

**BOARD OF ZONING APPEALS
TUESDAY MARCH 23, 2010**

These minutes are not verbatim

MEMBERS PRESENT: Fred Jay Meyer, (Chair), Dennis Keeler, Jonathan Berry (Associate), Willie Audet, Stan Given, Don Russell (Associate)

MEMEBERS Absent: Jim Thibodeau

Opens 6.32pm.

Mr. Meyer asked if someone was here to represent the Nanos' application and no one was. Mr. Farris said Julie Motherwell may have misunderstood him about being here this evening and that if there are no questions could the board continue with the review without the applicant. Mr. Meyer opens comment to the public, public comment closed.

Administrative item:

Cheryl Nanos- Is requesting Conditional Use approval under Section 6.2 for a porch at 42 Lowell Farm Rd. Parcel HL7-008, zoned "RBm"

Mr. Berry asked that the addition isn't closer to set back lines?

Mr. Farris answers correct. The building was lifted and shoreland zoning rules allow the building to be elevated 3' and this is what they did in the same footprint.

Mr. Berry asked how was the porch built so the enlargement or extension is not any closer to the set back line?

Mr. Farris answered the roof overhang that was on the building wasn't closer than 5'. They extended to the drip line of the old building.

Mr. Given asked about the drip line is it marked on the photo?

Mr. Farris answered it is misleading and 1' or 2' above the other roof covering extended 6' from the building this established the line.

Mr. Given asked if the number of bedrooms changed?

Mr. Farris answered no.

Mr. Meyer asked what was approved the last time?

Mr. Farris answered the elevation for the foundation and expansion of the front corner was squared off.

Mr. Meyer asked if the screened porch was changed?

Mr. Farris answered no it was part of the original building.

Mr. Meyer stated we have options to table or approve.

Mr. Given motions to approve the application.

Mr. Berry seconds the motion.

All in favor. Vote is unanimous.

1. Andrew Rzycki is requesting Conditional Use approval under Section 8.3 for a retail store and café at 333 Gray Rd. Parcel R06-042B, zoned "FF".

Mr. Andrew Rzycki presents plans for café, country store. He wants to sell imported food and tea.

Mr. Dave Pontius owns the property. He describes the application, history, surroundings and uses of the property. The property was Wasson Grove. Mr. Rzycki will be renting from him. There will be no changes to the external part of the building. It will be compatible to the surrounding buildings. Traffic will be less than the prior use.

Mr. Meyer opens comment to the public. Public comment closed.

Mr. Russell asked about parking.

Mr. Pontius answered there is ample parking, spaces in front, and additional spaces to address needs.

Mr. Given asked about the status of septic.

Mr. Pontius said there was a septic form provided to the town from the state.

Mr. Given asked if the septic will be reviewed for this application?

Mr. Farris answered this septic was designed for this prior use, a restaurant but should be inspected.

Mr. Given asked when the building permit is reviewed is the septic reviewed?

Mr. Farris answers no, but it could be a condition of approval.

Mr. Audet asked what are we calling it as a use?

Mr. Farris answers it is a legally existing nonconforming use. The board has the authority under 6.4 if the proposed use fits the criteria of the other uses; retail store or restaurant or other prior uses and they are similar. It is a judgment call and the board has the authority to make this determination.

Mr. Berry states we can take all prior nonconforming uses and morph them together and decide whether this is an improvement on one or more of the prior uses?

Mr. Farris answered yes. The board could approve this with conditions if the store was abandoned and it was made a full restaurant they would have to come back to the board.

Mr. Berry states the applicant addresses sandwiches for now.

Mr. Meyer and Mr. Pontius review the history of the property and uses.

Mr. Keeler arrived.

Mr. Meyer asked Mr. Farris if the past use was retail and service and Mr. Farris answers yes.

Mr. Meyer asked the proposed use would fall into retail and service?

Mr. Farris answered yes and said it should be part of the conditions of approval that if they expand the cooling facilities they come back to the board for approval.

Mr. Meyer asked that the change of use from Watsons Grove to the grooming salon, the application for the change of use was granted?

Mr. Farris answered yes.

Mr. Given asked where the breaking point would be if someone discovered it to be operating as a full food establishment.

Mr. Farris answered they would need a food service license from the state and a food service license from the town. In order to do this they would need different cooking equipment. This is where the difference is from convenient store to a full restaurant.

