

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

DATE: DECEMEBER 15, 2010

CASE NO.: 11/17/2010-1 (CONTINUED)

APPLICANT: MICHAEL J. RICCIO
169 EAST DERRY ROAD
CHESTER, NH 03036

LOCATION: 103 NASHUA ROAD, 6-35-17, C-I/RTE 102 POD

BOARD MEMBERS PRESENT: VICKI KEENAN, CHAIR
MATTHEW NEUMAN, VICE CHAIR
JIM SMITH, VOTING MEMBER
JOE GREEN, VOTING ALTERNATE
MICHAEL GALLAGHER, NON-VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

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

REQUEST: VARIANCE TO ALLOW REPLACEMENT OF THE SIGN FACE ON AN
EXISTING NON-CONFORMING FREESTANDING SIGN WITHOUT HAVING
TO BRING THE ENTIRE SIGN INTO COMPLIANCE AS REQUIRED BY SECTION
3.11.8.

PRESENTATION: CASE NO. 11/17/2010-1 WAS READ INTO THE RECORD WITH THE THREE PREVIOUS CASES LISTED.

LARRY O'SULLIVAN: The State of New Hampshire was notified by registered letter and we have not heard back.

VICKI KEENAN: What were the restrictions on the sign fifteen feet from the property line?

THE CLERK READ THE SPECIFIC RESTRICTIONS ATTACHED TO CASE NO. 10/17/89-1 INTO THE RECORD.

VICKI KEENAN: Would the parties that are presenting this case come on up?

JIM SMITH: Is that what you said? The State was sent a registered letter...

LARRY O'SULLIVAN: Yes.

JIM SMITH: ...and we got no reply from them?

LARRY O'SULLIVAN: No reply to date. Have you heard anything, Richard?

RICHARD CANUEL: Not a thing.

LARRY O'SULLIVAN: Let's ask the applicants. That's up to you, Madam Chair. How you'd like to proceed. What we're required to do is make the notification.

MATT NEUMAN: Yeah, they've been notified.

LARRY O'SULLIVAN: They've been notified.

VICKI KEENAN: Is there a certain timeframe by which they need to respond or it's deemed...?

RICHARD CANUEL: Before the hearing date.

MATT NEUMAN: Right.

VICKI KEENAN: And it's opened ended. There's no thirty (30) days or...and then deemed to [indistinct]...?

RICHARD CANUEL: No. I mean, they have the thirty (30) day appeal period, of course but...

LARRY O'SULLIVAN: Well, the issue that I feel that we have on the table right now is that it would be as if I was asking for a sign for somebody who is out of town for the next three months.

MATT NEUMAN: Yeah, but the State's not out of town, though. I mean, that's the thing. I mean, the State's always in existence, so I think that we've...

LARRY O'SULLIVAN: "Out of town," I meant the people...

MATT NEUMAN: Right, but I think we've gotta go under the assumption that...

LARRY O'SULLIVAN: They received it and everything's kosher and square and...

VICKI KEENAN: Can we, I mean, we can grant it conditionally, can't we? We review the case and...

MATT NEUMAN: Well, I mean there's a thirty (30) day appeal, so...

VICKI KEENAN: Right.

MATT NEUMAN: I mean, that's due process.

LARRY O'SULLIVAN: Stick by the rules, you mean, yeah?

JOE GREEN: That's right.

LARRY O'SULLIVAN: Okay. You know, my issue's gonna be it's the same thing; they have the land that the sign is on.

MATT NEUMAN: But it's, I mean, no difference if this was a private citizen...

LARRY O'SULLIVAN: If they had written something saying "let it go"...

MATT NEUMAN: I mean, we can't force them to respond. So, they've been notified. I think we need to move forward. I mean, that's my opinion.

JIM SMITH: The only problem I have is the sign is physically located on their property. It's not located on the lot in question.

LARRY O'SULLIVAN: The applicant's property. Yeah, that was my point, is that...

MATT NEUMAN: Now what happens if we continue this until next meeting and the State still hasn't...

LARRY O'SULLIVAN: They still haven't...

