

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

DATE: OCTOBER 19, 2011

CASE NOS.: 10/19/2011-1 AND 10/19/2011-2

APPLICANT: STATE OF NEW HAMPSHIRE DOT
PO BOX 483-7 HAZEN DRIVE
CONCORD, NH 03302-0483

LOCATION: 61 NASHUA ROAD; 7-125-1; C-1

BOARD MEMBERS PRESENT: MATT NEUMAN, CHAIR
JAMES SMITH, VOTING MEMBER
MICHAEL GALLAGHER, VOTING ALTERNATE
JAY HOOLEY, VOTING ALTERNATE
NEIL DUNN, CLERK

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

REQUEST: CASE NO. 10/19/2011-1: SPECIAL EXCEPTION TO ALLOW AN OFF-
PREMISE SIGN IN ACCORDANCE WITH THE PROVISIONS OF SECTION
3.11.6.3.6; TO EXTEND THE TIME PERIOD PREVIOUSLY GRANTED.
CASE NO. 10/19/2011-2: VARIANCE TO ALLOW THE AREA OF AN OFF-
PREMISE SIGN TO EXCEED THE 25 SQ. FT. LIMITED BY SECTION
3.11.6.3.6.3.

PRESENTATION: Case No. 10/19/2011-1 was read into the record with four previous cases listed.

JOSEPH MAYNARD: Good evening. My name's Joseph Maynard. I represent the State of New Hampshire and the Nevins off site premise sign. I'd like to talk also about the next case that's after this because they kind of go hand in hand. The case after this, I'm asking for an additional square footage to the off-premise sign, to increase the sign to the language that's on the sign that's currently exists. The special exception that we're asking for that's here first expires in December of this year. The Nevins is down to the last seventeen units to be built. With the economy, it's kind of hard to say when that might finally finish. With this off-premise sign, it'll be removed as soon as they're done with their sales within the development. They rent it from the State in an off-premise application. The variance that you have after you, again, currently there's an existing twenty-something square foot sign that exists. It's shown here in this picture as the top. It says "a premier over-55 community," it says, "The Nevins, model open daily, first left, then right," so that's more directional. What they've been finding over the years, being that this sign has been out there since 2007 roughly, is that people are still like, "what's the phone number, internet address," that kind of thing. They actually, earlier this

46 year, not realizing they were over their square footage, went and had the lower portion made. It came under
47 a letter from Richard that asked for it to be removed unless they got a variance, so they had this portion of a
48 sign that they had mounted underneath that's three (3) feet by seven (7), so twenty one (21) square feet. It
49 actually...it spells out the "luxury homes," you know for "active adults," it has their phone number and also an
50 internet address so people can find the site, you know, instead of trying to drive through and actually stop in
51 at the club house that has different hours of operation. So, I'm not sure how you'd like to handle it, because
52 I'd like the two permits to kind of run concurrently with the...

53
54 MATT NEUMAN: Well, why don't you run through both applications...

55
56 JOSEPH MAYNARD: Okay, I'll do them both then.

57
58 MATT NEUMAN: I think we can handle...

59
60 NEIL DUNN: Let me read in the case then, 'cause there are another lengthy redundancy on the same things.

61
62 Case No. 10/19/2011-1 was read into the record with four previous cases listed.

63
64 JOSEPH MAYNARD: So again, Joseph Maynard, Benchmark Engineering. I represent the Nevins.

65
66 MATT NEUMAN: We remember you.

67
68 JOSEPH MAYNARD: Yup. The big gist of the whole aspect of it is that they'd like to ask for the request for the
69 additional twenty one (21) square feet of signage. They'd like it to stay on the off-premise sign. The sign
70 itself, this is in a C-II zone, so if there was a building on this property, it would be allowed a sixty (60) five (65)
71 square foot sign. Under your special exception for an off-premise sign, you cap it at twenty five (25) square
72 feet. So what we're actually looking for in this case is forty six (46) square feet for the off-premise sign. We'd
73 like the forty six (46) square feet to remain for an additional three (3) years. If they do finish their sales prior
74 to the three year (3) time period, the sign would be removed prior to that time. We're hoping to be out of
75 there in the next three (3) years, is the anticipated time frame. Again, being that the Nevins sits so far off the
76 road, they need some sort of an outside thing to try and draw people in, Route 102 being the obvious location
77 with the amount of traffic that goes by per day, a sign of this size is just about the right size that people can
78 catch it with their eye and still see the numbers and read from it. I'll read through the variance first so that I
79 can go over the reasons we're requesting this. The variance itself is requested from Section 3.11.6.3.6.3 of the
80 zoning ordinance for the following reason; 3.11.6.3.6.3. We are requesting an additional twenty one (21)
81 square feet of marketing sign to the existing twenty five (25) square foot off-premise sign previously granted
82 under case number 11/16/2005-1 for the Nevins Senior Cooperative Community. The facts supporting this
83 request: number one, the variance will not be contrary to public interest because there's an existing off-
84 premise sign now that measures approximately twenty five (25) square feet, the maximum allowed under the
85 ordinance. The additional proposed twenty one (21) square feet is a marketing sign for the project and will be
86 removed once the project is completed. The overall sign will remain under the maximum overall of sixty (60)
87 five (65) square feet allowed in a C-II zone. Again, being that the State of New Hampshire owns this piece of
88 property, it's an undeveloped lot that...it's wooded all around it on both sides of the street in this area. It's
89 really only visible from a commercial property across the street or the Post Office or traffic that does happen
90 to go across 102. The spirit of the ordinance is observed. This sign will remain as it currently exists with the