Mr. Russell asked how would this be different from the Town Landing market?

Mr. Farris answered not much different except Town Landing doesn't serve hot sandwiches.

Mr. Berry expresses concerns about the grandfathering and can it be cured by addressing it under 8.7 e to review the septic or certificate should be obtained as conditions of approval. Then under 8.7.c & g if ovens were brought in they would be addressed for fire issues and would the building itself be appropriate for this use.

Mr. Audet would like to see the decision for approval in 1985. He states in 2004 the Board said you couldn't sell NASCAR memorabilia. As a convenient store you are still buying a product.

Mr. Farris just found in 1975 Marcel Morin was granted an exception to expand the restaurant.

Mr. Berry asked why the Board denied the request in 2004 for the additional sale of candles and NASCAR memorabilia.

Mr. Farris answered a certain neighbor nearby objected and the board accepted that.

Mr. Berry asked if the same neighbor was still around?

Mr. Farris answered yes and they came in and reviewed this application and they are not here tonight.

Mr. Pontius explained the neighbor that objected thought we were going to have go-carts, the same as Scarborough.

Mr. Given states it is consistent with past uses and feels comfortable with the proposed use.

Mr. Russell is in favor of it.

Mr. Meyer states it is similar as the past uses and the continuation of this use the restaurant, is not grandfathered at all.

Mr. Audet asked if Planning had reviewed the site and there is no curb cut.

Mr. Farris answered no; Planning agreed with him that stripping the parking lot wouldn't rise to the level of requiring site plan approval. Relocating the sign or changing it, expand the building or parking would need Planning review but not striping or adding curbing.

Mr. Audet asked what the operating hours would be?

Mr. Rzycki answered 7 to 7.

Mr. Audet said this is concern because of traffic in the morning and evening. It is 300 ft of open curb. There is no curb there at all. There are a lot of tractor trailers on this road.

Mr. Meyer asked Mr. Farris what happens if traffic becomes a problem?

Mr. Farris states he has no answer and said he'd hope the police would advise us if there is a lot of accidents. Or make it a condition of approval; they would have to come back to the Board.

Mr. Audet states he thinks more thought is needed about entrance and exits.

Mr. Given states site distance is good but it doesn't solve the problem about someone going in at a sharp angle and someone going out.

Mr. Audet asked if someone looked at the lighting?

Mr. Berry states the property owner has said this property has been used in commerce for sometime.

Mr. Farris has cleared it with planning and they are not concerned.

Mr. Berry feels it should not be their concern giving the testimony they received from the applicant.

Mr. Farris states the requirements in the ordinance. Planning Board review is not needed without making significant changes to the site. If they were to anything other than place plant pots to define the entrance & exists. To cut pavement or put in an island then you need site plan approval at this level. It doesn't mean the Planning Dept. didn't have concerns with this site.

Mr. Given said years ago when it was Wasson Grove it was seasonal and there wasn't as much traffic and it was slower. Part of the conditions of approval should be that he has plans for exit and egress.

Mr. Audet would like a more detailed plan for parking. It's a lot of distance to have wide open.

Mr. Meyer states we could put a condition on it now or come in with a plan showing us.

Mr. Pontius would like to move forward.

Mr. Given motions to approve the application with conditions with satisfactory approval of the septic system for the intended use. They would need to re-apply for approval if there is a change in use to a full food service establishment.

A traffic study is obtained for exit and egress submitted by a traffic engineer or someone qualified to do this with sufficient detail for approval by the Code Enforcement office staff.

Mr. Russell seconded the motion.

Mr. Audet states the plans for parking layout and egress & exit details.

Mr. Given agrees.

Mr. Russell seconds this amendment.

All in Favor. Vote is unanimous.

2. **Tidesmart Realty, LLC.** Is requesting Conditional Use approval under Section 8.3 for warehousing and manufacturing at 380 US RT1, Parcel U62-003-001 &2, zoned "BP".

Mr. Stephen Moore represents Tidesmart Realty is presenting the plans. He is with Moore & Sheridan Architects and they are the design team for the project, along with Tom Greer. Reviews plans for the addition where Mr. Woods can put his light manufacturing and warehousing for his two businesses. Mr. Woods wants to consolidate his office. He notes the closest house is 300' away. He has submitted existing conditions that were approved by the planning board.

