

Town of Clifton Park

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Zoning Board of Appeals



APPROVED
12-5-17

ZONING BOARD OF APPEALS November 21, 2017

Present: Chairman Dudick, Chris Lemire, John Klimes, Mario Fantini and Michael Bloss

Absent: Jerry Cifor, Lisa McCoy and Terrance Cosgrove.

Also Present: Neil Weiner, Esq., ZBA Counsel
Steve Myers, Director, Building and Zoning

The Meeting was called to order at 7:06 p.m. by Chairman Dudick. Mr. Dudick announced that Alternate member, John Klimes would be voting in place of Jerry Cifor.

PLEDGE OF ALLEGIANCE
ROLL CALL

OLD BUSINESS

NONE

NEW BUSINESS

The secretary read the legal notice as it appeared in The Gazette on November 16, 2017:

1. **Application from Stewart's Shops Corp. for area variances from Chapter 171, Table I for newly proposed gas canopy signs. Signs are considered wall signs since they do not fit into the "other" sign category. 39 SF of wall signs already allowed per previous variance #81134. 42 SF more proposed (6 signs). Property is located at 1206 Route 146, Clifton Park, NY 12065. (Permit #81138).**

Marcus Andrews from Stewart's explained that following receipt of approvals from Planning and Zoning, Stewart's was approached by Sunoco to brand the gas for their new shop at the corner of Route 146 and Vischer Ferry Road. They would like to have two (2) Sunoco signs on the east and west portions of the gas canopy as well as four (4) official fuel of NASCAR signs, one (1) on each side of the canopy, which would be a skin or decal with no internal illumination.

Mr. Myers stated that this is a Type II action and therefore no further SEQRA review by the Board is required. He asked Mr. Andrews whether Sunoco wanted the multi-colored or rainbow sign on the canopy or whether they wanted it to be an all blue sign, such as the one at the A-Plus store at the corner of Lapp and Crescent Roads.

Mr. Andrews replied that they have done both, but with a canopy of this length, in their experience Sunoco has wanted the rainbow sign.

Mr. Myers also pointed out that the Sunoco sign at the A-Plus does not include the NASCAR signs and added for that store, because there was so much signage going on with the application, the Zoning Board had left it up to his discretion and Sunoco had decided to go with the solid blue.

Mr. Andrews added that the Sunoco signs at the A-Plus are illuminated.

Mr. Myers noted that the current application indicates a request for branding for Sunoco and Price Chopper. He explained that Sunoco usually puts stickers on the pumps referencing Price Chopper's Advantage Fuel Program which he does not count as signs, but added that he had made the A-Plus store take down a Price Chopper sign because it was attached to their free standing sign.

Upon inquiry from Mr. Lemire, Mr. Andrews explained the Price Chopper branding was solely for their Advantage Fuel Program.

Mr. Dudick referenced lengthy discussions the Board has had regarding branding requests in prior applications and advised he would be more comfortable if the applicant dropped the NASCAR signs and went with a solid blue Sunoco sign, instead of the multi-colored or rainbow sign, since that had already been approved at another location in Town.

Mr. Lemire stated his opinion against allowing branding on the requested signs, also citing prior discussions and situations where branding had been requested, but denied by this Board.

Mr. Dudick stated in his mind, the difference here is that the gas canopy is a separate structure and to have the pumps signifying it is Sunoco gas being sold, he would be comfortable granting the application because this Board has already approved similar signs for another convenience store.

Upon inquiry from Mr. Lemire, Mr. Myers confirmed that if the applicant removed the request for the four (4) NASCAR signs, even though this is a separate structure, they would still require a variance for two (2) additional signs and square footage over what is allowed, because Stewarts already has two (2) wall signs.

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

Mr. Weiner asked the applicant what color the canopy would be if they didn't get the requested variance. Mr. Andrews replied that they originally obtained approval for a white canopy.

As no members of the public wished to comment, Mr. Dudick make a motion to close the Public Hearing. Mr. Lemire seconded. All voted in favor and the Public Hearing was closed.

He then asked Mr. Andrews if he would be willing to amend the application to two (2) all blue Sunoco signs as he had suggested or if he would like to carry on with the application as proposed.

Mr. Andrews replied that they could do that and would be okay with that amendment.

Mr. Dudick asked whether any new art renderings would be necessary.

