

**Zoning Board of Adjustment
Warner, NH
Meeting Minutes of July 14, 2010**

Members Present: Mike Holt; Eric Rodgers; Rick Davies; Janice Loz and Gordon Nolen.

Members Excused: None

Members Absent: None

Alternates Present: Kimberley Edelmann

Alternates Excused: Scott Hanwell

Alternates Absent: None

The meeting was called to order at 7:00 p.m. The roll call was taken.

1. ELECTION OF CHAIRMAN AND VICE CHAIRMAN

A. CHAIRMAN

Rick Davies made a **MOTION** to nominate Mike Holt as Chairman. Eric Rogers seconded the **MOTION**.

Janice Loz asked if Martha Thoits wanted to relinquish the position. Mike Holt said Martha Thoits had been officially off the Board (retired) since April 2010. There has not been a meeting since January 2010.

All were in favor of Mike Holt as Chairman.

B VICE CHAIRMAN

Gordon Nolen made a **MOTION** to nominate Eric Rogers as Vice Chairman. Janice Loz seconded the **MOTION**.

Mike Holt as if there were any other candidates.

Eric Rogers made a **MOTION** to nominate Janice Loz as Vice Chairman. Rick Davies seconded the **MOTION**.

Janice Loz relinquished the Vice Chairman position to Eric Rogers.

A vote was taken and all were in favor of Eric Rogers as Vice Chairman.

2. Case 01-10: Variance

Applicant: Evan's Group, Inc. /Shell

Property location: 23 Route 103 West, Map: 35; Lot: 005,

Zoning District: C-1

Variance requested to Ordinance Article XII, Section A.2. Propose to install new LED price changer sign in place of 3-product illuminated sign, the installation of illuminated "Shell" logos and single bar light on gas pump canopy.

A. REVIEW APPLICATION

Mike Holt asked the applicant to introduce himself. Mr. Doug Evans, owner of Evans Group, introduced himself as well as Brian Gauge, Operations Manager, for Evans Group.

Mike Holt asked Mr. Evans to read and discuss into record his response to the questions in his application. Mr. Holt explained that Mr. Evans's position in this situation is to present his position goals and to bring the Board the information that he would like to present that would satisfy his request.

Mr. Evans gave a very brief background. He stated that they have had the Citgo location/Evans ExpressMart for about 12-13 years. They recently re-branded the location with Shell. During the re-branding the high rise Citgo sign was taken down with the intention of permanently removing the sign. The Citgo pylon system was replaced with a similar Shell system; however a variance is being requested for an LED price sign as part of that system. The sign will be located on the poles at the same pole height. Mr. Evans stated that basically it is the same sign system with the Shell name instead of Citgo. He stated the face of the canopy was changed to the Shell image canopy. The three Citgo logos were removed and 2 Shell logos and one light bar was placed on the canopy. Mr. Evans stated that neither the Shell logos nor the light bar are illuminated at the time.

Mr. Evans stated they are applying to have the LED price sign which actually is a single price sign that is replacing a three (3) price sign they had for Citgo. He said the former Citgo sign was internally illuminated but was not an LED sign but rather the old style where the numbers are changed manually with a number changer. He said the sign is basically the same footprint.

Mr. Evans read the following into the record:

Details of the request: Request for variance to install single price LED sign in place of a 3-product illuminated price sign. Request installation of illuminated (2) - "Shell" letters on a single light bar canopy face.

1. Explain why granting the variance will not be contrary to the public interest. *The new LED sign presents a clearer appearance, has only one price display and is more energy efficient, has a longer life and does not contain any toxic metals that fluorescent tube lighting contains, therefore Evans Group feels this type of lighting is the lighting of the future.*

2. Explain why granting the variance would not be contrary to the spirit of the ordinance: *The new energy efficient lighting sends the message with less overall yard light and in a more direct crisp manner. There is less overflow (waste).*

3. Explain why by granting the variance, substantial justice is done. *The new attractive energy efficient sign is a visible safer alternative while being more environmentally friendly.*

4. Explain why granting the variance the values of surrounding properties will not be diminished. *The location basically has had the same use of a retail gas facility/convenience store for years. The requested signage will improve the overall appearance of the existing site. There will be a new image at the location.*

5. Explain why Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

A. For the purpose of this subparagraph, “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; and *the property has a 100 ft State setback from Route 103 and the requested signage will increase visibility and identification of the business. In that respect it is felt that the visible canopy will also help identify the business.*

ii. The proposed use is a reasonable one. *The requested LED signage is the sign of the future in Evans Group opinion and in the opinion of lighting people they work with, it is clean with less power use and is environmentally friendly.*

Mr. Evans said he included some pictures in the package of the proposed signage and canopy. The Board members were all given a copy of the photos to review.

