

**Approved**

**ZONING BOARD OF APPEALS**

March 5, 2013

Present: Michael Dudick, Chairman, Michael Bloss, Mario Fantini, Randy Gifford, Chris Lemire Amy Standaert, Jennifer Vucetic (7:10)

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

Absent: Doug Strother

Mr. Dudick called the meeting at 7:10 p.m.

PLEDGE OF ALLEGIANCE

**OLD BUSINESS:**

Mr. Dudick informed the applicants this is a seven member board with one alternate, Mr. Fantini. To receive approval an application must receive 4 yeas regardless of the number of members present. There are six members present tonight. Mr. Fantini will be sitting in for Doug Strother making a full board of seven.

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

James Roberts, President of the Church Council for Prince of Peace Lutheran Church, presented. He notified he is standing in for Mr. Galerno. Facilities Team Manager, who is out of town. He thanked the committee for giving him the opportunity to discuss their church needs and work

with them. He gave a brief history of the church which has been in Clifton Park for more than 42 years. He spoke of the decrease in participation in organized religion and fewer people attending houses of worship. He stressed that it is increasingly important that they make themselves and the congregation relevant to the community which is why they purchased the sign. He added they hope to reach out to the people in Clifton Park and surrounding areas instead of waiting for them to come to them. Mr. Roberts said they hope to use the sign for worship hours and other communal activities. He cited the example of their free Mothers Day brunch to be advertised on the sign. He agreed they understand the sign is a challenge and they don't want Rt 146 to look like Vegas strip. He said he hopes their proposal will be mutually acceptable.

Mr. Roberts presented a booklet for review. The first two pages are copies of the zoning map and satellite map to show where they are located and the location of their neighbors. He said they are confident the impact of the sign will be minimal. Page four and five displayed pictures taken of the signs from different directions. He informed the pictures are the current messages displayed and referred to the free soup supper they hold every Wednesday during lent. Page six displayed pictures of the sign at night at 100 lux, looking from west and east. Page seven was a copy of the notice of decision for the Community Reformed Church and the restrictions they agreed to and page eight displayed examples of localities showing a comparison of regulations for LED signs in PA, KY, GA and TX. Page nine is their proposal that they would like the Board to consider. Page 10 is a paper regarding recommended light levels on LED signs.

Mr. Roberts summarized their proposal stating they modeled it after the agreement made with the Community Reformed Church with a few exceptions. They propose: text only with a three line limit, static only with only two colors; no flashing, scrolling or rolling text or image; .3 footcandles above ambient light level at night; no other messages other than church related event; hours of illumination 6-11pm but they are turning it off at 8pm; and finally, the suggestion to change the message with a limit of two static messages every twenty (20) seconds to give people the opportunity to see both messages. He demonstrated the length of time (20 sec) would be before the message change.

He added they would ask flexibility during busy times such as Christmas and Easter. He cited as example, Palm Sunday activities and that they would ask for permission for more than two messages and consideration of an alternate time change interval.

Mr. Bloss commented that the red letters currently being used on the sign, are difficult to read.

Mr. Dudick asked how many houses of worship there are in town. Mr. Myers answered he thought it was 8 or 10 and Mr. Roberts stated there are 47.

Mr. Dudick informed Mr. Roberts that, as a Board, they have to look at precedent and there is a big difference between changing every twenty-four (24) hours and every twenty (20) seconds. He said from their perspective they are willing to change as times change, but of concern is that every house of worship will ask for what the last house of worship has. He expressed concern over envisioning 30-40 signs changing every 20 seconds, some being literally within site of each other. He explained the concern isn't what is happening in front of one church, but what is happening every half mile with a steady stream of flashing. He said they are not looking for people's attention to be drawn off the road.

Mr. Dudick said his desire is to drive by at 8am and see one message and drive by at 8pm and see the other message. He stated he thinks they are willing, as a Board, to have a lesser time frame but not to see messages changing as you are going by. He added he doesn't know if he would be comfortable going from once every twenty-four hours to once every 20 seconds. He said he would like a different message at a different time of day but commented that every 20 seconds is better than changing every 5 seconds, except it is still trying to capture the attention as people are going by.

Mr. Roberts contended that research shows most of the municipalities in their research average in the 20 second range and that 20 seconds is a starting point for them. He said they didn't realistically expect to go from every 24 hours to every 20 seconds. He said they are willing to work with the board but most important is working with the board for those times when the church is busier and there are more activities going on.

Mr. Dudick said he understands the high holy days of any religion is an important time, but is not sure if the logic about the signage goes away because of religious importance. He explained there is a concern about safety and distracting drivers. He added he doesn't want it to be overwhelming and not go too far on any one thing and they must go slow.

