

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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2021 MAY 28 A 100

ZBA 2021-38

Petition of FR Linden Square, Inc.
161-200 Linden Street

Pursuant to due notice, the Special Permit Granting Authority opened a Public Hearing on Thursday, May 6, 2021 at 7:30 p.m., via Zoom, and streamed and televised live by Wellesley Public Media, on the petition of FR Linden Square, Inc. (the “Petitioner”) requesting a Special Use Permit pursuant to the provisions of Section 11.A.13(1), Section 13, Section 14G.D.1 and Section 25 of the Zoning Bylaw for accessory use for outdoor dining at seven (7) designated locations associated with present or future dining establishments within the Linden Square shopping center located variously at 162 Linden Street (one location), 165 Linden Street (three locations), 185 Linden Street (one location) and 190 Linden Street (two locations), all as more particularly depicted in plans submitted with the Petitioner’s application materials (the “Petition”), which is a use not allowed by right in an Industrial or Business District, nor in the Linden Street Corridor Overlay District. The Authority continued the Public Hearing to Thursday, May 20, 2021 at 7:00 p.m., which Public Hearing was held via Zoom and streamed and televised live by Wellesley Public Media.

The Public Hearing before the Authority was held upon the request of the Petitioner, filed on February 24, 2021, for which due notice of the hearing was given by mailing and publication.

Present at the public hearing on May 20, 2021 were Michael Wallace, Esq. and Peter Tamm, Esq., representing the Petitioner, Mark Hebert, Vice President of Development for Federal Realty Investment Trust, Aksel Solberg of Harrison French and Associates in his capacity as Project Architect, and Robert Adams of Halvorson in his capacity as Landscape Architect.

A Board member asked what protects outdoor diners within the proposed outdoor dining area at Building 185. Mr. R. Adams said that all outdoor dining areas will be elevated above a raised curb at the same grade as the existing sidewalk and, at this location, surrounded by planted buffers. The planted containers will stay year-round. The Chairman then asked whether operations will be changed at the restaurants and where trash will be left. Mr. Wallace responded that operations will not be changed and tenants will be responsible for maintaining these areas in accordance with lease arrangements. A Board member also asked about seat counts. Mr. R. Adams responded that the seating depicted in the dimensioned outdoor dining areas approximates the seating capacity but is conceptual in nature.

The Chairman asked about the effects of the dining area on storm water and drainage at Building 185. Mr. R. Adams said that the planters are on raised platforms allowing for stormwater to sheet off the elevated dining area unimpeded to existing catch basins located on the north side of the south parcel.

A Board member asked whether trellises over outdoor dining areas will have rain cover. Mr. Solberg responded that the trellises are robust, but the tenant will be responsible for the choice and placement of any appropriate covering.

The Chairman raised the issue that at Building 162, there is currently no separation between the pedestrian sidewalk and the vehicle area. Mr. Hebert stated that the current tenant of Building 162, the Linden Store, preferred certain other property enhancements on the side of the building rather than to the existing outdoor dining area, which is to be maintained substantially in its current configuration. The Chairman stated that the Board must make findings about the safety of pedestrian traffic to authorize the accessory use. He then asked whether the proposed outdoor dining locations on the north parcel were previously permitted. Mr. Tamm stated that the Petitioner does not have evidence of formal permitting, and accordingly, the Petitioner felt it was appropriate to include these locations in the comprehensive special use permit. Mr. Tamm stated the Petitioner's willingness to accept as a permit condition providing protection of the seating area from adjoining vehicles through various means (e.g., bollards, raised curbing, landscape planters, etc.).

The Chairman asked how the two outdoor dining areas at Building 190, which are adjacent, will be separated. Mr. R. Adams responded that the Petitioner seeks to create flexibility of space between the two tenants based on the potential use of planter boxes. A Board member asked how the tables will be bussed at the Building 190 space currently leased by Starbucks without causing debris to spread across the Linden Square site. Mr. R. Adams responded that because this is an existing outdoor dining area, it will continue to be bussed and cleaned in the same manner as currently. Mr. Tamm stated that the Petitioner would accept a condition that all outdoor dining areas be regularly maintained with respect to trash.

