

Town of Clifton Park

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Zoning Board of Appeals



ZONING BOARD OF APPEALS September 20, 2016

Present: Chairman Dudick, Jerry Cifor, Lisa McCoy, Randy Gifford, Mario Fantini and Michael Bloss

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

Absent: Chris Lemire and Tony Morelli

Meeting was called to Order at 7:03 p.m.

PLEDGE OF ALLEGIANCE
ROLL CALL

Chairman Dudick 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. He designated Mario Fantini to vote in place of Tony Morelli.

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)**

The property owner, Craig Werner reminded the Board that he requested a variance to build a 3 car garage thinking he had 16' to his neighbor's property line and that although there was an easement in place when he purchased the property, he had found out from the Board during the application process, the easement did not transfer to him. He stated that the reason it has been taking so long is because he has been speaking with his neighbor, Isabell Prescott who owns the apple orchard behind his property, to see if he could buy the 30' strip of land. He further indicated that Mrs. Prescott had said she didn't think it was in her best interest to sell the property to him.

Mr. Dudick stated that the last time Mr. Werner had been present, he advised he was going to obtain a letter from Mrs. Prescott to show that she was okay with the current arrangement and setup as far as the building that he presently has on the property.

Mr. Peller referred the Board to the map included in the application and pointed out the 30' wide parking access easement at issue. Upon inquiry from Mr. Peller, Mr. Werner confirmed that he no longer has access to that area as a matter of right and as a matter of law and that Mrs. Prescott is not willing to sell him the parcel or grant him another easement.

Mr. Peller advised that the Board should then be looking at the actual property line to make a determination relative to the existing metal building and the issue with the concrete foundation that Mr. Werner poured.

Upon inquiry from Mr. Dudick, Mr. Myers confirmed there are 2 variance requests; one for the foundation that has no building on it and one for the existing metal building which has been in place since 1988, for which a 5.4' variance is required.

Mr. Cifor asked whether there is a certain easement that is granted by having a building in place for that length of time.

Mr. Peller advised there was not, because the issue is that the easement Mr. Werner thought he was entitled to has now been extinguished as a matter of law.

Mr. Werner advised that when he purchased the property he was under the impression the easement came with it and that the existing building was fine where it was.

Mr. Dudick advised that his understanding is that not only is the existing building too close to the property line, but that Mr. Werner has a driveway that extends off of his property onto the neighbor's property. Mr. Werner advised that was not correct and that he owns the property where the driveway is located.

Mr. Peller asked whether the applicant is out of the easement area now or if he is still using it. Mr. Werner replied that he is in the process of transitioning out of it and is still using it a little bit by parking trucks there.

Mr. Peller pointed out to the applicant that he is violating his neighbor's property by being in the easement and that since Mrs. Prescott is not going to grant him access, he needs to move out of the easement area. Mr. Werner advised that intended to move his equipment out of the easement area.

Mr. Dudick reminded Mr. Werner that his application has been before the Board since May and asked why, four months later, he is not completely out of the easement area. Mr. Werner advised that when he originally spoke to Mrs. Prescott, she was okay with it, but didn't know if it was okay to sell or grant him an easement due to the Conservation Easement on her property.

Mr. Dudick pointed out that the applicant still hasn't been able to present anything in writing showing Mrs. Prescott's consent and has not appeared at any meetings and therefore, he is making the assumption that she is not okay with the proposal.

Mr. Cifor pointed out that Mrs. Prescott had sent an e-mail advising that she is in full agreement with the August 15, 2016 memo prepared by the Open Space Coordinator, Jennifer Viggiani.

Mrs. McCoy reminded the Board that Ms. Viggiani's memo and Mrs. Prescott's e-mail had been received after Mr. Werner initially presented to the Board. Mr. Werner advised that he had just received a copy of Mrs. Prescott's e-mail on September 12, 2016.

Upon inquiry from Mr. Cifor, Mr. Myers confirmed there is an underground storage tank in the easement area, although he was not sure if it feeds the metal building or whether it is a fuel tank for the applicant's vehicles. Mr. Werner advised the tank holds heating oil.

Mr. Myers also confirmed that Mr. Werner did not become aware of the restriction on the easement until the Board had received and reviewed the easement documents and determined that the easement stayed with the previous owner and could not be transferred to him.

Mr. Peller advised that although that is true, the Zoning Board does not have the authority to do anything about the fact that Mr. Werner is violating the easement and therefore, the Board needs to look at the existing metal building, and asked how much of a variance is needed for the concrete foundation. Mr. Myers advised that there is 12.5' available for the metal building and that the applicant needs a 5.4' variance to be able to leave it where it stands.

Upon inquiry from Mr. Peller, the applicant advised he is presently accessing the metal building from the front and that he intended to access the proposed 3 car garage from the side.

Mr. Peller asked Mr. Myers whether the applicant had enough space available for him to access it that way. Mr. Myers confirmed the doors are on the applicant's property and although it was misrepresented on the plans submitted, the setback for the new concrete foundation is the issue. He advised that Ms. Viggiani had summed it up pretty well in her August 15, 2016 memo. He added that the existing metal building is farther back than the new proposed garage and he doesn't have any issues with that. He advised is it more about the applicant abandoning the easement area, removing the tank and not parking vehicles on it, but that it is up to the Board as to what they wanted to do about the concrete foundation because it's pretty close to the property line which normally would not be allowed.

Mr. Dudick again stated that conservatively the applicant has known about the easement issue for at least a month and again asked the applicant what was keeping him from moving his equipment off Mrs. Prescott's property. Mr. Werner replied that without the easement the gravel parking area has shrunk down 15' or so, he can no longer park his trucks (approximately 11) across from each other and it's difficult for him to get vehicles in and out. He added that although his property is 2 acres, he is currently parking his vehicles where the gravel driveway is located, because was under the assumption that Mrs. Prescott was going to let him buy the property.

Mr. Dudick asked whether there was anything preventing him from putting an entrance door on his side of the existing building instead of on the far side facing toward the easement area. Mr. Werner replied the door does not face the easement area and that there is no reason for him to have his vehicles go into the easement in order to get in and out of that building, as he intends to be completely out of the easement area and that perhaps he would put up a fence so that his employees wouldn't put anything over into Mrs. Prescott's property.

Mr. Dudick advised that he is not aware of indication from Mrs. Prescott that she wanted to have the existing building removed and Mr. Myers confirmed that building is 7' away from her property and therefore a 5' variance is needed for the building to remain.

Mr. Dudick advised that because this is in a fairly rural area, he has no problem going along with the recommendations of the Town's Open Space Coordinator, but that he was not in favor of constructing any new buildings. He asked Mr. Myers whether he would recommend removal of the foundation and Mr. Myers advised that it could be used for anything that resembles a structure.

Mr. Werner stated that he and Mrs. Prescott had talked about him cutting off one of the bays of the proposed garage to make it a 2 car garage instead, which would give him 16' feet to build on.

Mr. Myers advised the applicant would have to add another wall to what would be the end of the structure and that if he changed the length of the proposed structure, it would require partial removal of the concrete foundation. He added that if plans were submitted for a 2 car garage that met the setbacks, depending on the height of the structure, he may not even need a variance.

Mr. Myers further stated that if the Board wanted to ensure that the existing concrete foundation met the required setbacks, Mr. Werner would have to remove at least part of it and suggested that perhaps the applicant could put the 3rd bay on the end away from the property line.

Mr. Dudick again advised he was not in favor of approving a variance that would allow for construction of any structure on the concrete foundation, but that with regard to existing structure which has been there for over 25 years, it was an issue someone could have come forward about to the Town and requested something being done.

Mr. Peller asked the applicant whether he understood that if the Board denies his request for a variance, the foundation would need to be removed, but that Mr. Myers is indicating if he went in with a revised plan he might be able to salvage some of it. Mr. Werner advised that he understood.

Mr. Peller also advised the applicant that if the Board denies the variance, the Code Enforcement Officer then would have the right to issue an appearance ticket in Town Court if he was found to be in violation. Mr. Werner again advised he understood and did not want to see that happen.

Upon inquiry from the Chairman, Mr. Peller advised that the Board could vote on the application as submitted or bifurcate it and take one variance request at a time.

Mr. Cifor asked whether the recommendation to grant the variance contingent upon the underground storage tank being removed and relocated is within the Board's jurisdiction

Mr. Peller advised that certainly the Board can make any contingency they wish on the variance, but it would then become an enforcement issue and suggested it would be better to have Mr. Werner agree to do it and then it would fall under Mr. Myers' purview to enforce.

Mr. Werner advised he had no problem with removing the underground storage tank.

