

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

DATE: MARCH 21, 2012

CASE NO.: 3/21/2012-4

APPLICANT: HOME DEPOT USA, INC (FOR THE 99 RESTAURANT)
PO BOX 105842
ATLANTA, GA 30348-5842

LOCATION: 41 NASHUA ROAD; 7-119; C-I

BOARD MEMBERS PRESENT: JAMES SMITH, ACTING CHAIR
LARRY O'SULLIVAN, VOTING MEMBER
JAY HOOLEY, VOTING MEMBER
NEIL DUNN, CLERK

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

REQUEST: VARIANCE TO ALLOW A SECOND WALL SIGN WHERE ONLY ONE SUCH
SIGN IS PERMITTED BY SECTION 3.11.6.4.3.2 AT A MAXIMUM ALLOWED
SQUARE FOOTAGE OF 50 SQUARE FEET FOR THE BUILDING; AND TO
ALSO ALLOW A WALL SIGN TO PROJECT ABOVE THE ROOF EAVELINE OF
THE BUILDING AS RESTRICTED BY SECTION 3.11.7.1.4.

PRESENTATION: Case No. 3/21/2012-4 was read into the record along with the first three of eight previous cases;

JIM SMITH: Reread that one.

NEIL DUNN: Sure.

The Clerk reread previous Case No. 3/18/2003-2 into the record (i.e. Variance to allow a second wall sign of 46 sq. ft. for a total of 96 sq. ft. where only one wall sign of 50 sq. ft. is allowed. Denied).

LARRY O'SULLIVAN: Okay, stop.

JIM SMITH: Okay.

LARRY O'SULLIVAN: How's that different than what this is, Richard?

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RICHARD CANUEL: Excuse me?

LARRY O'SULLIVAN: How is what was denied in 2002 different...or 2003-2 different from what's being requested tonight.

RICHARD CANUEL: I'm sorry, I wasn't paying attention to what he was reading. I apologize.

JIM SMITH: Read it another time.

RICHARD CANUEL: I forget those were past cases. I didn't...

[overlapping comments]

RICHARD CANUEL: Please read that...

The Clerk reread previous Case No. 3/18/2003-2 into the record.

RICHARD CANUEL: That's a good point.

LARRY O'SULLIVAN: That sounds extremely like what the application is here for tonight, so that's why I'm saying why should we be hearing this if we've already denied it?

RICHARD CANUEL: Well, I think more for two reasons. Simply because of the proposed location of the sign as well. That's true. If there was a previous variance denied for a second wall sign, then there can't be, you know, a second variance on location because he's already been heard.

LARRY O'SULLIVAN: I don't think we should hear it.

RICHARD CANUEL: You know, unless there's something substantially different about this particular wall sign that differs from the previous variance application, you're right. There shouldn't be another application.

LARRY O'SULLIVAN: Okay. Mr. Chairman, I...

NEIL DUNN: As I recall, we were on the case and it was also to be above the roof line to be more visible too, wasn't it?

LARRY O'SULLIVAN: Yeah. Yeah, so...

NEIL DUNN: I mean, so there's nothing really...

TIM S.: If I may address? I believe...my name's Tim [indistinct] with Barlo Signs out of Hudson, New Hampshire. I believe that original request was for a sign facing the Home Depot elevation. Our proposal tonight is to be on the west elevation of the property.

90 NEIL DUNN: Facing 102?
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92 TIM S.: No, facing the entrance into the property.
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94 JIM SMITH: The donut side.
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96 TIM S. :But I believe that one, at the time, was on the side facing the Home Depot.
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98 JIM SMITH: This would be the Dunkin' Donuts side.
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100 TIM S.: Correct.
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102 LARRY O'SULLIVAN: I don't see the significant difference. The issue about the sign that...to me, you know, it's
103 another one of those...I can't get in there four nights a week and they need another sign to do what? You
104 know? As far as I'm concerned, they're nuts. They've got more signs than most other businesses in town and
105 they want more? Now, I know I'm not supposed to go off on my high horse like this, but we've already said no
106 here. I'd like to make a motion that we not listen, or not hear the case before us here, 2012-4, as it's exactly
107 the same as had been requested in 2003. I remember it like it was eleven (11) years ago.
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109 JIM SMITH: It was eleven (11).
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111 LARRY O'SULLIVAN: Mr. Chair, I made the motion.
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113 JIM SMITH: Do I have a second? Well...before we go that way, Richard, do we even need to make a hearing, I
114 mean a motion?
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116 RICHARD CANUEL: No, because there can't be a case.
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118 JIM SMITH: Okay.
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120 RICHARD CANUEL: I mean, if there was a previous....
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122 JIM SMITH: So it's a moot point.
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124 RICHARD CANUEL: ...a previous variance for the same request, then you can't hear another, you know, you
125 can't hear the same variance over and over again.
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127 JIM SMITH: Right.
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129 RICHARD CANUEL: If it's already been denied, then, you know, it's a moot point.
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131 JIM SMITH: So, the case...
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133 LARRY O'SULLIVAN: [indistinct] know the significant difference or there's a major significant difference
134 between a sign that goes above the roof line and fifty (50) feet...

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TIM S.: I mean, I guess the major difference in the property now might be the fact that the trees have grown larger, the building is more concealed, and with that, it's more important to get some visibility on the westbound side of the property, which is what we're seeking. That's what I could see would be a difference in the eleven (11) years is the vegetation has grown in. That might be a...

