

**Town of Milford
Zoning Board of Adjustment Minutes
October 15, 2015
Case #2015-18(A)
Poyant Signs along with
CVS Pharmacy
Variance**

Present: Zach Tripp
F. Seagroves
Joan Dargie
Kevin Johnson
Michael Thornton
Len Harten, Alternate

Excused: Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

The applicant, Poyant Signs, along with CVS Pharmacy owner of Map 30, Lot 58, located at 321 Nashua St, in the Commercial District, is requesting a Variance from Article VII, Section 7.06.E.2, to permit multiple wall signs exceeding maximum square footage.

Approved Minutes on October 29, 2015

F. Seagroves, Acting Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. The list of abutters was read. No abutters were present.

F. Seagroves read the notice of hearing. He said this was one application which has been divided into two. First application will be for the wall signs and second application will be for the monument sign. Richard Westergren appeared for applicants. He would discuss the building signs. By way of background, he showed the elevation that was initially presented to the Planning Board ultimately passed the design with the channel letters, CVS Pharmacy, and the Drive-thru letters on the building. They are now going through the permitting process. One major change since it was before the Planning Board they reduced size of the signs with lettering was 4 ft. high. They have scaled down but still need variance. Now propose 3 ft. letters “CVS Pharmacy” and 18 in. for the Drive-thru point on Nashua St. and also the side elevation. Nashua St. building frontage consists of 96 ft. times multiplier, which is how allowed sq.

footage is determined, is 1.5, which would allow 144 SF. They were only asking 100.18 but they cap it at 100 SF. They are there for .1 SF.

F. Seagroves asked if they were requesting 1 SF.

R. Westergren said .18 on Nashua St. On Clinton St. sign there is 143 ft. frontage. Over 100 Ft., back on Nashua St. which gives multiplier of 1.5. On Clinton St. only 53 ft. back which allows a multiplier of 1.0, times 143 ft of building, but capped at 100 SF. They were there because of the cap at 100 SF. In reality, asking for .18 SF. He began to discuss the monument sign. He was informed that would be discussed in the second case. They recommended to office that the monument sign should be separated from the wall sign application because if they were all in one case, if the Board denied one it would be a denial of all.

R. Westergren continued that these are channel letters, not background lit. Most in the area are box signs. J. Dargie said all those were grandfathered.

R. Westergren said he was pointing out the difference in illumination. They don't like background – just the surface of the letters illuminated. Said they were dealing with less SF of actual sign area.

L. Harten said the SF quoted was just the lighted portion of the sign.

R. Westergren said it was overall, height times length. It included the background. It was 15 to 20 percent less in area that is lighted.

F. Seagroves said they were asking for .18.

K. Johnson said less than ½ SF total.

R. Westergren said he was trying to get as well as they can to the code. If they didn't have cap, it would be OK. That was it as far as wall signs - two sets of CVS Pharmacy and two sets of Drive-Thru Pharmacy letters.

F. Seagroves said one on Nashua St. and one on Clinton?

R. Westergren said another concession to the Planning Board not putting signs on Clinton St. and asking to put on the side that faces shopping center parking.

K. Johnson said facing Nashua St. at the end and facing parking lot plaza which is the front of the building.

F. Seagroves asked why no light on Clinton St.

R. Westergren said it was a one of the concession to the Planning Board.

F. Seagroves said they want to discuss the wall signs on this 18A and then 18B which will be the monument sign.

F. Seagroves asked if any questions from the Board and there were none.

F. Seagroves opened the meeting for public comment. There were none. He closed the public comment portion of the meeting.

Applicant read the application into the record: (only regarding the wall signs)

A variance is requested from Article VII Section 7.06 of the Zoning Ordinance to permit: multiple wall signs and total sq. ft. allowances.

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

Proposed signs are in keeping with basic objectives of the zoning ordinance and needed to adequately identify site and services of a new CVS Pharmacy.

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

The proposed signage is in keeping with goals of your zoning ordinance.

3. Granting the variance would do substantial justice because:

Yes, signage is needed to adequately identify this new business visibly for safety and welfare of general public.

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

Proposed new CVS signage is all upscale individual channel letters, LED illumination, which will increase value to this and surrounding properties.

