

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

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5 DATE: JANUARY 20, 2016
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7 CASE NO.: 1/20/2016-1
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9 APPLICANT: KAK REAL ESTATE HOLDINGS, LLC
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11 LOCATION: 80 PERKINS RD, 15-55, MUC
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13 BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN
14 JACKIE BENARD, VOTING MEMBER
15 JIM TIRABASSI, ACTING CLERK
16 JACKIE BENARD, VOTING MEMBER
17 NEIL DUNN, VOTING MEMBER
18 SUZANNE BRUNELLE, VOTING MEMBER
19 BILL BERARDINO, NON-VOTING ALTERNATE
20
21 ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING
22 ADMINISTRATOR/HEALTH OFFICER
23
24 REQUEST: VARIANCE TO ALLOW A 24' TALL SIGN WHERE NO SIGN SHALL EXCEED
25 10' IN HEIGHT BY SECTION 3.11.5.C.1.
26
27 PRESENTATION: J. TIRABASSI READ THE CASE INTO THE RECORD. TWO PREVIOUS CASES.
28 NO LETTERS.
29
30 JIM SMITH: Who will be presenting?
31
32 PETER MARCH: Good evening, Mr. Chairman. My name is Peter March, NH Signs, 60 Old Derry Road,
33 Londonderry.
34
35 JIM SMITH: Okay, before you go any further, Suzanne has a question...
36
37 SUZANNE BRUNELLE: Yes, I am an attorney with a law firm in Manchester, NH which is Devine, Millimet &
38 Branch. I did run conflicts based on the information that I had on the name of owner presented and we
39 didn't find one. However, looking at the documentation this evening, I see that it's Twins Smoke Shop.
40 There's some relationship between...and you may not know the answer to this...
41
42 PETER MARCH: Well, I have the owner here.
43
44 SUZANNE BRUNELLE: Okay.
45

46 PETER MARCH: The owner is here so...
47
48 SUZANNE BRUNELLE: Is there some relationship between the owner of the record and Twins Smoke shop?
49
50 UNIDENTIFIED AUDIENCE MEMBER: Yes.
51
52 SUZANNE BRUNELLE: Yes?
53
54 JIM SMITH: Okay, do you want to come up to a microphone?
55
56 KURT KENDALL: My name is Kurt Kendall, 9 Beacon Hill Road, Hooksett, NH, but I am the owner of both
57 corporations.
58
59 SUZANNE BRUNELLE: Okay, so are you familiar as Devine, Millimet as representing you in the past?
60
61 KURT KENDALL: No.
62
63 SUZANNE BRUNELLE: Okay.
64
65 JIM SMITH: Okay, are you...?
66
67 SUZANNE BRUNELLE: Satisfied?
68
69 JIM SMITH: Okay, we just want to clear that one point, so there wouldn't be any conflicts.
70
71 KURT KENDALL: Okay.
72
73 JIM SMITH: Okay, go ahead. The floor is yours.
74
75 PETER MARCH: Thank you. Chairman Smith asked me to talk loudly and slowly. He said I had an accent, but I
76 sort of deny that.
77
78 [Laughter]
79
80 JIM SMITH: Everybody has an accent.
81
82 PETER MARCH: Everybody has an accent, so if I'm not talking loudly enough, or slowly enough, please you
83 know...I'd be very happy to talk up. So this request, and I'm going to use the poster board which I'll put on
84 the floor once I've conveyed some of the pictures I need to convey. We're asking for a sign in an area that
85 has allowed a 10-foot high sign. We're asking for one that is 24 feet high. Basically, the location is at Junction
86 5 of 93. So Route 28, 93, Junction 5. The property is a wedge shape property, and I can bring this closer to
87 anyone who needs to see it. There's the property line there, and the building is in that location. We're
88 asking for a sign placement on the 93 side of the building, okay. The sign is within setback, and it's within the
89 require area, but we're merely asking for an increase in the allowable height. There are a number of other
90 signs in the area, and this picture shows a shell sign, and also a subway sign would be an equivalent height to

