

The Board of Adjustment met on May 11, 1976 to hear the petition of Antrim Pharmacy, Inc., Robert D. Polinsky, President (Case #16). The roll call was as follows:

Emery S. Doane	- Present
Benjamin Pratt	- Present
Robert B. Flanders	- Present
Ralph Proctor	- Absent
Carole Webber	- Present
Eugene Bried, Alternate	- Present
Patricia Novak, Alternate	- Present
Catherine C. T. Dik, Clerk and Alternate	- Present

Also present were Mr. Polinsky and Edward C. Clarke of the Board of Selectmen.

The meeting was called to order at 7:40 P.M. and the Clerk read the petition, and recounted the procedure of notification of the hearing as follows: Certified mail, return receipt requested, was sent to the petitioner and seven abutters, all receipts having been received except from Mr. Polinsky who said he knew of the hearing but could never get to the post office when it was open to sign the receipt for his copy. The Chairman handed him a copy of the notice and asked him to read it aloud before the Board to show that he was aware. Notices by regular mail were sent to each member of this Board, the Town Clerk, the Town Counsel, Chairman of the Planning Board, and the Building Inspector. Notice was published in the Peterborough Transcript for April 29, 1976, page 18, and posted on the Town Bulletin Board.

Mr. Polinsky was then called on to present his case and said that he inquired of a Selectman about a sign and was told it should be 2' x 3'. He then asked what he should do to have a bigger one, and he was told he would need a permit. So he had one made 3' x 5', and when he went for the permit the Selectmen denied it, saying they felt it was too big and would like to have it of a more colonial design. He made the point that it would be a safe sign and would not stick out over the street. We measured it and found it would stick out about two or three feet over the sidewalk. He had understood that all he needed to do was get a permit for the larger size;

but they did not wish to approve it. I guess I misunderstood the restrictions they set up.

Mrs. Webber asked if he was aware that there was a restriction before making the sign, and he replied he was aware of the six square feet restriction but the gentleman he spoke with said I would need to get a permit. Mr. Flanders asked if he could tell us what compromise might be made, and asked if he could cut it off at top or bottom and whether the Selectmen would accept it if he put it flat on the building. Mr. Polinsky said that the man who made the sign asked how high it would be and was told it would be practically to the second floor. He replied that a 2' x 3' sign would not show that high up. Mr. Bried remarked that his eye tells him it is more than 3' x 5', more like 4' x 6'. Whereupon Mr. Polinsky, Mr. Bried and Mr. Pratt went to the store to measure the sign and reported back that it was 4' x 6'. The Chairman asked Mr. Polinsky if he acknowledged that as the size. He replied, "Yes." The Chairman then asked if he made out a written application for the sign permit and put down the dimensions. Did you file one? There is such a form. Mr. Polinsky replied, "It was not offered." In speaking to the Selectman he thought that he would get the permit by asking for it. He did not feel he was exceeding what he asked for. Mr. Flanders asked if the fellow who painted it was the one who recommended that size for twelve feet high. Mr. Polinsky replied that he said one should be able to see part of the sign above the eupola over the door.

As there were no further questions the Chairman called on Mr. Clarke to speak. He said he would rather have the Selectmen's letter of May 10, 1976 giving their reasons for denial read first and then would follow that. The Chairman read the letter which was placed on file in Case #16 folder. Mr. Clarke then went on to say that the Selectmen found themselves in a dual role as a ruling body and as landlords. Also that they were given custody of this building. We made suggestions which we thought might fill the Bill as far as advertising goes. We questioned the fact that holes would be bored

in the building to hold up this sign. There are three small signs on the building now and to put up a sign of that size would throw the entire front of the building out of balance. As landlords we felt that we have the right to restrict signs on the Town Hall, and even the six square feet sign would be larger than what is there now. If put on top of the cupola it would project out to the street. We felt as Selectmen and as landlords we had jurisdiction over the way the building is used. Snow removal is done by the Town snow plow driving on the sidewalk so if the truck, or a man standing in the truck spreading sand, is higher than twelve feet then it would be impossible. Mrs. Webber asked if a hanging sign would be a safety hazard from falling ice or wind. Mr. Clarke replied, "Yes. And as landlords the number of bolts that would be necessary in the building would be a safety hazard." Mr. Bried asked who would erect the sign; that is a rather specialized job. The Chairman remarked that if you allowed a projecting sign 4' x 6' it would not overhang the public way, the building being set back 9' or 10' from the property line. Also, the rentor's public liability insurance goes to the front door; the primary coverage goes to the owner of the building, Mr. Flanders said. Mr. Polinsky asked why was nothing written in his lease? Why no guide lines about insurance or signs, etc.? Mrs. Webber remarked that she would expect that if these things should be in the lease it should be taken up with the landlords.

It was brought out that the cost of the sign was \$170 which included the hanging. Mr. Flanders asked who designed it, and Mr. Polinsky said he asked for advice and designed it. Mrs. Webber remarked that you were definitely not aware that there is a restriction on the sign before having it made, and Mr. Polinsky replied that he was aware that there is a restriction of six square feet but if I went to the Selectmen they would give a permit for the larger size.

