

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

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5 DATE: SEPTEMBER 16, 2015  
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7 CASE NO.: CASE NO. 8/19/2015-2 (CONTINUED FROM AUGUST 19, 2015)  
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9 APPLICANT: ALLIANCE ENERGY CORPORATION  
10 36 EAST INDUSTRIAL ROAD  
11 BRANFORD, CT 06405  
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13 LOCATION: 1 HAMPTON DRIVE, 7-73-1, C-II  
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15 BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN  
16 JACKIE BENARD, VOTING MEMBER  
17 BILL BERNADINO, VOTING ALTERNATE  
18 JIM TIRABASSI, ACTING CLERK  
19  
20 ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING  
21 ADMINISTRATOR/HEALTH OFFICER  
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23 REQUEST: VARIANCE TO ALLOW A FREESTANDING SIGN WITH A CHANGEABLE  
24 ELECTRONIC MESSAGE BOARD WHERE OTHERWISE PROHIBITED BY  
25 SECTION 3.11.7.E.3.  
26  
27 PRESENTATION: J. TIRABASSI READ THE CASE INTO THE RECORD. SIX PREVIOUS CASES.  
28 ONE LETTER READ INTO THE RECORD. NO PAGES TO REFERENCE AS  
29 ATTACHMENTS. PAGES \_\_\_\_\_ ARE ATTACHMENTS TO REFERENCE.  
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31 JIM SMITH: Okay, who will be presenting?  
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33 [Overlapping comments]  
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35 JIM TIRABASSI: I thought there was something else to read in here...it's okay.  
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37 JIM SMITH: Is that a new letter?  
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39 JIM TIRABASSI: No it's not, it's a dictionary...  
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41 JACKIE BENARD: No, it's a different one, yeah.  
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43 JIM SMITH: Okay. Who will be presenting? You want to name and...

44  
45 HUSEYIN SEVINCGIL: Good evening for the record Huseyin Sevincgil with MHF Design Consultants out of  
46 Salem, NH and we have Dan Berry with Alliance Energy Corporation.  
47

48 JIM SMITH: Okay. Kind of as a recap what we were talking about, I think at the end of the last meeting was  
49 whether or not this was part of the original application and part of the original presentation to everybody.  
50 One of the things that we did look up was the Heritage Commission Minutes in particular the ones I noticed  
51 was May 22 and on the third page one of the Commissioners asked about the tall sign...I'm quoting this  
52 "along 102 and if the electronic number were considered an electronic sign Planner Vogl said it was not  
53 considered an electronic sign because the numbers did not move". Which kind of suggests to me that the  
54 fact that they were electronic was in fact noted at that meeting, and at least one of the Commissioners made  
55 a comment about that. I know several of the Heritage Commission people had seem to think it hadn't been  
56 presented before, but the minutes suggested it was.  
57

58 JACKIE BENARD: Mr. Chairman, may I?  
59

60 JIM SMITH: Sure.  
61

62 JACKIE BENARD: At the last meeting, Mark Gross was present for that meeting. The conversation about our  
63 zoning ordinances and the references that he made specifically concerning symbol and that it was  
64 ambiguous. So, for tonight I wanted to make sure that we clarified what that was because I did question  
65 that, and Mr. Gross...I don't think you want me to read how he responded because I also said to him is not a  
66 number a symbol, and he proceeded to tell me that it was not. Nicole...I'd like to present to you because I  
67 was not as versed as he was I guess that evening, I decided that I would call on somebody higher. So, I looked  
68 it up in the American Heritage Dictionary (1991). So, I said alright, a number which you have in front of you  
69 the definition "a member of the set of positive integers one of a series of symbols". So, I wanted to make  
70 sure because we talked about numbers and numeric and numerical. So, a numeral, which I also highlighted  
71 for you – the very first sentence "a symbol or mark to represent a number". So, I'd like to clarify that the  
72 zoning ordinances the way that they were written were specific and they did deal with numbers. The symbol  
73 is referring to a number, and the basis of his argument so noted in the minutes of the meeting were that it  
74 never addressed numbers, but it does and it does correctly.  
75  
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77 HUSEYIN SEVINCGIL: Thank you. Thank you for the clarification, I guess. Unfortunately, Mark Gross is on  
78 medical leave, so I covering for him. I permitted the project from the beginning til construction and beyond  
79 basically. I was at the Heritage Commission meeting and again, I don't know what Mark indicated, but at the  
80 Heritage Commission meeting...we attended two meetings. They had the first meeting in which you  
81 indicated in May. We presented the signage; I have a copy of what was presented as well, so you reviewed  
82 that. As you had indicated, I found in the minutes that you know Mr. Vogl indicated that the sign that we are  
83 presenting is not considered an electronic message board. So, under that premise is how we moved forward.  
84 So, then we attended a second meeting with the Heritage Commission. So, the first meeting the Heritage  
85 Commission was trying to keep the existing sign posts and changing out the existing manual price sign to

86 what is presented to you tonight. So, at that time, there were four price...you know LED price signs  
87 presented to the Board. I have a copy of what was presented at that time, so I can...

88  
89 HUSEYIN SEVINGIL: If I can come closer?

90  
91 JIM SMITH: Yeah, sure.

92  
93 HUSEYIN SEVINGIL: So, this is the existing sign with us swapping out...you know this price/prices. At that  
94 meeting the Heritage Commission did not like that. They wanted us to lower the sign and come in with a new  
95 sign. So, at the next Heritage Commission meeting, we presented this which again is an electronic LED price  
96 sign, and that is what we used to permit the project all the way through...I think we received approval  
97 sometime...I'm not sure, maybe November from the Planning Board. So, members of the Heritage  
98 Commission were at the Heritage Commission meeting and at the Planning Board meeting which is what we  
99 presented. And again, you know, I read through the meeting minutes. We are not trying to pull anything  
100 over on the Town. We do a lot of work in the Town. So, you know, if at that point they would have indicated  
101 that hey...nope it's not allowed. You know we've submitted and received department comments as well at  
102 that time. We went through a rigorous Staff review and outside peer review. At no point, did anyone  
103 mention that this sign would not be allowed until during construction they went out to apply for a sign  
104 permit, and they were denied the sign permit. So, you know...that's the process that we've been through.  
105 We didn't try pulling anything over on the Board. We met with the Planning Board initially too back in April  
106 2014, and they had a change the site plan that we had originally presented. So, we've worked with the Town  
107 all throughout the process. So, I didn't appreciate the fact you know at the last meeting abutters, or  
108 members of the audience said that we were trying to pull something over on them, but as far as the  
109 sign...again, it's not a changeable sign. I read through the...you know the symbolic. In my opinion, numbers  
110 are numbers, letters are letters, symbols are you know...symbols you see in a cave from ancient times...you  
111 know what I mean? So, Webster's dictionary can define a letter as a symbol as well maybe? Because  
112 anything you jot down can be considered a symbol, I guess? So, I'm not sure what the intent of your code  
113 was, but again there's changeable copy that's allowed to be electronic which this is considered changeable  
114 copy in my mind. We do work all throughout New England. It's not constantly changing. It's stationary for  
115 most of the day, unless they change the price at night. I don't think they change the price in the middle of  
116 the day and its flashing. So, it doesn't meet any of the flashing, moving, animated, or noise making  
117 definitions that are listed in your ordinance. So, animated, moving, flashing, or noise making signs are  
118 prohibited. So, that sign doesn't meet any of that. I know they went into you know numeric, alphabetic, but  
119 again, I don't know what the intent is of the ordinance? Is it that there's no sign at all, or is it flashing,  
120 moving, noise making and animated signs. That's what was called out in the letter the denial letter from the  
121 Building Inspector. That's specific section that I just reference – Section 3.11.7.E.3. Again, just going back to  
122 the sign. The original sign was not as presented. It was fully illuminated...you know at the meeting, Heritage  
123 Commission they said it has to have an opaque background which we took from that meeting. So, that's just  
124 the facts that we were faced with just going forward with this project. Again, we started the permitting back  
125 in April 2014.

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127 JACKIE BENARD: May I Mr. Chairman?

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JIM SMITH: Sure.

JACKIE BENARD: Mr. Dunn was the one that asked for...and he's not here this evening. He asked...he used the term slight of hand which is what you were referring to. The Heritage Commission and the minutes that I have from that – it's dated May 22. You were here before the Zoning Board on April 15<sup>th</sup>.

HUSEYIN SEVINGIL: Correct.

JACKIE BENARD: That is a month before the Heritage Commission and the notes that you are referring to?

HUSEYIN SEVINGIL: No, no. April 15<sup>th</sup> of this year.

JACKIE BENARD: Of this year?

HUSEYIN SEVINGIL: Heritage Commission was last year.

JACKIE BENARD: Alright, its 14, so on April 19<sup>th</sup>, this year this was the sign that you presented to us in our packet.

HUSEYIN SEVINGIL: That's the existing sign that I have here today.

JACKIE BENARD: Correct, so...and what my point is when we gave you the variance to go higher we didn't have that sign, we had this in our package?

HUSEYIN SEVINGIL: That wasn't the only thing that was presented in the packet. That was an existing...

JACKIE BENARD: Correct...

HUSEYIN SEVINGIL: ...sign.

JACKIE BENARD: ...and it was to show to us why you wanted to go higher because we have pictures of all the other trees down Route 102 all different types. So, we have dentists, we have banks, and last year's winter was phenomenal, so it made sense why you were coming for a higher sign.

HUSEYIN SEVINGIL: Right, so at that meeting though, that was before the June 1<sup>st</sup> denial letter. So, at that meeting, we were just going for a height variance.

JACKIE BENARD: Correct.

HUSEYIN SEVINGIL: We weren't going for the LED...you know the price change because we didn't know...

JACKIE BENARD: Correct.

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173 HUSEYIN SEVINGIL: ...at that point...  
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175 JACKIE BENARD: Correct.  
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177 HUSEYIN SEVINGIL: ...so...the signs were already...  
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179 JACKIE BENARD: Because the statement was made by Mr. Gross that you already had the sign that you  
180 approved that you had seen it, and that's when Mr. Dunn said I want...  
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182 HUSEYIN SEVINGIL: Okay, so he was referring to the zoning?  
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184 JACKIE BENARD: That is correct.  
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186 HUSEYIN SEVINGIL: Right.  
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188 JACKIE BENARD: So, I just want that to be very clear.  
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190 HUSEYIN SEVINGIL: Okay.  
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192 JACKIE BENARD: Alright?  
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194 HUSEYIN SEVINGIL: But again just to rebut that...that sign was what was there today...  
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196 JACKIE BENARD: That was your original?  
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198 HUSEYIN SEVINGIL: ...that's why we used the visual...  
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200 JACKIE BENARD: Yes.  
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202 HUSEYIN SEVINGIL: ...you know the 20 and the 10. Again, thinking that the original sign that we had  
203 proposed the one that's on this board that was presented to the Town previously was allowed.  
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205 JACKIE BENARD: May I?  
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207 JIM SMITH: Yeah.  
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209 JACKIE BENARD: One more question. You state it's going to change when prices change. Do you have  
210 specials for fuel?  
211  
212 JIM SMITH: Do you want to say something...  
213  
214 [Overlapping comments]

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216 DAN BERRY: Yeah, no we don't.  
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218 JACKIE BENARD: Okay.  
219  
220 JIM SMITH: Just so we can get that in the record.  
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222 JACKIE BENARD: So, you're price change may be in the morning, or maybe in the afternoon? Whatever the  
223 market...whenever it is?  
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225 DAN BERRY: That's correct.  
226  
227 JACKIE BENARD: ...You're notified, or whenever you decide to change the price?  
228  
229 DAN BERRY: Yeah, yeah, right.  
230  
231 JACKIE BENARD: And your argument is that to let the public know. I happen to be in the next town over last  
232 weekend, and there's gas a gas station that has an electronic changing sign and when I happened to be at the  
233 stop light I thought I saw one price...I drifted, I looked over because the sign had changed because they  
234 happened to have a special. If you're part of...  
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236 JIM SMITH: Cumberland Farms?  
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238 JACKIE BENARD: Yeah.  
239  
240 JIM SMITH: Yeah, we don't do that.  
241  
242 JACKIE BENARD: ...its one price and then all of the sudden it changed to another price. So, your premise to  
243 us is that you are going to display the price. Who's to say that you don't change prices and you don't have a  
244 special of some sort, and now we have a moving sign? Animated...  
245  
246 DAN BERRY: Well, we don't do that. That's Cumberland Farms.  
247  
248 JACKIE BENARD: You don't do that today?  
249  
250 DAN BERRY: We don't do that, but you can put a restriction in on us that we can't do that.  
251  
252 HUSEYIN SEVINGIL: I think Cumberland's is the only one that does that.  
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254 JACKIE BENARD: It just...  
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256 HUSEYIN SEVINGIL: There's other signs that actually...you know, they have the text that moves around, but  
257 this again...