91 the sign that we are requesting. These pictures which I believe you have in your record actually shows the
92 sign we are requesting (24 feet high). It's 64 square foot where we are allowed 65, and as I said it's within
93 the correct setbacks. This gives an approximate location of the sign. This I took off Google Earth, and again
94 you can see from where the building is where we are locating the sign. Again, within setbacks. The location
95 was previously a real estate office and the current occupant has turned it into a retail and smoking lounge
96 operation. As I said, the land is wedged shaped, with the base of the wedge on the 93 side of the property.
97 The business attracts a large amount of traffic from 93 and this sign will be seen from the highway, and it will
98 serve to advertise the business to people on the highway and to people on Route 28. The other somewhat
99 unique part of the property is that the building is a large building and it's relatively close to the road, and it
100 serves to block the view...would lock the view of a smaller sign. So, that's one of the reasons we're asking for
101 a larger sign. So, to answer the five points...the first being granting this variance would not be contrary to
102 public interest – the zoning ordinance among other things that the purpose of the sign regs is to establish
103 uniform sign regulations for the installation and use of signs in the Town of Londonderry, and to protect and
104 improve the livability and quality of life in Londonderry through sign regulations that maintain and enhance
105 the appearance in the esthetic environment in Londonderry, control visual clutter and encourage high
106 professional standards on sign display, retains the Town's ability to attract and encourage business and
107 promote economic growth. As I said, this property is unusual in its located in a wedged shaped piece of land
108 with fairly poor visibility from 93, if one was to use a smaller sign, and also from the essentially the East
109 bound part of Route 28. The recent construction on 93 or the bridge on 93 basically also serves to block
110 visibility of people on 28 from the property and from any signage. The issues that the topography of the
111 building creates again site lines to the sign from the highway are limited and site lines from 28 headed East
112 and the need to maintain setbacks. There are several other signs in the area in fact the closest sign to the
113 sign that are approximately the same height. It's quite tough to measure other people's signs. So what we
114 did is we tried and scale them. We believe the Subway sign to be 24-25 feet. The Shell sign we believe to be
115 around 25 feet high. On the other side of the highway a similar type location the Sunoco is around 25 feet
116 and we believe Verani Realty is between 20-25 feet. So there's precedence for signs that close to the
117 highway being this high. We assume that public policy would allow an equitable use for this parcel as
118 compared to the other parcels in the area that are using higher signs. Secondly, the second point is that the
119 proposed use will observe the spirit of the ordinance. As I said, the spirit of the ordinance is essentially to
120 improve the livability/quality of life in Londonderry through sign regulations that among others attract and
121 maintain economic growth and promote a community image that's conducive to attracting new businesses
122 and industrial development. The setback and the area requirements are met in this particular case. It's
123 merely the height requirements we ask relief for...so in our opinion given the fact there are other signs in the
124 area that the Board has felt moved to grant height increases in the past that are not even actually as close to
125 93 as this one...we'd argue that the spirit of the ordinance would be served by granting this variance.
126 Substantial justice will be done to the property owner by granting the variance. The property owner would
127 be at a disadvantage if he was limited to a 10 foot high sign in this area. Really due to the proximately to 93
128 and also due to the location of the building on the lot which is a large building and it's close to the road. I
129 think if the property was maybe a mile or two further down the street I think it would be maybe a different
130 circumstance. For example, the Irving station on the other side of 93 is well served by a sign that is served by
131 a sign that is 10 feet high, but visibility is good for traffic in all locations and that different from this particular
132 location. The fourth point is that the proposed use would not diminish the values of surrounding properties.
133 I can't really see allowing the sign to having the sign having any effect on surrounding properties. It doesn't
134 create any more visual clutter than any of the other signs in the area. As I previously stated, the Shell sign,
135 the Subway sign, the Sunoco sign are all the same size and the Verani sign as well are pretty well all the same

136 size. So, the surrounding properties would not be adversely be impacted by this at all in terms of visibility or
137 clutter or any of the things that would serve to diminish property values. It's a well thought out design. It's
138 in our opinion, it's an attractive sign and it's probably more attractive than some of the other signs in the
139 area. It'll be brand new and will have a number of nice features. The final point is literal enforcement of the
140 provisions of the ordinance would result in an unnecessary hardship. The ordinance makes no provision for
141 any height differentiation depending on circumstances and obviously the vehicle of the variance is to make
142 that differentiation to allow us to present a case to ask you to differentiate. In this particular case because
143 it's an odd property it's located very close to 93 and it's wedged shaped with a building very close to the
144 street to me if we were forced to put a 10 foot sign up there the owner miss a large amount of potential
145 business coming off Route 93 in particular and also some business off of Route 28. Is that loud enough?
146

147 JIM SMITH: Is that it? Questions from the Board?
148

149 JACKIE BENARD: Can I see the...
150

151 PETER MARCH: Yes.
152

153 SUZANNE BRUNELLE: ...bottom page in there? I'm just trying to get a sense of where the sign is going to be?
154

155 PETER MARCH: Yes, it's roughly where that red...
156

157 [Overlapping Comments]
158

159 PETER MARCH: ...that's Route 28 [Indistinct]...
160

161 [Overlapping Comments]
162

163 SUZANNE BRUNELLE: That area is very congested with traffic so my concern is if you're putting that large sign
164 up and it's pretty colorful is that going to be a distraction to some drivers?
165

166 PETER MARCH: I don't believe so...
167

168 JIM SMITH: Make sure you on a mic.
169

170 PETER MARCH: ...I don't believe so. I mean one of the things that I think we've done is we've lifted the entire
171 sign up so there's very clear visibility under the sign to any traffic that may have its visibility blocked so we've
172 taken care of that.
173

174 SUZANNE BRUNELLE: What does the other side of the sign look like?
175

176 PETER MARCH: It's exactly the same.
177

178 SUZANNE BRUNELLE: Exactly the same both sides?
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180 PETER MARCH: Yes.

