

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

DATE: AUGUST 18, 2010

CASE NO.: 8/18/2010-3

APPLICANT: FORTIER ENTERPRISES, INC.  
C/O WILLIAM FORTIER  
9 NASHUA ROAD  
LONDONDERRY, NH 03038

LOCATION: 9 NASHUA ROAD, 10-136, C-II

BOARD MEMBERS PRESENT: JIM SMITH, ACTING CHAIR  
MICHAEL GALLAGHER, VOTING ALTERNATE  
JOE GREEN, VOTING ALTERNATE  
JAY HOOLEY, VOTING ALTERNATE  
LARRY O'SULLIVAN, CLERK

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

REQUEST: VARIANCE TO ALLOW SIGNAGE ON THE EXISTING CANOPY STRUCTURE  
THAT WILL EXCEED THE WALL SIGN AREA ALLOWED BY SECTION  
3.11.6.4.3.2 AS MEASURED IN ACCORDANCE WITH SECTION 3.11.5.2.1.

PRESENTATION: CASE NO. 8/18/2010-3 WAS READ INTO THE RECORD WITH EIGHT PREVIOUS CASES LISTED.

JIM SMITH: Who will be presenting?

WILLIAM FORTIER: William Fortier, Fortier Enterprises.

DAVID FORTIER: David Fortier.

WILLIAM FORTIER: On number one, not contrary to the public interest; noting five (5) gas stations within eyesight and the canopy would obscure any building signage that we would, should or could attempt. And the spirit would be observed; signage appears on all other canopies in the town. Allowing this would not deter from the surrounding area. Substantial justice; by granting this variance, the motoring public would have a little more decision time to make a timely and safe decision to exit for food rather than gas, whereas everything else in the area is gas. Values of the surrounding property; well, it's all gas stations in the area and there would be no diminishing of any property values. Unnecessary hardship; in '91, I believe it was, and you folks have the paperwork on that, we gave an easement to the Town and I don't know why it ended up with

the Town, they're the one that requested it, on the front property line for future expansion of 102. Now that, whether it may or may not have a possible reflection on any future signage, I don't know. But that is one thing that does come into mind about the property. In summary, the 102 corridor would be a little more traveler friendly, eliminating one (1) gas station and with a little bit of signage to help with the food idea and make it easier for the motoring public. That's my summary.

JIM SMITH: What's the total square footage of the sign? Is it...?

WILLIAM FORTIER: I'd have to...the sign proposed?

JIM SMITH: Well...

WILLIAM FORTIER: I would guess, and I'm only gonna guess, because I don't know, I haven't measured it...a hundred and fifty (150)?

JIM SMITH: On each side?

WILLIAM FORTIER: On each side.

JIM SMITH: And the limit is...?

RICHARD CANUEL: You're asking me?

JIM SMITH: Yes.

RICHARD CANUEL: For wall signage for a commercial property is fifty (50) feet...or fifty (50) square feet, I should say.

LARRY O'SULLIVAN: What exists now in the way of signage? How many square feet is there now?

RICHARD CANUEL: What exists there now is what's already applied to the canopy. The canopy itself is fifty (50) feet long and I don't know what the depth of the canopy is, say a foot and a half, two (2) feet at the most. So you're probably looking at, you know, calculating the area of that entire canopy face where the sign is applied, you're gonna have seventy five (75) or a hundred (100) square feet there.

JOE GREEN: But it's...

RICHARD CANUEL: I don't know what that depth of that canopy is.

JOE GREEN: The fifty (50) feet, it's total, so when you...you have to divide it by two (2) for two (2) sides, right? So it would be twenty five (25) each side?

RICHARD CANUEL: Well, at this point, it's only applied to one (1) side, so I don't know...

JOE GREEN: Okay.

RICHARD CANUEL: ...what the intention is. If the applicant is looking for a variance for both sides...

WILLIAM FORTIER: We would like both sides if we could...

RICHARD CANUEL: Okay.

WILLIAM FORTIER: ...if we could get that.

DAVID FORTIER: Correct.

