

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
Thursday – October 6, 2011
356 Main Street - Farmington, NH**

Members Present: Elmer W. "Butch" Barron III, John David Aylard, Paul Parker and Joe Pitre

Members Absent: Joanne Shomphe

Town Staff Present: Town Planner Kathy Menici, CEO Dennis Roseberry and Department Secretary Bette Anne Gallagher

Public Present: Sheila Walker, Barry Elliott, Jamie Scott, Richard Wentworth

Chairman Barron called the meeting to order at 7:02 pm.

BUSINESS BEFORE THE BOARD:

- **Review and approve Meeting Minutes of August 4 2011 and September 1, 2011.**

Joe Pitre motioned to approve the minutes of August 4, 2011 as presented; 2nd John David Aylard. Motion carried with three in favor and one abstaining.

Joe Pitre motioned to approve the minutes of September 1, 2011 as presented; 2nd Paul Parker. Motioned carried with all in favor.

- **There was no other business to come before the board.**

NEW CASES:

Application for a Variance from Richard and Emily Wentworth (Tax Map U-10 Lot 039): To allow a handicap-accessible ramp within the front setback (Table 2.04(B) – Space and Bulk Standards – Urban Residential District). The parcel is located at 57 Bunker Street and in the Urban Residential District.

CEO Dennis Roseberry and Planner Menici spoke on behalf of Mr. Wentworth. The applicant had come in for a building permit to construct a handicap ramp for his daughter and his wife who has mobility problems would also benefit from the ramp. The CEO said zoning in this area requires a 25-foot front setback and the house is 28 feet from the edge of the pavement. In order to install the ramp a variance would be necessary.

Planner Menici said RSA 674:33.V allows the ZBA to grant a variance without a finding of hardship “when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises”. She explained that in order to grant the variance the Board needed to make a finding that the variance would be in harmony with the general purpose and intent of the zoning ordinance and that it would not be necessary to meet all five criteria, just the first. Additionally, she explained that she had two recommendations for conditions of approval:

1. the variance shall survive only so long as the current owners and their adult daughter have a need to use the premises; and
2. the proposed ramp shall not encroach into the Town's right-of-way.

Joe Pitre asked if there was enough room for the ramp. The CEO said the original plan showed a straight ramp, but that would put it out 24 feet which would not work. The ramp has been redesigned so it will turn and there is sufficient room for that. In response to Chairman Barron's question, the CEO confirmed that the ramp will not impact the sidewalk or the side of the road. Paul Parker asked if there was a new sketch of the ramp. CEO Roseberry said he has not received one yet, but when he does it will be made part of the file. Mr. Parker said that should be a condition of approval.

Chairman Barron stated that this request is not contrary to the public interest and the Planner said the variance request is in harmony with the general purpose and intent of the zoning ordinance.

The Chairman opened the hearing to the public but there were no comments.

Joe Pitre motioned to Grant the Application for Variance within the front setback (Table 2.04(B) – Space and Bulk Standards Urban Residential District) as follows:

1. ***An accurate plan of the ramp is to be submitted and attached to the file;***
2. ***The variance shall survive only so long as the current owners and their adult daughter have a need to use the premises. When they no longer use the premises, the variance is extinguished and the ramp shall be removed; and***
3. ***The proposed ramp shall not encroach into the Town's right-of-way.***

2nd Paul Parker. Motion carried by a vote of four in favor and none opposed.

Planner Menici said she had an additional request on behalf of the applicant to refund the application fee. At the time the application was submitted, all fees were paid. Although the abutter and advertising fees cannot be refunded because they are direct costs to the Town, the Planner said it is within the Board's purview to waive the application fee. She said it was a reasonable request since this is a temporary not permanent ordinance. The Board considered the request and the following motion was made:

Joe Pitre motioned to waive the application fee for the applicant but not the notification fees; 2nd Elmer W. Barron III. Motion carried with all in favor.

Appeal from an Administrative Decision by Jamie and Kathy Scott LLC (Tax Map R-20 Lot 025): To appeal the Code Enforcement Officer's interpretation of the Zoning Ordinance with regard to sign properties and the illusion of movement [Section 3.09(D)(1)]. The parcel is located at 438 NH Route 11 and Commercial Industrial Business District.

Jamie Scott said the LED sign in question is only on the Alton side. It was installed in 2009 and he was told the illusion of movement meant no scrolling. Mr. Scott said he was requested by staff working for the Town at that time to submit a letter to CEO Roseberry stating that there would be no scrolling – only instant change – and said he received the CEO's approval. Mr. Scott provided a copy of his letter to the Board. He also said brightness was an issue at the time and he agreed to adjust it.

In April of this year Mr. Scott applied for a permit to install a new LED sign on the other side of the existing sign. This was denied by CEO Roseberry however, he was given permission for a second, non-changing sign.

In July of this year the CEO sent a letter stating the scrolling on the existing LED sign was in violation of the zoning ordinance and must be reprogrammed to change no more frequently than every 60 seconds. Mr. Scott said the CEO's new interpretation is in violation of the zoning ordinance, that he is grandfathered by his 2009 approval and the CEO cannot require the change.

Chairman Barron asked CEO Roseberry to address the applicant's statements.

The CEO said the LED sign by its nature attracts attention through movement. He stated that although the zoning ordinance prohibits movement in order to encourage business and allow competition, he attempted to find a middle ground.

