

## Zoning Board of Adjustment Meeting

July 17, 2019

Members present: Susan Arnold, Charles Burnham, Jean Chartrand Ewen, Herman Groth, and Scott Hodgdon Alternate member.

The Chairman could not be present this evening, so Susan Arnold advised that she had been asked to serve as Acting Chair. Board members introduced themselves and Ms. Arnold advised that Scott Hodgdon, Alternate member, would be voting this evening to bring the Board up to a full five members. Notice for Case Number #412 was published in Foster's Daily Democrat on or before April 24, 2019. Notice for Case Number #414, Isinglass Country Store, was published on or before June 10, 2019. Notices for tonight's meeting were posted at the Strafford Post Office and the Strafford Town Hall. The meeting was called to order at 7:00 PM by the Acting Chair. There were no abutters present at the start of the meeting and none arrived later during discussion; John Dupere was present.

### Continuation of Case Number #412

Petitioner: Jessica Arneil is requesting a Special Exception under Article 1.4.1K of the Zoning and Land Use Ordinances in order to allow the construction of an approximately 750 square foot, two-bedroom, one-story Accessory Dwelling Unit on the front end of the existing home. The existing home and proposed addition meet all setback requirements and the ADU will meet the required criteria under Article 1.4.1K. (36 Beaver Road, Tax Map 37, Lot 76, Owners: Jessica and Eric Arneil)

There was nobody present for this item; discussion was automatically continued forward.

### Case Number #414

Petitioner: Three Shining Stars Corp. d/b/a Isinglass Country Store is requesting a Variance to Article 1.3.12 II, Paragraph C and a Special Exception under Article 1.3.8, Paragraph 4, of the Zoning and Land Use Ordinances in order to allow the placement of new interior lighted gas price signs to be placed in the same location as the existing gas price signs. Gas signs would be up to 7.05 square feet and the diesel gas price sign would be up to 8.65 square feet, which is larger than the six square feet allowed under current ordinances. The signs are LED lit at 1500 MCD and are intended to be visible in daylight. (Owner: NAJMA LLC, Francis Ali, Agent, 410 Roller Coaster Road, Tax Map 37, Lot 1)

Francis Ali, petitioner, was present accompanied by Donald Coker, who assisted with the presentation.

Donald Coker stepped forward to present updated information regarding the application. First, he noted the potential conditions of approval noted by Board members at the June meeting, including the following: 1) LED lights must be red (regular) and green (diesel) (at the illumination level/brightness suggested by the specs in the application), with no white LED illumination; 2) LED lit numbers must be 10 inches or less, and the total sign area should be no greater than the 6 square feet allowed under the ordinance (Article 1.3.8); 3) Any additional sign lighting must comply with the ordinance (Article 1.3.12); and mounted signs must not encroach on the State of New Hampshire road right-of-way for Route 202A. He said that the applicants have agreed to all of these conditions. He said that he believes that the sketch of NH Route 202A from the driveway permit application files for the Isinglass Store shows the accurate location of the edge of the ROW, and he noted that the driveway permit includes the language that the highway ROW extends 25 feet from the center line of the pavement. He said he believes that it is therefore reasonable to use the paved road as a marker. Mr. Coker also presented a copy of the subdivision plan that created the separate lot for the store and which shows the road and lot lines. Mr. Coker said that they have found all of the pins noted on the subdivision plan, so they believe that they have plenty of room for the sign. Mr. Coker then submitted a letter in support of the application from Nancy Goedker, who lives in the home immediately to the northeast of the store.

