Mr. Strother is not inclined to support this application.

Mr. Dudick asked Mr. Myers for his comments. Mr. Myers is very concerned about this parcel. The numbers do not add up. He is concerned about the creation of a keyhole lot and what that will mean for any other buildings that may be built on the back parcel.

Mr. Dudick asked if this were an actual road leading along the side, would the issues of the variances be resolved. Mr. Myers replied that it would take away the issues for the keyhole but there would still need to be parking and setback variances. Mr. Andres discussed this point with Mr. Dudick as well as the concerns of a keyhole lot with multiple buildings.

Mr. Dudick read a memorandum of understanding from the Saratoga County Planning Board which decided no significant countywide or intercommunity impact.

Mr. Dudick asked about the purchase price in 1998. Mr. Andres replied that it was raw land and he did not know the purchase price. Mr. Dudick believes that whatever it was, trying to recoup \$1.75 million minus the cost of the buildings does not necessarily indicate financial hardship. Mr. Andres agreed but stated that this is area variance request. He believes this would only be a subdivision line and there would be no physical changes. Mr. Peller advised Mr. Andres that he is correct regarding the criteria for area variances but the board can and has asked for financial evidence when an applicant claims financial hardship. Mr. Andres has no problem providing it but is unprepared to do so at this meeting.

Mr. Ritter again stated that because economic hardship has been stated by the applicant as a reason for the subdivision request he would like to see financial documentation.

Mrs. Gleason stated to Mr. Peller that she does not see any difference between this request and that of DCG, Mr. Reckuki or Mr. Phillips, except for the keyhole lot. Mr. Peller agreed, but the integrity of this parcel is different from what was looked at before. There was discussion about the similarities and differences among the variances referenced by Mrs. Gleason.

Mr. Strother asked if the problem caused by a keyhole lot is any different from what they have now and what are the potential problems if this is sold off. Will there be an easement issue and what will it mean for potential buildings in the back. Mr. Myers responded to Mr. Strother and believes that the other applicants referred to by Ms. Gleason also claimed financial hardship. The problem with this application according to Mr. Myers is that we do not know about further development of the back lot and further subdivisions that may be asked for. Mr. Andres stated that the applicant no interest or money to develop. If she decides to sell it, someone can still build on it and come back if they want it subdivided.

Mr. Dudick believes the board needs to consider how much a property can be carved up and whether the creation of this keyhole lot is a self-created hardship.

Mr. Dudick asked the board if it wished to wait for additional financial information or to vote on the application. Mr. Telesh discussed the possibility of approving the application with the stipulation that the back lot not be further subdivided. Mr. Andres believes that the applicant would be willing to restrict that the back lot not be further subdivided. It would not restrict them from building, however. Mr. Peller reminded the board that it is important to understand that a restriction of further subdivision needs to be in the deed. Mrs. Gleason believes that the concerns would not go away. Mr. Telesh believes it would be easier to deal with two owners rather than more and believes that a subdivision restriction should be made. Mr. Whalen agreed with Mr. Telesh. Mr. Ritter is not sure that this is fair to a potential property owner. He does not feel that the back half of the property should be judged differently from the front half.

Mr. Ritter and Ms. Gleason feel the need to see additional financial information. Mr. Dudick, Mr. Whalen, Mr. Strother, Ms. Ferro and Mr. Telesh do not.

Mr. Dudick asked for public comment and there was none. Mr. Dudick made a motion to close the public hearing. Mr. Ritter seconded. Approval unanimous.

Mr. Dudick believes there are differences between this application and others discussed in that this creates a flag-shaped lot which creates access and easement issues which he is uncomfortable with.

Mr. Ritter made a motion to deny the application. Mr. Strother seconded. Mr. Peller asked Mr. Andres if he wished to weigh in and adjourn the meeting. Mr. Andres would like to table the meeting but knows of no other way logical way to subdivide the property. There was discussion regarding tabling the application and it was agreed to by the board and Mr. Andres that the application would be tabled to June 15th so that financial evidence could be provided. Mr. Andres waived the 61 days. Mr. Ritter withdrew his motion and Mr. Strother withdrew his second.

