

# Town of Clifton Park

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APPROVED

16-4-16

## Zoning Board of Appeals



## ZONING BOARD OF APPEALS August 16, 2016

**Present:** Acting Chairman Jerry Cifor, Chris Lemire, Lisa McCoy, Randy Gifford, Tony Morelli and Mario Fantini

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

**Absent:** Chairman, Michael Dudick and Michael Bloss

Meeting was called to Order at 7:00 p.m.

PLEDGE OF ALLEGIANCE  
ROLL CALL

Acting Chairman Cifor informed the public that this is a 7 member board with 1 alternate member and that in order for an application to be approved, 4 votes of approval are required.

### OLD BUSINESS

1. 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)

Prior to the meeting the applicant's attorney requested that the matter be postponed until the next meeting.

2. Application from Dan Lill and Thomas Lill for a use variance to construct multi-family dwelling units in a B4-A zone. 16 townhouses are proposed on a 1.56 acre lot, which is 2 lots combined. Allowed uses are anything permitted in a B-3 zone except dwellings which will not be allowed by special exception or otherwise. The area variances originally sought have been withdrawn from the application. Property is located at 13 and 15 Old Plank Road, Clifton Park, NY 12065. (Permit #81067).

Prior to the meeting the applicant's attorney requested that the matter be postponed until the next meeting.

- 3. Application from Ruffigan Enterprises d/b/a Elements Massage for an area variance from Chapter 171(C) (1)(a) and (b): 1) 2 max. window signs per building tenant; applicant requests 7 signs, variance required = 5 signs; 2) No more than 50% of windows covered or 8 SF whichever is less; applicant requests 159sf; 151sf variance required; and 3) 100% coverage requested, 50% variance required. Property is located at 5 Southside Drive, Clifton Park, NY 12065. (Permit #81094)**

Beth Godsil presented the application and confirmed she is the owner of Ruffigan Enterprises d/b/a Elements Massage. She reminded the Board that she had appeared 2 months ago with proposed window graphics which had not been approved and that it had been recommended that she return with more subtle graphics. She handed out to the Board members color copies of 4 iterations of the final proposed graphics.

Ms. Godsil explained that they have now added a black band to blacken out the top windows and that graphics are now only proposed for the lower windows for the purpose of blocking out the sunlight and to provide a level of privacy for her clients. She further advised that no graphics would be placed on the door, except for their hours of operation, which are already there. She advised that they presently have UV film on the windows, as well as shades which cost over \$2,000.00 to install which are not providing enough blockage from the intense sun. She added that the proposed perforated vinyl graphics are more protective than the UV film which they intend to remove once approval is obtained, but informed the Board the shades would stay up due to the aesthetic value they provide inside the studio.

She explained that the \$49.00 introductory special sign being proposed would be placed on the outside of the window so that it could be removed when the promotion was over.

Mr. Lemire pointed out that the original proposal was for 7 window signs and that the application has now been reduced to 3 requested signs which Ms. Godsil confirmed.

Mr. Cifor opened the Public Hearing and asked for comments or question.

Pete Peck, who was present with his wife Theresa, commented in support of the application, advising that they own iLovekickboxing.com and experience the same issues as the applicant with the sunlight, because the front of their space also faces south.

Mr. Gifford asked whether the applicant had visited the space morning, noon and night prior to opening the business in order to determine if there was a problem with the sun. Ms. Godsil replied that when they were in the build out stage, they had been told that the existing vertical blinds would remain, but during construction they had accidentally been taken down, which was when she realized they had a problem and had taken the step of adding the UV film and shades, thinking that would resolve the problem, but it hadn't.

Mr. Cifor asked whether there were any other members of the public who wished to comment on the application. Being none, he made a motion to close the Public Hearing. Mr. Gifford seconded the motion. All voted in favor and the Public Hearing was closed.

Mr. Myers stated that he believes the Board is going to want to remain consistent with what has been approved to date, adding that most of the other graphics that have been approved were very non-descript, had very few words if any and did not contain prices. He added that vinyl to be applied to the window showing

the price for the introductory special is considered a sign. He suggested that perhaps the applicant might consider putting an A-frame sign outside the door like other vendors in Town do instead, as that would be considered a temporary sign because it would not be applied to the window.

