

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

DATE: OCTOBER 21, 2015

CASE NO.: CASE NO. 10/21/2015-2

APPLICANT: BALLINGER PROPERTIES, LLC AND
FIVE-N-ASSOCIATES GENERAL PARTNERSHIP
20 TRAFALGAR SQUARE, SUITE 602
NASHUA, NH 03063

LOCATION: 30 INDUSTRIAL DRIVE; 28-17-4; GB

BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN
JACKIE BENARD, VOTING MEMBER
NEIL DUNN, VOTING MEMBER
DAVE PAQUETTE, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING
ADMINISTRATOR/HEALTH OFFICER

REQUEST: VARIANCE TO ALLOW A SECOND WALL SIGN WHERE ONLY ONE WALL
SIGN IS ALLOWED BY SECTION 2.7.2.I AND SECTION 3.11.6.D.5.b.

PRESENTATION: D. PAQUETTE READ THE CASE INTO THE RECORD. ONE PREVIOUS CASE.
NO LETTERS READ INTO THE RECORD.

JIM SMITH: Okay, who will be presenting?

NEIL DUNN: Do you want to give them the option of...?

JACKIE BENARD: Yeah.

JIM SMITH: Okay.

JACKIE BENARD: Mr. Chairman, at this time, I'd like to either ask the Board and the Applicant if they feel that I should be recused because of being an employee of Milton Caterpillar, which this is the business owner. If anyone has a problem with that? If I should remain, or if I should recuse?

JIM SMITH: I think you should.

JACKIE BENARD: Recuse?

46 JIM SMITH: Yeah. Having gone through that, we are now down to three people. We will give you the option
47 of waiting until next month when hopefully we'd have five people, or more?
48

49 [Overlapping comments]
50

51 BRAD FARRIN: I'm Brad Farrin, a Corporate Facilities Manager for Milton CAT. We feel that this is a pretty
52 straight forward request and would like to present it to you and take the comments from there.
53

54 JIM SMITH: Well, you understand the problem if you have less than three positive votes...?
55

56 BRAD FARRIN: Understood.
57

58 JIM SMITH: And, also I think the other...implication about...once the case is heard and voted on you can't
59 come back and reapply because that issue has been settled.
60

61 BRAD FARRIN: Understood.
62

63 JIM SMITH: So, I would strongly urge you not to proceed, but it's your choice. I mean you really...you know,
64 I'm not trying to twist your arm, but you really kind of limiting your options at this point. If for some reason,
65 it was denied, the only option you'd have left is to ask for a rehearing.
66

67 BRAD FARRIN: Mr. Chair, I appreciate that very much and we've had a great working relationship with the
68 Town and the Board through this process, and I really probably should defer to your recommendation to
69 postpone for a month.
70

71 JIM SMITH: Okay, just wanted to make sure you're fully informed. Okay, you can proceed with your
72 presentation.
73

74 BRAD FARRIN: Okay, again my name is Brad Farrin, I'm the Corporate Facilities Manager for Milton CAT. I
75 think it was a little over a year ago, we were here on the joining of the properties as before, and construction
76 is well underway and moving towards an opening date. I have Ethan Flinkstrom from Colby Company who is
77 our engineering firm who helped prepare the application, and I'm going to turn it over to Ethan to explain
78 exactly what it is that we are looking for this evening.
79

80 ETHAN FLINKSTROM : Yes, good evening. So, as you know Milton CAT is building a brand new facility. It's
81 about 108,000 sq. ft. down on Industrial Drive and the current design shows we have two wall signs whereas
82 the zoning ordinance only allows one at a maximum of a 100 sq. ft. Our current design shows, as you can see
83 down here on the printouts (see Exhibit #1). It's a little bit larger. We're showing two signs. Two smaller
84 signs for a total of 72 sq. ft. So, we have two 3x12 signs up there. So, this would be in lieu of one large 100
85 sq. ft. sign. We're putting two smaller ones.
86

