

**Town of Milford
Zoning Board of Adjustment
July 20, 2017
Case #2017-15
Salt Creek Properties, LLC
Variance**

Present: Michael Thornton
Joan Dargie
Tracy Steel, Alternate
Wade Scott Campbell, Alternate
Karin Lagro, Alternate
Robin Lunn, Zoning Administrator

Absent: Steven Bonczar, Chair
Jason Plourde, Vice Chair
Rob Costantino
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 APPROVES SEPTEMBER 21, 2017

MICHAEL Thornton, Acting Chair, opened the meeting and introduced the Board members. Tracy Dean Steel, Wade Scott Campbell and Karin Lagro were seated as alternates by acclamation. M. Thornton introduced the Board members and informed all of the procedures of the Board. Board members agreed to table Approval of Minutes to the next regularly scheduled meeting, since there were not enough members currently present who attended the previous meeting.

M. Thornton read the notice of hearing into the record and asked the applicant to state what he planned to do. Steven Desmarais of Salt Creek Properties, LLC, came forward. He gave a history of the property, now known as 300 and 308 Elm St. In summary, the property was Milford Lumber since 1950's. Over time the company built different buildings. Currently two buildings. Building on left is currently used by Tech Transport, which is freight forwarding and logistics. Building on right is Good Mojo Dog daycare which has a training center in that smaller building. Small building in back which is Peneil Environmental storage. When original remodeled, intent was to have a sign that said 300 Elm Street. The Fire Dept. had a rule that they had to have two numbers for two separate buildings. That was what prompted having two signs.

Wanted to have 300 Elm have a big number. Thought it would identify his property. When Milford Lumber operated in the 70's and 80's and maybe the 90's there were two entrances – one on the right and one on the left. At some point they closed one on the right by excavating a 1 ft. low ditch right on the road and put in a fence on the right side and guard shack on the left to prevent stealing of lumber. He asked the town if he could open the other drive and the said he would have to have approval of road agent. The road agent was fine with it, but some things needed to open the right drive so the right building could use the right and the left building the left. Would like to have a sign for the right building and another for the left drive.

Currently has a sign 19 ft. high x 9 ft. wide. It was ugly and out of character, out of proportion. They spent a huge amount of money on the buildings, one of which was falling down. Reason for separate drives and separate signs was because they were pretty different businesses. Although not necessary; he could survive if not allowed. People coming in to dog daycare come in and are amongst parking for the transport business and they go around to the back and then across to where that entrance is. He would prefer it the other way. That was the plan and the reason he wanted to do this. He believed it was reasonable because the lot is 4 ½ acres and could be subdivided, but they intend to own the property for a long time and rent to them; and if they move on, to rent to someone else. He would like, at some point, to expand the building on the right – 4 ½ acres of land, so he could have a substantially bigger building there. Elm Street Corridor and Nashua Street supposed to be cleaning things up. He drives up the street and doesn't think signs are pretty. Wanted to make two signs instead of one big ugly sign.

J. Dargie asked the distance between the drives.

S. Desmarais said a total frontage of 308 ft., so roughly 150 to 200 ft from drive to drive.

J. Dargie asked if they were not at the end.

S. Desmarais said no. He didn't do an engineering survey because of the expense.

J. Dargie had concern in not knowing exactly. Referred to drawing not being exactly what the signs would look like. Concern would be sight distance for people leaving.

S. Desmarais said it wouldn't interfere. You had to have your sign on your own property – it was 15 ft, a full car back. Sign presently on the lot was not even close. Right of way was very wide. He said the dotted line was the pavement. As it was currently, the sign could not be further toward the road. A car exiting would be forward of that to look.

J. Dargie asked if there was a little bit of elevation on the sign.

S. Desmarais said he proposed it not to be bigger, divided by two, than what was there. Didn't want a massive sign. Wanted there to be a good looking sign for each business. The objective was he would like them to be separate so that traffic flow worked better for what they had looking at left side of the site plan. On the left side of building, only 24 ft. wide. For a road in the town of Milford the spec was 24 ft. wide. It feels like a pinch point going around that building. The dog people were not very observant drivers. Not a problem for him, but a lot of kids work there. It seemed to have a pinch point there. Mojo University clients were typically there from 3 p.m. to 8 p.m. and tech transport from 6 a.m. to 5 p.m. so they don't overlap. Not saying it was a train wreck, but could be better. He was waiting for Contemporary to get their vehicles out of there.