Mr. Peller asked the applicant whether she would be agreeable with the restriction of not putting up any pricing on the windows and Ms. Godsil replied that she would.

In reviewing the handout, Mr. Lemire inquired as to why different colors were shown and whether the signs were going to change seasonally.

Ms. Godsil advised that she had presented them in order to show the Board different color options they had been considering for spring and to show different ways the graphics could be presented, adding that although the basic graphics and tone are the same, one is a bit more colorful.

Mr. Myer reminded the applicant and the Board that if a particular set of graphics were approved, she would have to come back before the Board if they were to be changed.

Upon inquiry from Mr. Peller, Mr. Myers confirmed that if an unapproved sign was put up, he would have to contact the business owner and advise them they would have to come before the Board for a hearing. He stated that he did not believe a color change would trigger him to do anything, although he did not believe the Board had approved pricing in windows to date.

Mr. Peller recommended to the Board that they remain consistent with what they have approved in the past and noted that they would be approving what is in front of them.

Mr. Fantini asked whether the Board had approved any window signs in the past containing the logo and the name of the business. Mr. Myers stated that the Board had approved signs with the name of the business, which are allowed, but not with logos.

Mr. Lemire asked whether the applicant was requesting approval for more than 50% coverage of the windows in addition to the number of signs, and if so, what that square footage was now.

Mr. Myers confirmed that was correct and that he did not consider the black UV film that is already applied to the window as a sign, because it's a solid color that is simply darkening the windows and is not an identifying mark to the business. He confirmed that instead of approval of 159 SF, the applicant is now only looking to cover the bottom windows, which would be 114 SF.

Mr. Cifor commented that the sign containing the logo is well under 8 SF and is allowable.

Mr. Gifford pointed out that there is already a wall sign on the building itself which contains the name of the business. Ms. Godsil confirmed that was correct and added that currently their logo is above the door which would be blocked out.

Mr. Lemire inquired whether the Board would be more comfortable with the signs containing more generic stones and leaves and the sign identifying the business above the door.

Both Mr. Gifford and Mr. Fantini advised that that they would be more comfortable with that.

Mr. Myers commented that the Board had granted variances in the past covering entire windows for much larger stores, citing Redwing and The G-Box.

Mr. Gifford advised that he personally has a problem allowing coverage of windows on any building and does not feel that is what the Board has been doing for the 6 years he's been a member.

Mr. Myers pointed out that clothing stores put mannequins and things in the windows with backdrops, which are not signs, but still block visibility into the stores and that the beauty of the vinyl signs, which seems to be the new technology that is getting more and more popular, is that you can still see out.

Acting Chairman Cifor made a motion to approve the amended variance, conditional upon what is shown on page "1" of the handout, adding that any variations would require the applicant to come back before the Zoning Board of Appeals for approval. Mrs. McCoy seconded the motion.

Mr. Fantini stated that he wanted to explain his position before he voted, advising that he believes this is a departure from what the Board has done before in terms of the logo.

*The secretary called the Vote:*

Ayes: Mr. Cifor, Mrs. McCoy and Mr. Morelli.

Noes: Mr. Lemire, Mr. Gifford and Mr. Fantini.

#### **Amended Application denied.**

*The secretary read the legal notice as it appeared in The Gazette on August 11, 2016:*

- 4. Application from iLoveKickboxing.com for area variances from Chapter 171-6C.(1) of Town Code for: 1) Window signs allowed = 2; 7 windows covered, 5 with words or images; variance required = 3 signs; and 2) Max. coverage = 50% of windows or 8 SF; coverage requested is 140 SF or 45.6%; 142 SF variance required. Property is located at 22 Clifton Country Road, Suite 10, Clifton Park, NY 12065. (Permit #81101)**

The owners, Pete and Theresa Peck, presented the application. Mr. Peck presented the Board with a handout containing various photographs of the business. He stated that page "1" shows the front of the store and explained that the left hand side where the graphics are shown, is where their staff desk is. He stated the window on the right hand side is completely left open and that because their building faces south, they do get sunlight that comes in through that window during the 6:00 a.m. and 7:15 a.m. classes, but it is not as intense. However, in the afternoon, when the sun swings over and comes through the window on the left, he advised that the sun is very intense, especially in the winter months. He advised that they had placed a window cling there to help block some of the sunlight in an effort to protect their clients who are already sweating from working out.

