

**Town of Milford
Zoning Board of Adjustment Minutes
April 21, 2011
June Costa
Case #5-11
Variance**

Present: Kevin Johnson, Chairman
Fletcher Seagroves
Steven Bonczar
Steven Winder
Michael Unsworth - Alternate

Katherine Bauer – Board of Selectmen’s representative
Zach Tripp - Alternate

Absent: Laura Horning

Secretary: Kathryn Parenti

The applicant, June Costa, owner of 127 Union Square, Map 25, Lot 23 in the Commercial “C” district, Oval sub-district, is requesting a Variance from Article VII, Section 7.06:E.2 to permit up to eight (8) square feet of additional wall signage for advertising a principal product.

MINUTES APPROVED JUNE 2, 2011

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

Kevin Johnson, Chairman, read the notice of hearing into the record as well as the list of abutters; June Costa and Rick Ganis, owners of 127 Union Square, were present. He then invited the applicant forward to present her case.

J. Costa began by stating they had opened the gift store in November 2007 under very difficult circumstances as the economy was not doing well at that point. The reason they chose the building, not only to open the business but to purchase, was that it had great exposure on the Oval. There was some difficulty getting people to notice the store as it is located near the section of the Oval that is very busy and drivers are looking at the traffic coming from the left and not at the buildings on the right. She had spoken with sales representatives who said one of the best ways to introduce a new business was to put up good looking banners. The banner in question has been up since they opened the store. They had recently gotten a letter from the Code Enforcement Officer stating the banner was not permitted. There is a lot of confusion on the Oval with regard to the location of her store; it is not easy to notice the building when people drive around the Oval. From research that they have done, people are noticing the banner. The banner represents the key product line for sale in her store. It is necessary for her business to be allowed to keep the banner because it does work in bringing people into the store. Pandora jewelry is the number two (2) jewelry line in the world, the number one (1) brand in the country. Pandora's research shows this type of advertizing is best. She wished she didn't need it, but she does. The banner is not always the same; they are required to change it seasonally. It is a necessary evil. She was willing to make modifications to the banner but she needs to have it up until a better alternative is reached with Pandora. She noted she does do other advertizing and spent \$10,000 last year on that. She stated the banner is of key importance and is to recognize they are a bona fide Pandora retailer.

F. Seagroves stated he was confused and asked if this was the banner that is over the window.

J. Costa replied it was; it was below the larger sign and covers up a couple of the windows.

F. Seagroves asked if she was asking for the banner along with the existing signage.

J. Costa replied yes; it has been there a long time.

S. Bonczar stated long-term temporary signs are not allowed in the Oval sub-district, per the ordinance.

K. Johnson stated he read over the sign application included in the packet, which is for a long term temporary sign and it was recommended she seek a variance. His issue is with the request for a variance; he feels the applicant needs to seek a special exception. From the applicant's application, illustration and the testimony, they are talking about a banner sign. He read from Article VII, Section 7.06.3 of the Town of Milford Zoning Ordinance: "*Definitions: Banner sign: A temporary sign of lightweight material (paper, plastic or fabric) hung either with or without frames. Flags and insignias containing markings of any government, corporation or business are not considered banners, and are defined as flags. Banner signs are regulated as STT and LTT signs for the purpose of this Article.*" He read the definition for Long-term temporary (LTT) signs: "*Any sign established for a temporary period of not more than six (6) months.*" He noted, in Article VII, Section 7.06.7:I, the table shows that long-term temporary signs are not permitted in the Oval sub-district. He noted, Section 7.06.7:1.2.c states: "*An applicant in a non-residential district may apply to the Zoning Board of Adjustment for a special exception to be allowed a LTT sign.*" He thought the applicant should apply for a special exception rather than a variance to allow the LTT.

J. Costa replied she would have done that if she knew that was what she needed to do.

M. Unsworth asked about the seasonality, if that would make it LTT and not a wall sign.

There was some discussion regarding where that statement was in the ordinance; it was on page 118 of the Zoning Ordinance.

S. Bonczar stated he was conflicted; the long-term temporary signs are specifically not allowed, unlike a special exception what is allowed is listed.

