

Approved

ZONING BOARD OF APPEALS

February 5, 2013

Present: Michael Dudick, Chairman, Michael Bloss, Mario Fantini, Randy Gifford, Chris Lemire, Amy Standaert, Doug Strother

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

Absent: Jennifer Vucetic

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

PLEDGE OF ALLEGIANCE

Mr. Dudick informed that the board consists of seven members and one alternate. In order to have an application approved, it must receive four votes out of seven, regardless of the number of members present. Tonight there are six members present and the alternate, Mario Fantini. Mario is designated to sit in for Jennifer Vucetic to make a full board.

OLD BUSINESS:

Mr. Dudick stated that a letter from Mr. Kevin Dailey (regarding the Boni application #80892) was addressed to Mr. Lemire regarding the hearing and discussion of the application on January 15, 2013. The letter was admitted to the applicant file for the record, and copy given to each board member.

NEW BUSINESS:

The secretary read the legal notice as it appeared in the Daily Gazette on January 31, 2013.

1) An application from Drake Petroleum Company, Inc. for setback variances from Section 208-93 and 208-36 for B-3. 1) Section 208-38D side parking setback required=20’;

available=6'; variance required = 14'. 2) Section 208-93C fuel pump setback required = 50'; available 10'; variance required = 40'. Parcel is zoned B-3 by definition property is classified as convenience store which also sells fuel. Property must also meet Section 208-93 as an auto service station since it has more than 12 nozzles, as well as 208-36 for B-3. Property is located at 283 Ushers Road, Clifton Park, NY 12065 (Permit #80897)

The application was presented by Mr. Chris Boyea, from Bohler Engineering, who introduced Mr. Conrad Decker, from Drake Petroleum, and Mr. Steve Harris, design engineer for the project.

He informed the project is a reinvestment in the existing ExtraMart at Exit 10 off I95. They want to remove the diesel and kerosene island located in the front on the right hand side and relocate it to improve service and layout. He explained that the current position of the pumps is not designed for large trucks which often extend into the road. Their intent is to get the trucks safely in and out. The plan is to build new pumps on the other side of the site so there will be no need for any vehicle to back up.

Mr. Boyea described the layout and explained the difficulty of large trucks, such as a backhoe, to get into the site. He said by relocating it they are providing ample stacking and circulation and no need for any vehicle to back up. He informed that the plan is to remove the septic system behind the building, connect to Saratoga County sewer district and pave the area so the trucks can enter on the right, go behind the building, pump on the left side and go directly out.

He informed they have been before the Planning Board, and received comments. They now limit the exits to one way in and one way out and have added landscaping and drainage to the plan. He said it is a minor improvement but will have a big impact on safety.

They are asking for two variances. He explained why they need a side yard parking variance. Currently the edge of the pavement is 6.08 feet from the line and they would like to keep it where it is so the trucks will have room to enter. They want to make sure they are doing things right by getting the variance.

For the pump setback, which must be 50 feet from the property line, the current diesel pump on the right is at 10.69 feet. He stated when they move it, they will push it further back from the front setback making it more in compliance. They have re-adjusted the plans and the side setback pump location is now 25.75 feet making it less of variance then they originally applied for.

Mr. Peller asked if for clarification if the difference now will be 50 feet minus the 25.75 and Mr. Myers confirmed it is. Mr. Peller asked Mr. Boyea if he wished to amend the amount of variance needed.

Mr. Boyea stated he would like to amend it and round it to 25 feet to give them an extra few inches.

Mr. Lemire said he thinks this is a wonderful idea to have one ingress and egress as it is difficult to maneuver there. He said he likes the idea of the trucks going around in the back and has no objections to the application.

Mr. Bloss asked if Zone B3 code is less stringent than the light industrial which surrounds it. Mr. Myers answered that B3 zoning is more lenient than light industrial which has requirements for large buffers.

Mr. Dudick asked if there is a reason why they couldn't move it away from the sign.

