



**Stratham Zoning Board of Adjustment
Meeting Minutes
November 13, 2018
Municipal Center, Selectmen's Meeting Room
10 Bunker Hill Avenue
Time: 7:00 PM**

Members Present: Garrett Dolan, Chairman
Phil Caparso, Full Time Member
Bruno Federico, Full Time Member
Deidre Lawrence, Full Time Member
Amber Dagata, Alternate

Members Absent: Tana Ream, Alternate

Staff Present: Shanti Wolph, Code Enforcement Officer/Building Inspector

1) Call to Order/Roll Call

Chairman took roll call.

2) Approval of Minutes

a. October 23, 2018

Mr. Caparso made a motion to approve the October 23, 2018 meeting minutes as submitted. Ms. Lawrence seconded the motion. Motion carried unanimously.

3) Public Hearing

- a. **Case #641, 72 Portsmouth Ave, Map # 09 Lot # 08-120, Gateway Commercial Business Zoning District.** Domino's Pizza represented by Stephanie Torres of Barlow's Signs, This is a public hearing whereby the applicant requests a Variance from Article VII: Signs, Section 7.9(b) viii of the Stratham Zoning Ordinance to allow the applicant to install an additional wall sign.

Craig Morrow, Barlow Signs, stated the applicant is requesting a second wall sign to be placed on the façade facing Portsmouth Avenue. Domino's acquired the space next door and renovated both units to create one unit. The applicant would like to have a sign above the entrance which faces the parking lot and to have a secondary sign on the façade facing Portsmouth Avenue for exposure to the main road. The development is "L" shaped. Some of the properties have signage

that can face the road and Domino's believes they are at a disadvantage with their sign only facing the parking lot. Domino's has after-hour's traffic and would like to have an illuminated sign that is a corporate standard. The applicant stated visibility does not allow the business proper exposure. The applicant received approval from the Condominium Association to allow for the proposed extra signage.

Mr. Wolph stated the criteria 1-5 is the RSA that establishes whether the board approves the variance and if the applicant feels addressing the points in the criteria would be beneficial for the board to retain while discussing the criteria for consideration. Mr. Dolan asked Mr. Wolph if there are code compliance issues with this application. Mr. Wolph stated the application was reviewed and deemed complete. Mr. Wolph did a site visit with regard to visibility and it is agreed that the Domino's sign is hard to see but the other business in the plaza are equally not represented. Mr. Wolph stated concerned with an approval of multiple signs in the complex, other businesses may request more signage as well which could create multiple signs on the gable ends of the plaza. Mr. Dolan and Ms. Dagata agreed with Mr. Wolph's assessment of creating multiple signs on the gable end. Mr. Morrow explained Domino's is the only unit that would allow a second sign on a side elevation in the plaza. Mr. Morrow stated the sign is 3 ft. high by 15.5 ft. wide. Mr. Caparso asked how long this Domino's has been at this location. Mr. Morrow is unsure. Mr. Dolan stated the business has been in this location since 1984. Ms. Lawrence questioned if Domino's is listed on the existing free-standing sign. Mr. Morrow stated yes, Domino's has a small area on the free-standing sign. Mr. Caparso made a correction that the applicant is requesting a third sign, not a second sign (existing free-standing sign, wall sign facing the parking lot, and a new wall sign on the gable end of the building). Mr. Federico questioned if Domino's would be requesting to have two spaces on the free-standing sign due to having two units and if it allowed by code. Mr. Wolph stated the applicant is allowed more square footage on the free-standing sign, due to having more than one unit. Mr. Federico requested the applicant speak with the Condominium Association regarding more free-standing signage. Mr. Wolph explained the applicant gained more lineal frontage which talks to how much square footage of sign is allowed. Mr. Wolph stated the applicant could remove the sign facing the parking lot and have the signage on the gable end but under the current zoning only one is allowed. Mr. Caparso voiced concern with setting a precedence for allowing businesses two signs when two units are combined. Mr. Federico stated signage is based on lineal footage, not number of units. Mr. Wolph explained the applicant is allowed one (1) SF of sign per lineal foot of frontage.

