

ZONING BOARD OF APPEALS

February 19, 2013

Present: Michael Dudick, Chairman, Michael Bloss, Randy Gifford, Amy Standaert, Doug Strother, (7:10), Jennifer Vucetic

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

Absent: Chris Lemire

PLEDGE OF ALLEGIANCE

Mr. Dudick called the meeting at 7:06 p.m. He informed this is a seven member board with one alternate. Mr. Fantini, who is the alternate, will be sitting in for Mr. Lemire, who is absent tonight.

Mr. Dudick announced that tonight New Business, the application of Judith Frolish, will be heard prior to the Old Business (Boni Enterprises)

NEW BUSINESS:

An application from Judith A Frolish, Saratoga Sign Pro's Inc. for a variance from Chapter 171, Chart I, maximum height of wall sign allowed = 20'. Applicant requests 28' to bottom of sign or 33' to top of sign. Variance required = 13'. Property is located at 386 Clifton Park Center Road, Clifton Park, NY 12065 (Permit #80901)

Ms. Judith Frolish, representing Saratoga Sign Pro presented. She introduced Greg Moore VP from Saratoga National Bank Main Office. Mr. Moore said he is excited to bring a branch of

Saratoga National Bank to Clifton Park. They recently purchased the Cap Com building and will open in about a month.

Ms. Frolish distributed pictures of the property. She indicated the location of the ramp, and described the building as sitting in a hole so it is low and a sign on it would not be seen. She explained that when you drive by, to look at the tower you would not realize it is that tall because of the building location. She informed there will be a freestanding sign located on Clifton Park Center Road, which is the only identification sign. They would like to put a sign on the tower at the rear of the property facing the Northway with the name of the bank and a horse logo on the side of the tower. She said the two signs meet code with regard to total sign footage. She stated there is quite a bit of foliage that blocks the lower part of the bank and visibility cannot be achieved any other way. She said it would not work to put the sign lower on the tower because it would be blocked by the skylight.

She said the surrounding properties all have channel letters that are very similar and many of them are where the ramp levels out and are even with the elevation of the Northway. She contended that some of the signs are much higher than what they are proposing and the hotel chains are higher also. She added that the signs closer to them are lower, but that is because their building elevation is higher. She summarized they are trying to get as much exposure as possible.

Mr. Bloss asked if the tower has always been there. Ms. Frolish answered yes.

Mr. Dudick discussed the history of the building which was built around 2001. It originally did not have the tower which was added later as an architectural feature. At the time of request, the applicant stated they had no intention of putting a sign on the tower. The tower was approved, and after it was built they came to the Zoning Board with a request to put a sign on it. The board denied the request for that variance because it concluded the only benefit for visibility was from the ramp alone, and not much from the Northway. The board also felt it was a distraction while making the curve getting on to the Northway, plus the applicant said they didn't want signage on it, and then came back and asked for one.

Ms. Frolish asked which side of the tower they had requested to place the sign. Mr. Dudick responded that he thinks it was the side toward the ramp. He stated he is the only member of the Zoning Board remaining from that time, and this board may come to a different conclusion, but at the time he had felt it didn't make sense from a safety standpoint. He added that there is a uniqueness to the property and he recognizes it is low down because of the access loop of the ramp and it is hard to see. He asked Mr. Moore if they own the building at this time.

Mr. Moore informed they do own it. Mr. Dudick said he was asking to determine if the purchase was contingent on putting the sign there, and was told it was not.

Ms. Frolish contended that there are signs all over and if you scan the environment they are everywhere. She alluded to research done by Penn State University which she said indicated that people's visual pattern while driving is to scan the environment. She said that drivers see the sign for a couple of seconds and then go back to driving. She added they would like to attract

the passengers as well and they have more time to look at the sign. She reiterated that the driver is only scanning and not being totally distracted.

Mr. Dudick asked Ms. Frolish whether animated signs are distracting. She stated according to the study that it is usually only a couple of seconds. She said if animated signs were a safety hazard then the state would not put them on the highways.

Mr. Dudick requested that she forward the study to him as he was interested in reading it. Mr. Strother stated he couldn't respond or make an argument about distracted driving until such time as he has details on the study.

Mr. Dudick commented that he has read research which is in favor and also opposed. He said if there is a study that says there is absolutely no impact, he would want to read it.

Ms. Frolish repeated that if there are multiple persons in the car, it is worth it to put the sign up for the passengers.

Mr. Dudick announced the public hearing and asked for comments. There were none.

Mr. Myers commented the building was built in 2003, and the tower was added later. The variance request for the sign on it was not granted, he felt, for good reason. He said he did not agree that would be no higher than the other signs around it. He commented he didn't see the need for it and suggested that people would not get off the Northway and come back when they see it. He added that it is now a different board and a different area than it was then.

Mr. Strother asked if Ms. Frolish had considered the visibility of the sign, and from the perspective shown, he couldn't read it. He asked if they have considered alternatives. He said he is having trouble getting behind it and added that the ornamentation of the building makes it unique.

Mr. Dudick agreed it is a beautiful building.

Mr. Moore answered that the horse is the recognizable symbol and their logo, and agreed the size of the title is challenging but as time goes on people will know it is their bank.

Mr. Strother asked if the Bank of America sign is the same height and Mr. Moore answered it is and added there is a wide range of heights.

Mr. Dudick asked Mr. Myers if that is the case. He responded that he is assuming it is the same, but he would find out.

