

*Approved*

## ZONING BOARD OF APPEALS

September 17, 2013

Present: Michael Bloss, Jerry Cifor, Mario Fantini, Randy Gifford, Chris Lemire (7:05),  
Doug Strother, Jennifer Vucetic

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

Absent: Michael Dudick, Chairman,

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

### PLEDGE OF ALLEGIANCE

Mrs. Jenn Vucetic informed she is serving as Chairman for Michael Dudick tonight. She requested everyone shut cell phones off.

Mr. Fantini, alternate, sat in for Mr. Dudick to make a full board of seven.

### **OLD BUSINESS:**

*The secretary read the legal notice as it appeared in the Daily Gazette on September 12, 2013.*

**An application from Ray Sign, Inc. for a variance from Section 171-6C.(1)(b) permanent window signs. Total area of window shall not exceed 50% of window area or 8 sq ft, whichever is smaller. Variance required for 100% coverage, area estimated at 36 x 12 = 432 sq ft. Property is located at Clifton Park Center Mall, Clifton Country Rd, Clifton Park, NY (Permit #80937)**

Mr. Tim Prescott, Ray Sign, representing Red Wing Shoes, continued with his presentation of the application. He explained why they need the mural to cover the window: to cover up the

back of the shoe shelves, to block the sun coming into the window at the end of the day. He stated there is no logo on the mural, and that the only thing that indicates what the store sells is the man's work shoes.

Mr. Prescott informed he drove around town taking pictures of several stores in town, stating that their windows are covered by large signs: Pub 99, Halloween Store, Buffalo Chicken, Tobacco Store (full image covering window), Lane Bryant, Ashton and Sakura were shown. He added many of these stores have signs in their windows which are larger than allowed. He informed he had only been to one parking lot.

Mr. Prescott stated that they found out at the last meeting that by giving up 3 feet of space inside the store, they could have the same look by putting the mural on a board three feet back from the window and it would be legal, and it would look the same. He asserted that not many stores have this many windows. He suggested they are only trying to block the sight of the shoe racks and make it look nice and there is nothing like it in the town. He pointed out that many stores have product displayed, citing the hair salon as an example and suggesting it does not look good.

Mr. Gifford asked Mr. Myers if he will pursue the above mentioned stores because they are violating the code and tell them they have to apply for a permit.

Mr. Myers responded he hasn't decided and added he will probably visit them one way or the other.

Mr. Fantini asked if this is going to set a precedent and Mr. Myers answered "very possibly".

Mrs. Vucetic asked Mr. Myers if the board should defer to the Town Board to make a rule for this kind of signage. Mr. Myers answered that the Town Board has already made the law and those people put up the signs after the fact and did not ask whether they could do it or not.

Mr. Lemire said, forgetting about the other signs, is this a sign? Mr. Myers answered it is. Mr. Lemire then read the code and asked how this draws attention to a product, service, person, business or solicitation? He said he doesn't see it as a sign.

Mr. Myers said he had this discussion with Mr. Peller prior to the first meeting and came to the conclusion that it met the definition of a sign.

Mr. Peller pointed out it is intended to attract customers to the store.

Mr. Lemire read the code out loud again and opinioned that if he had not known this is a shoe place, he would not have known it was.

Mr. Peller responded to Mr. Lemire, stating it is speculative and anything in a window is intended to attract customers. He said if there were drapes there it would not attract customers.

Mr. Cifor pointed out that there is a Red Wing sign above the mural and told Mr. Lemire the board had approved that sign at the last meeting (Mr. Lemire was not at that meeting.)

Mr. Lemire informed that in determining the size of a sign, only words are counted in the size so it is not fair to count the window covering as a sign. He asked whether it would be any different than if you put drapery or venetian blinds behind it.

Mr. Peller informed Mr. Lemire it was his reading of the code and consultation with Mr. Dudick and Mr. Myers they determined that the mural was intended to draw customers into the store, so it is considered a sign. He added that it is not temporary, not saying “buy one get one free”, or up for two weeks. He explained this is a permanent structure intended to bring customers in.

Mr. Lemire asked if this is the front door. Mr. Prescott answered it is not, the front door was moved to the other side.

