

**ZONING BOARD OF APPEALS  
MEETING MINUTES  
August 1, 2018  
1323 Main Street, Continued**

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

Alternate members present: Dick Johnston

Staff present: Michelle Buck, Town Planner

Continued Hearing from June 27, 2018 and July 12, 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 7:39PM.

Present for the Applicant: William Roberts, Michael Doray, and Paul Doray

Mr. Hathaway opened the public hearing. He explained that he did some homework on the application since the last hearing. He spoke with Town Administrator, Town Planner and Building Inspector regarding the Zoning Bylaw and how temporary signs are treated. The Town Administrator had already contacted Town Counsel on the issue, and it's the opinion of Town Counsel that since the Bylaw doesn't make a distinction between temporary and permanent signs, we have to treat all signs as permanent. The Bylaw states that 1 sign is allowed per site, with a maximum size of 50 square feet [by special permit]. Mr. Hathaway identified two issues: he wouldn't feel comfortable only granting a special permit; the Applicant would need a variance for more than 1 standing sign and also for aggregate square footage [exceeding 50 square feet]. The Building Inspector had crossed out the variance requirement for a second sign. However, based on his homework the bylaw doesn't allow more than 1 sign per site. They only advertised a special permit application, not a variance.

Mr. Hathaway then explained that there are only four Board members present that were present at the last meeting (Mr. Hathaway, Mr. Buckley, Mr. Orth, and Ms. Moore), so only four members could vote. The Applicant may want to continue to have five voting members, as the application would currently require a unanimous vote. If continued, Mr. Johnston could listen to the tape so he could participate if needed; Mr. Reinke listen to the tape and participate if available at a continued meeting date.

Mr. Roberts stated that he and Arthur Paquette had met with the Building Inspector and felt he'd been given inaccurate information. He asked if he needs a variance for 50 square feet.

Mr. Hathaway said a variance is needed for more than 1 standing sign per lot, and special permit for a sign over 30 square feet.

Mr. Mike Doray noted that many businesses have more than 1 sign per lot.

Mr. Paul Doray stated that they only want to be treated like everyone else. They don't want favoritism; they just want what everyone else can get. His issue with Mr. Taylor and the Town Administrator is that we're not treated the same way; we don't know why. Someone has issues with him or Mr. Roberts. He questioned the limit of 50 square feet and noted that there are many signs on the Route 9 over 50 square feet.

Mr. Hathaway said that they can only discuss what we can do under the Bylaws and the petition before us.

Mr. Paul Doray said that Jeff Taylor has indicated that other signs are grandfathered. He (Mr. Doray) is frustrated that other businesses can have giant signs, though he doesn't want to go after other businesses. Mr. Hathaway reiterated that the ZBA is restricted to what the Bylaw allows.

Mr. Doray indicated he doesn't know what to do next. He doesn't want to spend money on a lawyer; he wants advice. What happens if he tries for a variance? Mr. Hathaway noted that he'd suggested at the last meeting that it might be cleaner to go with 1 sign, under 50 square feet. Mr. Roberts asked if that would require a new application. Mr. Hathaway said yes.

Mr. Buckley noted if the sign was 30 square feet, no special permit would be required. Mr. Roberts noted that the free-standing sign has been there forever.

Mr. Hathaway said that the application now is for an additional sign, and the bylaw limits standing signs to 1 per lot. He suggested considering a single sign. A special permit would be required for a changeable type sign.

Ms. Moore noted that there's more than one business out of this location. She mentioned Northeast Pizza site, which has multiple signs because there are multiple businesses. Also Biscos.

Mr. Hathaway said the Bylaw allows 1 standing sign for services per lot and that he has to act on the Bylaw as it exists.

Mr. Paul Doray said they have an agreement with the landowner for a separate business on a lot.

Mr. Orth noted that it's one lot; that's the issue. Based on the opinion of the Town Administrator and Building Inspector, if this sign were to move to another location, it would still need a variance and special permit. He feels that interpretation of the bylaw could basically put the sign owner out of business.

Mr. Paul Doray said that none of the other businesses were required to get a permit [those that used the same moveable sign.]

Mr. Hathaway said according to what lawyers (Town Counsel) have said, the Bylaw doesn't make a distinction.

Mr. Mike Doray asked how do we enforce? Go to Jeff Taylor? Mr. Hathaway stated what lawyers have said, Mr. Orth said yes, it's under the jurisdiction of Jeff Taylor.

Mr. Paul Doray said he's just trying to be treated like everyone else. He said it's easy for someone to make a decision and get an opinion from the Town's attorney, but why should he have to spend thousands of dollars to rent a sign when everyone else is allowed to do it. He feels that the ZBA members understand this.

Mr. Hathaway said we're only talking about 1323 Main Street. Mr. Paul Doray said that 1323 Main Street is being singled out. Mr. Hathaway said it doesn't matter who was in front of the ZBA, he would make the same statement. He's looking at the petition as it stands.

Ms. Buck noted that wall signs can go larger than standing signs. Mr. Hathaway noted that they can be 10% of the wall size in commercial districts, including HB-1 where 1323 is located.

Bill Roberts noted he felt confused about the process, and modifying the sign would increase costs.