Mr. Pratt, addressing Mr. Clarke, said he took it from this letter that

the Board of Selectmen is unanimous in denying this permit. Mr. Polinsky said no. Mr. Flanders asked what the vote was at the time, and Mr. Clarke replied that he and Mr. Schacht were against it and Mr. Tenney abstained, but at the time the letter was written Mr. Tenney did sign it.

Mr. Bried pointed out that if the sign was 2' x 3' it could hang out over the sidewalk without a permit. All the same things could happen.

Mr. Flanders remarked that the signs for three previous tenants all hung out over the walk from the peak of the cupola and the snow plow men were upset because they could not drive under it. Mrs. Webber asked Mr. Clarke how he would feel if the sign met the 2' x 3' requirement but still was an overhanging sign. Mr. Clarke replied that the weight would not be there. We would have to investigate and check what would be required in boring into the building and the method of hanging. Mrs. Webber, "Even from the peak?" Mr. Clarke, "I could not say without knowing how it is to be attached."

Mr. Pratt summed it up by saying that this Board must consider the actions of the Selectmen only in granting or denying an oversized sign. The Selectmen are acting in a dual capacity,--as Selectmen and as landlords. As landlords there is nothing in the lease. We could grant a permit and the Selectmen as landlords could deny it. This Board has no business to get involved in the landlord aspect. I have a feeling there is no nice clear cut division of action here.

The Chairman read the last paragraph of the letter and said that guide lines usually are in effect before the fact and not after the fact. Mr. Clarke said that in respect to the lease, as landlords our dealings are with Mr. Polinsky. We explained our feelings at the time.

Mr. Flanders asked Mr. Polinsky if he had any idea of the cost of cutting down the sign, and he replied that a 2' x 3' sign just would not do, he would have to start all over.

The Chairman asked Mrs. Novak what Mr. Hardwick thought when he talked

with the Planning Board. She said he thought the sign was too flashy and that it should be more in keeping with the others in town.

Mr. Bried said the restrictions should be spelled out so that someone could pick them up.

Mr. Flanders asked Mr. Polinsky, "When you were told that you had to get a permit did you automatically figure that the granting was automatic?" Mr. Polinsky, "The way it was presented I did. I thought one automatically get a permit."

The Chairman raised the question, and asked Mr. Flanders, the insurance expert, if there was any reason why Mr. Polinsky cannot get an insurance policy to cover this sign. Mr. Flanders said that he would not give an opinion if someone went by and hit his head you would flip a coin to see who was at fault. If it falls down that is covered under the public liability. Mr. Pratt asked what Mr. Polinsky's public liability covers, and the reply was that if someone slips on the steps or inside the store he is covered. The Chairman remarked that if this sign is approved by the Board I would like to have Mr. Polinsky provide a copy of his insurance policy to the Selectmen.

Mr. Flanders asked if the Selectmen put in the lease who is responsible for shovelling the snow from the walk, and the answer was no. Mr. Flanders said, "Then it is the Town's responsibility."

Mr. Bried said that if the sign protruded two feet or six the same things can happen.

Mr. Flanders felt that people are doing things before they get their permits, and somehow we have to educate them to get the permit first. The problem tonight is he got the cart before the horse.

Mr. Pratt remarked that zoning is new. We have not had this problem before and probably it will not come up again.

The Chairman read from the Zoning Ordinance on pages 17 and 18, 29, 30, 31 and said that is all in the Zoning Ordinance that relates to this case.

There is nothing else in the ordinance.

The Chairman asked if there was anything more to say, and as there was not the hearing was closed at 8:40 P.M.

The Board met immediately in executive session and the Chairman remarked that he thinks there is a terrible misapprehension that a sign over six square feet is prohibited.

Mr. Flanders thinks that when one is reading something that is law one has to read what is the intent of it. If one cannot deny or permit why call for a permit? He maintains that the Selectmen had a right to deny it because of size. They had a right because of the intent of this law to deny a permit because it was too big and would look out of place.

Mr. Pratt said he was still a little confused. He does not know whether it makes any difference whether or not the decision to deny the permit for this sign on the part of the Selectmen, acting solely as Selectmen, was unanimous. He would like to get Mr. Tenney on the phone. My personal feeling is that the last paragraph of that letter has no position for the Board to consider. I wonder if the Selectmen were unanimous as landlords but not as Selectmen.

The Chairman said that he telephoned Mr. Clarke and told him that the applicant had asked for an application for a hearing before this Board. I mentioned to Clarke that as landlords they should have put restrictions in the lease. I do not believe they had given it a thought until then. Mr. Flanders talked with all of them; the vote was two to one that the size was too large and did not look well. Mrs. Webber said they are responsible for the town buildings, and Mr. Flanders replied that that is not our problem. Mrs. Novak said that that about the lease was correct. The landlords should have spelled out these things. She could see how Mr. Polinsky would go ahead after talking with one Selectman.

After talking with Mr. Tenney Mr. Pratt reported that Mr. Tenney signed the letter last night but wondered whether he should have written a separate one. He said that the letter represents the position of the majority of the Board of Selectmen of the Town of Antrim and he signed as a Selectman, but that is not to signify the vote of the Board of Selectmen was unanimous. It was two to one. The letter signifies that the majority of the Selectmen was against granting the permit.

