



# City of Westbrook

## DEPARTMENT OF PLANNING

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### WESTBROOK PLANNING BOARD TUESDAY, AUGUST 17, 2010, 7:00 P.M. WESTBROOK HIGH SCHOOL, ROOM 114 MINUTES

Present: Ed Reidman, (Chair) (Ward 5), Rene Daniel (Vice-Chair) (Ward 1), Scott Herrick (Ward 3), Robert Morrill (Alternate), Dennis Isherwood (Ward 2), Cory Fleming (At Large), Greg Blake (At Large), Michael Taylor (Alternate)

Absent: Rebecca Dillon (Alternate)

Staff: Molly Just, Richard Gouzie

**Chairman Reidman called the Westbrook Planning Board meeting to order at 7:00 p.m. in Room 114 of the Westbrook High School.**

*MINUTES MAY NOT BE TRANSCRIBED VERBATIM. SECTIONS MAY BE PARAPHRASED FOR CLARITY. A COMPLETE RECORDING MAY BE OBTAINED BY CONTACTING ENGINEERING, PLANNING AND CODE ENFORCEMENT at 207-854-9105 ext. 220 and lgain@westbrook.me.us.*

#### **Public Hearing – Land Use Ordinance – Section 404.2 - Business Signage in Residential Districts – The City Council has referred to the Planning Board for their consideration and recommendation alternatives for non-conforming signage for businesses in residential zones.**

#### **1. Land Use Ordinances – Section 404.2 - Business Signage in Residential Districts**

Summary. The City Council has referred to the Planning Board consideration and recommendation of amendments to the Land Use Ordinances to enable the alteration of non-conforming signs for non-conforming uses in residential zones.

Background. Dairy Queen, located at 272 Main Street, has applied for a sign permit to replace their existing manual message board sign, name sign and drive thru sign. Dairy Queen exists as a legal non-conforming use as the use is not currently allowed but the building and use pre-dates zoning in the City of Westbrook. The existing signage is also non-conforming as it exceeds the square footage and number of sign faces allowed and is inconsistent with the type of illumination currently allowed.

In response to the sign permit, the Code Enforcement Officer issued a denial of the application as Section 404.2 (D) states that, on the premises of a non-conforming use there may be 1 sign containing not more than ten 10 square feet of signboard area. Further, section 404.8 Variance and Nonconforming Uses states that where a sign is non-conforming, it may not be extended, altered or enlarged, except that routine maintenance is permitted. Dairy Queen subsequently appealed to the Zoning Board of Appeals the determination of the Code Enforcement Officer. The ZBA upheld the determination of the Code Enforcement Officer finding that the zoning provisions governing signage for non-conforming uses are

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very clear, with no room for a different interpretation. The ZBA then referred the matter to the City Council for consideration of changes to the subject zoning provisions. The next step would be for the Planning Board to advertise language and hold a public hearing. The Planning Board is expected to recommend revised zoning provisions to the City Council who will then consider, hold a public hearing and may adopt the revised zoning provisions. The draft provisions are included herein.

Issues to Consider:

- While Dairy Queen as a use is not allowed in the district, the business has existed since before the adoption of zoning in Westbrook.
- Dairy Queen proposes to reduce the overall amount of signage for the use, thereby reducing the non-conformity of the signage.
- The nature of the location and its surroundings. In the future, should we consider the possibility of rezoning to a mixed-use designation the frontage parcels along Main Street between the Gateway Commercial District and the City Center District?

PROPOSED ZONING PROVISIONS

404 Sign Regulations

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404.2 Signs in Residential Districts. The following provisions apply to signs in residential zoning districts:

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H. Business Signs.

(1) Legally Operating Businesses. On the premises of a business which is legally operating in a residential zoning district, other than those described in Section 404.2.A, there may be one (1) sign advertising that business ~~having not more than one face~~, containing an area of not more than sixteen (16) square feet. The sign must be attached to the building in which the business is situated.

