



WEARE ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
February 1, 2022

PRESENT: JACK DEARBORN, CHAIRMAN; MICHAEL MEYER, VICE CHAIRMAN; MALCOLM WRIGHT, MEMBER; MARC MORETTE, MEMBER; GARY SHELTO, ALTERNATE; NAOMI BOLTON, INTERIM LAND USE COORDINATOR

Absent: BOBBI-JO PLAMONDON, MEMBER

GUESTS: Jacques Belanger, Carolyn Parker, Neal Kurk

Chairman Dearborn called the Town of Weare Zoning Board of Adjustment February 1, 2022 meeting to order at 7:30 pm.

I. INTRODUCTION/ADMINISTRATIVE ITEMS:

The Chair stated there are three cases before the Board, Case #02-2022, Case #03-2022 requested to be Continued and Case #04-2022. He then read the agenda explaining how the meeting will run. He stated there are five members this evening and then asked the Board to introduce themselves, all being seated for the hearings. Gary Shelto will be a voting member tonight.

II. PUBLIC HEARING

A. Case #02-2022: Aubuchon Realty Co., Inc. (owner); Dollar General (Applicant) 455 South Stark Highway, Tax Map 412 Lot 248, Commercial Zone Variance – Article 34, Sections 34.10.3.2 Applicant is seeking a variance for the construction of two (2) total signs where one (1) is allowed and to have a total of 92.02 square feet where 64 square feet is allowed.

The Chair asked for a motion to accept. **Vice Chairman Meyer moved, Marc Morette seconded to accept ZBA Case #02-2022.** Discussion: Being none. **Passed 5-0-0.**

The Chair explained the applicant, Dollar General, 3 Lorion Avenue, Worcester, MA. 01606 is represented by their agent Carolyn Parker. The property is 5.85 acres, Commercial Zone, owned by Aubuchon Realty Co., 73 Junction Square Drive, Concord, MA. He then went through the application for completeness.

Carolyn Parker stated they have eliminated one wall sign since her last presentation. The Chair asked the Board if they have any questions for the applicant. Marc Morette clarified their request as one sign slightly larger than the town allows and asked for the exact location. Carolyn Parker responded yes, the town allows for one sign 64 sq. ft. and she showed him her document for the placement of the sign. She then began to read the following five points of hardship with answers:

1. The Variance will not be contrary to the public interest: *The variance is not contrary to the public interest because the Dollar General retail store will be new to the community and the total number of signs (2) two and square footage 92.02 will help potential customers safely locate the store (Pylon Sign) and pull in off South Stark Highway and then the entrance of the building (Wall Sign) from the parking lot.*

2. Please describe how the spirit of the ordinance is observed: *If the variance were granted, the spirit of the ordinance would be observed because the number of signs (1) one and total square footage of 64 square feet allowed per the Zoning Ordinance are not enough to properly advertise a retail store of the size proposed (10,500 square feet). The site is located in a commercial zone and the additional square footage would not be out of place in this area as we are surrounded by a Dunkin Donuts (2 signs and menu board), Lanctots Center strip mall (large pylon sign) and Sanal Auto Parts Company (pylon and wall sign) which have larger than allowed signage. The safety of the public is improved by the additional sign and square footage.*

3. Please describe how substantial justice is done; benefits to the applicant must not be outweighed by harm to the general public: *Substantial justice is done because a business (building) of this size, 10,500 square feet would normally have a pylon sign and at least (1) one wall sign. As mentioned, it is the location of the building and entrance on the lot that require the (1) one new wall sign. The wall signs direct the customers to the entrance to the store from the parking lot. Dollar General is bringing business and employment to the community. The commercial location means people could be traveling far distances to the new store and we need the proper signs for visibly and to safely locate the property and entrance once in the parking lot. There will be no harm to the public if approved.*

4. Please describe how the values of surrounding properties are not diminished: *The granting of the variance will not change the values of the surrounding properties as we are located in a commercial zone and the surrounding properties, all commercial, have increased signs and square footage at their properties.*

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship;

