

ZONING BOARD OF APPEALS

October 7, 2014

Present: Michael Dudick, Chairman, Denise Bagramian, Jerry Cifor, Randy Gifford, Chris Lemire (7:05), Mario Fantini (7:10)

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

Absent: Michael Bloss, Jennifer Vucetic

Mr. Dudick called the meeting at 7:02 p.m.

PLEDGE OF ALLEGIANCE

Mr. Dudick informed the applicant this is a seven member board with one alternate. Tonight two of the board members are absent and therefore, Mr. Fantini, as alternate, is designated to sit in for Mr. Bloss. To receive approval an application must receive 4 yea votes regardless of the number of members present. There are six members present tonight so the applicant must receive four out of six votes for approval. The applicants have the option to defer to a future date when there might be more members present, but there are no guarantees how many members will be present at any meeting.

OLD BUSINESS

None

NEW BUSINESS

The secretary read the legal notice as it appeared in the Daily Gazette on October 2, 2014

1) An application from **DeSalvatore Building and Carpentry** for a variance from Section 208-11. In an R-1 zone, 10' setback is required, 4' available, variance requested = 6 feet. New garage to be attached to house and considered part of main building, therefore not an accessory structure. The property is located at 12 Cheviot Court, Clifton Park, NY 12065. (Permit #80994)

The application was presented by Ryan DeSalvatore, owner and proprietor of DeSalvatore Building and Carpentry, and representing the owner of the property.

Mr. DeSalvatore stated the Hennesseys wish to build a 24' x 24' 2 car garage with a room above which will have an 8' ceiling height. He indicated it would be attached to the house. He distributed preliminary sketches. He explained they only have one next door neighbor, stating the neighbor was consulted and has no issues with the garage. He described the garage as meeting the aesthetics of the elevation and will meet the house.

Mrs. Bagramian inquired how the room above would be used.

Mr. DeSalvatore responded it would currently be for storage but it will be heated, wired and insulated but not dry walled at this point.

Mr. Gifford asked why the garage isn't going to be built on the other side of the house. Mr. DeSalvatore answered there is a 2 bay garage on the other side.

Mr. Lemire asked if they have a shared driveway and was told they do not.

Mr. Myers informed he has no problem with the application.

Mr. Dudick announced the public hearing and asked for comments.

The owner, Yvonne Hennessey, described the plans for the garage as a six year process and had always planned to build the garage. She stated they have wetlands on the other side of the property and are unable to build it where they originally wanted because of DEC regulations. She summarized they had tried other means but have no other option where to put the garage, which is why they are here asking for a variance.

Mr. Lemire asked if they are removing the hot tub now located there. Mrs. Yvonne agreed they are as the garage is more important.

Mr. Dudick made the motion to close the public hearing. Mr. Gifford seconded. Public hearing closed.

Mr. Dudick referred to the sketch asking what was missing on it. Mr. DeSalvatore answered the 2 bay garage had not been drawn on the site plan, but that is why the proposed garage can't be put on the front of the building.

Mr. Dudick commented they would have a total of four bays and Mr. DeSalvatore confirmed that is so. Mr. Dudick asked if there would be access to the second story from any other place beside inside the garage. Mr. DeSalvatore said there would not be other entrances.

Mr. Dudick stated he has no problem with the application.

Mr. Gifford made the motion to approve the application as submitted. The motion was seconded by Mrs. Bagramian.

Ayes: Fantini, Gifford, Dudick, Cifor, Bagramian, Lemire Noes: None
Application approved as submitted.

The secretary read the legal notice as it appeared in the Daily Gazette on October 2, 2014

2) An application from **AJ Signs**, for variances from Chapter 171 – sign law. No variance required for freestanding sign as long as sign installed is 15’ from both property lines. Proposed sign is 90 sq. ft. wall sign, 32 sq. ft. is allowed – variance requested = 58 sq. ft. (Tenant space for sign = 3,150 sq. ft.). The property is located at 1750 Route 9, Clifton Park, NY 12065. (Permit #80995)

The application was presented by Tom Wheeler, AJ Sign Company, representing the applicant, Hannoush Square, for a pylon sign to accommodate five tenants in the building and a wall sign. Referring to the wall sign, he described it is an aluminum panel with push through letters internally lit. One tenant will be Hannoush Jewelers, and as the anchor store, he said they need a variance for the letters which they want to stand out and have a presence. He referred to the architect’s rendering saying they are requesting letters bigger than code allows because they want them visible and aesthetically pleasing. He explained they will be internally lit, channel letters in a grey face which is a softer look.

Mr. Cifor asked if the request is for both signs or just for the large one on the building.

