

ZONING BOARD OF APPEALS

November 17, 2009

Present: Michael Dudick, Chairman, Robert Ritter, Dale Gleason, Christopher Lemire, Douglas Strother, James Whalen, Deborah Ferro (alternate member)

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

Absent: Brian Telesh

Mr. Dudick called the meeting at 7:04 p.m.

PLEDGE OF ALLEGIANCE

NEW BUSINESS:

- 1. An application from Benson's Pet Center, requesting a variance from Chapter 171, Chart I, Commercial Signs Permitted. Maximum allowed signage = 32 sq. ft., unless business is greater than 6,400 sq. ft. (No information is provided regarding size of space). Proposed sign = 120 sq. ft., variance requested = 88 sq. ft. The property is located at 12 Fire Road, Clifton Park, New York. (Permit #80751).**

The secretary read the legal notice as it appeared in the Daily Gazette on November 12, 2009.

Mr. Frank Kramer presented this application and appeared with his son, Ryan Kramer. They own Benson's Pet Center. They have been in the area since 1996 – first in the mall, and then to Star Plaza in Halfmoon. They bought the building in Fire Road. Business is doing okay but their controller is not happy because Clifton Park, of their 4 stores, is last in sales. He believes

the problem is that people do not know they are there and this has been expressed to Mr. Kramer by customers. They wish to reuse the sign that used to be on their Halfmoon store by mounting it on the store of their new building. This faces the park-and-ride and Northway. They lost visibility from Route 146 when the proposed Starbucks was built. Their pylon sign is blocked by Comfort Suites' sign. According to Mr. Kramer, they have a total visibility of about 3 seconds on Route 146, and you have to turn onto Fire Road in order to know that Bensons is there. The sign would give them the visibility that they feel they need.

Mr. Peller asked what is in the space where they would like to put the sign. Mr. Kramer replied that nothing is there. He brought a picture of the side of the building and presented it to the board.

Mr. Lemire asked for clarification about what the side of the building is and asked if it is the side that faces the road. Mr. Kramer replied that it is the side that faces Fire Road. Mr. Lemire asked if the Print Graphics business is still there and Mr. Kramer replied yes.

Mr. Kramer would like to repaint / refurbish the sign, which is presently leaning against the building.

Mr. Kramer further explained the visibility from the Northway by stating the store is only visible during the fall / winter months when the leaves are off.

Mr. Peller asked about the side that faces Route 146 and advised Mr. Kramer that he currently has a sign. Mr. Kramer replied that they have a small awning sign very similar to the Print Graphics sign. It is built into the awning and is about 32 sq. ft.

Mr. Dudick asked for public comment and there was none. Mr. Ritter made a motion to close the public hearing. Mr. Strother seconded. Approval unanimous.

Mr. Ritter asked for clarification regarding the paperwork as the box was checked for a use variance and this is not a use variance application. Mr. Kramer stated that he and his son filled out the paperwork and did so to the best of their ability. Mr. Ritter understood but stated that this application is not for a use variance. Mr. Kramer apologized and stated that this is for a sign and they are not changing the use of the building at all.

Mr. Dudick stated to Mr. Kramer that Print Graphics has two separate signs on the building and asked if Kevin from Print Graphics runs two separate businesses. Mr. Kramer replied no, that they took over the portion where Kevin's business and Malta Electric were and combined them to make one store. They moved Kevin to the rear with a lot less space – 2,400 sq. ft.

Mr. Dudick asked if when viewing the building from the park-and-ride Kevin is on the left side. Mr. Kramer replied yes. There was discussion between Mr. Dudick, Mr. Lemire and Mr. Kramer about Kevin's position on the far left.

Mr. Dudick asked if the variance is granted and they put up the sign will they remove one of the two Print Graphics signs and Mr. Kramer replied yes.

Mr. Dudick asked Mr. Kramer if he was aware that there would be less visibility when he moved from the corner of two state roads of a major intersection to the current location. Mr. Kramer replied yes, but at the time they did not know anything about a Starbucks. They timed it and believed they had good visibility for about 12 – 14 seconds of visibility on Route 146 when traveling at approximately 35 mph. There was discussion about that building which almost became a Starbucks.