Mr. Flanders said he felt the Selectmen were perfectly in their right to deny the permit because of over-size.

Mrs. Webber, "Therefore we can deny it also on that ground."

The Chairman pointed out that nowhere in the Zoning Ordinance (Sign sections) does the word "prohibition" appear. This ordinance merely says that they must get a permit.

Mr. Pratt, "My outlook would be that it is our responsibility to examine the reasons why the Board of Selectmen would not issue the permit for the sign and rather narrowly see whether their reasons fall within the Zoning Ordinance. A permit ^{granted} ~~is~~/if a sign over six square feet conforms to the specifications in this section of the ordinance. If the Selectmen approved the size Mr. Polinsky would not have had to come to this Board. I feel that the size and suitability of a sign should be written into the Zoning Ordinance. A permit for a sign over six square feet must be secured from the Selectmen; less than six square feet does not constitute a hazard. When it exceeds that size the Selectmen pass on it and could reject it if it did not meet these qualifications." Referring to the reasons in the Selectmen's letter of May 10, 1976 Mr. Pratt said he rejects numbers 1, 2, 3 as not valid reasons. Number 4, that it interferes with the view of neighboring establishments is valid and is the only reason to deny that is in the Zoning Ordinance.

Mr. Flanders again emphasized the intent of the ordinance,--to keep

the size of signs down.

Mr. Bried asked what about the word "conforming". Does that appear anywhere? Mr. Pratt, "Where does it say anywhere about suitability?"

Mr. Flanders, "That is just what I was saying. It doesn't."

Mr. Pratt, "The permit, if given or not, should be based on what is listed in the Zoning Ordinance."

The Chairman feels that the Selectmen's action in denying this permit was barely short of being arbitrary and capricious. It was because no restrictions were spelled out.

Mrs. Novak asked, "Did not Mr. Clarke say that if the size was cut down to six square feet the question would then go back to the Selectmen as landlords, and that is not in our province?"

Mr. Pratt objected to the way the Selectmen's letter was written,-- anything over six square feet has to have a permit, not that it is "illegal". He said personally I do not like the sign. I wish the miserable thing had never come, but I cannot find anything on which to deny it. Therefore, I am going to vote against the Selectmen's denial, but if the Selectmen then deny the sign as landlords then I am not going to object.

The Chairman added that he thought what happened was that when the sign was brought here on the truck it was held up for a time and possibly Mr. Hardwick saw it and took a dislike to it and so went to the Planning Board, and that is how this whole thing snowballed.

Mr. Flanders then

MOVED: That Mr. Polinsky's appeal be denied.

SECONDED: By Mr. Bried.

VOTED: In favor: Eugene Bried
Robert B. Flanders
Carole Webber

Opposed: Emery S. Doane
Benjamin Pratt

Reason: It did not comply with the Zoning Ordinance restricting signs in this category to six square feet; therefore the majority of the Board concurs that the permit should not be granted.

There followed emphatic discussion on the necessity for changes in the Zoning Ordinance particularly on signs, mobile homes, etc.

The Chairman announced that the State law has been changed about the timing of a notice for a hearing. Mr. Henderson, the Town Counsel, had approved our use of five days, including the day of the hearing, but this sometimes does not fit in with the Planning Board's meetings and the receipt of our notice in time to make a recommendation as they have a right to do for a special exception. The State law says ~~Satur~~days and Sundays shall be included in the five days, but not the day of publication or of the hearing. So we are changing to a week longer (eleven days), due to the weekly publishing schedule of the Peterborough Transcript.

The Chairman then called for nominations for Chairman, Vice Chairman and Clerk for the ensuing year. He called for nominations for Chairman and Mr. Pratt asked Mr. Doane if he would consider serving another year, and Mr. Doane said let me bounce the ball right back to you. You have continually ducked it. Mr. Pratt replied that he will have to continue to do so. Mrs. Webber was then asked, but said not this year; I would like to have another year to get a better grip. Also I am not sure that I shall be able to attend all meetings next year because of family responsibilities.

Mr. Pratt then

MOVED: That the Clerk cast one ballot for:
Emery S. Doane as Chairman for the ensuing year;
Carole Webber as Vice Chairman for the ensuing year;
Catherine C. T. Dik, Clerk for the ensuing year.

SECONDED: By Mrs. Webber

VOTED: Unanimously in favor.

The Chairman announced that the Board for the coming year would be:

Emery S. Doane, Chairman
Carole Webber, Vice Chairman
Eugene Bried
Benjamin Pratt
Ralph Proctor

with alternates:
Robert B. Flanders
Patricia Novak
Catherine C. T. Dik

The Chairman brought up the matter of fee once more and said that State law requires the applicant to pay the expense of a hearing. Mr. Pratt remarked it looked as though we must charge for notices in the paper and for certified mail cost. It was agreed to postpone any decision until the next meeting.

The meeting adjourned at 10 P.M.

Respectfully submitted,

Catherine C. T. Dik

Catherine C. T. Dik, Clerk