Mr. Myers suggested adding some kind of time frame on when the revised plans would need to be submitted showing the removal of the violating portion of the foundation and any modification desired to the existing permit and suggested a contingency that the violating foundation has to be removed within 60 or 90 days.

Mr. Peller advised Mr. Werner that when he comes back to the Town with a revised plan, it will need to be in compliance and he should not be presenting anything that requires a variance. Mr. Werner stated that he understood.

Mr. Bloss made a motion to approve the variance for the existing building contingent on the removal of the underground storage tank in the next 60 days and to deny the variance request for the structure on the new foundation, adding that revised plans for the current project be submitted within 30 days and that the existing foundation that's not within Code be removed in 90 days.

Mr. Gifford seconded the motion.

Mr. Cifor asked the applicant whether he would be able to meet the time frames given and Mr. Werner advised that he could.

Mr. Dudick opened the Public Hearing and asked for questions or comments. Being none, he made a motion to close the Public Hearing. Mr. Cifor seconded. All voted in favor and the Public Hearing was closed.

Mr. Bloss stated that he did not believe a building that has been in place for over 25 years would create an undesirable change in the character of the neighborhood and that the benefit sought by the applicant could not be achieved by some other method feasible to pursue because to move a building that has existed for over 25 years would not be feasible. He stated that although the requested variance is substantial, it does not override the other factors and that he did not believe an adverse effect or impact on the physical or environmental conditions in the neighborhood would be created, adding that because Mr. Werner is going to remove the underground tank, which would be a benefit. He concluded by stating that although the alleged difficulty is self-created because the applicant should have understood that the easement was extinguished when he purchased, it does not override the other elements.

The secretary called the Vote:

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

Noes: None.

Application approved as stipulated above.

- 2. Application from Cellco Partnership d/b/a Verizon Wireless for a use variance from Section 208-10, permitted uses in R-1 zone; from Section 208.95D(3)(h), new towers not allowed in R-1 zones; and from 208-95 E(3)(b), no new towers within 500' of the property line of an existing residential property. Applicant requests approval to construct a new cell tower. Property is located at 329 Moe Road, Clifton Park, NY 12065. (Permit #81091)**

The Chairman advised that the Public Hearing with regard to this application is still open and that after the applicant's presentation, the public would again be afforded an opportunity to comment or ask questions.

David Brennan, Esq. from the law firm of Young Sommer in Albany presented the application. Sara Colman from AiroSmith Development, the site acquisition person for the project and Rick Andras, a Radio Frequency Engineer for Verizon Wireless were also in attendance. Mr. Brennan provided the Chairman with copies of new material he indicated would be discussed this evening, for distribution to the Board members, the Town's Engineer and to Professor Johnson after the meeting for review and consideration.

Mr. Brennan stated that he appeared before the Board on July 19, 2016 for their initial presentation and commencement of the Public Hearing process, at which time there had been some comments and questions from both the Board and the public and requests had been made for additional information.

He stated that although the Board has not had an opportunity to review the new material submitted, he would go thorough it very quickly. He then showed a slide which he described as a plot previously submitted, explaining that the blue shaded area shows the existing coverage from Verizon's existing sites at 95 dbm and the white shaded areas that do not have sufficient, 4th generation LTE coverage, which is why they are in front of the Board with this proposal. He added that at the last meeting there had been a discussion about a proposed site off of Exit 8 on the existing monopole located in the Town of Halfmoon, as well as a hypothetical location at the Town's Transfer Station proposing a tower of 180', adding that the Board had requested to be shown data with both of those possible locations turned on at the same time.

He then presented a slide which he explained showed in yellow what coverage would come from the Exit 8 tower; showed in orange what coverage would come from a 180' tower at the Transfer Station, pointing out that the bulk of the area they are trying to cover is still shaded white and does not get sufficient LTE coverage.

Mr. Brennan stated that on top of that, as explained and detailed in the new materials presented this evening, when you put the site in the middle of the gap in coverage it transmits in 360 degrees, which triples the amount of capacity from the site as compared to transmitting in from simply one sector on a site and that these sites have three sectors. He explained that at the Transfer Station, there would be 1 set of antennas pointing one way and 2 pointing in another direction, adding that putting a tower in the proposed location, would triple the capacity.

He stated that the Board had also asked for a write up as to the need for the facility. He then showed a graphic, which is included in the new materials, on which a circle depicts the intended coverage area and red dots depicted what they refer to as drive test data. He explained that a technician with a phone mounted in a car hooked to a computer drives the area to see the strength of the coverage and that the dots represent areas where Verizon's drive data shows they don't have sufficient coverage. He explained that the push pins shown in the red area represent independent drive testing performed by a company called Root Metrics, which is an independent company that goes out, drives the areas and collects data for all of the major carriers, identifying what they consider to be substandard areas of coverage. He added that they now have information from this independent company showing that in this area the applicant is dropping calls, not having data sessions that work, as well as inability to send text messages or engage the internet.

Mr. Brennan advised that in response to another of the Board's questions, because this part of the community is under the flight path going into the Albany County Airport on certain days and times and in certain weather conditions, they had submitted an application to the FAA for a determination as to whether or not a light was required on the proposed facility. He advised that they received a letter from them indicating they

had reviewed the location and proposed height of the cell tower and advising that no obstruction marking or lighting on the tower was required.

He then advised that there is a new set of zoning drawings for the Board's consideration and showed a slide he described as a revised or updated survey due to one of the questions that had arisen as to whether the grove of trees in front of the proposed facility they were relying on for screening, was on the subject property. He advised that their surveyor had gone back out and identified tree by tree, the location within the property which has been added to the survey map rather and which indicates that those trees are indeed on the landlord's property and not subject to being removed as was suggested.

Mr. Brennan then advised that instead of a standalone monopole at 100' with a 4' lightening rod, they are now proposing to the Board and the community a stealth monopine tree. He explained that the monopine would not be as apparent as the existing one in the Town of Halfmoon near Grooms Road which was permitted 7 to 10 years ago, as this one would be surrounded by trees.

In response to the request from either the Board or the Town Attorney to dial in on the exact tree height, Mr. Brennan advised they had hired a newer company they have not used before, to fly a drone which has sensors and uses 18 satellites, to fly the entire perimeter of the property in order to provide data within a foot of vertical elevation and a foot and a half or so of horizontal. He advised that analysis indicated that although there is one tree in excess of 100', the average tree height in this area is 85'. He explained that with 85' feet being the solid barrier, their antennas would need to be approximately 5' above that and therefore, the intended centerline they are proposing is 91', with steel on top of that making it 100' and an ornamental cap for the tree at 105' so it looks like a tree.

He added they had then revised the view shed photo sims depicting the proposed tower as a tree. He showed a number of slides, explaining that blue represented locations where the tower would potentially be visible through vegetation; green represented locations where the tower would be visible; and yellow and red represented locations where it would not be visible. He opined that this proposed monopine is one of the best as far as invisibility and that with the existing screening it becomes substantially invisible. He added that this is what the applicant typically deploys in the Adirondack Park area to comply with the APA requirements.

He then showed new photos of the same locations presented at the last meeting, explaining that the bottom balloon is the height of the tower. He showed slides in leaf off conditions from Moe and Grooms Road showing the tower behind a stand of trees; from Moe Road and Englemore Road where there is no view of the tower; from an area off of Arbor Lane, south of the proposed facility, where the tower could be seen; from 13 Arbor Lane where he believes the monopine blends seamlessly into the background; from 20 Carlson Way where the top 2 balloons could be seen; from Grooms Road and Jarose Place where again the top 2 balloons are visible; and from the back of Grooms Road and Jarose Place which is one of the locations where the facility can be seen.

Mr. Brennan then showed slides of material included in the new submission, consisting of the revised structural letter indicating the capacity of the site and the letter from the surveyor indicating the field work they had done to locate the trees. He then requested that the new material be provided to the Town Consultants for their consideration and stated they would come back at a subsequent meeting, once the Town has had an opportunity to review it.

Mr. Peller asked if the new material had been sent to Professor Johnson and Mr. Brennan replied that it had not, but that he had e-mailed an electronic copy to Mr. Myers and Mr. Scavo, which could be forwarded to him.

Mr. Dudick inquired how quickly the existing trees would grow.

Mr. Brennan advised he would get back to him on that, but that typically they consider these as mature groves of trees, that top out at a certain height. He added that they normally they would rather be 10' above their centerline or 10' above the existing trees, but that they have come in proposing a 104' structure, lowering it a bit more than they would like.

Mr. Dudick asked whether there would be any practical advantage to having other cellular companies add onto this tower, since they would be below the tree line.