Mr. Strother said they have signs and placards and he thinks the word “mural” is a good word and falls under the definition of a sign. He pointed out that there is a huge potential for this, especially when he read that, in San Francisco, they were going to wrap a building in a sign. He pointed out there is vulnerable for creep. He questioned what happens when someone paints their window for a holiday.

Mr. Peller suggested that there is a difference between a permanent sign vs a temporary one that is a notice of a sale.

Mr. Prescott named several holidays and rhetorically suggested that they could cover a window each month they changed the appearance using holiday decorations.

Mr. Strother responded that this does not help the case tonight and there may be some enforcement issues. He speculated they may have to take this to the Town Board and Planning Board. He added that he, himself, does not hate the mural, but asked if this might be the time to further define the code. He said as it stands now, he can't favor the application.

Mr. Prescott asked whether it would be an issue if the man in the mural did not have shoes on.

Mr. Strother said it is still a mural.

Mr. Prescott questioned what makes a sign, asking if it is only when they put an image on it.

Mr. Strother stated he thinks it does.

Mr. Lemire pointed out that all the pictures he had handed out have the name of the product and are advertisements.

Mr. Bloss disagreed, saying “not all”.

Mr. Prescott suggested Panera Bread and argued that the awnings are a different issue, but some if the buildings have images on them.

Mr. Strother stated they may be looking at a wave of austerity.... and this has “creeped out” and the industry is going everything it can possibly do to circumvent the codes. He informed their mission is to create a uniform and pleasant appearance to the town.

Mr. Cifor said originally he was against the mural but personally he thinks it is very aesthetically pleasing and an improvement to what is there now. He pointed out the building has been empty a long time and they must have had a hard time renting it out. He concluded his comments saying he encourages they should make an exception.

Mr. Fantini said he is worried about precedent about the next person who wants to do this.

Mr. Strother pointed out there are already others who have already done it.

Gifford stated he is all for encouraging business but this is a sign. He added, they already have a sign and don't need all this in the window.

Mr. Bloss suggested the mural plays off the radio advertising Red Wing has been playing. He informed RedWing has been having an aggressive radio campaign. He added he thinks the mural is well done, not a bad idea, but he is afraid it is opening a Pandora's box.

Mr. Lemire asked if they want the working guy in the picture, they could put it up if they met the 50" in the window. Mr. Myers added or 8 square feet, whichever is less.

Mr. Cifor added or they could put it on a board 3 feet from the window. He said he could see why they want to do that as the store is all windows like a fish bowl.

Mrs. Vucetic announced the public hearing and asked for comments. There were none. Mr. Gifford motioned to close the public hearing, seconded by Mr. Fantini. All approved. Public hearing closed.

Mr. Myers stated he has never had a problem with this since the beginning. He spoke with Mr. Peller early on and they came to the conclusion it is a sign, but he is of the opinion this is a very unique location. He said he does not think this would be a problem throughout the town and cautioned the Board they should not try to make changes to the law as it is a Town Board action. He referred to the other businesses shown in the pictures saying he was not sure at this point about them. He informed he would talk to the Town Attorney and it could be some are pre-existing non-conforming or temporary. He added the blinds at "99" are iffy. He repeated he is not sure anything is going to happen, but it may. He suggested the board just look at this one. He added if it became a problem they would have to address it again. He opinioned that this is aesthetically pleasing in that corner which is very visible and would look better than shoe racks or blacked out which were their options.

Mr. Lemire asked if they could remove the windows. Mr. Myers responded it is a possibility but they had already re-done them and he doesn't expect that would be doing it again soon especially since the business is opening tomorrow.

Mr. Strother suggested there is some flexibility with the mall and the board did grant relief with the Red Wing signs which he thinks looks good.

Mr. Prescott said they could paint the windows black. He asked what if blinds had an image on them.

Mr. Strother answered blinds with an image is a sign based on the standards in place. He said the mural doesn't look so bad but you can't define it as anything except a sign.

Mr. Strother questioned whether they could grant the variance for the life of the mural.

Mr. Peller answered there is no reason they can't put a sunset on it.