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182 SUZANNE BRUNELLE: Okay.
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184 NEIL DUNN: May I also...we don't have any of those pictures in the folder? We have half of them, I think?
185
186 PETER MARCH: I've generated some others so that's what the sign is.
187
188 NEIL DUNN: Yeah, that I'm good with, so if you go up to the one that had the location, so...
189
190 PETER MARCH: So, this is the current...that's actually taking off Google earth so the road has changed a bit
191 since then.
192
193 NEIL DUNN: Um hmm...
194
195 PETER MARCH: This red mark in there is the approximate location of the sign.
196
197 NEIL DUNN: ...but not the height?
198
199 PETER MARCH: No, It's not the height...this here...this again is taken off Google earth so that the aerial view.
200 This is the building here 93 runs...
201
202 NEIL DUNN: Um hmm...
203
204 PETER MARCH: ...both South...
205
206 NEIL DUNN: Um hmm...I know the location.
207
208 PETER MARCH: Okay, this is the actual plot plan of the lot so you can see it's like a wedge shaped lot and that
209 there is [Indistinct].
210
211 JIM SMITH: It's the Verani's old office building.
212
213 NEIL DUNN: No, yeah, I know what it is...
214
215 JIM TIRABASSI: Is the sign going East/West or North/South?
216
217 [Overlapping]
218
219 JIM TIRABASSI: Is it flush or parallel to the building?
220
221 PETER MARCH: It'll be that way.
222
223 JIM TIRABASSI: Okay.
224
225 JIM SMITH: Right angle is to the road.

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SUZANNE BRUNELLE: So, one of the pictures that we do have in our set other side is this one here...that's not where it's going to be though?

PETER MARCH: That is approximately where it's going to be. Sometimes it's tough to take it and put it in a real location...

SUZANNE BRUNELLE: Okay, I don't see how that represents where that at all? It's two different parts of the building?

PETER MARCH: Well you're taking a shot from this end here.

SUZANNE BRUNELLE: So, this Twins sign here that's here is actually located on this side of the building?

PETER MARCH: That's correct yes.

SUZANNE BRUNELLE: Okay, so you have two signs?

PETER MARCH: So this shot here is [Indistinct]...

SUZANNE BRUNELLE: Okay.

NEIL DUNN: If I may, do you know how high...up the roadway is on 93 relative to this sign?

PETER MARCH: I actually don't. My...if I was guessing I would say probably the base of the highway would be 15 feet off grade maybe? Maybe Richard can help me with that? The roadway is probably another...10 feet or 8 feet above that?

SUZANNE BRUNELLE: Okay.

PETER MARCH: I...

NEIL DUNN: I guess I...the reason I'm asking is because it attracts customers from 93 and you're trying to I guess make them aware and it seems to me that 93 is quite a bit higher than that and...

PETER MARCH: I mean I know that the Subway sign was built so that you can see it from 93 and you can you know somewhat see it...this sign is closer to 93 than Subway and we believe that you'll be able to get a decent visibility...decent view of it?

NEIL DUNN: Strictly for advertising because by the time they see it they've past the exit.

PETER MARCH: The hope is if they pass it and they've passed the exit they will see it and say there's smoke shop there...you know we'll come back next time were in the area. So, it's not necessary direction it's more advertising the presence of a smoke shop.

271 BILL BERNADINO: Alright so we're looking...the base of the building is on...on ramp is right after the building
272 right?
273
274 PETER MARCH: I'm sorry sir?
275
276 BILL BERNADINO: The on ramp? You've got an off ramp on one side?
277
278 PETER MARCH: Yeah, that's correct yeah.
279
280 BILL BERNADINO: So the building would be on the on ramp side?
281
282 PETER MARCH: The building is on the on ramp side heading South.
283
284 BILL BERNADINO: Okay.
285
286 PETER MARCH: Would you like me to point that out?
287
288 BILL BERNADINO: No, no I have the picture right here.
289
290 JIM SMITH: A question for Richard? Before we had the 10 foot height sign thing, what was the height for?
291
292 RICHARD CANUEL: The ordinance has been changed a number of times over the years. I mean, it was at one
293 point the ordinance allowed a sign height of 30 feet, so I forget when it was actually reduced to 10 feet
294 maybe 10 years or so ago?
295
296 JIM SMITH: Okay, the point I'm trying to get to is a lot of the signs that you're referencing were installed
297 before the 10 foot limit came into effect.
298
299 PETER MARCH: The Subway would be an exception. The Subway was put in probably five years ago.
300
301 RICHARD CANUEL: That was granted with a variance.
302
303 JIM SMITH: Okay.'
304
305 PETER MARCH: So the Shell sign I can't comment on. I imagine Verani is probably new? It looks to me like a
306 newer sign?
307
308 JIM SMITH: The Verani sign he's talking...
309
310 RICHARD CANUEL: The Verani sign [Indistinct] 10 years plus?
311
312 PETER MARCH: Okay.
313
314 [Overlapping Comments]
315

316 JIM SMITH: I think what happened that you are referring to it had to be relocated because of the
317 construction of the North bound on ramp.

318
319 PETER MARCH: Okay.

320
321 JIM SMITH: So they did get a variance for part of that not the height.

322
323 PETER MARCH: Okay.

324
325 JIM SMITH: So again part of what you're comparing to are signs where through various
326 mechanisms...Suzanne anything else?

