

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

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5 DATE: MAY 20, 2015
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7 CASE NO.: 5/20/2015-1
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9 APPLICANT: RICHARD A. BROWNELL
10 5 NASHUA RD.
11 LONDONDERRY, NH 03053
12
13 LOCATION: 5 NASHUA ROAD, 10-128, C-II
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15 BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN
16 NEIL DUNN, VOTING MEMBER
17 JACKIE BENARD, VOTING MEMBER
18 JIM TIRABASSI, VOTING MEMBER
19 BILL BERNADINO, NON-VOTING ALTERNATE
20 DAVID PAQUETTE, CLERK
21
22 ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING
23 ADMINISTRATOR/HEALTH OFFICER
24
25 REQUEST: SPECIAL EXCEPTION TO ALLOW AN OFF-PREMISE SIGN IN ACCORDANCE
26 WITH THE PROVISIONS OF SECTION 3.11.6.C.6 [FORMERLY SECTION
27 3.11.6.3.6].
28
29 PRESENTATION: Case No. 5/20/2015-1 was read into the record with 4 previous cases listed.
30
31 JIM SMITH: Okay, who will be presenting?
32
33 ROBERT DIETEL: Good evening Chairman Smith. I'm Robert Dietel. I'm an attorney with the Gallagher law
34 firm in Concord. My colleague Eric Newman is listed on the application. I'm here tonight in his place. He had
35 a last minute family conflict come up, and with me is Phil Silverman of Phantom Fireworks. We're here tonight
36 on behalf of the applicant, Richard Brownell, but to give the Board some context which I think is fairly self-
37 evident from the sign. This would be for an off-premises sign for Phantom Fireworks to be located at the
38 Brownell Insurance Agency. I'll give the Board a brief description of the sign. You can see the picture in front
39 of you that is up on the screen. What we're proposing is an off-premises sign. I would be located on the
40 existing pylon sign that's at the Brownell Insurance Agency. As you can see on the pylon sign, there's two
41 components to it. This is what's existing on the property today. The upper part which says Brownell Insurance
42 Center would remain as it. The sign that we're proposing what would be located on what I consider, or what I
43 would call a reader sign below it where you can see the lettering there. It's a sign that we are requesting to be
44 up for approximately a month from June 6th to July 5th. The sign would be professionally printed, installed. It

45 would not be illuminated. It would be eighteen (18) square feet in size located front and back, and so when I
46 look at this, I'm really thinking this is a change in the existing content of that sign, but there's no change in the
47 dimensions, the use, the purpose of it other than that it's providing direction to Phantom Fireworks. It's in
48 keeping with the existing conditions in that district. It's a commercial district. It's a heavily traffic area with
49 commercial signage on numerous properties in that area. That's what we're proposing, and these factors in
50 our opinion meet the criteria for special exception. In multiple ways, but to hit the highest level from the
51 outside it's provided for in the zoning ordinance to have an off-premises sign by special exception. There's no
52 hazard or nuisance to the adjoining properties because it's really a change in the content for a brief period of
53 time. There's no changes in the dimensions. It's in keeping with the conditions in the area. To go through
54 very briefly, to touch on the criteria within the special exception application the proposed off-premise sign will
55 be the only off-premise sign on that parcel. There's no...it's not advertised on more than two (2) off-premise
56 signs in Londonderry. Phantom Fireworks will have this sign, and it's...I don't think I touched on it, but this is
57 pointing to Phantom Fireworks location which is really about a quarter of a mile just down the road. It's a
58 straight shot down Londonderry Road from there. I'm assuming you guys are familiar with the location
59 obviously. The surface area of the sign is less than the twenty five (25) square feet that's provided for in the
60 application. Some of the other criteria are not applicable as we've noted, but so I think this is a fairly straight
61 forward application that speaks for its self, but we have Phil here with us tonight in case you have any
62 questions about the sign in general, and we're happy to address any questions that you may have. Thank you.
63

64 JIM SMITH: I have a question of the zoning officer before we start. Is this a conforming sign that they're
65 working on?
66

67 RICHARD CANUEL: I don't know? I couldn't tell you off the top of my head. I would guess, or I would venture
68 a guess that that sign is not conforming because of its setback from the front property.
69

