ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, March 7, 2016 – 7:00 p.m.
1 Grove Street, Peterborough, New Hampshire

Board Present: Jim Stewart, Sharon Monahan, Loretta Laurenitis, Peter LaRoche, Peggy Leedberg, Seth Chatfield and Peter Leishman

Staff Present: Laura Norton, Office of Community Development and Dario Carrara, Code Enforcement Officer

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Chair Stewart called the meeting to order at 7:00 p.m. "Good evening" he said "this is the March stated meeting of the Zoning Board of Adjustment. I am Jim Stewart and I am the Chair." Chair Stewart went on to introduce the members and staff and read the Rules of Procedure. He noted he would read the request and ask the applicant to present their case. He told the audience that when the applicant was done he would close the public hearing and the Board would go into deliberation. "If we feel we have enough information we will make a decision" he said.

Shaun Pratt introduced himself as the Business Manager of Conrad's Hair Affair Salon. "We are here to request a Variance for a roof sign" he said adding "and if we don't get one it will actually hurt our business." Mr. Pratt introduced Reed Hayes as the preparer of the application noting he was available to provide any specifics on details and to answer any questions the Board may have. Both Chair Stewart and Vice Chair Monahan recognized Mr. Hayes from representing other applicants in the past.

Citing the Variance criteria Chair Stewart emphasized the importance of meeting *all five* of the criteria. He asked if Mr. Hayes would like to speak to each one individually noting "these tell us what makes this property so unique that it needs relief from the ordinance."

Mr. Hayes explained that because of the roof line of the building and the lack of wall space "there is no space for a 40 square foot sign" adding "in fact our sign is smaller than that. It is 32 square feet (four feet by eight feet)." He told the members "that is about the same size as the Dunkin Donuts sign next door, there is

no adequate place to put a sign other that on the roof. I believe Dunkin Donuts has one for the very same reason."

Chair Stewart cautioned Mr. Hayes about keeping to the uniqueness of their building space, not their neighbors.

Ms. Laurenitis asked it the sign would be the same height as the Dunkin Donut sign. Mr. Hayes replied "yes." Ms. Monahan asked about lighting with Mr. Hayes noting "it will not be lit internally but we light it externally later on." Chair Stewart asked so like Dunkin Donuts?" Mr. Hayes relied "no, theirs is internally lit." Ms. Monahan asked about a free-standing sign for the plaza tenants with Mr. Hayes replying "yes there is a sign and the salon has a 1X3 foot panel (3 square feet)." Mr. Chatfield interjected "that is mostly for people to know what is located in the plaza" with Mr. Hayes replying "yes, right." Ms. Monahan noted that cars in the parking lot block the window space and asked "are those windows real?" Mr. Hayes explained the windows were real "and that is where all our space is."

Chair Stewart asked Code Enforcement Officer and ZBA Liaison Dario Carrara to explain what the ordinance said. Mr. Carrara replied "it is pretty straight forward, under *245-18 G Prohibited Signs* (#11) it says *Roof Signs*." Chair Stewart noted seeing roof signs "all over the place" with Mr. Carrara replying "they all predate the ordinance." Citing the two plazas in town Chair Stewart pointed out that every business had a roof sign. Mr. Carrara noted the problem was that the ordinance is open to interpretation. Chair Stewart questioned the spirit of an ordinance that is in the zoning regulations but in practice has not been followed. "I cannot tell you why it is in place" replied Mr. Carrara, "I cannot answer you." Mr. Carrara gave a brief history of Dunkin Donuts erecting their sign in 1999 "and a few months later the ordinance appeared." He also noted that his definition of a roof sign was a sign *on top* of the roof and that the ordinance had been written in a very simplistic manner. Chair Stewart interjected "so they could construct a fake gable end and put up a sign?" Mr. Carrara replied "yes, it is very simplistic. I would have written it differently" adding "and a gable end could go very high, I don't envy the Board tonight in making a decision."

Mr. LaRoche asked about the concern for internally-lit signs with Mr. Chatfield suggesting it may have something to do with preserving the rural character. Ms. Laurenitis noted she had no problem with the request "there is nowhere else to put a sign" she said. Chair Stewart cautioned her about voicing her opinion. "Not before deliberation" he said.