Mr. Wolph stated the applicant is seeking relief from Section 8, Wall Building Signage, specifically the applicant could have stated #4. Mr. Dolan questioned if the board could only review and approve #1, 2, and 4 that the applicant addresses in the application or can the board make the decision #1 is fulfilled is a permitted use, #2 is also permitted for walls facing rear parking areas with the same areas permitted on the front façade. Mr. Wolph stated that would fall underneath the allowance for wall signs.

Mr. Caparso made a motion to close the public hearing. Mr. Federico seconded the motion. Motion carried unanimously.

17.8.3 Variances: (Rev. 3/11)

- a. As provided for in NH RSA 674:33-I(a), the Board of Adjustment shall hear and decide requests to vary the terms of this Ordinance. At the hearing on the application, the applicant

93 shall present testimony and other evidence to establish that the conditions for a variance have
94 been met. The decision of the Board shall be based on the evidence both written and oral
95 which shall be presented at the hearing and as may be contained in the application. Abutters
96 and residents shall be entitled to present testimony and other evidence to establish that the
97 applicant either has or has not met all of the listed conditions as stated below.
98

99 b. No variance shall be granted unless all of the following conditions are met:

100
101 i. The variance will not be contrary to the public interest.

102 Mr. Dolan read the applicant's response, "Only motorists traveling northbound on
103 Portsmouth Avenue are aware of Domino's location in the plaza and assuming they read
104 the free-standing sign and not distracted trying to get a quick glimpse of the business on
105 the property based on the storefront sign." Ms. Lawrence stated she does not see this as
106 relative to the public interest and the narrative provided by the applicant does not address
107 whether it is or is not contrary to the public interest. Mr. Dolan stated the narrative
108 addresses the issue of convenience to motorists. Mr. Caparso stated he is concerned with
109 setting precedent in town and this would be open for other cases to appear before the
110 board. Mr. Caparso stated the variance would be contrary to the public interest because it
111 would set a bad precedent that other businesses could follow. Mr. Dolan agreed. Mr.
112 Federico stated the applicant explained the Association is aware that this would be the only
113 business that would request this type of variance for this plaza but other plazas in town
114 could make the same application.
115

116 ii. The spirit of the ordinance is observed.

117
118 Mr. Dolan read the applicant's response, "the business has acquired the corner space of the
119 plaza from the main motor and motorists are limited to knowing Domino's is now located
120 in that space. The tenant is asking to be allowed a secondary wall size on the wall that
121 faces the main road." Ms. Lawrence stated the ordinance allows 1 (one) wall sign for a
122 reason and the request is contrary to the ordinance which is to avoid excessive signage.
123 Mr. Wolph explained the ordinance is not limited to 1 (one) sign, but limited to square
124 footage per lineal footage. Mr. Dolan stated the applicant could eliminate the parking lot
125 sign and use the square footage for the gable end sign. Mr. Federico stated the applicant is
126 limited due to the wall of trees which block the plaza until a motorist is passed by. Ms.
127 Lawrence stated there are other tenants in the plaza faced with the same issue. Ms. Dagata
128 stated there is an issue with visibility for the plaza and voiced concern that allowing this
129 would open it up to others requesting additional signage. Mr. Dolan explained there are
130 special circumstances around this, but the applicant has options to change the signage to
131 conform to the ordinance.
132

133 iii. Substantial justice is done.

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135 Mr. Dolan read the applicant's response, "other businesses on Portsmouth Avenue have a
136 secondary wall sign facing the main road. The tenant is in the corner space of the plaza,
137 where the building faces the main road. Motorists traveling southbound will be properly
138 notified in a timely manner of the business in this location." Mr. Dolan and Ms. Lawrence
139 agreed this does not address the substantial justice of granting the variance. Mr. Federico
140 stated the applicant is explaining motorists this is the only unit that does not have a sign

facing the street. Ms. Lawrence explained there are several others businesses in the plaza with the same situation. Ms. Lawrence stated Exhibit A1, shows 4 (four) businesses that do not face the road. Mr. Caparso stated allowing this sign would give them an unfair competitive advantage to the other 4 (four) units which would not be able to avail themselves of a side unit. Mr. Dolan stated substantial justice is not done by granting a variance to the applicant where it does not make them unique in the parcel that is unique to them.