At this point, there was a recess from 8:55 p.m. to 9:10 p.m. When the meeting resumed, the next applicant (MJM-PED) agreed to be heard last.

- 6. An application from Roger Hordines, requesting a variance from Section 208-12A. Eighty feet (80') setback required from front property line for accessory structures (shed) in an R-1 zone. Applicant wishes to place shed 35' from property line, variance required = 45'. The property is located at 32 Merrall Drive, Clifton Park, New York. (Permit #80778)**

The secretary read the legal notice as it appeared in the *Daily Gazette* on Thursday, May 27, 2010.

Mr. Roger Hordines presented his application. He wishes to install a 10' x 16' pre-built shed on his property. He is restricted to less than 19% of his lot due to being on a corner lot which requires 80-foot setbacks on two fronts and a 10-foot setback from the other side. His backyard is fenced and he would like to place the shed along the south fence line. The area between the back of the fence and Huntridge Drive contains natural growth. In the 19%, he currently has another shed, a small planting area, a deck and a portion of his house. This leaves about 10% of his property within which to position a shed in order to have some use of his back yard.

Mr. Ritter asked if the new shed will replace the existing shed. Mr. Hordines replied yes. The new shed will essentially be placed where the existing shed is. The back of the new shed will be incorporated into the fence line.

Mr. Peller asked if it will be in the same place as the existing shed or if it will be moved to the left and Mr. Hordines replied yes, that it will be moved to the left.

Mr. Hordines described his property and stated that there are two sheds currently on his property. The metal shed will be replaced by the new shed.

There was no public comment and Mr. Ritter made a motion to close the public hearing. Mr. Telesh seconded. Approval unanimous.

Mr. Dudick asked Mr. Myers for his comments. Mr. Myers did not have any concern other than that the existing shed should have had a permit. Mr. Hordines replied that it was there when he purchased the property.

Mr. Strother asked what the closest structure is to his back fence. Mr. Hordines replied that there is about 250 feet of wooded area.

Mr. Dudick understands the situation with a corner lot and thinks the application is reasonable.

Mr. Ritter made a motion to approve the application as submitted. Mrs. Gleason seconded. Ayes: Gleason, Ritter, Whalen, Dudick, Strother, Telesh, Ferro. Noes: None.

- 7. An application from David Bernacki, proposing to build a sunroom onto home in a cluster subdivision (underlying zoning is R-1). Twenty five feet (25') rear yard setback required, 10' available, 15' variance required. (Note: Confirmation from ACOE that wetlands are not an issue will be required prior to issuing permit if variance granted) The property is located at 8 Northgate Court, Clifton Park, New York. (Permit #80779)**

The secretary read the legal notice as it appeared in the *Daily Gazette* on Thursday, May 27, 2010.

David Bernacki, builder for Capital District Contractors, presented this application on behalf of owner, Michael Weitzman. The proposal is to build a three-season room on the rear of the home, which would require a 15-foot variance.

There were no questions from the board and Mr. Dudick asked Mr. Myers for his comments. Mr. Myers replied that the existing deck explains why they cannot move it to a different location. He does not have a problem with the application and if there is a wetland issue it will be worked out. The rest of his response is inaudible.

Mr. Peller asked Mr. Myers what prompted him to think that there is an issue. Mr. Myers replied that wetlands are shown on the mapping but he is not sure of the accuracy of the mapping. There has been a lot of work done in that development, filling in of wetlands. He is not sure and will ask for confirmation as to whether the wetlands exist. Mr. Peller added that the issue may have been resolved when it was built and Mr. Myers replied correct.

Mr. Peller asked Mr. Bernacki how long Mr. Weitzman has owned the property. Mr. Weitzman replied since 2004 and he is the original owner. Mr. Bernacki stated that they did contact the Army Corps of Engineers some time ago but they have not received a response.

Ms. Ferro asked about removing the deck and putting the three-season room where the deck is. Mr. Weitzman explained that this will darken the kitchen.

