



**ZONING BOARD OF ADJUSTMENT
424 WHITE MOUNTAIN HIGHWAY
MILTON, NH 03851
Meeting Minutes
November 19, 2014**

Members in attendance: Chairman Michael Tabory, Lue Snyder, Stan Nadeau, Mike Beaulieu and Larry Brown.

Public in attendance: Carolyn Parker

Chairman Tabory called the meeting to order at 6:00pm

Public Comments

None

NEW BUSINESS

Case #2014-4; Carolyn Parker Consulting (Property owners: VSH Realty, Inc./Cumberland Farms) are 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 in attendance representing Cumberland Farms. She explained the process of the Smart Pay program which allows customers to receive ten cents off a gallon of gas if they are a member. They would like to incorporate this into their sign. Cumberland Farms is proposing to install a new 6" x 60 1/2" alternator placard within the existing price panel, allowing the prices to alternate from the "Smart Pay Member" price to the "Non-Member" price. The standard setting is set at 8 seconds, typically 3 cars could pass by before it changes. M. Tabory asked if it changed color. Answer was no. Ms. Parker had video on her phone to show how it worked. L. Brown did not want to see it and stated it was a trivial presentation. M. Tabory stated he has not seen what it looks like and would like to unless Larry feels there is a procedural concern. L. Brown stated no.

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.

Cumberland Farms has recently initiated a Smart Pay program which allows customers to receive ten cents off a gallon of gas if they are a member. Gas prices are a major part of the consumer's gas station choice and the installation of the "Smart Pay" program is a benefit to the customers in allowing them discounted prices at the pumps. The installation of the "Smart Pay" program will benefit the public to inform them of the lower gas prices. It will not threaten public health, safety or welfare.

L. Snyder asked about the illuminated pump toppers. Ms. Parker stated there is also another price inside the pump. L. Brown stated therefore the numbers can already be changed electronically so it is not necessary to put a header on top of the pumps. His concern is bait and switch. When you have 2 prices offered and when a person cannot get that price by driving in but has to fill out a specific application they are not getting the price that is there. He went on to say the problem with the definition of flashing is that between 0 and 60 is undefined and the output of the LED is undefined. Ms. Parker stated another thing they are able to do is that all of Cumberland Farms automatically sets all of their signs at a brightness of 6. They can go down to 2 or 3 which will dim the lights. As far as the pump toppers they can put a film over them which would dim them even more.

L. Brown said the Zoning Ordinance exists by words that are carefully defined. Ms. Parker stated the ordinance says no internally illuminated, flashing signs or scrolling signs. Their sign is already internally lit, she doesn't feel it is flashing if it is set at 15-30 seconds and it does not scroll. In her opinion it doesn't meet any of the criteria of the bylaws. S. Nadeau stated without the definition in the ordinance Brian did the right thing by sending it to the ZBA. L. Brown said the essential character of the neighborhood is mixed residential and high density and commercial and the essential character is defined by not having flashing lights. The introduction of flashing lights has every potential to bring in more and that changes the essential character of the neighborhood. Ms. Parker stated again she doesn't feel it is flashing. M. Tabory stated it is open to individual perception and how we define that. L. Snyder stated she has seen this sign in Rochester and does not find it at all offensive. She does not agree with L. Brown at all, it is not flashing, it does change but not fast. She then said that is our downtown area and if people choose to live in the village that goes along with it and does not see where this would change the spirit of the downtown. M. Tabory asked if it dimmed at night. Ms. Parker stated all LED lights dim as it gets darker out, it is actually brighter in the daytime.

L. Brown stated the fact that the original application for an illuminated sign may have been bungled by the Code Enforcement Officer who seems incapable of understanding what illumination is compared to no illumination, which is a nonconformity that does not have to be added to by the actions of the ZBA. S. Nadeau stated that comment was not necessary. L. Brown then said the other point is the general public's right to the view shed of the highway and what is absent is that there should be regulations in any approval given that limits the rate at which it alternates, blinks or changes. He sees nothing in the application that speaks to that. M. Tabory asked if that has ever been tested. Ms. Parker responded that is very hard to determine considering all the other factors, such as other lighting on site and placement of the sign. S. Nadeau stated nothing is changing with the brightness, it is the same amount no matter what price is showing. M. Tabory stated in all fairness it is adding to the brightness with the pump toppers. Ms. Parker stated the canopy lights are much brighter than the pump toppers. There was a lengthy discussion on lumens and output. L. Brown stated he is looking ahead to where the town changes its sign height, looking ahead to a gas station at Exit 17, and looking ahead to unregulated LED's blasting into the night sky. S. Nadeau mentioned this is what the technology is today, we have an application in front of us and we need to keep to that. M. Beaulieu stated the illumination of the sign is adjustable, it is not flashing or scrolling and maybe we need to take another look at the sign ordinance and define it a little bit better for the future.

Ms. Parker asked if when the board votes are they voting on the sign and the pump toppers or are they individual. She mentioned if anything she would withdraw the sign and ask for the pump toppers as they are manual now and it would alleviate the employees having to go outside. There was a discussion and

the board decided they would be separate as the application did not specifically state she was asking for the pump toppers also. Ms. Parker decided to withdraw the pump toppers from the application at this time.