Mr. Gauge stated that the actual lettering area of the Citgo price sign is significantly more than the LED area is; which would be only 4 numbers for the price of regular gas. In addition he stated the LED sign does not have capabilities for flashing or scrolling; it is simply controlled by a remote control to change the price. He said that in the spirit of the ordinance with the limited capabilities it does not go too far over what the spirit of the ordinance is. The sign would serve as an identifier of the price of gas.

Mike Holt said looking at the photos there is only regular gas price listed and asked if they have diesel, super, etc. Mr. Gauge said they do have regular and plus at the station but since 90% of the gas purchased in America is regular gas through a marketing standpoint and a cleaner image portrayed by the convenience stores and the association a lot of people have gone to the one price. Shell does not have Diesel or they would have a second smaller price in a different color.

Mr. Evans said per New Hampshire State law they do post all the gas prices on top of each individual pump.

Mr. Evans said as stated initially they are utilizing the same poles. He apologized for the late application but said that when they first did the brand change since they were in the same footprint they did not realize they needed to come for a variance for the LED sign. Mr. Evans said the pole height is 20' in both cases.

Mike Holt verified that the signage is the same footprint as before. Mr. Evans said there is actually a 1 ½ square foot differential with the Shell sign being smaller of the two. Mr. Evans stated that they removed a 134 square foot high rise Citgo sign from the property.

Mr. Evans presented a photo to the Board of the Shell logos illuminated in the evening. The photo was of the canopy with the light bar and two illuminated Shell logo. Mr. Evans said there is no change being made to the under lighting of the canopy. He said if in the future they were to do any changes to the under canopy lighting they would propose going with LED lighting down below. He feels that it is a cleaner image.

Mike Holt verified that this is a corporate sign program. Mr. Evans said yes it is the Shell corporate image program that they put through to their distributors and dealers. Mr. Evans said in an ideal world with no Zoning consideration what they were provided with is their latest and greatest image.

Mike Holt opened the meeting for discussion.

Gordon Nolen stated that LED seems to be the way of the future. He said he was quite impressed by an article he read about LED lighting. Gordon Nolen said he read in the article that area lighting and parking lot lighting can be totally LED at more than a 40% savings in energy and possibly even higher in dollar savings due to the maintenance that does not have to be done as you would have with high sodium vapor in conventional type of lighting. He feels that LED is the lighting of the future and lasts a long time. He said he is not surprised at all that signage is going to LED with the savings.

Janice Loz said she does not think that the Board's issue is with LED. She said there is nothing in the sign regulations that says LED is not allowed; it is more internal illumination, animation and flashing.

Eric Rogers agreed with Janice. Eric Rogers said two things that should be discussed are

1. The sign.
2. The canopy.

Eric Rogers said there was a similar business in Town that went through this same thing and it was broken down into two separate issues. He felt the decision should be broken down into two separate issues to be consistent.

Rick Davies asked if the Applicant was applying for three separate things. The LED, the illuminated bar and the illuminated Shell sign letters on the canopy. Rick Davies asked if the letters would be on the canopy.

Mr. Gauge said yes they are on the canopy and are part of the bar system.

Rick Davies verified they are requesting a variance for the canopy also.

Eric Rogers said he feels the canopy is one whole issue and the price sign another but he would be okay with it if the Board wanted to break it into three separate issues.

Mike Holt asked Mr. Evans if he was looking at the whole picture or nothing at all.

Mr. Evans said no. He said input from the Town Administrator was that any LED price sign would require a variance. He said they went before the Planning Board with a Citgo upgrade back in the early 90's and at that time the Planning Board set a condition that if any lighting changes were going to be made in the future for the canopy they would need to reappear. Mr. Evans said there was discussion before the meeting and it was decided by someone in Town that both issues could be separated; therefore in his mind he is asking for two separate requests.

