

ZONING BOARD OF APPEALS
MEETING MINUTES
July 12, 2018
1323 Main Street, Continued

Members present: Vaughn Hathaway, David Orth, Clerk; Jim Buckley, Mary Moore, Jim Reinke
Staff present: Barbara Knox, Department Assistant

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

Meeting called to order at 7:30PM.

Mr. Hathaway provided instructions on hearing procedures. Voting members for this application are: Vaughn Hathaway, David Orth, Jim Buckley, Mary Moore, and Jim Reinke.

Mr. Orth read the hearing notice, application, and letter from the building inspector. Submitted into evidence: several illustrations of the sign and property. Correspondence received: letter from the Police Department dated April 4, 2018, with picture illustrations showing the sign on site. The site consideration letter from Jeff Taylor, dated June 7, 2018 was read into the record by Mr. Hathaway.

Present for the Applicant: William Roberts and Arthur Paquette.

Mr. Hathaway asked the petitioner to speak regarding the application.

Arthur Paquette from Route 9 Auto Group stated that it's a portable sign that a friend lets them use when he's not using it elsewhere. The sign helps the business and generates positive feedback from customers. We keep a nice clean car lot; there's no trash and debris. Although the sign is primarily used for business, they've also used it for public service messages regarding car accident prevention. The sign also has light sensor, so as it gets darker, the sign automatically dims. It's a professional sign, and we would like the sign to help the business, and we will shut off the sign overnight.

Mr. Roberts suggested 7:00AM as an appropriate time to turn the sign on as traffic is heaviest during the morning commute, turn off around 8:00PM at night. He said he received a lot of positive feedback on the public safety messages on the sign.

Mr. Hathaway asked the petitioner to discuss the location, as what's shown on submittals appears different than where the sign had been placed. Mr. Roberts said the sign will be located where it was previously, and explained the drawing.

Ms. Moore asked hours of operation. Mr. Roberts said 8:00AM – 5:00PM.

Mr. Orth asked if the sign goes off automatically. Mr. Roberts said no.

Mr. Buckley asked for clarification. Mr. Taylor's letter says that the total area of signs is 79s.f. The bylaw says it can only be 30s.f. Ms. Knox said Mr. Taylor crossed out that sentence. Mr. Hathaway said the sentence indicating that the petitioner also needs a variance for exceeding allowed area of 50s.f. He's not sure why that sentence is crossed out. Ms. Knox said Mr. Taylor indicated that he wasn't requiring a variance.

Mr. Buckley said that the Bylaw says you can only have 30 s.f. by-right, and up to 50 s.f. by special permit. There's reference to a 47s.f. sign. Is there an existing 47s.f. sign? Mr. Roberts said there's an existing standing sign that's been there for many years. Although the message on that has changed, the size hasn't changed.

Ms. Moore said so Jeff Taylor is saying that the existing sign is 47s.f.? Mr. Roberts said he didn't know. Mr. Hathaway read from Mr. Taylor's letter indicates that it's 47s.f. Ms. Moore said now they're adding 32s.f.

Mr. Hathaway asked if the petitioner will be keeping the existing sign and said that the point that Mr. Buckley is making is that we can only approve up to 50s.f. and the total square feet will be 79 with both signs. Mr. Roberts said he explained that to Mr. Taylor, and he was told only a special permit would be required for the portable sign. Mr. Hathaway indicated that Mr. Taylor is likely considering the existing sign as pre-existing non-conforming.

Mr. Reinke said the existing sign size hasn't changed, even though they changed out the face a couple years ago. In his experience, as long as you don't change the size or illumination, it doesn't usually require additional permits. Mr. Hathaway asked for clarification. Mr. Reinke said he was referencing Mr. Taylor's comment that they changed the face of the sign without a permit.

Mr. Hathaway said he sees what Mr. Buckley he saying, that the aggregate size of signs exceeds 50s.f. Mr. Buckley gave the example of an existing sign of 15 s.f. If they added 15s.f. they'd be okay. But if they wanted 20s.f. they'd need a special permit [for exceeding 30s.f.]. It doesn't matter that the 15s.f. sign was already there.

