

**Clifton Park Zoning Board of Appeals Meeting Minutes  
November 14, 2006**

Present: Michael Dudick, Chairman, Joel Koval, Jessica McCarthy,  
Gil Kortz, Dale Gleason, Robert Ritter (arrived at 7:08 PM)

Absent: Eric Ophardt, Christopher Lemire

Also Present: Lou Renzi, ZBA Counsel  
Steve Myers, Director, Building & Zoning

Mr. Dudick called the meeting to order at 7:05 PM.

**OLD BUSINESS**

1. An application from CLAD Realty, LLC representing Dunkin Donuts, , requesting an area variance from Section 208-98 from the required front yard setback on Plank Road (has 5 ft. variance from #80505) – proposed building setback = 122 ft. – variance requested = 3 ft.; an area variance from Section 208-46 from the 80 ft. setback on Route 146 – proposed setback = 63 ft. = variance requested = 17 ft.; an area variance from Section 208-46 from the required 35% green space – proposed = 31.85% - variance requested = 3.15%; an area variance from Section 208-48 from the required 15 ft. of landscaping from front line to rear line – proposed = 10 ft. – variance requested = 5 ft. on the west side; and a variance from Section 208-47 only one entrance/exit allowed per establishment – plan shows two entrances/exits on Plank Road. The property is located at 602 Plank Road, Clifton Park. Permit #80622

Paul Olin, Environmental Design Partnership, presented this application. He introduced Dinart Serpa, who is also involved with this project. He explained that they are here tonight to address the Board's concerns expressed at the last meeting regarding the exit only access point that is being proposed. He explained that one of the concerns expressed was whether or not DOT had any jurisdiction over this exit only access point. He explained that he contacted DOT some time ago and they said they had no concerns with this project but the Board wanted something in

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writing and he resubmitted the plan to them and they responded with a letter that he presented to the Board. He noted that they also stated that they have no concern with the location in terms of impact that it has on the intersection of Plank Road and Route 146. He also noted one other concern with the location of the exit only is that it might be too close to Route 146 and he took another look at that and pushed it back approximately 10-12 ft. He also had some input from DOT on this subject and they noted that the existing brick median should discourage people from wanting to use this for a left hand turn onto Route 146. He explained that he did push it back from the radius point of Route 146 and

submitted a revised site plan and feels this is a good solution to that problem. It will be a right turn only onto Plank Road with a right turn only onto Route 146 which makes it a simple traffic pattern.

Mr. Olin noted that he feels this is a solution that works in the context of the existing conditions that are there with a wide shoulder in addition to the travel lane on Plank Road.

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

Mr. Ritter asked if DOT approved the exit only curb cut. Mr. Olin explained that they actually have no jurisdiction over it but they have stated that they do not see it causing any problems.

Mr. Kortz noted that the location of the exit only was not a variance request; the variance is needed for a second exit only.

Ms. McCarthy asked if the application has been amended to show the new location of the exit.

Mr. Myers explained that there were questions on DOT's jurisdiction and if a second exit should be there, the variance is for a second exit only.

Mr. Renzi noted that the record should reflect that the applicant has submitted an e-mail from an individual who works at DOT and they clearly state that DOT has no jurisdiction over the project and therefore is rendering no opinion whatsoever.

Mr. Olin referred to a letter he submitted from DOT stating that they have no jurisdiction over the proposed access points on Plank Road nor do they believe that the proposed access would have a negative impact on the operations of either Plank Road or Route 146.

Mr. Dudick noted that after revisiting and looking at the previous uses of the property, the changes that have been made, and the addressing of jurisdiction by DOT, he would make a motion to approve this portion of the application as revised for the second exit onto Plank Road. Mr. Ritter seconded. Ayes: Dudick, Kortz, Gleason, Koval, McCarthy. Noes: Ritter.

Mr. Olin noted that there was a slight discrepancy in what was stated in the application and the site plan submitted as to the exact setbacks that are needed for the building. He believes that the setbacks were scaled as opposed to the exact measurements as shown on the plan he submitted.

