Town of Clifton Park

One Town Hall Plaza
Clifton Park, New York 12065
(518)371-6651
Fax: (518)383-2668

Zoning Board of Appeals

APPROVED
10-18-16

ZONING BOARD OF APPEALS
October 4, 2016

Present: Chairman Dudick, Chris Lemire, Jerry Cifor, Lisa McCoy, Randy Gifford, Tony Morelli and Michael Bloss

Also Present: Joel Peller, Esq., ZBA Counsel
Steve Myers, Director, Building and Zoning

Meeting was called to order at 7:05 p.m.

PLEDGE OF ALLEGIANCE
ROLL CALL

Chairman Dudick informed the public that this is a 7 member board with 1 alternate member and in order for an application to be approved, 4 votes of approval are required.

OLD BUSINESS

1. **Application from Dan Lill and Thomas Lill for a use variance to construct multi-family dwelling units in a B4-A zone. 16 townhouses are proposed on a 1.56 acre lot, which is 2 lots combined. Allowed uses are anything permitted in a B-3 zone except dwellings which will not be allowed by special exception or otherwise. The area variances originally sought have been withdrawn from the application. Property is located at 13 and 15 Old Plank Road, Clifton Park, NY 12065. (Permit #81067)**

Joshua Silver, Esq. from the Murray Law Firm presented the application and reminded the Board that in order to override the negative recommendation received from the Saratoga County Planning Board, they will need a super majority vote, or 5 out of 7, in order to approve their application for a use variance to permit the proposed townhome development in a B-4A Zone where multi-family residential use is not permitted.

He reviewed the elements of a use variance as contained in the project narrative, advising they had submitted evidence the property cannot realize a reasonable return, in the form of a real estate broker's letter showing the sale prices for single family homes in the neighborhood; anticipated costs of renovations; and comparisons to the purchase price of the property, stating it is obvious the owner cannot realize a reasonable rate of return or any return at all and that the project would be a $120,000 loss according to their estimates. He advised they also had provided a broker's letter showing that commercial development of the property, which is the permitted use the B-4A zone, is not feasible because of the current condition of the road; the

lack of frontage on Route 9 and benefits related thereto; as well as a broker's letter which provided evidence that a nearby commercial unit at 9 Old Plank Road, which has been on the market for over 2000 days, is still not rented.

Mr. Silver explained that the applicant has a unique hardship because the properties are in a dilapidated condition, which is not a condition that is shared by other properties in the zone and because of the condition of the roadway, it's distance from Route 9 and the fact that commercial traffic isn't feasible in that area.

He went on to explain that the property is bounded on the south by a single family residence which is currently under contract and would be wrapped into the applicant's site plan, should their application be approved. The property is bounded on the north by single family residences and to the south and east by businesses. Therefore they feel their proposal would be consistent with the present mixed use character of the neighborhood and would not be a change to the essential character of the zone.

The final element, he explained is whether or not this is a self-created hardship, which Mr. Silver believes is the Board's biggest issue. He reiterated that Mr. Lill had purchased the properties at an online foreclosure sale without having the opportunity to inspect the interior; stating that typically during a foreclosure, bidders are not allowed to enter the property to perform a thorough inspection the way that you would for an arm's length transaction. He stated that in order to be sure he was buying a property that he could reasonably invest in, fix up and sell again, Mr. Lill had inspected the property from the outside and had relied upon an MLS listing which indicated that the property had many updates, including a newer roof, windows, furnace, hot water tank, updated bathroom and was a great home at a great price. He stated the MLS did not say anything about missing pipes that had been pulled out of the home or that the hardwood floors had been completely destroyed.

Mr. Silver went on to state that although purchasers who buy at a foreclosure sale assume a little bit of risk, Mr. Lill was not the cause of those risks and that although there is a line of cases which say the purchaser of a property that is subject to hardship, takes with knowledge of that hardship, in all of those cases there is the idea that the purchaser was able to exercise some modicum of due diligence which would give some sort of constructive or actual notice of these conditions. Here he explained, there was no legal way for Mr. Lill to go into or inspect the property and that he had done everything he could by inspecting the outside, relying upon statements in the MLS and therefore there was no amount of due diligence which would have apprised him that the property was in a such a dilapidated condition that it was completely valueless as a residential renovation project.