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:

Due to the setback of the CVS building, we are allowed specific criteria but defeats its intent with a maximum cap at low overall amount of sign area.

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

To adequately identify a new CVS store both visibly and informatively of goods and services available to the general public.

B) Explain how, 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:

A hardship will develop if general public cannot read or identify goods and services available. Good signage must be readable and instantly identifiable.

C. Notwithstanding paragraph (B) above, a Variance may be granted without finding a hardship arising from the terms of the Zoning Ordinance when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:

i. The Variance requested under this paragraph shall be in harmony with general purpose and intent of the Zoning Ordinance because:

Granting this signage variance would do substantial good in providing excellent readable signs which will advance the health and safety of the general public.

F. Seagroves asked for any questions from the Board.

Z. Tripp, having arrived, and said he'd be sitting as alternate. He asked whether he should vote on this case.

L. Harten asked if he felt comfortable voting on it.

Z. Tripp had reviewed the case pretty thoroughly and heard most of the presentation.

F. Seagroves asked if he knew they had cut down the size for the wall signs.

R. Westergren said they reduced from 4 ft. to 3 ft.

Z. Tripp asked for the total on East side and North side.

F. Seagroves said it is maximum in the zoning.

R. Westergren said 100.18 on both.

Z. Tripp said that was same as application. He said it is 100 SF per building; applicant requesting 200.

K. Johnson said it is per building wall on page 197 - it used to be the entire building. When they reduced the SF amount, they allowed it on the entire building. It says for definition “any sign attached parallel to the building wall.” And goes on and in the tables defines total area, so you can put that on as many walls as you want.

J. Dargie thought that it was 100 ft. max.

K. Johnson agreed.

Z. Tripp read “the total area for all wall signs shall not exceed the allowable maximum sign area per storefront.

J. Dargie said it was interpreted that way in a prior case.

R. Westergren interpreted it as per wall, and they have two frontages.
Z Tripp said they have one. Then he said if you count Clinton St.
L. Harten said Clinton St. was eliminated. Signs are only being put on the front of the building and on the side facing the shopping center.
R. Westergren said they were asking to use that allowance on the other side of the building so it doesn't face residential properties.
Z. Tripp said they were in compliance.
K. Johnson said they are .36 SF over.
Z. Tripp said he missed the part where it said per wall.
J. Dargie agreed.
K. Johnson said total area on all signage shall not exceed the maximum allowable per store front. They have two store fronts.
Z. Tripp said they only have one store front.
K. Johnson said two, because they one on each street.
J. Dargie asked where access to and from the building was.
K. Johnson said both.
J. Dargie said she read it that they were assuming shop has one wall as frontage. They had someone come up that had two frontages and they only took one and they picked one to put their additional signs.
K. Johnson said he had one with two frontages and they wanted the larger portion. If you combined two, for example it gave them 200 SF, but they wanted 125 on one and 75 on the other.
Z. Tripp referred to page 183, frontage means that continuous portion of a lot bordering on a road(s) from which access can be taken, that meets the minimum requirements of the underlying zoning district. He doesn't define Clinton St. as frontage.
J. Dargie said they are taking access from Clinton St. so in her mind it is the frontage.
Z. Tripp asked if access is from Clinton St.
K. Johnson said into the parking lot, not into the building.
J. Dargie would like clarification.
Z. Tripp said they had access off Clinton St. and off the County Stores. He can see argument for two frontages. They are over by .36. Should be 50% of storefront of 100 SF whichever is less. He reads that as the north side being limited to 75 SF and east side to 110 SF, 185 SF total.
K. Johnson said he was right. If they take Clinton St. as frontage, then the size of the building from the frontage street, it doesn't sit 143 ft from the street. The side with the entrance does, but not the frontage of the building on the street.
Z. Tripp said the east side.
R. Westergren said it sits back 53 ft. on Clinton St.
F. Seagroves said not worried about how far it sits back.
K. Johnson said how far back determines the multiplier.
R. Westergren said 1.0 for 53 ft. setback, with 143 SF but still cap at 100.
Z. Tripp said 50%, which is 70, whichever is less.
J. Dargie said no, it is or maximum.
K. Johnson said total or 100 SF, whichever is less. If they had 1000 ft. long building located 255 ft. over that would give them 2,000 effective ft frontage, but still limited to 100 SF.
R. Westergren said that didn't make sense - for the bigger building.
K. Johnson said the bigger the building the smaller the sign.
R. Westergren said if the building is further back you need a bigger sign to see it.
J. Dargie said to put a huge sign in that area would be overkill.

