

Approved

ZONING BOARD OF APPEALS

September 6, 2011

Present: Michael Dudick, Chairman, Michael Bloss, Randy Gifford, Chris Lemire,
Eric Prescott, Douglas Strother, Jennifer Vucetic

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

Absent: Deborah Ferro

Mr. Dudick called the meeting at 7:05 p.m.

PLEDGE OF ALLEGIANCE

Mr. Dudick informed the applicants that the board has a new member, Michael Bloss. Mr. Bloss fills the vacant seat. The full board of seven members is present tonight. He notified applicants they would need four yeas to approve their application.

OLD BUSINESS:

The secretary read the legal notice as it appeared in the *Daily Gazette* on September 1, 2011.

- 1) **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 feet 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)

Bill Lockett representing CIMA Network presented the application. Donald MacElroy from DCG and Kate Wentworth, Director of Signage, from Regal Movie Theaters, and Mr. John Scavo, Director Planning for the Town of Clifton Park, was also present.

Mr. MacElroy stated that based on the conversations at the last meeting with regard to the blade structure, they have submitted an application to the planning board for a minor site plan change, at which time the PB will make a determination of the structure. He added that based on the PB decision, it could eliminate the need for the use variance.

Mr. Dudick thanked him, and introduced Mr. Scavo. Mr. Scavo stated that he had circulated a copy of the revised plans to the members of the Planning Board and had received positive feedback. He stated that informally the board would approve the amendment, but because it was seen at the prior meeting, they did not feel comfortable about saying “yes” without it coming before the board on Sept 14. The Planning Board attorney and the ZBA attorney have discussed the situation and have indicated that if the applicant revises its use variance application to request an area variance and, conditional to the planning board giving its approval of the blade structure, then the project would be allowed to go forward without coming back to the Zoning Board.

Mr. Peller showed renderings of the structure and asked for confirmation that they were the sketches that would go to the Planning Board. Mr. Lockett confirmed they were. They were passed to the members and one submitted for the record.

Mr. Dudick reiterated that the application can go one of two ways; either straight application of the use variance, or look at the application contingent on what the Planning Board does, with Mr. Scavo stating the board doesn't foresee any problem with the project.

Mr. Lemire asked if they proceed without acting on the use variance if it would be contingent upon Planning approval. If Planning says no then it comes back to the zoning board.

Mr. Peller confirmed that is his recommendation. Mr. Dudick asked if they are considering an area or use variance and Mr. Peller said it would be an area variance on the wall signs.

Mr. Lockett stated that was ok with him. He informed that they had originally filed two applications, one for area and one for use. Mr. Myers confirmed this, and said he had combined them into one, and that now it is strictly an area variance. He added that the wording on the blade is part of the approval of the Planning Board and it is up to the board (zoning) whether they want to consider it or not while making decisions on the area variances.

Mr. Peller stated his research indicates there has been precedent set in the past (naming the Clifton Park Center logo, the Clifton Park/Halfmoon Library freestanding sign and the Witts End soldier that did not come before the Zoning Board). He informed that the Planning Board has

approved such in the past without it going to Zoning. He stated that it is his position that the board does not have to consider the lettering on the blade and the area variance should only be reviewed for the wall signs.

Mr. Dudick asked if they could take into consideration the entire picture, and Mr. Peller said “absolutely”. He added that his opinion is that they should be looking at the area variance and not looking at the words on the blade.

Mr. Lemire asked if they would be setting a precedent. He suggested that if applicants want more signs than the code allows they could build a sign attached to the building and that portion of the sign with writing on it will not be considered part of the area variance.

Mr. Peller said that is the precedent that has been set in the past , if the Planning Board approves it, then zoning does not look at it.

Mr. Dudick stated he can understand the art design and logos but his interpretation is that any approval of a freestanding sign the Planning Board made in the past should not set precedent and should be considered an error. He cited the library sign, and said that he does not take it to mean that it should not have any precedent setting merit. He added that it was considered an error and was addressed by zoning when it eventually came to back to zoning for an area variance and was approved subsequently, He does not see any freestanding signs with words on it would now be allowable by Planning because of prior error.

Mr. Peller said he and the board are entitled to their opinion and he would provide advice, but they could take into consideration pursuant to the guidelines if they do not agree with what Planning did before it comes to zoning, they can.