Mr. Cifor asked how the applicant can get around the argument that he didn't have to buy the property, as foreclosures are buyer beware situations.

Mr. Silver responded that such situations are buyer beware only with respect to anticipated construction costs and condition of the land, but not with respect to knowledge of a fact which he had no ability to determine on his own.

Mr. Cifor advised that he personally has purchased assets at foreclosure in the past and pointed out that usually bidders try to get the price low enough to take care of the unknowns, suggesting that what Mr. Lill paid for the property wasn't low enough.

Mr. Silver responded that if you look at the self-created hardship cases, essentially the Court is saying that you should have known of specific conditions because there were avenues to do so and you did not take one of those avenues. He explained that there are no cases to support the fact that there was no such avenue available to Mr. Lill and there nothing he could have done and although he might actually be charged with having to deal with such conditions, he cannot be charged with having knowledge of the defective conditions within the house.

Mr. Peller stated that because he practices foreclosure law in his private law firm, he is aware that online servicers do in fact allow for an inspection of the property and that if you follow the proper guidelines, you can go into a property, but cannot use any information obtained for a reduction of any kind in the bid being put forth or that the lender is going to accept. He therefore indicated that he did not believe Mr. Silver's statement that Mr. Lill was unable to conduct an inspection or see the interior of the property was factually correct and encouraged him to look at the site to see who the servicer was.

Mr. Silver advised he understood that, but pointed out that Mr. Lill's Affidavit which was submitted in support of his application reiterates that on this specific deal, he was not permitted access and in fact, was not even permitted access after the closing and had to call a locksmith to gain entry.

Mr. Peller advised is normal procedure for the buyer to be required to change the locks, because the lender is not going to unlock the property for the buyer.

Mr. Gifford inquired as to how long the applicant has owned the property, whether he is in the construction business or in the business of buying houses to flip them and suggested that perhaps he created his own financial burden, which is a risk anyone takes when buying properties in foreclosure, adding that he too had purchased a foreclosure property several years ago and experienced a loss when water pipes broke in the winter and he had no insurance.

Mr. Lill responded that he has owned the property for a little over a year; that he is in the new construction business; that he had requested access and was denied; and that he had taken the representations made by the agents of Auction.com at face value.

Mr. Silver advised that he is not saying Mr. Lill did not assume any risk in purchasing at foreclosure and therefore may be charged with knowledge of certain things that due diligence would have disclosed. His point is that no level of due diligence would have disclosed this to him and therefore he cannot be charged with that knowledge. We are talking about only one factor of many in a test that applies to a use variance and the argument they are making is that this is not a self-created hardship because those due diligence avenues were shut off to him.

Mr. Lemire noted that when he was previously before the Board, Mr. Lill had conceded he purchased this at a buyer beware auction and stated on the record, his intention was to purchase the property and then check out the zoning. Therefore, at the time he purchased, regardless of the condition of the property, he wasn't even sure what the property was zoned for or what uses were permitted.

Mr. Silver stated that does not change the fact that this is not a self-created hardship because it has to do with the level of due diligence that was made available to him and whether there was a legal avenue which would have provided him with access.

Mr. Lill stated that he wasn't worried about the zoning because the original intent was to invest and sell the property under its existing zoning.

Mrs. McCoy asked since the applicant wasn't worried about the zoning and had originally bought the property with the intention to redo it, keep it a single family home and then flip it, what his expectation was, being in the construction field and having knowledge of the dilapidated condition of the exterior and therefore knew he had to put money into it.
Mr. Lill stated that he is not sure if the house has any value but that it was the land. He added that he did not have the knowledge of the MLS at the time, but his expectation was to have a small investment and possibly stay around $200,000 to $215,000.