Rick Davies verified they were referring to the bar on the canopy and the Shell sign on the canopy as one item. Mr. Evans said that was correct. Eric Rogers said that makes sense to him.

Rick Davies asked if that would be a Planning Board level issue since it was previously Citgo and now is Shell. He asked if there is anything in the ordinance that would require them to have a variance on that.

Mike Holt said he could not answer that question at this time since he has not done research on that.

Mr. Evans said that another issue came up that they needed to verify they were making no changes to the building or the traffic through the yard or the building signs that are all related to the businesses within the building.

Janice Loz said a decision would need to be made whether they are both considered signage. She asked if the canopy is considered signage.

Rick Davies asked if he could continue with his original question. He asked Mr. Evans what was illuminated before on the original Citgo canopy. Mr. Evans said the Citgo logo was not illuminated on the canopy. Rick Davies verified that the back lighting of the Shell logo is now going to be illuminated and the bar is illuminated.

Mike Holt said in reference to Rick Davies question regarding the Planning Board's involvement there was an informal discussion and the Planning Board felt this was a Zoning Board of Adjustment concern and the Zoning Board of Adjustment would rule on it. Mike Holt said if he is wrong in his thinking please do not hesitate to speak.

Rick Davies said they clarified his question regarding the back lighting. Rick Davies said he still feels it should be three separate issues: the back lighting on the letters, the bar light, and the price sign. He said he assumed each could be controlled separately by switches.

Mike Holt said he is not arguing the fact that the price sign is a separate issue but he feels that the canopy is all one issue.

Rick Davies stated in question number 5 on the application pertaining to hardship the property having a 100' setback does not distinguish it from other properties since a similar property across the street has a similar setback. He stated that the State has a huge Right of Way in that area. He asked if from a hardship point of view is there a reason why from the companies operation it is important to have the LED lighting vs. another type of lighting.

Mr. Evans said both types of lighting would have visibility; the LED lighting has a more crisp appearance. He stated that the more important issue with the setback is the canopy visibility since both sides of the road are set back. For people who live in Town it is fine but for people coming off the Interstate it would give them similar identification as the business on the other side of the road has. Mr. Evans said although they have the canopy under lighting it is very dark in the area at night.

Rick Davies asked is there is a different intensity for day light vs. night lighting with the LED price sign. Mr. Evans said the intensity is actually the same. Rick Davies asked if it would be very bright at night if you can see it during the day. Mr. Evans said he is not a lighting expert but his read on it is that LED is an intense and focused light as opposed to back light sign systems where you lose a lot of light around the perimeter of the yard. He said LED is a focused group of little lights. He said in their opinion it is not offensive and just sends out a direct message. Mr. Evans said the numbers are a series of very small bulbs that have a long life, run at a more ambient temperature instead of high temperature and each little bulb has a high intensity to it so that in broad daylight you are looking at the same light but the energy level is extremely low.

Kimberley Edelman said she had seen the sign while it was lit in broad daylight and it was extremely readable. She said she viewed it heading west and it was very easy to see and very readable.

Rick Davies said in regards to question #2 of the application talking about being contrary to the spirit of the ordinance he said the applicant talked about energy efficient light. He said the ordinance does not really get into the LED aspect as Janice Loz pointed out earlier. He said the ordinance itself talks about lighting and different types of lighting that can be used. He asked Mr. Evans if there is any reason another type of lighting could not be used. Mr. Evans said in their experience a sign can be illuminated with exterior lighting but you get a lot of glare off of a lot of sign faces that you would not get with an internally lit sign. Mr. Evans said the Citgo sign that had been there had been an internally illuminated sign for many years. He said he feels the LED is a more subdued lighting than an exterior light shining against a shiny surface which would give you glare and a reflection.

Rick Davies said his last question at this time was in reference to the letter attached to the application that gives more information on some of the topics in the application. He asked if the letter was just meant to supplement the explanation of his request. Mr. Evans said yes he submitted it with the main application for just a little more detail for the Board members to understand what they want to do. He stated that a lot of the information duplicated what is in the application. Mr. Evans again stated that they are not proposing any building changes or building sign box changes. He stated that the use on the property is existing and they are only upgrading the appearance. With the area being zoned commercial they want to have a good commercial presentation. Mr. Evans feels that the overall impact would be positive and certainly not negative. He said the Shell look is a subdued look because of the coloration of the yellow and red. The only real brilliant lighting would be the individual lights that make up the price sign. Mr. Evans said he thinks the general opinion is that LED is not offensive lighting but rather poignant lighting that sends a message without people having to look around to figure out what location to go to and a decision could be made more quickly when someone is riding down the road. He said if someone is coming into the area and does know which way to turn the sign would be more be visible so they could decide whether to go right or left.

