

**Zoning Board of Appeals  
Meeting Minutes  
May 25, 2010**

**Members in attendance:** Richard Rand, Chairman; Mark Rutan, Clerk; Gerry Benson; Chan Byun; Richard Kane; Sandra Landau, Alternate

**Others in attendance:** Kathy Joubert, Town Planner; Bill Farnsworth, Building Inspector; Fred Litchfield, Town Engineer; Elaine Rowe, Board Secretary; Tim Shay; Sean Durkin; Rich Mainville, Connorstone Engineering; John Grenier, J.M. Grenier Associates; Michelle Gillespie; Nicole LeBlanc; Larry Cotter; Jackie Cotter; Eric Marcus; Glen Barney; Attorney Marshall Gould; Kevin Giblin; Paul Cincotta; Remi Doiron

**Chairman Rand called the meeting to order at 7:00pm.**

**Public hearing to consider the petition of 168 East Main Street Realty Trust, Tim Shay, Trustee, for a Variance/Special Permits to allow a mixed-use building with retail use on the first floor and residential use (two 2-bedroom units) on the second floor, on the property located at 168 East Main Street**

Rich Mainville of Connorstone Engineering explained that there is an existing 2-bedroom home with garage, pavement, and septic system located on this site at the corner of Bartlett Street and East Main Street. He noted that the site is located within the Business East District, within a groundwater 3 overlay district. Mr. Mainville stated that the applicant is planning to remove the existing garage, building and pavement to construct a 2-story structure with retail on the first floor and two 2-bedroom units on the second floor, with each floor to be approximately 1900 square feet. Mr. Mainville also stated that the drainage on the site will be handled using underground structures.

Mr. Mainville explained that the site's location in the groundwater protection district requires a special permit to allow for 220 gallons per day per 10,000 sq. ft. He stated that a special permit is also required for the garage to be located within the side yard setbacks. In addition, a variance is required for the two residential units. Mr. Mainville noted that there is an anomaly in the bylaw that allows for one residential unit by right and multiple units (3 or more) by special permit but there are no allowances for two residential units.

Chairman Rand inquired about sewage. Mr. Mainville noted that the existing septic system will be used, and noted that it is sized appropriately to accommodate the new building. He also voiced his understanding that the Groundwater Advisory Committee

(GAC) intends to provide a comment letter indicating their approval for the increase in sewer discharge.

Chairman Rand asked if the project has been to the Design Review Committee, and invited comments from Michelle Gillespie. Ms. Gillespie noted that the application did not contain the required lighting plan, landscaping plan, and signage plan and the DRC has asked Mr. Shay to work with Ms. Joubert to address these items.

Ms. Gillespie noted that the new zoning bylaw calls for buildings to be located near the street with parking in the rear, but that DRC was comfortable with the plan as submitted for this project. She also commented that this is the first mixed-use building to come before the town since the revised bylaw took effect.

Mr. Benson asked if the applicant has met with Ms. Joubert yet. Ms. Joubert indicated that he has not. Mr. Mainville stated that the lighting is shown on the plan being presented this evening, but that the landscaping plan has not yet been addressed. He also voiced his understanding that the Fire Chief has requested that the location of the water be changed so that it is in closer proximity to the fire hydrant across the street.

Ms. Joubert requested that the hearing be continued to allow the applicant and town staff to resolve the outstanding issues prior to the board rendering a decision.

Mr. Farnsworth suggested that the applicant be sensitive to the neighbors when defining the lighting plan for the project. Chairman Rand asked if it is possible to move the garage away from the lot line in order to meet the setback. Mr. Shay indicated that the garage needs to be 10 feet from the septic system. Chairman Rand asked the purpose for the garage. Mr. Shay commented that it would be beneficial for securing tenants for the residential units.

Mr. Litchfield stated that the applicant had previously been to the Groundwater Advisory Committee (GAC) and the GAC did vote to recommend approval, but he has not yet completed the review letter.

**Larry Cotter, 164 East Main**, asked what the garage will be used for and commented that it seems to be a considerable distance from the house. Mr. Mainville reiterated that the garage will be used for the residential tenants.

Mr. Byun asked how many total parking spaces will be provided for the residential units. Mr. Mainville indicated that there will be four spaces along the side of the building in addition to the garage. Mr. Byun asked why the garage cannot be located closer to the

parking area. Mr. Mainville explained that the bylaw attempts to keep as much landscaping between the building and the street as possible.