(a) Temporary. A sign erected under Section 404.2.H is temporary and does not become a non-conforming use. If this ordinance is amended so that such signs become illegal, the owner of the premises on which the sign is constructed must remove it or make it conform to the amended Ordinance.

(b) Stationary. All signs or advertising devices must be permanently affixed to the structure. They may not contain any visible moving or movable parts except as described in Section 404.3.G below. The lighting of neon or other illuminated tube-type signs or advertising device is not allowed in residential districts.

(2) Legal Non-conforming business. Legally existing non-conforming signs may continue to be used and may be repaired, but the Code Enforcement Officer must find that the sign is not otherwise altered, enlarged or relocated. Where the Code Enforcement Officer finds that such a sign is otherwise altered or relocated:

(a) The Code Enforcement Officer may approve the alteration or relocation of a non-conforming free-standing sign so long as it is reduced in size by at least 25% of the original

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sign size. Where there are additional alterations or relocations beyond that there must be an additional reduction in size of at least 25% until such time as the sign size is no longer non-conforming.

(b) The Code Enforcement Officer may approve the alteration or relocation of non-conforming building mounted signs so long as the sign area is reduced in size by at least 25% of the original sign area. This could be achieved through eliminating signs or reducing the overall size of building mounted signs. Where there are additional alterations or relocations beyond that there must be an additional reduction of at least 25% until such time as the sign size is no longer non-conforming.

(c) Internally illuminated signs may only be turned on (illuminated) during hours when the business is open to the public and message boards may change not more than once every 24 hours.

**Ed Reidman** does the staff have a presentation for us?

**Molly Just** the City Council has referred this to the Planning Board for consideration and recommendation for amendments to the Land Use Ordinance to enable the alteration of nonconforming signs for nonconforming uses in residential zones. This really applies to business uses. We have a couple of businesses that are larger than perhaps in-home businesses or small businesses that operate out of residential structures. They have been in place since before our Ordinance, before we had zoning period, so they are legal nonconforming uses. They sometimes have nonconforming signs, they are usually signs that are too big or a lighting type that is not allowed for businesses in residential zones.

Working with the Code Enforcement Officer, we have come up with provisions for legal nonconforming businesses in residential districts as to signage. Basically the requirement is you can alter your sign so long as you reduce it in size by at least 25%. You can continue to alter it, update it or upgrade it so long as you reduce the size again by 25%, again and again with each alteration. That is the essence of the proposed amendments.

**Ed Reidman** does anyone care to speak during the public hearing portion?

No Comments

**Public Hearing is Closed**

**Ed Reidman** any questions from the Board?

No questions

1. **Call to Order**

2. **Approval of Minutes**

**Rene Daniel moved to approve July 13, 2010 and August 3, 2010 minutes as written.  
2<sup>nd</sup> by Cory Fleming**

**The vote was unanimous in favor 7-0**

Continuing Business

**3. Land Use Ordinance – Section 404.2 - Business Signage in Residential Districts – The City Council has referred to the Planning Board for their consideration and recommendation alternatives for non-conforming signage for businesses in residential zones.**

**Ed Reidman** we just held our public hearing and there was no one here to speak either in favor or against it. Our job is to make a recommendation to the City Council.

**Mike Taylor** moved to recommend amended language to the City Council for Section 404.2 - Business Signage in Residential Districts.

2<sup>nd</sup> by **Cory Fleming**

**Ed Reidman** any comments on this?

**Robert Morrill** are we aware of any other franchises that may fall into this category of nonconforming businesses in a residential zone?

**Richard Gouzie** I do not believe there are any others in the residential district.

**Robert Morrill** the reason that I bring this up is because of the 25% restriction and because Dairy Queen was here before we had regulations that are in place today and now we are going to amend those regulations.

What would happen in the future if Dairy Queen changed their sign again and Dairy Queen was not able to conform because of the sign size because of the 25% reduction and then would lose their franchise because of that. Has there been any consideration to that?

I am concerned that by forcing them to reduce their sign to a point where they could no longer be a Dairy Queen franchise.