Mr. Renzi explained that the information submitted with the application will be the controlling factor.

## NEW BUSINESS

1. An application from Anthony A. Fazzone, requesting an area variance from Section 208-11 from the required 10 ft. side yard setback – proposed setback = 9 ft. – variance requested = 1 ft. The property is located at Vischer Ferry Road at Riverview Road, Rexford. Permit #80624.

The secretary read the legal notice as it appeared in the Daily Gazette on November 9, 2006.

Jerry Gray, Surveyor for Ingalls & Associates presented this application. He explained that a 1 ft. variance is needed on the westerly side of the lot. He noted that the dwelling was staked out with 10 ft. offsets by his firm but it appears the foundation was installed incorrectly. He noted that at the time of framing they were notified by the Town that they needed a foundation location survey and at that time it was discovered that a variance would be needed. He explained that it would be an extreme expense to move the foundation since the building is already partially constructed. He also noted that there would be no negative impact since the abutting property is a pumping station owned by the Town.

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

Mr. Ritter made a motion to approve this application as submitted. Mr. Kortz seconded. Ayes: Ritter, McCarthy, Koval, Kortz, Gleason, Dudick. Noes: None.

2. An application from Mother Teresa Academy, requesting an area variance from Chapter 171 of the Town Code (Sign Law) from the required 15 ft. front line setback – proposed setback = 8 ft. – variance requested = 7 ft. The property is located at 10 Old Plank Road, Clifton Park. Permit #80625.

The secretary read the legal notice as it appeared in the Daily Gazette on November 9, 2006.

Joyce Madalone, Director of Mother Teresa Academy, presented this application. She stated that she obtained a permit for a message sign that has been placed at 10 Old Plank Road. She explained that the school is located in the United Methodist Church. The property is “pie” shaped and the building is over 165 years old. She noted that the sign is 14 ½ ft. from the road up an embankment and if it was placed an additional 15 ft. back it would be inside the Church therefore they are requesting the variance to leave the sign on its current site.

Mr. Dudick noted that it is a difficult site for a sign.

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Mr. Myers stated he does not see another location where they could place the sign.

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

Mr. Kortz stated that he sees no problems with this request as long as there are no safety issues.

Mr. Dudick made a motion to approve this application as submitted. Mrs. McCarthy seconded. Ayes: Dudick, Gleason, Kortz, Koval, McCarthy. Noes: None. Abstained: Ritter.

3. An application from Ray Sign Inc. representing Marshalls HomeGoods, requesting an area variance from Chapter 171 of the Town Code (Sign Law) from the maximum wall sign of 60 sq. ft. – proposed sign = 299 sq. ft. – variance requested = 239 sq. ft. The property is located at Clifton Park Center Mall, Clifton Park. Permit #80626.

The secretary read the legal notice as it appeared in the Daily Gazette on November 9, 2006.

Tim Prescott, Ray Sign, and Mimi Olsen, Service Select Signs presented this application.

Ms. Olsen explained that Marshalls is a significant tenant, 50,000 sq. ft.

Mr. Ritter asked if this application is significantly different from the last one they submitted that was denied. Mr. Prescott responded the size of the letters for the sign have been reduced.

There was discussion by Mr. Myers and the Board as to the issue of an application that was denied having to be significantly different if resubmitted. Mr. Myers explained that he believes the application does not have to be significantly different to be heard.

Ms. Olsen noted that they are willing to negotiate tonight. She explained that their first option is because it is such a large store front and they are built to represent a co-branded store model rather than have two separate stores within the same shopping center. She noted that this is a whole new concept that works very well for this client. They also are interested in the aesthetics.

Ms. Olsen explained the first option, Project #14936, Option 1, is requesting a sign of 243 sq. ft. reduced from the original 299 sq. ft.

She explained that this is the option that they would like but they do have other options to present if this one is not agreeable to the Board.