70 JIM SMITH: What about the height?
71

72 RICHARD CANUEL: The height? Well it wouldn't conform to today's standards, but it is a pre-existing sign, so
73 it's protected as far as the height goes and the location of the sign. However, we get into the issue of it being
74 a non-conforming sign as the Board may know as a non-conforming sign it loses its protected status if its'
75 changed in any way. Including sign copy, so I'm not for certain off the top of my head if it's conforming or not.
76 I would venture a guess that it's not.
77

78 NEIL DUNN: If I may ask a question Richard? So when they change the house of the week on the sign is that
79 changing the...I mean when it's designed for letters and moving literature if you will?
80

81 [Overlapping comments]
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83 RICHARD CANUEL: Yeah, that portion of the sign is designed for changeable sign copy. You are correct.
84

85 NEIL DUNN: So, but I thought you said something about changing copy? I'm just trying to understand that a
86 little better.
87

88 RICHARD CANUEL: Yeah, yeah that's a very odd quirk in our ordinance that I've never seen in another
89 ordinance, but when it talks about non-conforming signs when you change sign copy because otherwise in our
90 ordinance, we don't regulate sign copy any more except for non-conforming signs. However, I think in this
91 particular situation where no necessarily talking about changing that sign. We're talking about allowing an off-
92 premise sign, so I think that's something the Board can address differently simply because as specific criteria
93 to address to allow for off-premise sign, and I think the Board needs to just address that specific criteria, and if
94 the applicant meets that criteria the Board needs to grant the special exception.
95

96 JIM SMITH: Okay, I just wanted to get that on the table, so...

97
98 RICHARD CANUEL: Yeah, yeah it is important to note, you're correct.
99

100 ROBERT DIETEL: I'd like to...I have an aerial picture here which it's my understanding this was provided to the
101 Board. It was not part of our original submission, but the Board staff provided it and you can see the sign
102 that's on the Brownell Agency right now is really in keeping with the other pylon signs in that neighborhood,
103 and to my knowledge this is a conforming sign.
104

105 NEIL DUNN: So one other technical thing, Mr. Brownell is the applicant. Did we get a letter from him saying
106 from him you could represent him tonight?
107

108 ROBERT DIETEL: I am not specifically listed on that, but Phil Silverman is listed as an individual. That's my
109 understanding?
110

111 PHIL SILVERMAN: Yes, and he signed off on the application which is all we were told that we're needed.
112

113 NEIL DUNN: Okay, I'm just concerned...
114

115 PHIL SILVERMAN: Yeah, he signed off.
116

117 JACKIE BENARD: Page six (6).
118

119 ROBERT DIETEL: Yeah, like I said, I'm filling in. My colleague had a sick child that he had to attend to this
120 evening, but Phil Silverman is listed on the application.
121

122 NEIL DUNN: Also, if I may, you said for the month of June what to July what?
123

124 PHIL SILVERMAN: June 6th to July 5th. Thirty (30) days.
125

126 JACKIE BENARD: And then it will be taken down?
127

128 PHIL SILVERMAN: It'll be taken down right away.
129

130 JACKIE BENARD: Okay, so it's temporary.

131
132 PHIL SILVERMAN: Yes.
133
134 ROBERT DIETEL: Yeah, it's a very short window.
135
136 NEIL DUNN: So we're doing the special exception so this can be yearly during that time frame and you're fine
137 with it being limited to that time period?
138
139 PHIL SILVERMAN: Absolutely.
140
141 BILL BERNADINO: Is that a third sign below the reader sign?
142
143 ROBERT DIETEL: I...
144
145 BILL BERNADINO: Like a white dot. It looks like it's hanging under the reader sign?
146
147 ROBERT DIETEL: Phil do you know what that is?
148
149 PHIL SILVERMAN: No. I never really notice that until just now.
150
151 DAVE PAQUETTE: I want to say that a ...is that a cleaner's there or something?
152
153 BILL BERNADINO: It looks like there's a line coming from the readers sign down. Like it's illuminated?
154
155 DAVE PAQUETTE: You're going to lose...
156
157 NICOLE DOOLAN: Yeah, sorry, I'll back up.
158
159 BILL BERNADINO: Like right here?
160
161 JIM SMITH: Yeah.
162
163 BILL BERNADINO: It looks like wires coming down and it looks like that could be illuminated?
164
165 [Overlapping comments]
166
167 ROBERT DIETEL: To be perfectly candid with the Board, I don't know what that is being depicted there, but the
168 sign...Phil the sign is not going to be illuminated?
169
170 PHIL SILVERMAN: Yeah, no we're thinking of vinyl, and just going to have it wrapped. Quite frankly at that
171 time of year, it's light enough until 9:30PM anyways, so I'm not really worried about putting any light on it.
172

