

## ZONING BOARD OF APPEALS

January 7, 2014

Present: Michael Dudick, Chairman , Michael Bloss, Jerry Cifor, Randy Gifford, Doug Strother, Jennifer Vucetic, Mario Fantini

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

Absent: Chris Lemire

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

### PLEDGE OF ALLEGIANCE

Mr. Dudick requested everyone to turn cell phones off to avoid interference with the recording system. He informed the applicants this is a seven member board with one alternate. Tonight Mr. Fantini, as alternate, is designated to sit in for Mr. Lemire who is absent. To receive approval an application one must receive 4 yea votes regardless of the number of members present. There are seven members present tonight so the applicant must receive four out of seven votes for approval.

### OLD BUSINESS

None

### NEW BUSINESS

*The secretary read the legal notice as it appeared in the Daily Gazette on January 2, 2014*

**1) An application from Saxton Sign Corp (Residence Inn) for variance from Chapter 171, Table I, sign law. 1) Maximum allowed wall signage = 60sqft; proposed total signage = 84**

**sq ft; variance required = 24 sq ft 2) Maximum height of wall = 20ft; proposed = 38' to bottom of wall sign, 44' to top; variance required = 24ft.**

**Property is located at 1740 Route 9, Clifton Park, NY 12065 (Permit #80960)**

The application was presented by Mr. Terry Meisner from Saxton Sign Corp., representing Residence Inn and Marriott. Mr. Meisner informed they are looking for a sign size variance of 12 square feet for each of two walls signs and a variance of 24' for the height of the signs. He explained they need to put one sign higher than the building in front of it. The other sign they need to erect so it can be seen from the Northway. He asserted that what they are requesting is comparable to what the Holiday Inn and Comfort Suite already have.

Mr. Dudick asked Mr. Myers if this is the case, that their signage request is similar to Holiday Inn and other hotel signs. Mr. Myers answered that it is a reasonable statement and although he doesn't know the exact size of the other signs, they are comparable to what Mr. Meisner is requesting. He added that the motel is located a considerable distance from the road.

Mr. Dudick commented that their building is lower than street level. Mr. Myers agreed, saying it is "way lower than street level" and they have to get the signs above the building in the front and they need to get it higher on the side for it to be seen from the Northway.

Mr. Dudick queried whether this is just an issue of height and size. Mr. Myers agreed, saying the signs are a little bigger but he had no problem with the application.

Mr. Gifford asked Mr. Meisner the size of the sign that will face the Northway. Mr. Meisner responded it will be 6'2" tall and 14'8" wide and both signs are the same size. Mr. Gifford asked if this is a standard sign for these motels and Mr. Meisner answered that they are usually a little bigger.

Mr. Dudick asked about the illumination of the signs. Mr. Meisner answered they will be LED and lit from the inside. Mr. Dudick questioned if they will be lit the entire evening and Mr. Meisner said they would be.

Mr. Gifford inquired about the sign colors. Mr. Meisner informed the Residence Inn will be burgundy and the Marriot sign will be red. He added that, at night, they should show white.

Mr. Dudick announced the public hearing and asked for comments. There were none. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Bloss. All approved. Public hearing closed.

Mrs. Vucetic, referring to a picture presented, asked if the monument sign is conforming.

Mr. Myers answered her question, saying the monument sign is not part of the application and will be submitted separately at a different time.

Mr. Dudick reiterated they are just addressing the height and size of the wall signs. He reminded they are allowed to have two wall signs, stating the application is not an issue to him. He explained the building sign next door is a similar size. He asked Mr. Myers to identify the zone in which the motel is located. Mr. Myers informed it is in the highway business section.

Mr. Cifor made the motion to approve the application as submitted. Mr. Gifford seconded the motion. Mr. Dudick informed he must have four yes votes to be approved.

Ayes: Bloss, Vucetic, Gifford, Dudick, Cifor, Fantini, Strother Noes: None  
Application approved as submitted.

