

**ZONING BOARD OF APPEALS
MEETING MINUTES
August 8, 2018
1323 Main Street, Continued**

Members present: Vaughn Hathaway, David Orth, Clerk; Jim Buckley, Mary Moore, and James Reinke

Alternate members present: Dick Johnston

Staff present: Michelle Buck, Town Planner

Continued Hearing from June 27, 2018, July 12, 2018, and August 1, 2018 on the petition of William Roberts of 1323 Main Street for a special permit for a 32 s.f. digital sign with automatically changing messages.

Meeting called to order at 7:30PM.

Mr. Hathaway opened the public hearing at 7:31PM. Present for the Applicant: William Roberts, Michael Doray, and Paul Doray.

Voting members for this application: Vaughn Hathaway, David Orth, Jim Buckley, Mary Moore, and James Reinke. Mr. Reinke missed the August 1, 2018 hearing, but listened to the audio recording. Mr. Johnston, Alternate member was absent July 12, 2018 and listened to the audio recording, but is not voting because the full regular Board is present.

Mr. Hathaway explained that there needed to be a variance for more than one sign per lot, as well as the special permit for a changeable sign and exceeding 30 square feet. He asked the applicant to explain how it meets the requirements.

Mr. Paul Doray first addressed impact to the area. He mentioned Police Chief Hurley's written comments that the sign is not a public safety issue. Regarding impact on the neighborhood, the sign can be dimmed. Mr. Hathaway noted that the ZBA has previously put conditions on LED signs related to dimming. If the sign is too bright, neighbors could then submit a complaint to the Building Inspector.

Mr. Paul Doray continued and made the following points:

- The site is business zoned (HB-1)
- The sign dims and shuts off at a reasonable hour (lit from 7:00AM-8:00PM) and is controlled remotely via computer.
- Other businesses in Leicester have more than one sign
- The sign helps keep the business profitable and sustainable
- There's potential for expansion of business on the site, and it may be a permanent sign in the future

Mr. Roberts stated that he's been speaking to engineers regarding potential expansion of his business. He works hard to keep the site neat and clean. The proposed sign helps business and the current signage is inadequate.

Mr. Orth asked if the hardship is that not having the sign impacts your business. Mr. Paul Doray said yes; it's to help the business stay there and grow.

Mr. Hathaway noted that the Town doesn't distinguish between temporary and permanent signs, so the Board has to treat this sign the same as a permanent sign. The Board could condition an approval to address concerns.

Mr. Orth said the issue is that they could move the sign tomorrow, and they would then only have 1 sign. He disagrees with Town Counsel's opinion that the sign should be treated like a permanent sign.

Jim Reinke noted that the sign was designed as portable in previous meeting minutes.

Mr. Hathaway said that the Board shouldn't justify a decision on the temporary nature of the sign because that's not consistent with Town Counsel's opinion.

Mr. Orth said they could move the sign at any time. If the Board considers this a permanent sign the Board would put the gentleman that owns the sign out-of-business because every person that rents the sign would need a ZBA approval.

Mr. Hathaway said if they only wanted the sign for 30 days, it might be treated differently, but they haven't indicated that's the case, so we have to treat it as permanent. Mr. Orth said they could condition that it would be for only 30 days. The question would be how long it would have to be turned off to re-start the 30 days. Mr. Hathaway said our bylaws and Town Counsel don't make a distinction. We wouldn't be here if the petitioners were only asking for 30 days.

Mr. Orth said he didn't understand why the Building Inspector was involved.

Mr. Paul Doray said Mr. Taylor said it would need ZBA approval as there's no distinction between temporary and permanent in the bylaw. He said he understands there are rules, but common sense and flexibility has to come to play when it's not black and white.

Mr. Hathaway said the applicant should stop calling the sign temporary unless he's prepared to say it will only be there short-term.

Mr. Paul Doray said he asked Mr. Taylor what is temporary, but the bylaw doesn't say. It has to be fair and equal for everyone. If it's not, that's where there's a problem. The Building Inspector says it has to be treated as permanent.

Mr. Hathaway says all he is asking is that we stop using the term temporary because there's no distinction in the bylaws and your application hasn't stated a time period.

Mr. Paul Doray said he's concerned that if he stops calling it temporary and gets approval, the sign could be gone if the person leasing them the sign gets a better offer. Mr. Hathaway said that's not the domain of the ZBA. Mr. Paul Doray is concerned about having to come back for another approval from the ZBA in the future.

Ms. Moore stated that a variance is for the land, and goes on the deed.

Mr. Orth said the bylaw doesn't define temporary; it only defines a sign. If we were to grant a variance and special permit, they could legitimately put up a permanent sign. The bylaws don't make a distinction. The bylaw implies a permanent sign, not a sign on wheels. Mr. Hathaway says this Board is hearing an application for a sign. Mr. Orth says our bylaws are not adequate for this. Ms. Buck agrees.

Mr. Reinke asked what percentage did business increase with the sign? Mr. Paul Doray said there was a 30% - 40% decrease without the sign.