Board members then reviewed the subdivision plan and lot lines. Jean Ewen asked for clarification on the location of the existing signpost. Herman Groth noted that the town cannot give the applicants an approval for anything other than use of their own land, and he said if the area around the sign is not part of the applicant's lot, that would be an issue for the applicant and not the town. In response to Ms. Ewen's question, the applicants suggested that the existing post is about 31 feet from the yellow line on the pavement; the sign would extend about 24 to 26 inches toward the road from the post they think. Board members then reviewed why a variance is needed for the proposed sign. The applicants have agreed to smaller signs that would not exceed the size requirements under Article 1.3.8, but there is still the question of sign lighting. Under Article 1.3.8, internally lit signs require a special exception, in the same way that signs exceeding six square feet require a special exception. Article 1.3.12, the "dark skies" ordinance, requires that new/newly lit signs be lit by continuous indirect external downcast white light. Susan Arnold noted that at the last meeting, she feels that most of the Board was proceeding in regards to the regulation about internally illuminated signs, and working through the possible conditions of approval for an exception. Ms. Arnold also noted that she feels that LED lighting is internally illuminated in the spirit of the ordinance. The Board now turned to Article 1.3.12. Jean Ewen noted that the proposed sign will be shutting off when the store closes. Susan Arnold noted that although it is late in the process, that it is important to revisit the question of the flip signs. She noted that Mr. Ferreira had been able to find a source for the signs, and that a flip sign would not require a variance. Donald Coker replied that the reason for requesting a variance for the LED signs is that the applicants are hoping to modernize and make improvements. Selling gas is a service to the community, he noted, as the Isinglass Store is the only place that sells gas in Strafford. Ms. Arnold noted that there had been a question on the availability of the flip signs, but that Rick Ferreira noted at the last meeting that he had found the listings fairly easily. The applicants advised that they want to move forward with their application for the lighted signs because the flip signs are increasingly difficult to find and maintain and the lighted signs are more modern.

Board members agreed to move forward with the variance worksheet regarding the request for variance to the requirements of Article 1.3.12, Paragraph C, for a sign to be lit other than by indirect downcast white light. Board members suggested some possible responses to the criteria on the decision worksheet. 1) Herman Groth said that as the only store with gas in town, gas sales are in the public interest. Charlie Burnham noted that there will be no white light glare. Jean Ewen asked about the current Isinglass Country Store sign; it was agreed that it is lit with white light and is not proposed to change. She asked if these lights would affect the visibility of the proposed gas signs; there was some discussion on LED lighting. Donald Coker asked if 1.3.12 was written that signs "may" or "shall" be lit by indirect external white light. Ms. Arnold suggested that the "may" in the ordinance referred to the fact that signs are not required to be lighted, and she noted the word "only" in reference to lighting with indirect external white light. Francis Ali said that he thought that the Board had resolved the question of whether LED lighting qualifies as an internally lit sign. Susan Arnold said that she feels that the question has not been resolved. She apologized, noting that at the June meeting, the Board had not parsed the distinction between internally lit signs and the requirements under Article 1.3.12. Discussion returned to the variance worksheet and the first item, which concerns public interest. Board members again suggested that having gas available is in the public interest. 2) As regards spirit and intent, Herman Groth noted that there is already a sign, so there is no change in use. Charlie Burnham suggested that the colors would be less offensive than white light. Susan Arnold said that she feels that the LED lights are not in the spirit of the ordinance; there is a different aesthetic to computerized signs than with an externally lit sign. Scott Hodgdon noted that a white light above the gas signs would light a larger area. Jean Ewen noted that the community had voted for the lighting ordinance, and she noted the country feel of externally lit signs. 3) As regards the question of substantial justice, Herman Groth noted that there would not be a big change in the information on the sign or in the area of the sign. This is an established business with poles and signs already in place, he noted, and these types of signs go with that type of operation. Susan Arnold said that LED signs suggest that the owners are updating and would be appealing to some. 4) Would there be any diminution of property values? Herman Groth said that he does not feel that changing the sign would affect value; Susan Arnold noted that the abutters do not seem to mind based on attendance at the meeting, and two have written in support. Mr. Burnham said that he does not feel that there would be any additional effect on the surrounding properties. 5) Hardship: Herman Groth noted that this is one of the few commercial properties in the town and the use is grandfathered. Susan Arnold advised that zoning currently prohibits this kind of use unless the application comes before this Board, so the Board would have the opportunity to review any similar