Mr. Ritter explained that as a Board dealing with other plazas throughout the Town, individual tenants came before the Board requesting additional signage and the Board said no. Finally all the tenants went to the landlord and asked them to present a sign package. They came in and

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presented a package for the plaza that fit that theme. He feels that would be reasonable for the remodeling of the mall. He explained that he would like to see a presentable look for the Town. He would like this sign request to conform to the others for the mall that will be presented next.

Mr. Dudick also noted that the ZBA has seen other requests for co-habitated businesses that wanted additional signage but the Board looks for uniformity, it's not that it's two stores in one so they need twice the signage. He expressed his concern over the possibility of a single tenant occupying the space in the future.

Mr. Dudick noted that they are approved for 70 sq. ft. of signage; he would like to know what is the amount of increase being requested.

Ms. Olsen explained that she and her client are also interested in having a positive impact in the community. She noted that there is only so much fascia width to install a sign, so if they were to move out and an individual tenant came in they would only have a specific width to install their sign. She also explained that when you have multiple tenants with 20-25 ft. store front that are entitled to the same amount of signage you have sign after sign, after sign and then a large blank fascia storefront like this one with a tiny sign similar in size.

Mr. Dudick explained that each member of this Board has their own opinion on how to address that issue and it has come up before but with the logic if we have a big face on our building we deserve a big sign, and buildings are being built with larger faces on the front with the expectation that a larger face means a larger sign, from his personal perspective he does not feel that big signs make a community look better.

Mr. Kortz explained that his interpretation of how the Town Board set up the sign law was based on square footage of the store, not the face of the store in order to try to have a type of balance between businesses.

The Board discussed the amount of signage approved for the other larger department stores in the mall and the calculations used to determine the size of the signs.

Mr. Renzi asked Mr. Myers if the sign being requested in this application is the same size as original request, but is just being calculated differently. Mr. Myers responded this request is slightly smaller than the original request that was turned down.

Mr. Koval asked if this is the one and only sign for Marshalls. Mr. Myers replied that there is a sign over by DMV that is pre-existing.

Ms. McCarthy asked for the size of that sign. Mr. Myers responded he believes it is 117 sq. ft., and he can only find approval for 70 sq. ft.

There was discussion on the calculations used based on square footage to determine the amount of signage that would be allowed if there were no maximum. Ms. Olsen noted that it would be

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243 sq. ft. for Marshalls.

Mr. Koval noted that they already have 117 sq. ft. on the east side of the mall which would leave 126 sq. ft. and asked which option would be closest to that number.

Ms. Olsen explained that if that were the case they would probably want to change that sign out because it is not as important as the store front.

Mr. Myers noted that it is currently an existing non-conforming sign and would be a whole new application.

Mr. Dudick asked about the size of the current banner on the front of the store. It was not known. Ms. Olsen stated that they have an application in for 70 sq. ft. because it is important for the store to have identification.

There was Board discussion on using the 243 sq. ft. for signage minus the 117 sq. ft. for the current sign. Ms. Olsen asked if they could be granted 243 sq. ft. and they could determine the size used for each sign. It was not agreeable to the Board to leave that determination to the applicant.

Mr. Renzi explained that if an agreement was reached it could be stated with a total square footage with the front and rear signs not to exceed a certain maximum square footage.

Ms. Olsen asked if the 70 sq. ft. sign that is going to be put up could replace the east side sign and then the remainder of the square footage could be used for the front sign.

Mr. Ritter asked if the 70 sq. ft. would be in conformance with what the mall is proposing for the other tenants or if it's 90 sq. ft. is that what Marshalls will be entitled to. He is interested in conformity

The Board discussed the amount of signage and the different options being presented. Mr. Myers suggested that the Board approve a total square footage that is acceptable and split it evenly between the two signs. He feels a limit has to be put on the size of the front sign so that it would conform to the rest of the mall.

The Board discussed the size of other signs at the mall and how and why they were granted and their effect on this application.

