

Town of Clifton Park

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Zoning Board of Appeals



APPROVED

11-15-16

ZONING BOARD OF APPEALS

October 18, 2016

Present: Chairman Dudick, Jerry Cifor, Lisa McCoy, Randy Gifford, Tony Morelli and Mario Fantini

Absent: Chris Lemire and Michael Bloss

Also Present: Tom McCarthy, Esq., Town Attorney
Steve Myers, Director, Building and Zoning

Meeting was called to order at 7:03 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

Chairman Dudick informed the public that this is a 7 member board with 1 alternate member and that in order for an application to be approved, 4 votes of approval are required and that Mario Fantini would be sitting in place of Michael Bloss.

OLD BUSINESS

1. Application from Cellco Partnership d/b/a Verizon Wireless for a use variance from Section 208-10, permitted uses in R-1 zone; from Section 208.95D(3)(h), new towers not allowed in R-1 zones; and from 208-95 E(3)(b), no new towers within 500' of the property line of an existing residential property. Applicant requests approval to construct a new cell tower. Property is located at 329 Moe Road, Clifton Park, NY 12065. (Permit #81091).

The Chairman advised that the Public Hearing with regard to this application is still open.

David Brennan, Esq. from the law firm of Young Sommer presented the application. Sara Colman from AiroSmith Development was also in attendance. Mr. Brennan advised that in accordance with the Board's request at the September 6, 2016 meeting, they had submitted simulations of the proposed monopine containing 2 and 3 carriers to the Town last week, together with some additional information which he intended to go over this evening. He advised that it was his understanding they are awaiting receipt of Professor Johnson's comment letter from his review of the previous materials submitted.

Mr. Brennan reminded the Board that the original set of slides shown were for a proposed 100' monopine tree which had antennas at a centerline height of 91'. He indicated he would be presenting this evening a number of new slides showing a 119' tall monopine with antenna centerlines of 95' and 105' feet, as well as a 129' tall monopine with centerlines of 115', 105' and 95', explaining that there needs to be 10' between antenna centerlines for interference purposes, so as not to make it untenable for another carrier to co-locate on the tower.

He presented an overall slide of the subject area on which green represented areas where the proposed tower would be visible; blue represented areas of partial visibility and yellow and red represented areas where the tower would not be visible at all.

He explained that balloons had been positioned at 100', 120' and 140' and then presented slides depicting views of the proposed monopine from the intersection of Moe Road and Grooms Road; Arbor Lane; Carlson Way; Grooms Road and Jarose Place. Upon inquiry from Mr. Gifford, Mr. Brennan reminded the Board they had determined through the use of a drone that the average tree height in the area around the site is 85' with one tree that was in excess of 95' and that 2 large deciduous trees would serve to rather effectively screen the tree.

Mr. Brennan advised they had also submitted a copy of an archeological survey which had been performed in May of 2016, showing that shovel tests had been taken every 25' from Moe Road back into the site, all of which had come up clean.

Mr. Brennan opined that although there will be a direct view of the monopine in a couple of locations, the monopines look good and would blend in quite well through the thick woods. He advised the Board that he would provide the address for a newer monopine constructed in the City of Saratoga a year ago, which he believes is 120' tall, so that they could drive by and see what a newer monopine looks like.

The Chairman opened the Public Hearing and asked for questions or comments.

John Rucinski stated he owns property at 528 Grooms Road and spoke in opposition of the application. He explained his property consists of 6 acres and that he intends to take down the existing woods to build a house on a pre-approved building lot. He stated that although his property is behind the proposed location, the applicant had not presented any pictures of his property. He also expressed concerns about property values decreasing and not being able to sell his property if the application was approved. He also stated that the Town had made the area an R-1 zone and he would like the Town to keep it that way. He concluded by suggesting that Verizon should locate the proposed cell tower on the property they already own on Moe Road.