LARRY O'SULLIVAN: So you're looking for a duplicate of what we see in this picture that you've provided?

DAVID FORTIER: Correct.

LARRY O'SULLIVAN: On the opposite side?

WILLIAM FORTIER: Yes.

JOE GREEN: It's only on one (1) side right now?

WILLIAM FORTIER: It is.

JIM SMITH: And this is the side, if you're coming from Derry?

WILLIAM FORTIER: Correct.

LARRY O'SULLIVAN: Are there other signs on the property?

WILLIAM FORTIER: There is.

LARRY O'SULLIVAN: Okay. And how many square feet do those signs have?

WILLIAM FORTIER: A little shy of sign ordinance. I don't know what it is.

DAVID FORTIER: It's about sixty five (65) square feet.

WILLIAM FORTIER: Is it?

JOE GREEN: Good answer.

LARRY O'SULLIVAN: So it's inside what's allowable today.

WILLIAM FORTIER: Excuse me?

LARRY O'SULLIVAN: Less than what is allowable today?

WILLIAM FORTIER: Yes.

JIM SMITH: I think this is a situation where the signage that you have on the side of the actual building, they're more like menu boards, right?

WILLIAM FORTIER: On the front of the building, correct.

JIM SMITH: Right. Richard? On drive-thrus, what do we have for allowances for drive-thru menu boards?

RICHARD CANUEL: Well, we have allowances for, you know, directory signs and things like that on the property. You know, we have drive-thrus, we've kind of looked at those being directory signs, as long as they don't exceed that allowed square footage, you know, they're permitted.

JIM SMITH: Yeah. Because those were always something that weren't directly addressed.

RICHARD CANUEL: Right. Yeah. That's not really the case here, seeing how we don't necessarily have a drive-thru.

JIM SMITH: I know.

RICHARD CANUEL: It's more of a drive-in.

LARRY O'SULLIVAN: Do you have any measurements of the things that exist now? Including what you have in the way of the canopy signage? Signage, a drawing, proposed drawing, the dimensions, the size of the characters, colors of the characters, things along those lines. Anything like that?

DAVID FORTIER: Well, as you can see, I guess from the picture that you have in front of you right now, we're looking to do that same thing on the other side.

LARRY O'SULLIVAN: Okay.

DAVID FORTIER: The dimensions of the letters are approximately a foot high.

LARRY O'SULLIVAN: Okay, I'd like to get something more specific because we have...in other words, we're on top of each other with spaces in between and you've got "Poor Boys" on, you know, the logo on one end and so forth. There's no measurement. Okay? And that's something that I think we ought to have, is a measurement of what you're asking for and a measurement of what you've got.

JIM SMITH: I think what the problem we have...

RICHARD CANUEL: Actually, that's kind of...oh, I'm sorry, I didn't mean to interrupt.

JIM SMITH: Yeah.

RICHARD CANUEL: That's actually irrelevant because based on the sign area measurement by our ordinance, once you apply letters to the canopy, you include the entire canopy face as the sign area.

LARRY O'SULLIVAN: Okay.

RICHARD CANUEL: So regardless of the size of the letters.

LARRY O'SULLIVAN: So it's entire canopy face.

RICHARD CANUEL: That's right. Yeah.

LARRY O'SULLIVAN: Alright, so...and do we have the dimensions of the canopy?

RICHARD CANUEL: Well, that's what we were just discussing. I know it's fifty (50) feet long. I don't know how deep it is. A foot and a half (1.5) or two (2) feet.

DAVID FORTIER: It's probably two (2) feet. Just a little...two (2), two and a half (2.5) feet.

RICHARD CANUEL: Alright, so you're looking at a hundred (100) square feet per side. So a total of two hundred (200) square feet of wall signage is...

LARRY O'SULLIVAN: And how much is allowed?

MICHAEL GALLAGHER: Fifty (50).

RICHARD CANUEL: Excuse me?

LARRY O'SULLIVAN: And fifty (50) is allowed.

RICHARD CANUEL: That's right.

