

## ZONING BOARD OF APPEALS

April 21, 2015

Present: Michael Dudick, Chairman, Denise Bagramian, Michael Bloss, Jerry Cifor,  
Randy Gifford, Mario Fantini

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

Absent: Jennifer Vucetic, Chris Lemire

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

### PLEDGE OF ALLEGIANCE

Mr. Dudick informed the applicants this is a seven member board with one alternate. Tonight five members are present and the alternate. To receive approval, an application one must receive 4 yea votes regardless of the number of members present. Mr. Fantini is designated to sit in for Mrs. Vucetic. There are six voting members present tonight so the applicant must receive four out of six votes for approval.

### OLD BUSINESS

### NEW BUSINESS

*The secretary read the legal notice as it appeared in the Daily Gazette on April 16, 2015*

**An application from Bruce Tanski for a variance from Section 208-38A(B-3) which sends you to 208-11. Front setback required = 50'; 41' available; variance required=9'. Property is located at 11 Meyer Road, Clifton Park NY 12065 (Permit #81017)**

*The secretary read the legal notice as it appeared in the Daily Gazette on April 16, 2015*

The application was presented by Duane Rabideau, VanGuilder Associates, representing Bruce Tanski. Mr. Rabideau explained the variance they are requesting is for a front setback from the terminus of Meyer Road. Discussing the situation, he said the requirement is 50' and they have 41'. He informed Mr. Tanski owns all of the surrounding parcels, some for the apartment complex but most parcels are vacant. Mr. Tanski is re-doing his house, and taking some of it down and some parts he is leaving. The existing house does not meet all the setbacks and they are going from 22 variances down to one. Mr. Tanski will minimize the variances down to one by combining three parcels into one parcel. He asserted they have an attorney and will guarantee if the variance is granted they will consolidate the parcels.

Mr. Peller asked if part of Meyer Road is privately owned. Mr. Rabideau confirmed that is correct, pointing out the southern portion of it which is owned by Mr. Tanski. Mr. Myers said the road goes through.

Mr. Peller questioned if the parcel is on the private road and if the request for the setback applies to that part of the road. Mr. Myers said it is on the private road. Mr. Rabideau discussed with Mr. Dudick and Mr. Peller the location of the road. Mr. Dudick queried if it was not actually a driveway as opposed to a private road. Mr. Rabideau confirmed that is correct.

Mr. Dudick asked if it has a turnaround. Mr. Myers said it does not and suggested that is a highway issue. He added he assumes that the highway department turns around there somehow. Mr. Rabideau pointed out there is a little "t" where they can back in and turn around. Mr. Gifford commented there is a dead end sign on one end of one side of the road and a gate on the other end.

Mr. Myers advised the board that it is not unusual and there are other similar roads in town where they back up and turn around.

Mr. Peller summarized they are looking at a road on a dedicated property. Mr. Myers confirmed that is correct.

Mr. Myers opined this is bringing all the setbacks to the current zoning requirements and it is a good thing. He said the road issue would be addressed by Mr. Kukuk if he wishes to, but it has been like that for years. Mr. Dudick asked if this would be a time to contact the highway department and Mr. Myers reminded it is not the same issue. Mr. Peller agreed. Mr. Myers stated it is a lot line adjustment and Planning will see it.

Mr. Gifford asked a few questions regarding the location of the road. Mr. Dudick commented Meyer Road is the old Route 9 and speculated when the road was sold. Mr. Myers suggested when they put the new Route 9 in, the state might have sold the property the old Route 9 was on. Mr. Dudick asked again if it was definitely a private road and Mr. Rabideau confirmed it is.

Mr. Fantini asked why the house could not be moved back to meet the setback requirements. Mr. Rabideau explained it is an existing house. Mr. Fantini reasoned the house is coming down. Mr. Rabideau repeated there are sections that are being left and by the time the design was completed and they had checked with zoning requirements, they had reduced the variances to only one.

Mr. Cifor pointed out that this is a 9 foot setback from a dead end road and does not have significant impact to the public.

Mr. Dudick declared he does not see this as a big deal. Mr. Rabideau showed a photo of the dead end street that shows the visual impact and reiterated Mr. Tanski owns all the land around. He said the impact to the neighborhood is a plus in that he is improving the house.

Mr. Dudick asked for public comment. There were no comments. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Bloss. All approved. Public hearing closed.

Mr. Cifor made the motion that the application be approved for a 9' variance contingent with the three parcels being consolidated into one parcel.

Mr. Dudick questioned Mr. Rabideau as to whether he is in a position to agree to it. Mr. Rabideau responded "yes because we have correspondence with the attorney and they had said if the variance is granted they will go ahead with it and if not, they will stay separate parcels."

