



TOWN OF
NEW LONDON, NEW HAMPSHIRE

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NEW LONDON
ZONING BOARD OF ADJUSTMENT (ZBA)

Thursday, December 28, 2017

Meeting Minutes

Town Office

Sydney Crook Conference Room

375 Main Street

6:30 PM

MEMBERS PRESENT: Douglas W. Lyon (Chair), W. Michael Todd, Katharine Fischer, Paul Vance, Ann Bedard, Vahan Sarkisian (Alt.)

STAFF PRESENT: Nicole Gage, Zoning Administrator

OTHERS PRESENT: Jim Wheeler, Glenn & Donna Perreault, Frank Anzalone, Donald Catino, Jim D'Angelis, Peter Hill, Ben Barton, Janet Kidder, Margie Weathers.

1. **Call to Order:** Chair Lyon called the meeting to order at 6:30 pm.
2. **Roll Call:** Chair Lyon called the roll.
3. **Minutes**

IT WAS MOVED (Michael Todd) AND SECONDED (Katherine Fischer) to approve the minutes from the November 16, 2017 meeting. THE MOTION WAS APPROVED UNANIMOUSLY.

4. **Peter Hill, Applicant / Wesley & Nina Royce, Owners.** Located at 1590 Little Sunapee Road. Tax Map 030-019-000. Zoned Residential (R-2) in the Shoreland Overlay District. Request for a Equitable Waiver of Dimensional Requirements from Article V, Section C.2. of the Zoning Ordinance for relief from the minimum 20' side yard setback, whereas the existing foundation is 17.9' in the southeast corner only.

Chair Lyon opened the public hearing at 6:30 p.m. Peter Hill attended the meeting on behalf of Wesley and Nina Royce.

In article 5 section C2, it states the side yard shall be provided an aggregate minimum width of 50 feet with a minimum of 20 feet from any one side yard. In regards to the aggregate of 50 feet side setbacks, Mr. Hill is requesting relief on the Southeast corner, which is 17.9 feet and is not the required 20 feet. This request is for 2.1 feet in the southeast corner only. The balance of the foundation meets setback standards.

Mr. Todd asked how this happened. Mr. Hill stated that they had to blast twice and although they had their pins set, they were moved during the blasting process and not replaced accurately. He was not

aware of it or he would have fixed it. Mr. Todd asked if this took place before a building permit was issued. Mr. Hill stated that yes, he had all his sub-contractors lined up and he jumped the gun. He apologized and stated he moved forward or he would have lost his sub-contractors. Chair Lyon confirmed that he knowingly went ahead without a permit. Mr. Hill stated that was correct. Mr. Todd stated the original permit would have been issued, had a survey been provided, that confirmed that the proposed location of the building would not violate any of the setbacks. All of this is presently constructed without a permit. Mr. Todd doesn't feel they can consider relief when there isn't a permit. How can relief be granted on a permit that hasn't ever been issued?

Vahan Sarkisian asked who was responsible for the permit. Mr. Hill stated he was working on it. Chair Lyon asked if it was Mr. Hill's intention to seek a building permit. Mr. Hill replied yes. Chair Lyon stated there is no way Mr. Hill will meet the second criteria and has knowingly violated the rules. Chair Lyon's suggestion is to get the building permit first because he currently has an illegal project.

Chair Lyon informed him that the building permit will be reviewed by the Select board. If they choose to grant the building permit, they will do it subject to approval of the waiver, so he will have to come back. Chair Lyon is sympathetic to the fact that he has all his subcontractors lined up, but it doesn't justify moving forward without a permit. Chair Lyon suggested he withdraw his application. Mr. Hill has submitted the building application and Nicole Gage confirmed it. Chair Lyon stated they consider the application withdrawn.

5. **Frank Anzalone Assoc., Applicant / Split Rail Properties LLC, Owner.** Located at 82 Newport Road, to be known as Colonial Pharmacy. Tax Map 059-030-000. Zoned Commercial (C). Request for a variance from Article II, Section 10 of the Zoning Ordinance to permit a 19-square-foot freestanding sign, in addition to the allowable two (2) building signs.

Chair Lyon reminded the board and audience members that the only thing the board can consider when a variance is requested is the specific five criteria that are listed in the law. That is what the decision is based on.

Mr. Anzalone attended the meeting to represent Colonial Pharmacy/Split Rail Properties, LLC and is asking for a variance from article 2, section 10. They are asking for a freestanding sign to be 19 square feet, rather than the allowed 15 square feet and also an additional building sign on the right-hand side over the exit of the building. There are two allowable signs and they are asking for three. There was clarification that the signs on the building meet regulations and they do. The street sign will be mounted to two granite posts and illuminated with an overhead light fixture. The street sign is 60 inches wide and 48 inches tall.

A suggestion was made to remove one of the signs on the building, so they are only asking for two signs, one bigger than allowed. There are not entrances on both ends of the building.