327
328 SUZANNE BRUNELLE: I just I appreciate the height of the sign as I actually thing the advantage point is better
329 but again you're putting a sign in a spot that's already a very busy area and the traffic there particularly
330 during rush hour is very difficult. It backs up on to that street that runs across to the front of it. I'm not going
331 to know that name of that street and people are stuck there trying to take a left across two lanes of traffic.
332 So, I just want to make sure from a safety perspective that that sign is going to be okay.

333
334 PETER MARCH: If we were to be limited to 10 foot...a 10 foot high sign 65 square feet which we would be
335 able to pull a permit tomorrow that would be right on the ground.

336
337 SUZANNE BRUNELLE: Right.

338
339 PETER MARCH: It would give no one any visibility past the sign in fact I'd argue either like if we went by code
340 the sign that we would be putting in would make things worse for people getting on and off the ramp
341 because you couldn't see under it. You can't see around it. At least this one is way up in the air and you
342 can...you know see around the pole covers or the legs of the sign. You can...so there's clear traffic visibility in
343 my opinion.

344
345 JIM SMITH: Anything else from the Board at this point?

346
347 JACKIE BENARD: You know you mentioned Subway and even the height of the Subway sign if you wouldn't
348 notice it getting...you wouldn't get off that ramp to find that Subway? I tend...to find that it's missed. You're
349 sign height and trying to turn left and trying to get into Subway and crossing traffic and all those wonderful
350 things you do make a valid point that you're sign is high and that it can be spotted so if someone was actually
351 looking for your smoke shop...I think your...that's a big positive that I see here versus a negative because if
352 someone is trying to find you you're going to be readily spotted. Whereas, I know with the Subway that you
353 used I've seen more people do one of these...oh there's Subway and actually more or less cause an accident.
354 So, I have to agree with you on that...

355
356 PETER MARCH: Thank you.

357
358 JACKIE BERNARD: ...and being lower, I think you're going to create more of a problem so it's not going to be
359 lit?

360

361 PETER MARCH: Yes, it is an illuminated sign Ma'am.
362
363 JACKIE BERNARD: Okay, both sides will be illuminated?
364
365 PETER MARCH: That's correct, yes.
366
367 JACKIE BERNARD: Okay.
368
369 NEIL DUNN: If I may, Mr. Chairman? So, the...if you're within the setbacks and the sign will be on the on
370 ramp headed South on 93 then there's...I don't really see where there's...there would be a pending blockage
371 at the lower height? I mean I understand what you are saying and it's clear, but if you're within your setbacks
372 looking at the drawing of it so to speak, I'm not quite sure where that creates a hazard, or an issue because
373 you're so set back from the road?
374
375 PETER MARCH: I think it's a matter of degree. I think if you...I don't think really either would necessarily
376 cause that much of a traffic issue. The reason we are asking for it is for visibility so that's really the nature of
377 the request.
378
379 JIM SMITH: Any other questions? If not, anyone in favor of this request? Anyone having questions or in
380 opposition?
381
382 JIM TIRABASSI: Yeah, I have a question based on what he just said...
383
384 JIM SMITH: Okay.
385
386 JIM TIRABASSI: ...and what Neil had said. Just...you had mentioned before when somebody asked you the
387 elevation of 93 (the grade) and you took an approximate figure what determined the 20 feet would be the
388 optimal height of visibility?
389
390 PETER MARCH: We looked at it from driving down 93 so we did that. We looked at it from the off ramp. We
391 also looked at other signs in the area and got an idea of scale of what you know other people have done. You
392 know there were a number of factors related as to why we decided to go with this particular height. It's not a
393 particularly scientific approach but it seems to us to be in line with other signs in the area. In line with a sign
394 that could be seen if not necessarily by traffic right there but certainly traffic off the off ramp. Certainly, the
395 traffic off of the off ramp. Certainly, traffic actually on the bridge heading South and certainly traffic heading
396 North of the bridge. So, it wasn't particularly a scientific approach but as I said most of the other signs in that
397 area pretty well the same height and it in our opinion it gave us better visibility.
398
399 NEIL DUNN: Do you know how high the building is?
400
401 PETER MARCH: I don't.
402
403 NEIL DUNN: I'm just trying to get perspective on...looking at the diagram or the picture here that you have it
404 imposed on or whatever it looks as almost as tall as the building and it kind of the scale looks awful large to
405 me so I'm just trying to get a real feel for...it looks like it's as big as the building?

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PETER MARCH: Unfortunately, as I mentioned to Ms. Brunelle, it's sometime quite difficult to superimpose a sign and get an accurate...

NEIL DUNN: No, I understand to be fair I...that's why I was trying to get a sense of how tall the building is?

PETER MARCH: I'm assuming that the building is lower than the sign. I mean certainly the sign does not tower over the building. The building is a two story building with...and it's built up off grade to some degree.

SUZANNE BRUNELLE: I guess the only other question if I may. Is the height of that sign blocking anything as it relates to access signs to 93? I do not see anything in the picture there but.

PETER MARCH: It is not going to block anything.

SUZANNE BRUNELLE: Ok. Do we know the distance from where the property is located and that on ramp?