173 ROBERT DIETEL: Certainly, if the Board wanted to add a condition to confirm that it was not going to be a lit
174 sign you know that would make sense to clarify that.
175
176 DAVE PAQUETTE: Are you looking to have this be a yearly special exception?
177
178 PHIL SILVERMAN: If we could, that would be appreciated?
179
180 DAVE PAQUETTE: My original thought was to have a sunset involved with an approval.
181
182 PHIL SILVERMAN: To have a...? I'm sorry, I just didn't hear what you said?
183
184 DAVE PAQUETTE: My original thought is to have a sunset involved in this...in the event the Board was to...to
185 sunset the special exception at the end of your requested date of July 5th.
186
187 PHIL SILVERMAN: Is that kind of like a trial run? See how it goes this year, and...?
188
189 DAVE PAQUETTE: I think it's just handled that way sometimes with...?
190
191 PHIL SILVERMAN: I'm fine with whatever you guys would like to do.
192
193 [Overlapping comments]
194
195 ROBERT DIETEL: Certainly, we would like to see it recurring, but if the Board wanted to put a condition as to
196 the timeline that of course would be preferable?
197
198 JACKIE BENEARD: How long have you been at your current location?
199
200 PHIL SILVERMAN: I believe seven (7) years. Seven (7) or eight (8) somewhere in there.
201
202 JACKIE BENARD: Okay, so you've been there a fair amount of time?
203
204 PHIL SILVERMAN: Yes. Um hmm.
205
206 JACKIE BENARD: You probably will not move from that location?
207
208 PHIL SILVERMAN: That is one of the reasons we are looking to put a sign up. We were the first ones here and
209 we have two (2) competitors who have cut us off closer to the street. They do benefit from our advertising
210 and trying to draw people that just see fireworks and go to the other stores, so we're trying everything we can
211 to direct traffic to the proper place.
212
213 ROBERT DIETEL: And I'd add that this comment sort of addresses what you just asked, but also the duration of
214 the sign. The Board's approval would obviously be specific to the design that we've submitted to the Board,

215 so if Phantom Fireworks were to move there obviously wouldn't be any commercial value to somebody else
216 using that sign space in that way.
217
218 PHIL SILVERMAN: No, but we have a home in Londonderry. Our manager is very well fitted in with everyone
219 here, and we have no intention of leaving, just asking for a little bit of help for our big season.
220
221 NEIL DUNN: If I may, Mr. Chairman? So Richard, are we actually locking down the graphics so to speak in this
222 case?
223
224 RICHARD CANUEL: Not necessarily. I mean...if the applicant displays a certain graphic and that is the graphic
225 that he is applying for for that sign I supposed the Board could put that as a condition that that's what the
226 graphic shall be?
227
228 NEIL DUNN: Well, it's getting back to this copy thing and if we're saying yes we'll allow it but only a temporary
229 from June 5th...
230
231 [Overlapping comments]
232
233 NEIL DUNN: ... and then if they did move and put a different location...I mean again, I'm just...
234
235 RICHARD CANUEL: Yeah, no, that's true, and just one point of order that a special exception is a use that's
236 allowed by the ordinance provided the applicant meets that specific criteria in the ordinance. If the applicant
237 does that criteria the Board has to grant the special exception. Now the Board can place conditions on that
238 such as what the sign copy shall be, if the Board so chooses, or how long the sign shall be there, but once the
239 special exception is granted it's just like a variance, its forever.
240
241 JIM SMITH: Who's the owner of the property?
242
243 ROBERT DIETEL: It's Richard Brownell.
244
245 JIM SMITH: So he's...?
246
247 ROBERT DIETEL: He's the applicant. We're here tonight requesting Phantom Fireworks because of course this
248 is a sign that ultimately is for the purpose of advertising Phantom Fireworks.
249
250 JIM SMITH: One of the other complications of this...if he happens to sell this piece of property then you'd
251 have to get permission from the new owner.
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253 ROBERT DIETEL: That's understood.
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255 JIM SMITH: Otherwise, this special exception would...
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257 ROBERT DIETEL: Sure, sure.