The Chairman asked whether the door leading from the Building 190 space currently leased by The Cottage onto its proposed outdoor dining area is an emergency exit. Mr. Solberg responded that there are several egresses that serve as emergency exits, and that there are gaps in the stone wall surrounding the proposed outdoor dining area that would allow anyone exiting the interior of the space into the outdoor dining area to exit further onto the sidewalk.

A Board member stated that a 6-inch curb at Building 162, currently the Linden Store, is not intended to protect diners, and that the Petitioner will need to further address separation between pedestrian and vehicular areas. Mr. Tamm acknowledged the Petitioner's willingness to do so.

A Board member asked about improvements being made to Building 180 to provide outdoor space. Mr. Tamm clarified that there is no proposed outdoor dining for Building 180 and that it is not part of this petition. A Board member stated that the two main access drives for this project site are very heavily trafficked. He suggested that the outer edge of the curb at Building 180 provide pedestrian protection as a possible condition. Mr. Adams said that pedestrian protection measures were suggested by the Design Review Board as part of its review, and that the Petitioner incorporated this suggestion into its plans which now reflect a protective stone wall in the proposed location.

A Board member asked Tom Harrington, Esq., Town Counsel, how the Petition fits into the Development Agreement entered into by the Town and the Petitioner's predecessor-in-interest. Mr. Harrington said he did not have details of the agreement in front of him. Mr. Tamm stated that no changes are proposed to the Development Agreement, the Board does not have jurisdiction over the Development Agreement, and

that the Petition is squarely within the Board's jurisdiction. He stated that the Petitioner would accept a condition that this Petition does not modify the terms of the Development Agreement and the Petitioner will not change the Development Agreement absent approval of the Select Board and Town Meeting. Mr. Harrington clarified that the Development Agreement has been modified four times, and that he would provide the Board with copies of the amendments.

In the public comment portion of the hearing, John Wolfe, owner of The Cottage and The Tavern, dining establishments that will receive two of the proposed outdoor dining areas; spoke in favor of the Petition. He said that outdoor dining is popular, important for the dining establishments' financial viability, and that with respect to parking near The Tavern, there is no shortage of parking in that location.

David Himmelberger spoke in opposition to the Petition. He said that the Petition is overly broad, seeking to authorize modifications that go beyond the outdoor dining use, and that proposed hardscaping and building façade updates are material changes to the Project Plan in the Development Agreement, and thus require Select Board and Town Meeting approval. He also stated that the submitted plans contain inadequate information. The Chairman requested Mr. Harrington respond to Mr. Himmelberger's assertions relating to the Development Agreement, and Mr. Harrington said that the referenced plans attached to the Development Agreement as exhibits do not govern building facades. Mr. Tamm clarified further the Petition must comply with the Development Agreement and is not within the Board's jurisdiction. He also stated the Development Agreement fundamentally contemplates that immaterial changes may be made, including in the course of permitting, and the Petition proposes such an immaterial change. Mr. Harrington agreed that the Select Board rather than the Board is responsible for enforcement of the Development Agreement.

Todd Himstead, residing at Hilltop Road and serving as neighborhood contact for the Petitioner for streets to the east of the Linden Square site, provided certain neighborhood concerns with respect to the proposed use. These concerns are: (1) lighting of outdoor dining areas during evening hours; (2) pedestrian safety for pedestrians traversing the Linden Square site from east to west, and proper markings for pedestrians; and (3) potential for increased noise from outdoor dining areas during evening hours.

Statement of Facts

The Petitioner is requesting a Special Use Permit for accessory outdoor dining in seven (7) designated locations associated with present or future dining establishments within the Linden Square shopping center located variously at 162 Linden Street, 165 Linden Street, 185 Linden Street and 190 Linden Street, all as more particularly depicted in plans submitted with the Petitioner's application materials, which is a use not allowed by right in an Industrial or Business District, nor in the Linden Street Corridor Overlay District, but which is a use allowed by special permit in each of those districts.

