

**Town of Milford
Zoning Board of Adjustment
September 21, 2017
Case #2017-15
Salt Creek Properties, LLC
Variance
Re-Deliberation & Re-vote**

Present: Jason Plourde, Vice Chair
Michael Thornton
Joan Dargie
Rob Costantino
Tracy Steel, Alternate
Wade Scott Campbell, Alternate
Karin Lagro, Alternate

Absent: Steven Bonczar, Chair
Robin Lunn, Zoning Administrator
Laura Dudziak, Board of Selectmen Representative

Secretary: Peg Ouellette

Salt Creek Properties, LLC, for property located at 300 Elm Street, Milford, NH, Tax Map 18, Lot 16, in the Commercial District, is seeking a Variance of the Milford Zoning Ordinances per Article VII, Section 7.06.7.G to allow two (2) monument signs not to exceed combined size of existing non-conforming monuments sign.

MINUTES APPROVED SEPTEMBER 21, 2017

J. Plourde, Vice Chair, stated that this portion of the meeting was a re-deliberation and revote only, on this case. At the original meeting he and R. Costantino were not present. Those who took part in the original meeting could participate in the discussion and the voting: M. Thornton, J. Dargie, W. Campbell, T. Steel, and K. Lagro. For this case, they were only re-deliberating and re-voting. There would be no new testimony. Intent was to provide clarification of the previous vote.

J. Plourde then turned the meeting over to M. Thornton and would remain involved for process only. M. Thornton said they were there for re-deliberation and re-vote only. No new testimony would be taken. He read the notice of hearing. Bd. went on to re-discuss the case. He asked Bd. for any further consideration from last time.

J. Dargie said they were reconsidering; it was not further information to consider. They were starting over and reconsidering the information previously presented.

J. Plourde stated the Board needed to re-deliberate as if the original deliberation did not take place.

J. Dargie said, speaking from memory, the reason they were looking at it was to give relief for the sign. She said the sign ordinance needed work. She understood why someone wanted relief from it. Applicant had said he could break the property into two lots and would not have to come before the Bd. That was giving relief. He had a lot big enough for two lots. Sign ordinance allowed it. He was taking down a large sign and putting up two smaller signs. That was reasonable, to give him relief from this requirement.

M. Thornton said at the last deliberation they considered it would be conditional upon two entrances to have two signs. So that it was incumbent on applicant to get that other entrance.

J. Dargie agreed. If the applicant did not receive the second driveway then. Otherwise it was a moot point. They put in that the two signs would be two entrances because that was what the applicant was contemplating.

T. Steel said J. Dargie explained it well. Shouldn't they discuss that it would be a hardship to break it up.

J. Dargie said that played into it. It would cost him money. Rather than making him break the property into two, you were allowing him to have two small signs at two entrances. The purpose of the ordinance was to stop large signs. It would make it a nicer entrance. She would rather see him get two, because she would like to see the large sign come down and bring the signs more into conformity

K. Lagro remembered from the original paperwork re one old sign. A warehouse business is not eligible for a sign.

J. Dargie disagreed. A warehouse needed to be identified so someone driving to drop something off would be able to find it. Somehow they don't consider a warehouse a business. She thought a warehouse should be considered a business. When people were looking to find it to drop something off or pick something up, it should be able to be located.

K. Lagro asked how many businesses along that whole stretch would have enough space. If you say if you have enough space you can have two signs.

J. Dargie said if they don't - who had enough business of that size? She forgot what the frontage was.

M. Thornton said about 295 ft.

J. Dargie said allowing a sign for 295 Ft. for the frontage. If they thought that would be too much for every business to have a sign - it was the entrance. If somebody had 1000 ft. long they would probably put two signs, one for "In" and one for "Out." Adding two entrances would create better traffic flow.

M. Thornton said greater safety with two driveways.

K. Lagro asked the original request.

W. Campbell said 75 SF?

T. Steel said 15 ft. from the ground and 7 ½ ft. wide.

W. Campbell asked for square footage.

J. Dargie said the proposed is 7 ½ ft. by 15 ft?

T. Steel agreed.

M. Thornton said current sign was 191 SF?

W. Campbell asked for what was proposed.

J. Dargie said 15 ft. by 7 ½ ft.

M. Thornton said that was for one sign. The other was not grandfathered.

J. Dargie said if the signs proposed were smaller. She thought the dimensions he gave were a little more.

T. Steel said the building was given an additional street number.

M. Thornton asked about the criteria for the spirit of the ordinance.

T. Steel said she voted yes on that.

J. Dargie said she was just talking in general discussion.

M. Thornton said granting the variance.

J. Dargie said she wasn't speaking necessarily to a specific segment of this. They were moving on to the second one. Didn't know they talked about the first one, that is, granting would not be contrary to the public interest. Didn't think so, because it would be reducing the current signage to a smaller size and as far as the public was concerned it would be more clearly identifying the two drives for the business at that location.

