

ZONING BOARD OF APPEALS

February 4, 2014

Present: Michael Dudick, Chairman , Michael Bloss, Randy Gifford, Chris Lemire ,
Mario Fantini

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

Absent: Jerry Cifor, Doug Strother, Jennifer Vucetic

Mr. Dudick called the meeting at 7:14 p.m.

PLEDGE OF ALLEGIANCE

Mr. Dudick informed the applicant this is a seven member board with one alternate. Tonight three of the board members are absent and therefore, Mr. Fantini, as alternate, is designated to sit in for Mr. Strother. To receive approval an application one must receive 4 yea votes regardless of the number of members present. There are five members present tonight so the applicant must receive four out of five votes for approval. He explained the applicant has the option to defer to a future date when there might be more members present, but there are no guarantees how many members will be present at any meeting.

OLD BUSINESS

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 continuation of the application was presented by Tyler King, property manager from Equinox Company. Mr. King referred to the last meeting stating they have four criteria to meet in order to grant the appeal. He continued: two of which were no problem, the third was the question if it was self-created and he pointed out the tower had been there since the early 90's. He stated his impression was the board was willing to look past that. He indicated he was back to discuss the issue that was put on them was to show evidence of financial hardship back to the meeting.

Mr. Dudick clarified the board did not waive any of the aspects of the requirements. He said he was attempting to state last time which ones he thought were the greater problem. He added they wanted to give him the opportunity to see what they were looking at and how and why they were.

Mr. King explained that the tower in the shopping center was constructed 20 years ago with a (retail) space behind it and there is not much they can do about it now.

Mr. Bloss asked if the current sign law was in effect when the shopping center was built. Mr. King answered he didn't know and Mr. Peller responded that the law was in effect in 1989 when the shopping center was built.

Mr. King stated they needed to show the financial hardships that would-be tenants and the brokers have had over the years in renting the space. He submitted for the record a letter from their broker and a letter drafted by Mr. King derived from data that came from their comptroller. He said the letter from the broker explains clearly that the big issue they had with national and local businesses turning down the space is because of lack of exposure. He explained every one of them, over the years, has asked if there was any way they could get signage over the tower to show where there business is.

Mr. King said there is a hardship, and, without showing specific financials, he drafted a list of occupants over the years. He detailed the situation with an ice cream shop which lasted less than a year before they went bankrupt which he said was a large part due to having no exposure. He explained the next tenant was a chiropractor who complained constantly that he had no exposure. He said they were lucky it was a doctor's office because it is a destination location. However, he added, they had to grant several rent reductions along the way, with the doctor claiming lack of exposure. Mr. King informed the doctor ended up owing them lots of money, of which they came to a settlement agreement.

He said, as indicated by his broker, they were able to rent to Liberty Tax with the stipulation that Equinox try to get permission to put a sign on the tower.

Mr. King asserted that the clock tower is liked by the other tenants and some use it or its image in their advertising.

He offered to show financial information to the board explaining their specific losses.

Mr. Peller asked if the lease was contingent on the sign. Mr. King answered it is somewhat ambiguous in a sense it is not a deal breaker but the lease states the landlord will do whatever they can to get them a sign on the tower.

Mr. Peller asked if the tenant has moved in, and if this does not go through, will they move out; asking if Equinox has anything in the lease to protect them.

Mr. King answered they have moved in, and yes, there is a possibility they could move out because they do not have something in the lease to protect them. He informed Liberty Tax has a 2 ½ year lease plus five, year options.

Mr. King reminded it is not this particular tenant, but also every other tenant.

Mr. Lemire asked if it has always been a separate suite. Mr. King responded it has. Mr. Lemire followed up, asking if it would solve the problem to combine that space with the spaces on either side.

Mr. King agreed that it would solve the problem. He explained the problem is that, according to the broker, tenants want less than 2000 square feet (which is the size of this space) and as far as the industry goes any big box retailer and on line ordering, stores are becoming smaller and smaller.

Mr. Gifford stated that since the last meeting, he has driven by the space and saw a sign that sticks out like a “sore thumb”. He said he could see it very well. Mr. King informed it is a temporary sign.

