



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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Zoning Board of Adjustment Approved Minutes July 22, 2014 at 7:30 pm Community Development Department

Board Members:

Mark Samsel, Chairman – Present

Mike Scholz, Vice-Chairman – Present

Heath Partington, Secretary – Present

Jay Yennaco, Member – Excused

Jim Tierney, Member – Present

Mike Mazalewski, Alternate – Present

Kevin Hughes, Alternate – Excused, arrived at 8:10pm

Staff:

Dick Gregory, Code Enforcement Administrator

Laura Accaputo, ZBA Minute Taker

The Chair called the meeting to order at 7:30pm, introduced the Board and Staff, and explained the meeting process.

Public Hearings

The Chair sat Mr. Mazalewski for Mr. Yennaco

Mr. Partington read Case #28-2014 into the record along with the abutter list and letter of authorization from Thomas Klemm authorizing Cathy Champagne of Jutras Signs to represent him in this case.

Lot 17-H-1, Case # 28-2014

Applicant – Cathy Champagne, Jutras Signs

Owner – Corner Of New Horizons LLC

Location – 54 Range Rd.

Zone – Gateway Commercial

An Application to Appeal an Administrative Decision has been filed in reference to a letter written on June 25, 2014 by Dick Gregory, ZBA/Code Enforcement Administrator, to Cathy Champagne of Jutras Signs regarding the Town's position that the a sign application, submitted on June 25, 2014 to replace the electronic reader board, does not meet the requirements of **Section 706.5.1.2** of the Zoning Ordinance.

- Ms. Jutras addressed the Board. She stated the appeal focuses on Section 706.5.1.2 which prohibits electronic reader boards. She was told a permit was required to replace the existing sign because it is considered a significant change. They are proposing to replace the existing 10 year old red monochrome 35mm electronic sign with a higher resolution 12mm color unit. She stated the replacement of electronic signs with newer models is typical and finding parts to repair the existing sign is difficult and at some point the monochrome signs will no longer be available. She believes the improvement in resolution and clarity of the proposed sign will make the (non-conformity) condition better with higher reader efficiency and comprehension. The sign copy

will remain consistent and the overall size, area, proportion, height, width, and location will remain the same. She noted the State RSA on grandfathering protects the sign as long as the use and structure are not changing and unless there is a substantially different type of work being done than currently exists

Questions/Comments from the Board

- Mr. Scholz asked the dimensions of the display both existing and proposed and Ms. Champagne answered the permit was granted for 20.89 sq. ft. and the new sign conforms to that size.
- The Chair asked if the current sign displays images or just text and Ms. Champagne answered both.
- Mr. Scholz referred to the New London Case and stated the benefit to the community should not be part of their consideration relative to the testing criteria for grandfathering.
- The Chair asked if the current definition of Electronic Reader Board is different than the technology available today and Mr. Scholz read the definition from the Zoning Ordinance as a sign or portion thereof with characters, letters, or illustrations that can be electronically changed or rearranged without altering the face or surface of the sign.
- Mr. Tierney stated he believes the ordinance is clear and he agrees with Mr. Gregory that it requires a variance. Mr. Scholz agreed and stated the grandfathering test doesn't speak to better or worse just a substantially different impact and by not granting the appeal they are not taking away their rights as they still have the ability to repair and maintain the existing sign or to use different signs. He also referred to a case that went to the First Circuit Court of Appeals regarding Electronic Reader Board signs with the argument they would lose customers if they were restricted to manual changeable signs and the court stated maximizing of profit is not the animating concern of the First Amendment and the First Amendment does not guarantee a right to most cost effective means of speech.
- Mr. Mazalewski asked if the brightness of the sign could be controlled and Mr. Ben Barr of Watchfire Signs answered it is a two part piece with a temperature sensor and an accelerated dimming brightness process based on GPS coordinates.

Mr. Partington motioned to go into Deliberative Session, seconded by Mr. Scholz. Motion passed: 5-0.

