

Approved

ZONING BOARD OF APPEALS

April 17, 2012

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

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:

- 1) **An application from AJ Sign Company for sign variances for Christ Community Reformed Church.**
 - 1) **Variance from Chapter 171, Table II: 24 sq ft allowed per freestanding sign, 85 sq ft requested, variance required = 61 sq ft;**
 - 2) **Variance from Section 171-4 H (4)(n) animated signs not allowed in PIR Zone, variance required, not an allowed use.**
 - 3) **Variance from Chapter 171, front setback; 15' front setback required, 0' requested, variance required = 15 feet.**

Property is located at 1010 Route 146, Clifton Park, NY 12065 (Permit #80855)

Mr. Dudick asked the representative of the application to come forward. There was no one from AJ sign or Christ Community Reformed Church present.

Mr. Dudick directed the board to move to the next item on the agenda.

NEW BUSINESS:

The secretary read the legal notice as it appeared in the *Daily Gazette* on April 12, 2012.

- 1) **An application from Ellis Medicine for variances from Chapter 171-Table I of sign law.**
 - 1) **3 wall signs requested, 2 allowed**
 - 2) **267 square feet of wall signage requested, 60 sf allowed, variance required=207 sq ft,**

Property is located at 103 Sitterly Road, Clifton Park 12065 (Permit #80861)

The application was presented by Mr. Paul Milton, CEO at Ellis. He stated they are building an enhanced care medical center which will have a fully equipped emergency room department, a diagnostic center and radiology. They will have staffing 24 hours a day. He informed that they chose the sight because of the high visibility and said they will need directional signage which is the community standard. He said in an emergency situation directional signs and building signage are important. He added that they are here tonight specifically for building signage but would like direction on where to go for directional signage on the roadway.

When asked why they are not called an Emergency Facility, he stated that is because of state law, which requires a facility to have hospital beds in order to be called an Emergency Room, and the state has reduced and limited the number of hospital beds statewide.

Mr. Randy Cole, architect, showed images of the proposed signage. He stated they want a logo on the mesh screen on the east side and the words Enhanced Care on the side of the building. He added that the letters are not that large. He said there will be a monument sign in front which does not require a variance.

Mr. Strother asked about directional signs. Mr. Cole responded that they have questions about off site signs.

Mr. Peller suggested directing those questions to Mr. Myers.

Mr. Dudick stated the building looks nice and asked if two signs ES1 & ES2 could be combined. Mr. Milton explained the screen is stainless steel mesh. He said they had considered combining, but feel it is important to get both Ellis Medicine and Urgent Care on signs. He said they did look at it.

Mr. Dudick stated the town tries not to have multiple signs on large buildings and that town law restricts the number of signs. He added this is a unique building and suggested they put both names on the masonry and it would be in compliance. He asked if they would consider this.

Mr. Cole said that it didn't look as nice. He added that they could not make a decision on that tonight and go back and look at it.

Mr. Lemire asked for more details about the screen's function and asked what is behind it. Mr. Cole stated it is decorative and there is a curtain wall behind it. Mr. Lemire suggested it is a billboard.

Mr. Strother responded that it is an architectural feature which has visibility and he added he thinks it is harsh to call it a billboard.

Mr. Lemire asked if they remove the letters to the mortar, what would the screen look like.

Mr. Cole said it would be empty. He said it was designed with the highway passage in mind.

Mr. Milton said they wanted the Northbound traffic to see the building from a distance and use it as a reference which would pull you in.

Mr. Dudick noted that the drivers on the Northway, heading south can see the building, but can't get to it until exit 8A. He said hopefully some day there would be a direct access to it.

Mr. Strother suggested that from a landmark perspective, combining the text would put the signs in compliance.

Ms. Vucetic asked if there is any study on how long the eye would look at one and the other. She asked if there was a safety issue and wondered at what point it would be too long to read.

Mr. Cole stated Ellis can be seen at a glance. He added that the Northway has a wide range of speeds. He said they are not putting up a lot to read.

Mr. Myers said the drawing was submitted as an interpretation and he talked to the construction manager about it and said he thought it was a bit much and some sign negotiation would occur. In reference to the directional, off premises signs, they are not allowed in town. He suggested the DOT might put a sign on the Northway.

Mr. Dudick stated they would have to request a variance for an off premises sign, but he doesn't remember any being approved. Mr. Peller stated that if they requested off premises signage, the application would have to be re-noticed.

Mr. Lemire asked if they are referring to the blue H signs.