Mrs. McCoy asked him whether he had checked the values of what a single family home would sell for in that area and Mr. Lill replied not until he had gotten into everything with this submission.

Mr. Silver advised that the applicant believed it would take approximately $215,000 to renovate, leaving him enough money to earn a reasonable rate of return.

Mrs. McCoy pointed out that if he purchased for $120,000 and expected to be able to sell for $215,000 that is not really a big spread in a foreclosure.

Mr. Lemire inquired as to whether the applicant has tried to market the property for any of the allowable uses in the zone. Mr. Lill responded he had not.

Mr. Silver reiterated they had provided a letter from a real estate agent showing that Mr. Lill's property is useless right now and is not capable of being marketed, but could be put to good use if developed into a nice project.

Mr. Dudick asked what made the applicant decide to purchase the property, despite being denied information and access that he felt he should have and needed.

Mr. Silver replied it's a different type of risk. The applicant advised he had taken the representatives of Auction.com and the Wells Fargo associates at their word and thought it was a good deal

Mr. Dudick asked whether the representatives of Wells Fargo had made any claims to him and Mr. Lill replied that the Wells Fargo associates made claims to Auction.com as to the status of the unit.

Mr. Peller inquired whether the applicant had asked Wells Fargo if he could get in to see the property prior to the bid and Mr. Lill replied that he did not because he was only dealing with the facilitator at Auction.com.

The Chairman opened the Public Hearing and asked for questions or comments.

Mr. Myers reiterated the points in the summary he prepared upon the initial submission, in that he does not believe the financial information required by the standard for a use variance has been met; that although unique hardship has been claimed due to poor infrastructure and visibility; he believes the neighborhood is far from a being mixed use; the applicant had purchased property with knowledge residential uses were not allowed and the claims about the Northway, which was constructed in 1957, causing the change in zoning to

make residential use non-conforming doesn't work, because the Zoning Law in this area didn't go into effect until 1967.

Mr. Myers also stated that this is an unlisted SEQRA action and after reviewing the environmental assessment form, he does not believe there will be any significant impact and recommends a negative declaration be issued. He went on to state that the current road is substandard as it is too narrow and if this application was approved here and Planning did take up the project, they would require roadway improvements to meet the current standards, adding that the road could be widened.
Mr. Silver pointed out that if the property were to be developed as a commercial use consistent with the current zoning, there would potentially be more of an increase in the level of traffic, due to commercial uses typically having customers coming and going throughout the day, whereas a residential use would have less impactful traffic.

Brian Ragone, a Landscape Architect with Environmental Design Partnership advised that they had met with Sheryl Reed and feel they can meet all of her comments and requests to obtain access to the property. He explained that since the original application to the Planning Board, they have provided new plans showing access for fire trucks and agreed that this proposal would have the least impact on traffic, as there would only be approximately 16 total cars at the peak hours.

Mr. Dudick opined that the average price for a building lot in Clifton Park, would probably be anywhere from $75,000 to $90,000, depending on location and utilities and therefore the $124,000 that was spent seems high, even if you tore the existing building down and built a new house.

Mr. Silver stated that it is clear if the applicant were to tear down the existing residential structure and build a new single family residence, it would require a use variance and that there is also an abandonment of the existing use issue.

Mr. Myers pointed out that the Code specifically states dwellings will not be allowed in the Zone by special exception or otherwise, which is why the applicant is here asking for a use variance.

Upon inquiry from Mr. Lemire, Mr. Myers confirmed that the applicant would have to build in the exact same footprint and that once a non-conforming use is abandoned for a year or more you cannot restart the non-conforming use, even if it pre-existed the zoning. He added that although the property was occupied at one point, he did not know if it currently is.

Therefore Mr. Peller, opined the argument could be made that the non-conforming use has not been abandoned

Mr. Lill advised that the home has not been lived in for quite some time and although it is not red-tagged by the Town, there is a foreclosure tag on the door. Mr. Peller explained that means that the property has been preserved by the lender.

Reid Miller, the owner of 13 Old Plank Road advised the Board that the property has been abandoned for at least 4 years.

