

**Town of Milford
Zoning Board of Adjustment Minutes
October 3, 2013
McDonald's USA, LLC and
Spirit MT Milford NH, LLC
Case #2013-18
Variance**

Present: Fletcher Seagroves, Chairman
Laura Horning, Vice Chair
Kevin Taylor
Zach Tripp
Michael Thornton, Alternate
Katherine Bauer – Board of Selectmen's representative

Absent: Bob Pichette
Len Harten, Alternate
Paul Butler, Alternate

Secretary: Peg Ouellette

The applicant, McDonald's USA, LLC along with the owner, Spirit MT Milford NH, LLC of Map 44, Lot 10, 599 Nashua St. in the Commercial "C" district, is requesting a variance from Article VII, Section 7.06.7:G.2 to allow a 74 SF monument sign with electronic message center, in addition to the existing multi-tenant freestanding sign.

Minutes approved on November 21, 2013

Fletcher Seagroves, Chairman, read the notice of hearing into the record. The list of abutters was read. John Kucich, P.E. of Bohler Engineering appeared on behalf of the applicants. The Chair invited him present his case.

J. Kucich said that McDonald's is renovating its existing building and site, and would like to add a monument sign. Normally it would be allowed, but the site is a large property; one piece with McDonald's and a bank and what is now a vacant Stop & Shop. As a stand-alone parcel it would be allowed a sign. The ordinance only allows one sign per property. The existing sign is approximately 25 SF with a panel for McDonald's. They want to make sure they have adequate visibility and access to the site. There is good visibility going westbound but traveling east, because of the setback of the building and the greenery, the building cannot be seen until you are upon it. They hope to improve that by adding a sign and he pointed out the proposed sign location on the plan. Part of renovation would pull the driveway back and force traffic for the drive-thru around the building so it doesn't queue up in the street. They want to have a sign in the vicinity of the driveway so people aren't stopping short or missing the entrance.

L. Horning asked if it would obstruct visibility.

J. Kucich said it is an entrance only. The proposed sign is one stand-alone monument, completely compliant and would be in harmony with other signs in the vicinity.

K. Taylor said he was in favor of what they are doing but totally against a message board, which is a distraction and hazard.

J. Kucich said typically they will advertise peak times, breakfast, lunch and dinner, and put up the specials. People are concerned about flashing signs; they would be putting up a standard message and keep it.

K. Taylor asked if it would have flashing, rolling or screening.

J. Kucich said it will be fixed and it will be electronic so it can be changed from inside. They would not object to restrictions against it being flashing or rolling.

F. Seagroves said he believed the Zoning Ordinance allows a change every couple minutes or so.

J. Kucich said they would not change the message that often.

F. Seagroves initiated a brief discussion regarding FCC regulations and the issue of noise generated by electronic signs, as they are computers and can interfere with radios, and the FCC regulations.

J. Kucich said if this were granted approval, they would not object to a condition.

L. Horning said she had done research on McDonald's signs and how they change them, and it is pretty standard and stable company-wide.

J. Kucich repeated they wouldn't have an issue with a restriction.

L. Horning asked what time that McDonald's closes.

J. Kucich said it is open 24 hours.

F. Seagroves asked if it will be dimmed at night.

J. Kucich said it stays the same; it is LED backlit.

L. Horning and F. Seagroves said there is the ability to dim it.

M. Thornton said at night there is a startle aspect on older eyes.

J. Kucich said he would assume if it is dimmable they would do so.

F. Seagroves said he brought it up to the Planning Board to change the ordinance.

M. Thornton commented that a scientific method to measure it was needed.

L. Horning said she would be concerned because that corridor is already pretty backlit by streetlights.

F. Seagroves asked for further questions. There were none. He opened meeting to public comment.

Joan Dargie spoke, saying that the electronic area measures 25 ½ SF and zoning says no more than 24 SF for the LED matrix. What is size of the LED matrix?

J. Kucich said the intent is to keep it compliant, if 24SF is the limit, we will stay within that size.

F. Seagroves said he believed it was just over 20 ft.

J. Dargie said there was no way to tell if it meets requirements without having it on the document.

F. Seagroves agreed.

J. Kucich said it went to the outside of the casing.

J. Dargie outside is 8 ft.

J. Kucich said it was on the 2' 9"
F. Seagroves said to make note of it for the building inspector.
J. Kucich said on the sign summary table, it is 24 SF, so it is on the plan submitted.
L. Horning said they may still note it.
J. Kucich said they had no issue with that.
M. Thornton asked if this sign would be in addition to the existing sign, or replacing it?
J. Kucich said the existing sign would remain; that is why they are requesting a variance.
L. Horning said they have one shared lot and have a visibility factor.
F. Seagroves asked for further questions. There were none. He closed the public portion of the meeting.
J. Kucich read the criteria for a variance in the application.

