

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

MINUTES FROM 06/16/21 MEETING

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Neil Dunn, Chair; Brendan O'Brien, member; Bill Berardino, member; Irene Macarelli and David Armstrong, alternate member. Also, participating was Laura Gandia, Associate Planner; Nick Codner, Chief Building Inspector; and Beth Morrison, Recording Secretary. Chairman Dunn appointed both I. Macarelli and D. Armstrong as voting members this evening.

I. APPROVAL OF MINUTES

B. O'Brien made a motion to accept the May 19, 2021, minutes as presented.

The motion was seconded by B. Berardino.

The motion was granted by, 3-0-2, with N. Dunn and B. Berardino abstaining.

II. REPORT BY TOWN COUNCIL – D. Paul informed the Board that she had no report for them this evening.

III. REGIONAL IMPACT DETERMINATIONS: Associate Planner Gandia informed the Board that she had one for their consideration this evening.

1. CASE NO. 06/16/2021-1: Request for four variances from LZO: (1) 7.7.E.3 to allow a changeable electronic message board sign that is otherwise prohibited; (2) 7.5.C to allow a sign 16 feet in height where only 10 feet in height are allowed; (3) 7.6.D.3.B to allow an additional wall sign where only one is permitted; and (4) 7.6.D.3.a.i to allow a free standing sign to be located 4 feet from the Nashua Road property line where 15 feet are required and 2 feet from the Ela Road property line where 15 feet are required, Seven Nashua Road, Map 10 Lot 129, Zoned C-II, RGGS Realty, Inc. (Owner) and NH Signs (Applicant)

B. O'Brien made a motion that none of these projects are of regional impact.

The motion was seconded by B. Berardino.

The motion was granted by, 5-0-0.

IV. PUBLIC HEARING OF CASES

- A. CASE NO. 06/16/2021-1: Request for four variances from LZO: (1) 7.7.E.3 to allow a changeable electronic message board sign that is otherwise prohibited; (2) 7.5.C to allow a sign 16 feet in height where only**

10 feet in height are allowed; (3) 7.6.D.3.B to allow an additional wall sign where only one is permitted; and (4) 7.6.D.3.a.i to allow a free standing sign to be located 4 feet from the Nashua Road property line where 15 feet are required and 2 feet from the Ela Road property line where 15 feet are required, Seven Nashua Road, Map 10 Lot 129, Zoned C-II, RGGGS Realty, Inc. (Owner) and NH Signs (Applicant)

B. O'Brien read the case into the record noting the previous zoning cases. Chairman Dunn asked why the applicant was able to come back for multiple attempts at the same variance, if there was nothing substantially different. N. Codner replied that was before his time and did not know why this was allowed. Peter March, NH Signs, 66 Gold Ledge Avenue, Auburn, NH, addressed the Board. P. March told the Board that there are essentially two major components to this, with the first being the rebuilding of the sign that conforms with the Mobile image. He reviewed a picture with the Board noting that they would like the same height and same setback for the sign. He stated that he believes this request is substantially different from the other variances. Chairman Dunn clarified that the sign will comply with Mobile's standards and not the town's standards. P. March replied that was correct. He said that they requested an additional sign for the building to identify the convenience store, but they were denied as the code only allows two wall signs. He pointed out that they have a canopy and have two Mobile signs on the canopy, which were previously granted. He commented that the convenience store is its own entity, which is separate for the gas canopy. He went on stating that the gas canopy Mobile signs are needed to identify the site adequately for traffic approaching from either direction on Route 102. He mentioned that they are requesting the new sign be 48 SF where 65 SF are allowed. He added that they want to maintain the existing height of the sign and add LED digits to the sign. He said that the LED digits are a new technology that is replacing manual reader boards. He noted that the LED digits only display number digits and do not flash, display moving images or animation. He remarked that the LED digits make it easier for the public to read gas prices and improve traffic safety. He stated that the older type signs are difficult to change in windy or icy conditions, so the LED digits would improve the safety of the employees. He commented that the LED digit signs are networked, allowing the owner to change prices on the dispensers, at the till and on the sign simultaneously and remotely. He said that they would also like to maintain the setback, they do not wish to move the sign, as the site has very limited space to move the sign and have visibility.

He then reviewed the five criteria for the granting of all four of the variances:

- (1) The granting of the variance is not contrary to the public interest: because it does not change the essential character of the neighborhood nor threaten the health, safety or welfare of the general community. He said it allows the business to identify different elements they are offering. He stated that the LED digits allow for better readability, are neater, improves the ability of the owner to control prices centrally and are safer for employees. He said that the setback is for visibility.
- (2) The spirit of the ordinance is observed: because the essential character of the neighborhood is not changed and it makes the prices easier to read for the motoring public, and the height is because it is blocked by I-93 and the power lines. He said that they wish to maintain the same top and bottom of the sign.
- (3) Substantial justice is done: because the loss to the applicant would outweigh any gain to the public.