91 marketing sign of twenty one (21) square feet to be placed under the sign which was previously allowed for
92 the Nevins Senior Cooperative Community. The sign size, although larger than allowed under the ordinance,
93 is still consistent with signs allowed in the surrounding C-I zone. Substantial justice is to be done. The Nevins
94 project is a very large senior housing project with no direct frontage on Route 102. An off-premise sign is
95 necessary so the project can be identified. This location helps guide potential consumers to the project. The
96 additional marketing sign is necessary since this is such a large project and overall build out is still expected to
97 take a couple of years. The additional sign will help the developer effectively market their project. Four, the
98 value of surrounding properties are not to be diminished. There is a sign now. Many of the abutting projects
99 are commercial in nature and the sign is located in such that it's not visible to any of the residential abutters.
100 Five, literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. For (A),
101 for purposes of this subparagraph, unnecessary hardship means owing to special conditions of the property
102 that distinguish it from other properties in the area, (i) no fair and substantial relationship exists between the
103 general public purpose of the ordinance provision and the specific application of that provision to the property
104 and, you know, this is an off-premise sign located in a C-I zone, which does allow up to sixty five (65) square
105 foot signs. The off-premise sign is temporary and is utilized for identifying and marketing the existing Nevins
106 project. And (ii), the proposed use is a reasonable one. There is a sign there now. The twenty one (21) square
107 foot addition is below the existing sign and will put the total square footage of the sign at forty six (46) square
108 feet. The Nevins is a very large project, no direct frontage on 102, and this sign does help identify and
109 delineate the project. Under the special exception, it's a little shorter. The project itself, again, as we
110 discussed, the sign itself does expire, I think it's in December of this year. The Nevins development does pay
111 the State and does have an agreement with the State to have this off-premise sign. There's a letter in the file
112 that the State is aware of the square footage that we're actually asking for, being the forty six (46) square feet.
113 They're fine with that, they have no issues with us proposing that. You know, as per the conditions of the
114 special exception, (A) no more than one (1) off-premise sign shall exist on an individual parcel. We already
115 have a sign there, we're just looking to enlarge it. No business shall be advertised on more than two (2) off-
116 premise signs as provided as Section...and again, we have one (1) off-premise sign and it's located at this
117 location. The (c) portion of this, so again, there's two (2) parts, if we were not to receive the variance for the
118 additional twenty one (21) square feet, we still would like to ask for the extension of the existing sign and the
119 sign must conform with the regulations of the zoning ordinance and therefore that's why we're requesting the
120 variance for the increase in size. That's pretty much the gist of it. Try and be short.

121
122 MICHAEL GALLAGHER: The current sign, did you say that bottom piece was added? Is it forty six (46) right
123 now as we're looking at it?

124
125 JOSEPH MAYNARD: No, right now, you're looking at just this top section, which is about twenty four (24)
126 square feet. Just under twenty four (24) square...about twenty four (24) square feet.

127
128 MICHAEL GALLAGHER: I pass it every day.

129
130 JOSEPH MAYNARD: Yeah, but you don't even notice it and what they wanna add is three (3) feet by seven (7)
131 below it, twenty one (21) additional square feet. It's a little out of proportion because I took this as a separate
132 image and stuck it here just to show you where they were proposing it.

