

ZONING BOARD OF APPEALS

July 19, 2011

Approved

Present: Michael Dudick, Chairman, Deborah Ferro, Randy Gifford, Douglas Strother (7:10), Eric Prescott, Jennifer Vucetic

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

Absent: Christopher Lemire

Mr. Dudick called the meeting at 7:10 p.m.

PLEDGE OF ALLEGIANCE

Mr. Dudick informed the applicants that the board has seven members and an alternate, and there is currently one vacant seat. One sitting member is not present tonight. He said that Ms. Ferro, who is the alternate, has been designated to sit in for the vacant seat.

NEW BUSINESS:

The secretary read the legal notice as it appeared in the *Daily Gazette* on July 14, 2011.

1) An application from Saxton Sign Corp for a variance from Chapter 171, Chart I. to increase wall sign square footage on Hannaford store. Maximum allowed wall sign area = 60 square feet. Previous variance granted 8/30/88 allowed 253 square feet of wall sign. Applicant requests an additional 41 square feet. Property is located at 9 Clifton Country Road, Clifton Park, NY (Permit # 80826)

Mr. Pat Boni from Saxton Sign Corp, representing Hannaford, presented the application. He stated that Hannaford wishes to add an additional 41 square feet of illuminated letters which will be an overall size of 18" high x 27 feet. They want it to say Supermarket and Pharmacy so local people will know there is a pharmacy inside. He added that non-local people will know there is a supermarket and pharmacy in case of a medical emergency. He stated that with the setback and size of the building this does not appear that big. He said that percentage-wise, Hannaford has less percentage of storefront facia than any other store in the plaza indicating that with some stores it takes up 75% of storefront.

Ms. Ferro commented the application mentions it would cost thousands of dollars to remove the current sign and put one up that was within the allowed size. She asked if there was anything to support that.

Mr. Boni said it would cost thousands of dollars to remove them and replace, but if they stay with what is allowed, it would be way too small.

Ms. Ferro asked if whatever the cost to put up the sign, wouldn't the cost be depreciated by the business recovered and he said "yes".

Mr. Dudick referred to the current sign and logo. Mr. Boni said it would be refaced as it is the old image. He asked if the management of Hannaford felt that the public doesn't know what Hannaford sells. He was told that was correct, that they don't think they know there is a pharmacy in there if they have not been in the store before.

Mr. Gifford asked if they are a chain store and was told "yes".

Mr. Strother stated that in 1988 they were granted an astronomical variance. He asked if it was a requirement that all Hannaford stores advertise there is a pharmacy inside. He was told that it is a desire. It is not a NY State law.

Mr. Strother mentioned that tens of thousands of dollars for an operation of expansion like that, is not a prohibitive cost. He stated he is not inclined to support the application as submitted and ask that they use their expertise to solve the problem within the constraints of the already substantial variance.

Mr. Dudick commented that Hannaford carries many types of products and when you start to advertise all the products it becomes a question. He suggested using window signs as they already do. He asked about the name change ten years ago.

Mr. Boni said it used to be a Shop and Save and now Foodline bought them out, but they are not changing the name in this area.

Mr. Dudick asked for public comment. There was none.

Mr. Myers said he does not feel this is a significant change and he did not have much of a problem with it, considering the distance from the road. He indicated he feels this is a small addition to accomplish what they want.

Mr. Dudick asked if the addition is 41 sq ft. Mr. Myers agreed.
Ms. Vucetic asked if the sign would be backlit and told it would be.

Mr. Dudick made the motion to close the public hearing, seconded by Mr. Strother. All agreed.
Public hearing closed.

Mr. Dudick said it is not a big addition but it is a big sign.

Mr. Boni commented that, as far as adding additional items, not all supermarkets have pharmacies inside and that not all Hannaford's have pharmacies.

Mr. Gifford asked about the hours of the pharmacy and was told seven days a week, but he didn't know the store hours.

Ms. Vucetic asked if there were any other pharmacies in the plaza. Mr. Dudick said there is not but several pharmacies in town.

Mr. Strother made the motion to deny the application. Ms. Ferro seconded. Mr. Dudick clarified that a vote of Yes means to deny, a vote of No is a vote to approve. Four "no" votes are needed to deny the application.

Mr. Dudick said it is a tough call, a substantial size, but not a tremendous need, yet a small incremental add on. He said he could go either way.

Mr. Boni stated it is a huge facia, but doesn't appear to be that big when you are looking at it, especially with the setback. He referred to the photo, which is true to life.

Mr. Gifford asked about calling it a supermarket/pharmacy.

Mr. Strother said he sees there is some public benefit to the pharmacy sign, just that he would like to see it within the constraints.