MATT NEUMAN: Are we gonna just keep putting...I mean, I don't think we can force the State to respond. I think they've been notified.

JIM SMITH: Well, I think what I, in my mind, I think the owner should be required to approach the State and get their permission from the State to proceed with this. It should be on the owner's...

LARRY O'SULLIVAN: As opposed to the Town.

JIM SMITH: Right.

VICKI KEENAN: But has anybody looked at the pictures of the changes?

JOE GREEN: Yup.

VICKI KEENAN: I mean, the reality is and the practicality of this is that, you know, I'm not speaking for the State but I don't see what their objections would be to this change. And I just...can't we hear the case and put a restriction or a condition on it that it's until they receive State approval? That we're...and then they have to, in order for them to go ahead and make these changes, they have to pursue the approval, but we've heard the case and rather than have them keep coming back time and time again. Is that not an option?

JIM SMITH: And I think I'm kind of thinking about the sign that we had up by Exit 5 for Verani Real Estate.

VICKI KEENAN: Mm-hmm.

JIM SMITH: They had to move their sign because they were at the ramp end.

VICKI KEENAN: Yeah. Uh-huh.

JIM SMITH: The State was actively involved in pursuing that case. So, it's...

VICKI KEENAN: They're not after it at all. I just...I don't see why we can't make a decision and put a condition on it that they have to have the State approval or decline before it can move forward. Do you know what I mean?

MATT NEUMAN: I do. I'm just not sure how forthcoming an approval will come from the State.

VICKI KEENAN: Yeah.

MATT NEUMAN: I don't know what the process is with the State on that and I don't know if they're just...if that's something that they won't do.

VICKI KEENAN: Richard? Could you weigh in on this a little bit? Do you have any comments or thoughts?

RICHARD CANUEL: Well, the issue is the State took the property. That's why the sign ended up on their property. So, number one, the State would have had to have first been aware of that. Secondly, they've been recently notified of the activity involving that sign which gives them the right to respond in objection if there was an objection by the State. Plus the fact that there's a thirty (30) day appeal period to the Board's decision. I think that we've gone through the process of properly notifying all the property owners of the Board's action here. I think the Board is well within their rights to proceed.

LARRY O'SULLIVAN: Alright, I don't have any issues if that's the case but you have to understand, though, the applicant has to understand that if the State came in and took down the day after they put up a new one, it's not our issue.

VICKI KEENAN: It's at their risk. Right.

MATT NEUMAN: Well, no, that's all the State.

LARRY O'SULLIVAN: Okay, well, that's fine with me.

VICKI KEENAN: So, are we all in agreement that we should go...I think we should go forward and hear the case. Okay? With that said, could you please present your application?

J.D. ILES: Do we need to make introductions or...?

VICKI KEENAN: Yes, please.

JUDY RICCIO: My name is Judy Riccio. I own Café Theresa and I'm here representing my husband, Mike Riccio, who is the owner of the property at 103 Nashua Road.

J.D. ILES: Hi, my name is J.D. Iles. I work for Jutras Sign Company and I'm assisting. I live at 46 Briston Court, Bedford. And I'm sorry I was searching for that. I've, like, been moving over the last week, so all of my belongings and information are all over the place, so...

VICKI KEENAN: Thank you.

J.D. ILES: So should I just jump into it?

VICKI KEENAN: Yes, please.