Mr. Brennan replied that if they do a monopine, it's kept as low as possible so it doesn't stick out like a sore thumb and in this area with the heavy trees that can be accomplished. He added that the downside to that is if they put their antennas as low as they can, then the next carrier in is in what they call the weeds or in the trees which doesn't work for them and it would be difficult to add onto this tower.

Mr. Dudick asked how many carriers in upstate New York on are on the average tower and whether Verizon is required to make space available if another carrier wanted to locate on their pole.

Mr. Brennan advised the majority of the towers in this area have 2, 3 or sometimes even 4 carriers on it. He added there is no external regulation requiring them to make space available to other carriers, although he believes the Town Code, as well as most communities who regulate telecommunications at any level, have a requirement that they cooperate and that the standard is they do go on their towers and other carriers come onto Verizon towers.

He went on to state that there are a couple of solutions or options to address that concern. One is to consider a higher tree and build it tall enough to add additional carriers, but at what point does it become a tree that looks good, as versus a tree that sticks out like a sore thumb. The other he advised is to do what they had proposed initially, which is a monopole, which can be built with a steel foundation that is strong enough to bolt onto or stack on another piece and go higher if somebody else wants to add on.

Mr. Dudick advised that aesthetics, height and function are the things he is basically looking at.

Mr. Brennan stated that he is looking for Verizon to come through with the best product they can to satisfy everyone and that the Board, rightfully so, is planning ahead for the future on how this might play out, adding that they can work with the Board to accommodate what it thinks is best for the community.

Mr. Dudick advised he would like to be able to see sims on the tree for 2 and 3 carriers and Mr. Brennan advised they would put that together.

Mr. Fantini asked the applicant whether they have coverage maps showing how voice and 3G works in the proposed area and asked whether this is just an LTE issue.

Rick Andras, an RF Engineer with Verizon Wireless advised that 3G is no longer being deployed and is being phased out in favor of 4G and eventually 5G. He explained that the 3G coverage that exists now will start to be phased out next year and that historically, 3G covers somewhere in the range of 25% farther than 4G because it is basically the same amount of power, but over a smaller band, which is why in some areas you will have 3G coverage on your phone, but you won't be able to access the 4G network and in this particular area, voice and 3G are still weak, which is not to say that you can't make a phone call.

Mr. Brennan asked Mr. Andras to quickly describe the speed difference between 3G and 4G and why it is not just about the phone calls.

Mr. Andras explained that in the 3G network, as far as data speed, on average if you were lucky you'd get 1.25 megabits per second, whereas LTE is currently in the 20 megabits per second range and that if you're in a good RF environment you can get up to 40 or 50 megabits per second and the data speeds are just going to continue going up. He added that the push for 4G is because of Facebook, people downloading videos, watching videos, watching TV on the phones and things of that nature, which requires as much bandwidth as possible to obtain the fastest data rate.

Mr. Fantini asked whether the Root Metric data presented was LTE and Mr. Andras replied it was 100% LTE.

Mr. Brennan also asked Mr. Andras to explain that there is also a capacity issue that they are attempting to solve with the existing sites that surround this area, which serve it from the outside.

Mr. Andras described a similar capacity problem, advising they will not let Verizon put a site in the middle of Fort Drum and therefore, they have all these sites around Fort Drum pointing in which creates a horrible RF environment because each site pointing at each other is interfering with each other, which makes the data rate go down, the usage goes up and causes interference all over the place. He advised the situation is similar here because there is a site over by the Crossings at Exit 9 and others around the area with sectors shooting in, but none of them are strong enough to actually take over the usage in that area. Therefore, as you drive through you're bouncing around from all these sites that are too far away and as the network continues to grow, usage is doubling if not tripling and in order to solve that immediate capacity issue you have to put in these small fill in sites, which is the point of the site they are currently proposing.

Mr. Dudick asked whether the sims showing the overlays for coverage from the Exit 8 Tower and the Transfer Station were taken at the highest point available and Mr. Andras advised that Verizon is the next one below the existing carrier on the Exit 8 tower and therefore the data presented was in fact taken from the highest possible location, or the best case scenario.

Mr. Bloss mentioned that the Board had received e-mails from Mrs. Elacqua and others who continue to oppose the variance based on health and wellness issues and asked if there is any documentation on that issue.

Mr. Dudick also commented that the e-mails received state there are no conclusive studies showing whether health risks do or do not exist and asked the applicant to address what is known as far as health risks and radiofrequency issues from cell towers.

Mr. Brennan responded by stating that the Town has hired a professional consultant on radio frequency matters and he would certainly would have no problem with Professor Johnson opining on that topic and then presented some slides from another presentation that he had done, showing the relative signal strengths of various pieces of equipment as well as the radio frequency spectrum. He explained that these slides show that a typical hand held cell phone transmits at ¼ of a watt of signal strength; home Wi-Fi transmits at about 1/10th of a watt of signal strength or around 2100 megahertz; and that a baby monitor is about 1/10th of a watt. He explained that the negative 95 dpm they are trying to achieve in this area is 1 millionth to one billionth of watt and therefore, the signal strength is exceedingly low off.

He advised that they are not PYX 106 transmitting at 50,000 watts and that they are 700 megahertz, which has traditionally been used on the UHF TV stations since the 1950s and 1960s. He stated that this is what was used by television station channels, that those frequencies were reacquired by the FCC and then auctioned off to the cell phone carriers and have now been deployed. Therefore, what they are proposing is not something new. He added that in cars, all radios work at 106.5 megahertz and they are farther up, but not so far up into the very high frequencies such as x-rays, gamma rays or ionizing radiation. Those very high frequencies are so small that they can actually impact atoms and strip electrons.

Mr. Dudick commented that in his experience using ionizing radiation, there is something referred as the infra square law, which is to say for each unit of distance that you travel away from the ionizing radiation, the radiation scatters to the point where its ineffective as far as being dangerous and that it can then be stopped with a piece of paper instead of lead barriers and asked the applicant if the same thing applies as far as radio frequencies.

Mr. Brennan advised he would say it would, adding that the initial application materials contain a study from a licensed professional engineer in New York who indicates that with all of the antennas turned on and all of the channels turned on at full power, which is not how they operate, any distance from the facility, they are well below 1% of what the FAA allows their strength to be and that is because while it is strong in front of the antennas, it drops off at such an incredible rate and that at any distance, its exceedingly low.

Mr. Brennan went on to state that when one of these was in a Church steeple next to a high school, he was been present when a monitor has been taken, both before and after, to the high school next door, and the monitor didn't move at all because the signal is so exceedingly low, it does not even register on the meters. He added that he didn't know whether he is going to be able to convince people who believe otherwise and that perhaps at some point, Mr. Peller may have the opportunity to explain that perceived health effects is not a consideration for the Zoning Board in approving or denying an application, as that has been pre-empted by the Federal government because of the fact that they've studied it and made that determination and because everybody in this room probably has a cell phone that needs to work in their home and in their car.

Mr. Dudick opened the Public Hearing and asked for questions or comments.

Mr. Fantini asked whether the Board would be voting on the application tonight.

Mr. Dudick replied that in addition to his request for more sims, the Board, Town Engineer and Professor Johnson first need to review the new material submitted this evening and therefore, no vote on the application would be entertained.

Mrs. McCoy asked whether the Board will have the opportunity to speak with Professor Johnson and Mr. Peller replied he would send a written response.

With regard to Mr. Dudick's request for additional sims, Mr. Brennan asked for clarification on whether he would also like to see simulations of a standard monopole at the height above the tree line to show 3 carriers on it.

Mr. Dudick replied that from his standpoint he is more interested in the tree simulation at the different heights.

Stephanie Haverly, who lives on Towline Lane, almost directly across the street from where the proposed cell tower is to be located, spoke in opposition to the application and advised that health reasons was her first concern. She indicated that one can google search and find 100 different things that say there is a correlation between cell phone towers and cancer and also find 100 different things that say there is no correlation. Ms. Haverly went on to state that the tower would be an eyesore and that no matter how you dress it up, it will still be a hideous pole in the middle of their neighborhood, adding that it was her understanding cell towers are supposed to be in more commercial areas and not in nice residential neighborhoods. She went on to state that she had spoken to a couple of Realtor friends, who had also discussed the issue with other Realtors and they expect the property values in their area would decrease due to this cell phone tower, because just as people don't want to live near high power lines, people don't want to be near these fake trees that are cell phone towers.