A. Please describe the special conditions of the property that distinguish it from other properties in the area, explain any details of the property, structure, that are different from surrounding properties such as slopes and wetlands: *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. The use of the parcel as a 10,500 square foot Dollar General store within a commercial zone requires the variance for additional site signage and number of signs. The location of the entrance requires a sign to let the customers locate the entrance of the building.*

i. Owing the special conditions identified above, please indicate how no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property: *As described above the overall size of the building and property make it hard for the Dollar General to get by with just the (1) one sign at the entrance. The building frontage at the parking lot is approximately 1348 square feet. The proposed sign will only be 2% of the building frontage. The granting of the requested variance poses no adverse impact to the health, safety and general welfare of the community and general character of the neighborhood.*

ii. Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one; (explain how the special conditions of the property and the zoning restriction interferes with the reasonable use of the property): *As mentioned the size of the building on the property 10,500 square feet makes the reason for the (1) one additional wall sign a reasonable one. The location of the building on the property and the location of the doors (entrance) being installed at an angle; the additional wall sign will show the customers where to enter the building.*

The Chair asked the Board if they had any questions of the applicant. There was none.

The Chair asked for approving abutters to speak. There was none.

The Chair asked for disapproving abutters to speak. There was none.

The Chair asked for public at large to speak. Neal Kurk, Mt. Dearborn Road, stated the applicant has not made it's case for hardship. He suggested a location sign, an entrance sign, eliminating the need for an additional Dollar

General sign on the north side of the building that requires a variance. He indicated the sign they are suggesting to show customers how to enter the building does not say anything about entering. Instead, it says Dollar General. His position is there is no justification for hardship especially when the ordinance allows for the sign they are suggesting of reasonable size and location. The applicant is attempting to get a second sign despite the ordinance. If allowed as a hardship other businesses will utilize the same conceptualization. The Board will have rewritten the ordinance.

He further explains the applicant using other commercial businesses in town, with more than one sign, as a point of reference does not take under consideration these signs were put in before the ordinance took effect, grandfathered.

The Chair asked for other boards to speak. There was none.

The Chair asked for additional public at large to speak. There was none.

The Chair asked the applicant to rebut. Carolyn Parker asked the Board if there is a square footage for entrance signs and when were the bylaws revised. The Chair stated tiny in comparison. Vice Chairman Meyer answered 3/8/2011. Carolyn Parker commented Dunkin Donuts has been there for 11 years. Chairman Dearborn stated he knows Sanel revised their sign when Napa became principal, as did Irving. He does not have the exact dates.

Carolyn Parker asked if these businesses came before the Board for variances. Malcolm Wright responded he is unsure of the facts; they may have been grandfathered originally. He responded, though a good question, but “two wrongs don’t make a right.”

Carolyn Parker stated the town’s bylaws are very restrictive for a main highway. Chairman Dearborn stated, technically, the applicant is asking for a second sign. Asking for 92.02 square feet. The square footage for the lot is 32 plus 64, which is 96 square feet.

Carolyn Parker reiterates how restrictive the bylaws are. Chairman Dearborn and Vice Chairman Meyer read the ordinance. It allows for two signs, on the pedestal, one no more than 32 sq.ft., and one below at no more than 64. Clarifying with the applicant, she does not want them both on the pedestal. She replied one on the wall.

Chairman Dearborn stated by square footage the applicant is compliant, but not by location. He stated 92 square feet and non-collocated pylon signs is the request.

Carolyn Parker stated she is not going over the square footage, just looking for relocation of some square footage. She stated at 2% of the building frontage, it is not offensive.

Malcolm Wright asked who is Dollar General. Carolyn Parker replied that is in her letter. Malcolm Wright stated his question was rhetorical; he is interested in the integrity of the ordinance. He needs more of the hardship addressed, because there is no hardship.

The Chair asked for a second round of approving/disapproving abutters to speak. There was none.

The Chair asked for the public at large to speak. Neal Kurk stated the applicant’s purpose for the sign is to direct people as the doors are not in the usual place. He read page 16 of the ordinance. He reiterated his earlier point of directional signs; they can put up as many as they want as long as they are not visible from the road. As to the square footage, he read Article 34.10.3.2. It defines the second sign only for the purpose of a letter board.

The Chair asked for additional public at large to speak. There was none.

The Chair asked the Board to speak. Being none, he closed the public hearing at 8:01 pm.

