

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
May 21, 2009

Members Present

Allan Virr, Chairman
David Thompson, Vice Chairman
Cecile Cormier, Secretary
Albert Dimmock
James Webb

Members Absent

Alternates Present

Ernest Osborn
Michael Fairbanks
John DeBonis

Alternates Absent

Staff Present

Robert Mackey, Code Enforcement Director

Mr. Virr called the meeting to order at 7:03 p.m. with the salute to the flag, and notice of fire and handicap exits.

It was noted for the record that Mr. Thompson would step down and that Mr. DeBonis would sit for the following case.

**09-108 Sign A Rama
 Owner: B.P. Realty Trust**

Variance to terms of Article XII, Section 165-101C, to allow placement of Electronic Message Board type sign at 14 Route 111, tax map 04129-003. GC DISTRICT

Mark Casey, Sign A Rama said that he was representing B.P. Realty Trust, and that they were here tonight to request an electronic message center that would be placed on Route 111 in front of Brookstone Park. He said that the request for this type of sign is to gain exposure for the Brookstone Park tenants as there is only one entrance and exit into the park. Mr. Casey said that the park owner has done a wonderful job for esthetic purposes but there have been comments that people did not know that the park was a public facility. The entrance into the park would be expanded to allow for easier access if the sign is allowed. This type of sign is not the red lettered message center that you have typically seen as it is a full color message center.

Mr. Virr asked if the applicant could review the criteria on application for the Board before adding additional testimony.

Mr. Casey read the application for the Board. He said that this type of sign would be an alternative means to achieve and is a better way than a full pylon sign that would house 10-15 tenant signs that vehicles would have to slow down to actually read. Mr. Casey said that he feels that this type of message center would be safer for the area.

Mr. Dimmock said that this proposal had not been discussed with the Town Highway Safety Committee and asked if they were going to bring presenting it to them. Mr. Casey said that he has been in discussion with the State Department with regard to the proposal and believed the first step in order for Mr. Brooks to proceed with the proposal was to obtain a variance from the Zoning Board and then proceed with the other required approvals.

There was some discussion with regard to how many tenants were currently at the location now and how many times the message center would change.

Mr. Virr said that he did not believe that the vehicles on that particular intersection drive the posted 55 mile an hour speed limit as they tend to go faster. His concern is that people will be trying to read the next sign and located a few yards beyond Brookstone Park is a memorial site where someone died so that indicates that the area is a dangerous stretch of road. Mr. Casey said that there have been some studies done by the Federal Highway in 2001 of potentially safety of safe signs and state that easy to read and legible signs are favored. He said that no one will be able to read all 15 signs in one drive by. The reasoning for this type of board would be at dinner time it would show "Hungry want steak come to our grill" possibly in August the daycare would get more exposure as it would indicate openings. Mr. Casey said that he had driven by the property many months before the applicant had come in for a sign estimate and was unaware that there were so many different businesses in that area.

Mr. Fairbanks said that he felt that this type of sign would be a distraction as there is this type of sign in Manchester off exit one and people forget to turn as they are reading the sign. Mr. Casey said that this type of sign is designed differently and felt that it would be safer than the typical pylon type sign.

Ms. Cormier asked what class type highway was Route 111. Mr. Mackey said that he thought it was a type 2 or 3 classification.

Ms. Cormier asked if there were any State regulations on timing and if a permit was required for the driveway. Mr. Casey said that the State regulates that the sign does not scroll and that this type of sign would just change and that there was a driveway permit application required.

Ms. Cormier asked if a stipulation could be made that the sign did not scroll. Mr. Casey said yes that it was not a pixel of flashing red lettering. Most customers would ask for a large pylon type sign as it would be cheaper and it would require that for this area be 35' feet high. The Brooks family is seeking for a safe and ethically pleasing sign to do a job of reaching new customers.

There was some discussion with regard to size and height of proposed sign.

Mr. DeBonis said that he was concerned for highway view entrance and exit with regard to the location of the proposed sign. Mr. Casey said that the sign would be situated back where a vehicle could easily enter and/or exit the facility and not interfere with oncoming traffic.

There was discussion with regard to buffers and tree clearing and the location of the proposed sign and if an additional variance would be required for the 10' front lot line setback.

Favor

There were no abutters present.

Code Enforcement

Mr. Mackey said that the applicant's request is to install an electronic message sign at the entrance to the above referenced property. According to Article XII, Section 165-101C, these electronic type signs are prohibited. This prohibition became effective on 12-2-2005 after the Planning Board and Town Council adopted this provision. It was determined that these types of signs were not suitable in the Town. As a use variance is being requested, the Simplex hardship test will apply. These provisions are now contained in the application for a variance. As described, the property houses several buildings with multiple businesses as well as a golf course and restaurant. It is located on a State highway and is, therefore, subject to State regulations. There are pictures in the file for the Board's review.