J. Dargie said whatever they approve, they were going by what he was putting there.

S. Desmarais said not what the sign ordinance allowed. Didn't think it was appropriate sign on that road. He said it was 19 ft. high and 9 ft. wide. Ordinance allowed 75 SF per? Was that correct –in the Commercial District?

R. Lunn said one monument sign.

S. Desmarais said he was requesting variance for two monuments signs. If they said they want them smaller. What had been there was 19 ft. x 9 ft.

M. Thornton asked if the transport building engaged in business from that location.

S. Desmarais said it was office only. They didn't have trucks. It was all forwarding and logistics. All office function.

M. Thornton said, if his reading of the ordinance was correct, that was a problem for that particular operation because the ordinance said "business."

R Lunn said it was a business.

M. Thornton said they would be able to have a sign.

R. Lunn said yes.

M. Thornton was reading it as retail.

J. Dargie asked about lighting.

S. Desmarais said there will be lighting of some kind. Was she asking internally? He didn't know. He listened to that argument in Amherst for 40 years. Some internally lit are less of eyesores than externally lit with lights out of control. Also, a lot of time not as many lumens because signing intense light to make it visible.

J. Dargie said a backlit sign vs. a scrolling sign like MacDonald's.

S. Desmarais said those were really obtrusive.

M. Thornton asked about materials to be used.

S. Desmarais said the frame will be ASIX, a brand of plastic wood. Sign will be classic sign with plastic panels they write numbers on. Would be consistent with whatever.

M. Thornton asked if he wanted each sign to be 37 ½ SF.

S. Desmarais said 75 SF.

M. Thornton asked, not 75 each?

S. Desmarais said yes, 75 SF.

W. Campbell assumed both signs would match each other.

S. Desmarais said yes.

M. Thornton asked board members if there were any other issues.

K. Lagro said she drove down there and back and there were a lot of instances with one lot and multiple businesses. The main thing was the number for the building?

S. Desmarais said that started the whole thing. They owned the building for 3 years and thought he could identify it with a larger number. If they don't want it, that was fine. Logic was to have this entrance with traffic. They changed the number on him. It used to be 300 Elm St., with Units 1, 2 & 3. Fire Dept. renumbered the building # 308 which started the whole thing. He could subdivide the lot on the right side. Had 300 ft. of frontage and 4 ½ acres to have a monument sign. Didn't intend to do that but may later on. Site plan showed Milford Lumber building in back and intent was to build it twice as large – reason why 25 ft. high with no windows and doors, because that was supposed to be inside a bigger building. They may build a bigger building some day. Thinking about it, but not there yet.

J. Dargie asked, if they don't do the two, then he would use the 19 ft. total, or take that one down?

S. Desmarais said he would take it down and small one and have small one there.

J Dargie asked if he will have to have 15 ft?

S. Desmarais said who knew what would be there in ten years. Originally thought the warehouse would be subdivided into three for their use and Mojo wanted to use it.

J. Dargie asked if he had gone to each of those and figured out how that 15 ft. will be sitting back and forth, or just decide this was what he had.

S. Desmarais said if you looked at the directory sign there were three businesses. 25 SF was not a gigantic sign.

J. Dargie asked, just markings on the monument sign and not on the building?

S. Desmarais was assuming they wanted it on the building, too. Tenants would want to do what the town wants. Wants businesses to be successful. Making the building look better makes the road look better.

J. Dargie asked about lit up signs on the building. Didn't feel they really needed that. If it was just a regular sign with no colored letters, etc. The ordinance was there because things were out of control with flashing blue signs that are bright at night. If he was breaking it up into two, it may not end up that big.

S. Desmarais said unless there was objection, he thought the scale was reasonable. Driving up the road you could see the ones before and after the ordinance. The ones after the ordinance were reasonable scale. It was a mixed bag. Some are good looking and some aren't. He wants to have two good ones.

M. Thornton said he received paperwork on two monument signs not to exceed combined size of the existing. That was saying 37 1/2 for each.

