

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

DATE: NOVEMBER 19, 2014

CASE NO.: 11/19/2014-3

APPLICANT: ARANCO REALTY, INC.
557 NORTH STATE STREET
CONCORD, NH 03301

LOCATION OF PROPERTY: 137, 131 AND 129 ROCKINGHAM ROAD, 16-66, 73 & 75, C-II

BOARD MEMBERS PRESENT: JIM SMITH, CHAIR
JACKIE BENARD, VOTING MEMBER
JIM TIRABASSI, VOTING MEMBER
ANNETTE STOLLER, VOTING ALTERNATE
BILL BERARDINO, VOTING ALTERNATE
NEIL DUNN, ACTING CLERK

REQUEST: VARIANCE TO ALLOW TWO SIGNS CONSISTING OF LETTERS AFFIXED TO A CANOPY, WHICH WOULD EXCEED THE ALLOWABLE SIZE AS CALCULATED ACCORDING TO SECTION 3.11.5.2.1.

PRESENTATION: CASE NO. 11/19/2014-3 WAS READ INTO THE RECORD WITH TWO PREVIOUS CASE LISTED.

JIM SMITH: Okay, go ahead.

JOHN CRONIN: Mr. Chairman, my name is John Cronin. I'm here on behalf of the applicant Aranco Oil. Seated to my right, your left is Mr. Ford Hayes. He's a principle of that company. Mr. Chair this is one of the unusual cases that I really have the opportunity to present, and it's unusual in the sense that we are seeking a variance to actually reduce the area of the existing signage. As you may be acquainted, I'm sure you're acquainted with this particular location off of Exit 5 where the current Sunoco stands and the convenience store. It's been there for approximately for thirty (30) years. In your drives by you may have noticed that each of the sides of the roof areas above the tanks, or the pumps have the Sunoco lettered sign. So there are not existing four (4) signs one on each panel. This proposal is to reduce that signage to two (2). I believe the reason why we are here relates to some nuances in the ordinance that certainly can create contradiction and reasonable minds can read them differently. When we look at the ordinance and you'll see it in the detail of our application it talks about the general signage provisions and how you can calculate signage. Generally, when you look at it if you have a letter sign such as the ones that we propose in this case where the Sunoco letters will be posted on a wall of the canopy. The way that is measured is to look at the smallest rectangular area around that sign to measure the sign location. We believe that would be the section that would control in that subsection two. The building official however disagrees with that and with some reason because the general provision talk about when you have awnings or canopies that you take into consideration the entire area of the canopy. If you look at the photographs that are attached to the application you can see the roof structure that is above

