

RESOLUTION INTERPRETING ZONING ORDINANCE AS TO WHETHER
STOREFRONT WINDOWS WHICH HAVE BEEN COVERED BY PICTURES OF
GROCERY ITEMS ARE STILL CLASSIFIED AS WINDOWS

BOARD OF ADJUSTMENT
TOWNSHIP OF ABERDEEN

BLOCK 88; Lot 1.01
Application # SP 10-533(2)
JAM FOOD DISTRIBUTORS, d/b/a LIVOTI'S OLD WORLD MARKET
1077 HIGHWAY 34

WHEREAS, Jam Food Distributors, d/b/a Livoti's Old World Market has applied to the Board of Adjustment of the Township of Aberdeen for an interpretation of the Township Zoning Ordinance as it pertains to whether traditional storefront windows which have been covered by pictures of grocery items on the outside of the glass are still to be classified as windows; and

WHEREAS, the premises in question are located at property identified as Block 88, Lot 1.01 on the official tax map of the Township and which is more commonly known as 1077 Highway 34; and

WHEREAS, public notice is not required for the Board to gain jurisdiction over this application, and therefore none has been given; and

WHEREAS, a public hearing was held in the within matter at a regularly scheduled meeting of the Board of Adjustment on November 10, 2010 at which time all persons having an interest in said application were heard; and

WHEREAS, the Board having carefully considered the evidence and exhibits presented by the applicants;

NOW THEREFORE, be it Resolved by the Board of Adjustment of the Township of Aberdeen that the following findings of facts and conclusions are made:

1. The applicant was represented by its attorney Fred Kalma, Esquire.
2. A representative of the applicant, John Livoti, was sworn, and testified that his business is seeking a finding that the area in which pictures of grocery items have been installed on his storefront should no longer be classified as windows despite the fact those windows still exist behind the pictures.
3. The applicant submitted photographs depicting how the storefront currently looks. Said photographs were marked into evidence as **Exhibit A-1**.
4. The applicant also submitted a memorandum authored by the Board's Engineer, Timothy W. Gillen, P.E., dated October 26, 2010. This memorandum was marked into evidence as **Exhibit A-2**.
5. According to Mr. Gillen's memorandum, the definition in Webster's dictionary for a window is "...an opening in a wall or screen that admits light and air and through which customers can be served. An opening in a wall of a building. A transparent panel."
6. It was further Mr. Gillen's position, as per the memorandum and also his sworn testimony during the hearing, that the pictures installed by the applicant are known as "skins" and constitute signage in a window.

7. It was made clear to the Board, by the applicant's attorney, that the question before the Board did not relate to whether the "skins" should be considered signage. That issue was being conceded. The only issue before the Board was whether or not "windows" still existed.
8. It was the sworn testimony and opinion of both the Board's Engineer, Mr. Gillen, and the Township's Zoning Officer, Maxine Rescorl, that regardless of whether signage was at issue, windows still existed. Both noted there was still glass present. The windows had not been bricked up, they had merely been covered up by the "skins".
9. The applicant did not present any expert witnesses in favor of its application.
10. After considering all of the evidence, the Board finds that it is inclined to agree with the opinion of the Township's Zoning Officer and the Board's Engineer.
11. The Board finds that based upon the testimony and exhibits presented, the proposed area in the storefront of the building still constitute "windows".
12. In reaching this conclusion, the Board relies upon the fact there is still glass where the windows had previously been. If the "skins" were removed, the windows would once again be clearly visible.
13. The Board recognizes that the Township Ordinance does not have a definition of "window." Accordingly, it must rely upon the common definition of "window" as noted within its Engineer's Memorandum. Webster's Dictionary has defined a "window" as being: "An opening in a wall of a building. A transparent panel."
14. Based upon the testimony and evidence presented, it is the Board's opinion that the area at issue most certainly involves a "transparent panel" which is an "opening in a wall of a building." It is irrelevant that you currently cannot see the inside of the store through those windows. The fact remains, as previously noted, that were the "skins" which currently block the windows to be removed, the windows would once again be visible.
15. Based upon all of the evidence before it, the Board has no choice but to rule against the applicants' interpretation request.
16. The Board wishes to emphasize its ruling against the requested interpretation in no way indicates its disapproval or distaste of the "skins" themselves. The applicant is free to file a proper application requesting variance approval so as to allow installation of the "skins."

