

Town of Milford
Zoning Board of Adjustment Minutes
November 4, 2010
Contemporary Chrysler
Case #34-10
Variance

Present: Steven Bonczar
Kevin Johnson
Fletcher Seagroves
Zach Tripp

Absent: Katherine Bauer – Board of Selectmen’s representative
Steve Winder
Laura Horning
Michael Unsworth - Alternate

Secretary: Kathryn Parenti

The applicant, Contemporary Chrysler Dodge Jeep, along with 320 Elm Street Realty, owner of 320 Elm Street, Map 16, Lot 4-1 in the Commercial “C” district, is seeking two (2) variances to the Milford Zoning Ordinance Article VII, Section 7.06.7:E.2 (Wall Signs). Case #34-10 is to allow a total of approximately 90 square feet of wall sign area where 27.5 square feet is allowed; Case #32-10 is to permit five (5) wall signs where one (1) is permitted.

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

Steve Bonczar, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinances and the applicable New Hampshire statutes. He continued by informing all of the procedures of the Board; he then introduced the Board. He stated because the board consisted of only four (4) members tonight, the applicant had the option of either signing a waiver, waiving his rights to a five (5) member board or he could ask to have his case tabled until such a time when a full board was present. The applicant signed the waiver, which applied to case #32-10 as well. He read the notice of hearing into the record as well as the list of abutters; David Hammer of Contemporary Chrysler and JD Iles of Jutras Signs, were present. He then invited the applicant forward to present his case.

D. Hammer began by stating he has a franchise agreement that he is obliged to fill. In addition to sales quotas, signage and appearances are part of the agreement. They are in the process of changing the interior and exterior branding of each franchisee. Over the past couple of years, there has been a big push to brand all the stores across the country to look similar so anyone visiting any of the stores would find them all recognizable. There are style guidelines that have changed over the past several months and the focus is now on a central arch that directs patrons into the showroom. The name of the dealer is across the arch and the brands represented are on either side of the arch. He is not allowed to change the color, material or size of the logos, per his franchise agreement. Going through the bankruptcy process, all prior franchise agreements were torn up and new ones were drafted by the bankruptcy court. Any dealer that made it through the process with the franchise agreement does not have a lot of flexibility. It is important to understand the changes that are requested and what he is obligated to do. The reason for the two (2) requested variances is for the collective size of the signs and the number of signs, as determined by the frontage of the building. The shape of the building is odd and the corner of the building points to the apex of the curve in the road. The entrance to the building has always been on the side, as seen from the east. The building was built in 1984 and that side entrance is the natural entrance of the building. He looked at how to apply the arch and this was the only logical choice. If the arch went on the front of the building, at the triangle, it would be a challenging undertaking. There is no entrance or parking on that side of the building unless they removed the green area in the front and he didn't want to do that. The natural entrance of the building faces the front of the road as you drive up to it. The reason the building is shaped the way it is because the lot is shaped as the building is – rectangular. The front of the building is not visible when you are driving down the road. The best solution was to put the arch on the side and move the brand signs to the side too. Chrysler agreed with the plan after they came to the site. He is looking for permission to consider the east side of the building to be the effective front of the building. The side of the building is 220 feet and the arch is installed on that side to accent the entrance. He is asking to mount the signs on that side as it is the effective front of the building. One hundred (100) square feet of signage is the maximum allowed and he is asking for ninety (90) square feet. He has been involved with the dealership since 1984, is active in the Rotary and the community and employs thirty (30) people.

S. Bonczar asked the board if they had any questions.

K. Johnson asked about the 27.5 square foot measurement.

D. Hammer replied that is from the true front of the building (fifty percent (50%) of the store front of fifty five (55) feet), the side that abuts the road.

S. Bonczar noted for the audience that in the commercial district, one (1) sign is permitted and the size can be fifty percent (50%) of the storefront's linear measure or a maximum of one hundred (100) square feet, whichever is less. He looked in the ordinance for the definition of store front and there was none. The glass side of the building could be considered the store front but in this case, it is different from stores within a plaza, where each store front is obvious. The storefront does not necessarily mean the front of the building.

K. Johnson read from Article VII, Section 7.06.7:E Wall Signs: “*Definition: Wall Sign:...This sign also includes any sign established on any other part of a building...*” No where does it say that it has to be on the side facing the road.

