

**Approved**

**ZONING BOARD OF APPEALS**

February 7, 2012

Present: Michael Dudick, Chairman, Michael Bloss, Randy Gifford, Chris Lemire,  
Eric Prescott, Doug Strother, Amy Standaert

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

Absent: Jennifer Vucetic

Mr. Dudick called the meeting to order at 7:12 p.m.

**PLEDGE OF ALLEGIANCE**

Mr. Dudick welcomed Amy Standaert to the board. Amy will serve as alternate in the absence of a board member. He informed the applicants that this is a seven person board with six members present and that this week, Amy will be serving as alternate for Jennifer Vucetic.

**OLD BUSINESS:**

None

**NEW BUSINESS:**

The secretary read the legal notice as it appeared in the *Daily Gazette* on February 2, 2012.

**1) An application from Wayne T. Beale for variances to expand nonconforming building.**

**Variances needed:**

**1) From 208-97B to expand building to approx 6300 SF and add 2500 SF of patio area**

**2) 208-50.3B variance requested for front setback from Rt 9 = 86.6 ft; Setback variance from Biette Rd property line requested = 34.3 ft.**

**3) 208-50.3B variance request for front parking setback = 27 ft**

**4) 208.50.3C variance request for side setback to building = 10.4ft**

**5)208-50.3C variance request for side parking setback = 17.8ft**

**6) 208.5 variance request for side landscape buffer = 12.8 ft**

**7) 208-50.3C Greenspace variance requested = 13%**

**Property is located at 1781 NYS Route 9, Clifton Park, NY 12065 (Permit #80845)**

Randy Gifford recused himself from hearing the application due to business related connection with the applicant.

Dominick Arico, consulting engineer for Mr. Beale of the Rusty Nail. Present also was John Ferro, architect for the applicant's project.

Mr. Arico provided plans and renderings of the project and explained the proposed adjustments compared to present property. He stated that Biette Road is a user road, but also a town road and maintained by the town. They have combined 3 lots into two lots and adjusted Biette Rd and that the plans are for the applicant to use the road. . He said it has been looked at by the town and approved but they haven't submitted it yet because they need to get the variances. He said Highway Superintendant (Rick Kukuk) has agreed to end the road at a certain point and the property owner will provide easement.

He said they are reducing the front yard setback to make more space. He went through each variance. He informed the existing structure is not being changed, only added on. The variance for the front of the building is already existing.

Mr. Peller asked if Biette Rd is a town road and Mr. Arico stated it is a user road maintained by the town as the line ends in the middle of the road. He added that the highway superintendant has agreed to end Biette road at a certain point and the applicant is giving the town the easement to continue through so they can drive the truck through.

Mr. Arico stated it went through the Planning Board with the neighbors and no one objected and added that they are working with the town attorney, Tom McCarthy who agreed if the Mr. Kukuk ended the road it was ok.

Mr. Peller asked the easement size and who is pushing the snow. Mr. Arico answered 18' wide and 20' long and that the town would push the snow.

Mr. Lemire asked who owns the road. Mr. Myers responded that the property line extends to the middle of the existing road and the town maintains it.

Mr. Peller inquired if the road is dedicated to the town and Mr. Arico answered it isn't.

Discussion ensued as to who owns the road and if it is deeded or dedicated to the town. Mr. Arico informed that the town maintains it because there are drainage sewers there, but that they will be removed.

Mr. Peller expressed concern whether the town would be properly abandoning the piece of the road. He also has concerns about the ownership of it and the way it is dedicated and the way the town is maintaining it. Mr. Myers said he would try to obtain that information. Mr. Peller asked

him to relay this concern to the Planning Board how to relay this and what would be done with drainage.

Mr. Myers stated the site plan hasn't been approved until they get the variances but they are ok with the concept. He explained that the property line extends into the middle of the road. He hasn't received that information about abandoning a road from the PB but would find out.

Mr. Dudick asked if the road is paved and will it be paved when changed. Mr. Myers said it is and will be paved.

Mr. Arico discussed the other variances, stating that they want to move the parking and make the front more visually attractive. He stated they now have 25% greenspace so they are not changing what is there, just moving it.