Mr. Boyea answered they had looked at it but they would have to increase the amount of pavement behind the building. He explained they need to let the trucks swing as wide and they want to keep them as far over as possible.

Mr. Dudick asked if the octagon area on the plan is a parking spot, and was told it is.

Mr. Boyea added that the other reason is to keep the setback at six feet is because they get fuel drops, and the truck occupies the area closest to the tanks and due to one ingress this will keep it open. They feel that it needs to be open in that area.

Mr. Lemire asked if they are getting rid of the parking in the back, and if the parking will be on the side. Mr. Boyea said that is correct.

Mr. Dudick asked Mr. Myers for code on the setback. Mr. Myers informed it is 20'. Mr. Dudick summarized it would be a 14' variance.

Mr. Lemire asked if there was a way to get the diesel and kerosene pumps within the 50 foot setback.

Mr. Boyea answered that not as it is currently built, because they would have to rebuild the main canopy or the building.

Mr. Lemire asked if they were not doing the project, would they have to get a variance for that setback.

Mr. Boyea informed they would not need a variance as they are existing, non-conforming.

Mr. Dudick asked about the number of parking spaces they plan and Mr. Boyea responded it would be 13 although only 12 are required. He added that from the aerial view you can see they are next to a non residential building and they are not aware of any existing issues with the parking the way it is.

Mr. Dudick repeated Mr. Lemire's question regarding moving the diesel and kerosene pumps farther back. Mr. Boyea answered they have pushed them as far back as they can go. By the new proposal they pushed it back to meet the front but can't enough to meet the side.

Mr. Myers offered the opinion that normally he would be tough on the 50 foot setback but that this is a significant improvement and worthwhile. He added it is a lot better than the way it is now.

Mr. Strother agreed that the traffic situation has been difficult. He asked about the neighboring property (tool & die company now vacant) and whether there is a potential some day for it to be a more human traffic intensive site.

Mr. Dudick responded that the current owner has been notified. He asked if the owner was present. (He was not.) Mr. Dudick continued, saying no one knows who might own it in the future, but the current owner is the one who could comment and make an objection now.

Mr. Dudick announced the public hearing. There were no comments.

Mr. Gifford made the motion to close the public hearing. Mr. Lemire seconded the motion. All approved. Public hearing closed.

Mr. Dudick asked about contamination. Mr. Boyea informed they have a contamination system in place and it is in compliance with the NY DEC.

Mr. Lemire asked if the diesel and kerosene pumps could be placed in the back of the building. Mr. Boyea responded that there is not sufficient width to get the truck squarely into the dispenser in the back. He explained that there is also a need for the pumps to be in sight of the cash register in the store.

Mr. Bloss made the motion to approve the amended application (25 foot side setback)

Mr. Gifford seconded the motion.

Mr. Boyea asked if they need to discuss SEQRA first. Mr. Peller responded the Planning Board handles that.

Mr. Dudick read the letter from the Saratoga County Planning Board, which had reviewed the application and was neutral on the subject, finding no significant impact.

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

Amended application approved.

The secretary read the legal notice as it appeared in the Daily Gazette on January 31, 2013.

2) An application from Ray Sign Inc. for area variance for freestanding sign and possibly offsite sign. Per Chapter 171, Table I maximum allowable freestanding sign= 150 sq ft; 244 sq ft requested; variance required = 94 sq ft (soldier = 72 sq ft; oval 57 sq ft; digital board =87 sq ft; Soldier base = 28 sq ft). (Wits End)

Property is located at 1762 Route 9, Clifton Park, NY 12065 (Permit #80898)

Mr. Tim Prescott, from Ray Sign Inc, presented the application representing Wits End. Also present were Susan Hoffman, owner of the Wits End property, and Chuck Hoffman.

Mr. Prescott first clarified the size of the soldiers which he said, after re-measuring, are 18 ½ sq feet, not 36 sq ft. He stated Mr. Myers told him that, because of the soldiers are an image, the footage is part of the entire sign. He said they are looking at about 60 sq ft of pole covers to hold the sign up and they will be non-illuminated cast out of fiberglass. They are trying to cover up the poles.