RICHARD CANUEL: You know, I suppose you could look at it from the aspect that, you know, the variance is requesting the sign on a different side of the building. You know, I don't know if that's necessarily, you know, substantially different than the original request.

LARRY O'SULLIVAN: And we all have the pictures.

NEIL DUNN: Oh yeah, and you got one too.

LARRY O'SULLIVAN: Oh, yeah. Son of a gun.

NEIL DUNN: I was busy reading. You couldn't see what I was saying.

LARRY O'SULLIVAN: I was taking notes, as a matter of fact. I made the motion and I stick by it, so...

JIM SMITH: Well, I think we've heard the ruling of the Zoning Officer that it is essentially the same case, so I would say that's it.

LARRY O'SULLIVAN: We're not gonna...

JIM SMITH: I would say you would have to convince the Zoning Officer...

LARRY O'SULLIVAN: Of the significant...

JIM SMITH: ...of the significant differences and if you can then convince him, you could reapply...

NEIL DUNN: Or is it too late to appeal the decision?

RICHARD CANUEL: Appeal the decision?

NEIL DUNN: Of the original Board, back eight (8) years ago?

LARRY O'SULLIVAN: You and I were there.

RICHARD CANUEL: No.

NEIL DUNN: I'm just saying, usually they appeal the...

RICHARD CANUEL: Well...

180 LARRY O'SULLIVAN: No, it's just...
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182 RICHARD CANUEL: ...not of the Board's decision, but the applicant can certainly appeal my decision and go
183 that route. If you wanna do it as an appeal from an administrative decision and, you know...
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185 JIM SMITH: Right.
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187 RICHARD CANUEL: That would still bring the case before the Board to make a decision on.
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189 LARRY O'SULLIVAN: So do you want us to vote then?
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191 JIM SMITH: No.
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193 LARRY O'SULLIVAN: So that it no longer is...?
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195 JIM SMITH: We don't have to vote.
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197 RICHARD CANUEL: You don't have to do anything.
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199 JIM SMITH: In other words, it's now between these two parties. You can talk to him and if you still don't
200 agree with his decision, then you can appeal his decision to the Board.
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202 LARRY O'SULLIVAN: His decision to this Board.
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204 JIM SMITH: Then we would have to review it and decide whether it's a correct decision or not.
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206 TIM S.: But then why were we initially told to come before the Board for a variance? Why did we put in all the
207 energy and effort to be here when, in fact, it was a moot point?
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209 NEIL DUNN: Who told you to come to the Board?
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211 RICHARD CANUEL: I did that in my letter to them. That I told them, you know, any additional wall sign would
212 require a variance from the Board.
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214 NEIL DUNN: Which is standard policy and procedure, but...
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216 RICHARD CANUEL: That's right. That's right. You know, I...
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218 NEIL DUNN: ...Home Depot should have known they've already been here or I guess you would have had to
219 look up all the cases every time someone asks a general...
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221 RICHARD CANUEL: Yeah, I just didn't realize that there was a previous variance case for the same request.
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223 NEIL DUNN: Okay.
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225 LARRY O'SULLIVAN: An easy mistake...
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227 JIM SMITH: Which is understandable, given the total number of cases which are in the records and to try and
228 ferret out every one of these is a pretty daunting task at best, I would say.
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230 TIM S.: No, I have to say the Town of Londonderry does have a better handle on previous variances for
231 properties than most other towns do have, anyways. I was actually intrigued to see the number of variances
232 that have gone down on other properties and especially reading every variance before a case is...
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234 JIM SMITH: And I think that's the function of that, to try to pick up something like this.
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236 TIM S.: Right.
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238 JIM SMITH: And it worked.
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240 LARRY O'SULLIVAN: For you old timers.
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242 JIM SMITH: What?
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244 LARRY O'SULLIVAN: For you old timers.
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246 JIM SMITH: I was only listening to half of what you said, but I listened to that particular one.
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248 NEIL DUNN: Thanks a lot.
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250 LARRY O'SULLIVAN: You didn't listen to the parenthesis part?
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252 JIM SMITH: As soon he...what he said at the end, I said, "This sounds like the same thing."
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254 NEIL DUNN: Do you want these back, or...?
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256 TIM S.: No, you can keep them.
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258 JIM SMITH: Okay.
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260 TIM S.: So, my recourse...I can appeal the administrative decision?
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262 JIM SMITH: You certainly can.
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264 LARRY O'SULLIVAN: Remember, there's four (4) of us tonight. You need three (3) positive votes.
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266 JIM SMITH: You might get five (5) and we've got...someone's interested in being an alternate, so, we may
267 have a better shot at...
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269 LARRY O'SULLIVAN: Ten fifteen (10:15) at night and we're advertising late...late night TV.

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JIM SMITH: Yeah.

TIM S.: Okay. Thank you.

RESULT: THE BOARD DECLINED TO HEAR THE REQUEST BASED ON THE DENIAL OF PREVIOUS REQUEST,
CASE NO. 3/18/2003-2.

RESPECTFULLY SUBMITTED,



NEIL DUNN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED APRIL 18, 2011 WITH A MOTION MADE BY LARRY O’SULLIVAN, SECONDED BY JAMES SMITH AND
APPROVED 4-0-1 WITH MATT NEUMAN ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.