Mr. Dudick called for a vote, and stated he now feels it is not a substantial increase in size.

Yes: Ferro, Strother Noes: Dudick, Gifford, Prescott, Vucetic

Application approved as submitted.

The secretary read the legal notice as it appeared in the *Daily Gazette* July 14, 2011.

2. An application from James & Katherine Mahon for a variance from Section 208-12 which requires 5 foot setback from property line. Applicant requires 4 foot setback variance for existing pool shed.

Property is located at 1 Woodstock Drive, Clifton Park, NY (Permit #80827)

Mr. James Mahon, owner of the home, presented the application. He stated he and his wife purchased the home in February, 2010. They have a pool in the back yard, which needed a

fence. They went to the town to get a permit for the fence, and during inspection was informed that the pool shed was not 5 feet from the property line. The pool shed is pre-existing and is located about 2 feet from the line. He stated he can't remove it without considerable effort. He spoke with Mr. Myers who suggested making the pool safe and get the fence up. They have done that and have made the shed part of the fence so the pool is closed in. They are asking for a variance so the shed is in code.

Mr. Dudick asked the size of the shed. Mr. Peller answered it is 17' x 6'.

Ms. Vucetic asked if the shed houses the mechanics of the pool and was told it does not, they are outside of the shed.

Mr. Strother asked how long it has been there and how long have the neighbors behind them been there. Mr. Mahon answered about 20 years.

Mr. Strother asked if it was pre-existing, non conforming.

Mr. Myers answered it is. He felt they needed a variance to make everything legal. He stated that they might not have needed a variance when the shed was built.

Mr. Dudick stated this is just getting the books clean and if the neighbors don't have a problem with it and is not on their property, this is not difficult to think about.

Mr. Dudick asked for public comments. There was none. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Strother. All approved. Public hearing closed.

Ms. Ferro asked if the shed is two feet from the property line. Mr. Mahon said yes approximately. Mr. Myers said that is best guess.

Mr. Dudick made the motion to accept the application as submitted, seconded by Mr. Strother.

Ayes: Ferro, Prescott, Gifford, Ducick, Strother, Vucetic Noes: none

Application approved as submitted.

The secretary read the legal notice as it appeared in the *Daily Gazette* on May 28, 2011.

3. An application from Affordable Modular Homes for a variance from Chapter 171, sign law, Table I. Maximum allowed freestanding sign = 32 square feet for parcel, 3 separate businesses. One permit granted previously for hair salon = 16 square feet, leaving 16 square feet available. Two other businesses request total of 42 square feet = 26 square foot variance required.

Property is located at 1796 Route 9, Clifton Park, NY (Permit #80829)

Mr. Lawrence Lapinski, from Affordable Mobile Homes, presented the application.

He stated they are moving up the road. They have been in business since 1990 on the other side of the road. They were at a disadvantage for south to north traffic because 30' evergreens block their building and sign. They would like to bring their existing signs with them. The current signage on the property leaves them 16 square feet.

Mr. Dudick asked if they owned the property and was told that they are leasing it from Chuck Hoffman.

Mr. Lipinski he said he is trying to tie in what they have to what they can have, that the 1 x 8 sign will be missed.

Mr. Peller asked if there is representation form on file allowing Mr. Lipinski to speak on Chuck Hoffman's behalf, and Mr. Myers said no. Mr. Peller asked Mr. Lipinski if he would get something in the file indicating he can speak as Mr. Hoffman's agent.

Mr. Strother said he is concerned with the number of buildings.

Mr. Lipinski said there are two existing buildings, one in front, one in rear. The one in the rear is the hair salon, the one in front will be both their carpet business and modular business. The carpet business for the modular customers and there are no retail hours, it is only by appointment. They are going to put a model next to the building which will be changed on a yearly basis. He states there is nothing else that could be there. The front building used to be Art World.

Mr. Gifford asked if there would only be one modular home there and Mr. Lipinski answered "yes" and they had given Planning the largest dimensions that might go on there. The original structure in front was a two story cape to which an additional one story was added and joined them together. The area upstairs will be used to storage, no bathrooms. The main business will run off the first floor.

Mr. Dudick asked Mr. Myers for confirmation that they are looking at a total of 26 foot variance total. Mr. Myers agreed. Mr. Dudick continued, for a lot with three buildings on it, two already there, and a modular to be added (the modular sample, which will at some time be removed.) They are looking at three buildings on the lot with three signs, which seems reasonable. He asked if the lot supports three buildings. Mr. Myers said it does, it has been covered by Planning and the building is temporary with no foundation.

