

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
DECEMBER 1, 2021 MEETING
MINUTES**

Attendees: Chair Christopher Carley, Nicholas Wallner, Andrew Winters, James Monahan and Tedd Evans

Absent: Laura Scott

Staff: Ernest Cartier-Creveling, Zoning Administrator
Rose Fife, Clerk of the Board

Meeting commenced at 7:00 pm.

49-21 JP Irving, LLC, 6 Loudon Road; GWP-Gateway Performance District: Applicant wishes to establish a Master Signage Plan and requests a modification to variances granted under Case #41-98 to include requests for the following variances:

1. *Article 28-6-9(b), Permitted building Signs*, to allow the installation of 8 additional building signs, each sign with an allowed area not to exceed 65 square feet for a combined new signage area of up to 520 square feet, which, when added to the existing 85 square feet of signage, will result in 10 signs with a combined sign area of up to 605 square feet, where a maximum of 181 square feet is allowed, and
2. *Article 28-6-7(i) Signs Prohibited under This Ordinance* to allow the installation of 8 additional building signs at heights up to approximately 46 feet above grade and above the sills of the third-floor window sills, where signs are not allowed to be placed more than 25 feet above grade, or be placed above the sills of the first level of windows above the first story on the same wall, and
3. *Article 28-6-9(b)(4), Permitted Building Signs*, to allow tenants occupying upper floors and having no building frontage to utilize building signage established under the Master Signage Plan, where only a directory sign of up to 6 square feet placed at the entry door is allowed, for property located at 6 Loudon Road in the GWP-Gateway Performance District.

Testified: Attorney John Bisson of Cronin Bisson & Zalinsky out of Manchester. This is a large dark building with a large parking lot in a sea of other uses. The new sign they would like to put up is for Absolute Banker's Life. The only sign there now says 6 Loudon Road. The font on that sign has recently been revamped. All lettering will be the same font if variances are granted. It's hard to see the first 2 floors of the building due to its location. This is a large building that has 26 tenants. The only approved sign right now is the freestanding directory sign. It has 2' x 3" individual tenant names, which does not have the best visibility. Their goal is to improve identification of the building and reference to the tenants. The proposal will not be for any logos, designs or 'fun' script. The lettering will be consistent with the font that is now used for 6 Loudon Road signage on the building. They want 2 rows of tenant's names on 2 sides of the building. The tenants having the larger spaces will be identified. It may help direct people to this building. It's not contrary to the public interest. It will not violate basic objectives of the ordinance. It's in the GWP zone with a fair amount of traffic. This is in a unique location. It is consistent with the spirit of the ordinance as it is in a zone where it is allowed. The existing signage there is minimal. It will do substantial justice as it improves the draw to the building, etc. During the pandemic, commercial space softened a bit and they want to be sure they attract and keep commercial tenants. They do not see it as having any significant impact on anyone in the area. They could have asked for more signage, but have limited it to upper floor levels. Lettering is consistent. It is compatible with the neighborhood.

Carley asked where the ground sign would go. Attorney Bisson explained that it would stay where it is. The existing sign is 6 s.f. at the entry door. It will not be relocated or affected in any way. Carley asked if the signage would only be affixed on the building. Attorney Bisson said that was correct. Evans asked if they put 6 Loudon Road into a GPS, would it direct them to this building. Would the GPS take you there without getting lost? Attorney Bisson believes it will take you to that area, but not specifically that building. The reason for signage is to get people there and it enhances the space value for people that are there as they want to be known. The signs are not illuminated. They are not strange script. It is proportioned to the building. Winters asked how many total tenants they have in the Building. Attorney Bisson explained that they have 26 now. Winters asked if they would have a sign for each tenant. Attorney Bisson explained that they would not. And it would be up to the landlord/owner as to which tenant would be on the building.

Winters asked if they needed a variance only for the total square footage, not the number of signs. Attorney Bisson believes that is correct. Monahan asked what the signage was when the building was the Christian Mutual Insurance Company building. Attorney Bisson wasn't sure.

In favor: none.

In opposition: none.

Code: none.

Carley read a memo into the record to the Board from Carlos Baia, Deputy City Manager for Development. See memo in file.

DECISION: Carley reviewed the testimony as given.

Winters: The property is unique as it is the only office building in that vicinity and is set back. He is inclined to support a variance, but this one is excessive. He can see approving a variance for a bit more than the variance allows as it isn't the easiest building to see from the street, but this is double what would be permitted.

Evans: Agrees. He once had issues finding that building but that was before GPS. He is offended by the maximum approach of this variance request. He is leaning towards not approving.