He explained that page "2", which shows the right hand window with graphics, is where the staff desk is, as well as their computers, lighting equipment for the floor, stereo equipment and their Wi-Fi, which are all direct sunlight.

He explained that page "3" shows the left hand window with a lot of sun coming through (which is the right window if you are facing the building). Mr. Peck advised that they had built a 4' privacy wall before the

workout floor, so that when the members were on the floor they were partially protected from the sun as well. He added that they didn't want people coming up to the windows, peering in and that if they didn't have the clings on the other window, there would be no privacy for members on the floor.

Mr. Peck explained that page "5" shows their staff on the floor during a training meeting, as well as the front area where people check in, which is very illuminated by the sunlight. He advised that they have staff there from 6:00 a.m. to 9:00 p.m. who would be behind the desk, under direct sunlight all day long and have members holding their hands up to shield them from the sun in order to locate the check in scanner, which shows that they really need the window cling in that area. He concluded by stating the last page of the handout, where they had circled iLovekickboxing, shows the direct southern exposure from the sun.

Upon inquiry from Mr. Peller, the applicants confirmed that they rent their space from DCG.

Mr. Peller advised the applicants that regardless of what the Board does tonight, they will need to provide Mr. Myers with an owner authorization form signed by DCG allowing them to present the application and the applicants agreed to obtain that.

Mr. Cifor commented that the variances the Board has approved for window signs within the Town have been very generic in nature and non-descript, mentioning Redwing Shoes which shows a guy climbing up a gear. He added that he feels this application is unlikely to be approved because the graphics presented are basically advertising what's going on inside the store. He went on to state that the reason he was telling them this is because if the variance was denied, they would not be able to come back before the Board again without a material change to the original application and reminded the applicant that they already need to obtain the owner authorization form.

Mr. Peck advised he had looked at the Redwing Shoes sign and that they had noticed that the G-Box has a lot of graphics that advertise their business.

Mr. Cifor pointed out that the G-Box has very generic figurines of a male and female.

Mr. Peck asked if there was something they could do with the signage that would bring them into compliance and Mr. Cifor stated they should present a generic sign that does not advertise what they are doing inside the store.

Mr. Lemire showed the applicants the handout received from Elements Massage tonight and explained that they had originally come in with graphics showing people actually having massages, pointing out that even with the revisions presented this evening, they still had problems.

Mr. Peck asked whether they should come back with new graphics that did not contain an offer or if the offer could just be smaller.

Mr. Cifor reminded him that they had just heard that Elements Massage was looking to have a sign showing the \$49.00 introductory massage that didn't fly very well with the Board.

Mr. Peller suggested that the applicants adjourn the matter in order to keep the application open, obtain the owner's consent form, change your graphics, talk with Steve and then come back before the Board.

Mr. and Mrs. Peck agreed to adjourn the application to the September 6, 2016 meeting and advised if they were not able to get new graphics together in time, they would let Mr. Myers know.

Mr. Peller asked the applicant if they would be willing to waive the 62 day requirement the Board has within which to make a decision on the application and Mr. and Mrs. Peck agreed.

Mr. Myers asked the Board if they wanted to put a time frame on the application, advising that the applicants had already placed the signs on the windows without asking the Town.

Mr. Peck apologized, advising that he is a retired police officer and he and his wife are not business people.

Following a discussion with the Board members on whether a time limit should be placed on the application, Acting Chairman Cifor advised the applicants if approval is not obtained at either the September 6<sup>th</sup> or the September 20<sup>th</sup> meeting, the signs would have to be removed.

Mr. and Mrs. Peck advised they understood.

**Application tabled until the September 6, 2016 meeting.**

**NEW BUSINESS**

*The secretary read the legal notice as it appeared in The Gazette on August 11, 2016:*

- 1. Application from Donald Cremeans for area variances from 1) Section 208-65E(3) – 25’ setback required for accessory structure (gazebo); 14’ available - 11’ variance required; 2) Section 208-65E(1) – parking in front yard not allowed, parking proposed facing both Ushers Road and Pierce Road; 3) Section 208-65B which requires 40% greenspace; 34% proposed - 6% variance requested; and 4) 208-65E(2) – no parking in 25’ side setback/buffer area; 5’ proposed – 20’ variance required. Property is located at the Southwest corner of Pierce Road and Ushers Road, Clifton Park, NY 12065. (Permit #81102)**

Jason Dell from Lansing Engineering presented the application on behalf of Northway Church and explained that the site is located at the intersections of VanPatten, Ushers and Pierce Roads on a parcel that is approximately 6.83 acres, located about 600’ west of the on ramp to the Northway on the south side of Ushers Road. Mr. Dell stated that the site is zoned Light Industrial; is currently vacant, wooded land; that there is public water and sewer utilities available and that stormwater will be managed on site in accordance with all DEC requirements.