J.D. ILES: Okay, great. A variance is requested from Section 3.11 of the zoning ordinance for the following reasons: The existing free standing pylon sign misdirects the consumer into thinking another business, Mr. Steer, is still at 103 Nashua Road. The owner of the company, Café Theresa, wants to change the sign faces in order to properly identify the businesses at that location, Café Theresa and New England Design Elements. Additionally, New England Design Elements is a tenant of the owner's of Café Theresa and they would like to be able to serve their tenant to the best of their ability. Additionally, Café Theresa would like to update their logo to the current logo used in the rest of their marketing campaign. Number one, the variance will not be contrary to the public interest. The requested face change will not impact the public interest in a negative way and will, in fact, be an improvement to the signage on the property. The sign currently being mislabeled confuses the public. Café Theresa is asking for the ability to being their sign current with the tenants that currently exist in this building. Number two, the spirit of the ordinance is observed. The letter from the Zoning Board dated 10/19/10 [see file] confirms that the existing sign is protected from the retroactive application of the ordinance sign regulations, which I believe means that the sign is still legal as it currently stands as per the variance that was awarded back in 1988. "However, the sign will lose its legal nonconforming status if the sign is 'altered in any way in structure or copy.'" And that's a quote from the letter that Judy received during her initial application. I can understand Londonderry's interest in having oversight over changes a business owner makes to their signage but I don't think that changing the logo on this sign goes against the sign ordinance and is in closer keeping with the purpose and intent of the Town's sign ordinance than leaving it as is would be. In regards to keeping with the purpose and intent of the sign ordinance, changing the logos on the sign would, according to 3.11.1.5, promote signs that are "harmonious in color, material, and lighting with the buildings and surroundings to which they relate." Café Theresa recently changed their logo and rebranded their building with awnings which will compliment the sign change as well. To leave the sign as is would negate the important of this purpose. Changing the logos would serve to, according to 3.11.1.4, "control visual clutter and encourage high professional standards in sign design and display." Visual clutter would include, in my mind, information which is potentially confusing to the person reading a sign and clearly, having a business mismarked would be confusing to the public. Allowing a logo change on a sign face would, according to 3.11.1.5, "promote the economic growth of Londonderry that is conducive [sic] to attracting new business in industrial development." By restricting the ability for a sign owner to freshen their logo or correctly identify a tenant in a building places unnecessary hardship on a Londonderry business owner. In regards to the issue of whether or not changing a business's logo on a sign is,

in fact, allowed by Londonderry's current sign ordinances, 3.11.8.2.1 reads that "a sign is no longer protected if the sign is altered in any way in structure or copy." The word "copy" is never defined in the sign code and a poll of dictionary definitions define copy as "the text of a news story, advertisement, television commercial, etc., as distinguished from other visual material." I would like to suggest that a customer's logo or logo type is, in fact, not copy. I believe the intention of the sign ordinance is to make sure that any copy placed on a sign is readily changeable only in the case that it occurs within a changeable copy system as Londonderry sign code reflects. For example, if a fictitious business, Fred's Fish, wanted to create a static sign that says "Flounder, 99 cents per pound," they would be restricted from changing the price whenever the market changed, except if the price change occurred in a changeable copy area. "Ninety nine cents" is copy and if the change of copy was not restricted, a business owner could change a large amount of copy on their sign at will. And I can understand the logical need to restrict that. If an owner updates their logo to provide a fresher look to keep with the times and attract more business, only the visual representation of the business changes on the sign. No copy needs to change for this to occur. And additionally, it would be the same business. Substantial justice is done because it would be better to grant the request than to deny it. Granting the request would allow a business owner to refresh their logo and properly reflect the tenants in the building. To deny the request would set up situations where an incorrect sign stands in front of a business for several years unchanged because the owner is hesitant to change the logo, less they lose the protected status of the sign. And that's where we are currently. Number four, the values of the surrounding properties are not diminished. The sign has existed in the same location since 1989 and has not yet to be found to have a negative impact on the property owners. Number five, literal enforcement of the provisions of this ordinance would result in an unnecessary hardship. Number one, no fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of the provision to the property. There is no relationship between the spirit of the provision and its application in regards to the property. We contend that a logo change on a sign face or the change of tenants in a building should be allowed on any property as outlined above. Not being able to change the face of this sign has resulted in unnecessary hardship already. Patrons of Mr. Steer incorrectly coming into the existing businesses at this address takes up time as the business staff needs to deal with it and diminishes public good will in the two businesses at the property, as well as Mr. Steer's good will. Not allowing the change does more harm than good. And I actually have a letter signed by Mr. Steer. His name escapes me at the moment.

LARRY O'SULLIVAN: Chris George.