Mr. Myers replied that would not be required because he could make the necessary amendments on the application, but clarified by going to the two (2) Sunoco signs, the variances would be reduced to 26 SF and two (2) additional signs as versus six (6) additional signs.

Mr. Weiner clarified that the amendments agreed to by the applicant are that the NASCAR signs be removed, a blue stripe only across the canopy and no illumination. Mr. Andrews confirmed that was correct.

Upon inquiry from Mr. Lemire, Mr. Myers confirmed that the images at the top and bottom of the gas pumps that say Sunoco with the blue, yellow and orange rainbow are not considered signage.

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

Mr. Dudick stated that he does not believe the granting of the variance will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, because this intersection already has a gas station and that although he does believe the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue, he believes the request is reasonable. He added that he does not believe the requested variance, as amended, is substantial; that the granting of the variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood and that all variance requests are self-created difficulties.

The secretary called the Vote:

Ayes: Mr. Klimes, Mr. Dudick, Mr. Fantini and Mr. Bloss.

Noes: Mr. Lemire.

Application approved as amended.

The secretary read the legal notice as it appeared in The Gazette on November 16, 2017:

- 2. Application from Windsor Development for two (2) area variances from Chapter 171, Table I as follows: 1) 60SF of wall signs allowed; 253SF requested and 2) 18' height for wall signs allowed. 24' requested; 6' variance requested. Property is located at 19 Clifton Country Road, Clifton Park, NY 12065. (Permit #81139).**

Bob Miller from Windsor Development explained that they are requesting a variance for a second 253 SF wall sign for Hannaford and that with 60 SF permitted, they are looking for a variance of 193 SF. By way of a history of the existing signage at Hannaford today, he explained that the project was developed as a PDD and as part of that PDD back in 1988, signage was addressed and therefore, there is no variance that exists for the signage that was put up.

Mr. Myers approached the applicant and showed him some paperwork he had recently located. He explained to the Board that in 1988, the Town had in fact granted a variance to Shop-n-Save for a 252 SF sign on the east wall, which sign was later changed to a 252 SF Hannaford sign. He added that when the original sign variance was granted to Shop-n-Save in 1988, a second wall sign of the same size as now proposed was also requested, but was denied. In addition, he does not believe there was a mandatory maximum square footage for signs at the time this was originally done.

Mr. Miller went on to advise that there is now a Town Center Plan and things have been happening over at the center. By way of an update, he explained that there was an existing monument sign, which has now been taken down because of the variance granted for a new pylon sign and the concrete was poured for that today. He added that there are two (2) new buildings currently under construction; they have redone some of the parking at Uncommon Grounds; they have removed some trees; installed parking which will be paved within the next two (2) weeks; have redone the storm water retention area which will include some stone retaining walls and have opened up the viewshed from the south, which was previously blocked.

He explained that in considering the size and scale of the 192 SF variance they are requesting, it would be approximately 2.76% of the 7,000 SF blank wall. He added that the sign would help soften the image of the brick wall; it would place an identity on the wall for Hannaford from the line of site from Clifton Park Center Road; and would help direct customers to the store.

Mr. Miller concluded by stating that signage is very important to their tenant, especially in light of the internet; the whole center corridor area of supermarkets being under attack from the internet; the competition that shows up now and then; and pointed out that the New York State Small Business Development Center has a handbook on signage in which it is noted that signage is the cornerstone of brand identity; helps attract new customers; helps existing customers locate services and significantly impacts revenues.

Mr. Weiner advised the Board that because this application was originally made originally in 1988, it is first a question of whether there are new circumstances which justify a re-application for the same relief that was previously denied. He added that although the applicant is emphasizing the economic aspects of modern times as versus those in 1988, economic factors are not mandated to be a factor in the Board's consideration. Instead he explained, it is to be a balancing of the interests of the community as versus the interests of the applicant and the Board needs to consider whether there has been a significant change in the request in order to even hear the application. If the Board agrees there has been a significant change, the Board has to give the reasons for such opinion and then vote on it.

Upon inquiry from Mr. Lemire as to how this Board can re-hear this application absent a Court challenge to that finding and what factors this Board is to consider.