Mr. Hathaway asked the petitioner for clarification on what is meant by temporary regarding this application. Mr. Roberts said the sign is owned by a friend and it's only on-site when available. Mr. Hathaway asked how long the sign would be there. Three months, six months? Mr. Paquette said that when he met with Mr. Taylor and the Town Administrator they said that because they couldn't say how long it would be there, that's why they needed a special permit from the ZBA. Mr. Hathaway asked if the sign could be there indefinitely. Mr. Paquette said it could be, or it could be gone next week. Mr. Taylor said that they'd need a special permit because it would be there longer than what he deems a temporary sign. The Town may amend the bylaw because there's nothing in the bylaw regarding temporary signs. It affects many businesses, so the Town Administrator and Mr. Taylor felt that there should be a timeframe in the bylaw, and if it stayed within that time frame they wouldn't need a special permit.

Mr. Hathaway said that they are working with the bylaw as it is now, and it sounds like the petitioner is not actually proposing a temporary sign, but a permanent sign that can be moved.

Mr. Buckley said for the purposes of this application, it's a permanent sign, but how do you do that when it isn't a permanent sign? Normally, when the ZBA approves a sign, it's for a very specific location on the property. How do we approve for a sign that can be moved? We normally consider sight lines, etc., but the Board could include a condition that it be placed in an exact location. Other members agreed.

Mr. Orth said that if we were to grant the special permit for the LED sign, in the future if he were to buy a permanent sign at the same size, he wouldn't need a permit from the ZBA.

Mr. Hathaway reiterated that for the Boards' purposes, it's a permanent sign. He clarified that a future sign of the same size might need a permit from the Building Department, but not the ZBA.

Mr. Buckley said the special permit normally specifies the height from the ground, etc.

Mr. Orth said there isn't a provision in the bylaw for a temporary sign.

Mr. Reinke said he doesn't feel the bylaw is enforceable for temporary signs. The petitioner could get a semi-trailer with advertisement on it and park it out front. He doesn't understand how the Board can enforce the bylaw on a sign that can be moved away at any time. He questioned the sign in front of the Police Station, which is an even bigger sign.

Mr. Paquette said that Mr. Taylor has to protect himself because if something isn't listed, it's prohibited. Mr. Taylor indicated that he has to enforce the bylaw.

Mr. Hathaway said that they'd have to think of how to word the decision so that the approval is for a sign that matches the portable sign dimension. Mr. Orth said this sign is temporary. Mr. Reinke said he sees the sign as personal property, that it shouldn't need approval. Mr. Hathaway asked for clarification. Mr. Reinke said he doesn't think this portable sign is under the Board's purview or the Building Inspector's purview.

Mr. Orth said the Board could grant a special permit for an LED sign, but then the petitioner could construct a permanent sign. Mr. Reinke said the Board could condition the approval, if they wanted, to be limited to a portable sign.

Mr. Reinke is concerned about setting a precedent that any time this portable sign is moved around Leicester they'd need another special permit. He feels that it's not business-friendly. It would be better if there was a bylaw that said you would pay a fee for a temporary sign, but there isn't such a bylaw. There's nothing we can enforce. He doesn't feel the ZBA can issue a permit if there's nothing in the bylaw for a temporary sign. Mr. Buckley agrees.

Mr. Buckley asked if a special permit would have been required if this sign was less than 30 square feet? Mr. Hathaway said he didn't know.

Mr. Paquette said they want to do things by the book. They want to run a classy business, and they just want to maintain our business on Route 9 and pay taxes and bring business in. We generate business for other businesses in town, like restaurants.

Ms. Moore said she's concerned that we don't have a bylaw about temporary signs. Mr. Hathaway said he met with Mr. Taylor, and basically because the sign has been there for so long, it's not temporary. That's the reasoning for sending it to the ZBA.

Mr. Orth asked about the threshold for a temporary vs. permanent sign. When does it become permanent? There was discussion back and forth between Board members on this issue. How long is so long? There's nothing in the bylaw on this issue. The bylaw only assumes permanent sign.

Mr. Buckley said Mr. Taylor is the Zoning Enforcement Officer, and most of the time he agrees with his determination that something requires a special permit, but he's also concerned about the precedent for requiring a special permit.

Mr. Hathaway asked for clarification. Mr. Reinke reiterated that he doesn't feel that this sign, or any temporary sign, is under the purview of the ZBA. Mr. Orth said again that there's no clarity on how long a sign has to be there to be considered permanent. Mr. Reinke said that there's nothing in the bylaw to limit or allow temporary signs.