Ms. Haverly stated that her understanding is that if Verizon is asking for a variance to put the cell tower in a residential area, they would need to show a financial hardship and doesn't believe they have one. She added that she has lived in the middle of the white area shown on the slides as having no coverage, but stated she and her 3 children have never had a problem with their cell phones or computers.

Mr. Dudick responded by stating that this a variance application, which means it is not allowed unless special circumstances are met. He went over the criteria the Board reviews when considering any variance application such as whether the benefit sought can be achieved by any other feasible means; whether an undesirable change in the character of the neighborhood or detriment to the nearby properties would be created; whether the request is substantial; whether the request would have an adverse effect on the physical or environment conditions of the neighborhood and whether the alleged difficulty was self-created. In addition, the Board has to look at this as a special circumstance and that there has to be consideration because utilities have a little bit more leeway, since they serve a public need and the Board must also consider whether the request is so substantial that public need is not an issue.

Ms. Haverly asked whether utilities are supposed to be located underground and Mr. Dudick replied there is no requirement that all utilities must be underground and there is no practical way there could underground cell towers.

Mary Raciti who lives on Grooms Road spoke in opposition to the application. She stated that they purchased their home with 18 acres, a little over a year ago, which they have plans for their family to use to either build homes on or develop. She stated they all recognize there is a need for proper cell service, but does not understand why the residents in this area are being asked to sacrifice their residential community to put in a cell tower. She inquired as to whether Verizon had considered other locations that they already own or other available, vacant locations instead of putting it in the middle of a farm field in their backyards. She

stated that these residents are being asked to sacrifice the present and future enjoyment of their properties by allowing a cell tower to be built there and by changing the zoning. She reiterated that she is a landlord of a cell tower in a nearby community and knows firsthand what it's like, adding that particular tower is on a commercial property, in a parking lot next to a warehouse and that the impact of living near one is much different. She advised that there is regular maintenance that needs to be done on the towers; there are power stations, equipment rooms and many other things that go along with them.

She also stated that property values will certainly be impacted and advised she would never have bought their land if they knew there was going to be a cell tower there. She mentioned that the property next door had recently sold and inquired as to whether that new property owner had even been made aware of the application, as they would be most directly impacted. She concluded by stating the people in this area want to be able to benefit from their land, both personally and financially and believe that this proposal will prevent them from being able to do so.

Katherine Hull, who lives at 334 Moe Road spoke in opposition to the application and inquired as to how this whole process started, asking whether there were complaints from the area. She suggested that Verizon put a cell tower at the Transfer Station and add onto the existing pole at Exit 8 and then see if there is still any real issue. She stated she had not seen a picture of the proposed tower from Moe Road or the area of the bike path. She advised that Verizon's website shows full coverage in this area and that she was concerned about the right of refusal in the lease agreement where if the property owner decided to sell, Verizon could buy the property and if the zoning has been changed, asked what could then be done to that property. She also inquired as to what the height of the cell tower that was approved by the Town on Veteran's Road is.

Cindy Just, who lives on Moe Road stated that she had taken a picture of the trees the applicant had talked about and had paid to have her land surveyed to prove that the trees are theirs. She presented the Chairman with the photograph she had taken, showing not only the trees, but their access to the roadway, as well as the only buildable lot they have according to their surveyor, due to the wetlands on the other side of their property. In addition she expressed concern that the tower would impact, change or decrease the buildable envelope on her property because of the required fall out zone.

Mr. Dudick asked Mr. Myers how far away from the cell tower Mrs. Just could build and whether the tower could change the building envelope on her property.

Mr. Myers responded that the building envelope could be affected and that they would have to ensure that the fall out zone is available before the tower can be erected, but would defer to Professor Johnson for a more definitive answer

Mr. Brennan advised that the Town Code requires 110% of the tower height for the fall out zone and advised that they are in excess of that from the property line and therefore if the tower were to fall, which is highly unlikely, it would not leave the property it is located on, as it is actually 950' from the property line.

Shawn Just, who lives at 327 Moe Road spoke in opposition to the application stating that the cell tower is going to be an eyesore for the community and he does not believe it is necessary. He advised that the surveying company that came out all had Verizon service and were laughing about how good their signal. He stated that even though the signal may get safer farther away from the tower, his son would be playing right next to it and that they have dirt bike tracks in that area as well. Mr. Just also presented the Chairman with a photograph and pointed out their property line and where the cell tower is proposed to be located. He

advised that he owns all of the big trees that are intended to hide the cell tower and that the adjacent property owner only owns 4. He advised that he would remove all of his trees if the tower went up, because that is how badly they do not want it.

Mr. Just went on to state that he has lived on the property since 1977 and one of his hobbies as a kid was to search for Indian things, advising that the property is full of it. He presented 2 plastic boxes with compartments to the Chairman and pulled out Indian pipes, spear heads, arrowheads and other items. He advised that his opinion, the ground should not be disturbed from a historical and architectural standpoint, adding that he has 20 more boxes full of Indian items he has found on the property

Mr. Dudick inquired as to whether there was anyone who could render an official opinion with regard to impact from a historical standpoint. Mr. Myers advised he would contact the Town Historian, John Scheer to get him involved.

Mark Raciti who lives on Grooms Road also spoke in opposition to the application. He advised that he and his wife who spoke earlier, have a raised ranch, with a full second story area that he considers a family room and that when goes out there to have coffee to look over his pastures and his horses, he will be able to see the top of this great looking artificial tree. He advised that although most of the trees in the area are 85', there are others that are 100' tall, one of which is on his property, which would be blocking the signal. He advised that he and wife would like to retire there, want to keep their horses there and want all of their animals to enjoy the area and that to have a tower there, and would ruin it visually for them. He added that it also takes away from the aesthetics of being in the country, that he would not have bought a house where there was a cell tower and that he assumes most of the Board members would not want a cell tower in their backyard either.

Mr. Myers advised the Board that he and Jackie Hines went through the environmental assessment form and completed the part they had to do and requested the Board review the form, as well as the other documents been presented, because they had made some notes that probably will need further study.

Mr. Dudick announced the Public Hearing was completed for the evening and asked whether the applicant wished to respond to any of the comments.

Mr. Brennan stated that with regard to the criteria the Board is required to consider for a use variance, they don't go by the 4 or 5 prong standard variance test and that it is actually the Rosenberg variance test which the Board can take a look at in the future, which does not go through the traditional balancing test as regular variances. He explained the Rosenberg variance test is a public utility variance standard because, while many of them are underground, other ones like gas substations, power stations and utility lines needed to serve communities, have to exist in all of zoning districts, not just in commercial or industrial areas. He advised that the Court of Appeals had set aside the standard 4 and 5 point test in lieu of this Rosenberg test, which is covered in the materials submitted in a couple of different places around tabs 3 and 4.

Mr. Brennan added that this would not be a zoning change to the property, but rather a use variance only for Verizon and for this site. He explained that the site they are proposing to lease is 100' x 100' plus the access road and therefore does not encompass the entire parcel. As to the right of first refusal, he stated that is only on the 100' x 100' area and not over the entire property if the landowner wanted to sell their house.

With regard to the 110' setback and archeological sensitivity, Mr. Brennan advised there is a process in place for that which first involves a study of known literature of the area. He explained that after those studies are reviewed, they decide whether there is an area of sensitivity and perform shovel tests. Once the shovel tests are performed and the results are obtained, they then decide whether they have to go any further or not. He added that the end result is that if there is something in the ground, it is under the supervision of an archeologist, exhumed, cataloged and sent to the State Library which is traditional and typical for every single project in this community and every community. He advised that if there is something in the way, it is not that houses are okay to be built and the next thing to come in can't be built. There is a way to deal with the archeological sensitivity, which is something they do with all of their facilities and offered to provide the Board with some more information on that if desired.

Mr. Dudick advised the applicant he would like to see something else on that and Mr. Brennan agreed to provide same, although he was not certain whether it has been as yet because sometimes it is done further in the process because it's a Federal component, not a State component, but it is germane to what the Board's review is and will provide some additional detail.

A member of the audience then commented from his seat. The Chairman invited him to step up to the podium to speak, but the gentleman declined.

Mr. Bloss commented that we have heard from several residents that there appears to be no shortage of coverage in the area and asked the applicant whether there was any technical response as to why the coverage is good now, but might not be in the future.

Mr. Brennan advised that although they have already covered that, he has yet to be at a Public Hearing where they hear anything other than coverage is perfect because people don't want the facility and therefore, he takes some of those comments with a grain of salt. He added that there are people in the communities who don't want to come out and disagree with their neighbors, but do agree that the coverage is not what it should be.

