

TOWN OF DEERFIELD
ZONING BOARD OF APPEALS

Minutes of September 17, 1998

Members present: R. Bohonowicz, Chair; Fran Olszewski; Grace Friary; Leonard Grybko; R. Sadoski; S. Barrett; Town Counsel, Bud Pepyne

Bohonowicz asked Olszewski to chair for purpose of hearing request of extension of variance for Yankee Candle Co. as Bohonowicz works at Yankee Candle. Judy Kundl asked if an extension could be granted of variance for pavement of parking lot as the variance will expire October 21, 1998. She says that because of new ownership some projects are being delayed. Grybko made a motion to grant extension of variance for six months for paving of parking lot. Grace seconded. Motion was approved unanimously 4 – 0.

1st Hearing: Application of Leonard & Marjorie Bedard for a special permit. Mr. Asmann stated that the current Use is nonconforming and is not specifically addressed in the Use Regulation Schedule, 2230. He stated that it comes closest to that of *Retail sales or rental with display outdoors* and *Motor vehicle repair shop*, both of which require a special permit in the C-II zoning district. Mr. Asmann suggested that it was easier to handle under *Nonconforming Uses* section 2252(a.) of the Deerfield Zoning By-Laws; requiring that change or substantial extension of use shall not be more detrimental than existing nonconforming use. Mr. Bedard stated that they propose to construct a 32 x 80-foot addition to the Pioneer Valley Saab-Volvo automobile service building for prep of new cars and storage area. A letter from Doris Bilodeau, an abutter, was read in full by Friary. This letter is attached as Item A. She wanted the board to look at safety issues regarding car carriers that have unloaded on Routes 5 & 10 and in her parking lot and the testing of cars in her lot. Mr. Bedard stated that he has obtained a curb cut permit from the State for an entrance that the car carriers could use to unload on his lot. Mr. Bedard said that he went before the Planning Board and they approved the plan. Mr. Asmann stated that there were three stipulations: 1. Receive approval from the Conservation Commission; 2. Setback requirements are met from rear of property; 3. Approval from fire department that this building addition does not hamper access to building. Mr. Pepyne spoke with Mr. Cuddeback, Chair of the Planning Board and Pepyne concurred with these stipulations. There were no public comments in favor of above. Mr. Bilodeau opposed the above stating he believes that there are still safety issues that need to be addressed. Barrett questioned if any accidents had happened directly related to Pioneer Valley Saab Volvo. Mr. Bilodeau stated that they had crashed one car on a test drive. Mr. Bohonowicz closed the hearing for discussion by board members. Friary stated that she would like to see the paperwork for the curb cut, and that the plans for the addition be more precise, and that concerns with Conservation Commission and Fire Department be

addressed. Olszewski made motion to grant a special permit under section 2252 of Zoning Bylaws for an addition to Pioneer Valley Saab-Volvo building. Grybko seconded motion. Bohonowicz made motion to amend the motion to include following stipulations;

1. Mr. Bedard exercise curb cut permit and that grade of curb cut allow for car carriers to enter and unload.
2. Mr. Bedard receives approval from Conservation Commission for addition.
3. Mr. Bedard obtain letter from Fire Department stating that addition to building will not hamper access of fire trucks to building.
4. That the addition not be started until Mr. Asmann, Building Commissioner, has seen a stamped-engineered plan before he approves building permit.

Friary seconded motion to amend. Vote for motion to amend was unanimous, 5-0. Motion to grant special permit as amended with conditions was unanimous, 5-0.

2nd Hearing; Application of C & C Realty Trust for a Special Permit. Mr. Asmann stated that the building at 1 Sugarloaf St., Deerfield Assessor's Map 19 Lot 84 is a nonconforming structure due to insufficient setbacks. He stated that a Special Permit may be granted for a Change of Use in a nonconforming structure under Section 2253 of the Deerfield Zoning By-Laws requiring that the change of use shall not be substantially more detrimental than the existing nonconforming structure. Sarah Campbell, an engineer employed by Coler & Colantonio, presented a plan for alterations to change the use of the 2nd floor from residential use to business use. The Planning Board approved the plan on August 3rd, 1998. There were no public comments regarding above. Hearing closed for discussion by Board members. Sadoski made a motion to grant a Special Permit under Section 2253 (b.), altered to provide for a substantially different purpose. Friary seconded the motion. Motion to grant the Special Permit was unanimous, 5-0.