Monahan: He did the math and this size sign is 330% in excess of what is allowed. He's not convinced that adequate signage isn't already there.

Wallner: He is not persuaded by the hardship argument. There are dozens of multiple story buildings that could argue the same issue. It has adequate signage. He is not in support.

Carley: Agrees.

A motion to deny all 3 requests was made by Monahan, seconded by Wallner and passed by a unanimous vote. The board felt that there was no hardship demonstrated and it is not the minimum variance. The request is for an excessive amount over and above what is allowed.

62-21 Matthew Lear, 8 Grove Street; RD-Downtown Residential District: Applicant wishes to construct a breezeway connecting the main house to an existing barn and requests a variance to:

1. *Article 28-4-1 (h), Table of Dimensional Regulations*, to allow the construction of a breezeway between the principal structure (house) and an existing barn within the 20' rear setback.

Testified: Matthew Lear. He has had a surveyor come out but doesn't have the plan yet. The breezeway would be so close to the property line that they would like to move it foot forward towards Grove Street, further away from the abutter located at 32 Thorndike Street.

Wallner asked what the new distance would be. Mr. Lear explained it would range from 18 to 20 inches, depending on the actual distance of the existing barn to rear property line, which is currently estimated at 6 to 8 inches. Carley asked if it would be a foot less in violation than the barn. Mr. Lear said that was correct. Creveling explained that the applicant had already discuss this with Code. It's less nonconforming and Codes has no issue with this.

Mr. Lear explained the plans. The smaller roof line is the kitchen and below that is a 4x4 bulk head. It would be nice to get to the barn in the winter by walking through the breezeway and it would create a better access to the basement. It's an 1860/1890's home. There are others like it. Abutters are very close to the property lines.

Evans asked what the setback would be when done. Mr. Lear stated that the second to the last page of the plans he submitted shows a rendering. They were going to stay flush with the barn, but now they will shift it closer by a foot towards Grove Street. Evans asked how far from the boundary it would be. Mr. Lear believes it would be 18 to 20" from the property line. Winters asked if it would be flushed with the barn? Carley asked what was on the lot behind them. Mr. Lear explained that it was his neighbor's lawn at 32 Thorndike. Winters asked the height of breezeway? Mr. Lear explained that it would be lower than both the connecting structures.

In favor: none.

In opposition: none.

Code: Letter from abutter Joseph Johnson of 4 Grove Street. See letter in the file. The letter spoke about concerns that the barn would be converted to an apartment and he was not in favor of that. He has no objection to the breezeway though.

Rebuttal: Mr. Lear only wants to build a breezeway. He realizes he'd need a variance for anything more. Right now they only want to connect to the barn. He spoke with Joseph Johnson as well as two other neighbors (Jason and Julie) to let them know what they are doing. If Mr. Johnson is worried about rental, that is not what he is asking for.

DECISION: Carley reviewed the testimony as given.

Wallner: This is less intrusive than the current structure. He is in support.

Monahan: Agrees.

Evans: Agrees.

Winters: Agrees. Very frequently the board has approved this type of request.

Carley: Agrees. This is in less violation than what is there already.

A motion to approve the request was made by Evans, seconded by Monahan with a notation of the change of moving the addition back a foot, which Evans agreed to. Motion passed by a unanimous vote.

65-21 Kevin & Carol Cotterly; 3 Lawrence Street Extension; RM-Medium Density Residential District:

Applicant wishes to install an above ground swimming pool and requests a variance from:

1. *Article 28-5-32, Accessory Buildings and Facilities* within 5 feet of the rear property line, where a setback of 25 feet is required.

Testified: Kevin and Carol Cotterly. Mr. Cotterly explained that they want to install a pool 5 feet from rear setback where 25 feet are required. The property behind him is owned by Sandy's Pet Store and they have an easement going through for water pipes. He doesn't believe it will have any impact on the neighborhood. Mrs. Cotterly explained that the owners of Sandy's Pet Store is aware of what they want to do and have helped them remove the trees. Winters asked if there were any residential neighbors back there? Mr. Cotterly said no. Carley asked Creveling why this accessory structure would not be allowed 5 feet from the property line. Creveling explained that more than 250 s.f. of the pool is in the rear yard setback. That is the basis for the variance. Only 250 s.f. is allowed to rest within the setback. Winters asked if a smaller pool would not need a variance. Creveling explained that would be correct as long as no more than 250 square feet encroaches into the rear yard setback, nor would it need a variance if it was pulled out of the setback. Carley asked the applicant why they can't place the pool within the setback. Mr. Cotterly explained that the pool would then be right up against the house. The yard where they want to put the pool gets the full sun. They have a septic and leach field that is also in the way. This is the only area. Mrs. Cotterly explained that they would lose a lot of their yard if they moved it. Carley asked the square footage of the pool. Wallner found the dimensions on the plan and it said it was a 20 x 32. Ernie showed a photo of the Gibraltar pool they are buying.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

Winters: The lot is unique as their relevant neighbors structures are so far away. They would not be crowding neighbors. He feels it is a reasonable use and is in favor.

