

**RESOLUTION APPROVING SPECIAL USE PERMIT
AND ADOPTING FINDINGS AND CONDITIONS
MAY 3, 2023**

COSTCO PROJECT



The Town of Guilderland Zoning Board of Appeals ("ZBA") hereby resolves as follows:

WHEREAS, in November 2019 an application by Crossgates Releasco, LLC for a Special Use Permit was filed with the ZBA (the "Application") for a ±163,000 square feet Costco facility, as described in the annexed Findings and Conditions (the "Project"); and

WHEREAS, the ZBA has duly considered the entire record of proceedings for the Costco Project Special Use Permit Application and the requirements of Guilderland Zoning Law Section 280-52; and

WHEREAS, on March 22, 2023, the Planning Board filed a Site Plan Review Report with the ZBA that: 1) recommends that the ZBA, as a SEQRA Involved Agency, ratify and affirm the Planning Board's August 28, 2020 SEQRA Lead Agency Findings Statement; 2) confirms that the recommendations of the Planning Board in the Site Plan Review Report are within the scope of the prior SEQRA review and 3) confirms that the Project meets all Site Plan approval factors set forth in the Town Zoning Law; and

WHEREAS, on April 19, 2023, the ZBA conducted a public hearing on the Application as required by Zoning Law Section 280-52(D); and

WHEREAS, there were 112 written comments and 14 verbal comments made in support of the Project and 5 written comments and 12 verbal comments opposed to the Project; and

NOW, THEREFORE, BE IT RESOLVED: after due deliberation, the ZBA hereby adopts and incorporates in this Resolution the annexed Special Use Permit Approval Findings and Conditions, and

BE IT FURTHER RESOLVED, based on the entire Costco Project record of proceedings, as evidenced by the Findings and Conditions contained herein, that the regulations and objectives expressed in the Town of Guilderland Zoning Law have been satisfied by the Costco Project Application. The ZBA, therefore, hereby grants approval of the Special Use Permit Application for the Costco Project.

This resolution was adopted by a 4 - 0 vote (0 absent; 2 recused) of the Zoning Board of Appeals.

BY ORDER OF THE ZONING BOARD OF APPEALS

Dated: May 3, 2023

E. Lott 

Chairperson

Crossgates Releaseco LLC Special Use Permit Request No. 4771

The file consists of: the mailing list to 81 neighboring property owners, the Town's required forms for a special use permit along with a Short Environmental Assessment Form under SEQRA, Albany County Planning Board Notification, Town Planning Board site plan review, a project narrative and various drawings and plans of the property. A special page was also created for the Project labeled “Proposed Costco” on the Planning Board page of the Town of Guilderland website. Numerous site plans can be found on the Proposed Costco page including the architectural plans, stormwater management plan, offsite Greenspace plan, and a full set revised April 11, 2023.

The Town Planning Board reviewed the application and provided the ZBA with a Site Plan Report dated March 30, 2023 and a letter dated April 11, 2023 from the applicant to the ZBA in response to the Planning Board’s Site Plan Report.

The Proposed Costco page of the Town Planning Board includes nine comment letters/emails from interested/involved agencies: Westmere Fire Department (September 6, 2022); Albany Pine Bush Preserve (September 29, 2022); Albany County Planning Board SUP Recommendation (May 4, 2020); Town Highway Department Letter (March 15, 2023); Pine Bush Preserve Commission emails (March 16,

2023); NYSDOT (April 7, 2023); email from Town Planner to NYSDOT (April 12, 2023); NYSDEC letter regarding the Long Eared Bat inquiry (April 28, 2023).

Project description by applicant:

In November 2019 Crossgates Releaseco, LLC (the “Applicant”) filed an application with the Town of Guilderland Zoning Board of Appeals (“ZBA”) for a 163,000+/- square foot Costco retail facility, including an 18 pump fuel facility, liquor sales and tire sales/installation on 16.46 acres +/- located at the northeast corner of Western Avenue and Crossgates Mall Road in the Transit Oriented Development (TOD) District (the “Application”). Access to the site will be provided via three driveways, which include a full access driveway from Gabriel Terrace; a full access driveway from Crossgates Mall Road and right-in only driveway from Crossgates Mall Road. The applicant is proposing 770 parking spaces (which complies with the minimum and is less than the maximum parking spaces permitted), which includes 16 accessible parking spaces and electric vehicle charging parking spaces (collectively, the “Project” or “site”).

Motion for ratifying and affirming the Lead Agency Final Environmental Impact Statements and Lead Agency Findings Statement:

The Town Planning Board acted as the SEQRA Lead

Agency and completed a Draft and Final Environmental Impact Statement (EIS) dated August 28, 2020.

See annexed “Involved Agency Findings Statement” dated May 3, 2023 for a resolution by the ZBA adopting and incorporating the findings statement of the Lead Agency dated August 28, 2020.