R. Westergren said the further back you place it, the harder it is to read.

K. Johnson asked applicant how he was calculating the SF allowed on side on Clinton St. side.

R. Westergren said 143 x 1.

K. Johnson said he read something that it is distance from the access point, not the closest point, which would be the upper corner, not the lower corner.

R. Westergren said he used the lower corner. It would be more from the back line. He gave the shorter distance.

K. Johnson said table on page 198 said “Distance of Storefront from Property Line with main point of access of abutting street.” In table where it says distance of storefront from property line with main point of access multiplied by 50-99, 100-249, etc. it says distance of store front from property line with main point of access of abutting street. That would say measure the distance from the entry point. Still limit to 100. Even if you set it back 250 to get 2 multiplier, you would still be limited.

R. Westergren said it seemed an unfair requirement.

K. Johnson said they have to draw the line somewhere when they write it down.

F. Seagroves asked how much he needs.

K. Johnson was comfortable with what he is requesting. His reading of ordinance says since they are on two streets they are allowed two frontages; therefore, they would be allowed 100 SF.

J. Dargie’s interpretation was there was only one access point; therefore, only one frontage.

K. Johnson asked access into the building.

J. Dargie said to the building. She referred to the ordinance saying frontage is that continuous portion of the lot bordering on a road from which access can be taken. Access can only be taken from Clinton St.

K. Johnson and L. Harten said they have access on Nashua St, also, through the parking lot.

K. Johnson asked, what is access to the building by turning off Nashua St. and Clinton St.?

J. Dargie said okay.

Z. Tripp said on the north elevation he understood why they kept signage same size, as size and aspect ratio, but looking at store front and its proximity to Nashua St. and ignoring east wall, the requirement of that would be 75 SF given size of the store front and distance from the road.

R. Westergren said that wouldn’t be symmetrical. CVS very concerned how building will look.

Z. Tripp understood. Can they get to 75 SF on that frontage?

R. Westergren said no.

K. Johnson asked the setback on the north.

R. Westergren said 111 ft. Consider these are Channel lights.

M. Thornton said ordinance says its enclosed area.

R. Westergren said in reality there will be about 15 percent less light.

J. Dargie asked if they will be off when store is closed.

R. Westergren said general are on an hour after closing. This could become a 24-hr. store. No decision on that yet. Most towns tell them to turn off an hour after closing for security purposes.

Z. Tripp wanted to confirm his math for north elevation. 111 ft to the street, so 1.5 multiplier. 100 long, that’s 150 SF. He originally had 50 percent at 75 but as he re-read, he had reduced total SF, or 100 ft. whichever is less. Therefore, that wall unto itself should be 75 SF.

R. Westergren disagreed.

Z. Tripp was addressing the board, just looking at this elevation relative to Nashua St. In response to question from K. Johnson which figure, 96 ft. or 100 ft 8 in. figure, he said he took 100 ft. 8 in. as frontage multiplied by 1.5 equals 150.

R. Westergren said they were still at cap of 100.

K. Johnson said it states the maximum of 50 percent of store front linear measurement or 100 ft., so it would be 50 percent of that, 75 on just the north side.

L. Harten said he would defer to Z. Tripp at this point.

J. Dargie asked if letters on Nashua St. were larger than those facing parking lot.

R. Westergren said they were both the same.

J. Dargie said if they are both the same size, how was it 100 SF on each side. One of the sides is larger.

K. Johnson said he was asking for 100 on each face, for total of 200. It is still capped at 100 SF.

R. Westergren pointed it out, saying it was considerably smaller than original proposal.

F. Seagroves asked if any more comments from the board.

The Board proceeded to discuss the criteria.

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

K. Johnson – yes, could be granted without violating public interest. Increase in signage would not create any hazard or significant danger to the public.

Z. Tripp – yes, granting would not be contrary to public interest. Wall signage will not alter the essential character of this neighborhood. It is a business neighborhood with signs all around.