requests. 6) Is there a substantial relationship between the public purpose of the ordinance and its application here; Susan Arnold said that yes, as the intent is to minimize light. This is a commercial operation that could illuminate more than proposed, she noted. 7) Is the use reasonable; Board members agreed that signage is reasonable because this is a commercial operation, the proposed sign meets size requirements, the LEDs may possibly shed less light than with indirect external light, and the store is a public good as the only gas station. 8) Are there special conditions of the property; Herman Groth again noted that the town benefits from the availability of gas. Charles Burnham said that the new signage will look better and advised that the ability to replace and repair flip number signs will disappear.

Board members then deliberated on the question of whether the criteria for granting a variance to the lighting ordinance have been met. Jean Ewen asked if there would actually be less visibility with the 10 inch LED numbers than with signage and a white light. She said that she feels that the colors are more aesthetically pleasing. Susan Arnold quickly researched sight distance for the 10 inch numbers, which are best viewed from a distance of 100 to 450 feet. Board members agreed that this is appropriate for the store, given the terrain and tree cover. Francis Ali said that he believes that the LED signs are also dimmable, if desired. Jean Ewen said that she is not sure that the town is gaining by the switch to LED. Susan Arnold said that the lights are contained in the sign, but would not be shedding light. Scott Hodgdon said that he feels that the LEDs would produce less overall light. Charles Burnham agreed, saying that the red and green lights would not throw off light in the same way as a white light. Scott Hodgdon noted that a much larger cone of light would be required if the gas signs were lit by indirect external light from the top of the pole. Jean Ewen asked if the LED signs are only for gas. Mr. Ali said that the signs are specific for gas stations and that he believes that they are only dots, just for numbers. Susan Arnold suggested that a condition of approval would be that the LEDs are for the fuel price signs only, no other messages or information.

The Acting Chairman then closed the public hearing. Board members reviewed the proposed stipulations on the decision, including a requirement that the lights go dark when the store closes (current hours are 6AM to 9PM in summer, 7AM opening on weekends, and 6AM to 8PM in winter, 7AM opening on weekends) or must be illuminated/darkened consistent with the hours identified in the ordinance, whichever is earlier; the top of the pole upon which the signs will be hung shall be no greater than 16 feet from ground level (the current pole, which they hope to use, is about 12 feet high); red lights for gas and green lights for diesel, at the illumination level/brightness suggested by the specifications in the application, and any additional lighting must conform with the ordinances (Article 1.3.8 and 1.3.12); LED lit numbers shall be 10 inches or less in height and total sign area should be no greater than the six square feet allowed under the ordinance (Article 1.3.8); and the signs must not encroach on the State of NH DOT road right-of-way for Route 202A.

There was no further discussion. Charles Burnham then made a motion to approve the request for variance to Article 1.3.12 with all of the conditions as enumerated above, as follows:

Resolved: To accept and approve the request for Variance to allow gas and diesel signs to be lit by LED lights, with the following conditions as stipulated by the Board: Sign is only for fuel prices, no other messages or information shall be allowed; lights shall be turned off when the store closes or midnight, whichever is earlier; red LED lights for gas and green LED lights for diesel at the brightness level stated in the application; any other sign illumination must conform to the ordinances; the top of the sign post shall not exceed 16 feet; LED lit numbers shall be 10 inches or less in height; and the mounted signs must not encroach on the State of NH road right-of-way for NH Route 202A. The decision is based on the fact that the size of the signs will meet the requirements of the existing ordinance, the store is a grandfathered business and is the only gas station in the town so it serves a public interest, and the proposed colors are less offensive than white lights.

Jean Ewen seconded the motion. There were no additional comments, and the Acting Chairman called the vote. The vote was unanimous in the affirmative. The variance request has been granted; there is a 30-day appeal period for Board of Adjustment decisions.

There being no further business before the Board, a motion to adjourn was made and seconded. There was no further discussion, and the vote was unanimous in the affirmative. The meeting adjourned at 8:15 PM.