[OVERLAPPING COMMENTS]

JIM SMITH: It is not really a two story building; it is not really a one story building

SUZANNE: Yeah, there is really no way...you can't tell by this.

[OVERLAPPING COMMENTS]

JIM SMITH: That is why there is a whole difference area...

[OVERLAPPING COMMENTS]

SUZANNE BRUNELLE: Thank you.

PETER MARCH: The sign is...

[OVERLAPPING COMMENTS]

SUZANNE BRUNELLE: I am concerned about the top of the sign hiding anything that will identify getting onto 93.

[INAUDIBLE]

PETER MARCH: ...that says 340....

SUZANNE BRUNELLE: Yep...

[INAUDIBLE]

451 JIM SMITH: Ok, any other questions from the board. Anything else from the audience? Richard, do you have
452 any idea of the height of the building?
453

454 RICHARD CANUEL: I am just trying to take a look at that on the site plan to make a determination based on
455 the elevations of the existing...elevations of the floor. It looks like the building is 24 feet in height to the eves
456 of the roof not counting the peak...about 24 feet.
457

458 JIM SMITH: So, the picture they have is a little bit misleading.
459

460 [INAUDIBLE]
461

462 JIM SMITH: So you are saying the eve is approximately the same height as this.
463

464 PETER MARCH: There is an element of trying to create a perspective on the drawing.
465

466 JIM SMITH: Does that answer your question?
467

468 RICHARD CANUEL: It helps. I mean looking at it their drawing makes me wonder and
469

470 JIM SMITH: It is a picture and...
471

472 SUZANNE BRUNELLE: It is not to scale.
473

474 RICHARD CANUEL: Right, but it comes back and get us later when we don't say...oh well...you know.
475

476 JIM SMITH: Ok, if we have no other comments, questions.
477

478 PETER MARCH: Ok, may I make one other comment. That is it is no higher than any of the other signs in the
479 area so there is nothing to tower over any other signs.
480

481 JIM SMITH: And that being said, I am going to close the public hearing and take this matter under
482 advisement and we will discuss...the floor is open. Neil, what is your thoughts.
483

484 **DELIBERATIONS:**
485

486 NEIL DUNN: Well, I am trying to go through the points and that is why I am wondering why the visibility from
487 the highway.. I do not think we should as a town that we are really trying to pull people off highways. As far
488 as the aesthetics go and then the next thing, you know, we are trying to keep away from the billboards that
489 are out there...I don't know at this point I think I'm still reading trough the five points so...
490

491 JIM SMITH: Okay. Jackie, what's your thoughts?
492

493 JACKIE BERNARD: Well, 28 is built up over there. It's...everybody that's in that corridor has the same
494 aesthetics. The improvement, it's all improvement. I don't see this as being different as what's currently
495 there and what's already been variance? Granted the picture is not to scale so when you first look at our

496 packet, it appears it's very large and overpowering the existing building and when in fact it is not. So, you
497 know I don't see anything out of the ordinary allowing this in this corridor in this whole sector. Going
498 through the five points of law, I think we can draw that out.

499
500 JIM SMITH: Okay, Jim any comments?

501
502 JIM TIRABASSI: No, I kind of agree with Jackie. It's staying in synch with all the other signs that seem to be
503 within that area with the Subway, with the Verani with the new gas station that was put up. It all seems to
504 be into that thing. The signs are not overly obtrusive. They are high enough that there's a site...there's
505 clearance through everything. It's not obstructionable, or obstructions in travel. There doesn't seem to be
506 anything there that it blocks safety, or access, or egress with anything.

507
508 BILL BERARDINO: I'm agreeable to them...said it all.

509
510 JIM SMITH: Suzanne do you have anything?

511
512 SUZANNE BRUNELLE: I would have liked to see a picture with the proposed sign heading towards the onramp
513 so that we can make sure that there isn't going to be any blockage there. Again, my concern is it's a very
514 congested area and adding a very attractive sign is just going to be another source of distraction to the
515 drivers in that area.

516
517 JIM SMITH: I kind of like the idea that it's high and there is a lot of open area below it.

518
519 SUZANNE BRUNELLE: Yeah, my only concern is that if there's 93 signs up high to get on that onramp you're
520 not going to see it if that sign is blocking it, but I can't tell.

521
522 JIM SMITH: Why don't we go through the five points of law.

523
524 JACKIE BENARD: The variance will not be contrary to the public interest. So, granting the variance would or
525 would not be contrary to the public interest because...?

526
527 NEIL DUNN: I guess the only issue I am having with one is that it gets back to the aesthetics and that's why
528 we...although there are other signs in that area that are high. I think that Richard's made a valid point that
529 when some of those went in those restrictions weren't there. There were different height limits and so I start
530 looking at the aesthetics of Londonderry and then on the applicant's own submittal Item B maintain and
531 enhance appearance in aesthetics and then D to control clutter and I'm kind of with Suzanne. I'm trying to
532 put it into perspective and that's why I was concerned about the height. Is it looking like clutter up there in
533 the sky like a lollipop? You know short of flying a flag or putting up something there temporary, I don't know
534 if I have a good handle personally on it. It is a crazy busy intersection and I don't know, I'm having a little
535 trouble...one just from that point of view, we don't know enough, we don't have enough views. I did drive by
536 there and without knowing exactly where the sign was going and getting a perspective it's really hard to tell.
537 So, I'm having a little issue with it just Item one.