M. Tabory stated a yes vote on #1 would indicate that you support this sign being put in place.

The board took a straw pole vote for question 1. Straw pole vote was 5 – yes, 0 – no.

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 in the building. Cumberland Farms only proposes to add a 6" x 60 1/2" alternator placard within the existing 4' x 6' LED price sign. We have been setting them at an 8 second interval, but they can change from 0-60 seconds and the illumination level can be reduced. At the 8 seconds the sign is NOT a flashing or scrolling sign and NOT the types of signs the ordinance is meant to prohibit.

Larry said sign ordinance is a town wide ordinance. The spirit of the ordinance is for the protection of the view shed for the public and has nothing to do with the current use of the property as a gas station, the issue is the increased light load. The increased light is a distraction to the public. M. Tabory mentioned they currently have the brightness set at 6 and are willing to lower to 3, cutting light output in half which would meet the spirit of the ordinance. Lue asked if 3 might be too low for people with poor vision. L. Brown again asked about the output of lumens. He said if the board so wishes they can ask the applicant to find out from the manufacturer at a range of 10 how many lumens, at a rate of 6 and so on. Ms. Parker stated it comes back to the same thing, that guy in the warehouse that says at 10 the lumens are this much, but depending on where the sign is, some are 10 ft. off the ground, some 15 ft. This all affects the lumen and how much light is coming off the sign so as much as L. Brown wants to talk about lumens it is very hard to give him that answer. S. Nadeau feels they are willing to work with us by setting the light lower and he also feels that it is within the spirit of the ordinance. L. Snyder stated she would like to say yes but with it being set a 4 because she feels people like her wouldn't be able to see it well enough at a 3.

Straw pole vote was 4 – yes; 1 – no. L. Brown voted no.

3) Granting the variance would do substantial justice because:

The site is currently a gas station, which has resided in the High Density zone for over 36 years. The sign we wish to modify will remain in the exact location and we will maintain the existing 72 square feet. Cumberland Farms only wishes to change the way they display the price of gas at the freestanding sign.

L. Brown stated what is at issue is the definition of substantial and this is an incremental advertising benefit and this does not meet his criteria for substantial justice. S. Nadeau stated his take is a little different he thinks it qualifies through the fact that people want to see more business in this town and keep the businesses we have in town and something this minor, in his mind, would help business compete with other gas stations in the immediate area that are doing the same thing. If it helps them stay in business, helps pay the taxes, and gives a convenience to the residents he doesn't see where it's in violation.

S. Nadeau motioned to recess for 5 minutes. Motion seconded by L. Snyder.

M. Tabory called the meeting back into session.

Straw pole vote was 5 – yes; 0 – no.

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 to allow for the “Smart Pay” program. The values of the surrounding properties will not be affected by this change.

L. Brown feels it is a loss because of the intrusion of the additional lights. M. Tabory stated it is already part of the landscape.

Straw pole vote was 5 – yes; 0 – no.

5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area because:

A) Denial of the variance would result in unnecessary hardship because:

(i) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property because:

(ii) the proposed use is a reasonable one because:

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, i.e. a fuel price sign which also displays the “Smart Pay” program. The granting of the requested variance poses no adverse impact to the health, safety and general welfare of the community. As indicated herein, relief is required solely to provide for the installation of a “Smart Pay” alternator within the existing LED price sign. No dimensional relief is required and no other on-site changes are proposed. The use remains as existing, i.e. providing notice of fuel pricing, and has no impact upon the site.

L. Brown stated there are no special conditions on this property that distinguish it from other property which is zoned and suitable for a gas station. It does not have a special condition, which requires a particular signage. The property is already being used in strict conformance of the ordinance. He referred to a newspaper article for Monster Gas in Somersworth showing their price signs. He then stated other gas stations have not gone to smart pay and self-chosen is not a necessary hardship.

Ms. Parker stated her argument is their hardship is the Town’s by-laws, and the fact is there is no definition of flashing but she’s being told she can’t have a flashing sign. She also feels it is a reasonable use because there is already an illuminated sign existing.

Straw pole vote was 3 – yes; 2 – no. L. Brown and M. Tabory voted no.

The board took a formal vote on the application as a whole. All in favor of granting the variance: 3 – yes; 2 – no. L. Brown and M. Tabory voted no.

L. Brown motioned that the approval is granted with the following conditions: 1) Smart Pay alternator will cycle no less than every 12 seconds 2) in the evening the present numerical setting ranging from 1 to 10 shall be no higher than 4 and 3) a lumen output will be provided at the convenience of the applicant. Motion seconded by M. Beaulieu.

There was a brief discussion that the third condition was unnecessary. M. Beaulieu rescinded his second. L. Brown withdraw his motion. Motion by S. Nadeau that the company agrees that on a scale of 1 to 10 the illumination will be no higher than 4 at night and the sign is not to change any sooner than every 12 seconds. Motion seconded by M. Beaulieu. Motion carried. The variance was **GRANTED**.

Other Business

L.Snyder stated she did present the ZBA's budget to the Board of Selectmen.

Approval of Minutes

Motion by L. Brown to accept the September 25, 2014 minutes as written. Motion seconded by L. Snyder. Motion carried.

S. Nadeau motioned at 7:41pm to adjourn. Motion seconded by L. Snyder. Motion carried.

Respectfully submitted,

Kimberly Ladisheff
Land use Clerk