

Chairperson Pam Knapp called the regular meeting of the Zoning Board of Appeals of the Town of Walworth to order at 7:00 PM. Members present: Chairperson Pam Knapp, Mike Kunzer, Mike Bagne, Suzi Mance and Marlene Hall (alternate). Member absent: Jim Hinz. Phil Williamson, Code Enforcement Officer was present.

The minutes of the October 14, 2014 and the November 10, 2013 will be approved at the next meeting.

**1. Application of Walworth Plaza LLC requesting relief in the form of area variances for signage related to the development of the "TOPS Friendly Market" to be located at 2140 Walworth-Penfield Road, approximately 1,000 feet west of Walworth-Palmyra Road. Variance request is seeking relief from Town Code §180-40E(3)(a)(b)(c)(d)(e) and allow the use of TOPS standard sign package associated with a typical TOPS Friendly Market location. Property is zoned: B – Business.**

Chairperson Knapp opened the public hearing.

John August, (Walworth Plaza LLC developer of Tops Friendly Market was present along with his partner Jeff Saeger, Lou Terranova (Tops representative), and Bob Bringley (Marathon Engineering).

Mr. August said that the proposed 42,674 Tops Friendly Market, future 9,600 sq. ft. addition and a 65,00 sq. ft. retail building will require three variance for signage below:

- Number of signs allowed on a building façade 6 vs. the required 1.
- Size of building mounted sign allowed 233 sq. ft. vs. the required 32 sq. ft.
- Number of signs allowed on a fuel island 3 vs. the required 1.

The Board was in receipt of detailed diagrams of all proposed signage.

These variances allow the applicant to safely advertise the proposed development while respecting the characteristics of the neighborhood. The signage will be typical of a commercial development of this size and consistent with other grocery stores. The six signs requested are: (1) "Tops" Logo – 233 sq. ft. (1) "Recycle Center" sign – 9 sq. ft. and (4) department name signs: Bakery, Deli, Café and Pharmacy. The signage is not substantial considering the size and scale of the building and aesthetically pleasing and complements the façade of the building. Each of the building mounted signs on the façade of the building are located 370 feet for the road and 18 feet lower than the center line of the road, lessening the visual impact, but still large enough for traffic to view safely. The proposed signage covers approximately 5% of the building façade, well below the 20% maximum allowed by the Town Code.

Phil Williamson said that the current Town code regarding signage states:

"Each separate commercial enterprise shall be permitted to erect a single sign mounted or placed on the front of a building covering no more than 20% of the area of the portion of the front wall allocated to such enterprise, not to exceed a maximum of 32 sq. ft. "

Mr. Williamson said that this portion of the code was written years ago, and applies to smaller entities, such as Mark's Pizzeria and the Walworth Post Office and is really not appropriate for a commercial development the size of Tops.

Several questions posed by the Board regarding the signs were answered.

Mike Bagne commented that he had attended the Planning Board public hearing regarding Tops and Planning Board members did not have a problem with the signage.

There were no comments from the public.

Susie Mance made a motion seconded by Mike Bagne to close the public hearing.

Motion carried.

Suzi Mance made a motion, seconded by Mike Bagne to approve the Tops standard sign package with the following variances:

- Number of signs allowed on a building façade 6 vs. the required 1.
- Size of building mounted sign allowed 233 sq. ft. vs. the required 32 sq. ft.
- Number of signs allowed on a fuel island 3 vs. the required 1.

I move, after considering the benefit to the applicant and detriment to the health, safety general welfare of the neighborhood or the community that would occur as a result of the variance being granted and taking into consideration the five factors set forth in Section 267-b(3b) and finding:

**1. Can the benefit sought by the applicant be achieved by some method feasible for the applicant to pursue, other than an area variance?**

No, because the current town code is not defined for commercial enterprises and does not accommodate a development of this size.

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

No, because the majority of the signage is well off the road (building mounted signs located 370 feet from the road) and well below grade.

**3. Is the amount of variation from the zoning requirement substantial?**

Yes. The variance is substantial, but the current zoning code (20% of the area portion of the front wall, not to exceed a maximum of 32 sq. ft.) does not accommodate a commercial development of this size.

**4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?**

No.

**5. Was the alleged difficulty self-created? Consideration of this factor shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.**

Yes, it was self-created because the applicant has chosen the Tops standard sign package that does not meet the current town code.

And further finding the variance is the minimum variance that it deems necessary and adequate at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community.

The Board concludes that the variance be granted since the benefit to the applicant outweigh the detriment to the health, safety and welfare of the community.

