

**Village of Lansing
Board of Zoning Appeals
June 18, 2002**

The meeting of the Village of Lansing Board of Zoning Appeals was convened at 7:30 P.M. by Acting Chairperson Mary Sirois. Present at the meeting were Board members John Dennis, Don Eckrich, and Mike Ward, Code Enforcement Officer Ben Curtis, Village Attorney William Troy, and members of the public.

Appeal No. 2002-3, Cornell Real Estate, 95 Thornwood Drive, B & T Park:

The first item on the agenda was Appeal No. 2002-3, Cornell Real Estate, Cornell Business and Technology Park, requesting a variance from Section 202.09(e)(4) of the Village of Lansing Zoning Law to construct an approximately 350sf pergola 20 feet from the front property line facing Thornwood Drive of their property at 95 Brown Road. A variance is required because the pergola is a structure required to be set back 75 feet from a front property line in the Business and Technology District. Tax parcel No. 45.1-1-55.8

Curtis has received proof of mailing for the adjoining property owner, the Tompkins County Airport. Curtis noted that the airport did not receive the notice 5 days prior as required but Airport Manager Bob Nichols wrote a letter acknowledging he had received the late notice and that he had no concerns with the pergola.

Melissa Dietrich, project manager for Cornell Real Estate Department, made the presentation. Dietrich stated they are requesting a variance to construct a pergola on an existing foundation. The pathway was extended last year to this site from the road with the hopes of placing a gazebo or pergola in that location. Site plans were reviewed indicating the site to be 53 ft. from the road center and 20 ft. from the property line. It will be constructed of natural cedar and is a half circle facing the large pond and encompasses only a portion of the foundation. Detrick stated the park area is also used by residents and others as well as park employees. Eckrich was previously concerned about the proximity from the road but it was noted that the site is slightly elevated and the structure will be open.

There being no one else who wished to speak, Ward moved to close the Public Hearing. Seconded by Dennis. All aye.

Ward moved to grant Appeal 2002-3. Seconded by Eckrich.

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: No. It will be the opposite.

- 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: Ward felt another way would be to dig up the foundation, plant grass and place the pergola in another site. Eckrich stated that the feasibility of doing so was questionable.

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

Finding: The Board determined it is not substantial and would make the site more attractive and is well-suited to the site.

- 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 would be an improvement.

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

Finding: Not really as the foundation was pre-existing.

A vote was taken to approve Appeal 2002-3. All aye.

Curtis noted this is an exempt action under SEQRA.

Appeal No. 2002-4, Bomax Properties, 2415 N. Triphammer Rd.:

The second item on the agenda was Appeal No. 2002-4, Bomax Properties to lease existing space in the building at 2415 N. Triphammer Road, in the Commercial Low Traffic District, to a business that does Commercial Assembly Soft Goods, a use not permitted under Section 202.07(a)-(d) of the Village of Lansing Zoning Law in the Commercial Low Traffic District. Tax Parcel No. 45.1-1-46.3

Bob Dean, the building owner, provided proof of notification to adjoining property owners.

Dean made the presentation and gave a brief history of the businesses which have utilized the site since 1979 when it was a car dealership. From 1981 until 1994, it was used as a light electronic assembly operation after which time it was renovated for multi-tenant use. Rental of the space in Commercial Low Traffic has been difficult. Glyph Technology has now offered to rent 13,000 sf of space for a soft assembly business. Dean stated that Maxim Technologies, the previous tenant for this space, has moved to the Cortland area. Glyph Industries is currently in downtown Ithaca and would like to relocate to this site. Dean showed the Board a plan depicting where the business would be located

within the building including provision for shipping and receiving in the rear. Dean stated the company basically assembles audio and video data storage devices. Dean has been involved with them for five years and would like to move them in in July or August. Currently there are 28 employees. Parking has been extended in the back and will soon be blacktopped so there will be plenty of space for employees and visitors. Other tenants currently in the building include physical therapist, Dr. Molino, and RP Solutions.

Sirois questioned how deliveries would be made to the site. Dean responded that it was mostly by ground transportation such as UPS and Fed Ex. Dean said there would also be about one semi per week bringing in supplies.

Troy asked if, with changing technology, there might be need for additional trucks in the future. Dean stated the business is geared for the audio and video industry but is moving into digital which requires smaller spaces for much more information. Dean does not predict an increase in the size of the product but rather they are becoming smaller. Troy was concerned about the demand for the product increasing and requiring additional trucks. Dean did not think this likely.

Dennis asked how many hard drives are shipped per month. Dean responded about 250-300. Dean stated the company usually ships on Wednesdays and Fridays. Multiple drives are sent 6-8 per package.