K. Johnson reiterated the table in Section 7.06.7:I lists they are allowed in the residential districts but if in a non- residential district, a special exception may be applied for. You can take the ordinance at its face value and see that it is allowed in the non-residential districts by special exception.

S. Bonczar noted the sign is only allowed in the Residential “A, “B”, and “R” districts.

M. Unsworth asked if the banner exists and it has been brought to the applicant’s attention that it is not legal.

J. Costa replied the banner has been up since the store opened in 2007.

K. Johnson asked if the board had any other concerns.

M. Unsworth asked if there was any change to the banners.

J. Costa replied they have gotten smaller over the years. They are created by the company and don’t look like they are just thrown together; they are state of the art photographs.

K. Johnson replied they can have permits no more than two (2) times per year; if they are allowed to continue the use of the LTT, they have to reapply every six (6) months.

J. Costa stated she was following the ordinance, read it and interpreted it this way.

M. Unsworth asked if this was the only place to put the sign.

J. Costa replied they carefully placed the sign because of the traffic flow.

S. Bonczar asked, if the banner is key to their business, have they thought about reducing the J.M. Princewell sign and highlighting the jewelry.

J. Costa replied they had thought of that. With regard to her building, the store front allows for a much smaller sign than the rest along the Oval. She doesn’t want her store to look like a Pandora store, which it isn’t.

S. Bonczar stated if it was not a Pandora store, he was confused. The applicant is saying one (1) thing and asking for another.

J. Costa replied the signage emphasizes J.M. Princewell, personal accessories and gifts. Their intention is to create something brand new and special. It’s not a girly store and even men feel comfortable shopping in it. The other problem is the window has a lot of grids so it is hard to see the display inside. The eight (8) square foot banner doesn’t determine what the store’s essence is; it is just one (1) of many wonderful things in the store.

K. Johnson asked who makes the banner.

J. Costa replied Pandora makes the banner.

S. Winder asked about the sizing of the banners; is that specified by Pandora.

J. Costa stated they are either three (3) feet by six (6) feet or two (2) feet by four (4) feet; she purchases the smaller ones. The company strongly recommends they purchase the banners.

M. Unsworth asked why they couldn’t put out a flag with the corporate identity on it.

K. Johnson replied that was not her corporate identity.

F. Seagroves asked if they planned to leave the banner where it was.

J. Costa replied she would like to mount it, frame it and center it under the other sign so it would look like part of the sign above it. It wouldn’t look like a banner and no grommets would be visible.

M. Unsworth asked what the difference was between an “open” flag and a banner.

K. Johnson replied each has its own classification within the ordinance; the banner identifies not only the corporation but the characteristic of the merchandise. The “open” flag is a specified corporate logo, government entity and so on.

M. Unsworth replied the “open” flag is much more in the way than the banner.

K. Johnson replied that has its own classification under the ordinance.

S. Winder asked if the point they are trying to make is if this to be a special exception or a variance.

K. Johnson replied by the nature of her application for a banner, specifically defined by the ordinance as being LTT or STT. In this case it falls under LTT, section 7.06.7:I.2.c, which states: *“An applicant in a non-residential district may apply to the Zoning Board of Adjustment for a special exception to be allowed a LTT sign.”* Since it is not normally permitted, a special exception would permit it in a district other than residential.

S. Winder replied the wording is clear.

K. Johnson replied a special exception would be easier to get than a variance.

K. Johnson opened the meeting for public comment.

Katherine Bauer stated she was confused by what was written on the application, looking at the Code Enforcement officer’s comments that state this was a request for an additional wall sign. She noted a variance would be needed for an additional wall sign; the criteria for the wall signs are on page 99 of the zoning ordinance.

K. Johnson replied that was true but the applicant stated it was a LTT banner in both the sign permit and variance applications.

K. Bauer wanted to see if the applicant was still asking for a LTT sign or if she and Bill Parker, Zoning Official, discussed the wall sign.

J. Costa replied they did not discuss the wall sign. She was just reading the comments now; she would prefer to see it as a wall sign.

M. Unsworth said if she was putting framing around it, it would be a wall sign.

S. Bonczar stated he agreed; that was what led to the confusion.

K. Johnson replied he thought Code Enforcement was looking for some way to get them to bring it out of LTT since the ordinance says it is not permitted in the district without a special exception.