133
134 MICHAEL GALLAGHER: Okay.
135

136 JOSEPH MAYNARD: So this is what you see when you go by now...
137
138 MICHAEL GALLAGHER: Okay.
139
140 JOSEPH MAYNARD: ...there's nothing on the bottom.
141
142 MICHAEL GALLAGHER: Okay, and this is what you're proposing.
143
144 JOSEPH MAYNARD: This is what I'm proposing, to keep the top and add twenty one (21)n square feet below
145 it.
146
147 MICHAEL GALLAGHER: And that would be the red...
148
149 JOSEPH MAYNARD: The red.
150
151 MICHAEL GALLAGHER: ...and the phone and URL information?
152
153 JOSEPH MAYNARD: Yes.
154
155 JIM SMITH: If you went by there a couple of months ago, you would have seen that.
156
157 JOSEPH MAYNARD: That was up. It's close to three (3) months ago but yeah.
158
159 MATT NEUMAN: What's the size of just the phone number and email or the website? Besides that portion...
160
161 JOSEPH MAYNARD: That's about eighteen (18) inches tall because again, that sign itself is three (3) feet and
162 it's the full width of what's there, seven (7). So that portion of it is eighteen (18) inches. Roughly half the sign.
163
164 MATT NEUMAN: And you feel that the "luxury homes for active adults" is vital as well to the sign?
165
166 JOSEPH MAYNARD: The marketing people for the Nevins do feel it is.
167
168 MATT NEUMAN: Mm-hmm.
169
170 JOSEPH MAYNARD: You know, they feel they need something to try and draw people in to the project and it's
171 part of their marketing for it in general, so...
172
173 MATT NEUMAN: Mm-hmm.
174
175 JOSEPH MAYNARD: Again, it's a temporary sign. We're hoping to be out of there within the next two (2)
176 years, is the game plan. There's seventeen (17) units left out of the hundred and twenty (120) that were
177 approved.
178

179 MATT NEUMAN: And so if the Board did approve and did have a...that it was conditioned on...or put a
180 condition on that once the last unit was sold that the sign would come down? I know that's the intent but if
181 that was included...
182
183 JOSEPH MAYNARD: We're fine with that. We're fine with that. Yup.
184
185 JAY HOOLEY: Mr. Chairman, couldn't we frame it...what is it you were asking for? Three (3) years?
186
187 JOSEPH MAYNARD: I'm asking for not to exceed three (3) years, so...
188
189 JAY HOOLEY: Right. So...
190
191 MATT NEUMAN: Well, right, but in that...
192
193 JAY HOOLEY: Three (3) years or when they sell off, whichever comes first.
194
195 MATT NEUMAN: Yeah, and I was just saying so a year from now, when it's completed, then...
196
197 JAY HOOLEY: Sold off. They won't need it.
198
199 MATT NEUMAN: Right. We also just wanna make sure that...
200
201 JOSEPH MAYNARD: You know, they pay the State every year to keep that sign, so when they're done, they
202 don't wanna be paying any more than they have to for it, so it's a considerable amount of money that goes to
203 the State...
204
205 MATT NEUMAN: The State may not like that, though. They might want to keep that revenue coming...
206
207 JOSEPH MAYNARD: They really don't care, to be honest with you, so...
208
209 MATT NEUMAN: They like the revenue, come on.
210
211 JOSEPH MAYNARD: Yeah.
212
213 NEIL DUNN: The seventeen (17) units or the end of the complete complex or is there another phase to follow?
214
215 JOSEPH MAYNARD: No, this is the final portion of it. There's seventeen (17) unsold units, so...There's a few
216 under construction right now, so when you drive through there, you'll see construction but the very end of the
217 road and there's three (3) units at the beginning of the road that they haven't cut the trees for yet, so...But
218 that's all that's left.
219
220 MATT NEUMAN: Jim?
221
222 JIM SMITH: Okay, in your argument, you talk about the sixty (60) five square foot limit of the normal
223 freestanding sign for a commercial lot and that's for the normal tenant of that piece of property and it's

224 not...and the special exception for the off-premise sign is specifically limited to twenty five (25) square feet.
225 So I think trying to argue that the sixty (60) five is justification to increase the off-premise sign to that limit is a
226 little bit weak.

227
228 JIM SMITH: No, you know, and I look at that aspect, Jim, and I say to myself as you drive down 102, that's a C-I
229 zone, so a sixty (60) five (65) square foot sign is not uncommon as you drive through that stretch of Route 102.
230 I know it's an off-premise sign, I know off-premise signs do have a cap, you know, for...but this is also a piece
231 of property the State of New Hampshire has. There's nothing else on it. It's not developed at this point in
232 time, so it's utilized specifically just for the Nevins and again, the Nevins is a different animal where it's a
233 thousand (1,000) feet back from 102. This is the primary sign that gives delineation to where it is but the
234 character of the whole 102 corridor in a C-I zone, which is a sixty five (65) square foot maximum sign. People
235 don't realize that that's not a piece of land that the Nevins owns out at 102 and, you know, I'm using the
236 argument from the standpoint of it's not out of character with what else is in the area. And again, our sign's
237 temporary, the other one's are permanent. It's not a lit sign. It's a pretty straight forward thing, more for
238 marketing to delineate a project that just has no Route 102 exposure other than this sign.

239
240 JIM SMITH: I still think it's a weak argument because you're comparing apples and oranges. Two different
241 things. One sign was made, set up for one particular use...

242
243 JOSEPH MAYNARD: Yup.

244
245 JIM SMITH: The other sign is set up for a totally different use and to try to use the on-site sign as a justification
246 to increase an off-premise sign, I don't think is really a legitimate argument in my mind.