Mrs. Standaert agreed that they should go slowly and that flashing every five seconds is a distraction. She related that she had stopped for the light and had been able to see both messages when they changed every twenty seconds. She offered the opinion that she feels it is appropriate for an intersection and not a distraction or flashy and was tastefully done. She added she thinks it is a reasonable compromise.

Mr. Dudick asked Mrs. Standaert her opinion as to what should be done during the high holy days. Mrs. Standaert did not offer an answer. Mrs. Vucetic responded she thinks it is too much.

Mr. Fantini said he could see a smaller duration of time for the holidays, but it should be spelled out exactly what they are and what it should be for an event. He suggested the order of magnitude should be minutes, maybe 10 minutes, rather than seconds. Mrs. Standaert countered that if they did that, when a car is sitting at the light, it wouldn't get all the message and would have to come back.

Mr. Gifford asked if this is going to make or break attendance in church and Mr. Roberts said it would not. He explained the change during those times of year has to do with being able to put more than two messages up per day. He cited three services they have on Christmas Eve.

Mr. Gifford asked if they send out monthly bulletins, and Mr. Roberts answered they do.

Mr. Dudick explained it is not the number of messages but the frequency of change that is the issue. He said if they have four things they want to get out, they can put them in.

Mr. Roberts pointed out that if they can change only twice a day, that is only two messages they can get out. Mr. Dudick agreed, and used as an example that if it changed every half hour, they could get out 24 messages. He reiterated the number of messages is not the issue but the number

of changes. He asked the board if anyone felt there was an issue with the number of messages. The Board members indicated they did not have an issue with the number of messages.

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

Mr. Myers suggested that the red letters would work much better with a lighter background rather than black.

Mr. Myers said he thinks they need to come to a conclusion as to what the standards are going to be as this is, by far, is not the last application like this. He stated he and the Board are still in a learning process as to how the regulations for these signs are going to work in the unique category for houses of worship. He informed that legally, he doesn't think they can change things more than what they have already given to others, but practically he isn't sure that is the right answer. He continued that he doesn't think you can do it by location and tell one church one thing and another church something different. He suggested they come to a point where everyone is comfortable with what the standard will be for houses of worship going forward.

Mr. Myers offered the opinion that he doesn't have a problem with twenty seconds and he had looked at the sign while stopped for the light. He reiterated that whatever the last one is, that is what they should do from now on, because the Board can't keep giving ground.

Mr. Dudick said he looks at it as an application for 30 churches with each wanting to have signs that change every twenty seconds.

Mr. Lemire contended that every business would want the same. He asked what the Kulak landscaping had been given. Mr. Myers responded he thought it might be once an hour.

Mr. Lemire asked what they would do with the church who was given a limit of once a day, whether they would come back and ask for more. Mr. Myers informed they would have to refile. Mr. Peller added they would have to ask for an amendment and it would have to be re-noticed.

Mr. Lemire contrasted the old fashioned sign with the digital saying it is more convenient and nice looking. He suggested that once a day is not unreasonable especially since houses of worship are not being held to use variance requirements as businesses are. He stated he had not been present at the last church application but based on the use variance requirements he would have voted no. Mr. Peller informed Mr. Lemire that case law is such that restrictions can be relaxed for houses of worship.

Mr. Bloss mentioned they are trying to eliminate banners and flag signs that are often used by churches. He suggested that if they can change the sign more than one message a day, they will eliminate the other signs that look bad. He added, in his mind, it may be a better way to get information to people who pass.

Mr. Dudick reminded that the Town Board has come up with signage law to prohibit LED signs in this area of town. The only way to get a sign is to come for a variance. He explained that in this section of town, there are residences close by. Because the applicant is a house of worship,

the Board is here to grant relief but it has to balance it. He said unless the Town Board says differently, he feels that the sign changing every twenty seconds is too much. He added that he would be more comfortable with once a day, and could be persuaded to a little more often, but not every twenty seconds.

Mr. Roberts responded it is a problem for them because they have no perspective on what to ask for.

Mr. Dudick answered that they do not want to spend a long time discussing what would be acceptable as this is a special circumstance. He offered two alternative actions: he could close the public hearing and take a vote on the twenty seconds request or the applicant could go back to his church group and discuss this and come back with a different offer of frequency. Mr. Roberts agreed he would like to do that.

Mr. Myers suggested the meeting be tabled so they don't need to re-apply with a different application. He recommended meeting with senior members of the town (supervisor, town attorney) to see if they are willing to entertain doing something different with the law. He said he would do it for them and speak with the town officials.