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

Granting a Variance would not later the character of the neighborhood or threaten the health, safety or general welfare of the public. The property is within a highly developed commercial zoning district where other retail and commercial uses, including some of McDonald's competitors have similar monument signs. Further, the proposed monument sign is compliant with all dimensional requirements of the Sign Ordinance.

2. If the variance were granted, the spirit of the ordinance would be observed because:

One goal of the sign bylaw is to "*Retain the Town's ability to attract and encourage economic development and growth.*" McDonald's has committed to substantial financial investments to improve the property and building. Since McDonald's is not a destination restaurant, it relies heavily on brand recognition to succeed, and said recognition is dependent upon the visibility of its logos and namesake. The additional monument sign would give it comparable square footage of freestanding sign area to some of its direct competitors in the surrounding area, creating a fair opportunity for their business to succeed and continue to grow. Another goal of the sign bylaw is to "*Improve pedestrian and vehicle traffic safety.*" The proposed location of the monument sign would be a useful landmark for patrons to recognize the location of the newly proposed and Planning Board approved enter-only driveway. The driveway was relocated in an effort to improve circulation within the site and to minimize the potential for cars queuing from the drive-thru back onto Nashua. The sign would help to increase traffic safety for vehicles entering the site from Nashua Street. Another goal of the sign bylaw is to "*Minimize potential adverse effects of signs on nearby public and other private property.*" As previously mentioned, the property is located within a highly developed commercial district. The additional signage will not create adverse impacts to public or other private property.

3. Granting the variance would do substantial justice because:

The monument sign would create an opportunity for McDonald's to have a comparable standalone monument sign as some of its direct competitors in the area, while at the same time maintaining the intent of the Sign Ordinance, not detracting from property values in the area and not creating a threat to the public wellbeing. Denying a variance would do a substantial injustice to McDonald's as other competing quick serve restaurants in the area have an advantage by having their monument signs directly on-site. The existing panel sign that McDonald's rents is a across the plaza driveway entrance, away from the McDonald's putting them at a disadvantage.

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

The property is located within a highly developed commercial district along Nashua Street, also known as New Hampshire Route 101A. The proposed signage is consistent with other commercial and industrial uses along Nashua Street proximate to the site. The proposed sign dimensions are compliant with requirements of the sign bylaws and as such the addition of a monument sign, in our opinion, should not diminish the value of surrounding property.

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:

Eastbound vehicles on Nashua Street have an obstructed sight line to the McDonald's restaurant due to a buffer of trees between the abutting property and the McDonald's. The McDonald's does not have an existing wall sign on the building facing Nashua Street, so as vehicles travel past the buffer of trees there is little indication as to what the building is. Once the eastbound traffic has passed the McDonald's entrance, the roughly 23 SF sign panel in the existing freestanding sign becomes visible. If the existing buffer of trees between the McDonald's and the western abutting property did not exist the McDonald's site entrance would be visible from further down the road, allowing patrons to make a decision to turn into the property. The hardship created by the existing buffer of trees and vegetation is unique to the property and creates a hardship for McDonald's

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

The proposed sign is reasonable because the property is located within a highly developed commercial area and the sign is otherwise in conformance with all setback, area, height, and other dimensional sign requirements within the zoning district. Additionally, competing quick serve restaurants in the area have monument signs.

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:

Since McDonald's is not a destination restaurant, it relies heavily on brand recognition to success. Said recognition is dependent of the visibility of its signs, especially monument signs in the case where the sightline to the building is obstructed by a buffer of mature vegetation. This condition is unique to the site and does not exist for competing quick serve restaurants in the area. If a variance were not granted, an unnecessary hardship would be put on McDonald's. Further, McDonald's would be put at a distinct disadvantage if the Ordinance were literally interpreted and strictly enforced. The addition of a proposed monument sign is otherwise in compliance with allowable sign dimensions as set forth in the sign bylaw, does not negatively impact public health or property value and does not deviate from the intent of the sign bylaw.

F. Seagroves discussion of the criteria to the Board.

Z. Tripp said regarding public interest, it would not violate zoning objectives or alter the character of the neighborhood. Other businesses in the area have monument signs. The spirit of the ordinance is for sales and services where vehicular traffic can occur. Restaurant is allowed in the zone. If this were freestanding lot site the sign would be compliant. Per the Planning Board minutes of 8/21/13, the details of the sign should be submitted to the Planning Board once approved by ZBA, if applicable. So that should also insure it is within the spirit. Substantial justice: He didn't see gain to the public by denying the variance. He didn't believe surrounding properties would be reduced in value. It is going to stay a restaurant with modern, updated sign. Hardship: what is unique about this lot or use is that McDonald's is on a large lot with several other businesses; that is something other properties in the area don't share. He felt they could grant this without frustrating the purpose of the ordinance because the sign is in compliance if it were an individual lot. Limiting McDonald's to no monument sign because they share a large lot would not be a reasonable use.

