

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

Minutes – June 11, 2019

Call to order at 7:03 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 Administrative Assistant).

Chairman Sousa read the public notices for the 2 submitted variance applications. The Chair noted that the applicant had not yet arrived, asking the property owner, Dana Ryll, if he wished to have the two matters considered in separate hearings or one combined hearing. Mr. Ryll answered that he was not familiar with the process and did not know how to best proceed. Chairman Sousa offered that the Board could recess for 10 minutes to await the arrival of the applicant (Michael Trickett), which Mr. Ryll gratefully accepted. The Chairman announced a 10-minute recess of the hearing at 7:06 p.m.

The Board reviewed the minutes of the Public Hearing conducted January 3, 2019.

Motion by Mr. Orgaz, 2nd by Mr. Rathbun, to approve the minutes of January 3, 2019 as presented.

Motion carried with 4 in favor, none opposed.

The Town Administrator noted that the Board has several departing members, and suggested that the members could attempt to seek out people who might be interested in being appointed by the Selectmen. Mr. Orgaz noted that he needed to depart at 8:15 p.m.

Motion by Mr. Washburn, 2nd by Mr. Orgaz, to resume the public hearing at 7:17 p.m.

Motion carried with 4 in favor, none opposed.

Chairman Sousa asked the applicant if he preferred separate hearings for the 2 applications or if he wanted the hearings to be combined into one. The applicant answered that one combined hearing was agreeable.

The applicant identified himself as Ed Spinney of Sign Art, Inc. He expressed that the topography of the site presents a visibility challenge. He explained that the sign was designed to mimic the design of the building. He noted that the road is busy and the traffic moves quickly. In an effort to not cause traffic issues, the desired placement is near the corner so that people know where to turn into the facility. He noted that other signs along this road appear to be closer and larger than what is allowed. He noted the location of the facility as being up on a hill, and that a previously existing sign was located in the center of the lot. Mr. Rathbun asked Mr. Spinney if he felt the visibility was more of an issue from the north or the south. Mr. Spinney answered that most places have signage located near entrances, and in their case, the entrance is off a busy road. He expressed that visibility is an issue from both directions, and that they don't want someone to "do something stupid" because they drove by the store. He expressed that they are open to discussion. Chairman Sousa asked if the other trailer currently parked in front of the site with a banner across it was among the other signs referenced. Mr. Spinney answered that he

was referencing other signs on the opposite side, noting that if they placed this sign similarly, it would be in a drainage ditch. In discussing the previously existing sign for the landscaping company, Mr. Spinney indicated that if that were moved closer to the road, it would be in the ditch, hence their request to place it closer to the intersection. Mr. Ryll noted that where Cassidy's sign had been previously was not visible from the south. He expressed that the current location of the trailer was the desired location for the sign, at the edge of the drainage ditch. Chairman Sousa asked how far off the road the trailer is currently. The applicant, owner, and Board reviewed the submitted drawing to understand the site orientation and topography including current structures and landforms. Mr. Rathbun expressed that the location identified on the application, and the area they were proposing in testimony was not the same, and the area they are requesting was at most, in his estimation, only 10 feet from Route 31. Town Attorney Biron Bedard stated that that would be within the State's right-of-way. Further confusion surrounding the location of features identified in the submitted plan, including a pole, was discussed. The applicant indicated that they could have an engineer place pins at a "reasonable" distance. Mr. Rathbun noted that they would have to define "reasonable". The impact of the property line and right-of-way was discussed, with Atty Bedard indicating that the setback from the property line would place the sign up on the hill. Atty Bedard noted that placement on the corner is not favored by the Zoning, as there is a requirement for a 100' setback from intersections.

