

Approved

ZONING BOARD OF APPEALS

April 16, 2013

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

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

Absent:

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

Mr. Fantini sat in briefly, as alternate, for Jennifer Vucetic until she arrived at 7:10 pm.

PLEDGE OF ALLEGIANCE

OLD BUSINESS:

1) An application from Ray Sign Inc. for 1) area variance for freestanding sign and off site sign. 2) Per Chapter 171, Table I maximum allowable freestanding sign= 150 sq ft; 228 sq ft requested; variance required = 78 sq ft 3) From Chapter 171 Chart I front setback proposed = 7', variance required = 8'; side setback proposed = 7', variance required = 3' (Wits End)

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

Mr. Gavin Vuillaume, Environmental Design Partnership, continued the presentation of the application, representing the applicant, Susan Hoffman. He summarized the discussion regarding the agreement between the landowners for an easement, which Mr. Peller agreed was acceptable. He informed the agreement has been recorded, and gives Mrs. Hoffman an easement for the sign resolving the need for the use variance for off site sign.

Mr. Vuillaume discussed the request for a setback variance for the sign for Wits End requesting a sign side yard and front yard variance. They are moving the sign over and incorporating the landscape island which will give them more green space and keep it away from vehicles. He added that the advantage is it is closer to the entrance and gives clear directions from Rt 9.

Mr. Peller asked if it is still within the same easement area. Mr. Vuillaume answered there is no change with that.

Mr. Vuillaume stated they are also asking for a 228 square foot sign which requires a variance of 78 square feet.

Mr. Lemire asked if they are considering the use variance or just area variances. Mr. Myers answered it is his understanding they are not considering the use variance. Mr. Dudick added it is because of the easement agreement now in place.

Mr. Lemire asked if the easement is because of the relationship of the two land owners, which makes it unique and then questioned if Moradian's asks for an easement from one of the landowners, would it be a different situation. Mr. Peller said that is correct.

Mr. Dudick asked if Mr. Nahl sold his property to Mr. Moradian, would Mr. Moradian get to put a sign up on the easement. Mr. Peller responded that the board would have to rely on intent, citing the relationship of the landowners and the intent of purchase of the property. He added the intent is, once the litigation issues on the property has been resolved, she would be allowed to purchase it.

Mr. Lemire asked what would happen to the sign if Mrs. Hoffman, for whatever reason, does not purchase the property.

Mr. Peller answered it is a license for the easement that was granted. He explained the license can be revoked by either party. The intent of the license was based on the fact that the parties are related, so an argument could be made that it was made to run between those two parties and does not run with the land.

Mr. Lemire stated this is unique. Mr. Peller agreed, that this is because the parties are related and there is a representation to purchase. Mr. Lemire said it is two pieces of land and the only way to have the sign is by virtue of the license. Mr. Peller answered "it is, unless they are combined by purchase."

Mr. Myers informed the board it could put a sunset on it as they did with the garden center. Mr. Peller agreed the board could do that with this situation. Mr. Dudick suggested that one never knows how things may wind up and cited examples of things that could happen.

Mr. Vuillaume responded "I understand that".

Mr Lemire repeated this is a license to use the property and the only way Mrs. Hoffman can have the sign in the front is by virtue of a license. Mr. Peller agreed that is correct and he said he recommends the board put a sunset on it.

Mr. Vuillaume stated they have no problem with that.

Mr. Strother questioned who the variances would be issued to. Mr. Vuillaume answered it would be to Mrs. Hoffman. Mr. Peller confirmed the variances go to Mrs. Hoffman.

Mr. Strother asked if the variance would sunset if either party (owner) changes. Mr. Peller said that is so.

Mr. Dudick discussed the request for the 228 square foot sign and asked Mr. Vuillaume the size of the building. Mr. Myers answered it is over 20,000 square feet and qualifies for the 150 square foot sign. Mr. Dudick asked if it is about the size of Staples sign, and Mr. Myers responded that it is larger.

Mr. Myers stated that, as far as square footage, he has had discussions with them regarding the soldiers being part of the sign which put it over the code limit. He added he has no issue with the sign if the Board has no issue. He said he does not think it is a big sign and he has no concerns.

Mr. Peller asked if the movement on the sign is allowed in the zone. Mr. Myers responded it is allowed in the zone. He added the board might want to discuss the frequency of sign change as it is the first one, other than the mall sign (which happened before the law changed.)