247
248 NEIL DUNN: If I may, and I think to agree with Jim's point is if the dive shop decided they wanted to go see the
249 State and rent land and put up a sign because they're kind of back there too, and then anybody else, then
250 we've just gotten into this whole thing, spirit of the ordinance and when we start saying "well, yeah, that
251 could be if, if, if," well, again, they're not related and it could become a row of signs.

252
253 JOSEPH MAYNARD: Yeah, and it could, but you limit it to one (1) off-premise sign on the piece of property. So
254 we'd have to work a deal with the State, if that was the case, so that we wouldn't take up all the square
255 footage that was allowed to identify the project.

256
257 NEIL DUNN: Well, no, I would interpret it that maybe the dive shop could have an off-premise sign, so there's
258 a second sign there and then if Tinkham's wanted one because that's the only way to get down around there,
259 there's a third off-premise sign. So I think, to Jim's point and to ours is to compare apples and oranges isn't a
260 fair argument and we see that a lot and I guess we're just trying to point that out, that...

261
262 JOSEPH MAYNARD: No, you know, like I said, I kind of weigh it and I look at it a little differently but point
263 taken.

264
265 JAY HOOLEY: But we would not have more than one (1) off-premise sign on any one (1) parcel. Was that...?

266
267 JIM SMITH: It's the rule.

268
269 JAY HOOLEY: Right. So we would not, under any circumstances, end up with three (3) different signs on that
270 parcel, would we? I don't think we can. Right, so...
271
272 NEIL DUNN: But unless we gave the exception? The original sign never had a phone number on there? The
273 top half?
274
275 JOSEPH MAYNARD: No. Never a phone number on it.
276
277 MATT NEUMAN: No portion of that is lit presently.
278
279 JOSEPH MAYNARD: No, it's not a lit sign.
280
281 MATT NEUMAN: No.
282
283 JOSEPH MAYNARD: No.
284
285 MATT NEUMAN: It's just in that, and I know you just added it on there but it looks like it's a lighted...
286
287 JOSEPH MAYNARD: Yeah, 'cause I took "The Nevins" in the rain and I took the sign in a building, so the
288 reflection, a little light on it, but...
289
290 MATT NEUMAN: Yeah.
291
292 JOSEPH MAYNARD: ...it's not a lit sign and again...
293
294 JIM SMITH: They don't want the flower box that they had before?
295
296 JOSEPH MAYNARD: Not that I know of, so...would you like them back?
297
298 JIM SMITH: No.
299
300 MATT NEUMAN: You're right on top of it, Jim.
301
302 JIM SMITH: What?
303
304 MATT NEUMAN: You're right on top of it.
305
306 JIM SMITH: Yeah, it was very obvious to me. And again, it kind of speaks to the fact that some people just do
307 things without really finding out what's legal or not.
308
309 JOSEPH MAYNARD: And we're here before you to try and rectify that, so...
310
311 MATT NEUMAN: Okay. Any other questions from the Board?
312

313 RICHARD CANUEL: If I could, Mr. Chairman, before you guys go into deliberations here, I just wanna point out
314 a procedural issue for the Board. Although the location of this sign and the size of this sign are sort of
315 concurrent issues, the Board needs to make two distinctly different decisions, one being a special exception as
316 the Board knows is a use that's allowed by the ordinance, based on certain criteria. If the applicant meets that
317 criteria, the Board is obligated to grant that special exception. If they miss just one of those criteria, then you
318 cannot grant it. On the other hand, being a variance request, the Board needs to apply a completely different
319 criteria along the lines for that variance application too, so, just a note.

320
321 MATT NEUMAN: Thank you. Alright, are there any members of the audience who'd like to come forward in
322 favor of the applicant's request?

323
324 JOSEPH MAYNARD: No, I think we've covered why we need it and why we want.

325
326 MATT NEUMAN: I'm looking for anybody else. We've heard from you. Just kidding. Anyone in opposition
327 who'd like to come forward? No, not seeing any. Any last questions from the Board before we deliberate
328 this? And as Richard said, we will be deliberating two separate cases. We'll take the special exception first.

329
330 JAY HOOLEY: If I can do a couple quick questions, just to make sure...

331
332 MATT NEUMAN: You go right ahead.

333
334 JAY HOOLEY: Richard, they would be allowed a second off-premise sign on a different parcel?

335
336 RICHARD CANUEL: That's right.

337
338 JAY HOOLEY: Which could be the opposite side of the road.

339
340 RICHARD CANUEL: It could be, yes.

341
342 JOSEPH MAYNARD: I'd like...tax map wise, that's considered one (1) parcel.

343
344 JAY HOOLEY: Oh, it is.

345
346 JOSEPH MAYNARD: As far as I can find on the maps.

