



**TOWN OF PLYMOUTH
ZONING BOARD OF
ADJUSTMENT
PLYMOUTH TOWN HALL
PLYMOUTH, NH 03264**

April 7, 2015

Final – Approved June 2, 2015

Members Present:

Patrice Scott (Chair), Howard Burnham (Vice Chair), Butch Cushing, Freeman Plummer, Tom McGlaufflin (alternate)

Members Absent or Recused:

Omer C. Ahern Jr.

Others Present:

Brian Murphy

Call to Order and Roll Call:

- Mrs. Patrice Scott opened the meeting at 7:00 pm and took roll call of the members present.

Minutes from March 3, 2015:

- Mr. Plummer noted a misspelling of Butch needed to be fixed.
- Mr. Burnham noted that he feels Omer C. Ahern Jr. should *not* be noted as absent on the minutes. He was recused, and therefore, excused.
- Mr. Freeman Plummer made a motion to approve the minutes from March 3, 2015 with corrections; seconded by Mr. Cushing. All in favor.

Public Hearing:

- **Application 212-046-002 Administrative Appeal 09-02-14 Continued:** The applicant Riverside Landing LLC through his agent, Mark Puffer Esquire **requested a continuation of this appeal** to a date certain (11/04/14) by correspondence received 10/01/14. The Board voted to continue the matter, and granted additional continuance requests for the November and December 2014 and January, February and March 2015 meetings. Public notice and abutter notification for this appeal was accomplished per RSA 676:7.

Abutters and newspaper re-notice was given, per direction of the Board at the March 3, 2015 meeting.

- Mr. Puffer apologized to the Zoning Board for the prolonged continuances due to health concerns. He inquired if the Zoning Board had a letter from Attorney Newman on behalf of the Bank of New Hampshire. Mr. Puffer said the letter posits that the appeal was not timely filed. The Zoning Board, he stated, has the authority to decide what a reasonable time is.
- On June 19, the sign permit was issued. While vacationing in Maine in early July, Mr. McGinley received a phone call from his surveyor, who said that there was activity on his property. When Mr. McGinley arrived home in mid-July, he learned from the Town that a permit had been issued, and filed his appeal within 30 days. Mr. Puffer claims the appeal is timely because procedural rules provide that the time for appeal starts when the owner learns that a decision has been made, not when activity starts.
- Mr. Puffer continued to state that the permit violates section 408.5 of the Plymouth zoning ordinance, which allows one freestanding sign per lot in the Agricultural Zone. They believe that the issuance of a second freestanding sign violates the town ordinance because Mr. McGinley and Riverside Landing LCC, through the Site Plan review process, had received approval for a Master Sign for the entire development.
- Mrs. Scott inquired whether Mr. Puffer knew the dates when the Site Plan and Master Sign Plan had been approved.
 - Mr. Puffer stated that the Site Plan was approved on September 20, 2012.
- Mr. Puffer stated it has been suggested that the approved site plan shows an easement, which is an area where the Master Sign was supposed to be placed, and that the easement creates a separate lot. He stated if another sign was placed on the second lot, this would not be consistent with the town's zoning ordinance.
- Mr. Puffer stated that Riverside Landing's lease to the Bank of New Hampshire shows clear language that the developer intended to have a Master Sign, and that the tenant is entitled to a slot within the Master Sign.
- Mr. Puffer noted at a previous Planning Board meeting on September 6, there was discussion about pursuing a Master Sign Plan by board members. He then explained that the Site Plan approval for the Riverside Landing subdivision included the approval of a Master Sign Plan on Lot 2 to be proposed at a future date. (PLANNER'S NOTE: The zoning ordinance states that a Master Sign Plan may be approved as part of a regular Site Plan approval only if a detailed and complete Master Sign Plan is submitted along with the site plan application at the time of review of the latter. Otherwise, an additional review and approval is needed by the Planning Board or its designee to approve Master Plan signage. The two aspects can be accomplished separately or together. However, SPR

approval does not connote instant Master Sign Plan approval, only the opportunity to be accomplished at some point later on).