Mr. Hathaway summarized the questions. Can the ZBA act on a special permit if the aggregate square feet for both signs exceeds 50 square feet? What is the definition of temporary? If we grant for temporary, does that approval automatically apply to a permanent sign?

Mr. Reinke said the Town should ultimately improve the sign bylaw.

Mr. Hathaway read the relevant portion of Section 3.2.07 (signs). It limits standing signs to 30 s.f., and up to 50 s.f with a special permit.

Mr. Hathaway opened the hearing to the public.

Patricia Dineen, 1340 Main Street, across the street said that we've live there for 35 years, but when the sign was there, it reflected in her windows. She doesn't feel that as a taxpayer and long-time resident, she should have to see LED lights in her window.

Mr. Hathaway noted that they'd be turned off at 8PM. Ms. Dineen said you can see the sign all day long, that LED signs are still visible in daylight.

Donald Dineen, also of 1340 Main Street, said that LED lights emit blue light that are distracting. He put down everything they had to buy this property and he and his wife have worked hard to improve their residential property. At some point it was re-zoned commercial, and he's seen that corridor decay, deteriorating their quality of life and lowering property value. He said that the site is littered with trash. He feels that Mr. Paquette has mis-represented the size and impact of the sign, which will be lit at night after the business is closed. There are no similar signs on the corridor, and when the business opened we were assured that there would be no more than 6 cars on the lot. Mr. Hathaway reminded Mr. Dineen that only the sign is under review.

Mr. Dineen reiterated that his quality of life has deteriorated. Ms. Dineen said the sign is offensive. Mr. Dineen agreed and said again that it's lowering property values. He said he spoke with other residents in the area didn't receive notice, because notice went to the realty companies that own the buildings. Mr. Hathaway noted the legal requirements for abutters.

Mr. Dineen noted that although it's zoned for business, we live there, along with many others that will look at the sign for a closed business.

Mr. Hathaway asked for any other comments from the public on the sign.

Mr. Dineen said the sign is completely unnecessary and offensive. A closed business doesn't need an offensive LED sign at night. It's not temporary. It's the petitioner's intention to leave the sign up long-term.

Ms. Dineen said that the Police Chief and Mr. Paquette don't live there. She lives across the street.

Mr. Hathaway noted that any changes in the Zoning Bylaw have to be approved at Town Meeting, and there's an opportunity to speak at Town Meeting on zoning changes. Once the bylaw is approved, that's what controls. If things are being done that aren't allowed under the Zoning Bylaws, that's what the Town can enforce.

Mr. Dineen asked if prior approvals that limited the number of cars on the lot are not complied with, shouldn't that affect new applications? There was discussion back and forth on whether or not the number of cars was limited by the ZBA or another Board.

Ms. Dineen said that it reflects in her windows, and she doesn't feel that a resident should have to see that.

Mr. Dineen asked if Mr. Paquette would enjoy seeing that outside his windows. Mr. Hathaway suggested that comments be limited to what can be done on the application. Mr. Dineen said the application should be withdrawn. Ms. Dineen said that the sign that's there now is sufficient.

Mr. Hathaway raised again the issue of the total aggregate size of signs on the lot. He asked the petitioner to explain the need for the sign. Why couldn't the changeable sign be in the existing sign?

Mr. Roberts said he could alter the existing sign, and that's what he'll do if he has to. The proposed sign was intended to be temporary. It's temporary because it's on wheels.

Ms. Dineen asked how long it was up? Mr. Roberts said until he was ordered to take it down.

Mr. Hathaway noted that we don't want to get into the past, but only the application before the Board now. If we approve, what are appropriate conditions? And if we deny, what are the reasons that we wouldn't approve?

Mr. Dineen said that the outcome would be that about 15 families would have to look at this sign. The quality of life would be reduced, their ability to see TV screens would be reduced, and property values would decrease. He asked the Board if would like to live near a business that has grown from an auto repair business to a used car lot. It now includes boats and heavy machinery.

Mr. Paquette said they have permits for all automobiles through the Select Board. We're not going over the number allowed. The sign enhances our business as a used car lot. This is what businesses do to succeed and make a living.