347
348 JAY HOOLEY: Okay. Even though the road splits it, it's one (1).

349
350 JOSEPH MAYNARD: Yes.

351
352 JAY HOOLEY: Okay.

353
354 RICHARD CANUEL: Oh, on the opposite side of...yeah...

355
356 [overlapping comments]

358 RICHARD CANUEL: Yeah, it is.
359
360 JAY HOOLEY: Okay, I was thinking that was a separate parcel.
361
362 JOSEPH MAYNARD: Yeah, I thought of that one, too.
363
364 MATT NEUMAN: Yeah, I know. Yeah, it is.
365
366 JAY HOOLEY: In other words, functionally, they're allowed a second one, either single pieces within the
367 twenty five (25) square feet. It's just that, in my mind, I guess that's somewhat unique. If those two (2)
368 different pieces of land are one (1) parcel, even if you put two (2) less than twenty five foot square signs on
369 opposite sides of that intersection, you would still not be able to meet it due to that unique scenario.
370
371 MATT NEUMAN: Mmm.
372
373 JIM SMITH: I think the history was that that was a piece of land that they took to create a wetlands...
374
375 JAY HOOLEY: Okay.
376
377 JIM SMITH: ...to compensate for some other development someplace else.
378
379 JAY HOOLEY: I just find it rather unusual that you got a street splitting one lot.
380
381 JIM SMITH: I think that's the history of it.
382
383 JAY HOOLEY: You know, because they could probably accomplish something very similar with two (2) signs
384 less than twenty five (25) square feet very close to each other if those were two (2) distinct parcels and then
385 they would simply need the one, I believe, there...exception, sorry.
386
387 MATT NEUMAN: Okay. Alright, any further questions or do you want to pull back into deliberations? Are we
388 ready? Well, looking at the...
389
390 JAY HOOLEY: Before we put one last...so they don't anticipate a need, once this thing is sold out, to have a
391 directional sign trying to get anybody in there?
392
393 NEIL DUNN: It would be removed.
394
395 JAY HOOLEY: And any visitors, they just...?
396
397 JOSEPH MAYNARD: They direct them in...
398
399 JAY HOOLEY: Pull a GPS out and...
400
401 JOSEPH MAYNARD: Tell them where to go on the street names and so forth.
402

403 JAY HOOLEY: They don't anticipate coming back eventually just with a, you know...
404
405 JOSEPH MAYNARD: No, this sign is paid for by the developer...
406
407 JAY HOOLEY: Okay,
408
409 JOSEPH MAYNARD:and it's for the marketing purposes only. The Nevins as a community is not paying for
410 an off-premise sign, they're not...
411
412 JAY HOOLEY: And don't have any...
413
414 JOSEPH MAYNARD: They don't plan on it, they don't...
415
416 MATT NEUMAN: 'Cause it really would be like any other subdivision, really, at that point.
417
418 JOSEPH MAYNARD: Yeah.
419
420 JAY HOOLEY: Yup. Okay.
421
422 MATT NEUMAN: Alright, we're gonna pull back and deliberate.
423
424 DELIBERATIONS:
425
426 MATT NEUMAN: First we have to look at the special exception. And really, it's just a matter of running
427 through the requirements of it. Is there any of the criteria that anyone feels they do not meet?
428
429 JIM SMITH: No, not the way it's presented for the special exception part. There's only one (1) sign there.
430 They're not advertising in more than two (2) locations and what we're talking about right now is just strictly
431 the twenty five (25) square feet.
432
433 MATT NEUMAN: Exactly, yup, we're looking at twenty five (25) and under, so...
434
435 JIM SMITH: Right, so I would say it meets the criteria and it had met the criteria in the past.
436
437 MATT NEUMAN: Exactly. It's really a continuation of the...
438
439 JIM SMITH: Yeah.
440
441 MATT NEUMAN: Alright, so I think we should probably rule on this case and then move forward. So is there is
442 a motion on...?
443
444 NEIL DUNN: If I may just bring up, does anybody have issue with the "luxury homes" and "active adult
445 community," as opposed just to allowing the phone number there?
446
447 MATT NEUMAN: Alright, well, we can talk about that in a second. This is just a special exception, just on the...