Chairman Sousa asked Mr. Ryll to identify the location of the installed flag pole. Mr. Ryll estimated the location of the flag on the plan. Chairman Sousa estimated that the pole is visible 600' from the south, and indicating a sign located near that would have the same visibility. Mr. Rathbun expressed that the area near the flag pole would be ideal and would meet zoning requirements. Mr. Spinney questioned if that location would have the desired visibility. Mr. Rathbun expressed his thoughts that a gun shop is a business that patrons are knowingly looking for and accessing. Mr. Ryll discussed that people have trouble finding his current location off Route 31 in Mason. Chairman Sousa expressed that determining the location of the property line is essential. Atty Bedard noted that all distances being discussed are based upon the owner's submitted plans. He expressed that a variance allowing for a small amount, 5' for example, would be different than the Board considering a variance for 100'. Mr. Ryll expressed that a sign too far from the road would not be worth putting up. Atty Bedard asked what physical limitations would cause difficulty with placing the sign in the ditch, other than needed to lengthen the posts. Mr. Ryll answered that there is all ledge there, and that they designed the sign to be low to the ground for aesthetic purposes. Mr. Spinney stated that the sign on stilts may look strange, and that the ditch is at least 6 feet down. Mr. Sousa expressed that a sign near the flag pole would be visible. Mr. Spinney asked Mr. Sousa if he had walked the site. Mr. Sousa answered that he had not. Mr. Rathbun noted that he had walked the site. Mr. Spinney suggested that if the size issue could be resolved, the placement could be resolved at a later date with a site visit. He discussed the desire to have adequate signage due to the substantial investment in the property, and that the lead time for the sign construction would allow for another meeting after engineers had placed pins. Mr. Ryll expressed "the sooner the better" for resolution of this matter, as the construction is complete and they will be moving product in soon.

Mr. Rathbun asked if there would be any signage on the building itself. Mr. Ryll answered that they had not really discussed that. He and Mr. Spinney indicated that any signage on the building would be for aesthetic not visibility purposes. Mr. Spinney expressed that they do not want to over-sign, and that they just want customers to be able to find them, to be a good neighbor, and not cause any traffic

issues. Mr. Rathbun relayed his concerns that it is close to the road, close to the intersection, and under the power lines. Mr. Spinney responded that when the site was surveyed, they needed to be 15' from the upper lines, and they had determined they had met that requirement. Mr. Rathbun expressed that if sited where the applicants proposed, it would be the closest sign to the road. He believed the Dunkin Donuts sign was currently the closest. Mr. Spinney believed Greenville Recycling's sign was closer. Mr. Spinney requested that the Board table the location matter and act on the approval of the sign size, color, material, etc. Atty Bedard counseled the Board that the decision was theirs whether or not to split these matters up, explaining to the applicants that another meeting could be scheduled rather quickly, and that it may be difficult for the Board to make a decision about the sign without the placement issue resolved. He recommended that if the matter were recessed, the applicant address the 5 required legal criteria in addition to the practical issues laid out presently. Mr. Spinney questioned whether the topography and other practical matters were legal, which Atty Bedard answered they can be, in the context of the 5 criteria. He discussed criteria 1, which requires that the proposed use will not diminish the surrounding property values, noting that the use is a conforming use, which has been approved by the Planning Board, and that adding signage would not diminish values, so long as the sign did not have a detrimental effect on the neighborhood, i.e. would not be illuminated 24/7, and other such considerations such as motion. He noted that though this is a commercial industrial zone, there are a couple of residences. Discussing the criteria that granting the variance would not be contrary to the public interest, Atty Bedard suggested that the applicant should discuss that this is a conforming use, and the sign itself would be conforming if not for the topographical issues. He suggested that the larger sign is consistent with commercial industrial use, and that 18 sq. feet allowed is very modest for a retail facility. Regarding unnecessary hardship, Atty Bedard discussed that the applicant should address the uniqueness of the area, in that the logical place for the sign is not useable. The applicant needs to show, to the Board's satisfaction, that there is not a reasonable technological solution for locating the sign in a conforming area.

Regarding substantial justice and the spirit of the ordinance, Atty Bedard discussed the totality of the circumstances, and that the use is conforming. He indicated that placement so close to the right-of-way needs to be shown to be non-detrimental. He believed that the right-of-way might extend much further into the property than the drawing may indicate, hence why the Board needs to see the area with pins placed. Mr. Spinney questioned if he needed an attorney in order to address these criteria. Atty Bedard discussed that he could not recommend whether or not to use an attorney, but that there is a well-developed body of law about these criteria. He suggested that an attorney should be able to help formulate responses that would leave fewer questions for the Board. Mr. Spinney discussed that he believed they could meet all the criteria for the sign size, and that they would like to get an approval on that in order to get the sign into production. He agreed that they could wait for a decision on placement. Mr. Rathbun discussed his concerns about the nature of the sign, illumination, movement, etc. Mr. Spinney answered that this is an internally LED illuminated sign, with a changeable LED message board below. He indicated that they would like to have an American flag waving on it on the 4th of July, but it would not be scrolling in normal use. It is designed to be a fixed message. Mr. Rathbun asked if the upper sign moved, and Mr. Spinney answered it does not. He stated that they would want the sign illuminated during open hours, and would respectfully request that they be allowed to remain on 2 hours after closing. He had not checked when other businesses shut off their signs, but he believes their requested use will not be detrimental to the neighborhood. Mr. Rathbun noted that there are no

