

ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, April 3, 2017 – 7:00 p.m.
1 Grove Street, Peterborough, New Hampshire

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

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

Chair Stewart called the meeting to order at 7:00 p.m. “Good evening” he said “this is the stated April meeting of the ZBA, I am Jim Stewart and I am the Chairman.” He then introduced the Members and Staff and read the Rules of Procedure. He concluded by asking anyone wishing to speak (questions or concern, for or against) please identify themselves for the record.

Chair Stewart then read the first case:

Case No. 1230 David Labnon is requesting a Variance to allow Personal Services, Professional Services, and Retail Establishments uses, as regulated by Chapter 245, Article II, Section 7 A, of the zoning ordinance. The property is located at 115 Wilton Road, Parcel No.U019-006-000, in the General Residence District.

When finished he informed the Board Mr. Labnon had requested a continuance to the stated May meeting. A motion was made/seconded (Stewart/Chatfield) to continue the case to the May 1, 2017 ZBA meeting with all in favor.

Chair Stewart read the second case:

Case No. 1231 Ocean State Job Lots is requesting a Variance to allow nine wall/building signs, with a total area of 205 square feet, for one business, as regulated by Chapter 245, Article IV, Section 18 D 10 b, of the zoning ordinance. The property located at 19 Wilton Road, Parcel No. U018-062-100, in the Village Commercial District.

When finished he looked up and asked “are there any corrections or changes to this posting?” With none he invited the applicant to present.

Frank Bourque introduced himself as the Manager of Construction and Planning for Ocean State Job Lots. He also introduced David Steinberg, Manager of Leasing for Ocean State Job Lots and Peter Holden of Holden Engineering & Surveying, Inc. He told the Board Ocean State Jobbers has roughly 125 stores (35,000 to 45,000 square feet in size) throughout New England and New Jersey. “It is headquartered in North Kingstown, New Jersey and is privately owned” he said.

Mr. Bourque explained that the company bought the Peterborough Plaza in 2013 and had invested money in replacing the entire roof, doing façade restoration and parking lot repairs. He acknowledged more work was necessary but they were holding off pending an opportunity to upgrade Rite Aid’s current space of 15,300 square feet to 50,212 square feet (roughly the size of their current prototype). “That negotiation took almost three years” he said adding “and they have finally signed an agreement to take the space” he said.

Mr. Bourque briefly noted a Minor Site Plan Review with that Committee earlier in the day and their approval to redevelop the northern most unit of the Peterborough Plaza for a retail use. The redevelopment will remove a section of the awning along the front of the unit, relocate the entrance to the unit, add windows, reconfigure the parking lot and replace the existing loading dock with a drive-through window for the pharmacy. Using a graphic he noted these points of redevelopment for the Board, using front and side elevations of the

building. He briefly reviewed the proposed grading and drainage plan and using existing infrastructure at a higher elevation with the addition of a new catch basin; removal of the old loading dock for the creation of a single lane drive through pharmacy and Rite Aid's typical corner entrance from either side of the building. "It is a great location but it needs visibility to attract others to the Center." He told the members the two restaurants have helped to bring in more people. He then reviewed the request for additional signage which included two Rite Aid Shield Logo and Letter combination signs, two Pharmacy signs, two Drive Thru signs, one Drive-Thru Pharmacy sign and two GNC Live Well signs. "The proposed total square footage is 205 square feet" he said. He also noted several directional signs for the Drive-Thru (*Height Clearance, Pick-Up, Drop-Off, and Exit Only* signs)

Mr. Chatfield clarified "so you have seven signs for Rite Aid and two for GNC." Ms. Laurenitis asked why the Logo had to be on the sign. Mr. Bourque replied he had never seen a Rite Aid sign without the logo attached. "It is considered their trademark across the country, it is pretty prominent" he said.



Mr. Bourque went on to say he'd served on the ZBA in his town of Raymond, New Hampshire. "I know understand the process, you are volunteers to protect the community and prevent anything objectionable from being brought in. I appreciate your position and I am aware we are asking for more than what your zoning ordinance allow (and) the tenant is aware they may get *less* than what they asked for but *more* than what the regulations allows" he said.