Catherine Hull of 334 Moe Road inquired whether a vote would be taken on the application after a certain number of meetings or if the application could go on indefinitely; whether she could provide the Town with a link to a Facebook page she is creating to keep the public informed; and whether there were any Town ordinances which prohibited the placement of lawn signs in the area, in order to let people know a cell tower is being proposed.

Mr. Dudick advised there is no set number of meetings before a vote is taken and that as more information becomes available, the Town's consultant would first need to review and comment on it before a vote would be taken.

Mr. McCarthy advised the Town does not yet have the process to link to a Facebook page; that Ms. Hull should expect the application to be on the Agenda for the next meeting and confirmed the Board is awaiting Professor Johnson's comments on the latest material submitted by the applicant on October 14, 2016.

Ms. Hull reiterated her opposition to the application and advised she would save the rest of her comments since a vote was not being taken this evening

Ms. Hull asked if there was any way to appeal the application if it was approved and Mr. McCarthy advised that an appeal would have to be filed within 30 days after the notice of decision is filed in the Clerk's office.

Mary Raciti of 522 Grooms, who was present with her husband and daughter, reiterated their opposition to the application. She presented photographs to the Board showing the tower, as well as photographs of her property and horse pasture. She expressed concerns that if the tree line shown in the applicant's simulations is removed due to development or as trees get old and diseased and come down, their view would consist of a cell tower behind their horse pasture and next to the house that her daughter is looking to build.

Ms. Raciti stated that she finds it completely unacceptable and shocking for a community like Clifton Park to even be entertaining this proposal in an R-1 district and that many other jurisdictions throughout the State and the Country are combining utilities in areas that are already commercially zoned or are putting towers on rooftops, schools and libraries so the Towns can obtain the revenue and offset the tax burden.

Margo Elacqua of 5 Towline Lane reiterated her opposition to the application and reminded the Board that she had previously presented an extensive amount of information regarding health concerns; decreased property values and asked how the Town intends to look at compensating the people that will be affected by the zoning change if approved. She inquired as to the length of the rope the balloons were flown on and suggested that since the balloons shown in the applicant's slides are not straight up and down, it makes it look as though the existing trees are going to cover the tower and with balloons waving in the wind, it would make a big difference in what the tower will actually look like from the road and from people's properties.

Jackie Hakes, from MJ Engineering who was present on behalf of the Town, confirmed that the previous simulations presented by the applicant followed typical industry standards; that wind conditions are taken into consideration when the balloons are flown and that if the wind conditions exceed a certain amount, they would have to hold off until a different day.

Mrs. Elacqua inquired as to whether the tower could go almost 40' above the tree line and Mr. Dudick confirmed that was correct.

Cindy Just of 327 Moe Road commented that she was present the day the balloons were flown and that the height of the balloons noted was not accurate, because the wind was in fact blowing that day.

Mr. Dudick stated that the Public Hearing would remain open and the Board was going to adjourn the application while they await additional information from the Town's consultant.

Application tabled until the November 15, 2016 meeting.

- 2. Application from iLoveKickboxing.com for an area variance from Chapter 171-6C.(1) of Town Code for: Window signs allowed = 2; 7 windows covered, 5 with words or images. Variance required = 3 signs; and 2) Max. coverage = 50% of windows or 8 SF; coverage requested is 140 SF or 45.6%; 142 SF variance required. Property is located at 22 Clifton Country Road, Suite 10, Clifton Park, NY 12065. (Permit #81101)**

Peter and Theresa Peck presented the application and handed out to the Board members copies of an e-mail they had received from ILKB Graphics outlining the dimensions of the window signs now being proposed, as had been requested by the Board. Mrs. Peck stated that signs proposed to be placed on the 3 bottom windows are 57.75 SF in total, which does not include the red and black window cling on the 3 top windows due to Mr. Myers' comment at the last meeting that they would be considered a shade and not a sign. She also stated that the windows on the other side of the door would remain exposed with no coverings.

