

**Town of Milford
Zoning Board of Adjustment
December 1, 2016
Case #2016-28
Variance
NH Signs**

Present: Michael Thornton, Vice Chair
Joan Dargie
Jason Plourde
Steven Bonczar
Tracy Steel
Robin Lunn, Zoning Administrator

Absent: Kevin Johnson, Chair
Rob Costantino
Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

Case #2016-28

NH Signs, for property located at 603 Nashua Street, Milford, NH, Tax Map 44, Lot 10, in the Integrated Commercial-Industrial (ICI) district, is seeking a Variance per the Milford Zoning Ordinances Article VII, Section 07.06.D & E to allow an Awning Sign in excess of the maximum square footage allowed at an existing multi-use shopping plaza complex.

APPROVED MINUTES 12/15/16

M. Thornton, acting as Chair, opened the meeting and introduced the Board members. He informed all of the procedures of the Board. He introduced members of the Board.

M. Thornton the applicants forward to present the case.

Cliff Conti for NH Signs and Dr. Kevin Chauvette for Merrimack Vision Care came forward.

C. Conti said plan was to add graphic to the existing awning. Building faces away (from street). Want to add small square ft to the existing awning. Business served people from all around the area. There were medical personnel Located in large Open State plaza. He pointed to part of building in the left corner away from road.

M. Thornton said by St. Mary's Bank.

C. Conti said on the other side.

K. Chauvette said heading east on Rt 101 you can't see it. Trying to put lettering on sign to be seen. Had some issues with patients calling on their cell phones asking where they were. Had tracked it for the last months and half the number of patients who go into wrong door. Seventy percent don't see it as an entrance to the business. They enter through the back door. Business put up a sign and locked the door;

people were knocking and peeking in and thought the business was closed. He thought it was because as they are driving on Rt 101A they aren't seeing this as the front of the building. Asking for additional 15 SF.

C. Conti had distances from GIS. 50 ft was closest point of the building. 300 ft from the ramp About 300 ft from part of Nashua St. Closest you could get to the building was approx 50 ft., at St. Mary's Bank.

K. Chauvette said they weren't talking about putting up any other structure. Intend to have face perpendicular to the traffic from Rt 101A. To keep it under the square footage they had to leave graphics off. Coming back now so they could put them back on.

C. Conti said corridor district said entrances should be clearly defined. Instead of putting flat sign on the wall they put awning. Because of where building is facing, you have to turn sideways to see it. A little bit of identification will tell people to come all the way around. Just adding the awning so people would know and see it. Everywhere else in the plaza was pretty straightforward. You have to go around the building to their entrance. Tried to balance aesthetics.

M. Thornton asked, on one side? That was included in SF for each side?

C. Conti said on both sides, and yes.

S. Bonczar asked if off ramp on right side.

M. Thornton said as you look at it, it was on the left side.

K. Chauvette said yes. Calculating SF total, thought they allowed for what he considered a corner lot, frontage on 101A and left side looking at building was along off ramp. That wasn't considered when they calculated the frontage they were allowed to have. It was limited by just the front facing 101A and not the side of the building.

C. Conti said they were allowed to split the signage so they put individual letters on the side. They have all frontage around two sides. They wouldn't be allowed to put a sign on St. Mary's. Was discussed before but not viable. Don't want a projecting sign. They already have awnings. Will be nice aesthetic.

M. Thornton said it would have been nice to know that before front one went up because that used up 50 percent allowed.

C. Conti said this was the side. Otherwise no identity on that side. A simple aesthetic for identity on the side. Awning is angled.

M. Thornton asked for questions from Bd.

S. Bonczar said right now – though he doesn't pay attention to the building – there is no sign on the building and those awnings are there?

C. Conti said there was a sign on the other side.

S. Bonczar said side facing the road the sign is on that awning on the side?

C. Conti said the photo he was looking showed what was currently there.

S. Bonczar was not sure what they were trying to solve. What would be solved by putting a sign on there? People will think this was the back of the building and not the front. Will still have people knocking on what they consider the back. That was side where you come into the parking lot. When you pull into the parking lot people will think this was the front of the building and will continue to knock on that door whether they put up a sign or not.

T. Steel asked if door in the back was solid. It didn't look like an entrance.

C. Conti said yes.

K. Chauvette said there were two doors. A solid one and a windowed door.

T. Steel said she goes to St. Mary's and drives by it all the time.

K. Chauvette said two problems. One was identifying the front with signage and other was gaining visibility for bulk of traffic heading east on 101A. Can't see it until almost past it and turning 90 degrees to the right. Would solve people calling from their cells saying they can't find it.

