

Clifton Park Zoning Board of Appeals Meeting Minutes

May 6, 2003

Present: Dale Kelley, Chairman, Michael Dudick,
Skye Heritage, Sandra Pace, Dale Gleason
Gil Kortz, Donna Lawton

Also Present: Don Clemens, Director Building & Development
Louis Renzi, ZBA Counsel

Mr. Kelley called the meeting to order at 7:03 P.M.

NEW BUSINESS

1. An application from Kohl's Department Stores, requesting an area variance from Chapter 171 of the Town Code (Sign Law) for a wall sign of 193 sq. ft. - maximum allowed = 60 sq. ft. - variance requested = 133 sq. ft.; and a height variance from the maximum 20 ft. - proposed height = 22 ft. - variance requested = 2 ft., and an area variance for a second wall sign of 193 sq. ft. and a height variance from the maximum allowed of 20 ft. - proposed height = 22 ft. - variance requested = 2 ft.. The property is located at 54 Crossing Boulevard, Clifton Park. Permit #80431.

The secretary read the legal notice as it appeared in the Daily Gazette on May 1, 2003.

Christopher Smith, C. T. Male, presented this application. He noted that Jackie Rosiak from Kohl's Corporate offices is also present.

Mr. Kelley read the Saratoga County Planning Board's recommendation stating that the proposed height of the wall sign letters seems excessive.

He handed out a colored rendering of the proposed signs. He referred to a site plan showing the location of the store.

Mr. Smith noted that this is a B-4 Commercial zone. He referred to the justifications required in the application process. He noted the practical difficulty would be that the signs would not be readable from the adjacent roads as they are approximately 400 ft. from I-87 and over 600 ft. from Crossing Boulevard. He stated that an economic hardship would result if they complied with they code in that the other signs and buildings in the area do have larger signs than allowed and this would make them more

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competitive with those around them. Also he noted there would be no detriment to the public. The signs would be in character with the size and magnitude of the building and those around them.

Mr. Smith also mentioned the Town Planning Board referral that essentially supported

this application.

Ms. Rosiak noted that they currently operate 457 stores in 34 states and that this store is part of a 51 store opening scheduled for October. This is the first entrance into upstate New York. She stated that this is a prototype store with 88,000 sq. ft. of floor space and noted that the signs being requested are less than 3% of the facade on each wall. She also stated her concern with being able to be identified. She noted that request is for their prototypical signs throughout the country. She also stated they would like to be able to clearly identify their building and emphasized that the signs fit in with the architectural features of the building. She continued, this request is in keeping with the other area retailers and this would give them a fair chance to compete.

Mr. Clemens stated that he has no objection to this request. He noted the signs are aesthetically pleasing and are in keeping with others in the area.

Mr. Kelley asked Mr. Clemens about the visual impact in relation to the County's comments. Mr. Clemens responded he did not know. They have made similar comments in the past.

Mr. Dudick inquired about the size of the store and if this one is larger than those previous. Ms. Rosiak responded no this is a prototype store and is generally what is put in across the country. He then asked if these are the size signs being put on all stores. Ms. Rosiak responded yes. This is the typical sign being put on all one story stores.

Mr. Kortz inquired about the square footage of the walls that the signs are being put on. Ms. Rosiak responded the front facade is 8,320 sq. ft. and the sign will occupy 2.3%, the side facade is 6,500 sq. ft. and the sign will occupy 2.97%.

Discussion continued on the size and number of other signs in the area and it was agreed that this request is not excessive.

Mrs. Pace asked about the size of the letters on the sign for the Target store. Mr. Clemens stated approximately 110 sq. ft. and they have two other smaller signs on the building.

There was no public comment. Mr. Kelley made a motion to close the public hearing,

Mr. Dudick seconded, approval unanimous.

Mr. Renzi, Counsel for the Board, noted for the record that the sign application is signed by John L. Renzi and stated that he is not related and does not know John Renzi.

