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5 **Stratham Zoning Board of Appeals**
6 **Meeting Minutes**
7 **March 24, 2015**
8 **Municipal Center, Selectmen's Meeting Room**
9 10 Bunker Hill Avenue
10 Time: 7:00 PM
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13 **Members Present:** Arol Charbonneau, Chairman
14 Bruno Federico, Selectmen's Representative
15 Chris Brett, Member
16 Garrett Dolan, Alternate
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18 **Members Absent:** Jim Elliott, Secretary
19 Chris Cavarretta, Full Time Member
20 Diedre Lawrence, Alternate
21

22 **Staff Present:** Audrey Cline, Code Enforcement Officer
23 Paul Deschaine, Town Administrator
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26 **1) Call to Order/Roll Call.**

27 The Chairman took roll call.

28 **2) Review/Approval of Meeting Minutes.**

29 March 3, 2015

30 Mr. Brett made a motion to approve the meeting minutes from March 3, 2015. Motion
31 seconded by Mr. Federico. Motion carried unanimously.

32 **3) Public Hearing(s).**

- 33 a) **Case #615: Lindt & Sprungli (USA) Inc., 1 Fine Chocolate Place, for the property**
34 **located at 3 Portsmouth Avenue, Stratham, NH, Tax Map 4, Lot 3.** An administrative
35 appeals from the Code Enforcement Officer's interpretation of Zoning Ordinance Section
36 7.9(b)(viii), in which an ad-wall "Display H" was counted as a sign for the purposes of
37 determining the maximum square footage of allowable sign face.

38 Jeff Spear, Attorney for Lindt & Sprungli, stated this issue was relative to a display in
39 the interior of the building. He continued that the request was denied on the basis that it
40 was a sign and would exceed the maximum square footage of signage allowed. Mr. Spear
41 indicated that he did not believe this should be considered a sign because it was not
42 affixed to the exterior of the building and was not illuminated. He continued if the Board

1 determined that this should be considered a sign, then he would ask for a variance to
2 exceed the square footage allowed by ordinance. Terry McGrath, Construction Manager
3 for Lindt, noted that this display was basically like plastic wrap which was stretched over
4 the wall and there would be no back illumination, only track lighting from the front which
5 was adjustable. Mr. Federico asked how far back the display was from the window. Mr.
6 McGrath responded that it was about three and a half feet. Mr. Federico indicated that
7 he believed this to be a window display and not a sign. Mr. Dolan asked if it was an
8 advertising piece or if it was simply a design element. Mr. McGrath replied that it would
9 have the logo on it and would depend on the final design they chose. Mr. Caparso felt
10 that this was a window display rather than an actual sign. Ms. Cline handed out the
11 definition for a sign and advised the Board which sub sections to consider. Mr. Federico
12 referenced Talbots who have a window display. Ms. Cline said under one of the
13 definitions, merchandise is not considered a window display. Mr. Federico said he sees
14 Lindt's displays more like wall paper and you can only see the displays by walking up to
15 the building.

16 Mr. Dolan moved to close the public hearing on Case #615. Mr. Brett seconded the
17 motion, which passed unanimously.

18 The Board had a discussion on whether this issue met the criteria of a sign and came to
19 the conclusion that it did not.

20 Mr. Federico made a motion to approve the appeal by the applicant that the determination
21 of the Ad Wall Display H does not constitute a sign. Motion seconded by Mr. Caparso.
22 Motion carried unanimously.

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24 b) **Case #616: Lindt & Sprungli (USA) Inc., 1 Fine Chocolate Place, for the property**
25 **located at 3 Portsmouth Avenue, Stratham, NH, Tax Map 4, Lot 3.** A variance
26 request from the Zoning Ordinance, Section 7.9(b)(iv)2 to exceed the maximum sign face
27 of 130 sf and exceed the maximum height above grade of 30 ft.

28 Mr. Spear explained they were looking to increase the height of an existing sign by
29 approximately 25 feet as it was difficult to see it at the height it was currently. Drivers
30 on the Route 101 see it at the last second when it is too late to come off the exit and it is
31 equally difficult to see from the Route 108 coming south.