Mr. Strother made the motion to approve the variance with the provision it sunsets if there is a change of tenant or the subject matter of the mural changes. Mrs. Vucetic seconded the motion.

Mr. Fantini expressed his opinion it is setting a precedent.

Mr. Prescott asked if it could be replaced with the same graphics as it will eventually fade. Mr. Strother agreed it could as long as subject matter doesn't change.

Ayes: Lemire, Strother, Cifor, Vucetic, Gifford, Bloss Noes: Fantini

Application approved with stipulation that variance sunsets with a change of tenant or graphics of the mural.

Mr. Lemire qualified that his vote of "aye" is based upon his understanding that he does not think it is a sign.

### **NEW BUSINESS**

*The secretary read the legal notice as it appeared in the Daily Gazette on September 12, 2013.*

**1) An application from Kent H. Brust for a variance from 208-12A which requires 80' setback from front property line. 15' requested, variance required = 65'. Currently there is 25' from the property line to the main building. Applicant requests placing shed 15' from property line. Property is located at 8C Spyglass Hill, Clifton Park, NY 12065. (Permit#80941)**

The application was read into the record, however, the applicant was not present.

Mr. Myers stated he did not know why the applicant was not here.

Mr. Peller informed it was up to the board whether they wanted to defer the application to the next meeting or abandon it.

Mr. Myers asked for clarification, the board cannot vote on it without the applicant being present. Mr. Peller answered that is correct.

Mr. Myers suggested holding off. He said he would contact him and find out why he did not appear.

After polling the board, Mrs. Vucetic announced the application would be deferred to the next meeting (October 1, 2013).

*The secretary read the legal notice as it appeared in the Daily Gazette on September 12, 2013.*

**2) An application from Bruno Batko for a variance from Section 208-16D, permitted uses in a CR Zone. Applicant requests chickens on less than 5 acres, property is 2.75 acres. Property is located at 24 Appleton Road, Rexford, NY 12148 (Permit #80943)**

The application was presented by Mr. Bruno Batko, owner of the property on 24 Appleton Road. He informed he lives in a farming community and has been buying chickens and eggs from the local farmers and decided why not have their own. He stated the school asked him if he would take some chickens in the spring.

Mr. Peller asked how many chickens and Mr. Batko answered there are about a dozen. He continued that they would build a little pen.

Mr. Strother asked if he lives by the golf course and Mr. Batko answered in the affirmative. Mrs. Vucetic questioned, they have 2.75 acres and Mr. Batko confirmed they do.

Mr. Bloss asked if he has deed restrictions on his property and Mr. Batko answered he did not know. Mr. Peller advised that when he bought the property, they need to know if there were any covenants in it prohibiting livestock.

Mr. Batko answered the property was one big farm which was subdivided. Mr. Peller advised the board that whatever action they decide, it would have to be contingent on whether there is a deed restriction.

Mr. Bloss mentioned they had a similar case where there was a deed restriction. Mrs. Vucetic said she had looked up the case, which was heard on May 1, 2012 in which the home previously had turkeys living it, but when the land was subdivided a deed restriction was placed on each property prohibiting livestock.

Mr. Cifor asked if the neighbors were supportive of his having chickens. Mr. Batko answered they are supportive as long as they don't get roosters and he promised he wouldn't.

Mr. Gifford stated chickens multiply fast, and asked if they have woods in the back.

Mr. Batko said it is a golf course. He said the land is pretty much open.

Mr. Peller asked if neighbors within 500 feet have been notified as per law and the secretary confirmed she has the proof they have been notified.

Mr. Lemire asked if this is a use variance and Mr. Myers confirmed it is.

Mr. Lemire then pointed out that there are specific questions on the applications that must be answered, stringent elements that must be met like the need to show hardship and the property could not make a reasonable return under normal conditions under current zoning. He read the requirement to be met for a use variance and asked Mr. Batko what evidence he has that he cannot achieve a reasonable rate of return on his property under the current zoning.

Mr. Batko answered the current zoning means they must have five acres and there are other people who have less than five acres.

Mr. Gifford questioned if these people are on his street, and Mr. Batko answered “no” but close by. He admitted the other neighbors have more than five acres.