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JACKIE BENARD: Again, this is not what we're talking about?

HUSEYIN SEVINGIL: Again, yeah.

JACKIE BENARD: We're clearly just staying with the pricing and that is what it is going to display?

JIM SMITH: Well, on the Cumberland sign, do they verbiage to go with it?

DAN BERRY: Yeah they do.

JACKIE BENARD: Yeah.

JIM SMITH: Okay, so in this particular...

JACKIE BENARD: In one...one of the signs, yeah. It says member and the price is lower, and it turns to a higher price, and that's what you see then all of the sudden it goes back, and it's another price

JIM SMITH: Yeah, but the point I'm trying to raise is...what they are suggesting is just to have the numeral.

HUSEYIN SEVINGIL: The numbers correct.

DAN BERRY: Numbers.

JIM SMITH: With no...you know...

JACKIE BENARD: They actually had them both, so Cumberland's addressed both of those issues.

JIM SMITH: Yeah, but they had to of had some sort of verbiage to indicate which is which.

JACKIE BENARD: Right, the one that said "Member", so that's how you knew.

JIM SMITH: Yeah.

JACKIE BENARD: Oh, I'm not a member.

JIM SMITH: So, in this case what...we're not talking about having a provision to put anything like that.

JACKIE BENARD: Right.

JIM SMITH: So, that's...

JACKIE BENARD: But that's how they use it today.

301  
302 JIM SMITH: Well, they'd have to re-work the whole sign to do that.  
303  
304 JACKIE BENARD: Because the sign...from what I recall, you change the pricing internally in the station?  
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306 DAN BERRY: That's correct.  
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308 JACKIE BENARD: You do not go outside?  
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310 DAN BERRY: That's correct.  
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312 JACKIE BENARD: To change the price like everybody else down the strip?  
313  
314 DAN BERRY: That's correct.  
315  
316 JACKIE BENARD: Okay.  
317  
318 JIM TIRABASSI: When...oh, I'm sorry?  
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320 JIM SMITH: Go ahead.  
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322 JIM TIRABASSI: How often do you change prices? What time of day, I assume it's no more than daily?  
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324 DAN BERRY: Yeah, it wouldn't be any more than once a day, and right now the way prices are it's probably a  
325 couple three times a week.  
326  
327 JIM TIRABASSI: Okay, okay and when do you get your pricing? Overnight or during the day?  
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329 DAN BERRY: They'd get it during the day.  
330  
331 JIM TIRABASSI: Day.  
332  
333 DAN BERRY: Yeah.  
334  
335 JIM SMITH: Anybody else? Comments from the Board? Okay, anybody who's in favor? In favor? Okay,  
336 come on up and speak in a microphone and identify yourself.  
337  
338 DONALD BOOTH: My name is Donald Booth, and I'm a resident at 13 Partridge Lane. I'd like to speak in favor  
339 of this sign, and I know there's a lot of controversy regarding whether or not it's a message board, or  
340 changing digits, or whatever...splitting hairs, and I know in your variances you can put in stipulations that  
341 could stipulate there could be no images displayed that it had to be numeric. So, I think you can do that.  
342 What I would like to present to you and talk about is your ordinance itself, and that the way that I read it...the  
343 way I see the sign it allowed by the ordinance with the exception no electronic message sentence. Putting



344 that aside let's look at the purpose and the intent of the sign ordinance. Section 3.11.1.A – "Protect the  
345 health, safety and the welfare of the public". The changing of this sign from a manual price changer to an  
346 electronic price changer is a safety issue for those who have to go out with a tall pole, cold weather and  
347 change those numbers. It's not easy to do particularly in bad weather. B, "Maintain and enhance the  
348 appearance in the aesthetic environment of Londonderry". Changing the sign from its existing sign to a new  
349 modern technology sign is enhancing the appearance. There's no question about it. "Maintain and promote  
350 the rural, agricultural, and historical character of Londonderry". That area is all business for all intense of  
351 purposes it's a commercial zone. It may not be considered that in terms of your ordinances and zoning and  
352 what not, but as the public sees it, it's a commercial zone. So, there's no difference in what they presently  
353 have manually to going digitally. It's just a different technology. The numbers can still change. You can have  
354 an individual go out there ten times a day and change those letters which is far more distracting to the  
355 motorist going by than a digit changing. You probably wouldn't see a digit changing with the exception I  
356 understand you comment with Cumberland Farms, and I fully understand what she's saying, but for the most  
357 part no other gas station that I know of in all of New England other than Cumberland Farms changes their  
358 digit that frequently. D, "Control visual clutter and encourage high professional standards in sign design and  
359 display". Allowing a digital sign is a much more uniform way of displaying the price of the gasoline. If you  
360 allowed all of the gas stations in Town to do so, you would have a much more unified sign. Instead of having  
361 missing numbers, super large numbers, or super small numbers displaying various different prices. If you go  
362 to the north end of Town the Shell station up by the bus terminal. If you look at the price of their letters  
363 they're humongous. That sign to me is more offensive than any electronic digital numerical changing sign  
364 could ever be, and you don't have anything in the ordinance that I am aware of that says that the letters have  
365 to be a certain size. So, you don't have uniformity when it comes to digital, you can't have humongous  
366 letters because the bigger the letter the larger the cabinet has to be and now when you go to a larger cabinet  
367 you are sucking up square footage of the overall sign which is controlled by the ordinance. So therefore the  
368 ordinance protects the size of the sign. So therefore it has to protect the size of the letters, or excuse me, the  
369 numbers. F, "Retain the Town's ability to attract and encourage economic development and growth". How  
370 else are you going to do that? By using the latest technology...it doesn't make sense. We want to go back to  
371 the old says where the old gas pumps that never read right? We've allowed those pumps to change over  
372 years. You've allowed them to build a beautiful brand new building. Why not allow them to have a sign to  
373 compliment the building and promote the economic growth of Londonderry by creating a community image  
374 that is conducive to attracting new business and industrial development. Well, if I had a business and  
375 somebody told me I couldn't use my new technology, I wouldn't be interested in coming to Londonderry. So,  
376 we have to look at the technology. Nothings changing here...the numbers change. It's just a different  
377 technology that's doing it. We've all evolved. We no longer use a crank to start our cars. Why can't the sign  
378 evolve along with it? Down in your permit process – Section 3.11.4 (1, 2 and 3), "The sign will not cause  
379 visual confusion, glare, or offensive lighting in the neighborhood". I don't see that happening here. As a  
380 matter of fact, I think it's going to produce less light than the current sign that is there now. "The sign will not  
381 significantly alter the character of the zoning district". I'm not 100 percent certain of what that zoning district  
382 is, but for all intense of purposes, it's commercial. Putting another sign in a commercial thing, in a  
383 commercial zone is not going to change anything one iota. "The sign will not interfere with traffic and safety  
384 in the area." The sign cannot, will not interfere with traffic safety...it would enhance it. Ironically, when I  
385 read this in the paper a few weeks ago that the meeting was postponed to tonight, I went down to Market  
386 Basket and as I come out of Market Basket well low and behold what do I see, I see the guy in the gas station

387 changing the price signs. How ironic, and I looked because I was curious. Well stupid on my part  
388 because...no I didn't get in an accident or anything, but he was a distraction. Now, if he's out there twice a  
389 day, three times a day, or three times a week whatever that's a big distraction in my opinion. The electronic  
390 digit you know for the most part you would not know it had even changed. So, I fully support this and I  
391 understand what people are very concerned about, and they are very concerned about having large signs  
392 with moving objects, pictures, specials of the day and all of that, and I fully support those people's concerns  
393 in regards to that...but the way you people govern, if that's the right word...and the way variances are issued  
394 you can put stipulations in there that would prevent that from happening. I think you can probably put in a  
395 stipulation that could prevent Cumberland Farms from doing it, but I'm no lawyer, but I do know for a fact  
396 that variances have been approved with stipulations, and when things change those stipulations, or that  
397 variance goes bye bye. So, you have all the protections right there. In my opinion, and the way I see this, I  
398 don't have an issue with it. It's just a different technology. I really don't, and again it's the way the variance  
399 is written and stipulations you want to put in it, and I'm speaking as a resident. I just...I like technology, and I  
400 hate it just as much as everybody else too. Not in a sign in it, but just computers and phones and everything  
401 else. It's, you know, driving me crazy. I'm not getting any younger, but I'm passionate about the digit on the  
402 gas station.

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404 JIM SMITH: Okay, do you have anything else?

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406 DONALD BOOTH: I think that's it.

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408 JIM SMITH: Okay, thank you.

409  
410 DONALD BOOTH: Thank you.

411  
412 JIM SMITH: Anyone else if favor? Identify yourself, your name and address please?