Mr. Anzalone made a presentation and reviewed the application:

1. *The variance will not be contrary to the public interest:*

The additional freestanding sign and additional 4 square feet of freestanding sign does not present a hazard to vehicular and/or pedestrian traffic. This variance will allow Colonial Pharmacy to effectively and efficiently communicate with the public. The sign will support economic development for the community and Colonial Pharmacy and still enhance the community character.

Mr. Anzalone stated that the property has 285 feet of frontage which is unusual for Newport road or Main Street. He feels that the size of the lot, governs the size of the sign. There is a 14,000 square foot building so would have to go well past the entrance in order to see a 15 foot sign. Mr. Todd argued there isn't anywhere in the ordinance that states the size of the sign out front is predicated on the size of frontage of the lot.

Mr. Anzalone feels the ordinance is based on typical sized lots on Main Street and Newport road. Katharine Fischer feels perhaps the ordinance speaks for the community and how they'd like it to look, regardless of the size. If in fact, the entrance is on one side and encouraging people to drive in that driveway, the sign should be closer to the entrance. Mr. Anzalone feels it is standard to have the sign in the middle of the property. Chair Lyon feels the purpose of the sign is to direct traffic. It doesn't relate to the size of the building but instead relates to the ability of traffic to see where they are supposed to go. The closer the sign is to the entrance you want them to use makes more sense. Nicole Gage informed the group that the Planning board will review and approve the locations of signs.

Chair Lyon inquired about a restriction on the building permit that states that after building has been open for a period of time, they would go back and consider any traffic issues that have come up. Mr. Anzalone stated the intent of that was related to a small piece of sidewalk that led to a crosswalk across the street. Due to DOT requirements, they would have made the town modify the entire length of sidewalk on Newport road so it was removed at that point.

2. *The spirit of the ordinance is observed:*

The intent of the ordinance is to prevent hazards to vehicular and pedestrian traffic. Signs perform several functions other than public safety and general welfare. The proposed sign will provide information and direction for people visiting our town. The visual effects of the additional signage will not have any negative visual effects on the community.

3. *Substantial justice is done:*

The requested additional signage will allow Colonial Pharmacy to properly communicate with the community and visitors of the town, in a safe method; this will ensure and assist in the economic viability of Colonial Pharmacy.

4. *The values of surrounding properties are not diminished:*

The additional freestanding sign and additional 4 sq. ft. for the freestanding sign will have no impact on the surrounding properties. This request is very minimal. Several of the businesses on Newport Road have signs similar in size as the requested freestanding sign. These properties have not had a negative impact on the surrounding commercial properties.

5. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:*

(1) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.

The purpose of the ordinance is to regulate the quantity and size of signs in order to help maintain public safety and general welfare of the residents and visitors to the town. It also regulates and helps facilitate efficient and effective communication between the local businesses of the community. The ordinance also supports economic development and community vitality by providing communication between local business and the community. The majority of businesses along Main Street and Newport Road are significantly smaller than the property Colonial Pharmacy sits on. Applying a sign regulation generally intended for smaller properties and small businesses to Colonial Pharmacy is unfair. The scale of the sign ordinance is not proportional to the size of this property.

(2) The proposed use is a reasonable one;

The intent of the signs is for Colonial Pharmacy to effectively communicate with the local residents and visitors to the town. A smaller sign that meets the ordinance will be difficult to see for people in vehicles. This will cause them to miss the entrance and attempt to turn around on Newport Road which will cause unnecessary traffic and potential incidences.

The proposed sign is proportional to the scale of the property and the structure. A sign that meets the ordinance would be out of place, too small and would have a negative visual effect on the community.

Mr. Anzalone produced several photos of signs along Newport road with signs exceeding the 15 square foot limit. These signs have not been detrimental to the neighborhood.

Mr. Todd wanted an explanation of the physical characteristics of the lot that distinguish it from others in the vicinity that causes unnecessary hardship. All of the properties on the street are subject to the same ordinance and are equally burdened by the sign restrictions. Mr. Anzalone stated that other than Lake Sunapee Bank, all of the properties are not as wide as this property and it's the size that causes hardship. Mr. Todd asserts it is not substantially different.

Chair Lyon carefully read through the application and drove the whole stretch of road that's been discussed. He looked at various signs and argues that most meet the 15 square foot or less requirement and aren't difficult to read.

Mr. Vance asked if product advertisement is intended in the front windows. Mr. Anzalone stated no, they have shelving surrounding the windows and the windows are there for light.

At this point in the meeting, the request was modified to withdraw the request for the third sign. The request is now for two signs, the street sign which is freestanding and slightly larger at 19 feet and one building sign.

Chair Lyon addressed the audience and stated the criteria that has been heard is the only criteria on which the board can make a decision. There have been concerns expressed about the esthetics of the building but this is irrelevant to tonight's discussion. 14 letters have been received and they are almost evenly

split. The letters involve many different issues, but many are irrelevant to the variance criteria and they aren't issues on which the board can make a decision.