Ms. Monahan suggested Mr. Hayes go through each of the criteria and he did so by reading them one at a time. This criteria reviewed why granting the Variance would not be contrary to the public interest and the spirit of the ordinance is observed (meeting the purpose and intent of the ordinance to protect and improve community appearance and aesthetics by remaining consistent with similar work at the plaza and promoting the vitality of a local business for whom adequate signage is of high important). How substantial justice is done (the business will receive the attention needed for its vitality and the public will receive adequate direction as well as the business being granted the same privilege enjoyed by an adjacent business in the plaza). The value of surrounding properties are not diminished (the proposed sign is consistent with existing signage and is located in a commercial area where surrounding properties have signs identifying businesses in the area). Special conditions (low roof line and lack of wall space occupied by the business), and the use is a reasonable one because a business in a commercial area requires adequate signage for visibility and to direct the public.

When he was done Chair Stewart cited two other requests for roof signs (Case No. 1065 (2005) for a Chinese Restaurant which was approved and Case No. 1112 (2007) for US Cellular, which was denied. Mr. Hayes pointed out the Variance granted in 2005 is the same location as the salon. “That was granted because there was no other space available for a sign” he said.

Mr. Chatfield asked about the signage change for the Chinese Restaurant at Noone’s Falls. The brief discussion that followed pointed out the sign was occupying the same footprint with a change of text.

A motion was made/seconded (Stewart/LaRoche) to close the hearing and move to deliberation with all in favor.

Alternates Chatfield and Leedberg left the table as Chair Stewart noted he had not read the public posting at the beginning of the hearing. “There is no audience but for the record” he said “I will read it. **Case No. 1223** Conrad’s Unisex Hair Salon is requesting a variance to install a sign on a roof, as regulated by Chapter 245, Article IV, Section 18 (G) (11) of the zoning ordinance. The property is located at 209 Concord Street, Parcel No. U013-001-000 in the Commercial District.” Once done he looked up and asked if there were any changes or corrections to the notice. With none Chair Stewart read the deliberative session statement.

Chair Stewart continued with “I’ll start with a straw poll” adding “I have no problem whatsoever with this. They meet the criteria and absolutely should be

approved." He looked to Ms. Monahan and said "Sharon?" Ms. Monahan replied "yes, I am for it." Mr. Stewart continued "Peter?" Mr. Leishman "I have no problem at all," Mr. LaRoche interjected "I don't either" with Ms. Laurenitis concluding "I already told you what I think."

A motion was made/seconded (Stewart/Monhan) to approve the request for a Variance Conrad's Unisex Hair Salon to install a sign on a roof, as regulated by Chapter 245, Article IV, Section 18 (G) (11) of the zoning ordinance was approved with all in favor. Conditions included the new sign comply with all town sign ordinances, be the same height as the Dunkin Donuts sign and be 8 by 4 feet in size (32 square feet) in size wit hall in favor..

Minutes:
A motion was made/seconded (Stewart/LaRoche) to approve the Minutes of October 14, 2015 as written with all in favor.

Open Positions:
Chair Stewart led a brief discussion about two positions open for election at this year's town meeting, Ms. Monahan noted she preferred someone take her place on the Board but did consider becoming an alternate when Mr. Chatfield offered to fill her spot "if it was for the taking." Chair Stewart encouraged Ms. Laurenitis to finish Mr. Sobe's seat on the Board. "It is just one more year" he said. Ms. Laurenitis replied "I could do that."

General Discussion:
Ms. Laurenitis noted the ZBA Handbook had been updated but she had been unsuccessful in downloading the changes. Ms. Leedberg gave a brief review of a training session she attended that was offered by the New Hampshire Municipal Association. Ms. Monahan noted while Ms. Leedberg attended a legislative session she had attended a session on six new case laws in zoning and planning. She asked two of the cases be copied and distributed to the members for the next meeting. "I would like to review them and specifically get Dario's (Carrara, Code Enforcement Officer) input on them as they involve the code officer" she said. She also mentioned *Agritourism is not Agriculture*" (Forster's Christmas Tree Farm v. Town of Henniker) and noted "agritourism is considered commercial, its sizing is different from a farm." She told the members Conditional Use Permits and Special Exceptions had been discussed "and our town is doing it wrong" she said adding "and I do not know how to address it." Chair Stewart asked "were DTC lawyers there?" Ms. Monahan replied "yes" and (after having a conversation with her) added "and they are concerned." Vice Chair Monahan suggested a joint meeting

with the Planning Board and the town attorney to address Conditional Use Permits, specifically allowing waivers to zoning ordinances.