He went on to state that Verizon is not a glutton for punishment and they don't just come out and propose these facilities, because they cost millions between the technology, the zoning, and the lease payments and there's plenty of other places to spend that money. He went on to state that it is only done when it's very much required and when the existing coverage is deficient or is projected to be deficient. He pointed out that Professor Johnson's initial letter supported the fact that it was necessary.

Mr. Bloss asked whether from a layman's prospective, the change in technology was changing the coverage area.

Mr. Brennan advised it was not just that, but is also that the existing coverage for 4G is deficient and that 4G is newer, but is not brand new. He reiterated that they now have data from independent testing company showing that the service in this area is deficient and needs to be fixed and that because Verizon is measured and compared to the other carriers on these call failures and the Root Metrics data, they actively go through to try to fix those deficiencies.

Mr. Fantini commented that he knows Verizon is coming up with the new standard advanced LTE and asked whether that has a larger radius and if so, whether Verizon could put the advanced LTE on the towers that

exist so that they wouldn't require this use variance and if that is done, whether that would adversely impact how much energy is coming off the tower.

Mr. Andras replied that the advanced LTE is actually at a higher frequency range and does cover as far, but is far more impacted by losses through trees and into homes. He added that the signal that will be provided at the advanced LTE is smaller than what it is today and that if you did 100% overlay on all of the sites they currently have with the advanced LTE, there would still be places in between all of the sites that don't have the capability of supporting the advanced LTE.

Mr. Brennan re-emphasized that they are now talking about a substantially invisible site when it's designed as a tree. He went on to state that they had looked at the Verizon land line facility farther east on Grooms Road, but reiterated that site had been discounted as a viable site because the property is only a ¼ of an acre in size, which prevented them from meeting the required fall zone setback and because it was much closer to nearby properties. He added that they had showed the Board at least 3 other possible sites they had looked at, if not 4, before selecting this one for a variety of reasons.

Mr. Dudick advised he was going to table the application at this point to allow the Board and the Town's experts to review the new material submitted so the applicant could come back at a later date.

Application tabled.

- 3. 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 application be postponed until the October 4, 2016 meeting.

- 4. Application from iLoveKickboxing.com for an area variance from Chapter 171-6C.(1) of Town Code for: 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)**

Prior to the meeting the applicant requested that the application be postponed until the October 4, 2016 meeting.

A five minute recess was taken at 8:55 p.m.

NEW BUSINESS

The secretary read the legal notice as it appeared in The Gazette on September 15, 2016:

- 1. Application from Tracy Rashford for an area variance from Section 208-11 which requires a 10' side yard setback in an R1 Zone. 5' available; 5' variance requested for a carport. Property is located at 70 Esopus Drive, Clifton Park, NY 12065. (Permit #81109).**

The owner of the property, Tracy Rashford and her boyfriend, Mike Richards presented the application. Mr. Richards explained that they have a boat and would like to build a carport, which would be attached to the garage with support poles along the roofline.

Upon inquiry from Mr. Dudick, Mr. Richards confirmed that the garage is attached to the home; that the carport would be attached to the garage; and that a contractor was going to perform the work. Upon inquiry from Mr. Peller, Mr. Richards advised he did not have photographs or pictures, but had presented a rough sketch.

Ms. Rashford stated they had spoken to their neighbors, and particularly the next door neighbors at 68 Esopus Drive, who would be directly impacted and all had advised they were fine with the proposal. She also confirmed that had performed the required mailings and provided the secretary with the certified mail receipts.

Mr. Cifor asked for clarification on the distance shown on the sketch. Mr. Myers advised that he had tried scaling it as best he could from the survey map the applicant had and that although the applicant had noted 7', he had changed it to 5' just be sure. He added that the Building Department would double check when it is laid out to make sure there is no issue.

Mr. Myers also stated that this is Type II action and therefore no further SEQRA review by the Board would be required.

Mr. Dudick opened the Public Hearing and asked for questions or comments. Being none, he made a motion to close the Public Hearing. Mr. Gifford seconded. All voted in favor and the Public Hearing was closed.

Mr. Cifor made a motion to approve the 5' variance request for a carport as submitted. Mr. Fantini seconded the motion.

Mr. Cifor stated that an undesirable change would not be produced in the character of the neighborhood or detriment to nearby properties created by granting the area variance; that the benefit sought by the applicant could not be achieved by some other method feasible for the applicant to pursue as the proposed location of the carport is the only feasible place to put it; and that the because the variance request was 50% it would be considered substantial, which was only a consideration. He concluded by stating that he did not believe the carport would have an adverse effect or impact on the physical or environmental conditions of the neighborhood and that although the difficulty is self-created, that was only a consideration and is not material in this specific instance.

The secretary called the Vote:

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

Noes: None.

Application approved.

The secretary read the legal notice as it appeared in The Gazette on September 15 2016:

- 2. Application from Signworks for area variances from Sign Law Chapter 171 Chart I which allows 1) two maximum wall signs; 18 signs proposed; variance required = 16 signs; and 2) 60 SF maximum wall signage; 675 SF requested; 615' variance required Property is located at 1018-1028 Route 146, Clifton Park, NY. (Permit #81110).**

Mike Kopchik, the Architecture Design and Purchasing Director for Price Chopper, which is now known as the Golub Corp and increasingly known as Market 32, presented the application. He explained that they are requesting a variance for a number of signs and for square footage for the new Market 32 store under construction at the corner of Vischer Ferry Road and Route 146. He advised they had been before the Board about 2 ½ years ago with the same request for the Market 32 store located in the Shoppers World plaza at the other end of Town and what they are proposing for this new store is very similar.

Mr. Kopchik presented an artistic rendering of the front and side of the new building and advised that they have completed stores with similar signage at Exit 15 in Wilton; the Hudson Valley Plaza near the Community College; Hamilton Square in Guilderland; as well as in Massachusetts and Connecticut and that additional sites have been proposed for Fort Edward and Brunswick.

Fred Early from Signworks advised that the old Price Chopper building is 30,000 SF and that the new store currently under construction is going to be 50,000 SF. He then handed out to the Board composite drawings he indicated he had prepared in 2004 when he appeared before the Board, showing the original, horizontal Price Chopper sign and stated that the problem arose when Cumberland Farms came onto the corner lot and extended the cover over their gas pump area, and that because of the way the building was set up, it really took away from visibility of the store front.

Mr. Early went on to state that the amount of square footage required to achieve the Market 32 branding is quite a bit more than what was on the store originally. He advised that there was almost 400 SF of signs on the store originally, which was permitted back then and that over the course of time, the Code was changed and the old signage was brought into conformity with the changes in 2004.

Mr. Early advised they now have new branding which was discussed with the Board for the Shoppers World store and that brought with them this evening a very similar package which included the smaller departmental signs along the façade of the building. He explained that somewhere along the line, between the Golub Corp and the design Company in Canada, it was decided to eliminating the small departmental signs and leave the “welcome” and “Pharmacy Plus” signs. He added that the big objection at that time was about 500 SF of signs on the side of the building for the recycling area, which contained large verbiage.

Mr. Early commented that he was shocked when he drove by the new building tonight, because there are so many additional buildings on the site. He opined that with the bank building and Rite Aid having their own

standalone stores, the view of Market 32 is decreasing more and more. He added that he feels they would be lucky if the smaller side wall signs on the side of the building could even be seen while traveling along that particular viewpoint. He advised the new store is setback almost 400' from Vischer's Ferry Road, which is going to increase the depth of viewing and that when looking at the storefront image, it will pretty much look exactly like what would be seen from the road and that the impact is minimal when you look at the size of the building, the almost doubling of the square footage of the new building and the fact that these signs are going to be seen from such a great distance. He indicated that the smaller departmental signs won't be legible until you pull into the plaza.

Mr. Early went on to state that they are interested in having the main sign and the graphic images because that is the new branding for the store. They would like to have their entire branding package for the community to see, as well as the smaller recycling center signs on the side of the building, as they are more informational and directional signs for the public.

Mr. Cifor advised that the majority of this Board's variance requests are for signs and what the Board has been doing is saying if someone wants to put a window sign up, it must be generic in nature and not advertise what they are selling within the store. He went on to state that the 5 illuminated graphic panels, which represent 531.8' or 82% of the variance request, all advertise products sold within the store and therefore, in relation to all of the other variance requests, this Board would be giving Market 32 something that no one else is getting. He asked the applicant if the Board is not allowing anyone else to do that, why Market 32 should be allowed to have it.

Mr. Early replied that it was allowed at the property in Shoppers World and the reason for these particular graphic panels, which he believes are generic in nature, are to represent healthier food types which is important in their new branding. He added that they want to make sure people know that Price Chopper is now going to a healthier image; the public demanded healthier foods and these were images that said these are the healthiest foods you can possibly get because of their vitamin content and antioxidants, which is what the images represent.

