

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

DATE: DECEMBER 17, 2008

CASE NO.: 12/17/2008-1

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

LOCATION: 61 NASHUA ROAD, 7-125-1, C-I

BOARD MEMBERS PRESENT: MARK OFFICER, CHAIR
YVES STEGER, VOTING MEMBER
NEIL DUNN, VOTING MEMBER
BARBARA DILORENZO, VOTING MEMBER
MICHAEL GALLAGHER, NON-VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR

REQUEST: SPECIAL EXCEPTION TO ALLOW AN OFF-PREMISE SIGN IN
ACCORDANCE WITH THE PROVISIONS OF SECTION 3.11.6.3.6

PRESENTATION: CASE NO. 12/17/2008-1 WAS READ INTO THE RECORD WITH FIVE
PREVIOUS CASES LISTED (SEE FILE FOR EXPLANATION OF PREVIOUS
ERRONEOUS LOCATION CITED)

MARK OFFICER: Who will be presenting for the applicant?

ELMER PEASE: My name is Elmer Pease with PD Associates. I'll be presenting. As Board member O'Sullivan had mentioned, just prior to the 2007 meeting, we did an additional search because there was a request from the Town's Assessor's office to check because the Tinkhams were, at that time, filing a request for an abatement because they said they didn't own the property anymore. Well, in your registry check, we actually found out that the Tinkhams had sold the property, like twenty (20) years ago, to the State of New Hampshire, unbeknownst to us. And then we found out that it had been subdivided into the 125-1 but on the tax maps, it showed just one (1) big lot. So, it's been subdivided for some time. The State of New Hampshire has owned it for some time. And just to go through the State of New Hampshire to get the necessary documentation, leases signed, took a little over a year. That's why I'm here tonight. The sign is exactly the same. The sign hasn't changed. It's still in the same location. All the conditions, I would assume, are up to the Board from the prior approvals, if you see so fit to grant the special exception. And we comply, if you have the application

in front of you, with all the requirements, that there will be no more than one (1) off-premises sign, that no business shall be advertised on two (2) off-premises signs, the off-premises sign is located in an industrial or commercial, and in this case, a commercial district, the off-premises sign located in districts other than the I or C districts shall have a maximum surface area of eight (8), that's not applicable, [e] is not applicable and that the sign must otherwise conform to other applicable regulations of the zoning ordinance as under section 3.11. And if you look at 3.11.6.3.6.3, the signage maximum surface area is twenty five (25) square feet and our sign does not exceed that maximum. So, otherwise, everything else is exactly the same under your current ZBA guidelines.

MARK OFFICER: Okay, so the reason you're here is that the discovery that the Tinkhams don't own it, the State of New Hampshire does?

ELMER PEASE: Yes.

MARK OFFICER: Okay.

YVES STEGER: And it hadn't been subdivided as well.

LARRY O'SULLIVAN: So the lot isn't as big as the records that we had showed.

MARK OFFICER: Right. Right. Alright, any questions from the Board.

NEIL DUNN: One question I have. I see the lease is for, and I don't know, I guess I'll direct it to you if I may, the lease is only good for a year. If the lease was not to be renewed, then do we have to have some kind of stipulation? I don't know. I guess I'm just trying to figure out...

MARK OFFICER: That might have been in the restrictions...

NEIL DUNN: Well, before it wasn't...we don't know if it was a lease. It was Tinkham that was doing it. Now it's a lease that expires November, 2009 and if that lease isn't renewed, is there an issue there?

RICHARD CANUEL: Well, unless there's a change of ownership of the property, the special exception stands. I mean, 'cause the special exception is granted to the property owner.

NEIL DUNN: So, then the property owner, if they didn't renew the lease, would be able to take the sign down if they chose.

RICHARD CANUEL: If they so chose. Or they could put some other advisement or some...

NEIL DUNN: Well, okay, so that would be a concern maybe. Another ad...

LARRY O'SULLIVAN: So the State of New Hampshire owns it now. Do you think they'll put up a sign for the liquor store? Mr. Pease, do you think the size of the lot has been diminished, you know, significantly, based on where the size of this sign?

ELMER PEASE: No.

LARRY O'SULLIVAN: Is there any potential to have anything built on the other lot that you're aware of?

ELMER PEASE: No, the...oh, on the other lot?

LARRY O'SULLIVAN: Right.

ELMER PEASE: It's still Judy Tinkham's lot. That's the lot that her existing building is on, as I recall. What they did is, if you look at the hammerhead of where 102 is and the sign is...