Mr. Dudick repeated it does not require a use variance, and asked can the board make comments on restrictions on the sign.

Mr. Peller asked Mr. Myers if he has the ability to put restrictions on the signs and Mr. Myers said that is what he has been told. Mr. Myers informed this is a heavier commercial zone and he had spoken to one company about their sign usage. He said it is not having a moving message but about the frequency of the number of times it changes and he sticks to the idea of changing about once an hour.

Mr. Peller recommended the board not address restrictions, as what is before the board is the size of the sign.

Mr. Dudick asked Mr. Myers to let the Board know what guidelines he decides so the Board can put it on record and will have an idea of a place to start if it comes before them again. Mr. Myers said he put once every fifteen minutes on Kulak's Garden Center but they needed a variance.

Mr. Vuillaume responded that every fifteen minutes is fine. Mr. Myers responded he thinks that is reasonable. Mr. Dudick stated the Board should let Mr. Myers handle that.

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

Mr Lemire asked about the setback issues. Mr. Vuillaume informed they are seven feet off the right of way and seven feet off the sideline. Mr. Dudick asked if it is in the DOT area. Mr.

Vuillaume responded that it is not; it is in the grassy area where there will be a planter and green area.

Mr. Dudick asked if there is any blockage of view. Mr Vuillaume said he checked the sight distance and there is no problem.

Mr. Dudick said if the property is sold or changes hands the sign would have to come down or the new owner would have to come to the board and ask for a variance. The sign would not be allowed if the property changed hands.

Mr. Vuillaume said he agreed.

Mr. Lemire asked if it would change the unique character of the agreement if the new owner was not Mrs. Hoffman or her husband. Mr. Dudick said that would void the variance. He added in that case, it would be an off premises sign which would not be allowed.

Mr. Frank Berlin, Main Street, Jonesville asked what would happen if the premises was rented. Mr. Dudick answered it goes to ownership and if a portion of the store is rented out by Mrs. Hoffman, it is still Mrs. Hoffman's property.

Mr. Lemire asked if the license goes with the ownership of the property or the business. Mr. Dudick answered it is the ownership of the property, not the business.

Mr. Fantini (asked from the audience) why the board is not voting on the use variance. Mr. Peller responded it is not a matter of law for the Board to look at it as a use variance with the easement agreement in place.

Mr. Dudick added the board is not required to vote on whether a license should be allowed as it is a legal issue.

Mr. Gifford made the motion to approve the application with the stipulation of the sunset clause (the variances are void should ownership of the two properties change from anyone other than Mrs. Hoffman and Mr. Nahl.) Mrs. Vucetic seconded the motion.

Ayes: Strother, Standaert, Dudick, Gifford, Vucetic, Bloss Noes: Lemire
Application approved with stipulation.

2) 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. Application similar to variance #80855.

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

Mr. Jim Galerno, Facilities Team Leader of Prince of Peace Lutheran Church, continued the presentation of the application. He thanked the board for being helpful to them.

Mr. Galerno stated Mr. Jim Roberts understands the stipulations that were placed on Christ Community Reformed Church and agrees to them, but asked if the board could consider allowing them to change the message twice a day.

Mr. Dudick explained that this is new legislation on how to handle these type of signs in different parts of the town. The Zoning Board had reached back to the Town Board to find out their intent and what they are looking for. He explained they granted the other church the right to change the sign once a day, and are not looking to explore more changes than that.

Mr. Dudick went on to explain they understand the church has made the investment in the sign and wants to get the message out. He suggested that with the change of once every 24 hours, they actually can get two messages a day out by changing the sign at noon. He explained a person driving by in the morning would see one sign and in the afternoon would see another on the way home. He added that has already been granted to the other church.

Mr. Galerno said he understood, and that it actually meets what Mr. Roberts asked for.

Mr. Strother responded that day one afternoon message and day two morning message would be the same, which is every twenty four hours. He said he is comfortable with that but how it is expressed is important.

Mr. Lemire repeated it doesn't have to change at midnight.

Mr. Dudick said they might get to the point of allowing it to change more, but they want to see how many other churches come forward.

Mr. Strother said one of the reasons for going to an LED sign is the health and safety issue because they do not have to go outside to change the letters on a leaderboard.

Mr. Myers asked if the same message have to be on both sides of the sign. He suggested it is something to look into, as it would give them more flexibility on the messages they want to get out. Mr. Galerno responded he hadn't looked at it but he would.