48 the tanks. The existing ones are up on top and it shows the Sunoco sign and the boarder that goes around the
49 pumps. It provides a roof, protect from the weather and other things. Down on the lower level was what's
50 going to be proposed a much cleaner solid blue line, and they'll only be two (2) signs. One facing out
51 Londonderry Road. The other out towards 93. The way the Building inspector is interpreted that is you take
52 that whole area of that band, and again I think he's relying on the definition in the ordinance that talks about
53 awnings and canopy. I believe when the drafters looked at that section and they drafted it, and certainly good
54 drafters of any ordinance can't predict every exact situation their looking at those types of awnings you might
55 see over a restaurant door of that nature where you have a signage that's affixed to either a canopy or an
56 awning. In that particular case I think you go to the edge of the sign even though it may be background intent
57 and take that as your area. But when you look at a lettered sign it's very distinctly different in the subsection
58 in the ordinance, and I think that's what's at play here. So one of our arguments is an administrative appeal
59 that you interpreted it according to subsection two (2), and that we are actually compliant with the proposed
60 signage. Recognizing it's never the pleasure of any Zoning Board that I've worked with to overrule an
61 administrative decision. We also applied for a variance. The variance if you look at the terms and
62 requirements. Typically, I would waived the express reading of the five conditions but hearing the chair in the
63 other case wanting some narrative for the record, I'm happy to address those particular points. In this case
64 the grant of the variance would not be contrary to the spirit of the ordinance or the public interest. The
65 critical way we determine that generally...and there's two factors that you can look at. With the variance if it
66 were granted alter the essential character of the neighborhood? Here I think we can all agree that it would
67 not. We have four (4) we're going down to two (2). It's been a gas station for over thirty (30) years. The
68 Planning Board and the Heritage Commission have both looked at this they've approved the plan.
69 Construction is well under way and they liked the signage and preferred it was being reduced rather than
70 being expanded which is typically the case when I come looking for a sign variance. The other way to look at it
71 is to whether or not the variance if granted would threaten the public health, safety, or welfare. I can see
72 nothing in this request that would have any notion to threaten any one of those important criterias in the
73 work that you do. Certainly, signage is important for any commercial business. These are tastefully done.
74 They'll be a reduction in sign area. There will be adequate signage to let people know where they are going.
75 They can see that it's a Sunoco shop and get in, but certainly there'd be no substantive or negative impact to
76 public health, safety or welfare. The next prong of the variance criteria relates to value. Will the variance if
77 granted diminish the value of surrounding properties? If you're familiar with the locus of that particular area
78 it's at the interchange of the Exit there 5. The use has been in place for approximately thirty (30) years. It's
79 done very well there. It's been a good citizen. On the opposite corner you have other commercial operations
80 and it's a proper use for the area. Zoned properly approved by the Planning Board. The other prong and
81 usually the one that's most difficult in the variance analysis is the hardship factor. No fair and substantial
82 relationship exists between the general public purposes of the ordinance provision and the specific application
83 of the provisions to the property. I think this is highlighted in more detail on the narrative. The written
84 narrative that we submitted on the administrative appeal. Certainly, there has to be a health, safety and
85 welfare concern for any ordinance criteria. In this particular case, if the ordinance says it's suitable to take a
86 sign with letters and use only the smallest rectangular area around those letters the purpose to applying it to
87 the whole boarder of this particular roof of a gasoline pump really is not connected to the goals of the
88 ordinance. As we detailed in our narrative, I don't want to belabor it. Certainly, we don't come here to make
89 constitutional legal arguments but realize the duty to our client, we have to raise them or lose them. When
90 you look at an equal protection analysis to say that you can only count the smallest rectangle on a letter sign
91 on some other building, but not on a gas station. In our view, that offends the notions of the constitutional
92 protections. Is the use a reasonable one? I think whenever you're reducing signage taking a step back making
93 it less it would satisfy the requirement that it's reasonable. The final prong the substantial justice prong. I
94 recognize it's a balancing test and somewhat subjective, but the harm to the applicant B versus the harm to
95 the public if it was granted. We don't believe there'd be any hard whatsoever to the public if this was granted.
96 In fact we believe there'd be a benefit to the public. The harm to the applicant here is that their redeveloping

97 a property. Making a nice modern use of it. There sign package has done a lot of evaluation. They've looked
98 at if professionally. They think it's tasteful. They think it suits their needs and the needs of the community.
99 So we would suggest that we would meet that criteria as well. Mr. Hayes and myself are happy to entertain
100 any questions for the purposes of deliberation and vote. If you find that it's appropriate to grant the variance
101 that would make the administrative appeal mute, and we would withdraw that. To the extent that you don't
102 see if proper to grant, the variance we would ask then to move on and take a look at the administrative
103 appeal. Thank you.

104
105 NEIL DUNN: Mr. Chairman if I may? On your five points of law you went into something about...I'm not quite
106 sure if you're trying to say freedom of speech, or equal speech with the signage? I didn't see it written here,
107 so could you do that one more time for me please?

108
109 JOHN CRONON: Sure. Yeah, equal protection is just a constitutional notion whenever you're dealing with
110 signage; it implicates free speech and commercial speech. Signage has been recognized to be a protected
111 class. What that constitutional provision states both in the federal law and the state law that similarly
112 situated people have to be treated the same. So if you tell someone that has an office building...say myself...I
113 wanted to put law office on the side of my wall and you're only going to measure my sign area by going to the
114 outside corners of those letters you have to apply that same standard to all other users that are similarly
115 situated. We would say Mr. Hayes in Aranco when they put that Sunoco lettering up on the corner of that
116 canopy, if you want to be fair about it you should do what you do to the law office, and you should measure
117 that area that smallest rectangle around the letters and not take that whole canopy that extends the length of
118 the room or the length of the tanks.

