

ZONING BOARD OF APPEALS

November 16, 2010

Present: Michael Dudick, Chairman(7:05), Deborah Ferro, Robert Ritter(7:06), James Whalen(7:05), Douglas Strother (7:08), Christopher Lemire

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

Absent: Brian Telesh

Mr. Dudick called the meeting at 7:08 p.m.

PLEDGE OF ALLEGIANCE

Mr. Dudick informed that there is a vacancy on the board and that Deborah Ferro, who is an alternate will be filling in for that vacancy.

OLD BUSINESS:

1. **An application from The Hertz Corporation requesting a use variance in a B-4A zone. Applicant requests to open an automotive rental business that is not an allowed use in a B-4A zone. The property is located at 1768 Rt 9, Clifton Park, NY. (Permit #80802)**

The continuation of the application was presented by Paul Peluso, area manager from Hertz Corporation, and by Charles Hoffman, owner of the property. They are requesting a use variance to expand operations.

Mr. Peller presented an e-mail addressed to him, from Mr. Hoffman's attorney, Robert Chauvin, dated November 10, 2010 and also the owner provided a letter from CBRE Real Estate, also dated November 10, 2010, regarding the marketing of the property. Both were entered into record. The board took some time to read the letter and e-mail.

Mr. Dudick asked about the marketing of the property; what does it entail.

It was explained that the property was previously owned by Jack Burn, sold to P. Hoffman in 1999, and then sold to Mark Rekucki and then sold to C. Hoffman. Mr. C Hoffman stated he purchased the property for \$150,000 less than Mr. Rekucki paid for it. Mr. Hoffman originally put it on the market for sale, and then took it off.

Mr. Dudick clarified that Mr. Hoffman is not trying to sell the property, but to lease it. He stated that there were no interested parties except for Hertz. The building is about 2000 sq ft.

Mr. Rekucki was originally going to demolish the building and build new and sell to individual businesses. When the market went down, the plan was scrapped and he sold the property.

Mr. Dudick asked if there are any other options for the property. Mr. Hoffman stated there have been no offers to rent, and if there was an offer to buy, he would entertain it, but there have been none.

Mr. Lemire stated that the application was tabled October 19, in order for them to produce financial evidence to show that a reasonable financial return could not be met based on the permitted uses. He asked if that is what the CBRE letter is for. Mr. Hoffman said it was. Mr. Lemire said that the letter does not appear to provide the competent financial evidence that the board needs to address the use variance criteria. He informed the applicant that the criteria that must be met to show financial hardship includes showing they cannot realize a reasonable financial return as shown by competent financial evidence. He stated it doesn't appear to meet that.

Mr. Dudick stated that the corridor of Route 9 is not in an area that is being developed and hasn't found its time yet. He suggested that it is a greater reason it hasn't been marketable rather than financial. Given that, the board needs to be careful of something called "spot zoning" where they pick out one spot and change the use.

Mr. Lemire asked if they had thought about moving to a properly zoned area in the town. Mr. Peluso informed that would be an infringement of territory of other Hertz. Mr. Lemire asked if they had explored purchase rights. Mr. Peluso said they had, and were refused.

Mr. Strother said the attorney's letter is a little closer to what they need, but it is still an opinion. He indicated he was looking for something like a timeline, acquisition cost, was it listed and for how long, how many deals, how many years, etc.

Mr. Hoffman stated he owned the property since December 2007. Mr. Dudick mentioned that the letter talks about marketing the property for five years, yet Mr. Rekucki had appeared before the board for a variance to re-develop the property with no intention of marketing it.

Mr. Peller asked Mr. Hoffman and Mr. Peluso if they were comfortable to have a vote with what they had presented or if they would like to table.

Mr. Hoffman stated he would like to table. Mr. Dudick said he would be looking for actual numbers, specifics and prices for the time he has owned the property.

Mr. Ritter stated he is not opposed to this type of project but he is looking for more financial information in order for the board to feel comfortable in making a decision to grant a use

variance and they need more to work with. He informed them that they need to meet the four criteria for a use variance. (Section 208)

Application is tabled until December 7, 2010.