87 NEIL DUNN: Could you do the numbers on that again? The square footage? Please.
88

89 ETHAN FLINKSTROM: 72 sq. ft. total for both.
90

91 NEIL DUNN: Versus the 100?
92
93 ETHAN FLINKSTROM: Correct, 100 for one so we've split it up into two smaller ones. The front of the
94 building is over 300 ft. wide so having one large sign...it kind of makes sense to distribute them a little bit
95 farther apart, as well as having them 90 degrees from each other so it's a little bit easier to see from both
96 sides coming down the road. So, if you'd like I can go down through the five points?
97
98 JIM SMITH: Yeah, just before you do, Neil?
99
100 NEIL DUNN: Um, hmm.
101
102 JIM SMITH: Do you want to do...?
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104 NEIL DUNN: Oh yeah where'd she go? Oh there she is.
105
106 JIM SMITH: Well, see...
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108 DAVE PAQUETTE: She keeps us straight too.
109
110 JIM SMITH: Just so you understand what we are doing. The lawyers have advised us that we really need to
111 document our arguments on the various five points and to facilitate that I have appointed one person to
112 write down those comments so that we have it in a format that the lawyer likes.
113
114 BRAD FARRIN: Understood, Mr. Chairman.
115
116 ETHAN FLINKSTROM: That's kind of...that's why we'd like to present it that way to keep it very straight
117 forward for you.
118
119 JIM SMITH: Okay, go ahead.
120
121 ETHAN FLINKSTROM: So, one the variance would not be contrary to the public interest. We don't believe
122 that there's an adverse effect on, nor contrary to the public interest due to using these two signs. In respect
123 to safety, health and general wellbeing of the community...so, we feel that's pretty straight forward. To the
124 spirit of the ordinance, we believe that this request for the variance is not in contrary to the spirit of the
125 ordinance. As I mentioned, health, safety and the general wellbeing not directly inflicted upon due to the
126 installation of a second sign on the front of this building. Furthermore, we...if you take a look at the two
127 smaller signs as I mentioned it's substantially smaller than the number one larger 100 sq. ft. one that we are
128 allowed. Three, substantial justice is done. Loss of the property owner due to the literal enforcement of the
129 ordinance being appealed there's a couple of reasons here; one, the facility we believe will not be sufficiently
130 visible from Industrial Drive. It's doesn't quiet show it on the plans here, but we are over 800 ft. back from
131 Industrial Drive. So, it's quite a ways away. Second, Milton CAT has a dozen facilities throughout New
132 England. All of them are pretty much the same. They have the same look, and we believe we wouldn't be
133 able to uphold a consistent image across the brand having a second sign denied. So, this is looking in from
134 the entrance way. (see Exhibit #2). Our neighbor to the left, Kluber, we share a common entrance here and it
135 forks off. To the right...to our facility, and actually during construction, we've actually had a couple of

136 deliveries that were meant for Kluber ended up coming down to our site, so being able to distinguish clearly
137 the Milton CAT site to the right and the Kluber to the left will also help, I think with customers coming in.
138 Four, surrounding properties are not diminished. We believe granting this variance will be in harmony with
139 the objectives of the sign ordinance and will not impair the integrity, character, utility, and value of the
140 neighboring properties. We also believe that it will not materially add to visual clutter, give special privilege
141 above our neighbors, increase traffic, or change the character of the neighborhood. Five, the literal
142 enforcement of the provisions of the ordinance will result in unnecessary hardship. Allowance of this
143 variance will not diminish the purpose of the ordinance. The restriction on this property is not necessary in
144 order to give full effect to the purpose of the ordinance. As such, we believe the enforcement of this
145 ordinance on the particular property presents an unnecessary hardship to the owner and lastly part two the
146 proposed use here is a reasonable one. We proposed the use of the second sign in respect to one is to allow
147 adequate visibility of the property to the customers approaching the destination from either side of Industrial
148 Drive. The Exhibits B and E that you are looking at here with the photographs show the two different
149 directions as you're approaching. So, due to the nature of the surrounding land and the trees and the
150 orientation of the actual building, the setback, we believe a single sign would not provide adequate visibility
151 of the property to advance enough time as you're coming around that corner of Industrial Drive. So, adding
152 that second sign at 90 degrees, we believe it increases the range of visibility of the property coming from
153 either side.