He pointed out that the current sign is far back and hard to see.

Mr. Peller asked him to comment on the off site sign issue on the other parcel, formerly Parkwood Restaurant.

Mr. Prescott informed this is going to be resolved prior to putting the sign up.

Mr. Peller asked if Mrs. Hoffman is going to purchase the property so there is common ownership. The response was that there are tax issues now.

Mr. Lemire asked if this is a separate property and deed. Mr. Peller informed it is a separate owner.

Mr. Lemire asked if the ownership becomes united, would it be considered an on premises sign. Mr. Myers responded that the lots have to be combined into one for it to be an on premises sign.

Mrs. Susan Hoffman, owner of Wits End, said she owns the Wits End parcel and her husband purchased the property next door. She informed her husband bought it so she could put a sign there and he would give her an easement for it.

Mr. Peller asked if the intent was to sell it to her. Mrs. Hoffman said not at this time. She added that people have trouble finding the store because they are set back so far on the property, and it is dangerous for people making a turn at the last minute. She informed that the GPS does not bring people to their address.

Mr. Dudick asked if there are plans to expand her store on to the other parcel.

Mrs. Hoffman affirmed that they have added 10,000 square feet last year and have a plan to eventually add 8,000 feet toward Rt 9.

Mr. Dudick asked Mr. Myers asked if she did that, could she have a sign. Mr. Myers answered that he is not sure she can expand on two separate lots which is an issue of its own. He commented that if the business sat on the other lot, it wouldn't be an off premises sign any more.

Mr. Peller informed that the boundary line would have to be adjusted and the Planning Board would not approve building on a piece of land you do not own.

Mr. Myers said it is an issue if there isn't common ownership. He talked briefly about the whole problem of when the bigger lot was divided up they were given small pieces to have access to the road. None of them have enough frontage to have a sign for their property. He stated he has discussed with Chuck Hoffman getting one common sign for all the parcels as a group to put all the stores on the sign. He said if this application goes forward, and Wits End gets an off site sign, it will snowball and others will want one.

Mr. Lemire said he recalls the board did not give an off site sign to Mooradians.

Mr. Dudick concluded that the off site sign problem goes away if the two lots are united. Mr. Myers agreed. Mr. Dudick asked the Hoffmans if this is doable.

Mr. Strother asked if all buildings have different numbers and Mr. Myers said there are several different parcels.

Mr. Chuck Hoffman explained how the real estate is set up. He said there are three lots with adequate frontage to have their own signs, Dunkin Donuts, the large building in the center, and the Parkwood restaurant site (which his brother-in-law purchased). He informed there is a tax problem right now which is why the lot cannot be conveyed at this time. He suggested they could do a long term lease or easement to make it work. They are working with an attorney regarding the legalities. He said that eventually that parcel will be Wits End also.

Mr. Dudick discussed the issues with having off site signs, which go under the realm of billboards which the town does not want. He suggested the problem goes away if the properties join.

Mr. Myers informed that the Dunkin Donuts sign is not on their parcel but it was placed there before his jurisdiction. He said the Parkwood sign was already there and the Dunkin Donuts sign was attached. Mr. Hoffman stated it was placed there in 1971.

Mr. Dudick asked if there is enough space to create a road. Mr. Myers said it wouldn't help as the issue would still be visibility and they would still want a sign on Route 9.

Mr. Hoffman asked if they could put a sign on it if Wits End leased the lot, Mr. Peller advised that the question would come under the definition of ownership, whether the sign would go with the land if it was sold. He stated he couldn't answer that right now because they would need to do research to decide what exactly ownership means.

Mr. Lemire pointed out that, according to the definition, the sign has to call attention to the commodity or service building on that lot. Mr. Peller said it still goes down to ownership. Mr. Lemire proposed the example that, if the restaurant building was there and Mrs. Hoffman leased it and put a product in there, she could put up a sign.

