

Approved

ZONING BOARD OF APPEALS

June 5, 2012

Present: Michael Dudick, Chairman, Michael Bloss, Mario Fantini (7:20) Randy Gifford, Chris Lemire, Amy Standaert, 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

Mr. Dudick explained that there are seven members on the board and an alternate. He indicated that all board members are present at this meeting. He introduced the new alternate, Mario Fantini.

OLD BUSINESS:

1) 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)

Joanne Coons, owner of the home on 4 Balsam Way, spoke. She informed that she and her husband, Paul, have found out that there is a deed restriction on their home, and they are trying to get it changed. She stated that in answer to the hardship question, they had contact Northeast Pest Control who quoted them a cost of \$3000 yearly to treat the ticks. She added that they cannot treat the wetlands, which is 1/3 of their property. She said it would also jeopardize their Lead status. She said they had found more ticks on themselves since the last meeting. She

informed they are trying to get in touch with the developer's partner, but so far they have not been able to. She stated they would like to withdraw their application without prejudice until such time as they meet with the developer and get the deed restriction changed.

Mr. Dudick informed if they withdraw the application, they can come back and re-submit the same application at any time, but if they proceed with the application and it is denied, they cannot come back. He said there are two hurdles: the deed restriction and the variance.

Mr. Peller repeated that if the board makes a decision now and it is denied, they cannot come back under the same terms. Mrs. Coons said she doesn't want them to make the decision today because she has to address the deed restriction first..

Mr. Dudick asked Mr. Myers the situation with ticks this year.

Mr. Myers stated everyone he talked to is having the same problem, saying this is the worst year ever seen.

Mr. Dudick mentioned that the unusual mild winter with minimal snow and the current weather is affecting the tick population. He asked if the area around the Coons was worse than other areas.

Mr. Myers said it is not, it is the same all over.

Mr. Strother said he had done some research and talked to an individual who studied integrative pest management. He said he would send Mrs. Coons the computer link on some research that she might like to know about.

Mrs. Coons agreed to withdraw her application without prejudice at this time.

2) An application from Brooks Teele and Timothy Mitchell for variances for 3 residential properties.

Lot 1:

1) 208-35D(1) front building setback required=130', 78' available, variance required = 52'

Lot 2:

2) From 208-35C: 40,000 sf min area req, 30,200 sf proposed, variance required=9800 sf

3) From 208-35C: 180' width req at building line, 54' available, variance required=126' (changed to 90' variance)

4) From 208-35D(2) Side yard setback for bldg and parking is 25' required, 14' for building and 0' for parking available, variance required= 25'

5) 208-35D(4): 10' landscape buffer req along side and rear property lines, 0' available, variance required =10'

Lot 3:

6) 208-35C: 40,000sf min area req, 26,750 sf available, variance req = 13,250sf (removed)

7) 208-35C: 180' lot width req at building line, 71' available, variance req=109'

8)208-35D(2): 25' side and rear yard setback for parking req, 0'available, variance required=25'

9)208-35D(4): 10' landscape buffer required at side and rear yards, 0'available, variance required=10'

Driveway easement for lots 2 & 3 required.

Property is located 995/997 Route 146, Clifton Park, NY 12065 (Permit#80866)

Mr. Gavin Vuillaume continued the followup to the previous discussion. He submitted new plans in which the lots are re-configured. He summarized that they wish to subdivide one lot into three lots so that each of the three buildings on the lot will have its own parcel. The lot is in a B1, business, non retail zone.

He stated they have moved the lot line to increase the size of Lot 2, so that it now meets the code requirement of 40,000 sq ft and no longer needs a variance.

He continued that they also improved the lot width of Lot 3, changing the width from 54 feet to 90 feet.

He summarized that they got rid of one variance and increased the lot width of Lot 3. He stated nothing else was changed.

Mr. Dudick told him that it is significant and definite improvement.

Mr. Lemire asked if the NW lot line was moved to the west for Lot 2.

Mr. V stated yes, a little bit but they couldn't do too much without getting into a keyhole lot issue.