Ms. Monahan noted the clause for waiving Zoning ordinances was not supported. “They can only do that under Site Plan Review” she said. Ms. Monahan went on to note the use of Performance Standards, waiving Performance Standards and the absence of going to Site Plan Review were problems “and they (the Planning Board) keeps proposing amendments” she said. “We need to have a discussion” interjected Chair Stewart. Mr. Lieshman added “sounds like a joint meeting” with Mr. Carrara adding “to include Peter Throop and John Ratigan.” Mr. Carrara also noted that when he was on the Planning Board in Greenfield one of the members sat on both the Planning Board and the Zoning Board of Adjustment. “Looking in the rear view mirror I think it was a good thing” he said. Chair Stewart remained hesitant to be involved noting “it is all spelled out in the books, not respecting that has nothing to do with us.” Mr. Chatfield asked who had the authority to review and straighten out the mess with Mr. Leishman replying “the Board of Selectmen.”

Ms. Monahan concluded by noting the long history of case law versus the infancy of Conditional Use Permits and offered to put something together for a joint meeting. She concluded by noting there was a total of 12 Conditional Use Permits available to be applied for and added “the only one done right was the first one. The one that Carol (Ogilvie) did.”

The meeting adjourned at 8:10 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant

NOTICE OF DECISION

Case Number 1223 March 7, 2016

You are hereby notified that the request of Conrad’s Unisex Hair Salon, for a **Variance** to Chapter 245, Article IV, Section 245-18 (G) (11) of the Zoning Ordinance, to allow a

roof sign, on property located at 209 Concord Street, parcel number U013-001-000, in the Commercial district, is hereby **GRANTED**.

In **granting** the variance, the Board finds that:

1. The variance **WILL NOT** be contrary to the public interest because and
2. The spirit of the ordinance **IS** observed because:
   The proposed work meets the criteria of the purpose and intent of Article IV, Section 245-18, in that the proposed work does "protect and improve community appearance and aesthetics" by remaining consistent with other similar work at the location, and it promotes "the vitality of local businesses and organizations for whom adequate signage is of high importance". In addition, in keeping with the purpose and intent of the ordinance, the proposed work provides identification for establishments and direction for the public.

3. Substantial justice **IS** done because:
   A local business will receive the identification needed for its vitality and the public will receive more adequate direction, and said local business will be granted the same privilege as enjoyed by an adjacent business at the same location.

4. The values of surrounding properties **ARE NOT** diminished because:
   The proposed sign is consistent with other signage already existing at the location, and the property is located in a commercial area where the surrounding properties have signs identifying the businesses located there.

5. Unnecessary hardship
   Special conditions of the property that distinguish it from other properties in the area:
   - A low roof line and lack of "wall space due to doors and windows that is occupied by the business that the sign is identifying" do not allow for a reasonable usage of the maximum allowable sign area defined by the ordinance.
   - There is also an existing roof sign on the property for an adjacent business, and a variance has been previously granted for a second roof sign on the property for a business occupying the same space as the Applicant (Please see attached ZBA Notice of Decision, Case No. 1065).

   a. Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance **WOULD** result in an unnecessary hardship because:

i. There **IS NOT** a fair and substantial relationship between the general purposes of the zoning ordinance and the specific application of that provision on the property because:
The low roof line and lack of available wall space do not accommodate adequate commercial signage.

ii. The proposed use **IS** a reasonable one because:
A business in a commercial area requires adequate signage for its vitality and to direct the public, and the proposed sign will be consistent with other signage already permitted on the property.

In granting this variance, the Board imposes the following conditions:

1. Substantial compliance with sign application plans.
2. The height of the sign shall not exceed the height of the adjacent Dunkin Donuts sign.
3. The size of the sign shall be 8' x 4', or 32 square feet.

Signed,

James Stewart, Chairman

Note: An application for rehearing on any question of the above determination may be taken within 30 days of said determination by any party to the action or person directly affected thereby according to the provisions of New Hampshire Revised Statutes Annotated, Chapter 677. Decisions for Variances and Special Exceptions shall become null and void in two years if substantial compliance with said decision or substantial completion of the improvements allowed by said decision has not been undertaken after the date of approval. If this decision becomes null and void, the owner must reapply to the Board of Adjustment for a Variance or Special Exception as provided for in §245-42 of the Peterborough Zoning Ordinance.