Mr. Dudick asked for public comment and there was none. Mr. Telesh made a motion to close the public hearing. Mr. Ritter seconded. Approval unanimous.

Mr. Telesh believes the request is reasonable. He asked if neighbors had been contacted. Mr. Bernacki replied that the area is wooded in the back.

Mr. Ritter made a motion to approve the application as submitted. Mr. Telesh seconded. Ayes: Gleason, Ritter, Whalen, Dudick, Telesh. Noes: Strother, Ferro.

- 8. An application from MJM-PED, Inc., requesting a variance from 208-50.3B front parking setback required is 30'. Variance required = 30' plus an easement from the town to utilize a portion of the row for parking. The property is located at 16 Clifton Park Center Road, Clifton Park, New York. (Permit #80777)**

The secretary read the legal notice as it appeared in the *Daily Gazette* on Thursday, May 27, 2010.

Mr. Tom Andres of ABD Engineer and Surveyors presented this application. He explained that this application was brought about by Mr. Myers contacting him to take a look at the drainage. There is a large ditch running across from Route 9 by the Paquin property. It runs through and around the property and the Town has easements for all of that. The ditch is 5 to 6 feet deep and is just off the edge of the road. There were discussions about stabilizing the ditch. The suggestion from Mr. Andres' office was to pipe it, which would cost over \$30,000 and the planning board just added another manhole into it. This is a lot of money for the Town to go forward with. According to Mr. Andres, after discussions at the site, Peddlers volunteered to put the piping in so that they could fill in the ditch and eliminate the hazard and maintenance issues that the Town has.

At the same time, there is an issue with the amount of parking available and Mr. Andres' proposal is to add 16 parking spaces over that area. They have gone to the planning board and they need the zoning board's approval before they can move further. He discussed where the parking and access would be by referring to a map. There were discussions with the planning board about a barrier. There would be plantings that would be maintained by Peddlers. Drainage pipes would be underneath and there would be catch basins that would tie into the storm system.

All of this is occurring within the 30 feet that is the front parking area restriction which is why the variance is being requested. It protrudes into the Town's right-of-way and they would pursue an easement agreement with the Town to allow the use of the parking within the right-of-way.

Mr. Peller asked what the planning board's position regarding the easement. Mr. Andres does not believe they had any issue with the easement. He believes that in general, everyone has been very much in favor of this because it solves two problems: it fills in the ditch and gets more parking. Mr. Andres stated that the planning board brought up issues but they reserve comment pending the zoning board's decision. There are lighting, fencing and drainage issues – engineering issues that still have to be worked out. He believes that the general intent of all parties is that there is an existing situation that is not the best for drainage or parking.

According to Mr. Andres, one of the points that director of planning, John Scavo made is that the previous approval allowed joint parking so that the parking that was on the lot did not meet the requirement. However, because there was joint parking on the hotel lot, with those counted it met the requirement. By putting these parking spaces in, they would meet the requirement on the lot for parking and they would still have the joint parking arrangement available.

Mr. Myers asked if the joint parking has been restricted and Mr. Andres replied no, that the joint parking is deeded. The restriction at one point in time was that the hotel felt that the Peddlers customers were parking in more spaces than they had been allotted. There are discussions to try to control that. People did not want to park in the back of the hotel and walk around to the front.

Mr. Ritter stated that the hotel has severely enforced parking limitations in the back by posting signs and towing cars. Customers are parking all over the grass and along Clifton Park Village Road. Although he is in favor of more parking for the facility, Mr. Ritter does not believe that an additional 16 spots is even close to what is needed. Mr. Andres stated that Peddlers is aware of the situation and is looking at alternatives.

Mr. Peller asked Mr. Andres who would pay for the piping. Mr. Andres replied that all improvements would be done by Peddlers with no cost to the Town.

Ms. Ferro asked what would happen if it is necessary to dig up the pipe at some point in time. Mr. Andres replied that it would be under the standard easement agreement that the Town would dig it up and would have to replace the subsurface but would not have to repair the pavement. Any improvement would be replaced by the owner of the property. Whoever has the easement would have to repair up to that surface.