Ben Barton stated that he doesn't think it's practical to think people will see the sign on the building as they driving on Newport road so it won't be a directional help as the building sits back too far. The focal point will be the one free standing on the ground. He isn't negatively impacted by the larger signs talked about tonight. He feels that people that aren't familiar with New London will need the sign to understand where they are. He feels the sign is fair and is in favor.

Janet Kidder commented that the sign ordinance is not based on the size of the lot. She does think it's important that the sign remain a Colonial Pharmacy sign and in the event the property is sold they can't change it or request an interior lit sign based on a corporate logo. She also thinks the sign ordinance has been developed based on the feel of the town. The 15-square foot requirement was instituted so there wasn't "sign creep" and feels this decision could set a precedent.

Chair Lyon commented that his understanding of the law is that when a variance is granted it runs with the property. They can't put a restriction on that says if it changes hands then the variance goes away. Also, no individual decision by the Board sets a precedent for any other. Every decision is unique to the particular case being discussed. Each case is considered on its own merit.

Margie Weathers clarified the size of the sign. She commented that it's a big lot and there aren't any obstacles or obstructions so feels a 15 sq. ft. sign could be easily seen. Mr. Anzalone stated that right now there is just a split rail fence but eventually there would be trees. She feels this could create a snowball effect and feels that the ordinance was set to keep a certain feel for the town. Ms. Weathers inquired as to whether someone had actually measured the signs on Newport Road. Mr. Anzalone stated that yes they had, and 8 signs exceeded the 15 foot requirement.

Jim D'Angelis commented that the bigger sign makes it more identifiable and feels esthetically the sign belongs in the middle of the property.

IT WAS MOVED (W. Michael Todd) AND SECONDED (Anne Bedard) to discuss the request for the variance to permit a 19 square foot freestanding sign. THE MOTION WAS APPROVED UNANIMOUSLY.

Vahan Sarkisian commented that seeing the sizes of the signs on Newport Road, hearing their dimensions, and understanding that this sign isn't any larger than others, it should be granted. He feels it should be moved closer to the entrance.

Katharine Fischer feels that with respect for the first criteria, the issue of community character has validity. The ordinance as it is written now expresses how the community feels about signage. There was a lot of discussion that went into that decision and a great deal of attention should be paid to that. She doesn't feel that 15ft is particularly different from 19 ft. and that line should be held.

Anne Bedard feels that this ordinance was changed to reign in some of the signage going on in the town. She stated that although Mr. Anzalone believes that this was not the spirit of the ordinance, she feels that it is. She also believes that the hardship as far as that the scale of the sign ordinance is not proportional to the size of the property is not an unnecessary hardship.

Michael Todd stated he pressed Mr. Anzalone to address the physical characteristics of the lot that distinguish it from the others and because of those physical characteristics the imposition of the zoning ordinance as to that property and the uniqueness of it causes significant hardship. There has to be a physical characteristic of the lot that makes the application of the ordinance unique and distinct. From the evidence he has heard, Mr. Anzalone hasn't met that burden. While the size of the parcel make it uniquely appropriate for the use of a pharmacy, it doesn't make it unique for zoning purposes. Paul Vance stated that while Mr. Anzalone's presentation was good he struggled with the hardship issue and how to reach a reasonable agreement to satisfy that criteria.

Chair Lyon commented that the general purpose of a variance is to allow the reasonable use of a property when a strict interpretation of the law would make such reasonable use impossible. There is specific case law that speaks to this issue that says "while the size of the parcel might make it uniquely appropriate for the applicants uses, it does not make it unique for zoning purposes." There is no evidence that this property is different from other properties in this zone.

The letters from the community speak to the concern about the size of signs in town, speaks to the spirit of the ordinance. The resistance by the town is evidence that the concern is there and the spirit of the ordinance is a significant issue for the town. On that basis, two of the criteria are not met.

IT WAS MOVED AND SECONDED to deny the request for a variance for not being able to meet Criteria #5, that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship; and for not being able to meet Criteria #2, that the spirit of the ordinance is observed. The MOTION TO DENY THE VARIANCE WAS APPROVED UNANIMOUSLY, 5-0.

Chair Lyon commented that this decision has nothing to do with their belief that Colonial Pharmacy is not a valued member of the community. They appreciate what Colonial Pharmacy does for New London but by law they can't grant a variance unless it clearly meets all 5 criteria.

6. Updating the Rules of Procedure

Chair Lyon suggested establishing a subcommittee and they will create a draft.

7. Other Business

Nicole Gage recommended the Planning Board re-number Article II, Section 10, Sign Regulations so the ordinance can more easily be identified. Chairman Lyon will work with Ms. Gage on the request.

The meeting was adjourned at 8:06pm.

Respectfully submitted,

Trina Dawson
Recording Secretary
Town of New London