S. Desmarais said existing was 9 x 19.

M. Thornton said he wants two with size of existing?

S. Desmarais said none had that. Current sign is big.

J. Dargie said 171 ft.

S. Desmarais said issue being, if you looked at the drawing, if he had the numbers 300 and 308 which was what he wanted in the beginning, that was subtracted from what the tenant wants for a sign. If he had three businesses they would have a 2 x 8 signs. Both sides could easily be three or four businesses. He could build 50,000 SF and would have to have parking spaces, etc.

M. Thornton said the application had no answer to the question, "If the variance were granted the spirit of the ordinance would be observed, because:"

S. Desmarais said because it was the same as the one above. The way he understood the law was that you had to prove that it didn't conflict with intent of the ordinance, and the intent was having the character of the neighborhood upheld. It didn't threaten health, safety or welfare.

M. Thornton said it was a good answer to #4. To put a better sign than what was there. On #5, unnecessary hardship - that was to go directly with the land and buildings. What would be the hardship?

S. Desmarais said he assumed he would have two entrances. Won't do it if not two entrances. Hardship was that the traffic pattern around the left side of the building was the logical for him. Was thinking about doing this in the first place. No other parcel similar to those. Memo says so. 4 out of 100 isn't all of them. He has a pinch point around the left that one tenant has concern about traffic from the other tenant. He started this to solve that problem. If that wasn't hardship, he will keep the sign and the entrance.

K. Lagro pointed out on site plan and asked if Mojo people could use that entrance.

D. Desmarais referred to little one in the second to last one. Pointed out entrance and that they would go between cars. That is not paved or lighted and where Contemporary was still parking their inventory.

T. Steel said they can't go in there.

S. Desmarais said they could but have to go between all those cars. You could do that. You could go in the front and in the back. It would be better if they can come in on their own side. Still will be able to go in either way.

M. Thornton asked about the building to the rear.

S. Desmarais said they store stuff there. They do remediation work. Has one trailer truck to put stuff in which comes once or twice a week.

M. Thornton said they [business in rear] really didn't need a sign.

S. Desmarais said they may want one.

M. Thornton said the ordinance was written for businesses. According to his reading, if they weren't doing business out of that building it didn't warrant a sign. He asked for any other questions.

J. Dargie said now having more information. The other four businesses were similar. Did they have multiple businesses?

R. Lunn said other businesses in that part of Elm were both multi-business and multi-building with enough frontage to subdivide. All similar to this parcel. Was his warehouse building numbered individually as well?

S. Desmarais said they never brought it up.

J. Dargie asked what it was now. Unit #300?

S. Desmarais said they didn't talk about it. Didn't know why. It was just a warehouse.

J. Dargie asked if it was because of engineering or other that he couldn't get that other driveway.

S. Desmarais said he wanted to do it.

J. Dargie asked, one large one?

S. Desmarais said yes. Reducing it to make it look good.

J. Dargie said if you looked at it breaking it into two. With a couple of businesses it was hard to have enough signage to be seen.

R. Lunn asked if that was question for deliberation.

J. Dargie said it was. She would wait for that.

M. Thornton asked if anybody in audience wanted to comment. None. Before closing public comment he asked if any abutters were present.

David Hammer of 320 Elm Street Realty, PO Box 238, Milford, NH said he supported it. He owned the property, and it would open up that whole area.

There were no other comments, so M. Thornton closed the public comment portion of the hearing and proceeded to deliberation.

J. Dargie said she would rather see two conforming signs than one. 9 x 19 sign was much more obstructive than two small ones. That was where she was leaning.

K. Lagro said it was grandfathered nonconforming but it had nothing on it.

R. Lunn said size of the sign was there but no content on it. Asked Board members to read definition of Abandoned Sign in Sec. 7.06.3 of the ordinance.

K. Lagro said it should have been removed after a year. Did that still make it grandfathered sign? In which case he would be back to a conforming sign.

M. Thornton didn't think they were talking about a nonconforming sign.

K. Lagro referred to J. Dargie's comment that she would rather see two small conforming ones.

J. Dargie said unless you had two lots.

K. Lagro said yes. You could have two small monuments.

R. Lunn said only one monument sign per lot.

M. Thornton said that meant 75 ft per sign.

R. Lunn said regulations allowed one monument sign per lot regardless how many driveways.

M. Thornton asked if that was limited to 75 ft of display area

R. Lunn said yes.

J. Dargie felt that wasn't much for a lot that size. When you are driving someplace you have never been, it was kind of nice to have it well marked. It is sort of a distraction when you can't find it.

