



BOARD of ADJUSTMENT
Town of Hollis
Seven Monument Square
Hollis, New Hampshire 03049
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Minutes of April 25, 2019

Meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Brian Major at 7:15 pm.

MEMBERS OF ZONING BOARD OF ADJUSTMENT: Brian Major, Chairman; Jim Belanger, Vice Chairman; Regular Members –Cindy Robbins-Tsao, Rick MacMillan and Susan Durham; Alternate Members –Drew Mason, Kat McGhee, Bill Moseley and Meredith West.

Election of Officers

The elections of officers were conducted by a secret ballot vote and the results were as follows:
Brian Major, Chairman
Jim Belanger, Vice Chairman

The ZBA members also discussed appointing a Clerk in the case that D. Setaro was unavailable.

*Major moved to appoint McGhee as clerk, with West as alternate clerk.
Seconded by MacMillan.
Motion unanimously approved.*

Review of Minutes

*Mason moved to approve the minutes of February 28, 2019
Seconded by Belanger.
Motion unanimously approved.*

Major explained policies and procedures.

Major explained to Stickney (applicant) that the state RSA requires the ZBA to have 5 voting members to hear and decided cases.

Major explained to Stickney (applicant) that himself and Belanger would be recusing themselves from hearing the cases this evening leaving only 4 voting members available due to Durham's absence.

However, The ZBA can proceed with the cases this evening provided that Stickney accepts the fact that he would need 3 affirmative votes from the 4 member board this evening. Major asked Stickney if he would like to proceed with his cases this evening. Stickney agreed to proceed.

Major appointed McMillian, Regular Member; Mason, McGhee and West, Alternate Members as voting members this evening.

Major and Belanger recused themselves from both cases this evening.

MacMillan assumed the Chair and explained the ZBA would be taking testimony on both cases combined. However, the deliberations and voting for each case would be conducted individually.

Case ZBA 2019-002

The application of Spencer Stickney, for an Appeal from an Administrative Decision under the provisions of RSA 677:17, appealing the Historic District Commission decision denying a new business sign, property owned by Belanger Family Trust, located at 17-19 Proctor Hill Rd. Road. (Map 052, Lot 018) in the Agricultural Business Zone.

Case ZBA 2019-003

The application of Spencer Stickney, for an Variance to Section XIV Sign Ordinance, Section P.2, to permit a new business sign with more than 3 colors, property owned by Belanger Family Trust, located at 17-19 Proctor Hill Rd.

Road. (Map 052, Lot 018) in the Agricultural Business Zone.

Spencer Stickney said the Historic District Commission (HDC) denied the proposed sign at the April 4, 2019 meeting. The reasons for the denial were unclear based on the minutes. The minutes did state the sign did not blend with the harmonious environment of the landscape. Stickney asked if the ZBA had a copy of the HDC minutes. MacMillan replied he had read them. Stickney said his reason for requesting an appeal is that there are other approved signs in the area which do not meet the ordinance. Stickney presented examples of past approved signs, which in fact he sat on the commission during some of the sign approvals. Stickney said he is aware that 3 colors are allowed however, the samples show previously approved signs with 4 or more colors. The HDC also asked if the lettering color could be changed because they were counting the colors of the lettering as 3 different blues. The presented examples which include MTC (My Trainers Closet), shades from a light to dark grey, you could count that as 4 colors; Orde Farm, raised lettering with a light to dark shading and if you exclude the illustration portions the sign has 2 grays, blue, green, beige and white with green letters totaling 6 colors.

MacMillan asked Stickney if the sign ordinance states 3 colors are allowed. Stickney agreed. MacMillan asked if different shades of the same color were, in fact, different colors. Stickney replied yes, however the sign is using blue letters. In other previously approved cases the shading of letters with the same color have been used and approved. MacMillan asked if Stickney agreed the HDC should consider the application before them and not base their decision on previously approved applications. Stickney agreed. MacMillan said he had read the minutes and it seemed clear to him the HDC is adamant on 3 colors and even then the HDC felt they did not want the proposed sign in the district, which the HDC stated.