*The secretary read the legal notice as it appeared in the Daily Gazette on January 2, 2014*

**2)An application from The Crossing, LLC for a use variance to place wall sign in a location not allowed by code. Per Table I for commercial locations at bottom of “number of signs” column it states “1 wall sign per tenant, must be placed on store front of the tenant identified by the sign”. Applicant wishes to place sign on clock tower (which has its own tenant & sign) for a tenant behind the clock tower.**

**Property is located at 54A Crossing Blvd, Clifton Park, NY 12065 (Permit #80961)**

The application was presented by Todd Fisher, in charge of construction for Equinox, and by Tyler King, property manager from Equinox Company.

Mr. Fisher informed the board that Mr. Myers had explained it has to be a hardship in order to obtain the variance they are requesting. He expanded on the issue, saying they have a store behind the clock tower and that a sign placed over its door cannot be seen from the mall because of its location behind the tower. Mr. Fisher said they wish to install a sign on the clock tower for the store located behind the tower. He acknowledged that the sign is supposed to be directly over the front door, and argued that, because of the tower, the door is hidden. He asserted it is a hardship and asked Mr. King to explain. He passed out additional pictures of the location.

Mr. King came to the podium and repeated the tenant needs a sign on the clock tower because the store is located behind the tower. He asserted the store has been extremely difficult to rent because businesses want as much sign exposure as possible. He added that particularly “Mom and Pop” businesses won’t even consider it. He said they had been fortunate to have it occupied by a doctor for a while, adding that not having a sign in front was not a problem because doctors’ offices are destination locations. He said he believes if they could put a sign on the clock tower it would entice tenants to take that space.

Mr. Peller asked if they have an interested tenant, and if the lease is contingent on having the sign on the tower. Mr. King responded they have an interested client. He informed they don’t have a contingency that they must have a sign on the tower, but there is a clause that says they will use their best efforts to obtain it. He added that before they were even thinking about that tenant it was already an ongoing issue because they have had to turn tenants away so many different times.

Mr. Cifor asked where the sign would be placed on the tower. Mr. King responded (showing on the picture) it would be above the green rectangular panels.

Mr. Strother asked if they would use one of the green panels. Mr. King said the sign would be in between the panels. Mr. Dudick questioned whether that would be confusing if everyone had a sign over the door except for the one behind the tower. Mr. King said it would not, because it would be underneath the awning. He reiterated that if the sign was over the door there is no way a person driving by could see the sign.

Mr. Gifford queried about other tenants who have been in that spot. Mr. King answered the previous tenant was a chiropractor who had been there for several years.

Mr. Strother commented the problem is pretty clear. He asked why the panels were placed on the tower when it was built.

Mr. Fisher responded it was an architectural element, informing the Planning Board wanted to see something there to break up the vertical structure. He informed the panels were not intended to be a sign panel.

Mr. Strother opinioned he thinks it is necessary to solve the problem, but is worried about “sign creep” on the other panels. He explained his concern that others might complain and request variances to place their signs on it also.

Mr. Fisher asked Mr. Strother if his concern was there might be additional signs placed on the tower. Mr. Strother indicated he would support the application but he wants to make sure it was limited to this application and that Mr. Fisher understands that. Mr. Fisher said he has no problem if that is read into the motion.

Mr. Dudick reminded the board this is a use variance which has a higher threshold of criteria that must be met.

Mr. Strother suggested the board might put in some language indicating this is a unique situation and is a one shot deal for a well established mall.

Mr. Dudick pointed out there is a space over the nail salon business next door. He questioned if a use variance would no longer be necessary if the nail salon’s sign was shifted and moved over so that they could put the new tenant sign there so it is out from behind the tower but not directly over the door of the store.

Mr. Peller reminded this would still be a use variance as the sign would be on another store’s property. Mr. Myers agreed, stating that it would depend how far the shift is because if it is within the area of the nail salon storefront, it would still be a use variance.

Mr. Dudick stated it doesn’t look like the Nail sign is over the door.

Mr. Fisher explained that the nail salon has new ownership and the new owner had removed the oval from the old sign and was planning to replace it with his own logo.

Mr. King reminded that store owners have a preference to have a sign over their own door and this would have an effect on that tenant. He added that putting another sign over part of the nail salon would look really odd and would bunch the signs together.

Mr. Gifford agreed this would not be a good idea. He speculated that putting their sign on the tower could also be confusing.

Mr. Bloss asked if this would be a time to talk about directional signage. He suggested they consider an alternative such as putting a sign on the side of the tower as a larger directional sign with an arrow.

