

Zoning Board of Adjustment
424 White Mountain Highway
Milton, NH 03851
Meeting Minutes
May 28, 2015

Members in attendance: Michael Tabory, Mike Beaulieu, Stan Nadeau, Lue Snyder, Larry Brown and alternate Bruce Woodruff. Also in attendance was Recording Clerk Kimberly Ladisheff.

Public in attendance: Carolyn Parker, Bob Srnec, Natasha and Jerry Randall.

Chairman Tabory called the meeting to order at 6:02pm.

Chairman Tabory explained to Carolyn Parker that there had been a slight procedural change in the voting procedure. At the last meeting she attended the Board had done straw poll votes but no longer did it that way. They vote on each criteria so that each one is binding. There was a brief discussion and Ms. Parker was okay with the change.

Case #2015-3

Carolyn Parker Consulting (Property owners: VSH Realty, Inc./Cumberland Farms) is requesting a variance from Article XX, Section 6(d) of the Zoning Ordinance; Internally illuminated, flashing signs and scrolling signs are not permitted. Property located at Map 42 Lot 118, 569 White Mountain Highway, Milton, NH in the High Density Residential Zone.

Carolyn Parker of Carolyn Parker Consulting was present to represent Cumberland Farms. She stated she was here back in November. Cumberland Farms currently has an LED price sign at the location and they have what they call a smart pay program which allows customers to receive ten cents off a gallon of gas if they are a member. At that hearing she was approved to put in the smart pay alternator within the existing price sign. At that time it was her understanding she did not have to file for the pump toppers which are the prices on the dispenser, that it was all included when she filed for the sign. During that hearing it was decided she would need to file separately for the pump toppers. She is back now to ask to remove the four existing manual toppers which are approximately 2 sq. ft. and install four new LED pump toppers that will also have the same smart pay program on them. They will set them at a level 4 brightness and will have them alternate at 12 seconds, the same as the pylon sign.

1)The variance will not be contrary to the public interest because (1) Whether granting the variance would alter the essential character of the locality, and (2) Whether granting the variance would threaten public health, safety or welfare.

There will be no threat to public health, safety of welfare. The pump toppers are a requirement by the State. They are currently manual and not meant to be seen from the roadway, they are meant to be seen by the person at the pump and are approximately 33 feet from the roadway. They are within the dispenser and the sight is parallel. The installation would benefit the public to inform them of the lower gas price. She is also concerned with the safety of the employees who currently have to go outside to manually change the prices.

Public Comment

None

L. Snyder stated she has looked at them closer since Carolyn had been in and she really likes them. It would help having them and she watched the blinking and it doesn't bother anyone driving by. M. Beaulieu asked what the light will be set at. Carolyn stated at a level four brightness where the normal is eight. M. Beaulieu asked if that was at night. Carolyn stated it would be all the time. L. Brown then stated he personally measured the placard that is there and the outside dimensions were 10 ½" by 25 ½" but the plan shows a 10" x 22". He said they were dealing with a sign larger than the size that is replaces. Carolyn stated she had not measured the existing sign because the standard magnetic pump topper as she knows it, was the same exact size, they are 2.12 sq. ft. each. She asked when they were manual they were not considered signs, now when you make them LED why do they become signs? L. Brown then thanked the company for providing the lumen output, they do not specify what the range is but they give the maximum and minimum lumen which was more than was there before. He said, also this light goes straight out, the sign ordinance says that all light shall be generally down. Carolyn answered the lighting is under the canopy so it's very hard to tell how many lumens are coming out when you have 4 to 6 canopy lights shining down. B. Woodruff agreed with the applicant on the safety aspect of the workers but had questions with the intensity of light especially with LED's that are measured in nits. He stated there are intensity standards in the industry and asked if the voting members so choose to put a condition on the variance that says you should meet the intensity standards for day and night measured in nits, would she be agreeable to that. Carolyn stated yes she believes they already meet those standards. They can also put a film to lower it even more.

L. Brown moved for approval that granting the variance will not be contrary to the public interest on the presumption that a nit standard will be provided. Motion seconded by S. Nadeau. All in favor, motion carried.

2) The spirit of the ordinance is observed because:

If the variance were granted, the spirit of the ordinance would be observed because the current use, a gas station and convenience store is an allowed use. The site currently has an existing LED price sign, which allows the prices to be changed from within the building. Cumberland Farms wants to change out the manual pump toppers for new LED pump toppers with the Smart Pay. Per the Zoning Board approval for the main pylon sign they will set the alternators at 12 seconds and at a level 4 brightness. At the 12 seconds the sign is not a flashing or scrolling sign and not the types of signs the ordinance is meant to prohibit.

Public Comment

None

L. Brown moved for approval that the spirit of the ordinance is observed. Motion seconded by S. Nadeau. All in favor, motion carried.

3) Granting the variance would do substantial justice because:

5.28.15 ZBA

The site is currently a gas station, which has resided in the High Density Zone for over 36 years. The sign they wish to modify will remain in the exact location and as realized the sq. footage will be increased to approximately 2.12 sq. ft. Cumberland Farms only wishes to change the way they display the price of gas at the pump toppers.

Public Comment

None

S. Nadeau asked just to be clear if the application gets approved would the temporary wooden sign disappear. Carolyn answered yes.

S. Nadeau motioned granting the variance would do substantial justice. Motion seconded by L. Brown. All in favor, motion carried.

4) The values of surrounding properties are not diminished because:

The site is an existing gas station that has been in existence since 1978. Cumberland Farms only wishes to change the way the gas prices are displayed and to allow for the Smart Pay program. They are just trying to change to electronic from manual. The values of the surrounding properties will not be affected by this change.