Mr. Dudick asked the allowable height and Mr. Myers answered 20 feet. Mr. Dudick said he does not recall a variance for Bank of America.

Discussion ensued as to comparisons of signs. Mr. Dudick said looking at two banks with towers and signs on them, the question is how high the other sign is. He suggested they hold on this application until they have additional information to give fair weight to the argument it is a similar situation.

Ms. Vucetic stated she would like to know about the Bank of America.

Mr. Peller asked if the applicant would waive the 62 day period. Ms. Frolish agreed, and added that she would provide the documentation of the study as well.

Mr. Dudick informed the public hearing would remain open.

The applicant will return on March 5, 2013.

Mr. Strother commented he believes they have some room for creativity.

OLD BUSINESS:

An application from Boni Enterprises, LLC & Country Club Acres, Inc for an administrative review by the Zoning Board of decision rendered by the Town Zoning Enforcement Officer per section 208-109D of Town Code. Applicant wishes to build a mix of single family residential and office/warehouse on north side of Ushers Road, west of I87. Property is located on the north side of Ushers Road, west of Interstate 87, Clifton Park, NY (Permit #80892)

Mr. Fantini recused himself due to the fact that he missed the first half of the presentation which was on January 15, 2013.

Mr. Dudick announced this is an open forum discussion of the board regarding questions at hand based on presentation of counsel, Mr. Dailey with regard to Boni Enterprises, LLC and Country Club Acres, Inc. He alluded that under consideration are the 12 exhibits presented by Mr. Dailey, as well as Mr. Dailey's letter to Mr. Lemire, (which was forwarded to the board) and also additional input from Mr. Myers.

Mr. Dudick asked if there were comments from the public and was told by members of the audience that they were there as observers.

Mr. Dudick stated the first question is: "was the zoning officer correct or incorrect in determining that multiple dwellings on a single parcel are not allowed in a B1 district." and the second question is: "does the Zoning Board of Appeals have any granted authority to affirm, reverse, modify or interpret a decision or action by the Town Board of Clifton Park with regard to whether they properly terminated a planned development unit."

Mr. Strother addressed the second point by saying the Zoning Board of Appeals actions are between the public and the zoning officer. He stated he feels the board has no right to override a decision of the Town Board.

Mr. Gifford agreed with Mr. Strother.

Mr. Bloss said he appreciated the efforts of Mr. Myers to gather the information he provided to the board to give them the background on which he based his findings. He explained he feels the findings are well founded, and the intent of the zoning code, as opposed to some of the narrow interpretations Mr. Dailey provided. Mr. Bloss said "wordsmithing" can give a very different opinion. He said the intention of the code and master plan was upheld by Mr. Myers.

Mrs. Vucetic stated she thinks there were numerous discrepancies and they cannot rule on them over the Town Board and does not feel comfortable with ruling on it.

Mrs. Standaert informed the board she is in agreement with Mr. Strother.

Mr. Dudick related that he has been on the Zoning Board for 10 years and he turns to Mr. Myers for advice. He said he cannot recall ever challenging Mr. Myers with regard to enforcement of code and has seen no reason based on what he has read to come to a different conclusion now. With regard to the Zoning Board's authority to have an impact on a Town Board decision, he feels the board is not a legislative body. Mr. Strother added they are not an oversight board. Mr. Dudick summarized he does not have the authority to make a decision to render an opinion that way.

He asked for opposing opinions. There were none.

He asked for public opinion, and there was no audience response. Mr. Peller advised the board had a public hearing but didn't need to but recommended going through the procedure to close. Mr. Dudick made the motion to close the public hearing. Mr. Gifford seconded the motion. All approved. Public hearing closed.

Mr. Dudick called for a vote on each question.

Question one: "Does the board want to uphold the opinion of the Zoning Enforcement Officer in determining that multiple dwellings on a single parcel are not allowed in a B1 zoned district."

Mr. Bloss seconded the motion. A vote of yes, means to uphold.

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

The board stands with the code enforcement officer's opinion.

Question two: "Does the Zoning Board of Appeals have the authority to render an opinion, decision, reverse or modify a decision made by the Town Board."

Mr. Strother stated he does not think the board is required to review decisions of the Town Board and the law is clear on that.

Mr. Peller pointed out that the applicant has asked for the board to comment as part of his appeal.

Mr. Strother said he understands but he is going to abstain.

Mr. Dudick responded that the applicant has asked for an opinion, and Mr. Strother again stated he does not think it is appropriate for them to vote on it.

Mr. Dudick repeated the question: " Does the Zoning Board of Appeals have the authority to either reverse, affirm or modify any decision made by the Town Board." He added that he does not think it has the authority. He made the motion that the board does not have any impact to reverse, affirm or modify a Town Board decision. Mrs. Standaert seconded the motion. A vote of yes means they do not have the authority.

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

The Zoning Board of Appeals determines they do not have the authority over a Town Board decision.

Mr. Dudick asked Mr. Dailey if that answers the position of the Zoning Board on the questions he had asked. Mr. Dailey said it does.

Mr. Dudick made the motion to approve the minutes of the February 5, 2013 meeting. The motion was seconded by Mr. Gifford. All approved. Mrs. Vucetic was not present at that meeting and did not vote. Minutes approved.

Mr. Peller requested more time to review the minutes of the January 15, 2013 meeting, so a vote was not taken on those minutes.

Mr. Dudick made the motion to adjourn the meeting. Mr. Strother seconded the motion. All approved. The meeting was adjourned at 7:52 pm.

The next meeting is March 5, 2013.

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