538
539 JIM SMITH: Okay, here's...

541 JACKIE BENARD: Well, may I make also another point? Entry to this piece of property is on Perkins Road.
542
543 NEIL DUNN: It's all the way around the other side.
544
545 JACKIE BENARD: It's all the way around the other side. You know so we could play devil's advocate here and
546 say will that sign actually help versus being lower at that 10 foot and saying how do we get in. He's got a
547 unique piece here where he...it's forcing the issue to...for the person seeking this business, they can only get
548 in through Perkins Road.
549
550 NEIL DUNN: Which might argue its more clutter there then putting it over near the side over near the
551 entrance would be or something?
552
553 JACKIE BENARD: Oh, I see what you mean. Locating it on the other side?
554
555 NEIL DUNN: Yeah, although I guess it would give them the visibility they are after from the highway. So,
556 again...
557
558 JACKIE BENARD: Well because behind them on Perkins is the Hotel to...
559
560 NEIL DUNN: Yeah, but...
561
562 JACKIE BENARD: So, you know people are looking for a place to stay to so there's...you know what I mean,
563 how they attract their customer because they also only have entry only on Perking Road?
564
565 JIM SMITH: It is an odd shaped lot though...
566
567 JACKIE BENARD: Yeah.
568
569 JIM SMITH: ...and the building is placed in a...you have a parking lot between the building and the Perkins
570 Road side.
571
572 JACKIE BENARD: Yeah.
573
574 JIM SMITH: So, if they were going to put that they'd have to put it in the middle of their parking lot.
575
576 NEIL DUNN: Or, on the corner of their parking lot where it might be more guidance into the facility?
577
578 SUZANNE BRUNELLE: Well, that's what hit looks like in this picture and in that case it takes away all of your
579 issues with safety and along the side of the road.
580
581 NEIL DUNN: And it's more directional as getting them closer to the entrance. I don't know that's...
582
583 SUZANNE BRUNELLE: Well, I don't know if it's closer to the entrance but...
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585 NEIL DUNN: Well, I mean...

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SUZANNE BRUNELLE: ...it is to attract it from the highway it...why does it have to be on that side of the building why couldn't be on the other side of the building?

JIM SMITH: Yeah.

JACKIE BENARD: Well, if it goes on to the other side in the back...of the approximate height by Richard's calculation that's to the eve...

SUZANNE BRUNELLE: Um hmm.

JACKIE BENARD: ...so that doesn't include to the very peak and you have that tall peak in one of our photos here. So you may not even see it you'd actually probably bypass Perkins and have to turn around or as so many tend to slam on the breaks because they've just missed that left hand turn...you know just making sure we don't cause that kind of reaction there either. I mean, going down 28 how many times do you see people you know slamming on their breaks because they need to get into Dunkin Donuts on the left?

JIM SMITH: I keep thinking. Richard, maybe you can answer this? Is there a sign on that lot and off premise sign or anything?

[Overlapping Comments]

RICHARD CANUEL: No, not that I'm aware of, no.

JIM SMITH: Seems like there was a case a while back that they were trying to put a sign on that corner?

RICHARD CANUEL: No, well there isn't one there presently.

JIM SMITH: No, okay.

NEIL DUNN: Two to two?

JIM SMITH: Okay, so we're kind of split on number one. I think the size, the shape of the lot kind of makes it a unusual lot you know the placement of the building. Okay, let's take a look at number two.

JACKIE BERNARD: The spirit of the ordinance is observed. So, the spirit of the ordinance would or would not be observed because...?

NEIL DUNN: The only issue I have there is that he said it does not contribute to clutter. Now I'm trying to figure out if it does but that's...you know...

JACKIE BERNARD: Well, I think because...

NEIL DUNN: ...I guess subjective?

631 JACKIE BENARD: ..I know and its...
632
633 JIM SMITH: Well, when you talk about clutter the size of the sign is meeting the requirement which I believe
634 is 65 square feet?
635
636 JACKIE BENARD: Yes.
637
638 [Overlapping Comments]
639
640 JIM SMITH: So, whether its 24 feet up in the air or 10 feet off the ground, it's still going to be 65 square feet.
641
642 NEIL DUNN: Right, but...
643
644 JIM SMITH: So, the only thing we're talking about is whether it's elevated so it's a little more visible or
645 dropped down to the point where it's potentially creating a visual problem of people driving by because they
646 can't see through the sign. You know, and again we're not talking about the overall...look of the sign.
647
648 NEIL DUNN: No, no absolutely not.
649
650 JIM SMITH: So...
651
652 NEIL DUNN: No, I understand that.
653
654 JIM SMITH: ...So, and again when you look at this part it says "retains the Town's ability to attract and
655 encourage economic development and growth". Part of what goes into that is to be competitive with what is
656 in the neighborhood. So, if every other sign in that general area is about this same height...
657
658 NEIL DUNN: We should change the ordinance?
659
660 JIM SMITH: Well, we didn't make it retroactive, so I mean all those signs are there either through a variance
661 or because they were conforming at the time. The only way what you could get to with what you're
662 suggesting would be every time somebody changed their sign would have it reduced to 10 feet.
663
664 NEIL DUNN: No, no, no...
665
666 JIM SMITH: Which I don't think is going to happen?
667
668 NEIL DUNN: No, and that is not what I am saying because that's not what the ordinance would require unless
669 they changed dramatically copy and all that. However, the ordinance is codified and written just trying to
670 see...to me over on that corner next to 93 like a lollipop where I don't see it, or we wouldn't be able to tell
671 unless we did some kind of demonstration. To me, it looks more like an advertisement for the highway on 93
672 and more like clutter than our standard aesthetics with a lower sign. It's a beautiful sign. It's well done, but
673 maybe on that other side closer to Perkins Road where it would bring more value to that's where you are
674 going. That's what my perspective is and of course you can't go back and change all the other signs. So