Mr. Myers volunteered that he had written that in as part of the description of the variance. He said he submitted because it was there.

Mr. Dudick commented it is not necessarily a stipulation and was submitted with the understanding there will be a consolidation of three lots.

Mr. Gifford seconded the motion.

Ayes: Bagramian, Cifor, Dudick, Gifford, Fantini, Bloss Noes: none  
Application approved as submitted.

**An application from The Crossing LLC for a variance from Section 171, Table I which allows a maximum of 150 sq. ft. for freestanding sign. Variance #21961 (1993) granted 120 sq. ft. but is actually 90 sq. ft. Current sign is 237 sq. ft. and 36' high. Request is for additional tenant(s) panel of 185 sq. ft. for total additional variance (87+ 185=272 sq. ft. over 150 sq. ft. allowed.**

**Property is located at Route 146, Clifton Park, NY 12065 (Permit #81019)**

The application was presented by Paul Goldman, attorney, representing the developer. He informed he has been involved with the redevelopment of the center. He explained the 185sq.ft. variance is for a panel they wish to install on the freestanding sign.

Mr. Goldman discussed the disadvantage the Crossing has due to its location which is away from and below the road (Rt 146). He submitted a letter from Saratoga Planning Board, signed by Jason Kemper, which indicated the board found no significant impact county-wide. Mr. Dudick read the letter into the record.

Mr. Goldman went on to explain they don't have enough signage for the shopping center. He stated it is his understanding that signage is by tax parcel. He explained Target, Kohl's and

Michaels (all long term tenants) are on their own tax parcels and all the Crossing has is the Big Lots piece. Target owns its own property, Kohl's has a 49 year lease and Michaels was a freestanding store that is another long term tenant. He explained they only have about 14.6 sq.ft. of space for the balance of the center and they would like to put in more. He asserted the retail business is very competitive and signage is a critical component. He recounted the history of the center around 9-11 at the time they lost Builders Square and Grand Union and they almost lost the center which is when the town helped them. He pointed out Michaels was originally MJ Design that went bankrupt and they are in the same position now that Office Depot, Office Max and Staples are being consolidated. He reiterated signage is a critical component.

Mr. Goldman presented several exhibits which he discussed, the first being their signage agreements with Target and Kohl's and tax maps which included square footage of each store.

He emphasized that when someone is driving on the Northway, the property is obscured because of the berm and the configuration of the property. He stated they do not have a lot of frontage except on Sitterly Road.

Mr. Goldman referred to the other sign (which is on Route 9 on Halfmoon property). He said Target gets top billing, followed by Kohl's. He maintained the signage analysis shows the signage at 38 ½ sq. ft. and if you add in the sign in Halfmoon, it is 190 sq. ft. which is not sufficient. They only have a small section on the sign for the other stores. He stated he believes the request is reasonable in the context of where it is located, reminding the Board that the town wants the center to be successful because it provides sales tax income for the town.

Mr. Peller asked Mr. Myers if he had found the permit for the construction of the sign. Mr. Myers said he had not found the actual permit, nor one for any setback variance approvals or for the sign on Sitterly Road. He indicated he tends to believe that it was done, and pointed out that going back this far, there are permits missing.

Mr. Goldman said when they came to the board in 2001 for the building of Target, etc, he knows everything had been completed.

Mr. Dudick remarked that it would be hard to believe that a sign that size would have been erected in Clifton Park without permits. Mr. Myers agreed and suggested that maybe the owner might be able to provide some records to verify. Mr. Goldman said he wasn't aware this was a problem until now.

Mr. Myers said he would like to complete his records because he can't find it. Mr. Goldman pledged to the board they would do a diligent investigation to find whatever they can and he knows the issue did not come up in 2001 when they did Target and Kohl's.

Mrs. Bagramian inquired whether the additional space is for current or new tenants. Mr. Goldman replied the space will be for new or replacement tenants. He said they are probably looking at a vacancy with Office Max, Staples and Office Depot combining. He related the conversation he had with a potential tenant who declined to rent because they would have had no signage because this center is buried in a hole. He promised they will jealously guard their signage rights for new development.

Mr. Dudick articulated they are looking at the need for signage vs the town zoning regarding signage. He pointed out the need for signage is the same for all tenants throughout the town and he is weighing this. He recounted a sign request the board received a few weeks ago with a shopping center that had given away larger signs to an anchor tenant and are now asking for more signage below the larger sign.