Submittals from the Petitioner

Memorandum in Support of Petition regarding Signage and Accessory Outdoor Dining Special Use Permits Application for 161-200 Linden Street, Master Plan & Design Improvements, Existing Parking Plan, Proposed Parking Plan, Existing and Proposed Accessory Outdoor Dining, Pedestrian Circulation, Bldg 162 Linden Store, Bldg 190 Starbucks & Cottage, Bldg 185 Qdoba, Bldg 165 East Plaza, Bldg 165 Storefront Tavern, F/K/A Door #7, Bldg 165 West Plaza, dated 2/19/21, prepared by HFA & Halvorson, Tighe & Bond Studio, letter to Zoning Board of Appeals, dated 2/22/21, from Joseph M. Persechino, Vice

President & Jianhong Wang, Senior Engineer, Tighe & Bond, re: Traffic Statement Linden Square Shopping Center Outdoor Dining, Wellesley, Massachusetts, were submitted.

On January 11, 2021, the Design Review Board voted unanimously to approve the application, subject to recommendations.

On May 6, 2021, the Planning Board reviewed the petition and recommended approval of a Special Permit, subject to an exception that action be delayed on the dining area for Building 165 East Plaza.

On May 20, 2021, the Zoning Board of Appeals closed the Public Hearing, and on May 28, 2021 convened a public meeting.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the Public Hearing. Accessory use for outdoor dining that consists of seven (7) designated outdoor dining areas at Buildings 162 (one location), 165 (three locations), 185 (one location) and 190 (two locations) within the Linden Square shopping center, as more particularly depicted in the plans submitted with the application materials, is a use not allowed by right in a Business District, an Industrial District, or the Linden Street Corridor Overlay District, but may be authorized after determination by the Special Permit Granting Authority that the proposed use satisfies the Special Use Permit Standards set forth in Section 25.D of the bylaw.

It is the opinion of this Authority that accessory use for outdoor dining that consists of seven (7) designated outdoor dining areas within the Linden Square shopping center at Buildings 162, 165, 185 and 190, as more particularly depicted in the plans submitted with the application materials, satisfies the Special Use Permit Standards set forth in Section 25.D of the bylaw as follows: (i) the proposed use does not materially add to traffic congestion and does not create any new accident potential on the Linden Square site or surrounding area, as demonstrated by the Petitioner's submitted traffic memorandum; (ii) there are no new driveways in relation to the proposed use; (iii) vehicle queuing lanes will continue to have a width equal to or greater than nine feet, permanent protective measures will be installed to ensure that vehicles do not encroach onto pedestrian areas, and, as demonstrated by the Petitioner's submitted parking plan, site-wide parking will continue to exceed the 950 spaces required for the shopping center so as to ensure there is no vehicular interference with vehicle maneuvering or emergency vehicle access; (iv) together with the proposed use, the Petitioner will be adding trees and other landscaping that will enhance the natural features of the shopping center, and dining establishment operations (including sounds and lighting) will continue in a manner that prevents the disturbance of surrounding uses; (v) there will be continued capacity for and sufficiency of pedestrian circulation in areas adjacent to the proposed outdoor dining areas, as depicted on the Petitioner's submitted plans, and grade-separated curbing and other permanent protective measures will be installed to ensure pedestrian-vehicular separation; (vi) the proposed use supports existing and future dining establishments within the shopping center and is not injurious to the public health, safety, morals or welfare nor does it pose a risk of emissions, noise or vibrations that will be offensive or injurious thereto; and (vii) the Petitioner's submitted traffic memorandum shows that any increased trip generation related to the proposed use is minimal, and subject to the conditions herein with respect to noise and lighting, the proposed use does not otherwise impact

municipal infrastructure or adversely affect the character of the Linden Square site and the surrounding area.