He explained that the applicant is proposing a re-location and expansion to construct a 40,000 SF building for the Church with 2 access points into the facility from VanPatten Road and from Pierce Road, extending into the parking areas. He advised that the proposed parking exceeds what is required by the Zoning Ordinance because of the need for the Church to have as much parking as possible in order to accommodate the expansion and that they are also proposing a gazebo, or a trail resting structure on the western side of the project site, which had been requested by the Planning Board and the Trails Committee. He stated that the greenspace requirement for the zone is 40% and the applicant is now proposing 37.6%, which is less than what was originally requested.

Mr. Dell added that the original application had also requested a side yard setback variance, which they are no longer seeking, because the site plan had been revised. He advised that the first variance being requested is from the 50' setback requirement and that they are seeking a 42.5' variance to allow for a 7.5' setback to the gazebo structure along VanPatten Road.

Mr. Lemire pointed out that the application indicates an 11' foot variance was required for the accessory structure. Mr. Dell replied that the 11' variance had been reduced down to 7.5' and that they are now only seeking 2 variances, one for the front setback for the accessory structure and one for the reduction in greenspace.

Mr. Cifor asked if the setback was specific to the gazebo and not the building itself and Mr. Dell confirmed that was correct.

Mr. Lemire asked if the variance to allow parking in the front yard was still required. Mr. Dell responded that they don't have any parking in the front yard.

Mr. Myers pointed out that although he has not seen the new site plan, they do have parking in the front yard because the building has 3 fronts and that Ushers, VanPatten and Pierce Roads were all fronts, no matter which way the building is oriented on the lot. He added that the law states if you front on a street, no matter where the front of the building is, it is still a front.

Upon inquiry from Mr. Lemire, Mr. Myers confirmed that of the 4 variance requests in the original application, number 1 for the gazebo setback is still being requested, but has been reduced from 11' to 7.5'; number 2 for parking in the front yard is still required and number 3 for greenspace was still being requested; for a total of 3 variances.

Mr. Peller asked Mr. Myers to advise the Board about the Federal Religious Land Use and Institutionalized Persons Act and why it was cited.

Mr. Myers explained he had been advised by another attorney that even though a church is not an allowed use listed in the Zoning Law, churches are given great deference to be allowed to be placed in any zone and that the law had been cited in the application because it was cited to him.

Mr. Peller asked if that was going to preempt zoning and if therefore, a church could be built anywhere in Town. Mr. Myers responded that was correct.

Mr. Peller asked if Mr. Myers had been presented with anything other than a verbal statement. Mr. Myers replied he had not, but that the Planning Director and Town Engineer had confirmed it.

Mr. Cifor asked what the Town's practice in the past with churches has been.

Mr. Myers responded that as far as he knew, they have always been allowed no matter what, but that this is probably the first time since he's been with the Town that a church was to be built in a zone that did not specifically allow it. He explained that although the Light Industrial Zone does specifically state you can build a church, it is not an allowed use and therefore is one of those gray areas. He added one other new church was built on Jarose Place, but it was an R1 zone and it was an allowed use.

Mr. Peller asked if what Mr. Myers was saying is that if this project was an R1 Zone, it wouldn't matter because the Federal Religious Land Use and Institutionalized Persons Act pre-empts that. Mr. Myers responded that was correct and Mr. Peller advised he would like to review that further with him.

Mr. Lemire asked hypothetically, if there is a use variance issue, whether that would be in addition to the requested area variances and Mr. Peller responded that was correct.

Mr. Myers advised that originally he was going to put the use variance requirement into the application, but had been instructed that was incorrect.

Mr. Gifford asked how many parking spaces were being planned and Mr. Dell advised 450.

Mr. Gifford asked how many members the church had. From the audience Jeff Buell advised there were about 2,000 people on a weekly basis.