Mr. Lemire asked when he bought this and Mr. Kramer replied three years this past April. Mr. Lemire asked if he moved there three years ago and Mr. Kramer replied yes. Mr. Lemire asked if Mr. Kramer was in this building before they went to Halfmoon and Mr. Kramer replied no – it was a dog food place where Kevin is now and this was over ten years ago. There was a discussion about the chronology of the movement of the business. Mr. Kramer replied that he owns this building and they are not going anywhere.

Mr. Lemire asked if the sign in question was in the mall. Mr. Kramer replied no, that it was on the Halfmoon property. Mr. Lemire asked about the size of the sign on the mall. Mr. Kramer replied that they did not have an exterior sign, only an interior sign which was small. Mr. Lemire asked Mr. Kramer how visibility was from any major roads when the business was in the mall. Mr. Kramer stated that this is why they are not in the mall. They relied on mall traffic. They are a destination business.

Mr. Dudick referred to the sign currently up which faces Route 146 and asked about its size. Mr. Kramer thinks that the awning is no more than 2 feet high and maybe 8 feet long. There was a discussion about the sign they wish to erect and Mr. Kramer acknowledged that it is a large sign.

Mr. Dudick asked about the square footage of the business and Mr. Kramer replied 11,000 sq. ft. Mr. Myers stated that the business is actually almost 12,000 according to the plans he has, and that Mr. Kramer would be entitled to a 60-sq.ft. wall sign.

Mr. Dudick suggested to Mr. Kramer to go with what is legally allowed so that a variance may not be necessary and have the sign face traffic so that it is visible. Mr. Dudick explained that applicants have come to the board for approval for signs that are way too large because they feel it is necessary. Mr. Dudick feels that a business can be run without having the largest sign in the town. Mr. Kramer replied that the only reason they are taking this route is purely economical. They already paid for this sign five years ago and to replace it now would cost at least \$7,500.

Mr. Dudick tried to clarify for Mr. Kramer that the town and the zoning board want him to run his business and do well. The only issue is that the board cannot just let anybody put any size sign up anywhere they want without having some sort of control and that Mr. Kramer had to foresee that moving a business off of a corner of two busy highways to a side road may pose some visibility issues. Mr. Kramer stated that he is aware of this and they always knew they would have to go through this procedure. He would like this sign because it has been paid for, they own it, it is leaning against the building, and they feel it is a nice sign. He does not feel it will be a distraction and hopes the sign will not go to waste. Mr. Dudick advised Mr. Kramer that Halfmoon's sign law is different from Clifton Park's, and a 120-sq.ft. sign is two times what Clifton Park's sign law allows. The question is whether it is a reasonable request to double the

signage allowed. Mr. Dudick understands that the sign is already built, but the board does not have to grant a variance based on that. Mr. Kramer understands but questioned the size of the Chili's signs on both the front and side of the building. He also referred to the size of the Comfort Suites sign and asked if they had to get a variance. Mr. Kramer also explained that they did not have a lot of time to think this through. When Mr. Tanski bought the Halfmoon property they had to rush to find a place and this became available.

Mr. Lemire asked if the 60 sq. ft. wall sign allowed is the total signage allowed for the business and referred to the awning sign. Mr. Dudick explained that all signs for the business can total 60 sq. ft.

Mr. Strother asked about the size of the building. Mr. Kramer stated that the whole building is 20,000 sq. ft. There was discussion about Mr. Kramer's business being 12,000 sq. ft., being allowed total signage of 60 sq. ft., and not knowing the size of the awning sign.

Mr. Myers estimated the existing sign to be about 30 sq. ft. The business is 11,700 sq. ft. – approximately 12,000 sq. ft. What Mr. Myers did not realize when they made their application was that they wanted to add this 120 sq. ft. sign to what they already have. This would make their total signage 150 sq. ft. What Mr. Myers also did not realize was that he does not appear to have a permit for either the wall sign or the freestanding sign currently, so both signs are illegal according to Mr. Myers.