- 2. An application from AJ Sign Company requesting a variance from Section 171-4 H (1) which does not allow off premises signs. Request is to place sign for YMCA on Kids Lodge Property, which already has a freestanding sign. A variance from Table II of Chapter 171 is also required for a second freestanding sign. The property is located at 47 Clifton Country Road, Clifton Park. (Permit #80803)**

Mr. Tom Wheeler, with the AJ Sign Company presented the application. Mr. Christian Engle, VP of Operations of the Capital District YMCA, was present to support the application. Mr. Wheeler referred to a new map that had been given to the board which shows the right of way. They are looking for two variances, one to put two freestanding signs on the Kidz Lodge property, and one to put the sign in the easement area. He stated they are open to suggestions for a solution. He said that people have trouble finding the YMCA because there is no sign on the road.

Mr. Myers stated that it is not appropriate to put a sign in an easement area which is a pump station because trucks need access to the area. He said if you put a sign there it will be in the way. He added that there is already a freestanding sign on the property, and the board has never granted a variance for a second freestanding sign on any property. He had spoken to a YMCA board member and suggested they consider moving the existing freestanding sign and use it as a combined sign for the Y and Kidz Lodge.

Mr. Lemire asked if there was a problem with an off-site sign.

Mr. Myers said that since both properties are owned by the Y, it wouldn't bother him.

Mr. Peller asked if it is two separate properties, and Mr. Myers verified it is.

Mr. Lemire asked about the sign that is across the street. Mr. Myers stated that it is an illegal sign placed there before his tenure.

Mr. Peluso said he had talked to the sewer department and they are ok with the sign but Mr. informed that the sewer department cannot overrule town law.

Mr. Dudick mentioned that there is an illegal A frame sign in front of the Kidz Lodge.

Mr. Lemire asked if the enrollment of the Y has increased or decreased over 15 years.

Ms. Stacy Peugh, District Executive Director for the Capital District YMCA. said the enrollment has increased. She indicated that they have about 18,000 people using the facility.

Mr. Lemire informed that there is a problem with placing a sign on the Kidz Lodge because they are two separate entities. The law is that you can't have an off premises sign. To ask that a rear property have a sign on the front property just because it has the same parent organization is something he believes has never been done.

Mr. Strother verified that in his opinion it may take a few times to find the YMCA. He stated there should be some consideration, and hoped they can give them the signage.

Mr. Dudick called for comments from the public.

Ms. Kathleen Schnitzer spoke and informed the board she has a child at the Kidz Lodge. She understands the reasoning for keeping the signs separate to retain the Adirondack Theme. She said she supports separate signs on the property because the road looks like a driveway that goes into Hannaford Plaza.

Mr. Dudick made the motion to close the public hearing. It was seconded by Mr. Ritter. All agreed.

Mr. Myers opinion was that to allow them to have a second freestanding sign will set a bad precedent and will open up the board to many more applications of this nature, which has never been granted in the past.

Mr. Dudick said that there have been numerous applications for off site signs. He informed that this becomes an issue when it comes to billboards, which are off site signs. The board is mindful of town laws that prevent people from advertising their businesses on other people's properties. They try to keep billboards down to a minimum and within the law. Setting up a sign in an easement area brings problems. The problem with a YMCA sign on the Kidz Lodge property is that this is non contiguous property and a variance has to go with the property forever. Therefore, if the YMCA sells the Kidz Lodge property, that business would have two signs and no obligation to advertise for the business in the back if they didn't want to. From that standpoint, he indicated that he is not a big fan of this idea.

Mr. Ritter said he agreed and that he can think of at least five other businesses that would come back to the board if they granted this application. He indicated that each one has almost the same situation. He stated the law is what it is and there is a reason for it.

Mr. Ritter made the motion to deny the application. Mr. Dudick seconded it and asked for further discussion.

Mr. Myers asked if this has ramifications for the sign that exists now, considering that it is on public record. Mr. Peller said that now that it is on public record the town has no choice but to direct him to enforce the code.

Ayes (yes vote is for denial): Ferro, Ritter, Whalen, Dudick, Strother, Lemire Noes: none

Application denied.

NEW BUSINESS:

The secretary read the notice as it appeared in the *Daily Gazette* on November 11, 2010.

- 1. An application from Westmere Realty, LLC to demolish existing house & garage and replace with new home. Three (3) variances needed:**

- 1) **Minimum width of lot at front building line required = 80'; 75' available. 5' variance required from Section 208-11.**
- 2) **Minimum land area per dwelling = 40,000 sq ft required; 13,2615 sq ft available, 26,739 sq ft variance required from Section 208-11 (no public sewer)**
- 3) **Variance from Section 208-97 B (2) required. Replacement of an existing home on a nonconforming lot with another home without bringing the lot into conformance is not allowed. It appears the square footage of the home will increase as a result of its replacement. Expanding a nonconforming use is also not allowed.**

The property is located at 10 Lee Avenue, Clifton Park, NY. (Permit #80805)

Mr. Mike Caruso, Westmere Realty member, presented the application. Mr. Peller asked if Westmere Realty owns the property, and if he is a member with the authority to act on behalf of Westmere and Mr. Caruso confirmed that he does.