JOE GREEN: Twenty five (25) on each side because you divide it by two (2). If there's two (2) signs.

JIM SMITH: If they were to change this into an actual sign applied to that surface, then you wouldn't have that, would you? Or would you?

RICHARD CANUEL: Yeah, exactly right. Yeah, if it was an actual square or rectangle type physical sign that they could apply to the canopy, you would include just that sign area. But because the signage is applied to the canopy face, by our ordinance, you have to measure the entire the canopy face as the sign area.

JOE GREEN: Now, the "Poor Boys"...so what we're saying, just to summarize onto Jim's point, if...what it looks like, we would eliminate all of the "burgers," "hot dogs," "fried dough," et cetera. The menu items. And even by doing that, you would still, because of the "Poor Boy" diner emblem that's on the canopy, you're still talking about the same thing?

RICHARD CANUEL: Yeah.

JOE GREEN: So, in reality, in order to get this into...

JAY HOOLEY: Compliance?

JOE GREEN: Make a compliance, the "Poor Boys" would have to be raised off the canopy, into a sign and everything else would have to be taken off?

LARRY O'SULLIVAN: Or boxed in.

RICHARD CANUEL: That's right, yeah.

LARRY O'SULLIVAN: Right.

JOE GREEN: It could be boxed in?

LARRY O'SULLIVAN: Sure. 'Cause, you know, there's a hardship issue, too. So I'm wondering if, you know, boxing it in would be less expensive?

RICHARD CANUEL: Well, it'd have to be pretty particular about that. You talk about boxing it in. If it's just talking that...

LARRY O'SULLIVAN: Framing.

RICHARD CANUEL: ...putting a box around the letters that already exist on the canopy, I think that's a sort of circumvention of the intent of the ordinance.

JOE GREEN: That's why I wanted to be clear with that, if that was gonna be allowed or not.

JIM SMITH: Okay. From a practical point of view, has anyone attempted to time the amount of time that you have from, with normal traffic, from the time you can see the sign until you're by it? Any idea what that time frame might be?

WILLIAM FORTIER: I guess you'd have to calculate the speed limit and whatnot and the traffic flow...

JIM SMITH: Yeah.

WILLIAM FORTIER: The amount of traffic. But...I don't know. If I had to take a guess at something, I'd probably have to go ten (10) or fifteen (15) seconds.

JOE GREEN: Yeah, it's probably slower around there because the police stay right outside your...

JIM SMITH: Okay, the point I'm trying to get to, you've got one, two, three, four, five, six, seven, eight (8) distinct things to try to read, plus the "Poor Boys." It's almost impossible to read all those things in that time frame.

WILLIAM FORTIER: I agree with that. But the point is the fact that it's food...everything else there is gas. This is the only...

JIM SMITH: No, I understand what you're saying.

WILLIAM FORTIER: This is the only food there and it's the only drive-in food that's in the town of Londonderry. We don't have any more drive-in/take-out food. It's the first and only one. And I'm looking at it, if, as Mr. Canuel pointed out, if the fact that you add a letter or add something to the face of that canopy, if that constitutes the entire canopy as signage, then every gas station in this town is over their limit. Because every gas station has got their name on there. We're not even looking to light this up so that it won't be an obstruction twenty four (24) hours a day. Well, it's not gonna be an obstruction anyway because it kinda blends in pretty nicely but non-illuminated as, and if you look across the street at the Shell, this is illuminated twenty four (24) hours a day, it's illuminated. And "Shell" is written on the canopy, as is Sunoco, the one up the street there.

DAVID FORTIER: Mutual, was it?

WILLIAM FORTIER: No, well, it was Mutual. Whatever it is...

DAVID FORTIER: Luk-Oil.

WILLIAM FORTIER: Luk-Oil. They all have...their canopies are all lettered. I don't know of one that isn't. And if that is the law, that once you put your lettering on the canopy, that constitutes your signage for that canopy...

JOE GREEN: Can you clarify that? As to why Gulf is able to do that?

RICHARD CANUEL: I can't clarify that. It's there. It's existing.