Mr. Dudick opened the Public Hearing and asked for questions or comments. Being none, he made a motion to close the Public Hearing. Mr. Cifor seconded. All voted in favor and the Public Hearing was closed.

Mr. Dudick stated that even if the Board agrees this is not a self-created hardship, in his opinion there is still an issue as to whether or not the applicant has shown that he cannot realize a reasonable return and made a motion to deny the application.

Mr. Gifford seconded.

Mr. Dudick reiterating that based upon the information submitted, he is not convinced that a reasonable return cannot be gained by the owner as shown by competent financial evidence, but agreed that the alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood, because this is a very unusual part of the Town.

He went on to state he believes the proposed variance would in fact, substantially alter the essential character of the neighborhood, as it doesn't fit within the current zoning and from his prospective, this seems to be by definition, a self-created hardship, adding that the owner of the property has described he wanted to have information and access before he made the purchase, was denied that information and access and then went forward with the purchase, despite the fact that he was being denied information that he had requested.

The secretary called the Vote:
Ayes: Mr. Lemire, Mr. Cifor, Mrs. McCoy, Mr. Dudick, Mr. Gifford, Mr. Morelli and Mr. Bloss.
Noes: None.

Application denied.

2. **Application from iLoveKickboxing.com for an area variance from Chapter 171-6C.(1) of Town Code for: Window signs allowed = 2; 7 windows covered, 5 with words or images. Variance required = 3 signs; and 2) Max. coverage = 50% of windows or 8 SF; coverage requested is 140 SF or 45.6%; 142 SF variance required. Property is located at 22 Clifton Country Road, Suite 10, Clifton Park, NY 12065. (Permit #81101)**

Owners, Peter and Theresa Peck presented the application and started by handing out new versions of the proposed signage to the Board members. Upon inquiry from Mr. Gifford they confirmed they are seeking approval for window clings for privacy, to block the sun and to promote and market their business within the Town's guidelines.

Mr. Gifford pointed out the Town guidelines state 50% of windows can be covered, or 8 SF, whichever is less. Mr. Cifor noted that the applicant is looking to cover 45.6% of their window space.

Mr. Myers confirmed that was the original intent, but with the new material presented, he is uncertain how much coverage is now being requested.

Mr. Dudick inquired as to what the advantage would be to having the name of the business on the window covering, in addition to the wall sign they already have.

Mr. Peck explained that people find them by signing up on line and that they were hoping to have something on the window describing what they do inside of the business. Mrs. Peck explained people obtain their trial classes and view their class schedules on line as well, but stated they could certainly remove iLovingkickboxing.com from the window sign if the Board would prefer.

Mr. Peck stated they have seen other businesses in Town, such as The G-Box, who have lettering and full window coverage and are hoping to be able to do the same, adding that the owner of The G-Box is a good friend.

Mrs. Peck then handed out photographs of The G-Box signs to the Board members, which had been taken approximately 2 weeks ago.
Mr. Peck also mentioned the Redwing shoe store, which has much larger windows and is completely covered as well.

Mr. Dudick commented that he had been comfortable with the Redwing window covering because there was no text or branding on it and Mrs. McCoy agreed.

Mr. Cifor reiterated that the Board has been allowing window signs that are generic in nature and do not advertise what is going on within the business, adding that The G-Box has a generic picture of a male and female, that are not doing anything.

Mr. Peck asked whether it would be acceptable to the Board if they had some generic people kicking a bag with no lettering and Mrs. Peck added that they had tried to make it as generic as possible with their corporate graphic department

Mr. Cifor pointed out that they are showing boxing gloves and a person boxing, and therefore are advertising exactly what is happening inside.

Mrs. Peck pointed out that the Redwing sign shows a man climbing wearing boots.

Mr. Dudick opined that although the man has footwear on in the picture, it doesn't really draw attention to the fact that it's a footwear company.

Mr. Peck asked whether the graphic they are proposing that says "wraps on gloves tight let's do this" was acceptable.