Mr. Myers and Mr. Peller discussed options and interpretations of codes and use of land with respect to whether her husband could give Mrs. Hoffman vested interest in the property. Mr. Peller told Mrs. Hoffman they need to do some research on the issues.

Mr. Lemire asked if the off premises issue needs to be resolved before the board votes on the size of the sign and Mr. Peller said yes. He asked the Hoffmans if they were agreeable to adjourn so many of the questions can be answered about the off premises sign first before they vote on sign size. The Hoffmans agreed to adjourn.

Mr. Strother said he would like to see looking into solutions for the group of buildings. He added he would not like to talk about a "mock" building. Mr. Dudick said they would not talk about that, and Mr. Hoffman said he had no interest in that.

Mr. Peller asked if they would waive the 61 day rule, and the Hoffmans agreed. The application is deferred until research has been finished on solutions to the off site sign issue.

The secretary read the legal notice as it appeared in the Daily Gazette on January 31, 2013.

3) An application from Prince of Peace Lutheran Church for a use variance from Section 171 H.3(n) which does not allow animated signs in a PIR Zone. Sign has been installed without permit or approval. Application similar to variance #80855, Christ Community Reformed Church.

Property is located at 4 Northcrest Drive, Clifton Park, NY 12065 (Permit #80899)

The application was presented by Mr. Jim Galarneau, who is a member of the congregation and also runs the facilities team. He showed a picture of the sign that had been installed on the front lawn. Its size is 4 x 34 x 8. He addressed the issue of installing the sign without a permit stating it was not their intention to violate code. He said it is a community based church, used as a polling place, and they keep their property well groomed. He asserted they were not aware they needed a use variance because they were replacing the original sign (installed in the late 1970's) with a sign of the same size and in the same location. He said they use the sign for public messages of various activities the church has to offer. He contended the messages are one color with no flashing icons such as seen on the Clifton Country Mall sign. He asserted that the messages are mostly static, once displayed and they are unaware of any objections of neighbors.

Mr. Peller asked what the permit #80855 was for; Mr. Myers answered it is Christ Community Reformed Church.

Mr. Dudick responded he agreed with most of what Mr. Galarneau said, but one part he disagrees is with the amount of flashing on the sign. He explained that the town determines where animated signs are acceptable and a use variance is required because the area where the church is located has been designated as where those signs are not desired.

Mr. Galarneau asserted that it isn't animated and is LED. Mr. Myers explained that, according to the law, it is an animated sign. Mr. Dudick defined an animated sign as any sign that does not have to be changed by hand.

Mr. Galarneau asked if the public library sign is animated and pointed out it is down the street from them. Mr. Dudick said it is animated because it has images that can be changed. He informed they had a variance.

Mr. Galarneau responded that it looks like it changes every two or three seconds. Mr. Myers said theirs is changing every five seconds.

Mr. Dudick explained the town decides where they will allow the animated signs, and if someone is in an area they are not allowed, it requires an application, a permit and for the applicant to meet with the zoning board for a use variance. He explained the Christ Community Church met with them to obtain approval for their sign. He said it is the position of the town and board that although it is not desirable to have signs there, they give more leniency to houses of worship. He said he understands putting up the sign was a mistake, but regardless of whether it was installed in error, they still would have had to come to the board for a variance. He informed Mr. Galarneau that the Christ Community Reformed Church came to them with ideas of what they needed, and if they could come to the same type of agreement with their sign, he can't imagine the board would come to a different conclusion. He said they would look at it more harshly if they were a business selling a commodity.

Mr. Galarneau asked what that would be, considering all their ministries.

Mr. Dudick asked Mr. Myers to list the restrictions of the other church sign

Mr. Myers read the restrictions agreed upon:

- no more than two colors excluding the background

- no images cartoons or graphics

- 3 line message limit

- no flashing, scrolling, rolling or moving text or images (images have to be static)

- automatic light intensity dimming at night

- message change once a day

Mr. Galarneau questioned the number of times the message could change.