M. Thornton said he could be voting yes on that because the language said granting the variance would **not** be contrary to the public interest, so you would have to say yes.

J. Dargie said they weren't voting on that.

M. Thornton said he was remonstrating because when you say "no" on any of the criteria it would be a "no" in that whole application.

M. Thornton asked if they were finished talking about it. All said yes.

Re Question 2, spirit of the ordinance:

J. Dargie said because the larger sign would be reduced to two smaller signs. The spirit of the ordinance, that was one of the reasons for that.

M. Thornton said it brought it more in conformance to the ordinance.

K. Lagro asked the sq. ft. for a nonconforming sign in that district.

M. Thornton referred to page 183 of the Ordinance, Monument Sign, which stated that when freestanding signs were established back to back, the larger face shall be calculated for the purposes of determining allowable area. He understood the applicant would have the same thing on both sides of the signs.

J. Dargie said he was conforming with both signs. Previous sign was 20 ft. tall.

M. Thornton said his reading was that the maximum size was 75 sq. ft. Was that in keeping with what was requested?

J. Dargie said that was maximum area per sign where the writing is, not the maximum of the whole sign. He wasn't exceeding that. He was putting in two conforming signs.

M. Thornton asked if all agreed. Yes.

J. Dargie said anything over 15 ft. tall and over 75 sq. ft. would not be conforming.

K. Lagro said what he was originally asking for. Then during discussion it changed.

M. Thornton asked for anything else to add re spirit of the ordinance. Nothing.

Re, C., granting the ordinance doing substantial justice:

J. Dargie said substantial justice came from having two drives and the business being more visible by the signs.

M. Thornton said also reducing clutter on one sign and having two businesses there and having to go back in the middle of traffic to the other business if you only had one sign.

J. Dargie said there was no greater benefit to the public by not allowing it.

M. Thornton said it made more sense to have two.

K. Lagro said currently there was only one driveway.

M. Thornton said if he got the second drive, he gets the second sign.

T. Steel said he was waiting for Contemporary to move their cars. Where the drive would be was where their inventory of cars was.

J. Dargie said there was another issue of land – possible wetlands. If he wasn't allowed to because of the wetlands, this wasn't going to happen anyway.

M. Thornton said then it would default to one sign.

J. Dargie said there may be some other reasons why he couldn't.

W. Campbell agreed.

M. Thornton agreed. It made no sense to limit to one sign when you had two locations and two separate entrances because then you pile traffic in the one entrance.

Re D, diminishing the value of surrounding property would not be diminished:

W. Campbell didn't think it would. Would probably enhance the area with smaller signs. The abandoned sign was an eyesore.

T. Steel said it would make it more professional and revitalize the area. The abandoned sign was an eyesore.

M. Thornton said the applicant wanted to do work on the buildings that would dress up the area.

K. Lagro said it would not diminish the surrounding property values.

J. Dargie agreed.

M. Thornton said there was no way that enhancing the property would diminish adjacent properties – answer is yes.

Re E., unnecessary hardship?

M. Thornton read from the Handbook, page II-3, the first paragraph of Section 5: “The term ‘unnecessary hardship’ has caused more problems for boards of adjustment than anything else connected with zoning, possibly because the term is so general and has so many applications outside of zoning law. By its basic purpose, a zoning ordinance imposes some hardship on all property by setting lot size dimensions and allowable uses. The restrictions on one parcel are balanced by similar restrictions on other parcels in the same zone. When the hardship so imposed is shared equally by all property owners, no grounds for a variance exist. Only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed. The fact that a variance may be granted in one town does not mean that in another town on an identical fact pattern, that a different decision might not be lawfully reached by a zoning board. Even in the same town, different results may be reached with just slightly different fact patterns.”

J. Dargie said some of the unnecessary hardship was created by the sign ordinance. This was an extra large property wanting to put in a second drive. Signage should be allowed for the second drive. If you treated those as individual properties, it would be allowed in accordance with the sign ordinance. He had a lot more frontage than the minimum criteria of 250 ft. With the second driveway, traffic patterns would be a lot safer. It was an extra large property; the fact that he could turn it into two lots the sign would be allowed, told her that it was a hardship.

