

**LINCOLN ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
TUESDAY AUGUST 26 2014 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

APPROVED

Present: Chairman Paul J. Beaudin II, Jonathan Ham, James Martin II

Members Excused: Vice Chair Don Landry, Board of Selectman Representative Patricia McTeague

Members Absent: None

Staff Present: Planning and Zoning Administrator Carole Bont, and Wendy Tanner (recorder)

Guests:

- Heidi Hurley, Property Manager of 26 Union Street, Littleton, NH 03561
 - Ron Beard, Fire Chief, Town of Lincoln, P.O. Box 25, Lincoln, NH 03251
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I. CALL TO ORDER:

The meeting was called to order at 6:00PM.

II. CONSIDERATION OF DRAFT MEETING MINUTES FROM: AUGUST 19, 2014

Chair Beaudin abstained for the consideration of the August 19th, 2014 meeting minutes as he did not attend the meeting. The ZBA cannot approve minutes with only two members. A quorum is required, so the approval of minutes will be moved to the next meeting on September 17, 2014.

III. CONTINUING AND OTHER BUSINESS.

No other business.

IV. NEW BUSINESS

- 6:00 pm. **Application for Special Exception for an Off Premise Sign**

1. Case #ZBA SE #2014-03

Location of Proposed Off Premise Sign:

- Former Pinestead Quilt building, 33 Main Street, [Map 112, Lot 27)
- Former Bill & Bob's Famous Roast Beef building, 31 Main Street, (Tax Map 112, Lot 28). *These two lots are now merged.*

Property Owner of Merged Lots Where Proposed Off Premise Sign would be located:

Herbert Lahout, 54 Sunset Hill, Sugar Hill, MA 03586

Location of businesses to be advertised on Proposed Off Premise Sign:

Herbert Lahout Shopping Center, (Tax Map 118, Lots 075 & 076)

Property Owner of Shopping Center Businesses to be advertised on Proposed Off Premise Sign:

Herbert Lahout Shopping Center, 26 Union Street, Littleton, NH 01532

Applicant: Herbert Lahout, 54 Sunset Hill, Sugar Hill, MA 03586

DESCRIPTION: Under Land Use Plan Ordinance, Article VIII, Section A, Paragraph 2, Applicant Herbert Lahout is seeking a Special Exception from the ZBA on **Tuesday, August 26, 2014 at 6 PM** in the Conference Room of Town Hall, 148 Main Street, Lincoln, NH. Lahout proposes to erect an off premise sign at 31 & 33 Main Street [Map 112, Lot 27 is 33 Main Street & 31 Main Street is Map 112, Lot 28 – the two lots are now merged]. The off premise sign would advertise businesses & direct travelers to businesses located at 165 Main Street, (Map 118, Lot 076) owned by Herbert Lahout Shopping Center, LLC. The parcel which would host the off premise sign & the parcel where the advertised businesses are located are in the Village Center (V.C.) District]. According to Article VI-B (Sign Regulations), Section E (Permit Requirement & Review Procedure), Para. 10 (Sign Classification & Standards), Subpara. q (Off Premises Sign), off premise signs are prohibited except by Special Exception as provided in Article VIII (Board of Adjustment) Section A (Board of Adjustment), Para. 2, Subpara. A-D of the Land Use Plan Ordinance.

ACTION: Acceptance of the application as administratively complete by the Zoning Board.

ACTION: The Zoning Board may conduct a public hearing, or schedule a public hearing at some future date established during this meeting.

ACTION: Approval, approval with conditions or disapproval of the application by the Zoning Board.

Chairman Beaudin read the application, pointing out that the lots had now merged and would now be listed as only the Pinestead Quilt building at Map 112, Lot 27.

Chairman Beaudin looked at the ZBA Rules and Procedures, page 6, pointing out:

"If an agent is appearing before the ZBA and the applicant is not present at the meeting, the ZBA must have written authorization from the applicant stating that the agent has been appointed to represent the applicant at the hearing."