119
120 NEIL DUNN: At what point does that color scheme and the flare and the red and the orange become a symbol
121 or brand name or a trademark item?

122
123 JOHN CRONIN: Well you can...

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125 NEIL DUNN: As part of the sign?

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127 JOHN CRONIN: ...I recognize that Planning ordinances regulations have an opportunity to make aesthetic
128 regulations, but to my knowledge Londonderry doesn't regulate what colors you paint your canopies, and
129 that's not part of a lettered sign, or a graphic sign. To the extent is it you'll see that it's greatly reduced from
130 the prior striping and the existing sign you'll see that color burst that spreads across the canopy. In the new
131 situation, the new sign its mostly solid blue with just one ray of it. In our view that color has no impact on the
132 sign and the sign is the message that's conveyed which are the words Sunoco.

133
134 ANNETTE STOLLER: Mr. Chair, may I?

135
136 JIM SMITH: Yeah.

137
138 ANNETTE STOLLER: How much of this is illuminated? It says here on the proposed one channel letter
139 illuminated sign. How does that compare to what's currently illuminated?

141 JOHN CRONON: Well one of the two signs that will be illuminated the one facing 93.
142
143 ANNETTE STOLLER: Okay.
144
145 NEIL DUNN: If I may, Mr. Chairman? For the whole distance of that canopy?
146
147 JOHN CRONON: No just the letters.
148
149 NEIL DUNN: Just the lettering.
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151 ANNETTE STOLLER: Just the letters.
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153 JIM SMITH: Anyone else?
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155 ANNETTE STOLLER: I think he kind of answered both my questions at once.
156
157 JIM SMITH: Um, hmm. Okay, anyone in favor of this? Either variance or anyone in opposition? Yes?
158
159 ANN CHIAMPA: Um, I'm not in favor, or opposing...
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161 JIM SMITH: Okay, you need to identify yourself.
162
163 ANN CHIAMPA: My name is Ann Chiampa, 28 Wedgewood Drive.
164
165 JIM SMITH: Thank you.
166
167 ANN CHIAMPA: As I understand it that the canopy the color scheme on the canopy is going to be changing
168 from the multi-color rainbow to a more solid strip. I just wanted to mention something that was said at the
169 Heritage Commission meeting after I asked a question. I asked about the canopy that has different colors and
170 Mr. Hayes said that they have to keep that as part of the contract with Sunoco for brand identification. Mr.
171 Hayes said that some of the Sunoco names on the canopy would be removed, and I understand it at another
172 meeting he also mentioned it would be two of the Sunoco name signs would be removed, and it sounds like to
173 me that if that color image that was once part of the brand as being removed then I question a bit if that
174 sign...the image of the sign, could be taken as that whole canopy with the name Sunoco and that big rainbow
175 image. If that rainbow image is being removed from that vision is the sign now just the Sunoco words, or not?
176 So that's something to ponder.
177
178 [Overlapping comments]
179
180 ANN CHIAMPA: And I was just curious if Mr. Canuel when he was basing his accounting for us...the image size.
181 Did that swoosh...? Was he taking in to consideration that swoosh, or the exact letter of the law on Section
182 3.1.1.5.2.1? I was just curious if it was because of the swoosh or because of the canopy size and its totality?
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184 JIM SMITH: Okay, we'll let Richard answer that.

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RICHARD CANUEL: Okay. My interpretation had nothing to do with the color of the canopy.

ANN CHIAMPA: Okay.

RICHARD CANUEL: Because we don't regulate the colors, or whatever. Provided that's...there aren't any symbols or logos or anything attached to that. It's not considered part of the sign area. So it was just simply the area of that side of the canopy that the lettering was incorporated.

ANN CHIAMPA: Okay, I wasn't sure about that. I appreciate the extra information. Thank you.

