

To: Albany County Planning Board
From: Guilderland Zoning Board of Appeals
Re: Response to your recommendation dated May 4, 2020 for the Costco Special Use Permit Application
Date: May 3, 2023

RESPONSE TO ALBANY COUNTY PLANNING BOARD NYS GENERAL MUNICIPAL LAW 239-m, n RECOMMENDATION DATED MAY 4, 2020.

Introduction. The Albany County Planning Board issued a recommendation concerning the Costco Special Use Permit application with primary themes being that the project was not consistent with the Westmere Corridor Study, the TOD zoning district and potential traffic impacts.

Initially, local zoning determinations should not be in the province of the Albany County Planning Board, based on the NYS General Municipal Law 239-m. The local Zoning Administrator and ZBA are responsible for local zoning use determinations.

Moreover, in Hart v. Town of Guilderland, 196 A.D.3d 900 (3rd Dept. 2021), the Court specifically found:

As codified in Local Law No. 4, the transit district permits a “wide range” of uses, including local and regional shopping centers, gasoline stations and apartment buildings. In furtherance of the Plan, the transit district also includes regulations to protect existing residential neighborhoods outside the district from adverse visual and density-related impacts... In addition, certain commercial uses, such as the Costco store, are specifically permitted in the transit district, subject to a special use permit. The transit district also prohibits construction of single- and two-family dwellings as inconsistent with the character of the commercial corridor, limiting residential construction to multifamily housing.

With that background in mind, Supreme Court erred in holding that the Planning Board failed to take a hard look at the project's impact on community character because the project does not comply with each and every goal of the transit district. For example, to find that the Planning Board failed to take the requisite hard look because the Costco store does not provide for bicycle access focuses far too much on only one of the goals, not requirements, of the district – which is a “transit” district. In fact, here, it would be difficult to conceive of a use that would simultaneously meet all of the admittedly

“diverse” goals of the transit district. More importantly, it is also far beyond our judicial function to try to find such a use. Rather, our review is limited to determining whether the Planning Board took a hard look or whether its determination was arbitrary and capricious ...

In this regard, the Planning Board did not simply rubber stamp the project as compatible because it was a permitted use. Instead, a number of concerns were identified and scoped, discussed at length in the DEIS and addressed in the FEIS. Specifically, the project was examined and found to be consistent with the major commercial corridor surrounding the site, which is a mix of commercial and other business uses. The Planning Board then concluded that the project, which is 10% of the size of the adjacent Crossgates Mall and is well below the permissible maximum build, was compatible with the surrounding uses. The Planning Board also found, when examining the Plan, the Study and the goals of the transit district, that the project would not create a significant adverse impact on local zoning goals. Our review of the record supports this determination and demonstrates compatibility with the effort to establish a zoning district with a mixed community of housing, shopping, entertainment and employment within walking distance from the Capital District Transportation Authority (hereinafter CDTA) main transit hub located within Crossgates Mall.

In essence, although the Costco store may, to some, not be the most compatible use, the Planning Board properly viewed it in the context of the entire project. As such, the Planning Board considered not only the fact that the Costco store is a permitted use that complied with all of the design standards contained in Local Law No. 4, but also the other tangible benefits of the project, which directly aligned with the purpose of the Local Law. These factors included pedestrian and bicycle accommodations and improvements. Also, the Planning Board considered access management and transit improvements in design and layout, including the reduction of lanes on Crossgates Mall Road, the construction of a new roundabout to process traffic more efficiently, the reconfiguration of a major intersection to reduce vehicular speed and a new CDTA bus stop, which CDTA confirmed would ease congestion, improve safety and result in a “marked improvement for customers” in the area. The Planning Board proposed the construction of a new connector road to Crossgates Mall Road, and numerous project design features to prevent noise and visual and other impacts. All told, the Planning Board discharged its duty and took the requisite hard look as to compatibility and satisfied its obligations under SEQRA.

ACPB Recommendation 1. Compatibility of various land uses with one another:

- A. The ACPB commented that the proposed use is not a compatible land use as it does not meet the purpose of an approved use in a Transit Oriented Development District (TOD) as described in the Town of Guilderland (TOG) Zoning Code Chapter 280-18.1 A. Purpose.