675 again, just going through the points that's where I had issues. If we want, we can continue stuff...I mean this
676 business was across the street with much smaller signs and much smaller buildings closer to the road so...?
677

678 JACKIE BENARD: Well, even when you're on 28 too because of its odd shape where it is and where it sits
679 that's what I keep getting drawn back to. It's a very unique parcel and when...I believe it was Verani?
680

681 JIM SMITH: Yeah, it was.
682

683 JACKIE BENARD: Was there...a lot of people would look for it and miss it because it was just that irregular
684 parcel. So, I'm leaning towards understanding why they're asking for this because of its uniqueness and
685 some of the difficulties that they're going to have having this business here and making sure that people
686 know where it is. Again, it's Perkins Road only and you're sort of...they're up, they're up on that higher grade.
687 They're not down below like the Shell, or the...
688

689 [Overlapping Comments]
690

691 JACKIE BENARD: ...Dunkin Donuts. They're not...seems that they're not at the same elevation as all the
692 others that you can freely see. Should I go on to number three?
693

694 JIM SMITH: Yeah, then we can go back and we will...?
695

696 JACKIE BENARD: Okay, we can come back? Granting the variance would or would not do substantial justice?
697

698 SUZANNE BRUNELLE: Well, it's interesting because the uniqueness of the property is number five which is
699 usually the toughest hurdle for everyone to get over and that one I think you've clearly met in my point.
700

701 JACKIE BENARD: Yeah.
702

703 SUZANNE BRUNELLE: But the other items interestingly enough were difficult.
704

705 JIM SMITH: Well, you don't... I think one of the problems in [Long Silent Pause].
706

707 JACKIE BENARD: Well, when you go to number four the values of surrounding properties are not diminished.
708 So, for the following reasons the values of the surrounding properties would or would not be diminished?
709

710 JIM SMITH: I don't think so.
711

712 NEIL DUNN: I'd be fine with that.
713

714 JACKIE BENARD: I'd be fine that it would not be diminished. Okay.
715

716 [Long Silent Pause]
717

718 JACKIE BENARD: And then five?
719

720 JIM SMITH: Well, the unusual shape of the lot and large building and the location of the building lot.
721
722 NEIL DUNN: But that's not what he's...he has not stated that. I mean, it's true...
723
724 JIM SMITH: Yeah, well the picture shows it.
725
726 JACKIE BENARD: I mean he may not have stated it in his argument, but he clearly has shown even with the
727 topographical that he gave to us what they're up against.
728
729 JIM SMITH: Well, again part of the problem I have with the 10 foot limit is no vision for any variation based
730 upon any geographical situation. The one that always sticks out is the drug store down there at the corner.
731 Clearly the 10 foot sign – it's invisible and their should have been some provision to...
732
733 JACKIE BENARD: Yeah.
734
735 JIM SMITH: ...allow for that type of situation and to simply state 10 feet is the only height an acceptable sign
736 can be just seems somewhat arbitrary. I know that's the way it's written but I think that's where we come
737 into play. We have to try to look at what's the neighbors like, what else is around that area and the general
738 geographical layout of the area and so forth to try to determine whether the 10 foot height is...how would
739 you say an acceptable height for a sign in that particular location. I'm not saying every sign should be more
740 than 10 feet, but in some locations 10 feet you might as well not even put the sign up.
741
742 NEIL DUNN: Oh absolutely, we run into that all the time. It's probably the most requested variance there is.
743 It's all the reference to the highway and to me it's looking like a popsicle a lollipop or something trying to get
744 the highway and I don't think that's what we're after aesthetically and from the points of law but there's five
745 of us here so...?
746
747 JIM SMITH: Okay, why don't we...here's how we'll do it. Let's look at number one and I want to get a
748 consensus of what everybody said. Okay, on number one Jim what do you think?
749
750 JIM TIRABASSI: Ahh granting the variance...
751
752 JIM SMITH: What?
753
754 JIM TIRABASSI: ...No, no...I'm just re-reading...
755
756 JIM SMITH: ...Neil jumped in here what do you think of number one?
757
758 JIM TIRABASSI: Yes, oh yeah, yes it does, yes.
759
760 JIM SMITH: Jim says yes.
761
762 NEIL DUNN: I saw no. I think it would be better located...I'm not trying to arguing against...
763
764 JIM SMITH: Okay, I know, I'm just trying to get a...okay...