Mr. Cotter noted that this section of East Main Street is heavily travelled, with most traffic turning onto Bartlett Street, and asked if the location of the building will interfere with sight distance for oncoming traffic. Mr. Mainville noted that the building setback should be sufficient so that this will not be an issue. Mr. Cotter voiced concerns about the potential for traffic accidents.

**Jacqueline Cotter, 164 East Main Street**, asked about the flow of traffic into and exiting the site. Mr. Mainville stated that traffic will enter and exit via East Main Street. Mrs. Cotter voiced concern about lighting from this site negatively impacting her property. Mr. Mainville stated that the intent will be for the beams to be directed down in order to minimize impact to neighboring parcels.

**Glen Barney, 6 Torrey Lane**, asked if there is any danger with traffic driving over the septic system. Mr. Shay explained that there is not. He also noted that he had previously obtained approval to construct a 6,000 square foot building on this site, and the septic system was designed for that plan. Unfortunately, those plans were stalled because of the economic downturn that occurred following the events of September 11, 2001.

Mr. Barney commented about the horrific traffic conditions at this location, and suggested that there will be more serious issues if this is to be heavily used retail space. He also voiced concerns about the number of cars left overnight if the town allows for two residential units.

Mr. Barney asked what type of development is allowed on the site. Ms. Joubert reiterated that the applicant is allowed to construct one residential unit by right, and three or more by special permit. She reiterated that the bylaw makes no allowance for two residential units, so the applicant is required to get a variance.

**Nicole Leblanc, 167 East Main Street**, asked the distance between the roadway and the front of the building. She also asked if the applicant will be extending the sidewalks along East Main Street. Mr. Mainville stated that the building is 30 feet from the sidewalk.

Ms. Gillespie suggested that two residential units will not negatively impact the neighborhood. She also reiterated the importance of considering the impact to the neighbors when designing the lighting plan.

Ms. LeBlanc asked if there will be a marquis type sign installed for the business. Mr. Shay commented that he has not yet given any thought to the signage. Mr. Durkin noted that the signage will be addressed as part of the DRC process.

Mr. Farnsworth clarified that the application contains the following four requests:

1. A variance for the 2<sup>nd</sup> residential unit (use) upstairs
2. A special permit to locate the garage closer to the property line
3. A special permit due to the parcel's location in a groundwater 3 area
4. Special permit/site plan approval

Mr. Shay agreed to work with Ms. Joubert to address the remaining issues for the Design Review Committee. Ms. Gillespie stated that it is not necessary for the applicant to appear before the DRC again, as long as he can work out the issues to Ms. Joubert's satisfaction.

Richard Kane made a motion to continue the hearing to June 22, 2010 at 7:00p.m. to allow the Town Planner the opportunity to resolve the outstanding issues with the Design Review Committee and address the issues raised by the Fire Chief. Mark Rutan seconded, vote unanimous.

**Public hearing to consider the petition of 240 Turnpike Inc. for a Variance/Special Permit to allow construction of a 5,000 square-foot office and accessory automobile service facility to facilitate expanded used-vehicle sales on the property located at 1C Belmont Street**

John Grenier discussed the applicant's proposal to redevelop the site for use as a car dealership with an accessory service area to service his own vehicles. Mr. Grenier explained that the applicant is looking to relocate his late-model used car business from the eastbound side of Route 9 near Westmeadow Plaza to this location as it provides good street frontage and the opportunity for more vehicles. He also stated that they intend to work within the same footprint as is already developed on the site.

Mr. Grenier explained that the proposal is to construct a 5,000 square foot building, with the base floor to be used as the sales floor and showroom, with an access drive around the back to the service area in the basement. Mr. Grenier reiterated that the service area will be used for servicing the businesses vehicles only.

Mr. Kane asked about the extent of the service to be done. Mr. Grenier stated that it will be minor repairs and system check-ups only, and that major work will be contracted out.

Mr. Grenier explained that the project has been presented to the Conservation Commission and the Massachusetts DOT, and both have provided comments. He noted that they have not yet been to the Design Review Committee because his client has not yet decided about the design for the building.

Mr. Grenier stated that the project will meet all of the requirements of the stormwater regulations.

Ms. Landau questioned a reference to a pre-existing nonconforming use in the application. Ms. Joubert explained that “second-hand” or “previously owned” car lots are no longer allowed under the new zoning bylaw, and the applicant does have a license for selling 19 cars on this parcel but simply does not have a building, so it is the building use that is before the board. She noted that the issue of the license for the sale of vehicles will be addressed by the Board of Selectmen, and voiced her understanding that the applicant is seeking approval for 165 cars.

