

Town of Lincoln Zoning Board of Adjustment – Meeting Minutes
October 19, 2011 – 5:00 pm

Present: Chairman Paul Beaudin, Tom Smith, Patricia McTeague, Tamra Ham, Ron Comeau

Staff Present: Planning & Zoning Administrator Matt Henry

Excused Absences: None

Others Present: Rick Kelley, Fred Englert, Carol Govoni

I. CALL TO ORDER by the Chairman Paul Beaudin at 5:00 PM

Chairman Beaudin began by explaining the meeting procedure so the applicant was aware how a public hearing and deliberations will take place.

II. CONSIDERATION of the Draft Minutes of the June 8, 2011 meeting

MOTION: Tom Smith made a motion to approve the minutes of June 8, 2011. Tamra Ham seconded the motion. VOTE: U/A

III. CONSIDERATION of Case No: 11-03: Clarks Trading Post -

The applicant is seeking a Special Exception as described in the Lincoln Land Use Plan Ordinance in order to allow an off premise sign. A special exception is an allowed use so long as they meet specific conditions that are set forth in the ordinance.

Chairman Beaudin began by informing the applicants that were in the audience of the process that the ZBA will follow regarding holding a public hearing, deliberations and the final decision. He said that it is important that the applicant is aware of how the process should go prior to beginning to hear the application.

Fred Englert of Clarks Trading Post began by describing the location of the sign. He said that the sign will be located off premise and therefore a Special Exception is required in order to allow it. Additionally, the proposed sign also requires a special exception because it exceeds the allowable square foot requirements in the Rural Residential Zone. Fred Englert explained the sign by referring to the sketch attached to the packet. He said that the sign will be very similar to the freestanding sign they erected last spring at Clarks. Fred Englert said that the intent of the sign is to catch westbound traffic heading into Lincoln and will include directional verbiage such as “turn right at set of lights” ect.

Fred Englert addressed the following concerns that Chairman Beaudin had inquired about in an e-mail:

- 1) The sign will not be in the State right of way
- 2) There is no ancillary business
- 3) The support structure for the signs will not be any more than 1 foot in diameter and will not exceed 50% of the sign square footage. The proposed sign will only be one sided so it will be even less than one foot in depth.
- 4) The sign will be 20+ feet from the roadway.

Matt Henry said that he wanted to make clear the difference between a special exception and a variance. A variance is a use or dimensional requirement that is prohibited but the ZBA may relax zoning requirements subject to criteria the State of NH dictates. However, a Special Exception is an allowed use subject to conditions that the municipality dictates. According to case law, if an applicant meets special exception

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criteria, it must be granted and if it does not meet special exception criteria it must not be granted. Matt Henry recommended that the ZBA concentrate on the criteria that is listed in the zoning ordinance since that is the basis for their decision.

Fred Englert said that he checked with DOT and they said that approval is not necessary so long as it is not in or overhanging the State right of way.

Public Hearing Opened

Nobody spoke

Public Hearing Closed

The ZBA discussed the application related to the criteria:

- 1) **The Project is Architecturally Compatible** : Agree (5-0-0)

The ZBA found that it was indeed compatible with surrounding uses.

- 2) **The Project will not Affect Traffic Access:** Agree (5-0-0)

The ZBA found that the sign would not impact traffic.

- 3) **The Projects Lighting and Noise Levels will not Disturb the Tranquility of the District:** Agree (5-0-0)

The ZBA found that the sign's lighting and noise level will not disturb the tranquility of the district

- 4) **The project is compatible with existing uses:** Disagree (2-3-0)

Yes: Patricia McTeague, Tamra Ham; No: Paul Beaudin, Ron Comeau, Tom Smith

A majority of the ZBA members found that the size of the sign was not compatible with the other signs that were in the area. The other businesses in the area have complied with the size requirement and it should be the same with all businesses in the Rural Residential district.

The Special Exception was denied because the ZBA determined that it did not meet criteria #4.

The ZBA agreed that the current Zoning in town for signs are too restrictive and both the Special Exception criteria and sign section of the Land Use Plan Ordinance should be revised this year at town meeting.

IV. CONSIDERATION of Case No: 11-05: Clarks Trading Post -

The applicant is seeking a Special Exception as described in the Lincoln Land Use Plan Ordinance in order to allow an off premise sign. A special exception is an allowed use so long as they meet specific conditions that are set forth in the ordinance.

Fred Englert said that the sign he is proposing is double-sided and is 10' x 10' just like the other sign proposal. He chose 10' x 10' because that is what the size that is allowed for a free standing sign in the zone

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where Clarks Trading Post is located. Paul Beaudin explained that off premise signs are allowed only by special exception. Fred Englert agreed and said that that is the purpose for him coming before the ZBA.

Paul Beaudin said that he would look more favorably on an off premise sign if the applicant proposed a size that was allowed in the respective zone. For example, if the applicant applied for a 9 square foot sign that was off premise he would have a greater chance of granting the Special Exception.

