



## **Town of Moultonborough Zoning Board of Adjustment**

### **Notice of Decision**

### **Request for Variance**

**Tedeschi Food Shops, Inc. / Map 142, Lot 1**

**April 18, 2013**

**Applicant:** Tedeschi Food Shops, Inc.  
TFS Realty, LLS  
14 Howard Street  
Rockland, MA 02370

**Location:** 268 Whittier Highway, Moultonborough, NH (Tax Map 142, Lot 1)

On April 17, 2013 the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Tedeschi Food Shops, Inc. (hereinafter referred to as the "Applicants" and/or "Owners") for a variance from Article 5, Paragraph 504D to allow for an internally illuminated sign with gasoline and diesel prices to be displayed using light emitting diodes (LED's) on their parcel located in the Commercial Zone A.

Based on the application, and testimony given at the hearings, the Board hereby makes the following findings of fact:

- 1) The property is located on 268 Whittier Highway (Tax Map 142, Lot 1).
- 2) The applicant is the owner of record for the lot.
- 3) The applicant was represented at the Public Hearing by Biron L. Bedard, Esquire. Present for the hearing were Mike O'Donnell; TFMoran, Dan Hutchins; N.H. Signs and Mike McLaughlin; Operations Manager for Tedeschi Food Shops.
- 4) The lot is located in Commercial Zone A.
- 5) The applicant is proposing an internally illuminated sign with gasoline and diesel prices to be displayed using light emitting diodes (LED's) in two separate panels within the overall sign construct. Said panels shall be the only electronic, LED portions of the sign.

- 6) The existing non-conforming sign is approximately 68 sq. ft. and will be replaced with a new conforming size sign of 36 sq. ft. in the same location.
- 7) No members of the public spoke for or against the Variance request.
- 8) Granting the Variance would not be contrary to the public interest as it would be more economical with regard to power consumption, and it would be safer for the price changer and for the public.
- 9) Granting the Variance is consistent with the spirit of the Ordinance as the new sign becomes smaller, would be aesthetically pleasing, and the intent of the ordinance was to stop flashing, moving, changing, colored, animated signs that affected safety along the roadways, not changes in technology that didn't do the things as noted above (which this proposal does not do).
- 10) By granting the Variance, substantial justice is for the applicant is accomplished because the ordinance language, when written, had no way of expressing the difference between what an LED type sign could do that was harmful and the type of technology, when properly employed, which may be beneficial to the Town.
- 11) Granting the Variance does not diminish the value of surrounding properties because the proposed sign has less square footage, enhances appearance, neat, not cluttered, and is inherently safer for the operator and for passing public (no flying number placards in the wind).
- 12) No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision because the use of LED lighting in this instance maintains the public purpose which is safety and general welfare from such things as may occur when employing electronic message centers such as flashing, animated, changing colors, intensities and videos when this proposal is limited to static numbers only, changed no more than twice a day.
- 13) On April 17, 2013, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Nolin, Bickford, Crowe, Zewski, Hopkins) and none (0) opposed, to Approve the request for a variance and to close the Public Hearing. They moved to direct Staff to draft a formal Notice of Decision to Grant the Variance with the following conditions;
  1. That each module (of two) displays only the price of unleaded gasoline and the price of diesel fuel.
  2. That the price on each module change no more than twice in any 24 hour period.
  3. That only numbers necessary for fuel pricing be used; no graphics, moving characters, flashing, intensity change or changing colors shall be employed.
  4. That the daytime intensity (nits) of the LED's shall be reduced at dusk to generally acceptable levels established by the Illuminating Engineering Society of North America (IESNA) for LED sign illuminance. The daytime maximum being 5000 nits and the nighttime maximum being 500 nits which roughly equates to 0.3 foot candles above ambient light. This shall be accomplished by installing an ambient light sensing

mechanism (photocell) which automatically adjusts the sign's brightness based on current ambient light conditions.

5. That the foregoing conditions be included as requirements in the sign permit;

6. The formal notice language shall be reviewed by the Board at the May 1, 2013 Regular Meeting.

The Board of Adjustment, on May 1, 2013, approved this formal Notice of Decision language and authorized the Chairman to sign the Notice of Decision and send to the applicant and place same in the case file by a vote of four (4) in favor (Nolin, Bickford, Zewski, King), none (0) opposed, and one (1) abstention (Stephens).

The decision made to Approve the variance on April 17, 2013 shall not take effect until thirty (30) days have elapsed and no request for rehearing has been filed in accordance with RSA 677:2, or that if such request has been filed, it has been dismissed or denied, in accordance with RSA 677:3.

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Robert H. Stephens  
Chairman, Zoning Board of Adjustment

Date \_\_\_\_\_