



**ZONING BOARD OF ADJUSTMENT**  
**MINUTES OF MAY 17, 2010**  
**APPROVED AT MEETING OF JUNE 21, 2010**

**Present:** S. Bogert, **Chairman;** S. Perley, **Vice-Chairman;** R. Tautkus, **Secretary;** D. Greski; P. Lambert; J. Tivnan (alternate)

**Absent:** O. Gibbs

**Staff:** S. Saunders, **Planning Director;** K. Snow, **Zoning Technician**

S. Bogert opened the meeting at 7 pm.

**HEARINGS: (CONTINUED)**

**Application # 2010-0003**  
**Laconia RE, LLC**

**MSL 327-220-1**  
**1106 Union Avenue**

**C Zone**  
**Variance**

The applicant is requesting a variance from Chapter 235, Table VI, Table of Sign Regulations, in order to install 2 awnings, which are considered signs. The site already has 3 signs and 64.5 Sq Ft of signage, which is the maximum they are allowed to have.

**Applicant:** Greg Nolan appeared for the application. The proposal is to allow them to add the Dunkin Donut (DD) logo to their awnings. They want to change the color of the awnings from orange to brown. When originally approved by the Planning Board, the architectural criteria was to have 2 brown awnings over the entrances. He was told at the sign permitting process that awnings with information are considered signage, so he went with orange. Since then Planning Board members have talked to him and asked where the brown awnings were and he told them the issue. Corporate only allows the "DD" with the brown awnings, not with the orange. He is asking for the variance to allow the brown awnings with logos. That accounts for the additional 20 square feet of signage.

P. Lambert said he likes the looks of the orange awnings and G. Nolan said he wants to comply with the Planning Board approval, which was for the brown awnings. S. Bogert asked about why the Planning Board approved something that was in violation of zoning ordinances and S. Saunders told him they weren't at the time of approval. S. Perley asked if they got a full sign permit at that time, and was told no, we seldom get one during the Planning process.

G. Nolan said he doesn't mind the orange but the Planning Board had asked for the brown. He said he is trying to comply with their approval.

They made many concessions to the City during the process. They had planned to raze the Hathaway House and instead they saved it. They just got the paint samples for that and will be painting soon. In saving the building they had to change the orientation of the building. Going with their original plan would have given them additional square feet of signage.

P. Lambert asked if the picture shown was what the Planning Board had seen, and G. Nolan replied yes. It was a poster sized picture with the brown awnings with “DD” on them. That is what was approved by them.

D. Greski asked G. Nolan to go through the criteria he answered.

S. Bogert asked him to wait while the board determined if this was something they could hear.

S. Bogert asked if this is a Planning Board requirement, what happens if this is denied by the ZBA and S. Saunders said he would then have to go to the Planning Board and tell them he couldn't meet the condition of approval and ask for an amended approval. S. Bogert said he feels the criteria are irrelevant because the Planning Board has already approved this.

S. Saunders said that in working with the Planning Board, moving the structure and the layout of the site were issues. S. Bogert said the condition is because of the Planning Board directives. G. Nolan said he is requesting this because of the Planning Board condition that was set. S. Saunders said the Planning Board cannot condition something that is non-conforming. She said signs are not looked at until after the fact. P. Lambert said the site plan should have been conditioned upon meeting all the ordinances.

G. Nolan said he likes the contrast of the brown with the “DD”. Changing the awnings would be an additional expense for him. He applied for the signage, and was told no, so he made the awnings orange. After he did that he had people call him, asking where the brown awnings were.

S. Bogert said he feels the 5 criteria are answered by citing the Planning Board approval. He said it depends on how the NOA was written. If this was part of the general approval, then we can hear this. If this was set as a Planning Board condition at approval the ZBA doesn't have jurisdiction. S. Saunders said that the Planning Board approved the architectural rendering; the color of the awnings was not a set condition, just the drawing was approved.

G. Nolan went through the 5 conditions. This proposal is not contrary to public interest. He worked closely with the Planning Board on this. They took into consideration the architectural design, and made this more of a colonial building. They determined that they liked the brown awnings better. It makes for a nicer contrast.

