

ZONING BOARD OF APPEALS

May 1, 2012

Present: Michael Dudick, Chairman, Michael Bloss, Randy Gifford, Eric Prescott,
Doug Strother, Jennifer Vucetic (7:08)

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

Absent: Chris Lemire

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

PLEDGE OF ALLEGIANCE

OLD BUSINESS:

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. Jim Tuttle, 29 Robinwood Drive, Clifton Park, VP of Christ Community Reformed Church, spoke.

Mr. Dudick stated they had had communication with the town board, and asked Mr. Tuttle to speak about his communication with the town supervisor.

Mr. Tuttle said that they had had those discussions with the Supervisor and among themselves. He stated they would be content with a use variance which included restrictions on the sign which are: no movement, scrolling or animated message; the sign would change no more than once ever 24 hours, the light intensity automatically controlled at 0.3 footcandles above ambient light levels, use of sign would from 6am to 11 pm, and there is a maximum of 3 lines of messages, thereby making the letters bigger.

Mr. Dudick stated for the record that when dealing with houses of worship there is different criteria. He informed that one of the criteria for a use variance is financial hardship and churches are not considered financial endeavors. He continued, that based on counsel, houses of worship are not held the same as for profit businesses. He explained that the LED signs are new technology and that the sign law is in place to protect residential areas from changing signs and to prevent driving distractions. He said he likes the proposed restrictions and feels this is setting precedent and he would like to add one more condition. He said he wants to add that there will be no other signage in front of the church, such as a banner. He said with a message board there would be no need for a banner.

Mr. Tuttle said the sign would make it so they wouldn't need other signage and he is agreeable to no more signs.

Mr. Dudick announced that the public hearing is still open. He asked the audience for comments. There were none.

Mr. Myers asked if Mr. Tuttle was still agreeable to use the sign for town emergencies, and Mr. Tuttle agreed. Mr. Myers said he had a question about the colors. Discussion ensued. Mr. Tuttle said they would like the option of having two different colors for letters. Mr. Strother clarified that this would be three colors, a black background and two different colors for letters. Mr. Tuttle agreed.

Mr. Myers said he was under the impression it was background plus one but he doesn't have a problem with it. Mr. Myers said he could understand why they would want two colors of letters so they could make one or two words stand out. He added he just wants to clarify it for the record.

Mr. Strother informed he does not have a problem with three colors considering they can only change the message once a day.

Mr. Dudick stated they should expect that if they approve this one, that several houses of worship to come forward for signs with similar proposals. He suggested that this one plows the field and the board should imagine a dozen signs and decide what they want to have.

Mr. Strother added that a leaderboard is a background with one color, but they should allow for a little creativity.

Mr. Tuttle suggested they could put a message in white and some Easter lilies in yellow.

Mr. Myers stated the church had already put the wires in.

Mr. Dudick commented that is positive thinking.

Mr. Dudick made the motion to close the public hearing, seconded by Mr. Prescott. All in favor. Public hearing closed.

Mr. Myers informed he had just approved a banner for them. Mr. Tuttle explained it is for an event this weekend. Mr. Dudick said the new sign would not be up by then, so it won't be an issue this time.

Mr. Strother made the motion to approve the application as amended with the aforementioned conditions:

- 1) Text only display; background with two colors
- 2) 3 line message limit
- 3) no flashing, scrolling or moving text or images
- 4) automatic light 0.3 footcandles above ambient light
- 5) sign will not change more than once every 24 hours
- 6) no messages other than church related events
- 7) hours of operation 6am to 11pm
- 8) eliminate the use of any other temporary banner on the property
- 9) would agree for town to post an emergency announcement if necessary

Ms. Vucetic questioned about putting a graphic of Easter lilies on the sign as Mr. Tuttle mentioned and whether it conflicts with text only.

Mr. Dudick said a flower wouldn't be text. Mr. Tuttle responded that is fine with them, no pictures.

Mr. Strother stated they will have a beautiful sign and leaderboard.

Mr. Myers reminded that the variance request also includes a 15 foot front setback and Mr. Tuttle added that the sign size variance is also included in the original application.

Mr. Prescott seconded the motion to approve the application as submitted with amendments.

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

Application approved with amendments.

NEW BUSINESS:

The secretary read the legal notice as it appeared in the *Daily Gazette* on April 26, 2012.

An application from Paul and Joanne Coons for a use variance from Section 208-10 B(1)(a) (livestock not allowed on less than 5 acres). Property is 2.03 acres. Property is located at 4 Balsam Way, Clifton Park, NY 12065 (Permit #80864)

The application was presented by Mrs. Joanne Coons and Mr. Paul Coons, resident at 4 Balsam Way, Clifton Park.

Mr. Coons stated that the reason they are asking for a variance is because they have a bad tick problem on their property. She added that she had Lyme Disease last year and they had both found ticks on themselves this year. They want to mitigate the problem without using pesticides which will pollute.

She explained that with 5 acres they could have unlimited number of chickens and they want only six chickens and no rooster. She said they want to completely enclose them in an electric fence. She submitted pictures of the enclosure and described the open spaces bordering the property. She said it is portable and can be moved from one part of the yard to another. She stated that although they have two acres and five acres are required by code, there are 6 acres of open space next to them. She explained the boundaries.