413  
414 **PETER MARCH:** My name is Peter March. I'm the owner of New Hampshire Signs on 60 Old Derry Road,  
415 Londonderry. I don't have a relationship with Global in this respect, but I do have interest in particularly  
416 electronic digital signs for gas stations. I'd like to clarify a couple of points. The code and I argue variances  
417 for electronic signs on a very regular basis probably one a month. The code in a number of New Hampshire  
418 towns and cities appears to be cookie cutter. It's pretty well animated, moving, flashing signs. If you pull a  
419 code on probably 90 percent of the towns...90 percent of the towns refer to that type of sign and in a lot of  
420 cases they prohibit it. The code in my opinion is incorrect in that it does not distinguish a message board  
421 from a digital price sign. This is a digital price sign. It is as totally different technology to a message center.  
422 The message centers at the top of South Willow can display messages, they can flash, they can rotate, they  
423 can...you know employ animation. They can employ a number of different devices. The actual physical  
424 technology, the LED's in these signs is incapable of flashing. It cannot flash. It cannot display anything other  
425 than a digit. Anything other than a price sign, and in my opinion it is not the type of sign that's described in  
426 the code. Before I came here, I did something similar to what Mrs. Benard did. Whereas, I got onto Google  
427 and I typed...I actually copied and pasted the words changeable electronic message board into Google and  
428 got a thousand pages. The first twenty or thirty pages until it drifted off the subject there was nothing about  
429 those signs. There was everything about the type of sign that you see at the top of South Willow. So, in my

430 opinion, I'd like to make firstly that the technology that these people are asking for is nothing to do with a  
431 changeable message board. South Willow changeable message board...this is nothing like that. That's the  
432 first thing. The second this is, back in early 2014, first of January 2014 the State of New Hampshire  
433 promulgated legislation that allowed gas station owners to display the prices in two out of three places.  
434 Okay, there's a small LCD display on a pump. You have this sort of sign, and then you have the traditional  
435 pump topper. What that meant was that the station...the pump topper away and it also meant that the  
436 station owner could now put this sign into a network. So, for example, when Global changes its price in the  
437 headquarters, it can be sent through the POS system to a sign like this and can be changed electronically. So,  
438 one of the hardships you're creating in denying the variance is you're creating a hardship which means these  
439 people cannot change their price from a remote location and change this price on this message center. So,  
440 they are limited in terms of being able to do that. As the previous speaker mentioned, these things are not  
441 particularly safe to change. There's a reason why technology is being adopted. One of the large national  
442 chains has actually adopted a 100 percent move to electronic signs as a result of legal advice from their legal  
443 team, so there is an actual chain that has gone 100 percent electronic. The reason why have done that  
444 because they have a liability as being hurt by the sharp and somewhat dangerous plastic letters that they  
445 have to put up in all weather conditions. One of the issues that I have often wondered about it whether  
446 these people are looking for a sign, that type of safe sign being denied by a Planning Board someone gets  
447 injured my assumption is they'll go after the Global, and when that doesn't work they will probably go after  
448 the people that denied them the sign, and to me it is a small but real possibility that the Town has some sort  
449 of liability for that injury. I can tell you that...you can laugh, but I can tell you that...

450  
451 BILL BERNADINO: They are going to go after us for the sign. I'll tell you that right now.

452  
453 **PETER MARCH**: Okay, and that's all I have to say on the subject.

454  
455 JIM SMITH: Okay, thank you very much.

456  
457 **PETER MARCH**: Thank you.

458  
459 JIM SMITH: Anyone else in favor? Anyone in opposition, or having questions? Want to approach the mic  
460 and identify yourself?

461  
462 PAULINE CARON: I'm Pauline Caron, 368 Mammoth Road. I was here last month. I looked up the definition  
463 of messaging. It's a system or process of transmitting messages especially electronically and I got that from  
464 the Marion Webster's dictionary. No this can be done with letters, numbers or pictures. Either one at a time,  
465 or in combinations of two or more. At last month's meeting, Mr. Gross quoted from zoning 3.11.6.D.3.a for  
466 signs in commercial districts, and I quote from that ordinance "One freestanding sign for each developed  
467 parcel up to a maximum of 65 feet, or a total sign face area allowed, 75 percent may be used as changeable  
468 sign." He referred to that as message copy. Changeable signage is not message copy and it is not electronic  
469 signs or sign boards, but actual signs that are inserted in the large frame sign explained the names of the  
470 businesses in the development so they can be changed if a company moves and a new one come in. This  
471 section of the zoning ordinance does not apply to message copy and electronic signs, or to the variance that's  
472 requested in this hearing. Under 3.11.7.E.3 – "Changeable electronic message board signs are prohibited in

473 all zoning districts.” At last month’s meeting a member of the Board mentioned the height of the sign to be a  
474 safety issue. The old sign that was taken down was 30 feet and that had a manual message board. It had  
475 been there for years. The new sign is 20 feet is granted in the variance hearing of April, 2015. That’s 10 feet  
476 shorter than the old sign. So, changing a manual message Board should be not be about safety but about  
477 electronic signs. Five points – the variance will be contrary to the public interest. The spirit of the ordinance  
478 is not observed. Substantial justice is not done and the values of surrounding properties will be diminished if  
479 this is granted because other signs will be all over town. Literal enforcement of the provisions of the  
480 ordinance would result in unnecessary hardship to the Town. Now, you have to remember a few years ago,  
481 the Fire Department requested a variance for an electronic sign with an emergency telephone number. That  
482 variance was denied because it was an electronic sign and that had numbers.

483  
484 JIM SMITH: I want to stop you at that point. What was that case...I...?

485  
486 RICHARD CANUEL: I can’t recall when that case was?

487  
488 PAULINE CARON: It was after one of the big storms that we had when the power was out and I didn’t look up  
489 the year. It’s probably 10, or 11.

490  
491 JIM SMITH: Well, see because one of the problems in I think Richard will...this out, the Town itself is not  
492 subject to its own zoning.

493  
494 PAULINE CARON: Well, they requested a variance. The Fire Department did and it was denied. Granting of  
495 this variance will open a Pandora’s Box. I told you that last month. Talking into account all of the  
496 information, I just presented, it is hereby requested that you deny this variance. Thank you.

497  
498 JIM SMITH: Okay, I’d like to ask a question? Were the minutes of one of your...what was the date of the  
499 meeting?

500  
501 PAULINE CARON: There were two meetings, May and June.

502  
503 JIM SMITH: Okay.

504  
505 PAULINE CARON: 2014.

506  
507 JIM SMITH: Okay. In the May meeting according to the minutes this issue was discussed.

508  
509 PAULINE CARON: And Mr. Vogl is not a member of the Heritage Commission.

510  
511 JIM SMITH: I’m...I’m...

512  
513 PAULINE CARON: He’s a member of the Planning Board.

515 JIM SMITH: I'm not saying he is. I'm just saying, it was discussed at that hearing, and one of our  
516 Commissioner's asked him a question about it, and it's in your minutes, so the point I'm trying to raise is your  
517 Committee evidently should have been aware of what was proposed at that point, and yet you still approved  
518 what was presented?

519

520 PAULINE CARON: I know what you are saying and I think we overlooked the actual sign with the digital  
521 numbers on it and if we would have noticed it we would not have recommended the plan to the Planning  
522 Board.

523

524 JIM SMITH: Well, one of your Commissioner's did? According to the minutes.

525

526 PAULINE CARON: No, I told you he's not a Commissioner.

527

528 JIM SMITH: No, not who was it...?

529

530 PAULINE CARON: John Vogl is not...

531

532 JIM SMITH: No, no it wasn't John.

533

534 JIM TIRABASSI: Cold...

535

536 PAULINE CARON: Was it Coldglazier?

537

538 [Overlapping comments]

539

540 JIM SMITH: Yeah.

541

542 PAULINE CARON: Well, he always asks about lighting at every Heritage Commission.

543

544 [Overlapping comments]

545

546 JIM SMITH: Okay, do you want to read that...just that section? This is what the minutes said.

547

548 JACKIE BENARD: This is on Page 3.

549

550 PAULINE CARON: Of which meeting?

551

552 JACKIE BENARD: May 22<sup>nd</sup>, 2014, Page 3 and it is the second paragraph and I'll read it "Commission  
553 Coldglazier asked about the tall sign along Route 102, and if the electronic number were considered an  
554 electronic sign. Planner Vogl said that it was not considered an electronic sign because the numbers did not  
555 move."

556

557 PAULINE CARON: Well, that's not really true because the numbers do move because they have to be  
558 changed. So, I consider that an electronic sign.

559  
560 JACKIE BENARD: On Page 1 of that same...excuse me, June 26<sup>th</sup>, 2014, Page 1...count from the bottom, the  
561 fourth paragraph up and it starts out "Commissioner Coldglazier went over the content and type of  
562 illumination for each sign to make sure only letters and symbols would transmit light." So, they went over it.  
563

564 PAULINE CARON: Is that all you have?  
565

566 JIM SMITH: Okay, the point we are trying to raise is...  
567

568 PAULINE CARON: Is that we approved it.  
569

570 JIM SMITH: Right.  
571

572 PAULINE CARON: But technically, we didn't approve it because it's an electronic sign, and I'm going by the  
573 zoning ordinance and as a citizen.  
574

575 JIM SMITH: Okay, okay the point I'm just trying to raise is...in the review by the Heritage Commission and by  
576 the Planning Board currently the sign as presented with this type of lettering was in fact approved.  
577

578 PAULINE CARON: If that's what you say.  
579

580 JIM SMITH: Yeah, well evidently that is what you minutes reflect.  
581

582 PAULINE CARON: Okay, but it's...thank you.  
583

584 JIM SMITH: Okay, just to pick up on one point. Richard, you're part of the review committee right?  
585

586 RICHARD CANUEL: Yes.  
587

588 JIM SMITH: When you reviewed this did you make any comments about the sign?  
589

590 RICHARD CANUEL: No, of course not. Usually, when a sign is submitted as part of the site plan a  
591 representation for lack of an other term of what the sign may be shown on the site plan. Now the Heritage  
592 Commission being an advisory commission to the Planning Board and an advisory only, the Planning Board  
593 may review that sign as part of the site plan review process, but they need to approve, or disapprove of the  
594 signage. The time the sign gets approved or denied is when it's submitted to my office for a building permit  
595 and showing the actual graphics and dimensions as representative of the actual sign to be installed. So,  
596 that's when the approval or denial process takes place.  
597

598 JIM SMITH: Okay, okay. Does anybody else have any comments about the sign?  
599

600 KAY WEBBER: Kay Webber, 24 Peabody Row. I think in the spirit of the ordinance the signs should not have  
601 any parts that are lighted, moving, or non-moving. I think the key word is lighted, and I think the current sign  
602 ordinance is meant to preserve the look and character of the Town. Now in all the years that I have been  
603 here and out of all the gas stations on 102, I have never ever heard of a 911 call to come with the Fire  
604 Department and the ambulance to save a person that has gone out there to change the magnetic signs that  
605 have blown away, and I do not think this is a hardship case. Thank you.

606  
607 JIM TIRABASSI: I have a question?

608  
609 JIM SMITH: Sure, go ahead.

610  
611 JIM TIRABASSI: Okay, two questions. The gentleman in the back who's from the sign company said  
612 something and it caught my ear. You...the local station do not change the pricing?

613  
614 DAN BERRY: Yes.

615  
616 JIM TIRABASSI: You said it was done through your corporation through a POS system?

617  
618 DAN BERRY: No, yeah, it's done through a POS system at the site.

619  
620 JIM TIRABASSI: Okay, the way he was...your corporation...

621  
622 DAN BERRY: No.

623  
624 JIM TIRABASSI: ...submitted it through a POS?

625  
626 DAN BERRY: No.

627  
628 JIM TIRABASSI: Okay, now the other part of it is...what are the hours of your operation? Until 11 at night?

629  
630 DAN BERRY: I think it's approximately.

631  
632 JIM TIRABASSI: And what do you do with the sign...

633  
634 DAN BERRY: It's off.

635  
636 JIM TIRABASSI: It's off, okay, so there's no illumination at all?

637  
638 DAN BERRY: No.

639  
640 BILL BERNADINO: Now on the...you can still go in there any time day or night to get gas though right?

641  
642 DAN BERRY: No, you can't.

643  
644  
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BILL BERNADINO: You still got that? The last Global you could.