M. Thornton said hardship was incumbent on the property as not having two entrances, but if he kept one sign it would be bigger than they would like to allow because it was grandfathered. Hardship rested with one drive. If the other drive was there, there would be no hardship. There would be two signs allowed.

J. Dargie said if it were made into two separate lots then it would be allowed. He had one large lot and wanted another drive. Common sense would be him having another sign would help people know where they are going.

M. Thornton said they were giving him permission to put two signs in where there was only one allowed because of the length and character of the property. He agreed.

K. Lagro didn't think there was unnecessary hardship. In this case it goes to who has to follow the rules and why. All businesses have to follow that and all suffer the same hardship, which in essence cancelled that out. The old sign was grandfathered under nonconforming, but because it had been vacant and the main part of the structure of the sign was missing, it would have lost its grandfathered status.

M. Thornton agreed, but consideration during our other deliberations was that we don't have enforcement of the sign ordinance, so that there was no way to know when it was vacant and when the timeline started or to know when a year had lapsed.

K. Lagro referred to a picture in 2013 attached to the application package showing the empty sign.

M. Thornton said they could deduce the building was empty at that time, but they couldn't prove that something didn't go up in the interim and then came down again. That was because we didn't have a sign officer to prove it. The Town is working on getting someone to go around and notice the signs and put people on notice to bring the signs into conformance.

J. Dargie agreed and said the sign officer would put people on notice about signs.

T. Steel said they were in agreement it would be hardship if he had to separate the property just to get a second sign. That was how she interpreted it the first time. They also had added that he had to have that second drive.

Others agreed that the second sign was contingent on the second driveway as this would satisfy the unnecessary hardship.

W. Campbell had no further comment.

M. Thornton asked if they had to vote on the contingency. Because that would have to be approved before they could approve a variance.

J. Dargie said that was part of making a motion. At the end the motion for approval is contingent upon the second drive. That is what he presented.

J. Plourde said any vote they make, they want to be specific on contingencies and conditions – a drive, an extra drive, the size of the sign. At the previous meeting, the size of the sign changed.

J. Dargie said that was in the application. 15 x 7 ½ was in the application – no change.

J. Plourde said to make sure conditions were conditional upon what he requested. Be specific.

M. Thornton asked the size of what he was asking

J. Dargie said 15 ft. x 7 ½ ft. sign. Amount of signage 10 ft. x 7 ½ ft. height which led to 75 ft. He didn't change that. In that plan is the second drive. She thought they were approving his plan as presented. If second drive didn't happen, then she wasn't sure what would happen.

J. Plourde said that they would put the second sign is the contingent upon the second driveway. In the past they have overlooked things like that. Safer to vote on specifics.

J. Dargie said in the motion. In other cases they put condition on it. In this one they have to say it is in the plan as presented.

M. Thornton said with no motion they were looking at the plan presented that included 7 ½ ft. x 15 ft. with sign being 7 ½ ft. x 10 ft.

J. Dargie said, as presented.

M. Thornton said, as presented.

J. Plourde said as long as that has been discussed and everyone was in agreement with the second sign associated with the second driveway, then that is part of the record. They want to make sure that everyone is aware of this contingency during the vote on the criteria.

M. Thornton asked if they were ready to vote. Yes.

VOTE:

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

W. Campbell – yes; K. Lagro – yes; J. Dargie – yes; T. Steel – yes; M. Thornton – yes

2. Would granting the variance observe the spirit of the ordinance?

J. Dargie – yes; W. Campbell – yes; T. Steel – yes; K. Lagro – no; M. Thornton – no

3. Would granting the variance do substantial justice?

K. Lagro – no; T. Steel – yes; J. Dargie – yes; W. Campbell- yes; M. Thornton – yes

4. Would granting the variance not diminish the value of surrounding properties?

W. Campbell – yes; K. Lagro – yes; T. Steel – yes; J. Dargie – yes; M. Thornton – yes

5. Would denial of the variance result in unnecessary hardship?

J. Dargie – yes; K. Lagro – no; W. Campbell – yes; T. Steel –yes; M. Thornton – yes

M. Thornton stated that by acclamation , with 2 no votes and 3 yes votes, this application was approved. He mentioned the 30-day appeal period in which somebody could file an appeal on their decision. This case was approved by 3 to 2 vote.

M. Thornton turned the meeting back over to J. Plourde, Vice Chair.

J. Plourde asked if any other business. None.

J. Dargie moved to adjourn.

M. Thornton seconded.

All in favor.

Meeting adjourned at 7:45 p.m.

Zoning Board then held a brief work session until 8:15 p.m.