LARRY O'SULLIVAN: Mm-hmm.

ELMER PEASE: You have McAllister Drive that goes down behind it that actually goes down to where Tinkham's office is. That little thumb or finger there is completely impacted with wetlands except for when it slopes up to the street, so there is absolutely no chance to develop that property unless conservation laws changed significantly, which I doubt.

LARRY O'SULLIVAN: Did you have any plans to change the size or the look of the sign or the lighting or the...?

ELMER PEASE: Other than the upkeep of the sign, we plan on making no changes.

LARRY O'SULLIVAN: Okay, and the conditions or the restrictions that we had placed on this special exception last time, were they time oriented?

ELMER PEASE: I think there was one. I think it was for eighteen (18) months or something like that. But I do agree with Board member Dunn, that the lease that we have, because it's a private sign, they'll only issue it for a year at a time and we have to renew it. The fee doesn't change but I have to go through the paperwork and I'll start that like six (6) months before 'cause that's how long it takes to get through the process. And as I said, I don't have problem coming back every year to the Board for an extension.

MARK OFFICER: Okay. Any other questions? Yves.

YVES STEGER: Yes. It appears that the lot, actually, the 125-1, is separated in two (2) parts which are cut by a road. Your sign is on which of the two (2), the northern one or the southern one?

ELMER PEASE: It's actually the western side. Oh, I see, yes, it would be on the northern lot at the corner.

YVES STEGER: Okay. Alright, so it indicates, essentially, that you can go into that road to go to the Nevins.

ELMER PEASE: Yes, if you look at map 125-1, it actually appears on both sides of the street.

YVES STEGER: Okay. Thank you.

MARK OFFICER: Exactly how big is it? It's under twenty five (25) feet. Exactly how big or do you know?

ELMER PEASE: I think it was twenty four (24) feet.

MARK OFFICER: Twenty four (24)?

ELMER PEASE: I think it was four (4) by six (6).

MARK OFFICER: Okay. Richard, do you have anything else to add?

RICHARD CANUEL: No, aside from the location of the sign on the inappropriate lot, the sign meets all the other requirements of the ordinance in size and the setbacks and so forth. And they already, well, it passed three (3) years ago, so...

MARK OFFICER: What do you mean, an inappropriate lot?

RICHARD CANUEL: Well, the special exception being granted on the wrong...

MARK OFFICER: Oh, right.

RICHARD CANUEL: So, aside from that, the sign's in full compliance...

MARK OFFICER: Okay. I'm gonna open it up to the public [note: no members of the public were present]. Those in favor? Alright, those opposed or having questions? Alright, seeing none, I'll bring it back to the Board. Any other questions? No more? Okay, we'll take it under advisement and vote on it right now.

DELIBERATIONS:

LARRY O'SULLIVAN: I remember this case and I remembered one of the restrictions that we had placed on it was time oriented.

MARK OFFICER: It was, yeah.

LARRY O'SULLIVAN: And that's why I had the impression, reading the application as well, that it was a request for an extension 'cause it seemed like it was about that long ago when we first heard it and when was that?

MARK OFFICER: The first time, Mark Oswald presented, I recall.

LARRY O'SULLIVAN: Yeah.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: But anyway, the net of it still is the sign isn't changing, the ownership of the lot did and as far as I'm concerned, it's a pretty dry case.

MARK OFFICER: Mm-hmm.

LARRY O'SULLIVAN: I think I wouldn't remove any of the restrictions either, at the same time, but in effect, we'd be renewing those restrictions. Other than that, no restrictions...

MARK OFFICER: Same location and dimensions.

LARRY O'SULLIVAN: Sure. Mm-hmm.

YVES STEGER: Mm-hmm.

MARK OFFICER: Okay. Anything else? So, Mike, you're a voting alternate, well, Barbara, you're a full member anyways, okay.

NEIL DUNN: So do we word it so that it expires with the lease or no? Or do we...nobody really seems...again, I don't know. I guess my thought is...

LARRY O'SULLIVAN: You could.

NEIL DUNN: ...do we want anything else going up there? Again, not that it's much of a likelihood but...

YVES STEGER: Is there any advantage to the Town for putting that limit on it? That would be the only reason why we would do it.

LARRY O'SULLIVAN: Yeah, well...

YVES STEGER: But if there is no interest to do it, we don't need to put a limitation. What would be the...?