Mr. Dudick said that was the agreement. Mr. Strother drew a parallel to how often a standard message board would be changed by hand.

Mr. Galarneau questioned how you would get the message across changing it once a day when they have twenty ministries. He said he couldn't understand how he could communicate twenty ministries in twenty days.

Mr. Dudick asked what they did before when they had the other sign and was told it was static and they had a manual system which didn't get the message out well.

Mr. Dudick asked the rhetorical question of how many people would stop and watch if they had twenty messages every few seconds.

Mr. Galarneau said once a day is restrictive.

Mr. Strother said that is what the board and the Reformed Church agreed to.

Mr. Lemire listed the four elements of a use variance and pointed out that this is what they have to consider.

Mr. Dudick informed they did not hold the church to the requirement of proving financial hardship. He said they did discuss the other three elements.

Mr. Strother asked if it is required to notice neighbors and was told it was done and they had reached out.

Discussion ensued regarding the library sign. Mr. Myers reported that the sign was approved by the Planning Board in error at the time the site plan was approved. He agreed that they had come back to the zoning board recently but that was to replace the reader. He continued by reading aloud the research they had used to make a decision on the last church sign. He read "case law suggests it is incumbent on the ZBA to suggest measures to accommodate religious organizations while mitigating adverse effects to the surrounding community as much as possible and treated favorably over other businesses who may have the same request before the board." He added that the Reformed church came to him and the supervisor with a list of compromises and they, with Mr. Peller met and came before the board which decided the compromises were reasonable to accommodate. He said that he was reading what they did with that church and if the board wanted to change something, that is fine.

Mr. Strother asked what they did with Kulak Garden Supply. Mr. Dudick answered that Kulak's is in a different zone. Mr. Myers responded it was a unique location in that zone and added it has a sunset condition and can change once a day.

Mr. Peller advised that the board does not have to be as rigid because it is a religious organization.

Mr. Lemire asked what standards is the board to use to review the application.

Mr. Peller said the 4 elements talks about adverse effects and mitigating. Mr. Myers read that section on mitigating adverse effects and special consideration to churches.

Mr. Lemire summarized for Mr. Galarneau that they don't have to prove financial hardship, but in return, they need to be more flexible in what they are looking for, as the other church did. He again read the elements saying that most folks cannot meet all of them. He said if they are not holding them to one of the standards, but there has to be some sort of give or take, which sounds like it is the frequency of the message. He added they are trying to massage the situation to satisfy the requirements of the zoning board to grant what they want in the least restrictive way.

Mr. Dudick explained this is a new technology and they expected this would occur, that many businesses and churches would want to go to the message boards. He said there is a unique situation with churches which are allowed to locate in residential areas, and they want to keep animated signs out of those areas and but also balancing it with the need of churches.

Mr. Dudick announced public hearing.

Mr. Jim Roberts, member of Prince of Peace Church and counsel president, spoke. He said they are not coming to the board looking to change their sign twenty times a day. He contended that they only change it twice a day, but it is every 3 seconds, explaining that the three line sign advertises church service and Sunday school hours. He understood that they made a mistake when they thought they were just replacing the sign, but they would like the ability to change the sign more than once a day which makes it a static sign. He explained they don't want flashing or scrolling and it does dim at night. He informed they would like to advertise their ministries such as a supper and their associate pastor and are asking for flexibility.

Mr. Lemire commented that the message changes every three to five seconds, and he cannot calculate how many times a day that would be.

Mr. Dudick said every five seconds and Mr. Strother commented that is a 10,000 times a day.

Mr. Peller suggested it would be helpful for them to meet with their committee and put together a wish list as it appears they are not enthusiastic about agreeing to have what the other church has.

Mr. Galarneau said if that would have an outcome he would meet with the committee and see what they want.

Mr. Dudick said what they are looking at is that right now, the sign as it sits now would have to be turned off and removed as one option. He then suggested that they could agree to what the other church did, or something in between in which case they need to meet with the committee

and then inform the board how much more they want. He stated if they do that and keep the sign up, it must not change more than once a day. Then when they come back, the board would make a decision to accept or deny.