Mr. Caruso stated that Westmere had purchased the property five months ago. The property has a home in fair/poor condition and a separate two car garage. They are requesting a variance to demolish the home and garage and rebuild a simple modest home to fit the neighborhood. He states the footprint should be similar. The lot was a non-conforming lot when the home was built, as it is today. He believes this will enhance the neighborhood and remove a vacant house. Mr. Dudick and Mr. Ritter asked about the square footage and footprint.

Mr. Caruso stated that the current home is approximately 1200 sq ft and the new home would be 1550 sq ft with the garage. It would be a two story bungalow home built over the garage. Mr. Caruso stated if you take the footprint of the house and of the garage and put them together and add 100 sq ft it would be about the same. The garage would not impede on the land as it will be part of the house.

Mr. Peller asked if he could keep the bungalow on the same footprint.

Mr. Caruso said they basically are if you take the house and garage together. He said it is a three bedroom home, otherwise it wouldn't be marketable.

Mr. Myers said he has no issue with the home. His biggest concern is with the septic system, but if it is a correctly engineered system it will be viable. He feels it would be an improvement in the neighborhood and it is a minor increase in size with the garage underneath to not compromise any more surface land area. He indicated it is in line with what they have done with similar situations with small lots. He feels it is feasible and can be done.

Mr. Strother asked if there is a public sewer. Mr. Myers said there is not, but may be eventually. Mr. Strother asked about the septic system. Mr. Myers stated they would have to submit plans and everything would be checked out by an engineer.

Mr. Strother indicated that the request for the variance is substantial regarding the square footage, but the fact that it was already a non conforming situation presents less of a problem. Mr. Myers said it is a pre-existing situation and he has no issue with it.

Mr. Dudick mentioned that it is 1200 sq ft increasing to 1500 sq ft on a lot that is already non-conforming but he not opposed to it. He indicated they have seen the situation before.

Mr. Caruso stated in his opinion the empty house is unsafe and invites mischief. It needs excessive repair. Mr. Myers added it is almost to the point that it is not worth saving.

Mr. Dudick asked for public comment. There was none. Mr. Ritter made the motion to close the public hearing. Mr. Strother seconded. All approved.

Mr. Lemire stated he thinks this is a great opportunity to clean up the property. When he ran the numbers he said it is a 66.8% variance. He mentioned a previous application where they denied an application for less variance. Mr. Myers added that it was a different neighborhood and on this street, all the lots are all small, close to what this is, and with the previous application, the lots were all over ½ acre. Mr. Dudick agreed this was a different situation.

Mr. Ritter made the motion to accept the application as submitted by the applicant. Mr. Strother seconded.

Ayes: Ritter, Dudick, Strother, Lemire Noes: Ferro, Whalen

Application approved.

The secretary read the notice as it appeared in the *Daily Gazette* on November 11, 2010.

2) An application from Paul & Kathleen Schnitzer for variances for a residential garage addition to existing non-conforming parcel.

- 1) Section 208-11 requires 30' front setback in a CR zone; 20' available = 10' variance required.**
- 2) Section 208-16 E (5) requires 40,000 sq ft minimum lot area; 14,375 sq ft available = 25,625 sq ft variance.**
- 3) Section 208-97 B (2)(c) Applicant proposes to increase size of the nonconforming structure & decrease the setback – variance required**
- 4) Section 208-16 E (2)(a) base density is one dwelling unit per 20,000 sq ft or 3 acres; variance from both required.**

The property is located at 13 Camp Road, Rexford, NY 12148 (Permit #80806)

The application was presented by Kathleen Schnitzer. She stated her husband, Paul Schnitzer, was out of town. Mr. Peller asked if her name is on the deed as co-owner. She stated it is. Mr. Peller requested that her name be added to the record.

The home was purchased in May, 2010 and it is a ranch on an elevated piece of property adjacent to the Mohawk River. The previous owners have made improvements to the property which have left them with no existing garage or storage. It is a non-conforming property with the home being build in the 70's. They would like to add a garage with second story.