NEIL DUNN: Mr. Chairman, if I may? So Richard, what you're saying is because the Sunoco is on that side then you take that whole side?

RICHARD CANUEL: As it's written in our ordinance, and as you know as the Zoning administrator I have to make a literal...

NEIL DUNN: Absolutely.

RICHARD CANUEL: ... interpretation of the ordinance. You know much like we calculate sign area for individual letters applied to a wall of a building; we calculate it as the smallest possible rectangle including those letters. However, by that section of the ordinance when those letters are incorporated into a canopy, it is the entire canopy face that is considered the sign area and in doing so it would exceed the allowed area for the wall sign.

NEIL DUNN: And are you keeping a list of like the thirty (30) foot, sixty (60) foot things for any upcoming ordinance that maybe should be addressed? I know, I forget years ago we used to kind of keep a list full of things that we ran into and whether that...I'm not saying whether it's right or wrong if it should be readdressed? I know we always look at the ordinance...

RICHARD CANUEL: Oh, yeah...

NEIL DUNN: ...So years ago...maybe you were that Chair, Jim? We used to kind of have a little list going of what we needed to address. Do we still have a list like that one?

RICHARD CANUEL: Yes we do and that is one of them.

[Laughter]

NEIL DUNN: And that is one there? Thank you.

RICHARD CANUEL: Absolutely.

228 JIM SMITH: Any other questions? Any other comments from the audience? Seeing none...bring it back to the
229 applicant.

230
231 JOHN CRONIN: Yes, to give the lady that spoke. Yes, there are two signs that are coming down. I said
232 therefore existing the proposed is to have two. One thing I do want to emphasize as well. If you do measure
233 the Sunoco area, the two of them, they meet the criteria for size. The dimensions are within the limits of the
234 ordinance. Yes, they are actually less.

235
236 NEIL DUNN: So, if you measure it like we do on...

237
238 [Overlapping comments]

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240 NEIL DUNN: ...the wall sign, but because Richard can't you need the variance?

241
242 JOHN CRONIN: You wouldn't need a variance correct. We'd be less.

243
244 NEIL DUNN: Okay.

245
246 JIM SMITH: Okay. Okay. Maybe if we had a better definition of what a canopy and an awning...what they
247 meant by that, we wouldn't be here? Okay, any other questions? Comments? At that point we'll close the
248 public hearing and will go into deliberation.

249
250 DELIBERATIONS:

251
252 NEIL DUNN: So if we go right to the variance and grant it then we get rid of case one?

253
254 [Overlapping comments]

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256 NEIL DUNN: Um.

257
258 RICHARD CANUEL: If I could, Mr. Chairman? Just as a point of order. You do have two applications before
259 you, so you do need to make a decision on each one of them.

260
261 NEIL DUNN: Okay.

262
263 JIM SMITH: Well, we could have them withdraw the first one?

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265 JOHN CRONIN: Yes, I propose...

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267 [Overlapping comments]

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269 JOHN CRONIN: ...to do that if the variance is granted we would withdraw the administrative appeal.

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271 JIM SMITH: Okay.

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JACKIE BENARD: And since we do not have a really clear understanding of canopy versus awing versus...

ANNETTE STOLLER: Sign.

JACKIE BENARD: Because what we are looking at here is a decrease in signage. So they aren't asking for an increase. There's some clarity on the information provided that shows improvements to existing conditions right now. So the five points of law if we look at all of them from start to finish granting the variance for the second case wouldn't be contrary to the public interest...

[Overlapping comments]

JACKIE BENARD: ...and the spirit of the ordinance is still observed.

NEIL DUNN: Well, I'm still...are we closed? Did you close this, or are we still open?

JIM SMITH: Well, we're in deliberations.

[Overlapping comments]

JACKIE BENARD: We're in deliberations.

NEIL DUNN: Okay, thank you. I'm looking at the application for the sign permit.

JACKIE BENARD: Yeah, I just went to that the cases...on the first one.

NEIL DUNN: Yeah, and...if you scroll through the pictures, one of the proposed "C's" has lettering and one of the proposed "C's" does not?