32 Mr. Marsh explained that they took a crane truck and attached a 4' x 8' piece of plywood
33 and basically drove back and forth taking official measurements and photos of the crane
34 truck at certain heights. One of the optimal heights was 45' which is what Lindt is
35 seeking tonight. Mr. Dolan asked why they couldn't get by with a 30' high sign. Mr.
36 Marsh used CVS as an example saying that they are a local business which attracts local
37 people whereas Lindt really isn't, it tends to attract people from the Route 101. Raising
38 the height to 30' will mean the sign is still difficult to see from the Route 101 and too
39 late for people to take the exit.

40 Mr. Federico asked if they had looking into getting a sign on the highway from the State.
41 Mr. Spear replied that it was not allowed under these circumstances. Mr. McGregor
42 stated that this would be helpful in attracting tourists coming from the beach on Route
43 101. The Board then discussed the logistics and details of the request and decided that

1 they would like to see further testing done on the issue before making a decision. It was
2 decided a crane test would take place on Monday March 30, 2015 at 12:00 pm until 4:00
3 pm.

4 Mr. Deschaine explained to the applicant that one of tonight's members would not be
5 available for the suggested continuance until April 21, 2015 and there may be a member
6 who is not here tonight. Mr. Spear said he was happy to continue this until April 21,
7 2015.

8 Mr. Dolan moved to continue Case #616 until the next meeting on April 21, 2015 at 7:00
9 pm. Mr. Caparso seconded the motion, which passed unanimously.

10 c) **Case #617: Lindt & Sprungli (USA) Inc., 1 Fine Chocolate Place, for the property**
11 **located at 3 Portsmouth Avenue, Stratham, NH, Tax Map 4, Lot 3.** A variance
12 request from the Zoning Ordinance, Section 7.8(a)(i)(2) to discount the area of a triple
13 faced sign.

14 Mr. Spear indicated that this issue was framed as a variance request but was really an
15 interpretive question. He continued this was going to be a three sided sign, to optimize
16 its visibility to travelers on the Routes 108 and 101 West due to its location. He read
17 that the Ordinance allows a 2 faced sign to be calculated as one if separated by 30 degrees
18 or less. The 3-sided sign would be separated by 60 degrees which in his opinion should
19 equate to calculating it as 2 sides. Ms. Cline noted that three sided signs were not
20 addressed in the code and therefore are not permitted. She made the Board aware also
21 that this would be a second pylon sign on the property. Mr. Federico asked if the pylons
22 will be separated by at least 200' as stated in the Ordinance. Mr. Marsh said if you look
23 at a 3-sided sign head on, you will see 60 S.F. and if you walk around to the apex of it,
24 you see less than 60 S.F. Mr. Federico noted in his opinion it looked as though they were
25 requesting 180 square feet of signage when only 130 square feet were permitted. Mr.
26 Spear indicated it was his opinion they were only asking for 120 square feet based on his
27 understanding of how it should be calculated pursuant to the code.

28 Mr. Spears said he sees this as an area issue not a 3-sided sign issue. There was no denial
29 letter issued on the basis this is a 3-sided sign nor is there a section in the Ordinance that
30 he could ask for a variance to permit a 3-sided sign; this is a free standing sign which are
31 permitted, however there are restrictions on height and size of free standing signs. Mr.
32 Brett stated that he thought they could approve this variance as long as the square footage
33 was within the limit. Mr. Spear indicated he did not think the number of the sides of the
34 sign mattered, only the square footage being requested.

35 Mr. Dolan moved to close the public hearing relative to Case #617. Mr. Brett seconded
36 the motion, which passed unanimously.

37 Mr. Federico stated he thought they needed to go with the design standards on how to
38 calculate the square footage of a three sided sign. Mr. Dolan indicated that he agreed
39 with Mr. Federico, and that this was a unique case because three sided signs would not
40 be useful anywhere other than that specific lot. Mr. Caparso said he was comfortable
41 allowing this because from an ascetic perspective, you're only looking at one side at a
42 time. In his view the Ordinance is already written to the one side at a time bias; it only
43 counts the one side you're looking at. Mr. Deschaine reminded the Board of the issue of

1 the 60 degree angle. Mr. Brett stated he would be comfortable allowing the calculation
2 as the applicant presented.