Public Hearing Opened

OJ Robinson read the purpose of the sign ordinance which read:

“The purpose of this ordinance is to permit signage that will effectively direct movement, advertise and inform the public while not, by reason of size or location, confuse, mislead or obstruct the vision necessary for traffic safety, or otherwise endanger public health and safety. Further, the purpose of this ordinance is to encourage signage that will protect and improve our community’s appearance, not adding to visual clutter nor unnecessarily detracting from or obstructing scenic vistas nor competing with the natural environment, which are the major assets of our town’s tourist-based economy.”

OJ Robinson said that it is the mutually agreed upon purpose of the ZBA to grant Special Exceptions to the zoning ordinance when the purpose is unable to be fulfilled under strict conformity.

Rick Kelly said that he did not think that the property on Loon Mountain that was just denied was in a Residential Zone. Matt Henry confirmed that it was in a Rural Residential Zone.

Public Hearing Closed

1) The Project is Architecturally Compatible : Agree (5-0-0)

The ZBA found that it was indeed compatible with surrounding uses.

2) The Project will not Affect Traffic Access: Agree (5-0-0)

The ZBA found that the sign would not impact traffic.

3) The Projects Lighting and Noise Levels will not Disturb the Tranquility of the District: Agree (5-0-0)

The ZBA found that the sign’s lighting and noise level will not disturb the tranquility of the district

4) The project is compatible with existing uses: Disagree (2-3-0)

Yes: Patricia McTeague, Tamra Ham; No: Paul Beaudin, Ron Comeau, Tom Smith

A majority of the ZBA members found that the size of the sign was not compatible with the other signs that were in the area. The other businesses in the area have complied with the size requirement and it should be the same with all businesses in the Village Residential district.

The Special Exception was denied because the ZBA determined that it did not meet criteria #4.

The ZBA agreed that the current Zoning in town for signs are too restrictive and both the Special Exception criteria and sign section of the Land Use Plan Ordinance should be revised this year at town meeting.

V. CONSIDERATION of Case No: 11-04: NLI Inc. – Whales Tale Waterpark

The applicant is seeking a Special Exception as described in the Lincoln Land Use Plan Ordinance in order to allow directional signs that will exceed the allowable square foot requirement. A special exception is an allowed use so long as they meet specific conditions that are set forth in the ordinance.

OJ Robinson explained his application saying that it met all four criteria for the sign. He reiterated that he felt that it was the ZBA's role to make special exceptions for signs that met the stated intent of the Zoning Ordinance. He said that the sign would be in a state right of way, but it is not uncommon for signs along route 3 to be in a state right of way.

Matt Henry explained that originally there was an administrative question as to whether they should consider whales tale a "resort property". According to the LUPO,

"Directional Signs on a resort property in the General Use Zone, **such as Loon Mountain Resort and South Peak Resort**, are allowed Directional Signs that may be Free Standing or Wall Signs, bear no advertising and must be located on property in which the business owns, leases or, possesses an equity interest."

Matt Henry said that after discussing this with some Zoning Administrator colleagues, he determined that the bolded phrase "such as Loon Mountain Resort and South Peak Resort" intended to mean multi-faceted resorts with primarily a residential and recreational focus.

OJ went on to explain that there is a traffic issue that the signs hoped to address. Adding the signs would make it easier to distinguish the entrance so the traffic flow would improve. He said that there is a whale depicted on the sign but it is incidental to the word "entrance".

Tom Smith said that he does not think the ZBA can approve a sign that they know is in a state right of way. The ZBA questioned what their role was in enforcing state standards. OJ Robinson said that he understands it is Whales Tale's responsibility to get all of the proper appropriate approvals from the State and failure to do so is at their own peril. He said that there are countless signs in that area that are in a state right of way as well.

Paul Beaudin also said he feels the LUPO restriction on directional signs is too restrictive and should be changed in March. However, he said he thinks the LUPO should be honored. OJ Robinson said that a 3 square foot directional sign would not help at all and that is why he is here for a Special Exception.

Public Hearing Opened

Nobody Spoke

Public Hearing Closed

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1) The Project is Architecturally Compatible : Agree (5-0-0)

The ZBA found that it was indeed compatible with surrounding uses.

2) The Project will not Affect Traffic Access: Agree (5-0-0)

The ZBA found that the sign would not impact traffic.

3) The Projects Lighting and Noise Levels will not Disturb the Tranquility of the District: Agree (5-0-0)

The ZBA found that the sign's lighting and noise level will not disturb the tranquility of the district

4) The project is compatible with existing uses: Disagree (4-1-0)

Yes: Patricia McTeague Tom Smith, Tamra Ham, Ron Comeau; No: Paul Beaudin,

The ZBA found that the sign is compatible with existing uses.

The Special Exception was approved because a majority of ZBA members found that it met all four criteria.

III. ADJOURNMENT:

The meeting adjourned at 6:30p.m.