Chair Beaudin asked Heidi Hurley if she had anything in writing from Herbert Lahout, authorizing her to represent Herb Lahout. Heidi Hurley stated she did not have anything from Herb Lahout, that he could not be reached. Hurley stated that she had appeared before Town Boards before and that her representation of Herb Lahout was not questioned. Hurley was not sure if she appeared before the Planning Board or the Zoning Board in Lincoln before.

Chair Beaudin stated that it was probably the Planning Board. The rules for the Zoning Board were different and Zoning Board Rules and Procedures were the rules that applied at this meeting.

Chair Beaudin stated that at this point the ZBA could adjourn the meeting and return at a later time with the proper authorizations or he offered for the ZBA to discuss the application with Hurley and then adjourn to a date and time specific so she could at least have the input of the three Board members that were present.

Hurley stated that she had to give up her Zoning Board of Adjustment in Littleton, NH to be here this evening. She hoped that the Zoning Board in Lincoln could understand that. In Littleton if Board members are continually absent, they are “off the board”.

Chair Beaudin stated that everyone present gave up things to attend nightly meetings. Chair Beaudin then stated that if the Board did discuss this application with Hurley that Herb Lahout would have to be in attendance of the next meeting.

Hurley then stated that Herb Lahout was out of the country. Chair Beaudin asked if he was out of the country forever. Hurley said “no”, but probably the month of September. He was in Beirut, Lebanon.

Chair Beaudin asked that the meeting reconvene in October. Hurley stated she wanted to get this done now.

Chairman Beaudin read the Zoning Board Rules and Procedures on page 4 that states

“If there are less than 5 members present, the Chair shall give the choice to the applicant to have the hearing proceed or have the hearing continued until 5 members can be present. Should the applicant choose to proceed with less than 5 members present that should not solely constitute grounds for re-hearing should the application fail.”

Chair Beaudin stated that there are only three members present this evening. Chair Beaudin thought that the only way to proceed was to adjourn to a date and time specific, or that the meeting could continue with three members so that the applicant could hear concerns from these three members on the application so that either Hurley or Lahout could address these concerns. And then come back to the next meeting knowing the concerns so that the meeting could proceed.

Planning and Zoning Administrator Carole Bont stated that usually the Zoning Board meets on Wednesday, but because of vacation schedules they were now meeting on Tuesdays. Bont offered that the meeting could continue on September 3rd or 17th which were both on Wednesdays.

Hurley cannot make it the September 3, 2014, meeting. Hurley felt that the Zoning Board owed her the opportunity of hearing the Zoning Board members’ concerns just because she made the drive down from Littleton, NH. Hurley thought that after hearing the Zoning Boards concerns,

that Lahout may be off the plane by then and that then Lahout could give authorization for Hurley to represent Lahout at this meeting. Hurley also stated that she was going to go back to the records and find out what meeting David Pollack attended and the laws of the Planning Board and see why David Pollack who is not yet a lawyer was allowed to represent Herb Lahout at that meeting with the town. Hurley knows there is a difference between the Zoning Board and the Planning Board, but she opined that if the Board (which board was not specified) set a precedent, then in her opinion that precedent needed to be followed.

Chair Beaudin then stated that the Zoning Board Rules and Procedures relate to the Zoning Board only and have nothing to do with the Planning Board.

Hurley then stated that someone should have called her to tell her that she would require authorization from Lahout to represent Lahout in the meeting.

Chair Beaudin then stated that he was under the impression that Lahout was going to be at this meeting or he would have notified Lahout to authorize another person to attend in his place.

Hurley thought that the requirement for authorization was very aggravating because she does “all this stuff” for Lahout and never had a problem. In Bethlehem and Littleton they have never had this issue.

Chair Beaudin thought that it happened because this may be the first time that Lahout has come before the Lincoln Zoning Board. But, the Zoning Board was willing to go over the concerns that they have with this off premise sign application.

Hurley asked if she would be allowed to give input to the issues and concerns. Chair Beaudin stated that Hurley could give her input and asked Hurley to move closer to the front. Hurley stated she could be heard from where she was sitting perfectly well because she had a loud mouth.