The spirit of the ordinance is observed. They met with committees over the original proposal and spent a lot of time on the conditions, the building architecture, and the parking lot lighting, to make sure it covered safety issues but not spill over onto neighboring sites. They made this aesthetically appealing. The brown color is a softer contrast.

Substantial justice is done. They worked with the city on something both the city and he would be proud of.

The values of surrounding properties will not be diminished. This is a commercial corridor and the new building looks nice. They just finished the landscaping here. This adds to the local value.

Literal enforcement of the ordinance would result in an unnecessary hardship. If forced to comply with the Planning Board condition to have the brown awnings he then has to remove other signage, which is necessary. They need the name recognition.

No fair and substantial relationship exists as signage is a huge driver, and he spent lots of time working with Planning on this. They purposely changed the orientation of the building for the city in order to save the

Hathaway House and make the site work. The old location was a nightmare and they took a derelict site and made it nice. If allowed to orient the building the long way, he would have the square footage available to use for signage. S. Saunders explained that the signage is based on the frontage of the building on the street, not on the size of the lot.

The proposed use is a reasonable one which already exists.

**Public:** No one from the public spoke for or against the application.

**Abutters:** None

G. Nolan said they own a few locations in New Hampshire and are happy to be here. They took a bad situation, which was a high volume store with traffic issues and made it better. They originally had a different plan and worked with the city on saving the Hathaway House as well as the architecture on the Dunkin Donuts structure. They would not be here if they had laid the building out the way they initially wanted to. He said that people seem to prefer the brown awnings over the orange color.

**S. Bogert closed the hearing to the public at 7:20 pm.**

**Board:** P. Lambert said this is unique because he would have had the square footage for additional signage available if the building had been oriented the way they had wanted to in the first place. He said that the Planning Board wants the brown awnings, so why should the applicant sacrifice. He stated he is in favor of granting the request.

S. Bogert said he feels the Planning Board wanted this so it should be approved. P. Lambert said he feels the Planning Board put them in this position. D. Greski asked if the Planning Board couldn't add the signage step as the final sign off.

S. Saunders said she encouraged the applicant to come here because she felt he met the criteria. This is an odd situation here, due to the orientation of the structure, and the detail with the architecture that the Planning Board requested.

S. Perley asked the correct number of the application, 2010-003 or 2010-0004 and the board was told it is 2010-0004. She asked for clarification on the variances and was told there are 2, one for 2 additional signs and one for another 20 square feet of signage. P. Lambert said applicant has already bent over backwards for the city.

**Motion:** P. Lambert moved to approve application 2010-0004. This is for 2 variances: 1 for 2 additional signs, and another for the additional 20 sq ft of signage, which will be just the logo on the brown awning, "DD".

The proposal is not contrary to public interest. This is the 2 awnings and changing them from the orange to brown, with the logo, which was asked for by Planning Board at the time of site plan approval. This variance will satisfy requirements of the approved site plan.

The spirit of the ordinance is observed and the variance is being given in part because the land owner stipulated to numerous changes to the site plan to satisfy the city's wishes.

Substantial justice is done as the granting of the variance gives the landowner, who has gone beyond in making changes for the city, relief.

The values of surrounding properties are not diminished and were increased due to the new building and its added aesthetic value.

Literal enforcement of the ordinance would result in an unnecessary hardship. No fair and substantial relationship exists. The idea of signage is to allow signs to meet the requirements of a certain structure, which this would have met if the building were built parallel to the road. The city asked for the change, with the narrow end to the road, so they took away that ability.

This is a reasonable use and gives relief to the property owner due to the changes the applicant made to accommodate the city.

S. Perley seconded and the vote was, 4-1, with S. Bogert opposing.

**Sign discussion was held by the board members.**

**HEARINGS: (NEW)**

**Application # 2010-0005**

**MSL 412-150-2**

**RG Zone**

**Emily Clement**

**36 McGrath Street**

**Variance**

The applicant is requesting a variance from 235-35 (B), rear setback, in order to replace a window with an egress door and stairs. The residence currently protrudes into the rear setback so the stairs would infringe approximately 3-5 feet into the rear setback.