JOE GREEN: Oh, it's kind of been grandfathered. It's been the way it's been before, probably, the ordinance?

RICHARD CANUEL: I can't say.

LARRY O'SULLIVAN: They could have had a variance...

RICHARD CANUEL: I can't say at this point. You know, those signs are there on those canopies and, you know, Mr. Fortier's correct. You know, all of those fuel stations have their signs on those canopies and in applying that signage to those canopies, we would have to apply the sign area criteria out of that section of the ordinance that says you include the entire canopy face as the sign area. How it came to be on the other canopies, I can't say, but...

LARRY O'SULLIVAN: Well when did we institute the entire canopy...?

RICHARD CANUEL: Excuse me?

LARRY O'SULLIVAN: When did we institute that requirement that the entire canopy be...?

RICHARD CANUEL: ...[indistinct] proposed some years ago. I couldn't tell you off the top of my head but...

LARRY O'SULLIVAN: I was just wondering if it was before the other gas stations put up theirs, so...

JOE GREEN: That's what I was saying, [indistinct].

LARRY O'SULLIVAN: Yeah...

RICHARD CANUEL: Yeah, I...

JOE GREEN: Because we didn't have it in the cases that we read.

RICHARD CANUEL: No. Yeah.

JOE GREEN: We got a lot of Fortier Enterprises, but that's about it.

RICHARD CANUEL: Yeah.

JIM SMITH: Okay.

(UNKNOWN): We've got Texaco.

JOE GREEN: Texaco, that's right.

[pause]

LARRY O'SULLIVAN: You know, our Master Plan is...part of our documentation in the Master Plan is that we don't want to have the clutter of signage everywhere in town and in that part of the town it is pretty cluttered already. While I've been on this Board, I can't tell you how many cases there have been about signage on that road. I gotta think there's close to fifteen (15) so far that I have heard and a lot of them have...the insurance company that's up the street from you guys, right next to...on the same side. There was a gas station that



came in for an increased size of their canopy and signage on it and that...I don't know if that's still a Gulf there or not but further down the road, there was another one and we didn't allow them because it can get pretty messy and pretty sloppy and that, in my opinion, is the thing about the public interest, you know, there's positives and there's negatives in our requirements, in our zoning regulations. You know, the spirit of the ordinance is so that we don't wind up with a gazillion signs glaring and glowing. My understanding is, your business, you weren't planning on being open year round, right?

DAVID FORTIER: We're not open year round.

WILLIAM FORTIER: No. Well, I would suggest...you're leading right into my next one because if you stand on our property and look directly across the street...

LARRY O'SULLIVAN: Yeah.

WILLIAM FORTIER: ...you're gonna see flashing lights on top of every pump and you're gonna see signage like you've never seen before. And we're actually, by doing what we wanna do, we're clearing up some of that clutter that you're discussing. We're actually shrinking it.

JIM SMITH: Any other questions?

[pause]

JOE GREEN: Are we out of public?

JIM SMITH: No, we're still in public. Any questions regarding the various points of law as they presented?

LARRY O'SULLIVAN: Are we in public or not?

JIM SMITH: No, I'm...

LARRY O'SULLIVAN: Did you bring it back to the Board?

JIM SMITH: No, I'm asking the Board if they've got questions of what they presented.

JOE GREEN: No, I don't.

JIM SMITH: Okay, I'll open it up to the public. Opposition? None. I guess we're back to the Board again, considering we have no one for an audience at this point.

JAY HOOLEY: Nothing personal to the two folks out there.

JIM SMITH: He doesn't count. I had to say that. They said that to my wife one night at one of these meetings.

LARRY O'SULLIVAN: Ooh.

JOE GREEN: So we're in the private?

LARRY O'SULLIVAN: We're back on the Board, or...?

JIM SMITH: Back to the Board for any additional questions, comments? Okay, at that point, we'll take it back to the Board for deliberation.