The Town of Guilderland Zoning Board of Appeals (“ZBA”) hereby resolves as follows:

WHEREAS, in November 2019 an application by Crossgates Releasco, LLC for a Special Use Permit was filed with the ZBA for a ±163,000 square foot Costco facility, as described in the annexed SEQRA Findings Statement (the “Project”); and

WHEREAS, thereafter the Town of Guilderland Planning Board, acting as SEQRA Lead Agency, undertook the environmental review of the Project, resulting in completion of Draft and Final Environmental Impact Statements and the issuance of a Lead Agency Findings Statement dated August 28, 2020; and

WHEREAS, on March 22, 2023, the Planning Board filed a Site Plan Review Report with the ZBA that: 1) recommends that the ZBA, as a SEQRA Involved Agency, ratify and affirm the Planning Board’s August 28, 2020 SEQRA Lead Agency Findings Statement; 2) confirms that the recommendations of the Planning Board in the Site Plan Review Report are within the scope of the prior SEQRA

review and 3) confirms that the Project meets all Site Plan approval factors set forth in the Town Zoning Law; and

WHEREAS, the ZBA is an Involved Agency in the Project's SEQRA proceedings and the SEQRA Regulations require that all Involved Agencies make a written Findings Statement in all actions that have been the subject of a final EIS. 6 NYCRR617.6(b)(3)(iii), and

WHEREAS, in furtherance of this requirement the ZBA has evaluated the record of the SEQRA proceedings for the Project in light of its jurisdiction with respect to the application for the Special Use Permit, and has duly considered the annexed SEQRA Involved Agency Findings Statement for the Project,

NOW, THEREFORE, BE IT RESOLVED that, after due deliberation, the ZBA hereby adopts and incorporates in this Resolution the annexed Involved Agency Findings Statement.

Motion to approve by _____:

Second by _____:

Roll Call: Richard _____, Nicole _____, Steve _____, Chair _____

Special Use Permit Request No. 4771

Per Articles III, IV & V Sections 280-18.1 & 280-52

respectively

For property owned by Crossgates Releaseco LLC
Situating as follows: 1669, 1689, 1699 Western Avenue; 1
Tiernan Court; 2, 4, 8 Gabriel Terrace; 2, 4, 5, 6 Rielton
Court; 2-8, 3, 5, 7, 9, 14, 16 Lawton Terrace and Crossgates
Mall Road, Albany, NY 12203
Tax Map #s 52.10-1-26 through 35, 52.14-1-1 & 2,
52.14-1-20 through 26, 52.14-1-28 through 33, 52.01-1-6 &
52.14-1-10
Zoned: TOD (transit oriented district)

BACKGROUND

On April 19, 2023 the ZBA conducted a public hearing on the application as required by Zoning Law Section 280-52(D). There were 112 written comments and 14 verbal comments made in support of the Project and 5 written comments and 12 verbal comments opposed to the Project.

A motion was made at the April 19, 2023 meeting to close the public hearing. The motion was seconded and the motion carried by unanimous vote.

FINDINGS

The Zoning Board makes the following findings of fact:

1. The ZBA considered the factors identified in Section 280-52(e) of the Zoning Law (review of an application for a Special Use Permit) which

consideration includes, but is not limited to, a review of the factors identified under Section 280-53(H) of the Zoning Law (Site Plan Approval by the Planning Board.)

a. The site conforms with the Zoning Law and guidelines and no variances are required.

b. The vehicular traffic access and circulation are adequate. The project and location are adjacent to Crossgates Mall and will be directly connected to Crossgates Mall Road. Thus the arrangement of vehicular traffic access from major highways (I-87, the Northway, and I-90, the Thruway) has been considered and found adequate. A traffic circle is being constructed at the intersection of the I-87 exit/entrance ramp, and a road diet is planned for Crossgates Mall Road that will reduce the number of lanes from four to two with a center turning lane which will reduce vehicular speed. Seven driveways will be eliminated on Western Avenue. A new CDTA bus stop will be installed on the west side of Rapp Road and Crossgates Mall Road. A traffic intersection will be added where Gabriel Terrace meets Crossgates Mall Road which will improve traffic flow and enhance pedestrian safety. Truck movement to and from the loading docks have been considered and found adequate, and emergency vehicle movements in and out of the property were also found adequate.

c. The fire lanes and other emergency zones and location of fire hydrants were found adequate by the Westmere Fire District who commented that the developer agreed to coordinate fire hydrant quantities

and locations with the fire department.

d. Pedestrian access and circulation is adequate. A 10 foot wide multi-use trail will be installed around the perimeter of the Costco site which will provide adequate safe pedestrian access to the site from Western Avenue and the Crossgates Mall Road and Gabriel Terrace. Sidewalks and crosswalks are proposed within the Costco site that provide safe access for pedestrians from the parking areas and from the multi-use trail to and from the building entrance.