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JIM SMITH: Okay. Any other questions?

BILL BERNADINO: I just have something real quick...you know the way he's looking at it Mr. Dunn is you're renting the space correct?

ROBERT DIETEL: Yeah.

BILL BERNADINO: So somebody else comes in and rents it come here it's going to be up there for a year, or whatever...you lose the space right?

PHIL SILVERMAN: Um hmm.

BILL BERNADINO: ...[Indistinct]...one time first approval on just on those days, those thirty (30) days because you don't know if it's going to be there next year?

PHIL SILVERMAN: I don't know if I'm going to be here next year, so I agree totally with you.

ROBERT DIETEL: Yeah, and that's why when I look at this these are all questions that I anticipated because you know they make sense that's why tying it to the design that we've put before the Board tonight would really make sure that if this is used on an ongoing basis it's being used by Phantom Fireworks for the purposes that we discussed tonight. So for instance, if Mr. Brownell ultimately decided that somebody comes along in August and they want to rent the sign for a year. That individual obviously would have to come before the Board if it was going to be an off-premise sign, or something like that, but that would of course mean the approval tonight wouldn't apply to that individual because it would not have any commercial...they wouldn't be allowed of course obviously to use Phantom Fireworks' logos and things of that nature, so...

BILL BERNADINO: Right, but you're saying this comes down on the 5th?

ROBERT DIETEL: That's right, yeah.

BILL BERNADINO: So it's going to be an empty basic reader board again?

ROBERT DIETEL: You know to be candid with the Board...

[Overlapping comments]

JACKIE BENARD: Yeah, ...because it's a renter.

RICHARD CANUEL: But the special exception doesn't carry forward to another business. It's specific to this applicant.

[Overlapping comments]

301 JACKIE BENARD: Only.
302
303 RICHARD CANUEL: Right.
304
305 JACKIE BENARD: So, you really can't...I guess...?
306
307 JIM SMITH: No.
308
309 NEIL DUNN: That's even better if we put the limitation for the timeframe because....
310
311 JACKIE BENARD: Yeah.
312
313 NEIL DUNN: ...I think that's important, and it serves a purpose for their business and their...it seems to be in
314 compliance? It's obviously in compliance, so...I guess logistically that would be between the parties...
315
316 JIM SMITH: Well, the first part. The first requirement says no more than one (1) off-premise sign so exists on
317 an individual parcel. Would...even though this is for a thirty (30) day period, would this be the one off-premise
318 sign period?
319
320 RICHARD CANUEL: That would be the one (1) off-premise sign, yes.
321
322 JIM SMITH: So no one else could come in for the other eleven (11) months and do anything?
323
324 RICHARD CANUEL: No, because the special exception is specific to the business requesting the off-premise
325 sign. So, I'll I can say, if you put a sunset date on that sign, once that sign come down, if this particular
326 applicant wishes to replace that sign again it will necessitate another special exception request before the
327 Board.
328
329 NEIL DUNN: However, any physical change to the sign would also, or no? So, if Mr. Brownell decides...
330
331 [Overlapping comments]
332
333 NEIL DUNN: ...if Brownell sells and new buyers are fine with this, but want to put up a different sign then that
334 kills the exception?
335
336 RICHARD CANUEL: Yes, yes.
337
338 [Overlapping comments]
339
340 NEIL DUNN: As soon as he sells it? Okay, thank you.
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342 ROBERT DIETEL: If there was a new owner, they wouldn't be able to use the Phantom Fireworks sign.
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NEIL DUNN: No, I don't mean a new owner for you, I mean for the property owner.

ROBERT DIETEL: Right, right.

JIM SMITH: See the off-premise sign applicant has to have permission from the owner, so if you have a new owner they no longer have his permission.

NEIL DUNN: Okay.

JIM SMITH: Okay.

NEIL DUNN: It's a different one anyway.

JIM SMITH: Yeah.

DAVE PAQUETTE: You don't have any additional off-premise signs at his point right?

PHIL SILVERMAN: No.

ROBERT DIETEL: Yeah, and there's I believe like a placard in a shop?

PHIL SILVERMAN: Oh yeah, there's that...I forget what gas station it is on the corner there, but he sells some of our non-firework items, and I think that's how he kind of advertises he has Phantom Firework items there, so...