DAN BERRY: No, no. When the store is closed you can't get in.

BILL BERNADINO: You can't pump gas?

DAN BERRY: No.

JIM SMITH: Richard, under the illumination of sign.

RICHARD CANUEL: Um, hmm.

JIM SMITH: Is internally illuminated signs are permitted? Is that correct?

RICHARD CANUEL: Yes, they can either be internally illuminated, or externally illuminated.

JIM SMITH: So, that's permitted?

RICHARD CANUEL: Yes, yeah.

JIM SMITH: Okay.

RICHARD CANUEL: At one point, if I could make in the ordinance where it talks about construction of the signage it says "Dark backgrounds with light colored lettering are encouraged. Florescent or glowing colors are prohibited." As I've said before as the Zoning Administrator, I have to make a literal interpretation of the ordinance, and just looking at the way the ordinance is written and that language is certainly clear that the intent of the ordinance is to discourage this type of sign.

JIM SMITH: So, you're suggesting that LED illumination of a sign would be prohibited? Discouraged?

RICHARD CANUEL: No, I'm saying my interpretation of the ordinance, it's clear that the intent of the ordinance is to discourage the electronic type signage whether it's letters or numbers or what have you.

JIM SMITH: Going one step further, what do you mean by electronic?

RICHARD CANUEL: Well, electronically lit whether it's LED or anything. You know clearly at looking at this type of sign its not customary sign that we normally see in Town that is consistent with other signs that have been approved in Town. Granted this is new technology maybe it's time for our ordinance to be rewritten to come into the 21<sup>st</sup> century, but right now today as I read the ordinance the intent of the ordinance is to prohibit this type of sign.



685 JIM SMITH: Okay, does the applicant...oh okay. Anyone else in opposition that would like to talk or speak to  
686 this issue? Okay, I'll bring it back to the applicant.

687  
688 HUSEYIN SEVINCGIL: Just touching on two of the members in opposition. Again, if...if again we  
689 present...when we do our site plans we do, we present everything that's going to be on the site. Signage was  
690 presented at both Heritage Commission meetings to the Town; I have a lengthy review letter from both the  
691 Town's consultant and the Department Staff. So, the department Staff provides comments. The signage was  
692 on the plan. It's been on the plan since the beginning. This was the 10 foot sign that was proposed and we  
693 came in for a variance to go higher because of the grades at the site. So, this is the sign that was proposed.  
694 You know the lettering was as you see it in front of you. If at that time my client was aware that it was not  
695 allowed then he would have...you know we would have made a decision back then, but again, it was their  
696 understanding that that they were allowed this sign because it only came up at the first Heritage Commission  
697 meeting. At that meeting, it was resolved. All the Commission members were there. If there was  
698 opposition...you know...the reason the Heritage Commission is to review the signage and the landscaping. I  
699 believe, and architecture of the building. So, those are the three elements that we presented to them, and if  
700 there was a problem with any of those which there were, we made revisions and we went back to them and  
701 they were happy, and we revised the plan and showed the sign that was permitted. You know...that five or  
702 six months of permitting that we went through. They ordered the sign and they were ready to install it.  
703 That's when we had this letter. I know the ordinance is hazy, I guess. As one of the members of the audience  
704 had mentioned you know they're cookie cutter. I do see these types of wording in a lot of communities. We  
705 do a lot of work you know in all of New England, and it is what he said "cookie cutter"... there's you know  
706 then people in the Town modify it or tweak it as needed. Again, it's not changeable per say. It's not going to  
707 change you know you have a clock that changes every minute. Even if you have a...I don't know if clocks are  
708 prohibited you know an electronic box...time telling. If that's prohibited you know...I'm not ever sure if that is  
709 prohibited in the Town? How that's ever addressed, but again that changes every minute twenty four hours  
710 a day. This changes maybe once a day instantly without anyone really seeing it if you're driving by. So, I  
711 don't see it as a nuisance. I don't see it as flashing or anything like that so you know that's where we stand.  
712 We have...you know we...we're put in a hard...you know...in a hard position here because again if we knew a  
713 year ago, we wouldn't be in front of you guys asking for this. So...

714  
715 JIM TIRABASSI: The sign has already been purchased and paid?

716  
717 HUSEYIN SEVINCGIL: The sign was ready to be...I think installed...

718  
719 DAN BERRY: Yeah.

720  
721 [Overlapping comments]

722  
723 JIM TIRABASSI: That's...I'm saying, you've already purchased and paid for the sign.

724  
725 HUSEYIN SEVINCGIL: Yeah, we went to get a permit for it though...

727 JIM TIRABASSI: Okay, that's...that's just one of my questions because it's tied into all the other stuff. That  
728 was my direct question.  
729  
730 DAN BERRY: And it is an internally illuminated sign.  
731  
732 JIM TIRABASSI: Right.  
733  
734 DAN BERRY: And the whole sign is LED.  
735  
736 JIM TIRABASSI: Right.  
737  
738 DAN BERRY: Not just the numbers.  
739  
740 JIM TIRABASSI: Right.  
741  
742 DAN BERRY: The Dunkin Donuts and the Global...  
743  
744 JIM TIRABASSI: Right.  
745  
746 DAN BERRY: ...are internally illuminated with LED's. New technology...cheaper to run.  
747  
748 JACKIE BENARD: May I, Mr. Chair?  
749  
750 DAN BERRY: ...more cost effective. You're not dealing with ballast, mercury lamps. That kind of thing...Eco-  
751 friendly.  
752  
753 JIM SMITH: Okay, Jackie.  
754  
755 JACKIE BENARD: Thank you, Mr. Chairman. Two points, I don't think we're really harping...I guess on the LED  
756 part the illumination. We're talking about it being changed from a remote location hence what a message  
757 board is. My second point, the Heritage Commission letters that we've been talking about the May 22<sup>nd</sup>,  
758 2014; June 26<sup>th</sup>, 2014. In attendance is everybody listed...Commissioner David Coldglazier is listed there and  
759 you've made a statement that everything was fine and that they approved it and it wasn't a problem. Which  
760 a letter was read, a letter dated August 19<sup>th</sup>, 2015 from David Coldglazier was read into the record. Would  
761 you like me to read it again?  
762  
763 HUSEYIN SEVINGIL: Sure.  
764  
765 JACKIE BENARD: It's addressed to the Zoning Board of Adjustment. It's dated August 19<sup>th</sup>, 2015 and it was  
766 read at the first meeting, and it says "Dear Chairman Smith", and this is from "David Lee Coldglazier, 6  
767 Moulton Drive Londonderry, New Hampshire." "I am writing to you as Chairman and to the Zoning Board of  
768 Adjustment (ZBA) members with regards to case number 8/19/2015-2. I am not it favor of a "changeable

769 electronic message board” being allowed at 1 Hampton Drive for Alliance Energy Corporation or its  
770 subsidiaries.” Shall I continue?

771  
772 HUSEYIN SEVINCGIL: You can continue.

773  
774 JACKIE BENARD: “Such a sign is prohibited by a zoning regulation in section 3.11.7.E.3. This regulation was  
775 adopted with a fair amount of input from the public. I believe that the public interest still rests with not  
776 allowing such signage in Londonderry.” And, that word was not...“As a member of the Heritage Commission  
777 we have not seen any applicants for new buildings or renovations ask for an electronic sign as part of their  
778 proposed plans. This applicant did not include such a request for this type of signage at their presentation to  
779 the Heritage Commission on June 26, 2014. They did propose a lower exterior, freestanding sign. That sign  
780 and their plans were recommended to the Planning Board by the Commission. Their request for a variance  
781 does not adopt the spirit of the ordinance in any way...quote “...Changeable electronic message board signs  
782 are prohibited in all zoning districts...” end quote. “The term “prohibited” does not have any allowances or  
783 shades of meaning. There is no lawfulness or rightfulness to be done by allowing something that is clearly  
784 prohibited. Substantial justice is done by upholding this prohibition. There is no reason to know whether or  
785 not the value of surrounding properties are enhanced or decreased by allowing an electronic message board.  
786 I have yet to see a real estate listing exhorting the benefit of having a “view of electronic sign”. I would  
787 suggest that we let some other town be the site for this social experimentation in property values and  
788 community ambiance. I do not feel that the lack of an electronic message board is an undue hardship to the  
789 applicant. This location has supported a similar business for about 20 years without an electronic signboard.  
790 There are three other gasoline vendors nearby that have not needed an electronic sign to survive. The whole  
791 of Londonderry commercial operations has survived without signs of this type. The undue hardship would be  
792 on the Town, if this variance is allowed. There will be no stopping other businesses or organizations to not  
793 erect such visual clutter after they apply for variances to this prohibition. If you allow this one, how will you  
794 stop the next one? Thank you for your consideration. David Lee Coldglazier.”

795  
796 HUSEYIN SEVINCGIL: I understand the letter is dated of August of this year. The meeting minutes from  
797 April...I’m sorry May of last year...It was clearly stated; you even read it in that it was an electronic sign.

798  
799 JACKIE BENARD: He questioned it.

800  
801 HUSEYIN SEVINCGIL: He questioned it and the Planner indicated that it was not considered an electronic sign  
802 because the numbers did not move, so the Planner works for the Town and the Planning Department, and  
803 the Building Department know the zoning. I’m an engineer, I read zoning. Planners, building inspectors  
804 today read the zoning ordinances. I read multiple. They read the one in Londonderry. So, if it was  
805 mentioned at that meeting in Londonderry...we weren’t in another town then there would have been further  
806 discussion that night. I was there. Dan was there, and at that point we would have went back to the drawing  
807 board and looked at it and came back with a different type of design, but at that meeting a year ago...over a  
808 year ago, it was not mentioned. We didn’t pull a fast one on anyone. It was in the plans submitted to various  
809 department heads. Again, they had another chance to review it. They had an outside consultant that...my  
810 client paid an absorbent...