Mr. Lemire asked why the variance request if they own the road. Mr. Myers informed they are just following standard procedure. If the town maintains the road, they need a setback.

Mr. Dudick stated that since this is a request for use variance, there is a requirement of proof of notification of neighbors within 500 feet and that has not been met.

Mr. Arico said they were not aware of that and would do that right away. Mr. Dudick said based on that, the board cannot make a decision on the use variance. He informed that he would prefer the bulk of the presentation be seen after this has been done so that the people within the 500ft have the chance to attend the hearing. He asked if there was anyone in the audience who was there because of the application and who wished to speak and there was not.

Mr. Dudick announced the Public Hearing will remain open.

Mr. Strother stated the use variance seems substantial but that the setbacks are not changing from what they are now. Mr. Arico agreed.

Mr. Dudick asked Mr. Myers if the ECC had reviewed the storm drainage. Mr. Myers stated they had seen it and had no comment.

Mr. Dudick read a letter from Jason Kemper from the Saratoga County Planning Board. The board stated it did not approve of the application. Mr. Dudick informed that the County Planning Board provides guidance but is not the last word, that the ZBA can make its own decision.

Mr. Dudick informed Mr. Arico that the application will be adjourned until the next meeting on February 21, 2012 and that the applicant must provide proof of neighbor notification.

Mr. Peller inquired if Mr. Arico would waive the 61 days for the board to make a decision and Mr. Arico agreed.

The public hearing will remain open.

The secretary read the legal notice as it appeared in the *Daily Gazette* on February 2, 2012.

**2) An application from John Kulak to replace existing freestanding sign with an animated sign. Variance required from Section 171-4 H (3) n which allows animated signs in certain zones but not in hamlet mixed use where this property is located.**

**Property is located at 1615 Rt 146, Rexford NY 12148 (Permit #80847)**

Mr. Gifford returned to sit on the board for the application.

Mr. John Kulak, owner of Kulak's nursery presented the application. Mr. Kulak stated he would like to erect an LED sign to replace the existing sign. He informed that in 2010 the sign was allowed and he had received the verbal ok from Mr. Myers, but he did not get the permit at that time due to finances. Mr. Myers confirmed this was the case, and at the time there were no restrictions on the signs. Mr. Dudick stated that the day after their conversation, the town changed the sign law and there is now a restriction on animated signs.

Mr. Kulak stated the following reasons he needs the sign: 1) it is the up to date professional way to advertise 2) he can change data on a sign quickly 3) he would be able to notify the public of events, town and otherwise 4) save money on advertising 5) would be willing to post town emergency notifications such as bridge closing.

Mr. Kulak stated the traffic between the hours of 6:45-8:30 is bumper to bumper and presented pictures. He said it is a golden opportunity for advertising as the traffic is slow moving and the sign will not endanger by distracting.

Mr. Strother informed that he had gone out at night to observe the area and he can support the project. He explained that the Dunkin Donuts sign is high and extremely bright and Stewarts sign is there. He added he sees no impact this sign would have on the neighborhood. He asked if Mr. Kulak knew how the members of the Edison Club felt. Mr. Kulak said he sent a letter to the Edison Club, but he does not know how the members feel about it. He said he couldn't see it being an issue unless they are standing at a certain place at night.

Mr. Kulak said there is no residential area until you get beyond North of Glenridge Road.

Mr. Lemire asked why there is a need for the variance, if it is because it is in a hamlet. Mr. Myers confirmed it is because it is an animated sign within a hamlet. He said when the law was changed it determined they couldn't use broad zoning areas as to where and where not to have animated signs and if there was a unique case they would be considered independently and come before the board for a variance.

Discussion ensued with regard to changes in animated signs. Up until the issue with the church sign, there was nothing in the law to prohibit animated signs. The law re-defined animated signs to be any sign that can be controlled by other than manual means which means done by computer from a different location.

Mr. Lemire asked if this would be the first one in a hamlet, and Mr. Myers confirmed it would be. Mr. Dudick asked about the library sign on Moe Road and Mr. Myers explained that is in a Public Institution Recreational zone rather than a hamlet.