NEIL DUNN: Well, like Larry...

YVES STEGER: ...negative impact of not putting a limitation in time?

NEIL DUNN: I guess, like Larry said, they could advertise for the liquor store. Is that a sign we'd want there? Again, not that they necessarily would but do we wanna second guess that or do we wanna limit it to what it looks like now and what it is? That's just my thought...

LARRY O'SULLIVAN: The reason for the restriction...

NEIL DUNN: I'm not really that big on it, I'm just saying do we wanna...

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: We may have had this discussion also, you know, a year and a half, whenever it was, ago, that the intention of this sign was to help to build the traffic for the development.

MARK OFFICER: It's directional.

LARRY O'SULLIVAN: Right and we felt at...I felt at that time that putting a time restriction on it would also allow us the opportunity to either renew it based on their sales of the facility 'cause once those, you know, it's fairly well built out, I'd like to see that sign go away. That's one of the...this is an off-premises sign, so there are restrictions that we can place on it and it's totally legal to say there's a time limit. I mean, I would also have no objection, since the economy's in the tank the way it is, to making it longer than eighteen (18) months as we did originally, to make it twenty four (24) or thirty six (36) for that matter, but again, it is the first sign on Mammoth Road as you're heading that way, in that whole stretch of road, so, I kind of...I don't know if we can limit that, that would be a good thing.

MARK OFFICER: Yeah, I could see that. Two (2) years.

YVES STEGER: Yeah.

NEIL DUNN: I don't have a problem with that.

MARK OFFICER: I don't have a problem with it being long.

YVES STEGER: Essentially, what you want to is that it would not stay for the property forever.

LARRY O'SULLIVAN: Let it do its job. Right. Let it do its job and then once...'cause the special exception without a restriction will be for forever.

YVES STEGER: Yup. Agreed.

MARK OFFICER: So we could say same size, same dimension, same...how do we say it, same wording, same...

LARRY O'SULLIVAN: As presented and as shown and as...

MARK OFFICER: Well, as shown, as currently shown, same location, with a restriction of twenty four (24) months.

LARRY O'SULLIVAN: That would work for me. Thirty six (36) would be fine.

MARK OFFICER: Twenty four (24) or thirty six (36), I don't care.

YVES STEGER: As long as it's not infinite.

MARK OFFICER: Yeah.

LARRY O'SULLIVAN: And the other special exception...

RICHARD CANUEL: ...that you probably could do is tie the restriction to the use of the sign, meaning that the sign would be specifically for the advertisement of the Nevins. At some point in time, if Nevins decides not to renew their lease with the State, then the special exception would expire and that way, we don't get another sign advertisement on that particular location.

LARRY O'SULLIVAN: Well, nobody knows where that liquor store is anyway. That's a very good point, Richard. Yeah. I don't believe they're going to allow somebody else to put a sign up on the property, though. I'm not aware of them ever doing that, so, this is very, very rare.

MARK OFFICER: Does anybody wanna make a motion?

LARRY O'SULLIVAN: I make a motion to approve this special exception as presented with a time limitation of thirty six (36) months and continue the restrictions, the other restrictions, that we may have placed on the prior case.

MARK OFFICER: Okay. Do we have a second?

YVES STEGER: I will second that.

MARK OFFICER: Alright. Any other discussion? So, does that satisfy Richard's wording or...not that Richard's a member but...I don't know what the other restrictions were but...

LARRY O'SULLIVAN: I don't remember either but at the same time, the one that I do remember had a time limit, so...

YVES STEGER: Which was more restrictive than the current one.

LARRY O'SULLIVAN: Right and so I'm saying thirty six (36) months instead. So, in three (3) years, they can come back.

MARK OFFICER: Alright, any other discussion? Alright, seeing none, those in favor, say 'aye.'

LARRY O'SULLIVAN: Aye.

YVES STEGER: Aye.

NEIL DUNN: Aye.

BARBARA DILORENZO: Aye.

MARK OFFICER: Aye. Those opposed? Alright, motion carries, five (5), zero (0).

RESULT: THE MOTION TO GRANT THE SPECIAL EXCEPTION WITH RESTRICTIONS WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED JANUARY 21, 2009 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY BARBARA DILORENZO AND APPROVED 4-0-3 (VICKI KEENAN, JIM SMITH AND MATT NEUMAN ABSTAINED AS THEY HAD NOT ATTENDED THE DECEMBER 17, 2008 MEETING).