154
155 JIM SMITH: I almost hate to ask. Did you present any signs to the Planning Board when you had your site
156 plan?

157
158 BRAD FARRIN: These signs, these renderings that you are looking at through this whole process both signs
159 have been on our architectural boards and through the approval process from when we came in
160 here...actually, the boards you see up here are the first renderings that we've had from over a year ago that
161 we had there. Actually, when we went along in this process and was working with the building department
162 on the sign piece, the variance brought to light about the two separate signs. So, we've shown two signs
163 throughout the process.

164
165 NEIL DUNN: So, we saw this at the first meeting here?

166
167 BRAD FARRIN: You saw these at the first meeting. These were on the building renderings when we were
168 talking about them. No again, we go back in time, I don't know if they were as beautiful or colorful as this. It
169 was probably black and white drawings you know on a builders set, but we've had those...because it's
170 our...just going back to the point that Ethan was making this is kind of our corporate trade mark if you want
171 to say. The store that we showed similar buildings in North Reading Mass the recent one where we came in
172 and was talking about the preliminary stuff...this is almost identical to that with the pier and the 90 degree
173 location on to the building.

174
175 JIM SMITH: So, the point I was trying to get to...the Heritage Commission did review these?

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177 BRAD FARRIN: We've had that same preliminary set. We've gone through the whole...we went through the
178 whole process with.

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180 NEIL DUNN: The Heritage Commission looks at commercial? I know, I'm a little gun shy, but...if I may...?

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JIM SMITH: The Planning Board refers it to the Heritage, which is...[Indistinct]...but the point, I'm just trying to make sure that these have been through the process. Evidently, the fact that there was two signs nobody evidently picked up that that was in violation of the zoning regs.

ETHAN FLINKSTROM: Well, it might have been the fact that we were still under the 100 sq. ft. So...

JIM SMITH: Well, whatever...

NEIL DUNN: Don't most of your pieces of equipment you put in the yard have Milton all over them?

BRAD FARRIN: Well, the Milton CAT signs are a little bit smaller. Some say Caterpillar on it, but there is a lot of display area out front. You're absolutely correct.

NEIL DUNN: On the units themselves?

BRAD FARRIN: On the units themselves. You know, and just kind of concluding our presentation piece of it, and Ethan hit on most of the points. I think you're all familiar with the lot and the area, and you see from those pieces there, we do set back off from, and this is really part of the branding piece of a corporate standard that we have and we think especially staying under the 100 sq. ft. two signs, we could potentially put a huge big one on the side, but we do break off for more of a classy look and the architectural piece that was shown through. Really the neighbors all the way around with Kluber on the side, we've developed a good relationship with those folks, and you know what goes around the backside with your environmental easement, and we have that lot that we joined to the side, so in our opinion there is really no impact on any of the neighbors.

JIM SMITH: Is there a freestanding sign as well?

BRAD FARRIN: We do have a monument sign at the entrance way.

JIM SMITH: Okay, any other questions from the Board? Seeing none, anyone in favor of this? Anyone in opposition, or having questions? Seeing none, we'll bring it back to the Board. Any further questions?

[Overlapping comments – saying No]

JIM SMITH: Any further comments?

BRAD FARRIN: No,...appreciate your time.

JIM SMITH: Okay, we'll close the public hearing at this point.

DELIBERATIONS:

JIM SMITH: Comments?