Mr. Koval explained that if a cap was put on the total square footage and the applicant was allowed to move the new 70 sq. ft. sign to the east side of the mall the new front sign would not look out of place and would be about half the size of the sign being requested.

Mr. Kortz agreed if 243 sq. ft. is agreed on, minus the 70 sq. ft. sign that would be moved, it  
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would leave 153 sq. ft. for the front sign and it would not be unreasonable.

There was continued Board discussion on the size of the sign to be allowed. It was agreed that a larger sign is reasonable. Also discussion continued on the method of computing the size of the sign and it was agreed that the computation used would be the total box size as used by the Town's Building Department, not a box around just the letters.

Ms. Olsen agreed, therefore using that method of computation the new sign that will be put on the front temporarily is 90 sq. ft., not 70 sq. ft.

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

There was discussion on an amended application for this sign request and the effect of the sign on the east side of the mall.

Mr. Dudick explained that the only sign being requested at this time is for the front

elevation  
and he asked for clarification on that request.

Ms. Olsen stated that she would like the Board to consider Option 4.

There was considerable discussion on the actual size of the sign being requested and how  
the size  
of a sign is computed.

Mr. Dudick asked for the actual size of the sign that they are requesting. Ms. Olsen  
responded  
215 sq. ft.

There was continued discussion on the request and the inclusion of the rear sign in the  
total  
square footage. Mr. Dudick explained that the rear sign will not be considered in this  
application.

Mr. Renzi explained that the Board has no jurisdiction over the rear sign because it is not  
part of  
this application. The Board is trying to have some control over the size of the front sign.

Discussion continued as to what size sign the Board may be willing to grant and  
compromises  
that could be reached.

Mr. Dudick made a motion to deny this application as submitted. for a front sign of 215  
sq. ft.  
Ms. McCarthy seconded.

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The applicant asked to amend the application to allow a maximum of 175 sq. ft. for the  
front  
sign.

Mr. Dudick withdrew his motion, Ms. McCarthy seconded the withdrawal.

Mr. Dudick made a motion to deny the amendment to this application to allow for a  
maximum  
sign of 175 sq. ft. for the front of the building. Ms. McCarthy seconded. Ayes: Dudick,  
McCarthy. Noes: Gleason, Kortz, Koval, Ritter. Amended motion approved.

4. An application from DCG Development representing Clifton Park Center Mall, requesting an area variance from Chapter 171 of the Town Code (Sign Law) for a package proposal from the maximum 32 sq. ft. wall sign – proposed = 40 sq. ft. – variance requested = 8 sq. ft., and an area variance from the maximum 60 sq. ft. wall sign – proposed = 90 sq. ft. – variance requested = 30 sq. ft. The property is located at Clifton Park Center Mall, Clifton Park. Permit #80627

The secretary read the legal notice as it appeared in the Daily Gazette on November 9, 2006.

Donald MacElroy presented this application. He explained that they were requested by the Building Department to apply for a standard variance request that would apply to all the small to medium size tenants. He noted that this would cover virtually everyone but anchor store tenants that may have special circumstances that they would like to approach the ZBA about. He explained that they have tenant spaces from 500 sq. ft. up to about 8,000-10,000 sq. ft.

Mr. MacElroy stated that there are actually two additional parts to this application which is the request for a directory monument and a 2' x 8' Boscov's panel on the existing pylon sign.

He explained that they are requesting an increase in the minimum and maximum size of the signs allowed and also a change in the ratio that is applied based on the fact that this is a self contained project at some distance from the road. The new strip front that has been built is just shy of 1,000 ft. from Clifton Park Center Road. He noted that the code does allow the Director of the Building Department to allow for a 10% flex for every 500 ft. off the road and also on the minimum side that visual impact is in existence and on the maximum end it would be as well