There is a tree buffer between BP and the Residential. They want to add 17 additional parking spaces. The site has public water and sewer. They would like approval to build out the addition to 10860'. The 2200' addition and the 8660' basic building are in the application.

Mr. Meyer opens and closes public comment.

Mr. Russell wants to know what light manufacturing means.

Mr. Moore answers when the material comes in, example 5000 tubes of toothpaste. Mr. Woods company breaks them apart and repackages them with other products and ship them out.

Mr. Russell asked that it is mainly packaging?

Mr. Moore answers yes.

Mr. Given said the application requests only 8660'.

Mr. Moore states the application says 8660' then refers it to the cover letter spells it out.

Mr. Given asked Mr. Farris if this is sufficient to cover the application?

Mr. Farris answered yes, he thinks it is.

Mr. Given asked if there were other materials, anything hazardous?

Mr. Moore answered nothing.

Mr. Given asked how many employees once it is built?

Mr. Steve Woods answered approximately 25 to 30 employees 7 to 9 for the new business. Truck traffic will be non-existent. Maybe a freight truck now and then.

Mr. Given questioned the aerial view and the 3 parcels why it is different from what is shown?

Mr. Farris answered the aerial photo is from 2003 or 2004.

Mr. Keeler asked what the structure is in the corner?

Mr. Moore answer it is a bungalow and it is been there with the original parcel owned by Peter Kennedy. It has been both office and residential use.

Mr. Woods said it is used as residential and when he bought it came with a tenant.

Mr. Keeler asked if there was machinery.

Mr. Woods said only a manual fork lift.

Mr. Keeler asked what are height differences?

Mr. Moore reviews the diagram. The residential area sits above the site 24' to 30'.

Mr. Keeler asked what is the height of the building?

Mr. Moore answered 24'.

Mr. Keeler asked if there were traffic issues?

Mr. Moore answered there is a full traffic study done by Pinkham & Greer.

Mr. Keeler asked about storm water?

Mr. Moore said this was addressed and basins were in place. Along with a 40' buffer along Rt. 1.

Mr. Meyer asked where is the loading bay?

Mr. Moore reviewed the plans with Mr. Meyer and what kind of bays were there.

Mr. Given asked how will they handle waste and would they have a dumpster with a residential area behind them. Dumpsters make a lot of noise.

Mr. Moore answered right now they do not have plans for a dumpster.

Mr. Given asked what you will use?

Mr. Moore answered one for trash and one for recyclables.

Mr. Wood said it would be waste management with heavy duty plastic containers. The ledge is behind it with natural buffer of stone and wooded area.

Mr. Given states he asked this because of the noise and beeping these trucks make at early hours in the morning.

Mr. Woods said there would be normal working hours 8 to 6.

Mr. Audet motions to approve the application.

Mr. Keeler seconds the motion and adds with light manufacturing.

Mr. Audet amends this with adding it would be light manufacturing.

Mr. Keeler seconds the motion. The vote is unanimous.

3. Pam Wellin- Is appealing the decision of the CEO for a home business at 65 Waites Landing, Parcel U5-020, zoned "RC".

Ms. Pam Wellin referenced her March 4th letter she included and presents her application on making cookies. What she does is not a public business. She has no employees. No one comes to her house. There are no signs and she doesn't advertise at a public location. She bakes cookies that are gluten free. It is a part time basis. It is a test kitchen for people requesting certain recipes to be bake gluten free. She is also working on a cookbook. Ms. Wellin supports

the Juvenile Diabetes Foundation. Ms. Wellin points out what is permissible in the neighborhood is operating a independent school, a church, and a country club. Ms. Wellin said she wasn't trying to hide anything.

Mr. Meyer opens comment to the public.

Mr. John Graustien, 57 Waites Landing Rd. He expresses concerns. He is opposed to this a business use. If it is a permitted use, he requests that if this application is approved it would be limited to Ms. Wellin as long as she owns the house and it not grandfather for future owners.

Mr. Meyer asked if he has seen any traffic or deliveries?

Mr. Graustien answered no not with Ms. Wellin. But he is concerned if the use stays, future owners could use this.

Ms. Kathleen Joyce, 45 Winn Rd. She is here because she has tried to get a business in her home for many years. She said she is zoned for business. She states she wanted to do a catering business and was told she needed a completely separate kitchen. Financially this isn't possible for her. She doesn't feel it is appropriate for Ms. Wellin to operate her business when she is not following the rules.