Mr. Dudick cautioned that a sign on the tower is similar, whether it is on the front or side they have the same issue.

Mr. King indicated he did not like that idea and stated he thinks it would be confusing. He informed they have had eight different tenant possibilities that stipulated that if they were to take that space they would want a sign on the front of the tower. He explained that national companies are not interested if they cannot put a sign in the front.

Mr. Cifor said if the placement of the sign is low as possible it would meet with his approval as long as it was placed where they have indicated on the picture. Mr. King agreed they would place it there.

Mr. Myers weighed in, stating that this obviously borders on setting a precedent although he understands the issue. He responded to Mr. Dudick's question whether it mattered since all stores have the same address pointing out that all stores in the mall have the same address. He cautioned the board does not want it to become a situation in a different mall. He indicated Mr. Bloss' idea of directional signs would be easier, explaining it could be as large as 6-8 square feet with an arrow placed on both sides of the tower but he doesn't know if that is viable.

Mr. Strother said it would detract from the aesthetics but it would be an equalizer and a balance that could be explained to other people who ask why there is a sign.

Mr. Fisher stated this would be a one shot deal and they would not be asking for additional signage on the tower. He said he understands that the directional signs would be smart but pointed out that directional signs on the side of the tower would not be seen by cars approaching from the front of the plaza.

Mr. Fisher informed the possible tenant is Liberty Tax and noted they will be there for five years at least. He argued that tenants are allowed 32 square feet of signage and a 6-8 square foot directional sign would be useless.

Mr. Gifford asked how many people would have taxes done as a drive by.

Mr. King explained Liberty Tax has people dressed as Lady Liberty walking around, so they do solicit drive-by business.

Mr. Fisher asserted they started this quest to put the sign on the tower long before they had a specific tenant because they wanted to go to any prospective tenant and tell them they could put a sign up.

Mr. Dudick commented that if the tower were diamond shaped and not square, they wouldn't have a problem.

Mr. Fantini requested Mr. Dudick review the criteria required for a use variance.

Mr. Dudick listed the four elements, indicating how this application met the criteria.

- 1) Financial hardship and inability to obtain a reasonable rate of return. He informed that although they have explained this verbally, the applicant needs to have some concrete financial evidence of hardship in writing
- 2) Unique situation. Mr. Dudick agreed they met this as the tower makes this situation unique
- 3) Does not alter the essential character of the neighborhood. Mr. Dudick commented this is a mall, and the sign would not change anything
- 4) Not self created. Mr. Dudick commented this is the way the Plaza was built

Mr. Strother suggested the applicants come back and bring a rental history and information about vacancy. He asked how long it has been vacant.

Mr. King explained it has been vacant, this time, for a few months, but before the chiropractor was located there it had been vacant longer. He informed that the chiropractor had moved to Route 9. He added that for a long time he had been on a month to month rental basis and for the last two years several brokers have tried to find them a new tenant. He asserted that national chains didn't want a store that didn't have a sign that could be seen.

Mr. Strother and Mr. Fantini both informed they are looking for something financial in writing. Mr. Dudick asked Mr. King and Mr. Fisher if they were able to come back to the next meeting on February 4 with that information, and they both agreed.

Mr. Dudick explained the 62 day rule, in which the board needs to make a decision by that time unless it is waived by the applicant. Mr. King and Fisher agreed to waive the rule.

Application deferred to the February 4, 2014 meeting.

Mr. Dudick acknowledged the presence of several 12<sup>th</sup> grade students from Shenendehowa High School, who were attending as a class assignment on National Issues.

*The secretary read the legal notice as it appeared in the Daily Gazette on January 2, 2014*

**3) An application from David Green for variances for single story retail building:**

- 1) Section 208-50.3C, side yard parking setback required = 20', 0' proposed, variance required = 20'
- 2) Section 208-50.3D, rear yard parking setback required = 30', proposed = 26', variance required = 4';

**3) Section 208.50.3F, greenspace required 35%, proposed = 27.7%, variance required = 7.3% 4)**

**4) Section 208-50.4, one entrance & one exit allowed to public thoroughfare per establishment, separated by 100'; 2 entrances and exits proposed, separated by 70'; Variances required = 1 additional entrance/exit and 50' of separation.**

**5) Section 208.50.5, 15' landscaping buffer required along side & rear property lines; 0' proposed, variance required = 20'. (corrected to 15')**

**Property is located at 1750 Route 9, Clifton Park, NY 12065 (Permit#80962)**

Mr. Myers corrected the error on #5, Section 208.50.5 stating that he had erroneously indicated the applicant needed 20' variance for landscape buffer, when, in fact the variance required is 15'.