The foregoing was Moved by

Seconded by

and on Roll Call, the following vote was

recorded:

Affirmative:

Negative:

Abstentions:

The foregoing is a true copy of a Resolution adopted by the Board of Adjustment of the Township of Aberdeen as copied from the Minutes of its meeting on January 12, 2010.

Maxine Rescorl, Secretary
Board of Adjustment

RESOLUTION OF APPROVAL
TO PERMIT 36 in. X 36 in. TOWING SIGNS AT SHOPPING CENTER

BOARD OF ADJUSTMENT
TOWNSHIP OF ABERDEEN

BLOCK 66, LOT 3
Application # V 13-102
NBN REALTY, LLC
1055 HIGHWAY 34

WHEREAS, NBN Realty, LLC has applied to the Board of Adjustment of the Township of Aberdeen for approval to erect 36 inch x 36 inch towing signs at the Strathmore Shopping Center located at 1055 Highway 34 which is officially designated as Block 66, Lots 3 on the official Tax Map of the Township of Aberdeen; and

WHEREAS, the applicant has provided notice to all property owners within two hundred feet and has caused notice to be published regarding said application in accordance with N.J.S.A. 40:55D-1 et. seq., this Board gaining jurisdiction thereunder; and

WHEREAS, a public hearing was held in the within matter at a regularly scheduled meeting of the Board of Adjustment held on June 26, 2013 at which time all persons having an interest in said application were heard; and

WHEREAS, the Board having carefully considered the evidence and exhibits presented by the applicant and the review of the Township experts;

NOW THEREFORE, be it Resolved by the Board of Adjustment of the Township of Aberdeen that the following findings of facts are made:

1. Throughout all aspects of the public hearing, the applicant was represented by Mark L. Breitman, Esquire who has offices located at 2 Dogwood Circle, Matawan New Jersey.
2. The applicant has come before the Board in an effort to erect 36 inch x 36 inch towing signs at the Strathmore Shopping Center located at 1055 Highway 34, which is officially designated as Block 66, Lot 3.
3. The applicant's property is located within the Township's RC (Regional Commercial) zone where commercial buildings are a permitted use.
4. The only variance necessitated by this application is based upon the fact that the applicant is proposing to place signage consisting of 36 inches x 36 inches (or 9 sq. feet) whereas the Township's zoning ordinance dictates that signs are not to exceed 2 square feet.
5. Mr. Breitman indicated that the applicant has come before the Board so that the shopping center may be in compliance with New Jersey's Predatory Towing Prevention Act which is codified as N.J.S.A: 56:13-17, et. seq.
6. As indicated by Mr. Breitman, the Act mandates that if a property owner wishes to be able to tow vehicles, it must put certain information on a sign which is no smaller than 36 inches x 36 inches. The applicant can not comply with the Act absent a variance from the Board of Adjustment.