- Mr. Puffer explained that the Declaration of Covenants, Restrictions and Easements for Riverside Landing includes all parcels that are bound to the master sign. He also exhibited the deed, which allowed Riverside Landing to convey the land to other entities, but the new owners were subject to the Bank of New Hampshire's lease, with an easement reserved to Riverside Landing for Master Sign placement. Mr. Puffer exhibits a Notice of Lease document between Riverside Landing and the Bank of New Hampshire.
- Mr. Tom McGlaulin stated that Riverside Landing was granted the approval for a Master Sign, however, the Tenant was given a permit by the code enforcement officer, and the Tenant never notified the developer. Mr. McGlaulin asked who signed the permit application.
 - Mr. Puffer stated that a representative from the sign company signed the application on behalf of the Bank of New Hampshire.
- The Code Enforcement Officer, Mr. Brian Murphy, stated that the engineer of record presented the initial Site Plan, which indicated a master sign easement. Mr. McGinley then changed engineers and the next approved Site Plan had a dashed box without an attribution. Essentially, a Master Sign would be a pre-approved off-premise sign, by a developer making his wishes known to the Planning Board ahead of time. The zoning ordinance does not say it removes any rights from the landowner. In this case, the original engineer presented a Site Plan to the Planning Board indicating that an easement was going to be reserved; there was no other conversation about the easement. Mr. Murphy stated that approval is still open, especially since they understand the intent, but a final approved Site Plan was forwarded to him without mention of a sign easement attached.
- Mrs. Scott inquired about a developer's right to control property he no longer owns.
 - Mr. Murphy stated that an easement may be reserved for a separate use that is not related to the primary use of the property. A Master Sign is an off-premise sign that has the Planning Board's pre-approval in.
- Mr. Burnham asked if the lot where Tractor Supply is located becomes occupied, are they entitled to signage on their property.
 - Mr. Murphy stated that they are entitled to signage on their property.
- Mr. Burnham stated that future tenants of Riverside Landing will be allowed to have signage on the Master Sign Plan, if approved by the Planning Board.
- Mr. Murphy stated that when the property was sold, he was presented with a sign application that had the permission of the landowner. He also

communicated to them that he did not believe it would preclude them from going ahead with the master sign.

- Mrs. Scott asked when Mr. Murphy granted the permit, did he believe that a Master Sign Plan had been approved by the Planning Board?
 - Mr. Murphy stated that it did not cross his mind because it was never followed through at the Planning Board level.
- Mr. Burnham asked if the Bank of New Hampshire would allow a Master Sign on its property, if they were still able to keep its sign.
 - Mr. Murphy stated that the Bank of New Hampshire would have to, but it is a civil matter.
- Mr. Robert Graham represented MV Plymouth Replacement LLC. The property was purchased in December. He met with Mr. McGinley and the Bank of New Hampshire, and he believes that the matter is a civil conflict. He does not see an approval for a Master Sign or a sign permit for the Master Sign.
- Mr. Puffer stated that the Bank of New Hampshire's sign is located 7 ½ feet away from the easement area. Not only is it a second sign, but it is very close to the Master Sign. He disagrees that the dotted lines on the application represent another parcel because it is not a second lot.
- Mr. McGlauflin asked Mr. Puffer if he had written out a notice in order to stop the proceedings of the Tenant.
 - Mr. Puffer stated if they must, they will pursue a civil remedy, but in the meantime they have appealed the issuance of a sign permit.
- Mr. Butch Cushing asked Mr. Murphy when the bank applied, did they propose an area for their sign.
 - Mr. Murphy stated that they did and it was not opposed.
- Mr. Puffer stated that on September 6, 2012 it was discussed that Riverside Landing would submit a Master Sign Plan and it was approved. He also stated that there was no Site Plan approval for the bank's sign.
- After asking for comments from the public and receiving none, the Chairman closed the public hearing.
- Board members discussed whether they would like to deliberate on the case this evening, or if members would like time to read the extensive materials they received on the appeal. Members decided to take time to digest all submitted materials, and meet in two weeks to deliberate.
- Mr. Burnham made a motion to continue the meeting on Tuesday, April 21 at 7pm; seconded by Mr. Freeman Plummer. All in favor.

Unfinished and Other Business:

None

New Business:

None

Communications and Other Business:

Spring & Zoning Conference from NHOEP:

- Mr. Murphy said the deadline is Thursday, April 23, 2015.

Adjournment:

- Mr. Plummer made a motion to adjourn, seconded by Mr. McGlauffin. All in favor.
- Patrice Scott adjourned the meeting at 8:30pm.

Respectfully Submitted,
Jaseya Girona