At that time, Jeff Buell stepped to the podium and advised he is a developer with Sequence Development, the developer for the project.

Mr. Gifford asked how much of a traffic problem there was going to be at this small intersection, adding that he lives there and there is always a high volume of traffic there.

Mr. Buell advised that they had completed a traffic study with Creighton Manning Engineering that has been submitted to the Town for review, adding that it showed no added traffic mitigation from the Church. He stated that the high traffic numbers are during the week and if we were to dump all of our cars into the street at one time it wouldn't even be half of what it is during the week, because there are only 3 services, 1 on Saturday at 6:00 p.m. and 2 on Sunday mornings at 9:30 and 11:00 a.m.

Mr. Dell advised that the Planning Board and the Town's designated engineer would be reviewing the Traffic Study through the very detailed planning process.

Mr. Myers stated that this is a Type 2 action and no further SEQRA review by the Board is required. He also stated that he believes there is a section in the law about parking in the front yard which the Planning Board can override to allow it, depending on a project's specific nature and that therefore, the Planning Board will have the final say in the amount of parking allowed for any project in Town. He opined that Planning's view of the project as a bigger picture versus just the Zoning Law, is probably a better control.

Mr. Cifor inquired whether this project requires County approval. Mr. Myers confirmed that was correct, adding that although the County has the application, it will not be heard until next month and that any approval would have to be subject to the County's approval.

Acting Chairman Cifor opened the Public Hearing and asked for questions or comments. There were none. Mr. Gifford made a motion to close the Public Hearing and Mr. Fantini seconded. All voted in favor and the Public Hearing was closed.

Mr. Lemire asked whether it would make sense for the Zoning Board to take a step back on the front parking issue, due to the potential for Planning to override it anyway, and just wait to see what they do.

Mr. Myers explained that Planning will not review the project until the variances are granted and he did not know how it would work if Zoning said no to the parking and Planning overrode it.

Both Mr. Dell and Mr. Buell commented that there would be no other place to put the parking because the building is in the preferred location for the Planning Board.

Mr. Myers commented that perhaps the Zoning Board could defer a decision on the parking to Planning and eliminate it from this variance request, adding that the worst thing that might happen would be that the applicant would have to revisit this Board to obtain a vote on it later. He stated that although he wasn't sure, Planning may only be concerned about the parking against Pierce Road and say parking against Ushers Road doesn't count, because there no direct access from there. He added that because it is part of the Zoning Law, he felt he had to cite it in the variance application.

Mr. Buell advised that they would be agreeable to removing that request if the Board felt more comfortable with them going back to the Planning Board and talk to them about how they would prefer the parking.

Upon inquiry from Mr. Gifford and Mr. Lemire, Mr. Buell confirmed that the entrance to the church from VanPatten Road would be directly across from Fairchild Square.

Mr. Gifford asked if they were thinking about putting a traffic light there in the future because of all of the anticipated traffic.

Mr. Buell advised that was more of a DOT discussion and that he didn't believe a light would be added because of a church with services on Saturday and Sunday. He further advised that there will be less than 10 employees at the church on a daily basis; that they have no Sunday school meetings, no pre-K or daycare and that the building will be quiet during the week.

Mr. Fantini stated that in his opinion, he believes the request for the gazebo setback is reasonable as it would be a benefit to the Town; that the requested parking in the front is a unique circumstance due to the 3 fronts and that the request for the reduction in greenspace was not substantial.

Mr. Morelli also advised he had no issue with the requested variances.

Mr. Lemire asked whether anybody knew whether a use variance was requested. Mr. Cifor replied that he would think any approval the Board granted would have to be contingent upon County approval and subject to clarification that a use variance is not required.

Mr. Dell stated that the use was in accordance with the Federal Religious Land Use and Institutionalized Persons Act.

Mr. Peller advised that the Act says that a municipality cannot unreasonably withhold the ability of a church to be located within its border, which is not what is being discussed here, because the Town Code does allow houses of worship in other zones. He stated that his concern is if that is true, a use variance is also required, adding that he will follow up and obtain an answer to that question.

Acting Chairman Cifor asked counsel if there was any recommendation that he would like to make to the Board with regard to that issue.

Mr. Peller advised that conservatively, if the Board decided to rule on the application this evening, in the event it was later determined that a use variance was in fact required, it would be a material change and the applicant would therefore be entitled to come back before the Board. He added that if the Board does not act this evening, an answer to that question could be obtained before the applicant came back.

