

Village of Lansing
Board of Zoning Appeals
April 23, 2002

The meeting of the Village of Lansing Board of Zoning Appeals was convened at 7:31 P.M. by Acting Chairperson Mary Sirois. Present at the meeting were Board members John Dennis, Don Eckrich, Lorraine Johnson and Mike Ward, Code Enforcement Officer Curtis, Acting Village Attorney William Troy, and members of the public.

Appeal No. 2002-2, USNC, 59 Dart Dr., signage:

The first item on the agenda was Appeal No. 2002-2, UCNS (University Cooperative Nursery School), 59 Dart Drive to allow the installation of nine square foot freestanding sign identifying the nursery school at 59 Dart Drive in the Medium Density Residential District, Tax Parcel No. 46.1-2-11.2 A variance is required because Article V, Section 2 of the Village of Lansing Sign Law does not permit a sign for a nursery school in a residential district.

Curtis has received proof of mailing for supplementary notice to owners of contiguous properties.

Jeffrey Silber, parent, made the presentation for UCNS. He stated they have been there for the last 2 or 3 years and are requesting a sign of approx. 9 sq. ft. (23 inches by 56 inches) to be placed on the lawn in front of the school. The double faced sign will be perpendicular to Dart Dr. It will benefit the neighborhood by increasing traffic safety by alerting drivers that there is a school there. It will also benefit those coming to the school and the neighbors by identifying the property. The presence of the sign may also curb the speed in that area of Dart Drive. The group is interested in sprucing up the area also. Johnson asked why the applicant felt there was a need for a sign. Silber responded that people have stated they could not find the school. Johnson stated there is a sign on the house indicating UCNS and she did not have difficulty finding it. Silber stated the sign is flush mounted and unless someone is specifically looking for it, it is hard to see there is a nursery school there. Ward asked about the color scheme. Silber responded that it would be in children tones. Eckrich stated the proposal states it will be a white background with single color lettering and logo. Silber stated he has only seen the sketch in black and white so he was unfamiliar with the actual proposed coloring.

Curtis stated that outside the shopping malls, for an area such as that where Billy Bob Jacks is located one 9 square foot sign freestanding sign is permitted in addition to a building mounted sign and in the Farm and Craft Market Combining District on East Shore Drive one unlit 9 square foot freestanding sign is permitted. The top of the signs in residential districts must not be over 5 feet high. The proposed sign is four foot six inches high. Eckrich asked if there have been problems with speeding on Dart Drive which might make it hard to find the location because he noted the posted speed limit was 25 MPH. Curtis and Sirois stated there have always been problems with speeding on that road and cars have gone off the road at the 90 degree turn. Johnson asked about speed bumps and Curtis responded that they are not permitted. Ward asked about using school signs. Troy did not feel a

nursery school would qualify.

Curtis stated this property has gone from a home occupation to a day care center where no one resides. Regarding the color issue, Silber could provide a color scheme for approval before installing the sign. Troy stated a condition of approval can have specific requirements. Silber stated the property is owned by Cornell but it is a private nursery school.

Ward moved to close the Public Hearing. Seconded by Dennis. All aye.

Sirois asked Ward if he wanted to place conditions concerning color on any approval of this variance. Ward is concerned about the color of the sign but would like the sign installed for safety reasons as he was unaware that the school was even operating there at this time. Ward stated it is difficult to see the school from the west due to the trees in that area. Curtis stated they would currently be allowed a one square foot mounted sign identifying the occupants. Ward stated he has not seen the existing sign on the building. Johnson stated the current sign is larger than one square foot. Sirois stated that this property is the first place on Dart Drive off of Warren Road on the south side and, if identified by a sign, might act as a deterrent for speeding. The Board discussed various signs and permitted locations throughout the village. Dennis stated that from a safety perspective, as a motorist, he would prefer to see a sign warning of children more so than the ones commonly installed for deer. Johnson stated if clubs are allowed signage in a residential area, she would approve a school having signage if it were a natural looking sign that blended with the environment.

Ward moved to approve the appeal for the sign as proposed with conditions. Seconded by Dennis.

The Board considered the following:

- a) *Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by granting the area variance.*

Finding: It will be a desirable change. The benefits will outweigh the detriments because traffic may be slowed by motorists knowing of the location of the school. There was also no one present who spoke against the proposed sign.

- b) *Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance.*

Finding: Yes. The school has already placed a sign on the building.

- c) *Whether the requested area variance is substantial.*

Finding: The proposed sign is not substantial with appropriate conditions placed upon it by

this Board.

- d) *Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.*

Finding: No. It will not have an adverse impact as long as the proposed conditions are met.

- e) *Whether the alleged difficulty was self-created.*

Finding: No. It was not self-created because the business was already there.

