

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 member 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 *baron*."

Concluding, Mr. Bianco noted the last criterion 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 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 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 (xx/xx) 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.

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

The meeting adjourned at 8:15 p.m.

Respectfully submitted,

Laura Norton

Administrative Assistant