Mr. Dudick said he understands the need for three signs there. He asked Mr. Lipinski if he would be willing to stipulate that this is approved only as long as there is the one temporary building on the lot. Mr. Lipinski said that is fine with him, that he does not own the property, and one temporary building is all he is approved for by the Planning Board.

Mr. Myers added there is not enough room for another building.

Mr. Lipinski said he has a three year lease with a three year option. He added they will change the model home every year, but as far as he is concerned have only one. He said there is a garage that is already there. Ms. Vucetic asked if there was room for a business in the garage and was told "no".

Mr. Dudick asked for comments in the public hearing. No comments were made. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Gifford. All approved. Public hearing closed.

Mr. Strother made the motion to approve the application with the stipulation that three business signs are allowed only as long as there is one temporary building on the property. Should the temporary building be removed, only two signs would be allowed. Total square footage of 3 signs is 58 square feet. (21,21, & 16) Total variance is 26 feet. Seconded by Mr. Prescott.

Ayes: Vucetic, Strother, Dudick, Gifford, Prescott, Ferro Noes: none

Application approved 26 ft sign variance, 3 signs with total square footage of 58 sq ft with stipulation that three signs are allowed only as long as one temporary building is on the property. Two signs only if temporary building is removed.

The secretary read the legal notice as it appeared in the *Daily Gazette* on May 28, 2011.

4) An application from CIMA Network Inc for variances for exterior sign package.

1) A use variance from Section 171-4H (4) (c) – projecting signs specifically prohibited. Requesting projecting sign = 154 square feet

2) Area variance from Section 171-4G (3) exempt directional signs; maximum allowable area = 2 square feet, proposed = 20 square feet, 18 square foot variance required; Maximum height allowed = 6 feet, proposed height = approx 12 feet

3) Area variance for wall sign - 60 square feet allowed, 234 square feet proposed =174 square feet variance requested; Wall sign height 16 feet maximum allowable, 30 feet proposed, 14 foot area variance req

Property is located at 22 Clifton Country Road, Clifton Park Center, Clifton Park, NY (Permit #80828)

Mr. Bill Lockett, President of CIMA Network stood to present the application.

Mr. Dudick verified this is a use variance and asked Mr. Lockett if he had notified everyone within a 500 foot radius. Mr. Myers stated he had not received verification. Mr. Peller noted there is a list in the application and asked Mr. Lockett if he had sent notice to them.

Mr. Lockett stated they did not.

Mr. Dudick told him it is a requirement for the variance to be heard.

Mr. Lockett said, in looking at the code, he wasn't sure they needed that for the projecting sign.

Mr. Dudick said they go based on the review of Steve Myers and his department. If there is a question of interpretation, then he relies counsel to interpret the law to make sure there is no problem if there is a gray area. If there is a question of whether a use variance is needed, Mr. Myers says it is. He said if Mr. Lockett wanted to discuss it with Mr. Myers and counsel, he would go with what they decide. He stated the reason he brought up notification is because if it is a use variance, neighbors within 500 feet have to be notified so they have a legal opportunity to speak about something close to their property. If that wasn't done, the board cannot hear the application because no one was given the legal opportunity to speak as far as neighboring property owners.

Mr. Myers stated he could argue the use variance is correct.

Mr. Peller suggested that they adjourn it and send their 500 foot notices and come back so they have one complete application. Mr. Myers said when he received the list of neighbors he assumed the notices went out.

Mr. Peller told him they need to be sent certified or hand delivered.

Mr. Lockett read the code regarding the sign and said it was disappointing they didn't ask the right questions and it is their interpretation was that they didn't need the use variance.

Mr. Peller said he understood but they need to go by what the law says and the application states it is for a use variance. He said the board can't hear it or even make it contingent on them sending the notices because if the neighbors come, they could influence the board's decision. The board is at a disadvantage because they don't have the ability to listen to anybody who should have been noticed. Their only option is to not go forward on the projecting sign.

Mr. Strother stated it is worth debating anyway, as he is a supporter of the project.

Mr. Dudick said he would not want to go there. They have precedent set on how to go forward and cannot let this one go through without public notices going out. Mr. Peller added they understand the applicant would wish for interpretation, but he cannot do it on the spot as he is not equipped to handle it right now. It would mean that he and Mr. Myers would have to consult and he would have to look at case law to find out whether or not something like this is there.

Mr. Dudick added that when the notices are sent out, no one might show up, but at least the town would have done their due diligence to properly notify everyone in the newspaper and mailing as the law requires. This has nothing to do with how anyone feels about the application. This must be held to the same standard as any other application as a use variance. He apologized that this has happened.