Mr. Dudick advised that would be voted on as opposed to a negotiation on what the Board would vote on. He went on to state that window coverings with artistic renderings has been accepted by this Board and that the Redwing sign, which shows a man working in a factory, creates a mental image of where you might get your footwear for work, but does not focus on a series of shoes. He added that the Board has consistently turned down signage that included logos, branding and specific product.

A discussion among the Board members ensued as to what exact signage had been approved for The G-Box.

In looking at the pictures presented, Mr. Dudick stated he did not recall exactly what had been approved for The G-Box and advised he would feel more comfortable waiting until he had that information, as it would not make sense to grant an application to match one that was in violation.

A five minute recess was called at 7:55 p.m. so that Mr. Myers could confirm for the Board what had been approved for The G-Box.

At 8:00 p.m. the meeting resumed and Mr. Dudick confirmed that the signage depicted in the photographs of The G-Box presented by the applicant had in fact been approved. He then stated he would entertain any argument from the Board members as to why the applicant's proposed signage is any worse than that what has already been approved in similar situations and by precedent.

The applicants then noted that although the new pictures presented this evening only show the windows to the left of the door, they have the same set of windows on the other side, which they intend to keep open and uncovered.

Following a discussion, it was determined that the applicants would need to provide Mr. Myers with the exact dimensions of the new signage proposed so that he can determine the amount of the variance now required. He further indicated he would have to re-evaluate whether the red window tinting shown, should be included in the calculations or not, which could substantially reduce the amount of the required variance.

The applicants agreed to provide the requested dimensions.

Application tabled until the October 18, 2016 meeting.

3. **Application from Signworks for area variances from Sign Law Chapter 171 Chart I which allows 1) two maximum wall signs; 18 signs proposed; variance required = 16 signs; and 2) 60 SF maximum wall signage; 675 SF requested; 615' variance required Property is located at 1018-1028 Route 146, Clifton Park, NY. (Permit #81110)**

Fred Early from Signworks presented the application and advised that Mr. Kopchik had a previous engagement, but that Mr. Candida and other representatives from the real estate department were also in attendance. Additional photographs showing the new proposal were handed out to the Board.

Mr. Early reminded the Board they had initially presented the same sign package as they had for the Market 32 store in the Shopper's World plaza, which had been reduced by a number of signs and by approximately 60 SF across the façade of the building. In accordance with the feedback from the Board, he explained they have now reduced their proposed signage by a total of 182 SF by removing the 8 x 16 spinach graphic from the front of the building; by reducing the Market 32 sign square footage by 10%; by removing one of the side wall signs for recycling; and by reducing the side wall sign another 10%. He added that they feel they have done as much as possible and still hold up the brand and have images in keeping with their other Market 32 store in Town.

Mr. Dudick asked whether the Starbucks sign shown would be on the outside of the window and Mr. Early replied that it will be an interior window sign which will be in compliance.

Mr. Candida from Market 32 reiterated that the last time they were present there were concerns from the Board about the fact that the 2 stores in Town varied significantly in size. He explained that initially they had come before the Board with 1.56% of signage compared to the square footage of the new store, but have now gotten it down to 1.2%.

Mr. Gifford commented that the applicant had done a nice job doing what the Board asked.

Mr. Lemire asked if the new proposal is now less signage percentage wise than the bigger store and Mr. Candida replied that it was less by .1 %, as Shopper's World has a much bigger store.

Mr. Myers advised that this is a Type II action and therefore no further SEQRA review by the Board is required. He added that although this is a significant variance request, the applicant has now reduced their proposed signage by 35% from their original submission, which is a significant change that is more in line with what the Board was looking for.

Mr. Dudick opened the Public Hearing and asked for questions or comments. Being none, he made a Motion to close the Public Hearing. Mr. Gifford seconded. All voted in favor and the Public Hearing was closed.