There were no conditions placed on the variance.

Roll Vote:	Pam Knapp	Aye
	Michael Bagne	Aye
	Michael Kunzer	Aye
	Suzi Mance	Aye
	Marlene Hall	Aye
	Jim Hinz	Absent

Motion carried.

**2. Application of Murray Notebaert and Sue Fox for an area variance to allow horses in the existing barn (built in early 1900's) that is closer to the property line than the required 100 ft. setback. The property is located at 5312 Lincoln Road, north of Haley Road. Applicant seeks relief from Town Code §180-4 Definition of Farm and 180-10A Customary Agricultural Operations. Property is zoned: RR-1 – Rural Residential.**

Chairperson Knapp opened the public hearing.

Murray Notebaert and Sue Fox were present to answer questions from the Board regarding an area variance to allow horses in an existing barn that is 23 ft. from the side property line. The required setback for building housing animals is 100 feet. Mr. Notebaert explained that they have a purchase offer on the property at 5312 Lincoln Road, contingent upon being able to house a horse(s) on the property.

Chairperson Knapp asked how many feet the barn is from the road. It is 89 feet from the right-of-way. The width of the property at the road is 165 ft.

Chairperson Knapp asked if there was a possibility of building another barn further back on the property. Mr. Notebaert said that to build another barn further back in what is currently pasture area, would still require a variance of 29% on each side (71.5 feet from both property lines). The remainder of the property is too swampy and wet to build on. Also, it would be an added expense to have to build another barn.

Mike Kunzer asked how many horses they own. Mr. Notebaert said there are one horse, one pony and one donkey.

Mike Kunzer also questioned if the adjacent neighbors had horses and Mr. Notebaert said that they did not. To his knowledge the neighbors did not have any objection to the variance request.

Chairperson Knapp asked the current homeowners, Renier and Paula Bertou to address the Board.

Mr. Bertou told the Board that he had purchased the house in 2003 and has never had horses in the barn, although the tenant of the previous owner did house livestock in the barn. The stables have since been torn out and barn is now used as a workshop.

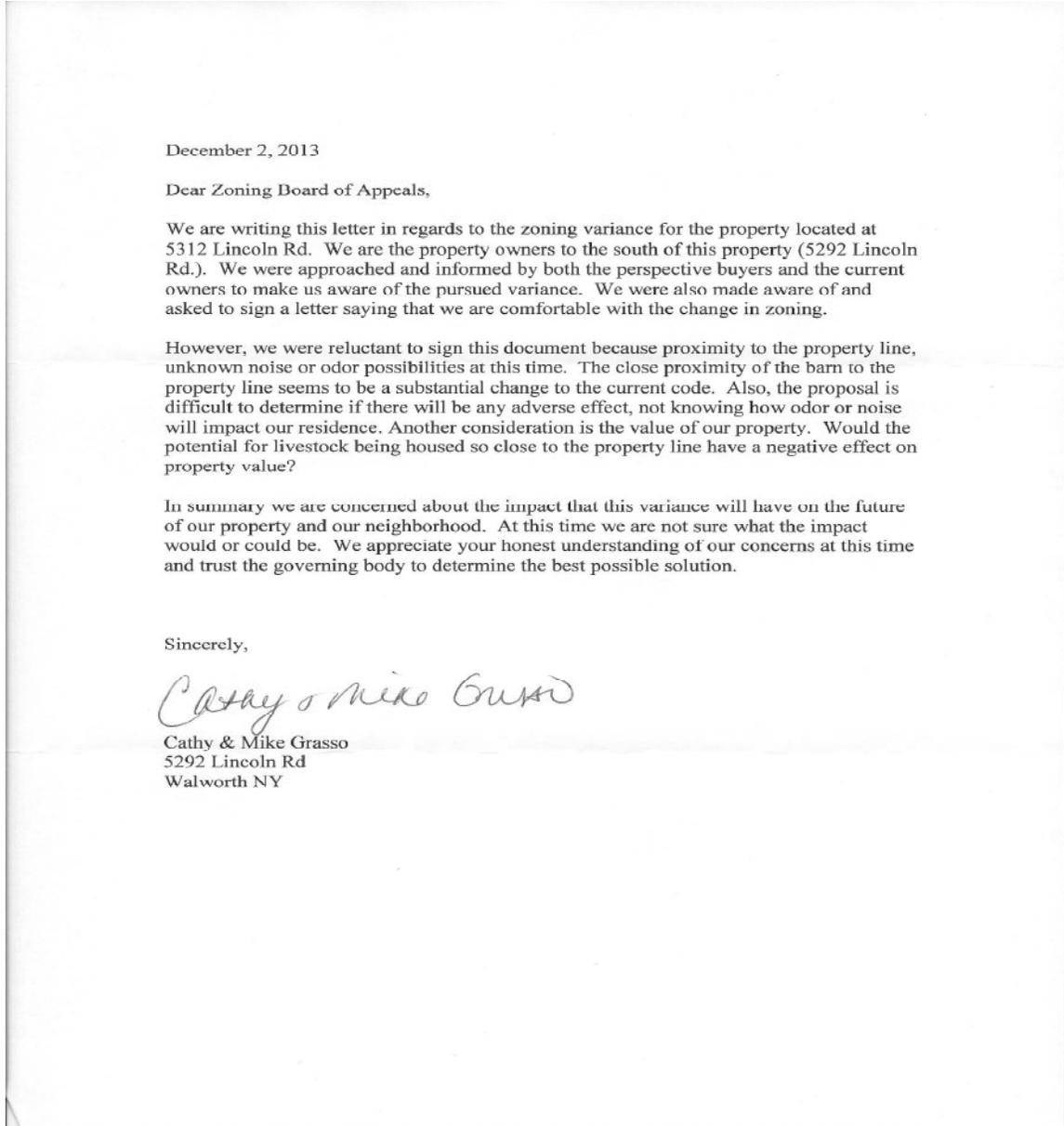
Chairperson Knapp asked if there was a variance on the property to house livestock when they purchased the home in 2003 and Paula Bertou said that there was not.