Mr. Strother referred to a case heard in August 2011 near to Season Supply, in which the applicant had 4.1 acres adjacent to Evergreen and an industrial business. He pointed out that in Mr. Batko’s case, the density of houses is tighter with 4-5 residents.

Mr. Batko agreed, and named the residents. He argued there is a golf course behind them, and everyone was very nice and he talked to pretty much everyone and they were ok with everything.

Mrs. Vucetic asked what he would do with the chickens. Mr. Batko answered they would lay eggs and they would keep the tick population down.

Mr. Strother informed that a Cornell pest control person confirmed a small area of chickens won’t do much to mitigate the tick population. He suggested the ticks could also move around on the chickens and spread them.

Mr. Bloss disagreed saying his boss has chickens and it has reduced the ticks. Mr. Strother argued that scientifically there is not a lot of evidence to support that chickens have much impact on controlling ticks.

Mr. Gifford asked if the chickens would be penned in, and Mr. Batko affirmed they would be and move it around the yard. Mr. Strother pointed out that chickens trim the grass down to the dirt.

Mr. Myers weighed in, reminding that there is a five acres rule was put in by the Town for a reason and in very unique cases it may be allowed but in his opinion it should be followed.

Mr. Batko asked how a homeowner can meet the requirements of a use variance in this type of situation. Mr. Myers answered he doesn’t think they can.

Mr. Strother referred to the Sept, 2011 case, informing that the man owned two lots, had them combined and he went through great pains to get a minimal variance. Mr. Myers added that if he looks at the record, he would find he did not agree with that one either. He said it becomes less attractive when the homes are close together.

Mr. Batko asserted he is next to a golf course on one side and behind him and with no houses in either direction.

Mr. Myers stated the problem the board has is when they open it up to one (person), then they have a harder time with the next one. He said unless there is a very good reason for allowing something like this, adding he doesn’t have a vote, but that is his opinion.

Mrs. Vucetic pointed out that the decision in May 2012, they also had green space but the board could not take that into consideration because they did not own it.

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

Mrs. Vucetic declared she thinks it is quite short of the five acres (required). Mr. Bloss commented it would have been nice to have documentation of what the neighbors said.

Mr. Batko said if he had known he would have asked them to come and suggested he get the phone numbers and the board call each of them and ask their opinion.

Mr. Bloss informed that is not what the board does. He explained this is a public meeting and they would come and speak on his behalf.

Mr. Batko claimed it did not say he had to tell his neighbors to come. Mr. Strother added that each meeting has a public notice in the paper and the secretary confirmed it was noticed. He continued it is Mr. Batko's obligation if he wanted to actively solicit them to come but he is not required to do it.

Mrs. Vucetic informed Mr. Batko if he did not want the board to take a vote at this time, and asked if he would like to defer and to go back and look at his deed.

Mr. Batko said he didn't and added this is a farming community and he can't have chickens. Mrs. Vucetic answered it is a problem because breaking the five acre rule opens the door for someone else to request it.

Mr. Batko asked about if a person had a pre-existing condition and has animals and someone else wants it .....

Mr. Strother explained that there is a difference between pre-existing, non-conforming and pre-existing with a variance. He went on to explain that a pre-existing variance goes with the property.

Mr. Batko argued that people can have chickens and call them their pets.

Mr. Peller explained chickens are considered livestock and are not considered pets and informed the code defines a cat or a dog as a pet.

Mr. Batko asked the board to vote on it.

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

Ayes: Lemire, Gifford, Cifor Noes: Strother, Vucetic, Bloss, Fantini

Application denied for the reason that the applicant could not show to the satisfaction of the board that he was being denied a reasonable return pursuant to the criteria for a use variance

Mr. Batko made a comment to Mr. Myers that he could have told him it was going to fail and saved him some money. Mr. Myers responded that he had told him he doesn't have a vote and he can't tell him what the board is going to do.