M. Thornton – yes, didn't see problem, especially when talking about .36 or .18 ft. whether talking about two sides or one. No danger to the public from sign falling down or from illumination.

J. Dargie – agreed, granting would not be contrary to the public interest.

F. Seagroves – agreed. As Kevin stated, there is substantial justice here. He saw no harm.

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

Z. Tripp – talked about two elevations separately. East one is in spirit of the ordinance given size and distance from Nashua St. is in conformance. North side is 25-30 ft. over the spirit of the ordinance. Spirit is to control sign size. Granted it is large store frontage but spirit doesn't account for that. Anything exceeding 75 SF would not be in the spirit of the ordinance.

M. Thornton – Confused between the 100 SF and 75 Sf. Understood the ordinance says smaller of the size.

K. Johnson – went back to how to calculate. It was 50 percent of linear length of building times the multiplier in the table. Since it is set back the multiplier is 1.5; therefore, assuming Zach's math, they get 75 for that one side of the building.

M. Thornton – not the 100 being requested.

K. Johnson said that was the cutoff.

M. Thornton said no, it could not be granted without violating the spirit of the ordinance.

J. Dargie agreed, didn't think it could be granted without violating the spirit of the ordinance.

They have a sign ordinance for a reason. They have had other companies, i.e. Subway, Railroad Place, come up for variance. This is small neighborhood. It is not like cars trying to see it from Rt. 101. It would be someone coming from the Oval down Nashua St. It could not be granted without violating the spirit of the ordinance. Agreed with Zach, the 100 ft. side could be but the other, the north side.

R. Westergren offered to eliminate the "Drive-thru Pharmacy" letters on the north elevation and they are in compliance.

K. Johnson said that wasn't what was before the board.

Z. Tripp recommended a condition for 175 SF per building and have applicant manage however they want.

K. Johnson disagreed. Going back to the purpose of the ordinance, Purpose and Intent, looking at trying to encourage effective use of communication this is a large building, and because of the size, position and location of the building granting would be within the spirit of the ordinance.

F. Seagroves referred to the Handbook that says safety, health and general welfare. From that standpoint, it could be granted.

3. Would granting the variance do substantial justice?

M. Thornton – it would. In some cases, but in this case they were talking about 75 SF or less. If they were going to take away different signage he would have to go back to address violating the spirit. If at the end, they were going to say they are taking away this and bargain back and forth they would have to address each question again? Other members said they would address it in the final vote. In that case, it would do substantial justice.

J. Dargie – didn't think it would do substantial justice. The signs are being slanted toward the parking lot but there is a residential set of buildings on Nashua St. She has to say no.

K. Johnson – substantial justice could be done, holding applicant to the strict letter of the ordinance would provide the public with minimal gain in this application. The lost of ability to attract customers would be greater to applicant than perceived gain to the general public.

Z. Tripp – as applicant presented, he didn't think there was substantial justice and didn't think there would be a loss to applicant limiting it to 75 SF on the wall parallel to Nashua St. with multiplier effect. As application was presented, no. If a condition limiting to total 175 SF, he would say yes.

F. Seagroves – yes, loss to the applicant is not outweighed by gain to general public. It is a very busy intersection and will not change it.

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

J. Dargie – no, having a large sign illuminated until 9 p.m., or 24 hours that will be directly across from Stone House residential neighborhood. For that reason, she said no.

K. Johnson didn't see surrounding values being diminished. It is a commercial area and commercial existing there and future development will occur in that area. He didn't see this signage affecting surrounding property values.

Z. Tripp – could grant without diminishing surrounding properties. Focus on the wall probably visible from Nashua St. Difference between 75 and 100 will not have effect on property value. Sign will be lit. Having 100 vs 75 will not change property values.

M. Thornton – Didn't believe illumination from 25 SF across the street will make any difference. It could be granted without diminishing abutting property values.

F. Seagroves I- agreed, didn't see it would diminish value of abutting properties, where most is commercial.

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 – Will follow Zach's lead and separate the two sides. With the east elevation this property does have enough specialties to it to be a hardship. However, with the north elevation, request for 33 percent increase over allowable signage it didn't meet the test of being unique enough to justify a result of hardship. If it were just the small overage based on size, position,

location, he would say yes, but the north being a 33 percent increase of allowable signage, there is not enough uniqueness to that area to justify a hardship.