Mr. Myers responded that the variance is just for the wall sign. He informed the Board he had discussed the other sign with Tom McCarthy. He stated he doesn’t believe the freestanding sign is that much over the 18 feet to the top of the letters to be an issue but he suggested the board can discuss the two foot overage if they want to add that to the discussion.

Mr. Peller advised that Mr. Myers has discretion in that and discussing the pylon sign would necessarily be a substantial change in the application.

Mr. Dudick questioned whether the Board should make a comment on the height aspect of the pylon sign. Mr. Myers said no. Mr. Dudick concluded they are just talking about the wall sign.

Mr. Peller commented that the Board is looking at a 58 ft. variance in the wall sign.

Mr. Cifor asked the location of the wall sign. Mr. Wheeler responded it will go on the Hannoush store, indicating the higher portion of the building, second space over.

Mr. Lemire asked if they know who the other tenants are and how much sign space are they allowed. Mr. Wheeler said they don’t know who the other tenants are. Mr. Myers explained the overall size of the building supports the freestanding sign but when you break out each tenant’s space for a sign, it doesn’t give them anything over 32 square feet each.

Mr. Lemire commented that the Town would be doing the signs piecemeal. Mr. Myers responded that they have only one known tenant and the rest would be told they would be given 32 sq. ft. Mr. Lemire responded that they would all be back for variances and Mr. Myers agreed they might.

Mr. Dudick proposed that, hypothetically, the owner of the property could rent to someone who takes over two of the stores and then asks for a larger sign.

Mr. Wheeler said Hannoush told him they are the largest tenant. Mr. Dudick challenged, asking if he is saying they wouldn't lease to someone who asked for two or three of the spaces. Mr. Wheeler said that from what he has been told so far, that is not happening.

Mr. Lemire asked about the back of the letters on sign, shown on the rendering. Mr. Wheeler explained they are just grout lines drawn on, and not part of the sign.

Mr. Dudick explained to Mr. Wheeler that the Board looks at variances as relief for unusual circumstances. He asked what unusual circumstance or unusual situation would warrant one store this size having a sign that is three times larger than any other store of the same size along Route 9.

Mr. Wheeler answered it's a jewelry store, and he referred to the large signs Boscov's and Price Chopper have because they are anchor stores. He said it's a large jewelry store about the size of Glenpeter Diamond Center on Central Avenue. He informed the applicant is moving his location and wants more visibility and to create a diamond center with a Glenpeter type feel like the applicant's Wolf Road store. He wants the sign to be fitting to the building stating that if the letters are reduced in size they would look ridiculous.

Mr. Gifford said he has a concern that other tenants might want a bigger sign if they take two spaces. Mr. Wheeler responded he can't imagine the applicant would allow a bigger sign than his.

Mr. Dudick commented they look for continuity in signage, suggesting that if a restaurant took up 6000 square feet of space, it would expect a larger sign than 32 square feet. He pointed out that Price Chopper and Boscovs both have thousands of square feet and the signs are proportional. He said even though it is an anchor store, he isn't sure it deserves a sign the same size as the large stores.

Mr. Wheeler argued, asking the board to look at the picture and tell him whether they think it looks like the right size sign for the building.

Mr. Lemire responded you can't tell because it is out of proportion of the whole building. Mr. Dudick responded it is a good looking building and it doesn't need signage to make it look right. He pointed out it would still be a good looking building without any sign. Mr. Wheeler said he doesn't agree.

Mrs. Bagramian remarked that her concern is with neighboring businesses. She suggested that if you grant a sign three times the normal size the neighbors can also come back and ask for the same.

Mr. Lemire asked Mr. Myers for his perspective. Mr. Dudick followed up on the question, asking him if any other businesses on Rt 9 that are 3100 square feet have signage substantially greater than this. Mr. Myers said there are not.

Mr. Gifford, who owns a 3000 square foot business kitty corner across the street from the discussed location, informed that his sign is the maximum allowed (32 square feet).

Mr. Dudick reminded they have precedent and town law to consider. He repeated he thinks it is a good looking building but he doesn't think it needs signage to enhance it to look good.

Mr. Dudick asked for public comment. There was none. He made the motion to close the public hearing, seconded by Mr. Lemire. All approved, public hearing closed.

Mr. Fantini asked Mr. Myers if jewelry stores typically have larger signs or do they have standard signage. Mr. Myers said he wouldn't know as he believes it is the only jewelry store in town.

Mr. Myers pointed out that the façade on his store will be larger than the facades on the rest of the building and the wall height on the rendering is just for that store.

Mr. Cifor commented it appears to be designed that way for a large sign and Mr. Myers agreed it appears that way. Mr. Dudick added he thinks it is a large façade made for a larger sign.

Mr. Myers said he can see the Board granting some leeway for the anchor store.