Mr. Hathaway directed Mr. Dineen to speak with the Building Inspector if he has issues that are not related to the sign.

Ms. Moore asked if the sign is lit on both sides. Mr. Roberts said yes. Ms. Moore said if it were only lit on one side that maybe it could be turned to have less impact on some abutters.

Mr. Reinke noted that typical conditions related to LED signs are related to when they must be dimmed, and limited in time. There was brief discussion back and forth between Board members on this issue. Conditions are specific to the particular sign and property. Board members were in agreement that conditions on brightness and time would be appropriate.

Mr. Dineen noted that this sign is 2 feet larger than what is allowed. It shines into the windows of many neighbors. Those are the most relevant things, and LED is worse than fluorescent. It's not a temporary sign, it's just portable. It's outside the rules, and shouldn't be considered. Most properties in the area are residential in nature.

Mr. Hathaway thanked Mr. Dineen for his input and noted that he's still struggling with this application. Mr. Reinke asked if it should be discussed further with Mr. Taylor. He asked other members what they think we should do.

Mr. Orth said the bylaw doesn't differentiate between permanent and temporary. The bylaws assume permanent signs, so if we were to grant a special permit for this sign, the petitioner could put up a permanent sign.

Mr. Buckley said that because the bylaw says someone can have only 1 standing sign, that we can't approve the special permit. Plus we're talking a total of over 50 s.f.

Ms. Dineen said that the reason it's reflecting in her windows is because it's a low sign on a trailer. If it were higher, it would have less impact. She mentioned the tall Tractor Supply sign.

Ms. Moore said that the Tractor Supply sign is visible to residents on the hill and does shine into their windows.

Mr. Hathaway agreed that the bylaw limits signs to 1 per lot. It's not only violating the 1 sign limit, it's also violating the total square footage in aggregate.

Mr. Dineen said this will bring the site to a total of around 4 signs, and about 80 s.f. The proposed sign is 32s.f., over the 30s.f. limit. They're looking for something bigger and more signs than allowed.

Mr. Hathaway suggested that the Board may not be able to approve as is for the reasons discussed, but the petitioner could modify the application so that it meets size requirements. He wanted to make sure it's clear that even if the Board would to deny, the applicant could come back with an LED sign that does meet the bylaws.

Ms. Dineen asked if the Board could look into the height issue. Mr. Hathaway noted that the Board relies on the input of the Police Department to see if they have concerns. The want to make sure that line of sight is preserved for cars entering the site and driving by the site.

Mr. Dineen stated again that he's lived in Town for 35 years and he's the one that will have to deal with lowered property values.

Mr. Orth said the sign can't be so low it would obstruct drivers' view of oncoming traffic.

Mr. Dineen said he didn't think the Police Chief would say anything negative about a career fireman [Mr. Roberts]. Mr. Hathaway said the discussion should stay away from attributing thoughts to others.

Mr. Dineen said he's only asking for the Town to limit signs like they do in other communities. Mr. Hathaway said they have to follow Leicester's bylaws. Mr. Dineen said these issues are covered in the bylaw and he's surprised the sign is even being considered.

Mr. Hathaway said he has an issue with more than one sign and the total square feet. Also, the whole issue of what is temporary vs. permanent is something that needs to be addressed in the bylaws. Without definition of what is temporary, it's a slippery slope.

Mr. Dineen said that the notice he received was from Classic Automotive, and yet what is this mystery business here? Mr. Hathaway said the fact that Mr. Dineen was present indicated that the notice was sufficient. We are only here about the sign. He understands the concerns and emotions, and we appreciate input, but it has to be related to the sign.

Mr. Reinke wants Town Counsel to weigh in on whether or not the ZBA has jurisdiction on a portable sign. Ms. Moore agrees. She notes that she works for a company that has lettering on their trucks and they park them along the road so that there are 40 signs for the business. She thinks that if it isn't permanent, the ZBA doesn't have jurisdiction.

Mr. Hathaway asked for clarification. Is what Ms. Moore saying is that the ZBA shouldn't act on this because the Board doesn't have jurisdiction on temporary signs? Ms. Moore says yes.