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Mr. Dudick made a motion to approve this application as requested. Ms. Heritage

seconded. Ayes: Pace, Lawton, Gleason, Kelley, Kortz, Dudick, Heritage. Noes: None.
2. An application from AT & T Wireless, requesting an area variance from Section 208-95B(2)(c) from the required 500 ft. separation from a telecommunications tower or any of the ancillary support or service structures - proposed setback = 200 ft. - variance requested = 300 ft.. The property is located at 56 Blue Barnes Road, Rexford. Permit #80432.

The secretary read the legal notice as it appeared in the Daily Gazette on May 1, 2003.

Maureen Elwell, attorney, represented AT & T and introduced Scott Heffron, RF Engineer with AT & T. She gave a brief overview of the site. She stated they would like to go on an existing 120 ft. monopole at approximately 83 ft.. They will install up to six panel antennas, a concrete base and put up to two equipment cables on the base. The variance is needed because they do not meet the 500 ft. separation in a residential district. They are a public utility under New York law.

Scott Heffron discussed the need to be at this location. He noted AT & T is trying to build up its network from Albany to Syracuse, heading up I-87 to Saratoga Springs and up to Lake George. In keeping with the Town's request for co-location, which is their main goal as well, is a win/win situation. They examined existing structures and there are enough in Town to cover the area they needed. They considered asking for an extension on the tower but there are FAA issues and they were fortunate enough to be able to make use of the available site at 83 ft.. This is the minimum height they could accept to locate at this site.

Ms. Heritage inquired about the location of the nearest homes to the tower. Ms. Elwell responded approximately 200 ft..

Ms. Heritage asked if the tower emitted any electro magnetic fields. Mr. Heffron responded that the tower itself is a passive element. The antennas attached to the tower are the transmission devices. They actually do transmit the signal away from the tower which gives you the coverage.

Ms. Elwell asked if the concern is with the RF emissions issue at the site and stated that they have already submitted that information verifying that they are within the acceptable range for the Federal requirements.

Mr. Heffron noted that before they can go on any tower they need to guarantee to the FCC and the Department of Public Health that they meet their standards. The emissions are very minimal, between 1 -10% of the FCC limit, more like 1 -2% in reality.

Mr. Renzi asked where that information is located in the application. Ms. Elwell responded that it was presented to the Planning Board as they requested.

Mr. Clemens noted that there will be minimal impact on the neighborhood because this is

an existing tower. He did have a question on the engineering report where it refers to modifications recommended for the tower. He noted that the report assumes they have been completed and asked if there is any proof that they were.

Mr. Elwell responded that they do not have that letter at this time but they are pursuing getting the letter. He stated that the building permit could be contingent on them submitting the letter. He noted the tower is up to the standards but they did not have the letter at the time of application. Ms. Heffron noted that she became aware of that on Friday and just has not been able to get the letter by today.

Mr. Renzi noted for the record that information in the conclusion has brought to mind: a) whether the modifications have been done, and b) or has someone subsequently decided that they did not need to be done. He asked what the letter will state.

Mr. Heffron stated that according to the tower company they were told the tower is fine, he cannot tell us that the modifications were done or upon a further study it was determined that the modifications were not needed. They are still waiting for them to provide the letter.

Mr. Renzi then asked if their position tonight would be that with the information that they have the addition of the antenna being planned to be added to this tower will not overload the structural integrity of this tower.

Ms. Elwell also noted that cell companies enter into agreements and one of the conditions of the agreement is that the tower can support their equipment. Therefore, she has no problem representing that to the Board.

Mr. Dudick inquired about the consideration of increasing the tower upward. Mr. Heffron responded they were considering going 10 - 20 feet upward. At the time they were considering if that was even a possibility. Mr. Dudick then asked if going upward would decrease the electromagnetic frequency put out by the antenna and therefore make it safer keeping it away from the ground. Mr. Heffron replied it would be less but there would be a minimal difference. He also stated that any carrier that has their antennas over 30 feet high are categorically excluded from doing an extensive study for the DPH. The reason is they are really focusing on the roof top installation, is it a controlled area, are there signs, is it clearly marked. Once you are in an area where you are 100 -150 feet up on a tower and you have a controlled area being the compound, and you roll off the adjacent properties that factor drops off dramatically, usually in the order of 5%, and that uses the worst case senerio. It is usually have that.