A brief discussion about the negotiation of what to keep, what to remove and directional signs followed. It was noted the GNC Live Well signs were for a store vendor and should be discarded. Mr. Bourque noted the signs were a brand the store featured but could live without them if they had to.

Mr. Leishman asked "have you looked at CVS?" adding "they have two outside signs that are quite small actually." "And they can be seen from the road" added Chair Stewart. It was noted CVS never requested a sign variance and that when reviewing the zoning applications Code Enforcement Officer Dario Carrara told the members "I do not prejudge requests; the applicant is contractually obligated to get as much as they can for their tenant. I just let the process go through its steps."

A brief discussion about signs for safety and direction followed with the members agreeing signs for *Drive-Thru*, *Height Clearance*, *Entrance* and *Exit* were all considered directional. After a short discussion on what would be illuminated and what would not, Chair Stewart suggested for clarity and consistency "let's assume all of the signs are illuminated."

Mr. Bourque then introduced an alternative plan that Rite Aid had suggested just prior to the meeting. This plan requested two Rite Aid Shield Logo and Letter combination signs (68 square feet each), two Pharmacy signs (7.14 and 5.42 square feet), two Drive-Thru signs (7.37 square feet each), one Drive-Thru Pharmacy sign and two GNC Live Well signs (9.43 square feet each) for a total of 182.16 square feet.

“That is still a lot of text on the building” said Mr. Chatfield adding “how would you *not* know Rite Aid was a pharmacy?” Mr. Bourque replied Rite Aid has been publically confused as being a retailer, “At the end of the day, they are a Pharmacy” he said. Ms. Monahan asked “what is the font?” and pointed out the height of the letters on the Logo sign were three feet tall. “There isn’t a sign in town with 3-foot high letters, I don’t think there is anything in the entire region actually. It is disproportionate for the area, Shaw’s letters are two feet high and CVS’s are one foot high.” She also noted the Rite Aid in Jaffrey was located on a five-way intersection “and they only have a sign (without the Shield Rite Aid Logo) on one side.” Mr. Bourque replied “that is unusual, was it an acquired building?” Ms. Monahan replied “no, it was built as a Rite Aid.”

After a brief discussion the members agreed the GNC Live Well signs should be discarded, the letters on the Shield Logo and Letters sign will not be taller than two feet, the Drive-Thru Pharmacy sign was allowable and the other requested signs were directional in nature and did not require a Variance.

Mr. Leishman pointed out the neighboring Liquor Store’s sign was 60 square feet (Variance approved in 2016). Chair Stewart asked about the two entrances with Mr. Bourque replying “that is typical for Rite Aid, they will have the two entrances with parking split equidistant to both sides.” Mr. Steinberg interjected “we are trying to save the shopping center, we hope you will allow some of our unique circumstances to be considered.”

Chair Stewart asked Mr. Bourque to review the five criteria for a Variance which he read from his application. When finished he looked up and said “that is the basis of our argument. We ask the Board to consider the fact that we are trying to redevelop the center and spend the additional money for the redevelopment approved by the Minor Site Plan Review Committee.” He went on to say “we are willing to take less

and compromise as that is certainly better for us than a no.” Chair Stewart explained once deliberation began there would be no additional testimony and the Board’s decision would be final. Mr. Bourque replied “we are willing to accept a reasonable consensus and go with what works versus an all or nothing approach.”

Ms. Laurenitis asked if the redevelopment work would impact the signage with Mr. Bourque replying “no, it will not.”

Chair Stewart opened the hearing to the audience. Mr. Steinberg briefly reviewed the status of the Center. He noted what they hear from potential tenants is “once you fix the entrance call me back” He went on to say “The Subway restaurant waited for a business to fail to get the location and the road visibility. They still don’t think it is all that great. We are working to get more traffic and volume into the Center.”

Chair Stewart asked “do we want a Site Visit?” The members agreed they did not. A motion was made/seconded (Stewart/Leishman) to enter Deliberation with all in favor. Chair Stewart concluded the public hearing by reading the Deliberative Statement.