J.D. ILES: Yeah. Number two, the proposed use is a reasonable one. Granting the variance does not allow the erecting of any new sign or structure but merely allows a sign that has stood since 1989 to remain. The variance granted for this pylon sign at the time allowed for reasonable use that was specific to the property. Placement of the sign according to the code would have resulted in the sign being placed in the middle of the parking lot and in a bad viewing location. We only ask to update logos on the sign and correctly reflect tenant information. To insist that these businesses need to remove and then rebuild and existing sign causes unnecessary hardship, both because of the cost burden and in the event they are unable to afford to the new sign. Café Theresa is less visible and branded than they would have been if they simply left the sign as it is. Number six, (B), if the criteria in subparagraph are not established, an unnecessary hardship will be deemed to exist only if and only if owning [sic] to special conditions of the property that distinguish it from other properties in the area. The property cannot be reasonably used in strict conformance with the ordinance and a variance is necessary to establish a reasonable use of it. The variance granted for this pylon sign at the time

allowed a reasonable use that was specific to the property. And then, to be quite honest, I simply repeated the paragraph above from section two, which I can read if you want me to and I will happily do so.

VICKI KEENAN: I don't think you need to. [Indistinct].

MATT NEUMAN: No.

VICKI KEENAN: Anything else you would like to add beyond your application?

J.D. ILES: Basically, in plain terms, the request Judy is making is simply to change the two (2) faces of the sign. I understand the issues involved. However, it's a sign that's been in the same place since 1989. No one has ever asked for it to be taken down or moved up to this point. To take the sign, tear it down and either move it to a new location or not do anything...I think doing that really...I think a business owner having to do that really wouldn't reflect the spirit and support that towns generally have for business owners. It seems an overly harsh solution. Do you have anything to add?

JUDY RICCIO: No, I mean, we're really just looking to generally improve the appearance of the property, update it, clean it up. We've done everything else on the property to do so. This is sort of the last piece of the puzzle that we're looking to do. We're not looking to change structure, not looking to do anything other than replace faces so the information is correct, the look is more attractive, both in the interest of the businesses on the property and just general aesthetics, being that we're on the major route going through town. Really, that's all we're looking to do is just update it, freshen it, and, you know, correctly reflect the tenancy.

J.D. ILES: I just have one more thing to add. A lot of businesses come to us and they say "business is down," particularly in this economy, "what are some things I can do to improve my business?" And the number one thing we usually suggest is get yourself a new coat of paint on the building, do some landscaping and consider getting a new sign. And Judy has done all of those things, so...

VICKI KEENAN: Thank you. Why don't we bring it back to the Board to ask questions.

LARRY O'SULLIVAN: This is in the Performance Overlay District, correct? Richard, this is in the Performance Overlay District on 102?

RICHARD CANUEL: Actually, that property is not.

LARRY O'SULLIVAN: It's pretty close.

RICHARD CANUEL: I think that property falls outside of that.

MATT NEUMAN: So there is no other structural changes to the sign other than the face? And I know we covered at the last meeting that if tenants change, you're gonna have to go through the whole process again if you're gonna....

JUDY RICCIO: Correct.

MATT NEUMAN: ...wanna change the sign again.

JUDY RICCIO: Mm-hmm.

JIM SMITH: Richard? You just said it's not within this overlay district?

RICHARD CANUEL: I think it does fall outside the overlay district.

LARRY O'SULLIVAN: It's listed as inside the Performance Overlay District on our notices.

RICHARD CANUEL: Right.

LARRY O'SULLIVAN: That's why I brought it up.

RICHARD CANUEL: Okay.

JIM SMITH: Well, that makes a big difference.

LARRY O'SULLIVAN: Because there's a height restriction in the Performance Overlay District.

JIM SMITH: Yeah.

RICHARD CANUEL: That's right, yup.

LARRY O'SULLIVAN: And one of the reasons that we have the "copy" word, for example, as a reason for a change that is required is to keep up to date because compliance requirements for the new signs in your area change. And so yours would stick out from theirs and what we are trying to accomplish here is to bring people into compliance as well with the new regulations and we've had several sign changes, regulation changes in the past eleven (11) years as well, so, but as this is...I'm sorry?

VICKI KEENAN: What's the height restriction for this performance overlay?

LARRY O'SULLIVAN: I don't know. Is it eight (8) feet/

RICHARD CANUEL: Ten (10) feet.