Opposed

John O'Connor, 13 Arrowhead Road, said that before the Board makes its decision he would like them to consider that the Town Fathers chose zoning restrictions for safety implications as there is a driving performance issue with the frequency of changing, bursting, flashing, animated, etc. with signs. He said that illumination of self adjusting signs of bursting can bring on immediate migraines to some drivers. FHWA has found that glare or extremely bright signs can be hazardous to drivers. He said that he did not feel that Simplex has been met as there is no hardship shown and quoted "Nassa Jewelry vs City of Concord" court case. Mr. O'Connor said that he has frequently visited Brookstone Park and it is a very nice facility but does not need this type of sign and that the Board needs to give serious thought before granting this type of use.

Mr. Casey said that there would be no bursting on the sign and that the illumination would be automatically made according to time of day. His company has a large list of clients that utilize this type of sign and that also the State Highway Department also uses them along the highway. He feels that this type of signage does not violate any government regulations and that the entire message cycle is required to be read effectively and safely two times at the posted speed limit. This sign is multicolored and not your typical amber red as there are approximately 26,000 different shade of color to brightness. He said as far as the hardship concern is that the applicant's tenants are paying rent in a park and there is not sufficient advertising of the businesses in the area. He stated that the daycare has had an occasion that

it required an ambulance service and that the ambulance had a hard time locating them as they did not see the sign indicating their location.

Mr. Dimmock asked if a stipulation to not changing more than one time per hour would be made. Mr. Casey said that type of stipulation would defeat the purpose of the sign.

There was some discussion with the number of times the sign would change and the brightness adjustments.

Opposed

Janet Bhagat, 3 Sarah Lane, said that her concern was that the sign was 2 sided with pictures visible to coming and going traffic and that if it was proven to be distracting could it be brought back before the Board for reconsideration. Route 111 was a very busy road and was very thankful when the State installed the traffic light as there have been many accidents on the road.

Deliberative Session

Mr. Virr said that the Simplex variance test requirement need to be met and reviewed the criteria for the Board.

Ms. Cormier said that she felt that the applicant met the criteria needed because of the uniqueness of the area on the highway and it is difficult to see tall signs with all the different slats. If this sign was requested for Route 28 would have to say no. Feel the general purpose of this sign is better to have as she personally feels it would be safer to be read than a standard sign. She said that she did not feel that it interferes with the rights of others and did not diminish the surrounding properties. Ms. Cormier said that it would however need to be subject to several conditions.

Mr. Webb said that he disagrees as the sign would be a safety issue so it would interfere with part 2 of the conditions and believe part 3 believe the owner does not need a 5' x 10' video screen to advertise his business.

Mr. Dimmock said that according to 165.101 states that the sign is not legal and do not believe it meets any of the required criteria. No hardship has been shown as the property has been there for 5 years already and has been operating. Feel that it would be a distraction to older drivers. It could be a dangerous situation as a quarter mile down is a traffic light and if you're reading the sign and going 50-55 mph may not give you enough time to stop.

Mr. DeBonis said that he believed that #1 is true and would not diminish the surrounding property. He is not sure if the proposal is the right sign but seems better and would bring value to property and that conditions would need to be addressed.

Mr. Virr said that he did not see hardship established and that restriction does not interfere with the owner's use of the property.

Ms. Cormier said that she was not familiar with this type of sign suggested that the Board continue the case until they could go to Methuen and see this type of sign.

There was some discussion with the design display of the sign and similar sign locations.

Ms. Cormier motioned to continue the case until the next meeting so the Board could view a sign similar to the proposal.

Motion failed for lack of a second.

Mr. Virr reviewed the conditions for the Board. The proposal be completed within 2 years or variance shall be void. Subject to obtaining all Town permits. Hours coincide with businesses. Not to change more than one time per 10 minutes. Remove all other signage along roadway. Temporary signs be prohibited. Onsite business use only except for Government emergencies.

There was some discussion with regard to time frequency changes.

Ms. Cormier motioned on case #09-108, Sign A Rama, Owner: B.P. Realty Trust, to Grant a Variance to terms of Article XII, Section 165-101C, to allow placement of Electronic Message Board type sign at 14 Route 111, tax map 04129-003. GC DISTRICT as presented with the following conditions:

- 1. Hours of illumination to coincide with the hours of operation of businesses.**
- 2. Message shall not change more frequently than 10 minutes.**
- 3. Remove all other signs along Route 111 and temporary signs are prohibited.**
- 4. For onsite business use only or public emergency.**
- 5. Must be completed within 2 years or the variance shall be null & void.**

Seconded by Mr. Dimmock.