7. In support of the application the following exhibits were offered into evidence:
 - A-1: A copy of the Predatory Towing Prevention Act, N.J.S.A. 56:13-17 et. seq.
 - A-2: A survey of the applicant's property, dated September 11, 2012, with a last revision date of October 2, 2012, as prepared by Richard G. Ruchalski, P.L.S., P.P. of Chester, Ploussas, Lisowsky Partnership, LLC.
 - A-3: "Parking Improvements" for the applicant's property, dated August 4, 2011, with a last revision date of March 1, 2012, as prepared by Michael Pucci, P.E., P.P. of Chester, Ploussas, Lisowsky Partnership, LLC. Said plans depict the proposed signs and their locations on the site as item S-4.
8. Harry Rosenbloom, the managing member of NBN Realty, LLC, was sworn and testified in support of the application.
9. Mr. Rosenbloom noted that there are two signs in question. The first sign is in the island at the entrance to Strathmore Shopping Center from Route 34. The second sign is on the easement owned by the bowling alley at the center.
10. Mr. Rosenbloom testified that the applicant has no control over the requirements of the Predatory Towing Prevention Act and therefore requires the Board's assistance in order to allow Strathmore to be in compliance with the State Law.
11. The Board's Engineer, Timothy W. Gillen, P.E., who was sworn, testified that he had no objection to the proposed signs from an engineering perspective.
12. No one else testified with regard to this application.
13. In considering this application, the Board relies upon the language of the Predatory Towing Prevention Act (Exhibit A-1) which clearly requires at N.J.S.A. 56:13-13 that in order for a private property owner to have vehicles towed from its property, there must be "...posted in conspicuous place at all vehicular entrances to the property which can easily be seen by the public, a sign no smaller than 36 inches high and 36 inches wide..."
14. In consideration of the very clear requirements of the Predatory Towing Prevention Act, the Board finds that it would create an significant undue hardship upon the applicant if it were to be denied the requested variance relief. Absent a grant of variance relief, the applicant would not be able to comply with the Predatory Towing Prevention Act and therefore be unable to tow unauthorized vehicles from its property.
15. The Board also finds that the benefits of granting the requested variance relief would lead to a better result for the Township of Aberdeen than strict adherence to the zoning ordinance would otherwise allow since parking at the shopping center could potentially become extremely difficult to find if non-authorized vehicles were able to park there for extended time periods without any possibility of being towed from the premises.
16. The Board cannot envision any detriments that would occur if the requested variance relief were to be granted.

17. The Board finds that there are no perceived detriments to granting the variance relief, an undue hardship for the applicant would be created if such relief were not granted, and the community would actually benefit upon the granting of relief. Accordingly, the Board finds that the requested variance relief can be granted pursuant to the provisions of N.J.S.A. 40:55D-70(c)(1) and (c)(2).
18. The Board finds that the requested variance relief can be granted without causing any detriment to the Zone Plan, Zoning Ordinance and the public good, provided the conditions of this Resolution are adhered to.

NOW THEREFORE, be it further resolved by the Board of Adjustment of the Township of Aberdeen, that the application of NBN Realty, LLC, for premises at 1055 Highway 34, which is officially designated as Block 66, Lot 3, be granted subject to the following:

1. The proposed signage shall be erected in a manner consistent with the provisions of the State's Predatory Towing Prevention Act, N.J.S.A. 56:13-17 et. seq. (Exhibit A-1) and as depicted on the "Parking Improvements" plan. (Exhibit A-3)
2. This approval shall be deemed void by abandonment if a permit is not issued within one year of the date hereof.
3. All representations made under oath by the applicants or their agents shall be deemed conditions of this approval, and any misrepresentations or actions by the applicant contrary to the representations made before the Board shall be deemed a violation of this approval.
4. This application is granted only in conjunction with the conditions noted herein and but for the existence of the same, the within application would not be approved.
5. Compliance with the Aberdeen Township Affordable Housing Trust Fund as required by the Aberdeen Development Ordinance.
6. Subject to any and all other approvals as may be required by the Township, County, State or Federal regulations.
7. Subject to the payment of any fees, escrows and taxes as may be due the Township, prior to the issuance of a building permit.
8. The action of the Board of Adjustment in approving this application shall not relieve the applicant of responsibility for any damage caused by this project, nor does the Board or its reviewing professionals and agencies accept any responsibility for the structural design of the proposed improvements or for any damage that may be caused by the development.
9. The applicant must publish adequate notice of this Resolution in the official newspaper of the Township of Aberdeen at their sole cost, within ten days, and provide proof of publication to the Board Secretary within thirty days.