Mr. Dudick thanked the applicant for working with the Board and recognizing that the Town is trying to maintain consistency with regard to the amount of signage allowed, when compared to the size of the building and asked when the anticipated opening date was. Mr. Candida replied he believed it would be in June of 2017 and upon inquiry from Mr. Lemire, confirmed the store will face Vischer Ferry Road.

Mr. Cifor made a motion to approve the amended variance as submitted. Mr. Gifford seconded.

Mr. Cifor stated that he did not believe the requested variance would produce an undesirable change in the character of the neighborhood or that a detriment to nearby properties would be created by the granting of the variance, as he believes it will be an improvement. He stated that he did not believe the benefit sought by the applicant could be achieved by some other method feasible for the applicant to pursue other than an area variance; that although the requested variance is substantial, it is only a consideration which does not override the other criteria and that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood. He added that although the alleged difficulty was self-created, it is only a consideration which does not override the other criteria.

The secretary called the Vote:
Ayes: Mr. Bloss, Mr. Morelli, Mr. Gifford, Mr. Dudick, Mrs. McCoy, Mr. Cifor and Mr. Lemire.
Noes: None.

Amended application approved.

NEW BUSINESS

The secretary read the legal notice as it appeared in The Gazette on September 29, 2016:

1. **Application from Robert and Elizabeth Desbiens for an area variance from Section 208-12A which requires a 5' side setback for accessory structures; 4.45' available; .55' or 1' variance required for inground pool. Property is located at 32 Valencia Lane, Clifton Park, NY 12065. (Permit #81112).**

Robert Desbiens presented the application, explaining that a pool contractor had laid out the pool and because of the tight site; the Town had come over and approved the layout. The contractor then dug, set the pool and poured the concrete deck and it was then, the error was discovered. He added that although the contractor had laid the pool out correctly, he had dug and set it wrong, and by then it was too late.

Mr. Cifor commented that the request for .55" is very modest and Mr. Desbiens confirmed it is basically 6 ¾"

Mr. Myers advised that he had requested the applicant provide an actual survey, because he knew it was close and that once it got above a few inches he had advised the applicant he had to come before the Board. He added that we are looking at 1' variance just to be safe and to avoid any possible issues in the future if Mr. Desbiens ever sold the property.

Mr. Dudick opened the Public Hearing and asked for questions or comments. Being none, he made a motion to close the Public Hearing. Mr. Lemire seconded. All voted in favor and the Public Hearing was closed.

Mr. Dudick then made a motion to approve the application as submitted. Mr. Lemire seconded.

Mr. Dudick stated he did not believe an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance and that the benefit sought could not be achieved by some other method feasible for the applicant to pursue other than an area variance, as it is clerical to correct a mistake which has already occurred. He added that the requested variance is not substantial; that he does not believe the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district and that the alleged difficulty was not self-created, as it was forced upon him by a contractor's error.

The secretary called the Vote:
Ayes: Mr. Lemire, Mr. Cifor, Mrs. McCoy, Mr. Dudick, Mr. Gifford, Mr. Morelli and Mr. Bloss.
Noes: None.

Application approved.

The secretary read the legal notice as it appeared in The Gazette on September 29, 2016:

2. **Application from Albert and David Hannoush for area variances from Chapter 171-6C(1) which allows maximum window coverage of 50% or 8 SF whichever is less. 1) 75 SF of windows covered; variance required = 75SF – 8 SF = 67 SF and 2) 50% window coverage allowed; 61.09 SF = 50%; 75 SF covered; variance required = 11.09% over 50% allowed. Property is located at 1750 Route 9, Clifton Park, NY 12065. Permit #81113).**

Tom Wheeler from AJ Signs, stated he was representing David and Albert Hannoush and presented the application. He explained that this application is similar to iLovekickboxing.com in that the applicant wants to put some decals on their windows. He added that the picture included in the application shows the windows to the left of the door which already have the request graphics in place. He advised that he has since learned that the windows on the other side of the door have now also been covered and that although they have a lot of coverage, the graphics are generic and artsy pictures from different jewelry vendors.

Mr. Dudick noted the graphics included a lot of branding. Mrs. McCoy and Mr. Cifor pointed out that Tag and Breitling are big brand names.

