

Approved

ZONING BOARD OF APPEALS

December 4, 2012

Present: Michael Dudick, Chairman, Michael Bloss, Randy Gifford, Amy Standaert, Jennifer Vucetic

Also Present: Lou Renzi, Esq., ZBA Counsel
Steve Myers, Director, Building & Zoning

Absent: Mario Fantini, Chris Lemire, Doug Strother

Mr. Dudick called the meeting at 7:12 p.m.

PLEDGE OF ALLEGIANCE

Mr. Dudick informed that the board consists of seven members and one alternate. In order to have an application approved, it must receive four votes out of seven, regardless of the number of members present. Tonight there are five members present. The applicant must have approval of four of the five members. He asked the applicant if he wished to continue or postpone the hearing until such time as there are more members present. The applicant stated he wishes to proceed.

OLD BUSINESS:

None

NEW BUSINESS:

The secretary read the legal notice as it appeared in the Daily Gazette on November 30, 2012.

An application from AJ Signs for a use variance from Section 171- 4 (n) to install an animated sign at the corner of Moe Rd & Rt 146. New sign is to replace damaged sign. Property is located at 532 Moe Road, Clifton Park, NY 12065 (Permit #80893)

The application was presented by Mr. Tom Wheeler of AJ Sign Co. Dr. Harry Miller owner of Four Seasons Pediatrics was also present and spoke.

Mr. Wheeler stated that the sign on the corner of Moe Road and Rt 146 had been vandalized and they wish to replace it. He added that the sign was in the right of way and sewer easement and they would move it 80 feet away from that spot. He stated they wish to put in an eternally lit sign. The background would not be lit, only the letters and numbers and on the bottom is digital display area, similar to the one Christ Community Reformed Church has. It would have auto dimming and would be 10% brightness at night. The purpose is to draw attention to the practice as the medical practices have become competitive with Ellis and other urgent care facilities in the area. The message board would be used for health statements, health tips to draw attention to pediatric health.

Dr. Miller said he and his wife started the practice in 2000 as part of the Ellis Hospital in that building. Nine months later Ellis closed the facility. He and his wife continued in the building as private practitioners. They are the only pediatric doctors who live and practice in the community in a small setting. As private practitioners they do not have negotiating ability with large insurers, and are just four doctors as opposed to 25 or 30. He pointed out that there are now four urgent care facilities in Clifton Park, one is a pediatric urgent care. He said Ellis has returned after eleven years and is having a financial impact on them. He said they have had a 28% increase in patients leaving their practice and a 53% decrease in urgent care visits since the time Ellis opened the practice in just one month. With the sign they hope to have an impact by giving good healthy information. They said it is very tough to compete. They also cover for two other doctors on the weekends, and patients have trouble finding their location.

Mr. Bloss asked about the 28% loss in client base and increase in urgent care visits. Dr. Miller clarified that it was a 28% increase in patients transferring out over the last month and 53% less urgent care visits even during hours they are open. He said they are open seven days a week and even Thanksgiving, but they are not open all of the hours some of the others are.

Mr. Dudick mentioned Ellis is open 24/7 and Community Care Pediatrics is open at night.

Mrs. Vucetic said she thinks it is highly important for a parent who is urgently trying to get a child to the doctor to see a clear marker where the doctors office is. She said the sign is highly important.

Mr. Dudick mentioned that it has been over a year since the banner has replaced the sign. Dr. Miller agreed it has been over a year. Mr. Dudick asked if there is signage on the building. Dr. Miller said there is not, but there used to be when Ellis owned it.

Mr. Dudick pointed out that this is not a typical request because it is a use variance which has different requirements than an area variance. He explained the town changed its laws regarding animated signs because it did not want proliferation of them in certain areas. He continued saying they thought in commercial areas it would be reasonable but this is not a commercial area. He said they consciously made the decision that they did not want to have this type of sign in this location. In order to get approval, the applicant would have to show special hardships and financial evidence. He informed that the applicant is allowed to have signage on the building and

they are not taking advantage of that. Mr. Myers added they could have at least 32 square feet or more depending on the size of the building. Mr. Dudick pointed out that the board has looked at larger signs when there is a large enough building, and that it would be an area variance which is an easier variance to receive.

Mr. Wheeler stated they looked at signs for the building but felt it was so far back off the road that this would be better. He said they felt this would be more effective as a marketing tool.

Mr. Dudick suggested they install a message board that isn't electronic.

Mr. Wheeler stated the letters get stolen and you have to go through snow to get to them. He alluded to the Reformed church's board is doing a great job of using their board.

Mr. Dudick pointed out the amount of illumination is a lot more than a non electronic board. Mr. Wheeler said the board dims down at night and is the same brightness at night as it is during the day.

Mrs. Standaert stated the location of the building is difficult to find and she had experience with that and had trouble finding it. She said she thinks it is a good looking sign and appreciates they will dim it at night.

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

Mr. Dudick asked Mr. Myers if the sign on the corner is a problem. Mr. Myers said it is and explained that when an applicant comes to him to replace a sign, it must meet current code. He added that he didn't know how the sign was put there in the first place. He said he is not sure he could even replace it on the original foundation. Mr. Wheeler added that it is in the sewer easement. Mr. Myers said if the sewer department had to go in there they would pull the sign out and the applicant would have to pay for replacing it himself.

Mr. Bloss asked about the sewer easement.