226 NEIL DUNN: Well, it's not often you get someone asking for two signs that has less square footage than the
227 one they are allowed, so...
228
229 DAVE PAQUETTE: Yeah, I'm not opposed...
230
231 NEIL DUNN: I think it speaks to their desire for the proper esthetics and the proper brand and the look, and
232 that corner is tough. I mean It's hard to say what the street sign would be like, but...
233
234 DAVE PAQUETTE: ...Right.
235
236 NEIL DUNN: ...you're coming around a corner from both angles coming into this property, so...
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238 JIM SMITH: Also, they have the common driveway.
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240 NEIL DUNN: Right...it gets a bit confusing...
241
242 [Overlapping comments]
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244 NEIL DUNN: ...and because of those angles, one flat you know facing east or west opposed to the other one
245 90 degrees off it does give better...I think it serves a purpose better than a big rectangle 100 sq. ft. stamp,
246 so...
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248 JIM SMITH: Okay, why don't we quickly go down through the five points?
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250 NEIL DUNN: Yup.
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252 JIM SMITH: I take it you've taken so notes already?
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254 NEIL DUNN: Yes, I have.
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256 JIM SMITH: Okay, first one.
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258 NEIL DUNN: The variance will not be contrary to the public interest as the total square footage in the sign is
259 no more than allowed in one sign and provides better visibility for customers.
260
261 JIM SMITH: That sounds good. Number two.
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263 NEIL DUNN: The spirit of the ordinance is observed.
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265 DAVE PAQUETTE: The total sign square footage would be less than the allowed one sign.
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267 NEIL DUNN: Pretty much they are so close. Usually...
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269 DAVE PAQUETTE: So, I think that...
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271 NEIL DUNN: ...correct, and it esthetically, it's a pleasing look...goes with the design.
272
273 JIM SMITH: Yup.
274
275 NEIL DUNN: Number three...
276
277 JIM SMITH: Also, this is what has been presented all along through the entire planning process. Would have
278 been nice if somebody said something to it earlier and they could have gotten the variance.
279
280 DAVE PAQUETTE: Included in the whole package.
281
282 JIM SMITH: Yeah.
283
284 NEIL DUNN: So, where are we? Number three?
285
286 JIM SMITH: Do substantial justice...
287
288 NEIL DUNN: The justice...the loss to the property owner due to the literal enforcement is mostly faceted.
289 One is for visibility from Industrial Drive. Secondly, Milton CAT is able to uphold their consistent image and
290 brand, and there's no loss to the general public. Number four, surrounding properties will not be diminished.
291 I agree with that, I don't think...
292
293 JIM SMITH: No real impact.
294
295 NEIL DUNN: ...I guess you could argue that big one would be...no...so, I'm good with number four. Number
296 five, relationship between the general public purposes of the ordinance and the specific application of this
297 provision...
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299 JIM SMITH: Provides better visibility and reasonable use because it is...
300
301 NEIL DUNN: It is reasonable and the two signs allow and provide for better visibility from both directions,
302 and from the shared driveway that was approved in the plan.
303
304 JIM SMITH: Okay, who wants to make a motion?
305
306 DAVE PAQUETTE: Mr. Chairman, in regards to Case 10-21-2015-2, I'd like to make a motion to grant
307 requested variance. Number one, granting the variance would not be contrary to public interest because
308 there's no adverse effect on public interest. The spirit of the ordinance would be observed. The total signage
309 square footage would be less than allowed with one sign, and this has been part of the design from the
310 beginning. Granting the variance would do substantial justice as there's no impact to the general public. For
311 the following reasons, the values of the surrounding properties would not be diminished as presented, it's a
312 commercial area, and I don't have the notes for the next...number five with the special conditions...
313
314 NEIL DUNN: Proposed use is reasonable.
315

316 DAVE PAQUETTE: ...Yeah, number five the proposed use is a reasonable one.
317
318 NEIL DUNN: It allows for better visibility.
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320 DAVE PAQUETTE: It allows for better visibility.
321
322 NEIL DUNN: ...shared driveways...
323
324 JIM SMITH: Yeah, shared driveways...
325
326 DAVE PAQUETTE: And, better visibility for the shared driveways, yeah, beautiful.
327
328 NEIL DUNN: I'll second that.
329
330 JIM SMITH: All in favor?

331
332 ALL: Aye.

333
334 **RESULTS:**

335
336 **THE MOTION TO GRANT CASE NO. 10/21/2015-2 WAS APPROVED, 3-0-0.**

337
338 RESPECTFULLY SUBMITTED,



339
340
341 DAVE PAQUETTE, CLERK

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

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345 **APPROVED (FEBRUARY 17, 2016) WITH A MOTION MADE BY N. DUNN, SECONDED BY J. BENARD AND**
346 **APPROVED 4-0-0.**

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