Mr. Buell asked who determines whether a use variance is needed and who makes the decision to kick it back to the Zoning Board. Mr. Peller advised it would either be the Planning Board or Mr. Myers.

Mr. Buell pointed out that neither has done so to this point and advised that the Planning Board had explicitly stated at their opening meeting in June, this was an allowed use and in his mind, unless something comes up that is new information, he believes it to be an unfair request. As to the side parking lot, he advised that although he appreciates the argument, if that is still an issue, they would be willing to respectfully withdraw that request with the understanding that they may need to come back before the Zoning Board if the Planning Board says that is something that they need to.

Mr. Lemire commented that would just leave the Board with the requests for variances for the gazebo and greenspace. Mr. Buell stated that was correct and advised they would appreciate it if the Board could at least act on those requests.

Mr. Myers advised that it doesn't matter what Planning says because they don't interpret the Zoning Law. He added that the applicant cannot just withdraw the parking request, because its still there and that the Zoning Board can defer it to Planning, but the applicant can't just withdraw it.

Mr. Lemire stated that he believed the applicant was talking about tabling the parking portion and Mr. Buell advised that was correct.

Mr. Gifford asked whether this project was going to go to public notice before anyone approves it.

Mr. Myers pointed out that if it goes on the Planning Agenda it goes to public notice in the newspaper.

Mr. Buell pointed out that it has already been noticed 3 times so far, twice because they have had 2 meetings with the Planning Board and that they plan on being on the September agenda as well, adding that they did have some public comments at the last meeting. Mr. Myers confirmed that was correct because notice was also published for this Zoning Board meeting as well.

Mr. Lemire advised that he would personally feel more comfortable if the Board could obtain clarification from Planning with regard to the parking and if they say that they're going to approve it because it logically makes the most sense that the parking would be where it is, therefore the applicant would not need a variance. Conversely, if Planning says no to the proposed parking and the applicant needs a variance, then the Board has to go through the regular steps for the variance for a parcel with 3 fronts, regardless of the fact that it's the only place that the building can be built and parking can go.

Acting Chairman Cifor stated that he believes the Board has enough information to make a determination, subject to County approval, noting that the building is located where it is because of Planning and the parking proposed is in the only other logical place. He stated that the only thing that could be reduced is the size of the parking lot and opined that 450 slots for a 2000 congregation is not excessive and he therefore does not believe it needs to be tabled.

Mr. Fantini agreed, again stating that he believes having the 3 fronts is a unique circumstance which he feels comfortable with.

Mr. Lemire asked what mitigation plans the applicant had for the 3 fronts so that people don't see the parking lot in their front yard of the building and asked whether the Board would require them to put up a buffer of greenspace or mature trees.

Mr. Cifor advised he believes that was Planning Decision. Mr. Lemire responded that was his point, so why not let them make that decision.

Mr. Cifor replied that it sounds like Planning has deferred the applicant to the Zoning Board.

Mr. Buell stated that although you can't tell from the 2D image presented, the site is actually 20' below Ushers Road; that they intend to keep as much natural vegetation as they can along Ushers Road and that they want more of a campus setting as versus a wide open parking lot.

Mr. Fantini commented that in addition to the site having 3 front yards, it's also a place of worship which entitles a unique look at the project and that generally places of worship are afforded a different point of view.

Mr. Cifor advised that it was ultimately up to the applicant as to whether they want to table the application or if they want the Board to move forward tonight. Mr. Buell advised he would appreciate a vote tonight.

Mr. Lemire asked for clarification on what the requested variance for the greenspace is now and Mr. Dell advised 2.4% as there is 37.6% available.

Referencing the parking discussion, Mr. Morelli commented that if the Board is sitting here tonight assuming that the use is permissible, he wouldn't want to kill the project based on the parking issue. He stated he would prefer to have counsel review the law concerning the use and if a use variance is required, the Board should have a more robust discussion at that time. However, he believes that basically we're being told that the church is permissible and therefore, he doesn't want to deny the parking which really is in the only spot it can go. He concluded by stating that he does not believe the parking request should be tabled; that the Board should approve it and then allow Planning to make their decisions without any sort of restrictions.

Acting Chairman Cifor agreed.