Mr. Lockett indicated that they are there tonight to obtain sign area variances for the elevation inside the mall. He referred to their request for an additional 174 sq ft wall sign area variance and 14 ft height variance. They are also asking for an 18 sq ft variance for directional signs at the entrance. He explained the need for branding their new theater.

Mr. Lemire asked how many signs will be there be. Mr. Lockett presented pictures to the board to show the types of signs.

Mr. Lockett addressed the hardship questions required in the application. He stated the signs are needed for traffic flow on Clifton Country Road southbound. He submitted photos to show the main goal, which is to help with traffic flow and movement. He stated the signs give people ample time to see it and change lanes. He suggested it will help with safety.

He discussed that they need enough signage to properly brand the building and give Regal the highest impact of advertising. He submitted a business article that discusses on site advertising vs other types of advertising and cost per impression.

To address the aesthetics of the area, Mr. Lockett provided pictures showing the view from the back of the lot showing distance from the adjacent road and the tree line as it affects the adjacent residential area.

He stated that the existing allowable area is insufficient for an anchor tenant with visibility to major roadways. He pointed out that Boscov's has six signs that are larger. He said Regal's are less obtrusive and less percentage of overall square footage for the elevation than the adjacent tenant. For directional signs he felt the signs are minimalistic for Regal Cinemas in consideration of Clifton Park's code. He said most Regal Cinemas have continuous neon lighting along the coping and multiple rows and more lighting.

He cited the Clifton Park codes purpose is to protect the property values, and suggested that this does not in any way contribute to lowering property value. He thinks it will increase the property value and create healthy business climate.

Mr. Lemire asked if there was an entrance to the theater from the outside. Mr. Lockett said there was not, which is the reason for the directional sign. Mr. Lemire asked for clarification of the location of the blade vs the directional signs.

Mr. Strother stated that he is inclined to support it given that no other motels and theaters will be in town. He asked about the tower. Mr. Lockett said there are new renderings and the tower was adjusted.

Mr. Dudick asked the square footage and was told it was approx 46,000 sq ft. He was informed Boscov's was 190,000. He said that the larger the business would have an impact of signage. With Boscov's, there was precedent set. Mr. Myers volunteered that Boscov's has 10% signage and Regal about 5%.

Mr. Dudick and Lemire asked if the 5% includes the blade and freestanding sign and was told by Mr. Myers it does not.

Mr. MacElroy referred to the sign standards that were set for stores in the mall and that it indicated that large stores could come to the board for more signage. He stated this is a world class cinema which is a massive upgrade from what they have had before. He said concern about precedent and similar business coming in and asking for what Regal was highly unlikely.

Mr. Dudick said this would be one of the larger businesses from a square footage standpoint. Every business that comes before the board asked for larger signage. He added there is a desire to develop this area of Clifton Park as a more central part of town for shopping and commerce. He provided this information to let the zoning board know that this is the direction the town and planning boards see the town developing.

He asked if the blade is not considered by the board, is there any consideration to reduce the signage.

Mr. Myers informed the board that the original proposal had considerably more signage on it and every application should be viewed as an independent thing. He said if it is approved by Planning it becomes part of the facade and whether the zoning board wants to consider the blade is up to them, but his opinion is that if the Planning Board approves it, it is not something they need to look at. He informed that was considerably more signage requested originally and it was

cut back because of pending issues. He feels this is the best package as it achieves what they want to do and it gives the Zoning Board a minimal package to look at.

Mr. Lockett mentioned that at their first visit, Hannaford was in asking for 200+ square footage and Regal is not asking much more, if any more, than what was granted that evening.

Discussion ensued regarding foliage issues. Mr. Myers informed that this would be addressed by the Planning Board.

Mr. Lemire asked whether they need to be considering the words on the blade as part of the area variance. Mr. Myers answered that Mr. Peller and he agree that they should not consider the blade but if the board wishes to, they can. He added that it is their advice that they don't need to. He said even if you added the footage of the sign it would be about what Boscov's has.

Mr. Peller concurred the Zoning Board does not need to as long as the Planning Board approves it as a site plan.

Mr. Dudick informed this is a public meeting and asked for comments. There were none. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Lemire. Public hearing closed.

