

Town of Milford
Zoning Board of Adjustment Minutes
June 4, 2015
Variance
Bill Greenwood for Double Play Hobby Consignments,
Along with Cardoza Realty, LLC

Present: Zach Tripp, Chairman
Fletcher Seagroves, Vice-Chair
Mike Thornton
Joan Dargie
Kevin Johnson

Excused: Len Harten, Alternate
Katherine Bauer – Board of Selectmen’s representative

Secretary: Peg Ouellette

The applicant, Bill Green for Double Play Hobby Consignments, along with Cardoza Realty, LLC, the owner Map 26, Lot 108, located at 318 Nashua St, in the Limited-Commercial District, is requesting a Variance from Article VII, Section 7.06.7:E.2, to allow a 4.5 SF exterior wall sign on the west side of the building and a 6.0 SF sign on the east side of the building.

Minutes Approved on July 2, 2015

Z. Tripp Chairman opened the meeting and informed all of the procedures for the meeting. He read the notice of hearing into the record, the list of abutters was read. No abutters were present. Bill Greenwood, applicant was present.

Z. Tripp said he currently the building has two Cardoza signs on the east and west sides. He read from the enforcement code decision, *“The two (2) existing Cardoza Flooring signs total 68 SF which was allowed up until March 2015 where each sign was limited to 50 SF. The zoning change now limits total signage (wall) to 50 SF, so the 68 SF is grandfathered. The new signage proposed increases signage by 10.5 SF total (4.5 SF on the west; 6 SF on the east).*

B. Greenwood said public interest; they would not change character of the building.

K. Johnson asked him to state what he wants to do.

B. Greenwood said he wants to put a 4.5 SF sign on the west end and 6 SF sign on the east end of the building.

Z. Tripp said currently Cardoza is in this building and will rent a section. Where it is located?

B. Greenwood said on the lower level.
Z. asked if that was on the west side in the lower level below street grade.
B. Greenwood said correct.
Z Tripp asked if any access to the rental space on the east side.
B. Greenwood said only on the east side. There would be no public safety or health impact or welfare of the public. There would be no change to the outside of the property.
Z. Tripp said there was a monument sign out front. Has he talked to the owner about putting his sign on the monument sign?
B. Greenwood said he has, Mike (Cardoza) has plans for that sign and has not come forward with those plans yet.
M. Thornton didn't know if it was right time to ask, but isn't the signage for the total building, not each business in the building?
K. Johnson said that's why he needs the variance.
M. Thornton understood, but is there any guidance for the board says a second or third business could have a sign.
J. Dargie said just as a total.
M. Thornton was concerned that they are not going to stick a future person so that he has a business-card-sized sign.
J. Dargie asked if any other business going in there, any other vacant space?
B. Greenwood said Cardoza uses 75 percent now. They have all the upstairs and 50 percent of lower level. It is just him today. Half of the downstairs is their showroom and other half is him.
Z. Tripp thought there was wording in the sign ordinance on multiple tenant buildings.
K. Johnson thinks it was dropped before they heard the Dodge Place case, and the same with White Duck when Valvoline took over the service and White Duck kept the car wash. They had that issue then.
J. Dargie said these will not be lit.
B. Greenwood said they will not be lit. They are 40,000 of inch thick sheet aluminum. One is 36 x 18" and other is 36 x 24" which is no larger than the pictures on the wall in the room. They will not be lit, no rotating sign or LEDs.
Z. Tripp opened meeting for public comment. There were none. He closed public portion and asked applicant to read his application into the record
Applicant read application as follows: (applicant's additional comments in parentheses)
1. Granting the variance would not be contrary to the public interest because:
By adding these 2 signs (10.5 sq ft) would not change the character of the neighborhood.
(It would not increase traffic flow any more than already.)
2. If the Variance were granted, the spirit of the ordinance would be observed because:
There will be no impact on public health, safety, or welfare (It is just increasing signage.
Nobody is going to get hurt from the increase.)
3. Granting the variance would do substantial justice because:
It will allow customers to readily locate the building & business location.
4. Granting the variance would not diminish surrounding properties because:
There is no significant change in its current use.
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:

N/A

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

There is minimal signage increase to allow for increased revenue. (It will allow customers to find the retail business for increased revenue.)