Mr. Myers said it is a pre-existing lot and the owners want to make improvements. He has no issue with it, but it will need some variances in order to do it.

Mr. Dudick asked if these were camps at one time. Mr. Myers confirmed this is so, with a great mixture of residences on it.

Mrs. Schnitzer said there are about 20 homes and 1/3 of them are unimproved camps with the rest new or improved. Mr. Myers confirmed that the new home is the result of combining a few lots to get a conforming lot.

Mr. Strother asked how this lot compares with the others. Mrs. Schnitzer answered that they are all different. Mr. Myers confirmed that they are different but there are some very small lots. He indicated the lot next to them is very narrow and small.

Mr. Myers said the area above the garage would probably be constructed as habitable space so if they ever wanted to use it as such, it would be there.

Mr. Dudick asked about access in the front. Mrs. Schnitzer answered that it is leased from the Canal Corp.

Mr. Strother stated that there is no way any structure on the property can be in compliance with zone laws. He indicated that if they were to ask the applicant to come up with a better idea, he doesn't know how they would outside of not having the garage.

Mr. Dudick asked for public comment. There was none. Mr. Ritter made the motion to close the public hearing. Mr. Strother seconded. All approved.

Mr. Lemire asked if she had talked to the neighbors about building. Mrs. Schnitzer said they are aware of it. Mr. Dudick asked if they voiced disapproval of the idea. He was told "not that they are aware of". Mrs. Schnitzer was asked why the garage couldn't be pushed back. She responded that they couldn't place it where the septic system is.

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

Ayes: Ritter, Whalen, Dudick, Strother Noes: Ferro, Lemire

Application approved

The secretary read the notice as it appeared in the *Daily Gazette* on November 11, 2010.

- 4) An application from Marty Torrey for a variance from Section 208-11 requiring 25' setback from rear property line. Applicant desires to replace screened porch with additional room. Variance required =5'. (screened porch was not required to meet setback per zoning law, once enclosed it must meet setback. Property is located at 10 Arbor Lane, Clifton Park, NY 12065. (Permit #80807)**

The application was presented by Kevin Dailey, attorney, representing Marty Torrey.

Mr. Ritter recused himself due to professional work he has done with the applicant. Mr. Dudick explained that there will be only five voting members and the applicant would need four yes votes. Mr. Dailey said he would like to proceed.

Mr. Dailey stated the applicant wants to replace a screened porch with an additional room. He submitted a written statement answering the criteria requirements needed to be met for approval. He referred to the map submitted to the board. The lot is wide and shallow and ½ the lot is tied up with the front setback. The house is not a large home. Mr. Torrey recently married and has children, grandchildren and 3 stepsons. He has a brother-in-law who is in a wheelchair. In order to accommodate all of the people he desires an addition for a larger family room to the back of his home. He cannot go in front due to the setback. Going to the side would mean the other side of the garage, or the other side of the living room and fireplace. The best place is to go off the back of the house. The deck is now a three season room which he would like to convert to a 14'7" x 17' family room.

Mr. Dailey stated that he has submitted in writing, for the record, that it meets the criteria: It does not create an undesirable change and is still residential. There is no different or more feasible way to create the extension. It is too expensive and impractical to go out either side. The request is not substantial because it is only five feet and there is green space woods behind the house. It does not create an adverse affect on the neighborhood or environment. The difficulty is not self created. The difficulty is the configuration of the lot which is wide and shallow.

Mr. Lemire asked if it is the deck with the screened in porch. He indicates it is 14'7 x 12 and asked if the additional 5 feet is the variance. Mr. Dailey affirmed it is as he would like the room a little bigger.

Mr. Strother stated it is a relatively minor request and he would be in support of it.

Mr. Dudick asked for comments from the public. There were none. He made the motion to close the public hearing. This was seconded by Mr. Strother. All were in favor.

Mr. Myers said the screened in porch is not required to meet the setback, but once it is enclosed and five feet are added, the variance is needed. He said he has no issue with what he is trying to do, extending it.

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

Ms. Ferro asked why he does not just stay within the footprint of the porch.

Mr. Dailey stated Mr. Torrey's brother-in-law is a frequent visitor in a wheelchair, and they need a sufficiently large room to put him in to be comfortable so he can move around. They need to bring him into the house through that room. They didn't feel that the current size of the porch was large enough.

Mr. Dudick asked Mr. Dailey if he would like the board to vote. He affirmed he would like a vote.