Mr. Kopchik advised of the 8 or 9 Market 32 stores in place now, all are represented very similar to what is being proposed. He explained that what they call the monument of the building has been repeated on each store and is now the brand and image for the company. He added that some of the images that are on the graphic panels are repeated in some of their advertising as well, and therefore, it is almost like a logo.

Mr. Cifor advised he understood that, but the problem he has is that the Board needs to treat everyone equally, even though every situation is unique.

Mr. Kopchik stated equal treatment for them is the fact that they already have a facility in Town with this imagery on it and on all of their other stores as well.

Mr. Dudick mentioned that argument had been made to the Board 2 ½ years ago, in that Price Chopper wanted to have images of food, but it was agreed to be generic foods as opposed to any particular brand of food like Nabisco. After much discussion, as a Board, 2 ½ years ago, it was decided that generic foods were reasonable, especially because Price Chopper literally sells thousands of different things and it was agreed that it would be hard to have an image of something that isn't for sale somewhere in the store.

Mr. Dudick also advised that for all of the reasons that he finally voted to approve the signs on the applicant's other location in Town, he would feel comfortable with the approval of the same type of imagery for the new store, but added he was not comfortable with all of the different departmental signs, because people going into a supermarket already know there are different departments. He advised the applicant that if they were willing to amend the application to match what was approved at the store in Shoppers World, he would feel more comfortable with the application.

Mr. Kopchik advised is prepared to show the Board just that.

Mr. Cifor asked what was wrong with just Market 32, adding that although it was brand new back then, it has now been around for a while and everyone knows what it is.

Mr. Dudick replied that there are 2 arguments that can be made - Mr. Cifor's point being one and the other being consistency and he'd hate to think that he approved something before and then decided he wouldn't approve it again.

Mr. Cifor commented that Mr. Dudick had now changed the definition of generic for him.

Mr. Fantini asked the applicant how the size of the store and square footage of signage for the new building compares to the Shopper's World store.

Mr. Kopchik replied that the Shoppers World store is approximately 78,000 SF, whereas the new store is 52,000 SF and has everything except for a pharmacy. He advised that the signage is essentially the same because the 2 stores have the same exterior in terms of the graphic and the monument, referencing the revised drawing which only has the "welcome" sign.

Mr. Early advised there essentially are now proposing to remove all of the departmental signs, except the "welcome" sign which indicates the entrance to the store and the recycling signs on the side, as they consider those to be directional signs.

Mr. Gifford commented that Price Chopper had the old sign with a hatchet in it for years and survived and inquired as to why they couldn't just use Market 32 by Price Chopper.

Mr. Kopchik advised that this is a new brand which is emphasizing fresh, clean, good food which is what the images are intended to depict. He added that it took a long time to come up with the name Market 32, which has to do with the year the company was founded, and that Price Chopper really was a moniker which was created in the 1970s to answer to those highly inflationary times and is no longer valid.

Mr. Kopchik advised that what it really comes down to is where they are now, as this is becoming a very established image which they are trying to consistently reproduce in all of their stores and given that they have another store down the road in the same community, their hope is that they can reasonably replicate it at the new site, in order to have the same identification for the public in this end of Town as versus the other end of Town.

Mr. Early asked if any of the signs at the other store which have been in place for a couple of years now are objectionable in any fashion.

Mr. Dudick responded that he does not find them objectionable and reiterated that he had voted to approve those signs, but by the same token, that is not the criteria by which signs are voted on, because it goes to volume and aesthetics and that even if he didn't like their logo, that wouldn't be a criteria to be considered unless there was some sort of offensive aspect to it.

Mr. Kopchik stated that they certainly appreciate a community's need for consistency in their ruling, but that they similarly desire consistency in their repeated projects in this community and other communities as well.

Mr. Fantini advised the he would feel more comfortable if the signage was more proportional to the square footage of this smaller store because currently, it is basically the same square footage of signs presently on the larger store.

Mr. Kopchik indicated that is because the front of the buildings and the elements the signage appears on are in fact, similar in size. He added however, that the Shoppers World store has a lot more building beyond the monument itself.

Mr. Early commented that there are also distinctive setback problems for visibility.

Mr. Gifford commented that the applicant should have thought of that before, knowing that visibility at the new store was not going to be the same as it is for the Shoppers World store and agreed that the signs should be made smaller to the proportion of the building, which he believes can be done.

Mr. Dudick stated that he agreed with Mr. Gifford on the visibility issue, because the applicant redesigned the entire plaza and it was their decision to have the building face towards Vischer's Ferry Road instead of toward Route 146. He added that there are advantages and disadvantages of the shape of the building which was clearly the choice of the owner of the property and asked whether Price Chopper owns the property.

Mr. Kopchik advised that Price Chopper does not own the property, a developer does which is why there are all of the other buildings on the site

Mrs. McCoy asked whether the proposed recycling center signs could be reduced to 1 as it was for the Shoppers World store.

Mr. Kopchik advised that the recycling area could be labeled in one location, but pointed out again the one thing that is different on the new building is that there isn't a pharmacy drive through toward the front that has signage like Shopper's World. Therefore they are actually missing signage on the side of the building as well as on the front, which is a reduction of 3 or 4 signs from Shoppers World to this project.

Mr. Cifor asked how this variance compares with other grocery stores signage that have been approved in Town in terms of sign size and Mr. Myers replied that this is well beyond anything that has been approved for any other grocery store, other than the Shoppers World Market 32.

Mr. Myers went on to state that he had looked at this store using past history of what was approved by the Board at the other store. He added that although the new store is approximately 20,000 SF smaller than the one in Shoppers World, the applicant requested the same signs. He also advised that without the 16SF pharmacy sign, without the departmental signs and with only 1 recycling sign, it brings it back to equal with the Shoppers World store.

Mr. Myers advised he did not buy the visibility argument, because in his opinion, the visibility is going to be phenomenal because there will be nothing between the store and roadways except a parking lot. He added that the setback from the road for the Shoppers World store is greater, but that he did assume the Board would look at a similar amount of signs for a store that basically has the same frontage, even though it is a smaller store.

Mr. Dudick inquired as to whether there was any reason the signage couldn't be reduced to 2/3rds of the size of the Shoppers World signage, since the Board seems to be having issues as far as scale and size.

Mr. Kopchik advised that would dramatically alter the appearance of the sign in terms of the scale relative to the other surrounding construction, as well as the fact that the façade, or front part of the store is similar in length, but is much less in depth. He went on to state that although the front of the Shoppers World store is longer, it is not 1/3rd greater than the new store. He explained both stores have very similar frontage and that even though Shopper's World has more background spaces, if they reduce all of the signs by 1/3rd it is going to look very different.

Mr. Bloss suggested making the brown area where the sign will be placed shorter so it is more to scale.

Mr. Kopchik advised that because there is so much more background space at Shoppers World, if he reduces that prominent feature by 1/3rd, that would be a drastic alteration, adding that if it was reduced by 10% or so, that would be much easier to do.

Mr. Early pointed out that they are not going to be able to shrink it vertically and therefore, everything is going to come in horizontally, which would be a massive difference in the whole proportion of the sign. He added that the monument itself, which is almost 89', is similar to Shoppers World, adding that Rite Aid has bigger signs on 3 sides of the building.

Mr. Early commented that there is no advantage to the Town making 2 stores dramatically different and that it really comes down to mathematics. He added that the reality is, does the Town want this store to look similar to the other store.

Mr. Dudick stated that the reason Board like mathematics is because if a store comes before them which has a large building and has a sign approved, if another smaller store then came asking for the same size sign as the larger store had, then the Board has established that it really doesn't make a difference what the size of the store is

Mr. Kopchik advised that by counter argument, they have the Shoppers World store which is 78,000 SF with a front elevation similar to the new store's front elevation; the Wilton store is 63,000 SF with the same front elevation; the Hamilton Square store in Guilderland is 55,000 or 56,000 SF with the same front elevation; and therefore they are not scaling their front designs to match all of our stores, they are trying to keep the front image consistent. He added that in all of the Towns thus far, they have reduced the things that they can without affecting the brand.

Mr. Dudick opened the Public Hearing and asked for questions or comments.

Pam Brumbaugh, who resides at 6 Cotton Court in Calico Colony, provided detailed information as to the past owners of her property, as well as their common interests of observing wildlife and gardening. She advised that her property included a ravine filled with trees as well as stream, making it a perfect place to observe a variety of wildlife, but still enjoy the convenience of nearby shopping. She stated she has wonderful neighbors and they all enjoy the serenity of the cul-de-sac.