MacMillan asked Stickney why he couldn't abide to the 3 color limitation. Stickney replied no one else has been held to 3 color standard and he should not be either. If the sign was designed completely abstract and untasteful, Stickney could see the points the HDC brought up during the April meeting, but he proposed sign took months to design and many customers, friends and family that saw the sign said the design was tastefully done.

Stickney said with his knowledge and background of the HDC he tried to make the design as compliant to the ordinance as he could. The design is a registered trade mark with the government and the state. West asked who created the sign. Stickney replied the design was a collaboration with his partners, son and a graphic designer.

MacMillan asked Stickney why he thought the HDC voted unanimously against the proposed sign. Stickney replied he thought the sign was denied due to the 3 color limitation. The HDC did ask if the lettering could be changed to black, which might reflect a different outcome. However, the design is a registered trade mark and they decided not to change the color. McGhee said the sign ordinance states the HDC prefers signs with dark backgrounds and light lettering which most of the examples follow. No disrespect intended, most of the examples look like they were professionally created and maybe that is why the HDC is being hesitant. Stickney replied the sign was created professionally by Carrier Signs and a graphic designer.

Stickney said the last example presented (town hall sign) has a white background with gold letters. If the town is going to go outside of the regulations businesses should be allowed to as well. The reason for that sign is the town does not have to follow the regulations. McGhee said there are exceptions for town buildings and the ordinance does state signs with white backgrounds can be approved. Stickney said another aspect during the HDC meeting was the sign did not blend in with the neighborhood. The 7 signs in the area are not consistent they are different sizes, fonts, colors, designs, and layouts. There are no standards set for Proctor Hill Rd. All the signs use their own design and followed the regulations of the district.

MacMillan asked what was unique about the property which would make the proposal a hardship. Stickney replied the company is selling arborist and landscape tools. The thought was to use a wood panel with the design imposed onto it to create a feel of what the company is about. MacMillan asked why the ordinance, as it applies to the proposal a hardship. Stickney replied there is no hardship. MacMillan said granting a variance without a definite hardship is not easy.

Stickney said the HDC has approved cases in the past which have more than 3 colors and Stickney feels he should not be held to a different standard. MacMillan said the ZBA can only act on the application before them and cannot consider past approvals right or wrong. Stickney disagrees the ZBA must look at the surroundings and the other signs you cannot say that out of seven signs, our sign is being held to the 3 color limitation. MacMillan said originally the building inspector denied the sign because it did not comply with the ordinance. The HDC unanimously denied the sign, including a Selectman who sits on the board. By your own admission there is no

hardship, you just want the sign. Stickney replied there will be hardship when the sign needs to be redesigned at a cost of \$1,000.00 and then he would have to go back to the federal government and say he could not use the trade mark. The design shows types of equipment being used. MacMillan said the law states the ZBA must apply the strict letter of the law in exactly the same way a building inspector must when determining an approval or denial of the appeal. MacMillan understands Stickney's points of view but an ordinance change would need to be approved by the voters to achieve the desired outcome.

Mason said Stickney has legitimate arguments as it pertains to substantial justice however, the letter of the law must be applied to the appeal of an administrative decision. With the second application for a variance, the applicant must show a hardship. In Mason's opinion there is not a hardship. Stickney said the hardship is the additional costs incurred such as \$300.00 of fees associated with the ZBA applications. If denied, those costs would be incurred again then the redesign of the sign at approximately \$1,000.00. West said financial hardship is not considered in determining hardship for a variance request.

MacMillan said he could not vote in favor of the applications since the building inspector initially denied the proposal. The HDC denied the application, no hardship found and the letter of the law must be followed pertaining to the appeal of an administrative decision application.

Mason asked Stickney what portion of the sign is his trademark? Stickney replied the carabiner "G" and "S" rope is part of the illustration. (see file for depiction) MacMillan asked if the trademark is on the company trucks. Stickney replied not currently but will be in the future. Mason said he only sees 3 colors in the proposed sign; blue, black and natural wood. McGhee agreed but only if the G and S is considered an illustration.