Deliberation:

Chair Stewart began with a straw poll. “I support the new revised size of 68 inches and I think the Drive-Thru signage is fine” he said adding “moving forward, it is a business in the community and it is good to arrange something acceptable to expand.”

Ms. Laurenitis agreed but noted “I still don’t see the reason for having two signs.” She also agreed the 68-inch sized sign was a good idea and the Drive-Thru signage was fine with no GNC sign.

Mr. Leishman stated “I agree with the two signs, the Drive –Thru, no GNC sign” adding “the Directional signs are fine (but) I would like to be supportive of the Liquor Store sign and give them two 60 square foot signs.”

Mr. Chatfield also agreed two signs, the Drive-Thru and no GNC sign. “It is a competitive marketplace but I am concerned about the size of the lettering, I think they should be smaller” he said.

Mr. LaRoche concluded that he felt two signs with smaller lettering would be fine. “It is an odd configuration” he said adding “the Drive-Thru is fine, no GNC sign.”

It was noted the current letters were 30 inches tall. The Board recommended the letters be reduced to 24 inches tall (“if they think that looks disproportionate they can reduce the size of logo” said Mr. LaRoche), the GNC signs be removed and the following illuminated signs be approved:

Two Rite Aid Shield Logo and Letter signs (68-square feet each) with dimensions of the letters RITE AID not to exceed 24 inches in height. Rite Aid Shield Logo may remain at 45.5 but to exceed 45.5 inches.

One Pharmacy Letter sign as proposed on the plan (7.14 square feet)

Two Drive-Thru Letter signs (7.37 square feet each)

One drive through pharmacy sign as proposed (5.42 square feet)

Chair Stewart noted the approval is for substantial compliance to the plan submitted to them this evening entitled SignArt Site Plan, Signage Plan for Rite Aid, Store #10285 – 19 Wilton Road, Peterborough, NH.

The members agreed to use the language that was provided by the applicant for the Notice of Decision Variance Criteria.

A motion was made/seconded (Stewart/LaRoche) to approve the Variance for signage as described above with all in favor.

NOTICE OF DECISION

Case Number 1231

April 3, 2017

You are hereby notified that the request of Ocean State Job Lots (for Rite Aid), for a **Variance** to Chapter 245, Article IV, Section 18 D 10 b, of the Zoning Ordinance, to allow five wall/building signs, for one business, on property located at 19 Wilton Road, parcel number U018-062-100, in the General Residence District, is hereby **GRANTED**.

Specifically, the Board approves the following illuminated signs:

1. Two Rite Aid/logo signs as proposed, modified by the Board so that lettering not to exceed 24" in height and logo not to exceed 45" in height.
2. Two pharmacy signs as proposed (7.14 square feet).
3. One drive-thru pharmacy sign as proposed (11.84 square feet).

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

1. The variance **WILL NOT** be contrary to the public interest because:
This is an established shopping center built in the 1970's and this endcap has been vacant since the grocery store closed many years ago. A significant pharmacy tenant will ensure a competitive marketplace for many years to come.
2. The spirit of the ordinance **IS** observed because:
This property is wholly within the village commercial district and the signage limits discourage competitive retail tenants. This signage will not detract from the spirit of ordinance as the revitalization of this shopping center will ensure stability for many local businesses, both surrounding and within the shopping center.
3. Substantial justice **IS** done because:
This proposed tenancy will ensure Peterborough continues to have a competitive market for pharmacy choices and will benefit the local consumers by reducing the risk of an unfair marketplace.
4. The values of surrounding properties **ARE/ARE NOT** diminished because:
This property is situated wholly within the village commercial district and the revitalization of this center will bolster and ensure the long-term stability of surrounding properties.
5. Unnecessary hardship:
Special conditions:
 - This corner of the plaza is kitty-corner to the highway.

(a) This shopping center has been underutilized for many years and the owners have been diligently attempting to revitalize this shopping center which contains many small business entities. Leasing of this center has been challenging due to the unique position of this parcel, bounded by a portion of NH Route 101 and the Contoocook River.