L. Horning agreed with Z. Tripp stating that substantial justice is done in that it provides more adequate egress into the property with the cut-in to the driveway and visibility of the sign. The value would be increased. Having businesses in this area is necessary for it to thrive as it is a business corridor. They will be making sure measures are within confines of the ordinance. She believed it would enhance the neighborhood and traffic flow. It does have a hardship site-wise. There is a drop-off as you are looking at the sightline. If a vehicle is not merging properly into those lanes where it becomes two lanes, it can't get there. That creates a hardship.

K. Taylor also agreed. The spirit is fine, the hardship is there and even if the vacant lot cut trees down, at that point you are right there. McDonald's is hidden in the corner a little.

M. Thornton said Tasty Tobacco had same list of problems with visibility, and they were constrained.. They didn't get two signs. They got one that had to conform. There are other nonconforming signs in town and nothing effective is being done to bring them into the fold. He agreed it was a good point to have a sign there but when making an exception for one company, it doubles the signage frontage on the property.

L. Horning said she didn't think anything would ever prohibit Tasty Tobacco from having a sign at the top of the hill. Every case and every property is unique. This property is not able to define itself as a separate entity. It creates a hardship.

M. Thornton said if it were a standalone they would have one sign.

L. Horning agreed, and said the applicant would not be in front of them.

Z. Tripp said that is a hardship.

M. Thornton asked if this was the only way to address it.

L. Horning said you have topography and sightlines critical to four lanes of traffic and a very short stretch of property. She weighs the Planning Board recommendations very heavily. That is why they have relief for applicants in situations where they have no control over vegetation or other properties they are forced to cohabitate with.

M. Thornton agreed.

F. Seagroves said it was good that M. Thornton brought up Tasty Tobacco, which has a wall sign. The only reason they couldn't get up on the other sign was because there wasn't room. In this case, applicants are asking for a variance with special conditions. He agreed with the special conditions of this property. Every case is unique and they are not setting a precedent here. This is because of the location. There are three traffic lights and you are going to hit every one.

M. Thornton said you don't see McDonald's until you are passing it.

L. Horning said Tasty Tobacco could have a sliver of sign on the monument as well as a fascia sign.

M. Thornton said it is a safety issue as much as anything. People suddenly realize McDonald's is there and pass over three lanes of traffic.

F. Seagroves continued, regarding public interest he didn't see public gain to deny it. The spirit of the ordinance is observed and it will probably be safer; he didn't see any threat to health or welfare of the community. The public won't gain by denial. Hardship is the unique condition of the property. If it was their own property they would be allowed a 15 ft high 75 SF monument sign. They are requesting 74SF, so they would not even be before the ZBA.

F. Seagroves asked if the board had any additional comments or questions; they did not so they proceeded to vote on the criteria for a variance.

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

L. Horning-yes; K. Taylor-yes; Z. Tripp-yes; M. Thornton-yes; F. Seagroves-yes

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

K. Taylor-yes; Z. Tripp-yes; M. Thornton-yes; L. Horning-yes; F. Seagroves-yes

3. Would granting the variance do substantial justice?

Z. Tripp-yes; M. Thornton-yes; L. Horning-yes; K. Taylor-yes; F. Seagroves-yes

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

M. Thornton-yes; K. Taylor-yes; Z. Tripp-yes; L. Horning-yes; F. Seagroves-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.

L. Horning–yes; Z. Tripp–yes; K. Taylor–yes; M. Thornton–yes; F. Seagroves–yes

L. Horning asked the Chair if they should consider the concern about the size of the proposed monument to make sure it is within the confines of the ordinance.

M. Thornton said in one place the application refers to 24 ft and in another it is 22 ft.

Z. Tripp asked whether the Planning Bd. would verify that.

K. Taylor said the Planning Board already approved it. They pretty much said whatever the ZBA does.

There was discussion about where in the application there were different measures and a statement from the audience who calculated 25 ½.

J. Kucich said if it was acceptable to the Board, they can refer to the sign table which says 25 ft maximum. That is intent of what they want.

Z. Tripp moved to make a stipulation that the sign not exceed the requirements of 7.06.7.C:2.a which says “the changing sign (electronic) may not exceed fifty (50) percent of the area of the sign or twenty-four (24) square feet of LED matrix.”

L. Horning seconded the motion. All voted in favor of the motion.

L. Horning moved to approve the case with the special condition placed on it.

Z. Tripp seconded.

Final Vote

L. Horning – yes; K. Taylor – yes; Z. Tripp – yes; M. Thornton – yes; F. Seagroves – yes.

Case #2013-18 was approved.

F. Seagroves advised the applicant of the thirty (30) day appeal period.