Mr. Roberts asked (understanding the idea of precedent) is it within the realm of possibility that they have a one month approval of a proposed time change, and see how it works?

Mr. Myers answered that is is happening now with the twenty second change which was not approved with a variance. He said the town board would look at it and see how they want to go with it.

Mr. Roberts agreed to table the application. Mr. Dudick asked if he would waive the 61 day rule, and Mr. Roberts agreed.

Application tabled until March 19, 2013, public hearing remains open.

**2) 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 presented the application. She introduced Mr. David DiMarco, President and CEO of Saratoga National Bank who stated he is excited to have a bank branch in Clifton Park and thanks the board for considering their application. He added they have done some homework at the Board's suggestion.

Ms. Frolish provided additional information regarding heights of adjacent signs. She suggested that their sign would not be detrimental considering all the other signs in the vicinity. She presented the research the Pennsylvania State on the safety of signs, which had been requested by Mr. Dudick.

Ms. Frolish discussed the heights of other signs in the area. She informed the level of the Northway is even with the top of their roof. One of their concerns is being judged by the grade on the other side of the building even though their sign is not on that side, and it is only 16 feet above grade in the back. She challenged that no one would be viewing the sign from the side of the building where they would need 28 feet. They are viewing it from the Northway side.

She informed they talked about changing the wording or shortening it, but the recognition of the logo is more important than the readability of the words. She talked about the years of effort to establish logo recognition and they didn't want to change that. She informed they studied the view from the Northway heading north and rotated the sign one facet to the south. They feel it would be more visible for a longer period of time going north. The trees might block the view heading south.

Mr. Lemire asked for clarification of the spacing/centering of the logo.

Mr. Dudick asked if the shape of the tower is an octagon. Mrs. Frolish informed it is six sided.

Mr. Lemire asked if there was ever a sign on the tower.

Mr. Dudick explained the history of the tower as it related to the previous owner. He informed the previous owner requested building the tower promising they didn't want a sign, then came back and asked for one. The request was denied as it would have made it higher than any other sign in the area. He added that the skyline of Clifton Park has grown taller in the last ten years ago and the hotel sign is now higher, but at the time of the request the sign would have been unique.

Mr. Myers informed that there are plans for buildings to fill vacant land areas at Exit 9 mall and he expects there will probably be multiple stories. Mr. Dudick added the bank's request is less of an issue now that the skyline is changing.

Mrs. Standaert commented that she had driven by the building, both ways and she thinks the bank business is needed and the sign distraction argument is silly and not an issue. She added she appreciates them bringing business here.

Mr. Lemire asked if it was possible to lower the height of the sign as they should consider the least possible height to achieve their goal.

Ms. Frolish said the roof is 24' 8" and they can't put the sign tight to the roof.

Mr. Roberts pointed out that you cannot even see the sign from the other side of the road (Rt 9).

Mr. Gifford volunteered the opinion that if it is too low, it is a distraction.

Mr. Fantini asked about the height of the Bank of America sign.

Mr. Myers responded it is 24 feet per a variance they were given. He informed he had re-measured the height of the horse and they actually need eleven (11') foot variance instead of thirteen (13') feet. He added that the Hilton sign is 45' high, Ellis is 32' and Boscov's is 31' so this sign is not going to be a precedent setting height in town. He said the mall was a package. He stated this is not unique or different than anything they have already done and it is a different

neighborhood than it was ten years ago. He predicted that buildings are not going to get longer, but will go up in height.

Mr. Lemire asked if there is a ramp issue. Mr. Myers stated he does not believe that science supports that digital signs are a safety hazard. He said he read the reports and it is starting to look that way to him. Mr. Dudick asked if it is just aesthetics, and Mr. Myers responded it is.

Mr. Dudick announced the public hearing and asked for comments. There were none. Mr. Dudick made the motion to close the public hearing. The motion was seconded by Mr. Gifford. All agreed, public hearing closed.

Mrs Standaert made the motion to approve the amended application for an 11' variance. Mr. Fantini seconded the motion.

Ayes: Bloss, Vucetic, Gifford, Dudick, Fantini, Standaert, Lemire Noes: none  
Amended application approved.