moving signs in the area, so that would be a "break from the norm." Mr. Spinney responded that it would only be moving if you let it scroll, and that the intended use is to change messages once or twice a day. Chairman Sousa asked if the signs will be able to be shut-off independent of each other, and Mr. Spinney answered that they would be wired independently. Mr. Rathbun asked Atty Bedard for clarification on documenting something such as no scrolling, and Atty Bedard answered that conditions could be part of the Board's motions on this matter. Members of the Board discussed that their approval would be contingent on conditions that restrict aspects of the sign in terms of time on and changing of messages. Mr. Rathbun noted a sign in New Ipswich that caused issues, and expressed wanted to avoid issues by discussing them now. Mr. Ryll discussed his current method of messages on magnets that he changes out in front of his current location. Mr. Ryll noted the design of his building as an indication of their intent, and Mr. Spinney echoed that with it being a "clean, high-end" sign. The Chair confirmed the Board had no further questions at this time, and opened the floor for public comment.

Mike Sadowski, of Livingston Road, began to address placement, and Atty Bedard stated that that matter was going to be tabled. Mr. Sadowski asked if the public would be invited back, and Atty Bedard confirmed that they would. Mr. Sadowski brought up that there are actually two signs, and that the square footage of the entire structure is 148.95 sq. feet. Mr. Spinney replied that the sign structure is not addressed anywhere in the ordinance, and that the two portions could be put together, but he felt the aesthetic was better with the separation. Mr. Ryll noted that separate signs were preferred in the event of one portion failing, only the failed portion would need to be replaced. Regarding the total square footage of the pole system, Mr. Spinney answered that the additional parts could be removed, but the design was done to match the building. Mr. Sadowski questioned the total amount of light, as there would be a spotlight on the flag as well as the lit sign. Mr. Spinney answered that it would not be any brighter than Dunkin Donuts sign, for example. Mr. Sadowski stated that we don't have any other digital signs besides fuel price signs, and in his opinion, this would not be in keeping with the neighborhood aesthetic. He expressed concern about "visual clutter" with the two signs. Mr. Spinney commented that he could easily bolt the two parts together.

Miles Horsley, of High Street, commented that he liked the overall look of the sign, but he agreed with Mr. Sadowski that no other signs in the area, other than fuel price signs, have digital displays and that this would increase the visual clutter. He noted that if the two signs were put together, they total 51.38 sq. ft. He expressed that his main issue was with the digital portion, and that the lower part of the sign seems redundant and unnecessary. Mr. Spinney stated that the two pieces combined are exactly 50 sq. ft, which was fashioned to be no larger than other signs in the area. He expressed that digital is digital, and if the Town allows a digital time and temperature sign or gas price sign, case law indicates that other digital signs must be allowed, so long as they do not jump, scroll, etc. The applicants noted both the gas station and Haffners have digital signs. They agree that no one wants to see movement, and that they respect that and designed the sign with that in mind. Mr. Sadowski asked if they could achieve the same advertising results with a non-digital sign. Mr. Ryll answered no. Mr. Spinney discussed the challenges and liabilities of a sign that has to be manually changed. Mr. Sadowski asked if the business would still be seen without the digital sign. Mr. Ryll answered that you would see the building, but you would not see the messages, because they would not be there. Mr. Spinney noted their willingness to put up messages for local churches and the like in order to be a good community member. Mr. Ryll

noted that he has already offered the facility for use by local law enforcement. Atty Bedard concurred with the applicant's assertion that once digital is allowed in a community, case law supports other types of digital signs being allowed. He noted that what can be controlled is the number of times the message changes. He expressed that one style of sign over another is simply an aesthetic preference. Mr. Horsley asked if there was a way to make a digital sign that was more like the signs which you attach letters to, as the black background has more of a "Vegas" look, and something gentler would alleviate his concerns. Mr. Spinney expressed that all the LED boards are manufactured on black backgrounds, and the only way to achieve that look would be to light the whole background a color and use black lettering. Atty Bedard noted that the background could be lit all white, but that would actually result in more light coming off the sign.