Vote:

Mr. Webb: No. Do not believe that it meets the second part of the criteria under the Simplex test. Other means can be done to advertise their facility.

Ms. Cormier: Yes. Believe all 5 criteria have been met as the property is unique on Route 111. Consistent with the ordinance as it does provide public interest. No property values would be diminished and is not contrary with the spirit and intent of the ordinance.

Mr. Dimmock: No. Feel that it would be a public safety issue as the sign is a distraction. No hardship has been shown.

Mr. DeBonis: Yes. Feel that the conditions have been met given the uniqueness of the property. Sign fits the area and do not believe it would be a safety issue.

Mr. Virr: No. Have a great concern with type of sign as feel that would be a distraction. Do not feel being unduly restrictive as public safety is an issue and agree with Mr. Dimmock as no hardship has been shown and has been created by the applicant.

The application was Denied by a vote of 2-3-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

It was noted for the record that Mr. Dimmock would step down and that Mr. Osborn would sit for the following case.

09-109 Anthony DeRosa

Variance to terms of Article VI, Section 165-32B, Article XIII, Section 165-107A & B, to rebuild existing structure for single family/retail use within 4' of the side lot line & build 2400 sq. ft. addition for Collision Repair & Auto/Motorcycle restoration within 3' of the side lot line at 191 Rockingham Rd., tax map 03084. GC DISTRICT

Anthony DeRosa, 8 Bounty Court, Salem, owner, read his application and his letter of explanation for the Board.

Mr. Thompson asked if the application shows the widening of the driveway but it does not show how vehicles get in there. Mr. DeRosa said that he has been in contact with State representative Scott Luney at DOT as the area is complicated. He said that a lot of people ride motorcycles and when drive out and sitting at a 40 degree angle it is very difficult to exit so have been in discussion with the State to bring the existing driveway up about 5 ½ feet to the level of the garage as it would create a safer means of egress for the property. He said that he felt that he needed to apply for the variance first before going to the Town with a formal site plan of the property.

Mr. Thompson asked if there would be room enough for a septic system with the proposal of such a long building. Mr. DeRosa said yes as have been also speaking with engineers in the Town and also a septic designer with regards to the newer type septic systems that are smaller and work efficiently.

Mr. Thompson asked if there was anyone living in the property next door. Mr. DeRosa said he was unsure.

Mr. Mackey said that the property next door was just a business use.

Mr. Virr asked if the addition to the front was for a showroom. Mr. DeRosa said yes that the proposal shows a dotted line indicating the existing building and the removal of the 8' foot porch and square the area off. The building in the rear would be for a collision and repair shop.

Ms. Cormier asked if all the buildings would be demolished. Mr. DeRosa said yes as all the wiring and copper has been removed and did not feel his son would live in it in its current state. He said that he was hoping to salvage the foundation.

Mr. Fairbanks said that the previous owner applied for same variance and was denied and asked why this was different. Mr. DeRosa said that he was the new owner and that the proposal in 2003 was to make the front building a lot bigger than this request.

Mr. Virr asked what the setback requirements were. Mr. Mackey said that in the general commercial district the side setbacks were 20' feet and the lot width is only 75' feet.

Mr. Virr asked what the property located on the left was. Mr. DeRosa said that it was Recovery Solutions and the other was Ace Paving. The proposal would clean up the left side of the property and he believed that there was one truck currently being parked on his driveway.

There was some discussion with regard to the type of use that the proposed business use would be performed on the property.

Ms. Cormier asked if the 2 bedroom residence would be located on top of the showroom. Mr. DeRosa said yes and that building 2 would be located 3' feet from the lot line but if needed building 2 could be moved slightly to hold 4' feet from the lot line.

Ms. Cormier asked if facing the new building where is the other office located. Mr. DeRosa said that building #1 is where the building is currently now on the dotted line to the left is where the parking and backing out with the tow trucks now but will be speaking with them and investing in some shrubbery as their plowing has knocked over some of the arborvitae. He said that the driveway is located on the left side of the building and the rear area is their storage area for the recovered vehicles.

Mr. Virr asked if there was another way to relocate so it would meet the setbacks. Mr. DeRosa said that in speaking with the engineers where removing the building it would be advantages to keep at the 1' foot setback.

Mr. Osborn asked if removing all buildings. Mr. DeRosa said yes but proposing to utilize the foundation if it was possible to salvage.

Mr. Fairbanks said that the plot plan shows only 2' feet off lot line and rear shows 2'4" feet off lot line. Mr. DeRosa said that there is some question with the plot plan as it shown shows the driveway in the stream and shows a square property with 1.78 acres. He has been speaking with Tim Peloquin and possibly utilizing Promised Lane Surveyors for the site plan proposal.