Mr. Milton said that is for a hospital.

Ms. Vucetic said this has a triage and is like an emergency room.

Mr. Milton informed that originally they went in for an application for a freestanding ER and they were denied because to be called an ER, they need hospital beds in the state of NY. This is why they are using the term Enhanced Urgent Care which would have everything you would find in an ER as if you were in a hospital ER. They would anticipate up to one or two hospital transfer admissions a day.

Mr. Dudick asked why they don't just add a couple of hospital beds and was told the state is downsizing beds not adding. He explained that is why the proposed hospital in Halfmoon was denied by the state.

Mr. Myers said he doesn't have a problem with directional signs but they never have been done. He stated the difference is because the facility is not accessible.

Mr. Lemire asked if directional signs are before the board.

Mr. Myers said it isn't, but if they want to do it, the board is the venue to do it, but they would need to re-do the application.

Mr. Milton said this is a different type of service for this community. Mr. Myers said this facility is a good idea especially right off the Northway.

Mr. Dudick called a five minute recess.

Upon return Mr. Cole informed that they had discussed the signage and now propose that the keep the ES1 signage which is on the screen, will not do the ES2 (Urgent Care) on the East side, and still do the ES3 on the monument sign. He said this would keep it two two signs just under 200 square feet. He added that a directional sign is a something that needs further study and will be a separate task.

Mr. Dudick repeated that they are looking at two signs of about 200 square feet and he is comfortable with that.

Mr. Dudick announced the public hearing and asked for comments. There were none. He made the motion to close the public hearing, seconded by Mr. Lemire. Public hearing closed.

Mr. Lemire stated he felt a 139 sq ft variance is workable. He made the motion to accept the application as amended, seconded by Mr. Strother.

Amended application is for two signs (ES1 & ES2) with a 139 square foot variance.

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

Amended application approved.

The secretary read the legal notice as it appeared in the *Daily Gazette* on April 12, 2012.

- 2) An application from Visimark dba Kay Gee Sign & Graphics for a variance for a single wall sign for Ocean State Job Lot. Max allowed per Chart I is 60 square feet, 88 square feet proposed, variance required = 28 square feet.
Property is located at North Country Commons, 1208 Route 146, Clifton Park, NY 12065 (Permit #80862)**

The application was presented by Mr. Joe Buckholz from Kay Gee, and Mr. Greg Duncan from Ocean State Job Lots.

Mr. Buckholz stated there are a lot of letters in the name, and therefore the sign needs to be larger.

Mr. Bloss asked the area of the store and was told it is approximately 32,000 square feet.

Mr. Dudick inquired about the products sold at the store, and was told OSJL sells close out items and buys up and sells excess inventory at a discounted price.

Mr. Gifford asked the size of the sign they currently have. Mr. Buckholz answered that they have a 2"by 10" banner (30 square feet).

Mr. Dudick announced the public hearing.

Mr. Dudick stated this doesn't strike him as excessive considering the size of the building.

Mr. Myers said he has no problem with the proposal and he thinks it is very reasonable for the size of the store.

Mr. Lemire agreed and added he had a concern about the number of off site signs for the store. Mr. Myers answered that they will talk about it.

Mr. Duncan responded that they would remove the signs tonight. Mr. Dudick said that would be a sign of good will to have the signs gone.

Mr. Dudick made the motion to close the public hearing, seconded by Ms. Vucetic. All approved. Public hearing closed.

Mr. Duncan stated that in his five years of experience he felt that Steve Myers is one of the best he has dealt with in years.

Mr. Strother informed that removal of the off site signs was not a condition of approval of the application. Mr. Duncan said they would be removed tonight. Mr. Dudick suggested that tomorrow would be ok, as it was late in the evening and could be dangerous to remove them in the dark.

Mr. Dudick made the motion to approve the application as presented for 28sq ft sign variance. The motion was seconded by Mr. Gifford.

Ayes: Bloss, Vucetic, Gifford, Dudick, Strother, Prescott, Lemire Noes: None
Application approved as submitted.

The secretary read the legal notice as it appeared in the *Daily Gazette* on April 12, 2012.

3) An application from David Tomney for a use variance from Section 208-16D, allowed uses in a CR Zone. 1) Applicant wishes to change pre-existing non-conforming use (retail) to another non-conforming use (bakery or business). 2) Variance from Section 208-97 B (1)(a) – can not change one non-conforming use to another non-conforming use. Property is located at 357 Riverview Rd, Rexford, NY 12148 (Permit #80863)

The application was presented by David Tomney, attorney, representing the owner, Deborah Reardon and the prospective purchaser, John Zumbo. He stated that the building is currently a tack shop across from the Vischer Ferry Fire Dept. He explained that the operator of the bakery Sugar & Spice (now located in the mall) wishes to purchase and move into the building. He said it would be the same type of business, a bakery and a few tables to sit and drink coffee.