M. Unsworth asked if it would be easier for her to get the special exception versus what they are doing now.

K. Johnson replied it would be easier to get the special exception and then apply for the sign permit.

S. Bonczar replied the Code Enforcement Officer determined the request was for an additional wall sign. Something would have to change to make it a LTT.

K. Johnson stated they are the body that hears appeals from Code Enforcement Officer determinations. If the Code Enforcement Officer has determined this is a wall sign, from the description of what the applicant has described, that it is a banner as provided by the vendor. It clearly indicates to him, in reality, it is a banner.

S. Bonczar replied that may be so but the notice and the application state this is a wall sign. The applicant desires a wall sign, not a LTT sign; not a banner but a wall sign. The way the sign is constructed is meaningless at this point. The Code Enforcement Officer agrees with that saying: *“Determined by Office to be a wall sign instead of Long Term Temporary (LTT) to allow year-round display.”* That is what is before us as a board, not a LTT sign.

K. Johnson stated the Code Enforcement Officer interpreted this to be a wall sign so the applicant will be allowed to leave it there year round. The office made the determination for it to be a wall sign and not LTT so that it can be displayed year round. He is saying the zoning ordinance says they don’t need to do that. He read from Section 7.06.7:I.b: *“An applicant may apply no more than two (2) times in any twelve months for a permit for a LTT sign. A permit for a LTT sign is valid for seven (7) months...”*

S. Bonczar stated they are not here to re-write the application; they need to make a determination on what has been presented to them, what went out as the notice of hearing.

K. Johnson noted the board has previously advised applicants to reapply and he felt that is what is needed here; the applicant could withdraw the variance and reapply as a special exception. He felt the board needed to determine if they should advise this.

S. Bonczar stated this depends on what the applicant is actually looking for. The description of framing the sign shows that this is definitely a wall sign. If it is a temporary banner that can be removed, it is a different story. What was presented by the applicant, to him, is a wall sign and thus the application is correct.

K. Johnson stated he heard something different. The applicant receives periodical banners from the vendor that the applicant would have to mount in some type of frame to make it fit the definition of a wall sign. She wants to change these throughout the year rather than keep one sign that says she deals in Pandora and other things and keep it up year round.

S. Winder asked if the applicant would be framing each banner she receives.

J. Costa replied the frame would be permanent but constructed in a way that it can be changed.

S. Winder asked if there was anything that says signs can't be changed throughout the year.

S. Bonczar said no, it is still a permanent sign; the fact that the frame is there makes it permanent.

J. Costa replied the banner would consist of pleasant lifestyle pictures with the word "Pandora".

K. Johnson stated the board does not consider the content of the sign, only the nature of the sign.

S. Bonczar stated the LTT sign is not automatically approved; they have to get a permit every seven (7) months.

J. Costa noted she this is not a lot of fun for her; she would not want to have to come back several times a year to beg for a new sign. She would prefer to get it right the first time and move on with her business. She works many hours in the day and this is a very important part of their advertizing platform.

S. Bonczar stated he understood as he was a business owner in the past. He appreciates it but they have to look at this as how the request goes along with the Ordinance and how the board interprets the Ordinance.

J. Costa stated she hoped they appreciated that there are not a lot of people who are willing to make an investment in downtown Milford. Many people are grateful for those who do and support the local businesses.

S. Bonczar stated he understood but the board is a judicial body; they look at the facts presented.

J. Costa state they should look at it from a human angle; they are working on building a thriving downtown and they need a little help from the board.

K. Johnson stated as much as he agrees with that from a philosophical standpoint, the law spells out certain criteria and the board must determine if the request meets the criteria. If it does, they must grant the request; if it does not, they can't grant it.

J. Costa stated she is looking for eight (8) additional square feet of advertizing; it is not a lot. It will look like a permanent sign.

K. Johnson asked if there were any additional questions.

K. Bauer asked for clarification – they are looking at an application for a variance for additional wall signage.

K. Johnson replied yes, a request for an additional eight (8) square feet of wall signage. He asked if there were any comments or questions from the board. He closed the public 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:

J. Costa stated the professional outdoor banner poses no aesthetic or safety concern due to size and nature of sign. It is made of sturdy material, fits firmly against the building and is maintained regularly. (Washed and changed).