Mr. Wheeler explained that the reason jewelry stores like to do this is because they don't all sell the same things, such Breitling or Rolex and they like to let people know what brands they have and to show what differentiates them from other jewelry stores.

Upon inquiry from Mr. Peller, Mr. Myers confirmed that he had stumbled upon the signage containing the Breitling graphics and after he had told the owners it was illegal, when he returned a couple of weeks later, they had covered the other windows with the Tag graphics. He added that typically he will advise that unapproved graphics can be left in place until such time as the variance is heard.

Mr. Wheeler emphasized that he did not do the applicant's signage and is only representing David and Albert Hannoush, but that in his opinion, the signage is similar to Redwing and The G-Box.

Mr. Dudick stated that what he has been saying tonight and repeatedly, the Board is trying to avoid branding and product placement where the applicant is selling a particular item, adding that the art image is acceptable, but the Board is trying not to have all the different products that are being sold by a particular store branded out on the store front.

Mr. Myers asked why that was because the Town Law does not state that branding is not allowed, only that 50% of the windows may be covered, or 8 SF, whichever is less, adding that he believes the Board will agree that the law is quite restrictive.

Mr. Dudick replied that the Board is being asked more and more to address window coverings from the standpoint that the Town doesn't want windows covered, but if windows are going to be covered, what do we allow them to be covered with?

Mr. Myers replied that although he understands Mr. Dudick's prospective on the branding issue, the sign law does not specify the content of the window signs.

Mr. Lemire asked whether an 8 SF sign with a watch and the brand Tag on it would be allowed and Mr. Myers replied that was correct, they would not need a variance for that.

Mr. Gifford stated he agreed with Mr. Dudick and asked whether the Board should wait for the Town to provide them with new rulings on what they would like to see in the Town.

Mr. Peller advised that he does not agree that there is no basis in the law for the Board to act, because the Board does have discretion to interpret what the Code says.

Mr. Myers reiterated that the Code is strictly based on size of the signs and says nothing about logos, branding or specific wording.

Mr. Dudick replied that from his standpoint, the reason he has gone beyond the size issue is because there is a difference between an artistic design and a flat out sign.

Mr. Wheeler stated that art is in the eyes of the beholder and asked how the applicant's signs were not art, as they appear to have been created by a very talented graphic designer or artist.

Mr. Dudick clarified that the pictures of the airplanes are in fact art and he does not have a problem with them. Mr. Lemire pointed out that the airplanes have a brand on them.

Mr. Wheeler replied that the branding is on the bottom of the planes and asked how many square feet of this artistic piece actually has branding on it.
Mrs. McCoy noted that a lot of the businesses that have come before the Board have had a battle with sun, heat and privacy and opined that this proposal is flat out - we want to show what brands we sell so we can distinguish ourselves from one jeweler to another.

Mr. Wheeler commented jewelry stores also want to cover their windows so that 2:00 a.m. shoppers can't see what's in the store.

Mr. Gifford opined that is not going to stop anyone from breaking into a jewelry store one way or the other.
Mr. Myers pointed out that these are perforated window signs and therefore you can still see into the store.

Mr. Wheeler commented that if you are familiar with perforated window films, which are the same as what is on the side of buses, 50% of the film is missing because it's got a bunch of holes in it, which is actually only 50% coverage.

Mr. Myers commented that was an interesting point.

Mr. Cifor stated that with Redwing, the Board looked at the prospect of having the racks sticking out which would have been unattractive and then they came up with the total window covering, which really wasn't advertising anything that was going on inside the store – it was really more of a piece of artwork, which shows a working man climbing a gear, which is very different from advertising a specific item. He added that the application is advertising 2 specific brands of watches and if the Board allowed this, then anyone else that has a store who wants to advertise something within their store, will say they want do exactly what Hannoush did.

