

**NOTICE OF DECISION**  
**ZONING BOARD OF ADJUSTMENT**  
**TOWN OF HOLDERNESS**  
**PO BOX 203**  
**HOLDERNESS, NH 03245**

Case No: 361-02-12

You are hereby notified that the appeal for a Motion for Reconsideration of the LSM Development LLC for property located at 10 Shepard Hill Road, Tax Map 102 Lot 47, in the Commercial District, has been DECIDED with the following determination:

This case initially came before this board as an administrative appeal of the compliance officer's denial of an application to replace an existing business sign with a new one. The case was heard on January 8, 2013 at which time this board denied the appeal.

On February 5, 2013 the appellant filed a motion to reconsider or rehear our decision and, on February 13, 2013, this board voted to suspend that decision to allow us to carefully consider the applicant's arguments, to more thoroughly analyze the issues, and to obtain guidance from our legal counsel.

On review of the issues and arguments, we are reminded that this appeal involved the interpretation of a number of questions. They were:

1. Are all electronic signs prohibited by the Holderness Zoning Ordinance, as ruled by the compliance officer?
2. What is the proper way to measure the area of the present free standing sign, and the new sign proposed to replace it?
3. Does the proper measurement of these signs result in the total signage on the property being in conformance with the ordinance, or non-conforming?
4. If the signage is non-conforming, does the appellant's proposed change in signage violate Section 400.6.5.8 by proposing a change in shape?

**Question 1.**

The appellant indicated in his application, and at the hearing, that two portions of the proposed new sign will be electronic or digital, so that its content may be changed remotely. However, the applicant also represented that the content of those signs will not be changed more than once every twenty-four (24) hours.

Upon re-examination of the ordinance, we do not find any blanket prohibition applying to all electronic signs. Rather, Section 400.6.3.1, captioned "flashing signs" prohibits only the intermittent illumination of signs or sign content that travels, is animated, or is flashing. Although such a digital (electronic) sign may have the capability of being used for "flashing," as long as the actual usage of the sign is consistent with the appellant's representation that its content will not be changed more than once every twenty-four (24)

hours, and as long as the content does not move, it will not be in violation of Section 400.6.3.1. Therefore, on reconsideration, we revise our earlier decision to overrule the compliance officer as to electronic signs, on the specific conditions described above.

## **Question 2.**

In measuring total signage on the property, the code officer included both sides of the present free standing sign, and came to the conclusion that the present total exceeds the amount allowed by Section 400.6.4.2, and is therefore non-conforming. The appellant instead focuses on the last sentence of Section 400.6.3.5 to argue that only one side of its free standing sign should be included, which would result in a total for the property that would be conforming.

If the last sentence of Section 400.6.3.5 was examined *in isolation* and compared with the language in Section 400.6.4.2, it would appear that there is a conflict in these provisions as to how to measure. When there are conflicting provisions, the rule is that the most restrictive provision applies (see RSA 676:14). In this case, application of that rule would dictate that both sides of the appellant's double-sided sign be counted.

However, in this case, we believe that the same result is reached even without application of that statute. Pieces of an ordinance are not to be examined in isolation, but rather as a whole, in context, and with the goal of interpreting provisions as logically consistent with each other whenever reasonably possible. Here we believe the last sentence of Section 400.6.3.5 must be read in the context of the sentences before it. The sentence before it refers to the measurement of two-sided signs affixed to and projecting from the surface of a building. As mentioned during the hearing, we interpret the last sentence to refer back to those same type of double-sided signs mentioned in that sentence before. Therefore, when the last sentence refers to "the area of one (1) side of *the double-sided sign*", it is referring only to those double-sided signs that are affixed to and project from a building. That sentence does not apply to the type of free standing business sign in this case, and as described in Section 400.6.4.2. The area of that type of sign is properly calculated using both sides.

## **Question 3.**

The determination under Question 2 above dictates the conclusion that with the present and proposed free standing signs, the total signage is and would still be non-conforming to the ordinance. This then requires examination of the next question.

## **Question 4.**

Given that the present signage is non-conforming to the ordinance's requirements and that the proposed new sign will not bring the total signage into conformance, it is necessary to examine Section 400.6.5.8 and determine whether the new sign enlarges the old, or *alters the old by change of shape*. We believe it does. The panels of the existing sign are all located within the fifty-seven (57) inches between the uprights of the present sign. However, with the proposed new sign, one of the panels is significantly wider than the old ones, extending a total of nineteen (19) inches beyond the interior of the uprights.

We therefore find that the proposed sign would create a change in shape in violation of Section 400.6.5.8. The appellant's avenue for possible relief is to apply for a variance.

Consistent with the explanations above, the appellant's motion for reconsideration is hereby granted as to the interpretation and application of Section 400.6.3.1 to allow electronic signs on the conditions described above; however, the appellant's motion is denied as to its other arguments. In light of these findings, no rehearing is necessary.

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Susan Webster, Chair  
Board of Adjustment

March 5, 2013

Note: Any person affected has a right to appeal this decision. If you wish to appeal, you must act within thirty days of the date of this notice, tomorrow being day one. The necessary first step, before any appeal may be taken to the courts, is to apply to the Board of Adjustment for a rehearing. The motion for rehearing must set forth all the grounds on which you will base your appeal. See New Hampshire Revised Statutes Annotated, Chapter 677 for details.