

**ZONING BOARD OF APPEALS**

May 20, 2008

Present: Michael Dudick, Chairman (arrived at 8pm), Dale Gleason, Douglas Strother, Robert Ritter, Gilbert Kortz

Absent: Christopher Lemire

Also Present: Joel Peller, ZBA Counsel  
Steve Myers, Director, Building & Zoning

Mr. Kortz chaired this hearing in Chairman Dudick's absence. He called the meeting to order at 7:05 p.m. He mentioned that there are only 4 board members present which constitutes a quorum. He stated that in order for an application to pass, all 4 members would have to vote affirmative. He advised the applicants that they have the option to adjourn their application and come back the next meeting. They can also make their decision while their application is being heard.

**NEW BUSINESS:**

- 1. An Application from Ray Sign, Inc., requesting an area variance from Chapter 171 of the Town Code (Sign Law) for a second freestanding sign for parcel located at 5 Maxwell Drive, Clifton Park, New York.(Existing sign is also a directory sign).  
Permit # 80694**

The secretary read the legal notice as it appeared in the Daily Gazette on May 15, 2008.

Tim Prescott, representing Ray Sign and AXA, presented this application. His shop is located at 28 Colonial Avenue, Schenectady, New York. He stated that there is an existing 24 sq. ft. sign for 8 tenants. The size of the 3-story office building is 150,000 sq. ft., which gives each tenant a 3 sq. ft. space for their sign on the existing tenant directory. He described the location of the sign on the map and stated that his tenant is complaining that people cannot see their name on the sign. He feels that based on the size of the building, a 24 sq. ft. sign divided by 8 tenants is not enough. He would like a sign that is 40 in. x 46 in. The logo is about 4 sq. ft. on the sign. He

stated that their customers see the main directory sign but are not able to find them. The sign would not be illuminated.

Mr. Kortz stated he recalls the board granting a fairly substantial wall sign for this building, and he stated that this was confirmed by the building officer. That sign was never put up, and he was wondering about it because he feels it would influence what is going on here. Mr. Prescott stated that the problem is you would still have to get through the parking lot area to see the wall sign.

Mr. Kortz stated that he feels that the wall sign was big enough where it was going to be positioned and would have easily be seen from the freestanding sign, but it was never put up. Mr. Prescott stated that was before this company contacted Mr. Prescott's company about this particular sign. He did not know anything about that.

Mr. Kortz asked Mr. Myers if the existing freestanding sign was the maximum allowable size. Mr. Myers replied that it is smaller than what would be allowed.

Mr. Ritter asked what is the maximum size allowed. Mr. Myers stated that as he recalls, this is a planned development falling within the office category, so 60 sq. ft. would be the maximum allowed. If it was a normal commercial development like the mall, it would be 150 sq. ft.

Mr. Kortz asked if the directory sign encompassed just 5 Maxwell Drive. Mr. Myers stated that he does not believe it is part of the Executive Woods part, but he does not recall exactly.

Mr. Kortz stated that he noticed that AXA Advisors is listed on the current freestanding directory sign. Mr. Prescott stated yes, but there are 2-inch letters.

Mr. Kortz stated he is concerned of this is truly a second freestanding sign, or if this would be for all Executive Woods. He is also concerned that this would give AXA the advantage over the other tenants in the building. Mr. Prescott stated that AXA occupies 10,000 sq. ft. of this building and they are a main occupant of that building. He does not know the square footage that the other tenants occupy.

Mr. Ritter asked if allowing one tenant would set a precedent. Mr. Kortz stated that in his opinion it does. At least define the building, if there was a wall sign. There was discussion among Mr. Kortz and Mr. Ritter about the wall sign that was previously approved. Mr. Myers said it was his company, for whomever took over for Delmar. Mr. Kortz stated he would be a little hesitant to approve another variance without more information with regard to the wall sign that was approved which he feels would have been visible.

Mr. Prescott asked how many square feet he would be allowed for a wall sign and would he be allowed an illuminated sign such as channel letters. Mr. Kortz stated that they would have to go back and look.