Discussion continued at length between Board members and the applicants, summarized as follows:

- Mr. Paul Doray rents the outside car sales area and office space from Mr. Roberts and has a permit from the Select Board that limits the number of cars on the lot. He also has a business license from the Town Clerk's office.
- Though the application states the sign is 32s.f., the exact size of the portable sign is 30.6 s.f. and the viewable area is smaller.
- Other parcels with multiple businesses on lot, especially in recent years, tend to have 1 standing sign.
- Board members and Ms. Buck agreed that the sign bylaw should be amended to address the issues discussed during this hearing.
- Mr. Reinke emphasized that he felt strongly that if there are two businesses on a lot, two signs should be allowed.
- The site is on a curve on a fast road, which is unique to the property. A second sign would make the site more visible.
- The location of the sign is limited because of topography, the location of abutting homes, and the location of the existing outdoor auto sales area.
- Mr. Buckley noted another banner sign on the property.
- Conditions of approval should address potential detriment to the neighborhood
- The consensus was that, if approved, the sign should be limited to 7AM - 8PM and dimmed to 10% or lower at dusk
- The Board typically requires a plot plan showing the exact location, so conditions should include a condition specifying location.
- The sign should be approved at 32 square feet.
- The length of changeable messages should be limited to a minimum of 5 seconds. No animation is allowed.
- Content could include public service messages

MOTION: Mr. Orth moved to grant the variance for the electronic sign located at 132 Main Street with conditions: 1) The sign shall be on no earlier than 7AM, off no later than 8PM, and dimmed after dark to 10% or lower; 2) minimum of 5 second message length, 3) the sign shall not exceed 32 square feet, and 4) [added by Mr. Reinke] the location of the sign shall be within 10 feet of the existing sign on the westerly side.

SECOND: Ms. Moore.

DISCUSSION:

Mr. Orth noted that his decision was based on topography (that the location is the only place the sign can go) and also financial hardship. Mr. Reinke amended the motion to include a requirement that the sign can only advertise one business, and not Classic Automotive. He feels that the main justification for allowing a second standing sign is that it's a separate business. After discussion back and forth between Board members and the Applicant, the following wording was agreed on for a 5th condition: The sign may advertise only one business not advertised on the existing standing sign.

Mr. Mike Doray asked if the variance stays with the property. Mr. Hathaway said yes, the variance is forever.

Ms. Moore said she felt it was a hardship that the renter couldn't have a sign. Mr. Orth said he's allowing a second sign because there's a second business.

There was discussion about the potential for a changeable LED component being added to the existing standing sign. A special permit would be required.

Mr. Hathaway noted that they would typically require a plot plan, so the applicant will want to stick to the location specified in the conditions.

VOTE: 4 in favor (Mr. Hathaway, Ms. Moore, Mr. Reinke, and Mr. Orth), 1 opposed (Mr. Buckley)

Finding of Facts:

Mr. Orth: Hardship was negative impact to business. The topography and location of power source meant that this was the only place the sign could go.

Ms. Moore: Her finding was the hardship was for a renter whose business would struggle without a sign. Her decision was also based on topography of the road and property condition.

Mr. Reinke: It's a hardship to a business not having a sign. The topography of the site limits location.

Mr. Hathaway: His decision is based on the location of the property with the business being on a busy street. From a perspective 30% difference in business is believable and a sign would make the business more visible. The property is unique. With conditions on hours and the frequency of message changing, the sign won't be detrimental to the neighborhood.

Mr. Buckley: He felt it didn't meet the criteria for granting a variance. It's not a hardship. He felt it could be incorporated into other sign.

Mr. Hathaway explained the process after approval and the appeal period. He then asked the Board to address the special permit for the LED [automatically changing messages] sign and exceeding 30 square feet. He noted that the variance was for allowing two signs on a lot.

Mr. Buckley noted that the Board is not looking at the square footage of the two signs in aggregate, but only looking at a special permit for the new sign exceeding 30 square feet.

MOTION: Mr. Orth moved that we grant the special permit for a 32 square foot sign

SECOND: Mr. Reinke

DISCUSSION: None

VOTE: All in favor

Mr. Hathaway reviewed the decision and appeal process. After the decisions are recorded, apply to the Building Inspector for a sign permit.

MOTION: Mr. Reinke moved to close the hearing.

SECOND: Mr. Orth

DISCUSSION: None

VOTE: All in favor.

The hearing closed at 9:00PM.

Minutes

Mr. Hathaway suggested waiting to a future meeting to vote on minutes.

Mr. Brian Green, Select Board member, expressed concern that the portable sign travels all over. Will it have to go to the ZBA at every location, or only if someone complains? Mr. Hathaway said if no one complains there's no issue. Mr. Buckley said it would only be an issue if it was a second sign. Also, all LED signs need a special permit, whether temporary or permanent. Mr. Reinke noted that the Police Department took down a sign.

Ms. Buck asked if the conditions are repeated in both decisions, or just included in the variance decision. Mr. Buckley said to only include the conditions in the variance decision, as voted.

Ms. Buck said she wasn't sure if the applicant for the ZBA vacancy was still interested in the position. She also notified the Board that she received a special permit application for expansion of a pre-existing non-conforming structure at 101 Huntoon Memorial Highway. The Board agreed to meet on Wednesday September 12, 2018.

Mr. Hathaway asked Ms. Buck to re-send all the minutes in the packet for the next meeting.

MOTION: Mr. Reinke moved to adjourn the meeting.

SECOND: Mr. Orth

DISCUSSION: None

VOTE: All in favor.

The meeting adjourned at 9:14PM.

Respectfully submitted,

Michelle Buck, Town Planner

Documents included in meeting packet or otherwise sent to ZBA in advance of the meeting:

- Agenda
- Minutes: 6/20/2018, 6/27/2018, and 8/1/2018
- Application for ZBA membership from Katherine Flynn

Documents submitted at meeting:

- None