Rick Davies asked why is it important for Mr. Evans's business to require pricing up front. Mr. Evans said gas price is super sensitive at this time and when pricing went sky high in 2008 people changed their buying habits out of necessity and a move was made to regular gas and a 0.2 to 0.5 cent per gallon difference can change a volume by 15-20% in a given time frame. It is important to have the gas prices easily visible for people to make their decision.

Gordon Nolen asked if it is the general consensus that the Board is discussing the price sign only tonight. Mike Holt said no the entire package is being discussed.

Kimberley Edelmann asked if the competitor across the street had the same type of external lighting that Mr. Evans is proposing. It was explained that they have an LED light strip around the canopy and an internally illuminated three part sign.

Rick Davies asked the size of the competitor's lighting strip. Mr. Gauge said it is a smaller strip but there entire canopy illuminates as well as the logos.

Janice Loz said the thing about this issue is that the Board did not allow Irving to install a digital number sign but they did allow them to install the lit up canopy with the bar light. She said that the LED sign would be in violation of the spirit of the ordinance. She said at this time they are in a situation where they already told Irving they could not have an LED sign therefore they need to seriously consider that before making any type of decision.

Kimberley Edelmann verified that Irving had been sent an abutters notice and that they did not respond. The secretary said yes.

Kimberley Edelmann said she noticed another change between the two photos (one being of the old Citgo sign and the other being the new Shell sign) a pipe is missing that was next to the sign poles. Mr. Evans explained that was an exhaust pipe that New Hampshire State law said was no

longer needed therefore it was removed. Mr. Gauge said that the telephone sign was also removed since there are no telephone booths at the location.

With no further discussion from the Board at this time Mike Holt opened the Public Hearing.

B. PUBLIC HEARING

Mike Holt asked if any abutters were present. There were no abutters present.

Mike Holt asked if anyone in the audience would like to speak.

Martha Mical said she thought the canopy was fine. She did have a problem with the LED pricing sign since Zoning Board of Adjustment said no to Irving Station in 2007. She said they both have the same setbacks. She felt since there are only two gas stations in the area people would not be reading multiple signs and it would not be that confusing to choose which one they wanted to go to. Ms. Mical said she would encourage the Board to not allow LED signs.

Barbara Annis said if anyone had attended the Visioning Sessions they would know she is pro business but it must be aesthetically pleasing. Ms. Annis said she took the opportunity to drive up through town, went through the Exit 9 area, went down the Interstate and went through Exit 7 and drove back through Town the evening of Monday July 12, 2010. She said she was surprised at the amount of internally illuminated signs. She said that Milton has a very nice internally illuminated sign, Knoxland has a nice burgundy color on their internally lit sign, McDonalds sign is internally lit but is a smaller sign, Aubuchon has backdrop lighting and Market Basket sign is edged in lighting and is proportionally acceptable. Ms. Annis said although the Irving Station has a LED strip lighting on the canopy it is recessed into the canopy and is a smaller diameter strip. She said it appeared to her that the LED strip lighting on the Shell station canopy is below the canopy level and will not have anything to diffuse the light. Ms. Annis suggested that the Board do a night site visit to get the entire picture. She reminded the Board that there is a conditional approval for possibly 8 stores at a nearby location, Wagner has conditional approval for subdivision and is worried that if LED lighting is approved there would be a lot of other business also using the same type of signage that would be very bright. She also said she would like to have the Board think of the future when making their decision.

Gerald Marsh said he did not have the opportunity to see the LED price sign lit so he cannot form an opinion. However, he stated that he is pro-business and thinks that Shell gave Evans Group Inc. a package to install like all their other stores. Mr. Marsh did say he is in favor of the canopy design.

C. CLOSE HEARING AND RE-OPEN MEETING

With no further comments from the public Mike Holt re-opened the meeting.