There was additional discussion on extending the height and the possible elimination of additional towers.

There was no public comment. Mrs. Gleason made a motion to close the public hearing, Mrs. Pace seconded, approval unanimous.

Mr. Kortz made a motion based on the information presented there does not seem to be a significant impact and therefore moves that this application be approved as submitted. Mrs. Gleason seconded. Ayes: Dudick, Kortz, Heritage, Gleason, Pace, Lawton, Kelley.

Noes: None.

3. An application from Cumberland Farms, Inc., requesting an area variance from Section 208-38C from the required 130 ft. setback from the centerline of Vischer Ferry Road for a pump island canopy - proposed setback = 53 ft. - variance requested = 77 ft.; an area variance from Section 208-93 from the required 50 ft. setback from the property line for gas pumps - proposed setback = 28 ft. - variance requested = 22 ft.; and an area variance from Section 208-38G from the required 35% green space - proposed 21% - variance requested = 14%. The property is located at the corner of NYS Route 146 & Vischer Ferry Road, Clifton Park. Permit #80433.

The secretary read the legal notice as it appeared in the Daily Gazette on May 1, 2003.

Mr. Kelley read the County Planning Boards recommendation for approval of this application.

Mr. Kelley noted that this applicant was before the Board in November and they were granted several variances. The applicant has been working with the Planning Board and are now back as a result of negotiations and compromises.

Martin Affredeau, attorney, and Chris Boyer, Bohler Engineering, were present.

Mr. Affredeau noted that since they were last here they have been working with the Planning Board on a number of their concerns, which mainly seemed to be the density of the site and the location of the building. He submitted the plan presented in November and then referred to a revised site plan. He noted this is an important site for Cumberland Farms and for the Town.

He noted the new site has a unique configuration. It moves the store away from Route 146 and the gas island is reconfigured and the curb cut moves down from Vischer Ferry Road. They now need a green space variance which they did not need originally. He noted the landscaping package will be better than what is currently there. It will be more aesthetically pleasing. The setbacks needed are due to the size of the site. He noted he believes the Planning Board seems to be more receptive to this plan. He also noted that the County Planning Board did recommend approval whereas before they did not.

Mr. Kelley noted that there are a lot of planning issues and this Board should address the variances as they stand alone.

Chris Boyer stated that they do have a conceptually approval entrance. DOT has made this a limited turn move entrance so there will not be traffic going in and out in both

directions. The landscaping does diminish because of moving the building back into the corner retaining walls will have to be built eliminating some of the green space.

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Mr. Clemens noted that he has had conversations with Jason Kemper, Planning Board, and he would like to ZBA to know that the Planning Board is on board with this plan. They like it much better than the original plan. This is the product of much negotiations. The Planning Board feels that even with the green space variance this is a better lay out. The moving around of the pump island and canopy's created the need for the other setback variances. He also noted that NYS code requires that the gas pump be in full view of the cashier in the store at all times. He stated he is also in full agreement with this application.

There was no public comment. Mrs. Gleason made a motion to close the public hearing, Mrs. Pace seconded, approval unanimous.

Mr. Kelley noted that the Planning Board is happier with this rendition than the previous one.

Mr. Kortz asked from a logistical standpoint are these variances in addition to those previously granted or replacements.

Mr. Clemens responded two are replacements, the green space is a new request. The canopy and pumps moving around changed the variances previously granted.

There was discussion on the number of variances granted and what will no longer be needed. Mr. Clemens stated he will have to go through the list on an item by item basis.