Mr. Goldman repeated this center has four parcels. Mr. Dudick said Target, Kohl's and Michaels, not being on the property would not even qualify to have signage on it. Mr. Goldman contended it was permitted. Mr. Myers pointed out that these are off-premises signage and why it was done he cannot say because it was over twenty years ago. Mr. Goldman said it was once a single parcel and was subdivided. He suggested that the town did not want to have two vacant stores the size of Grand Union and Builders Square and at the time, the town helped them out and the size got swept under the rug. He repeated he doesn't think the request is excessive and it balances out with the size of the sign in Halfmoon. He suggested that the town signage law is maybe too restrictive, pointing out a it says a sign is supposed to be attractive and reasoning that their sign is not unattractive.

Mr. Dudick read the criteria for an area variance, listing each one. Mr. Goldman stated that he believes he has answered each one in the application. Mr. Dudick challenged he cannot deny it is a substantial increase. Mr. Goldman argued that it is not substantial if you look at it per tax parcel and the reason people come to the Zoning Board of Appeals is for relief. He referred to the Crossing's location saying it is not controversial because you go by the property, take a right and you go right past it. He claimed it is obscured by Cracker Barrel, Sunmark and the apartments in the front of it.

Mr. Dudick read the criteria "whether the benefit can be achieved by other means feasible to the applicant". Mr. Goldman responded one means would be to put multiple pylon signs in front of each parcel which would be unattractive and not in the interest of the community. He said in terms of what it could be, it's not bad.

Mr. Dudick read "whether it creates an undesirable change or detriment to nearby properties and also whether it creates an adverse physical and environmental effect." Mr. Goldman argued it doesn't affect other properties because it is a commercial district and pointed out the property sits down in a hole and won't affect anything.

He said for 185 sq. ft. and the position they are in and looking at the Halfmoon sign, it is a reasonable request.

Mr. Dudick asserted they haven't brought presented to the board a particular tenant in the wings so they are projecting for the future. He asked if they need 140' x 190' signage without having anyone. Mr. Goldman answered they know Office Max, which is 30,000 sq. ft. is definitely going to be a problem for them. He said they would like to put in some out lots in front of Kohl's along the road and that they would need signage.

Mr. Myers questioned if they are talking out lots, would they have to come back to the board for signage. Mr. Dudick questioned whether the out lots would be separate parcels. Mr. Goldman

said he can't say with certainty either way, but right now there is no subdivided land in out lots. Mr. Myers said he just wants to get ahead of this, pointing out if it is done now, what would happen in the future with subdivision and if they want to put up a sign for a separate parcel it becomes a use variance. Mr. Goldman questioned if that would be part of the planning process if or when they came for subdivision approval. Mr. Myers informed signs are never part of the subdivision approval as they are a separate entity. He pointed out that if it happens in the future (subdivision) the question is would they be allowed to put signs on the pylon as they have so far. Mr. Peller said it is certainly more justifiable now.

Mr. Myers suggested maybe they could not have to deal with this down the road. Mr. Peller said they would have to come back.

Mrs. Bagramian asked if they would be putting the sign up all at once or wait until they get a new tenant.

Mr. Tyler King, property manager for the Crossing, answered, saying they would be putting it up all at once but it would be for new or replacement tenants. Mr. Goldman added they don't want to have a blank sign, so they would be putting it up when they have the first use or new tenant.

Mr. Dudick asked if one tenant moves out and another moves in would that be considered a new tenant. Mr. Goldman informed that would be an infill tenant and repeated they will jealously guard that space.

Mr. Gifford asked if the larger signage could be changed. Mr. Goldman answered that once signage has been committed they would have to go back and negotiate. He asserted that to go to Kohl's or Target to reduce the size of their signs would take an act of Congress. He explained this is just one store of thousands across the country and they (headquarters) are located in Minnesota.

Mr. Gifford asked if tenants could request to move signage around. Mr. King explained they would not allow that, adding Kohl's sign is in their lease. Mr. Peller summarized the Crossing would not allow tenants to change around their signs. Mr. King repeated they would guard the signage and the signage would be for new large tenants.

Mr. Dudick asked for public comments. There were none.

Mr. Myers weighed in, saying he had met with several people about the sign. He pointed out it will be the largest variance and freestanding sign in town, but he believes, given the location, if they were going to do it, this would be the one to do it. He reminded the board of the previous application from another shopping center and stated he would say absolutely not on that one because it was too big on that site. He opined that, because of the distance from the road and the elevation in relation to the road, he doesn't think this one is that bad an addition.