Point 1: Gary Shelto moved, Marc Morette seconded to accept point one of the five points of hardship for Case 02-2022. Discussion: Vice Chairman Meyer, personally speaking, stated the ordinance is very restrictive. The Zoning Board of Adjustments does not interpret as they choose. As to the hardship, he is not sure if it has been made. Relocating the second sign to the building does not fit into the intent of the ordinance as it is clear where it can be. Gary Shelto commented the Board is here to make exceptions. Chairman Dearborn stated the Board is not to discuss what the Article means, but to discuss relaxing the ordinance, 64 sq. ft. sign on the pedestal, but also one sign on the north side of the parking lot. This sign is the trademark of a national brand. It is not a big issue to him. Marc Morette commented the sign cannot alter the essential character of the neighborhood. Vice Chairman Meyer stated because of the other businesses in the area, it would not. Malcolm Wright commented we could vote differently across all points. **Passed 4-1-0 Vice Chairman Meyer voted no.**

Point 2: Malcolm Wright moved, Vice Chairman Meyer seconded to accept point two. Discussion: Malcolm Wright and Chairman Dearborn saw no conflict, clearly commercial. Marc Morette asked what if the sign was within the square footage. Would it hurt the applicant? Vice Chairman Meyer responded the spirit is to promote the character of Weare, a small town feel. The area in question is fully commercial with businesses having larger signs than the applicant is requesting. **Passed 5-0-0**

Point 3: Vice Chairman Meyer moved, Malcolm Wright seconded to accept point three. Discussion: Malcolm Wright stated there is no substantial injustice. Vice Chairman Meyer stated the Article benefits the applicant with no harm to the public. The area has other businesses with larger signs. Marc Morette agreed, but stated Dollar General, with a sign a few feet smaller, will not have a hard time drawing people in.

Passed 3-2-0 Marc Morette and Malcolm Wright voted no.

Point 4: Vice Chairman Meyer moved, Malcolm Wright seconded to accept point four. Discussion: Malcolm Wright stated there is no problem for the area's property values. Vice Chairman Meyer agreed, in line with the other area businesses. Chairman Dearborn stated no decrease in value for commercial properties. **Passed 5-0-0**

Point 5: Vice Chairman Meyer moved, Marc Morette seconded to accept point five in its entirety. Discussion: Chairman Dearborn stated the criteria is unnecessary hardship with a reasonable use. Will the language of Article 34.10.3.2 create an unnecessary hardship for Dollar General with a reasonable use? He stated it is a commercially zoned unnecessary hardship for an international corporation if their sign request is not allowed. It is a reasonable use. Marc Morette concurs. Malcolm Wright stated the sign is a reasonable use, but they are here because of the size of the sign requested. Chairman Dearborn declared the Board is to decide if Dollar General's request is a reasonable use. Marc Morette added unnecessary hardship, also. Malcolm Wright does not agree to group reasonable use and unnecessary hardship together. The square footage, the size of the sign, maybe location are not use issues. Two separate issues. A dimensional sign issue is not a hardship. Chairman Dearborn clarified the reasonable use is the size of Dollar General's sign, not the sign itself. Is the request for this size sign a reasonable use? Malcolm Wright stated it is an oversized sign. Chairman Dearborn responded he agreed. **Passed 4-1-0 Malcolm Wright voted no.**

The variance was approved.

B. Case #03-2022: Highland Farms & Forest Acquisitions (Owner); David Nault (Applicant) – Tax Map 102, Lots 31 & 32, Lakeview Drive, Residential Zone – Variance – Article 3, Section 3.5 and Article 17, Section 17.1.1 Applicant is seeking a variance for each lot for the construction of one single family home per lot.

Chairman Dearborn stated the applicant has requested a continuation. **Vice Chairman Meyer moved, Malcolm Wright seconded to continue Case #03-2022 to the March 1, 2022 meeting.** Discussion being none.

Passed 5-0-0

C. Case #04-2022: Donald & Tenley Welch (owner); Jacques Belanger (Applicant) 150 Branch Road, Tax Map 106, Lot 19 – Residential Zone Equitable Waiver of Dimensional Requirement – Article 3, Section 3.5.1

Applicant is seeking an equitable waiver of dimensional requirement to permit an addition to be within the side yard setback by 1'8" and 1'4" as shown on plot plan.

The Chair went through the documents included with the application and read the notice from the town Building Inspector Romeo Dubreuil. It stated "The only inspection that was performed at this property was the footing inspection, there was no foundation or frame inspections performed. As it states on the building permit (inspection points) item #1, no construction will be allowed after the footings are poured until a Plot Plan is submitted to the Building Department. The owner did sign the building permit document stating he understood the required inspections. I was not contacted for any other inspections past the footings as required."