Upon inquiry from Mr. McCarthy, Mr. Myers confirmed that the windows are 307 SF. He also confirmed that the amended proposal is now for 114 SF of window coverage, which is less than 50% of the total SF of the windows and that the only variance now required is for 106 SF over the allowed 8 SF.

Mr. Dudick opened the Public Hearing and asked for questions or comments. Being none, he made a motion to close the Public Hearing. Mr. Morelli seconded. All voted in favor and the Public Hearing was closed.

Mr. Dudick then made a motion to approve the amended application for a 106 SF area variance. Mr. Cifor seconded.

The secretary called the Vote:

Ayes: Mr. Fantini, Mr. Morelli, Mr. Gifford, Mr. Dudick, Mrs. McCoy and Mr. Cifor.

Noes: None.

Amended application approved.

- 3. Application from Albert and David Hannoush for area variances from Chapter 171-6C(1) which allows maximum window coverage of 50% or 8 SF whichever is less. 1) 75 SF of windows covered; variance required = 75SF – 8 SF = 67 SF and 2) 50% window coverage allowed; 61.09 SF = 50%; 75 SF covered; variance required = 11.09% over 50% allowed. Property is located at 1750 Route 9, Clifton Park, NY 12065. Permit #81113).**

Antonis Deves, the Director of Operations for Hannoush Jewelers presented the application. Tom Wheeler from AJ Signs was also present. Mr. Deves stated that the signs are not ads for specific products, but are internationally renowned campaigns for the Breitling and Tag Heuer high end Swiss watches. He advised they are privileged to have been named one of the 96 authorized dealers in the nation for these brands and have a lot of clients coming from other Towns into Clifton Park to visit their location. He explained that the Breitling images on the windows are relatable to historical aviation and depict the jet team which Breitling owns that performs acrobatic presentations throughout the nation and therefore is a more of a promotional attitude for the brand. He explained that the image on the right window facing the store is for the iconic watch from the Tag Heuer brand which is a new international campaign.

Mr. Deves opined that the images are in good taste; are made of high end perforated window film; and that the actual logo of the brand for both companies is minute.

Mr. Fantini advised that his concerns were are that the variance requested is greater than the 50% allowed; that the images appear to be advertisements as opposed to artwork and that this particular request is not being made to provide privacy and shade like the previous applications.

Mr. Deves advised they have a billboard next to Park City Guitar which advertises a specific model pursuant to the advertising campaign and that the image currently on the window is not an advertising image, but is a brand image for a commemorative, limited edition watch for the Breitling jet team, which has already been sold out.

Mr. Fantini inquired whether the applicant had a franchise agreement or some other requirement for these particular signs and what would happen if Hannoush stopped carrying the watches.

Mr. Deves replied that they do have contracts with both brands which state Hannoush cannot take their artwork to create a specific advertisement and change it. He added that each brand provides their own advertising material and artwork which they must comply with and that in the unfortunate event they lose the lines, the images would be peeled off and taken down.

Mr. Dudick commented that because Mr. Deves had stated customers were coming from far distances to buy these products, clearly the window signs are not the generators attracting the customers.

Mr. Deves agreed, but stated that the sign creates a boutique sense to their clients and when they come in, they feel they are being served in an environment which presents the brand properly and that psychology is being created within the first few seconds of contact, which prepares the client to understand they are in an environment that is serious about presenting this brand for their investment. He explained that the clients are elite and must get proper service in the property environment.

Mrs. McCoy confirmed with the applicant that Mr. Myers had notified them on August 17, 2016 the Breitling sign was over the allowable square footage; that their application for the Breitling sign had been submitted on August 23, 2016 and that Mr. Myers had discovered that another sign had been put up on September 14, 2016. She asked the applicant why they had put up another sign when they were aware of the fact there was a size issue with the first one; why that issue had not yet been addressed this evening and why he is saying it's not really a sign or advertisement.