Mr. Lemire said it is ok to talk about what you want and come and explain why you want what you want. Mr. Myers added that the Reformed Church came to them and told them what they wanted, and the board agreed.

Mr. Galarneau said they will accept coming back and changing the sign once a day but with further dialog they hope they can get greater frequency.

Mr. Lemire informed that if they agree to table, they don't have to make a decision tonight. Mr. Galarneau asked if they return and the board doesn't agree, would they have to take the sign down.

Mr. Myers said that would not be the case, that the absolute minimum they would get would be what the other church was granted. He said that church was the first one and that the modifications are not cast in stone and there is no hard standard yet. He explained that it all came about because another church put up a sign that they couldn't do anything about because there was no law.

Mr. Roberts clarified that once a day means the message if placed at 7am can't change until the next day. Mr. Myers said that is correct and added that one thing he didn't mention is that the sign can only operate from 6am to 11pm. He said they don't want it on at night distracting traffic. He reiterated their case may be somewhat different than the other church and they don't have a hard standard yet.

Mr. Myers asked if they want to return in two weeks and Mr. Galarneau agreed. Mr. Dudick explained the 61 day rule and asked if he was willing to waive it. Mr. Galarneau agreed to waive.

Mr. Dudick summarized they would meet with Mr. Myers and come back to the February 19 meeting. The application is adjourned until the 19th.

Mr. Dudick called a five minute break.

Upon return, Mr. Myers distributed a packet containing his response to Mr. Dailey's letter to Mr. Lemire. He informed that for the record, he had also given one to Mr. Dailey.

Mr. Strother and Mr. Fantini were not at the initial hearing. Mr. Dudick informed the next meeting would be an open round table discussion and after the discussion and after that the board would decide how to answer it.

Mr. Bloss wanted to know if Mr. Dailey would be present. Mr. Myers said he expected he will be there. Mr. Lemire pointed out it is Presidents week.

Discussion ensued as to whether the application would be discussed and a decision made at the February 19 meeting or if a decision would follow at the next meeting.

Mr. Peller commented that Mr. Dailey suggested they have a decision in 30 days and Mr. Myers confirmed that is his expectation.

Mr. Bloss asked what two items were to be discussed.

Mr. Dudick explained 1) Whether the board believes Mr. Myers has interpreted the code correctly or if the board interpreted it differently 2) regarding the PDD, whether the ZBA board feels it has the authority to overturn a decision made by the Town Board.

Mr. Bloss asked if it is whether the PDD exists or not.

Mr. Dudick explained that the Town Board position is that it does not exist.

Mr. Myers answered that the PDD no longer exists, that it sunsetted.

Mr. Bloss questioned about whether it was about not building.

Mr. Myers stated they have not touched it in 30 years.

Mr. Bloss questioned whether this is standard procedure for the ZBA board to rule on legalities above their pay grade.

Mr. Dudick said it is not standard, but they have discussed and interpreted whether the Town Board has interpreted it correctly.

Mr. Lemire asked "didn't Mr. Myers say the PDD expired in 1991, and his interpretation is based on the Town Board holding that meeting in May 1991. He summarized that the board is going to make a decision on is Steve's interpretation on whether the PDD doesn't exist based on the Town Board decision it sunsetted and whether Steve interpreted the code properly as it applies to the project?"

Mr. Dudick asked if the board would make it easier to get a letter from the Town Board.

Mr. Bloss questioned what is Mr. Dailey's recourse and Mr. Myers responded he would file an Article 78 to the county.

Mr. Dudick summarized the board would read the material and meet on February 19 to discuss.

Mr. Dudick stated the board will defer voting on the minutes of the January 15, 2013 meeting to give all board members time to review.

The next meeting is February 19, 2013.

Mr. Lemire made a motion to adjourn the meeting. The motion was seconded by Mr. Strother. 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