Mr. Gifford asked Mr. Kulak how often he would change the sign. Mr. Kulak said he did not know. Mr. Myers informed that the board could put limitations on the amount of changes like they did for the Walgreen sign, which is approx 10-15 minutes.

Mr. Lemire asked what is the standard to grant relief from town code. Mr. Myers said it is whatever the board is comfortable with but not a moving or continuous scrolling or animated figures.

Mr. Dudick stated that if he chose to use the sign to notify the public of town information, it would be a civic gesture and the town would be grateful, but the town would not put any obligation or requirement if the variance was granted. Mr. Kulak said he understands that.

Mr. Dudick asked if he would be willing to operate it only during business hours. Mr. Kulak said he could see no advantage of operating it after 9 pm. Discussion ensued regarding possible hours the sign should operate. Mr. Myers suggested one hour after business closes. Mr. Dudick suggested that it be 6 am to 9 pm to make it simple. Mr. Kulak agreed.

Mr. Lemire stated there are no houses around there and Mr. Strother agreed that one could barely see the Dunkin Donuts sign.

Mr. Dudick suggested that the sign change no more than every 15 minutes. Mr. Kulak said he would not change it very often.

Mr. Dudick announced the public hearing. Mr. Jim Prescott of Ray Sign Co spoke. He stated he installs signs for a living. He informed the board of DOT Federal regulations which have set a maximum sign change every 8 seconds without being a safety hazard.

Mr. Dudick responded that it is valid, useful information and gives guidance and added that national, states and towns all make their own decisions on what is right for them.

Mr. Myers stated he has no problem with the application and suggested that the board consider a "sunset clause" and also look at the adjustment of light intensity at night.

Mr. Lemire stated he felt the variance should be approved provided that the sign met all other standards.

Mr. Dudick, Mr. Peller and Mr. Myers took a 5 minutes recess for consultation with counsel.

Mr. Dudick asked Mr. Kulak if he was willing to add a sunset clause to the application, suggesting that the variance for the sign would expire if the type of business changes from the nursery/garden center. Mr. Kulak said he would have no problem with that.

Mr. Dudick made the motion to close the public hearing. Seconded by Mr. Lemire. All approved. Public hearing closed.

Mr. Dudick made the motion to accept the application as presented with three stipulations:

- 1) The sign will operate only between 6 am and 9 pm on days the business is open
- 2) The message will not change more than every 15 minutes maximum
- 3) The variance will expire if the current nursery/garden center business changes to another type of business. If the business changes, the owner must return to the Zoning Board of Appeals and request a variance.

Mr. Strother seconded the motion.

Ayes: Lemire, Prescott, Strother, Dudick, Gifford, Standaert, Bloss Noes: None

Application approved with the above mentioned stipulations.

The secretary read the legal notice as it appeared in the *Daily Gazette* on February 2, 2012.

**3) An application from Ray Sign Inc for variance from Chapter 171 sign law, Table I which allows one freestanding sign per tenant site. Applicant requests second freestanding sign. Property is located at 24 Park Avenue, Clifton Park, NY 12065 (Permit #80848)**

The application was presented by Tim Prescott, Ray Sign Company representing both Windsor Development and Men's Warehouse.

Mr. Dudick asked Mr. Prescott if he had submitted a form signed by the owner (Windsor) to give him authority to act on their behalf. Mr. Prescott stated he had submitted all the forms listed on line and that he had represented them for the other signs. He agreed to obtain the signed form for the record. Mr. Dudick stated that if they grant the sign, it would be contingent on the form being submitted.

Mr. Prescott stated they originally requested three wall signs and were allowed two wall signs and the front sign moved to the 146 side of the property. Because of the setback of the building and the road in between them is making their visibility poor. They are missing the Park Avenue traffic. The sign they are proposing is a double faced, internally illuminated sign of 10.6 sq ft of visible signage with letters of 8 inches. They are also going to turn the sign in the front parallel to the road to get more visibility.

Mr. Lemire asked if he has the authority to make a decision, for example to take down a sign and make more modifications.

Mr. Prescott stated he does, but it depends on what the modifications would be whether he would make a decision. He said he would not make a decision to take down a sign but would get proper authorization from the owners.