JACKIE BENARD: Yeah, I was looking at the one that did not.

NEIL DUNN: And then, but if you go above it then it has it, so I guess I'm just trying....making sure there is clarity on there's only two of them...?

JACKIE BENARD: Oh okay, I see what you mean.

NEIL DUNN: ...proposed "F" doesn't, but up here proposed "F"...

ANNETTE STOLLER: We could actually note the two sides by their letters in the decision.

JOHN CRONIN: Mr. Chair, if I may clarify?

JIM SMITH: Sure.

316 JOHN CRONIN: I have a photograph that's probably all on one page that doesn't show existing and proposed.
317 I'd be happy to show this to you and make it a condition of the approval to give you the comfort that it's only
318 two, if you'd like?

319
320 JIM SMITH: Okay.

321
322 NEIL DUNN: Do you see where I was having confusion though?

323
324 [Overlapping comments]

325
326 JOHN CRONIN: Because with the existing and proposed...

327
328 [Overlapping comments]

329
330 JOHN CRONIN: ...I think it's all on one page there that will give you a better picture.

331
332 [Overlapping comments]

333
334 NEIL DUNN: No that's much better...this was having it in like five places.

335
336 [Overlapping comments]

337
338 JIM SMITH: So we're in canopy "A", and "C".

339
340 [Overlapping comments]

341
342 NEIL DUNN: And we're eighteen (18) square feet and eighteen (18) square feet is ninety six (96), so we're
343 good in that regards. Okay, that's much better. I'll put that in the folder...

344
345 JIM SMITH: Okay, so I'll entertain a motion on Case 3.

346
347 [Overlapping comments]

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349 JACKIE BENARD: Mr. Chairman, I'd like to make a motion to grant the variance for Case No. 11/19/2014-3 to
350 allow two (2) signs consisting of letters affixed to a canopy. Do we have any conditions because it's less area,
351 so we don't have to...?

352
353 JIM SMITH: No.

354
355 JACKIE BENARD: Okay, perfect.

356
357 [Overlapping comments]

358

359 JACKIE BENARD: To allow two (2) signs consisting of letters affix to a canopy which would exceed the
360 allowable size calculated. Do we have to make reference to the calculation on how we came about...?
361
362 JIM SMITH: [Inaudible]...x amount of square foot.
363
364 JACKIE BENARD: Okay, which we said was eight...?
365
366 ANNETTE STOLLER: Nineteen (19)?
367
368 JACKIE BENARD: Nineteen (19), or eighteen (19)?
369
370 NEIL DUNN: It's 18.08 per...so what's 36.16?
371
372 ANNETTE STOLLER: Oh, okay.
373
374 JIM SMITH: So approximately thirty six (36) square feet.
375
376 JACKIE BENARD: Okay.
377
378 JIM SMITH: That's give a little wiggle room.
379
380 JACKIE BENEARD: Okay, which would allow the...which would exceed the allowable size as calculated
381 according to Section 3.1.1.5.2.1 – 137, 133 and 129 Rockingham Road to be a total of approximately thirty six
382 (36)...
383
384 JIM SMITH: Right.
385
386 JACKIE BENARD: ...square feet.
387
388 JIM SMITH: Okay, do I have a second?
389
390 JIM TIRABASSI: Second.
391
392 JIM SMITH: Okay, Jim seconds. All those in favor?
393
394 ALL: Aye.
395 JOHN CRONON: We'll withdraw the administrative appeal for the record (Case No. 11/19/2014-2). Thank
396 you.
397
398 RESULT: THE MOTION TO GRANT CASE NO. 11/19/2014-3 WAS APPROVED, 6-0-0.
399
400 RESPECTFULLY SUBMITTED,
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402 

403
404 NEIL DUNN, ACTING CLERK

405
406 TYPED AND TRANSCRIBED BY NICOLE DOOLAN, PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT
407 SECRETARY

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409 **APPROVED APRIL 15, 2015** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY JACKIE BENARD AND
410 APPROVED 5-0-0.

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