

Town of Greenville
46 Main Street, Greenville, NH
Zoning Board of Adjustment

Public Hearing – January 3, 2019

Call to order at 7:00 p.m. Present: Chairman Pedro Sousa, Member Michael Washburn, Alternate David Orgaz, and Town Administrator Tara Sousa (serving as ZBA Secretary).

Chairman Pedro Sousa announced that the applicant was unable to attend due to a scheduling conflict.

Motion by Mr. Washburn, 2nd by Mr. Orgaz, to continue the public hearing to January 17, 2019 at 7:00 p.m.

Motion carried with 3 in favor, none opposed.

Meeting reconvened Thursday, January 17, 2019 at 7:00 p.m. Present: Chairman Pedro Sousa, Members Michael Washburn and Michael Rathbun, Alternate David Orgaz, Town Attorney Biron Bedard, and Town Administrator Tara Sousa (serving as ZBA Secretary).

Chairman Sousa noted the order in which interested parties would be able to speak to the matter, Board members introduced themselves, and then Chairman Sousa read the public notice. He invited the applicant to speak to the application.

Rob McIntyre, of New England Signs and Awnings spoke on behalf of Dollar General, noting that Carolyn Parker (who filed for the variance) worked for him. He stated that he came to the Town offices on August 22, 2018 to file for sign permits from the Building Inspector (Scott Tenney), and that the Building Inspector issued permits for both the freestanding sign and the wall sign. Mr. McIntyre then received notice from Mr. Tenney on November 12, 2018, that the permits had been issued in error. In subsequent communications, Mr. Tenney indicated that a variance was the only resolution available. He noted the investment in the work already completed, and his and Dollar General's understanding that they were "all set" because they had a building permit. They are seeking a variance for the square footage of both the freestanding sign and the wall sign. He stated that the Dunkin Donuts sign is 20 feet high, and is freestanding. He expressed his belief that they must have sought a variance for that sign, as it is almost 60 square feet, including the top and bottom. He stated that the Dollar General wall sign is structurally engineered and mounted through the wall, for wind load rating and other requirements. Removing the sign would leave 25 mounting holes as well as circuitry in the wall. Regarding the free standing sign, he stated that it is 20 feet high from the base to the top, but is located down an embankment, so it does not rise 20 feet above the parking lot. Reducing the height, he contended, would reduce the visibility when traveling both north and south on Fitchburg Road. Noting the visibility of the wall sign as well, he referenced a chart included in the variance application which indicated recommended letter size depending on the setback distance. He expressed an issue with monument signs are that they can be obscured by snow. He described an instance where Dollar General was asked by a local Police Department to try to get approval to raise a monument sign, due to driver slamming on their brakes to enter the property. He expressed that that would be a concern with the speed limit on the road in question. He noted the difference with the neighboring sites (Dunkin Donuts and gas station)

being at grade level and the Dollar General being up on a hill. He noted the setbacks indicated in the paperwork: 52 feet for the freestanding sign and 132 feet for the wall sign.

The Chairman opened the floor for public comment. Michael Sadowski, of Livingston Road, expressed that he believed there was one mile of visibility for the sign traveling northbound and more than a third of a mile traveling southbound. He presented the May 10, 2018 minutes of the Planning Board, wherein Austin Turner, of Bohler Engineering, stated that the project was designed consistent with the Town's zoning requirements. He questioned how the signs were that large if the project was designed within the zoning requirements. Mr. Rathbun questioned how any of the signs on that road were allowed under the Town rules. Mr. Rathbun asked if these were standard size for Dollar General, and Rob McIntyre expressed that these were on the small end of standard signs Dollar General usually uses at their locations. Mr. Sadowski noted the plans indicate a setback of 132 feet, whereas the zoning requirement is a setback of 150'. He expressed his belief that a ground sign indicates a monument sign, and at the Planning Board, it was indicated that the sign would be like the New Ipswich sign. Mr. Sadowski expressed that the hardship caused by not granting the variance would be self-inflicted, as they (Boelher Engineering for Dollar General) had indicated that the entire project was designed within zoning requirements. He expressed concern that there is visual clutter in the area, and that these signs impact the character of the neighborhood. He was concerned that signs would continue to get larger. Mr. Rathbun questioned if anything had come to Scott Tenney or before the Planning Board regarding signs for the gun shop being built. Mr. Sadowski noted that he was there as a private citizen, but also indicated that the Planning Board has not seen specifics for signs for that project. Mr. Sadowski questioned what business Dollar General would lose if they reduced their signs to the required size, and stated that there had to be a "line in the sand". He expressed his feeling that it is sneaky to state at the Planning Board that everything is designed within the ordinance, then erect a sign that is not, and seek a variance after doing so. Mr. Rathbun discussed the similarity to the sign for Dunkin Donuts. Chairman Sousa reminded all parties to stay focused on the matter at hand.