Mr. Dudick asked if a sign had been removed. Mr. Prescott said one was taken down to turn it because it was creating a shadow. He said they were painting a wall and took one down which would be put back up.

Mr. Strother stated the area is challenging, but he is not in support of two signs. He suggested a directional sign.

Mr. Prescott asked what is a directional sign.

Mr. Myers read the description of a directional sign, stating it is for convenience of the public to show entrances and exits, not to exceed 2 sq ft per face and 6 sq ft in height. For safety reasons it can exceed that by 25%.

Mr. Peller asked if the HSBC sign is directional and Mr. Myers said it fits the parameters.

Mr. Myers said he agrees that their better access for advertising is off Park Avenue than Rt146. He suggested that they move the freestanding sign to Park Avenue and that the board would consider granting a variance for a somewhat larger directional sign on Rt 146. He added that the current freestanding sign is not doing much good and it would be a lesser variance to do it that way and they would still only have one freestanding sign on the parcel.

Mr. Dudick asked if the sign is a monument sign. Mr. Prescott said "yes" and it is 35 sq ft. Mr. Dudick asked Mr. Myers if that was the only freestanding sign would it require a variance, and Mr. Myers said it would not need one.

Mr. Dudick said they are looking at the sign they are proposing to go on the Park Avenue side and the current freestanding sign to be removed and replaced with a directional sign.

Mr. Myers suggested that they would want the directional sign to be somewhat larger than code, which would then require a variance. He and Mr. Dudick agreed it would need to be larger than 2 ½ square feet.

Mr. Prescott asked if he could turn the other sign, making it a single faced sign and make the monument sign single faced. Mr. Dudick said he it is still 2 freestanding signs although some towns count sign faces rather than signs.

Mr. Strother suggested a directional sign.

Mr. Prescott stated the letters would be too small.

Mr. Myers suggested that it could be illuminated. He mentioned that there were some trees that blocked. He stated that if setback was an issue, this would be the time for them to make a request for setback variance.

Mr. Dudick pointed out that if he turned the sign facing toward 146 then you would have two signs facing Park Avenue. He suggested a freestanding sign on Park Avenue and a directional sign on State Road. He indicated the board could give some latitude in giving a larger directional sign.

Mr. Lemire asked Mr. Prescott if he had authority to move the sign or did he need to confer with Windsor.

Mr. Prescott said he thought the customer would prefer to get rid of the sign and get a directional sign.

Suggestions were made by Mr. Lemire, Mr. Strother, Mr. Myers and Mr. Bloss as to options Mr. Prescott could use.

Mr. Strother stated that 10 sq ft is too large for a directional sign.

Mr. Dudick indicated that he is ok with 8 sq ft. Mr. Lemire stated that seems large and suggested two feet high and 4 feet long is large.

Mr. Dudick pointed out that a campaign lawn sign is 4 square feet and that 8 square feet would be the size of 2 campaign signs put together.

Mr. Myers suggested that if the board proposes a size and Windsor doesn't agree, they can come back to discuss.

Mr. Dudick asked Mr. Prescott if he would come back to the next meeting after he brings the board's suggestions to Windsor. Mr. Prescott agreed.

Mr. Dudick informed that if they remove the current sign and locate the monument sign on Park and erect a directional sign within code they would not need to come back. If they want a larger directional sign then they need to come back to the board. He asked Mr. Prescott to get a determination as to the number of square feet Windsor will accept and what they can't go below.

Mr. Prescott said he would and indicated it would be a lit directional sign.

Mr. Peller asked Mr. Prescott if he would waive the 60 days and still come back. Mr. Prescott agreed he would and will come back to the February 21, 2012 meeting.

Mr. Dudick made the motion to accept the minutes of the January 3, 2012, seconded by Mr. Prescott. Minutes were unanimously approved by members who were present at that meeting.

Mr. Myers will obtain appropriate information in the form of a summary from the Planning Board with regard to the Beale application. He will also obtain information, in writing, from Rick Kukuk regarding Biette Road and information on deeding and easement.

The next meeting is February 21, 2012.

Mr. Dudick made a motion to adjourn the meeting at 9:22 pm. Seconded by Mr. Gifford. 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