e. The location, arrangement, design and general site compatibility of buildings, lighting and signs are appropriate for the site. The elevation of the Costco building will be lower than the elevation of Crossgates Mall Road (ranging from seven feet to fourteen feet lower.) The Board also finds that noise will have less of an impact on surrounding neighbors because the Costco building will be lower than the ring road. Lighting is adequate because the applicant proposed 16 foot tall poles with LED lighting in the parking lot. This is in compliance with the maximum height allowance in the TOD district. The maximum illumination level will not exceed 0.2 foot-candles, which also complies with the lighting code.

f. The location, arrangement and setting of off-street parking and loading areas are appropriate. The loading dock area is located at the southeast corner of the building; the truck movement turning plan shows delivery vehicles entering the site from Western Avenue and using the Gabriel Terrace driveway entrance;

vehicles can adequately navigate through the parking lot and the Town Engineer will confirm that trucks can make the proposed turns.

g. The applicant has coordinated landscaping improvements with the Albany Pine Bush Preserve Commission to ensure the trees, shrubs and other landscaping are not invasive species. The proposed landscaping for the parking lot and islands and perimeter of the site are adequate.

h. The Stormwater Pollution Prevention Plan (SWPPP) has been reviewed by the Town Engineer and the plan will conform with NYSDEC stormwater regulations. Public water and sewer is available on the project site and is adequate for the use. The applicant has also proposed an adequate plan to handle snow removal and storage at the site.

i. The applicant has proposed a plan that adequately protects adjacent properties against noise, glare, unsightliness or other objectionable features. The elevation of the Costco building will be lower than the Crossgates Mall Road elevation by between seven and fourteen feet. This will necessarily reduce the impact of noise on surrounding properties. As stated above, multi-use trails and landscaping features will make the site attractive.

j. The applicant has considered various options so that the location of the building, the flow of traffic and trucks and pedestrians will be safe, and the SWPPP complies with all laws. The site of the proposed Costco site consists of unoccupied, vacant single-family homes,

and town roads that have been abandoned/discontinued. The applicant will coordinate landscaping improvements with the Albany Pine Bush Commission to ensure that they avoid impacting the local tree environment. The applicant will ensure that the property design protects against soil erosion and that stormwater is properly drained in accordance with all guidelines and codes.

k. The applicant is constructing sidewalks and bikeways consistent with the Comprehensive Plan as shown in the site plan and discussed above.

l. As discussed above the applicant's plan complies with all standards for stormwater management and erosion and sediment control contained in Chapter 241 of the Town Code. Thus there will be no adverse impacts due to storm water on or off site as a result of the proposed development.

Factors for consideration of the Special Use Permit pursuant to Section 280-52(E).

(a.) The Zoning Board further finds under Section 280-52(E) that the Costco project will not be detrimental to or endanger public health, safety, or the general welfare of the community.

- The site plans demonstrate adequate arrangement of vehicular traffic access and circulation, including intersections, road widths, transit accommodations, and traffic controls, and consideration for Project's impact on the overall

traffic circulation system of the neighborhood and the Town.

- Access to the site is provided from two access driveways from Crossgates Mall Road and one from Gabriel Terrace. Gabriel Terrace will be extended to connect with Crossgates Mall road on the north at a new signalized traffic signal. Access was exhaustively analyzed with the Town's TDE, Greenman Pederson, Town staff, the Planning Board as evidenced by the comment and response evaluations of potential impacts and the ZBA.

- Several other traffic improvements are proposed, including construction of a roundabout at the flyover ramps, reduction of the four lanes Crossgates Mall Road to two lanes with a center turn lane and elimination of two high speed turning movements at Crossgates Mall Road as recommended by the Capital District Transportation Committee which found a higher incident of high speed crashes at this location.

(b.) The Costco project will not compromise the use and enjoyment of other property in the immediate vicinity, nor substantially diminish and/or impair property values within the neighborhood.

- As a specially permitted use, New York statutes define authorization of a particular land use that is permitted in a zoning law subject to specific requirements that are imposed to assure that the proposed use is in harmony with the immediate neighborhood and will not adversely

affect the surrounding properties. It is well established law in New York that the inclusion of special use permit uses in a zoning code is tantamount to a legislative finding that the permitted use is in harmony with and compatible to existing adjacent land uses and will not adversely affect those uses.

- As part of the Transit Oriented District, the site will be within walking distance of a rapid transit service (BRT) bus stop and adjacent to other destinations that attract high volumes of people, such as the Crossgates Mall. A TOD neighborhood is expected to be fairly dense to keep walking distances shorter and maximize the number of people living in, working and visiting the area.

