

**APPROVED**

**ZONING BOARD OF APPEALS**

December 7, 2010

Present: Michael Dudick, Chairman, Deborah Ferro, Robert Ritter (7:18), James Whalen, Douglas Strother, Christopher Lemire

Also Present: Renzi, Esq., ZBA Counsel (standing in for Joel Peller)  
Steve Myers, Director, Building & Zoning

Absent: Brian Telesh

Mr. Dudick called the meeting at 7:15 p.m.

**PLEDGE OF ALLEGIANCE**

Mr. Dudick informed that there is a vacancy on the board and that Deborah Ferro, who is an alternate will be filling in for that vacancy. Attorney Louis Renzi attended filling in as counsel for Joel Peller.

**OLD BUSINESS:**

1. **An application from The Hertz Corporation requesting a use variance in a B-4A zone. Applicant requests to open an automotive rental business that is not an allowed use in a B-4A zone. The property is located at 1768 Rt 9, Clifton Park, NY. (Permit #80802)**

The continuation of the application was presented by Paul Peluso, area manager from Hertz Corporation, and by Charles Hoffman, owner of the property. They are requesting a use variance to expand operations and place a Hertz rental facility on the property.

Mr. Peluso submitted additional written information regarding financial issues, as requested by the board at the last meeting.

Mr. Dudick notified the room that this is a public hearing and asked for comments. There were none. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Strother. All approved.

Mr. Myers said he did not have any further comments on the application.

Mr. Dudick stated that, in his opinion, the criteria had been met and that he felt the car rental is an outstanding idea. He did not see any problem with it and did not think it is much of a substantial change considering that there are car dealerships on the same road and oil changes which were formerly done on the property.

Mr. Strother said he agreed with Mr. Dudick. He stated he thinks it is a cleaner use of the property than what had been on it. Also, he felt the tangible financial documents are credible and erases any doubt in his mind.

Mr. Lemire indicated that the issue must demonstrate reasonable financial return. He said he doesn't think the document provides the adequate financial documentation the applicant needs to meet in order for the board to grant the variance.

Mr. Dudick stated it is up to the board to decide what it considers reasonable financial evidence. He said the applicant, by his testimony and the real estate agent letter, had explained and gone into detail about the purchase price and taxation as well as the inability to render the property usable.

Mr. Lemire said he didn't disagree it was a reasonable use of the property, but added that if they have to follow the elements, a three page letter from Mr. Hoffman is no different from his testimony. He stated there is nothing new.

Mr. Dudick discussed that the question to the board is "what is the threshold of financial information for each individual application that needs to be met". He stated his personal threshold had been reached and the applicant has achieved reasonable financial information and he is comfortable with it.

Mr. Lemire said there are no dollars and cents numbers and they haven't met the standard.

Mr. Strother said he thinks the timeline contributes to the financial picture. He pointed out there is no question of the integrity of Mr. Hoffman's opinion and seeing the tax receipts brings some weight to the assessment of the property and that money is going out the door.

Mr. Lemire alluded to the standard and said that the applicant didn't show he cannot get a reasonable return for any of the uses that are permitted.

Mr. Strother referred to the global situation with car dealerships and suggested that it should be given consideration. He said the oil change business had been attempted and did not work out.

Mr. Lemire indicated he did not agree. Mr. Dudick reiterated that Mr. Strother feels he has the information he needs. He stated that it has been documented and verbally stated that there has been a car wash and oil change there and have gone out of business which could be a financial hardship. The question is, how long and what attempt has been made and what are the costs of carrying the property.

A discussion ensued as to ownership of the Hoffman Car wash businesses. Mr. Lemire asked what the financial evidence there was to show that the permitted uses have been explored. Mr. Dudick questioned how one would show proof of why other businesses did not locate there. Mr. Lemire stated the burden of proof is on the applicant to present evidence to satisfy the elements.

Mr. Ritter said he shared Mr. Lemire's frustration because other applicants have been refused for failure to present adequate evidence. He said he would have liked to have seen more financial information however he thinks what the applicant presented is reasonable enough to make a decision. He does not think there is more the applicant can provide and that the property is in a decaying area. He said if a viable business thinks it can succeed in the location and the applicant has provided reasonable information, he feels it is acceptable due to the economy and marketplace. He asked Mr. Renzi his opinion as to whether the information met the reasonable requirement.

Mr. Renzi stated counsel cannot substitute its judgment for the individual. He said Mr. Lemire's point is well taken, but the statute doesn't recite a laundry list of competent financial statements in specific terms. What each member of the board considers as evidence is up to the individual.

Mr. Lemire stated he feels that in three meetings, he doesn't think there is anything submitted that is new or changed. Mr. Strother indicated he felt he had submitted more. Mr. Dudick clarified that at the last meeting that it wasn't that the board wasn't prepared to vote, but that there was a request for additional information.

Ms. Ferro stated her position hasn't changed. She said this type of use isn't permitted but is permitted elsewhere. She suggested that the town must have had a reason to do so. She offered the opinion that it is not an economic hardship, but an economic climate issue. She said the business climate issue is not driven by zoning. She mentioned the franchise is placing location restrictions and she does not see that all of the criteria have been met. She stated she would have to vote no.

