

FINAL

**LEBANON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
REMOTE VIA MICROSOFT TEAMS
LebanonNH.gov/Live
MONDAY, August 2, 2021
7:00 PM**

MEMBERS PRESENT: Chair William Koppenheffer, Jeremy Katz, Dan Nash, Paul McDonough (Alt), Dave Newlove, (Alt)

MEMBERS ABSENT: Vice Chair Jennifer Mercer

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:03 PM by Chair Koppenheffer.

Mr. McDonough and Mr. Newlove were given voting privileges for this meeting.

2. APPROVAL OF MINUTES

A. July 6, 2021

Mr. Katz MOVED to approve the July 6, 2021, Minutes as presented in the August 2, 2021, agenda packet.

Seconded by Mr. McDonough.

**The Vote on the Motion was approved (4-0-1).*

Mr. Nash abstained because he was absent.

3. PUBLIC HEARING ITEMS

- A. DIV South Main Street, LLC, 200 South Main Street (Tax Map 114, Lot 5), zoned GC:**
Applicant requests a Variance from Section 608.4.A.1 of the Zoning Ordinance to install additional building signage. The total proposed sign area for the property exceeds the maximum sign area allowed under Section 608.4.A.1. **ZB2021-18-VAR**

Mark Bush, Gary McCoy, and Tony Lafo appeared on behalf of the application. During the redevelopment of the old Kmart Plaza, the applicants determined adequate signage was not available for the three new stores that will be going into the old Kmart store area. The principal façade is 932 square feet. Currently there is 464 square feet being used by the current tenants' storefronts. The Target proposal is to install 257, Sierra would like to install 160 square feet, and the applicants are asking for 50 square feet for the new tenant. The total proposed sign area would be 932 square feet including the three new sign packages. The principal façade allows them 849 square feet therefore they are short by 83 square feet on the signage they are asking to install.

To get a variance, the five conditions must be satisfied. Based on the lay out of the building, the reuse of a retail space, and the distance from the street, if authorized, they do not believe a variance would be contrary to the public interest. The commercial character of the GC Zone would be preserved. It would be similar to other retail spaces and signage up and down 12A. Justice would be

done. When the Plaza was purchased, there was only one retailer, using 106,000 square feet. Large box stores are not the way retailers are moving in the future. Now the Target space will become 86,000 feet for Target. By adding two additional retailers, Sierra and another tenant, additional signage is needed. The justice would be done because all three retailers need their own distinct signage and that requires more signage than one retailer. The renovation of the plaza will not diminish the surrounding properties and will improve the redesign of the area. The denial of the variance would result in unnecessary hardship, literal enforcement does not meet the needs of three retailers.

It is not clear that the property cannot be used without giving the retailers the amount of signage they are requesting. The retailers have already reduced the amount of signage they normally use. The owners may not be able to accommodate Target and Sierra, because the retailers need the signage on the building to be easily visible because the stores are far away from the main road. The calculations are a total of 468 square feet for Target, Sierra, including the 50 feet for the future tenant. The existing signage in the shopping center is 464 square feet. The ordinance allows 849 square feet, and an additional 83 square feet of signage is needed. Sierra has reduced their request to 4-foot letters instead of their usual 5-foot letter. A future tenant would be allowed 50 square feet.

It is not clear how an additional 10% would make a difference and how it constitutes a hardship. It is not clear that the Target store would not be easy to find. The depth of the facade is approximately 750 feet from the road. Gary McCoy said the Target sign is traditionally larger. Throughout the plaza, some of the smaller retailers have used a substantial amount of signage. Relative to the plaza, the new tenants are using a small amount of signage. Branding is important to retailers.

There is a free-standing sign in the front of the Plaza that is being redesigned and it will have all the retailers listed on that sign. A new pylon will be added, and it is separate from building signage. The applicants are also concerned that the signage needs to be visible for cars coming under the bridge and off Interstate 89. Mr. McCoy believes the signage is appropriate for the new façade of the building.

It is fair to say that someone would be able to see the freestanding Target bullseye sign, but it would not be used by drivers for directions coming off the interstate. The freestanding sign will show all the multiple tenants.

If this exact plaza was being built, according to the ordinance, there would be 849 square feet of signage allowed and across the plaza all signage would be sized accordingly. Under the ordinance, to grant a variance, there has to be something unique compared to other plazas within that area. What is fundamentally different from other plazas and what constitutes a hardship is that they are inheriting 464 square feet of signage. They are trying to blend old with new. There are two national tenants coming in. This seems to be partially the issue of the landlord and less that there is a hardship. The owners say the orientation of the stores, the scale and the depth of this plaza, and splitting one box into three and doing the best they can to mitigate the needs of three retailers are the hardship.

The ordinance addresses the signage facing the lot, and in this plaza, it is all inward facing, which makes it a difficulty. It is different from a strip plaza. Yes, the new owners did inherit another landlord's decisions. Theoretically the existing tenants with larger signs could be approached. However, based on the current inventory, there is no one that is outsized. The applicants believe the current tenants would not be agreeable to making a change in their signs. Sierra has a small amount

of square footage; however, the applicants believe Sierra would not negotiate a smaller sign and the 4-foot letters are reasonable.

Some Members have difficulty with the hardship issues and requirements. There is no evidence that there is a hardship under the ordinance. Everyone says a bigger sign and more square footage is needed. The Board cannot make a policy decision based on facade size and the amount of signage that may be appropriate. But the Board cannot change the ordinance based on that information.

Chair Koppenheffer opened the Public Hearing. Hearing no one, the Public Hearing was closed.