### **NEW BUSINESS:**

*The secretary read the legal notice as it appeared in the Daily Gazette on February 28, 2013.*

**1) An application from One Fairchild Square, Inc for a variance from Section 208-65B. 40% greenspace required, 37.5% available, 2.5% variance required.  
Property is located at 6 Fairchild Square, Clifton Park, NY 12065 (Permit #80903)**

Mr. Tom Andress, from ABD Engineering and Surveyors, presented the application. He showed maps of the property and pointed out the parcel (#6 Fairchild Square). He informed they had come to the board years ago for setbacks between the lots and for parking. He explained the two parcels in the corner have been built and developed and the main building has been rennovated and the property leveled. He stated building #6 had been constructed but had been vacant for more than a year. It was expected to be sold and was set up so it could be divided into four subspaces. He informed that now Shmaltz Brewery will rent it and has been working on it for three to four months.

Mr. Peller summarized that it is a manufacturing facility with no retail store or a bar. Mr. Andress said it is manufacturing, but will have a tasting room and tours, but it is not a bar.

Mr. Andress explained that the building permit is in place for the inside, but to get the brewery running, they will need outside barley tanks which require a 16 x 30 foot pad, and a 7' x 18' pad for the carbon dioxide tank and a small access drive to get to the tanks. He said they have 40% green as the site now stands.

Mr. Lemire asked if the variance is for 2.5% of the 40%. Mr. Andress said it is. Mr. Lemire made the motion to approve the application as submitted. Mrs. Vucetic seconded the motion.

Mr. Myers said this is a minor modification and he has no problem with it. Mr. Dudick asked if the variance should be contingent on the brewery remaining. Mr. Myers said it does not need to be as you don't know what might come in there next. It was pointed out that there is a twenty year lease.

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

Mr. Gifford asked when the brewery will open and was told the end of May is proposed.

Ayes: Lemire, Standaert, Fantini, Dudick, Gifford, Vucetic, Bloss Noes: none  
Application approved for 2.5% greenspace variance.

*The secretary read the legal notice as it appeared in the Daily Gazette on February 28, 2013.*

**2) An application from One Fairchild Square, Inc for a variance from Section 208-65B. 40% greenspace required, 36.5% available, 3.5% variance required. Property is located at 5 Fairchild Square, Clifton Park, NY 12065 (Permit #80902)**

Mr. Dudick read into the record a letter from James Angus dated February 26, 2013 from the Saratoga Economic Development Corporation commenting on the revised plan and indicating their support for the building and encouraging Board approval.

Mr. Dudick also read a letter dated February 22, 2013 from the Town Environmental Conservation Committee to the Planning Board. The letter stated the applicant has not provided a compelling reason for violating the required 40% greenspace and the ECC does not support going below said requirement for this lot. Mr. Peller noted the letter was addressed to the Planning Board not to the Zoning Board. Mr. Dudick explained the ECC is an advisory committee and the Board can take their comments into consideration.

Mr. Andress spoke regarding the application, representing Mark Rekucki and Fairchild Square. He explained originally there was a shovel ready plan for a 40,000 square foot rectangular building which they expected would be built on speculation due to the Global Foundaries arrival bringing in more businesses. He continued that this did not happen, and they have been working with SEDC and have changed the design, instead of a rectangle it would be an L shape. This would provide a smaller office and it could be more easily subdivided evenly into tenant space for four businesses. He explained the overhead doors would be necessary for individual tenants. They are asking for a variance of 3.5% from the greenspace of 40%. He stated that considering the entire development as a whole it has more than 40% greenspace (41.7%). He agreed there would be less on this lot and contended there are areas they can do extra landscaping.

Mr. Lemire asked if the original parcel was actually two lots. Mr. Myers said it was two lots and they purchased the other lot. Mr. Andress explained that at the time, Mr. Rekucki originally did not own the second lot and the Planning Board asked him to look into incorporating the lot into the project. When they purchased it they agreed to restricted access to Ushers Road from that lot.

Mr. Lemire stated there was concern about the overall traffic the development would create. Mr. Address said he did a traffic count, which showed traffic was increasing a little on Van Patten and Ushers but no traffic increase inside the complex.

Mr. Lemire wanted to know what was different that makes it necessary to reduce the greenspace. Mr. Address answered that it is because of parking in front and the loading dock added for tractor trailer access and maneuvering. He explained the loss is due to the larger area of pavement.

Mr. Lemire asked if the parking is mandated by the size of the building. Mr. Address agreed and said they did have that modified.

Mr. Dudick asked if there was a proposed tenant and Mr. Address said there is not. Mr. Dudick suggested there is no physical need for this particular shape.

Mr. Address answered that there is, and that is the reason for the letter from the SEDC. The SEDC and IDA suggested they build it so they can lease to multiple tenants.

Mr. Dudick suggested that if you were to set up for multiple tenants, and you didn't have the office space section, you wouldn't need the variance. Mr. Address disagreed stating he would need to take out more than the 1800 square feet, explaining he would have to remove 4700 square feet from the building.