Mr. Gifford asked if he wanted to open up a box store in the same spot with 3 fronts, whether he would be afforded the same right that the church is going to have. Mr. Myers responded that would be up to the Zoning Board.

Mr. Buell commented that as far as their proposed use, they would be constructing a very sharp looking building, which is going to be a really good improvement for Clifton Park compared to what could possibly go on the site in the Light Industrial Zone.

Mr. Myers pointed out that a Light Industrial use sometimes brings with it a vast sea of asphalt for a parking lot and that this a unique case where the applicant happens to need a lot of parking for a specialized use which the Town is trying to fit into the zone and allow and that right now, the Town thinks this has to be an

allowed use whether it's in the Zoning Law or not. He added that the worst case scenario is if that is incorrect, the applicant would have to come back to the Zoning Board to request a Use Variance.

Mr. Cifor asked whether that was ultimately Mr. Myers' determination.

Mr. Myers replied that based on the information he has now, he believes they do not need one, but it is a question he intends to ask in order to be sure. As to the proposed parking on the 3 fronts, he advised that from his prospective he really doesn't have an issue with it, but was required to quote what the law says to the Board.

Mr. Fantini made a motion to approve the 3 variances requested, subject to County approval. He stated that he does not believe the variances will create an undesirable change to the neighborhood or the Light Industrial area and that he does not believe the parking benefit can be achieved by some other feasible method due to the unique circumstances of the site having 3 fronts and there being no other place to put the parking. He added that the requested greenspace reduction is not substantial; that the church would not have an adverse impact on the environmental conditions of the neighborhood or the Light Industrial district and that he does not believe the issue is self-created, again because of the unique circumstance of the site having 3 front yards.

Mr. Gifford seconded the motion.

*The secretary called the Vote:*

Ayes: Mrs. McCoy, Mr. Cifor, Mr. Gifford, Mr. Morelli and Mr. Fontina.

Noes: Mr. Lemire.

**Amended application approved.**

*The secretary read the legal notice as it appeared in The Gazette on August 11, 2016:*

- 2. Application from 518 Remodel LLC for an area variance from Section 208-12A which requires 80' front setback for accessory structures (garage); 67' available; 13' variance required. Property is located at 269 Lapp Road, Clifton Park, NY 12065. (Permit #81103).**

The owner of 518 Remodel LLC, Sal Speciale presented the application, explaining that they are proposing to build a 24' x 24' detached garage having the same type of roof side gable, with the roof and siding color matching the house, but only have a 67' setback available. He advised that the drawing submitted shows the existing house is 65' from Lapp Road and therefore they are 2' from the front of the house and 2' from the back. He advised that there is currently no existing garage, because the attached garage, which was 2' closer to the street than where they currently want to build, had been taken down and that the owners need the garage to store their cars and things of that nature.

Mr. Gifford commented that the trees on the left hand side are going to hide the garage on the one side and Mr. Speciale replied that was correct.

Mr. Cifor pointed out that the application indicated a detached garage to be built on an Alaskan slab and asked what an Alaskan slab was.

Mr. Speciale advised that an Alaskan slab originated in Alaska where the frost is 14', which prohibited digging footings. Therefore, they intend to haunch concrete with a 14" haunch that comes up at a 40 degree angle. He explained they then place a 5' grid of rebar like a tic tac toe board and bend the rebar into the haunch and finish it with a power trowl. He explained that an Alaskan slab is made to float in case there's a lot of freeze in the ground so it can actually lift together, which is much less expensive because you don't have to dig to put in footings and a frost wall and then pour a floor and advised that monolithic is another word for it.

Mr. Myers stated it can only be done on detached structures and that there is a size limit, adding that at 600 SF you have to put in footings. Mr. Speciale advised that was correct and that they are at 576'.

Acting Chairman Cifor opened the Public Hearing and asked for any questions or comments. There were none. Mr. Gifford made a motion to close the Public Hearing. Mr. Morelli seconded and the Public Hearing was closed.

Mr. Myers advised that he did not have a problem with the application because this is an older house that was built closer to the road and the garage is being proposed behind the house.

Mr. Gifford made a motion to approve the application as submitted. He stated that an undesirable change would not be produced in the character of the neighborhood because everyone has either an attached or a detached garage in that area; that he does not believe the benefit sought by the applicant can be achieved by some other feasible method; that the requested variance is not substantial; that the proposed variance would not have an adverse effect on the physical or environmental conditions of the neighborhood and that the difficulty was not self-created.

