

## **January 25, 2022 ZBA Meeting Minutes**

**Meeting called to order:** 7pm by Chairman, George Carmichael with the Pledge of Allegiance. Members and alternates introduced themselves.

**Members present:** Bill Thomas, member; George Carmichael, Chair; Marcia Breckenridge, Vice-Chair; Deni Dickler, member

**Members absent:** Phil Stenersen, member; Marty Kulla, alternate

**Others present:** John Matthews, DSM Realty, Ross Thermos

Carmichael provided the following general information about how the meeting would proceed. The ZBA has five voting members. Alternates participate in the testimony phase and can ask questions as can anyone from the audience. Once the testimony is closed only the voting members participate in deliberation. When a regular member is either absent or recuses, the Chairman appoints one of the alternates to sit on the case. Carmichael asked if there were any recusals and there were none. He also stated that the quorum for meetings is three out of five members, that the hearing would move forward with the four members present and asked Mr. Matthews if he was okay with that. Mr. Matthews stated that he was okay with it.

ZBA Clerk, Kim McCummings, announced that the notice of the Public Hearing was posted in the Ledger/Transcript, Town of Rindge Website, Rindge Post Office, the Rindge Town Office, and the Ingalls Memorial Library.

Carmichael reminded the audience they would have to be recognized by the Chair before speaking and asked that they identify themselves by stating their name, abutter status and address for the clerk.

Carmichael opened the hearing for Case 1179 which was postponed from the December 28, 2021 meeting. Seated on the case were Breckenridge, Carmichael, Thomas, and Dickler.

Breckenridge read the following into the record. Case 1179, DSM MB I LLC/RSM Realty, 875 East Street, Tewksbury, MA 01876, for property located at 497 US Rte. 202, Map 6 Lot 14 in the Gateway Central District, for a variance from Article VI Section C of the Sign Ordinance to permit a wall sign for “Marshalls” department store that is 156.2 sq.ft. with LED internally, illuminated letters.

Thomas summarized the relative information from Article 6 of the Sign Ordinance for the record.

Carmichael asked for a motion to open the testimony phase. **Motion:** by Breckenridge, **Second:** by Thomas, **Vote:** 4-0-0.

Dickler asked to bring up an item before continuing regarding the absence of a document. She said as stated under Section X, Appeals, item B, it says, “All applications to the Board of Adjustment seeking a Variance related to this ordinance shall first obtain a statement from the Planning Board certifying that granting of such a Variance would not be contrary to the intent of the Master plan.” She asked if the document could be submitted after the fact. Carmichael agreed that it could be added as a motion at the end of the hearing as a condition of approval and that in all fairness it should have been brought to the attention of the applicant back in December.

Carmichael welcomed John Matthews, owners’ representative for DSM MB 1 LLC owner of the Cheshire Marketplace and asked him to proceed. Mr. Matthews proceeded to describe the project and highlighted site plan details. Identified the locations of the proposed Marshalls, the expanded New Hampshire State Liquor Store, the existing Market Basket space and spaces vacated by Right Aid, Aubuchon Hardware and TD Bank. He said the TD Bank sign is now gone and the store frontage for the old Rite Aid, Aubuchon and TD Bank located at the site is about what is requested for the Marshalls sign, 106 sq. ft.

Carmichael asked for clarification on the size of the proposed sign. Mr. Matthews said the three combined signs equaled the one sign that is being requested and that sign is less than half the size of the existing Market Basket Sign. Carmichael asked about the size of Market Basket compared to the size of the store being proposed. Mr. Matthew said the Market Basket retail space is 62 thousand sq. ft. and the proposed space for Marshalls is 22 thousand sq ft. Carmichael said so this is approximately 1/3 of it.

Mr. Matthew said the sign is proportional to the size of the building and we think we're building an attractive product. He added that the lighting will be LED internal illuminated letters.

Mr. Matthew presented the following issues and facts supporting the application.

1. The variance would not be contrary to the public interest because it would not violate "basic zoning objectives." The variance is for a wall sign in an existing conforming shopping center. The use is conforming, the dimensions of the building are conforming, and the setback is conforming. Dickler asked a question regarding a sign masterplan. Mr. Matthew said that he thought it existed years ago. He also stated that prior to filing the application he went to the Code Enforcement officer here in Town and asked if he needed permit reviews to bring to the Board. He was told that he just needed to apply.