S. Bonczar mentioned the sign on the pedestal.

K. Chauvette said there was one there.

C. Conti said trying to address the entrance. This was the least invasive option. Just putting 7 SF on each side would allow what a project sign does- a passive view - as you are driving by, if you glanced

you'd be able to see that was the entrance. When you go into the plaza you go all around. The corridor encourages canopies and signs to be readable. Fits into what ordinance is trying to achieve in that area. J. Plourde asked Robin to provide clarification. One of the points applicant brought up was that the 101 westbound ramp was not considered as far as frontage calculations. Was that accurate? Or should they be considering that if they did consider 101 ramp they would not be in front of the Bd?

R. Lunn said that was true.

J. Plourde asked whether road frontage meant you had to have legal access to it. Or just about it?

R. Lunn said she couldn't answer that.

J. Dargie asked how far away the ramp was.

C. Conti said 203 ft from the closest – not ramp itself but the borders of the property to the line, 213 ft. Building about 65 ft. This will give a little bit of identity. Simplest way is to get a little graphic on the side. They angled the awning when designing it. Relief they were seeking is the awning. Not looking to change the code. Disadvantage because frontage is not where entrance is. They took over both previous units. There was a hair salon.

R. Lunn read definition of frontage: "The continuous portion of a lot bordering on roads from which access can be taken." Which was why a ramp was not considered frontage. You can't take access from that road.

M. Thornton said that precluded taking that side into calculations as part of the sign.

K. Chauvette asked if there had to be access, or potential access?

J. Plourde said potential access.

R. Lunn repeated "from which access can be taken."

C. Conti said access could be taken from inside the plaza.

J. Plourde said those weren't public roadways. There was an easement for the signal to the drive for certain portion. Maybe 10 or 20 ft. beyond right of way. Internal road was under private ownership.

M. Thornton asked about a small sign at the bottom of the awning at that entrance.

C. Conti said they wanted people looking for Merrimack Vision to be able to see them. They talked about that but want them to see that identity. In turning decision they would be able to see that and awnings were the simplest way. Added to the two awnings for balance.

J. Plourde asked if limited to 50 percent, what linear measure.

M. Thornton said 75 percent of store front linear measure or maximum of 50 SF, whichever is less.

J. Dargie said there was calculation in the Subway case about how far off the road they were?

M. Thornton said they had that with Tasty Tobacco, also.

J. Dargie asked if that had been calculated.

R. Lunn said yes.

J. Dargie said they're not that far off the road, then. R. Lunn said no.

J. Plourde said M. Thornton was reading about the 75 percent. Comments and questions between J. Plourde and M. Thornton.

R. Lunn said they were at maximum now.

J. Plourde said with two additional signs they would be over by 15 SF.

M. Thornton asked if any other questions. None. He asked applicant to read application into the record.

C. Conti re-stated application a bit:

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

Area is relatively populated with signs. This is use of an existing awning adding a minimal 7 ½ ft. on each side. Graphic is simple; helps identify the store. Doesn't change nature of the neighborhood, doesn't threaten public health or safety. Character of neighborhood is such that there are signs. Not in residential zone or historic district where awning would create clutter. Believed public rights would not be affected.

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

Sign code states that the purpose of sign regulations is to encourage effective use of signs as means of communication in the Town, retain the Town's ability to attract and encourage economic

development and growth. He mentioned that Dr. Chauvette helped the woman who had the business; she was now working for him. He made the eyeglass studio into a better economic business. Town wants to attract and improve economic growth. Improve pedestrian and traffic safety. Promote safety of the traveling public. Protect existing property values in residential and nonresidential areas. In this case the sign represents a partial use of existing legal on-premise awning to clarify direction. Somewhat of a directional approach; awning shaped to get a straight on passive view of the entrance. Unique location. This was designed to be aesthetically nice for entrance and promote corridor's intent that entrances should be clearly identified. Promotes traffic safety since people will see in advance the need to go all the way around to find entrance. Not business where people are going there every day. People visit once every six months or year. Need to attract first-time customers, or to know he has other locations. Much business conducted at night or in winter. Not adding structure.

M. Thornton asked if any lighting on it.

C. Conti said there was. Rest of awning is opaque. Just lights straight down for traffic and pedestrians and where graphics are.

3. Granting the variance would do substantial justice because:

Substantial justice would be done to the property owner by granting variance because, as stated, management has found the people need to see that this is an entrance. Have done everything they can up to now to make that happen. Additional graphics would attempt to rectify situation. They rely on certain volume of traffic so people coming from the ramp can see it. Now they cannot until they are by it. Same thing coming westbound. This is simple passive view. Not a lot of other options except to ask for another sign. Everything is there; just want to make it more visible. Because of situation of corner, believe it is hardship of facing the wrong way.