- B. Page 56 in the Westmere Corridor study states, “While several elements of TOD are recommended throughout the Westmere Corridor with regard to access management, traffic calming, pedestrian, bicycle and transit improvements, this particular part of the corridor has critical features that would be necessary for a successful TOD neighborhood. These features include the availability of underutilized or vacant land adjacent to major destinations that attract high volumes of people (such as shopping, entertainment and employment centers) and could support high ridership transit stops. The missing elements, mixed use structures and compact, walkable more “urban” form can be created when land exists to integrate and transition uses into a more connected area with short blocks, mixed use buildings, public spaces and a strong pedestrian, bicycle and transit presence.” A warehouse retail store does meet the goals for the “missing elements” as described.
- C. Large warehouse stores are typically found in auto-oriented commercial zones that rely on highway infrastructure and are not found in TOD zones that promote walkability.
- D. Majority of customers visiting warehouse stores drive in. The closest Costco store is two hours away. Conceivable customers will be driving from many miles away to buy in bulk and leave. In this situation customers will typically not travel by bicycles or bus.
- E. The proposed warehouse along with 700 parking spaces does not show evidence of reducing the number of parking spaces and is in direct contradiction of the purpose of a TOD zone.
- F. In an article published by the American Planning Association dated May 2003 “How to Make Transit-Oriented Development Work” quotes Peter Albert, a Planner for Bay Area Rapid Transit (BART), “If the parking requirements doesn’t reflect the transit resource, it’s not TOD. It’s just a development close to a transit station.”
- G. In the Albany County Planning Board case #10-180503020 Town of Guilderland Local Law 4: Transit Oriented Development District (May 14, 2018) published meeting minutes states; “Michael Shanley addressed the board explaining that this town-wide initiative helps Crossgates Mall, which is a major employer and tax revenue generator for the county and town. Crossgates is forced to look at doing business in a different way; the TOD will help to create a mixed “community.” Crossgates has bought property in the surrounding area, and is hoping to build something that is first floor commercial, upper floors residential apartments/condos; perhaps a civic component as well, maybe

government offices, a Police station, and medical offices all of which will help support the overall health of Crossgates.”

Response 1: The ZBA disagrees with the ACPB recommendation. As detailed in the DEIS, FEIS, Lead Agency Findings Statement and Town Planner memorandum, dated March 23, 2023, the Costco project is consistent with the Westmere Corridor Study and TOD zoning. See, Hart v. Town of Guilderland, 196 A.D.3d 900 (3rd Dept. 2021).

ACPB Recommendation 2. Traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities:

- A. The ACPB finds the traffic impact will have detrimental effects in and around the proposed project. There will be an increase in accidents at the I-87 exit ramp leading to Crossgates Mall Ring Road, increased accidents and congestion along State Route 20 and increased traffic through the Rapp Road Historic District.
- B. In June 2001 the Altamont Enterprise published an article on the traffic accidents at the I-87 exit ramp leading to Crossgates Mall titled “Ending the ramp’age?” It noted 26 accidents in 1994 and jumped to 140 in 2000.
- C. New York State Department of Transportation provided accident reports on this same exit ramp. It noted 52 accidents in 2016, 48 accidents in 2017 and 54 accidents in 2018.
- D. In addition, the Westmere Corridor Study noted 502 accidents along the eastern portion of the Westmere Corridor in a three year span.
- E. New York State Thruway Authority is expecting cashless tolls by 2020. These tolls act as a “traffic calming measure” to the entrance onto I-87. How will this affect the traffic patterns and accidents at the Crossgates I-87 entrance?
- F. The proposed warehouse does not appear to show any traffic mitigation that address the accident prone exit ramp nor the heavily traveled eastern section of the Westmere corridor.

Response 2: The ZBA disagrees with the ACPB recommendation. As detailed in the DEIS, FEIS, Lead Agency Findings Statement, Town Planner memorandum, dated March 23,

2023, and multiple traffic analyses by the Town's traffic TDE and Applicant's traffic engineer, all potential traffic impacts have been identified and addressed through mitigation measures that include, but are not limited to a new roundabout at the intersection of the I87 exit/entrance ramps and Crossgates Mall Road, road diet on Crossgates Mall Road, installation of landscaped medians on Crossgates Mall Road for traffic calming and removal of the existing exit ramp on the west side of the intersection of Crossgates Mall Road to promote lower speeds, and pedestrian improvements.