Mr. Peller asked for a written authorization affidavit for the record. (This was completed and submitted prior to the close of the meeting.)

Mr. Peller questioned how the property was taxed. Mr. Myers informed that it is taxed as commercial but it zoned as residential. He stated it is non conforming use. The property is

registered with the historical society and has been some kind of store or business for 231 years. Mr. Momney submitted a letter from the Historical Society. He said it was once a grocery store and a general store.

Mr. Myers informed that the change from the tack shop to bakery is a change from one non-conforming use to another non conforming use. Mr. Tomney stated that back in history a bakery once was considered mercantile and Mr. Myers added that it is not currently.

Mr. Peller asked if the applicant is willing to do whatever is required to have food service, and wondered if he had been to the Planning Board.

Mr. Tomney answered that they will, and they had not been to the PB yet, as they were waiting for variance approval first.

Mr. Lemire suggested that this might be a similar situation to the application which they heard on the property on Rt 9 requesting a variance for a car rental. Mr. Peller pointed out that the code was silent on the car rental, whereas the code is specific in this case.

Mr. Dudick read the requirements the applicant must meet for a use variance. He explained the applicant needs to show hardship, that it doesn't change the neighborhood, and is not self created etc. He added that having a bakery there would not change that area of the town and not an issue.

Mr. Strother asked if there had to be major ventilation for the bakery.

Mr. John Zumbo, owner of Cinnamon and Spice, responded that he uses two convection ovens and there would be no open flames, deep frying or gas and no major ventilation fans are needed. He added that it is a small shop. When asked to explain why he wanted to re-locate there, he responded that the mall rent is too high. He stated he had looked at several different areas to rent, but rent is very expensive. He said for 6-8 months he collected comment cards from his customers and 95% of them came to his bakery as a destination. He went on to say he thinks most stores would have difficulty locating there since people would not drive there as a destination, but that for his bakery they would. He added that he wanted to keep a cozy atmosphere and keep the historic building intact. He said they have been doing business in Clifton Park for five years.

Mr. Dudick asked if the tack shop would be re-located. The owner, Deborah Reardon responded that she was closing the shop and selling the building, not renting it.

Mr. Tomney stated that is is a hardship for Mrs. Reardon to not be able to sell her shop as a retail operation. He added that the location of the building makes it difficult to find a retail operation that would be able to attract business.

Mr. Dudick asked how large the property is. Mr. Zumbo answered that it is about 3800 square feet and he would be using about 1800-1900 square feet of it. He informed there is an apartment in the front and in the back. There are 12 parking spots and the lot size is 106 x 111, or .26 acres.

Mr. Tomney reminded that the building had been a retail shop forever and they would like to allow it to continue. He said it would be a hardship if it is only allowed to be a tack shop.

Mr. Myers said that this is only the first step in the process for planning approval. He said after that, any kind of retail operation would have to meet the current building code including septic evaluation, fire barriers, grease trap, ventilation etc. Mr. Zumbo stated that in 1988/90 Bill Purdy did total renovation on the building and brought it up to code with firewalls and handicap access. He said he understands the other items would have to meet code also.

Mr. Myers stated since it is registered as an historical building, there would be some working with them, but there would still be things that have to be done.

Mr. Dudick asked about the hardship as far as how long the building had been on the market.

Laurie Tylanda, commercial real estate broker with CBRE, spoke as representative for the buyer. She stated that she has experience this year with sales on properties with restrictions on the type of use and other zoning restrictions. She stated they were difficult to lease or sell and the owners ended up with short sales. There are not a lot of buyers at this time. She stated that limiting use creates a hardship, as well as the location because a lot of businesses would not survive there since it is far removed from traffic.

Mr. Dudick asked how long the property had been on the market and was told since January and that is listed on MLS. She added that it is unusual timing for find a buyer so quickly, which worked out well.

Mr. Peller inquired about the asking price and was told \$299,000 for the property, with the tack shop business not included.

Mr. Strother asked for further clarification as to meeting hardship criteria.