Mr. Sadowski expressed that the proposed LED sign would alter the essential character of the neighborhood. Mr. Rathbun responded that the character of the neighborhood had been changed before this Board convened. Mr. Sadowski expressed his opinion that gas prices are not akin to changing messages. Chairman Sousa expressed that if there was nothing new to be brought before the public hearing on the matter of the sign size, the hearing could be closed. Mr. Rathbun expressed that he wanted the discussed conditions in writing, which Atty Bedard indicated could be dictated in the Board's motion should it choose to approve the sign size variance. The Town Administrator asked if the applicant needed to provide testimony about the two criteria which were left blank on the application. Atty Bedard answered that the applicant could provide further testimony, or the Board would need to find that the criteria had been met with prior testimony. Mr. Spinney indicated he felt they had met all the criteria for the variance for the sign size, and that they were willing to entertain any conditions with regard to movement, flashing, etc. He stated that not granting a variance would result in a hardship to this new business, and that it is not contrary to the spirit of the ordinance because everyone in the area has a similar sign. He answered that he had no further comments at this time.

Chairman Sousa asked for any additional comments before the hearing was closed. Mr. Horsley expressed that granting the variance for the additional square footage of the digital portion would "add insult to injury", as the upper portion would already exceed the size limitation in the ordinance. Mr. Sadowski expressed that it was unfortunate that the size variance is being considered separate from the placement, because the placement of the LED is a major part of his concern the sign size. Mr. Ryll asked if signs on the building are different. Mr. Rathbun and Atty Bedard answered that building signs would be different. Mr. Ryll commented that he did not want to put signs on the end of the building, but he would consider that if he needed to conform to other buildings. Mr. Sadowski asked the Board to table the LED portion of the sign until the placement issue was resolved.

Motion by Mr. Washburn, 2nd by Mr. Rathbun, to close the public hearing regarding the sign size variance application at 8:32 p.m.

Motion carried with 4 in favor, none opposed.

Atty Bedard clarified to the Board that it is within their power to table both matters if they chose. Board members expressed their willingness to decide the sign size issue that evening, separate from the placement variance. Chairman Sousa reviewed the outdoor advertising portion of the zoning ordinance. Mr. Rathbun expressed that it is ambiguous. Chairman Sousa reiterated Atty Bedard's comments about

the existence of other digital signs within town, and that the Board had been clear about conditions it would have regarding scrolling, message changing, etc. Atty Bedard encouraged the Board to lay out their conditions regarding those specifics.

The Board agreed that the sign should be limited to being illuminated not more than 2 hours before open hours, and will be shut off no later than 2 hours after closing. They agreed that there would be no flashing, scrolling or movement of any kind. Atty Bedard recommended that the Board clarify a maximum number of times the sign can be changed daily. Limiting to no more than 3 changes per day was discussed. Mr. Orgaz asked the purpose for limiting the number of changes allowed. Atty Bedard explained that it can alleviate arguments that can arise when the changing of the message gives the appearance of flashing, etc. The Board agreed that the message should be changed no more than 3 times per day. Mr. Rathbun expressed that all this would be contingent upon finding a suitable placement at the site. Chairman Sousa reiterated that this approval was for the sign size only, subject to the specified conditions, and subject to suitable placement at the site to be determined later.

Chairman Sousa reviewed the applicants written response to criteria 1. Members voiced their agreement with the applicant's response.

Motion by Mr. Washburn, 2nd by Mr. Rathbun, that the provided response meets the requirement that the proposed use would not diminish surrounding property values.

Motion carried with 4 in favor, none opposed.

Regarding criteria 2, Mr. Rathbun expressed that the proposed sign is in line with the existing signs in the area, and therefore it is not contrary to the public interest.

Motion by Mr. Rathbun, 2nd by Mr. Orgaz, to accept that the requirement of criteria 2 has been met.

Motion carried with 4 in favor, none opposed.