Miles Horsley, of High Street, referenced the plans submitted to the Planning Board, and expressed his understanding that the Dollar General sign would be a monument sign, no taller than a man. He expressed his belief that the placement of a higher sign on the embankment actually inhibits visibility. He concurred with Mr. Sadowski that this was "sneaky" and stated that it would not be in the spirit of the ordinance to grant the variance.

Chairman Sousa asked Tara Sousa if the plans before them were the Planning Board plans. She answered that these were the plans submitted with the variance application. Mr. Sadowski offered to locate the Planning Board plans. Plans by M.D. Smith for Dollar General (Liscotti Development) were entered into the record as evidence.

Biron Bedard, Town Counsel, questioned if the measurement for the setback was started at the edge of the pavement. Mr. McIntyre indicated that it was. Mr. Bedard and the Board members reviewed the plans. Mr. McIntyre noted that a ground sign can be anything attached to the ground.

Mr. Horsley stated that he believed the sight lines in both directions were enormous, and that the bright yellow sign's visibility would not be compromised if located at ground level.

Chairman Sousa asked Mr. McIntyre if he was the one who pulled the permit, and Mr. McIntyre answered yes. Chairman Sousa asked if it is part of his process to perform the due diligence to confirm that what the permit is being sought for is within the specifications required by zoning. Mr. McIntyre answered that he submits what the customer wants, and if they receive an answer that the proposed is not allowed, they would seek a variance.

Attorney Bedard expressed his greatest concern to be the setback from the intersection, which is less than half of what is required by the ordinance, though he also indicated confusion as to why the ordinance required such a large setback. Attorney Bedard asked Mr. McIntyre if there was a standard design for a ground level sign for Dollar General. Mr. McIntyre indicated stated that all monument signs are custom built, and that he personally had not done a monument sign for Dollar General. He explained his expertise is in the engineering required for larger signs.

Mr. McIntyre expressed his belief that Dollar General was referencing this type of sign (elevated) when they were discussing a ground sign at the Planning Board. He stated that there was no "back-dooring" here. He presented his paperwork to the Building Inspector, and was given a permit. He stated that if the Building Inspector had done his due diligence, and indicated that the signs were not allowed, he would have sought a variance before the signs were erected.

Mr. Washburn asked Mr. McIntyre if he would have been hired by Dollar General if this had been designed as a monument sign. He answered that he probably would have due to the size and scope of the wall sign. He explained that a ground sign to him is anything that involves concrete in the ground.

Mr. Sadowski commented that the sign is on a hill, and that combined with the height of the sign puts the sign about 30 feet above Route 31. Mr. McIntyre responded that a monument sign would be below the level of the parking lot and would not be able to seen going down the hill. Mr. Horsley commented that perhaps the sign could be partially lowered to reduce the overall height.

Motion by Mr. Washburn, 2nd by Mr. Rathbun, to close the public hearing at 7:43 p.m.
Motion carried with 4 in favor, none opposed.

Chairman Sousa expressed that not knowing does not absolve an applicant from responsibility, referencing the Planning Board minutes presented by Mr. Sadowski indicating that the project was presented as being designed consistent with zoning requirements. He did note that there is an issue with definition of terms, specifically "ground sign". Mr. Rathbun stated that it was ambiguous at best, other than that it is attached to the ground. Chairman Sousa acknowledged that a mistake was made in the issuance of the permit, but he believes the permit application was submitted with the knowledge that what was being presented was outside of what was allowed by zoning. Mr. Rathbun questioned if the representation at the Planning Board was regarding the sign. Mr. Sousa felt that that was referencing the entirety of the project.

Attorney Bedard reminded the Board members and those present that no additional evidence could be submitted at this time. Mr. Rathbun questioned the hand written note on the submitted Planning Board

minutes. Attorney Bedard noted that 3 separate variances were being sought: Building sign size, ground sign size, and placement of sign too close to the intersection. He expressed that he believed the applicant had mischaracterized the variance related to placement as distance from the right-of-way, when the actual issue is the distance from the intersection. He noted that intersection is not defined in the ordinance, but applying common use of terms, the measurements appear to place the sign inside the required setback. Mr. Rathbun suggested that the intersection could be defined as the point where the centers of the two roads converge. Attorney Bedard believed that the wrong relief was being sought on this issue. Mr. Rathbun discussed his assumptions that measurements had been checked during the Planning Board process. Mr. Rathbun noted that the actual application does not reference a variance for setback. Attorney Bedard agreed that, though discussed in the applicant's cover letter, the setback was not was not addressed in the application and did not have to be considered.