*The secretary read the legal notice as it appeared in the Daily Gazette on September 12, 2013.*

**3) An application from John Opitz for a setback variance from Section 208-12A for accessory structure. 80' required from front property line, 26' requested, variance required = 54'. 50' setback was approved subdivision setbacks for main structure only. When approved was R-R or R3 zone, now is CR Zone. Property is located at 11 Deerfield Court, Rexford, NY 12148 (Permit #80944)**

The application was presented by John Opitz, owner of the property at 11 Deerfield Court, to request a variance for a proposed detached garage which does not meet the setback. He asserted it is a unique location as a cul du sac joins the property and they have very little room because of the proposed septic system. He asserted this is an ideal spot which he hopes the board will approve.

Mrs. Vucetic asked if it will be the only garage. Mr. Myers answered there is a garage attached to the house.

Mr. Lemire asked the location of the driveway and Mr. Opitz responded it will be coming in off the cul du sac. He explained the location. He informed there is no driveway now as the house is currently being built.

Mr. Lemire asked if there were variances for the house. Mr. Opitz said the house met setbacks. Mr. Lemire responded asking when the house was being built, he was not thinking of the garage.

Mr. Opitz answered they were not sure where they would put the septic system and with the plans, it seems to be the only place to put the detached garage.

Mr. Lemire asked why the septic system cannot be put back further. Mr. Opitz answered that it would not meet the 50' setbacks. He reiterated he can't comply.

Mr. Opitz explained the map and discussion ensued regarding surrounding areas which are wooded. Mr. Myers explained the plot plan to the board. Mr. Strother commented it appeared the adjacent lot is unlikely to be another building lot. Mr. Myers informed he does not have the plan which shows exactly where the septic would go, that he would have to get it from the building department.

Mrs. Vucetic questioned how the garage would be used. Mr. Opitz responded it will be used for lawn equipment and for his truck to be stored in the winter.

Mr. Strother expressed concern for the parcel on the northwest and asked if the wooded lot might not be built upon. Mr. Opitz responded it is owned by a doctor who does not intend to build on it. He claimed it is not a buildable lot.

Mr. Myers explained the plot plan and speculated that it is unlikely that parcel could be built on.

Mr. Bloss asked what is preventing them from moving the garage farther off the road so the variance would not be so large. Mr. Opitz answered it is because of the setback and the slope of the property as the back drops off six to seven feet.

Mr. Bloss asked Mr. Myers if there was not a cul de sac, would the garage be in compliance. Mr. Myers answered Mr. Bloss saying "it could be". He declared that he does not recall that the back has a drop off as Mr. Opitz claims.

Mr. Lemire asked if he could move the garage to within the 50' setback.

Mr. Myers explained the 50' setback does not apply to the garage, only to the main building.

Lemire commented that if he were to move the garage to within the 50' setback, adding "even though it does not apply to the garage", it would be better than where it is now. Mr. Myers agreed that is correct because he needs 80' for the accessory structure and if he moves it within the 50' setback then he would only need a 30' variance.

Mr. Lemire asked if he needs 50' for the front property line, how much does he need for the back property line. Myers explained the whole subdivision was set up to require 50' all around the houses which applies only to the main building. Mr. Lemire asked again what he would need for a rear setback for the garage. Mr. Myers answered 10'.

Mr. Lemire commented to Mr. Opitz that he does not have a problem with the back. Mr. Opitz disagreed saying he does because it is very low land. Mr. Lemire summarized that the 50' setback isn't the reason he can't move the garage back.

Mr. Opitz answered it is because of the septic system that has to go in there.

Mr. Strother asked if there is a grade in the back. Mr. Opitz said there definitely is a grade. Mr. Strother asked Mr. Myers if, when he was out there and they surveyed, was it his opinion that the land in back is likely to be developed. Mr. Myers answered he didn't think the lot on the end has any chance of being subdivided.

Mr. Strother summarized that functionally the boundaries are not an issue.

Mr. Lemire asked how far the proposed garage will be from the house. Mr. Opitz answered it will be 177 feet from the left boundary line or about 120 feet from the house.

Mr. Lemire commented that is far away from the house. Mr. Opitz agreed and explained they want to finish the garage to look like the house with the same look.

Mr. Strother asked if the septic system is in. Mr. Opitz answered it is not because trying to figure out if the proposed variance for the garage works then they can set the septic system behind the house and to the left of the proposed garage.