Mr. Dudick said he has the opposite opinion and there is a uniqueness because of the type of business and because there is a territorial issue existing for franchises. He feels the use is reasonable and the difference between a car rental and car sales is a "shade of gray", but because of the zoning, it does require a use variance.

Mr. Dudick informed that there must be four "yes" votes from the members present. Mr. Dudick made the motion to accept the application for the use variance. Mr. Ritter seconded.

Mr. Whalen commented that with respect of the competent financial evidence the definition has a low threshold and he feels the applicant has met it in this case. He pointed out that every day

Mr. Hoffman is losing money on his investment and paying taxes. He feels it does not alter the essential character in the neighborhood and the criteria has been met and he will support the application.

Ayes: Ritter, Whalen, Dudick, Strother Noes: Ferro, Lemire  
Application approved.

**NEW BUSINESS:**

The secretary read the notice as it appeared in the *Daily Gazette* on December 2, 2010.

**1. An application from DCG Development for variances for construction of Olive Garden Restaurant.**

**Chapter 171, Table 1: Signage variances**

**Proposed signage = 174.52 sq ft in wall signs (3), 45.2 sq ft in freestanding signs**

**Allowable signage= 38sqft wall, 75 sq ft freestanding**

**Variances required=174.52-38= 137 sq ft (total area no greater than allowable)**

**Variance required for 3 wall signs, only 2 allowed**

**Freestanding sign 15' setback required, 4' available, variance required=11'**

**Parcel #3 with two fronts, Clifton Park Center Road & Clifton Country Road**

**208-50.3B Building front setback required = 80', 48' available, variance required =32'**

**208-50.3B Parking setback required front =30', 10' available, variance required=20' for each road**

**208.50.3C Side parking setback required=20', 0' available, variance required=20'**

**208.50.3F Required green space=35%, 18% proposed, variance required=17%**

**208-50.5 15' landscaping buffer required along both side prop lines, 0' available, variance required=15'**

**Property is located at Clifton Country Road, Clifton Park, NY (Permit #80809)**

Mr. Joseph Dannible, representing the consulting engineers for the project, Mr. Donald McElroy from DCG development, Mr. Brent Forte from Site Enhancement Services and Mr. Neil Terwilliger from Olive Garden presented the application.

Mr. Strother asked about the green space required. Mr. Dannible stated that the required green space is 35% and they are asking for a 50% variance or 18% green space. He said the current green space on site is now 8% and they will actually be increasing what is there.

Mr. Dannible informed the board that this is a 3 lot subdivision with parcel #1 the existing mall, and parcel #3 the Olive Garden and parcel #4 future tenant.

The site plan for Olive Garden includes 151 parking spaces. They had received a positive Planning Board recommendation with one change, which is included in the presentation (to remove parking on the access road) They moved the building 20' to the East and put parking spaces along the western parking line along Clifton Country Rd and eliminated the double loaded bay of parking next to the access road.

He stated they are present to request several variances (setbacks, sign variances and greenspace.) He pointed out that the site without the subdivision could exist on its own without the variances, but it would not meet the franchise requirements of Olive Garden. One of those items is a freestanding sign. He said there is no substantial change but due to tenant requirements they must subdivide. He referred to the motel application which he feels is similar.

Mr. Bret Forte presented the sign variances. They are asking for additional square footage for wall signs, for 3 signs (code allows 2) and 4' setback variance for the aerial sign (code requires 15' setback.)

Mr. Forte presented site renderings showing the proposed signs on three sides of the building and an aerial sign. He discussed the importance of visibility of the signs from the viewpoint of the road entrances to the site and described in detail each of the entranceway visibilities.

He stated they are only proposing a 50 sq ft aerial sign when the code allows 75 sq ft.

He addressed the four requirements to be met:

- 1) Not to be detrimental to the other properties. He stated the signs only provide identification to their property and will not adversely affect the other property within the corridor.
- 2) Not to create a hazard or a nuisance. He stated the signs are to provide identification to their site and not will divert drivers' attention, improving safety because it will provide an adequate way to find the building.
- 3) Not to interfere with the use of public highways. He said he did not think that would apply to the sign variance in their opinion.
- 4) Is it in harmony with the purpose of the chapter. They feel that proposing signs that will properly identify the site will allow it to identify itself. The purpose of the signs is not hardship.

He stated there were previously approved variances however they were nullified due to the subdivision. He pointed out that the proposed the signage is their prototypical package.

Mr. Ritter asked if the prototypical package had ever been "tweaked". Mr. Forte stated that it has, depending on the site. He said the vast majority has this type of signage, but the square footage could be discussed or changed. He stated they do need to keep the letters no smaller than 20" or they won't be visible.

Mr. Lemire asked which are most important sites for wall signs. Mr. Forte stated the main entrance is the most important. He indicated that the front elevation of 45 sq ft facing C Center Rd (A on the rendering) is the important one, with the second most important being the right elevation (B) that faces Clifton Country Rd.

