

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

DATE: OCTOBER 8, 2010

CASE NO.: 8/18/2010-3 (MOTION TO REHEAR)

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: LARRY O'SULLIVAN, ACTING CHAIR & CLERK
MICHAEL GALLAGHER, VOTING ALTERNATE
JAY HOOLEY, VOTING ALTERNATE

REQUEST: MOTION TO REHEAR CASE 8/18/2010-3, A 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.

ACTING CHAIR LARRY O'SULLIVAN OPENED THE MEETING AND INTRODUCED THE MEMBERS. HE THEN READ INTO THE RECORD THE LETTER SUBMITTED BY THE APPLICANT ON SEPTEMBER 14, 2010 OFFICIALLY REQUESTING A REHEARING.

LARRY O'SULLIVAN: So, that's the matter of tonight. I guess, since we're not taking any additional public comment or comments from the applicant, the issue that we are shown in the documents that were provided as well were an example of a sign that had existed there previously, the Citgo sign. And there's a photo of that in the documents that were submitted. There was also an application for a sign from...at that particular sign on 9 Nashua Road, I guess they called it then?

MICHAEL GALLAGHER: Yeah.

LARRY O'SULLIVAN: And it was for...the owner was Energy North and that's the sign that we're seeing there, the Citgo sign that used to exist.

MICHAEL GALLAGHER: Is that what they're referring to in his letter? Already approved signage of the type?

LARRY O'SULLIVAN: Right. Because there was a change in use and the facility had been abandoned or, not abandoned but not used for such a long time, I don't believe they got to carry over that...the authority to change that sign, since it's a change in use as well. But the way I look at it is the document that says "Citgo" is, the photo that we have in front of us, it only says "Citgo" on the front and the sides. And it doesn't look like it's very large. It's twenty eight (28) by a hundred and twenty four (124) inches for the whole overlay, I guess. What is requested is almost covering the side of the...what is that? An overhang? Or the canopy?

JAY HOOLEY: Canopy.

MICHAEL GALLAGHER: Canopy.

LARRY O'SULLIVAN: So we have considerably different information that's on the signs and it's more distracting, I believe, to have lots of words on it and I believe we took that into consideration when we made our decision last time. Any comments?

JAY HOOLEY: I would only suggest, and you may disagree, that the only question before us tonight, though, is is there new evidence that would warrant a rehearing?

LARRY O'SULLIVAN: Right.

JAY HOOLEY: Not whether or not the particular evidence is, in fact, compelling. That would be the subject of the rehearing itself, should we determine it to be appropriate.

LARRY O'SULLIVAN: Because they were submitted at the same time with the document requesting a rehearing...

JAY HOOLEY: Yup.

LARRY O'SULLIVAN: ...it was his building or this building and this canopy that's being referred to, so I think that's why I need to bring it up and why it was pertinent. But I agree with you that what we need to do is make a determination with whether the letter and the request that we had ignored or not...or had overlooked, previous decisions similar to the circumstances that we've had presented in this particular case. So, that said, I also have taken a trip up and down West Broadway, if you wanna call it that, and Nashua Road, to look at all the other signs that are in front of gas stations. Anything that has a canopy. And there either is a single word in a corner of most canopies or no signs whatsoever on the canopies. So, I am aware that, I don't believe we spoke about it in our minutes, but I haven't seen the minutes...I don't recall the minutes right now, whether we had actually discussed that, but the point of the matter is it's pretty common that we aware that all along, we haven't had lots of verbiage on signage on canopies that have been allowed, so...What I wouldn't object to, by the way, is, similarly to the way the Shell station across the street or the Hess station...yeah, I think it's the Hess station or the Getty station, has a little logo that they put on the corner of their, the front of the canopies, and I wouldn't object to the applicant keeping their logo there but I do object to all the other words that are there, so...As an alternative.

JAY HOOLEY: Yeah. Well, as an alternative. Unfortunately, that was not what they originally applied for though, so...

LARRY O'SULLIVAN: Right. And since they didn't apply for that, this is the only opportunity that we're gonna have to say maybe they should try this instead. So, do we feel as if there's anything new that's been presented? Anything additional that you think of, Jay? I mean, this is what was presented to us, so, had we overlooked anything?

JAY HOOLEY: Not that I would find compelling and I would only read from the guidance that we get in our handbook: "It is assumed that every case will be decided, originally, only after...consideration of all evidence at [sic] hand and to [sic] the best possible judgment of the...members. Therefore, no purpose is served by granting a rehearing unless the petitioner claims a technical error has been made to his detriment or he can produce new evidence that was not available to him at the time of the first hearing. The evidence might reflect a change in conditions that took place since the first hearing or information that was not obtainable [sic] because of the absence of key people, or for other valid reasons. The board, and those in opposition to the appeal, should not be penalized because the petitioner has not adequately prepared his original case and did not take the trouble to determine sufficient grounds and provide facts to support them" (p. 48, *The Board of Adjustment in New Hampshire, A Handbook for Local Officials, October 2009*). That...

LARRY O'SULLIVAN: That's exactly out of the book, right.

JAY HOOLEY: Right.

LARRY O'SULLIVAN: And the other thing is that we need to find out or feel if there is an alleged error in the order, the requirement, a decision, or the determination that we made enforcing this. So, as far I'm concerned...

JAY HOOLEY: This evidence was available for the prior hearing, if he thought it was compelling.

LARRY O'SULLIVAN: Right. Not...I don't agree that it's compelling at all.

JAY HOOLEY: Well, if he felt it was, the evidence existed and could have been presented and used at that time. It did not just come to light.

LARRY O'SULLIVAN: Right.

MICHAEL GALLAGHER: I agree. There is nothing compelling that I can see.

JAY HOOLEY: With that...

LARRY O'SULLIVAN: With that, do we wanna take a vote?

JAY HOOLEY: ...entertain a motion?

LARRY O'SULLIVAN: We'll take a motion for...

JAY HOOLEY: Mr. Chairman, I make a motion to deny the rehearing...let me get the case number...

LARRY O'SULLIVAN: This is the only case...8/18/2010-3.

JAY HOOLEY: Thank you, sir. 8/18/2010-3.

MICHAEL GALLAGHER: I'll second.

LARRY O'SULLIVAN: Okay. All in favor?

JAY HOOLEY: So we are voting to...

LARRY O'SULLIVAN: We're voting to deny...

MICHAEL GALLAGHER: Deny.

JAY HOOLEY: Deny.

LARRY O'SULLIVAN: ...the motion to rehear. Okay? Since there's no new evidence that's been provided. Alright?

JAY HOOLEY: Aye.

MICHAEL GALLAGHER: Aye.

LARRY O'SULLIVAN: Aye. Okay, the motion is denied.

RESULT: THE MOTION TO REHEAR CASE 8/18/2010-3 WAS DENIED, 3-0-0.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Larry O'Sullivan". The signature is fluid and cursive, with a long horizontal stroke at the end.

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 JAY HOOLEY AND APPROVED 3-0-4 WITH VICKI KEENAN, MATT NEUMAN, NEIL DUNN, AND JIM SMITH ABSTAINING AS THEY DID NOT ATTEND THE MEETING.