ACPB Recommendation 3. Impact of proposed land uses on existing and proposed county or state institutional or other uses:

- A. The special use permit does not demonstrate conclusively that no such negative impacts with regard to traffic and accidents in and around the proposed location and has not proposed any mitigation.
- B. We understand there is conversation with Town of Guilderland, Rapp Road Historic District, City of Albany and Pyramid regarding the adverse impacts to the Rapp Road Historical District. However at this time we don't have a conclusive traffic mitigation proposal that was deemed viable either by the Town of Guilderland or the City of Albany to be commenting on.

Response 3: The ZBA disagrees with the ACPB recommendation. Potential impacts to the Rapp Road Historic District were considered. See Response 2 and Hart v. Town of Guilderland, 196 A.D.3d 900 (3rd Dept. 2021).

ACPB Recommendation 4. Protection of community character as regards predominant land uses, population density, and the relation between residential and nonresidential areas:

- A. The proposed warehouse ignores the community character. If built, this structure will be the largest single use retail building found along State Route 20 in the Town of Guilderland.
- B. New York State General Municipal Law §96-a. Protection of historical places, buildings, and works of art states, "In addition to any power or authority of a municipal corporation to regulate by planning or zoning laws and regulations or by local laws and regulations, the governing board or local legislative body of any county, city, town, or village is empowered to provide by regulation special conditions and restrictions for the protection, enhancement, perpetuation, and use of places, districts, sites, buildings, structures, works of art, and other objects having a special character or special historical or aesthetic

interest or value. Such regulations, special conditions and restrictions may include appropriate and reasonable control of the use or appearance of neighboring private property within public view, or both.”

- C. The Rapp Road district was designated on the Nation’s list of properties worthy of preservation in 2002. The Director of New York State’s Technical Preservation Bureau within the State Historic Preservation Office, has advised that the impact of traffic and high density development is an adverse impact on the historical preservation of the Rapp Road historical community.
- D. The origin of the Historical Rapp Road community is an African American community that migrated from Shubuta, Mississippi during the Great Migration. The community is singular in Albany County in its living presentation of the agrarian lifestyle that remained intact through a community’s chain migration to the north and the subsequent five generations. Multiple decedent families from the original property owners still live on Rapp Road. The Great Migration was the largest migration of United States citizens in American History that culminated in the mass urbanization of most of the migrants. The historical Rapp Road community provides an alternate and unique oral and living history that is increasingly hard to maintain as development and density continues to encroach.

Response 4: The ZBA disagrees with the ACPB recommendation. Potential impacts to the Rapp Road Historic District were considered as detailed in the DEIS, FEIS, Lead Agency Findings Statement. See Response 2 and Hart v. Town of Guilderland, 196 A.D.3d 900 (3rd Dept. 2021). Land has been donated to the Rapp Road Historic District by the Applicant in accordance with the Planning Board’s SEQRA findings statement.

ACPB Recommendation 5. Drainage:

A. Maser Consulting, on behalf of Pyramid LLC, responded to the Department of Public Work’s comments about the exceeding 5 acres disturbances in their phasing descriptions as such: “Due to the extent of mass grading +/-8’ across the majority of the site and the complexity of the proposed site improvements, it is not feasible to split up construction in such a way that there is less than 5 acres of disturbance at any given time.”. For construction activities outside of grading, Pyramid should adhere to recommended 5 acre maximum disturbance of a construction site at one time (GP-0-20-001).

Response 5: A Stormwater Pollution Prevention Plan has been provided which concludes: As the proposed storm water pollution prevention plan provides reductions in peak flows for the required storms, and runoff reduction/water quality mitigation meeting the

applicable standards, there should be no adverse impacts due to storm water, on-site or off-site, as a result of the proposed development.

ACPB Recommendation 6. Official municipal and county development policies, as may be expressed through comprehensive plans, capital programs or regulatory measures:

- A. The proposed warehouse does not meet recommendations of the Westmere Corridor Study; it does not protect nearby neighborhoods, it does not create neighborhoods, it is not pedestrian friendly, it does not support bus transit services and does not emphasize alternate modes of non-automobile-oriented modes of transportation.
- B. Page 56 in the Westmere Corridor study states, “While several elements of TOD are recommended throughout the Westmere Corridor with regard to access management, traffic calming, pedestrian, bicycle and transit improvements, this particular part of the corridor has critical features that would be necessary for a successful TOD neighborhood. These features include the availability of underutilized or vacant land adjacent to major destinations that attract high volumes of people (such as shopping, entertainment and employment centers) and could support high ridership transit stops. The missing elements, mixed use structures and compact, walkable more “urban” form can be created when land exists to integrate and transition uses into a more connected area with short blocks, mixed use buildings, public spaces and a strong pedestrian, bicycle and transit presence.”