Mr. Dudick asked for public comment. There was none. Mr. Ritter made the motion to close the public hearing. Mr. Strother seconded. All approved.

Mr. Ritter said he does not have a problem with the layout of the signs, but would rather have the signs reduced in size. He was in favor of the square footage they are requesting on two of the signs.

Mr. Dudick said he is uncomfortable with having three wall signs. He reminded that they have had situations come before the board with other restaurants requesting 3 signs and they have denied them. He alluded to the applications from Staples, Taco Bell and Fridays.

Mr. Whalen pointed out they are bound by town code with regard to the number of signs and the situation has come up repeatedly. They have applied a precedent over the years with regard to what is allowable. He understands the request for maximum signage, but feels there is nothing in the application that indicates they should set a new precedent.

Mr. Strother agreed and suggested they restrict to two signs.

A discussion ensued with regard to number of signs and most important sites. They clarified the prioritization of signs. Mr. Dudick asked the board if anyone feels 3 signs is worth consideration. Mr. Ritter stated the applicant should work within the total square footage.

Mr. Dudick repeated he would be opposed to the idea of 3 signs regardless of square footage of the signs. He asked Mr. Forte if they would be willing to go with two signs instead of three.

Mr. Forte said he would be willing for two signs on elevations B & C with 45 sq ft per sign.

Mr. Dudick suggested they move the freestanding sign to another corner. Mr. Forte said that had been discussed at Planning. Mr. Renzi said it is a planning issue.

Mr. Dudick discussed 46 sq ft on sign A and 64 sq ft on sign B.

Mr. Forte asked if the board would consider that they are using a smaller freestanding sign that allowable. Mr. Strother said he would.

Mr. Dudick asked Mr. Myers for feedback on similar signs that have been approved. Mr. Myers said most are reasonably close to allowable and cited Fridays and 99 Restaurant are close to the max without a variance.

Mr. Dudick summarized they will have two signs with a total of 110 sq feet total wall signage. Discussion ensued between Mr. Myers and Mr. Terwilliger regarding the original variance before the subdivision. The subdivision was required in order for a freestanding sign, which is essential for Olive Garden.

Mr. Dudick brought the conversation back to green space and setbacks. He read the recommendation from the Planning Board and the referral from the environmental review.

Mr. Terwilliger stated the current green space is 8% and they are proposing to increase it to 18%. Mr. Myers said he agrees with the setback and green space. He said the sign is driving the variance. He would not like to see the board grant three wall signs. He suggested moving the side sign (C) and eliminate sign B. He stated if there are two signs, he has no issue with the proposed size. He said he could see a problem with parking because of the restaurant Buffalo Wild Wings, but that should be a Planning Board issue.

Mr. Dannible said that will be handled internally. He informed that parking is now being used by the Buffalo Wings employees and that will be addressed.

Mr. Myers mentioned the freestanding sign is smaller than allowed, and he wondered if they need it to be higher.

Mr. Terwilliger said they have looked at that and it is visible. They decided against putting a higher sign due to Clifton Park codes.

Mr. Ritter asked if directional signs are allowed. Mr. Myers confirmed they are and suggested Olive Garden install signs for “in” and “out”. He also stated that the original variance requested a 32’ front setback variance, and because that the building is moved 20’, the setback variance needed is now 20’.

Mr. Dudick agreed with Mr. Myers and is ok with the setback variance issue. Mr. Ritter stated it is positive that the green space will be increased. The changes requested by the Planning Board created a “bump out” in which the free standing sign will fit inside the setback. The intention was to put the sign in that, which is part of the green space.

Mr. Myers provided information regarding the average signage of area restaurants: Fridays – 44 sq ft free standing and 2 wall signs of 26 sq ft wall per sign and 99 Restaurant 85 sq ft free standing and one 63 sq ft wall sign.

Mr. Dudick asked if the applicants if they are willing to go with the 2 wall signs at 46 sq ft, and would they be willing to agree not to increase the freestanding sign above 46 sq ft. The applicants agreed to do so.

Mr. Dudick stated he is ok with the smaller freestanding sign at 46 sq ft.

Mr. Ritter made the motion to accept the application as presented with the following 3 amendments proposed by the chairman:

- 1) 2 wall signs at 46 sq ft each and free standing sign not to exceed 46 sq ft
- 2) Setback variance on free standing sign of 5’ (changed from 11’) with the understanding they will come back to the board should they require more.
- 3) Front setback variance of 20’ feet (instead of 32’)

Mr. Strother seconded the motion.

Ayes: Ferro, Ritter, Whalen, Dudick, Strother, Lemire Noes: none

Application approved with amendments.

Mr. Dudick noted that the minutes should acknowledge that there was a typographical error in the original application identifying the applicant as a 4 story hotel. This is incorrect and will be disregarded as it is in error.

The next meeting is January 4, 2011.

Mr. Dudick made the motion to accept the minutes of November 16, 2010, Mr. Strother seconded. All accepted. The minutes of November 16, 2010 were approved. The meeting was adjourned at 9:32 p.m.

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