Ms. Brumbaugh went on to advise that over the past 13 years, her property and home have been shielded by the trees and the ravine from the traffic on Vischer's Ferry Road, as well as from the shopping plaza. She indicated the shopping area is located directly across the ravine from her home and that many trees have been removed in preparation for the new Market 32. She advised that the sound and harsh lights coming from that area have increased tremendously. She described bright lights from the existing stores now being visible through the thinned ravine; the sounds of radios, conversations, trucks backing up, deliveries being made, buildings being torn down, etc. being heard in her home whether the windows and doors are open or closed. She advised that even everyday traffic on 146 can be heard day and night since

Ms. Brumbaugh advised that she is requesting that Market 32 / Price Chopper install a wall of large, fast growing evergreen trees along the rim of the ravine near the new store and the parking area. These trees would diminish the light and sound that has invaded her formerly quite neighborhood and allow them to enjoy our properties again. She indicated that she had spoken to a botanist who had suggested arborvitae or white pines as good options for the situation. She commented that once the building comes down, the lights through the ravine will be even worse, because all of the buildings will now be facing her neighborhood. She concluded by stating that although she is looking forward to the new store, it has really impacted the quality of life in Calico Colony and if a line of trees could be installed there, it would make a world of difference for them.

Mr. Kopchik advised that although he appreciates and understands Ms. Brumbaugh's comments, he does not a Zoning meeting is the proper place to discuss her concerns, adding that it may also be a landlord issue as opposed to a Price Chopper issue, because they are tenants.

Mr. Dudick also advised Ms. Brumbaugh that construction noise is much greater than business noise and that it would be his expectation that it will not sound like a building being torn down every day next year.

Mr. Dudick asked whether there were any other comments or questions from the public. Being none, he made a motion to close the public hearing. Mr. Bloss seconded. All voted in favor and the Public Hearing was closed.

Mr. Fantini reiterated that he would feel more comfortable if the signage was proportional to the square footage of the smaller store.

Mr. Early pointed out that its 400' into the plaza and that the size of the sign is reasonable when you consider what is actually being viewed from the road and by people passing by at an oblique angle, adding that it is important to have reasonable size signs considering the hardship of the distance and that because of the buildings surrounding the area, it is a true bonafide hardship.

Mr. Gifford stated that it is a self-created issue, because they knew what they were getting in to when they signed the land lease with Nigro.

Mr. Kopchik advised that if they were to reduce the signage on the monument proportional to the length of the monument on the new store, they would only be reducing things by 4'' or 5'', not 20%, which then becomes negligible. He added that if the Board wants to talk about the size of the signage compared to the overall square footage of the store, he doesn't believe that's material because the front presentation of the building doesn't relate to the square footage of the store. In other words, they could probably reduce the signage on the monument by some proportional amount but it would not be by a 1/3d.

Mr. Cifor pointed out that they don't have to proportionally drop the size of all of the signs and suggested that if they took out the flower for instance, because it is not edible, they could probably get to what the Board is looking for, because the flower is 85 SF or almost 15% of the variance request.

Mr. Kopchik indicated it was not impossible to lose 1 image, but added that this is the corporate image they are trying to replicate. He advised they are certainly willing to work with the Board because they want everyone to be happy, including themselves.

Mr. Cifor stated that personally he believes that the Board made a mistake 2 ½ years ago by allowing that type of variance for the Shoppers World store, because the Board doesn't allow it for anyone else.

Mr. Kopchik advised his justification would be that they have a pre-conceived situation in Town already which they are simply trying to duplicate.

Mr. Dudick inquired as to what square footage the Board would be looking at without the food imagery and graphics.

Mr. Myers responded it would be 175' on the front and 67' on the end. Mr. Cifor commented that 182 SF would be a very small variance. Mr. Dudick agreed, and stated that the question then becomes what will the Board allow in terms of graphic images on the building.

Mr. Kopchik advised they willing to negate the departmental signs, because they have done that in the past, adding that he would feel more comfortable if they only eliminated 1 graphic panel, such as the flower, and be able to retain the other fresh items as opposed to losing them all.

Mr. Peller asked the applicant if he wanted to table the application and rework the presentation or if he wanted the Board to go forward with a vote tonight.

Mr. Kopchik advised that they would like to try to re-work the monument with 1 less graphic panel in it, provide the Board with new square footage numbers for the signage and see what the Board thinks.

Mr. Peller asked if the applicant would be willing to waive the 61 day requirement the Board has within which to make a decision on their application.

Mr. Kopchik advised they would waive that requirement. He added that their intention would be to come back as quickly as possible with a modified façade, delete one of the panels and rework it to get the scale right. He explained that the difficulty is that the panels are actually separate pieces and the graphic panels fit inside of them so they have rearticulate the front, which takes a little bit of time.

Mr. Myers advised the applicant he will assume they will be on the Agenda for the next meeting unless he hears differently.

Application tabled until the October 4, 2016 Meeting.

The secretary read the legal notice as it appeared in The Gazette on September 15, 2016:

- 1. Application from Satin Beak LLC for area variances from 1) Section 208-33B which allows maximum area of a new building to be 4800 SF. Applicant requests 9600 SF (2nd story); 4800 SF variance required; 2) Section 208-35D(2) which requires a 25' parking setback. 0' proposed; 25' variance required; and 3) Section 208-35D(4) which requires a 10' buffer. 0' proposed; 10' variance required. Property is located at 954 Route 146, Clifton Park, NY 12065. (Permit #81111).**

Tom Andress from ABD Engineers presented the application. He explained that the plaza site consists of 3 buildings, as well as foundation for a 4th building, that was constructed in 2006, with a common access drive through the middle. The 4th building was never constructed due to a number of changes in the makeup of the ownership of the property and although they are separate parcels, both are now owned by the same entity.

Mr. Andress advised that the owner, Salvatore Galluzzo wants to move his medical practice to the new building because he is running out of space. He currently has 1800 SF. Labcorp is a tenant in the back who has about 1200 SF who wants to expand to 2400 SF. The owner wants to try to keep that tenant there and also be able to accommodate his own business. He intends to move his practice to the new building, but a single story 4800 SF building would still not quite allow him to do what he wants to do. He explained that when a 2 story building is constructed, you really don't get the full 4800 SF per floor because the amenities that are needed to accommodate the second story, such as an elevator or stairs, take up room and reduce the useable square footage of each floor and Mr. Galluzzo would like to be able to use the second floor for another type of medical business that he's looking to potentially start.

Mr. Andress explained that they are seeking to add a 4800 SF second story to the new building, maintaining the same footprint that the Zone established and to add some additional parking spaces. The third variance for the buffer is created by the second variance. He advised they do have parking spaces that can be built in the daycare area which has been there since 2006, but right now those spaces are being utilized as a play area. They are looking to add 15 additional spaces on the access drive on the west side, in order to keep them on the east side of the property line and be a part of 950 and 952. He explained that would allow them to be able to keep the trees and not create any real physical change, other than adding 18' of pavement along that strip. The parking spaces would bring them to the property line which necessitates the 25' side yard parking setback, as well as the request for the 10' variance for the buffer. He added that they do meet the required greenspace per Code.

Mr. Andress advised that the 2 properties have different financing and it would be very difficult to combine them and that even combining the 2 properties would not reduce the need for the 4800 SF variance. He advised the Zone allows for one 4800 SF building per acre and this site has 2 acres, adding they had provided information in reference to the requirements for the zoning change.

Mr. Andress stated that he did not believe the variances would create an undesirable change to the neighborhood because Route 146 is currently a mix of 1 and 2 story buildings, which he believes were all

created in 2005, prior to the Zoning change that created the 4800 SF maximum building size. He added that this Board had granted relief in the past to another medical facility to the east of the site and that the corridor is generally commercial with some residential use in between. He stated there is no other method other than the variance for the applicant to pursue in order to obtain the additional square footage because of the way the ordinance was set up. He stated that although the increase in square footage is somewhat substantial, they feel some of the other mitigating measures will hopefully overcome that concern. He added that because the square footage of the footprint and the site are staying pretty much the same, the site is already fully developed and they would only be adding some additional parking along the edge of an existing driveway with minimal pavement and as such, there would be no adverse effect on the physical or environmental conditions of the neighborhood. He did however, admit that the alleged difficulty is self-created, because the site was developed after the 2005 ordinance went into effect.

Mr. Bloss inquired as to why the 4800 SF building size limitation was set. Mr. Myers advised that the B1 and B2 zones are considered transition zones between heavy commercial and residential uses.