Mr. Robert Osterhoudt, from Bohler Engineering, representing David Green, presented the application. He informed they are proposing to build a 12,000 square foot retail establishment with a drive through on the parcel of land directly in front of the Tractor Store on Route 9. He informed they had already gone through the Planning Board but need variances to proceed.

Mr. Gifford asked what kind of retail would be in the building.

Mr. Osterhoudt answered it would be general retail with drive through use. He informed they do not have any specific business under contract and suggested it could be any number of different retail stores such as a bank, Laundromat or dry cleaning or even a coffee shop.

He stated they are looking to develop the site in accordance with the Tractor Supply Store development which was planned in 2006, with this parcel to be part of it. He showed on the map, adjoining businesses, and identified the parcel, the project site (which is the whole larger area) and also the "easement" area dedicated to the area. The parcel is about 1.2 acres and with the easement it is about 1.8 acres. They propose to develop the 12,000 sq. ft. of retail space in the center of the parcel which would meet all zoning requirements for the building itself.

They are proposing the easement area as their access for parking and to get into the project site. He informed there will not be access directly on Route 9, but will use the access road that Cap Com and Tractor Store use.

They propose 60+ parking spaces (5 per thousand) but also have some bank parking on the side if it is needed in the future. He said the variances they require revolve around the access and parking. He reviewed them individually:

Mr. Dudick asked why there is a non linear boundary between the property and Route 9.

Mr. Myers answered it is the DOT line which is not always straight. Mr. Osterhoudt said that is not uncommon and they have worked around it with their setbacks driven by the property frontage.

208-50.3C side yard parking setback requirement 20' and they are asking 0' to get parking up to the property line. He said driving by you wouldn't know there is a setback if they didn't know where the property line is because it appears to be the whole parcel.

Mr. Bloss commented if the entire property was one parcel, they wouldn't need the variances. Mr. Osterhoudt agreed that is correct.

Referring to 208-50.3D rear yard parking setback required 30' and they have 26'. Mr. Osterhoudt said their interpretation of the code was slightly different than Mr. Myers' in that they thought the code defined parking spaces and not drive by aisles. They seek relief for that requirement.

Referring to 208-50.3F greenspace of 35%, Mr. Osterhoudt said they do not have 35% on that parcel alone but if you take the area including the easement they are in access of that.

Referring to 208-50.4 Mr. Osterhoudt indicated there is only one access allowed with separation of 100 feet. He stated their position is that this is not a public thoroughfare but a private shared access drive so that was their original interpretation of the code.

Referring to 208.50.5 landscaping buffer required side and rear property lines of 15' he said it applied only to the side.

He summarized saying there are practical difficulties because they are trying to build with the parameters of the site from 2006 because they have an easement rather than ownership. He repeated they had gone to the Planning Board and believes they have written a letter of support. The letter was distributed to the Board. Mr. Dudick read the letter from Mr. John Scavo, Planning Board, January 23, 2014. The letter indicated the Planning Board's position is that the current proposal is consistent with the original plan of 2006 which sought to reduce curb cuts on to Route 9 using a single shared shared curb cut on to Route 9.

Mr. Osterhoudt handed out a copy of the concept plan developed in 2006 when Tractor Supply was developed.

Mr. Strother asked if they have support of Planning and Mr. Osterhoudt stated the letter was to clarify some things and yes they do have general support for the project.

Mr. Gifford asked if they shrunk the building 1000 square feet, would they have a need for variances. Mr. Osterhoudt stated that is not true, even if they shrunk it 2000 square feet, explaining that they would still be before the board because of the property line they would still need relief for the parking.

Mr. Gifford stated the access road is a very very busy road. Mr. Osterhoudt said he is aware of that.