2. Granting the variance would do substantial justice because the tenant "Marshalls" will be the second largest tenant in the shopping center. "Marshalls" has substantial building frontage, and the size of the proposed sign is properly proportioned to the area of the building facade.

Carmichael asked if Marshalls is proposing two-thirds of the frontage as Market Basket how does your sign compare, is it two thirds the size? Mr. Matthew responded that it is half the size as Market Basket? The Market Basket sign is 336 sq ft, this is 156 sq ft.

3. The variance would be consistent with the spirit and intent of the Rindge zoning ordinance because the sign will be located on an existing building that conforms with the zoning ordinance. The building is set back from Rte. 202 with the limited visibility (if any) from the street.

4. Granting the variance would not diminish surrounding property values because the shopping center is located on a large parcel with large areas of wetlands on the site to the North and South, a railroad R.O.W. to the East and the State highway on the West.

5. Special conditions do exist on the property that distinguish it from other properties in the area, such that literal enforcement of the ordinance results in unnecessary hardship. The 48+ acre property has substantial wetlands to the North and South of the developed area and along Rte. 202 frontage. The shopping center sets back from the roadway a substantial distance. The sign is allowed for an allowed commercial use.

5a. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance provision(s) and the specific application of the provision(s) because the sign is for a commercial use that is allowed in the Gateway Central zone. Marshalls is a large store that warrants a larger wall sign.

5b. The proposed variance would be a reasonable one because this is a large conforming commercial property with limited visibility (if any) from the street, Rte. 202. Wetlands provide a buffer from the adjacent parcels. The size of the proposed sign is properly proportioned with the size of the storefront.

Mr. Matthew asked if there were any questions. Dickler asked about the wetlands that provide a buffer and significant wildlife habitat and the artificial light has a definite impact on the birds, and other species. Mr. Matthew explained that the parking lot and external lighting was completely replaced about three years ago, they are LED with all down cast lighting. The store lights go out about half an hour after the stores close. The ATM in the parking lot will have some separately metered lighting because it will be available all night. Carmichael asked for additional questions from the Board. Dickler mentioned that she had found there is another way that the size of signs could be determined, and the applicant is very close to that number.

Carmichael asked if there were any other questions and there were none.

**Motion:** by Thomas to go into deliberative session, **Second:** by Carmichael  
**Vote:** 4-0-0

The Board went into Deliberative session and Carmichael said he initially had some concerns and they have been addressed. The sign fits in with the amount of frontage. Breckenridge said there were no objections, it's very

straight forward. The applicant did a good job on the application and on meeting the five criteria.

**Motion:** by Carmichael to approve the variance based on:

1. The applicants' responses to the five criteria as recorded on the application as submitted.
2. The approval is subject to receiving a statement from the Planning Board as outlined in the Sign Ordinance Section X. B.

**Second:** by Thomas **Vote:** 4-0-0

**The Variance is approved**

**Other business that may come before the Board:**

Carmichael motioned to move to other business that may come before the Board. Carmichael announced that Ross Thermos is new to Rindge saw the recent posting for ZBA Alternates on the Life in Rindge Facebook page Rindge and is interested in becoming a ZBA alternate. The board met with Ross and following their discussion Dickler. **Motioned:** to accept Ross as a ZBA alternate. **Second:** by Thomas. **Vote:** 4-0-0.

Carmichael welcomed Ross to the board explained that he would need to be sworn in by the next meeting on February 22<sup>nd</sup> and see ZBA Clerk, Kim McCummings for his ZBA materials.

**Approval of Minutes of 12/28/21:**

**Motion:** by Breckenridge to accept the minutes of 12/28/21. **Second:** by Thomas, **Vote:** 4-0-0 the minutes are approved.

Dickler gave an update on the petition warrant article submitted for Town Meeting.

**Motion to adjourn:** by Thomas **Second:** by Dickler **Vote:** 5-0-0

Meeting adjourned at 8:00 pm