Mr. Morelli seconded the motion.

*The secretary called the Vote:*

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

Noes: None.

**Application approved.**

*The secretary read the legal notice as it appeared in The Gazette on August 11, 2016:*

- 3. Application from John Bradley for area variances from Section 208-11 which requires 1) 10' side setback; 0' available; 10' variance required; 2) 30' front setback; 25' available; 5' variance required and 3) 40,000 SF minimum lot size; combined residences will total 30,938 SF; 9,062 SF variance required. Property is located at 93 and 95 Eastside Drive, Clifton Park, NY 12065. (Permit #81105)**

Jim Kelly, the contractor for the homeowner, Reverend John Bradley presented the application, explaining that they are proposing an attached garage in the existing driveway area and that the property is located at the end of the road, with an access driveway which comes down from 95 Eastside Drive. He explained that between the property and Eastside Drive, there is another property with an elevation rise of approximately 30', so the front of this property and the driveway abuts the back of the adjoining property and that the garage would be depressed in the elevation of the adjoining properties, especially the one to the north.

Mr. Kelly stated they are proposing an attached garage for safety reasons, because the garage is at the end of a private drive off of Eastside Drive, which needs to be plowed in the winter and because accessibility from a car to the house in the winter is difficult if there's any relative amount of snow. He added that the 2 lots, 93 and 95 Easement have been combined, which accounted for the 30,900 SF as noted on the variance application and that the 2 existing buildings on the property had been built in the early 1920s. He advised they are proposing to attach the 2 buildings with a breezeway, which had been recommended to them.

Mr. Kelly stated that the setback to the south will be 80' to the side, the front setback with the garage will be 27.9' to the adjacent property at 95 Eastside Drive rather than from the road, and that the reason they positioned the garage where it is so that it won't be visible from the lake because its in front of the house situated with 95 Eastside Drive and so it would not be visible from the road because of the depressed land in that area.

Upon inquiry from Mr. Lemire, Mr. Kelly confirmed that 95 Eastside is the bigger of the 2 buildings; that 93 Eastside is the smaller building in front of the lot with a shed on it that is going to be connected by the breezeway and that it is noted on the plan as 97 Eastside Drive, adding that 95 Eastside now has the 2 buildings on it.

Mr. Kelly confirmed that for the front setback, 27.9' is available and a 2.1' variance is being requested; that the side setback is no longer needed; and the variance from the required minimum lot size is still required.

Mr. Myers explained that this is now a large lot on Eastside Drive and that originally the application was started as a use variance, which was eliminated due to the past history as a non-conforming structure, and therefore it was not required.

Upon inquiry from Mr. Lemire, Mr. Kelly confirmed there is a garage at 95 Eastside Drive that only a few feet from the road and therefore is really not useable as a garage, which is about a 30' drive from the house.

Acting Chairman Cifor noted that because no public was present, there was no need to open or close a Public Hearing.

Mr. Lemire made a motion to approve the application as amended, with the understanding that the 10' side setback is no longer necessary; the front setback is now reduced to 2.1' and that the minimum lot size required a 9,062 SF variance. He stated that he does not believe that an undesirable change to the character of the neighborhood would be created by the addition of the garage; that although the applicant could achieve the benefit sought by putting the garage somewhere, it appears to be the most feasible place for it to go; that he does not believe the requested area variance is substantial; that the proposed variance would not have an adverse effect on the physical or environmental conditions of the neighborhood and that although, the problem may be self-created, he believes the project is worthy of the Board's approval.

Mr. Fantini seconded the motion.

*The secretary called the Vote:*

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

Noes: None.

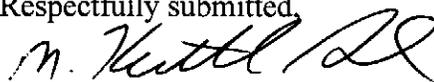
**Amended application approved.**

Acting Chairman Cifor advised that we do not have a quorum to approve the minutes from the July 19, 2016 meeting and therefore, that would be tabled until the September 6, 2016 meeting.

**Mr. Cifor made a motion to adjourn the meeting. The motion was seconded by Mr. Fantini. Approval was unanimous. The meeting was adjourned at 8:38 p.m.**

**The next meeting is September 6, 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