

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

DATE: APRIL 15, 2015

CASE NO.: 4/15/2015-2

APPLICANT: ALLIANCE ENERGY CORPORATION  
36 EAST INDUSTRIAL ROAD  
BRANFORD, CT 06405

LOCATION: 1 HAMPTON DRIVE, 7-73-1, C-II

BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN  
JACKIE BENARD, VOTING MEMBER  
JIM TIRABASSI, VOTING MEMBER  
ANNETTE STOLLER, NON-VOTING ALTERNATE  
BILL BERNADINO, VOTING ALTERNATE  
NEIL DUNN, ACTING CLERK

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

REQUEST: VARIANCE TO ALLOW A FREESTANDING SIGN OF 20 FEET IN HEIGHT  
WHERE A MAXIMUM HEIGHT OF 10 FEET IS ALLOWED BY SECTION  
3.11.5.C.1 [Formerly Section 3.11.5.3.1].

PRESENTATION: Case No. 4/15/2015-2 was read into the record with five previous cases  
listed.

JAMES SMITH: Who will be presenting?

MARK GROSS: I am, Mr. Chairman. For the record, Mark Gross with MHF Design Consultants. I'm an engineer. I'm not attorney presenting this, so it might give you a little bit of relief. I also have Dan Berry here. He is with Alliance Energy Group and that's who we're representing tonight. Just to give you a little bit of background; as you can see from the photographs [see Exhibits "A," "B" and "C"], this site is currently under construction. It is basically a reconstruction of a gas station with canopy, convenience store and I believe there is a Dunkin Donuts with a drive thru that's added to this site. This was approved...I believe it was last year? Last year, and it's currently under construction. There is an existing sign that Global has on the site, as you can see from the photograph and I believe that sign is thirty (30) feet and the actual setback of that sign meets your current setback requirement and I believe that was never a variance granted for that sign height. That was probably allowable at the time that this site was built the thirty (30) foot height. We are requesting a variance to replace that sign in its exact location. Our understanding is even to replace the fascia on that sign, we would require to adhere to your ten (10) foot height requirement. So because the site is new and has an

46 additional use, we want to upgrade...or Alliance wants to upgrade the sign with the new construction and so  
47 therefore require a variance for the height because we are proposing a twenty (20) foot high sign in the area.  
48 As you can see, also from the photographs, we marked off the ten (10) and twenty (20) foot locations on the  
49 existing sign and one of the interesting things, if you...as you're traveling down Route 102, you can see that  
50 with a passing car, if you're going on the opposite the road, it's a four (4) lane highway, any passing vehicle  
51 pretty much obscures any sign at a ten (10) foot height, so...To kind of give you an idea...

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53 JAMES SMITH: You need to stay on the mic, sir.

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55 MARK GROSS: So as you can see, you know, a ten (10) foot height here, any passing vehicle would absolutely  
56 obscure that sign. Add onto the issue of snowbanks. The other unique part of this site is the grade of this site.  
57 And as you can see from the other photograph [see Exhibit "D"], it's five (5) feet lower than the road. So  
58 you're only gonna see actually, you know, at a ten (10) foot height, you're only gonna see the five (5) foot high  
59 portion of that site. So any large vehicle going by is gonna obscure that sign altogether. There are other signs  
60 in the area, on the site and off the site; you have the Family Dentistry which is probably about twenty (20)  
61 feet, twenty plus feet. There's also the Hannaford sign that was granted by Special Exception, I believe, in  
62 2004 for twenty four (24) feet and that's located just on the side of the photograph. So with that, I'll go  
63 through the five criteria for the Board. Under one, the variance will not be contrary to the public interest  
64 because the proposed sign will be located in the same location as the existing sign and the twenty (20) foot  
65 will be significantly lower than the existing sign which is approximately thirty (30) feet in height. So we're  
66 reducing an existing, non-conforming sign by about a third, from thirty (30) to twenty (20) feet. The requested  
67 height at twenty (20) feet will be in the public interest as it will allow motorists traveling along the road to see  
68 the signage for the facility. And again, as I pointed out, a ten (10) foot high sign would be obscured by any  
69 vehicles traveling in the opposite direction, given the fact that the site is about five (5) feet lower than the  
70 adjacent roadway. The spirit of the ordinance is observed because the proposed signage at the twenty (20)  
71 foot height will have an observed height of approximately fifteen (15) feet as observed from the adjacent  
72 roadway due to the site elevation being approximately five (5) feet lower than the adjacent roadway.  
73 Additionally, this sign will be lower in height than some of the signage located in the immediate vicinity, such  
74 as the Hannaford site, which has an off-premises sign located on this lot and it was approved as an off-  
75 premises sign with an overall height at twenty four (24) feet. Substantial justice is done because it will allow  
76 signage that will be visible from the adjacent roadway as well as visible with the potential obstructions along  
77 the roadway such as other vehicles and snowbanks in the winter months. Substantial justice will be done as  
78 well, given the other signage on this lot exceeds the requested twenty (20) feet for our proposed sign. Again,  
79 the Hannaford sign is at twenty four (24) feet. And the proposed sign will be at least ten (10) feet lower than  
80 the current sign that this sign will replace. Substantial justice will be done as it will give the property owner  
81 the same relief as afforded others in the surrounding area and will less intrusive than the current sign that is in  
82 the property and again, we're reducing the non-conformance on the height. The area and the setback all will  
83 be in conformance with the current sign ordinance for the Town of Londonderry. The value of surrounding  
84 properties will not be diminished because the proposed signage will have a height that's significantly less than  
85 the current sign, will be lower than the existing signs that are in the area. The site is also located in a  
86 commercial district as well as the surrounding properties, therefore the values of those surrounding  
87 properties will not be diminished as a result of granting this variance for the height. And the special conditions  
88 of this property that distinguish from other properties in the area are as follows; the subject property was  
89 developed back in 1993, which allowed signage at a height of thirty (30) feet and is now subject to additional  
90 setback and development constraints as a result of new and amended site plan regulations and ordinances