Mr. Paul Doray said that Town Counsel said if something is not listed it's not allowed. Mr. Buckley agreed.

Mr. Hathaway noted that they may need more than one variance. At a minimum they'd need a variance for more than 1 sign on a lot, but he's not sure on the aggregate total sign size [exceeding 50 square feet]. He'll leave to others on the Board on whether the aggregate size would require a variance.

Mr. Orth asked about the size of the currently propose sign. Mr. Hathaway noted that it's 32 square feet; 4' x 8.' There was back and forth discussion among applicant representatives and Board members regarding the size of the existing standing sign. It's been there for decades.

Mr. Orth noted the Bylaw limit of 1 standing sign. What does that mean? He read aloud the relevant section of the Bylaw.

Mr. Paul Doray asked about the Wal-Mart signs. Ms. Buck noted that they received a variance for the size of the free-standing sign; the wall signs conform to the Bylaw.

Mr. Doray asked if he could apply for a variance for the size and quantity. Mr. Hathaway said he could add the variance to the current application.

Mr. Mike Doray asked who makes the decision.

Mr. Hathaway explained that the applicant has to show hardship, show a situation unique about the property that requires varying the terms of the bylaw. Mr. Mike Doray interjected that they could apply and the ZBA could just deny. Mr. Hathaway continued and noted that the applicant also has to show that it won't be detrimental to the neighborhood.

Mr. Paul Doray said it's a hardship if he rents the sign and can't use it. Mr. Hathaway noted that there would have to be more than that to justify a hardship. Mr. Paul Doray -hardship is that we can't rent the sign if we can't get it. Mr. Hathaway – asks for more to justify hardship. Mr. Paul Doray noted that it helped sales immensely when it was turned on. That's why other businesses have this type of sign.

Mr. Hathaway stated that they could add variance to this request without re-advertising. He's usually more comfortable adding a special permit to a variance than vice versa. The question is whether it's one or two variances. Should it be just for the second sign or also for the aggregate square footage over 50 square feet?

Mr. Buckley asked if the applicant really needs a second sign? Mr. Roberts said yes.

Mr. Hathaway asked if the applicant wanted to proceed with only four voting members. Mr. Mike Doray asked if Mr. Hathaway was one of the four. Mr. Hathaway said yes. Mr. Mike Doray said he'd like to continue.

Mr. Paul Doray indicated concern about a continuance. Mr. Hathaway said the applicant can request a continuance if they want more than four members, but it's the applicant's choice. Mr. Doray asked if it would have to be a unanimous vote. Mr. Hathaway said yes.

Mr. Roberts asked if they'd take it as one petition. Mr. Hathaway said it would be a special permit, and one or two variances. He noted a special permit would be needed for size exceeding 30 square feet (sign is 32 square feet).

Ms. Moore noted that she thought it was smaller. Mr. Roberts said it's 4' x 8.'

Mr. Hathaway noted that with the information provided, the applicant needs a special permit. They could measure the sign and if it's smaller they wouldn't need a special permit for size. They'd at least need a variance for more than 1 sign on a lot. How do other members feel about the need for a second variance?

Mr. Orth was comfortable with just one variance [for second standing sign on lot]. Ms. Moore and Mr. Buckley agreed.

Mr. Hathaway noted again that they'd have to justify hardship.

Mr. Roberts said a sign boosts business, that he's been here many years, and that more money means more money for the Town.

Mr. Mike Doray said if they have more profits, they can re-invest in the property and business.

Mr. Hathaway noted that he's not antagonistic; he's just trying to follow the bylaw.

Mr. Roberts asked about hardship and the three criteria for a variance.

Mr. Hathaway noted the hardship can be financial or otherwise. Mr. Paul Doray noted that he'd have well over a 30% increase in business when the sign was in place. Mr. Roberts said they'd lost business without the sign.

Mr. Paul Doray said he doesn't feel the ZBA members are against the applicants; he just wants to the Board to work with them.

Mr. Orth asked if they were hearing the variance now. Mr. Hathaway said they usually do the variance first because it's harder. He asked if everyone was comfortable proceeding.

Mr. Orth asked if Mr. Johnston can vote. Mr. Hathaway said no.

Mr. Paul Doray asked if they could step outside for a moment to discuss whether or not to request a continuance. ZBA members agreed, and took a brief recess.

When the applicants returned to the room, Mr. Roberts asked where to find the requirements for a variance. Ms. Buck noted that it's on page 65 of the Zoning Bylaws, Section 6.4.03, Variance. Mr. Hathaway noted that two of the requirements are in one paragraph and that the third requirement is in another paragraph.

There was discussion back and forth about the deadlines for a variance (75 days from submittal under Leicester's Zoning Bylaw) and potential dates for a continuance. The deadline would be August 20, 2018. .

**MOTION:** Ms. Moore moved to continue the public hearing to August 8, 2018 at 7:30PM.

**SECOND:** Mr. Orth. Discussion: None.

**VOTE:** All in favor

After brief discussion of minute-taking and filling the staff vacancy, the meeting adjourned at 8:27PM.

Respectfully submitted,  
Michelle Buck, Town Planner