Mr. MacElroy stated that what they are looking to do is get an increase in the minimum from 32 sq. ft. to 40 sq. ft. and on the maximum from 60 sq. ft. to 90 sq. ft. and then a change in the ratio. It is presently formatted that every business of 6,400 sq. ft. or less is allowed a 32 sq. ft. sign, which means that a 500 sq. ft. store gets the same size sign as a 6,400 sq. ft. store and obviously there is a significant difference in size so they would like to create some relationship in the size of the store and the size of the sign. He stated that he realizes that the Town's Code sets out to do that but with the ratio of .005 really renders that moot because there is such a wide variety of range in sizes that they all wind up with the same size at the minimum and on the other end as well, i.e. a 50,000 sq. ft. store would get the same size as a 12,000 sq. ft. store. He would like to

be able to tweak the ratio based on the fact that they are some distance from the highway

and at the same time they are looking for a competitive edge to bring national retailers to Clifton Park and, as just demonstrated with the previous application for Marshalls, one of the first things they ask is what is allowed for signage and is it adequate for exposure especially when you're located in a shopping center that is over a block from the highway.

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

Mr. Myers explained that he does have some latitude and asked what new formula they would like to use because the way it stands now you would have to be at 8,000 sq. ft. before you would consider something larger.

Mr. MacElroy responded that he is looking at the 500 sq. ft. store and then the 3,000 sq. ft. store and they both get the same size. He would like to be within the .015 to .020 range, i.e. the 500 sq. ft. store would get the minimum of 40 sq. ft. and someone who is three times its size, 1,500 sq. ft. would get the minimum, but from that point up, i.e. a 3,000 sq. ft. store would get 75 sq. ft.

There was discussion on the numbers being used and the sign sizes that would be allowed.

Mr. Renzi clarified that what they are trying to do is establish a graduated scale with square footage brakes that are much closer than current code allows for, i.e. a store from 500 sq. ft. to 1,500 sq. ft. would have the same size sign, from 1,500-3,000 another size sign, etc.

Mr. MacElroy explained that once you hit the minimum and until you get up to the maximum it will flow with the square footage and increase proportionally to the square footage but then you reach a point where, with the revised ratio, you 'd still hit the maximum and couldn't go any higher.

Mr. MacElroy explained that they are just trying to get a closer relationship to the square footage occupied to the size of the sign, but to reach that minimum sign threshold at a much lower square footage and then allow it to follow the square footage on up until you hit the maximum.

The Board and the applicant discussed the ratio to be used and its effect on the size of the sign.

Mr. Myers stated that the .015 would get you to a 6,000 sq. ft. store and above to get the maximum. He stated that he has no problem with that. It establishes some uniformity that the Board is looking for.

Mr. MacElroy noted that it will probably cut down on the number of people that would bypass

them and come directly to the ZBA.

Mr. Myers stated that he would like this to carry through for the remainder of the mall.

Mr. Dudick explained that currently at the .015 ratio a store of 4,000 sq. ft. would get the maximum sign of 60 sq. ft. Mr. Koval stated that the current calculator is .005. Mr. Dudick stated that with the new calculator all stores of 4,000 sq. ft. or less really would not be affected by the change, they would max out at 60 sq. ft.

Mr. MacElroy responded if all you did was change the minimum and maximum and left the ratio where it is, yes. It will allow a closer relationship between the size of the store and the size of the sign. Right now because of the way the ratio affects the minimum and maximum everybody between 200 sq. ft. and 6,400 sq. ft. get the same size sign. He's trying to create a playing field where as you increase the amount of floor space you increase the size of the sign.

Mr. Kortz asked if you went with 6,000 at .015 how many stores ratio wise are under and over that. Mr. MacElroy responded he would like to see more rather than less, but you probably won't see more than half a dozen to ten stores over 6,000-7,000 sq. ft. That is why he is trying to focus on that range and generally as the square footage increases the store front will increase, so if you have a small storefront with the minimum size sign, because they are 500 sq. ft. and they qualify for 32 sq. ft., and then you have the storefront next to them that may be three to four times as wide they get the same size sign, so there is some proportionality argument there also.