Mr. Strother asked Mr. Prescott if they were depending on foot traffic and what the nature of the AXA business is. Mr. Prescott replied that AXA is a financial advisors business. He asked Mr. Strother what he meant by foot traffic. Mr. Strother clarified what he meant, foot traffic like a

retail operation. Mr. Prescott replied no. Mr. Strother stated that the applicant was vague on the application, stating that it is unknown, because they do not know who is getting to their door. He feels this is a weak argument and they should have some type of financial hardship quantified. Mr. Kortz advised Mr. Strother that with sign variances, financial hardship is not as much of a consideration as it is for a use variance.

Mr. Prescott stated that in this tenant's mind he believes they are thinking that the sign is more of a directional sign than a commercial advertisement.

Mr. Ritter stated that he does not personally have a problem with advertising a tenant on a pylon sign. What he does have a problem with having a tenant having their own sign. If there was an existing building sign that was pre-approved, then they do not necessarily need to do anything different, as long as they stay within the size and scope of what Mr. Kortz suggested. If they work with the other tenants on a sign that they are proposing now, that might be a good compromise. But based on what they are proposing he is uncomfortable because he feels it is setting a wrong precedent. He does not want to give one tenant an advantage over another. He gave an example of another time when the board was faced with an issue of a major retail restaurant across the street on Route 146. The board suggested if they want to change their outside sign because that was their company's new logo, that was fine, but then they have to take down their freestanding sign. He said most of that side of the street are businesses of equal size and scope as this national financial service company. Mr. Ritter stated he would like to see Mr. Prescott go back to his client, work with Mr. Myers, and revamp this.

Mr. Prescott stated that his other option would be, with these 8 tenants in the building, to change the size, which is currently at 24 sq. ft. This gives him a 1 x 3 ft. panel. He asked how many square feet he would be allowed to change it to. Mr. Myers stated that he would be allowed 60 sq. ft. divided by 8 tenants, and apply for a variance to make that larger. Maybe they want to move that sign to the entrance where he is looking to place this one. This may be a better a better entrance for the sign. If we decide that the Executive Woods building is on a separate parcel they can get their own sign. Mr. Myers stated that their other option is a directional sign at one entrance or another which can be up to 2 sq. ft. per face. They can place AXA on that with an arrow, and they would not even need a permit as long as they stay within the size restrictions, and still make this sign larger where it sits. He stated he feels there are options that will involve all the tenants of the building and satisfy the board, plus there is the wall sign that has already been approved.

There was discussion among Mr. Kortz, Mr. Myers and Mr. Prescott about the wall sign. Mr. Peller asked Mr. Prescott if he was okay with adjourning the application to the next meeting. Mr. Prescott stated absolutely. He would like to resubmit this to his client and if they can get a bigger sign out by the road for these tenants for 60 sq. ft. or a little more, he would opt for that, and maybe a building sign that can be seen on the property. Mr. Ritter advised Mr. Prescott that he did not want to disillusion him into thinking he could go and revamp it, and we would grant whatever they come back with. Mr. Prescott stated he realizes this. He is looking for options and did not want to lead his customer astray.

Mr. Kortz mentioned that the county reviewed this application and found no significant county wide or intercommunity impact. He asked if there was any public comment and there was not. Mr. Kortz stated he will keep the public hearing open since we are adjourning this.

Mr. Prescott stated he would like to appear at the next meeting if possible. The secretary advised Mr. Prescott that the next meeting would be June 3<sup>rd</sup>.

Mr. Peller asked Mr. Prescott to waive the 60 days to allow the applicant to come back on June 3<sup>rd</sup>. Mr. Prescott stated that he was okay with that.

There was further discussion about investigating the wall sign and investigating what was approved.