Mr. Strother said he wished to continue what he had been saying and add to his comment that although he supports the project, this would require a great deal of discussion, legalities aside.

Mr. Lockett said the project is already behind schedule. He asked if it would be ok to discuss the other parts of the application. Mr. Dudick said they could.

Mr. Peller stated they could, but the board needs to look at the total picture of the signs all the way around.

Mr. Myers said, to clarify, he had discussed with them since at least February to get the variance in and it didn't show up until July. He stated that he made it very clear to whoever he talked to that it was a use variance. He said anything over 15" off the wall is the basis for his decision and he will stick to that. Mr. Lockett said the structure is already built and is in place, and Mr. Myers said as long as they don't put a sign on it, it is part of the building.

Mr. Peller said he tends to defer to the board, but advised it is in the board's best interest to hear the whole application in total. Mr. Myers agreed it should be heard as a whole package. He suggested that, if for some reason, they don't get the use variance, they might want to change the wall signs. Mr. Peller added they have seen that before.

Mr. Dudick stated that, as chairman, they are going to hold off hearing the application as it is presented in its entirety until they have proof of certified mailing to people within 500 feet radius. Mr. Peller clarified it must be certified mail or hand delivery.

Mr. Lockett said he would deliver them. Mr. Peller counseled that is ok but make sure he receives a notation of who the notice is delivered to and that the person who receives it is authorized to receive the delivery.

Mr. Dudick informed the next meeting is August 16, 2011 and he would expect to see them then. Mr. Peller informed Mr. Lockett that they would hold the 61 days in abeyance so they can re-apply. Mr. Lockett agreed.

The secretary read the legal notice as it appeared in the *Daily Gazette* on May 28, 2011.

5) An application from DCG Development for hotel, for variances from Chapter 171, sign law Chart I:

- 1) max total area of wall signs allowed = 60 SF, proposed = 191 SF, variance required = 135 SF;
- 2) Number of wall signs allowed = 2; 3 proposed , variance req = 1
- 3) Sign height max allowed = 20', proposed east and west sides = 72 feet, variance req = 52 feet, north side est 66', variance req =46 feet.

Property is located at Clifton Country Road, Clifton Park, NY (Permit #80833)

The application was presented by Donald MacElroy from DCG Development representing CCM Associates of Clifton Park, LLC. for the Hilton Gardens. They are requesting a total of three signs.

Mr. Dudick asked if the property was separated out, and Mr. MacElroy confirmed it was. Mr. Dudick asks who owns it. Mr. MacElroy stated it is owned by a subset of DCG but the hotel will be operated by the Hilton but for financing purposes it was separated.

Mr. Peller asked if he were a member of the subset, and Mr. MacElroy said he was not, but he was an authorized representative. Mr. Peller asked him to get something in writing authorizing by the owner.

Mr. MacElroy stated they are proposing three wall mounted signs of 191 square feet, variance required 135. They need signs for directional instructions to get from the Northway to the hotel. C sign focuses on Northway Corridor, B sign is for the intersection of Rt 146 and Clifton Country Road, and A sign is the standard hotel front sign.

He stated that his research showed that out of four hotels in Clifton Park, three of them have 3 signs. He said the sizes were determined in conjunction with hotel criteria, and for the distance perspective. He said they are about the minimum size the distance requires to be seen.

Mr. Strother made the motion to close the public hearing (no public present) and seconded by Mr. Gifford. All approved. Public hearing closed.

Mr. Strother asked about the names of the hotels he mentioned. Mr. MacElroy submitted pictures. Mr. Peller offered that for those three hotels, that one of the three sign was a pylon. Mr. Myers stated they are entitled to a pylon sign. Mr. MacElroy said the Holiday Inn Express is the only one with two signs, but they have a flag out front. Mr. MacElroy showed each of the pictures and spoke about the different signs, but didn't know the size of the signs.

Mr. Strother asked if he was giving up a pylon sign to get the wall signs. Mr. MacElroy said they were.

Mr. Dudick stated with regard to the pictures, none of them have three signs actually on the building and they don't have any buildings with three signs.

Mr. Myers offered that Boscov's has three wall signs that were approved by zoning in 2001.

Mr. Dudick corrected that other than Boscov's none have three signs. Mr. Myers said Marshalls might have three.

Mr. Strother asked about the maximum square footage in the mall. Mr. Myers said there is a bulk variance of up to 90 square feet, but this is a separate parcel from that variance so he did not use that variance with this application.

Mr. Strother said he has a problem with three signs. He mentioned they could have a pylon. Mr. MacElroy said there is an area for a pylon but only 2 signs would be visible at one time and that would only be if you were in one specific place. The argument is that you would generally see more than one sign on the building at one time.