Mr. Deves replied that the 2 signs had been ordered at the same time and because the Tag Heuer sign was smaller, they did not think there would be an issue with it. He went on to state that the difference between the 2 signs is that the Breitling sign is actually a continuous picture which starts from one panel and goes all the way up window in pieces to fit together and therefore, they cannot be separated as it would be visually unattractive to show a plane that is missing its nose and wings. He pointed to the yellow sign on top right side of the plane, where the actual Breitling brand emblem is located, and again stated the sign is not an advertisement because every one of the airplanes has Breitling painted on its belly.

Mrs. McCoy advised that in the context being discussed, it is an advertisement because it's a sign, however it is the square footage of the sign that the Board is concerned about.

Mr. Deves requested clarification as to whether the sign on the other side of the door is that the amount of signage that would be considered over the size limit, advising that if so, he wouldn't mind taking it down, but requested the Board to allow them to keep the Breitling sign.

Mr. Dudick clarified that the reason the applicant is before the Board is because they had been notified the Breitling sign was too large and despite that, they had then added another sign beyond what they had already been told was too large.

Mr. Deves advised they were not aware of the existence of the regulation and that once they had received the notification on the door, they had come to the Town the next day, at which time the regulation was explained to him.

Mr. Dudick pointed out that even after having had the regulation explained, additional window coverings had been put up.

Mr. Deves explained it was their understanding that the size of the Breitling image was in violation of the Code regulations and that because the sign on the other side was smaller, they did not believe there was a problem.

Mr. Wheeler pointed out that the Board had just approved a sign for iLovekickboxing.com, which had had a website and pictures of boxers on the windows.

Mr. Dudick replied that from his prospective, that sign contains generalized images without any branding and therefore would not be considered as advertising of a certain product.

Mrs. McCoy pointed out that iLovekickboxing.com was requested to come back to the Board 3 times and had continued to reduce the size of their signs significantly.

Mr. Wheeler commented that as a local sign guy, he is confused about what is and is not allowed because the Code is based on coverage and the Board has turned it into an issue of branding.

Mr. Dudick confirmed that the Code does not have specifics outlined as far as what text is allowed and described it as a bit of a gray area.

Mr. Cifor pointed out that the applicant has Breitling multiple logos, which is clearly advertising a product. He added that if a sign is 8 SF or less, a variance would not be needed, regardless of what the image was.

Mr. Deves showed the Board several images of signs in Town that he would consider distasteful, suggesting that maybe some things need to be reconsidered and sometime laws need to be amended.

Mr. McCarthy advised the applicant that window murals are relatively new and the Board has been trying to deal with them on a case by case basis and confirmed the Code does not make the differentiation between branding and advertising.

Mr. Myers inquired as to whether there were any plans to change the image on a regular basis and Mr. Deves replied that they would stay up a minimum of 2 years.

Mr. Myers pointed out that if a variance is granted for a particular size this evening, in the event the image is changed, the applicant would not need another permit, but would need to provide him with notice they had changed the sign. He also confirmed that although the Board has determined they don't want certain verbiage on window signs, to him it is only a matter of the size. In that regard, if the Breitling sign were approved, although it is below the 50% allowed, it is still 42 SF bigger than what is allowed, whereas if both signs were approved, the applicant would require an 11% variance over the 50% allowed, as well as a 67 SF of variance. He added that although the 8 SF allowed can sometimes be quite restrictive, in his opinion an 11% variance is not very substantial.

Mr. Dudick opened the Public Hearing and asked for questions or comments. Being none, he made a motion to close the Public Hearing. Mr. Gifford seconded and the Public Hearing was closed.

Mr. Gifford commented that he was bothered by the fact that the applicant had put up a second sign, after being told they were violation for the other sign.

Mr. Cifor reminded the applicant that he had offered to take down the Tag Heuer sign, which would reduce the total variance under 50%, and therefore, be similar to what the Board had just approved for iLovekickboxing.com.