4. Granting the variance would not diminish the value of surrounding properties because:

Simple lettering on awning. No increase in size or lighting. No glare or blocking view of neighboring businesses. Can't change anything except adding graphic. Not adding more than what is already allowed.

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:

The business relies on traffic volume. Visitors can be unfamiliar with area, having seen ad in the paper or heard about it. Can only see entrance from one direction. Found this would be necessary. Traffic pattern from 101 ramp and from other direction is little hardship because you can't get signage facing that way. This was simplest solution.

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

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, and a Variance is therefore necessary to enable a reasonable use of it:

M. Thornton asked about making the rear door a profit center, if people are going to come in there, make to his benefit.

K. Chauvette said they set it up in certain way inside and would be quite costly.

S. Bonczar disagreed with response to #3. Didn't think it was only option. Also troubling with what hardship would be. In fact, ordinance allows X number of square feet for signage. They have chosen to use it in such a way that limits options of signage on the side. They chose to put all square footage in one place. He didn't think this would solve the problem of people going to back. A billboard probably wouldn't make a difference.

K. Chauvette said hardship was the angle of the building so that sign faces away and doesn't face the road. In trying to decide sign when he took over the business he talked with NH Signs and talked about a projecting sign that would stick out from building. He thought it would look shoddy. Thought this was more appealing. After all, they figured they needed visibility in the back, so put one in the back.

M. Thornton asked how big the sign on back was.

C. Conti said 100 SF allowed so they broke it up.

K. Chauvette said it was split 30 Ft in back and 70 in front.

C. Conti pointed out part not considered to be frontage. He had unique situation. Going into plaza the awning gave a little angled view.

J. Dargie said it was difficult to see heading east and west. It was same thing for the salon there before. Difficult to see for them as well. One thing discussed on another business in area that came before the Bd. was to improve traffic flow and avoid dangerous situations with people driving up and down looking for it. Allowing awnings will allow vehicles to see it a lot more easily. Part of the relief is to give relief so people can see them. They have relief from road to see them from the plaza. But also giving relief if the building is situated in a certain way. They can't put it on St. Mary's. At the end people would see it from on-ramp. But she felt they wanted people to see it traveling east and west on 101A. That was part of giving relief in the ordinance. Have done it in past. It was nonresidential area where signs allowed.

McDonald's has a spinning sign. Not allowing flashing light or anything. Is it off when business closed?

K. Chauvette said yes.

J. Dargie said one of the things they have been asking is that it be off when business not open.

S. Bonczar still didn't see hardship. Applicants chose to spend all their square feet on the front sign.

K. Chauvette said they wanted to put a sign above St. Mary's wall facing traffic but difficult to get St. Mary's to allow sign on their building and owner of complex would not agree. One of the first things considered. Cliff came to him with awning idea which he liked better. The signs are there and money spent on them so feel relief they are asking for 7 1/2 ft on each side was reasonable.

C. Conti said they had to get the store open and took what was allowed, broke it up and put them up and drove by many times. It would have held up getting the store open. Was question whether they could get three at the same time.

M. Thornton asked if any more question from Bd. None.

M. Thornton opened meeting for public comment. None. He closed public portion of the meeting and proceeded to discussion of criteria:

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

J. Plourde – would not be contrary to public interest

S. Bonczar – agreed it would not be contrary, based on definition that it must not unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance.

J. Dargie agreed.

T. Steel agreed.

M. Thornton agreed it was not contrary to the public interest.

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

S. Bonczar – no. Ordinance gives adequate amount of sq. ft. for signage in the district. As he stated, applicant has chosen to use that in certain manner that now doesn't allow him to do what he wants to do. Giving him that would violate spirit of the ordinance.

J. Dargie disagreed. Granting it would observe the spirit of the ordinance. Building is at odd angle. Even if they had taken into consideration where they wanted to utilize, they were limited. Most people have flat signs on building. They did awning. Thought of

putting on side of the awning came after. They don't have a side. They could not have put it on that side. She thought spirit of the ordinance was observed by granting.

T. Steel agreed with Joan.

J. Plourde read from the Handbook, which was revised Nov. 2016 re spirit of the ordinance is observed. *"In general, the provisions must promote the health, safety or general welfare of the community. They do this by lessening congestion in the streets, securing safety from fires, panic and other dangers, and providing for adequate light and air. In deciding whether or not a variance will violate the spirit and intent of the ordinance the Board of Adjustment must determine the legal purpose the ordinance serves and the reason it was enacted."* In this case, talking about size limits of the sign, his understanding was the ordinance didn't want anything to be too massive or numerous signs all over a building or to advertise. In this case, talking about a 15 SF, he didn't think that would cause detriment to health, safety or general welfare. Spirit of ordinance would be observed.