M. Thornton agreed. At 222 Elm there were several businesses. He used to have a business there. The monument sign was maxed out; he couldn't have a sign. He lost the business.

R. Lunn said they had calculations mapped out. They might disagree with the regulations but that was what they had to act on. Then there were the criteria and asking if the applicant proved the criteria.

M. Thornton said, so making it one monument sign per lot.

R. Lunn referred them to page 199 of the ordinance regulations re the dimensions for each district.

M. Thornton said zoning district was Commercial, so no problem there.

T. Steel asked about other requests.

R. Lunn said this was the only request she was aware of. After they read the regulations, talk through the criteria.

M. Thornton said one sign versus two. That was pretty straightforward.

J. Dargie said when they get to hardship.

M. Thornton asked if that hardship was for the owner or directed at the land. Hardship is supposed to go to the land. He completely agreed with the applicant in some of the responses but it still didn't address one lot, one sign. He referred to response to Section I, #5 A ii in the application, saying he didn't see how that was responsive in explaining unnecessary hardship.

J. Dargie said it could be that he will have to make two lots.

M. Thornton said it almost sounded like two lots was the way to go.

J. Dargie asked why make someone go to the expense in order to have two signs? As long as the sign wasn't obtrusive. It was actually in the sign ordinance. Are you putting a burden on people? What if someone had a 20 acre lot with 800 ft. frontage with multiple businesses and didn't want to break it up?

M. Thornton said you could have a monument sign like 228 Elm with businesses represented on placard because it was all one lot.

J. Dargie commented they all had big signs.

K. Lagro said the address wasn't considered part of the sign.

M. Thornton agreed. It was only the display area. The numbers could be legible from a distance within reason. He didn't see the ordinance addressing that at all.

R. Lunn said it couldn't be smaller than 4 inches.

M. Thornton was talking maximum. Didn't think they would want something totally out of scale. Legible but within reason.

M. Thornton asked for discussion of spirit of the ordinance.

J. Dargie said it could be allowed and be within the spirit of the ordinance.

M. Thornton said they should allow it.

J. Dargie meant spirit of the ordinance if it was allowed. It was to reduce sizes of signs. Not to limit people from advertising their business.

M. Thornton said it was to reduce signage clutter. Reduce the number of signs so that people weren't hit with sign after sign after sign.

J. Dargie said also the size.

T. Steel said she drives that area. Didn't think there was that much signage.

W. Campbell said not in this size.

T. Steel didn't think it would take away from, having two smaller signs.

M. Thornton asked if allowing it would do substantial justice.

J. Dargie said if you allowed two signs, would the public gain be greater than hardship to the applicant? Didn't think allow the sign would be a problem for the public.

T. Steel said it helps Good Mojo advertise their business; it was tucked way in the back. When she drove by there, she turned around to see it.

M. Thornton said currently there was nothing.

T. Steel said there was a banner.

M. Thornton said they knew that wasn't adequate for long term.

K. Lagro mentioned driveways.

J. Dargie said if he could get two driveways he would do two signs. He didn't have any reason if he didn't have two driveways.

T. Steel asked if they could make the second driveway contingent on getting the second sign.

M. Thornton agreed. If they want to make a contingency, a motion was required.

J. Dargie asked if they should complete their deliberations first.

M. Thornton suggested writing it but not voting on it, talk some more.

R. Lunn said it went with the property and not the owner. Whatever condition, it must be in writing. Can't make an assumption.

T. Steel asked if she should make a motion.

M. Thornton said they should talk things out.

K. Lagro said based on a second driveway.

J. Dargie said if they approved, it would only be approved on condition of two driveways.

M. Thornton suggested wording like, upon condition of two driveways or driveways for two businesses.

T. Steel asked about possibility of a third business in there.

J. Dargie said it should be based on the driveway.

M. Thornton said they were talking about driveways for 300 Elm and 308 Elm.

R. Lunn asked if they wanted to talk about a second drive being approved. Make sure there was distinction between an approved drive and a theoretical drive.

T. Steel & M. Thornton said, based on approval –approved on condition of the approval and construction of a second driveway.