Response 6: The ZBA disagrees with the ACPB recommendation. See Response 1 and Introduction.

ACPB Recommendation 7. Such other matters as may relate to the public convenience, to governmental efficiency, and to the achieving and maintaining of a satisfactory community environment:

- A. A satisfactory community environment should be planned and based on a process that involved analysis of existing conditions, as well as public and professional input. The Westmere Corridor study established the TOD zone and based its recommendations on an “analysis of the existing conditions information found in the previous sections, discussions with the Study Advisory Committee (SAC) and comments received from the public at the project open house (pg. 55).

B. Based on the study a satisfactory community environment would contain “mixed use structures and (a) compact, walkable more “urban” form (that) can be created when land exists to integrate and transition uses into a more connected area with short street blocks, mixed use buildings, public spaces and a strong pedestrian, bicycle and transit presence (pg. 56). The environment would ideally consist of “at least 80% coverage”(pg. 63), “orienting buildings to the street with a consistent build-to line with maximum setbacks of no more than 15 feet”, and “parking in the rear” (pg. 68).

C. Granting a Special Use Permit to the Costco proposal as is, would be out of compliance with the community and professional input in a pre-existing study produced by the Town of Guilderland. To maximize governmental efficiency and community character development should try to adhere to existing comprehensive plans and studies.

Response 7: The ZBA disagrees with the ACPB recommendation. See Response 1.

IV. CONDITIONS OF SPECIAL USE PERMIT APPROVAL:

A. Off-Site Improvements

- Installation of a roundabout at the intersection of the I87 exit/entrance ramps and Crossgates Mall Road. A condition of the EIS requires the roundabout to be operational prior to Costco opening for business.
- Road diet on Crossgates Mall Road, which includes decreasing the existing 4-lane roadway to two lanes and installing dedicated turning lanes at major intersections.
- Installation of landscaped medians on Crossgates Mall Road, which acts as traffic calming.
- Gabriel Terrace will be improved and extended to intersect with Crossgates Mall Road, creating a 4-leg, signalized intersection with crosswalks. A new sidewalk will be installed on the north side of this intersection providing improved pedestrian connectivity from Crossgates Mall Road to the area of Dick's Sporting Goods.

- A new 10' wide multi-use trail will be installed around the perimeter of the Costco site, on Crossgates Mall Road and Gabriel Terrace, improving pedestrian connectivity to the Costco site and surrounding sites. The multi-use trail will also extend to the Homewood Suites/Tru by Hilton located east of the Costco site.
- Removal of the existing exit ramp on the west side of the intersection of Crossgates Mall Road. Removal of the ramp will require all vehicles to travel through a signalized intersection, which will slow vehicle speeds and increase pedestrian safety.

B. On-Site Improvements

- The Costco site plans have been updated, as more set forth in Applicant's letter dated April 11, 2023, by incorporating many of the suggestions contained in the Planning Board's site plan review report. The ZBA includes the following as conditions:
- The Applicant shall convey the ± 1.5 acre off-site greenspace area identified on the site plan to the Town of Guilderland, or the property shall be deed restricted.
- All pedestrian improvements, signalized and unsignalized intersection design, traffic control device improvements shall meet ADA/PROWAG/NYSDOT/MUTCD guidelines.
- The public road sections on the Site have been discontinued and abandoned as public roads and proceedings have been commenced by the Town of Guilderland Industrial Development Agency to acquire the road beds for this Project.

C. Completion of any open items on the following letters/memorandum and applicant responses prior to issuance of a building permit:

- Attached April 16, 2023 letter from the Westmere Fire Department.
- April 19, 2023 memorandum from the Town Engineer and April 26, 2023 response from Colliers Engineering.

- April 19, 2023 letter from GPI, April 25, 2023 response from JMT, and April 25, 2023 email communication from GPI.

V. CONCLUSION

The ZBA determines, based on the entire record of proceedings, as evidenced by the findings contained herein that the objectives expressed and regulations contained in the Town of Guilderland Zoning Law have been satisfied by the Costco Project Application.