Mr. Meyer states there is no application for a permit.

Ms. Joyce states Ms. Wellin has been doing this for 3 years without a permit.

Ms. Wellin references the fact that it took a postcard to in the mail to make Mr. Graustien aware of what she has been doing. This should verify the fact there is no impact to the neighborhood.

Mr. Russell states a home business is allowed in a lot of areas in Falmouth. He is impressed with the letters from all the neighbors in favor of what you are doing.

Ms. Wellin states her neighbors appreciate the idea behind what she is doing.

Mr. Given asked how many cookies does Ms. Wellin produce in a week? He would like to get a scale of the business.

Ms. Wellin answered about 200 a week. Summer month she is away and there is no profit. She pays her accountant and insurance.

Mr. Farris states he learned about the business from a phone call, then the newspaper article. Home occupation and businesses are not allowed in the RC district. The church, country club and school pre-existed the zoning ordinance in 1973. The reason for this change was residential individuals didn't want commercial vehicles parked in the driveways. Home based businesses are not allowed. He didn't think they took in account attorneys and accountants working from their home. Because home businesses are not allowed is why he sent Ms. Wellin a letter.

Mr. Berry states home occupations are not permitted as a conditional use. There is a specific provision in the code that permits some business as a matter of right so long as they are incidental to the residential use of the property and meet a certain criteria. The right to conduct this business is a matter of right.

Mr. Farris states he didn't disagree other than home occupations aren't a specific conditional use in this area.

Mr. Berry stated if Ms. Wellin submitted a conditional use application we'd be in a different line. There may be a lot of uses incidental to ones in home and those are outside of a conditional use application.

Mr. Farris answered yes.

Mr. Audet asked how Mr. Farris found out about the home occupation.

Mr. Farris answered he received a phone call about the article and in the employees lunch room people were talking about it.

Home occupations are allowed in the RC district.

Mr. Audet states as a matter of right, is this different than someone who knits and sells mittens during the year or someone who tie flies and sells them. It's a business part time in nature.

Mr. Meyer asked what licenses are required?

Mr. Farris answered the towns victualer license doesn't distinguish between the types of food businesses.

Mr. Audet reads 5.21 these activities are permitted by matter of right. There are no displays there and no deliveries. It's clear and fits in this mold.

Mr. Russell agrees with Mr. Audet and asked Mr. Farris if the use would go with the house the business wouldn't go with this house?

Mr. Farris states a conditional use would go with the property. You have authority to limit the conditional use.

Mr. Berry states this is not a conditional use application. Our review under 5.21, we are not issuing permits. Anyone could do this in their home.

Mr. Meyer agrees this doesn't rise to the level of conditional use.

Mr. Keeler asked Mr. Farris that he wasn't notified about the business other than the news article?

Mr. Farris answered correct, the news article.

Mr. Keeler asked where did the prohibition of no business in RC come from?

Mr. Farris reads and reviews the ordinances with Mr. Keeler.

Mr. Keeler asked if the criteria is met under 5.21a it would be a matter of right. Under "b" the zones are listed.

Mr. Farris agrees.

Mr. Russell reads the 7 criteria.

Mr. Given agrees with Mr. Keeler regarding 5.21a and he has a hard time considering this a home occupation.

Mr. Keeler states we are to grant the appeal or uphold the decision.

Mr. Berry asked under 5.21a, if the applicant meets all 7 but is full time in nature they can still get a permit.

Mr. Keeler motions to grant the appeal and overturn the decision of CEO pursuant to his letter of Feb 21, 2010.

Mr. Audet seconds the motion.

Mr. Keeler is persuaded under 5.21a is a matter of right under the ordinance and vote on the 7 criteria.

Mr. Given states we are making the findings under 5.21a.

Mr. Meyer has made Mr. Russell a voting member.

Mr. Berry agrees to include the reference to 5.21a.

Mr. Meyer states conditional uses listed are under 5.21b, 5.21a are different in nature and 5.21a is permitted as a matter of right.

Mr. Keeler clarifies the motion to include 5.21a.

Mr. Russell seconds the motion.

All in favor. The vote is unanimous.

Finding of facts have been satisfied under 5.21a, 1-7.

Mr. Keeler motions to approve the findings.

Mr. Russell seconds the motion.

Meeting adjourned.