Mr. Dudick announced the public hearing. There were no comments. Mr. Dudick made the motion to close the public hearing. Seconded by Mr. Lemire. All in favor. Public hearing is closed.

Mr. Myers said they did what was requested. He stated that one variance would go away, and for Lot 2, would change to a 90' variance from 126'. He had no problems with anything else.

Mr. Lemire asked about going to the Planning Board asking for 2 lots.

Mr. Myers explained that is what they originally wanted, but it is hard to do as far as zoning goes, to have 2 residential homes on one parcel. He stated the Planning Board did not have a problem with two lots, but that he, Mr. Myers, pointed out the zoning issue.

Mr. V stated that they still have to go back to the Planning Board for subdivision approval.

Mr. Bloss made the motion to accept the amended application. Mr. Gifford seconded the motion.

Ayes: Standaert, Strother, Lemire, Dudick, Gifford, Vucetic, Bloss Noes: none

Amended application approved.

NEW BUSINESS:

The secretary read the legal notice as it appeared in the *Daily Gazette* on May 31, 2012.

- 1) An application from Zappone, Inc for a variance from Section 171-Table 1 sign law. Applicant requests 161 sqft total of wall signage and total of 6 wall signs. Currently permitted wall sign @ 40sqft, 60 sqft allowed: 101 sqft variance required. 2 wall signs allowed, 6 requested. Variance required = 4 wall signs. Property is located at 1780 Route 9, Clifton Park, NY 12065 (Permit #80869)**

The application was presented by Jim Zappone, owner of Zapone, Inc. He stated that the extra signage he is asking for is required by the Chrysler franchise agreement. He is asking for additional 101 sq footage and 4 additional signs. He said they have the sign permit for the monument sign and the sign above the door of 40 square feet.

Mr. Peller asked if he is a shareholder and officer of Zappone, Inc. and Mr. Zappone stated he is.

Mr Zappone said all signs are made in the same place and are the same, based on franchise agreement.

Mr. Dudick asked if they would be denied the franchise if the signs are not granted. Mr. Zappone stated he would have to discuss with Chrysler but it is part of the agreement with them.

Mr. Dudick asked how many more signs they are asking for on the building. Mr. Zappone answered five signs, a Chrysler, Jeep, Ram, Dodge, and a service sign over the service bays.

Mr. Lemire asked if Dodge World (which was in the same location previously) had any sign variances. Mr. Myers said they did not.

Mr. Zappone stated this is the new look Chrysler and the government requires.

Mr. Dudick asked how the size of the building compares to Moradians and how many square feet of signage do they have.

Mr. Myers said it is very similar in size. He responded Moradians has 250 sq ft signage, split in half. He added this application is for 6 signs for 161 square feet.

Mr. Dudick asked if the agreement requires a Service Mopar sign. Mr. Z said it does.

Mr. Strother asked if he could consolidate the signs. He informed that the multiple signs create a liability and future concerns.

Mr.Z asked if the variance stays with the property.

Mr. Myers informed the board could put a provision on the variance that if the business leaves, the variance sunsets. He mentioned they had done that with the Kulak application.

Mr. Dudick said if this was one big sign, the square footage wouldn't be an issue but it is the individual signs that are a problem and this is a unique situation.

Mr. Peller asked if the franchise allows them to take on another brand.

Mr. Z said no, not on the same property. He said the only thing that might happen down the road is that they could offer him the Fiat brand, which he would not take at this point.

Mr. Peller suggested the board could put a limitation on the variance, that they could not take on an additional brand.

Mr. Lemire wanted to know how many wall signs Moradian and Staples have.

Mr. Myers said they each have two, and the Hilton has three. He added two is what the code says.

Mr. Strother asked if the service sign is purposeful. He said if they combined some signs there would be more flexibility. Mr. Z said he has no intentions of adding another brand as their agreement doesn't allow it.

Mr. Dudick asked if the brands are separate businesses. Mr. Z said they are separated brands under the same corporation. He added there are some dealers that have different franchises, but they have all four.

Mr. Myers stated they gave Hilton three signs because of the height of the building.