Mr. Bertou said that the property has been on the market for over six months and the price has been lowered three or four times. The contingent offer is the only offer that has been made on the property during that time. If the variance is not granted, they risk losing the sale which will be a financial hardship.

Mr. Bertou explained that at one time the farmhouse (built in 1825) was part of family farm that through the years has been subdivided resulting in a situation where the barn is too close to the property line to meet the current zoning code to house animals.

Paula Bertou said that if the variance is not granted, the possibility exists that the value of the property will be decreased even further. She said the parcel does meet the requirements for definition of a farm which is a minimum of 5 acres (the parcel is 5.405 acres), although it does not meet the 300 ft. minimum width requirement. She said, "If we don't get this variance, that just says that the 5 acres will be useless for the large share of the people coming out to Wayne County to live".

Chairperson Knapp read the following letter from the property owners Cathy and Mike Grasso, 5292 Lincoln Road:



Mr. Bertou said that the Grasso's were already living there when they purchased the property in 2003. He commented that he respected the Grasso's opinion and acknowledged that he was not aware of what problems they may have encountered with previous owners and their animals, but expressed that when one purchases property in an agricultural area in the country, the possibility of farm animals does exist.

There were no further comments from the public.

Suzi Mance made a motion, seconded by Mike Kunzer to close the public hearing.

Motion carried.

Mike Bagne made the following motion, seconded by Suzi Mance to deny the area variance for property located at 5312 Lincoln Road:

I move, after considering the benefit to the applicant and detriment to the health, safety general welfare of the neighborhood or the community that would occur as a result of the variance being granted and taking into consideration the five factors set forth in Section 267-b(3b) and finding:

**1. Can the benefit sought by the applicant be achieved by some method feasible for the applicant to pursue, other than an area variance?**

No, because regardless of placement of a new barn, one would still need a variance.

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

Yes, because the current characteristic of the neighborhood will change as it does not currently have farms housing livestock and there may be a detriment to the adjoining neighbors.

**3. Is the amount of variation from the zoning requirement substantial?**

Yes. The variance is substantial as it exceeds 75% of the required setback.

**4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?**

Yes. By having livestock that close to the property line it will have an adverse impact on the physical and environmental conditions in the neighborhood.

**5. Was the alleged difficulty self-created? Consideration of this factor shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.**

Yes, because the applicant is looking to introduce farm animals on a property that doesn't accommodate the required setback.

And further finding the variance is not the minimum variance that it deems necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community.

The Board concludes that the variance be denied since the detriment to the health safety and welfare of the community outweigh the benefit to the applicant.

Roll Vote:	Pam Knapp	Aye
	Michael Bagne	Aye
	Michael Kunzer	Aye
	Suzi Mance	Aye
	Marlene Hall	Aye
	Jim Hinz	Absent

Motion carried.

Suzi Mance made a motion, seconded by Mike Bagne to adjourn the meeting. Motion carried.

Chairman Knapp adjourned the meeting at 8:09 P.M.

Respectfully submitted,

Gail Rutkowski, Zoning Board Clerk

