

**Town of Milford  
Zoning Board of Adjustment Minutes  
October 21, 2010  
Fred Fuller Oil Company  
Case #29-10  
Variance**

Present: Steven Bonczar  
Kevin Johnson  
Fletcher Seagroves  
Laura Horning  
Steve Winder

Michael Unsworth - Alternate

Absent: Katherine Bauer – Board of Selectmen representative  
Zach Tripp - Alternate

Secretary: Kathryn Parenti

The applicant, Fred Fuller Oil Company, owner of 419 Nashua Street, Map 31, Lot 4 in the Limited Commercial-Business “LC” district, is requesting a Variance from Article VII, Section 7.06.7:G to permit a two (2) square foot electronic message copy area on a monument sign.

Motion to Approve: \_\_\_\_\_

Seconded: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Steven Bonczar, Chairman, read the notice of hearing into the record as well as the list of abutters; Bill Fuller, Vice President and Andy Morgan, Safety Director and Engineer of Fred Fuller Oil Company were present. He then invited the applicant forward to present his case.

B. Fuller stated they had come before the board last year to upgrade their Cottage Street site. In the meantime, they purchased the Nashua Street property from Draper Energy. After they purchased the Nashua Street property, the abutter at 415 Nashua Street said they were interested in selling. Fred Fuller Oil purchased that property as well and they will eventually go before the planning board to update both of the properties. He stated A. Morgan would address the variance for the electronic message copy.

A. Morgan stated they were planning to update the two (2) properties to one (1) facility but in the mean time, they are taking baby steps. There is currently a monument sign on site which is 1'x2'.

The Limited Commercial District does not allow electronic message copy (emc) area on a monument sign but it is allowed on a wall sign. They are asking for a variance for a small emc that would change once a day, at the most. It will not have any changing images, only numbers.

S. Bonczar noted the overall sign meets the criteria and they are here only for the emc part of the sign. He read from Article VI, Section 7.06.7:G, Monument Sign (also known as Ground, Identification, Detached, Freestanding, Pole or Pylon Sign): "*1. Definition: A "Monument Sign" is a sign established on a freestanding frame, mast or pole and not attached to any building. Where such signs are established back to back, the larger face shall be calculated for the purposes of determining allowable area.*" The area of the sign can be 32 square feet and it can be ten (10) feet in height. Changeable copy is allowed, not emc.

A. Morgan stated the current sign now hangs over the fence and is near the power line. They will move the new one closer to the building for safety and improved visibility.

F. Seagroves asked if it would be lit all day, every day.

A. Morgan stated it would be on a timed photo cell and would be on from dusk to dawn.

S. Bonczar commented that dimmers on the emc's don't work very well. An example of bright green LED lights were on the former BP gas station sign. He did understand the need for these signs; during the day the emc has to be bright to be seen but at night it is a little overwhelming.

A. Morgan responded that the footprint of the message center is small.

S. Bonczar thought the BP sign was the same size and it was extremely bright at night. It was too bad the sign company was not here to talk about the degree of dimming of the sign. He thought most LED signs in town were too bright at night.

B. Fuller stated they picked the green color because they thought it would not be too bright at night, versus red, blue or orange. As far as the dimming goes, they will look into it.

A. Morgan replied there is a dimming capability and they will look into it.

K. Johnson noted the drawing of the sign showed a changeable copy area as well and would they be using that too.

A. Morgan replied it did and they would.

S. Bonczar asked if there were any addition comments or questions; there were none so he opened the meeting to public comment. There was no comment so he closed that portion of the meeting and asked the applicant to go through the criteria for a variance.

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

A. Morgan stated the size of the emc is 12"x24" or 2 square feet with the total square feet of the sign being 30 square feet (32 square feet is allowed), with no flashing, movements, animation, etc. and illuminated in a green light, very little distraction will be cause by the emc. The emc is to illuminate price only; there will be no text, pictures, etc.

**2. The use is not contrary to the spirit of the ordinance because:**

A. Morgan stated the electronic message center for a wall mounted sign is permitted. Their emc will be less than 7% of the total sign (up to 50% is allowed on a wall mount sign) and will change at most once a day with no movements.

**3. Granting the variance would do substantial justice because:**

A. Morgan stated the code is directed more towards signs that are larger, allow more movement and contain pictures. Our emc is 2 square feet and will only change at most once a day and will be illuminated with green lighting (less impact) and only contain a price value and no texts.

**4. The proposed use would not diminish surrounding property values:**

A. Morgan stated the proposed emc would not diminish surrounding property values due to the fact that the sign will not be distracting, loud and unlike similar signs in the area.

**5. Denial of the variance would result in unnecessary hardship.**

**A). “Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:**

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

A. Morgan stated they are located in a grandfathered commercial use situated on a busy mixed business and residential street. Electronic signs are allowed in other commercial districts, but not in the limited business district. The small price board allows us to have the same benefits as other commercial zones.

**ii) and; The proposed use is a reasonable one because:**

A. Morgan stated by using the latest technology to effectively advertise our pricing for our product, we will not haul any adverse impact to abutters and general public and comply with all size requirements.

**B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, 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. A variance is therefore necessary to enable a reasonable use of the property because:**

A. Morgan stated this was not applicable.

S. Bonczar then asked the board if they had any questions or comments; they did not so they proceeded to discuss the criteria for a variance.

**1. Would granting the variance not be contrary to the public interest?**

F. Seagroves stated the variance would not be contrary to the public interest; the sign is just numbers, no text and would not be a problem. The intent of the ordinance is to prevent a proliferation of large illuminated signs.