Evans: There is a unique aspect of the property sufficient to justify granting.

Monahan: Agrees

Wallner: Agrees.

Carley: Agrees.

A motion to approve the request was made by Winters, seconded by Evans and passed by a unanimous vote.

63-21 Barlo Signs for Market Basket; 15-17 Merchants Way; GWP-Gateway Performance District: Applicant seeks approval to install two tenant building signs which exceed the maximum size as required by *Article 28-6-*

9(a) Table of Maximum Sign Dimensions for Non-residential Districts, which will require the following variances from said Article:

1. to install an internally illuminated wall sign for Market Basket, which is 482.42 square feet in size, where a sign not to exceed 200 square feet is required, and
2. to install an internally illuminated wall sign for a future tenant (TBD), which is 256.75 square feet in size, where a sign not to exceed 124 square feet is required.

Testify: Brandon Currier of Barlo Signs. Also available to testify is Carmine Thomas of Market Basket. Mr. Currier explained that a tenant has been selected for the right side of Market Basket's building, so he has the updated signage schematics for that. Home Goods will be the tenant located there. The drawing with the original package just said retail space, but it is now Home Goods. They would like approval for 2 separate wall signs. The current sign for Market Basket over the main entrance is 482.42. Home goods is 248 s.f. The stores are deeply set back from Hoit and Whitney Roads, approximately 1,000 feet. Without signage, it will hinder the ability of the wayfinding public to find the stores. This is not out of character with the building. Both signs are scaled to fit in the facia of the building.

Carley wanted to see what a sign that would meet the requirement of the ordinance would look like for Market Basket to see how much space it would take up. Mr. Currier doesn't have a visual with him, but it would be more than half of the proposed sign. Carley asked if they were asking for a sign more than twice the size. Mr. Currier said that was correct. Carley asked about the Home Goods Sign, is it also roughly twice the size. Mr. Currier said that was correct. It was to fit within the character of the front facia. The original proposal was larger, but this is 18 s.f. less than the original design. Carley asked if the signage would this be visible from Hoit Road and Whitney Road. Mr. Currier said it would be, yes. Carley asked if most of clientele will be coming from highway. Mr. Currier said it would be hard to tell, but there is a good chance that is correct. Carley asked what the building is that is dead center on the site. Mr. Currier stated that was the gas station that is currently there. Carley asked if there were 2 or 3 of them. Evans noted that the plans say Urgent Care and a proposed bank. Mr. Currier explained that this is a 43 acre property with multiple tenants and buildings. Carley asked what the distance from the traffic circle on Whitney Road onto this property is. How far is he from the supermarket? Mr. Currier took a rough measurement of 1,000 feet from roundabout to the store front. When talking copy height, they have a formula they use. Carley asked if the Market Basket building is 30 feet high? Mr. Currier believes that is correct. Wallner asked how the Market Basket signs at this location compare to the Fort Eddy Road location and the Warner NH location. Mr. Currier said those signs are 6 and 7 foot sets. Wallner noted that there is a directional sign at the round about which would alleviate visibility. Mr. Currier said potentially. They have a pylon sign. People like to be seen, but on the building is the main identifiers. Evans asked if you travel Hoit Road to the highway and running parallel you would be very close to that building, correct? Mr. Currier supposed yes, but the road coming to the highway and the trees and elevation go up. Winters asked why the development was so set back. Laurie Rauseo testified. She is with Interchange Development LLC. The Market Basket building is over 100,000 s.f. and has a large parking field. The only place on the site you could fit the building and parking area is setback where it is. It allows for co-tenants to be added. Winters asked if this development hasn't needed any other variances. Ms. Rauseo said that was correct.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

Winters: They are creating a neighborhood from scratch so he cannot comment on the character of the neighborhood. This sign is no different than other Market Baskets signs. It doesn't seem like a classic variance situation.