Mr. Dudick, playing devil's advocate, asked Mr. Myers what if DCG wants a similar sign for the center on 146. Mr. Myers answered maybe, and informed he had suggested to the Crossing they might consider going digital but they indicated they don't want to entertain that. He commented that DCG is trying to get their advertising up and over the restaurants in front of their plaza

which is why their sign is up so high. He pointed out the Crossing relies on traffic right next to it. Mr. Dudick asked about Shoppers World and Hannaford Plaza. Mr. Myers replied he wouldn't be surprised if they put up a new sign eventually because of the new Price Chopper but he doesn't know what.

Mr. Myers stated he doesn't want to say this is a precedent for very large signs in town but reminded they have made very large exceptions for signage in the past because of problems like this. He cited Moradians and Hilton where buildings are high or far from the road.

Mr. Peller asked Mr. Myers if he agrees with him that that this situation is unique enough that it is easily justifiable. Mr. Myers said absolutely because it started as one or two parcels. He said he wants to get ahead of the game in case Mr. Goldman comes to him with more outparcels that want to use the sign. He might have to say it is an off-site sign, but based on the previous decision it will make it easier and having good reason to do it.

Mr. Dudick asked what the minimum store size would be for a new tenant to be on the sign. Mr. King said it wouldn't be for anything under Office Max's size and then said it could be around 10,000 sq. ft.

Mr. Dudick commented he is envisioning 20-30 small signs. Mr. King said they are willing to cap it off at no more than four panels because they don't want a hodgepodge of little signs, adding they couldn't be seen anyway. He promised they would have only four panels.

Mr. Fantini asked why this application is not a use variance that is becoming more non-conforming. Mr. Goldman responded because it is grandfathered and it is an area variance because it is a size change.

Mr. Peller reminded there are no records and for that reason they have to go on the assumption that it was previously granted.

Mr. Myers corrected that they call this a pre-existing non-conforming not grandfathered and he cannot prove otherwise. Mr. Dudick said his recollection is that the Grand Union parcel was cut out of the plaza at Kohl's request and the sign was already there for Grand Union and Kohl's took it over.

Mr. Myers said he has the permit for when Target was Builders Square.

Mr. Myers explained to Mr. Fantini that if they requested a new sign off the parcel it would definitely be a use variance, but because of the conditions of how this came to be, they can't get there. Mr. Dudick summarized that at this moment there are no proposed subdivisions and this is why it is an area variance and not a use variance.

Mr. Dudick made the motion to close the public hearing, seconded by Mr. Gifford.

Mr. Gifford asked what determines the size of the sign, supposing Wheatfield's is bought out as a new corporation. Mr. King answered the sign is governed by the lease but it does not give them the right to expand. Mr. Gifford persisted, asking what if they bought out half of Office

Max and added it to Wheatfields. Mr. King said in that situation it would be a new lease and they would welcome a 15,000 sq.ft. restaurant.

Mr. Gifford insisted that a new tenant may want a larger sign and say if they can't have a larger sign, they won't sign the lease. Mr. King said that is why they have zoning laws and the zoning board. He said they have a good relationship with the town and the town has helped them. He reminded they have to work together and why they are committing to put no more than four panels.

Mr. Dudick asked Mr. Myers his opinion. Mr. Myers said he thinks its fine.

Mr. Fantini commented that based on Kohl's, Michaels and Big Lots they take up  $\frac{3}{4}$  of the square footage so he can see  $\frac{1}{4}$  more signage but doesn't see why they need to double the sign. Mrs. Bagramian asked if the sign is going to be a tool to market for the out lots. Mr. Goldman said when you see the letter from the Dartmouth Company they are saying no signage is a real problem.

Mr. Gifford asked whether the commuter parking lot helps business. Mr. Goldman answered that the retail stores don't like it and think it's a real problem because people come, take the bus and then come back and leave. It doesn't provide the nexus for shopping and they need vitality and a mix where people will stay and walk around.

Mr. Bloss made the motion to approve the application as submitted, with the stipulation that there be no more than four new panels. Mr. Gifford seconded the motion.

Mr. Dudick asked if it would be four on each side. Mr. Goldman said it would be four two sided panels.

Mr. Dudick repeated it would be no more than four different tenants. Mr. Goldman corrected saying four two-sided sign panels.

Mr. Fantini stated he thinks this is an unreasonably large request given the fact that the current tenants represent  $\frac{3}{4}$  of the sign and only  $\frac{1}{4}$  of the sign represents the remaining tenants.

Ayes: Dudick, Bagramian, Cifor, Gifford, Bloss Noes: Fantini

Application approved with stipulation.

Mr. Dudick made the motion to approve the minutes for the April 7, 2015 meeting, seconded by Mrs. Bagramian. All approved with Mr. Cifor abstaining as he had not been present at that meeting.

The next meeting is May 5, 2015.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mr. Cifor. The meeting was adjourned at 8:15 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