

ZONING BOARD OF APPEALS

January 3, 2012

Present: Michael Dudick, Chairman, Michael Bloss, Randy Gifford, Chris Lemire (7:10), Eric Prescott, Douglas Strother, JenniferVucetic

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

Absent:

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

PLEDGE OF ALLEGIANCE

OLD BUSINESS:

None

NEW BUSINESS:

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

An application from Mazzone Management Group, LLC to erect a 9 sq ft single sided sign with ground based up lighting for restaurant tenant. Request is for modification to variance #80833 which allowed changes to wall sign allowances. Variance requested from Section 208-109 D (1) and area variance from Chapter 171 – sign law. Property is located at 30 Clifton Country Road, Clifton Park, NY 12065 (Permit #80844)

Mr. Don McElroy, from Clifton Park Hotels, LLC, presented the application, representing the applicant, Matt Mazzone. Mr. McElroy stated that in reference to the Hilton Hotel, at the July ZBA meeting he stated he would not request a pylon for the hotel. He said he was not intending

to misrepresent that a tenant would not ask for a sign. He said they have room for 5 tenants (2-3 inside the mall)

Mr. Dudick asked if the location of the sign would be where the banner is. Mr. McElroy stated that is correct and the banner is temporary. He said the tenant is looking for signage because Angelos Bar and Grill depends on customers outside the hotel. The size of the sign is just to let people know where the restaurant is.

Ms. Vucetic asked if people could enter the restaurant from the mall.

Mr. McElroy said they are working on that, but due to Hilton's security requirement people other than guests of the hotel (who have a pass key) cannot enter from the mall side. He added it is one of the conflicts they are working on now so there can be cross traffic.

Ms. Vucetic asked if they needed signage on the mall side. Mr. McElroy answered that they did, have signage on the interior and won't be looking for signage anywhere else.

Mr. Lemire asked if the purpose of the sign is to advertise the Bar and Grill and was told it is.

Mr. Peller asked if there is space between the sign and the wall. Mr. McElroy responded there is a few feet. Mr. Dudick clarified it is a one sided sign. Mr. Strother asked if it would be lit and was told it would be uplit from the ground.

Mr. Gifford asked why the sign could not be attached to the wall. Mr. McElroy informed it is an issue with Hilton.

Mr. Gifford questioned why they didn't know there would be a restaurant in the hotel. Mr. McElroy answered they knew there would be a restaurant but they did not know at that time what it would be, that a deal had not been made.

Mr. Strother asked how many other businesses are there. Mr. McElroy said there are 3 other tenants but access would be from the mall and no signage was needed.

Mr. Myers added that no other businesses on the hotel property will require signs.

Mr. Dudick mentioned that the hotel property has been separated from the rest of the mall property. He asked Mr. McElroy if he had any intention of coming back for a sign for the banquet house. Mr. McElroy said they have no intentions of doing that. Mr. Dudick asked him if he was willing to state that at any point he will not come back before the board asking for a banquet sign. Mr. McElroy said he would not come back for a sign.

Mr. Dudick asked what the other businesses they are considering. Mr. McElroy said they have a small clothing boutique looking at a space, also Jackson Hewett or a service establishment. He said they would be interior store fronts. He added they have the right to continuation of exterior store fronts to Boscov's and the theater, and based on the Planning Board, those would be eligible to come to the board for exterior signs.

Mr. Dudick said he should have mentioned the restaurant when he came before the board. He asked if there were any other businesses. He asked if there are any other businesses anticipated

and added that if there were, Mr. McElroy should let them know that an exterior sign is not an option.

Mr. Strother questioned what is the disposition of the sign if that restaurant leaves. Mr. Dudick responded that he sees that sign for that space in the hotel. Mr. McElroy added they are a franchise and must meet the Hilton obligation to have a restaurant on site.

Mr. Dudick summarized that as long as it is a Hilton, there will be a restaurant.

Mr. Lemire referred back to the original application #80833 (July) and stated they got what they asked for with a stipulation. He asked if the stipulation no longer applies because they now have a restaurant, does the board need to revisit the original variance.

Mr. Dudick said they granted a variance that extends for the life of the property and he doesn't know if the board can pull back that variance even though there is a request for another variance, even if there was a stipulation.