Mr. Renzi asked if it is possible to leave the tiniest of stores with the existing minimum or is the eight feet truly not significant. Mr. MacElroy explained that they are also fighting the distance issue.

Mr. Myers explained that if you change the ratio from .005 to .015 and move the 32 to 40 it is an insignificant change. The minimum store size to get above the minimum sign size goes from the current 6,400 sq. ft. to get above 32 to 2,700 sq. ft. to get up to 40 and he feels that is a big change and solves the problem. Mr. Myers noted that he feels this will work and it looks like 80-90% of the tenants will not get above the maximum.

Mr. Ritter asked if the applicant would be willing to honor this commitment in his lease agreements. Mr. MacElroy responded that he has a concern.

Mr. Koval suggested that if a tenant is 6,000 sq. ft. or less it could be included in the lease, if they are above that they are not. Mr. MacElroy agreed He noted that unless

spaces are combined there are only four spaces above that size assuming there will be two tenants in the former Steinbach location.

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Mr. MacElroy also explained that there are specific areas that are intended for the signage and would not allow much more than has been discussed tonight.

Mr. MacElroy explained that the other portion of the application deals with a monument sign at the corner of Route 146 and Clifton Country Road to give them a competitive advantage with other markets outside the Clifton Park region. He noted that the Planning Board granted them site plan approval but it is a Zoning Board issue.

Mr. Ritter asked if this would replace the current sign at that location. Mr. MacElroy responded no the pylon sign will remain.

Mr. Myers stated that if this is a directional sign and has site plan approval it is not a Zoning issue.

There was discussion as to whether ZBA approval is needed. Mr. MacElroy explained that he referenced the sign in the application.

Mr. Renzi explained that if the chief Zoning Officer of the Town has made a determination that this is a directional sign in accordance with the code then ZBA approval is not needed.

The Board discussed the difference between directory and directional signs and other similar signs in town that have had to have ZBA approval. Mr. Myers stated that he will review this portion of the application and make a determination on this sign. It was decided that the ZBA should hear this portion of the application at the next meeting.

Mr. MacElroy explained that as a condition of getting Boscov's approval to make the changes to the mall Boscov's has requested that they be added to the existing pylon sign. He stated that this also has been explained to the Planning Board. It was determined that this did not need ZBA approval.

Ms. McCarthy made a motion to approve this application as submitted.

Mr. Kortz stated that the minimum and maximum sizes should be added to the motion.

There was no second to Ms. McCarthy's motion.

Mr. Kortz made a motion to approve this application as submitted for a minimum sign size of 40 sq. ft. with a maximum sign size of 90 sq. ft. and to modify the ratio in formula

C-1 (Wall Sign Allowable Sign Area) to .015 times the square footage of the floor area (between 2,000 & 6,000 sq. ft.) and this will be attached to the leases as part of the sign criteria.

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Mr. Ritter asked to have a condition added to the motion that the applicant provides the ZBA a copy of the appendix to the leases. Mr. MacElroy stated they will submit to the ZBA the revised sign criteria that will be attached to the leases.

Mr. Ritter seconded Mr. Kortz' motion. Ayes: Dudick, Gleason, Kortz, Koval, Ritter, McCarthy. Noes: None.

Mr. Renzi asked if the Board is clear on the geographical boundary where this will take place. Mr. Kortz responded it is anything attached to this building. Mr. MacElroy stated that his expectation is that anything on the Clifton Park Center property will have to observe this agreement.

Mr. Dudick made a motion to approve the minutes of October 3, 2006 Ms. McCarthy seconded, Ayes: Kortz, McCarthy, Dudick, Koval. Noes: None. Abstained: Ritter, Gleason.

Announcements were made regarding future training dates for Planning and Zoning Board members.

Mr. Kortz made a motion to adjourn the meeting at 9:50 PM, Mr. Ritter seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb  
Secretary

Cc: Town Clerk, Zoning Board Members, Louis Renzi, Counsel, Steve Myers,  
Department of  
Building and Development, Planning Board, ECC, Assessor, Highway Superintendent