M. Thornton agreed. It could be granted without violating, only with provision that signage they are trying to make a provision that people can see the sign and know where they were going. That was only reason he saw the applicants had any chance on this – to protect traffic from themselves.

3. Would granting the variance do substantial justice?

T. Steel - Would allow you to see it better. She drives by it all the time. If you don't know area, and going toward Rt 122 you can miss the entrance and have to drive down to Rt 122 and make a u-turn and come back.

J. Dargie agreed. Being able to be seen from that east to west access.

J. Plourde –would there be a gain to the public by denying? Didn't think so. He was OK with that.

S. Bonczar – yes, for reason Jason stated.

M. Thornton agreed.

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

S. Bonczar – yes. No issue with that.

J. Plourde – yes. Talking about 7 ½ SF on each side.

T. Steel agreed.

J. Dargie agreed.

M. Thornton agreed.

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.

T. Steel – Denial would be unnecessary hardship. Missed opportunity for everyone. People trying to find them and miss their appointment and maybe don't make another appointment.

S. Bonczar – supposed to consider specific ordinance and not monetary aspect for the business.

T. Steel – did believe granting would not result in unnecessary hardship

J. Plourde – no- didn't think hardship was presented in a way that could not have been addressed in different format. By reducing sign on back and being able to have extra available space for the side on the awning on the front. With this type of use, it is not pass-by use or I missed my driveway. If you go there once and then find it, you won't miss it again. It is place you go to once or twice a year, not every day or week or month. There were alternatives that could have been considered without a variance. Had to say no on this one.

J. Dargie – looking at unnecessary hardship it says 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 of the property and its angle and situation; and again, because there have been two or three businesses before and sign was where it was they're not there any longer, she didn't see gain to the public was bigger than loss to individual. Because of angle they don't have a good front way to be seen going from east and west on Rt 101A. Thought proposed use was reasonable. 7 ½ SF is not unreasonable, total 15 SF

J. Plourde – they have a free-standing sign that can grab your attention.

J. Dargie said it was down on the pedestal sign with all the other businesses.

C. Conti responded it was the entrance they were trying to address. He was told he wasn't allowed to speak since public comment was closed.

M. Thornton re-opened public comment.

C. Conti said they were just trying to identify and focus on the entrance. The real entrance and entrance to that corner was a problem. Had to get identity on that wall. This will do, as T. Steel said, will help with that whole issue and you will not have to drive all around the building. It was specific to this corner. Felt it was least invasive, most aesthetic way to help. Not asking for change in the law.

J. Plourde said any change to the ordinance was a change, whether significant or not. Not asking for special exception. Asking for a variance.

C. Conti said looking for relief so that customers can identify his entrance.

J. Plourde said they were asking them to break the town law. Didn't want him to think it wasn't a big deal.

C. Conti said he wasn't saying that. Trying to come up with least invasive way, only adding graphics to what was there. Felt they were asking for least amount of relief to address this problem. Small amount of relief for this corner will help with this issue.

M. Thornton asked for any further public comment. None. He closed public comment.

Unnecessary hardship (continued)

J. Dargie gave her answer that it would be unnecessary hardship to deny.

M. Thornton felt it would be unnecessary hardship only because looking at number of signs along highway, fact that there was signage that showed where they are at the bottom of the pedestal sign but none showing where the front door was, he believed could result in unnecessary hardship.

S. Bonczar – re hardship, no. Because applicant failed to show this was a hardship in that they decided to use allowed sq. ft. in a way that now prevented him from what he wanted to do. Didn't consider angle of the building as part of this. This was about changing existing

sign, and hardship re that existing sign, not a building, not putting up a sign originally with regard to the angle of the building. Definitely a no.

M. Thornton asked for a motion.

J. Dargie made a motion to approve Case #2016-28 for variance to the sign ordinance.

T. Steel seconded.

Vote on criteria:

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

J. Dargie – yes

S. Bonczar – yes

J. Plourde – yes

T. Steel – yes

M. Thornton – yes

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

S. Bonczar – no

J. Plourde – yes

J. Dargie – yes

T. Steel – yes

M. Thornton - yes

3. Would granting the variance do substantial justice?

S. Bonczar – yes

J. Plourde – yes

T. Steel - yes

J. Dargie – yes

M. Thornton - yes

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

J. Plourde – yes

J. Dargie – yes

T. Steel – yes

S. Bonczar – yes

M. Thornton - yes

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

S. Bonczar – no

J. Plourde – no

J. Dargie – yes

T. Steel – yes

M. Thornton – yes

Final Vote:

J. Plourde – no

S. Bonczar – no

J. Dargie – yes

T. Steel – yes

M. Thornton – yes

Variance granted by 3 to 2 vote.

M. Thornton informed applicants they were approved and reminded them of 30-day appeal period.