812 JIM TIRABASSI: And at that point in time you believed that the sign you proposed...put in that package was  
813 acceptable.  
814  
815 HUSEYIN SEVINGIL: The May 22<sup>nd</sup> ...?  
816  
817 JIM TIRABASSI: Yeah.  
818  
819 HUSEYIN SEVINGIL: ...so the price sign...  
820  
821 JIM TIRABASSI: Right.  
822  
823 HUSEYIN SEVINGIL: ...we believed was acceptable, but the overall sign was not that's why we revised it.  
824  
825 JIM TIRABASSI: Okay, so that segment of the sign you deemed dis-approved it...this was the approval for it?  
826  
827 HUSEYIN SEVINGIL: Acceptable by the...  
828  
829 JIM TIRABASSI: Yeah, acceptable...  
830  
831 HUSEYIN SEVINGILL: ...by the Town, yeah...  
832  
833 JIM TIRABASSI: ...acceptable...approved, right...Okay.  
834  
835 HUSEYIN SEVINGIL: ...Acceptable by the Town, yeah.  
836  
837 JIM TIRABASSI: And like I said, I only have this one paragraph to go on...what was mentioned about it in  
838 subsequent meetings? You said you had another meeting...was the meeting with the Heritage Commission  
839 previously, or after this...you had a second meeting.  
840  
841 HUSEYIN SEVINGIL: So, that was the initial meeting.  
842  
843 JIM TIRABASSI: Okay.  
844  
845 HUSEYIN SEVINGIL: They made some...you know they wanted **mullions** added to windows.  
846  
847 JIM TIRABASSI: Okay.  
848  
849 HUSEYIN SEVINGIL: They wanted us to change the wall signs. Some of the architectural elements they  
850 wanted the color changes...landscaping. So, we went back, we revised the plans. They had a special meeting  
851 for us the following month. They only meet once every two months. They had a special meeting for us, we  
852 revised everything. Presented it back to them and we had the next discussion on the May...sorry...June 26<sup>th</sup>  
853 hearing.  
854

855 JIM TIRABASSI: Okay, and there was not more discussion about this portion of the sign being electronic  
856 movement, or anything?  
857  
858 HUSEYIN SEVINGIL: We presented the sign.  
859  
860 JIM TIRABASSI: Yeah.  
861  
862 HUSEYIN SEVINGIL: There was no...  
863  
864 JIM TIRABASSI: Like I said, I don't have any documents...I have nothing, so I'm just saying...  
865  
866 HUSEYIN SEVINGIL: ...again, it was a year and...a year and three months ago.  
867  
868 JIM TIRABASSI: Right.  
869  
870 HUSEYIN SEVINGIL: If there was, we would have changed...  
871  
872 JIM TIRABASSI: Right, well, I'm just saying, I have nothing. I didn't know if you guys had...  
873  
874 HUSEYIN SEVINGIL: I have the June 22<sup>nd</sup>...  
875  
876 JIM TIRABASSI: Yeah, that's what I'm saying. I just don't have anything to read off of.  
877  
878 HUSEYIN SEVINGIL: I think they might have it as well.  
879  
880 JACKIE BENARD: In answer to your question.  
881  
882 JIM TIRABASSI: Right.  
883  
884 JACKIE BENARD: May 22<sup>nd</sup> meeting, 2014?  
885  
886 JIM TIRABASSI: No, this is the June...I'm reading the May 22<sup>nd</sup>...  
887  
888 JIM SMITH: Okay, she's go the next one.  
889  
890 JACKIE BENARD: I've got the...  
891  
892 JIM TIRABASSI: Oh, okay, I'm sorry, I'm sorry...  
893  
894 JACKIE BENARD: ...page two "Vice Chair Shwableblee asked about signage. Mr. McCarthy said that the sign  
895 package was not completed, but that they only expected a simple monument sign and one building self-  
896 mounted sign".  
897

898 HUSEYIN SEVINGIL: Which page is that?  
899  
900 JACKIE BENARD: Two.  
901  
902 HUSEYIN SEVINGIL: That's for another project.  
903  
904 JIM SMITH: Yeah, see...  
905  
906 HUSEYIN SEVINGIL: So, our project ends at the bottom of page one...one, two, three paragraphs up...so  
907 that...  
908  
909 JIM SMITH: Yeah.  
910  
911 HUSEYIN SEVINGILL: ...page two is another project.  
912  
913 JACKIE BENARD: Oh, two is another...?  
914  
915 JIM SMITH: They go into another...  
916  
917 JACKIE BENARD: Okay.  
918  
919 JIM SMITH: So, those...that's somebody else's.  
920  
921 JACKIE BENARD: Okay.  
922  
923 HUSEYIN SEVINGIL: So, you mentioned Commissioner Coldglazier letters and symbols would transmit light.  
924 So, today you clarified that a symbol is also a number.  
925  
926 JACKIE BENARD: That is correct.  
927  
928 HUSEYIN SEVINGIL: So, we went off of that...and again, if it wasn't allowed back then we would have...you  
929 know, we would have accommodated that. Again, they purchased a sign. They were ready to put it up, and  
930 you know...they have the sign waiting.  
931  
932 JIM SMITH: I think part of what we're seeing is...the person who interprets the zoning regs is the Zoning  
933 Officer. No one else. Mr. Vogl made an opinion. He's part of the Planning Department, but he's not charged  
934 with interpreting the zoning regs. Now, if you go back through the history of all this signs, and the Heritage  
935 Commission and everything else, at one point, either the Heritage Commission, nor the Planning really looked  
936 at the signs at all...it was strictly left up to the Zoning Officer to interpret the zoning regulations and see  
937 whether or not a sign conforms with the zoning regulations. At some point, someone decided that they  
938 wanted the Planning Board to look at the aesthetics of the signs. Now, I think the weakness of that is they're  
939 not looking at it from the zoning administrator's point of view and that's where we're getting this conflict.  
940

941 HUSEYIN SEVINGIL: I understand that, but again, as I indicated we...there's a design review...  
942  
943 JIM SMITH: No, I understand that. Again, as he...or Richard said, he didn't really review the sign until he got  
944 the sign application.  
945  
946 HUSEYIN SEVINGIL: Right. That's when you see the actual sign.  
947  
948 JIM SMITH: Right.  
949  
950 HUSEYIN SEVINGIL: However; during the design review process of every town...you know they look at that  
951 and that's the reason why we present it...you know at that stage, so we have everything there that...you  
952 know the Town can comment on.  
953  
954 JIM SMITH: Does the Board have any other comments, or questions?  
955  
956 JACKIE BENARD: I guess? One last question? You did state that every time you went back to Planning and  
957 Heritage that you would change whatever they asked you to change? You'd go back...  
958  
959 HUSEYIN SEVINGIL: We did end up...yeah...  
960  
961 JACKIE BENARD: Okay.  
962  
963 HUSEYIN SEVINGIL: ...like I said, we had a six page comment letter from Tighe & Bond. It's not... can give it  
964 to the Board, but I have some notes on it as well. Then we had DRC comments that were one, two, three,  
965 four, five...five pages.  
966  
967 JACKIE BENARD: And you addressed all the concerns when they asked for something?  
968  
969 HUSEYIN SEVINGIL: That's what the process is, so we submit for Design Review and we hash out you know  
970 everything, and then at that point, we issue revised plans with responses. At that point, once all those are  
971 set, we can file for a formal application, so...  
972  
973 JACKIE BENARD: So, you complied with all of their other requests that they asked? Would it be fair enough to  
974 say that you would have complied with different signage?  
975  
976 HUSEYIN SEVINGIL: If, yeah...if at...  
977  
978 JACKIE BENARD: If at that time?  
979  
980 HUSEYIN SEVINGIL: ...at that stage, if we were...again this is actually a year ago, so August 22<sup>nd</sup>, a little more  
981 than a year ago was when we go first onslaught of comments that we started addressing.  
982  
983 JACKIE BENARD: So, it's fair to say that you would have also complied with the sign change?

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HUSEYIN SEVINGIL: Yes.

JACKIE BENARD: Okay. I have nothing else.

JIM SMITH: Nothing else? Anything else from the public? Any further comments from the applicant?

HUSEYIN SEVINGIL: No.

JIM SMITH: Okay, at this point, we'll close the public hearing and will take this under advisement and discuss it.

HUSEYIN SEVINGIL: Thank you.

DAN BERRY: Thank you.

**DELIBERATIONS:**

JIM SMITH: In my mind the hardship is this whole review process.

JACKIE BENARD: Correct.

JIM TIRABASSI: Yeah, I mean having people who have no authority just opinionated input makes somebody to believe that if...[Indistinct]...they have justification of authority.

JIM SMITH: Well, we need to fit it into one of these.

JIM TIRABASSI: Oh.

JACKIE BENARD: And the thing is in the end by the applicant's own admission, he would have complied to change back then.

JIM TIRABASSI: Right.

JACKIE BENARD: So, if he would have done it back then, he's going to have to comply now. There's nothing different.

JIM SMITH: Well, he's...they've already spent money and bought the sign.

JACKIE BENARD: Again...

JIM SMITH: That's a financial...



027 JIM TIRABASSI: Yes.  
028  
029 JACKIE BENARD: That's subjective, we haven't been presented any of that either. He says that he has a sign  
030 purchased to what degree that it is done. To...he by his own admission, he would have complied anyways.  
031 The Pandora's Box is...you know our previous review just to raise the sign by everything that he gave us to  
032 begin with, he showed up pictures of everything down 102, and everything down 102 is not lit up like that.  
033  
034 JIM TIRABASSI: Right.  
035  
036 JACKIE BENARD: Everybody has complied. We're not...yes, it's a commercial...yes, it's the 102 you know  
037 district, but the banks don't even have the time, or the...  
038  
039 JIM SMITH: They did at one time.  
040  
041 JACKIE BENARD: ...but he banks don't even have the time, or the...  
042  
043 JIM SMITH: They did at one time.  
044  
045 JACKIE BENARD: ...Fahrenheit reading, what the degree is out...  
046  
047 JIM SMITH: No, but...  
048  
049 JACKIE BENARD: But they don't now.  
050  
051 JIM SMITH: that was a blanket change that was made a few years back.  
052  
053 JACKIE BENARD: So, all these things are...  
054  
055 JIM SMITH: Yeah.  
056  
057 JACKIE BENARD: ...no other fuel station all the way down that corridor has it.  
058  
059 JIM TIRABASSI: Right.  
060  
061 JACKIE BENARD: This is...you know, we do it for one...it's a competitive advantage for one. Why can't the  
062 others have it?  
063  
064 JIM TIRABASSI: It's not so much a competitive advantage as it is the implementation of new technology.  
065  
066 JACKIE BENARD: Which new technology is fine.  
067  
068 JIM TIRABASSI: Right.  
069

070 JACKIE BENARD: But our regulations the way that they are written does not allow for this. It's for us to...we  
071 don't write them, we have to go by what is written, and the spirit of the ordinance and the character of  
072 Londonderry and what's trying to be preserved is all being talked about this evening...

073  
074 JIM TIRABASSI: Correct.

075  
076 JACKIE BENARD: ...because of this type of change. If it was...and these are brand new ordinances that we just  
077 received...

078  
079 JIM TIRABASSI: Right.

080  
081 JACKIE BENARD: ...just a couple of months ago. If it was the people that write the ordinances and everybody  
082 that gets together...

083  
084 JIM TIRABASSI: Right.

085  
086 JACKIE BENARD: ...and puts their heads together on these things...if they really wanted all this lighting they  
087 would have allowed for it. They wouldn't have been so strong in the language, and if we grant for one, we  
088 must grant for all. You know, I don't think it's...when we go through the five points; the values of surrounding  
089 properties, I don't think will be diminished?

090  
091 JIM TIRABASSI: No.

092  
093 JACKIE BENARD: ...but it's the character of Londonderry...that whole sector is commercial, but it's commercial  
094 in a very structure way to keep that Londonderry feel rather than a whole lit...you know, strip.

095  
096 JIM TIRABASSI: So, we're going...okay, we're going on the assumption...the restriction there is no animated,  
097 moving, or flashing, or noise making signs are prohibited. That's the...and no changing messages...changeable  
098 messages. Okay.

099  
100 JIM SMITH: Well, not exactly because...okay, when you look at commercial one, two and three under...

101  
102 JACKIE BENARD: Page 150?

103  
104 JIM SMITH: ...page 150...

105  
106 JACKIE BENARD: Yup.