The Members discussed the limitations that the applicants were trying to address in their request for additional signage. Some of the arguments are very sound, but the hardship is less apparent to some members. The requested increase is less than 10% and could be considered reasonable. The area along 12A is very different. It is a commercial area, and the signs exist to present what is there. Signage is important. The façade is very recessed from the road and there is a very large parking area. Consumers need to be informed.

The hardship is a bit of a stretch. Sympathy for the inheritance of the previous landlords' decisions is a road to difficulty in the future. One consideration is that other stores in the area own the area in front of the store, there are no other retailers obstructing the store sign, the frontage or contributing to congestion.

Mr. McDonough Moved on August 2, 2021, at a duly noticed meeting of the Lebanon Zoning Board of Adjustment, there appeared Mark Bush Mr. McCoy and Tony Lafo on behalf of DIV South Main Street, LLC, regarding 200 South Main Street (Tax Map 114, Lot 5), zoned GC. Applicant requests a Variance from Section 608.4.A of the Zoning Ordinance to install additional building signage. The total proposed sign area for the property exceeds the maximum sign area allowed under Section 608.4.A. ZB2021-18-VARZB2021-06-VAR

I. FINDINGS OF FACT

Based on testimony given, application materials presented, and supporting documents submitted, the Lebanon Zoning Board of Adjustment makes the following findings of fact:

1. The subject property is improved with a single-story commercial building occupied by a variety of retail tenants (a detached restaurant also occupies the property). As described in the application materials, a large portion of the building was previously occupied by K-Mart. That portion of the building is currently undergoing renovations and is proposed to be occupied by two new retail tenants (Target and Sierra) and a future third tenant. A CVS pharmacy and Starbucks coffee shop will be contained within the Target store.
2. As described in the application materials, the applicant's proposed sign area for the proposed tenants and future third tenant exceeds the total sign area for the prior K-Mart use, and exceeds the total maximum sign area permitted for the building per Section 608 of the Zoning Ordinance.
3. Pursuant to Section 608.4.A of the Zoning Ordinance, the total permitted sign area for the subject building is the greater of:

- a. The product of the following formula: [linear width, or frontage, of the principal facade in feet] multiplied by 0.8 = [x] square feet (Sec. 608.4.A.1.a.i); or
 - b. The product of the following formula: [total area of the principal facade] multiplied by .05 = [x] square feet (Sec. 608.4.A.1.a.i); or
 - c. The total sign area of all existing legal signs on the building as of January 20, 2021, including the sign area utilized by the immediate prior tenant for any vacant tenant spaces as of January 20, 2021 (Sec. 608.4.A.1.e.ii).
4. Option 'b' affords the subject building the greatest amount of permitted sign area, which the applicant and staff agree is 849 sq. ft. Since the total proposed sign area for the building is 932 sq. ft., a Variance is required from Section 608.4.A to allow total sign area to exceed the maximum permitted by 83 sq. ft.
5. To obtain a Variance from Section 608.4.A, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The applicant submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning and Development Department.
6. No one from the public spoke for or against the application.

II. CONCLUSIONS OF LAW

As a result of the above findings of fact and based on testimony given, application materials presented, and supporting documents submitted, the Board concludes the following with respect to the Variance criteria set forth in Section 801.2 of the Zoning Ordinance:

1. The variance **will not** be contrary to the public interest. (Section 801.2.A.1)
2. The spirit of the ordinance **is** observed. (Section 801.2.A.2)
3. Substantial justice **is** done. (Section 801.2.A.3)
4. The values of surrounding properties **are not** diminished. (Section 801.2.A.4)
5. Literal enforcement of the provisions of the ordinance **would** result in an unnecessary hardship. Owing to **[the following]** special conditions of the property that distinguish it from other properties in the area (Section 801.2.A.5.a):

The distance from 12A to the property.

- i. There **is not** a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. (Section 801.2.A.5.a.i)
- ii. The proposed use **is** a reasonable one. (Section 801.2.A.5.a.ii)

III. DECISION

Now therefore be it resolved, the Lebanon Zoning Board of Adjustment, on this **2nd day of August, 2021**, hereby **GRANTS** the requested Variance from Section 608.4.A of the Zoning Ordinance, as set forth above and per testimony, plans, and materials submitted, and per the following conditions:

1. The applicant shall obtain a building permit for the proposed signs.

Seconded by Mr. Newlove.

The Members discussed minor corrections to the Motion regarding the findings of fact, conclusions of law and the hardships, that were originally read in the Motion. All changes were approved and seconded, as written above.

The Members compared the other buildings in other plazas to determine if there is a factual difference between the new plaza and existing plazas. No facts were testified to in the application that differentiate the Target façade.

Chair Koppenheffer reopened the Public Hearing.

By comparison, the previous Kmart façade was about 690 feet to the main road, the Kohl's sign is approximately 720 feet, Shaw's to Benning is about 400 feet, and Walmart to North Plainfield Road is 570 feet. LaValley is about 600 feet to the road.

The applicants had no additional comments.

The Public Hearing was reclosed.

There is value to informing where the businesses are and that may be more important than remaining strict to the ordinance. There are a couple other properties in the same situation. Although it is not absolutely unique, this plaza is different from most other businesses. Mr. McDonough said the two components of the motion that were removed pertained to the references about the preexisting buildings and that there are new tenants. The members restated that they amended the Motion and that the amendments were seconded by Mr. Katz.

Mr. McDonough, Mr. Newlove and Mr. Katz voted yea.

Mr. Nash and Mr. Koppenheffer voted nay.

****The Vote on the Motion was approved (3-2).***

4. STAFF COMMENTS-None

5. ADJOURNMENT

Mr. Nash MOVED to adjourn the meeting at 8:12 PM.

Seconded by Mr. Katz.

****The Vote on the Motion was unanimously approved (5-0).***

Respectfully submitted,
Linda Billings
Recording Secretary