ROBERT DIETEL: And the criteria as I understand it is...you know I don't think of that as an off-premise sign per say. I mention it to the Board, so we are completely candid about it, but you know the criteria says no business shall be advertised on more than two (2) off-premise signs.

DAVE PAQUETTE: That's where I was...

ROBERT DIETEL: So, even if it were...

PHIL SILVERMAN: I think a directional is off-site and that's...

ROBERT DIETEL: Yeah.

DAVE PAQUETTE: But they sell your products, as a...?

PHIL SILVERMAN: They sell like 3-D fire glasses, and I can't remember what else it is, and it's just...

DAVE PAQUETTE: Sure.

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PHIL SILVERMAN: ...He wanted a sign to draw people in.

JACKIE BENARD: So, it was more about a product?

PHIL SILVERMAN: Yeah.

[Overlapping comments]

ROBERT DIETEL: Yeah, I think of it as a vendor type.

PHIL SILVERMAN: Yeah.

ROBERT DIETEL: You know somebody who sells Marlboro cigarettes might have a sticker in their window, or something like that. It's a kin to that.

JACKIE BENARD: So, he basically used your logo? Okay.

JIM SMITH: Okay. Is there anything else that you would...? Okay? Anyone in favor of this? Anyone objecting to it? Questions? If you do, you want to approach the mic and identify yourself? Name and address for the record.

KEVIN FOLEY: Kevin Foley my parents own five (5) and seven (7) St. Charles the two (2) closest houses, and I just came to hear what they're saying and I'm in agreement as long as it's not an illuminated sign, and it's temporary, so...

JIM SMITH: Okay.

[Overlapping comments]

JACKIE BENARD: Thank you.

JIM SMITH: If there is nothing else? Any other questions? We'll close the public hearing.

DELIBERATIONS:

DAVE PAQUETTE: So, my thought is to make a special exception that it's allowed annually on those dates they're requesting with land owners approval, or rental deal whatever he's got...?

JIM SMITH: Okay, why don't we go through the criteria here?

DAVE PAQUETTE: Okay.

430 JIM SMITH: Number one, it says no more than one off-premise sign. That's, yes. They're not advertising over
431 more than two (2) locations. Its eighteen (18) square feet so that's...we're not talking directional, so does
432 somebody want to make a motion?
433

434 DAVE PAQUETTE: Mr. Chairman, I'd like to raise a motion to grant the special exception of Case No.
435 5/20/2015-1 with conditions that the special exception is only allowed annually from June 7th to July 5th with
436 the land owner's approval and it only be the sign as requested and presented.
437

438 JIM SMITH: Okay.
439

440 [Overlapping comments]
441

442 JACKIE BENARD: Did you ask for June 6th, Sir?
443

444 ROBERT DIETEL: Yeah, I was just to clarify June 6th is the date we were...
445

446 JACKIE BENARD: June 6th.
447

448 ROBERT DIETEL: Thank you.
449

450 JACKIE BENARD: Through July 5th.
451

452 DAVE PAQUETTE: Okay. I wrote it down as it was said.
453

454 ROBERT DIETEL: Yeah, and to clarify we're talking about through...so...
455

456 JACKIE BENARD: Through.
457

458 ROBERT DIETEL: Through, yeah.
459

460 DAVE PAQUETTE: So, allowed annually from June 6th through July 5th with the current land owner's approval
461 and only the sign as requested and presented.
462

463 NEIL DUNN: Non-lighted?
464

465 DAVE PAQUETTE: What's that?
466

467 NEIL DUNN: Non-lighted?
468

469 DAVE PAQUETTE: Yeah, as well as it be a non-illuminated sign.
470

471 JIM SMITH: Okay. Second?
472

473 JACKIE BENARD: I'll second.

474
475 JIM SMITH: Jackie seconds.

476
477 JIM SMITH: All those in favor?

478
479 ALL: Aye.

480
481 RESULTS: THE MOTION TO GRANT THE SPECIAL EXCEPTION WITH CONDITIONS WAS GRANTED, 5-0-0.

482
483 RESPECTFULLY SUBMITTED,

484 

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486
487 DAVID PAQUETTE, CLERK

488
489 TYPED AND TRANSCRIBED BY NICOLE DOOLAN, PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT
490 SECRETARY.

491
492 **APPROVED (JUNE 17, 2015)** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY JACKIE BERNARD AND
493 APPROVED 5-0-0.