91 that have been adopted by the Town of Londonderry since its initial construction. As a result, the  
92 redevelopment of the property is much more restricted than when originally developed, making the property  
93 unique with special conditions which distinguish it from other commercially zoned properties in the area.  
94 Additionally, the site topography makes this particular lot unique in that the site is located approximately five  
95 (5) feet lower than the adjacent roadway, creating a hardship for signage that is not only permitted to be ten  
96 (10) feet in height. With roadway obstructions, such as snowbanks in the winter months and/or vehicles in  
97 the adjacent lanes to the site, the visibility of the signage is further diminished at the permitted height of ten  
98 (10) feet in the district. These special conditions associated with the subject property create the hardship that  
99 we were seeking relief from, based on the current height restrictions of this section of the ordinance. There's  
100 no fair and substantial relationship that exists between the general public purposes of the ordinance and the  
101 specific application of that provision to the property because the current sign ordinance does not take into  
102 account physical limitations and/or constraints that a property may contain that would restrict the ability to  
103 adhere to the strict enforcement of those particular regulations contained within the zoning ordinance.  
104 Therefore, there is no fair or substantial relationship that exists between the general public purposes of the  
105 sign ordinance and the specific application of that provision, i.e. the height restriction, to the property because  
106 the general purpose of the sign ordinance assumes all properties are equal with respect to visibility and does  
107 account for those properties that may have physical limitations and/or constraints as it relates to the signage  
108 aspect. The constraint for this particular property as it relates to the signage aspect is the topography of the  
109 property, which is much lower, by five (5) feet, than the adjacent street. This great differential creates the  
110 potential for poor visibility of the site's freestanding sign, particularly when the height is limited to ten (10)  
111 feet and only five (5) feet of the sign would be visible from grade level without any obstructions such as  
112 snowbanks and/or vehicles. These obstructions further limit the visibility of the sign for the motoring public.  
113 And I also provided and I've enlarged a...kind of a cross section of the site and this is the proposed sign. The  
114 dashed red indicates the exact, the existing sign and it's about thirty (30) feet high. Our proposed height is  
115 twenty (20) feet, and the yellow line shows the ten (10) foot permitted height relative to the adjacent street,  
116 and as you can see, the car pretty much...in that lane adjacent to the site, pretty much blocks any view of that  
117 sign if it were at ten (10) feet. So that's kind of a cross section through the property where the sign is located.  
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119 JAMES SMITH: Do you want to bring that up and let us pass it...? I know you're saying 'the yellow line,' but it's  
120 pretty hard to see from this distance. Okay, yeah. That makes a little more sense.  
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122 MARK GROSS: That sketch, absent the colors, was also provided in your package [see Exhibit "D"]. And so,  
123 finally, the proposed use is a reasonable one because the property owner will be allowed signage at a  
124 reasonable height that is visible from the adjacent street, will reduce the height of the proposed sign from the  
125 existing sign height of thirty (30) feet to twenty (20) feet, thereby reducing the existing non-conforming sign  
126 and will be allowed signage that is consistent with signage located on this lot as well as on surrounding  
127 properties. So again, you have the Family Dentistry sign, which is located on the adjacent lot, and then the  
128 Hannaford sign which is located on this lot through an easement. So with that, if the Board has any questions,  
129 I'll be glad to answer.  
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131 JAMES SMITH: Okay, I'll open it up to the Board. Anyone with questions?  
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133 JIM TIRABASSI: No.  
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135 JAMES SMITH: Seeing none, anybody in the audience that has either...in support? Questions? Opposition?  
136 Seeing none, I'll bring it back to the Board. Any other...? Okay, if you've got nothing further to say, we'll close  
137 the public hearing of this and go into deliberation.  
138