- 2. An application from Gerald Currier, Trustee, Parkside Covenant Church, requesting variances from Chapter 171 of the Town Code (Sign Law): (1) variance needed from 171-4H(3) – potential for vehicular confusion, may impair visibility and placement is within 25 feet of street edge line – 15 ft. to property – variance requested = 10 ft.; (2) variance needed from Sign Tables Chart III – 15 feet from property line required – 15 ft. variance requested; (3) variance needed from 171-4H(m) - variance requested to have sign lit from 8pm to 8am; (4) variance needed from Sign Chart III which allows 24 sq. ft. and the letters only = 23.18 sq. ft., it is believed the sign is 36 sq. ft. – variance requested = 12 sq. ft.. The property is located at 14 Jarose Place, Clifton Park, New York. Permit #80696**

The secretary read the legal notice as it appeared in the Daily Gazette on May 15, 2008.

Paul McCart, pastor of Parkside Covenant Church presented this application. Mr. Currier was not able to be present and asked Rev. McCart to present the application. Rev. McCart stated they have almost completed the process of building their new church off Grooms Road. The building should be complete by the end of June. There has been a temporary sign there for about 3 years. They would like to put up a permanent sign.

Rev. McCart noted a correction to variance request number 4, which is no longer needed. He handed out a new rendering of the sign, which fits within the 24 sq. ft. guideline. Rev. McCart stated that the bottom portion of the sign matches the stone that is on the exterior of the building. The top part of the sign fits within the 24 sq. ft. guideline. He stated that a lot of the church signs around the community are illuminated and they would like an automatic changeable copy sign that would not change more than twice per day. They would have certain messaging on the temporary sign that would not change often.

Mr. Kortz referred to the rendering of the sign and asked what the changeable part is. Rev. McCart stated the part of the rendering where it states Vacation Bible School. This can be changed right from the office. He stated that it presents a nice graphic without having to reprint different inserts. Mr. Ritter asked for clarification of what portion of the diagram can be changeable. Rev. McCart clarified this for Mr. Ritter.

Rev. McCart stated that the variance request started mainly because of the location. The current location of the sign is on the edge of the property line. If it were to be set back, it would be so far back that it would not be visible from the road. He stated that the property starts approximately 4 house lots in. He stated that the proposed sign would actually be located further back than the current sign, which is currently over the property line. He wants the sign to be placed on the property line, which is about 25 feet from the road.

Mr. Kortz advised that the county planning board has reviewed this application and has found no significant county wide or intercommunity impact.

Mr. Kortz addressed the question of lighting. He referred to the part of the code which stated that no sign in a residential development shall be illuminated between 8:00 p.m. and 8:00 a.m., unless the premises on which it is located is open for business. He asked if the applicant was in compliance if the sign were lit during business hours. Mr. Myers stated that there is another section in the code which states that no sign in a residential code shall be lit.

Mr. Kortz asked if the sign can just be illuminated during business hours and not just from 8:00 p.m. to 8:00 a.m. Rev. McCart stated that he could. He stated that he wanted to be in line with the other churches in the area. Mr. Myers stated that the other churches are located in residential zones. There was discussion between Mr. Kortz and Rev. McCart regarding the lighting of the signs. Rev. McCart stated that he would turn the sign off when they are not having functions. This could vary from month to month. They discussed how they would turn the sign on and off.

Mr. Kortz stated that the board's guidance is to keep variances to a minimum and stay within the spirit of the sign law. There was more discussion regarding how the lights would be turned on and off. Mr. Kortz stated that if the lights were on during business hours they would be in compliance.

Mr. Ritter asked if the portion of the sign would be lit that contains white letters that say Parkside Covenant Church. Rev. McCart said that it would. Mr. Ritter was concerned about the top part lit with an unlit black space underneath. There was discussion among Mr. Ritter, Mr. Kortz and Rev. McCart about what portion of the sign would be lit. Mr. Ritter asked about a spotlight. Mr. Myers responded that this site is unique in that it is the entrance to a new development. He feels we should address this now rather than have complaints later. He does not feel that if just Parkside Community Church were lit it would be a problem. Mr. Myers is more concerned about the sign face being lit as a distraction to drivers on Grooms Road. He suggested dimming the lights at night. Mr. Kortz asked what would be the reason to grant this particular situation. Mr. Myers stated that he agrees with just having the sign lit when business is open. There was more discussion about how to turn the lights on and off and just having the top part illuminated when there were no programs and shut down the middle.

