

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

Board Present: 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

Vice Chair Laurenitis (Ms. Laurenitis) called the meeting to order at 7:00 p.m. “Good evening” she said “this is the stated March meeting of the ZBA.” She then introduced the Members and Staff. She 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 she informed the Board Mr. Labnon had requested a continuance to the June meeting as he was working on a more definitive plan for this Variance request. A motion was made/seconded (LaRoche/Chatfield) to continue the case to the time and date certain of June 5, 2017at 7:00 p.m. with all in favor.

Ms. Laurenitis reviewed the Rules of Procedure prior to reading the second application. She then read that case with a correction to the cited Article.

Case No. 1233 Global Montello Group is requesting a Variance to have 80 square feet of wall signs, as regulated by Chapter 245, Article II, Section 18, 10 of the zoning ordinance. *This reference was corrected to Article IV, Section 18 D10 of the ordinance.* The property is located at 113 Grove St., Parcel No. U022-001-000, in the Village Commercial District.

James Bianco of Bianco Professional Association introduced himself as an Attorney and the applicant’s agent. He also introduced Karen Soucy from his office and Dan Berry of Global Montello Group Corp. “We have been here before, way back when” he said. He noted he had visited the convenience store and fuel station before the meeting. “It is beautiful, but there was a misunderstanding about the windows” he said. As a hard copy was distributed Mr. Bianco began his presentation.

Mr. Bianco noted the new facility opened in December, 2016. He reviewed all the state and local approvals they obtained including the wall signs (40 square feet as allowed by the ordinance) affixed to the building. He went on to note that the building also includes two display windows with four panes specifically designed for removable advertisements which also totaled 40 square feet. He pointed out the faux windows on the front of the building

noting “we thought they were going to be windows at the beginning but not anymore” and explained the display windows are actually display cases mounted on the outside of the building that do not open into the building and are accessed from the outside. “Initially we understood that these display windows were acceptable window signs that would not require a permit” he said. Mr. Chatfield asked if someone from the town had told them as much or they had made that assumption. Mr. Bianco replied they had assumed it. He also pointed out the (inside) barriers to opening up the faux windows with an office area on the west end and a cooler on the east end. “The fix is approximately \$60,000 if your answer is to just fix it” he said adding “but we are here to ask for a Variance to allow it to stay the way it is.”

Mr. Chatfield asked “are all the Global Montello stores the same?” Mr. Berry replied “we have several like this one.” Ms. Laurenitis asked what type of advertising would be in the display cases with Mr. Berry noting “it is advertising for the Deli. “Are they lit?” asked Mr. Chatfield with Mr. Berry replying “they are.” Ms. Laurenitis asked “was this discussed with the Planning Board too?” Mr. Bianco replied “I think it was us, we just thought it was OK, so that is why we are here, we want to get it right. We want to fix it.”

Mr. Bianco proceeded to review the five criteria supporting the Variance. He pointed out granting the Variance would not be contrary to the public interest because the signs did not threaten public health, safety or welfare, the displays were consistent with the character of the surrounding Village Commercial District and that they were non-intrusive and non-distracting in nature.

Noting the spirit of the ordinance was observed as the signs do not detract from the community appearance or endanger public health, safety or welfare while balancing out the establishment’s need for signage. He noted the signs were professionally designed and protect the integrity of the aesthetic character without altering the character of the neighborhood.

Mr. Bianco told the members substantial justice was done because the displays are already constructed and part of the convenience store structure and the applicant was initially under the impression removable advertising and marketing materials in the displays were considered “window signs” and denying the Variance would leave the displays vacant and much less aesthetically pleasing.

Mr. Bianco noted surrounding properties are not diminished as the signs are not highly visible to other properties (including a shopping plaza, bank and coffee franchise). The signs face the fuel pumps and do not interfere with anyone else’s property” he said adding “they are very comparable to window signs. If we could load them from the back side, we would not be here.” Mr. Chatfield interjected “because you would have a *window*.”

Ms. Leedberg asked if the signs going forward would continue as they are now. Mr. Bianca replied “yes, we propose to leave what we have there. If you deny the Variance they will be barren.”

Concluding, Mr. Bianco noted the last criteria of literal enforcement of the provisions of the ordinance would result in unnecessary hardship “is the one most people look at.” Noting a less-than aesthetic appearance if the signs were to be removed, the estimated \$60,000 to

create real windows and loss of the normal features of commercial establishment advertising would result in unnecessary hardship for the applicant. "It would be unsightly and not in anyone's interest" he said adding "it is better to *leave it* the way it is and *maintain it* the way it is."

Mr. Bianco cited a New Hampshire Supreme Court case on granting of a sign Variance that supports the applicant's position of unnecessary hardship with Harborside Ass'n L.P. v. Parade Residence Hotel, LLC. "It is 162 N.H. 508 is the site" he said.

Citing the certified abutter letters that go out announcing the meeting Mr. Chatfield asked "have you had any feedback?" Mr. Bianco replied "no."