Ms. Cormier asked with the stream on the property if there was any wetlands. Mr. DeRosa said the stream was located way out back and that the underground pipes to the culvert he said that he is aware that he may also need to speak with Conservation Commission when the site plan is laid out.

Opposed

No abutters were present.

Code Enforcement

Mr. Mackey said that the applicant's request is to square off and rebuild the existing single family structure and also add a 60' x 40' addition. Both structures will encroach into the 20' foot side setback requirement. The current parcel is zoned General Commercial and contains .34 acres and approximately 75' feet of frontage. The existing garage is proposed to be removed. The proposed use is for a single family/retail use in the existing building and a Collision Repair Business in the proposed addition. Article VI, Section 165-32B deals with the area and dimensional requirements in the General Commercial zone and Article XIII, Section 165-107A & B regulates the alteration and rebuilding of non-conforming structures. A previous variance request by the previous owner to raze and rebuild and enlarge the structure was denied in 2004. As an area variance is being requested, the Boccia hardship test will apply. These provisions are now contained in the application for a variance. If approved, Planning Board Site Review will be required. There are pictures in the file for the Board's review.

Favor

No abutters were present

Deliberative Session

Ms. Cormier said that she felt that the application meets all the criteria.

Mr. Thompson said that he felt that the proposal would be a big improvement for the property.

Mr. Virr reviewed the conditions for the Board.

Mr. Thompson motioned on case #09-109, Anthony DeRosa to Grant a Variance to terms of Article VI, Section 165-32B, Article XIII, Section 165-107A & B, to rebuild existing structure for single family/retail use within 4' of the side lot line & build 2400 sq. ft. addition for Collision Repair & Auto/Motorcycle restoration within 3' of the side lot line at 191 Rockingham Rd., tax map 03084. GC DISTRICT, as presented with the following conditions:

- 1. Subject to Planning Board approval.**
- 2. Subject to obtaining all Town and State permits.**
- 3. Construction to be completed within 2 years or variance shall be void.**

Seconded by Mr. Osborn.

Vote:

Mr. Osborn: Yes. Feel it meets the criteria and would be a good improvement.
Mr. Thompson: Yes. Feel it would be a good improvement for the property and it meets all the criteria.
Mr. Webb: Yes. Meets all the requirements.

Ms. Cormier: Yes. Feel all criteria have been met.
Mr. Virr: Yes. Feel hardship has been proven under the Boccia test.

The application was Granted by a vote of 5-0-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

Approval of Minutes

Ms. Cormier motioned to approve the April 16, 2009 minutes as amended.
Seconded by Mr. Thompson.

Vote: Unanimous

Mr. DeBonis, Mr. Fairbanks, Mr. Osborn, Mr. Webb, Mr. Dimmock, Ms. Cormier, Mr. Thompson, Mr. Virr

Mr. Thompson motioned to approve the May 7, 2009 minutes as written.
Seconded by Mr. Dimmock.

Vote: Unanimous

Mr. DeBonis, Mr. Fairbanks, Mr. Osborn, Mr. Webb, Mr. Dimmock, Ms. Cormier, Mr. Thompson, Mr. Virr

Other Business

Mr. Mackey asked the Board when they might wish to schedule a workshop with the Town Attorney.

Mr. Thompson said that he had had a discussion with Mr. Mackey to have a workshop with the Town Attorney so they could review & revise their Policy & Procedures.

Mr. Virr said that he wished to address the order of calling the order of the meeting.

Mr. Mackey said that with the Board having new members Attorney Steve Clark has typically come in to answer any questions that you may come up and assist the Board with any other concerns.

Mr. Dimmock said that the Board's Policy & Procedures needs to be in writing and then need to have a meeting to discuss. If we need to make any changes and if the Board has any questions then the Board can ask the Local Government Center as they are here to answer any questions. He said that he does not feel that the Board needs to bring in an Attorney when the Board has the local government center available free of charge.

There was some discussion with regard to when to hold the workshop and was determined that the Board would email each other with some better dates and times of availability.

Adjourn

Motion to adjourn by Mr. Thompson.

Seconded by Mr. Dimmock.

Vote: Unanimous.

Mr. DeBonis, Mr. Osborn, Mr. Webb, Mr. Dimmock, Ms. Cormier, Mr. Thompson, Mr. Virr

Adjourn at 10:27 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes June 18, 2009

Ms. Cormier motioned to approve the minutes of May 21, 2009 as amended.

Seconded by Mr. Dimmock.

Vote: Unanimous.

Mr. DeBonis, Mr. Osborn, Mr. Fairbanks, Mr. Webb, Mr. Dimmock, Ms. Cormier, Mr. Thompson, Mr. Virr