Mr. Wheeler asked how this was any different than The G-Box signage. Mr. Cifor replied that The G-Box has a large generic man and woman, which in his opinion is a piece of artwork rather than an advertisement on what is being done inside the store

Mr. Wheeler commented that people go to The G-Box to work on their bodies, because it's a gym and the graphics are simply abstract bodies on the windows

Mr. Dudick advised that from his standpoint, if a jewelry store wants to show a woman smiling with a diamond on her finger or a man on his knee proposing, that would be a generic image. However, if he's got a Tag watch on, then he's selling a Tag watch and you're targeting a single product placement, which is clearly a sign.

Mr. Dudick added that if Mr. Hannoush wants to advertise his name he can, and if he wants to he can change the name of the store to Breitling, but if he wants to have multiple signs, there comes a limit on how many different signs he can have and does this Town have any say in how much signage we have.

Mr. Wheeler commented that it then goes back to what the Code says and whether we are getting variances for branding or for coverage.

Mr. Myers pointed out that anything that draws attention is a sign, regardless of whether it has branding or not.

Mr. Dudick stated that the Board is meeting businesses part way by being willing to accept generic signage that exceeds the code and therefore grant a variance, but we can't give you everything because it crosses a line and the line he has stated is with specific brand names. He added that The G-Box doesn't have signage advertising products they may sell inside such as GNC or Weider weight lifting equipment.

Mr. Wheeler again stated this is only 50% coverage because it's perforated material and asked whether he even needed a variance.

Mr. Dudick advised that would be up to the interpretation of the Town Code Enforcement Officer to decide.

Mr. Cifor pointed out the Code says 8 SF or 50% whichever is smaller and the applicant is above 8 SF.

Mrs. McCoy asked if the variance requested only includes the one sign and if the application in front of the Board is technically even what we are looking at.

Mr. Wheeler replied that his application only included the one, because the second one went up after he had submitted the application.

Mr. Myers advised he had changed the application to reflect what is actually in place now.

Mr. Dudick made a motion to close Public Hearing, as there was no longer any members of the public present. All voted in favor and the Public Hearing was closed.

Mr. Myers stated this is a Type II action and therefore, no further SEQRA review by the Board is required.

Mr. Gifford made a motion to deny the application.

Mr. Peller asked Mr. Wheeler whether he would prefer to go back and re-work the application rather than have the Board vote this evening and he replied he would like to table the application, talk to the applicants and see if they can come up with something that's a little more generic with no branding on it.

Mr. Peller suggested that Mr. Wheeler advise the applicants that they should not continue to put up additional window signs after the Code Enforcement has advised them of such. Mr. Wheeler said that he would.

Application tabled until the October 18, 2016 meeting.

With regard to the Cellco d/b/a Verizon cell tower application, Mr. Peller passed out to the Board Members a copy of the Rosenberg Court of Appeals case which had been mentioned by the applicant for their perusal.

Mr. Dudick then made a motion to approve the minutes from the August 16, 2016 meeting. Mr. Cifor, Mr. Lemire, Mrs. McCoy, Mr. Gifford and Mr. Morelli, who were present at that meeting, all voted in favor and the minutes were approved.

Mr. Dudick then made a motion to approve the minutes from the September 20, 2016 meeting. Mr. Dudick, Mr. Cifor, Mrs. McCoy, Mr. Gifford and Mr. Bloss, who were present at that meeting, all voted in favor and the minutes were approved.
Mr. Dudick announced that this is the last meeting at which Joel Peller, Esq. will be serving as Board counsel. He thanked Mr. Peller on behalf of himself and the Board, for his service and assistance, as well as every bit of effort and time he has given to help the Board, which has been very much appreciated.

Mr. Dudick made a motion to adjourn the meeting. Mr. Cifor seconded. Approval was unanimous. The meeting was adjourned at 8:45 p.m.

The next meeting is October 18, 2016.

Respectfully submitted,

M. Kathleen Smith
Secretary, Zoning Board of Appeals

cc: Town Clerk, Town Board, Town Attorney
Zoning Board Members, Joel Peller, Esq., Steve Myers
Department of Building and Development
Town Assessor, Town Highway Department