With no other questions Ms. Laurenitis appointed Ms. Monahan to sit and Ms. Leedberg left the table.

A motion was made/seconded (Laurenitis/Monahan) to go into deliberation with all in favor.

Deliberation

Ms. Laurenitis began by noting the special conditions presented by the applicant. "The signs face the pumps and parking lot, are not obvious to the main road and if they were plain old windows we would not be here" she said. She also noted the signs were lighted "but the whole lot is lighted so they do not stand out. It was a mistake and mistakes happen. I think it is consistent with the spirit of the ordinance and that we should allow the Variance."

Mr. Leishman agreed and complimented the applicant on their presentation. "It is a vast improvement, I don't see a problem. This is a reasonable request" he said.

Ms. Monahan also agreed, "I am in agreement, it is a very attractive building, the signs face the lot where the customer had already pulled in. The signs are trying to encourage the customer to eat their food,"

Mr. LaRoche noted he concurred with the other members.

Mr. Chatfield noted "I don't agree, sorry." "It is very attractive with a reasonable use but the 5th criteria is not well met." Mr. Chatfield told the members he travels Route 95 "a lot" and sees this exact design in every All Town Convenience store he sees. He told the members he thought the store looked nice and that he liked it "but that is not why we are here." He went on to say "if a window was on a wall it would be a wall. I feel like my leg is being pulled a bit. It brings me back to the Bill Clinton debate of defining what *is* is. It just sits poorly with me. I don't think it represents the way this process is supposed to go." Mr. Chatfield also noted his serious concerns about a similar recent request where the Board had denied certain signage. "This is very close to what we told another applicant they could not do in the spirit of the ordinance. I am very concerned about those guys coming back" he said. He concluded by noting "I like the place, I like the aesthetics but as previously interpreted by this Board it is not in the spirit of the ordinance. I am just doing what I am supposed to do."

Ms. Laurenitis asked if the site plans showed the display cases as windows. Mr. Leishman pointed out the plans depict the cases as windows. Code Enforcement Officer and ZBA

Liaison Dario Carrara noted “people’s memories are not the best after looking at plans a year ago” adding “I have to be fair and consistent with regards to all the other food vendors.”

A brief discussion about the differences between this request and the request by Rite Aid followed as well as conditions of approval they may assign to assure the advertising in the display cases remain connected to the foods their Deli serves. Mr. Berry assured the members “aside from seasonal changes (changing photographs of hamburgers to salads) the advertising would be dedicated to their Deli products.

When Mr. Chatfield asked “what about future applicants?” Ms. Laurenitis assured him “each application is different and reviewed on a case by case basis, each one is unique.” Mr. Chatfield asked “was there an error by the town?” Ms. Monahan replied “yes, they had to go through site plan review and this was on the plan.” Noting the applicant’s assumptions that outside windows served the same purpose as inside windows Mr. Chatfield suggested it may have been a shared error. He also stated “I will defer to you (the other members) about no future ramifications but it makes me think about the future and how it may be easier for applicants to ask for forgiveness rather than permission.”

A motion was made/seconded (Stewart/LaRoche) to grant a Variance to have 80-square feet of wall signs, as regulated by Chapter 245, Article IV, Section 18 D10 of the zoning ordinance with Ms. Laurenitis, Mr. Leishman Ms. Monahan and Mr. LaRoche in favor, Mr. Chatfield was opposed.

The members then reviewed the special conditions of the property as well as conditions of approval as cited in the Notice of Decision.

Minutes:

A motion was made to approve the Minutes of March 6, 2017 and April 3, 2017 with correction with all in favor.

Other Business:

A motion was made/seconded to appoint Ms. Laurenitis an Alternate on the Board as her term as a regular member ends May 31st with all in favor.

Next Meeting: June 5, 2017 at 7:00 p.m.

The meeting adjourned at 8:15 p.m.

Respectfully submitted,

Laura Norton

Administrative Assistant

NOTICE OF DECISION

Case Number 1233

May 1, 2017

You are hereby notified that the request of Global Montello Group, for a **Variance** to Chapter 245, Article IV, Section 18, D, 10, of the Zoning Ordinance, to allow 80 square feet of wall/building signs, for one business, on property located at 113 Grove Street, parcel number U022-001-000, in the Village 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:

Granting the variance to exceed wall and/or building sign dimensions, thereby allowing Global to hang signs in the display windows, would not be contrary to the public interest because it would not unduly conflict with the rights of others or the public interest in protecting aesthetics and safety. This is for two primary reasons. First, the window display signs do not alter the essential character of the area. Second, these signs do not threaten the public health, safety, or welfare.

First, the window displays are consistent with the character of the surrounding Village Commercial District and the redeveloped site. The window displays are built into the structure of the convenience store and resemble normal windows. The display windows are architecturally and aesthetically pleasing because the wall below the windows is made of stone, and an overhang sits above the window displays. By this design, the signs in these window displays are comparable to "window signs" as defined in the ordinance, which do not require permits or have dimensional limits.