139 DELIBERATIONS:  
140

141 JAMES SMITH: Again, I think we're faced with a situation where the Town proposed a ten (10) foot height  
142 without really looking at all the various areas where some of these signs are gonna be located. And we have  
143 the same situation like we had in the preceding lot; four(4) lane highway, thirty five (35) mile speed limit, and  
144 according to the information from the last hearing, it's...recommends at least a twenty (20) feet high...  
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146 NEIL DUNN: Coupled with the five (5) foot...  
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148 JAMES SMITH: Yeah, their site is actually worse than the site...  
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150 JACKIE BENARD: The topography. Right.  
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152 JAMES SMITH: ...by five (5) feet, so it makes it even...well, that adds to the uniqueness of the property, too.  
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154 JACKIE BENARD: Correct.  
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156 JAMES SMITH: So, having said all of that, why don't you...[indistinct] almost a carbon copy of the other...  
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158 JACKIE BENARD: It's almost a carbon copy of the other one and it has even stronger points because of its  
159 uniqueness of the topography.  
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161 JAMES SMITH: Okay, why don't we go through the five points and get something on paper and...  
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163 NEIL DUNN: Alright, granting the variance would not be contrary to public interest because the sign is located  
164 in an area with similar...properties...and so you're really not...you're not changing the character...it's not  
165 impacting the character and the fact that it's gonna be less is...  
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167 JACKIE BENARD: Well, it's actually in the same existing location. We're just talking about height so it's not...  
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169 NEIL DUNN: Right. Right. But in reference to the ten (10) foot, I mean, that's what the whole neighborhood  
170 has, to the applicant's point, there was recently, you know, a twenty four (24) foot one for Hannaford, there's  
171 other ones...  
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173 JAMES SMITH: Well, why don't we reverse this. It would be...  
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175 NEIL DUNN: Wouldn't be.  
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177 JAMES SMITH: ...would not be contrary to the public interest...  
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179 JACKIE BENARD: Right.

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JAMES SMITH: ...because it would not create a safety hazard.

JIM TIRABASSI: Safety hazard, yeah.

NEIL DUNN: There you go.

JAMES SMITH: Spirit of the ordinance observed. Again, part of what we're trying to do is to have uniform signs, so in that light, we're...I guess. Anybody else?

NEIL DUNN: Well, it doesn't...the spirit of the ordinance, again, usually gets more...a lot of times, to the character. It doesn't impact it. It's all...

JAMES SMITH: Yeah.

NEIL DUNN: ...of similar character.

JAMES SMITH: It's in...yeah. It's in the character of the neighborhood.

NEIL DUNN: And it's within line of other signs recently approved, too, so...

JAMES SMITH: Okay, substantial justice is done because...Allows a reasonable visibility from the adjacent roadway. And number four says values of surrounding properties will not be diminished because essentially, we're reducing the sign to some extent. I don't see how that can affect the values of the surrounding properties. It's still a sign. Okay, special conditions and literal enforcement. I guess the five (5) foot lower elevation of the main part of the lot relative to the road. And given the...it's a four (4) lane highway with a thirty five (35) mile speed limit.

JACKIE BENARD: So what do you want for the literal enforcement?

JAMES SMITH: The idea that if the...special conditions of the property being the five (5) foot lower elevation than the road and the...given the fact that it's a four (4) lane highway with a...

BILL BERARDINO: [Indistinct].

JAMES SMITH: ...thirty five (35) speed limit. Those are the things that apply.

JACKIE BENARD: Okay.

JAMES SMITH: And the proposed use is reasonable because it allows signage at a height that can be used. That's a usable height. Okay.

[Pause]

JAMES SMITH: All set?

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JACKIE BENARD: Yup.

JAMES SMITH: Who wants...? Do you want to make the motion?

JACKIE BENARD: Mr. Chairman, I'd like to make a motion to grant the variance for Case No. 4/15/2015-2, Alliance Energy Corporation, to allow a freestanding sign of twenty (20) feet in a height where a maximum height of ten (10) is allowed by Section 3.11.5.C.1 at 1 Hampton Drive.

JAMES SMITH: Do I have a second?

JIM TIRABASSI: Second.

JAMES SMITH: Jim seconds. All those in favor?

ALL: Aye.

RESULT: THE MOTION TO GRANT CASE NO. 4/15/2015-2 WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,



NEIL DUNN, ACTING CLERK

TYPED AND TRANSCRIBED BY JAYE TROTTIER, ASSOCIATE PLANNER

**APPROVED MAY 20, 2015** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY JACKIE BENARD AND APPROVED 5-0-0.