Mr. Lemire asked if the message on each side of the sign has to be the same.

Mr. Myers answered the law doesn't say the same message has to be on both sides of the sign just that it stays the same for 24 hours.

Mr. Strother said he would be comfortable with that.

Mr. Dudick stated all the conditions would be the same as for Christ Community Reformed Church.

- 1) Text only display; background with two colors
- 2) 3 line message limit
- 3) no flashing, scrolling or moving text or images
- 4) automatic light dimming at 0.3 footcandles above ambient light
- 5) sign will not change more than once every 24 hours

- 6) no messages other than church related events
- 7) hours of operation 6am to 11pm
- 8) eliminate the use of any other temporary banner on the property
- 9) agree to allow town to post an emergency announcement if needed

Mr. Fantini asked (from the audience) if they could advertise as a polling place.

Mr. Peller responded to Mr. Fantini saying the polling place signs are regulated and all the same, two sided sandwich boards. He added he is sure that the church does not want to get involved with politics so that is not something the Board should take into consideration.

Mr. Dudick asked for public comments. There were none. Mr. Dudick made the motion to close the public hearing. The motion was seconded by Mr. Bloss. All agreed. Public hearing closed.

Mr. Dudick made the motion to approve the application with the same guidelines as were approved for the Christ Community Reformed Church on March 20, 2012. Mr. Gifford seconded the motion.

Mr. Lemire stated he does not think this application meets the conditions of a use variance. Mr. Dudick stated Mr. Lemire's it is worth stating. He explained that after meetings with the Town Board and Building Department and town council, the bar is set differently, and a little bit lower for houses of worship as a special situation.

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

Application approved with stipulations.

3) An application from Massaroni Enterprises Trust for two variances 1) Section 208-46D, rear yard setback req =30', requested=11', variance required = 19'; 2) Section 208-46F green space req = 35%, has 23.6% from prior approval, requested=21.3%, variance required=13.7%

Property is located at 629 Plank Road, Clifton Park, NY 12065 (Permit #80904)

Mr. Myers informed the Board that Massaroni has asked to defer for tonight. He explained they are in the process of obtaining the property and will attend the Town Board meeting on May 6 to get a resolution. They hope to continue with their application before the Zoning Board of Appeals at the May 7, 2013 meeting.

NEW BUSINESS:

The secretary read the legal notice as it appeared in the Daily Gazette on April 11, 2013.

**1) An application from Allen Packard for a variance from Section 208-86B keyhole lot. 50' setback required from all property lines for main building. Proposed addition to existing building requires 6' side variance.
Property is located at 991 Hatlee Road, Ballston Lake, NY (Permit #80908)**

The application was presented by Allen Packard, representing the owners, Bill and Kathy Boradgiak. Mr. Dudick asked if Mr. Packard has an authorization to represent the owners on record. Mr. Myers confirmed he does.

Mr. Packard informed the owners wish to build a sun room on the North side of their existing home. He indicated the building lot is narrow and with a 50 ft setback, the sun room would encroach on the lot line. He stated they need a variance of 6 ½ feet so the building would be 44 ½ feet off the lot line. He informed they feel there is no other place to put the room which is to go outside of the great room. They cannot put it in the front because of the front entrance and can't put it in the back because it would be off a bedroom. He added there is forest all around the house so they are not impacting the neighborhood in any way.

Mr. Dudick responded it is not that great a request.

Mr. Strother asked how from the house is the next home or structure. Mr. Packard answered that it is quite far, two or three lots away.

Mr. Strother asked if there is a potential for a subdivision. Mr. Packard said he did not know how that works.

Mr. Myers said he has no issues with the application.

Mr. Dudick called for comments from the public. There were no comments. Mr. Dudick made the motion to close the public hearing. Mr. Gifford seconded the motion. Public hearing closed.

Mr. Dudick commented that sometimes the need for variances is small, but they must go through the process of getting the variance as it is required by law.

Mr. Gifford made the motion to approve the application as submitted. Mr. Strother seconded the motion.

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

Application approved as submitted.

Mr. Dudick called a short recess to speak with Mr. Myers, Mr. Lemire and Mr. Peller.

The secretary read the legal notice as it appeared in the Daily Gazette on April 11, 2013.

2) An application from Chris Semenza for a variance from Section 208-86-B which requires a 50' setback from all property lines for a keyhole lot. Maximum variance requested 12 feet.