Chair Beaudin asked Bont to give copies of the section of the Lincoln Zoning Board of Adjustment Rules of Procedure and the section of the Zoning Board Rules and Regulations stating the number of Board members that must be present for quorum. (Article IV, Meetings, Section 4. Quorum, Subparagraph c.)

Chair Beaudin asked Hurley to describe to the Board what the sign was going to be so that the ZBA would be sure they had the correct picture of the sign.

Hurley confirmed that the picture the Zoning Board was the correct sign. Hurley also confirmed that the sign would be mounted on the foundation of the pre-existing sign that was there for Bill and Bob’s Restaurant and would remain in the same location.

Chair Beaudin addressed several concerns.

1. Because the application is calling for an off premise sign, a special exception from the Zoning Board is required. The Town of Lincoln Ordinance states on page 63

Section E, Permit Requirements and Review Procedure, Paragraph 8, Non-Conforming Signs, Subparagraph b:

“Non-conforming signs are allowed to remain even though these signs are not in compliance with this ordinance. These signs may be maintained and continue to exist as long as they are not structurally altered, there is no change of business use.”

Chair Beaudin stated that this business came into the Planning Board for a Change of Use on this property, which means that the sign that is currently there needs to come into compliance with the existing regulations and rules.

2. Under permitted signs and prohibited signs on page 62 of the Town of Lincoln Ordinance, Section E, Permit Requirements and Review Procedure, Paragraph Prohibited Signs, Section A, Paragraph 7 Prohibited Signs, Subparagraph c states:

“Any sign placed on any public right-of-way or on and above any public road. The only exception shall be public event banners.”

Chair Beaudin then stated that the Zoning Board does not have proper paperwork showing the actual location of the sign in relation to property or the existing right-of-way, state, private or other and how far the sign is from the property line. There was nothing in the original application that shows the signs location. Proper drawings would be needed to make the determination of the sign being in the right-of-way or not. Drawings and diagrams showing the location of the sign, property lines, right-of-ways, is required.

Hurley asked if the space was still being used as Bill & Bob’s Restaurant, would they be able to keep the sign where it is now.

Chair Beaudin stated that if the sign was an existing sign and there was no change of use, the use as a sign could continue. However, since Lahout came in for a “change of use” on the property, that would mean that the sign or anything else on the property would need to comply with the existing Town of Lincoln Ordinance. The Town of Lincoln Ordinance states Lahout cannot have a sign in a right-of-way. Chair Beaudin understands that the pre-existing sign is located within one or more rights-of-way.

Hurley stated that the pre-existing sign was on Lahout’s property and Lahout could prove that. Chair Beaudin stated that even if the pre-existing sign is on Lahout’s property, it still needs to be out of the rights-of-way (i.e., state highway right-of-way and neighbor’s right-of-way). Hurley asked how far out of the right-of-way the sign needed to be. Chair Beaudin stated that it only needed to be out of the right-of-way. Hurley asked if it could be one inch out of the right-of-way. Chair Beaudin confirmed that as long as the sign was not in the right-of-way it would meet the requirements.

Chair Beaudin thought that Lahout would be better off if he applied for a different sign and that if the sign were to attach to his building like an awning sign, that might be better. Hurley stated that there were signs on the building and the roof already.

3. Chair Beaudin addressed his other concern that the Town of Lincoln currently does not have any off premise signs that advertise anything but the business itself. There are other signs that are on property that advertise multiple businesses, but they advertise businesses that are within the same property as the sign. To advertise several businesses that are not on that property, off premise, this is not in the ordinance.

Hurley disagreed stating that there is a Loon Mountain sign downtown. Chair Beaudin stated that the Loon Mountain sign she was referring to was an off-premise sign that advertises Loon Mountain, and only Loon Mountain. That sign does not advertise any other businesses. The proposed Lahout sign that is shown on the application advertises many businesses that are not on the premises where the sign will be located. Hurley stated that those are the businesses in that Lahout Square Mall shopping center.