Mr. Lemire said his question is whether there would be other concessions. He added he thinks the applicant is asking the board to revisit the variance.

Mr. Myers stated that the restaurant was always intended.

Mr. Peller asked the definition of a pylon sign vs a freestanding sign as it is not in the code. Mr. Myers said they are the same in his mind.

Mr. Peller repeated that Mr. Myers interpretation of a pylon sign is the same as a freestanding sign.

Mr. McElroy stated he is not asking the board to revisit the other application. He added that this is not a pylon sign, it is a monument sign and it doesn't project into the air and isn't on the roadway.

Mr. Strother said it is a pylon sign and that this was an oversight.

Mr. Myers clarified that if it is not attached to the building, it is freestanding regardless of height. He explained that the exception is a directional or informational sign.

Discussion ensued about other examples of freestanding signs.

Mr. Dudick stated that all agree these are freestanding signs and that this sign is a freestanding one sided sign.

Mr. Peller asked Mr. Myers if it was his understanding that they are just here to revisit the stipulation wherein they waived the right for the pylon sign and therefore the board does not have to revisit the variance granted to the Hilton.

Mr. Myers stated it was his interpretation based on the variance that there were to be no other signs other than the three signs. The applicant disagrees with his interpretation so it comes before the board.

Mr. Lemire asked again if they need to visit the original application.

Mr. Peller reiterated that Mr. Myers made the interpretation and the applicant disagrees and now it is before the board. He told Mr. Lemire, as a board member he can take into account whatever he would like and to review the application. He went on to say that the applicant is asking for an interpretation of the pylon in the first variance and therefore wants another sign, hence the request for the area variance.

Mr. Myers said he believes it was specific the way it was written that there were to be no other signs allowed, which is the basis of his denial.

Mr. Dudick questioned “had there not been that stipulation, another sign would have been allowed?” Mr. Myers said yes.

Mr. Peller asked Mr. Myers if it was his intent to have them revisit the three signs. Mr. Myers said “no”.

Mr. McElroy said he thought the variance meant no other Hilton signs on the property and the variance specifically said a pylon sign and he believes this is a monument sign.

Ms. Vucetic said she specifically remembers the issue and it was her interpretation that the pylon sign would be a marker along the road where the turn is very sharp, which was a safety issue. She added that this sign is blocked by the hedgerow and is just a marker and thinks it is informational.

Mr. Lemire asked if the only thing before them is a modification of application 80833 or is that just for an area variance. Mr. Myers answered that what he put in the application is a request for interpretation of his decision and for an area variance. He said there is no definition of freestanding and pylon sign in the code.

Mr. Lemire stated that if the applicant was there in July and knew there was to be a tenant and wanted a sign out front, the application would have been for four signs. If that is true, they are asking to re-open the application to reconsider the whole thing.

Mr. Peller said they are not asking that. He explained they are before the board for interpretation since they don't agree with Mr. Myers.

Mr. Lemire asked if they decide the sign is not a pylon sign, do they have to go for the area variance. Mr. Peller said that is correct.

Mr. McElroy queried why he would apply for a sign for a tenant that didn't exist and hadn't signed yet. He said the application they put in was for the Hilton Garden Inn, not for zone hospitality and services. He added he never would have anticipated or imagined that when he applied a variance for one tenant that he was giving up the right for a sign for another tenant.

Mr. Dudick said he does not have an issue with him coming before the board.

Mr. Strother said the applicant's argument is a little transparent if the requirement of the Hilton was to have a restaurant. He indicated that if there was a way to do this, he would like to grant the variance and drop the stipulation and not cloud the interpretation of the pylon.

Mr. Myers stated that based on the amount of the previous variance he had no intention of granting another sign without going to the board. He added that the sign fits the definition of a freestanding sign, in his mind, but he has no problem with it.

Mr. Peller asked Steve if he agreed with Ms. Vucetic that the reason the stipulation was in the variance was for safety reasons. Mr. Myers answered "yes" but he still needed to bring this before the board.