Mr. Dudick summarized that if they count the easement as part of the parcel the green space requirement is met, but the easement portion is not owned by the same property owner as the parcel. Mr. Osterhoudt agreed. Mr. Dudick rhetorically said this means "we meet our green space if we count our neighbor's property." Mr. Osterhoudt re-worded the statement saying "we meet our green space requirement if we take into account the easement that is dedicated to the project parcel."

Mr. Gifford asked if the easement was given by Tractor Supply. Mr. Osterhoudt agreed correcting that it is the owners of the property, not Tractor Supply, and the easement goes with the property as an exclusive easement to the pad site.

Mr. Dudick asked if Tractor Supply's green space also counts the easement. Mr. Myers said he was unsure, but Tractor's Supply green space might have been over that. Mr. Osterhoudt answered the CBRE listing in 2006, the stormwater management for that site took into account this site as well and incorporated a 65% build-out and 35% green space. He said Tractor Supply's greenspace is independent of that greenspace. Mr. Dudick summarized that Tractor Supply did not lay claim to the easement greenspace, and Mr. Osterhoudt agreed.

Mr. Myers stated he does not have a problem with the application but he disagrees that the easement road is not a public thoroughfare because it is the only way the public gets in and out. He reminded that the variance requirement for the buffer is 15' not 20'. He indicated he believes because of the combination of lots, it results in a lot of variances, which they have had in other areas. He said Tractor Supply will always own the property because that is how they get their sign on Route 9 so they will always retain that easement.

Mr. Dudick asked Mr. Myers if he sees the traffic or fire issues as a problem. Mr. Myers answered he does not.

Mr. Dudick announced the public hearing and asked for comments. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Vucetic. All approved. Public hearing closed.

Mr. Dudick summarized this was inevitable that the property would eventually be developed and the problem becomes is this development reasonable. He added there is a little bit of squeezing to be done but it doesn't seem a big deal.

Mr. Dudick challenged that he doesn't see why Mr. Osterhoudt said if they reduce the size of the building 2000 sq feet it would still need variances. Mr. Myers answered he would still need parking variances. Mr. Dudick argued reducing the size of the building would allow them to meet greenspace. Mr. Osterhoudt agreed they would have more greenspace but he doesn't believe it would meet the 35% on the parcel. Mr. Osterhoudt suggested reducing the size of the building would remove ten parking places but the same situation would remain for access and they would still need a 0' setback for parking on that side.

Mr. Dudick said it doesn't seem like an overly cumbersome development in a highway business corridor and he doesn't have a problem with it.

Mrs. Vucetic asked about fire access. Mr. Myers informed they have not finalized the entrances and exits and they will make sure the radius are there for fire trucks.

Mr. Gifford asked if the entrances are wide enough for fire trucks. Mr. Myers said they are wide enough, the issue was the code says you cannot have two within 100 feet of each other. He explained they will be plenty wide enough and he thinks they will be allowed to leave it because it makes the flow of traffic better.

Mr. Osterhoudt assured that they will be having meetings and will make sure, and informed that DOT will also be involved in it. He said they will also be making some improvements along the way, one of which is to add a sidewalk along the corridor and part of it is in the DOT right of way so they will be looking at that. Mr. Myers said they also plan to have cross access to Parkwood Plaza.

Mr. Osterhoudt pointed it out on the plan showing that the shared access to the north will allow traffic to flow internally rather than having to go out on to Route 9.

Mr. Gifford asked about the 63 parking places and why they don't build out the 8 banked spaces. Mr. Osterhoudt responded saying they already exceed the town requirements for parking and the Planning Board suggested they bank those spaces rather than build them out. He informed they are not counted in the green space but considered that as an impervious area.

Mr. Cifor made the motion to approve the application as submitted. The motion was seconded by Mr. Strother.

Ayes: Strother, Fantini, Cifor, Dudick, Gifford, Vucetic, Bloss Noes: none  
Application approved as submitted (with correction to buffer to 15')

Mr. Dudick explained the appeals process and reason for codes to the students attending the meeting as part of an assignment for a National Issues class from Shenendehowa High School.

The board approved the minutes for the December 3, 2013 meeting. Mr. Fantini abstained as he had not been present at the meeting.

The next meeting is February 4, 2014.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mrs. Vucetic. The meeting was adjourned at 8:25 pm.

Respectfully Submitted,

Susan White  
Secretary

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