Spoke in-favor of the application

Tina Carlson, 154 Proctor Hill Rd.

Carlson said the HDC did not consider the "G" or "S" as illustrations and asked the ZBA to consider the rope and carabiner as an illustration if so, the sign would conform to the 3 color limit of the sign ordinance. If denied there would be a financial hardship to recreate the sign.

Mason said the "S" in the Wild Salamander sign may have some bearing, or not on determining what standards the HDC uses. MacMillan replied the standards are 3 colors as stated in the ordinance. Mason said the HDC has some discussion on what part of the sign was an illustration but no conclusion was determined. MacMillan asked Mason what was the HDC's final conclusion. Mason replied denying the sign but it was not clear on why they denied the sign. West said there could be an argument the carabiner as the "G" in ground the Rope as "S" in support could be considered as an illustration. Stickney said it was clear to him after the HDC meeting they denied the sign based on the number of colors. However, after reviewing the minutes the written reason for the denial is something different. The final written conclusion was the sign was not in-keeping with the character of the Historic District. If the denial was based on color the final written notice should have noted that. MacMillan asked if the HDC mentioned the color issue in the minutes. Stickney replied yes but, not within the final decision notice. If an application was denied based on color the final finding should read, there is more than 3 colors and the proposal doesn't meet the guidelines. MacMillan said the entire case needs to be considered which includes the minutes and notice need to be considered. Stickney said if the ZBA is considering bits and pieces of the minutes, the examples of previously approved signs should also be considered

Spoke in-opposition of the application

Michael Bates, Regular Member of the Historic District Commission

Bates said the Historic District Commission (HDC) denied the proposed sign unanimously. The sign was denied because it violated ordinance pertaining to 3 color limitation. The defense that there are previously approved signs which do not comply with the ordinance, should not be considered in the ZBA decision process. The ordinance was approved by the voters and clearly states 3 colors are allowed. The vast majority of the signs within the district have 3 colors. Bates said since he has been a member of the HDC a number of signs were not approved and modifications were required.

Bates handed out pictures of several signs within the district which are showing contiguity with the ordinance. Most of the pictures are of signs near the applicants' property. The examples were presented to show past approved signs

which contain traditional colors within the 3 color limitation of the ordinance.

Bates showed the depiction of sign presented to the HDC for approval. The sign has 5 colors and after some debate the rope and carabiner was not determined to be an illustration. Mason asked if there was a clear statement within the minutes with the illustration determination. Bates replied the illustration aspect was debated and it was a factor in denying the sign. MacMillan said he had read the minutes and agreed with Bates. Mason asked if there was a finding of fact noted. MacMillan said the sign was denied with no finding of fact.

Bates said the applicants' defense of corporate colors should also not be considered. A number a years ago Dunkin Donuts corporate colors being tan and orange was clearly denied by the HDC. The proposed sign has orange and blue.

Bates said in conclusion the HDC is tasked to follow the ordinance and take each application individually and make a decision based on the design submitted. The HDC is respectfully requesting the ZBA to consider denying both the Appeal of an Administrative Decision and the Variance requested by the applicant.

Mason said the Wild Salamander sign presented as a sample doesn't seem to meet the ordinance requirement of 3 colors. Bates replied if the sign was presented today, he has no opinion whether the sign would be approved or not.

Greg Lingley, Wright Road

Lingley approached the ZBA and challenged the narrative of the acting chairman, MacMillan, on his reference to the State color requirements. Chairman MacMillan re-iterated his previous comments that it was the Town ordinance the ZBA follows not the State.

Applicant rebuttal

Stickney said while making a decision on either application. The HDC minutes do reflect debate on the number of colors however, the ZBA needs to decide the case based on the HDC findings. The findings were not based on color it was based on coinciding with the landscape. MacMillan said Stickney's point would be considered. Stickney said during the HDC deliberation the background was considered a color and since that color is the construction of the sign the color should be excluded.

