

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: FEBRUARY 17, 2016

CASE NO.: 1/20/2016-2 (CONT.)

APPLICANT: GTY MA/NH LEASING, LLC

LOCATION: 12-14 NASHUA ROAD, 10-138-2, C-II

BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN
JACQUELINE BENARD, VOTING MEMBER
JIM TIRABASSI, CLERK
NEIL DUNN, VOTING MEMBER
DAVID PAQUETTE, NONVOTING MEMBER
SUZANNE BRUNELLE, ALTERNATE MEMBER
BILL BERARDINO, ALTERNATE NONVOTING MEMBER

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING
ADMINISTRATOR/HEALTH OFFICER

REQUEST: **A VARIANCE TO ALLOW AN EXISTING FREESTANDING
SIGN TO DISPLAY ELECTRONIC LED CHANGEABLE COPY
WHERE OTHERWISE PROHIBITED UNDER LZO, SECTION
3.11.7.E.3 - 12-14 NASHUA ROAD, MAP 10 LOT 138-2, C-II**

PRESENTATION: J. TIRABASSI READ REQUEST INTO RECORD.

JIM SMITH: Ok, we were in the deliberative session, part of this case when we continued it. We were down to the fifth point of law and we had evidently agreed that we were satisfied that we had met the requirements for the first four. We got some advice from the lawyer on how to address the fifth point, and I have shared that with the rest of the members and at his point I will open up to the members to discuss the fifth point which is the hardship point. Before we go any further, Suzanne will be voting on this case because she was here last month and participated in that case in full and Dave who is a regular member wasn't present at that time. I will open it up. Neil, comments?

NEIL DUNN: Well, I guess after thinking about it and looking at all that has been presented it still gets back to the LED signage which is the basis of what is bringing us here. There are other ways to have changeable copies so I guess, I do not know. I am still pondering because I am

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not sure that there aren't other alternatives to the LED, well, that the town has fought so hard for and tried to codify so well or maybe not so well, but we tried.

JIM SMITH: Anybody else? Jackie, what are your thoughts?

JACQUELINE BENARD: With the term unnecessary hardship, and how it was presented. I guess I am not convinced that it is truly an unnecessary hardship. I guess I haven't really...in one frame of mind I can see where the applicant is going with this. I guess I am just not, usually I am pretty clear and I am still wavering.

JIM SMITH: Ok, the way it reads is for the purpose of this subparagraph, "unnecessary Hardship" means that, owing to the special conditions of the property that distinguish it from other properties in the area. I think part of what we are looking at is the people who sell fuel by state law are mandated to post their prices and with any other type of business, it is more to identify them rather than to sell or meet a particular state law or requirement. So, you could possibly make an argument that that makes it a special condition of this particular property being that they have to post their prices for other, say it was Market Basket. They do not have to post the prices of swordfish on a particular day or something. So, in that way they are a little bit different from other properties. Having said that.

JIM TIRABASSI: Mr. Chairman, I understand what you are saying in that the sign is required by law that they post it, the prices but what are the alternate methods of doing it? And I noticed that they keep coming and saying that part of it is a safety issue. Because under adverse weather conditions when people are out there. Is there a happy medium between the plastic numbers that they have to manually go out and change LEDs? Is it also going to be cost efficient for them? I am looking here at the spirit of the ordinance. Said prices are changed, could be changed daily, weekly or monthly because what they want to do is avoid, now the flashing lights and the prices being continuously changed. How frequently are the prices changed? To see whether it merits the LED. Is there another technology that is available today?

SUZANNE BRUNELLE: I thought we fairly, quickly and concisely went through the first four points so I am just sticking with the hardship and in reading council's opinion on this, he sort of expanded that hardship to allow a special condition not just in the land itself but for the use of the land and going back to the fact that it is a gas station and they are required to post the prices. I think that gets you into that realm of hardship. So I am inclined to think that they have actually met the criteria.

NEIL DUNN: Ok, but to that point there is plenty, they are currently posting their prices within the terms of the law and the requirements of the state. So it gets back to the Town having said we didn't want these LED flashing, whatever they want to call them. I know they are different on the message boards and all that but there are other ways to post the prices and they really are changing the sign to a different look. It is a better look and I kind of think the

LED thing is really the big issue and there are other ways. They are currently doing it and someone in this day and age can't come up with a better way of changing electronic copy or whatever you want to call it without doing these bright LEDs that we kind of spoke to in our ordinances. I do not see how this is the show stopper. The LED portion of it, they can post their prices. They are other ways maybe someone can come up with even a better way to make their life easy. But if we look at the argument for point five, a lot of it is talking to, because Shell Station wants it, Shell corporate standards. So, I think I brought this up last month. You know, it is their standards. It is not our ordinance. We are here for the way our ordinance is written. I do not get a lot of support for the argument that was presented for five other than the RSAs, the one that we referenced 674. We are letting them change their sign. We are letting them post their prices and it is just now a decision of if they should have LED or not. I don't. I am not sure I am in favor of it. I am not in favor of it.