- iv. The values of surrounding properties are not diminished, and Ms. Lawrence stated this does not affect property values. Mr. Caparso and Mr. Federico agreed.
- v. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 1. For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - a. 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; and
 - b. The proposed use is a reasonable one.
 2. If the criteria in subparagraph 1. 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.
 3. The definition of “unnecessary hardship” set forth in this section shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

Ms. Lawrence stated the applicant is asking to construct a larger sign than is permitted under the code and there is a fair and substantial relationship between the purposes of the provision and applying it to this specific property. Ms. Lawrence stated the “special conditions” were created by the applicant. Mr. Dolan stated the only special condition he sees is the fact that the applicant required a second face on the property which can be utilized if a smaller sign is used. Ms. Lawrence stated the applicant can make reasonable use of this property by having a sign that conforms to the size requirements of the zoning ordinance. Ms. Lawrence stated the applicant addressed the “no fair and substantial relationship” question by stating in a multi-tenant business, sign square footage is based on linear footage and due to this location is linear footage and a corner lot which faces a public roadway they should be allowed proper identification based on allowed square foot per the zoning ordinance. Ms. Lawrence does not agree that there is a relation to the standard. Ms. Lawrence stated the business can be used without restriction of the total square footage does not interfere with reasonable use of the property and the standards are not met. Mr. Dolan agreed.

Mr. Caparso made a motion to vote. Ms. Dagata seconded the motion. Motion carried unanimously.

- i. The variance will not be contrary to the public interest.

Mr. Dolan – No; Ms. Lawrence – No; Mr. Caparso-No; Ms. Dagata-No; Mr. Federico-No – 5 No Votes – 0 Yes Votes

- ii. The spirit of the ordinance is observed.

Mr. Dolan – No; Ms. Lawrence – No; Mr. Caparso-No; Ms. Dagata-No; Mr. Federico-No – 5 No Votes – 0 Yes Votes

- iii. Substantial justice is done.

Mr. Dolan – No; Ms. Lawrence – No; Mr. Caparso-No; Ms. Dagata-No; Mr. Federico-No – 5 No Votes – 0 Yes Votes

- iv. The values of surrounding properties are not diminished, and

Mr. Dolan – Yes; Ms. Lawrence – Yes; Mr. Caparso-Yes; Ms. Dagata-Yes; Mr. Federico-Yes – 0 No Votes – 5 Yes Votes

- v. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Mr. Dolan – No; Ms. Lawrence – No; Mr. Caparso-No; Ms. Dagata-No; Mr. Federico-No – 5 No Votes – 0 Yes Votes

Mr. Caparso made a motion to close Case #641. Ms. Dagata seconded the motion. Motion carried unanimously.

b. New ZBA voting Rules of Procedure per HB 1215- Standardizing voting process.

Mr. Wolph stated there has not been a public record as of yet. Mr. Dolan asked if there were any questions. Ms. Lawrence asked for clarification that if one criteria with a “no” vote it obviates the need to continue voting. Ms. Lawrence and Mr. Wolph stated voting per criteria makes the record clearer in case of appeal. Mr. Caparso and Ms. Dagata prefer voting on each individual criteria. Mr. Caparso stated voting on individual criteria will make it easier for future reviews to see how the board arrived at their decision. Mr. Caparso recommended the board take a vote on each individual criteria. Mr. Dolan agreed. Mr. Federico stated his belief that this addresses the issue an appeal could bring.

Mr. Caparso made a motion to require the board when considering to grant a variance the board shall vote on a motion for each of the 5 (five) criteria of RSA 674, 33 individually. Ms. Dagata seconded the motion. Motion carried unanimously.

237 **3) New Business**

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239 **4) Other Business**

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241 **5) Adjournment**

242

243 Mr. Dolan made a motion to adjourn at 8:20 pm. Ms. Lawrence seconded the motion.

244 Motion carried unanimously.