Gordon Nolen said that in regards to thinking of the future he feels the future is here and it is LED lighting since it wastes less energy and takes less maintenance than standard lighting of the

past. He said he was primarily focused on the signage and can think of no reason why the Board cannot acknowledge the latest technology in lighting.

Mike Holt said he understands the feelings of everyone. He said even in the automotive industry current models import as well as domestic have all gone to LED lighting mainly for safety reasons. He said that airplanes, boats and everyone is using LED lighting. He understands that it is here but he also understands that the Zoning Board needs to abide by the rules set by the Town. He said that they are in the middle and wants to make a good decision for Evans Group and for the Town.

Eric Rogers asked if they could discuss one issue at a time instead of going back and forth between the two issues. The Board agreed.

Rick Davies made a **MOTION** to have the Board do a site walk at some predetermined time.

Mike Holt asked if there was a second to the Motion

Eric Rogers said he personally did not need to do a site walk since he has come into Town well after dark and is familiar with lighted signs in different Towns.

Janice Loz says she also does not feel a need to second the Motion; however, she would not be against a site walk if that is what the Board wanted to do.

Gordon Nolen said he did not feel a need to do a site walk.

Kimberley Edelmann said if she were able to vote on a site walk she would second the Motion because she could not clearly differentiate between the two gas stations at night time; she does not have a clear picture in her mind to compare them.

Rick Davies said he wanted to make it clear that the Board is dealing with the situation at the Shell location and not with the competitor's location. Kimberley Edelmann said that the competition was mentioned previously.

The **MOTION** was not seconded.

Eric Rogers said Kimberley Edelmann is allowed to vote on a site walk, as an alternate she is able to vote on any internal Board matters.

Kimberley Edelmann asked if the LED sign they are proposing has the capability to turn down the intensity of the lighting. Mr. Evans said the sign did not have that capability. Kimberley Edelmann asked at what times will the lights be on. Mr. Evans said in the daytime the LED price sign would be lit and after dark the canopy lights and other signs would come on. Mr. Evans said the lights will be turned off physically at 11 pm.

Mr. Evans said the LED lighting in the canopy is recessed. There is some drop lighting under the canopy that already exists. Mike Holt verified that the lighting under the canopy has not been changed. Mr. Evans said that was correct.

Janice Loz said that the Board did set a precedence in their earlier decision and feels they need to be consistent with that decision.

Kimberley Edelmann said that one day there will need to be a change. Janice Loz said the Board did not say LED lighting was not allowed the issue was the LED lighted price sign. Janice Loz said she has no problem with LED signage as long as it is tasteful and in the spirit of the ordinance. She said the real issue the Board had at the time Irving requested the signage was the digital electronic numeric text.

Kimberley Edelmann asked if they requested a sign with moving text. Janice Loz said no but she feels that once lit up text is allowed you would open the door for that next stage. She said since the numbers can be changed electronically it falls within the definition of animation. Kimberley Edelmann said she did not see the difference between having a sign that you manually change the numbers or one that a computer could change the numbers. Janice Loz said the problem is the digital electronic component, and once you open the door for that you open it for a whole bunch of things and it would be hard to say no to anyone else in the future.

Mike Holt brought up the signage at Carlsons Chrysler in Concord, NH and subsequently there has been a hearing for signage on South Willow Street as you come off 393 with the large size of the sign. Kimberley Edelmann said that was a different situation and you cannot really compare a small sign to a large sign. Janice Loz said that they are both digital signs and they could make the digital part bigger if they wanted to.

Gordon Nolen said he did not see why the point was under discussion the company is in the business to make money and it is necessary for gas stations to change the price of gas. Janice Loz said that is what was discussed with Irving in 2007. He asked if it is relevant to rehash a decision that happened three years ago. Both Janice Loz and Eric Rogers said it was necessary.

Gordon Nolen said they are talking about digital animation. Eric Rogers said at the time the wording "slippery slope" was used. He said it was not the fact that there was a sign; it was not the fact that there was a lit sign but it is the fact that it is a digitally lit sign opens the door for everyone else who owns a business to ask for one. Eric Rogers said the construct of the ordinance is no flashing, scrolling, pictures, etc and the opinion of the Board at that time was this type of signage would be the first step to that.