Mr. Kortz asked Mr. Ritter why he feels the top part of the sign should be lit even if there are no functions there at night. Mr. Ritter replied that it would be smaller lettering that would be illuminated that identifies where the church is after hours. Mr. Ritter added that if the other portion of the sign were able to be made to be blank he feels this tactful and eye pleasing.

Mr. Kortz asked if anyone from the public hearing would like to comment.

Mr. Strother expressed his concern about whether images on the sign would be static or animated. He would be against any animation. Mr. Myers stated that animated signs or moving text are not allowed. Mr. Strother asked if a single change of an image would be considered animation. Mr. Myers stated that he consulted with the town attorney and he would not call that animated. Rev. McCart stated that they would only use static images that they could just change. There would be no moving images. There was discussion about the sign being back lit.

Mr. Kortz made a motion to close the public hearing. Mrs. Gleason seconded. Approval unanimous.

There was discussion between Mr. Kortz and Mr. Peller on the amendment of the application and the redacting of variance #4. Mr. Peller asked the applicant if we amend the application can variance # 4 be deleted. Rev. McCart replied yes.

There was discussion on how to make the motion.

Mrs. Gleason made a motion to approve the application with the following conditions and amendments:

- (1) variance approved as requested from 71-4H(3) – to place sign within 25 feet of street edge line – variance approved = 10 ft.;
- (2) variance approved as requested from Signa Tables Chart III – 15 feet from property line required – variance approved = 15 ft.;
- (3) variance to have sign illuminated has been approved **with the following conditions:** that the non-changeable portion of the sign be allowed to be illuminated between the hours of 8pm and 8am; and that the changeable portion of the sign only be allowed to be illuminated during business hours.

Variance # 4 is withdrawn.

Mr. Kortz seconded. Ayes: Gleason, Ritter, Kortz, Strother. Noes: None.

- 3. An application from Karl Ives, requesting an area variance from Section 208-16E(2)(10) which requires a 10 ft. side yard building setback in a CR Zone – variance requested = 2 ft., bringing setback to 8 ft. The property is located at 11 Garnsey Road, Rexford, New York. Permit #80697**

The secretary read the legal notice as it appeared in the Daily Gazette on May 15, 2008.

Karl Ives of 11 Garnsey Road, Rexford, presented this application. Mr. Ives stated that he and his wife have returned to their family home that they bought from their parents at 11 Garnsey Road after residing in Dallas for 22 years. The house is set into a hillside and the only way to

enter the living level of the house is via the stairs through the cellar or a treacherous route in the front. Because of this it was increasingly difficult for his parents, who now live in Coburg Village and Mr. Ives bought the house. He would like to remodel, and his plans call for a 2-car garage on the south end of the house. They also want to be able to drive up the hill and around the house to enter from the back. They want their parents to be able to enter the house more easily.

The 2-car garage would make for a more safe entry and also leave enough of a driveway to have same level access for their parents. In attempting this he has hired an architect and the property lines are closer than they thought, so they had to modify the plan in order to make this work. To leave room for a drive around, they need 2 feet to have an adequate 2-car garage on the end of the house. Those 2 feet encroach for a short distance, about half the depth of the garage. Because of the angle of the house, the property goes back within the 10-foot setback.

Mr. Kortz asked for clarification of the driveway on the map, and Mr. Ives explained it. Mr. Kortz asked why Mr. Ives did not want to put the garage on the other side of the house. Mr. Ives replied that there is shale which steps up and it would be much more expensive because it is solid rock about halfway from the house back.

Mr. Kortz asked Mr. Myers if he had any comments. Mr. Myers stated he did not have any issues and feels it is a reasonable request.

Mr. Dudick asked if in addition to the 2-foot sideyard setback is he asking to build his driveway partially on his neighbor's property. Mr. Ives stated that it will not go over his neighbor's property. He stated that the overlapping portion of driveway shown on the footprint will be removed. Mr. Dudick asked Mr. Myers if it would be a problem if the driveway were narrower. Mr. Myers replied no.

Mr. Ritter made a motion to close the public hearing. Mrs. Gleason seconded. Approval unanimous.