Eckrich stated the BZA has received a memo from Ned Hickey and the Planning Board with their recommendations contingent upon the BZA granting a variance. Eckrich is concerned that the business might grow beyond the number of people who were employed there previously. Eckrich wondered if a condition could be included that would require review at a later date as there is always the possibility that this might grow to a large business unsuitable for the neighborhood. Eckrich would like to see a periodic review of the business. Dean responded that there is not enough space in the building for 150 employees although it could sustain 70-75 employees which would be double the amount of employees now. Dean noted that he has about 16 acres of land available on Bomax Drive where TransAct Technologies is located. TransAct just added an additional 12,000 sf of space and now has 72,000 sf of space with 140 employees. Dean would like to maintain Glyph as a tenant and if they outgrew the space on N. Triphammer Rd. he would consider building another building on Bomax Drive. Leases are normally for 3 years and he is contemplating the lease with Glyph for 4 years.

Troy asked for the maximum number of employees that could reasonably use the building. Dean stated when Deanco and Bob Dean occupied the entire building, there were about 170 employees with another 10-12 elsewhere in the country. At that time, there was about one semi coming to the site per day.

Eckrich noted that warehousing and storage of goods is allowed in the CLT. Ward noted that the only reason it is before the BZA is because it is the manufacturing of software and the prior

grandfathered use of light electronic assembly from 1981 to 1994 has expired. Curtis stated Dean would need to return to both the Planning Board and the BZA to enlarge the building and additional conditions could be set at that time. Curtis stated there could also be a condition imposed limiting the number of tractor trailer loads and exceeding this would require them to return to the BZA.

Eckrich was concerned about the size as well as the manufacturing of the product. Although currently there is no soldering, things may change in the future. Troy felt this might be the basis for a condition set by the Planning Board.

Eckrich asked about the light assembly of goods and whether there would be any chemicals involved. Dean stated no. Dennis asked about tests for the product and Dean responded that the hard drives are tested for an hour with the software. When returned from the field, repair tests are run for refurbishing.

John Piscopo in the audience stated he felt that fire insurance determines how many employees there may be.

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

Dennis felt he would like to facilitate this approval and send it back to the Planning Board. He would question Ned Hickey's reasoning that each case like this be approved independently. Dennis would like to know about the problems property owners are having locating uses such as this in the CLT district and would like to hear from Dean regarding this. Dean responded that he received inquiries about uses which were not permitted in the CLT so he did not pursue them, such as banks and restaurants with take-out.

Dennis made the motion to grant Appeal 2002-4 and send it back to the Planning Board with a variance with no need for the BZA to review it again. Seconded by Ward.

The Board completed the SEQR Short Environmental Assessment Form Part II as follows: A – No; B – No; C1 – Sirois questioned the cut of the soil bank and parking in the rear. Curtis stated this would be handled in the Special Permit process. Currently there is a site improvement permit for bank removal but not parking. Dennis wanted to go on record as stating he is disappointed with parking lots in the Village with vast expanses of asphalt and he would like to see permeable surfaces retained for vegetation and to allow the water to return to the aquifer. Curtis stated the Planning Board would look at impermeable surfaces and parking as part of the Special Permit process. No; C2 – No; C3 – No; C4 – No; C5 – No; C6 – No; C7 – No; D – No.

Dennis moved a negative declaration for environmental impact. Seconded by Ward. All aye.

Eckrich stated he was supportive of Glyph but felt the variance should not apply for any occupant hereafter. Eckrich would like to see a stipulation by either time, occupant or nature of business that

would require further approval by the Planning Board rather than to leave this open ended. Ward was in agreement with this thought because there could be a spin-off of the proposed business or some other change that would significantly alter its impact on the area. Dennis would not want to see Glyph singled out and requirements made of them that are not made of other applicants.

Curtis stated Light Manufacturing is not allowed in CLT and noted this is Commercial Assembly Soft Goods.

The Board considered the following findings as required for any land use variance. No use variance shall be granted by the BZA without a showing by the applicant that the applicable provision of the Village of Lansing Zoning Law, or other applicable regulation or restriction, has caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the BZA that:

- a) under applicable zoning regulations the applicant cannot obtain a reasonable economic return as determined in the sole discretion of the BZA, from the property in question, which insufficient return must be established by competent financial evidence satisfactory to the BZA;
- b) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- c) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- d) that the alleged hardship has not been self-created.

Regarding a) above, Eckrich stated there has been no evidence of insufficient economic return. Dennis stated parts of the building have remained vacant for 4-5 years and the applicant was not notified of the need to provide detailed financial evidence. Troy stated it is the responsibility of the applicant to know the requirements for a use variance, which is difficult to obtain. Dennis felt this should be changed in the law so applicants would be aware of what is needed for a use variance and feels the Board of Trustees should be aware of this. Troy noted further that the determination is in the sole discretion of the BZA.

