



Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT APPROVED MINUTES WEDNESDAY, SEPTEMBER 29, 2021

Board members present: Richard Conescu, Patrick Dwyer, Ben Niles, Rod Buckley, Lynn Christensen and alternate Chuck Mower.

Board members absent: None

Staff present: Robert Price, Planning & Zoning Administrator

1. Call to Order

Richard Conescu called the meeting to order at 7:00 p.m.

2. Roll Call

Patrick Dwyer led the pledge of allegiance and swore in members of the public who would be testifying. Rod Buckley read the preamble.

The Board took up Items 4 & 5 before Item 3.

- 4. Innovation Acquisition, LLC (petitioner) and Solon Properties, LLC and Innovation Acquisition, LLC (owners)** – Variance under section 2.02.4.B of the Zoning Ordinance to permit multi-family residential use in the Industrial District. The parcel is located at 1 Innovation Way in the I-1 (Industrial) and Aquifer Districts. Tax Map 2D, Lot 041-15. Case # ZBA 2021-32. **This item is continued from the August 25, 2021 Zoning Board meeting.**

At the petitioner's request, the Board voted 4-1-0 to continue the public hearing to October 27, 2021, on a motion made by Lynn Christensen and seconded by Ben Niles. Patrick Dwyer voted in opposition.

- 5. Peter March (petitioner) and J Way Realty LLC Zebra Express (owner)** – Variances under Section 17.10.3 to permit a ground sign of 96 sf whereas 48 sf is allowed and Section 17.10.10.a to allow an electronic message display to change at an interval of less than ten minutes. The parcel is located at 1 Peach Tree Lane in the I-1 (Industrial) and Aquifer Districts. Tax Map 4D, Lot 056-02. Case # ZBA 2021-34.

Peter March & Fred Pineault (NH Signs) were present to review the variance requests with the Board. Mr. March began by providing an overview of the variances being requested and the location of the parcel in question. He went on to explain that the site currently has a 48 sf sign that is approximately 21 feet high and that pointed out that the property has frontage on both Continental Blvd (a public right-of-way) and Peach Tree Lane (a private driveway). Mr. March then advised the Board that the property is now being leased by new owners who will be rebranding the gas station within the coming year to "Garrett's Family Market." Part of this change will be to update the convenience store within the gas station because with more people switching

to electric cars these days, the store is where the business makes its money. He also spoke in detail about the need to have a credit and cash price to off-set the transaction fees the credit card companies charge and the importance of displaying both prices on the electronic sign. He shared some visual aids of the current site pointing out that the existing sign is hidden by various objects and indicated that the new sign will be, enlarged to 96 sf and raised to 40 feet. He also shared some renderings of what the new site might look like under the new brand and advised the Board that the sign will remain as Rapid Refill until all of the branding has been switched over to Garrett's. Mr. March then read through the responses to the statutory criteria (outlined below) and paused after each to answer questions from the Board.

Chairman Conescu asked when the switch to the new brand is supposed to take place and Mr. March responded that they can begin as early as this year. Rod Buckley asked for clarification on if the sign is being moved and Mr. March confirmed that it is not, it is just going to be bigger and taller. Patrick Dwyer shared his concerns that he believes that the argument for the spirit of the ordinance was not met because people that travel through that area usually do so several times a day so they would undoubtedly see the sign rotation if it was at a longer interval. Mr. March stated that he believes the ordinance was written to prohibit obnoxious flashing signs that are distracting to drivers and that is not what this sign will be.

Chuck Mower clarified that the sign in question will not be visible to travelers on the Daniel Webster Highway as previously stated by the petitioner but potentially visible from the Everett Turnpike.

Ben Niles asked if the sign will be used to display other things other than the gas prices and Mr. March explained that it will not and added that it is only going to be able to display numbers and not words.

Mr. Price recommended to the Board that they set a condition of approval on the interval of change for the sign because "less than 10 minutes" as the petitioner is requesting is too broad and the sign could be set to change every second without a threshold, should the Board opt to grant the variances.

There was no public comment.

The Board voted 5-0-0 to grant the variances, with conditions, on a motion made by Patrick Dwyer and seconded by Rod Buckley. The following condition applies:

1. The electronic message display is limited to a change interval of a minimum of 10 seconds.

Findings of Fact:

1. Granting the variance would not be contrary to the public interest because:

The Store is being remodeled and will provide a useful service to people that live in the neighborhood. The sign is an integral part of attracting traffic off Rt 3. The closest the sign is visible off Rt 3 is 900 ft; normally, motorists would see it at 11 00 ft or more. The conditions exist to warrant a larger sign- addressing travelers on Rt 3 is a legitimate goal, and a sign of this size is the only logical way to do it. The sign will mitigate the effects of the tree and the Burger King sign both of which block the current sign. The public interest is served by:

- a) Allowing businesses to identify different elements of their offering
- b) Maintaining the viability of this site.
- c) Attracting people that sign up to pay by debit and allowing them to benefit from lower prices.