Mr. Dudick stated they are completely removing item one from the vote. This will be an amended application voting on items two and three and suspending any decision regarding item one which should be decided by the Planning Board at its next meeting. Mr. Peller added that it is contingent upon the Planning Board approving item one, and if not, the applicant will need to come back to the Zoning Board for a use variance.

Mr. Lemire asked if that happens, then would the board consider the letters on the blade. He was told "yes". Mr. Strother stated he would be willing to vote on the use variance now if approval of the structure was denied by the Planning Board. Mr. Peller asked if he was stating he would include that in today's vote. Mr. Strother agreed.

Mr. Dudick informed he wants to streamline the vote. He stated that he does not have any expectation that Planning is going to deny the application based on discussion with Mr. Scavo, but if, for some reason they did, they would have a good reason. He said in that case, he would want it to come back to Zoning for a use variance discussion.

Mr. Dudick made the motion they approve the application with the contingency that Planning approves the blade portion of this application.

Mr. Peller asked Mr. Strother if he wanted to add the contingency if not approved, and Mr. Strother said he does not.

Mr. Dudick clarified a yea vote would be to approve the area variances for items two and three contingent upon the Planning Board approving the blade structure. If the Planning Board denies it, then the whole application comes back to Zoning as originally presented. Mr. Strother seconded.

Yeas: Vucetic, Strother, Dudick, Gifford, Prescott, Bloss Noes: Lemire

Application approved as amended, contingent upon Planning Board approval of the blade structure.

The secretary read the legal notice as it appeared in the *Daily Gazette* on September 1, 2011.

1) An application from Richard L. Harlow for a variance from Section 208-16 (a) (3) which requires a minimum of 5 acres to keep livestock in a CR Zone. Applicant has 2.38 acres, variance required = 2.62 acres. Property is located at 838 Grooms Road, Rexford, NY (Permit #80831)

Mr. Richard Harlow, owner, presented the application.

Mr. Myers informed the board that Mr. Harlow has now on file to combine the two properties and he confirmed this with the assessor.

Mr. Peller asked if Mr. Harlow owns both properties and was told he does. Mr. Peller asked if the variance is now .89 acres.

Mr. Myers informed that it is still a use variance, but that it is now a variance for .89 acres.

Mr. Dudick said this is a significant difference. He asked if the property borders on town property. Mr. Myers stated it does not.

Mr. Harlow informed that after survey, the property is actually 4.01 acres. He said he is still trying to straighten the taxes out.

Mr. Lemire asked if this is in the western part of the town and was told it is in the farm belt.

Mr. Lemire stated he sees no harm in approving this application. Ms. Vucetic stated she seconds that.

Mr. Dudick made the motion to close the public hearing as there was no one else present in the room. Mr. Prescott seconded the motion. All approved. Public hearing closed.

Mr. Bloss asked if he has thoughts about limiting how many animals he wants to have.

Mr. Harlow said that he is only going to have the animals in the summer to keep down the grass and will get rid of them in the winter.

Mr. Dudick asked what he would consider reasonable acreage for a farm. Mr. Harlow said it depended on different animals would be different amounts. He stated he disagreed with the code of the five acres requirement.

Mr. Gifford asked what kind of animals and how many. Mr. Harlow said a couple of sheep and a couple of goats he can put in a movable fence system to keep the grass down. He said he doesn't want a big animal.

Mr. Dudick proposed an amendment to the motion "if the property were to be sold so that Mr. Harlow no longer owns both lots, then the variance would "sunset". Mr. Harlow said he is fine with that.

Mr. Lemire made the motion to amend the motion. Ms. Vucetic seconded the motion. Mr. Dudick clarified that a vote of yes would be to approve the amended application for a use variance to allow this use as long as the owner of the properties is the owner of both properties.

Ayes: Bloss, Prescott, Gifford, Dudick, Lemire, Strother, Vucetic Noes: none

Application approved with the amendment that variance applies as long as the owner of property is the owner of both properties.

NEW BUSINESS:

None

Mr. Dudick made the motion to approve the minutes of August 16, 2011. All present at that meeting approved. Minutes approved.

There are no applications for September 20 and submission date is closed. The September 20, 2011 meeting is cancelled.

The next meeting is October 4, 2011.

Mr. Dudick made a motion to adjourn the meeting at 8:23 pm. 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, ---, ECC, Assessor, Highway