Mr. Lemire summarized that their choices are to put the garage within the 50' setback, which would make him happy, or to putting the septic system partially behind the house and partially beside the house. He asked what that would do for him, if it was better or cheaper.

Mr. Opitz disagreed, saying that if they decide to put a patio out there, they can't build on top of the septic system. Mr. Strother said this is a unique situation. Mr. Opitz agreed saying if the land was flat they could move the garage back, but they can't because it drops off.

Mr. Strother if the cul du sac is a town road and off shoot is a driveway? Opitz said it is a town road and Dr. Iannello's driveway.

Mr. Peller asked how he plans to get into the garage.

Mr. Opitz answered he is going to have a Y shaped driveway with one branch going to the house and the other to the proposed garage.

Mrs. Vucetic stated it looked like that is where the leech field is going. Mr. Myers informed they would have to know where the field would be before it is approved and he thinks it is on the leech field.

Mr. Peller asked Mr. Opitz if he knew where the septic system was going to be and Mr. Opitz answered it depends on where they put the garage. He added if they can put the garage where it is in the map, then it would fall to the back and side of the house. Mr. Peller suggested they could put the septic system in first and then decide where to put the garage.

Mr. Opitz asserted he would like to continue with construction and do the garage first.

Mr. Peller informed the Zoning Board can only look at what the Planning Board approves. It appears that where he wants to put the garage is right on the leech field. Mr. Opitz disagreed and declared it is going to be in front of it and to the side. He stated the drawing is from the original developer before the lots were sold because they had to have a drawing of the septic and leech before they sold the lots.

Mr. Peller asked Mr. Opitz if he has a revised map showing the septic location. Mr. Opitz said the builder has one. Mr. Peller repeated the town and board don't have it and Mr. Opitz explained that is because they haven't applied for a permit yet for the septic system.

Mr. Myers disagreed saying that as far as he is concerned, based on the drawing he had applied for the permit. Mr. Opitz showed the updated one, and Mr. Myers told him he needs to submit a revision. He explained he can't get a variance until they know where the septic system is going.

Mr. Peller suggested he get the revised drawing and adjourn this and come back.

Mr. Strother offered that in theory they are very close. Mr. Peller answered that the town doesn't want them to build on the leech field but the information the board is looking at is showing them it is.

Mr. Lemire suggested that Mr. Opitz is trying to do the septic system and garage simultaneously because he is building now. He said he thinks the variance is too large and would be comfortable with him building the garage within the 50' zone from the road. He suggested trying to fit the garage there, tell the builder that is what they have and decide where to put the septic system wherever it works and they will not have to come back.

Mr. Bloss said he feels the same, stressing that he also thinks the garage is too close to the road and will look funny there.

Mr. Myers suggested that if the back of the lot drops off, he could move the leech field to there.

Mr. Cifor said it is a dead end road, only servicing the neighbors and doesn't see the setback as that significant.

Mrs. Vucetic stated it is undesirable and changes the character of the neighborhood and nearby properties.

Mr. Myers informed that the garage would be the closest structure to the road including the houses.

Mr. Peller informed Mr. Opitz that because the Town does not have the final sketch, then this is premature because the board cannot grant a variance on the speculative placement of the septic. Mr. Myers added they had a plan and now they are changing. He added that is fine, but he needs to be able to come to the board with it.

Mr. Peller suggested his reading of procedure, he suggests Mr. Opitz adjourn the application, talk to the builder and Mr. Myers and get an updated plan is filed.

Mr. Myers stated since he wants to put a patio at the back of the house he should present a new design with any further improvement planned so that the board can look at the whole picture at once.

Mr. Peller asked Mr. Opitz if he agrees to defer until the next meeting and waive the 61 day rule, and Mr. Opitz agreed to waive the period. The application will be placed on the agenda for the October 1, 2013 meeting.

The board will approve the minutes for the September 3, 2013 meeting at the next meeting, October 1, 2013.

Mrs. Vucetic made the motion to adjourn. The motion was seconded by Mr. Lemire . The meeting was adjourned at 8:17 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