Therefore, a Special Use Permit is granted, as voted unanimously by this Authority at the public meeting, for accessory use for outdoor dining that consists of seven (7) designated outdoor dining areas within the Linden Square shopping center at Buildings 162, 165, 185 and 190, as more particularly depicted in the plans submitted with the application materials, subject to the following conditions:

1. All seven (7) outdoor dining areas authorized by this Special Use Permit shall be separated from adjoining vehicular parking by permanent protective measures, which may include raised curbing, bollards, fencing, landscape planters and the like.
2. The Petitioner shall cause all outdoor dining areas not serviced by waitstaff to be regularly bussed and/or monitored and cleaned when in operation so as to prevent the occurrence of litter and debris in the project site.
3. Any outdoor audio systems shall be operated and controlled so as to prevent the disturbance of surrounding uses.
4. Lighting during evening hours shall be operated in a manner consistent with existing lighting plans for the Linden Square site, and otherwise in a manner so as to prevent disturbances to surrounding uses. Outside lighting for each of the seven (7) areas shall be turned off not later than one-half hour after closing of the restaurant which operates the outdoor dining area.
5. The outdoor dining areas authorized by this Special Use Permit shall only be used as such, and any alteration to such designated areas shall require the review and approval of the Board.

2021 MAY 28 A 10:01
SHERIFF'S OFFICE
DEPARTMENT OF POLICE
FRANKLIN COUNTY MAILED

ZBA 2021-38

Petition of FR Linden Square, Inc.
162, 165, 185 and 190 Linden Street

APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.

J. Randolph Becker (a.m.)
J. Randolph Becker, Chairman

Richard L. Seegel (a.m.)
Richard L. Seegel

Derek B. Redgate (a.m.)
Derek B. Redgate

2021 MAY 28 A 10:01

WELLESLEY
TOWN CLERK'S OFFICE
MAILED

ZBA 2021-38
Applicant FR Linden Square, Inc.
Address 161-200 Linden Street

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Cathryn Jane Kato
Town Clerk

cc: Planning Board
Inspector of Buildings
lrm



May 28, 2021

VIA EMAIL DELIVERY ONLY

J. Randolph Becker, Chairman
Wellesley Zoning Board of Appeals
525 Washington Street
Wellesley, MA 02482

Re: ZBA 2021-37: Alternate Design Proposal for Standing Signs ID1-A and ID1-B – Linden Square Shopping Center

Dear Chairman Becker:

In response to helpful feedback from the Board during the May 20, 2021 public hearing on ZBA matter 2021-37, we are pleased to submit for the Board's consideration the enclosed revised sign plan that could, if the Board determines it to be appropriate, replace the two proposed signs identified in the signage package as ID1-A and ID1-B. We carefully considered the Board's commentary regarding the size of these signs and accordingly, have worked with our signage graphic designer to refine the design of these two signs to address the identified concerns.

As a result, you will note that the revised plan proposed for signs ID1-A and ID1-B effectively reduces both the height and overall square footage of the proposed signs. The Board may find this change to result in a beneficial improvement, in that the total area of each of these two proposed signs is now *less* than the currently existing identification sign that will need to be relocated from the stone wall directly adjacent to the Starbucks and Cottage outdoor patio area. We believe these refinements only further the Design Review Board's previous recommendation of the proposed signage package, in providing updated comprehensive signage that is of appropriate design, scale, limited quantity and proportionality in the context of the Linden Square shopping center on a large, 18-acre site, while still providing necessary site identity and vehicular and pedestrian wayfinding along principal site driveways.

We have also taken into account another suggestion made during the public hearing, that we consider a sign "hierarchy" whereby tenants' wayfinding signage could be implemented on additional standing signs "inboard" to the shopping center along the access drives. After careful consideration, we have concluded that such additional internal wayfinding signage may be useful but will require further review pending the study of potential future design and operational refinements to optimize vehicular movements throughout the shopping center. Any such refinements would not affect the proposed signage subject to this petition.