Mr. Myers answered it is 25 feet off the property line which is 40 ft off the edge of the road. He added the DOT owns quite a bit of land and the sewer easement is beyond that. He said he assumes they intend to improve it some day, which might be why they bought it.

When Mr. Dudick asked how he felt about the application, Mr. Myers said he doesn't think it meets the tenets of a use variance, and he listed the requirements. He said the applicant already has a variance from 1997 for two freestanding signs on the property.

To clarify for the board, he explained that an animated sign is described as any sign that you don't have to change with physical contact and it doesn't have to have moving figures. He added the law was put in place two years ago specifically to limit where the signs can be. He said it was allowed in commercial areas, but not in residential and certain commercial areas including B1, B2 & B3. He cited the two exceptions the board has made as being heavy retail, hamlet

mixed use and special consideration that has to be given to houses of worship. He added that the church sign had many restrictions on it.

Mr. Dudick explained that has to do with houses of worship which are different than other businesses.

Mr. Myers stated that putting the animated sign in this B1 area could open up problems with all the other businesses that will want it which is exactly what the town doesn't want. He added he doesn't believe it is appropriate.

Mr. Dudick stated that for a use variance they need proof of financial hardship more than percentages of decrease in patient visits. He explained that as a board they require competent financial evidence such as amount of money lost and time periods.

Dr. Miller stated Ellis opened the end of October so he doesn't have that exact information. Mr. Wheeler said the time period they are looking at is since Ellis opened. He said that they lost 22 more patients in the last 30 days, or one a day, more than they lost the corresponding month a year ago. He added that they had 40 less urgent care visits than a year ago, mostly to Ellis which has hurt them the most.

Mr. Dudick pointed out Ellis does not have an illuminated sign. Dr. Miller stated it is a very large practice they can't compete with that has more staffing and longer hours of operation. He said they are in a tough bind as a small business.

Mrs. Vucetic asked if they could give it special consideration because it is on Rt 146. Mr. Dudick said not, it is the zone they have to consider. Mr. Wheeler pointed out the church across the street has one. Mr. Dudick stated houses of worship fall under a specific law.

Mr. Renzi added that religion is a protected class and commercial doesn't get treated the same by the Supreme Court of the US as a church does. Mr. Dudick stated it is the same for taxes.

Mr. Dudick asked the applicant how he wants to proceed, giving him three choices:

- 1) carry forward and ask for a vote with the 5 members present
- 2) ask for it to be tabled until they come back with financial information
- 3) come back with different board members and give more argument

Dr. Miller said he is prepared to have the board vote tonight. He said he could estimate how much he would lose, but other than percentages as he would be unable to tell exactly how much as he wouldn't know what treatments he would have done during those visits. He said these are the numbers that are meaningful to him that don't break confidentiality of patient care.

Mr. Dudick said they wouldn't ask for specifics, only a spreadsheet.

Dr. Miller said he couldn't come up with a method to do it. Mr. Wheeler said they are just trying to stop the bleeding and if they trend continues, it will get worse.

Mrs. Vucetic asked if the library is in the same zone and Mr. Myers said it is not and the sign was approved as part of the site plan by Planning. Mrs. Standaert asked about Kulak Nursery. Mr. Myers said it is hamlet mixed use zone, and if the business leaves, the variance expires.

Mrs Vucetic asked if they could have a sunset for this variance. Mr. Dudick said “yes”.

Mr. Myers pointed out that if the board considers approval, it could snowball. He said based on the severe limitations on the church they should receive the same, but it is a severely different situation than the church. He suggested considering all the business in the B1 zone on 146 and if you approve one, your argument to not approve another would be more difficult.

Mr. Myers said he is not against him getting a sign, and that he already has two freestanding signs and the ability to put up a wall sign.

Mr. Wheeler said the sign in the driveway is small and just to find the driveway.

Mr. Dudick made the motion that the application be denied based on the fact there is not enough evidence to meet the criteria for a use variance. Mr. Bloss seconded the motion.

Mr. Dudick stated that if the vote to deny is not approved then it is left on the table.

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

Mr. Renzi stated you need another motion or should table the application.

Mr. Dudick told the applicant there are three choices: 1) table to the next meeting 2)

Mr. Gifford made the motion to approve the application with the same conditions set for Christ Community Reformed Church (2 color stipulation, one change per day, and dimming to ambient light at night to 10%) and the variance sunsets should the practice leave. Mrs. Standaert seconded the motion.

Dr. Miller was asked if he would accept the stipulations, and he answered he would accept them.

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

Mr. Renzi stated that the motion to approve has failed. He explained there is a split board with neither motion receiving the required 4 votes and therefore, the application fails.

Both Mr. Renzi and Mr. Dudick informed Mr. Wheeler and Dr. Miller that in order to come back to the board for approval of the application, it would need to be changed significantly.

Application not approved.

The second application on the agenda (Packard) was not heard as the applicant did not attend the meeting.

Mr. Dudick made the motion to accept the minutes of the October 2, 2012 meeting, seconded by Mr. Lemire. The minutes were unanimously approved by members who were present at that meeting.

Mr. Dudick made the motion to approve the minutes of the November 20 meeting. The motion was seconded by Mr. Bloss. The motion was approved by Mr. Bloss, Mr. Dudick, Mrs. Vucetic and Mrs. Standaert. Minutes accepted.

The next meeting is January 15, 2013.

Mr. Dudick made a motion to adjourn the meeting. The motion was seconded by Mr. Gifford. Approval unanimous, meeting adjourned at 8:03 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