- The site is adjacent to Crossgates Mall, and will provide a direct connection to Crossgates Mall Road which in turn provides direct access to major highways in the area (I-87 - the Northway and the New York State Thruway and I-90). Other shopping plazas in the area include Stuyvesant Plaza located a short distance to the east and the Town Center Plaza located across Western Avenue. A six-story hotel was constructed a few years ago to the immediate east of the Project site.

- The topography at the site is below existing grade which will ensure that the building

and parking and light poles will appear to be lower and reduce potential visual and noise impacts. In addition, the variance for light pole heights was withdrawn by the Applicant and the light poles will comply with the Town's height standards. Such lower pole heights will benefit the residential street located to the west of Crossgates Mall Road with less impacts.

(c.) The Costco project will not hinder the normal and orderly development and improvement of surrounding properties.

- The Costco project includes numerous traffic mitigation measures designed to address potential traffic impacts as a result of the Project and will promote normal and orderly development and improvement of surrounding properties. For instance, the Costco site and Site 3, a future potential development site, will be accessed via Gabriel Terrace and pedestrian accommodations are provided around the perimeter of Costco and through the Site to connect to Site 3 and hotel property located further to the east.

- The overall proposed action includes numerous features consistent with the Town's land use plans. The Costco Project proposes numerous TOD features, such as pedestrian and bicycle accommodations, new connector road to Crossgates Mall Road that will also serve as access to Site 3, when it is eventually developed.

- Changes are planned to the Crossgates Mall Road to reduce the number of lanes from four (4) to two (2) with a center turning lane and reconfigured Crossgates Mall intersection to eliminate two slip ramp that will reduce vehicular speed. In addition, seven (7) driveways will be eliminated on Western Avenue. A new multi-use trail will be provided on the west side of Rapp Road, from the vicinity of Gipp Road to Western Avenue. A new CDTA bus stop will be installed at the intersection of Rapp Road and Crossgates Mall Road. A new pedestrian crossing will be installed at the intersection of Gabriel Terrace and Crossgates Mall Road. All of these design improvements incorporate a Complete Streets design by designing a roadway for all uses, not just vehicular uses. The Complete Streets design will allow pedestrian connectivity from existing neighborhoods, the multi-use trail, and proposed residential uses on Site 1 and Site 3 to commercial uses such as Crossgates Mall, proposed Costco, and existing commercial uses along the Western Avenue corridor. The pedestrian and bicycle facilities proposed are in compliance with and encouraged by §280-18.1.G.2 of the Town of Guilderland Town Code.

(d.) The Costco project will be served by adequate utilities, access roads, drainage accommodations, and other necessary facilities are provided to serve the use.

- The control of stormwater and drainage

and provision of access roads, as shown on the Site Plans and related Application materials are adequate. The application includes a Stormwater Pollution Prevention Plan that will be implemented for construction and during operation of the project.

- Traffic impacts have been evaluated in detail and improvements designed to address potential impacts. See subsection (f) below.
- As set forth in the SEQRA Findings Statement, there is adequate water and sewer capacity to accommodate the project.
- The application materials demonstrate compliance with standards for stormwater management and erosion and sediment control contained in Chapter 241 of the Town Code, unless exempted under §241-23.

(e.) Ingress and egress to and from the site are provided in such a manner that no undue traffic congestion or hazard will be created.

- Traffic impacts underwent significant scrutiny during the environmental impact statement process.
- The Project and location are adjacent to Crossgates Mall, a super-regional shopping center, and will provide a direct connection to Crossgates Mall Road which in turn provides direct access to major highways in the area (I-87 - the Northway and the New York State Thruway and I-90). Other shopping plazas in the area include Stuyvesant

Plaza located a short distance to the east and the Town Center Plaza located across Western Avenue. A six-story hotel was constructed a few years ago to the immediate east of the Project site.

(f.) The use shall conform in all other respects with the provisions of this chapter and be consistent with the Comprehensive Plan.

- The Costco project conforms to the uses authorized by Special Use Permit under §280-21 of the Zoning Law the General Business District permits “Automobile service station” and “Retail, general” subject to issuance of a Special Use Permit. The Project is also consistent with §280-18A, the TOD regulations.
- As detailed in the DEIS, FEIS, Lead Agency Findings Statement and Town Planner memorandum, dated March 23, 2023, and current Site Plans, the Costco Project is consistent with the Westmere Corridor Study and TOD zoning.
- The permissibility of the Project’s use was fully litigated in *Hart v. Town of Guilderland*, 196 A.D.3d 900 (3rd Dept. 2021), where the Court found:

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 (case omitted).

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.

Motion to approve by _____

Seconded by _____

Roll call: Richard _____, Nicole _____,
Steve _____ Chair _____

The motion is _____

By order of the Zoning Board of Appeals

Dated: May 3, 2023

Chairperson, Elizabeth A. Lott