2. The spirit of the ordinance is observed because:

The Zoning Ordinance aims to ensure that businesses in Town have adequate business identification, advertising, and communication. It allows larger properties to have larger signs. This site, while it falls out of the category for a larger sign marginally, needs to advertise to traffic on Rt 3 as well as local traffic. This sign is the logical way to do that.

The Ordinance states:

Sign, Electronic Message Display: Signs permitted in section 17.10.3 & 17.10.4 shall be permitted as electronic message display subject to the following:

a) Electronic Message Displays shall display static messages for a period of a minimum of 10 minutes;

The technology to toggle prices has been around for about 8 years, and has become widespread in the last 5 years. The ordinance is intended to prevent flashing signs, and likely did not consider this technology when written.

The Toggle units change every 10 seconds or so, the change is instant and involves no transition. This essentially means that a vehicle traveling at sixty miles per hour covers eighty-eight feet per second ($60 \times 1.47 = 88$).

Eighty-eight feet per second times a Viewer Reaction Time of ten seconds equals eight hundred eighty feet (880) of Viewer Reaction. This means that traffic traveling on Rt3 would see no more than one change on the sign. The changes to the ID sign- both size and toggle units:

- Make the prices and site identification easy to read.
- Make this site visible to traffic coming to the site from Rt 3.
- Allow the user to be more transparent in pricing fuel.

3. Granting the variance would do substantial justice because:

The viability of the station is dependent on the C Store; the C Store is dependent on signage. Without this, the Public would be less likely to know that the site has a C Store. Allowing the larger sign has little or no negative effect on the area but will enhance the owner's chance of success substantially.

As concerns the ID sign, the name of the site and the price of gas are two critical elements to the success of a station. Signage is extremely important to these businesses. As explained previously, the normal practice is to advertise dual prices. A toggle is the most honest way of doing this. The site has no other reasonable alternatives for the size and height of the sign.

4. Granting the variance would not diminish the values of surrounding properties because:

Most of the other adjacent businesses have large signs including Burger King, Cinemagic and Woodspring Suites. This sign is not out of place in this area. The investment in the C Store will have a positive effect on the area. The sign will logically not have an effect on property values.

5. Unnecessary Hardship

- a. **Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how 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:**

The zoning ordinance interferes with the owner's reasonable use. The visibility of the site and the sign in particular is hampered for the Continental Traffic by the Burger King sign and the tree. The current 48 sf sign is too small to be seen from Rt 3. Raising the sign up and increasing the size is the logical way to cure this.

The toggle unit cannot have been considered when the code was written, since the technology is relatively new. While it is possible to add a static sign saying "Market Price" this leads to complaints from the public about unfair pricing.

But for a minor discrepancy in the frontage of this site, this signs height and sized would be subject to normal permits.

Granting this variance will be unique to this site in this specific vicinity; the Gulf sign, the Mall Sign and Burger King are all either larger, or can all be seen from the highway.

3. Annual Meeting – Election of Officers & Review of Rules of Procedure

Chairman Conescu stated that the only change being recommended to the Rules of Procedure is changing the annual meeting to May. Mr. Dwyer asks Mr. Price why the change in date is being made and Mr. Price responded that it is being done to be in line with the Planning Board so both Boards conduct them at the same time of the year.

The Board voted 5-0-0 to amend the Rules of Procedure as recommended by staff with one additional amendment on page one changing the word August to May, on a motion made by Lynn Christensen and seconded by Rod Buckley.

The Board voted 4-0-1 to elect Richard Conescu as Chair, on a nomination made by Rod Buckley and seconded by Patrick Dwyer. Richard Conescu abstained.

The Board voted 4-0-1 to elect Patrick Dwyer as Vice Chair, on a nomination made by Lynn Christensen and seconded by Rod Buckley. Patrick Dwyer abstained.

6. Discussion/possible action regarding other items of concern

7. Approval of Minutes - August 25, 2021

The minutes of August 25, 2021 were approved as submitted by a vote of 5-0-0, on a motion made by Lynn Christensen and seconded by Rod Buckley.

8. Adjourn

The meeting was adjourned at 7:37 p.m. by a vote of 5-0-0, on a motion made by Lynn Christensen and seconded by Rod Buckley.