

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
September 16, 2010

Members Present

Allan Virr, Chairman
David Thompson, Vice Chairman
James Webb, Secretary
Cecile Cormier
Ernest Osborn

Members Absent

Alternates Present

Betsy Burtis

Alternates Absent

Michael Fairbanks
Stephen Popp
John DeBonis

Staff Present

Robert Mackey, Code Enforcement Director

Mr. Virr called the meeting to order at 7:01 p.m. with the salute to the flag, and notice of fire and handicap exits.

10-124 E.C.S. Realty, Inc.

Requests a variance to the terms of Article XII, Section 165-101C, to convert an existing sign to a 9' x 6' illuminated message and image sign at 53 South Main Street, Parcel ID 05052-001, GC District.

Attorney Brian Germaine, representing applicant, said that he was here tonight with Joe Squeglia, Principal of E.C.S. Realty which is located at the corner of Rockingham Road and Route 28 By-Pass operating as Auto Mart. He read the application for the Board. Attorney Germaine said that he believed that there was a committee reviewing the sign ordinance and that the sign being proposed is not one that will be streaming and feel that it would be no different than a poster which would not be in violation. He said that he felt that the proposal was tasteful and not seeking to be offensive. The Derry Fire Department sign changes every minute and a half which directly violates the ordinance. Attorney Germaine said that the picture submitted of the sign located at New Hampshire Speedway was similar to what the applicant was seeking to do. He said that he felt that Simplex test has been met and that hardship has been shown. Attorney Germaine said

that they were told by Code Enforcement that they would require a variance in order to allow this type of sign.

Mr. Thompson asked Mr. Mackey if the existing signs were prior to 2005. Mr. Mackey said yes. ~~Previous to the ordinance change and that they have added a passage that there would be no scrolling or flashing type messages which~~ the owners ~~have~~ had to submit a letter stating that ~~they~~ their signs would ~~comply with~~ not to scroll or flash more than one time per hour. He said that the ordinance has since been reworded to state no changing messages and computer generated images are no longer allowed.

Mr. Thompson asked if the Fire Department sign was allowed to do anything it wanted. Mr. Mackey said that the sign was used for public safety message. ~~usage.~~

Mr. Thompson asked why not repair the existing sign if it was falling apart. Attorney Germaine said that they could repair the sign but that due to the changing times feel that the proposed sign is more appropriate for their needs.

Mr. Thompson said that the ordinance was adopted in 2005 and until the ordinance says that they are allowed they can't allow it. Attorney Germaine said that he felt that the sign input was put in for public safety but other portable signs were not allowed. He feels that the proposal is tastefully done and that the applicant is seeking to create a friendly environment. The property is located in the general commercial district and not in a residential zone. Attorney Germaine said that other towns have streaming noise signs and feel that was what the ordinance was seeking to prohibit when they made the changes in 2005 ordinance.

Ms. Cormier said that portable signs were allowed by permit as stated ~~and~~ in the ordinance. She asked what size were the letters going to be on the sign and if they would mind a condition that they keep the background always be dark. Attorney Germaine said that the size ~~dimensions~~ he believed were on the on the print out and that the letters would be block type letters. He said that the background could change but would agree to a stipulation to keep the background dark if required.

There was some discussion with regard to the brightness and illumination.

Mr. Virr asked if the current sign was illuminated and if a restriction imposed that the sign be turned off at night. Mr. Squeglia said that the existing sign was currently illuminated and that they would like to be able to take advantage of the morning traffic so would need to discuss the condition with his partner.

Mr. Virr said that to replace the existing illuminated sign with a newer computerized illuminated sign may not be much of a difference.

Ms. Cormier asked if the sign was located on the Rockingham Road side and if the light would shine into the line of traffic which-it could pose a nuisance. Attorney Germaine said that the proposed sign was tasteful and ~~dido~~ not feel that it would pose ~~to be~~ a nuisance to traffic.

Mr. Squeglia said that there currently was a telephone pole near the sign which has a light that shines into their parking lot at night so he did not feel that the proposed sign would interfere with traffic at night.

Code Enforcement

Mr. Mackey said that applicant's request is to install an electronic image and message sign at the above referenced location. In 2005, Article XII, Section 165-101C of the Zoning Ordinance was modified to specifically prohibit electronic type message signs. Prior to that, these signs had been allowed as long as the sign did not continually scroll or change messages. Typically, the owner was required to not allow the sign to change messages more than once per hour. The language changed in 2005 by the Planning Board was intended to prohibit these signs altogether. Recently, an electronic message sign was installed at the Central Fire Station. This sign was exempt from the regulation due to the public service nature of the messaging. Currently, there is a sign ordinance subcommittee working with the Planning Board. It is possible that the regulations regarding electronic signs could be reviewed once more. There are pictures in the file for the Boards review.