448

449 NEIL DUNN: Right, and that's...

450

451 JIM SMITH: We're just talking about the sign. Not the additional square footage.

452

453 MATT NEUMAN: Yeah. It's the existing sign that's there. We've got to look at them at two separate...

454

455 MICHAEL GALLAGHER: It would be part of the variance.

456

457 NEIL DUNN: Right, and I thought that's what I was just looking at here.

458

459 MICHAEL GALLAGHER: Not the special exception.

460

461 JIM SMITH: We have to talk about that next.

462

463 NEIL DUNN: Special exception, off-premise sign shall...alright, let me get back to the...

464

465 MATT NEUMAN: Okay, so look at it with both...

466

467 NEIL DUNN: That's why I wanted to make sure we felt [indistinct]. Oh, so you're doing...

468

469 MATT NEUMAN: The special exception.

470

471 NEIL DUNN: Okay, "to allow," I'm sorry. 'Cause that time period was gonna run out.

472

473 MATT NEUMAN: Exactly.

474

475 NEIL DUNN: My apologies.

476

477 MATT NEUMAN: So it's really...it's a further continuation of...

478

479 NEIL DUNN: No, yeah, my apologies,

480

481 MATT NEUMAN: No problem.

482

483 MICHAEL GALLAGHER: Mr. Chairman, I'll make a motion to approve the special exception with the condition
484 that it be taken down, well, I guess, after a time of what, thirty six (36) months or when the last unit is sold,
485 whichever comes first, then the sign would come down, the last unit sold.

485

486 MATT NEUMAN: Okay. Is there a second?

487

488 JIM SMITH: Second.

489

490 JAY HOOLEY: I'll second.
491
492 MATT NEUMAN: And a second.
493
494 RICHARD CANUEL: If I could, Mr. Chairman, before you vote, make one more comment. Being that there
495 were previous special exceptions on this same issue, one of them still being in effect, I would suggest that one
496 of the conditions of your approval be that previous special exceptions shall become null and void with
497 approval of this special exception and then just add whatever carryover conditions you wish on this current
498 special exception so that we don't have a conflict between prior approvals.
499
500 MATT NEUMAN: Thank you.
501
502 MICHAEL GALLAGHER: Okay, so I'll rephrase it. Vote to approve the special...motion to approve the special
503 exception for thirty six (36) months or until the last unit is sold, whichever comes first and to make null and
504 void all previous exceptions...make null and void the previous ruling by the Board. Is that what you were
505 getting at, Richard?
506
507 RICHARD CANUEL: Yeah, that's basically, you wanna null and void the previous special exception so that we
508 don't have a conflict between the two.
509
510 MICHAEL GALLAGHER: Okay.
511
512 MATT NEUMAN: Alright, do I have a second?
513
514 JAY HOOLEY: Second.
515
516 MATT NEUMAN: Second. All those in favor?
517
518 NEIL DUNN: Aye.
519
520 JIM SMITH: Aye.
521
522 JAY HOOLEY: Aye.
523
524 MICHAEL GALLAGHER: Aye.
525
526 MATT NEUMAN: Aye. Opposed? Abstain?
527
528 JIM SMITH: The way this was voted, then the thirty six months starts from now.
529
530 RICHARD CANUEL: That's right.
531
532 [Board members filled out their voting sheets and the Clerk read the result into the record]
533
534 JAY HOOLEY: So that was presented, are we moving right into deliberation on the second?

535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578

MATT NEUMAN: Oh, yeah, we're in deliberations, so...

JAY HOOLEY: Okay. Okay. I'll take a quick buzz at this one.

JIM SMITH: Well, you're gonna talk about it first.

JAY HOOLEY: Yeah. That's what [indistinct].

JIM SMITH: I still have a hard time with the extra twenty one (21) square feet. I mean, we have a criteria for an off-premise sign. It's supposed to be applied, you know, pretty uniformly. Trying to justify it by the other size, you know, the normal freestanding sign, I just have a hard time with that idea.

JAY HOOLEY: On the flip side, I'd observe that they would be allowed two (2) signs not to exceed twenty five (25) square feet each and if it were not for the uniqueness of that lot, they could both be right at that intersection on the two opposite sides and be within the zoning. So, he would need it...if he wanted to take it and split it into two (2) and put the other half on the opposite side, he'd still need to be here because of that being the single lot.

JIM SMITH: Yeah, but I think the intent of that is to have it on two (2) very distinct locations, not...

JAY HOOLEY: Well, normally, the opposite side of a road with a yellow line down the middle would be...

JIM SMITH: Yeah.

MATT NEUMAN: You could certainly make that argument.

JAY HOOLEY: It would meet that threshold for me at least.

NEIL DUNN: I tend to agree with Jim. Usually, you're looking at, if you like, the Londonderry Country Club, you have some roads that are quite a few miles apart, I mean one's on one side and one's on the other side, that's where the application, and me, personally, wouldn't have as much of an issue. If they came here and that was two (2) different lots and he wanted two (2) there, maybe we wouldn't be so willing. I mean, you know, I mean again, yes, they could do it within the twenty five (25), but they wouldn't be in front of us. If they want anything larger, I don't think I'd be willing to put two (2) side by each right on the main road. I mean, that's...I don't know that that argument carries much weight for me that they could be sitting there.

MATT NEUMAN: Well, should we walk through the application? Do you feel that's helpful?

NEIL DUNN: Absolutely.

MATT NEUMAN: Alright. Does anyone feel that it's contrary to the public interest? Any major concerns with that?