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

J. Costa stated it is an important promotional piece that speaks out to our little store's ability to "attract and encourage economic development and growth" to the Milford Oval. It enables a new small business to continue to promote a product that is vital to the success of the business and its bottom line. People tell us consistently that they were unaware that we carried the product until they saw the banner. This speaks to the power of a banner as we consistently do print ads in papers all over the area.

3. Granting the variance would do substantial justice because:

J. Costa stated the success of small businesses on the Oval is vital to the community on many levels. Since our opening in November 2007, we have a proven track record as being recognized by the community as the #1 gift shop in the Souhegan Valley by the Chamber of Commerce and the Milford Cabinet readership. We carry the #1 jewelry line in the US, which is also the #2 jewelry line in the world, Pandora Jewelry. Tasteful banners have been an integral part of our communication strategy with our customers...many walk by our store and observe the banner and are pleasantly surprised to see that a world-class product is being sold on the Milford Oval.

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

J. Costa state the banner is professionally created by the marketing department at Pandora Jewelry. It is an artful piece that mainly consists of a picture with a brand name association – it is what is considered a lifestyle piece.

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:

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

J. Costa replied they have a multi-paned window that does not enable use to display product well inside the store. We prefer to keep the lovely original windows that help create an ambience that even our male customers feel comfortable with. The Pandora Company encourages small businesses to use the banners and *only the banners* as an advertizing tool. Until, and when the company sanctions some other form of signage, this is all we can use. Due to our position on the Oval, the movement of cars around the Oval whether coming from east to west, or north to south there is little opportunity to look up and see our signage. The cards moving north to south are concentrating on merging and the east to west movement are doing the same as well. This eye level banner is at least a quick visual suggestion that there is more inside for consumers to see. During snowstorms there is a pile of snow that sometimes reaches the second floor of our building and consumes at least two parking spaces for many days. We need every means necessary to promote our 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:

J. Costa stated this was not applicable.

K. Johnson asked the board if they had any additional questions or comments.

F. Seagroves stated they were asking for an additional eight (8) feet of additional wall signage. Is only one (1) wall sign is allowed by the Ordinance?

K. Johnson stated in the new ordinance, the number of wall signs was eliminated but the total square footage remained. This was a result of the recent Chrysler, Jeep, Dodge, Ram sign case. The number of signs does not matter as long as they meet the square footage.

F. Seagroves asked about the square footage, being 75% of the linear square footage of the front of the building.

K. Johnson read from the Code Enforcement Officer's comments: "*Existing permitted wall mounted signage consists of 16 SF (8'x2')* which conforms to the maximum allowed at this location (75% of linear frontage = $.75 \times 22' + 16.5 \text{SF}$). Applicant desires 8 SF of additional wall signage allowance." He asked if the board had any additional comments or questions; they did not so they proceeded to discuss the criteria for a variance.

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

F. Seagroves felt granting the variance would not be contrary to the public interest. He doesn't see where, looking at the other signage on the Oval, this would be contrary.

M. Unsworth agreed; he didn't see where there would be any safety issues nor would it look bad in the downtown area.

S. Bonczar agreed; he didn't see where this would be contrary.

S. Winder and K. Johnson agreed.

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

S. Winder stated he did not see how this would violate the spirit of the ordinance if this was granted. He noted he has never noticed the sign when driving through the Oval. He didn't see how the spirit of the ordinance would be violated if the sign stayed as it is.

S. Bonczar stated he did not agree. It does not affect the health, safety or general welfare of the public but it is in the Oval sub-district and certain rules and standards are set up for that area. What is allowed for wall signs in the sub-district is larger than what is allowed for other districts – 75% of the store front's linear measure versus 50% in other areas. He didn't think allowing this would keep within the spirit of the ordinance.

M. Unsworth stated the sign has been there for a few years and he hasn't noticed it; the store front limits what signage can be put up and this is a good alternative. This could be granted without violating the spirit of the ordinance.