Property is located at 537A Clifton Park Center Road, Clifton Park, NY (Permit #80909)

Mr. Peller said he wished to disclose that his wife, Debra, is the owner of the property to the East of the properties mentioned. He stated he will not speak during the presentation but would sit here unless Mr. Semenza has an objection. He informed the Board that if it feels they need counsel, he would need to defer the application and Mr. Peller will get another town attorney to sit for the application in his place. Mr. Chris Semenza responded he is comfortable with having Mr. Peller remain.

Mr. Chris Semenza from Semenza Homes stated he will be presenting both applications for properties on 537A and 537B, keyhole lots, on Clifton Park Center Road. He informed there are other keyhole lots in that same area, and the homes are substantial, high quality, high stature homes. He said they are attempting to not diminish the value of those homes. They first went through the lots and established 25 foot, no cut buffers, which will provide 50 feet of treeline between the two properties. They also spoke to the neighbors and told them they would do everything in their power to build homes there which they would not have a problem with. He explained that with the 50 foot setbacks it is difficult to build something that does not look like a modular home. He informed they already have two clients wanting to buy homes.

Mr. Packard presented pictures of the homes they would build. He explained if they stay with the 50 foot setback, as you drive in, you would be looking at the side of the house instead of the front. He said that if they can get relief from the setback, it would make it more appealing to the neighbors to the West of them and behind them because they have long driveways that go in to the west of the property. He informed if you take the area beyond the existing setback, they would actually be occupying 11-12% of that area.

Mr. Lemire asked which property they are discussing, and Mr. Packard answered it is 537A. He then explained that for 537B which is a ranch, they tried to structure it in steps to fit, but the clients want a sun room which encroaches on the setback. In addition, for 537B they wish to locate the house so it is more appealing to the surrounding neighbors as you drive in. He summarized they want to keep the neighbors happy and have it look good.

Mr. Lemire asked if there are contracts for both homes. Mr. Packard answered they have contracts in place but not signed, and they have building plans. He told Mr. Lemire they held off to see if they can get the variance. He informed the Board that the clients interested in Lot B were present in the room and the client for Lot A, a trooper, was intending to be there, but he was called out at the last minute.

Mr. Strother asked the nature of the 25 foot buffer. Mr. Myers informed that Mr. Packard put that there for privacy, but it was not a requirement of the town. Mr. Packard added they offered that for the neighbors when they got the subdivision and it is already flagged.

Mr. Lemire asked if there is a deed restriction. Mr. Packard said it is a no cut buffer zone that the property owners can actively enforce.

Mr. Myers said he doesn't know if it was approved prior to the subdivision, but Mr. Packard has no intention of taking that down either way.

Mr. Lemire asked if the owner could cut it.

Mr. Myers answered that if it is on the plan it is probably on the deed, and he is guessing that Planning made it part of the approval. Mr. Packard agreed they did put that in and he is 99% sure that is in the deed restriction.

Mr. Strother said given the relatively small amount of the variance and the added features he thinks it is a reasonable request.

Mr. Myers stated he is ok with it.

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

Mr. Lemire made the motion to approve the application as submitted for 537A Clifton Park Center Road. Mr. Strother seconded the motion.

Mr. Strother asked if they are voting on both properties. Mr. Dudick stated they should be presented and voted upon separately as they are two different applications.

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

Application approved as submitted.

The secretary read the legal notice as it appeared in the Daily Gazette on April 11, 2013.

3) An application from Chris Semenza for a variance from Section 208-86-B which requires a 50' setback from all property lines for a keyhole lot. Maximum variance requested 12 feet.

Property is located at 537B Clifton Park Center Road, Clifton Park, NY (Permit #80910)

Mr. Peller repeated his same notice that his wife owns the adjoining property and would recuse himself if Mr. Packard requested. Mr. Packard stated he is ok with Mr. Peller remaining at his seat.

Mr. Packard informed that the same information he presented for 537A applies to the lot on 537B.

Mr. Dudick asked if the potential buyers, who were present in the room, wished to speak, and they declined.

Mr. Dudick asked for questions from the board, there were none.

Mr. Dudick announced the public hearing and asked for comments. There were no comments. Mr. Dudick made the motion to close the public hearing. Mr. Gifford seconded the motion. All approved. Public hearing closed.