Chair Beaudin then stated that the town did not want to open it up so that any property owner could advertise any business they wanted to on their property and potentially start charging to advertise businesses all over town.

Hurley asked if the other businesses on Main Street ever had any advertising on off premise signs. Chair Beaudin stated they did not. Off premise signs can advertise your business only, not other businesses. Hurley asked if Lahout could advertise the shopping plaza name. Chair Beaudin agreed that the sign could advertise the Lahout Square Mall, but could not advertise the specific stores at the shopping center and that it could not be a multi-business sign.

Hurley asked if the State Liquor Store could put an off premise sign up. Chair Beaudin stated that the State of New Hampshire would have to go through the ZBA to put their sign up. Bont then stated that she recently spoke to a representative of the State of New Hampshire Liquor Commission and he agreed that they would not put up an off premise sign. If they did decide to put up an off premise sign, they would go through the local process of making a request for a special exception from the Zoning Board for an off premise sign.

Chair Beaudin stated that that was all the concerns the Zoning Board had at the moment.

Hurley asked if they received permission in writing from the owner of the right-of-way, would that be okay. Chair Beaudin answered, that if the property owner of the property where the right of way was located gave Lahout permission to put the sign up in the right-of-way then it would be okay with him. If the State of New Hampshire gave Herb Lahout a letter stating it was okay for Lahout to put a sign in the state right of way, he (Chair Beaudin) would have no issues with that.

Bont thought that the primary concern in Lahout's case was really the neighbor. The right-of-way problem arises with the person who owns the subservient property.

Chair Beaudin mentioned if the sign was in the right-of-way or too close to a boundary and it fell over and someone's car was parked there, there would be a problem. That is why a sign is not supposed to be too close to a boundary line. The ZBA would need to look at those things.

Hurley stated that because the preexisting signs are on the property, Lahout can have those signs for the retail business he is going to make out of the Pinestead Quilt building.

Bont stated Lahout was talking about two different scenarios. First, Lahout said that the space was last used as retail space. If Lahout continued using the space as retail space then it is not a change in use. Therefore Lahout can continue to use the preexisting signs for that same use. The second scenario included a restaurant.

Chair Beaudin said that the Town of Lincoln does not have any multi business off premise signs. Any sign that is off premise has to be a sign that is for ONE business. If the sign for this application is going to advertise a business down the road, then that is the only sign that will be permitted. If Lahout wants to advertise the businesses on site, it would have to be a whole new sign.

Hurley asked if we had a sign that read "Lincoln Square Mall" at the Bill & Bob's site location, would that be okay?

Bont stated that would be an off premise sign and the ZBA would have to give special exemption for that sign. If it just said "Herb's Roast Beef", then that sign could stay there. If it's going to advertise something off premise, it would require special exemption.

Hurley asked if Lahout can still come back to that sign on September 17, 2014, as long as it is out of the right-of-way and advertising only one business. Since there is no plan for that building right now, a sign trying to draw business to the shops at the other end of town would be best for now.

Chair Beaudin said that "he" does not have any real issues with her proposal as long as it conforms to the regulations and advertises only a single business. But he was only one member of the Board.

Hurley thought that the sign would be taken down eventually when a new business did move into the Pinestead Quilt building.

Chair Beaudin again stated that there would probably be no problem as long as the sign conformed to the existing provisions of the ordinance.

Bont also gave the board copies of the Clark's Trading Post sign application and approvals so the ZBA members could see how off premise signs had been addressed before.

Chair Beaudin explained that if Hurley looked at some of the off premise signs the ZBA allowed, she will see that they are architecturally clean, tasteful and look nice. In the past off premise signs have been refused a lot because they tended to be lackluster and were made of materials

that did not fit the ordinance. If you take a look at some of the off premise signs that have been approved, they are clean, tasteful and nice. The sign for the nonprofit organization North Country Center for the Arts received a conditional approval for only a few years because they had a financial burden. That sign was approved for plastic, but they must come back with a better sign within a couple of years.