The Board reviewed the conditions for Appeal 2002-2. (1) Approval by the Code Enforcement Officer of materials and colors (natural materials and muted colors) to be submitted by applicant. (2) Variance is in effect only for state-registered nursery school tenants and a change of use for this property will make the variance null and void. (3) The sign will not be lighted.

Sirois called for a vote to approve Appeal 2002-2 with the noted conditions. All aye. Upon receipt of materials and colors, Curtis will ask Sirois to review the submission.

Appeal 2002-1, Bradley C. Grey, 45 Dart Dr., RE Target Store

The Board continued their discussion from March 19, 2002. First, it was noted that the public comment period was still open. Edward Premo, counsel for the petitioner, Mr. Grey, spoke first. He stated additional written information has been submitted since the last hearing which covers their arguments and comments and they have nothing additional to add at this time. The next individual to speak was J. Michael Naughton, counsel for Pyramid Mall, who provided the Board with a letter and photos of ongoing construction of the Target Store so the Board could see the status of the project as of today.

Ward moved to close the Public Comment Period. Seconded by Eckrich. All aye.

Troy spoke next. He indicated that at the last session he proposed to draft a decision for the Board's consideration. He has done so and it will be marked as Exhibit 1 for the records. Board members were e-mailed this yesterday. Troy provided copies for each counsel. The document is basically a framework for decision-making for the Board's use. Troy stated the issues are broken down after proposed Findings of Fact and then various outcome options are listed for the Board's considerations. Troy also emphasized to the Board that it is their decision to make and not his.

Sirois recommended that the Board go through the process step-by-step. Sirois stated that the applicant's request has not varied since the application for the variance was received and the 6 points are stated on pages 1 and 2. Troy stated after the 6 points, he gave a paragraph or brief history of the appeal. Following that is a paragraph for either granting or dismissing this appeal and this will not be

completed until the other decisions are reached. Then there are Roman numerals assigned to sections I-VI; Section I is proposed findings of fact; Section II deals with the issue of standing and there are 3 choices although the Board can come up with others; Section III deals with timeliness and there are 3 options listed; Section IV deals with the argument based on Section 239 of Municipal Law; Section V deals with allegations of improper submission of plans; Section VI addresses the environmental review. Troy stated the WHEREFORES at the end will be for the signatures of Board members.

Troy stated he has a disk of the draft document so changes can be made as needed and reprinted for signatures by the Board members if and when they reach a decision.

The Board began reviewing the document provided by Troy.

Sirois read through items 1-12 of Section I. Dennis requested additional information be provided between items (3) and (4) providing more information on the definition of large-scale development. He would like to see more details incorporated into the body of the findings of facts rather than references to sections of the Zoning Law or other documents. Dennis feels this is a large-scale development and that the permit was not handled correctly in the first place. Troy stated the timeliness regarding the definition of large-scale development will be addressed in Section III. Sirois recommended waiting until Section III to further discuss this topic. Regarding item (4), Ned Hickey, Planning Board Chairman, noted that after an independent traffic study was completed, it was determined that Pyramid Mall would be required to limit their expansion to 150,000 sf.

Johnson asked Troy for clarification of the approval of the proposed expansion of Pyramid Mall and whether there were any conditions placed upon Pyramid. Troy responded that Premo's papers have an Exhibit G showing the minutes of the Planning Board listing 7 conditions. Johnson stated there were no conditions as to the type of retail space. Troy stated there was nothing in the minutes. Sirois stated the Village has no say as to what type of stores are in Pyramid Mall.

Section II. Troy stated the threshold issue of standing is presented here. Troy stated there are 3 cases cited by Naughton and 2 cases cited by Premo. Dennis corrected it to state there are 3 cases cited by Premo. Troy stated there are two grounds for challenges: 1) Proximity to the proposed development or 2) unique/special difficulty or effect as a result of the proposed development. The cases he has given to the Board for review suggest that ½ mile may be too far away from a proposed development to confer standing. The other issue is the uniqueness and Troy felt there are two choices for the Board to consider. Johnson stated that she feels there is no exact definition regarding distance so she drove down from Grey's house to the mall and she could not see where he would suffer any more than anyone else. Dennis responded that the issue is whether the residents of Dart Drive and Graham Rd. collectively as a group would suffer from traffic issues. According to the Creighton Manning Study he sees Dart Dr. as having 5 times the amount of traffic as compared to Oakcrest Road. Also from personal experience, he sees that road as high traffic and he does not bike there during peak hours. Johnson stated that the issue is not for all the residents of that road but specifically for Mr. Grey.