107  
108 JIM SMITH: ...under A, it's says "one freestanding sign for each developed parcel up to a maximum of 65  
109 square feet of the total sign face area allowed. Seventy-five percent may be used for changeable signage. For  
110 the purpose of this section a developed parcel is a tract of land..." Yet, when you look at the definitions, we  
111 have two different definitions. It says sign changeable copy. It says "A sign, or portion thereof designed to  
112 accommodate message changes composed of characters or letters or illustrations that can be changed, or

113 rearranged either manual or..." here's the kicker, "or electronically without altering the face or surface of such  
114 a sign." That's just a definition. Followed by the definition of sign electronic message board... "A sign with a  
115 fixed or changeable display/message composed of a series of lights that may be changed through electronic  
116 means. Sign's who's alphabetical, pictorial, or symbol that can be changed or altered on a fixed display screen  
117 composed of electronically illuminated segments."  
118

119 JACKIE BENARD: And that's what this sign is...that they've proposed.  
120

121 JIM TIRABASSI: I'm just trying to think. I don't deem it as a moving sign. To me, movement is continuous  
122 change. The ability to change type on a regular basis. We're talking about something...  
123

124 JACKIE BENARD: We're talking about the...the definition of electronic message board which is again one of  
125 their other points...  
126

127 JIM TIRABASSI: Right.  
128

129 JACKIE BENARD: ...which is not allowed fits that definition of the sign that they are proposing. That they  
130 bought.  
131

132 JIM TIRABASSI: Well, the electric...what he just read was the definition for an electronic message board...  
133

134 [Overlapping comments]  
135

136 JIM TIRABASSI: Right.  
137

138 JACKIE BENARD: Sign electronic message board.  
139

140 JIM TIRABASSI: Right, right. I don't deem what he gave us as a description as being what this is.  
141

142 JACKIE BENARD: Because it's a sign with a fixed or changing display message composed of a series of lights  
143 that may be changed through electronic means. Signs who's alphabetic, pictographic or symbolic  
144 informational content can be changed, or altered on a fixed display screen composed of electronically  
145 illuminated segments." And that's what he's got.  
146

147 JIM TIRABASSI: ...well, I know, and I'm just interpreting something different. I'm interpreting it as not a  
148 changing message...I'm interpreting it as not a changing instrument.  
149

150 JACKIE BENARD: Right, but it starts off a sign with a fixed...  
151

152 JIM TIRABASSI: Right, okay, yeah.  
153

154 JACKIE BENARD: ...or...  
155

156 JIM TIRABASSI: Right.  
157  
158 JACKIE BENARD: ...changing display message. Because it's fixed when...once it's changed.  
159  
160 JIM TIRABASSI: Right, okay.  
161  
162 JACKIE BENARD: But then the rest of it falls under electronic message board...  
163  
164 JIM TIRABASSI: Right.  
165  
166 JACKIE BENARD: ...for the definition.  
167  
168 JIM TIRABASSI: Okay, the fixed part is...okay.  
169  
170 JIM SMITH: Okay, shall we go through the five points, and say whether...?  
171  
172 JACKIE BENARD: Yup.  
173  
174 JIM TIRABASSI: Okay.  
175  
176 JACKIE BENARD: First one, variance contrary to public interest?  
177  
178 JIM SMITH: Granting this variance would or not be contrary to the public interest? Comments? Well, if you  
179 look at purpose of intent under 3.11.1 as one of the persons who was in favor...point A says protect health,  
180 safety and welfare of the public. Second part is maintain and enhance the appearance, aesthetics,  
181 environment of Londonderry. Maintain and promote rural and agricultural and historic character of  
182 Londonderry. D; is control visual clutter and encourage high professional standards in sign display...design and  
183 display. Promote signs that are harmonious in color, material and lighting with the building and surroundings  
184 to which they relate. F; retain the Town's ability to attract and encourage economic development growth and  
185 G; promote the economic growth of Londonderry by creating community image that is conducive to  
186 attracting new businesses in an industrial development. Are we meeting those intents, or not?  
187  
188 JIM TIRABASSI: I just want to take a look at the other picture here for a quick second.  
189  
190 JACKIE BENARD: Well, I mean if we could go down the list, I mean...protect the health, safety and welfare of  
191 the public. This type of lighting versus just the fixed numbers...I mean, we could...it's subjective. I mean is it  
192 like looking at your cell phone when it lights up versus something that's just there?  
193  
194 JIM SMITH: Yeah.  
195  
196 JIM TIRABASSI: Right.  
197  
198 JACKIE BENARD: So, you know...I mean, I...

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JIM TIRABASSI: Yeah, that's a very subjective thing because it simplifies talking about going out and changing the pricing sign, which they are talking about is the safety of the worker, which is...you can always...

JIM SMITH: He actually raised two points.

JIM TIRABASSI: Right.

JIM SMITH: Safety of the worker and the possibility of distracting...

JIM TIRABASSI: ...distracting somebody else right.

JIM SMITH: ...somebody driving.

JIM TIRABASSI: ...the safety of the worker is one that can be mitigated by if it's a lousy day just don't change your price just live with what you've got there.

JACKIE BENARD: Yeah, but have you been there to the station? It's...it's fairly level ground. It's probably one of the nicer ones I've seen.

JIM TIRABASSI: I'm just saying, it's mitigated by the fact that it doesn't have to be changed manually if it's a storm, or something. He's talking about you know the safety to the employee. We're just saying that...that's not a consideration if I point that part.

JACKIE BENARD: Right, that has...that has no bearing here.

JIM TIRABASSI: Right, and that's what I'm saying.

JACKIE BENARD: Exactly.

JIM TIRABASSI: Right, yeah.

JACKIE BENARD: Maintain and enhance the appearance, aesthetics environment of Londonderry.

JIM TIRABASSI: Well, I'm looking at one of the old pictures from the exhibits here. That's why...I was by there today because I went to get gas and I looked at the sign, and there's always something about those signs that just rub me as cheap and lacking any character, and numbers blowing off and missing, and they just cheapen the value of it. So, for me that's a negative for these types of signs...of what's there right now.

JACKIE BENARD: I think they've actually go a nicer station than most right now.

JIM TIRABASSI: No, I'm not talking about the station, I'm talking about...

242 JACKIE BENARD: Well, I mean the sign.

243  
244 JIM TIRABASSI: Right.

245  
246 JACKIE BENARD: Even the sign. They're clean. They've enhanced what they've already done, so you know...

247  
248 JIM TIRABASSI: Right.

249  
250 JACKIE BENARD: ...I'm having a hard time with that one too...because they've actually...just buy the message  
251 changing board isn't going to make or break. They've already got a beautiful facility there.

252  
253 JIM TIRABASSI: Right.

254  
255 JACKIE BENARD: They've already enhanced it just the way it is. Maintain and promote the rural, agricultural,  
256 and historical character of Londonderry...um...

257  
258 JIM TIRABASSI: And the 3 feet up...

259  
260 JACKIE BENARD: ...well, historically...

261  
262 JIM TIRABASSI: ...3 feet off of I-93...

263  
264 JACKIE BENARD: Yeah, they're the first station off of...yeah, the highway...

265  
266 JIM TIRABASSI: Yeah, so much for the agrarian look right there, but you know...

267  
268 JACKIE BENARD: Control visual clutter and encourage high professional standards in sign and sign display.  
269 They've already got a...presenting a very professional sign anyways, it's just a matter of the electronic message  
270 board. The design of that sign for the numbers...manual versus changing it electronically from within.  
271 Basically, is the only...they're meeting...everything else is absolutely attractive with this whole business...

272  
273 JIM TIRABASSI: Right.

274  
275 JACKIE BENARD: ...with everything they have given to us. You know, from...especially from the first sign that  
276 was originally there to what they are showing now. It's how it's done. Promote signs that are harmonious in  
277 color, material and lighting with the building and surroundings to which they are related. They can achieve  
278 that without the electronic. They've done it, it's a gorgeous sign, and if you put the manual numbers like  
279 everybody else, or symbols like everybody else, I think it's still going to be better than everybody else. So,  
280 they've achieved that. Retain the Town's ability to retract and encourage economic development and growth.  
281 Anybody coming off the exit and seeing that station...brand new station...they'd say "Hey, they're here. Wow,  
282 this might be a great place to do business?" Compared to what the old station was that was there.

283  
284 JIM TIRABASSI: Oh, yeah, well, no doubt.

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JACKIE BENARD: Hoo...

JIM TIRABASSI: That's not...

JACKIE BENARD: And promote the economic growth of Londonderry by creating a community image that is conducive to attracting new business and industrial development, and that does it as well. It's very professional. They way that they've done it.

JIM TIRABASSI: But if we're becoming a truly...I'm trying to think of the word I want to say in the proper way...society where...I'll come back to what one of the gentleman said about technology and the advance of technology. Any potential for economic growth...a lot of people looking to relocate a business are going to look for communities that do show signs of technology in their marketing of their products...does it help, or hurt by not doing something like that? By having the ability...the business they can market themselves electronically by a sign.

JIM SMITH: Anything else?

JACKIE BENARD: Bill, do you have anything? So, I think it's contrary to the public interest. I'll mark it for the record for myself. Are you guys in contrary to the public interest, or...?

JIM SMITH: Well, when you look at all five points...one, two, three...

JACKIE BENARD: Yeah.

JIM SMITH: ...five, six, seven points there. My mind is kind of a mixed bag.

JIM TIRABASSI: Yeah.

JIM SMITH: Look at the last two ...retains the Town's ability to track and encourage economic development growth in Londonderry...having signs of this nature seems to be in keeping with those two points. Promoting signs in...color, material, and lighting with building...whether they have the electronic or not, the sign is going to meet that basic point.

JACKIE BENARD: Umm...

JIM SMITH: Control visual...and this is the part I think is a little difficult. Encourage high professional standards in sign design. The design of signs is what this is in keeping with with this type of display. If we're going to encourage people to use...I think in today's environment everyone is trying to use technology to make everything more efficient using this type of lighting is more efficient than using...

JIM TIRABASSI: Right.

328 JIM SMITH: ...some of your lighting needs, so I think this type of sign meets that point. Part C where it talks  
329 about maintaining and promoting rural and agricultural and historical...well, clearly there's no agricultural  
330 impact on this part of the Town. Now when you say historical character, I'm not sure whether having a bunch  
331 of pieces of plastic which have to be constantly changed versus having a lit up numbers that can just be  
332 changed remotely. I don't know if that's historical or not and I'm not sure how the rule fits into this particular  
333 sign?

334  
335 JIM TIRABASSI: On either sign, historically?

336  
337 JIM SMITH: Either sign.

338  
339 JACKIE BENARD: Well, I guess what if the market fluctuates and its changing three, four, six, twelve times a  
340 day?

341  
342 JIM TIRABASSI: Well, with that we can put in a caveat that they are limited to the number of changes they can  
343 do. That becomes their problem. They accept the technology, they accept the restriction.

344  
345 JACKIE BENARD: I know, but who polices that? That's...

346  
347 JIM TIRABASSI: Well, the other part is how...how noticeable is that change?

348  
349 JACKIE BENARD: I've got to tell you when I went by that Cumberland...

350  
351 JIM TIRABASSI: Well, we...

352  
353 [Overlapping comments]

354  
355 JACKIE BENARD: ...I did one of these...

356  
357 JIM SMITH: Well, okay, but I don't think that's comparing...?

358  
359 JIM TIRABASSI: Right, because...

360  
361 JACKIE BENARD: ...because it changed though...it was a pricing change.

362  
363 JIM TIRABASSI: Right.

364  
365 JIM SMITH: Right, I know but, I mean that clearly fits in my mind a message board.

366  
367 JACKIE BENARD: Correct.