DELIBERATIONS:

JOE GREEN: I just look at it as though, unfortunately, within the statute, there may be a lot of other ways that we could do it, that this could be done within the statutes. In other words, the sign could be made within the specific parameters and the wording that's on the side could be put in other places on the building. If you look at our statutes, it actually spells out exactly how the sign should look on the building and, you know, he could still...to your point, to his point, I know we're supposed to be talking to us, but to the point he's trying to talk to the public about the fact that it's not a gas station. You know? And it's...I know when I drove by there a few times, I said "That can't be a gas station." It doesn't look like a gas station, especially with the picnic tables. But some people will probably think it's a gas station. So getting those words out to the public, I can understand why they'd want to do that but there's other ways that you can do it if you look at our ordinances. There's other signs that could be placed on the building, so...

LARRY O'SULLIVAN: And they wouldn't need to be as spread out and high and so forth.

JOE GREEN: Yeah, there's a lot...

LARRY O'SULLIVAN: Because you want to distinguish yourself from the gas stations in a building that was made to be a gas station.

JOE GREEN: Right.

LARRY O'SULLIVAN: On a lot that has been...

JOE GREEN: So I get the reason why they're doing it but there's ways to do it, which is one of the issues that I have...

JIM SMITH: Right.

JOE GREEN: ...a problem with right now. There are ways to do it that I don't think would be a very considerable hardship but yet could still get the same...

LARRY O'SULLIVAN: Message aptly accomplished.

JOE GREEN: Yeah.

LARRY O'SULLIVAN: Mm-hmm. I think it's contrary to the public interest. I do think that, you know, the mess that we have down there now is getting worse. Every time a new fireworks store opens or we approve an additional or greater signage...I do want to be as commercial friendly and business friendly as I can be, I do think, though our ordinances require certain things and four (4) times what you have in the way of a request, in this case, is four (4) times what we have in the way of an allotment that you're allowed to have. So, there are other ways, I agree with Joe, to measure, to space the words and the food signs. I do think that their best advertisement happens to be the odor. The smell as we drive...I drive by there twice a day and know very well, without looking, you know, that we got a seafood shop in [indistinct]. So, to me, that's, you know, happy to be there and happy to stop in and don't need those signs in order to tell me. It's a destination as far as I'm concerned but for the motoring public, I think that's more of a distraction than anything else 'cause not everybody's gonna stop in there. So I believe we've got a problem with the public interest. I think we have the spirit of the ordinance, the four (4) times the allotment, allowance size.

JIM SMITH: Any other comments? Jay.

JAY HOOLEY: I'll only observe that it's...number two (2), the spirit of the ordinance being met. And if the ordinance states "measure that portion of the canopy in its entirety," it's tough to say that we're meeting that.

JIM SMITH: The spirit of the ordinance is the major...

JAY HOOLEY: For me.

LARRY O'SULLIVAN: I have both contrary to the public interest, spirit of the ordinance. I stopped there 'cause my voice was going.

JIM SMITH: So...

LARRY O'SULLIVAN: Because I do think that there's...

JOE GREEN: I said it before him...

LARRY O'SULLIVAN: ...there are, as Joe was saying, that there are other ways to get around it and we have plenty of opportunity in our code to allow for the same kind of signage pointing out the same message. Just doesn't happen to be as large, in the same shape.

JOE GREEN: See, and I kind of went with the number five (5) where it was...special circumstance could be saying that, well, he's in a sea of gas stations and he's got a food service but would doing something different create an unnecessary hardship? And that's where I went to say no, I wouldn't think so if you did, according to the certain guidelines that we have. I don't think there would be a hardship. It would just be placed differently.

JAY HOOLEY: But even if you grant number five (5), how do you get past two (2)?

JOE GREEN: Right.

LARRY O'SULLIVAN: Well, he's not...he doesn't grant number five (5).

JOE GREEN: Right. You know, start at two (2).

JIM SMITH: Okay. Seeing no...any other further comments?

LARRY O'SULLIVAN: Nothing out of Mike, huh?

MICHAEL GALLAGHER: It's...I mean, he brought up a point at which, you know, I don't know how many times I've driven by the area over the years but all the...I mean, what's across the street, like you said, the Shell, I really never noticed if they are free standing canopies like this is.