Regarding criteria 3, that denial would result in "unnecessary hardship", Chairman Sousa reviewed the written response that "the larger sign properly conveys the size and scope of this unique business." Mr. Washburn agreed. Mr. Rathbun felt the written response was misplaced, though he did not disagree that the proposed use was reasonable. Atty Bedard noted that they are not limited to the written responses, and that the Board has discussed that the sign ordinance lacks distinction between retail, commercial, and directional signs, and that as discussed, this area has become a commercial/retail area of high exposure businesses that require better signage. He expressed his understanding that the Board finds there is a hardship due to the lack of distinction in the ordinance. Atty Bedard clarified that the Board can find a compelling reason that supports the criteria being met that does not match what the applicant has offered.

Motion by Mr. Rathbun, 2nd by Mr. Orgaz, that criteria 3 has been met.

Motion carried with 4 in favor, none opposed.

Regarding substantial justice (criteria 4), Chairman Sousa referenced the applicant's verbal testimony.

Motion by Mr. Rathbun, 2nd by Mr. Orgaz, that the criteria of substantial justice has been met.

Motion carried with 4 in favor, none opposed.

Motion by Mr. Washburn, 2nd by Mr. Rathbun, that criteria 5, the use is not contrary to the spirit of the ordinance, has been met.

Motion carried with 4 in favor, none opposed.

Motion by Mr. Washburn, 2nd by Mr. Rathbun, that the proposed sign shall not be illuminated more than 2 hours before opening and 2 hours after closing (hours of the business).

Motion carried with 4 in favor, none opposed.

Motion by Mr. Orgaz, 2nd by Mr. Rathbun, that the proposed sign shall have no motion whatsoever.

Motion carried with 4 in favor, none opposed.

Motion by Mr. Orgaz, 2nd by Mr. Rathbun, that the proposed sign's message shall be changed no more than 3 times per day.

Motion carried with 4 in favor, none opposed.

Motion by Mr. Washburn, 2nd by Chairman Sousa, to grant the variance for a sign of 50 contiguous square feet, subject to the motioned conditions, and conditional upon placement in a location approved by this Board.

Motion carried with 4 in favor, none opposed.

Attorney Bedard gave the applicant the option to recess the 2nd pending application regarding placement to a time and place certain, for which they would need to have the pins placed in time for that reconvening, or to adjourn the hearing, and come back when the applicant notifies the Board he is ready. He noted this option would incur a 2nd set of abutters noticing fees. The Board discussed meeting for a site walk in 2 weeks, on June 25th, at 6:30 p.m. at the proposed site, and reconvening the hearing immediately thereafter in the meeting room. Mr. Sadowski asked about the public's ability to attend. Atty Bedard answered that the public is welcome to attend the site walk, and hear any discussion there, but not to speak, but that they would be able to speak at the continued public hearing. He explained that it would be posted as required by 91-a, but there would not be further abutters notices. Atty Bedard told the applicants to notify the Board if they were not ready for that date for some reason, so that the Board could convene to continue, or new abutters notices would be required. Members of the Board agreed that June 25th was suitable for them. Mr. Orgaz had a conflict which he indicated he could rearrange. Atty Bedard noted that if an alternate were needed, they would need to listen to the tape of this meeting.

The Chairman announced that the meeting would reconvene for a site walk on June 25, 2019 at 6:30 p.m., at 781 Fitchburg Road, Greenville, NH, with the public hearing immediately thereafter at the Town Hall Meeting Room, 46 Main Street, Greenville, NH (Chamberlin Street entrance).

Motion by Mr. Washburn, 2nd by Mr. Orgaz, to adjourn the meeting at 9:00 p.m.

Motion carried with 4 in favor, none opposed.

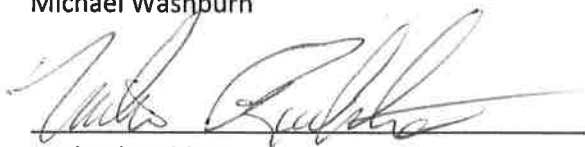
Submitted by: Tara Sousa/Town Administrator

Approved by:

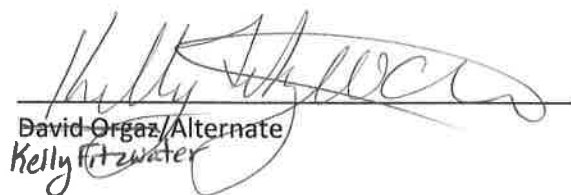


Pedro Sousa/Chairperson

Michael Washburn



Michael Rathbun



David Orgaz/Alternate

Kelly Fitzwater