Mr. Dudick said when he first saw the application, he didn't see freestanding and thought it was a wall mount. He added it cannot be seen from the road but indicates where to enter when standing on the hotel property. He stated he sees it qualifying as a directional sign and it has a different look than a lighted up pylon.

Mr. McElroy said he wanted to emphasize the variance is important for Mazzone and to protect his credibility. His perception was they could have three Hilton signs. He said there would be a restaurant but in July they had just met Matt Mazzone.

Mr. Lemire questioned if another company wanted to rent out some of their building and put another sign up for that business, wouldn't they have to revisit the whole original sign variance.

Mr. Peller said that would be correct, yet this is distinguishable because these people are asking for an interpretation of an existing variance and they did not like the interpretation so they come before the board.

Mr. Lemire said once they rule on the interpretation, then they would have to rule on the variance. Mr. Dudick stated Mr. Lemire was not here for the first meeting, and that this building is unique and the tallest building in town.

Mr. Lemire said they got exactly what they asked for and his problem is setting precedent that this will generate more. Mr. Dudick said just because they denied one application doesn't mean they have to deny all.

Discussion ensued. Mr. Lemire added if there is a change to the application that was made, that should have been made originally, then you have to look at the whole thing.

Mr. Peller responded that if you disagree with Mr. Myers interpretation, why would you not take into account everything. You can take anything into account when making a decision.

Mr. Strother pointed out that with regard to precedent, this is why the board exists and to make judgments.

Mr. Myers added that if the board doesn't agree that this is a freestanding sign, then the use variance would be modified as a directional sign. He said he doesn't have a problem with it.

Mr. Strother made the motion to agree with Mr. Myers interpretation.

Mr. Dudick said he disagreed with Mr. Myers literal interpretation of a freestanding sign and believes it is more of a directional sign since it is not visible from the road.

Mr. Strother made the motion to close the public hearing. Seconded by Mr. Bloss. All approved. Public hearing closed.

Mr. Strother made the motion that they rule on classification of the sign, with a yes vote to mean it is a freestanding sign.

Mr. Peller stated the board needs to make a determination on Mr. Myers interpretation. Mr. McElroy stated it was sold to them as a monument sign.

Mr. Dudick called for a five minute recess with Mr. Strother's motion pending.

Upon return, Mr. Strothers informed he was withdrawing his motion to accept Mr. Myers interpretation.

Mr. Dudick said he disagreed with what he believe is Mr. Myers literal interpretation of a freestanding sign. He added that for him, it is more of a directional sign because it is not visible from the road. He made the motion to reject Mr. Myers interpretation. Mr. Gifford seconded. A vote of yes means disagreement with Mr. Myers interpretation that no further signs can be added.

Ayes: Bloss, Vucetic, Gifford, Dudick, Prescott Noes: Strother, Lemire
Based on the vote, the board will consider the application as a variance on a directional sign.

Mr. Myers informed that the entire sign is 15 square feet and would need a 13 sq ft variance, considering the code. In addition, code indicates they will need a business name variance of 43%.

Mr. Lemire asked if this will be added as additional square footage and number of signs on the Hilton property. Mr. Myers said it would not as the Hilton signs are wall signs but it must meet code or get a variance for directional signs. Mr. Lemire asked if it were a directional sign of the code size it would not need a variance. Mr. Myers said that was correct. He added that a directional sign can be freestanding and has its own category of code. Mr. Dudick stated that businesses are allowed to have freestanding sign and directional signs that have a separate code.

Mr. Lemire asked if a pylon sign would be permitted on this property and was told "no." He asked if a business could have both a pylon sign and a directional sign and was told "yes". He asked if a business could have more than one directional sign and the answer was yes.

Mr. Dudick made the motion to grant a variance of 13 sq ft and a variance of 43% for the business name. Mr. Strother seconded. A yes vote is to grant the variance.

Ayes: Dudick, Gifford, Strother, Prescott, Bloss, Vucetic Noes: Lemire
Variance of 13 sq ft and 43% size of business name granted.

Minutes of the December 6, 2011 meeting were unanimously approved by members who were present at that meeting.

The next meeting is February 7, 2012.

Mr. Gifford made a motion to adjourn the meeting at 8:30 pm. Seconded by Ms. Vucetic. 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