368  
369 JIM TIRABASSI: Right.

370



371 JIM SMITH: There's no question. That's a message board, and it's not just changing the numbers. I'd like to  
372 ask them a technical question as far as the State law goes. What does the State law say about you posting  
373 your prices?  
374  
375 DAN BERRY: You have to post the price on the street.  
376  
377 JIM SMITH: The current price?  
378  
379 DAN BERRY: Right.  
380  
381 JIM SMITH: And does the law state how long you have to change that?  
382  
383 DAN BERRY: No.  
384  
385 JIM SMITH: Okay, thank you. The law is stating that they have to display the price.  
386  
387 JACKIE BENARD: Absolutely, yeah.  
388  
389 JIM SMITH: Yeah. I know from when he asked at the last meeting...they said they only had to display two  
390 prices. They don't have to display all the prices.  
391  
392 JIM TIRABASSI: All the prices?  
393  
394 JACKIE BENARD: Right.  
395  
396 JIM SMITH: Right...so, and the last one protect health, safety and welfare of the public. I think that's a mixed  
397 bag?  
398  
399 JIM TIRABASSI: Yeah, because if she's talking about a light changing, flashing....it's going to have the same  
400 impact as somebody observing something out there changing a sign manually?  
401  
402 JACKIE BENARD: Again, subjective, yeah.  
403  
404 JIM TIRABASSI: Yeah, that's what I was just saying.  
405  
406 JIM SMITH: Yeah.  
407  
408 JACKIE BENARD: Yeah.  
409  
410 JIM TIRABASSI: That's a tossup on that one.  
411  
412 JACKIE BENARD: Yup.  
413

414 JIM TIRABASSI: That where you some down to the sideline.  
415  
416 JIM SMITH: So, as far as the purpose and intent it's a mixed bag at best.  
417  
418 JACKIE BENARD: Yeah, it is.  
419  
420 JIM SMITH: Okay.  
421  
422 JIM TIRABASSI: So, we got that one resolved?  
423  
424 JIM SMITH: We have?  
425  
426 [Laughter]  
427  
428 JACKIE BENARD: We don't.  
429  
430 JIM SMITH: I wish we did.  
431  
432 JIM TIRABASSI: That was a fanciest statement.  
433  
434 JIM SMITH: Yeah.  
435  
436 JACKIE BENARD: Yeah.  
437  
438 JACKIE BENARD: Let's try going to the next one and seeing if the next one...  
439  
440 JIM SMITH: The spirit of the ordinance wouldn't be observed because? Again, when you look at the purpose  
441 and intent...the spirit in its entirety, it's almost the same thing.  
442  
443 JIM TIRABASSI: I'm just trying to go to their input. I had...  
444  
445 JIM SMITH: Why don't we go over the easy ones? Granting the variance would or would not do substantial  
446 justice because...? At one time, we could not consider financial problems...they said they've already bought  
447 the sign.  
448  
449 JIM TIRABASSI: They already bought the sign, but was it based on what they perceived to be consent to it,  
450 or...?  
451  
452 JIM SMITH: Yeah, I would almost have to say that because of the process.  
453  
454 JIM TIRABASSI: Right.  
455

456 JIM SMITH: Because of the design review. The Planning Board's...to say it...part of the review of the sign is  
457 being part of the site plan. The fact that it was mentioned at least in the initial meeting and nobody raised any  
458 objections. So, there's an argument that they were...  
459

460 JIM TIRABASSI: They were led to believe, or assumed to believe?  
461

462 JACKIE BENARD: Well, they make that argument and I can see their point...  
463

464 JIM TIRABASSI: Right.  
465

466 JACKIE BENARD: ...if...what throws me off is the strong letter.  
467

468 JIM SMITH: Well, the only problem I have with the letter...in the letter he denies that he ever...  
469

470 JACKIE BENARD: Correct.  
471

472 JIM SMITH: ...well, how would you say it?  
473

474 JACKIE BENARD: He uses strong language. It's says "This applicant did not include such a request for this type  
475 of signage at their presentation to the Heritage Commission on June 26, 2014. They did propose a lower  
476 exterior freestanding sign. That sign and their plans were recommended to the Planning Board by the  
477 Commission."  
478

479 JIM TIRABASSI: They did on the June meeting and they did on the May meeting.  
480

481 JACKIE BENARD: He states that on the June 26<sup>th</sup>, 2014...  
482

483 JIM TIRABASSI: Right, but...  
484

485 JACKIE BENARD: ...and on the May, it was mentioned...  
486

487 JIM TIRABASSI: ...right, on the May, it was mentioned.  
488

489 JACKIE BENARD: ...but June...  
490

491 JIM TIRABASSI: ...Right, right...he's using the exclusion of the fact that it wasn't brought up then, not  
492 mentioning the fact that it had been brought up previously.  
493

494 JACKIE BENARD: ...but he said "The applicant did not include such a request for this type of signage at their  
495 presentation to the Heritage Commission on June 26, 2014. They did propose a lower exterior freestanding  
496 sign." So, he's talking about it was different what he saw, so they're telling us that it was actually approved  
497 and that's what he perceived to be the answer, and then we have the letter from Mr...  
498

499 JIM TIRABASSI: Coldglazier.  
500  
501 JACKIE BENARD: ...Coldglazier that he did not.  
502  
503 JIM TIRABASSI: Right, but looking at May 22<sup>nd</sup>, if I'm incorrect...asked about the tall sign along Route 102 and  
504 if the electronic number were considered an electronic sign. So, he wouldn't have gotten that unless it was  
505 part of a presentation? That's the second full paragraph on Page 3.  
506  
507 JACKIE BENARD: Page 3?  
508  
509 JIM TIRABASSI: Yeah.  
510  
511 JIM SMITH: Yeah, that's the part I have a hard time with.  
512  
513 JIM TIRABASSI: Right.  
514  
515 JACKIE BENARD: Yeah.  
516  
517 JIM TIRABASSI: If he knew to ask that question...  
518  
519 JACKIE BENARD: Okay, so...  
520  
521 JIM TIRABASSI: ...it had to have been presented at that time, or previously?  
522  
523 JACKIE BENARD: ...so, it's ambiguous.  
524  
525 JIM TIRABASSI: Right, right, right.  
526  
527 JIM SMITH: Well, in all the presentation if you look at the presentation, it appears like they're all the same as  
528 far as how the pricing is presented on the sign.  
529  
530 JACKIE BENARD: Um, hmm.  
531  
532 JIM SMITH: So, what I would take from that...since he asked that particular question at the first meeting and  
533 they were given that impression that that was an acceptable format...  
534  
535 JACKIE BENARD: "Planner Vogl said that it was not considered an electronic sign because the numbers did not  
536 move".  
537  
538 JIM SMITH: Okay, once the applicant heard that, I would presume that they would presume that they would  
539 not have to bring the issue up again.  
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541 JACKIE BENARD: Okay.

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JIM TIRABASSI: Right, because how are they to know who...if you're meeting with somebody in a board meeting...

JACKIE BENARD: Um, hmm.

JIM TIRABASSI: ...you would presume they had the ability answer your questions authoritatively.

JIM SMITH: So, there was...going on that premise there wouldn't be any reason for them to bring that issue up at the 26<sup>th</sup> meeting.

JACKIE BENARD: Got it.

JIM SMITH: So, when you read his letter...

JACKIE BENARD: He clearly states something else in the letter.

JIM TIRABASSI: Right.

JIM SMITH: ...he's not; he's not considering both meetings.

JACKIE BENARD: Um, hmm.

JIM SMITH: ...and he was...the damming part of it, he was the one that asked that question.

JACKIE BENARD: Correct.

JIM SMTIH: So, anyways, where are we at?

JACKIE BENARD: May I ask Richard a question?

JIM SMTIH: Sure.

JACKIE BENARD: And this is...I'm sure that this Commission is going to absolutely hate me. Do they have zoning regulations there? Do they get to see them? Do they look at them? Do they...Mr. Coldglazier?

RICHARD CANUEL: Well, I can't speak for the Commission, but I have to assume that the Commission and their role on...in that position that they would be familiar with the requirements of our ordinance?

JACKIE BENARD: They would be? Okay, thank you.

RICHARD CANUEL: We have a member of the Commission here, I believe if you want to ask that question.

585 JIM SMITH: Would either one of the members of the Commission care to answer that question?  
586  
587 PAULINE CARON: Ah, we don't...  
588  
589 JIM SMITH: Would you come to a mic?  
590  
591 PAULINE CARON: The zoning ordinances have not been provided to the Commission. Does that answer your  
592 question?  
593  
594 JACKIE BENARD: Yes, thank you. Okay, so knowing this...going forward...  
595  
596 JIM TIRABASSI: Now, the question that I have based on the state that she just made...why would that person  
597 have asked the question related to me assuming zoning if they had no knowledge of the regulations?  
598  
599 JIM SMITH: Well, what she said that they have not been provided with...  
600  
601 JIM TIRABASSI: Right, okay.  
602  
603 JIM SMITH: ...that doesn't mean necessarily...  
604  
605 JIM TIRABASSI: Right, they...  
606  
607 JIM SMITH: ...that every member...  
608  
609 JIM TIRABASSI: ...Right...not without knowledge, okay.  
610  
611 JIM SMITH: ...hasn't on their own...  
612  
613 JIM TIRABASSI: Right, okay, yeah, okay.  
614  
615 JIM SMITH: Which I think points out the weakness of the whole...  
616  
617 JIM TIRABASSI: The process...  
618  
619 JIM SMITH: ...process...  
620  
621 JIM TIRABASSI: Right.  
622  
623 JACKIE BENARD: Okay.  
624  
625 JIM SMITH: But, again I think part of the process of what we're seeing is they are looking at from an aesthetic  
626 point of view more than anything else, not necessarily it's the right height, the right size, or whatever.  
627

628 JACKIE BENARD: Correct.  
629  
630 JIM SMITH: Okay, I think...  
631  
632 JACKIE BENARD: Because of the quandary that the applicant is actually in at this point...  
633  
634 JIM TIRABASSI: Right.  
635  
636 JACKIE BENARD: If a variance is granted for this one location because of the circumstances and the road in  
637 which he was led...  
638  
639 JIM SMITH: Yeah, in my mind the hardship was created by the process.  
640  
641 JACKIE BENARD: Because the applicant admits in his own words that he would have done something back  
642 then because he hit all the other points they asked him to hit.  
643  
644 JIM TIRABASSI: Right.  
645  
646 JACKIE BENARD: So, he probably would have never been here today because he would have addressed that  
647 point.  
648  
649 JIM TIRABASSI: He would have dealt with the sign.  
650  
651 JACKIE BENARD: He would have done a different type.  
652  
653 JIM TIRABASSI: Right.  
654  
655 JACKIE BENARD: So he went ahead he purchases and makes up this signage and you know, I don't know the  
656 logistics, or the cost or what happens when you take that sign and you don't do electronics anymore and it's  
657 you know...numbers, I don't know. I mean, I'm sure it's a sizable amount because these signs are not  
658 inexpensive. They're quite expensive. So, I don't know what you're thoughts are about this because...all our  
659 questions just brought this out, but the process itself is flawed.  
660  
661 JIM TIRABASSI: Right.  
662  
663 JACKIE BENARD: Leading to this having us to decide.  
664  
665 JIM TIRABASSI: And part of what you're getting at and I assume what you are leading up to is if we grant  
666 them a variance are the other gas stations going to come saying we want to change to an electronic sign and  
667 then there's a very expensive proposition. I know for each of the restaurant's I owned what I pay for my signs  
668 and it is not something...and they are just regular handing signs.  
669  
670 JACKIE BENARD: Hmm.