Mr. King asked if the sign is above the door, and Mr. Gifford said it is, adding it can be seen clearly and it would be better than on the tower which would be confusing.

Mr. King pointed out that the problem is when someone approaches from head on, and asserted you can hardly see the sign for the barber shop which is to the left of it. He reminded Dr. Ferguson had refused to put a sign above the door, stating “what’s the point”.

Mr. Gifford repeated he can see it now.

Mr. Dudick asked Mr. Myers if there are restrictions on sandwich board signs on the sidewalk. Mr. Myers responded they are not legal if they are over 8 feet square per face. He added below 8 square feet, they are not considered a sign, and in conjunction with that they would be on private property. He stated he didn’t think he would be doing anything with that, either way.

Mr. King responded it is more of a personal thing in trying to keep their mall at a higher level that the landlord is against sandwich board signs.

Mr. Gifford reminded they have one now. Mr. King responded that it was permitted only because of this whole issue and because they are a new business. He continued, saying they are trying to get as many people in because of the hardship.

Mr. Dudick said it is hard to imagine someone doing their taxes on a spur of the moment.

Mr. King disagreed, suggesting if you are worried or nervous about your taxes and you see a sign around the corner, you would say "I might use it".

Mr. Lemire asked where they would place the sign on the tower. Mr. King demonstrated on the plan, saying below the feature that looks like "toast" and above the shutters.

Mr. Peller asked who the first tenant was when the plaza was first built.

Mr. King admitted he did not know as it was before his time, but according to Todd Fisher, it was a long time before anyone took it and then they had to keep lowering the rent. He said the reason for that was always lack of exposure.

Mr. Peller stated that when the plaza was designed, Equinox had the opportunity to look at it and decide if the space was rentable or not rentable and to change the plan accordingly, pointing out that this is very different than saying they inherited it.

Mr. King said he understood.

Mr. Lemire asked when the ice cream store was located there and when did the chiropractor move there. Mr. King said he thought it was the early 2000's for the ice cream store and the space was vacant for two years before the chiropractor moved in. He added there was a very large gap in occupancy before the ice cream store. He said he understands the problem was created by the architect and it was their doing, but indicated they like the clock tower.

Mr. Dudick commented, in his opinion, the space was designed to be a professional office. He said in his experience it seems a logical fit to put a chiropractor in there or medical office or accountant or professional office that doesn't require road frontage.

Mr. King informed that several of the anchor tenants (naming Kohl's, Michaels and Big Lots) require a large percentage of retail that are not professional offices and it is built into their lease. He explained they want the traffic to come in and shop. Mr. Dudick commented again that a doctor's office would be good in there because people go to see their doctor regardless of where it is adding it would be a traffic generator, but not a retail generator.

Mr. King explained their business is retail focused, selling goods such as Mom and Pop places that add to the business of the anchor stores around it. He said in 2008 during hard times, they added an orthodontist. He reiterated that the more non retail and the more non consumer goods they move in there, the less rent and the less happy the anchor stores are, and they would be in violation of other leases. He said because of that, they must keep a certain percentage of retail.

Mr. Lemire asked when the chiropractor moved in and when did he move out. Mr. Dudick answered he moved in in 2004 and Mr. King said he left three or four months ago. Mr. Lemire summarized he was there nine years.

Mr. King informed the chiropractor left owing them \$40,000 in rent and his main argument was lack of exposure. He was on a month to month lease the last two years and during that time their

real estate brokers were trying to rent it. He said the chiropractor was paying next to nothing in rent.

Mr. Lemire asked if he was evicted. Mr. King responded he left on his own.

Mr. Bloss asked the specific rent he was paying as a percentage of others. Mr. King said rent in the mall averages \$18 square foot but the chiropractor was only paying \$6 and that was with no contribution to Triple Met, meaning no taxes, no insurance and no contribution to common area maintenance.

Mr. Peller asked what Liberty is paying. Mr. King informed Liberty has a “gross lease” meaning it doesn’t matter what the Triple Met is, they are paying about \$11 square foot.