Z. Tripp noted frontage, in relation to a piece of property, was defined in the ordinance.

K. Johnson agreed but noted store front and frontage are two (2) different things.

F. Seagroves felt the store front should be the side where you enter the store. In this case, it is the side of the building.

K. Johnson stated it was the entryway from the parking lot.

S. Bonczar stated he has owned several Chryslers and he has only gone into the building from that east facing entrance. He asked if the existing signs will move to the side.

D. Hammer replied they would and would be smaller; collectively they would be ninety (90) square feet.

K. Johnson clarified all the signs on the angled glass side of the building would be removed.

S. Bonczar opened the meeting to public comment; there was none so he closed that portion of the meeting and asked the applicant to go through the criteria for a variance.

1. Granting the variance would not be contrary to the public interest because:

D. Hammer stated the requested signage square footage is still less than what could be allowed if the building had been situated with greater frontage. Existing signage on the building frontage will be relocated to the side, thus reducing the impact from excessive signage.

2. The use is not contrary to the spirit of the ordinance because:

D. Hammer replied the total of ninety (90) square feet of wall signage is below maximum allowed square footage of one hundred (100) square feet provided the existing building frontage was greater than two hundred (200) feet. The signage requested will be relocated from the existing frontage (55 feet in length) to the side which is 226.5 feet in length.

3. Granting the variance would do substantial justice because:

D. Hammer stated Contemporary Chrysler Dodge Jeep is a long standing business in the Milford community. It is obligated under its franchise agreement with Chrysler to make these modifications. Granting the variance will allow Contemporary Chrysler Dodge Jeep to continue on its current successful path and will add to the local economic prosperity.

4. The proposed use would not diminish surrounding property values:

D. Hammer stated Contemporary Chrysler Dodge Jeep is located in a commercial highway oriented district with many businesses. Adequate signage draws additional customers to area and helps adjacent businesses. Property values may increase with added business traffic.

5. Denial of the variance would result in unnecessary hardship.

A). “Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:

i). 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 because:

D. Hammer stated the existing building is angled just enough that when combined with the curve of the road, the limited “frontage” is not the side of the building that provides the greatest business visibility.

ii) and; The proposed use is a reasonable one because:

D. Hammer replied the proposed use allows adequate and appropriate signage where it will provide the most benefit to the property and business.

B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:

D. Hammer stated when built, the existing building was situated with a minimal amount of frontage along Elm Street (55 feet). The main entrance for customers, and visibility of the business is angled toward Elm Street with the side of the building. Allowing appropriate signage along the more visible public side of the building allows a reasonable use of the property.

K. Johnson responded to the comment made by the applicant that the franchise agreement requires him to do this. He stated no franchise agreement can make anyone violate local laws.

D. Hammer replied the bankruptcy court changed the franchise agreements and it is a real threat that they will terminate the agreement if it is not acted upon.

Z. Tripp asked where other Chrysler dealers were located.

D. Hammer replied there are dealers in Nashua, Manchester and Keene.

S. Bonczar stated they have had other companies request certain square footage for their signs but didn't meet the requirements and were way over the size limitations and way over the intent of the ordinance. He also agreed that the franchiser can't make him do anything illegal.

S. Bonczar asked the board if they had any additional questions or comments; they did not so they proceeded to discuss the criteria for a variance.

K. Johnson stated he did not feel this variance was required as the store front, in this case, is the side and is large enough to allow for the square footage of the requested signs.

S. Bonczar stated there is a lack of definition for a store front but he felt they could still draw their own conclusions; this was a grey area.

F. Seagroves stated he agreed in this case; the store front is the side of the building.

1. Would granting the variance not be contrary to the public interest?

K. Johnson stated the variance could be granted without being contrary to the public interest. He read from page II-9 of The Board of Adjustment in New Hampshire – A Handbook for Local Officials: *“For the variance to be contrary to the public interest, it must unduly and to a masked degree violate the basic zoning objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public?”* He felt there was no way the variance would be contrary to the public interest.

F. Seagroves agreed.

Z. Tripp agreed; this request did not violate the basic objectives of the ordinance.

S. Bonczar agreed for the same reasons. It is not contrary, does not violate the spirit of the ordinance which is written to reduce the clutter of signage.

2. Could the variance be granted without violating the spirit of the ordinance?

F. Seagroves read from page II-9 of the The Board of Adjustment in New Hampshire – A Handbook for Local Officials: *“...does the variance alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public?”* He didn't think it would violate the spirit of the ordinance nor would the signs appear congested.