3 The Board then went over the variance criteria this request needed to meet per State
4 Statute. All members felt this application met the criteria due to the location and zone it
5 is located in; both make this lot unique in their view.

6 Mr. Dolan made a motion to permit a sign with angular separation of 60 degrees between
7 two adjacent sides, and to calculate the maximum square footage, based on the total
8 square footage of only two contiguous sides'. Mr. Caparso seconded the motion, which
9 passed unanimously.

10 d) **Case #618: Lindt & Sprungli (USA) Inc., 1 Fine Chocolate Place, for the property**
11 **located at 3 Portsmouth Avenue, Stratham, NH, Tax Map 4, Lot 3.** A variance
12 request from the Zoning Ordinance, Section 7.6(o) to allow for the internal illumination
13 of the free standing sign.

14 Mr. Marsh from the sign company took the floor. He explained this would be a 3-sided,
15 aluminum-framed sign with LED illumination which saves a lot of energy and
16 maintenance. Mr. Spear said there is an existing pylon sign and indicated this issue was
17 relative to a sign on top of a pylon that would be illuminated and that they had been very
18 careful to adhere to the requirements of the ordinance. Mr. Brett asked how tall the
19 current pylon was. Mr. Spears replied it was 25' high. He continued that there were
20 similar signs in the area of the Gateway and Commercial District and that it was
21 consistent with the spirit of the ordinance. Mr. Charbonneau said they did try to change
22 the zone from Special Commercial to Gateway, but the owner wanted to leave it as
23 Special Commercial. Mr. Dolan asked if the sign was currently illuminated. Mr.
24 McGregor responded that it was but only during business hours. Mr. Federico said that
25 the sign had previously belonged to a car dealership that was there prior to Lindt and
26 thought that it was grandfathered in. Mr. Dolan asked if this should be referred to Town
27 Counsel or if this was something that the ZBA could decide. Mr. Deschaine replied that
28 the decision should be made by the ZBA.

29 Mr. Dolan moved to close the public hearing relative to Case #618. Mr. Federico
30 seconded the motion, which passed unanimously.

31 The Board then discussed the criteria of a variance per State Statute. All members agreed
32 that due to its location it was in the spirit of the Ordinance, it won't be contrary to the
33 public interest as it already exists as an illuminated sign, substantial justice will be done
34 as it exists as a non-conforming use, surrounding properties will not diminish in value,
35 and there would be no gain to the public by not allowing this, and due to being the only
36 parcel on Portsmouth Avenue in the Special Commercial District, and therefore subjected
37 to different uses, it qualifies as an unnecessary hardship.

38 Mr. Brett moved relative to Case #618, to approve the variance request for the internal
39 illumination of the free standing sign. Mr. Federico seconded the motion, which passed
40 unanimously.

41 e) **Case #619: Lindt & Sprungli (USA) Inc., 1 Fine Chocolate Place, for the property**
42 **located at 3 Portsmouth Avenue, Stratham, NH, Tax Map 4, Lot 3.** A variance

1 request from the Zoning Ordinance, Section 7.9(b)5 to allow for both wall signage and
2 awning canopy (Sign C) with lettering.

3 Mr. Spear noted that Case #619 and Case #620 were essentially requesting the same thing
4 despite the signs being on different sides of the building. The Board indicated they would
5 hear both cases together. (Continued below)

6 f) **Case #620: Lindt & Sprungli (USA) Inc., 1 Fine Chocolate Place, for the property**
7 **located at 3 Portsmouth Avenue, Stratham, NH, Tax Map 4, Lot 3.** A variance
8 request from the Zoning Ordinance, Section 7.9(b)5 to allow for both wall signage and
9 awning canopy (Sign E) with lettering.

10 Mr. Spear indicated they were looking for a variance to allow both a wall sign and canopy
11 with lettering. He felt the awning would improve the ascetics of the building and break
12 up its monotony. Ms. Cline asked where the lettering would be on the awning. Mr.
13 Marsh answered it was on the slope. Ms. Cline asked what the angle of the slope was.
14 Mr. Marsh shared a drawing to illustrate it. Mr. Spear went over the criteria in the code
15 and noted he thought the request was consistent with the code. Mr. Brett said he felt that
16 having 2 of the signs so close together was redundant although he understood why they
17 wanted the awning. Mr. Spear stated that the awnings serve a dual purpose; one being a
18 way of protecting the perishables from sunlight. Mr. Brett had no issue with the awning
19 itself, it was the need for lettering on the awning. Mr. Spear said the majority of their
20 stores have that.