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:

N/A

Z. Tripp asked for any further questions. There were none, so they moved on to the discussion of the criteria.

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

F. Seagroves – no harm. Handbook mentions demonstrate public benefit if the variance is granted. Doesn't see public would gain by denying.

K. Johnson variance will not be contrary in this case because public interest here is the basic zoning objective of health, safety, morals, etc. Applying it to these two signs would not be contrary to the public interest.

J. Dargie – yes, would not be contrary. It will help people find him. They are not ostentatious. They are not flashing. She thinks they have a little sign out there now.

B. Greenwood said he does; it is a little portable sign, within the guidelines.

J. Dargie asked if that would be replaced.

B. Greenwood said not really; it is like putting out an "Open" flag. It is how his customers know he is there.

J. Dargie asked if it would be there when he's open.

B. Greenwood said yes. He was in business 6 years and not allowed a sign in Amherst because their zoning wouldn't allow signage. That portable sign was his primary signage.

Z. Tripp – yes, it would not be contrary to public interest. He doesn't imagine adding signs in of the neighborhood of condos and residential and new development across the street.

Increased sign on this one building will not change the character of the neighborhood with condos on one side, new development across the street.

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

M. Thornton – yes, because it does justice to the second and final tenant of the building in giving him adequate sign for the business.

J. Dargie – yes, the ordinance allows an exception to help business to have a sign where they would not be able to. It is in the spirit of the ordinance.

K. Johnson – to determine spirit of the ordinance go to the ordinance purpose and intent which is to encourage effective use of signs as a means of communication in the Town of Milford and to retain the town's ability to attract and encourage economic development and growth, respect the environment, address new technologies, and a number of others.

Looking at overall conditions set forth in purpose and intent, the primary are to reduce visual clutter of signs and provide communication and economic growth. He thinks in this case this variance falls within those criteria. Proposal is not for a big electronic flashing sign. It is fitting on the building. Spirit of the ordinance is observed.

F. Seagroves – Handbook talks of health, safety and general welfare of the community. He doesn't see a problem with that. They are talking about a 2x3 and a 3x1 1/2 sign, which are not big. As Kevin mentioned intent, this is in the spirit of the ordinance.

Z. Tripp- this is one of the most difficult questions. He agreed with Kevin about intent. Also limitation on signage on buildings is for a reason. There are two unique things about this building. It is on Nashua St, which is a hardship, but it is also very close to a road. The argument that it needs to exceed the maximum sign area per building he doesn't think the location and orientation show he needs more than what is allowed. What is unique in this case is the pre-existing signage already exceeds it. This kind of feels like alteration of a nonconforming use. Can it be granted without frustrating the purpose of the ordinance? Because it is a variance, because of the location of the building and the two ends that can be seen from the traffic, the can probably grant it without frustrating the spirit of the ordinance.

3. Would granting the variance do substantial justice?

F. Seagroves – by granting, substantial justice would be done. Handbook says a loss to the individual that is not outweighed by gain to the public is unjust. Doesn't see gain to public by refusing. It may help the public to find out we have a hobby shop in town.

K. Johnson – agreed that granting would do substantial justice. Balancing desire of public to minimize signage vs. individual right to advertise his business, taking both and considering the balance goes to the individual want to advertise his business in this location on this building.

J. Dargie agreed.

M. Thornton agreed.

Z. Tripp agreed that substantial just would be done. The public would not gain by denying this variance.

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

M. Thornton – surrounding properties are not going to be affected. They are all commercial. Only place that would be affected are the Stone House condos. It is not flashing lights. He doesn't see a big impact on them.

J. Dargie agreed.

K. Johnson agreed. Doesn't think value of surrounding properties would be diminished. Vast majority are already commercial and existing significant amount of signs. These signs on this building in the proposed location would not have any effect on residences or people entering or leaving Stone House.

F. Seagroves doesn't think if they grant it property would be diminished in that area.

Z. Tripp they are saying that will exceed signs allowed on the building which actually has residential on each side. Conventional wisdom would be that a commercial with residential on each side would have impact. But given the proposed size and the proposed location of this building and they are not lit and not flashing, increasing the sign on this building by this amount would not have a negative impact on surrounding 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.