Marc Morette moved, Gary Shelto seconded to accept ZBA Case #04-2022. Discussion: being none.
Passed 5-0-0

Jacques Belanger, J. E. Belanger Land Surveying, Dunbarton, NH., representing the Welchs, stated in December he was asked by his client to do a certification foundation location. His client was unaware, though stated on the building permit, that he needed additional inspections before the footing inspection.

Chairman Dearborn stated the Building Inspector is waiting for the documentation of the footing location. Jacques Belanger responded correct.

Vice Chairman Meyer asked if the Plot Plan has gone before the Planning Board. Chairman Dearborn explained a Certified Plot Plan is to document where the actual footing is. It was not done, inspections were out of sequence.

Jacques Belanger had a Certified Plot Plan in hand and stated it does not go to the Planning Board to satisfy the Building Inspector.

Equitable Waiver Application

Per RSA 674:33-a the undersigned hereby requests an equitable waiver of dimensional requirement from Article 3 Section 3.5.1 of the zoning ordinance to permit. An addition to be within the side yard setback by 1.8' and 1.4' as shown on submitted Plot Plan.

Jacques Belanger read the following:

1. Does the request involve a dimensional requirement, not a use restriction? (✓) yes

2. Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the town

-OR-

explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser *Nonconformity was not discovered until well after the footing and foundation was poured for the addition. The owner did not realize that a certified plot plan was required after the footings were poured. It was discovered to nonconform after the structure was framed and ready for town inspection and surveyed.*
and how the violation was not an outcome of ignorance of the law or bad faith, but resulted from a legitimate mistake.

Prior to construction, the owner applied and received a Shoreland Permit by the State of New Hampshire DES, permit #2021-00752 in March 2021. After applying for and receiving, a building permit, the construction of footings, foundation and framing was performed. The owner did not realize that a Certified Plot Plan was required by the town for the footings. It was after the owner requested an inspection by the building department of the enclosed addition that a CPP was needed. This was a legitimate mistake and not a result of bad faith.

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area. *The constructed addition is very consistent with surrounding properties and will not decrease the values of other properties. If anything, it should increase the values of surrounding properties. There is an existing hemlock hedge along the property line involved, which acts as a slight buffer. Abutters have not shown any disapproval of the existing addition.*

4. Explain how the cost of correction far outweighs any public benefit to be gained. *The cost of this honest mistake would outweigh any public gained benefits. It would be costly to correct this error, which might result in not completing the addition by the owner, which would cause other properties to diminish in value.*

Jacques Belanger noted he has a letter from an approving abutter.

The Chair asked the Board if they had any questions for the applicant. There was none.

The Chair asked for approving abutters to speak. There was none.

The Chair asked for disapproving abutters to speak. There was none.

The Chair asked the public at large to speak. There was none.

The Chair asked other boards to speak. There was none.

The Chair asked the applicant to speak again. He declined.

Interim Land Use Coordinator Naomi Bolton stated having spoken to the Building Inspector the two old decks that were removed were 19 feet, very much into the setbacks. The new construction being 12 feet makes it more compliant.

The Chair asked for a second round of approving/disapproving/public at large and other boards to speak.

There was none.

The Chair closed the public hearing at 8:36am.

The Chair requested a motion in the affirmative for Case #04-2022.

Malcolm Wright moved, Marc Morette seconded to grant the Equitable Waiver per the Certified Plot Plan of J.E. Belanger Land Surveyors PLLC, drawing 1 of 1, signed by the surveyor, stamped #758, dated 12/22/2021. Passed 5-0-0

IV. MINUTES:

December 7, 2021 Minutes: **Vice Chairman Meyer moved, Malcolm Wright seconded to accept the minutes of December 7, 2021 as amended, passed 5-0-0.**

January 4, 2022: **Vice Chairman Meyer moved, Gary Shelto seconded to accept the minutes of January 4, 2022 as written, passed 5-0-0.**

V. NEXT MEETING:

March 1, 2022

Being that there was no more business to come before the Board, Marc Morette moved, Malcolm Wright seconded to adjourn the meeting at 8:42 pm., passed 5-0-0.

ADJOURNMENT

A True Record.

Karen Nelson

Karen Nelson transcribed from

You Tube recording & TA Bolton notes