K. Johnson agreed; the intent of the ordinance is to reduce and prevent the proliferation of large garish signs. The request is reasonable and in line with the size of the side of the building.

Z. Tripp agreed.

S. Bonczar agreed; they look at every case individually and the characteristics of this property warrant the change in the square footage of signage. This request does not violate the spirit of the ordinance.

3. Would granting the variance do substantial justice?

K. Johnson yes it would and stated that by requiring three (3) possible measurements of the store front, 27 square feet of signage for the side facing the road. The main portion of the building is the length of the side of the building (226 ft) which allows for a maximum of one hundred (100) square feet of signage. There would be no public benefit in splitting hairs and if you look at all the buildings in the neighborhood as all the signage is pre-existing to the sign ordinance. It would be prohibitive to hold him to the sign ordinance and there would be no gain to the public if the request was denied.

F. Seagroves agreed; he didn't see any substantial justice being done if this request was denied. He read from The Handbook: "*Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.*" He didn't see where the public would gain if this was denied. He believed the new signage would look good.

Z. Tripp agreed; there would be no gain to the public if this request was denied.

S. Bonczar agreed; denial of the request would be an injustice, as stated by the board.

4. Could the variance be granted without diminishing the value of abutting property?

Z. Tripp stated there would be no diminution of property values if this was granted. The area of the signage would not negatively impact the public.

F. Seagroves agreed; there would be no decrease in value.

K. Johnson also agreed; they are not asking for huge signs that will block visibility and will have no affect on abutting properties.

S. Bonczar agreed; the amount of square footage they are asking for won't have any affect on abutting property values.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. 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; ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

K. Johnson stated denial of the variance would be a hardship. The use is a reasonable one as the signage is to promote the business. He didn't believe this variance is necessary taking into consideration the frontage of the building; the applicant would be allowed to have signage up to 100 square feet. He noted the sign ordinance did not exist when the building was built. Its uniqueness is the fact that the long side of the building is the entrance and not the side next to the road. To restrict the side facing the street as the frontage would not do any justice.

F. Seagroves agreed; what is frontage? It's the side where you go into the building; in this case, it is the side of the building.

S. Bonczar stated because the definition of store front is unclear, the request is based on the 27.5 feet allowed signage for the fifty five (55) feet of frontage facing the road. What is the store front is open to debate.

F. Seagroves stated he considered the front to be where you enter the building; it is grey because there is no definition of store front.

There was some additional discussion regarding the definition of store front and frontage in this application.

Z. Tripp read from page II-13 of The Handbook: “*Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance?*” Restricting the applicant to the front of the building facing the street is a hardship. The entrance to the building is on the long side and that allows the signs to conform to the ordinance. The use is a reasonable one.

S. Bonczar agreed. Restricting the store front because of the design of the building is an unnecessary hardship. In this case, the store front is not the side facing the street.

The use is a reasonable one as they are moving the signs facing the street to the side of the building. Enhancing the entrance and reducing the size of the signs is a good solution.

S. Bonczar asked if there were any additional comments; there were none so he stated after reviewing the petition and after hearing all of the evidence and by taking into consideration the personal knowledge of the property in question, he called for a vote.

1. Would granting the variance not be contrary to the public interest?

F. Seagroves – yes K. Johnson – yes Z. Tripp – yes S. Bonczar – yes

2. Could the variance be granted without violating the spirit of the ordinance?

K. Johnson – yes Z. Tripp – yes F. Seagroves – yes S. Bonczar – yes

3. Would granting the variance do substantial justice?

Z. Tripp – yes F. Seagroves – yes K. Johnson – yes S. Bonczar – yes

4. Could the variance be granted without violating the spirit of the ordinance?

F. Seagroves – yes K. Johnson – yes Z. Tripp – yes S. Bonczar – yes

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

- A) i. 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;**
- ii. The proposed use is a reasonable one.**

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

K. Johnson – yes F. Seagroves – yes Z. Tripp – yes S. Bonczar – yes

S. Bonczar asked if there was a motion to approve case # 34-10, a request for a variance.

K. Johnson made the motion to approve Case #34-10, with the above mentioned condition.

F. Seagroves seconded the motion.

Final Vote

Z. Tripp – yes K. Johnson – yes F. Seagroves – yes S. Bonczar – yes

S. Bonczar reminded the applicant of the thirty (30) day appeal period.