765
766 NEIL DUNN: Yup, no, yeah, I know.
767
768 JIM SMITH: Jackie what is your point?
769
770 JACKIE BENARD: Would not be contrary.
771
772 JIM SMITH: Would not be...
773
774 JACKIE BENARD: Nope.
775
776 JIM SMITH: Suzanne? Suzanne?
777
778 SUZANNE BRUNELLE: I' know sorry. I'm having a tough time with number one as well. I will say it is not. It is
779 not contrary against the public interest.
780
781 JIM SMITH: We have two against two...four...I think it has. So, that's three on number one. Number two just
782 to get an idea of where we stand. Proposed use will observe the spirit of the ordinance Jim?
783
784 JIM TIRABASSI: The spirit of the ord...I think would be observed.
785
786 JIM SMITH: Would be observed, okay. Neil?
787
788 NEIL DUNN: Not based on his word agenda fact that they're tying together no.
789
790 JIM SMITH: No. Jackie?
791
792 JACKIE BENARD: Would.
793
794 JIM SMITH: Would. Suzanne?
795
796 SUZANNE BRUNELLE: Would not.
797
798 JIM SMITH: Would not. I tend to think they have because part of what we're looking for...we're trying to
799 encourage economic development growth. We're trying to promote, so we've got to give them a way of
800 advertising. So, it' still three two. Number three, so substantial justice will be done to the property owners
801 by granting the variance?
802
803 JIM TIRABASSI: Would.
804
805 JIM SMITH: Would.
806
807 JIM TIRABASSI: Would be...
808
809 JIM SMITH: Neil?

810
811 NEIL DUNN: Yeah, I guess.
812
813 JIM SMITH: Neil says yes.
814
815 JACKIE BENARD: Would.
816
817 SUZANNE BRUNELLE: Would
818
819 JIM SMITH: So we've got five zero on that one. So, we have one that we agree on. Alright number four the
820 proposed us would or would not diminish the values of surrounding properties.
821
822 JIM TIRABASSI: Would not.
823
824 JIM SMITH: Would not.
825
826 NEIL DUNN: Would not.
827
828 JACKIE BENARD: Would not.
829
830 SUZANNE BRUNELLE: Would not.
831
832 JIM SMITH: Would not. Literal enforcement of the provisions of the ordinance would result in an
833 unnecessary hardship? Jim? Maybe I should put a timer on this?
834
835 JIM TIRABASSI: This is like I feel like I'm playing chess.
836
837 JIM SMITH: Usually, on an unnecessary hardship you're looking at the lot...
838
839 JIM TIRABASSI: Right.
840
841 JIM SMITH: whether it's different from other things and so forth...
842
843 NEIL DUNN: Right, but we're...it's relative to the setbacks and this isn't really a setbacks issue.
844
845 JIM SMITH: Right.
846
847 NEIL DUNN: To me, I don't see where that...
848
849 JIM SMITH: Yeah, okay...
850
851 NEIL DUNN: Yeah. I'm sorry you were...
852
853 JIM TIRABASSI: No, I'm trying to balance between a couple of different things here and...so to give you more
854 time...Neil?

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JIM SMITH: Neil, I think you've made up your mind?

NEIL DUNN: The height I don't see as a hardship of the shape of the property or again, it's getting back to whether 10 feet is right or wrong is my issue with it so I don't think it's an unnecessary hardship.

JIM SMITH: So, you're not. Jackie?

JACKIE BENARD: I say it's a unnecessary hardship.

JIM SMITH: You say it's a hardship? Suzanne?

SUZANNE BRUNELLE: I do too.

JIM SMITH: Two, I would go that way and which way are you going to go?

JIM TIRABASSI: I say it would be a hardship.

JIM SMITH: So, we've got four. Ok, so out of the five points, we a couple they agree they all meet and we've got several where it's a three two situation. Based upon that, I would entertain a motion one way or the other. Who wants to make it?

JACKIE BENARD: I'll make the motion Mr. Chairman...

JIM SMITH: Okay.

JACKIE BENARD: ...Mr. Chairman, I would like to make the motion to grant the variance to allow a 24 foot tall sign on Case No. 1/20/2016-1.

JIM SMITH: Do I have a second?

JIM TIRABASSI: Second

JIM SMITH: All those in favor?

AYE: Three in favor.

NAY: Two in opposition.

RESULTS:

THE MOTION TO GRANT CASE NO. 1/20/2016-1 WAS APPROVED, 3-2-0.

RESPECTFULLY SUBMITTED,

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Jim Tirabassi

JIM TIRABASSI, ACTING CLERK

TYPED AND TRANSCRIBED BY, PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT SECRETARY.

APPROVED (FEBRUARY 17, 2016) WITH A MOTION MADE BY N. DUNN, SECONDED BY J. BENARD AND APPROVED -0-0.