Mr. Peller asked Mr. Wheeler if he has some leeway to negotiate a reduced amount or would he have to go back to the applicant. Mr. Wheeler answered he is willing to negotiate.

Mr. Gifford reminded that the law is the law and zoning is zoning. He reprimanded that he should have come to the Board before he built the building and then based on the answer, he could have decided if he wanted to build it there or not. Mr. Wheeler said it is already being built and the steel is up.

Mr. Cifor informed that one of the considerations of the Board is whether the alleged difficulty is self-created and this is clearly self-created. Mr. Gifford agreed.

Mr. Dudick said in his mind, if the issue was the shape of the letters he wouldn't have a problem with that, but clearly this is not the issue. He stated if the Town Board wanted signs on Route 9 to be larger they would change the law to make the signs larger on Route 9. He said he doesn't see the special circumstance here.

Mr. Wheeler argued the design of the building is designed for that size sign and if you make it smaller it will look silly.

Mr. Fantini asked how much larger is the façade than Hannoush's. Mr. Wheeler answered it is four feet taller and a bigger façade.

Mr. Gifford inquired about the height of the letters. Mr. Wheeler said the smaller letters in the word "Hannoush" are 33" and the "jeweler" is 15" and the total height is 44".

Mrs. Bagramian commented she believes the architect put the cart before the horse to make the façade bigger because they had already decided that those are the larger letters they want. She asked if they could not go back to the drawing board and re-configure the size.

Mr. Wheeler said it is too late because it is built enough you can't backtrack and it's engineered and up and approved.

Mrs. Bagramian expressed concern the way they did it.

Mr. Gifford commented that he is all for business but they knew the law, asking rhetorically why did they went to the architect and said they want it that way.

Mrs. Bagramian said even if it is going up there should be able to do something about it.

Mr. Fantini asked if they could not reduce it to, for example, 40 square feet which would be more conforming.

Mr. Wheeler suggested 64 square feet which he said is a lot less than he came here for.

Mr. Lemire pointed out that 40 square feet is still a 25% increase over code.

Mr. Gifford said he would have no problem with 50 or 60 square feet as long as the letters were smaller.

Mr. Lemire asked if they could deal with all the signage in order to approve. Mr. Wheeler informed they don't know who the other tenants will be.

Mr. Peller advised the problem to consider is if he has other tenant the way the law is written it is 32 square feet allowed per tenant.

Mr. Myers suggested the owner might propose a package for the entire building as they did with the mall. He informed the owner hasn't done that but he agreed with Mr. Lemire, that maybe he should consider it.

Mr. Peller said it would then be part of the lease and the tenant would know what he would get for signage.

Mr. Dudick said he is looking at this in comparison to Parkwood Plaza, which is a little bit farther north on Rt 9. He informed all those stores have 32 square feet and if there are any that are 3000 square feet; they could use the argument that they expect a 90 square foot sign to match the one a few yards down the road.

Mr. Wheeler argued it is different because this is the anchor store and was built for this but in Parkwood Plaza it is all the same. Mr. Gifford commented it was built many years ago so you can't make a comparison.

Mr. Dudick suggested (rhetorically) that if Parkwood Plaza decided to reface their facades then they would be able to come to the board and get 90 square feet of signage too.

Mr. Wheeler answered that if they had an anchor tenant then that should be considered. He asked if they came in with a sign package for the whole property would it go to Planning or Zoning. Mr. Myers responded if they did not change the façade or anything about the building it would be just about the signage and would go to the Zoning Board. He explained the building itself goes to Planning but the signage goes to Zoning.

Mr. Peller addressed Mr. Wheeler and told him it was up to him if he wants the Board to vote on the application tonight, or if he wants to adjourn and come back with a sign package.

Mr. Myers pointed out the sign package would be a substantial change and he would have to close this application and file a new application. Mr. Peller agreed.

Mr. Dudick informed if the Board votes tonight and refuses the application then they can come back with a new application with a substantial change because they would not be coming back for one sign, but all the signs. Mr. Peller reminded they would have to pay the application fee again if they did. Mr. Myers agreed.

Mr. Peller said Mr. Wheeler's choice is to adjourn this one and come back and save the \$200, or pay the fee and come back with a new application.

Mr. Wheeler asked if anyone else was ok with 60 square feet. Mr. Gifford answered he might be, explaining that his mind is still with what the zoning is, but considering the building is there, he would personally consider it.

Mr. Dudick said he would not say what he would be happy with and what he would vote on. Mr. Wheeler responded that if he could get 60-64 square feet he would be happy. Mr. Dudick asked if that is what he wants them to vote on and what would be the exact number. Mr. Wheeler said "sure" suggesting they vote on 64 square feet.

Mr. Lemire asked for clarification – are they voting on just the one sign. Mr. Dudick said yes they are considering only one sign.