Favor

Albert Dimmock, High Street, said that when he was a member of the Board that a similar case had been presented but wanted to change the display every 15 minutes or less and this applicant is seeking to only change one time per hour. He said that he felt that the request was reasonable and should be granted.

Opposed

No abutters were present.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Thompson.

Vote: Unanimous.

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

Deliberative Session

Mr. Osborn said that the area was completely a business related area and feels that the sign is very professional looking. He said that he would like to make a condition that the sign be subject to not making the intersection any brighter from the illumination of the sign.

Mr. Virr said that there was no way to restrict the brightness of the sign.

There was some discussion with regard to luminosity and the intersection.

Mr. Thompson asked Mr. Mackey if there was restrictions on the Derry Pizza sign. Mr. Mackey said that there were restrictions with regard to the brightness and that the sign could not change more than one time per hour.

Mr. Virr said that they could make a condition subject to only change one time per hour.

Mr. Osborn said that feel it would be easy to sit at the light and see the sign but would not want the same type of sign as located in Manchester.

Mr. Thompson said that he felt that unless there was a change in the ordinance then the Board could grant such a sign but until then feel that the they could not grant permission for this type of sign.

Mr. Webb said that he did not see where there was hardship as they already have an existing sign.

Mr. Virr said that he agreed that he also did not see where hardship was established.

Ms. Cormier said that if allowed it would possibly start a new trend and ~~did~~ not feel that the Board would want to set a precedent~~ee~~. She said that the ordinance clearly states no flashing, scrolling or computer generated signs and that the intersection is very well lit and that the applicant does have an illuminated sign presently. She did ~~Do~~ not feel it would meet~~be in~~ the spirit and intent of the ordinance.

There was some discussion with regard to setting precedence and frequency and brightness of the proposal.

Mr. Virr reviewed the conditions for the Board.

Mr. Virr motioned to come out of deliberative session.

Seconded by Mr. Thompson.

Vote: Unanimous.

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

Mr. Thompson asked the applicant what hours of operation would be appropriate to end speculation. Attorney Germaine said that the Boards suggestion of 5:00 am – 11:00 pm would be acceptable to the applicant.

Mr. Thompson motioned to go into deliberative session.

Seconded by Mr. Osborn.

Vote: Unanimous.

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

Mr. Osborn motioned on case #10-124, E.C.S. Realty, Inc., to Grant a variance to the terms of Article XII, Section 165-101C, to convert an existing sign to a 9' x 6' illuminated message and image sign at 53 South Main Street, Parcel ID 05052-001, GC District as presented with the following conditions:

- 1. No increase in light illumination at the intersection.**
- 2. Sign frequency may not change more than once per hour.**
- 3. Hours of illumination 5:00am to 11:00pm - 7 days a week.**
- 4. Subject to obtaining permits and inspections.**

Seconded by Mr. Thompson.

Vote:

Mr. Webb: No. Section 165-101C of the ordinance states that full resolution video display or computer generated video is prohibited. Do not see where hardship has been shown and do not feel that it would be in the public's best interest.

Mr. Thompson: No. For the same reasons as stated by Mr. Webb.

Mr. Osborn: Yes. Feel that the property is located in a business area and plus feel that it would benefit the area.

Ms. Cormier: No. Believe all of the criteria have not been met. Does not meet the Spirit and Intent of the ordinance. Believes that there are ~~other better~~ means ~~can~~ that can be done until there are changes to the ordinance to allow such a sign to be placed.

Mr. Virr: No. Concerns with regard to message frequency and problems with the brightness. Concerned that if granted would be setting a standard and do not see where hardship has been shown. Spirit and intent specifically prohibits such signage and until changed would have a problem with allowing this type of sign.

The application was Denied by a vote of 1-4-0. 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.

Other Business

Mr. Virr informed the Board that Mr. Gasing has regretfully submitted a letter of resignation. He said that if there was anyone interested in joining the Zoning Board of Adjustment that they had an opening to please submit letter of intent to the Town Clerk.

Approval of Minutes

Ms. Cormier asked if the minutes of August 19, 2010 could be tabled so that more information could be listed for the True case as it was missing some important facts.

Vote: Unanimous.

Ms. Burtis, Mr. Osborn, Ms. Cormier, Mr. Webb, Mr. Thompson, Mr. Virr.

Adjourn

Motion to adjourn by Ms. Cormier.

Seconded by Mr. Osborn.

Vote: Unanimous.

Ms. Burtis, Mr. Osborn, Ms. Cormier, Mr. Webb, Mr. Thompson, Mr. Virr.

Adjourn at 8:05 pm

Minutes transcribed by:
Ginny Rioux
Recording Clerk

Approval of Minutes October 7, 2010

Mr. Thompson motioned to approve the minutes of September 16, 2010 as amended.

Seconded by Mr. Webb.

Vote: Unanimous.

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