Ms. Ferro asked if the Town would have to pay the cost of digging up the pavement and Mr. Andres replied yes. Ms. Ferro asked if the Town Board has weighed in on this. Mr. Andres replied that they have not had any official action by the Town Board. He has been told that the Town Board is very interested in it but he has not had any discussions with them directly.

Mr. Ritter asked about the cost of all of the improvements. Mr. Andres replied approximately \$70,000.

Mr. Peller asked Mr. Myers if this is just in the right-of-way, that there was no special land given to the Town. Mr. Myers replied yes. Mr. Peller asked if it is in the drainage easement. Mr. Myers believes that all of the water is in the Town's drainage easement. Ms. Ferro asked if there is a copy of that easement and Mr. Myers replied yes.

There was discussion about the cost per parking space.

There was no public comment and Mr. Dudick made a motion to close the public hearing. Mr. Ritter seconded. Approval unanimous.

Mr. Telesh asked about proposed vegetation and the Town's enforcement mechanism if it is not and becomes an eyesore. Mr. Myers replied that it would be approved as a modification to the site plan. It would have to be maintained or they would be in violation. They could be ticketed.

Mr. Dudick asked Mr. Myers for his comments. Mr. Myers' opinion is mixed. He has a problem with granting parking on Town property and an issue with replacing shrubbery. Also, the entire drainage issue needs to be addressed. What they propose is only a partial fix. The decision this board has is whether to grant the applicant the zero variance to park. Everything beyond that is a planning issue.

Mr. Peller asked Mr. Myers if the board has ever granted anything like this before. Mr. Myers replied not to his knowledge. Mr. Myers can understand a zero parking variance, but not parking on Town property. The variance can be granted but they still have to get permission for the easement, which they have to get from the planning board or town board. Mr. Peller asked Mr. Andres if he would want to know this first. Mr. Andres stated that he has spoken to the planning department and the planning department told him that the Town is very much on board and wants this to happen. Mr. Myers discussed issues such as liability if there is an accident on Town property.

Mr. Peller's issue is that the board has never granted any kind of easement like this. There was discussion about this point.

There was discussion initiated by Mr. Ritter about the deterioration of the retaining wall and the flow of water. Mr. Myers would like to see the property used to its fullest and get the parking off of the right-of-way.

Ms. Ferro would feel more comfortable hearing directly from the Town as to their feelings regarding a project like this.

Mr. Peller asked if the variance is granted and the easement is not, what good is the variance. Mr. Andres replied that they could still design a different parking scenario but it would cost a significant amount of money. If they do not get a variance they have no option. There was discussion about other parking options.

Ms. Gleason asked Mr. Myers about his opinion and Mr. Myers replied that his issue is not so much a zero parking variance as it is parking on the Town's right-of-way.

Mr. Ritter is supportive of extending the parking on a very intense parking situation and that the board should not hold up the project, that if the variance is granted it will be null and void if the Town does not grant the easement. There was discussion about the current unsafe parking.

Mr. Telesh asked for clarification regarding repercussions if the Town does not grant the easement. Mr. Myers replied that they would still be able to park up to the property. The rest of his response was inaudible. There was further discussion about the drainage issue.

Mrs. Gleason made a motion to approve the application as submitted. Mr. Telesh seconded.
Ayes: Gleason, Ritter, Whalen, Dudick, Telesh. Noes: Strother, Ferro.

Mr. Dudick made a motion to approve the minutes of May 4, 2010. Mr. Ritter seconded. Ayes:
Ritter, Whalen, Dudick, Ferro. Noes: None.

Mr. Ritter made a motion to approve the minutes of May 18, 2010. Ms. Ferro seconded. Ayes:
Ritter, Dudick, Strother, Telesh, Ferro. Noes: None.

Mr. Ritter made a motion to adjourn the meeting at 10:10 p.m. Mr. Telesh seconded. Approval
unanimous.

Respectfully Submitted,

Jessica McCarthy
Secretary

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