Public Comment

None

M. Tabory motioned the values of surrounding properties would not be diminished. Motion seconded by S. Nadeau. All in favor, motion carried.

5) Literal enforcement of the provision of the ordinance would result in an unnecessary hardship.

Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The unique use of the parcel as a retail gas facility requires the advertising of fuel prices in a safe, effective manner. The variance requested will not conflict with the general public purposes of the zoning ordinance and continues to permit a reasonable use. As indicated previously relief is required solely to provide for the installation of new LED pump toppers with the Smart Pay alternator. No dimensional relief is required and no other on-site changes are proposed. The use remains as existing and has no impact upon the site.

Public Comment

None

L. Brown stated regarding unnecessary hardship, Cumberland Farms would probably still be successful without the smart pay. Carolyn stated since it was allowed on the sign it should be allowed for the pump toppers. S. Nadeau stated he feels personally they have a smart pay plan to give the customer a chance to save ten cents a gallon and the Board should allow them to use any acceptable means to let

that happen. M. Beaulieu stated it is clearly a marketing strategy and they are even willing to put on a film which would reduce the glare more. L. Brown asked what the special conditions of this property were, such as does it have a hill, does it have a swamp, a cliff, why is the property special and different from any other properties in the area, and how is the area defined. Carolyn said it is a gas station and needs to display the prices. Sometimes the way these ordinances are written it doesn't have anything to do with a sign and there should be a special permit not a variance. L. Brown said for the record he agrees with the applicant but that is not an unnecessary hardship. B. Woodruff stated the other prong of the hardship is the reasonable use test. It doesn't always have to be a special condition of the land and if what the applicant is proposing is reasonable, but that the ordinance itself prohibits that reasonable use....he went on to explain that the ordinances all throughout NH communities are behind the times with regard to technology in the lighting of signs. Because the ordinance is so behind the times the hardship is the ordinance.

L. Brown motioned to approve that literal enforcement of the provision of the ordinance would result in an unnecessary hardship. Motion seconded by S. Nadeau. All in favor, motion carried.

Alternate B. Woodruff stepped down when the Board went into deliberation. (Per RSA 673:6 V) Chairman Tabory mentioned conditions and the lighting levels meeting industry standard for day and night be followed. There was a brief discussion regarding the anti-glare film.

S. Nadeau motioned to approve with the following conditions:

- 1) Set lighting at 4 with a 12 second change.
- 2) That there be a coating of antiglare film on the entire sign
- 3) Nit standards are met.

L. Brown seconded the motion. All in favor, motion carried. The variance was **GRANTED**.

Case #2015-4

Request for a Special Exception from Article III, Section 3.5 B, to utilize site for a Day Care Facility. Property located at Map 31 Lot 16, 417 Silver Street, Milton, NH in the Low Density Residential Zone.

- 1) That the specific site is an appropriate location for the proposed use or structure:

Natasha Randall was present. She is trying to open an in home daycare in their basement which they will be finishing off to use as the main area that the business will be run out of. She will be hiring a helper. She will be operating 5 days a week, Monday through Friday, open from 6am to 5pm. She is allowed to have 7 to 12 kids including her own 2. Natasha stated there are requirements from the State she needs to take care of but first she needs to get approval from the Town.

Public Comment

Abutter, Bob Srncac asked if this is the house that use to have horses. Natasha answered no that is the house next door. She stated it was a dead end road and they will be putting up a fence around the back yard. Mr. Srncac stated he did not have a problem with it.

Close Public Comment

L. Snyder stated the driveway goes down and it's all dirt, how will you take care of that in the winter time. She asked if they plow more for parking and if they were going to make a larger area for parking. Her concern is with that many kids how will the parking be. Natasha said they will not all be coming at the same time. They plan on putting an addition on and when that is done they will pave the driveway. S. Nadeau asked if there had been any input from the Fire and Police. Kim stated she had not sent out land use review forms. Natasha stated no they have not, this is her first step and once they get approval they can bring everything up to code and have the Fire Dept. come in. S. Nadeau asked if there were an emergency is that area acceptable for fire trucks, police cruisers to do what they need to do and still control the safety of not only the public but the children. There was discussion on child care licensing and what they would require for inspections. L. Brown asked to who the rights of the Special Exception go to. M. Tabory stated it goes with the property. There was a lengthy discussion concerning the specific site and different criteria that needed to be met. There was discussion if the questions could be answered without more information from the Police and Fire Dept.

L. Brown motioned to table without prejudice so that the applicant can fairly obtain materials from Fire and Police or another third party.

Chairman Tabory explained to the applicants that they could continue the meeting or table it. Natasha decided they would prefer to table.

S. Nadeau seconded the motion. All in favor, motion carried. The meeting was tabled until the next scheduled meeting on June 25th.

Approval of Minutes

L. Brown stated there was a grammatical error on page 1 last sentence, change applicant's to applicants.

M. Tabory motioned to approve the April 23, 2015 minutes with the change. Motion seconded by S.

Nadeau. L. Brown and M. Tabory abstained. Motion carried.

Other Business

Stephen Hayes was granted an Equitable Waiver at the previous meeting. Three signatures are required on the plan in order for the Assessors to change their records. M. Tabory, S. Nadeau and L. Snyder signed.

S. Nadeau motioned to adjourn. Motion seconded by L. Brown. All in favor, meeting adjourned at 7:40pm.

Respectfully submitted,

Kimberly Ladisheff
Recording Clerk