Mr. Lemire asked about the location of the freestanding sign and Mr. Myers replied it is out by Fire Road right next to the driveway to Chili's and Comfort Suites.

Mr. Dudick asked if the building is allowed a freestanding sign and a wall sign. Mr. Myers replied yes. There is no problem with the size of the freestanding sign. However, when Bensons moved in there, he received a permit for the renovation but no sign permit for either the freestanding sign or the wall sign. Mr. Kramer asked Mr. Myers if a permit is needed for a change to the sign and Mr. Myers replied yes. Mr. Kramer stated he did not know that. They just took down Malta Electric's and put in theirs. Mr. Myers explained the procedure to Mr. Kramer.

Mr. Dudick asked Mr. Myers about the size of the Comfort Suites sign(s) and Chili's sign(s). Mr. Myers did not know off hand. Mr. Dudick explained to Mr. Kramer that the board has to look at other business of the same size so limits can be set. Mr. Dudick asked Mr. Kramer if he feels he needs the sign where it currently is on the awning. Mr. Kramer replied that they need something to denote that this is the entrance. When they first moved there people did not know where to park. Mr. Myers added that they were parking on the Print Graphics side of the building.

Mr. Lemire discussed a prior application from TGIF's and believes the board adjourned the application because they did not produce financial data to show that there was some sort of hardship and that the signs were therefore necessary. He asked the board if this is something to be considered. Mrs. Gleason and Mr. Ritter believe the board did ask TJIF's for the data. Mr. Ritter believes they were making their case regarding why they needed greater signage because

they were losing market share to their competitors since when they came to town none of the other restaurants were there. Mr. Ritter stated that in response to that, the board asked for the data for part of the sign request. Mr. Dudick stated that in the TJIF's case, they did not move but other businesses built up around them. With Bensons, they relocated and say that people cannot find them. Mr. Lemire referred to Mr. Kramer's statement about Starbucks being built - that they did some visibility tests, and that they would not be here looking for another sign if what was supposed to be Starbucks was not built. He does not see this as being different from the TJIF's argument. There was discussion between Mr. Lemire and Mr. Dudick regarding the TJIF's application. Mr. Lemire again wondered if data is needed in this application. Mr. Dudick stated that the board can certainly ask for it.

Mr. Strother feels that the financial hardship issue is plausible based on coming in last in sales and the location of the business. However, this is not enough for Mr. Strother to support this application as he feels that to some extent this was self-imposed. Perhaps the applicant is a victim of circumstances, but the magnitude of the variance requested is excessive.

Mr. Kramer stated that they recently went through some tough business decisions. They had to hire an internal controller and this is the person who is pushing this. Sales are increasing but very slowly.

There was discussion about other businesses in the building and their signage. Mr. Dudick asked if the business took up the whole 20,000 sq. ft., what would be the signage allowed. Mr. Myers replied 60 sq. ft. total for wall signs, which is the maximum allowed for any business without approval from the zoning board. The maximum for freestanding signs is 32 sq. ft.

Mr. Ritter asked about the sign of the Staples store. Mr. Myers replied that they needed a variance. Mr. Ritter asked about the size of the Staples building. Mr. Myers believes it is 20,000 sq. ft. There was discussion about the size of the sign and the variance approved. Mr. Myers believes the variance request was reduced significantly when it was approved. There was discussion about the amount of signs they put up, the visibility issues and hardship alleged.

Mr. Ritter stated that this applicant is a local business that is providing good service and they are claiming it is hard to find them. They can probably provide statistics that show this. They have an existing sign that is larger than normal. Mr. Ritter asked that in this economy do we really want them to spend additional money on a sign when they can increase their employment by moving their corporate headquarters here. Mr. Ritter does not feel that this is an extraordinary request. Mr. Lemire asked if the Staples variance was around 80 sq. ft., and if so, that is a lot smaller than what is being asked for here.

Mr. Dudick thinks that the sign they currently have and want to use is too large. He asked Mr. Kramer how he feels about the size of the sign that is currently up. Mr. Kramer feels it is very small and not easily visible from Route 146. Mr. Dudick stated that if that sign is 30 sq. ft. and you double it and place it on the west face of the building, that is a pretty big sign, and that is only half of what is being asked for. Mr. Dudick would be more comfortable if he placed a 60 sq. ft. sign facing the Northway and something to indicate the entrance on the south face of the building that is smaller than the current awning sign, because of the location of the building.