M. Thornton asked if there were any other conditions.

T. Steel couldn't think of any.

R. Lunn asked if they were comfortable with size.

M. Thornton said wasn't. Didn't think the two 75 ft. signs were what they were asking. If he read it correctly, the request was for two monument signs not to exceed the size of the existing sign. J. Dargie said that didn't exist. M. Thornton said 37 ½ SF each.

J. Dargie said because the existing was 174 SF, so half of that would be 87.

K. Lagro said it was 171 SF.

M. Thornton said looking at ordinance, under monument signs in C, it said maximum area per sign was 75 SF.

J. Dargie agreed.

M. Thornton said the point was the other sign – it was grandfathered so the size was conditioned by whether that grandfathering was still in place. Was it one year or two?

R. Lunn referred to the ordinance Sec VII, 7.06.3.

M. Thornton read the section re definition of abandoned signs and the section re Free Standing or Monument Signs. They were discussing abandoned signs. He asked where it talked about time.

K. Lagro read from 7.06.6, under d. re removal. She didn't know if just the frame of the sign would be enough to avoid that.

M. Thornton thought it had to have content.

J. Dargie was reading that it didn't state that. She questioned when the picture was taken. The town didn't have an inspector for signs. If they did it for one they would have to do it on all. You would have to go out and put everybody on notice. She has same issue with dog licenses. Nobody to go out and put people on notice about them, so she can't issue fines.

R. Lunn said qualification was the interpretation of the current standing regulation allowing 365 days for a nonconforming sign to be restored to maintain its nonconformity. It was her job to enforce the sign regulations which she was currently working through.

J. Dargie questioned who was designating when that 365 days started.

W. Campbell said when 50% was damaged.

J. Dargie said if notice was given saying this sign was not in use and damaged then people know what the regulation is.

M. Thornton said it was on them to establish when it became abandoned.

J. Dargie said they had had the same issue on another case. M. Thornton remembered that.

J. Dargie said it was hard to determine, the abandoned part aside.

M. Thornton said that would go to grandfather status and allowing two 75 SF signs where you can't allow one. If they were to do it, it would make two 37 ½ SF signs. Taking half the size of the current frame of what the sign used to be, as he understood it, the ordinance, it would be 15 ft.

J. Dargie said the ordinance stated you could only have one monument sign. It didn't allow two at 37 ½.

M. Thornton agreed. If there were two lots he could put two 75SF signs with no problem.

J. Dargie asked if there was hardship if he didn't want to make two lots.

M. Thornton said hardship went to the property.

K. Lagro said there was always a hardship in zoning and what made it fair was that all properties shared the hardship with zoning. If all equally applied, there was no hardship. It was hard to make it without additional hardship.

M. Thornton asked W. Campbell if he had any comment.

W. Campbell said all was pretty much covered.

J. Dargie said the property was unique in that it was larger.

M. Thornton asked if there were any other conditions that encumbered what applicant was trying to do.

R. Lunn restated the condition that the second sign be conditioned on the second driveway.

They wanted a second driveway to be approved and constructed before a second sign could go up?

Others agreed.

M. Thornton said they had to vote on that first. R. Lunn had that the second sign was conditioned on the approval and construction of a second entrance in front of 308 Elm St so that specific entrance will be reasonable, with sign to be somewhere nearby. Any other conditions?

M. Thornton said they were voting on the condition that a second sign was conditioned on approval and construction of a second entrance in front of 308 Elm Street.

J. Dargie made motion.

T. Steel seconded.

All in favor. Motion passed.

M. Thornton then proceeded to the vote on the criteria for a variance.

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

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

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

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

3. Would granting the variance do substantial justice?

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

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

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

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

M. Thornton asked for motion to approve Case #2017-15 for a Variance, request for a variance of the Milford Zoning Ordinance per Article VII, Section 7.06.7.G to allow two monument signs not to exceed combined size of existing non-conforming monument sign at 300 Elm Street, Milford, NH, Tax Map 18, Lot 16 in the Commercial district, with the condition.

J. Dargie made motion to **approve** Case #2017-15 as conditioned.

T. Steel seconded the motion.

Final Vote: Yes vote was to approve

J. Dargie – yes

W. Campbell – yes

T. Steel – yes

L. Lagro – no

M. Thornton – no

Case # 2017-15 was approved by 3 to 2 vote.

M. Thornton informed applicant of approval, with the second sign conditioned on approval and construction of the second entrance in front of 308 Elm St. He reminded applicant of the 30-day appeal period.