**Molly Just** the sign that is there now has been there for about twenty or thirty years. We may have a different ordinance by the time they want to make another wholesale change. I prefer to leave the provisions as we have drafted because they are in place for the majority and not the minority. I would respectfully request to keep the same provisions as written.

**Robert Morrill** I have no problem in doing that, I just would like to take that into consideration when we vote on this tonight.

**Cory Fleming** in my experiences working in Iowa as well as here in Maine, I have seen franchises are willing to work with communities with much more restrictive Ordinances than ours... Not to down play your concern but I think Westbrook is pro-business and I think this is a reasonable solution.

**Ed Reidman** any other comments?

I am concerned that the gateway to the City of Westbrook comes through that part of Main Street. The Planning Board has been very careful allowing encroachments into that section of the City. It is

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commercial until you get to City Hall then at the Lawyers office that went in and the CPA firm that went in farther down the street... there was a piece that was going to go in at the corner of Forest to change into a business in the multi story building opposite from Funeral Home... The other thing that influences me is McDonalds which is as equally as large and certainly if you go to Freeport you see a McDonalds that you do not see anywhere else in the State of Maine... That is why I am going to vote against it. I am not opposed to the sign ordinance being changed, to accommodate it, I think it is reasonable.

With that said are there any other comments?

**Rene Daniel** I too have mixed feelings about sending this to the City Council for approval. Prior to the CPA firm buying the farm on Main Street and the other group that was a non profit that wanted a very large sign there and parking. We worked very hard not to allow that due to the gateway. Then we had another business that wanted to locate at the corner of Forest Street that wanted two separate signs and we denied them.

I have mixed feelings but I also hear Cory speaking and as you travel to Falmouth, Kennebunk, Kennebunkport and York that also have signs that are much smaller that are all franchised. I have mixed feelings as well and especially in this area where we have tried... because we have been hammered away that this is the Gateway. It is a struggle. I do not vote know if I am going to vote in favor or against it.

However the City Council is the legislative part of the City and if they choose to accept our recommendation or go against it and approve it, it will really be in their ball park, all they are doing is asking us for our feeling. Even if the vote goes to no, the City Council still can choose to put it into action.

It will be a hard vote and I have been trying to look at is as a change of wording and not taking the family and business that is involved into consideration because then that brings in emotion and I really want to do this without emotion, I want to do what is the best for the City, in the long term.

**Greg Blake** for clarification, for the legally operating businesses, the sign must be attached to the building which the business is situated. For these legal non-conforming businesses I do not see where it arrives to that conclusion, just curious if these reductions and so forth will culminate with the end result of a sign being attached to the building or not. I did not see that...

**Molly Just** the provisions for the conforming signs have an allowance for a ground mounted signs and building mounted signs. Then there are provisions here where we address nonconforming signs for building mounted signs and ground mounted signs.

**Greg Blake** as long as it is on the steel pole and as long as they continue to upgrade and reduce by 25% it can remain on that pole.

**Molly Just** correct

**Ed Reidman** any more? Are we ready to vote then?

**The vote was 5-2 in favor (Rene Daniel, Ed Reidman opposed)**

**Ed Reidman** item number four is on the table. I think we need to take it off the table and then have it withdrawn.

**Rene Daniel moved to remove the Subdivision Amendment – 700 Saco Street off the table**

**2<sup>nd</sup> by Greg Blake**

**The vote is unanimous in favor 7-0**

**Ed Reidman** the item is officially is withdrawn.

4. **APPLICATION WITHDRAWN - ~~Subdivision Amendment – 700 Saco Street~~** Sebago Technics on behalf of JTJ Holdings to amend the approved landscape plan which would result in an overall reduction in approved landscaping. ~~The president of the condominium association has issued a letter of support for the request. Tax Map: 1, Lot: 2, Zone: Residential Growth Area 2.~~

5. **Adjourn 7:15 p.m.**

*Respectfully submitted by Linda Gain PECE Administrative Assistant*