Mr. Weiner explained that there is no statutory list of factors and again explained it's a balancing between the community interests represented by the Zoning Code and the interests of the applicant. He added that it is basically a judgment call in many respects, but that there is supposed to be a representation of significant changes in the application now from the application back in 1988 and then if the Board agrees there has been a significant change in the application, the Board must then decide if the applicant has made a proper case for the variance. He added that although economic aspects are not mandated to be considered, the commercial development of the surrounding area could be considered.

Mr. Lemire inquired as to whether Mr. Myers had the application and the minutes from the meeting held in 1988. Mr. Myers replied he did not have them.

Mr. Miller asked whether the Board would not only be looking at the changing environment with respect to the retail environment, but also what the Board has done with respect to other similarly situated tenants.

Mr. Weiner explained that the Zoning Board of Appeals is designed to give relief from rigid code restrictions if there's a competent basis for it, but that the Board must first find there is something that justifies the same application now that was made in 1988, such as the economic conditions having evolved or the commercial development around the area having evolved.

Mr. Lemire stated that if the prior application was for two (2) wall signs one of the east and one on the south, both of which were 252 SF, he has to assume there was some discussions or rationale that the Zoning Board back in 1988 had come up with to determine that the one (1) sign on the east was the appropriate size; that the applicant had accepted that decision and in order to know whether or not there's been a change in circumstances, this Board would need to know what happened in 1988 other than it was denied.

Chairman Dudick asked Mr. Myers whether that information was recoverable. Mr. Myers responded that although he has the 1988 notice of decision, he does not know if the minutes are available, but could research it to see what could be found.

Mr. Miller stated that the question is, have things changed since then and that he believes the actions of this Board between 1988 and now have shown that there has been substantial change. He then asked Mr. Myers how much signage the two (2) Price Choppers have.

Mr. Myers replied that the large Price Chopper has about 650 SF and the new Price Chopper at Routes 146 and 146A has about 450 SF.

Mr. Miller stated that when you start looking at the signage as a percentage of the square footage, that percentage has clearly gone up when you consider that the big Price Chopper is about 78,000 SF and the smaller one is about 55,000 SF.

Mr. Weiner noted that the Board could also consider whether the new construction that is underway impacts the visibility of the front sign and Mr. Dudick stated that would be an argument the applicant could make if he wanted to.

Mr. Miller replied that there were a lot of discussions that went on with Hannaford to move this project forward and visibility was a discussion with them and with Toys-R-Us when they had to renegotiate leases.

Addressing Mr. Lemire, Mr. Dudick pointed out that we know an application was previously made for the same size sign; that the building is still the same size and has the same purpose and inquired what possible rationale could be found in the minutes from 1988 that would influence his decision on whether or not there is anything different now.

Mr. Lemire replied that to him, this application doesn't seem different, but that he is trying to help the applicant because there may be something in the minutes or a reason that was given back then that doesn't exist today.

Mr. Weiner advised the Board that back in 1988 he was the Zoning Board Chairman and his recollection is because it was a new mall, with Hollandale Apartments and the residential conditions that existed in the area back then, there was some resistance for the commercial uses so close to Hollandale Apartments. He pointed out however, that the street has been built up since then with restaurants, libraries, a YMCA, hotels and therefore, there is a lot of differences now than there were in 1988, as the malls were just emerging and there was a certain reticence to going from a rural suburban area to a commercial area.

Mr. Lemire asked Mr. Miller if the need for the new sign is out of fear that the sign on the front is inadequate given the new construction.

Mr. Miller replied that the area has now been opened up quite a bit and that solely from an aesthetic standpoint he would think the Town would want to see something to soften the brick wall. He added that it is important to Hannaford to have visibility from that side and with the new four (4) story building being constructed, the additional signage is needed.

Mr. Dudick stated that in his mind, the fact that there is a different landscape in this section of Town; the fact there are buildings going up in front of where Hannaford currently has a sign; the fact that trees have been taken down opening up the area and exposing the blank wall and the fact that the Town has changed the zoning for the area to Town Center Zoning, clearly shows there have been substantial changes.

Mr. Lemire pointed out that the sign zoning has not been changed and Mr. Myers confirmed that was correct.

Mr. Lemire stated that in order to know whether there was a change from what was previously considered, he believes the Board would need to know what the application was back then, what was considered and how the Board got to their decision.

Mr. Dudick clarified that he is looking to apply the sign law to the zone and if the zone is being redefined then he feels the Board would have to consider that when looking at this application.