Mr. Dudick announced the public hearing, there were no public comments. Discussion ensued between Mr. Z, Mr. Dudick and Mr. Lemire regarding comparisons of different stores which sell several brands of products and similarities or differences between them and the applicant's franchise.

Mr. Lemire stated this is a slippery slope and if this is granted, next time someone else might want the same.

Mrs. Vucetic stated this is going toward uniqueness, and it is better to have the signs on the building than to have different sections of the lot with signs on each one.

Mr. Lemire stated a sign is a sign and he doesn't think they should be considering what is written on the sign. He added it is the number of signs and once you open the flood gate.

Mr. Dudick asked Mr. Z if there was any chance they could do two signs.

Mr. Z said he would never say never, but he re-iterated that as one board member has already said, a larger sign with all on it would not look good. He added that he will take any suggestions but he thinks this is the way it is across the country and it looks sharp.

Mr. Dudick said he doesn't disagree with any of Mr. Lemire's caveats, but he will bring up the uniqueness of the neighborhood and the situation. He stated why the need for the variance on perceived hardship of the applicant has been presented.

Mr. Lemire stated they have no proof that each franchise requires an individual sign.

Mr. Z stated he can easily prove that as he was not anxious to spend the \$62,00 for the signs. He said he even fought with them a bit over it.

Mr. Gifford said he drives by the building daily and it used to be run down and looked bad. He said Mr. Z has added landscape and it is now a good asset. He added the town needs something on that side of the town.

Mr. Strother suggested the board place a sunset on the variance and added that if they want to add the Fiat, they would have to re-apply for all the signs.

Mr. Peller agreed and said that any substantial change would trigger a review of all of it. He suggested the easier way to go is to say Mr. Z could agree he will not come back for more variances.

Mr. Dudick suggested this be put in a stipulation.

Mr. Z agreed and at this point he is not interested in another franchise.

Mr. Strother said he also agreed with Mr. Gifford, that the building looks great.

Mr. Lemire said it is advertising every product they sell and stated every business would like to advertise every product they sell.

Mr. Gifford asked if he bought 4 different franchises.

Mr. Z said he did, adding it is one corporation with 4 different franchise agreements.

Mr. Strother asked if it is necessary to brand the service area.

Mr. Z said Mopar is a service and is their brand of parts.

Mr. Dudick said if you don't have to put out a Mopar sign, then you could label it service with a directional sign.

Mr. Z said it is unique part of Chrysler, the way this is set up.

Mr. Dudick asked for public comment. There was none. Mr. Dudick made the motion to close the public hearing. Seconded by Mr. Strother. All approved. Public hearing closed.

Mr. Dudick suggested the motion be for a variance sunset if the business changes, and that there be a stipulation they will not come back for other signs.

Discussion ensued regarding the service sign being made a directional sign. Mr. Myers indicated that the sign is much larger than a directional sign. Mr. Z stated he would rather not change it.

Mr. Strother made the motion to approve the application with the stipulation they will not come back for any additional signs and an amendment that the variance will sunset if the business is no longer there. Mrs. Standaert seconded the motion. Approval is pending upon Mr. Zappone providing Mr. Myers with the franchise information.

Ayes: Bloss, Vucetic, Gifford, Strother, Standaert Noes: Dudick, Lemire

Amended application approved with stipulation.

The secretary read the legal notice as it appeared in the *Daily Gazette* on May 31, 2012.

- 2) An application from Panera Bread for modification to original sign variance #80518. Applicant requests to move wall sign on East face of building to South face of building. Property is located at 22 Maxwell Drive, Clifton Park, NY 12065 (Permit #80870)**

The application was presented by Mr. Peter May of Hanley Sign Company, who provide the signs for Panera Bread.

Mr. Peller asked about the name of another company mentioned in the application. He informed they would need a signed authorization form from Panera for Mr. to act on their behalf. Mr. May said he would provide one.

Mr. Myers stated this was the name of the company that originally built the store and represented Panera. He said Don McElroy called him and informed him that Mr. May would be there tonight.

Mr. May discussed that there was a variance granted for a sign on the east elevation of the building. He showed photos of the sign taken from the parking lot, demonstrating that the sign is now blocked. They want to move the sign to the South elevation so it can be seen.