Ayes: Whalen, Dudick, Strother, Lemire Noes: Ferro

Application approved.

The secretary read the notice as it appeared in the *Daily Gazette* on November 11, 2010.

4) An application from Signworks (for Dollar Tree) for a variance from Chapter 171, sign law, Chart 1. Allowable wall signage = $(0.005) \times$ (ground floor area) = $(0.005) \times 10,703$ sq ft = 53.5 sq ft. Applicant requests 89.4 sq ft – 53.5 = 35.9 sq ft variance. (Previous variance granted #80130 on 4-1-97 for 60 sq ft) Actual variance required considering previous variance = $80.4 - 60 = 29.4$ sq ft. The property is located at Shoppers World, 15 Park Avenue Ste 6 (former Ethan Allen store), Clifton Park, NY 12065. (Permit #80808)

Mr. Fred Early from Signworks, representing the Dollar Tree presented the application as a third party. Blair Sign Company manufactured the sign and asked him as installer to represent them. He stated that he was unaware of the previous variance granted to the store. He explained that Dollar Tree is in a smaller store front and is moving to the former Ethan Allen store to expand their operation. He stated that, due to the landscaping trees in the plaza, the store front is invisible. On the secondary road the store can be seen, but has difficulty. He said the LED signs have lower luminosity so they want to maximize square footage and visibility. He informed that the Dollar Tree is not a destination business so it needs to be seen. He referred to pictures presented to the board.

Mr. Dudick asked if it is possible to prune the trees so they don't overwhelm signage. Mr. Myers stated that it is not a planning consideration how to maintain the trees. After the approval to build the plaza and the landscaping, it no longer is within planning control. Mr. Early said they cannot force a landlord to prune the trees.

Mr. Ritter asked if the size of the Ethan Allen sign would not be visible based on foliage reasons and if that is the reason for the larger sign. Mr. Early stated it is different lettering and any number of reasons. He said you can't see anything from Route 146.

Mr. Lemire said that the whole shopping center is in front of you. He asked if they are only talking about the size of the letters not the building facade. Mr. Early affirmed. Mr. Myers referred to the photos of both the Ethan Allen sign that used to be there and a picture of the proposed sign to see the difference how it fits on the facade.

Mr. Lemire asked about the previous variance. He asked for verification that they are talking about 3 foot letters and the dollar sign, and if they go with 2 foot letter and the dollar sign, they don't need the variance. Mr. Early said that is so.

Mr. Dudick asked for public comment. There was none. Mr. Ritter made the motion to close the public hearing. Mr. Strother seconded. All were in favor.

Mr. Strother indicated he will not support the application. He feels that they already have a generous variance in place. He said the letters this big are disproportionate to those adjacent to it. Also the Dollar Tree seems to have been successful enough to expand with their current sign which is significantly less visible. He believes that from a marketing perspective of moving to a larger building they have a big step up and the façade is very prominent.

Mr. Dudick said he personally believes the facades have been getting bigger over the last 15 years. He questions that filling a large façade is a good reason to put up a larger sign.

Mr. Myers commented that the Ethan Allen sign was sufficient for the new tenant. The hardship of seeing this location is the foliage and all of the businesses in front also create a viewing problem but they all belong to the same owner (Windsor).

Mr. Lemire stated that a bigger sign won't change the fact the trees are in the way. Mr. Early commented it will help. Mr. Lemire said people from 146 still won't see it. Mr. Early said the people coming through the intersection will see it. He added that when they change from neon sign to LED it doesn't have the frontal impact because of loss of luminosity which is the reason for asking for bigger letters. He said moving to a larger location puts them at some risk and they need the larger letters to bring in additional business. He stated if you don't come from the town and when you go to a town, if you don't see the sign, you don't go there.

Mr. Ritter asked if the board does not approve this variance, will the Dollar Tree be able to put up the same size sign from the previous variance and was told it would.

Mr. Whalen made the motion to deny the application. Mr. Strother seconded.

Yeas: (for denial of application) Ferro, Ritter, Whalen, Dudick, Strother, Lemire Noes: none

Application denied.

The next meeting is December 7, 2010.

Mr. Ritter made the motion to accept the minutes of October 19, 2010, Mr. Dudick seconded.

All accepted. The minutes of October 19, 2010 were approved.

The meeting was adjourned at 9:20 p.m.

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, Planning Board, ECC, Assessor, Highway