- Mr. Scholz stated he believes the denial decision by the ZBA Code Enforcement Administrator was the right decision and he is focusing on the test for grandfathered use.
- Mr. Partington stated he agrees based on the Ordinance and application that the decision made by Mr. Gregory was correct, however in the past year there has been pertinent case law (21st Century vs. Town of Windham ZBA dated 6/26/13) in which the decision says a change in color from single to multi is not a substantial change and if there is no substantial change it remains a grandfathered non-conforming use, the town did not appeal this decision.
- Mr. Scholz went through the four criteria of grandfathering and stated he believes the fourth prong fails. He believes the change will have a substantially different effect on the abutting property or the neighborhood, not better or worse, just different.
- The Chair stated he would caution that any grandfathered replacement to a structure or sign would be different and they wouldn't be grandfathering anything based on that logic.
- Mr. Mazalewski stated he believes it can be denied based on Section 401 as it is increasing the non-conformity.
- Mr. Scholz stated the task is evaluating whether this grandfathered use meets the criteria.

Mr. Partington motioned to grant the appeal for Case #28-2014, lot 17-H-1, regarding the June 25, 2014 letter by Dick Gregory, as recent Superior Court Case Law indicates that monochrome

lighted signs changed to multi lighted signs remain a grandfathered use, there was no second and the motion failed.

Mr. Tierney motioned to uphold the decision by Dick Gregory and deny the appeal of administrative decision, seconded by Mr. Scholz. Motion passed: 3-2 with Mr. Partington and the Chair in opposition.

The Chair advised of the 30 day appeal period.

Mr. Partington read Case #27-2014 into the record and noted the abutter list is the same.

The Chair sat Mr. Hughes for Mr. Mazalewski.

Lot 17-H-1, Case # 27-2014

Applicant – Cathy Champagne, Jutras Signs

Owner – Corner of New Horizons LLC

Location – 54 Range Rd.

Zone – Gateway Commercial

Variance from **Section 706.5.1.2** of the Zoning Ordinance is requested to allow the replacement of the existing electronic reader board sign, which was permitted in 2003, with a color model. No increase in size is proposed.

- Ms. Champagne of Jutras Signs addressed the Board. She read the five criteria into the record.

Questions/Comments from the Board

- Mr. Tierney asked if the brightness control is a standard feature and if the owner will control the graphic and flash rate. Mr. Barr stated it is a standard feature and they are able to lock in and protect the interval change (3 seconds for time and temperature), the message change is set by the software programmer.
- Mr. Scholz asked if the existing sign has the temperature gage adjustment discussed previously and Mr. Barr answered no the current signs brightness does not change.
- Mr. Hughes asked if the sign would be lit 24/7 and Ms. Champagne stated it is not currently lit 24/7 and they are not proposing to change the current use.
- Mr. Mazalewski asked the brightness of the LED's on the existing sign and if the proposed sign could be programmed not to exceed that brightness and Mr. Barr answered the nighttime brightness will be between 700 and 1000 NITS which is 7 to 10% of the output of the LED. The current sign is brighter, between 1000 and 3000 NITS. He also noted the brightness could be adjusted down from the maximum factory brightness if needed.
- Mr. Tierney asked the percentage difference of the energy efficiency of the new sign and Mr. Barr stated they have improved their energy efficiency anywhere from 30 to 50 percent, depending upon the model and product.
- The Chair asked where Mr. Barr thought the monochrome market would be in the next few years and Mr. Barr replied his percentage in the northeast is less than 15% and most are moving to color because it differentiates text, gives more distinction, and will not chop up the message.
- Mr. Scholz asked if there was something better than 12mm available and Mr. Barr answered there is but it is unnecessary at this location and more costly.

The Chair opened the hearing to the public at 9:00pm and hearing none the public portion was closed.

Mr. Partington motioned to go into Deliberative Session, seconded by Mr. Tierney. Motion passed: 5-0.

- The Chair asked Mr. Gregory if the same restrictions from the original site plan would still apply and Mr. Gregory answered yes.
- Mr. Scholz raised a concern that the display area increased and the Chair stated that can be addressed in the motion.
- Mr. Hughes stated he believes since the sign will be easier to read it will be in the public's best interest. Mr. Tierney agreed and stated the newer technology such as adjusting for lighting will be an improvement for the area.
- Mr. Partington stated the ordinance clearly does not allow Electronic Reader Board signs and there is a way to have clear signage without them, he thinks there will be a change in character by allowing a multicolored sign. He believes hardship is not met because the only thing unique about the property is the pre-existing nonconforming use and if you allow a variance for the sign on this property you will have to allow them on other properties in this area and at other busy intersections.
- Mr. Tierney stated they are not changing the structure or location of the sign; they are taking out one sign and putting in another. Mr. Partington stated you are giving them a variance which eliminates the pre-existing non-conforming use and noted Electronic Reader Boards are not allowed anymore.
- The Chair stated this is a determining decision for Route 111 at this location and in general. He believes what is unique is the existing sign and he does not believe it is contrary to public interest since there is betterment. He thinks it is imperative from a safety position to have a clear sign and that stepping back from technology is not a smart thing. He believes those who make the ordinances will have to address this for the future as there will be more applications for this type of sign. He does not believe the value of surrounding properties will be diminished especially since the light intensity will be reduced.
- Mr. Scholz stated he feels the spirit of the ordinance is not observed and there is no unnecessary hardship as the sign can be repaired and other signage is available.
- Mr. Mazalewski stated part of the testimony for hardship was that it is hard to get parts for repairs to the current sign.