Z. Tripp – special conditions were, it is a large building with large parking lot with two sight lines on west side going toward town on Nashua St. looking across the parking lot to see it. The north elevation is pretty parallel to Nashua St. more geared toward people leaving town. Trying to see on both sides is a unique characteristic of the property. Question is how much total signage to allow on the property because of the unique setting and whether it is a hardship. Only way is to break the two up. Each side is in compliance. On north elevation, didn't see anything unique that would deem a hardship.

He would have to say north side being 75 SF or 175 SF per building.

R. Westergren commented it is 75.18.

Z. Tripp said proposed use is a reasonable one. It is reasonable for applicant to request a variance for extra signs, given orientation of the building on the lot. Since criteria A was not met, he went to B, unnecessary hardship, didn't think that was met. They still have reasonable use with 175 total sq. ft.

M. Thornton – two different sides. One side they are quibbling about .18 SF and didn't see reason to quibble on that. On the north side, saw demarcation of 75 SF and he didn't see any hardship there.

R. Westergren said .18 comes from the letters "CVS Pharmacy."

M. Thornton said 100 SF side not a problem. He was talking about north side where some of them interpreted at 75 SF. The 75.18 is not a problem and didn't know if anyone else had issue with .18, but he didn't.

J. Dargie – didn't think denial of variance would result in hardship. A lot of thought put into sign ordinance. A .18 or .36 over is not a problem and didn't see a hardship.

F. Seagroves agreed, didn't see a hardship. Thought they could conform to the ordinance. It is small dimension requested; didn't see problem there. But other one, he did see a problem.

K. Johnson said it seemed to be consensus of the board that if applicant requested removal of drive-thru pharmacy sign on the north elevation the variance would request 101.18 SF on the east elevation and 75.18 SF on the north elevation. Correct? In reviewing the five criteria, in that case, since applicant's standard signage is so close to what is called for in the ordinance, he would be comfortable saying yes to each criteria - that it is within the spirit, substantial justice would be done – because of that minor variance in size.

M. Thornton said 100 on both sides.

K. Johnson said 100 on each elevation. Grant for 100.18 SF of signage on the east and 75.18 SF signage on the north elevation. Then all five criteria would be met. The size of the building, the location – each criterion would fall within. There would be substantial justice, it would be within the spirit of the ordinance, and there would be no safety issues. Denying for that minimal amount considering location, size, would be a hardship, in his opinion.

J. Dargie agreed. Then it is .36 over what is allowed. She would change her votes. Make a motion to put that as a condition? With those criteria?

Z. Tripp – limit east to 100.18 and north to 75.18 for a total of 175.36. He could answer yes. He didn't want to require removal of the drive-thru pharmacy letters. He wanted the applicant to decide how to get to that area amount.

F. Seagroves said to say they have to meet the sq. ft. any way they want.

M. Thornton said if the modification that he was hearing is what will be proposed, he had no problem. They could say in this case it would create an unnecessary hardship.

F. Seagroves agreed with the board. If they put stipulation he has no problem saying yes to all.
K. Johnson made a motion that a condition be attached to granting of this variance granting 100.18 SF of signage on the east elevation and up to 75.18 SF signage on the north elevation.
Z. Tripp seconded.

Vote on the motion: M. Thornton – yes; J. Dargie – yes; K. Johnson – yes; Z. Tripp – yes; F. Seagroves - yes

Vote on Criteria:

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

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

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

J. Dargie - yes; K. Johnson- yes; Z. Tripp – with the special exception, yes; F. Seagrove – yes;
M. Thornton – with the stipulation, yes

Would granting the variance do substantial justice?

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

Could the variance be granted without diminishing the value of surrounding property?

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

Would denial of the variance result in unnecessary hardship?

J. Dargie – yes; K. Johnson – yes; M. Thornton – with the stipulation, yes; Z. Tripp – with the stipulation, yes; F. Seagroves – yes

K. Johnson moved that Case #2015-18a be granted with the prior approved condition.

Z. Tripp seconded.

Final Vote:

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

Case #2015-18a approved by 4 to 0 vote.