**Applicant:** Emily Clement appeared for the application. She stated she wants to replace a window located at the rear of the house with an egress door and stairs.

**Board:** S. Perley asked E. Clement if her back yard faces an empty lot, and was told it is one long lot that she can see the back yard, but the house is located on another street.

S. Bogert asked if the second structure is a garage and was told yes. P. Lambert asked where the back door is now, and was told there is none. She uses the front door exclusively.

S. Bogert asked if there are any plans of changing this to a multi family structure and was told no. S. Saunders said the applicant doesn't have the density for that and it would require a variance.

D. Greski asked for clarification on the answers to the criteria as he doesn't feel they were filled out completely.

S. Perley said she agrees with the spirit of the ordinance as she wrote it, as the variance promotes orderly development in the city of Laconia. D. Greski said he is trying to get away from my take, your take, on the responses to the criteria. He feels it should be agreed upon by the board. He said he doesn't feel she gave us enough detail. P. Lambert said it is hard enough for us, as a board, to answer the questions, let alone for the public. He said we have to give them some leeway.

S. Bogert said we will discuss this further after we finish this item. We will make a determination first.

D. Greski said he doesn't feel this application is filled out completely, and that all the information should be before it comes before the board. S. Bogert said he feels the remainder of the board seems to feel it is filled out adequately enough to hear. S. Perley, P. Lambert and R. Tautkus agreed that they can work with this as written. S. Bogert reminded D. Greski that if he doesn't feel the information provided is adequate he can approve, deny, abstain, or move not to hear it.

S. Perley asked the applicant about the size of the stairs and was told they will go out 3 ½ feet. It is just a landing and will be a little bit wider than the door. The landing will be large enough to accommodate the swinging door. S. Saunders said Code determines that, and its size must allow for room so you don't knock the person at your door off the stairs.

**Public:** No one spoke for or against the application.

**Abutters:** None

**Board:** S. Bogert asked the board members if there were further questions for the applicant and. S. Perley asked the age of the house. E. Clement said it was built in 1927. The addition was added in the late 60's, as an office.

**S. Bogert closed the hearing to the public at 7:50 pm.**

**Board:** R. Tautkus said she feels this is a reasonable request.

**Motion:** S. Perley moved to approve application 2010-0005 for a variance from 235-35 (B) to allow a new door and landing that will protrude approximately 3-5 ft into rear setback.

The granting of the variance will not be contrary to the public interest and no abutters spoke for or against the proposal.

The spirit of the ordinance will be observed. This is an older house, located in an established residential neighborhood, and will have no impact on the neighborhood.

Substantial justice is done and the positive benefit outweighs any negatives.

There will be no impact on the surrounding properties due to location of the landing no neighbor will be directly affected.

Literal enforcement would result in an unnecessary hardship. There is no fair and substantial relationship between the general public purposes and the specific application of that provision as this is a very minor intrusion which allows the homeowner a second egress that is usable. The egress provides for safety issues and is a reasonable use given location of the property.

R. Tautkus seconded and the vote was 4-0, with 1 abstaining.

S. Saunders mentioned the stair issue. She said this had been brought up in the past. The members can initiate a change in the zoning ordinance to exempt minor stair encroachments. A provision for cornices and eaves is already in the ordinance. We can also add a code regarding a legal landing and stairs. If the board wants to initiate it that is something we can do. S. Saunders asked the board members to think about it and we can discuss that at a future meeting.

**MINUTES:** The minutes from the meeting of April 19, 2010 were reviewed. The motion to accept the minutes as written was made by S. Perley and seconded by P. Lambert with all voting in favor of approval, 5-0

**OTHER BUSINESS:** S. Bogert said he had a conversation with D. Greski and his concerns regarding the applications. He said that everyone looks at an application and answers the questions differently; they interpret them differently. A discussion on the completion of the application was held. D. Greski asked

staff to review the applications before they get to the board and make sure that everything is adequately addressed to the complexity of the application.

**ADJOURNMENT:** S. Bogert made the motion to adjourn the meeting with the second by P. Lambert. All voted in favor and the meeting adjourned at 8:30 pm.

Submitted By:

Kristine Y. Snow, Zoning Technician