JIM SMITH: Ten (10) feet.

LARRY O'SULLIVAN: Ten (10) feet.

VICKI KEENAN: And what's the height of the current sign?

J.D. ILES: I believe it's fifteen (15).

MICHAEL GALLAGHER: Yeah, it looks like the sign alone is almost eight (8).

JIM SMITH: Well, if it's not in the overlay district, what's the height requirement then?

RICHARD CANUEL: Ten (10) feet.

JIM SMITH: Still ten (10) feet?

RICHARD CANUEL: Mm-hmm.

JIM SMITH: Okay, so it's stuck with ten (10) feet no matter what.

RICHARD CANUEL: Right.

LARRY O'SULLIVAN: That's the very point of one of the reasons for the design of the wording on the requirements in the ordinance, is so that we have the opportunity to review and that gives the Town to give the opportunity to say, "Okay, well, you're gonna spend some money on a sign, let's see if we can bring you into compliance at the same time." Now I really don't have an issue with the height or the change of letters here or the wording.

VICKI KEENAN: Mmm.

LARRY O'SULLIVAN: I don't think that the arguments that were made are very valid because what we're talking about is, again, something that's...it isn't a huge thing, but it helps the Town bring the signs, the height, the width and what have you into compliance and that's really what my issue is with it. But I have no real questions other than, you know, if those things are in the Performance Overlay District and it's a ten (10) foot requirement and backlighting is okay in the Performance Overlay District, I don't know if we would have any other questions. Or if I have any other questions.

VICKI KEENAN: Are there any other questions from the Board for the applicant?

RICHARD CANUEL: And just for correction, that is one of the properties in the overlay district.

LARRY O'SULLIVAN: It is.

RICHARD CANUEL: Yeah. It is.

LARRY O'SULLIVAN: Okay.

RICHARD CANUEL: It's listed.

MICHAEL GALLAGHER: The variance, I thought it was brought up, but is it about to run out?

JIM SMITH: No.

VICKI KEENAN: No, they wanna change the signs so the nonconforming use is no longer valid if it's altered in any way. Is that correct, Richard?

MICHAEL GALLAGHER: Altered. Okay.

RICHARD CANUEL: That's right.

LARRY O'SULLIVAN: A variance goes with the property, right?

JIM SMITH: See, it has a variance on the setback from the edge of the property.

MICHAEL GALLAGHER: Right. Because of where it is.

JIM SMITH: But at that time, the height was okay.

MICHAEL GALLAGHER: Yeah. Okay.

JIM SMITH: Since then, they've changed the rules, so it makes the sign too high and nonconforming because it's too tall.

VICKI KEENAN: Richard, if we were to not grant this, what other things would they have to do to the sign to get in compliance besides height?

RICHARD CANUEL: Well, that's...

MATT NEUMAN: Yeah, I mean, we looked at this the last time.

VICKI KEENAN: It's location, right?

RICHARD CANUEL: Yeah.

VICKI KEENAN: I'm sorry, I missed the [indistinct].

MATT NEUMAN: Yeah. No, no.

VICKI KEENAN: I apologize if I'm repeating it.

MATT NEUMAN: Yeah, it's...

VICKI KEENAN: Yeah, I mean that it's [indistinct].

RICHARD CANUEL: That's a tough position. Because, basically, as a preexisting nonconforming sign by our ordinance...

VICKI KEENAN: Yeah.

RICHARD CANUEL: ...if that sign advertises businesses or services that are no longer on the property, then the sign is required to be removed.

VICKI KEENAN: Mm-hmm.

RICHARD CANUEL: So at this point in time, you know, the sign could be ordered to be removed as it is.

VICKI KEENAN: Okay. Alright, any more questions from the Board to the applicant? Seeing none then, let's open it to the public for comment. Is there anyone here to speak for or against the applicant? Okay, seeing none, we're going to bring it back to the Board for deliberation.

DELIBERATIONS:

JOE GREEN: Would this be something that, if it wasn't approved, they'd have to go under a nonconforming again to try to go through the process again? In other words...