Regarding b) above, Eckrich stated this requirement has been demonstrated by the applicant. Eckrich stated Deanco once used this property for assembly and light manufacturing and it was originally built for automobile sales and service, and the Planning Board feels this is a unique situation.

Regarding c) above, Eckrich stated there is no alteration in the character of the neighborhood so this requirement has been met by the applicant.

Regarding d) above, Eckrich stated it was not self-created as the building predated the Village.

Returning to a) above, the Board discussed what financial evidence might meet their needs. Ward

moved to reopen the Public Hearing to Dean for additional information. Troy asked Dean for his reasons why he feels he cannot get a reasonable economic return for his building without the granting of a use variance. Dean stated about 50% of his building has gone unrented since January 2002. For the 4 years prior to that, about 20% has gone unrented. In the past 4 years, Dean has been approached by banks and restaurants with take-out which are not permitted in CLT. Dean has not been approached by manufacturing, assembly or warehousing businesses until Glyph approached him. Dean stated Sciarabba Walker is their accounting business and it shows the past 7 months to a year with the loss for the building. Dean felt the monthly loss is approx. 5 figures. Troy asked if reasonable efforts have been made to rent this space and Dean stated yes. Dean stated he had an accounting firm which was ready to sign for the space but the City of Ithaca offered some incentives to have the firm remain downtown. The company leaving had some tax benefits for relocating to the Cortland area. Dean stated there are no other tenants waiting to lease the 50% vacant space. Dean also stated the space might remain vacant for the foreseeable future if the variance were not granted but he hoped not.

The Board again closed the Public Hearing.

Again the Board returned to a) above. Troy stated based on Dean's testimony the Board could determine whether the testimony was sufficient or insufficient for the Board. Sirois felt it was included in the record. Dennis felt Dean's willingness to provide records from his accountants was useful.

The Board returned to d) above and Troy noted that the tenant who left, left for greener pastures and not because of anything Dean did.

A vote was taken on granting variance Appeal 2002-4 with the recommendation that the Planning Board consider the general and special conditions as they see fit. Dennis would like to see the permeable surfaces of parking addressed. Dennis felt as parking is approved in the future, impermeable surfaces be kept to a minimum to reduce runoff from the property.

Troy questioned the Board as to whether the variance is for the section of the building as proposed for Glyph or for the entire building. Dennis felt it would be easier to allow the entire building be used for commercial assembly soft goods. Eckrich felt it should only be allowed for not more than 50% of the building and the applicant be required to return to the Board if more than 50% is required. Eckrich felt there would be a maximum of 50% of the building for soft assembly which is almost double what they are currently requesting. Eckrich stated Glyph could occupy the entire building but only a maximum of 50% of the building as currently constructed could be used for the assembly of soft goods.

Curtis asked the Board if they would like to make a recommendation to the Planning Board review the uses considering the changes in use of technology. Dennis is intrigued by the fact that other municipalities are using fiscal incentives to bring businesses in and keep them and he would like to see this encouraged in the Village and this message should be sent to other Boards within the Village.

Curtis will share this thought with Ned Hickey.

The Board withdrew the previous motion. Ward moved to grant the variance for Appeal 2002-4 with the following conditions: 1) Planning Board is advised that when considering the Special Permit, the property owner be encouraged to look for methods to minimize the increase in impermeable surfaces and; 2) No more than 50% of this existing building can be used for the soft assembly operation of the business. Seconded by Dennis. All aye.

Dean stated that regarding impermeable surfaces, he is waiting to see what the Village does on N. Triphammer Road which will change their entranceway. Dennis recommended having gravel to allow the water to return to the aquifer.

Other Business:

Curtis was directed by the BZA to approve the colors for the Cooperative Nursery School sign. Curtis showed the colors green with the cream lettering. This met the Board's approval.

Curtis also was directed to request the smoke stack for the Ornithology Lab be of a non-shiny, natural look. Curtis showed the sample provided to him which was non-reflective, non-maintenance surface that matches some of the building materials. The Board would like to know if there are alternatives with more of an earth tone.

Approval of Minutes – March 19 & April 23:

Regarding the minutes of April 23, Curtis has made changes as previously requested and incorporated them into the draft minutes. As they were needed at that time, they were approved by Sirois and Johnson at a special meeting with Ward participating by phone. Since more Board members were present, the Board decided to approve them again with additional revisions. Ward moved to approve the revised minutes of April 23, as well as the March 19 minutes. Seconded by Eckrich. All aye.

Adjournment:

Eckrich moved to adjourn the meeting at 9:45 P.M. Seconded by Dennis. All aye.