Mr. Dudick informed he has no problem with the application for the same reasons they discussed with the previous application. He said it is not a tremendous amount and it will make the neighbors happy.

Mr. Gifford made the motion to approve the application as submitted. Mr. Bloss seconded the motion.

Mr. Myers said he is good with it.

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

Application approved as submitted.

4) An application from Prestige Motor Car Corp. for use variance from 208-69.2 to expand existing building in an LI-2 zone into adjacent LC zone, LC zone in this area requires 100 feet buffer from Dwaas Kill per 208-69.1 (2) (c), variance required = 55'. Property is located at 1926 & 1928 Route 9, Clifton Park, NY (Permit #80830)

Mr. Dudick stated the applicant has not appeared. He informed that several attempts were made to contact the applicant during the evening. He stated the Board will give them an extension and place the application on the May 7, 2013 agenda.

Several people were in the audience and asked if they could still make comment.

Mr. Peller advised that there could be no public hearing or comments on the application because the applicant is not here and the application has not been read into the record.

Mr. Lemire asked if the 61 day rule could be waived if the applicant was not present to waive it.

Mr. Peller answered that the 61 day waiver is after the application has been presented, which it has not been, so therefore, there is nothing yet before the Board. He informed the only thing the Board could vote on would be to determine the application has been abandoned.

Mr. Dudick said they wouldn't do that unless they did not appear again without reason.

Mr. Dudick informed that, although Prestige had appeared before the board regarding this property once before, this is a new application, not a continuation of the previous one. Mr. Myers stated the applicant withdrew the old application and it was officially closed and this is a new application.

Mr. Bill Koebbeman, 861 Riverview Road, Clifton Park, requested the opportunity to ask questions of the board regarding the agenda procedure. He stated sometimes applications come

before the board and they get postponed and the public can't find out about it. He asked the board to think about the public when they can't find out what is happening. He questioned how the public could find out about postponements and asked if he could submit written comments regarding the application.

Susan White, ZBA secretary, explained the procedure is to place a legal notice in the Schenectady Gazette five days prior to the meeting (Thursday before the meeting). Also, the agenda is posted on the bulletin boards at Town Hall no later than the Thursday or Friday before. In addition, the agenda is posted on the website. She detailed the procedure that applications have to be submitted for each meeting by a scheduled submission date approximately 2-3 weeks before the meeting (schedule is also on the website) in order to give Mr. Myers time to process it, and the secretary time to send notices, get the applications to the board and make an agenda and send a legal notice to the newspaper.

Mr. Myers explained there was a glitch in web posting and that he had checked with the person who posts on the website. For some reason the agenda for this meeting was on the site and then dropped off, and it was re-posted when he was made aware of it.

Mr. Dudick said the legal requirement is the posting in the newspaper and the posting on the bulletin boards. He informed that posting on the website is a courtesy but not a legal requirement. He added the public can find out about any application by contacting Mr. Myers.

Mr. Dudick said if it is not on the agenda or in the newspaper the Thursday before, it should not be heard as it hasn't given the public time to know about it. Mr. Strother added that if something like that happened, the public hearing would be left open. Mr. Myers said the 2-3 week lead time is to give him time to review the application and to get the application to the board so they can review it before the meeting.

Mr. Koebbeman asked if it possible to make comments regarding the Prestige application. Mr. Dudick answered that the public can make comments by either fax or mail or in person. Mr. Peller informed the comments would become part of the permanent record.

Mr. Bloss asked if the Prestige application had to be re-noticed. Mr. Dudick answered that it would be re-noticed for the May 7, 2013 meeting. He added that the Board is setting it up for May 7, and it will appear in the public notice and agenda, but they cannot predict ahead of time if the applicant might decide to pull it at the last minute.

Mr. Jim Ruhl, 168 Wood Dale Drive, asked if someone wants to see the new proposal, should they contact Mr. Myers.

Mr. Myers informed that his records are public record and anyone can come to the building department and review the entire application. He also informed that applicants sometimes defer at the last minute and if they are on the agenda, it is too late to change it, but the public can check with him prior to the meeting to find out.

Mr. Dudick made the motion to approve the minutes for the April 2, 2013 meeting. The motion was seconded by Mr. Gifford. All approved, with Mrs. Vucetic abstaining as she was not present at that meeting. Minutes approved.

The next meeting is May 7, 2013.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mrs. Vucetic. The meeting was adjourned at 8:35 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