Carley: They are required to put together a signage package for approval by Planning. In fact, he spoke with Code Administration this morning about this and the way things are set up now they need to get a variance from ZBA first before going to Planning. He supposes the board does have the authority to request a consult with Planning and can defer this decision until they are able to consult with Planning. Winters thought that if they only allow them what is allowed by Ordinance it will completely change the development.

Evans: He is inclined to say the property is unique. He's happy to hear it's not too much bigger than Warner's sign. He would be in favor.

Monahan: They knew what the ordinance was when they designed this. There are a lot of items going to be developed on this property. This may set precedent. If they consult with Planning on the sign package, would it only be for Market Basket and Home Goods, or for the whole development. Creveling noted that according to the ordinance everyone should

have a master signage plan. The development is coming along in bits and pieces. Not indifferent to the fact that this is set back deeply into the property.

Wallner: Past requests the board has been receptive of oversized signs. i.e. Lowe's, Hannafords, etc. It's pretty close to what they have seen on Fort Eddy. He is in support.

Winters: If additional structures will be put on there, will it be the same lot and are they approving the maximum for the entire lot. Cartier-Creveling looked up whether this would max out signage on the lot or whether it was per building.

Carley: They are creating a little village as a shopping center with several tenants. The sign ordinance, as written, imagines buildings on Main Street or elsewhere in town. The idea is to not have chaotic signage. When you enter the shopping center you need to see a sign to find the store. He sees an argument for both design and safety. He is concerned that something like this should, to the extent that it is possible, have a coherent sign plan. Laurie Rauseo testified that she asked Mr. Baia about this before they submitted this request. She asked for an example of a Master Sign Plan, but he said they have never seen anything like this. It's multiple zones, a large parcel. The Planning Board has reviewed their condominium documents which has a section on signage. Carley asked how many of the buildings on the site plan are under construction. Ms. Rauseo answered that there are 2 buildings with 3 tenants. She asked the Board to read the Memo into the record from Mr. Baia for the next case. Carley reviewed the site plan. The big building is on the eastern end is under construction, which is Market Basket. The liquor store is to the west of the parking lot of the Market Basket store. Ms. Rauseo explained that next year there will be a Wendy's before the Board. Monahan asked if the liquor commission owns the building. Ms. Rauseo explained that they are leasing it to the State. The City will be moving the on-ramp to I93 away from this building.

Evans: This is a unique development in Concord. What is the wisdom of the board making these piecemeal decisions. It's not on a lot on Main Street, it's a separate development on its own. The board will be getting into something they won't want to do. They will approve a sign like this and others will want the same.

Cartier Creveling stated that the total signage is based on road frontage. Where there is no road frontage, it's based on parking lot frontage. They have it developed into a condo plan to use the frontage on the parking lot. Ms. Rauseo explained that the internal roads are not public streets.

Carley is not sure at this point if a comprehensive sign program will be offered any time soon. From his own point of view, he is inclined to address the buildings they have before them that are being built. It isn't reasonable to ask the appellant to wait until they have the rest of the building's information that doesn't exist right now. He feels the board should act on it. The whole development is a unique situation.

Monahan: He'd like to see a global proposal to see what signage would look like.

Winters: What if Wendy's comes in and asks for bigger signage as well, etc. Carley explained that the board should not act on precedent but on each situation as it comes forth. Winters asked what a consultation with the Planning Board would look like. Carley thought that rather than have a joint meeting, he would ask them to come back to the ZBA and explain their response of overall signage and what they think. Monahan's hope is that someone in City government has some idea of the global sign strategy for this property. Carley thought that they could ask for a consultation with the Planning Board and if they get nothing back they could move forward. Carley would not be uncomfortable reviewing this on its merits alone as if this building were all by itself out there and not part of a development, but with the observation that before the rest of this comes back to them, a signage plan be developed.

Evans would be in favor of a motion to approve and one to communicate with the Planning Board to give the Board something to go by. It seems to him that it's in Planning Board's wheelhouse to direct the decision making to the proper decision-making body. For future projects, as they develop, it would be less of an argument that they would need a large sign. He feels it's unfair to hold the owners up. Carley noted that if the signage changes the applicant would have to come back before the Board.

Winters: He asked the owners about their vision for the future. Are they thinking that the rest will comply with the ordinance, and that Market Basket is the only one seeking the variance? Ms. Rauseo noted that they are all much smaller buildings. They have no vision. If they don't know what their tenants are, how do you do a master sign plan.

A motion to approve request #1 and #2 was made by Wallner and seconded by Evans. The situation is unique and a reasonable use given the scale of the buildings. Monahan wanted to add that because the building is so deep into the property the signage is reasonable. Motion passes by a unanimous vote.