Mr. Hathaway notes that the other issues are too many signs and too much square footage. The sign is in violation of several aspects of the bylaw. Mr. Orth says the Board doesn't have standing for a temporary sign, can it be added to the existing signage? Mr. Buckley notes that the bylaw limits signs to 1 per lot. Mr. Hathaway says that if there's no language in the bylaw for temporary, then we treat the sign as permanent.

Mr. Hathaway asks the other Board members if they want to act on the application on the information they have now, or do they want an opinion from Town Counsel. Mr. Reinke wants Town Counsel's opinion. He's concerned that it's not business-friendly to require a special permit every time the sign is moved. It's also a huge amount of work for something that might be there a week. Mr. Hathaway asks for what specifically they want Town Counsel to address. Mr. Reinke asked for how to treat a temporary portable sign under our bylaw. Mr. Orth said if it's temporary, how long does it have to be there for it to be considered permanent?

Mr. Hathaway said our bylaws say nothing about temporary. Mr. Orth noted that any other site using this portable sign would most likely also have another existing sign and so would need a special permit.

Mr. Hathaway said that the question for Town Counsel would be: is the bylaw enforceable against a portable sign?

Ms. Moore said that at least in terms of temporary enforcement, any new bylaw would have to have a date.

Mr. Reinke noted that as far as LED, the ZBA typically includes conditions, but he doesn't feel that the ZBA even has jurisdiction over a portable sign. He wants a legal opinion so that the Board's decision stands.

Mr. Hathaway notes that another option would be for the petitioner to look at the bylaws and try to come up with a sign that conforms. He asked if that was the case, he'd like the abutters to consider how to condition an LED sign appropriately, rather than have the Board say no.

Mr. Dineen notes again that it won't be temporary, it will be permanent.

Ms. Moore asked how it would be treated if the property owner brought it home every night, then returned it to the site each morning. She felt that the ZBA doesn't have the right to vote on this application.

Mr. Buckley indicated that the Board may not be able to vote in favor of the application, but they can act. Mr. Hathaway agreed. The Board could act on the issue of more than 1 sign and size. Mr. Buckley said all Town Counsel is going to do to look at our bylaw, not case law in other Towns. Mr. Hathaway noted Town Counsel may look at case law on bylaws similar to Leicester's.

Mr. Dineen said it's already clear that what is proposed is not allowed because of the size and number of signs on the property. Mr. Hathaway said Town Counsel may say it's clear, but the Board is trying to exercise diligence.

There was discussion on the time limits to act, to avoid automatic approval. The application was received June 6, 2018, so they have time to act. There was discussion related to Barbara's retirement, and lack of staff for a continued meeting. Harry Brooks, Select Board, suggested contacting the Town Administrator to see if Kristen Forsberg could take the minutes.

Mr. Roberts asked if it would go to Town Counsel for advice. Mr. Hathaway said yes. Mr. Reinke reiterated that his concern is precedent. Mr. Hathaway said that the ZBA is not a precedent-setting Board, but it would raise questions for other people wanting a similar sign. There was discussion back and forth on the issue of precedent and other similar signs.

MOTION: Mr. Buckley moved to continue the hearing for a changeable sign located at 1323 Main Street to Wednesday, August 1, 2018 at 7:30PM to get an opinion from Town Counsel.
SECOND: Ms. Moore. Discussion: None
VOTE: All in favor

The hearing discussion ended at 9:05PM

Minutes:

May 23, 2018

MOTION: Mr. Buckley moved to approve the minutes of May 23, 2018.
SECOND: Ms. Moore.
VOTE: All in favor

May 29, 2018

MOTION: Mr. Buckley moved to approve the minutes of May 29, 2018.
SECOND: Mr. Reinke.
VOTE: All in favor

May 30, 2018, 25 Rawson

MOTION: Mr. Reinke moved to approve the minutes of May 30, 2018 for 25 Rawson Street.
SECOND: Mr. Buckley.
VOTE: All in favor

May 30, 2018, 875 Pleasant

MOTION: Ms. Moore moved to approve the minutes of May 30, 2018 for 875 Pleasant Street.
SECOND: Mr. Reinke.
VOTE: All in favor

May 8, 2018, Executive Session

MOTION: Mr. Buckley moved to approve the minutes of May 8, 2018
SECOND: Mr. Reinke.
VOTE: All in favor

The meeting adjourned at 9:40PM.

Respectfully submitted,
Michelle Buck, Town Planner