- (4) Values of surrounding properties are not diminished: because the essential character of the neighborhood is not changed, as the surrounding gas stations have canopy signs, ID signs with LED digits and signs on the building.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the current code gives the owner a disadvantage by limiting him to using outdated manual price changers which are incapable of being interfaced into his network, subject the owner to an increased risk of employee injury and incur higher maintenance costs of manual changers. He said that the proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. B. Berardino asked if the repair store is staying. P. March replied that is going to be converted into a convenience store. D. Armstrong reviewed the existing signs on the property. P. March commented that they are not looking for any more signs. D. Armstrong asked the height of the LED digits. P. March replied that the LED digits are 21-inches. D. Armstrong asked the height of the existing manual numbers. P. March responded that he did not know the answer, but he guessed they are 18-inches. Chairman Dunn asked if the clearance from the pavement is 8-feet for the sign. P. March replied that was correct. Chairman Dunn asked if the store had any complaints on the sign touching the cable wires. P. March responded that he is not aware of any complaints and noted that the sign is touching the fire alarm of the fiberoptic line, not any electrical lines. Chairman Dunn asked if there was any jurisdiction on signs, as the surrounding area has many signs that should only be up temporarily, but seem to be up permanently. N. Codner answered that they have a new code enforcement officer, Norma Ditri, who is being trained now and will be going around town to make sure that everything is compliance. D. Armstrong asked if the Board can place any stipulations, such as the applicant can only have one sign. Chairman Dunn replied that he is not sure what the regulations are on a 30-day temporary sign or the difference between signs on the inside of windows versus the outside. N. Codner commented that if the signs are on the outside, it is an enforcement issue, but on the inside, it is not. P. March told the Board that Mobile is very strict with their branding and signs, and they do a mystery shopper and if they get below 80% for three quarters in a row, they will debrand you. Chairman Dunn asked if the two Mobile signs was part of the branding. P. March answered that Mobile does not require it, but felt that it is useful with the traffic flow up and down Route 102. B. Berardino asked if they looked at putting signs on the canopy. P. March replied that the signs they have on the canopy now are there by permits. B. Berardino mentioned that there are five gas stations in the same area and he believes the applicant is looking for a bigger sign to stand out. P. March mentioned that the Sunoco, Shell and Nutfield signs are substantially bigger than the sign they are requesting this evening. D. Armstrong remarked that he thinks the new sign is better than the old sign, but the variance goes with the property, not the applicant. Chairman Dunn asked if the convenience store leaves, what will happen when another business comes in. N. Codner replied that the new business would have to come back for a permit for a new sign. P. March suggested that the Board could put condition or stipulation stating the building sign would not be used a sign for the gas station. Chairman Dunn asked if the Board could put a stipulation like that on a variance. L. Gandia replied that the Board cannot tie the variance to the applicant. Chairman Dunn asked how they were approved two signs for the canopy. P. March replied that they are allowed two by right, so they are requesting a third sign this evening. Chairman Dunn reviewed the square footage of the sign.

Chairman Dunn asked for public input.

Deb Paul, 118 Hardy Road. D. Paul said that she is okay with the LED digits, but reiterated that what is passed/granted this evening will go with the property. She noted that if Mobile fails and the convenience store closes, anything that is allowed in C-II would be allowed the same thing.

Chairman Dunn brought the discussion back to the Board. He asked if this was to change hands in a business, what would happen to the sign. N. Codner replied that the sign is here by variance, so as long as they did not change the height or size of the sign, it would be by permit. Chairman Dunn said that he is having a hard time with the two entities, versus just the gas station. He noted that this is the time to clean things up. Chairman Dunn asked why the applicant is here for the height and setback if this was already granted by previous variances. N. Codner replied that because they changed the area of the sign, they need to request this. D. Armstrong asked if the sign increased from 42-feet to 48-feet. P. March replied that he believed it was 38-feet to 48-feet. He said that it does not expand the setback or height, but instead filling the background. He commented that they are allowed 65 SF. Chairman Dunn clarified that they are allowed the 65 SF if they meet the setbacks. He asked how much they added. P. March replied 10 SF. Chairman Dunn asked why the applicant was allowed a sign for 66 SF in 1996. N. Codner replied that he was not sure what the regulations were in 1996. Chairman Dunn noted that none of the other variances for this property deal with the size of the sign. P. March reviewed the numbers. B. O'Brien commented that they are not outside the allowed square footage, so he does not know how the Board can put a restriction on this. Chairman Dunn remarked that he believes that the Synergy is too cluttered and should be removed. P. March replied that they would not be opposed to it.