K. Johnson - They don't need to talk about B. When you need to address literal enforcement of A. Proposed use is a reasonable one. If there is a fair and substantial relationship between the general public purposes of the ordinance and the specific application of the provisions to the property? That is probably toughest criteria of a variance. They need to balance general public purposes and this purpose. This is a fairly small property which makes it unique among properties in the area. It is going from single business to multi-business property which also makes it unique among buildings in the area. There is no substantial relationship between general public purposes and this specific property as to addressing application of signs to this specific building in this specific location.

F. Seagroves – the proposed use is a reasonable one. These signs are small. Re no fair and substantial relationship, he has a problem with that because he believes measuring frontage at the front door. This building is much longer and shorter.

M. Thornton said it is frontage on the road is actually the side of the building

Z. Tripp said they are measuring part of the building that faces right of way, which is Nashua St.

F. Seagroves thought they had changed that for the car dealership.

K. Johnson said for J.P. Chemical. The facing side they measured was not the side was not the side measured.

Z. Tripp and K. Johnson said they need a variance because of the orientation. This would be the same situation.

Z. Tripp said 50 SF maximum is based on calculation of the part of the building that faces Nashua St. not the entrance.

B. Greenwood said in that case, it doesn't exceed.

Z. Tripp said it does because it is 50 SF and building is already at 68 ft.

B. Greenwood said there is no sign on Nashua St.

Z. Tripp said but maximum per building is for all sides.

K. Johnson – signage is for all sides that face the street, which may or may not be putting best side forward. When the sign was put on Cardoza they were below allowed. The ordinance was changed and they are above the amount allowed, by them.

Z. Tripp said now they are going more above, technically. K. Johnson said that is why they needed a variance.

F. Seagroves said change is for all sides on the building.

J. Dargie agreed with board.

M. Thornton agreed there is a reasonable use. Agreed with comments that this is a conundrum that applicant finds himself in. He found himself in the same; being the least man on the totem pole and all space was gone and his signs were taken down. That business doesn't exist anymore. It is a question of equity to the applicant without being odious for others. These signs are small enough that it meets that test. Z. Tripp asked if proposed use is a reasonable one. M. Thornton said yes. Z. Tripp thought he just answered fair and substantial relationship. M. Thornton said yes. He answered the easiest one first and the hard one last.

Z. Tripp – re unnecessary hardship, it means that owing to special conditions. Special conditions of this property, it is parallel to the street rather than perpendicular. If he just put on the west side people traveling east to west would not see it. It is reasonable to put signs on both sides. But he struggled with special conditions of the property that make it

different from other in the area to allow him to exceed square feet per building. It is unique to add to a building that already exceeds signage because it is grandfathered. The question is can they grant this without frustrating the purpose of the ordinance. Is the full application of the ordinance due to special conditions of the property necessary to promote a valid public purpose. In this case, due to special conditions of this property – running parallel to the street, you have to be viewed from two directions, you are on the lower level and have to distinguish yourself – a literal enforcement of the ordinance is not necessary. Proposed signage is reasonable in size and location. It is not lit and not large. He believes that both conditions can be met.

Vote on criteria:

Z. Tripp read, after reviewing the petition and after hearing all of the evidence and by taking into consideration the personal knowledge of the property in question, this Board of Adjustment member has determined the following findings of fact:

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

F. Seagroves – yes; K. Johnson – yes; M. Thornton – yes; J. Dargie – yes; Z. Tripp - yes

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

K. Johnson – yes; M. Thornton – yes; J. Dargie – yes; F. Seagroves – yes; Z. Tripp - yes

3. Would granting the variance do substantial justice?

M. Thornton – yes; J. Dargie – yes; F. Seagroves – yes; K. Johnson – yes; Z. Tripp - yes

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

J. Dargie – yes; F. Seagroves – yes; K. Johnson – yes; M. Thornton – yes; Z. Tripp - 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.**

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 – yes; K. Johnson – yes; M. Thornton – yes; J. Dargie – yes; Z. Tripp - yes

Z. Tripp asked if there was a motion to approve case # 2015-10, a request for a variance.

J. Dargie made the motion to approve Case #2015-10.

M. Thornton seconded the motion.

Final Vote :

J. Dargie – yes M. Thornton – yes K. Johnson – yes F. Seagroves – yes Z. Tripp - yes

Case #2015-10 was approved by a unanimous vote.

Z. Tripp informed the applicant he was approved and reminded the applicant of the thirty (30) day appeal period.