Mr. Dudick suggested if they hollowed out the tower and made it four pillars on the bottom, one could see the sign over the door. He asked if that would solve the problem if they didn’t have retail space in it.

Mr. King reminded they have a tenant in the tower and every tenant has loved it, with some tenants building the “tower” into their store name, such as Tower Coin.

Mr. Myers stated he doesn’t see how they can get around the self-created hardship. He added he does not know if Liberty Tax has a permit to be in the building and he knows they don’t have a sign permit. He said he will find out tomorrow.

Mr. Dudick responded he doesn’t see as that has any bearing on the current application. Mr. Myers said if they are in the building illegally it might have some bearing. Mr. King reminded this isn’t specific to Liberty Tax, but they are asking for any tenant they bring forward whether Liberty goes or stays.

Mr. Lemire asked if Equinox owns the building and was told it does. He asked if they are asking for a use variance for a sign on the tower instead of a sandwich board which was suggested as an option.

Mr. King answered no, that he doesn’t think a sandwich board for any retailer would be anything they would want. He rhetorically asked if that would demonstrate sophistication. Mr. Dudick commented “no more than dressing up as the Statue of Liberty”.

Mr. Lemire asked if that need to be seen wouldn’t be met with a sandwich board.

Mr. Dudick again suggested that it is an option if it is less than 8 square feet and since the whole mall is private property there is a lower issue than having a sandwich sign on a town road. He said they are bringing this to Mr. King’s attention as an option.

Mr. King responded that any national tenant such as a restaurant or high end store is going to pass it up if you offer sandwich boards as their main signage. He reminded that the letter from the broker states that several national tenants have already passed it up because they couldn’t have a sign on the tower.

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

Mr. Dudick discussed the situation, stating this is unique because there aren't that many commercial spaces with a clock tower. Saying this is an out-parcel which is fairly common, he indicated it then goes to the architecture and how close to the building can the sign be. He explained, in a discussion in their meetings about a business that has a large parking lot and wanted to put a sign off property, the tenant that has that space will not allow it. He stated that tenants do not want anything in front of them, and that has to be recognized. Equinox, being the landlord, recognizes a profit and benefit from the tower because it creates notoriety. He added they realize a profit because they rent the space within the tower, but they recognize a loss because of the space behind it that very few want.

Mr. Dudick summarized: The issue of self- created hardship is paramount in his mind. He suggested there are options such as: 1) getting a tenant who is willing to expand beyond the 2000 square feet so signage could be seen from either side 2) changing the tower so you could see the signage through the base of the tower or 3) connecting the lower part of the tower to the space behind it so the sign can be on the tower. He commented these options are less desirable than placing a sign where it is not allowed by town law, which creates precedent, of which the board is conscious.

Mr. Dudick stated based on this he would make a motion to deny approval. Mr. Bloss seconded the denial of the application. Mr. Dudick explained that in order for the application to be approved, it has to have 4 yes for approval votes.

Mr. Myers reminded the need for SEQRA declaration before decision is rendered.

Mr. Dudick informed there is a declaration of environmental impact that needs to be made and voted on before the vote on a use variance. He explained that because it is a use variance SEQRA needs to be addressed by board determination and vote whether the application would have a negative impact on the environment.

Mr. Dudick made the motion that this application would not have a negative impact on the environment if it were approved. Mr. Bloss seconded the motion.

SEQRA vote:

Ayes: Lemire, Fantini, Dudick, Gifford, Bloss Noes: none
No negative impact.

Vote to deny application. Yea would be to deny.

Ayes: Lemire, Fantini, Dudick, Gifford, Bloss Noes: none
Application denied based on fact the hardship is self-created and there are other options to remedy.

NEW BUSINESS

None

Mr. Dudick made the motion to approve the minutes for the January 7, 2014 meeting. The motion was seconded by Mr. Gifford. All approved. Mr. Lemire abstained as he had not been present at the meeting.

The next meeting is February 18, 2014. It was noted there is a possibility there are no applications for that meeting, and if so, the meeting will be cancelled.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mr. Gifford. The meeting was adjourned at 7:55 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