Hurley noted that the Littleton Sign Company would be creating the sign for Lahout.

Chair Beaudin asked that the meeting be continued to a later date.

Jon Ham mentioned that nowhere on the sign Lahout is proposing does it say “Lincoln Square Mall”.

Chair Beaudin then explained that this application is for a special exemption of an off premise sign. If Lahout wants to put an on premise sign for whatever business is in the building, he just comes to the town and applies for a sign permit.

Ham then asked if this sign received approval, would Lahout still have the right to erect another free standing sign.

Chair Beaudin then reiterated that it would depend upon how many signs Lahout wanted to have on his building. If he was going to want to put more signs on that building to advertise whatever he wants to put there, then he should look at the Town of Lincoln Ordinance to see how many square feet and what type of sign, because the Ordinance is very specific about the number of signs, the size of the signage and what type of signs he can put on a building.

James Martin then asked whether there would be a chance that the sign would have to come down for whatever was going to be on that site.

Chair Beaudin said no. He gave an example. “If Lahout received permission to make this off premise sign for Lincoln Square Mall, and then he decided that he did not want to advertise Lincoln Square Mall, he wanted to advertise the shop that is going to be here, he can just put a sign up in that spot. He would have to come into the town and tell the Planning Board that was what he was going to do, but Beaudin did not think the Planning Board would have any issues with it.

Bont stated that if Lahout wanted to put up a second free standing sign he would have to go through the approval process again and receive a special exemption.

Bont scheduled the next meeting tentatively for the 17th of September, 2014.

Hurley asked if she could get back to Bont on the actual date. Hurley thought that he was just touching down quickly here in the US and was heading back to Beirut. Hurley thanked the Zoning Board.

Bont asked if Hurley could get Lahout to email or scan something that would give her permission to appear on his behalf.

Motion to continue this meeting on September 17th

Motion: Chair Beaudin Second: Jon Ham

All in Favor: (3-0)

Chair Beaudin then clarified with Bont that Lahout would have to provide a site plan with location of the sign, location of the right-of-way and the State of New Hampshire rules and regulations that might apply being on a state road. We also need a more detail description of what the off-premise sign will look like, the architectural pieces of what it is going to be.

Bont asked if that was something that would be prepared for them by the Littleton Sign Company. Hurley thought so.

Chair Beaudin stated he did not really look at all the provisions within the Ordinance for signs and hopes they did not miss anything.

Chair Beaudin directed Bont to notify David Rodgers that the meeting was being moved to September 17th because David Rodgers is a direct abutter. Chair Beaudin recommended that between this meeting and September 17th the members of the ZBA look carefully at the sign ordinance to see if they missed anything else in the Land Use Plan Ordinance that would raise a red flag.

According to Chair Beaudin, the entire sign needs to comply to be with the Land Use Plan Ordinance because of the approved change of use. He did not remember if there was a height limit in the ordinance.

Bont said there is a height restriction for signs in the Village Center District.

Ron Beard asked, “What if Dave Rodgers decides to put a fence up on the property line and their sign is in such a place that we cannot fit a fire truck through there, but you could fit a passenger car?”

Chair Beaudin stated that the fire trucks would have to drive over the curb anyway to get into this parking lot. Lahout only has 2 feet of that entry way that he owns.

Beard reminded everyone that Lahout cannot modify the sidewalk without state approval. Chair Beaudin then mentioned that he understood that the state is not granting any more curb cuts on Route 112.

V. OTHER BUSINESS – ZBA members/alternates, Zoning Board Staff

No other subjects were addressed.

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- VI. PUBLIC PARTICIPATION AND OTHER BUSINESS:** Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

No public participation.

VII. ADJOURNMENT

The meeting was adjourned by 6:38.

Motion to Adjourn:


Motion: Chair Beaudin Second: Jon Ham

All in Favor: (3-0)

Respectfully submitted,

Wendy Tanner, Planning and Zoning
Recorder

Dated: August 26, 2014



Paul J. Beaudin II, Chairman