Mr. Strother asked if the A sign would be visible from the residential area. He was told no, except possibly somewhere down Clifton Park Center Road. Mr. Myers said the tree cover would make it difficult to see.

Mr. Strother said if you give up the pylon sign, it would be fair trade that everyone would get three signs.

Mr. Myers stated there is now a LED sign at the mall that would advertise.

Mr. MacElroy pointed out that that sign would not help with a directional viewpoint. He said the signs are specifically to provide a clear path to the hotel.

Ms. Vucetic said she thinks this is beneficial for safety reasons and that a pylon would be more difficult to see as it is in a tight area and easy to miss.

Mr. Dudick asked what size the B sign letters are. Mr. MacElroy stated they are all the same size – 21" for the Hilton and 31" for the G and D. He said they picked the next to the smallest size that could be seen.

Mr. Dudick questioned if 21" could be seen from the Northway. Mr. MacElroy answered that they would have liked larger. He said people looking for the sign are familiar with the trademark.

Mr. Dudick said he thinks you can see the hotel without any signage being identified as it stands as it is the tallest building in town, but that people who come from the hotel will not be from town and might not recognize it.

He mentioned that he does not recall every approving a three wall sign variance.

Mr. MacElroy said several possibilities were considered including a pylon sign, but it was felt exposure to the Northway, Rt 146 and front door. They would drop the pylon sign in return for the third wall sign. It is not a shotgun approach but purposeful. Once people are there, they don't need the pylon. He reiterated that the request for three is mitigated by the fact that there is no more than one location where you can see more than one sign.

Mr. Dudick argued that it is a matter of so many signs for all businesses. Mr. MacElroy pointed out that there is a compelling reason for directional signs due to location of the motel which is farther away from the main highway. He said the other hotels are more easily seen.

Mr. Gifford mentioned the other hotels have less signs and asked if he went to the smaller sign, how much variance would he need. Mr. MacElroy said yes they might have less, but people still have to get there and it's a matter of location. Mr. Gifford pointed out people make reservations ahead of time. Mr. MacElroy said some people shop the Hilton brand, but they would still not necessarily know how to get there.

Ms. Ferro suggested getting a Tom Tom. Mr. Gifford suggested a Northway exit sign.

Mr. Strother suggested that if you want to contain it, the B sign would be the one to go.

Mr. Dudick said he is uncomfortable with three signs but he would let the owner of the property to decide which signs.

Mr. Myers stated there is a tradeoff for the freestanding sign and he has no issue with it. He suggested then they would need a pylon sign. He said this is well done and if there was ever exceptions to be made, it is the mall.

Mr. Prescott said he would rather see wall signs on the building than have them come back for a pylon sign, that it would not make sense.

Mr. Strother agreed.

Mr. Prescott asked what if the A sign (on the front) was smaller since they don't need the road exposure. Mr. MacElroy showed an example of the smaller sign regarding the perspective of the size of sign in relation to the scope of the building.

Mr. Gifford asked about the name Garden Inn. Mr. MacElroy answered that there are certain branding requirements from Hilton.

Mr. Dudick stated that because the sign is higher than any other sign considered, sight distance, the letters will appear smaller than if they were lower down. Mr. MacElroy said that is why he went with the second smallest lettering. He asked Mr. MacElroy if he would be willing to stipulate that they would never come back for a pylon sign.

Mr. MacElroy said "absolutely".

Ms. Vulcetic made the motion to approve with the stipulation, seconded by Mr. Strother.

It was pointed out that the height requests were not on the original application, but were read tonight, and were on the legal notice. Mr. Peller stated he was ok with that.

Ms. Ferro asked if the variance runs with the land, if the property was sold or hotel demolished. Mr. Dudick stated if it was demolished the variance goes with the land. Mr. Peller stated the stipulation the variance goes with the building.

Mr. Dudick stated there are two stipulations: 1) the applicant will waive the right to ever place a pylon on the property and 2) the variance stays as long as the building remains the representative height that it currently is.

Ayes: Vulcetic, Strother, Dudick, Prescott, Ferro Noes: Gifford

Application approved with above two stipulations.

Mr. Dudick made the motion to approve the minutes of June 7, 2011. All present at that meeting approved. Mr. Dudick made the motion to approve the minutes of June 21, 2011. All present at that meeting approved. Minutes approved for June 7, 2011 and June 21, 2011.

The next meeting is August 16, 2011.

Mr. Dudick made a motion to adjourn the meeting at 9:07 p.m. Mr. Gifford seconded. Approval unanimous.

Respectfully Submitted,

Susan White
Secretary

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