Mr. Lemire noted that the sign appears different.

Mr. May said the sign is different, it is one line, but it is the same size. He also submitted drawings of the existing sign and the new sign.

Mr. Lemire asked why they are back for a variance. Mr. Myers stated that is because the variance was very location specific so it could be seen from Rt 146, and when there is specific location variance, he felt it should come back for any change.

Mr. Dudick asked if they are just changing the wall it is located on.

Mr. May said yes, and added there are no other changes.

Mr. Dudick said he sees no problem with that. He announced the public hearing and asked for comments. There were none. He made the motion to close the public hearing. Motion was seconded by Mr. Gifford. All approved. Public hearing closed.

Mr. Myers stated he has no problem with the change.

Mr. Dudick made the motion to approve the application as submitted. Motion was seconded by Mr. Bloss.

Ayes: Bloss, Vucetic, Gifford, Dudick, Lemire, Strother, Standaert Noes: none
Application approved as submitted.

The secretary read the legal notice as it appeared in the *Daily Gazette* on May 31, 2012.

3) An application from Brian & Erin Smith to reopen Variance #80823. After further review it was determined that the garage setback is planned to be 9' not 19' as shown on submitted plan. An additional 10' of variance is requested from Section 208-11. Total setback variance required = 21'.

Property is located at 81 East Side Dr. Ballston Lake, NY 12019 (Permit #80823)

Mr. Brian Smith, owner of the property, presented the application. He stated he is asking for a correction in the variance they received a year ago for a new home on a non conforming lot. He said he did the math wrong and miscalculated. They are asking an additional 10' of setback variance for the garage.

Mr. Myers stated this is just a modification from the original variance and he does not have an issue with it.

Mr. Strother asked if they are demolishing the old garage and Mr. Smith said they are.

Mr. Dudick announced the 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. Public hearing closed.

Mr. Dudick said he does not see a problem with this as it is just a modification. He made the motion to approve the application for the modification. Seconded by Mr. Gifford.

Ayes: Dudick, Strother, Standaert, Gifford, Vucetic, Bloss Noes: Lemire
Application approved as submitted.

The secretary read the legal notice as it appeared in the *Daily Gazette* on May 31, 2012.

4) An application from Michael & Kristie Yaccano for a variance from Section 208-12A, accessory structure setback to install above ground pool. 80' required, 36' available, Variance required = 44'

Property is located at 116 Southbury Rd, Clifton Park, NY 12065 (Permit#80872)

The application was presented by Mr. Michael Yaccano. He informed he wants to install a pool, but he has a lot with a unique situation where they don't have the same ability to build because of side yard setbacks.

Mr. Dudick stated that people with corner lots have difficulty with setbacks and this happens quite often.

Mr. Lemire asked why the Alpin Haus numbers on the plan are different than his. Mr. Myers showed a copy of his math, and pointed out there is 49' from the pool to the property line.

Mr. Peller asked Mr. Yaccano if he planned to build a deck. Mr. Myers stated the deck is going on the side away from the road. Mr. Yaccano agreed. Mr. Dudick pointed out that otherwise, Mr. Yaccano would have to come back for another variance.

Mr. Dudick announced the public hearing and asked for comments. There were none. Mr. Gifford made the motion to close the public hearing. Seconded by Mrs. Vucetic. All approved. Public hearing closed.

Mr. Myers said he had no comments on the application and was ok with it.

Mr. Lemire made the motion to accept the application as submitted. Seconded by Mrs. Vucetic.

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

Application approved as submitted.

Mr. Dudick made the motion to accept the minutes of the May 1, 2012 meeting. All approved.
Mr. Dudick made the motion to accept the May 15 minutes. The minutes were unanimously approved by members who were present at that meeting.

Mr. Dudick reminded members of the HVCC educational training scheduled for June 20, and informed all members need 4 education hours per year.

Mr. Lemire made the motion to adjourn the meeting, seconded by Mr. Gifford. All approved.
Meeting adjourned at 8:40 pm.

The next meeting is June 15, 2012.

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