579 JIM SMITH: Well, again, it goes back to the size of the sign and would we...we've got the special exception for
580 those situations when you have a location which is remote from where the normal travel path is and we've
581 had a limit of twenty five (25) square feet in these zones and it's been applied that way pretty consistently as
582 far as I know and to arbitrarily increase it another twenty one (21) square feet and trying to justify it based
583 upon the idea that the normal freestanding sign is sixty (60) five (65) square feet in that zone...

584
585 MICHAEL GALLAGHER: Jay, pardon my ignorance here, but what lot were you referring to putting the second,
586 you know, where your argument was.

587
588 JAY HOOLEY: If you look at the...

589
590 JIM SMITH: In other words, he was talking like over here.

591
592 MICHAEL GALLAGHER: Oh, okay. Alright.

593
594 JIM SMITH: But, in fact, they're both the same lot.

595
596 MICHAEL GALLAGHER: Oh. Alright.

597
598 JAY HOOLEY: Yeah, Winding Pond Road splits this lot down the middle.

599
600 MICHAEL GALLAGHER: Yeah. I see. Okay.

601
602 JIM SMITH: And I think it kinda goes back to the history of the lot. That lot was set up as a compensation for
603 some filling of wetlands on another part of the property, I believe, on the far end.

604
605 MICHAEL GALLAGHER: Okay.

606
607 JIM SMITH: They created an artificial wetlands.

608
609 MATT NEUMAN: Well, let's just keep going through the application here.

610
611 MICHAEL GALLAGHER: Okay.

612
613 MATT NEUMAN: And the spirit of the ordinance...Jim, I think you have some issues with that.

614
615 JIM SMITH: They'd be the same. Those two are very close.

616
617 MATT NEUMAN: Mm-hmm.

618
619 JIM SMITH: Same idea.

620
621 MATT NEUMAN: And substantial justice.

622
623 JIM SMITH: Well, on that one, you could make an argument because of the unique location of that

624 development and so forth and trying to make it visible and give information out, yeah, I guess that would...you
625 could buy that one.

626
627 NEIL DUNN: Yeah, but there's nothing there that's talking...in the application, there's nothing that talks to the
628 uniqueness of the development and it's not so much that it's unique other than it's off the road. I mean, if
629 we're going to go through the points and that's what we're doing, I don't see anything in substantial justice or
630 whatever that is arguing the uniqueness of the property. It's just saying that the marketing people feel it's
631 necessary to add some more verbiage.

632
633 MATT NEUMAN: Well, but, you know, I think by them saying that the location helps guide potential owners or
634 potential consumers to the project.

635
636 NEIL DUNN: I'm just pointing out that it's not stated there. I'm going by what's on the application.

637
638 MATT NEUMAN: I agree with you. So you have a problem with that.

639
640 NEIL DUNN: When they don't...yeah, when they don't support it well in the documentation, I [indistinct]
641 problem with it.

642
643 MATT NEUMAN: I'm just talking about in this particular case.

644
645 NEIL DUNN: No, I'm just...I mean, realistically, it was there, it's when you start going bigger and better...

646
647 MATT NEUMAN: Mm-hmm. And the surrounding properties being diminished? I'm not sure that's an issue.

648
649 NEIL DUNN: I don't think that's an issue at all.

650
651 MATT NEUMAN: Right.

652
653 JIM SMITH: I think another part of this, which is a little bit...makes this difficult; this, in reality, is really more of
654 a real estate sign and this off-premise sign is really aimed at a business or some entity like that being remotely
655 located as such as like Stonyfield Yogurt. They're up at the end of a street. They have a sign out where most
656 of the traffic is and they're trying to attract a certain amount of customers to come into their little store that
657 they have and so forth, so I think it's more aimed at that type of an application. So this is kind of a stretch on
658 this type of use for this particular type of sign, but...and again, that's what complicating it. In trying to
659 accomplish that realistic driven need, I guess is what I'm trying to say.

660
661 MATT NEUMAN: Mm-hmm.

662
663 MICHAEL GALLAGHER: You're saying it's more to the marketing...

664
665 JIM SMITH: Yeah, that's what it is. I mean, obviously, if it wasn't, then they wouldn't be agreeable to the limit
666 of...

667
668 MICHAEL GALLAGHER: Right. Makes sense.

669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713

MATT NEUMAN: Alright, and unnecessary hardship? Neil, some thoughts?

NEIL DUNN: When we look at the verbiage and the way it's presented that the C zone lets up to sixty five (65) square foot signs, "this off-premise sign is a temporary sign utilized for identifying..." I guess the only thing there is the temporary nature maybe...maybe would sway me. Again, I don't think we're supporting the unnecessary hardship so much. I mean, it's...he's again using the argument that he could have had sixty five (65) if it was a real building on that lot, which it's not, but I mean there's no substantiation for that fair and substantial relationship. I guess what makes it hard when it's hard to support it in the documentation, I guess is...