Mr. Dudick asked what is preventing Mr. Rekucki from changing the building so they didn't need to reduce the greenspace. Mr. Address answered they would have to reduce the size of the building to less than 40,000 square feet and then they would have a problem with financing.

Mr. Dudick said the original plan had 40% greenspace. Mr. Address explained the design changed to meet the need for overhead doors and maneuvering space for the tenants. He said that extra part takes the percentage down.

Mr. Peller asked Mr. Myers to explain to the board why this application is not premature. Mr. Myers answered Mr. Address is proposing to knowingly go into the green space without having the building and that he (Mr. Myers) has a problem granting a variance without having a building on it.

Mr. Peller added that there is no permit issued on this. He stated that the Board has to have faith that Steve will issue the permit based on the schematic. Mr. Myers said that is correct. Mr. Peller informed that if there is any change in the schematic then they would have to come back again. Mr. Myers added that they may or may not depending on whether they meet code.

Mr. Address said the other building was built exactly as it was approved. He suggested they might get a tenant to take the whole building, but the bank won't finance for just one tenant.

Mr. Dudick said the board is willing to consider small variances and changes but this does not have any proposed tenant or possible tenants. He commented they are asking for a blanket cut of

the greenspace requirements because they have nothing other than they are looking to expand where the market it. He said he doesn't see a building permit, a tenant or even a hardship need other than because the greenspace requirement is other than it should be.

Mr. Address reiterated that Mr. Rekucki wants to build the building but they can't do it the way it was approved because it is not going to be financed. They went to the SEDC who works to get them tenants.

Discussion ensued as to why they needed to reduce greenspace. Mr. Dudick summarized that the pavement increase is because of the prospect of multiple tenants needing overhead doors and maneuvering space for trucks. He asked why they could not build the 40,000 sq ft building without the additional pavement pointing out it is not necessary yet because you do not have the additional tenants. He suggested they could come to the board for a variance if there is a need.

Mr. Address responded that the design would not accommodate the ability to put additional tenants in there and the bank won't finance it if they can't show they can do that. He explained if there is greenspace and they had to come back later for a variance, the bank wouldn't finance it.

Mr. Dudick asked Mr. Address if he is saying there is a lender who will finance a building without prospective tenants, but not if the building is the wrong shape? Mr. Address said yes.

Mr. Dudick again suggested they don't build the portion for multiple tenants until they get at least one tenant. Mr. Address said he wouldn't have a problem with it but the bank will have a problem if they don't have a variance to allow multiple tenants.

Mr. Peller asked if the bank requires any tenants if they financed. Mr. Address said they didn't with the other buildings. Mr. Peller said clearly the collateral is not the building. Mr. Address said if they had foreclose the bank would want to be able to market it.

Mr. Dudick asked Mr. Myers if the approval could be incremental or maybe they could reduce the parking. He suggested they don't need as many parking spaces until they get to three or four tenants. Mr. Myers responded you don't know how many spaces you need yet, but office space requires more parking spaces. He proposed that Mr. Address go to Planning and ask to reduce parking and then could show that as greenspace. He suggested that it would be greenspace until such time as they need the parking and then they can come back for a variance.

Mr. Address informed that Planning can grant up to a 25% reduction (landbank) in required parking. He said the bank would look at the landbank and ask if they have a variance to use it if they need it.

Mr. Lemire asked Mr. Address if the Board didn't grant the variance the bank would not finance and the land would go unused? Mr. Address said not at all, they would have to look at other designs.

Mr. Myers suggested deferring the decision until they have some further discussions. Mr. Peller stated they need something concrete to work with.

Mr. Dudick asked Mr. Andress if he could provide a letter from the lender stating it wouldn't provide the loan for the building. Mr. Andress said he would.

Mr. Peller asked him if he would agree to table and waive the 61 day rule. Mr. Andress agreed. Application tabled.

Mr. Dudick read into the record a letter dated February 25, 2013 from the Saratoga County Planning Board. The letter referred to the Saratoga National Bank sign and indicated that the Board approved the application with the condition only one sign is facing Clifton Park Center Road. Mr. Peller asked the Board members if, based on the letter, anyone would change their vote. No one indicated they would change their vote.

The board approved the amended minutes for the February 5, 2013 meeting, with Mrs. Vucetic abstaining as she was not present at that meeting.

The board approved the minutes for February 19, 2013 with Mr. Lemire abstaining due to not being present at that meeting.

The next meeting is March 19, 2013.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mr. Gifford. The meeting was adjourned at 9:15 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