Kimberley Edelmann asked if Shell had another option if they could not get approval for the LED sign. Mr. Evans said they have the option of going back to the internally lit pylon type sign. Eric Rogers said there may be a point that in the future the verbiage in the ordinance is changed to allow a non-moving, non-flashing, static number in a sign of that size; however at this time in his opinion it is wholly against the intent of the ordinance. He said they do not want to potentially through a slip through the gap have Exit 9 look like South Willow Street. He said it is not the sign; it is not the light but rather the digital aspect that the sign can be changed.

Gordon Nolen said the ordinance states no internally illuminated signs are allowed. He said that a precedence has already been started by allowing internally illuminated signs. He did not feel they were setting any “slippery slope”. Gordon Nolen said he felt it was getting too complicated. Eric Rogers said that is exactly why they are trying to remain consistent because some Planning Board previously said it was okay to have an internally lit sign and now they are everywhere. He said it is pretty much unfair business practices to not allow someone else to have one. Mike Holt said he agreed that what you do for one you have to do for others. Janice Loz agreed that until the ordinance verbiage is changed the Board needs to continue to be consistent with their decision on LED signage.

Mr. Evans asked if it could be a condition of approval that the numeric numbers must be static with no animation. Eric Rogers said the ordinance would first need to be changed to allow that type of signage. He also said it would be unfair business practice to deny Shell the strip LED lighting since they gave permission to their competitor.

Gordon Nolen said he still feels that the LED lighting is a good idea. He said that the applicant is here requesting a variance and the Board has the authority to grant his request. He said that modern technology is here and the Board should consider that and if he had been on the Board three years ago he would have argued just as vehemently then. Since he was not on the Board at that time he is starting fresh and does not think it would be earth shattering if a different decision was made for Evans Group than was made for Irving three years ago. He said that if Irving would like to come before them again for a similar sign he would argue why not since LED signage is modern technology. Gordon Nolen also stated that the “slippery slope” thing is a personal thing.

D. ACTION TAKEN – APPROVE/DENY/CONTINUE

Rick Davies made a **MOTION** to **DENY** the request for variance for an LED price lights since it is contrary to the spirit ordinance and hardship was not proven per question #5. Eric Rogers seconded the **MOTION**.

Mike Holt opened the Motion for discussion.

Gordon Nolen said that it was mentioned that hardship was not established but people who want to sell a commodity who cannot put their price out where it can be seen would have an obvious hardship. He asked if the request is denied why would there not be a hardship. Janice Loz said they still can display their prices they just cannot use that particular type of sign. Gordon Nolen said an internally lighted sign is against the ordinance. Janice Loz said the Board is just discussing the digital component. Rick Davies said the existing light was internally lit for years. Mike Holt said yes and that is what the misunderstanding was when Mr. Evans went to the Board of Selectman to ask permission to change the sign. Eric Rogers said that most people do not think about what type of internally lit signs are allowed.

Rick Davies said that another thing regarding hardship is that the set back is the same for all businesses in the area.

Mike Holt asked Mr. Evans if there was an option to the LED sign. Mr. Evans said there is an option to go with an internally illuminated sign. Mike Holt verified that corporate has the sign available and Mr. Evans would not be out of business and that he would still be able to operate his business. Mr. Evans said yes but there would be the added expense to change out the sign.

The Board verified that Mr. Evans was already working under a variance with an internally illuminated pylon sign and he can have the same type of sign again. It was stated that an LED light is not considered an internally lit sign.

Mike Holt said there was a question from the floor and since there was a Motion at this point he would allow the question.

Martha Mical stated that since Mr. Evans already has a variance for an internally lit sign he already had he would not need a variance for the same type of signage; he would need a variance for an LED price sign.

Mike Holt stated that his question to Mr. Evans was that if corporate did not provide that other type of sign he would not want to see someone go out of business if the variance was denied. He stated that he too is very pro-business.

With no further questions or comments Mike Holt asked for a vote. A yes vote would deny the request for LED lighting.

Eric Rogers-yes; Janice Loz-yes; Gordon Nolen-no; Rick Davies-yes; Mike Holt-yes.

The request for variance of an LED price sign was denied by a majority vote.

Mike Holt said the next issue is the canopy.

Eric Rogers made a **MOTION** to **GRANT** the variance to allow the new canopy lighting as read into the record, I do not believe it changes any of the issues number 1-5 on the application and would also be deemed fair business practice by the competitor across the street. Janice Loz seconded the **MOTION**.