When Mr. Scott's sign permit was issued in 2009 the CEO said he was more concerned with the sign's backdrop. He knew the sign would change, but didn't consider how fast the change would be. The CEO explained that he received multiple complaints regarding the rapidity of the changes. He consulted Town Counsel who suggested he try to determine the length of time it took to drive by and not have the sign become a distraction. He made multiple trips driving past to determine the length of time that would be appropriate and felt 60 seconds was reasonable. The zoning ordinance does not give a time frame just that there cannot be the illusion of movement and the time frame of 60 seconds was a judgment call.

Paul Parker asked what has changed since 2009. The CEO said the action was driven by the number of complaints received from other businesses. Mr. Scott insisted the interpretation changed. CEO Roseberry reiterated that the rapidity of the changes was the issue at this time and that when sign permit was issued in 2009 he addressed his concern for the changing backdrops but not the length of time the messages were changing.

Chairman Barron read the applicable paragraph from the zoning ordinance – Section 3.09(D) subparagraph 1 – which states that a sign may not move nor give the illusion of movement except for a clock display. Mr. Parker said that has not changed since 2001 and the Planner verified that fact.

There was a brief discussion regarding other LED signs in the community and the business owners cooperation with the CEO's request that their signs change no more frequently than 60 seconds.

Chairman Barron said the bottom line is that the zoning ordinance is very clear and the Board does not have the authority to make a determination as to the length of time for a sign to change. He pointed out that the CEO is trying to achieve a reasonable accommodation. Mr. Scott disagreed stating the CEO's decision was unfair.

The Chairman said there are multiple accidents in front of signs such as this and the section of Route 11 under discussion is particularly hazardous. He said he understands the applicant's investment, but a change of not less than one minute is reasonable. Mr. Scott said he should be "grandfathered" for his change every few seconds because of the new interpretation.

The CEO said he tried to be reasonable when making the determination of 60 seconds. The Chairman asked Mr. Scott what would happen when someone says he was involved in an accident and hurt because he was reading the sign. Mr. Scott maintained his position that he should be able to have his sign change every few seconds.

Mr. Parker reminded the applicant that he is not being asked to remove the sign just to change the time frame. The Chairman said that perhaps the decision to allow any change at all was a mistake.

Paul Parker motioned to support the decision of the Code Enforcement Officer and deny Jamie and Kathy Scott's Appeal from an Administrative Decision with regard to sign properties and the illusion of movement (Section 3.09(D)(1); 2nd Elmer W. Barron III.

Chairman Barron said he seconded the motion for the purpose of discussion on the motion. He said CEO Roseberry was trying to decide when the illusion of movement occurs but that was outside of the authority of the Board. The ZBA does not have the authority to make changes to the zoning ordinances and can only decide if the CEO acted inappropriately.

Paul Parker said the CEO did not act inappropriately, that the zoning ordinance is clear but the CEO is the interpreter. Joe Pitre felt that the definition of movement is different from a changing sign. The Chairman said the ordinance is clear that a sign may not move or give the illusion of movement and that the Board is not going to establish a time frame as that is not within their purview.

Mr. Scott insisted that he should have been grandfathered because he had been allowed instant change but not scrolling. The Chairman said that "grandfathered" is not an accurate term and that the correct designation is pre-existing, non-conforming however, in this instance the zoning ordinance had not changed and there was no pre-existing situation. The CEO's interpretation had changed but not the zoning ordinance itself.

The Chairman said he acknowledges that the investment in a sign is important, but the applicant should have read the zoning ordinance so he was familiar with what was allowed. Additionally, the Chairman said the Board would not argue lengths of time or definition of movement; their decision was whether to overturn CEO Roseberry's decision as inappropriate.

Mr. Scott handed another letter to the Board. Planner Menici said all the material being handed out was required to be part of the application and was not and that staff had not had the opportunity to review any of this. Chairman Barron gave his copy to the Planner for reference.

The Chairman said he was trying to keep the discussion on track. He stated that a mistake by someone does not make it right. The zoning ordinance was clear and the time frame was the CEO's interpretation and in the strictest sense allowing 60 seconds is overstepping.

Chairman Barron said the applicant has asked for relief from an administrative decision and the Board must decide whether the decision was arrived at fairly and is in harmony with the zoning ordinance. The applicant was cautioned that if the Board determines that the CEO's decision was reached improperly than no change messages on the sign will be allowed at all.

Joe Pitre offered his opinion that a changing message is not movement because the sign itself is not moving, that the CEO's interpretation of 60 seconds is arbitrary and that regardless of the time frame,

Approved by the Zoning Board on December 1, 2011.

the sign is not moving only the messages are. Additionally, Mr. Pitre felt the applicant's investment should affect the decision.

The other Board members disagreed with Mr. Pitre and Chairman Barron said they were over thinking the matter. The Chairman said there was a motion and second on the floor and asked if there were any further discussion. There was not and the vote was as follows:

Motion carried by a vote of two in favor; one opposed and one abstaining.

At 8:12 pm Paul Parker motioned to adjourn, 2nd John David Aylard. Motion carried with all in favor.

Respectfully Submitted,
Bette Anne Gallagher
Department Secretary

Elmer W. "Butch" Barron III, Chairman
Zoning Board of Adjustment

Date