Mr. Dudick asked about the bike path border the property.

Mrs. Coons stated the property was formerly a poultry farm and their home used to house turkeys. She stated they are not going to impede on anyone and will take care of their problem.

Mr. Bloss asked for clarification on the enclosure, whether it encloses the whole yard, or if it is just where the chickens are.

Mr. Paul Coons informed that the fence is 164 feet long and can be arranged so it is 40 feet on each side. He said you can pick up and move it. It has a waffle weave. Mrs. Coons stated it is to keep the chickens in and foxes out. She said the chickens would be contained on all side.

Mr. Peller asked them to comment on the deed restrictions on the property which prohibit having livestock and poultry on the property. Mrs. Coons stated they are just going on the town code and didn't know about a deed restriction. She asked if they are included. Mr. Peller stated that they are.

Mrs. Coons stated they bought a separate lot and thought they are not part of the new building. Mr. Peller informed that lot 4 is included in the covenant and is on record with the county clerk. She said she would have to check that. She said their home had to be left standing because it is historic but didn't think their home was part of it.

Mr. Coons stated he had sent notice to neighbors within 500 feet and no one has said anything. Mrs. Coons said she even sent it to the builder and he didn't say anything.

Mr. Dudick informed that he had received an e-mail from Craig LeClaire of Shaker Builders Inc with a copy of the covenant. He read the e-mail which referred to article 19 which stated no farm animals or poultry.

Mrs. Coons stated that she was unaware of Mr. LeClaire's response, and Mr. Dudick said sending the e-mail to the town was the proper procedure when the person could not be at the meeting.

Mr. Dudick stated that this is a use variance. He informed the reason for the five acre limitation is because that there is an expectation is that if there will be farm animals there would be smell and noise as well as waste products. Mrs. Coons said they it is documented that isn't a problem when you move it.

Mr. Dudick speculated that he is not sure a 40 x 40 foot area with chickens would have a strong tick deterrent expectation and that ticks could come from the surrounding area.

Mr. Coons responded that it would at least reduce the present tick population and they can't think of any other natural way to mitigate the tick problem. Mr. Coons said the only other way is guinea hens, but they are too noisy. Mr. Bloss agreed.

Mr. Dudick stated that since there was no one else present in the audience, he made the motion to close the public hearing. This was seconded by Mr. Prescott. All approved.

Mr. Prescott said he had concerns about an electric fence and asked how close it is to the bike path and what the voltage is.

Mrs. Coons said there is a natural barrier of trees between the property line and bike path. She showed the plot plan. Mr. Coons informed that the fence is 12 volts, 500 watts and is run by solar. He said there is about 12 feet to the bike path and there are solar panels in between. Mr. Coons said their deed has no restrictions on it.

Mr. Peller provided the Coons with a copy of the deed and told them it clearly states that it encumbers their property, #4 which is recorded with the clerk. He added that the town doesn't ordinarily enforce deed restrictions but the covenant does give the town the purvue to do that. He pointed out that #19 of the covenant talks about poultry and that the board needs to consider that. He added that on top of the town code, there is this deed restriction that he suggests they look at that before going forward.

Mr. Dudick explained the requirements to be met in order to have a use variance approved.

1. Showing financial evidence of hardship
2. hardship is unique and does not apply to substantial portions of the district or neighborhood
3. will not alter the essential character of the neighborhood
4. hardship has not been self created

He asked what the financial hardship would be, and if they could show documentation as such. He reminded that this is no longer a poultry farm.

Mrs. Coons said there are health benefits and the concern with pesticides and this is a more natural way. She said pesticide would affect Stony Creek.

Mr. Dudick asked for financial evidence and how they could show not realizing a reasonable return.

Mrs. Coons said it is a health benefit, and Mr. Dudick repeated he needed a financial statement. Mrs. Coons said they didn't have that, but Mr. Coons said they could get an estimate for pesticide treatment.

Mr. Myers informed he had given everyone a picture of the lots and said that there are a number of houses built. He said it is his understanding that every empty lot in the subdivision has a hold on it and those lots will be developed in the future. He added that the five acre rules are there for a reason so that when there are animals there is enough space between the homes. He stated that this is not self created, that this is the homestead lot on the subdivision but as far as they know, they are part of the subdivision.

Mr. Peller asked if they wished the board to hold the application until the Coons research this. They agreed to do so, and could return to the board for the May 15 meeting. Mrs. Coons stated she didn't see a difference between having 6 chickens or 3 rottweilers, chickens are animals and so are dogs.

Mr. Peller asked that the record should reflect that the Coons were given a copy of the deed restrictions. He asked if they are willing to waive the 62 day rule, and they agreed.

Mr. Dudick stated he is re-opening the public hearing.

The Coons submitted the registered mail notification to neighbors for the record.

Mrs. Coons asked if they need to re-send the letters if the public hearing is re-opened and was told they do not have to do that.

The Coons will review the deed restrictions and return to the May 15, 2012 board meeting.

Mr. Prescott made the motion to accept the minutes of the April 17, 2012 meeting, seconded by Mr. Bloss. The minutes were unanimously approved by members who were present at that meeting.

The next meeting is May 15, 2012.

Mr. Gifford made the motion to adjourn the meeting, seconded by Ms. Vucetic. All approved. Meeting adjourned at 7:45 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