Mr. Kortz stated that he does not feel there is any significant impact and he feels that this application reasonably meets the conditions necessary for an area variance.

Mr. Kortz made mention that the chairman is now here and is functioning as a member this evening.

Mr. Ritter made a motion to approve the application as presented by the applicant. Mrs. Gleason seconded. Ayes: Gleason, Ritter, Kortz, Strother, Dudick. Noes: None.

- 4. An application from John Cuttita, requesting an area variance for an accessory structure on a keyhole lot. Garage was part of #424 Moe Road. Ownership to be transferred to 426A Moe Road. Due to new subdivision of properties, the following variance is required: (1) a variance from 208-12(A) to allow for an accessory building in an R-1 zone requires 80 ft. fro front property line – 6 ft. proposed – variance requested = 74 ft. The side setback is acceptable per 208-86. The property**

**is located at the south side of Par Del Rio, west side of Moe Road, Clifton Park.  
Permit #80698**

The secretary read the legal notice as it appeared in the Daily Gazette on May 15, 2008.

Steve Lamb of 2 Pine Hill Bend, Ballston Lake, presented this application on behalf of the Cuttita's. He stated that Christopher Cutitta is going to sell a lot that was originally subdivided in the early 1980's. At that time, there was a garage on the property it faces. The land is now owned by John Cutitta, another son. The father did the entire subdivision. Since Christopher is selling it and the garage faces the property behind them, it is really not usable and never has been part of Christopher's lot. It would require municipal water or sewer. Municipal water is available and if there is ever a problem it will be connected to municipal water. They are proposing that if there is ever a problem with the sewer, they also would connect to a municipal sewer which would be up with Evergreen Estates under the new ownership. This would make the garage still useable as a garage for John Cutitta. If it goes the other way it would not make any sense because there is no access from the lands of Christopher Cutitta to get to it.

Mr. Kortz stated that it looks like the garage is being used. Mr. Lamb stated that it is being used by John Cutitta. His father built it many years ago. Those 4 lots are like a family plot. They have always been under the same ownership. Now one of the sons, Christopher, is trying to sell his property. Mr. Kortz asked if when they sell they want to subdivide the garage so John can continue to use it. Mr. Lamb replied yes.

Mr. Ritter asked if the garage is staying. Mr. Lamb replied yes.

Mr. Kortz asked Mr. Myers for his comments. Mr. Myers replied that this is a unique situation in that the garage has never been used by the other property. This seems like a drastic variance request but not when you look at the whole package. The only reason he needs a setback is because of the accessory structure. If he had public water and public sewer he probably would not be here because they would be within 5 feet of the property lines.

Mr. Kortz agreed with Mr. Myers that although this seems like drastic variance this a unique situation that is already there and it does not hurt anything. Mr. Lamb replied that the only thing that changes is the ownership. Mr. Myers stated that he advised Mr. Lamb that if the water and sewer were bad they would need to connect.

Mr. Kortz made mention of one of the conditions for approval, that being was the condition self-created. Mr. Lamb replied that the garage was constructed by the father. The only thing that changes is the legal ownership of the garage.

Mr. Dudick asked if John Cutitta wanted the garage and that is why they are here, or if doors can be put on the other side so that they can face Christopher Cutitta's property. John Cutitta replied that he wants the garage.

Mr. Ritter made a motion to close the public hearing. Mr. Dudick seconded. Approval unanimous.

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Mr. Ritter made a motion to approve the application as presented by the applicant. Mrs. Gleason seconded. Ayes: Gleason, Ritter, Kortz, Strother, Dudick. Noes: None.

There was discussion about approving the minutes of May 6, 2008. Mr. Dudick stated that they could not be approved yet because Mr. Lemire was not present and there are some changes / corrections to be made.

Mr. Kortz made a motion to adjourn the meeting at 8:20 p.m. Mr. Ritter seconded. Approval unanimous.

Respectfully Submitted,

Jess McCarthy  
Secretary

Cc: Town Clerk, Town Board, Zoning Board Members, Joel Peller, Counsel, Steve Myers,  
Department of Building and Development, Planning Board, ECC, Assessor, Highway