Mr. Lemire pointed out that the Town Board, the legislative body in the Town, rewrote the Zoning Law with the Town Center, but they did not change the law for signage.

A discussion ensued, and Mr. Myers confirmed that the applicant is allowed a second wall sign if it stays within the allowable square feet.

Mr. Lemire suggested that back in 1988 in order to grant the variance for the 252 SF sign on the front of the store, the applicant may have agreed to the removal of the request for the second sign.

Mr. Miller inquired as to whether the change required to be shown would be environmental or just a change in circumstances, and not necessarily a change in the application.

Mr. Weiner clarified that because the applications are basically the same, the applicant would need to show a change in circumstances since 1988 which would justify hearing this application on the merits.

Mr. Dudick suggested that if the applicant requested a smaller sign, that would be considered a substantial change. He advised he is looking at size, location, environment and zoning and asking himself is this a

substantial change? The size is the same, the location is the same, so in his mind it goes to zoning and environment.

Mr. Miller stated he believes the change in the physical environment needs to be considered because of what has occurred in the Town, especially since a Town Center Plan has been adopted and the Form Based Code was adopted as a tool to implement the vision of the plan. He added that a discussion was had at that time about the Town amending the Sign Code, but apparently it was too much in terms of cost and time so it was said it would be dealt with later. He added that he believes this Board is well aware the Sign Ordinance needs to be amended by virtue of the fact that the majority of tenants that come before it have to seek a variance.

Mr. Dudick pointed out that signage for a 68,000 SF building is a unique and different circumstance.

Mr. Miller said he doesn't disagree with that, but reiterated there has been a change in circumstances based on the Zoning Code and by virtue of what this Board has permitted recently for signage at Price Chopper and Rite Aid when you start to compare the square footage of the signage granted as a percentage of the square footage of the buildings.

A discussion was had about a previous variance application made by Friday's when they wanted a wall sign on the Route 146 side of their building, were claiming a financial hardship and based on that claim, the Board had requested financial documentation be presented.

Mr. Miller pointed out that the signage helps increase sales and that they haven't said there is a financial hardship in this case.

Chairman Dudick advised that unless the applicant wanted to table the application, he was going to call for a vote to determine whether the application can even be heard. He then opened the Public Hearing and asked for questions or comments.

Michael Vilardi, 6 Princess Pine Drive, Clifton Park, NY commented in favor of the application, stating it seems obvious to him that because the smaller Price Chopper is 55,000 SF and has roughly 450 SF of signage and the larger Price Chopper is 77,000 SF and has roughly 650 SF sign, with the Hannaford building being 68,000 SF and only asking for a 252 SF of signage, it sounds unfair to him.

Mr. Dudick reiterated that the Board is first considering whether there is a substantial difference with this application, to allow it to even be heard and then it would go to an argument about the size of the requested sign. Prior to calling for a vote of the Board on that issue he asked Mr. Miller if he would prefer that the Board hold off on the vote and table the application to see if the minutes from the 1988 meeting could be located in order to satisfy Mr. Lemire's request.

He pointed out that that the Board could search for additional information to give insight as to how the 1988 decision was made and either nothing is found, in which case the Board would be right back where it is now, or something is found, in which case the Board would have further enlightenment to make a decision, which decision could be in favor of allowing this application to go forward or denied based upon the additional information.

Mr. Miller replied that they should probably table the application and see what can be found.

Mr. Bloss pointed out that the other option was that the applicant could come back with something substantially different than what they are asking for and Mr. Dudick agreed.

Mr. Miller stated he would like to take some time to further understand the legal requirements for what has to occur and inquired of Board Counsel whether any legal research has been done that could be shared.

Mr. Weiner responded that because the present application is identical to the application from 1988, this Board has an obligation to find that there is a significant change in some circumstance that justifies a reapplication exactly as was once presented. In other words, can you convince the board that there are enough changes in circumstances that would justify reconsideration of this same application on the merits?

Mr. Miller again stated that the best thing to do would be to table the application and find out some additional information. Upon inquiry from Mr. Dudick, Mr. Miller agreed to waive the 62 day period within which the Board is required to make a decision on the present application.

Mr. Myers confirmed he would research the issue with the Town Clerk and the Planning Department to see what could be found.