Rick Davies said that they were talking earlier about three different issues. Mike Holt said he asked if that could be comingled. Rick Davies asked if it would be appropriate to have them as separate items rather than comingling them. Eric Rogers said he felt that the Shell lettering and the canopy with the light bar are all one issue and could not be separated. Rick Davies felt the back lighted Shell logos should be separate from the canopy bar light. Eric Rogers said the majority of the Board agreed earlier to combine the Shell letters with the entire canopy.

Mike Holt asked if there was any further discussion.

Rick Davies said he still felt that it should be brought up as three separate issues that would include the size of the red bar. Mike Holt said the information was provided and it is 2.37 inches.

Mr. Gauge said that in comparison to the illumination size as compared to the competition their canopy will have less illumination because the competitor's entire canopy is lit.

Rick Davies asked what will be lit on the Shell canopy. Mr. Gauge stated that just the two Shell lettering logos will be lit as well as the red light bar. Rick Davies verified with Mr. Evans that the background of the canopy will not be illuminated and Mr. Evans confirmed that was correct. Rick Davies said he would like to see the lighted Shell logos and the bar light as two separate issues. The rest of the Board agreed to keep the canopy as a whole.

With no further discussions Mike Holt said a yes vote would grant the variance for both the Shell lighting as well as the illuminated red bar on the canopy.

Eric Rogers-yes; Janice Loz-yes; Gordon Nolen-yes; Rick Davies-no; Mike Holt-yes.

By a majority vote the request for variance for both the two (2) illuminated Shell logos and red bar light on the canopy has been granted.

Mike Holt explained to Mr. Evans that he has 30 days to appeal the decision. Mr. Evans said he understands.

Mr. Evans thanked the Board and left the meeting.

3. MINUTES

Eric Rogers made a **MOTION** to **APPROVE** the minutes of January 13, 2010 as **AMENDED**. Gordon Nolen seconded the **MOTION** and all were in favor.

4. REVIEW ZONING BOARD OF ADJUSTMENT RULES OF PROCEDURE.

Mike Holt said on page 2 under Records the second paragraph where it says within 144 hours of public meeting it should read within 5 business days per RSA 91-A:2 II. It will now read:

Minutes of all meetings, including names of Board members, persons appearing before the Board, a brief description of the subject matter discussed, and all votes taken shall be open to public inspection within 5 business days of the public meeting.

Janice Loz said under order of previous business the approval of minutes is listed as B but they never approve the minutes early in the meeting. Rick Davies said the same change has been implemented in the Planning Board meetings.

Janice Loz said she could not find anything about informational meetings in the procedures and if they were going to have them should something be put into the Rules of Procedure. Mike Holt said that the Zoning Board will not conduct any informational meetings. The Planning Board handles conceptual consultations. Rick Davies said it is not allowed per RSA.

Rick Davies asked if anything should be added to the Rules of Procedure regarding instructions for an Appeal of Administrative Decision. It was agreed nothing needed to be added at this time.

If there were any questions the secretary would handle it under the guidance of the Chairman. Rick Davies also said there is nothing in the Rules of Procedure pertaining to the time period for allowing an Appeal to Administrative Decision the only reference to the 20 day time frame is in the instructions sheet. The Board agreed to leave the 20 day time frame in the instructions only.

Janice Loz asked if verbiage should be added to the Disqualification section to coincide with the RSA in the Land Use book pertaining to reasons for a member to recuse themselves. Mike Holt asked Janice Loz prepare some verbiage to present to the Board.

5. COMMUNICATIONS AND MISCELLANEOUS

Rick Davies explained he requested the secretary provide copies of the pages in the Zoning Ordinance that had the typographical correction and the clearer Workforce Housing map provided by Central New Hampshire. The typographical error was found at a previous Planning Board meeting.

Rick Davies asked if the secretary could furnish a copy of the court decision in the Albert and Maryann Plass lawsuit. The secretary said she would contact counsel to get that information.

Rick Davies asked what the procedure is for contacting counsel regarding the budget. Mike Holt said the secretary would contact counsel on the Board's behalf.

6. ADJOURN

Eric Rogers made a **MOTION** to **ADJOURN**. Gordon Nolen seconded the **MOTION** and all were in favor. The meeting was adjourned at 8:45 PM