Mr. Andress advised that Kathy Simmons, the Town Planner at the time was very involved in the ordinance and there was a concern at the time because there was a lot of residential behind Route 146 and the thought was that if the square footage was limited, it would stop the commercial transition, but in fact what it did was create a lot of these four plex buildings.

Since no members of the public were present, Mr. Dudick made a motion to close the Public Hearing. Mr. Gifford seconded. All voted in favor and the Public Hearing was closed.

Mr. Myers commented that there are some 2 story buildings along this corridor and previous variances in this area have kept it to one story buildings, although there are DCG owned buildings on the other side of the road that are around 6200 SF to 6500 SF that were granted variances. He added that he believes the intent to keep the footprints at 4800 SF was because the Town didn't want big sprawling buildings in this zone. He advised that he really doesn't have an issue with the second story and that Planning seems to be on board with it. As for the variance for the parking spaces, he advised he had talked with the Planning Director about them and unless the applicant really thinks they have a need for them now, they may land bank those. He added that personally he believes the proposed parking spaces are in a bad spot because they're on the entry road.

Mr. Andress replied that it would be possible to land bank some of the spaces but he does believe there will be a demand for them, especially when the daycare facility has events in the evening for the kids. He added that he doesn't believe there currently is a huge demand internally within the park, but they wanted to be sure to obtain variance so that they would be available if they were needed.

Mr. Cifor asked why the foundation that was installed 10 years ago had never been destructed.

Mr. Andress advised that there are actually a number of stories, one of them being that there was a partnership which Mr. Galluzzo had with some other individuals, and although it was the intention to move into the next building, it became a large financial burden. There was also a controversy with the other doctor that was a business partner in the real estate with Mr. Galluzzo who is currently no longer practicing. In addition, there were a lot of economic issues at the time that prevented the owners from putting money into the project at that time, as there just wasn't any cash available.

Mr. Dudick stated that people have come before this Board in the past asking for relief with regard to the 4800 SF size building restriction and that because there was a certain concept the Town had with regard to this transition area, he does not recall being in favor of those applications. For that same reason, he advised that he is not comfortable with the idea of expanding simply because there is a need for the owner to expand. From his understanding the Town wanted larger sized buildings in other locations and for the same rationale, he stands with that kind of thinking on this application.

Mr. Address mentioned that he believes John Scavo's office feels that restriction sometimes ties it down because sometimes you do need that extra square footage to make it work

Dr. Salvatore Galluzzo stepped to the podium and advised that he has been podiatrist in Town for the last 26 years, having started out in a one room office in the Medi-cal building, thereafter transitioning from a pharmacist to a podiatrist, doing both for years to build a practice which he believes has done pretty well. He advised that he is looking to phase out pretty soon and the bottom line is, he's come a long way and worked really hard to support himself, his family and this Town. He advised he had just bought a house in Rexford which would now be another tax bill and that his practice has grown, he needs more space and he has nowhere else to go. He advised he has 4 million dollars invested in property here in Town and doesn't want to go anywhere else. He wants to expand, continue paying his bills like he has been doing and taking care of his employees and my tenants, but stated he cannot do that unless he can build this building. He added that he needs this badly and would really appreciate the Board thinking about it carefully.

Mr. Dudick asked if there was anyone who would like to make a motion to approve the application. Hearing nothing, Mr. Dudick then made a motion to deny the application. Mr. Fantini seconded the motion.

Mr. Address stated that Mr. Scavo was very interested in having this move forward and asked whether there was any other information that could be provided from perhaps the Planning Department that would help anyone with their concerns since there is a motion to deny the application.

Mr. Dudick advised that the applicant they could table their application if they would like, because a denied application cannot be resubmitted.

Mr. Dudick went on to state that the Board does not approve applications based upon how much the applicant really wants something, explaining its about whether or not there is a hardship, the uniqueness of the situation and whether it is an appropriate request for the zone.

Mr. Address advised he understood this would probably fall under the undesirable change to the neighborhood criteria using that type of an example. He added that they are leaning towards asking the Board to table the application to review the criteria and maybe come back with something better for the Board to look at, because they believe irrespective of whether there's been other variances issued or not, it is really that criteria the Board has to look at for the area variance and if they meet the criteria it should be granted.

Mr. Dudick stated that the Zone has been in place since at least 2001, but pointed out the applicant had mentioned 1995, and asked when the owner had purchased the property.

Mr. Galluzzo advised he had purchased in 2002 when it was 2 residential houses.

Mr. Dudick stated that since he purchased the property after the Zone was in place with the 4800 SF building size restriction, there is no hardship.

Mr. Andress agreed, but indicated that the criteria for variances which has been developed over the years based upon Court rulings and statutes, have 5 very specific items that the Board has to look at.

Addressing that criteria, Mr. Dudick stated that certainly if the applicant needs additional space, a 4800 SF building could be built to create that and therefore, the benefit sought by the applicant could in fact be achieved by another feasible method. He added that although he does not believe an undesirable change in the character of the neighborhood or detriment to nearby properties would be created because it is an office, since this would be a 100% variance, doubling the allowable size, the requested variance is certainly considered substantial. Mr. Dudick also stated that although he does believe an adverse effect on the physical or environmental conditions of the neighborhood would be created, the alleged difficulty is in fact self-created, because the property had been purchased after the 4800 SF building size restriction was in place, and advised he doesn't see any way around that.

While Mr. Andress agreed that the substantial and self-created issues are relevant, they do not necessarily preclude the granting of the easement. He believes there are very few application he has ever brought before the Board that weren't self-created and that is why it is very specific that such consideration shall be relevant to the decision of the Board, but shall not necessarily preclude the granting of the area variance.

As to whether the benefit can be achieved by any other means feasible to the applicant, using his own practice as an example, Mr. Dudick stated that if he needed additional space, his options would be to possibly move and there are places in Clifton Park that are on 146 that have medical space available of a larger size.

Mr. Andress advised they would like to be able to provide some evidence in relationship to that, because the owner has a financial interest in the entire site which has 3 buildings and the potential for a 4th building, which he could obviously build without a variance, but it makes it a much higher financial burden to move his practice and put that property into a rental situation, thereby holding onto that property or to selling it to some other entity and then move into another building and try to maintain your client base.

Mr. Dudick asked whether their argument is that there's a financial hardship in renting space as opposed to owning space.

Mr. Andress stated that there certainly is. He stated that not only would it be a financial hardship renting as versus owning, it would be a financial hardship if the owner isn't on the property and has to hire a management company instead of being able to manage it himself, as he would effectively become an absentee landlord. He added that in some other instances it may be easier financially to rent only because you don't have to have the equity in the situation. In this instance, Mr. Galluzzo has the equity and he's utilizing that.

Mr. Dudick advised the applicant that there has been a motion made and seconded and asked the applicant if he would like to table the matter or allow the Board to vote.

Mr. Andress advised that would like to request that the application be tabled so they can look at their options, provide more information to the Board, and then see if the Board can make a decision one way or the other.

Mr. Dudick asked if applicant would be willing to waive the 61 day requirement within which the Board is required to make a decision on the application and Mr. Address advised they certainly would.

Mr. Peller asked whether the applicant wanted to be on the Agenda for the next meeting. Mr. Address advised they would let Steve know when they would like to be on the Agenda.

Application tabled by the applicant.

Mr. Dudick then made a motion to approve the minutes from the July 19, 2016 meeting. Mr. Dudick, Mr. Cifor, Mrs. McCoy and Mr. Bloss, who were present at that meeting, all voted in favor and the minutes were approved.

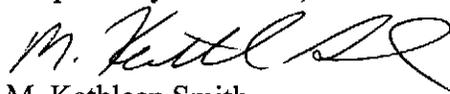
Mr. Dudick then made a motion to approve the minutes from the August 16, 2016 meeting. It was determined that Mr. Cifor, Mrs. McCoy, Mr. Gifford and Mr. Fantini, who were present at that meeting, were able to vote. However, Mrs. McCoy stated that she had looked all over and could not find those minutes. As such, the approval of the minutes from the August 16, 2016 meeting was tabled until the next meeting and the Chairman requested the secretary provide Mrs. McCoy with another copy of the minutes.

Mr. Dudick made a motion to approve the minutes from the September 6, 2016 meeting. Mr. Dudick, Mrs. McCoy, Mr. Fantini and Mr. Bloss, who were present at that meeting, all voted in favor and the minutes were approved.

Mr. Dudick made a motion to adjourn the meeting. The motion was seconded by Mr. Cifor. Approval was unanimous. The meeting was adjourned at 10:50 p.m.

The next meeting is October 4, 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