We trust these refinements to these two signs are responsive to the Board's concerns and we look forward to your further consideration of our petition at the continued public hearing on June 1st. Please do not hesitate to reach out to me with any further questions in the meantime. Thank you.

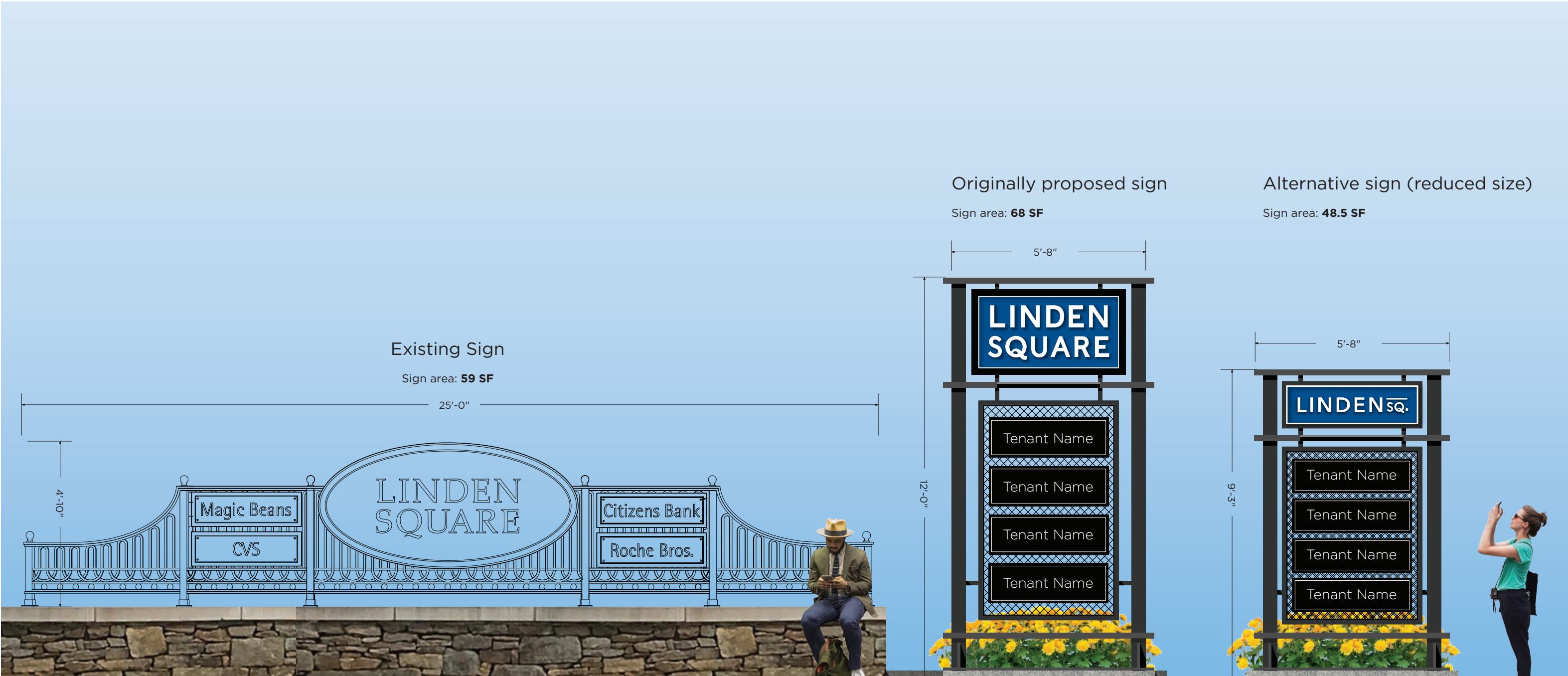
Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Hebert".

Mark Hebert
Vice President, Development Northeast

cc: Peter L. Tamm, Esq.

ID1 SIGN SIZE REDUCTION



14

ID1 ORIGINALLY PROPOSED SIGN



15

ID1 ALTERNATIVE SIGN (REDUCED SIZE)



16