JAY HOOLEY: If they predate this particular version of the sign ordinance, that could be documented, I assume. If they don't, then that's an enforcement action that...

MICHAEL GALLAGHER: How did that...

RICHARD CANUEL: Yeah, just by the Board's reference, it looks like 1982 is when the ordinance was amended to include the overall general sign area requirements, so those canopies were likely built prior to 1982.

JOE GREEN: And even if they're refaced, saying the same thing, then that would be allowed, right? It wouldn't be in violation?

RICHARD CANUEL: Yeah, because, you know, you're starting from scratch, basically.

JOE GREEN: But I'm saying, if Texaco just put a new "Texaco" in the same exact spot, it was just updated, it wouldn't be any different, right?

RICHARD CANUEL: Well, I guess it wouldn't. I mean, you're basically just changing the face of the sign.

JOE GREEN: Cleaning it up.

RICHARD CANUEL: I wouldn't see that to being an issue. However, by our sign regulations, you know, those signs, if we look at the area requirements for canopies today compared to what it was prior to 1982...

JOE GREEN: 1982, yeah.

RICHARD CANUEL: ...those are all existing, nonconforming signs, basically.

LARRY O'SULLIVAN: Mm-hmm.

RICHARD CANUEL: And by our ordinance, you cannot change the face of an existing, nonconforming sign. If you change it, you must change it in compliance with the ordinance, so...

LARRY O'SULLIVAN: You know our Planning Department...

RICHARD CANUEL: That would be an issue.

LARRY O'SULLIVAN: ...spent a great deal of time talking about signs. An enormous amount of time talking about signs in town. And spending a lot of time putting together the ordinances that we have. And I've agreed with them all along that, you know, that it is a lot less messy when you have, not only a limit to the size and a standard size. In that section of town, there isn't much standard there and I think that's why, over time, things can become standardized. And I think that's what were at here, is that they're ready for a standardizing to what we've required in town.

JIM SMITH: Okay. Any further comments? If not, I'll entertain a motion at this point.

JOE GREEN: A motion to deny 8/18/2010-3 on the basis that it does not meet the five (5) points of law as discussed.

LARRY O'SULLIVAN: Can we be specific about that, please?

JOE GREEN: Okay. That it would not be...it would be contrary to the public interest because of the amount of mess that it creates. Visual noise, if you will. I don't have to go any further than that, though, right?

LARRY O'SULLIVAN: Well, you should.

JOE GREEN: ...based on one?

LARRY O'SULLIVAN: You should.

JOE GREEN: Okay. Let's see...the spirit of the ordinance would not be observed because we are trying to limit the amount of signage to a specific area and a specific size and so I don't feel that the spirit of the ordinance would be met if we approve this variance. The other one that I also talked about was the fact that special conditions, although you might say that the special conditions would be a food service area within a gas block, conforming signage would not create an unnecessary hardship for the owner. So those are the three (3) that I identified.

LARRY O'SULLIVAN: I'll second that one.

JIM SMITH: Okay. All those in favor?

JOE GREEN: Aye.

LARRY O'SULLIVAN: No discussion?

JIM SMITH: No.

MICHAEL GALLAGHER: I was just, again, thinking of the spirit of, you know, the ordinance and everything that's around there, so...go ahead.

JIM SMITH: Okay, no further comments? Okay, we'll take a vote. All those in favor of denying the variance?

LARRY O'SULLIVAN: Aye.

JAY HOOLEY: Aye.

JOE GREEN: Aye.

JIM SMITH: Aye.

MICHAEL GALLAGHER: I'm "nay" on that.

RESULT: THE MOTION TO DENY THE VARIANCE WAS APPROVED, 4-1-0 WITH MICHAEL GALLAGHER IN OPPOSITION.

RESPECTFULLY SUBMITTED,



LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

**APPROVED NOVEMBER 17, 2010** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JIM SMITH AND APPROVED 3-0-1 WITH MATT NEUMAN ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.