Mr. Tom McManus, owner of the home next to Mrs. Reardon, 359 Riverview Rd, spoke. He informed that he and his wife wanted to purchase the building and put in a retail business. They struggled with how to make it work but couldn't due to the restrictions and location. He said it's a great location but has to be a destination store. He pointed out that then Mrs. Reardon put it on the market, so it actually was for sale for longer than the January listing.

Mr. Lemire reviewed the retail categories allowed and asked about converting to another retail. Mr. Myers explained that use is now non-conforming, and they want to convert it to a different non-conforming use.

Mr. Dudick informed that it is up to the board what they interpret as financial evidence of hardship. Mrs. Reardon stated she purchased the property in 1990 and the business is now in a downturn. She said she had talked to a couple of real estate agents prior to listing with Caldwell Banker. She explained what creates the hardship.

Mr. Tomney reiterated that the property was actually on the market longer than three months as it had been offered to the neighbors prior to listing but they didn't buy it because they couldn't find a way to make a business profitable there.

Mr. Tomney addressed the second requirement for a use variance. He stated this is a residential area and this is the only business with a fire department across the street. The property is different than other properties and has always been a retail business of some sort.

Ms. Vucetic stated that the seller is lucky to find a buyer so quickly in that location.

Mr. Zumbo added that hardship is personal and this is a historical piece of property and no one wants to see someone buy it and throw in another apartment or let it go which would be a shame. He added we have few historical properties left standing. Putting the bakery there with destination traffic, that he already has, will allow the building to succeed because it is a perfect area for it. He said putting a clothing store or any mercantile there is not going to happen.

Mr. Dudick asked if there was proof of neighbor notification. Mr. Tomney answered that there is and submitted it for the record.

Mrs. Nancy Dvorscak, 255 Riverview Road, Rexford, about 1 mile from the shop spoke. She informed she had lived there for 25 years and fully supports having the bakery there. She added it would be an asset to the neighborhood.

Kim Engel, 236 Riverview Rd, Rexford, another neighbor spoke. She said she can attest to the quality of the baked goods. She stated that when she heard there was a bakery coming in, she felt it is a wonderful addition to the neighborhood and a good use for the building. She added a lot of people come to the area to cycle and walk so it is a good location.

Louise McManus, 359 Riverview Road, Rexford, spoke. She stated she and her husband are completely in favor of the bakery and feel it would be a huge asset.

Mr. Tomney stated the building has always been a local gathering spot for people in the neighborhood. He added that the hardship is not self created because the property is currently used for a commercial business. He continued that they just want to continue with another business and that Mr. Zumbo will only purchase if he can put his bakery there. He pointed out that neighbors will not know the difference between them operating a tack shop, clothing shop or bakery because they are not changing anything.

Mr. Dudick asked for further public comments. There were none. He made the motion to close the public hearing, seconded by Ms. Vucetic. Public hearing closed.

Mr. Peller asked Mr. Myers if there were historical concerns. Mr. Myers stated that most of the historical requirements specified are for the exterior of the building and there shouldn't be issues as long as the exterior is fairly well maintained. He said they can work most of that out.

Mr. Peller added that if the applicant changed the outside, they would lose the historical status. Mr. Tomney stated they can't make changes without specific approval. Mr. Myers said they might have an easement from the town. Mr. Tomney clarified they probably couldn't make any unilateral changes.

Mr. Lemire inquired as to what kind of commercial business could be there that would be within code at this point. He asked what could be there without having to get a use variance.

Mr. Myers answered “nothing”.

Mr. Lemire stated “there is her financial hardship.”

Mr. Myers said it has a business now, but once you change it, you need a variance. He added maybe the only thing could be a home based business.

Mr. Peller informed that because of the nature of it, and because it has not been to the Planning Board, it is recommendation that any approval would be contingent on the approval of the Planning Board. Mr. Myers agreed.

Mr. Lemire made the motion to approve the application as submitted because it is a very unique hardship situation. He explained his reasoning. Mr. Strother seconded the motion.

Mr. Dudick said it is a good idea and the right thing to do, and keeps Clifton Park’s heritage.

Mr. Myers and Lemire added that variance would be approved contingent on approval from the Planning Board.

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

Application approved contingent on Planning Board approval.

Mr. Dudick made the motion to approve the minutes of the April 3, 2012 meeting, seconded by Mr. Strother. Minutes were unanimously approved by members who were present at that meeting (Dudick, Bloss, Vucetic, Strother).

The next meeting is May 1, 2012.

Mr. Dudick made a motion to adjourn the meeting, seconded by Mr. Lemire. Approval unanimous. Meeting adjourned at 9:10 pm.

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