Mr. Kortz asked what the Planning Board did not like about the old plan. Mr. Affreseau responded the primary thing was the building was too close to Route 146, and they felt the area for the pumps was too tight so both areas were reconfigured. This is a variant of what the Town Engineer wanted. They worked very close with him and they feel they have satisfied his concerns with this plan.

Mr. Kortz discussed the issue of the process an applicant goes through with the Planning Board, Zoning Board, back to the Planning Board, back to the Zoning Board, etc..

Mr. Kelley stated that they are working on improving communications between the Boards. They are trying to establish a regular meeting between the chairmen and attorneys to keep the boards working together.

Mr. Clemens addressed this issue. He noted although this is not a perfect system, approximately ten years ago it was agreed to allow applicants to move concurrently through both Boards to make them more user friendly and hopefully streamline the system for the applicant. Sometimes it doesn't always work perfectly and this is a case

where it didn't. In 90% of the cases it works very well.

Mr. Affredeau pointed out additional benefits, although they are planning issues, there will be a separate sidewalk and bike path that the Town would like to see to connect to the recreational area.

Mrs. Lawton made a motion to approve this application as submitted. Mr. Dudick seconded. Ayes: Gleason, Pace, Lawton, Kortz, Heritage, Dudick, Kelley. Noes: None.

4. An application from Massaroni Development Corporation, requesting an area variance from Section 208-11 from the required 10 ft. side yard setback in an R-1 zone - actual setback = 9.4 ft. - variance requested = .6 ft.. The property is located at 30 Wishing Well Lane, Clifton Park. Permit 80434.

The Secretary read the legal notice as it appeared in the Daily Gazette on May 1, 2003.

Dwayne Rabideau, VanGuilder Associates, presented this application. He noted that they did not find out about the need for the variance until after the fact. The builder was trying to put in a side load garage and did not take enough care on the right hand side to stay within the 10 ft. setback. The variance only being .6 ft. will not be detrimental to the neighborhood. The house is set back farther and there will not be any visual impact.

Mr. Kelley noted that this has happen before in this subdivision. This is the third time. Unfortunately, this home is already built. Mr. Kelley stated he has talked with Mr. Clemens and he has come up with a recommendation.

Mr. Clemens stated his recommendation is that if this variance is granted it will be with the condition that any further homes constructed in this development, Mr. Massaroni will have to submit a foundation location to the Building Department before he can start framing the house.

There was discussion on this condition and if it would apply to this subdivision or the builder. Mr. Clemens responded, the builder.

There was no public comment. Mr. Kelley made a motion to close the public hearing, Ms. Heritage seconded, approval unanimous.

Mr. Dudick asked if it would be possible to move property lines? Mr. Clemens stated some of the homes are already built and that would not be feasible.

Mr. Dudick asked what if the builder does not want to accept this condition. Mr. Kelley responded he will not be able to sell the house.

Mr. Kelley made a motion to approve this variance with the condition that all future building permit applications submitted by this applicant, Massaroni Development Corporation or its successors thereof, shall be subject to an as built foundation location

plan submitted to the Building Department for approval prior to the start of framing. Mrs. Lawton seconded. Ayes: Kortz, Kelley, Dudick, Pace, Lawton, Gleason, Heritage. Noes: None.

The secretary noted that there was some additional editing needed on the pending minutes and also that Mr. Renzi noted that the change in counsel was not made on the 5/6/03 Page 8

“cc” section of the minutes.

Ms. Heritage made a motion to approve the minutes of April 1, 2003 as amended, Mrs. Pace seconded, approval unanimous.

Mr. Renzi asked for any comments on the Comprehensive Plan.

Mr. Kelley noted that on 4/21/03 the Town Board passed a resolution on LC zones. He asked the members to review this item.

Mr. Kortz made a motion to adjourn the meeting at 8:22 PM,
Mr. Dudick seconded, approval unanimous.

Respectfully Submitted,

Judy Lamb
Secretary

cc: Town Clerk, Zoning Board Members, Louis Renzi, Counsel,
Don Clemens, Department of Building and Development, Planning Board, ECC
Members