Mr. Lemire asked about the variance granted to Mooradians. Mr. Dudick replied that Mooradians is a much larger building and business. Mr. Ritter added that they were not given the off-premises pylon sign. Mr. Lemire pointed out that Mooradians was granted significantly less than what they requested.

Mr. Kramer stated that he would like to see something on the side / front of the building and he is at the mercy of the zoning board as to the size he would be allowed. Mr. Lemire replied that if there is 30 sq. ft. there already and they place a 30 sq. ft. sign on the west side, a variance would not be needed. If they are not going to be able to use the existing sign, they may not even need a variance. Mr. Kramer stated he would like as large a sign as possible to increase visibility from the Northway for the four or 5 months per year when there are no leaves on the trees. He does not wish to take down the awning sign. Mr. Dudick replied that the zoning board is not a negotiating board where an applicant would request the largest sign they can get and then the board decides. Mr. Dudick advised the applicant that the way the application stands, to try to reuse this 120 sq. ft. sign to add to what they already have – he is ready to vote.

Mrs. Gleason believes this is a more confusing application as many things are being discussed. Mr. Ritter wanted to compare this application to other sign requests from similar sized buildings. He feels that if they have an existing sign that works, in a tight economy why would the board ask him to spend more money for a sign. He is looking at this from a business owner's perspective. Mr. Dudick believes that if we grant this variance, this would be the largest sign in the town, other than Boscovs, which is a mall anchor. He does not feel comfortable voting for this.

At this point, a five-minute recess was called from 7:40 p.m. to 7:45 p.m., in order to retrieve information regarding variances granted for signs for similar-sized business.

After the recess, Mr. Myers advised that Mooradians was approved for a total of 150 sq. ft. of signage for two signs of 75 sq. ft. each. That building is 30,000 sq. ft.

Staples was approved for a total signage of 141 sq. ft. for two signs. That building is approximately 20,000 sq. ft. Mr. Dudick commented that the Staples is approximately the same size building as this business but they occupy the whole building.

Mr. Dudick repeated this information for the applicant, and advised that from the Northway, the Mooradians' sign is 75 sq. ft. and can be viewed when driving 65 mph on the Northway. The applicant is requesting to use a 120 sq. ft. sign. Mr. Dudick also advised that Staples occupies 100% of their building. He stated this to give the applicant guidance and advised that the board grants or denies what is requested. He advised the applicant that they can change the request and give a different number, but for the applicant to advise the board to give them the largest sign they will approve is not how the board operates.

Mr. Peller advised Mr. Kramer that he has a few options: He can ask the board to vote on the application; he can amend his application and ask the board to vote; or, he can adjourn the application and figure out what kind of sign he would want within the parameters that the board

has suggested.

Mr. Kramer believes it is not likely that the board will grant him the variance as is. He will go back to see what options are available to him and come back. He wishes to adjourn this application.

Mrs. Gleason would like a clear definition of what they have now – not an approximation so that the board can decide. Mr. Kramer stated that the awning sign is 30 sq. ft., as Mr. Myers stated.

Mr. Peller advised the applicant that he can adjourn the application and come back with an amended application. The applicant waived the 61 days. There was discussion regarding what meeting the applicant would appear. The applicant advised Mr. Myers he would let him know.

Mr. Ritter made a motion to approve the minutes of October 6, 2009. Mr. Strother seconded. Ayes: Ritter, Whalen, Dudick, Lemire, Strother, Ferro. Noes: None. Abstentions: Gleason.

Mr. Dudick made a motion to approve the minutes of October 20, 2009. Mr. Ritter seconded. Ayes: Gleason, Ritter, Whalen, Dudick, Lemire. Noes: None. Abstentions: Strother.

Mr. Dudick made a motion to adjourn the meeting at 8:05 p.m. Mr. Ritter seconded. Approval unanimous.

Respectfully Submitted,

Jessica McCarthy
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