The Board closed public input and began deliberation on Section 7.7.E.3 to allow a changeable electronic message board sign that is otherwise prohibited:

- (1) The variance would not be contrary to the public interest: because it does not alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would be observed: because it does not alter the essential character of the neighborhood.
- (3) Substantial justice would be done: because the loss to the applicant outweighs any gain to the general public.
- (4) Values of the surrounding properties would not be diminished: because the essential character of the neighborhood would not be changed.
- (5) There is not a fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: because the property has multiple setbacks and other properties in the area have LED digits to display gas prices. The proposed use is a reasonable one.

Chairman Dunn asked how big the word "Synergy" is on the sign. P. March reviewed the numbers. Chairman Dunn stated his opinion, that the word Synergy makes the sign more cluttered and if it was removed, the sign could be 38 SF. B. O'Brien reiterated that they are not outside the allowed square footage, so he does not know how the Board could restrict this. He asked if the Board wanted a condition

that the applicant can have Mobile and LED digits on the sign, but not Synergy. Chairman Dunn asked if this would be a problem for the applicant. P. March replied that they would not be opposed to it. B. O'Brien stated that if Synergy is not on the sign, the sign would be approximately 39 SF. Chairman Dunn asked if the Board can restrict what a business puts on a sign, as far as language. N. Codner remarked that if they are not changing the size, height, location or face of the sign, there is no action by the Board. P. March mentioned that the Board could further restrict that the LED message board is only to display numerals and for a gas station. He added that the LED digits will be displayed only during normal businesses hours. L. Gandia commented that the Board should not be regulating the content of what is on the sign. She noted the review process of when the applicant applies to the Building Department for a sign permit. N. Codner mentioned that he would like to further research the variance that was granted for 66 SF and asked if the applicant would mind continuing the case until the next month. He said that, as a right if he kept the sign 38 SF, it would eliminate the need for three other variances. B. O'Brien stated that they should also review the 2002 and 2006 variances, as this is when the location was changed. Chairman Dunn asked if the Board would like to get more information on the previous variances. P. March commented that he did not apply for a variance for the square footage, as he is asking for a smaller square footage than what he is allowed. He added that he believes clutter is subjective. Chairman Dunn stated that he believes too much on the sign is clutter. P. March reviewed that Synergy is a Mobile brand of gasoline that is cleaner. L. Gandia pointed out that when the Board is reviewing the five points, the spirit and intent is where clutter would be addressed. P. March asked if Synergy was the problem on the sign and would like this section to be plain without wording. B. O'Brien stated that he does not think that the Board can restrict what is on the sign. P. March asked if the clutter was regarding the number of signs in the area versus what is on the sign. Chairman Dunn said that he would like to see the previous variances in order to decide. The Board agreed.

B. O'Brien made a motion in CASE NO. 06/16/2021-1 to continue the request for four variances from LZO: (1) 7.7.E.3 to allow a changeable electronic message board sign that is otherwise prohibited; (2) 7.5.C to allow a sign 16 feet in height where only 10 feet in height are allowed; (3) 7.6.D.3.B to allow an additional wall sign where only one is permitted; and (4) 7.6.D.3.a.i to allow a free standing sign to be located 4 feet from the Nashua Road property line where 15 feet are required and 2 feet from the Ela Road property line where 15 feet are required, Seven Nashua Road, Map 10 Lot 129, Zoned C-II, RGGGS Realty, Inc. (Owner) and NH Signs (Applicant) until July 21, 2021.

I. Macarelli seconded the motion.

The motion was granted, 5-0-0. The applicant's request for a variance was CONTINUED until July 21, 2021.

VI. Other Business

D. Paul told the Board that she has brought up the need to look at the variances for signs and chickens, as it is requested every month, to both the Planning Board and Town Council. She added that the Board could attend the meetings when this was discussed. Chairman Dunn said that you never know what is going to be on the agenda. D. Paul said that she would try to tell people when a meeting is scheduled when she finds out.

Adjournment:

B. Berardino made a motion to adjourn at 8:20 p.m.

B. O'Brien seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 8:20 p.m.

RESPECTFULLY SUBMITTED,



CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY Jackie Berardino, SECONDED BY B. O'Brien, 5-0-0.