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JIM TIRABASSI: And they go into five figures.

JACKIE BENARD: Correct.

JIM TIRABASSI: I can imagine something of this scope is going to be close to six and they're not going to it on a lot, it's going to be a redesign project, so I don't think it's something that's going to be cropping up. It's something that a new business would do as opposed to an existing business. Not to say that it doesn't need to be addressed how it is, but it's not something that everybody's going to run out to do.

JACKIE BENARD: Well, what's also dangerous is that the terminology...

JIM TIRABASSI: Right.

JACKIE BENARD: ...for the sign...

JIM TIRABASSI: Right.

JACKIE BENARD: ...clearly allows the door to open for not just gas stations, but...

JIM TIRABASSI: Right, any business right.

JACKIE BENARD: ...the banks for the changing of the temperature, the changing of the time, so it opens the door for that because the definition and everything that we have to work with...

JIM TIRABASSI: Right.

JACKIE BENARD: ...clearly states absolutely no...

JIM TIRABASSI: Right.

JACKIE BENARD: ...but the applicant has been led along the line for a year now...

JIM TIRABASSI: Right.

JACKIE BENARD: ...that everything was fine. He follows all the other rules and now this is the curve.

JIM TIRABASSI: ...Well, as I said, why don't we look...if we go that way our own restriction of how many times it can change. I mean, I know that's...as you said is a difficult thing, but that...if you were say some enforcement in that regard, it does eliminate time and temperature because those change continuously, so that's at least...not the best solution, but it is a solution.

JACKIE BENARD: Even to put that restrictive writing...



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JIM TIRABASSI: Right.

JACKIE BENARD: ...it shall not change.

JIM SMITH: Okay, one of the things that I think...we are kind of forgetting one case does not set a precedence for other cases because each case is supposed to be looked on...

JIM TIRABASSI: On its own individual uniqueness. Right.

JIM SMITH: So, just because we've granted this for one situation doesn't force us to make that same decision. We'd have to look at all the various elements that goes into it.

JIM TIRABASSI: Right.

JIM SMITH: And what makes this particular one unique is the fact that he went through this extensive design review, planning process and everything else and whether it was by mistake, or omission, or whatever you want to say it was, he was given the impress that this was an acceptable format. Granted the Zoning Administrator is the only one that can actually officially interpret the zoning regulations. However; because of the way this process is put together instead of that interpretation being made at the beginning, it was made at the tail end of the whole process. It was only made when the permit was applied for whether or not that procedure can be, or the whole review process can be reworked so that we don't get into this situation again in the future that's something that the administration has to figure out not for us to.

JIM TIRABASSI: Right.

JACKIE BENARD: Correct...

JIM SMITH: So, in my mind...

JACKIE BENARD: ... because we've got to clean up the mess.

JIM TIRABASSI: Right.

JIM SMITH: So, as far as a hardship goes, I think the hardship is the process that led him to believe that this was an acceptable sign, so I think he has a hardship.

JACKIE BENARD: I agree with that.

JIM TIRABASSI: Right.

JIM SMITH: Okay, so we all agree on that, we still have the other five points to decide whether or not we...it's almost easier to go back up...

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JACKIE BENARD: Yeah.

JIM SMITH: Then on the bottom. Number four for the following reasons the surrounding properties would or would not be diminished? That's about subjective as you can get. I don't think that you can prove one way or the other that...

JIM TIRABASSI: No.

JACKIE BENARD: No.

JIM SMITH: Granting a variance would or would not do substantial justice because? And here we have to also consider the financial burden, so I think because of the financial burden of having already purchased the sign. I think it would do substantial justice on the financial end. Okay, now on to the two hard ones. The reason this is taking so long, we have to document the reasoning's that we're coming up with for these different points and Jackie is trying to write it all down upon advice of our legal. So, the spirit of the ordinance, I think when you look at the purpose and intent on both the public interest and spirit, we meet some of the points, and we don't meet some of the other points.

JACKIE BENARD: I mean, all in all, he's met, he's enhances, he's done everything for the spirit of the ordinance.

JIM TIRABASSI: Right.

JACKIE BENARD: He really has, I mean, it's not that...it's pleasing. It invites business to the area. It's a win all the way around.

JIM TIRABASSI: It's a great introduction to the...

JACKIE BENARD: Into the Town right off of the exit.

JIM TIRABASSI: Right, right.

JACKIE BENARD: So, he's achieved all of that.

JIM TIRABASSI: Right.

JACKIE BENARD: So, the spirit of the ordinance...he's hit it all just by the purpose and intent...

JIM TIRABASSI: Right.

JACKIE BENARD: ...of the ordinance. He's done that. The only thing that he hasn't done is just put fixed numbers.

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JIM TIRABASSI: Right.

JACKIE BENARD: But other than that, he's done everything else.

JIM TIRABASSI: Right, yeah.

JACKIE BENARD: In all honesty, so...I mean, is the spirit of the ordinance observed...

JIM TIRABASSI: Yes.

JACKIE BENARD: ...it is in every aspect except for the lighting of it...

JIM TIRABASSI: Right.

JACKIE BENARD: ...or the ability to change it.

JIM SMITH: Well, it's not even just the lighting. I mean it's just the...

JACKIE BENARD: It's not the lighting, but the...

JIM SMITH: The ability to change it.

JACKIE BENARD: ...to change it.

JIM TIRABASSI: Right, right.

JACKIE BENARD: To change the price.

JIM SMITH: Which I think because it's just the numbers that changes it really out of the message board because it's just doing that one function. In my mind anyway?

JACKIE BENARD: And that's what we have concluded.

JIM TIRABASSI: Right.

JACKIE BENARD: I mean, we've beat this.

JIM TIRABASSI: Right.

JIM SMITH: Okay.

842 JIM TIRABASSI: And as I said if...and I'll come back to it. You said it Jackie, if we put the restrictions that it can  
843 only change so many times. How would we know? There are enough people that are set against it that they  
844 would track it.

845  
846 [Laughter]

847  
848 JIM TIRABASSI: They would get that information. They would take pictures. I'm not referring to anybody. It's  
849 not meant to anybody directly. There are people that are against technology in general and they would be  
850 more than willing to send in pictures, and stamped timed and all. So, it would be...the information would be...

851  
852 JIM SMITH: Well...

853  
854 JIM TIRABASSI: ...if that became a...

855  
856 JIM SMITH: ...I think the restriction we should put on it that the only thing that can change is the actual price  
857 of the...

858  
859 JIM TIRABASSI: Right.

860  
861 JIM SMITH: ...of the product.

862  
863 JIM TIRABASSI: And nothing except fuel pricing can be on it.

864  
865 JIM SMITH: Right.

866  
867 JACKIE BENARD: Okay, we can do that.

868  
869 JIM TIRABASSI: Right, just numeric values and...

870  
871 JACKIE BENARD: Alright, so we'll do that at the end.

872  
873 JIM SMITH: And...

874  
875 JACKIE BENARD: And one variance contrary to the public interest?

876  
877 JIM SMITH: Well, I don't think it is because the sign whether it says this type of technology, or the old type.  
878 It's still essentially going to do the same thing.

879  
880 JIM TIRABASSI: Right.

881  
882 JIM SMITH: The public is there. The purpose of the sign is to inform the public of the price of the fuel, the  
883 name of the place, and that's all what the sign is supposed to do.

884

885 JACKIE BENARD: So, it's not contrary to the public interest.  
886  
887 JIM SMITH: No.  
888  
889 JIM TIRABASSI: It provides the information that people need when they need it for what they need it for.  
890  
891 JIM SMITH: Okay, we got through those.  
892  
893 JACKIE BENARD: We did.  
894  
895 JIM SMITH: Wasn't easy. Okay, I'd ask for a motion.  
896  
897 [Laughter]  
898  
899 JACKIE BENARD: Are you going to make a motion Bill?  
900  
901 BILL BERNADINO: Me, I'm wondering if I can ask a couple of questions?  
902  
903 JIM SMITH: Sure.  
904  
905 BILL BERNADINO: First of all, what kind of sign are you going with?  
906  
907 JIM SMITH: No, no, no, you can't...  
908  
909 BILL BERNADINO: You can't just...  
910  
911 [Overlapping comments]  
912  
913 BILL BERNADINO: ...done?  
914  
915 JIM SMITH: The public hearing is done. Yeah, okay. The only thing we can ask at this point if we have some  
916 sort of a technical question...like I asked him the price of...what the State Law say, when we asked Richard...  
917  
918 BILL BERNADINO: Right.  
919  
920 JIM SMITH: It's a technical...that's the only thing we should do once we get to this point.  
921  
922 BILL BERNADINO: Well, I'll be caught up to you now.  
923  
924 JIM SMITH: Okay.  
925  
926 BILL BERNADINO: Too late.  
927

928 JIM SMITH: Okay. Jackie, since you've got all the notes.  
929  
930 JACKIE BENARD: Yeah, pull the trigger.  
931  
932 JIM SMITH: Yeah.  
933  
934 JACKIE BENARD: Alright.  
935  
936 JIM SMITH: Case 8/19/2015-2.  
937  
938 JACKIE BENARD: Ahh, Mr. Chairman, I'd like to make a motion to grant Case No. 8/19/2015-2 with  
939 restrictions...  
940  
941 JIM SMITH: Okay.  
942  
943 JACKIE BENARD: ...that the pricing shall be the only thing listed on said proposed sign...  
944  
945 JIM SMITH: No, no, the only thing that can be changed.  
946  
947 JACKIE BENARD: that can be changed. That the pricing is the only...  
948  
949 JIM SMITH: Yeah.  
950  
951 JACKIE BENARD: ...thing that can be changed on that sign.  
952  
953 JIM SMITH: Okay. Do I have a second?  
954  
955 JIM TIRABASSI: Second.  
956  
957 JIM SMITH: Jim second's. All those in favor?  
958  
959 JIM TIRABASSI: Aye.  
960  
961 JIM SMITH: Jackie do you vote Aye?  
962  
963 JACKIE BENARD: Yeah.  
964  
965 JIM SMITH: Aye.  
966  
967 JIM TIRABASSI: Aye.  
968  
969 BILL BERNADINO: Opposed.  
970

971 JIM SMITH: Opposed, okay.

972

973 JACKIE BENARD: Do we know what color the sign is, or anything? Do we have to state any of that?

974

975 JIM SMITH: No.

976

977 JACKIE BENARD: No.

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979 **RESULTS:**

980

981 **THE MOTION TO GRANT CASE NO. 8/19/2015-2 WAS APPROVED, 3-0-1.**

982

983 RESPECTFULLY SUBMITTED,

984

*Jim Tirabassi*

985

986 JIM TIRABASSI, ACTING CLERK

987

988 TYPED AND TRANSCRIBED BY NICOLE DOOLAN, PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT  
989 SECRETARY.

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991 **APPROVED (NOVEMBER 18, 2015) WITH A MOTION MADE BY N. DUNN, SECONDED BY J. BERNARD AND**  
992 **APPROVED 5-0-0.**