Mr. Tierney motioned for Case #27-2014 to grant the variance from Section 706.5.1.2 to allow replacement of the existing Electronic Reader Board with a color model with the size not to increase what stands today, seconded by Mr. Hughes. Motion passed: 3-2 with Mr. Partington and Mr. Scholz in opposition.

Mr. Partington stated he was opposed because he believes it is contrary to the public interest, the spirit of the ordinance is not observed, and there is no hardship. Mr. Scholz agreed with Mr. Partington on all three reasons.

The Chair advised of the 30 day appeal period.

Mr. Partington read Case #29-2014 into the record along with the abutter list.

Lot 7A441, Case # 29-2014

Applicant/owner – Sean & Stephanie Mahoney – 11 Netherwood Road RT - Mahoney, Sean M TEE

Location – 11 Netherwood Road

Zone – Rural

Variance from section **Section 702, Appendix A-1** of the Zoning Ordinance is requested to permit an in ground pool to be within 32' from a front lot line. This is a corner lot where a 50' set back is required on both front lot lines.

- Mr. Sean Mahoney addressed the Board. He stated he is requesting to install an in ground pool on his property which is just over 1 acre. He stated due to the fact his property is a corner lot and requires a 50ft set back from both front lot lines rather than the standard 30ft setback he requires a variance. The Chair asked him to describe the proposed location relative to the stone wall on the property and Mr. Mahoney distributed two photos displaying the pools location on the property which the Chair accepted as Exhibits A and B. Mr. Mahoney then read the five criteria into the record.

Questions/Comments from the Board

- The Chair asked if there were any plans for landscaping and Mr. Mahoney answered they will landscape on the side of the property along Colchester Road for privacy.

The Chair opened the hearing to the public at 9:20pm and hearing none the public portion was closed.

Mr. Scholz motioned to go into Deliberative Session, seconded by Mr. Hughes. Motion passed: 5-0.

- The Chair stated there is no other area on the property to put the pool and since a 30ft setback is standard other than on a corner lot he has no issues.
- Mr. Scholz stated there is no other location for it as you have the septic setback and a large wall; putting it closer to the home will make a worse situation for the applicant.
- Mr. Tierney and Mr. Hughes both stated they had no issue with the request.
- Mr. Partington stated it meets all five criteria; there will be no change in character and no issue with health, safety, and welfare. It will benefit the owner without detriment to the public and will not diminish property values. What's unique is the location of the septic and wall and the two frontages. He feels it is a reasonable request.

Mr. Scholz motioned for Case #29-2014, Lot 7-A-441 to grant relief from Section 702 Appendix A-1 to permit an in ground pool 32ft from a front line where a 50ft setback is required from both front lot lines on a corner lot, with dimensions not to exceed 18ft X 36ft, seconded by Mr. Tierney. Motion passed: 5-0.

The Chair advised of the 30 day appeal period.

Review and Approval of Draft Meeting Minutes – 05/27/14 & 06/24/14

The Chair sat Mr. Mazalewski for Mr. Tierney for the review of the May 27, 2014 minutes.

- **Mr. Partington motioned to approve the May 27, 2014 ZBA minutes as amended, seconded by Mr. Hughes. Motion passed: 5-0.**

The Chair sat Mr. Tierney for Mr. Mazalewski for the review of the June 24, 2014 minutes.

- **Mr. Partington motioned to approve the June 24, 2014 ZBA minutes as written, seconded by Mr. Tierney. Motion passed: 5-0.**

Mr. Scholz motioned to adjourn the July 22, 2014 ZBA meeting at 9:30pm, seconded by Mr. Tierney. Motion passed: 5-0.

These minutes are respectfully submitted by Laura Accaputo, ZBA Minute Taker.