Mr. Fantini questioned whether the application would have to be re-noticed if the applicant was going to reduce the size of the sign requested.

Mr. Myers advised that if a lesser variance was going to be requested, it would not have to be re-noticed.

Application tabled until the December 5, 2017 meeting.

The secretary read the legal notice as it appeared in The Gazette on November 16, 2017:

- 3. Application from Michael Vilardi for an area variance from Section 208-11 which requires a 50' front setback in an R-1 zone. 43' available, 7' variance required for a garage addition. Property is located at 6 Princess Pine Drive, Clifton Park, NY 12065. (Permit #81143).**

Michael Vilardi presented the application and first handed out copies of four (4) letters from his neighbors indicating they have no problem with the requested variance.

He went on to explain that he is planning to construct a garage in front of the existing a garage in order to convert the existing garage into a two (2) bedroom handicapped unit for his parents who are 90 and 91 years old. He added that in order to facilitate a space for them, he needs to have a main floor dwelling that's all on the same level for mobility reasons and that the concept is to elevate the existing garage space to the same level as the adjacent parts of the house to allow access from their existing living space into the garage and to allow for installation of a handicap ramp. He added that due to the pie shaped lot, the required 50' setback is met on the left corner of the lot, but not on the right corner.

Mr. Myers confirmed this a Type II action and therefore no further SEQRA review by the Board is required and that he does not have any issues with the application.

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

Mr. Bloss made a motion to approve the variance as submitted. Mr. Lemire seconded

Mr. Bloss stated he does not believe an undesirable change would be produced in the character of the neighborhood or detriment to nearby properties created by the granting of the variance, especially since the neighbors have shown they have no problem with the request and that he does not believe the benefit sought can be achieved by some other method feasible for the applicant to pursue, adding that it is a reasonable approach for a great reason. He stated that he does not believe the requested variance is substantial; that he does not believe the proposed variance would have an adverse effect on the physical or environmental conditions of the neighborhood or district, and that although the alleged difficulty is self-created, it does not overwhelm the other criteria

The secretary called the Vote:

Yeses: Mr. Lemire, Mr. Klimes, Mr. Dudick, Mr. Fantini and Mr. Bloss

Noes: None.

Application Approved.

Mr. Myers then brought to the Board's attention a problem that became apparent with Windsor Development's attempted mailing of the required notice to the adjacent neighbors at The Bentley, as evidenced by the stack of envelopes that had been returned. He explained that the Town database provides the applicant with mailing labels for the adjacent neighbors. For the Windsor application, the labels generated contained the address of 8 Wall Street with no apartment or unit numbers, which is why the mailings were returned. He indicated this is the not the first time this has happened.

He further explained that for use variances, contiguous / adjacent property owners within 500' of the subject parcel are required to receive notification of a variance application. For area variances the Town recently changed things to require applicants to provide notice to the neighbors of the adjoining parcels, due to a problem in the past with residents not being notified when a variance was being applied for on a commercial property near them.

He added that the Town Assessor may know who the owners are, but he would not know the names of the renters and pointed out that renters would still have a right to receive notice of a variance application and have a say in it.

Mr. Weiner stated that if a notice needed to be sent to Hollandale apartments, he would think it would be mailed to Barry Hollander as the owner, not to the renters. He suggested that the Board may want to change the language to state notice to the adjoining property owners instead of residents.

Mr. Myers advised that he wanted the issue reflected in the minutes and the Board to be aware of the issue with notifications to various places so we can start trying to figure it out, adding that it may be something he and the Town Attorney would need to discuss.

Mr. Dudick made a motion to approve the minutes from the October 17, 2017 meeting. Mr. Dudick, Mr. Lemire, Mr. Fantini, Mr. Klimes and Mr. Bloss, who were present at that meeting, all voted in favor and the meeting minutes were approved.

Chairman Dudick wished everyone a Happy Thanksgiving and made a motion to adjourn the meeting. Mr. Lemire seconded. Approval was unanimous. The meeting was adjourned at 8:29 p.m.

The next meeting is scheduled for December 5, 2017.

Respectfully submitted,



M. Kathleen Smith
Secretary, Zoning Board of Appeals

Cc: Town Clerk, Town Board, Zoning Board Members
Neil Weiner, Esq.
Steve Myers, Department of Building and Development
Town Assessor, Town Highway Department