Regarding the wall sign, Mr. Rathbun asked if the lettering on the building would be considered a sign or just a logo. Attorney Bedard reviewed the "Outdoor Advertising" section of the ordinance, and in the absence of defined terms, discussed that the Zoning Board would be the arbiters of any interpretation. Chairman Sousa requested clarification on wording in the section regarding signs affixed to buildings already within the setback. Attorney Bedard suggested the criteria be reviewed individually for the two requested variances. The Board agreed to take up the wall sign first.

Chairman Sousa noted that the wall sign is 149 square feet per the applicant, and that 18 square feet is allowed. Mr. Rathbun still questioned whether the name on the building is advertising. He expressed his main sticking point being that the permit to install the signs was approved. Mr. Rathbun acquiesced that the wall sign was advertising, as the applicant referred to it in that manner in the application.

On the question of diminishment of surrounding property values, Board members expressed agreement with the applicant's assertion that surrounding property values would not be diminished.

On the question of the proposed use being contrary to the public interest, the applicant asserted the sign will help patrons safely locate and access the property. Board members agreed that this is not contrary to the public interest.

On the matter of denial resulting in unnecessary hardship, Mr. Orgaz noted the alterations already made to the building. Mr. Rathbun expressed that the sign size is appropriately sized to the building. Board members expressed agreement that this criteria was met.

On the matter of the spirit of the ordinance being observed, Mr. Orgaz expressed that the sign was appropriate for a commercial/industrial zone, which Mr. Rathbun agreed with. Chairman Sousa expressed that he did not agree, feeling that a reduction in size would not hamper the retailer's visibility.

Attorney Bedard explained that substantial justice is meant to stop an injustice from occurring when taking all factors into account. On the matter of substantial justice, Mr. Rathbun expressed that the existence of similar signs in the neighborhood necessitate allowance of this sign, which other Board members agreed with, save for Chairman Sousa, who expressed his disagreement.

Motion by Mr. Orgaz, 2nd by Mr. Washburn, to grant a variance for the size of the wall sign.
Motion carried with 4 in favor, none opposed.

Mr. McIntyre offered to Attorney Bedard that the sign could be lowered approximately four feet if a compromise were needed. Attorney Bedard said that he would discuss that offer if mitigation of public concern was raised in discussion of the free-standing sign.

Regarding the variance for the free-standing sign: On the question of diminishment of surrounding property values, Board members expressed agreement with the applicant's assertion that surrounding property values would not be diminished. Mr. Rathbun expressed that the sign is in balance with the surrounding area and the site.

On the question of the proposed use being contrary to the public interest, Chairman Sousa expressed that based on public comment, members of the public felt the sign was contrary to the public interest. Upon clarification by Attorney Bedard of distinctions made by the courts on this matter, all Board members agreed that this criteria was met.

On the matter of denial resulting in unnecessary hardship, Mr. Rathbun expressed the cost of removal or alteration of the sign after the permit was approved would result in a hardship. Attorney Bedard clarified that a hardship must be related to a unique condition of the property. Mr. Rathbun expressed that they would suffer a hardship in advertising space by comparison too the buildings around them. Board members expressed agreement that this criteria was met.

On the matter of the spirit of the ordinance being observed, Mr. Rathbun expressed that this sign would be comparable to existing signs, and requiring them to reduce the size would put them at a disadvantage. Chairman Sousa expressed that he did not agree that the spirit of the ordinance was observed.

On the matter of substantial justice, Mr. Rathbun expressed that the sign erected was per the approved permit. The rest of the Board except for Chairman Sousa agreed with this assessment.

Motion by Mr. Orgaz, 2nd by Mr. Washburn, to grant a variance for the size of the free-standing sign.
Motion carried with 4 in favor, none opposed.


Attorney Bedard noted that there is a 30-day appeal period, which the applicant would receive notice of if an appeal was filed. Mrs. Sousa confirmed that a Notice of Decision would be issued.

Motion by Mr. Orgaz, 2nd by Mr. Washburn, to adjourn at 8:36 p.m.
Motion carried with 4 in favor, none opposed.

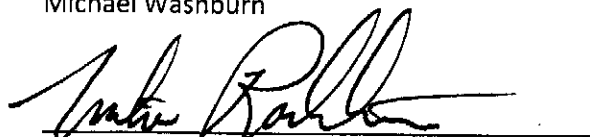
Submitted by: Tara Sousa/Town Administrator
Approved by:



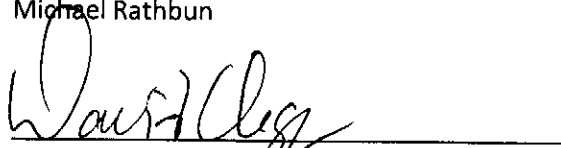
Pedro Sousa, Chairperson



Michael Washburn



Michael Rathbun



David Orgaz, Alternate