MATT NEUMAN: Any other thoughts on the hardship?

JAY HOOLEY: My only thought on the uniqueness of the stuff with the split lot, is that...it sort of jumped out as an easy solution. You're allowed two (2) off-premise signs. If you've got two (2) different lots, he could have done them, except for the fact that that's one (1) lot, so I don't know where you accomplish the same thing, putting that second off-premise sign within reason to get somebody into the Nevins from 102. I don't know what the viable alternative is for his second off-premise sign that he would be...

NEIL DUNN: Well, you wouldn't necessarily need it if it was on 102. You don't need them, again, going back to...

JAY HOOLEY: No, I'm saying based on his location, if he's allowed two (2) off-premise signs, where is it not on this split lot that he could put the second sign and viably get folks in there?

NEIL DUNN: Down at the end of the development where it goes into Constitution and some of those other roads.

MATT NEUMAN: Yeah, you know, I have a tough time with that. I guess with allowing the two (2) signs, 'cause I mean, you could have that other sign anywhere else in Londonderry.

JAY HOOLEY: And accomplish the purpose?

MATT NEUMAN: No, but I mean, that could be...I mean, I think that the Londonderry Country Club was a good example of that. It could be down at the end of...other end of 102. I just think to argue this point, saying that he could have two (2) signs right across from the street from each other, I just have a hard time with the unnecessary hardship. I don't know that it's a hardship not to have the extra twenty one (21) square feet.

JAY HOOLEY: Oh.

MATT NEUMAN: I think it's a luxury. It's not like it's not allowing the sign.

JAY HOOLEY: They still could put the second sign, he's just gotta find a spot for it. And he could put that verbage on it if he chooses.

714 MATT NEUMAN: Right.
715
716 JAY HOOLEY: Or...
717
718 JIM SMITH: Yeah, we're not dictating what they say on the sign.
719
720 JAY HOOLEY: Right, no, I'm saying just functionally, he can have the second sign still. He's gotta find a spot for
721 it.
722
723 MATT NEUMAN: And Richard, just to go back to you for a second. They're not limited to changing the sign at
724 all. They were given a special exception to have the sign there.
725
726 RICHARD CANUEL: That's right.
727
728 MATT NEUMAN: They can change the sign however they want.
729
730 RICHARD CANUEL: Yeah, we do not regulate sign copy.
731
732 MATT NEUMAN: Right. It's not like a preexisting...
733
734 RICHARD CANUEL: That's right.
735
736 MATT NEUMAN: Right.
737
738 JAY HOOLEY: So if you wanted to take the existing sign and reword it...
739
740 JIM SMITH: Yeah, they could.
741
742 MATT NEUMAN: "Models open daily," that could be removed and something else could be put there or
743 however.
744
745 JAY HOOLEY: And the total square footage of the existing sign is...
746
747 MATT NEUMAN: About twenty four (24) I think.
748
749 JAY HOOLEY: So, you don't...okay, you wouldn't be able to add a whole extra....
750
751 MATT NEUMAN: No, you'd have to...I think they'd have to change the sign.
752
753 JAY HOOLEY: Okay.
754
755 JIM SMITH: I think one of the problems you have with signs is once it's get too much verbage on it, it's not
756 readable and nobody reads it anyways.
757
758 MATT NEUMAN: Mmm.

759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803

JIM SMITH: And that's close to getting to that point by if they did have that additional twenty one (21) square feet.

MATT NEUMAN: Alright, have we resolved anything or is there anyone ready for a motion?

JIM SMITH: Yes. I'll make a motion to deny case 10/19/2011-2; no unnecessary hardship has been proven and it doesn't meet the spirit and intent of the ordinance.

MATT NEUMAN: I have a motion. Alright, anyone like to second that?

NEIL DUNN: I'll second it.

MATT NEUMAN: And a second. All those in favor?

JIM SMITH: Aye.

MATT NEUMAN: Aye.

JAY HOOLEY: Aye.

NEIL DUNN: Aye.

MATT NEUMAN: Those opposed?

MICHAEL GALLAGHER: Aye.

MATT NEUMAN: Or "nay"?

MICHAEL GALLAGHER: Or a nay.

RESULTS: THE MOTION TO GRANT CASE NO. 10/19/2011-1 WITH RESTRICTIONS WAS APPROVED, 5-0-0
THE MOTION TO DENY CASE 10/19/2011-2 WAS APPROVED, 4-1-0

RESPECTFULLY SUBMITTED,



NEIL DUNN, CLERK
TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED JANUARY 18, 2012 WITH A MOTION MADE BY N. DUNN, SECONDED BY J. SMITH AND APPROVED 4-0-1 WITH L. O'SULLIVAN ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.