- (i) The ordinance provision is meant to protect the community against new development abutting numerous types of zoning and this center has been serving the community since the 1970's.
- (ii) The signage provides useful information for the residents of Peterborough and the vitality of this shopping center will help to stabilize surrounding properties for the foreseeable future.

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

1. None.

Signed,

James Stewart, Chair

Case No. 1232 Laura Baker is requesting an Equitable Waiver of Dimensional Requirements for a non-conforming building in which the height was increased, as regulated by Chapter 245, Article VI, Section 30.1 of the zoning ordinance. The property is located at 67 Condy Road, Parcel No. R002-019-000, in the Rural District.

When finished reading Chair Stewart looked up and asked “are there any corrections or changes to this posting?” With none he invited the applicant to present.

Laura Baker stood and introduced herself as the applicant. She reviewed how she had purchased the town-owned property last fall. “There was a house already there” she said but went on to note it was determined the house was not salvageable and needed to be demolished.

Ms. Baker explained she had submitted a Building Permit application for a new 1200 square-foot, two-story dwelling on the lot. This dwelling

would replace the 1400 square-foot foot, single-story house that had existed there. She told the members the original dwelling had a nonconforming setback, as would the new dwelling as permitted by 245-30.1. “At that time Dario (Carrara) did not inform us of the grandfathering clause prohibiting additional height” she said adding “so that is why I am here to request the Equitable Waiver of Dimensional Requirements.” The members then reviewed the criteria for approving such a waiver.

Ms. Monahan asked about the specific location of the dwelling on Condy Road. When Mr. Leishman asked if the house was on the same footprint as the previous house Ms. Baker replied “yes, but it is actually smaller. It is 22 by 22 feet with an 8 by 8 stairwell and it is two stories. It would be an insurmountable hardship for me to bring the structure into compliance” she said.

Mr. Carrara cited his mistake of not considering height when he issued the Building Permit. He told the members the mistake came to light when Ms. Baker’s Bank requested a letter of zoning compliance for the structure. “I sent them a letter with a copy of the zoning saying the building was in compliance and they caught the height thing. By the time it was realized, the house was framed and a substantial amount of effort and money had been put into the building. It was my mistake” he said. He went on to note Ms. Baker could have requested a Variance “but I thought it was more prudent to request the Equitable Waiver of Dimensional Requirements.” Mr. Chatfield asked Ms. Baker “is this how you remember this as well?” Ms. Baker replied it was.

With no other questions and no other people in the audience Chair Stewart asked “do we want a Site Visit?” the members responded “no.” He then asked “are we ready to go into deliberation?” The members replied they were.

A motion was made/seconded (Stewart/LaRoche) to go into Deliberative Session with all in favor.

Deliberation:

Starting with a straw poll Chair Stewart began with “I absolutely approve. She would have gotten Variance anyway, there are no abutters, she is not blocking anything and she has enhanced the value.”

Each of the other members agreed. Mr. Chatfield concluded “this meets to the letter of what the equitable waiver of dimensional requirements is for. This nails it.”

A motion was made/seconded (Chatfield/LaRoche) to approve the request for an Equitable Waiver of Dimensional Requirements from Chapter 674, Section 674:33-a (specifically 245-30.1) which states existing legally nonconforming buildings or structures that have nonconforming setbacks may be enlarged or changed as long as it does not further encroach into a setback. The height of any nonconforming section of the building or structure may not increase. Proposals that further encroach into the setback or will exceed the height of the existing building or structure will require a Variance with all in favor.

NOTICE OF DECISION

Case Number 1231

April 3, 2017

You are hereby notified that the request of Laura Baker, for an **Equitable Waiver of Dimensional Requirements** to Chapter 245, Article VI, Section 30.1 of the Zoning Ordinance, on property located at 67 Condy Road, parcel number R002-019-000, in the Rural District, is hereby **GRANTED**.

The Board concludes that granting this equitable waiver is fair and just for the reasons stated by the applicant’s letter dated February 23, 2017.

Signed,

James Stewart, Chair

Minutes: Continued

Next Meeting: May 1, 2017 at 7:00 p.m.

The meeting adjourned at 8:45 p.m.

Respectfully submitted,

Laura Norton

Administrative Assistant