LARRY O'SULLIVAN: You mean would there have to be a site plan or something, you mean?

JOE GREEN: Right. Because...

VICKI KEENAN: They'd have to design a new sign and bring it in to the setback area, right?

RICHARD CANUEL: That's right.

JOE GREEN: No, I guess my real question would be, it's nonconforming, so they're gonna change it where they'd have to come in to get a variance for another nonconforming sign. Because they got one originally.

VICKI KEENAN: So if they redesigned it for the ten (10) feet...

JOE GREEN: Right.

VICKI KEENAN: ...let's just say, they'd have to come back because it's within the fifteen (15) foot setback, right?

MICHAEL GALLAGHER: Setback.

VICKI KEENAN: No?

RICHARD CANUEL: No. No.

VICKI KEENAN: No?

RICHARD CANUEL: No, this would be the only variance that they would require because all they're changing on that sign is just the sign copy, the sign face.

LARRY O'SULLIVAN: We're not gonna...unless we made them go to ten (10) feet, right?

VICKI KEENAN: Right.

LARRY O'SULLIVAN: And we said a restriction would be that the height....the new sign can only be ten (10) feet.

RICHARD CANUEL: That's right.

LARRY O'SULLIVAN: Right, so we're not...

RICHARD CANUEL: As a preexisting nonconforming sign, the sign is protected by our ordinance...

LARRY O'SULLIVAN: As is, right?

RICHARD CANUEL: ...from subsequent changes to our ordinance, such as the sign height.

VICKI KEENAN: Gotcha.

RICHARD CANUEL: So I don't believe that the Board can really require them to reduce the height of that sign because...

MATT NEUMAN: Unless they were going to be changing the structure.

RICHARD CANUEL: That's right. Unless they were changing the sign structure.

JOE GREEN: Even though they're changing the name, it's still not required?

RICHARD CANUEL: That's right.

JOE GREEN: Okay.

RICHARD CANUEL: They're changing the sign copy. Either they obtain a variance or the sign has to be installed in conformance with the ordinance today, which means they would have to meet the fifteen (15) foot setback, it would have to be the ten (10) foot height...

LARRY O'SULLIVAN: Gotcha.

RICHARD CANUEL: ...and so forth.

MATT NEUMAN: Which puts it in the middle of the parking lot.

LARRY O'SULLIVAN: Yeah.

VICKI KEENAN: Right, which is [indistinct].

LARRY O'SULLIVAN: Silly.

VICKI KEENAN: Okay.

LARRY O'SULLIVAN: I think this is as far as we can go with this is...we've done the best we can to notify the State.

MATT NEUMAN: Yeah.

VICKI KEENAN: Mm-hmm.

LARRY O'SULLIVAN: So, you know, they've done the best they can to notify the State, so I don't think there's any question or qualm that this is simply replacing their sign faces.

MATT NEUMAN: Sounds like Larry has a motion.

LARRY O'SULLIVAN: No, I'm not gonna cut discussion just because I feel this way.

VICKI KEENAN: Is there any other discussion? I don't think so.

MICHAEL GALLAGHER: No, I...

LARRY O'SULLIVAN: Okay, I'll make a motion to approve Case No. 11/17/2010-1, approve the variance as presented.

JOE GREEN: I'll second that.

VICKI KEENAN: Okay, so there's a motion to approve the variance as requested and a second. Any discussion around the motion? Seeing none, we'll take it to a vote. All those in favor of approving the application, signify by saying 'aye.'

LARRY O'SULLIVAN: Aye.

JOE GREEN: Aye.

JIM SMITH: Aye.

MATT NEUMAN: Aye.

VICKI KEENAN: Aye. Opposed? Abstentions?

[No response to either].

RESULT: THE MOTION TO GRANT CASE NO. 11/17/2010-1 AS PRESENTED WAS APPROVED, 5-0-0

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Larry O'Sullivan". The signature is cursive and somewhat stylized.

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED JANUARY 19, 2011 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY MATT NEUMAN AND APPROVED 5-0-2 WITH NEIL DUNN AND JAY HOOLEY ABSTAINING AS THEY HAD NOT ATTENDED THE MEETING.