Additionally, rather than facing the street, both display windows face the parking area and gasoline dispensers in front of the convenience store. By this location, they are immediately visible only to visiting patrons rather than passing motorists or pedestrians. Moreover, the only abutter that could have any view of the signs in the window displays is another commercial establishment, and that abutting property line is approximately 250 feet from the window displays. Accordingly, signs in the window displays would be consistent with the surrounding aesthetics and would not unduly interfere with the rights of others, and they would therefore not alter the essential character of the area or be contrary to the public interest.

Second, the signs would not threaten the public health, safety or welfare because they are non-intrusive, non-distracting signs. The signs are located within the window display facing the parking area and gasoline dispensers. The

signs would not face the road and would not cause any distraction to passing motorists. Although the window displays are illuminated, the light would not be distracting because the displays are located in an area that is already illuminated. Therefore, the signs pose no safety concerns that are contrary to the public interest.

2. The spirit of the ordinance **IS** observed because:

Article IV, Section 245-18 of the Peterborough Zoning Ordinance regulates signage, and Subsection A states:

The purposes of this section are to protect and improve community appearance and aesthetics and to protect the health, safety, and welfare of its citizens without inhibiting the vitality of local businesses and organizations for whom adequate signage is of high importance. This section recognizes that establishments need identification and the public needs direction. This section aims to encourage the use of street graphics which are compatible with community character, are readable and clear, are non-distracting to vehicular and pedestrian traffic, and are maintained in good repair.

By this language, the basic objective of the ordinance is to regulate signs that could detract from community appearance or endanger public health, safety, or welfare, while also balancing some establishments' need for signage.

The requested variance observes the spirit of the ordinance because, as described above in Criterion 1, the window displays and the signs inside of them are professionally designed in a manner that protects the integrity of the aesthetic standards in the Village Commercial District. As such, the signs do not alter the essential character of the neighborhood. This conclusion is further supported by the fact that the ordinance allows "window signs"—which are similar to the signs in Global's window display—without a permit or other dimensional limits. Additionally, as also described above in Criterion 1, the window displays do not pose any safety concerns.

Accordingly, these signs do not violate the basic objectives of the zoning ordinance. Indeed, granting the variance to allow these signs strikes a balance between Global's need for signage and the public interest in protecting aesthetics and safety. Therefore, the requested variance observes the spirit of the ordinance.

3. Substantial justice **IS** done because:

Substantial justice would be done by granting the requested variance because the window displays are already constructed as part of the convenience store structure because Global was initially under the impression that removable marketing materials in the display windows were "window signs" rather than affixed "wall" or "building" signs that required a permit and are subject to dimensional limits. Denying the variance would compel Global to leave both display windows empty, which would also be less aesthetically pleasing. As established in Criteria 1 and 2, the window display signs do not unduly conflict with the public interest or the rights of others. Therefore, Global's detriment is not outweighed by a gain the general public, and substantial justice is done by granting the variance.

4. The values of surrounding properties **ARE NOT** diminished because:

Allowing Global to place signs in the display windows would not diminish surrounding properties because display windows with signs would be more attractive than display windows without signs. Moreover, the signs would not be highly visible to other properties because they are both located on the side of the convenience store facing the site's parking area and gasoline dispensers. The only abutter with a view of the window display signs is another commercial property, and that property line is approximately 250 feet from the window displays.

5. Unnecessary hardship:

Special conditions of the property include the following:

- The two display cases are on the side of the building that faces the parking lot and fuel dispensers.
 - The property is large and over 6 acres in size.
 - The display cases do not face Grove Street and are non-intrusive and non-distracting.
 - The nearest abutter is a commercial establishment and is several hundred feet away.
 - The Planning Board previously approved the plans as submitted.
- 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:

Global cannot reasonably reconfigure the structure in a manner that meets the sign dimensional limits of the Zoning Ordinance, absent a variance. Literal enforcement of the wall sign dimensional limits would result in unnecessary hardship because the window displays have already

been constructed as part of the convenience store structure, and the displays will necessarily remain empty without the variance. Empty window displays would either create a less aesthetically pleasing site or require Global to undertake additional costs and time to reconstruct the walls to remove the window displays entirely.

Owing to these special conditions unique to Global's site, there exists no fair and substantial relationship between the general public purposes of the ordinance—to protect area aesthetics and public safety—and the specific application of the provision to the property. Applying the signage provisions to prohibit the window display signs would create a less aesthetically pleasing site and overlook the site's need for signage, even though the signs have minimal aesthetic or safety impacts. Additionally, the proposed signage is reasonable because it is a normal feature of commercial establishments like convenience stores, and as described above in Criteria 1 and 2, these particular signs do not interfere with the rights of others or the public interest. Therefore, literal enforcement of the signage provisions of the zoning ordinance would result in unnecessary hardship.

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

1. Substantial compliance with the testimony and plans submitted.
2. The variance only applies to the two display cases addressed in this application.
3. The use of the display cases is restricted to images and descriptions of food products prepared on site.
4. The display cases must remain the same size and remain in the same location.

Signed,

Loretta Laurenitis, Vice-Chair

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.