No Further Questions from the Board and none from the floor – hearing portion of the case closed.

DELIBERATIONS

Case ZBA 2019-002

The application of Spencer Stickney, for an Appeal from an Administrative Decision under the provisions of RSA 677:17, appealing the Historic District Commission decision denying a new business sign, property owned by Belanger Family Trust, located at 17-19 Proctor Hill Rd. Road. (Map 052, Lot 018) in the Agricultural Business Zone.

MacMillan said the ZBA must apply the strict letter of the law in exactly the same way a building inspector must when determining an approval or denial of the appeal. McGhee and West agreed.

Mason asked how many colors the sign actually has. MacMillan replied all involved parties stated there was more than 3 colors. McGhee said the HDC members have the knowledge and are tasked with making decisions in the best interest of the district. MacMillan agreed.

McGhee said the applicant's defense of previously approved signs within the district should not be a determining factor due to the fact each case was determined on an individual basis. It was McGhee's opinion there is no grounds to grant the appeal. MacMillan said Mr. Cadwell addressed the same issue with the applicant during the HDC meeting as well. Decisions need to be based on the application presented and not the decisions of past cases.

West said the HDC should be given due deference in the case. McGhee said the ZBA is not the forum to determine what needs to happen to make the sign appropriate. MacMillan agreed there needs to be an ordinance change requested by a petition and let the residents decide what sign are appropriate in the district.

MacMillan called for a vote on case ZBA2019-002. The vote was 4-0 to deny the application.

*MacMillan moves to deny the Appeal from an Administrative Decision, Case ZBA2019-002.
Seconded by McGhee.
Motion unanimously approved.*

No further discussion.

Case ZBA 2019-003

The application of Spencer Stickney, for an Variance to Section XIV Sign Ordinance, Section P.2, to permit a new business sign with more than 3 colors, property owned by Belanger Family Trust, located at 17-19 Proctor Hill Rd. Road. (Map 052, Lot 018) in the Agricultural Business Zone.

The ZBA discussed the application for the variance and determined there was no hardship and no special conditions of the property that distinguish it from other properties, as stated by the applicant within the application. Mason said by law the legal definition of “hardship” in determining a land case, the application does not meet the criteria. However, Mason recognized the financial burden to the applicant. MacMillan agreed and said it was unfortunate that the sign expense was incurred without the direction or approval from the town. MacMillan asked Condra if the original sign presented had more than three colors and was that why the sign was denied. Condra replied yes.

MacMillan moved for the following finding of fact;

1. *The Board finds the application does not meet the Hollis Zoning Ordinance.*

Seconded by West.

Motion unanimously approved.

McGhee moved for the following finding of fact;

2. *The Board finds it should give due deference to the decision made by the Historic District Commission.*

Seconded by MacMillan.

Motion unanimously approved.

No further discussion.

Questions - Variance

- Question 1. The variance will not be contrary to the public interest
Question 2. The spirit of the ordinance is observed
Question 3. Substantial justice is done
Question 4. The values of surrounding properties are not diminished
Question 5a(1). 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
Question 5a(2). And, the proposed use is a reasonable one.

Board Member	Question #1	Question #2	Question #3	Question #4	Question #5a(1)	Question #5a(2)	Total Yes	Total No
MacMillan	No	No	Yes	Yes	No	No	2	4
Mason	No	No	Yes	Yes	No	Yes	3	3
McGhee	No	No	Yes	Yes	No	No	2	4
West	No	No	Yes	Yes	No	No	2	4

THEREFORE, THE VARIANCE WAS DENIED WITH THE FINDINGS OF FACT:

1. **The Board finds that the application does not meet the Hollis Zoning Ordinance.**
2. **The Board finds it should give due deference to the decision made by the Historic District Commission.**

Major assumed the Chair.

Belanger assumed as Vice Chairman

Major moved to adjourn.

Seconded by Belanger.

The ZBA meeting adjourned at 8:15 pm.

Respectfully submitted, Donna L. Setaro, Building & Land Use Coordinator