21 Mr. Brett moved to close the public hearing on Case #619 and Case #620. Mr. Caparso
22 seconded the motion, which passed unanimously.

23 The Board then discussed the criteria needed to approve the request. Mr. Charbonneau
24 said that ultimately it comes down to whether there is a hardship. Mr. Brett said the
25 uniqueness of the lot has been recognized for the other variance requests, but it's the
26 opposite here. He added the awnings are an improvement. Mr. Caparso said he was
27 struggling to find the hardship connection with the lettering on the awning. Mr. Dolan
28 said he can understand the ascetics of having awnings the whole way around, but he
29 couldn't find a hardship. Mr. Spear said one awning has lettering on it in compliance
30 with the Ordinance, but the others won't so that makes it unique, and as mentioned
31 before, the awning protects the products displayed in the window from sunlight due to
32 the positioning of the building. The Board had reservations about what the next property
33 owner might do with the variance if they granted it.

34 Ms. Cline observed that the maximum allowed signage on this side of the building would
35 be significantly more than they are showing and if they took the awning down they could
36 put it right on the side of the building. She asked what the purpose of denying the awning
37 signage was as opposed to any other signage on the building; one of the purposes is so
38 that people don't use awnings to allow for signage that wouldn't be allowed otherwise
39 and impede the nature of the design of the front of the building by exceeding the area that
40 an awning makes sense for other reasons; that's not happening here because the awning
41 is huge anyway for other purposes so it's not just there for putting lettering on. Ms. Cline
42 continued that it is true that once approved the next signage put on there could be the
43 maximum amount allowed on the side of the building. Having said that the awning could
44 come down and the maximum signage could be there anyway.

1 Mr. Federico said the only people who will view this awning and lettering are those in
2 the parking lot. He said it's unique because people aren't going to be walking by the
3 store.

4 The Board discussed the variance criteria. Mr. Caparso said the applicant does suffer an
5 unnecessary hardship because of the nature of their business they have to have the awning
6 to protect the inventory. As they have to have the awning, they are restricted from using
7 all the linear feet available to them for signage and so because of this they have to use
8 the awning as signage too. Mr. Federico agreed with that reasoning. Mr. Charbonneau
9 said he was wrestling with the general public purpose of the Ordinance provision, but
10 more specifically the application of that provision to the property. He finds the use a
11 reasonable one, but he is finding it hard to find a hardship. Mr. Brett said it is more the
12 building that is causing the hardship and not the actual property in this instance. Mr.
13 Dolan said he agreed with Mr. Caparso's reasoning although he still has reservations
14 about the fact that it is a result of their own actions. He can make the argument go both
15 ways so Mr. Dolan said he would support it. After some deliberation Mr. Brett agreed
16 with Mr. Caparso's reasons for agreeing there was an unnecessary hardship.

17 Mr. Deschaine stated if the Board were to approve this request, they should put something
18 in the motion to only allow for this specific company to have the awnings.

19 Mr. Dolan made a motion to approve Case #619 and Case #620, to allow the use of wall
20 signage and lettered awning due to the unique nature of the storage and display of
21 perishable products with the conditions that the use shall continue to store, display and
22 sell perishable products and that it is granted due to large plate glass display windows
23 that generate excessive solar load. The variance is conditioned upon the continued sale,
24 storage and display of perishable products and secondly that the total signage of the wall
25 and awnings shall be restricted to the applicant's design specs presented in the application
26 and there will be no increase to the square footage of the awning and wall signs. Mr.
27 Federico seconded the motion, which passed unanimously.

28 **4) Miscellaneous.**

29 There were no miscellaneous items to report.

30 **5) Adjournment.**

31 Mr. Brett made a motion to adjourn the meeting at 11:59 p.m. Motion seconded by Mr.
32 Dolan. Motion carried unanimously.