Mr. Deves confirmed they would be willing to remove the Tag Heuer sign.

Mr. Myers advised that with the Tag Heuer sign removed, the applicant would only require a variance for 42 SF.

Mr. Gifford made a motion to approve the application, as amended, with the stipulation that the Tag Heuer sign on the left side of the door is removed. Mr. Morelli seconded the motion.

Mr. Gifford then stated the he did not believe an undesirable change would be produced in the character of the neighborhood or detriment to nearby property would be created by granting the variance; that with the amendment proposed, the benefit sought by the applicant could not be achieved by some other method feasible for the applicant to pursue and was not substantial; that the proposed variance would not have an adverse effect or impact on the physical or environmental conditions of the neighborhood and that as amended, the alleged difficulty was not self-created.

The secretary called the Vote:

Ayes: Mr. Cifor, Mrs. McCoy, Mr. Gifford and Mr. Morelli.

Noes: Mr. Dudick and Mr. Fantini.

Amended application approved with the stipulation that the Tag Heuer sign be taken down within 2 weeks.

- 4. Application from Party City for an area variance from Section 171-6C(1), which allows 2 window signs per building side, 50% coverage of windows or 8 sq. ft., whichever less. Coverage requested 182 sq. ft or 90% +/-, 174 sq ft + 40% variance required. Property is located at 54 The Crossing Boulevard, Clifton Park, NY 12065. (Permit #81078).**

Andrew Peterson from Party City presented the application and advised that the revised sign package submitted now requests 75% window coverage instead of 90%. He explained they had made significant changes by reducing the size, removing all branding, removing all signs from the door and above the door and had made all of the panels generic in accordance with the Board's comments the last time they were in.

Upon inquiry from Mrs. McCoy, Mr. Peterson confirmed the reason for the requested window coverage is to hide the backside of the empty pegboard and because the register area is directly behind the proposed graphics.

As no public was present, Mr. Dudick made a motion to close the Public Hearing. Mr. Gifford seconded. All voted in favor and the Public Hearing was closed.

Upon inquiry from Mr. Fantini, Mr. Peterson advised that their signage is changed on average every 8 to 10 years, as the signs are expensive to produce.

Mr. Cifor pointed out that the applicant had reduced the variance request from 182 SF to 152 SF.

Mr. Myers stated that this is a Type II action and therefore no further SEQRA review by the Board is required and confirmed that the applicant is now proposing 152 SF and 75% window coverage, which would require a variance of 144 SF and 25% over the allowable window coverage.

Mr. Gifford made a motion to approve the amended application. Mr. Dudick seconded.

Mr. Gifford then stated that an undesirable change would not be produced in the character of the neighborhood; that the benefit sought by the applicant could not be achieved by some other method feasible

for the applicant to pursue; that with the amendment, the requested variance was no longer substantial; that the proposed variance would not have an adverse effect or impact on the physical or environmental conditions of the neighborhood and that the alleged difficulty was not self-created.

The secretary called the Vote:

Ayes: Mr. Fantini, Mr. Morelli, Mr. Gifford, Mr. Dudick, Mrs. McCoy and Mr. Cifor.

Noes: None.

Amended Application approved.

Mr. Dudick then made a motion to approve the minutes from the October 4, 2016 meeting. Mr. Dudick, Mr. Cifor, Mrs. McCoy, Mr. Gifford and Mr. Morelli, who were present at that meeting, all voted in favor and the minutes were approved.

Mr. Dudick made a motion to adjourn the meeting. The motion was seconded by Mr. Cifor. Approval was unanimous. The meeting was adjourned at 8:45 p.m.

The next meeting is November 15, 2016.

Respectfully submitted,



M. Kathleen Smith
Secretary, Zoning Board of Appeals

Cc: Town Clerk, Town Board, Town Attorney
Zoning Board Members, Tom McCarthy, Esq., Steve Myers
Department of Building and Development
Town Assessor, Town Highway Department