Mr. Peller asked Mr. Myers to confirm that they are now voting on a 32 square foot variance, down from the 58 square foot variance. Mr. Myers confirmed.

Mr. Lemire commented that this is still double the allowed footage for a sign.

Mr. Gifford made the motion to approve the 64 square foot sign, as amended from 90 square feet.

Mr. Dudick asked for a second to the motion. No board member would second the motion. Mr. Fantini questioned whether they should make a motion to disapprove it. Mr. Dudick said he wants to stay with positive motions and announced the motion doesn't carry because they do not have a second to approve it. He explained to Mr. Wheeler that he has two options. He suggested they could make a motion to deny or he would allow one more amended motion.

Mr. Wheeler repeated the options, that he could table it and come back with a whole package or come back and ask again. Mr. Dudick said he could come back with a different number. Mr. Wheeler said he would like to table it.

Mr. Dudick inquired if he would waive the 62 day rule, and Mr. Wheeler agreed.

Mr. Peller informed if they are coming back with a package, it needs to be re-noticed and the public hearing needs to be re-opened.

Mr. Dudick made the motion to re-open the public hearing, seconded by Mr. Cifor. All agreed. Public hearing re-open.

Mr. Myers informed they would not get on the next October meeting and would be on the November 18, 2014 meeting. The deadline for the application to get on that meeting is October 28, 2014.

Mr. Wheeler asked the Board what they are willing to give as far as square footage.

Mr. Cifor answered that to him, it is an issue about fairness. He said his thinking is that if they grant a variance to one business why the same variance wouldn't be granted to any other business. He repeated it is an issue of fairness and reminded this issue is totally self-created so it is hard to be sympathetic.

Mr. Myers addressed Mr. Wheeler's reference to the mall and the fact they have 40 square feet each. He said they came to the Board and did it in "one shot" and they have a distance issue that Mr. Wheeler does not have, that of being able to see the sign from far away. He informed that he is not able to use that reason in this option. He suggested Mr. Wheeler bring a package that looks good and gives some weight to the anchor store that is reasonable.

Mr. Dudick reminded his issue about other tenants. He commented that even if this store is the anchor, a business could come in that is 6000 square feet and he would have a hard time explaining to that store they only get 32 square feet because the anchor store sign has to be bigger.

Mr. Cifor and Mr. Dudick suggested the lease could say that any tenant couldn't come for a variance for a bigger sign.

Mr. Myers disagreed, saying his past experience tells him that anyone can request a variance no matter the reason because it is their legal right. Mr. Peller added they could strongly suggest it in the lease and discourage doing it, but he agreed with Mr. Myers' point. Mr. Myers commented they did that for the mall, and up to now, no one has come and asked for a variance.

Mr. Peller suggested that Mr. Wheeler meet with Mr. Myers to work something out. Application deferred.

The secretary read the legal notice as it appeared in the Daily Gazette on October 2, 2014

3) An application from **Marianne Bono Theophilis**, for a variance from Section 208-11. 10' setback required in an R-1 zone. Currently, 18' is available, 14' proposed garage addition leaves 4' to property line – variance requested = 6 feet. The property is located at 44 Wheeler Drive, Clifton Park, NY 12065. (Permit #80996)

The application was presented by Marianne Bono Theophilis, owner of the property. She explained their application is similar to the previous one, in that they want to build a garage and they need a variance. She stated the garage is simple with no second floor or heating. She informed there are a number of homes in their area with second garages.

Mr. Peller asked if they have a garage now and if so, would this be built next to it. Mrs. Theophilis said they have a one car garage and the second garage would be next to it.

Mr. Myers said he had no comments or problems with it.

Mr. Dudick asked for public comment, there was none. Mr. Dudick made the motion to close the public hearing, seconded by Mr. Gifford. All approved. Public hearing closed.

Mr. Lemire asked who lived next to them and if they had spoken with them about the garage. Mrs. Theophilis said the neighbors are Patrick and Bonnie Marshall and they had been consulted and they do not have a problem with the garage.

Mr. Dudick inquired how long they have lived in the home and was told “more than 20 years”. She explained they have more than one car and they need room for a snow blower and other lawn equipment.

Mr. Dudick informed the Board he has no issue with the application stating the garage is a simple addition. He made the motion to approve the application as submitted. The motion was seconded by Mr. Lemire.

Ayes: Fantini, Gifford, Dudick, Cifor, Bagramian, Fantini Noes: none
Application approved as submitted.

The board approved the minutes for the August 19, 2014 meeting with Mr. Lemire and Mr. Gifford abstaining as they were not at that meeting.

The next meeting is October 21, 2014.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mr. Gifford. The meeting was adjourned at 7:55 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