The Board silently read the three options as drafted by Troy. Dennis summarized his sense after having reviewed all cases presented, that he feels all residents on Dart Drive have a lot of traffic because it is a corridor between two north and south roads and it has apartment complexes on it. Dennis sees this corridor as being used as a main corridor and those residents will have a large amount of traffic. Sirois took a vote of the options in the draft decision (attached): Option A - none; Option B - 4 votes (Eckrich, Johnson, Sirois and Ward); Option C - 1 vote (Dennis).

Section III. Troy stated he has given the Board three options regarding timeliness for challenging the Code Enforcement Officer's determination that the proposed development was not a large-scale development. Troy stated the claims for improper review of plans, segmented environmental review may be timely claims. The determination regarding large-scale development, however, was made on June 24, 1999 and a timely appeal of that decision must be made within 60 days of that date. The approval for the 150,000 sf expansion had a 60-day time limit for appeal and that expired in March 2001. Ward stated the only thing he sees different is the permit number for the Special Permit was 1466 and this Building Permit number is 1701. Troy reviewed the three options. Option A states this appeal is untimely. Option B states the appeal is timely and the Code Officer's decision was improperly arrived at. Option C states the decision is timely but that the appeal does not have merit. Troy would recommend the Board adopt Option A.

Dennis asked for clarification on Option B. He feels there is a difference between having a Home Depot and a Target store. Johnson stated that it is irrelevant what store goes in Pyramid Mall as long as it falls within the 150,000 sf approved by the Planning Board; the Village is not in a position to determine which stores go in the Mall. Dennis stated he has contacted Sear Brown regarding traffic. Ward stated the initial traffic study was based on retail space rather than specific stores and he referenced the Premo document. Troy stated the timeliness issue must be decided first. Dennis felt there were two issues in Option B, timeliness and failure to treat the project as a large-scale development. Dennis feels since this is a new permit then the failure to treat the project as a large-scale development can be appealed again at this time. Ward stated that he sees this new permit as being the same as the prior permit and the time has expired for appeal of the first permit. Curtis stated he has issued several building permits for this project since the approval of the original special permit. Troy stated under Special Permit 1466, there is this building permit, 1701 for Target and it meets the criteria as previously approved under the Special Permit.

The Board took a 5 minute recess.

Sirois took a vote on the options: Option A – 4 votes (Eckrich, Johnson, Sirois and Ward) Option B – 1 vote (Dennis) Option C – none. Dennis stated he is voting for Option B because the target Store is in excess of 75,000 sf which he feels is the thresh-hold of large scale development for a Type I action. He also feels the previous error regarding large scale development is being repeated and it should be corrected at this time. Curtis stated this section of the law is poorly written and he has communicated with the attorney, Planning Board chairman and Mayor regarding this section and he is

confident with the decision he has made.

Section IV. Troy stated this section does not have options. After reviewing the record, Troy felt this argument advanced by Grey does not have merit as the Tompkins County Planning Department reviewed the original proposal as well as the 150,000 sf amendment, the Village Planning Board considered the County's comments and approved the Special Permit with a supermajority vote as required under 239.

Section V. Troy stated this deals with the allegation of improper plans submitted and reviewed. Troy felt Curtis acted properly and the draft reflects this. Dennis reiterated his request for a glossary of terms and feels he is unfamiliar with many of the terms and may abstain on this section.

Section VI deals with an improper segmented environmental review of the proposed expansion. Troy stated that when Premo wrote his papers and submitted them to the Board, there was a question of whether Home Depot was or was not going to come to Pyramid Mall. Troy stated Home Depot never formally submitted an application and, even if they had, it would have been withdrawn because they are not coming to the Mall. Therefore there is no segmented environmental review because there will be no Home Depot store. Troy stated the conditions of the Special Permit have never changed except for three minor changes in configuration.

Troy reviewed the entire draft and the changes made by the Board. Page 2 – The Board chose Option A stating the appeal/request should be dismissed. Page 3 – Paragraph (4) will remain as written. Page 4 – Paragraph (9) remove the word again; Paragraph (12) to reflect the distance as one-half mile to one mile as proposed by both counsels. Page 5 – The Board chose Option B. Page 6 – The Board chose Option A. On the last page, the Board would leave in the first WHEREFORE clause with four signatures and then language added stating a dissent by Dennis with his signature.

The Board recessed so Curtis and Troy could make the proposed changes to the draft. Dennis, with the assistance of Premo, added his dissent to the end of the draft.

The Board reconvened and signed the Decision (Eckrich, Johnson, Sirois and Ward in support). Dennis signed the dissent at the end.

Approval of Minutes – Oct. 16

Next, Eckrich approved the minutes of October 16 as submitted. Seconded by Johnson. All aye.

Adjournment

Johnson moved to adjourn the meeting at 10:20 P.M. Seconded by Eckrich. All aye.