3rd Hearing; Application of Peter R. LaBarbera and Roberta E. LaBarbera by their Attorney Michael Pill, Esq. to reverse the zoning opinion decision of the Deerfield Building Commissioner, Richard Asmann, relating to a lot on Deerfield Assessor's Map 13 Lot 78 and owned by Henry and Cindy Dzieciolowski located on Ridge Road. Mr. Pill stated that he wrote a 19 page memo explaining why the Building Commissioner's decision should be reversed. He states that Ridge Road is neither a public way or a way shown on a definitive subdivision plan approved by the Planning Board. He states that the Zoning By-Laws sets up a simple workable test which basically says that if a street falls into one of two categories; to be a way currently maintained by the town, county, or state that it must be a public way or a way shown on a definitive subdivision plan that has been recorded. Mr. Pepyne received a copy of Mr. Dzieciolowski's attorney (Jack Curtiss) reply to Mr. Pill. Mr. Pill stated he needed time to read the reply. Mr. Asmann stated that he was asked for a zoning opinion determination from Mr. Dzieciolowski regarding whether lot 78 on Map 13 was a building lot. Mr. Asmann determined that the lot was entitled to a grandfather status. He stated that the lot does not meet current dimension requirements but did meet

the requirements at the time it was created and has been held in separate ownership. Since then, Zoning changes have made the dimensions nonconforming. Mr. Asmann referred to his letter stating that the Town of Deerfield does not consider Ridge Road a public way or a publicly maintained way. However, Ridge Road was a way in existence when the Subdivision Control Law became effective in Deerfield in 1984. It is a paved way serviced by a public water supply and accessible by police and fire vehicles and the public and maintained privately by people who live on that road. He has spoken to the Fire Dept. and Police Chief and they agreed that Ridge Road is just as accessible as Stage Road which is a public way. Mr. Asmann states that it is his interpretation, as the Zoning Enforcement Officer, that this definition of Frontage in the new By-Laws was not intended by the Planning Board or the creators of the By-Laws to be applied to private ways that currently exist in town and have been developed and are accessible by emergency and regular vehicles; that this would suddenly leave all the lots on Ridge Road, Sunrise and other similarly developed private ways with no frontage. That would make every house on these lots nonconforming structures. Mr. Asmann talked to Ken Cuddeback, Chair of Planning Board and he said it was not the intent of the Planning Board to make this definition such that these private ways would suddenly not have frontage but to protect old farm roads in town from being developed. Mr. Pepyne stated that the new By-law changes the town is working with have not yet been approved by the Attorney General. He feels that the Planning Board should be asked what the intention of the new By-law is. He also stated that money was appropriated by the Town at Town Meeting to do a study of all roads in Deerfield. He recommends the Zoning Board uphold Mr. Asmann's decision. Jack Curtiss spoke on Mark's behalf. He stated he looked at the lot. The road is paved and has town water. Mr. Curtiss referred to a 1992 opinion in another town dealing with a frontage issue. Mr. Curtiss feels this is a question Town Counsel should resolve as a legal issue. He thinks that Mr. Asmann is correct in his interpretation of the By-law. Mr. LaBarbera stated that he understood the money allocated for town roads was to look at discontinuance of roads after talking with the Town Administrator. He states that there are no other roads like Ridge Road in town. Hearing closed for discussion by board members. Grybko made a motion to deny the appeal and uphold the decision of the Building Commissioner. Sadoski seconded the motion. Motion to deny the appeal was unanimous, 5-0. Motion made and seconded to close meeting. Vote unanimous, 5-0.

Respectfully submitted by,

Julie L. Gray
Clerk-typist