64-21 Barlo Signs for Interchange Development, LLC: 1 Whitney Road; GWP Gateway Performance

District: Applicant seeks approval to install a freestanding sign containing tenant building signs which exceed the maximum size allowed by *Article 28-6-9(a), Table of Maximum Sign Dimensions for Non-residential Districts*, which will require the following variances:

1. *Article 28-6-9(a) Table of Maximum Sign Dimensions for Non-residential Districts*, to install a freestanding pylon sign containing 190.66 square feet of sign area, where only 150 square feet is allowed;

2. *Article 28-6-9-(c)(2)*, to install a freestanding sign with a setback of zero (0) feet, where a setback from any lot line of 5 feet is required, and
3. *Article 28-6-7(r)*, to allow an electronic message center, which is prohibited.

Testify: Brandon Currier of Barlo Signs. Laurie Rauseo of Interchange Development LLC.

A letter was read into the record by Carley that was received from Carlos Baia, Deputy City Manager – Development.

Mr. Currier showed an updated rendering. Currently this area is under construction to create a new round about. The Mobile station sign will be removed and incorporated into the requested pylon sign. They took the clearance into consideration as well as the guardrail. The total square footage is 190.66 vs. 150. The sign was designed with safety in mind. They have kept the square footage as close as possible to the ordinance. They are asking for 40 s.f. more. Due to the roundabout addition, this sign is required to be pushed back significantly. Drawings show the location. The grade drops rapidly after the guardrail. The placement of the sign will not be blocking motorists. Gas price changes are the EMC request. Due to the location, it is dangerous for employees to change the prices of gas. Employees would need to bring out a ladder to change the price. Simple solution is that it would be changed remotely as with time and temperatures. A grouping of LED in a pattern and it would only show numbers and be only one color. Technology is different from boards in front of the theaters on North Main Street. The sign will increase visibility.

Winters: Gas prices are manually changed? Mr. Currier said that was correct. There is either a magnet or suction cup on a pole that employees use to change the prices. Carley asked why the price needs to be on this sign. Mr. Currier believes it is a law that prices need to be presented at the street. Carley asked if this is the only place that it could be shown? Mr. Currier wanted to reduce the number of signs so they added it to this sign. They will remove the old sign and incorporate it into this sign to make a clean design. Winters asked if the other tenants would be on this pylon sign. Ms. Rauseo explained that she wants only one pylon sign for all 43 acres. They have one other location on Interchange Drive that they may put a small pylon for Market Basket Deliveries and Urgent care. There will be no other pylon signs within the site. Ms. Rauseo gave an overview of whether the pylon sign was an off premise sign as it was on the master sign. This is not considered an off premise sign. Wallner asked if it were conceivable that the State Liquor Store could have their own pylon sign. Ms. Rauseo said she doesn't want them to and she has already told them no as it is her property.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

Mr. Currier explained that they have a separate option that they would like to propose for a scrolling set up system instead of an LED board for the electronic price changer. The numbers are able to be programmed from inside the building and change outside. Carley asked if it were mechanical, not electronic. He believes it needs to be sent back to Code for a decision as to whether it needs a variance or not.

Wallner: Request #1 & #2 he feels are reasonable. This is a slight increase of square footage given the number of potential tenants.

Monahan: Generally agreed.

Evans: Agrees.

Winters: Agrees.

A motion to approve request #1 and #2 was made by Wallner, seconded by Monahan and passed by a unanimous vote.

Request #3: Winters: all the points are valid. However, he doesn't see this is different from what any gas stations could argue and he feels it should be decided at a City level to tastefully be able to allow EMC. He is not in favor, there's nothing different from this one to others.

Evans: Wording of the ordinance only says time and temperature is allowed. He is skeptical regarding electronic sign parts. He understands the logic in terms of safety. He is more inclined to look favorably on another type of device that is out there vs. EMC.

Monahan: He is bound by what is in the ordinance now.

Wallner: Agrees.

Carley: Agrees. They have confronted this before. It has gone to Court. City Council has elected not to change this requirement.

A motion to deny request #3 was made by Wallner, seconded by Evans and passed by a unanimous vote. Denial was based on no hardship being found. This is inconsistent with requirements of Ordinance.

Minutes

A motion to approve the November 3, 2021 Minutes was made by Wallner, seconded by Winters and passed by a 4-0 votes. Evans recused himself as he wasn't here in November.

*Respectfully submitted,
Rose M. Fife, Clerk
Zoning Board of Adjustment*