F. Seagroves agreed; there is no threat to the health, safety or general welfare of the public.

K. Johnson disagreed. As S. Bonczar stated, this is in the Oval sub-district and that has a more liberal signage allowance than the other districts. The major concern is the banner; it is referred to it as a banner in the application and even putting a frame on the banner still makes it a banner. Banner signs are clearly defined in the ordinance. He read from page II-4 of The Board of Adjustment in New Hampshire: A Handbook for Local Officials: "*In determining the intent and meaning of a provision of the ordinance and map, the board is restricted to a fairly literal interpretation.*" He also read: "*The construction of the terms of a zoning ordinance is a question of law...The proper inquiry is the ascertainment of the intent of the enacting body...Where the ordinance defines the term in issue, the definition will govern.*" He continued with: "the zoning board *cannot alter the ordinance...or waive any restriction under the guise of interpreting the law.*" If it looks, walks and quacks like a duck, it is a duck; if it looks like a banner and it built like a banner, it is a banner. That is not the intent of what a wall sign is.

3. Would granting the variance do substantial justice?

M. Unsworth stated granting the variance would do substantial justice; it would help the business and bring others into the downtown to shop. Overall, it is a good thing.

S. Bonczar stated he doesn't see how there would be a loss to the public if this was granted; there is nothing for the public to gain if this was denied.

F. Seagroves stated he agreed.

S. Winder agreed and stated there was more to lose by the denial than the public would gain.

K. Johnson stated there is minimal public gain in denying the variance and it does impact the applicant's ability to do business. Granting the variance would do substantial justice.

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

S. Winder stated he could not imagine this would diminish the value of abutting property if it was granted.

S. Bonczar agreed; if it did it would be minimal.

M. Unsworth and F. Seagroves agreed.

K. Johnson also agreed; this will have no affect on abutting properties.

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.

F. Seagroves stated he did not see where there were any special conditions of the property that distinguish it from other properties in the area. Everyone on the Oval is running into the same problem. He didn't see any unnecessary hardship.

M. Unsworth stated he agreed with F. Seagroves. Denial would not be an unnecessary hardship; this does not meet the hardship standard as all of the businesses on the Oval are similar.

S. Bonczar agreed; there is no hardship. He stated again, the way the ordinance is written, the rules are more liberal in the Oval sub-district. He read from page II-11 of The Handbook: "*When the hardship so imposed is shared equally by all property owners, no grounds for a variance exists. Only when some characteristic of the particular land in question makes it different from others can unnecessarily hardship be claimed.*" The applicant is allowed the same amount of square footage as the others on the Oval. The applicant is allowed 75% of the linear square footage, as are the others on the Oval. He didn't see any characteristics here that would point to a hardship.

S. Winder stated if the variance was denied, it would impose a hardship on the property owner. He understood the location of the business and the issue of seeing the sign. He was not sure all the businesses on the Oval are in conformance with the ordinance, given the other existing signs but this would be a hardship if it was denied.

K. Johnson agreed with S. Bonczar. In the Oval sub-district, all the businesses are in the same situation with the traffic and visibility. This holds true for every business on the Oval. People are concerned with driving and pedestrians and not looking at the signs but all the businesses share this issue. There is nothing unique about this property.

K. Johnson 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 M. Unsworth – yes S. Winder – yes S. Bonczar – yes

K. Johnson - yes

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

M. Unsworth – yes S. Winder – yes S. Bonczar - no F. Seagroves – yes

K. Johnson – no

3. Would granting the variance do substantial justice?

S. Winder – yes S. Bonczar – yes F. Seagroves – yes M. Unsworth – yes

K. Johnson – yes

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

S. Bonczar – yes F. Seagroves – yes M. Unsworth – yes S. Winder – yes

K. Johnson – 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.

F. Seagroves – no M. Unsworth – no S. Winder – yes S. Bonczar - no

K. Johnson – no

K. Johnson asked if there was a motion to approve case # 5-11, a request for a variance.

M. Unsworth made the motion to approve Case #5-11.

S. Winder seconded the motion.

F. Seagroves – no M. Unsworth – yes S. Bonczar – no S. Winder – yes

K. Johnson – no

K. Johnson asked if there was a motion to deny case #5-11.

S. Bonczar made the motion to deny case #5-11.

F. Seagroves seconded.

Final Vote

S. Bonczar – yes S. Winder – no M. Unsworth – no F. Seagroves – yes

K. Johnson - yes

Case #5-11 was denied by a 3-2 vote.

K. Johnson reminded the applicant of the thirty (30) day appeal period.