JIM SMITH: You know one of the things that I keep going back to and how we describe our signs and so forth. They talk about using a good design and so we know exactly how it is worded. Do you have that?

JACQUELINE BENARD: I have it. I read it last month.

JIM SMITH: So, part of what I am kind of looking at is...this is the design of these types of signs which is pretty much being used. I know it is used in Derry. They got one over there. I noticed it the other day. So it is being used quite a bit. Whether, I am not so sure why LED, to Neil, is so objectionable. It is a light. It is still just a light.

NEIL DUNN: If I may, Mr. Chairman.

JIM SMITH: Sure.

NEIL DUNN: One could argue that there are all kinds of signs and all over, Derry, Manchester, Salem and everywhere that are being used. But that is not the point. The point is that we try to codify our ordinances and limit this because we wanted to maintain the character and the rural look and to me, the red LED is harsher than the existing method. With the back light on white with black letters. I do not find them attractive by any means. If I was to look at the character. Yes, you can have numbers flying off and all of that but that is maybe a design feature of the older signs. I would have to think that newer signs are better than that. I am standing back looking at what is argued. The standards of the corporations and then there is other terminology that they use. So I look at the argument and the fact that we try to codify and to limit them and I am not seeing a strong argument when they talk about the natural progression of technology. I mean you could argue that the flashing moving ones are natural technology and they are talking more about their needs from the corporate and nothing to the character. Nothing to the, they did not make an argument for safety. I do not think that is what the Town wanted when they codified it and if it needs to be changed, then that is different.

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JACQUELINE BENARD: I have the purpose and intent of the ordinance. Do you want me to go through that again?

JIM SMITH: Yeah, why not. So we all have it fresh.

JACQUELINE BENARD: So this is the purpose and intent for ordinance 3.11.1. Section 3.11.1 was read into the record. So Mr. Chairman, if I may. When I think of the hardship factor and I reread what the intent of the ordinance is, it does hit upon those points and the hardship factor for them having to display their pricing. I can see where it does fit and I am driven to believe that the hardship factor does actually on this fifth point meet the spirit of the ordinance in each way.

JIM SMITH: Ok, at this point we got Suzanne, Jackie saying yes. Where do you stand?

JIM TIRABASSI: I am tending to, listening to Jackie talk. I was talking about intermediary sources of or styles of signage in between but that would be dependent on something being developed so it's fairly irrational to think that we be holding to something that does not exist as a replacement so I am leaning towards the fact that in terms of what there is, it is the best available. And agree that it does meet the hardship.

JIM SMITH: Ok, that gives us three and one against. I would tend to think that it has met the hardship so at this point I would ask for a motion.

NEIL DUNN: If I may before we go to a motion we had talked about the presented copy in the packet. They had a white backdrop as opposed to a darker backdrop.

JACQUELINE BENARD: Yes.

NEIL DUNN: So, I would like to make a recommendation that we go back to the stipulation. What is the word I am after? Condition, restriction?

JIM SMITH: You want to add a restriction that the LED be reversed, basically.

NEIL DUNN: Basically, yes because before it was a more neutral background. Now it was going light and back lit with the letters dark and so the overall impression was much brighter with the white.

JIM SMITH: So, you want the letters illuminated and the background muted?

NEIL DUNN: Correct.

JACQUELINE BENARD: And I believe the applicant had no problem with that.

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JIM SMITH: Yes, we had discussed that last time. So whoever makes the motion, you want to incorporate that into it.

JACQUELINE BENARD: Mr. Chairman, I would like to make a motion to approve Case no. 1/20/16-2 and approve the variance for the freestanding sign with the conditions that the background of the sign be muted, to be a muted color and the text shall be white, correct?

JIM SMITH: Illuminated.

JACQUELINE BENARD: Or illuminated. This shows us that illuminating the red and the green. Didn't we say that it didn't matter about the color?

NEIL DUNN: Well, I think what they are saying was the whole white panel which was the whole on the square footage, if you will. The sign was illuminated and then their food mart, car wash, ATM was going to be the dark spots. So in effect that would be a much brighter looking sign.

JACQUELINE: So the back of the sign to be a muted color and text illuminated?

JIM SMITH: Ok. Do I have a second?

JIM TIRABASSI: Second.

JIM SMITH: Jim seconds. All those in favor.

SUZANNE BRUNELLE, JACQUELINE BENARD, JIM TIRABASSI AND JIM SMITH: Aye.

JIM SMITH: So we got, you.

NEIL DUNN: Opposed.

JIM SMITH: Four for and one against.

MARK GROSS: Thank you.

JIM SMITH: Hopefully we will not have too many of these.

[OVERLAPPING COMMENTS]

RESULTS: MOTION WAS APPROVED 4-1-0

RESPECTFULLY SUBMITTED,

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Jim Tirabassi

JIM TIRABASSI, ACTING CLERK

TYPED AND TRANSCRIBED BY, PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT
SECRETARY.

APPROVED (X) WITH A MOTION MADE BY X, SECONDED BY X AND APPROVED 0-0-0.