K. Johnson agreed; it is in the public interest to promote local business.

L. Horning agreed; as long as it is green, it would be fine.

S. Winder agreed; it would be similar to what is already there before but would be better.

S. Bonczar stated the impact of approximately 2 square feet of emc on a nice sign wouldn't have any effect on property values and wouldn't be contrary to the public interest.

**2. Could the variance be granted without violating the spirit of the ordinance?**

K. Johnson stated it is the public interest to promote the growth and welfare of the businesses and to post competitive pricing.

S. Winder agreed; it is similar to others in town.

L. Horning stated it was in the public interest to replace the sign that is located near the live wire.

F. Seagroves read from page 14 of the The Board of Adjustment in New Hampshire – A Handbook for Local Officials: “...*does the variance alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public?*” He didn’t think it would violate the spirit of the ordinance.

S. Bonczar agreed; it is not contrary to all the other characteristics of the sign ordinance.

**3. Would granting the variance do substantial justice?**

K. Johnson stated the minimal benefit to the down, if this was denied, would not outweigh the hardship to the applicant. Granting the variance would do substantial justice as there is a minimal amount of emc on the sign.

S. Winder agreed; there is no way to expand on K. Johnson’s comments. The only homes that can see the sign are located across the baseball field.

L. Horning agreed and noted the road is a darkened area and the loss to the individual, if this was not granted, would far outweigh the loss to the public.

F. Seagroves agreed; the whole sign is illuminated and the price area is small; the loss to the individual would be great.

S. Bonczar agreed; there would be no gain to the public if this was denied. The impact of the small sign is minimal.

**4. Could the variance be granted without diminishing the value of abutting property?**

S. Winder stated if the sign was a wall sign, it would be more obtrusive, especially to the houses across the field.

F. Seagroves stated the health and safety of the public is not violated so it would not diminish the value of abutting property.

L. Horning agreed; the ordinance is to encourage growth of the business and commercial businesses in town and this would not violate that.

K. Johnson agreed; the intent is to limit the proliferation of large, bright and constantly moving signs. This request would be minimally invasive and was within the spirit of the ordinance.

S. Bonczar agreed; all of the items of the sign ordinance are met except for the emc. The size of 2 square feet meets the intent of the ordinance.

**5. Would denial of the variance result in unnecessary hardship taking the following into consideration:**

**A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, 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.**

**ii. The proposed use is a reasonable one.**

S. Winder denying the request would create a hardship and the signage is beneficial to the business.

F. Seagroves stated granting the variance would do substantial justice; all gas stations now have this type of sign and it would be an advantage for their business to advertise their prices.

L. Horning agreed; these signs are allowed in other districts and they do face visibility issues on that stretch of road.

K. Johnson agreed; denying the variance would be an unnecessary hardship. He read from Article VII, Section 7.06.3, Definitions, Changing sign (electronic): “*A sign that is either electronically or electricall controlled to illustrate copy changes on the same sign. This*

*sign's message may be change by electronic switching or automatic switching of lamps or alteration in the level of illumination or other illumination source to form words, letters, designs, figures, numeral and pictures often through the apparent vertical or horizontal movement of light. Such signs shall not include a flashing light source. In the case of a changing sign (electronic), flashing shall be defined as an internal of illumination less than five (5) minutes in duration; provided, however, that time and temperature text shall be maintained for a period of fixed illumination of not less than five (5) seconds in duration. A changing sign includes, without limitation, time, temperature, date and message centers or reader boards, indexing signs, and those known as electronic message centers.”* The specifics the applicant is asking for are only numerals. If the request was for a wall sign, it would be allowed. The proposed use is a reasonable one.

S. Bonczar stated the intent of the ordinance is that signage in town will not be huge and lit up like Las Vegas. Other than the emc, the sign meets the ordinance requirements and the request is not unreasonable.

S. Bonczar asked if there were any additional comments; there were none so he stated after reviewing the petition and after hearing all of the evidence and by taking into consideration the personal knowledge of the property in question, he called for a vote.

**1. Would granting the variance not be contrary to the public interest?**

F. Seagroves – yes    L. Horning – yes    S. Winder – yes    K. Johnson – yes  
S. Bonczar – yes

**2. Could the variance be granted without violating the spirit of the ordinance?**

L. Horning – yes    S. Winder – yes    K. Johnson – yes    F. Seagroves – yes  
S. Bonczar – yes

**3. Would granting the variance do substantial justice?**

S. Winder – yes    F. Seagroves – yes    L. Horning – yes    K. Johnson – yes  
S. Bonczar – yes

**4. Could the variance be granted without violating the spirit of the ordinance?**

F. Seagroves – yes    L. Horning – yes    S. Winder – yes    K. Johnson – yes  
S. Bonczar – yes

**5. Would denial of the variance result in unnecessary hardship taking the following into consideration:**

**A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;  
ii. The proposed use is a reasonable one.**

**B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, 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.**

K. Johnson – yes    S. Winder – yes    F. Seagroves – yes    L. Horning – yes  
S. Bonczar – yes

S. Bonczar asked if there was a motion to approve case # 29-10, a request for a variance.

K. Johnson made the motion to approve Case #29-10.

F. Seagroves seconded the motion.

**Final Vote**

L. Horning – yes    K. Johnson – yes    S. Winder – yes    F. Seagroves – yes  
S. Bonczar – yes

S. Bonczar reminded the applicant of the thirty (30) day appeal period.