Mr. Kane made a motion to continue the hearing to June 22 at 7:00PM to allow the applicant the opportunity to appear before the Design Review Committee. Mr. Rutan seconded, vote unanimous.

**Public hearing to consider the petition of Leslie S. Carey, Trustee of Loop Realty Trust, for Variances/Special Permit to allow the use of a 58’ x 23’foot Pylon sign to advertise businesses located in The Shops 9@20, previously approved per ZBA Case No. 08-12, on the property located at 370 Southwest Cutoff and 370-Rear Southwest Cutoff**

Attorney Marshall Gould explained that 2/3 of the application is a repeat of what was applied for and approved by this board in 2008, and noted that pages 13 through 18 of the application include the 2008 decision. He also noted that page 5 contains a summary of the application, which is a petition for a variance for the property known as “Shops 9@20 and Avalon Bay”. He explained that the applicant had acquired a parcel formerly owned by John O’Mara, from which the rear half was allocated to the Avalon Bay project and used for an additional 32 apartments. The front portion is to be used for the installation of a free standing sign, which was previously approved on September 17, 2008. Attorney Gould explained that, in a recent discussion with Mr. Farnsworth, they both agreed that they could not say in good faith that work had been started on this site so they are seeking to renew the sign approval in order to keep everything legal and clean.

Attorney Gould explained that the parcel is divided by a small strip of land owned by the old Boston Railway, which technically makes it two lots even though it has always been

deeded as one parcel. Because of that, an additional variance is needed to allow for the placement of a sign advertising a business on a separate parcel.

Attorney Gould stated that a third variance is needed in order to place the sign reasonably close to the lot line. He explained that both he and Mr. Farnsworth do not feel that this variance is necessary, but Bank Counsel feels it is so they are requesting it in order to facilitate their financing.

Attorney Gould explained that the project has already been before the Conservation Commission. He noted that, given the topography, and the fact that access to the site is virtually impossible, it is clear that no building will ever be built on the site and the only thing it is useful for is the location of the sign. Mr. Gould also stated that the corner location allows for the least amount of impact to the wetland and easy access for construction.

Attorney Gould referred to pages 7 and 8 of the application, which contain details about soil conditions and hardship factors.

Mr. Rutan asked if there is any risk of the sign falling onto the roadway. Attorney Gould stated that there is not, and noted that the sign will be built to the same engineering specifications as a small building.

Chairman Rand asked about the 120-foot tall sign in the original application. Attorney Gould stated that there is a fairly strong likelihood that they will not need that sign now. He also stated that he anticipates that they will formally acknowledge the elimination of that sign when they next appear before the board.

Mr. Benson asked for confirmation that the installation of the sign is the only work proposed south of the railway, and asked when the applicant plans to do that work. Attorney Gould voiced his understanding that the sign will be installed later this year or early in 2011.

**Remi Doiron, 322 Davis Street**, commented that the applicant had stated that his financing depends upon approval of this sign. Attorney Gould clarified that financing would depend on a zoning opinion. Mr. Doiron asked if the financing of this development is based on the approval of this sign. He informed the board that he lives at 322 Davis Street and has been fighting to have the street re-paved, as was previously promised by the applicant. He suggested that the applicant be asked to live up to his promise to the residents before the board grants any further approvals. He stated that the street is a mess, and pleaded for the board to force the applicant to fix it.

Mr. Giblin explained that he had done additional work and improvements in conjunction with the sewer installation at a significant cost, and is now in the process of working out an agreement with the DPW Director about any further work to be done. He emphasized that he has done absolutely everything and more than the town has asked of him.

Chairman Rand asked Ms. Joubert if there are any plans for the town to resolve the situation, and asked Mr. Giblin for suggestions of what Mr. Doiron can do to get the matter addressed. Mr. Farnsworth suggested that the paving issue is a separate issue and is not a matter for this board to consider. Mr. Doiron voiced frustration that he still has no answers, and reiterated his opposition to the granting of a variance. Mr. Rutan noted that it is not within this board's jurisdiction to link the variance approval to the paving issue. Chairman Rand suggested that Mr. Doiron bring the matter to the Board of Selectmen. Mr. Doiron reiterated his desire for the town to force the applicant to move in the right direction for the betterment of the town and its residents. Mr. Rutan reiterated that the board cannot exceed its authority and any attempt to do so could result in a lawsuit.

Mr. Rutan made a motion to close the hearing. Mr. Kane seconded, vote unanimous.

#### **DECISIONS:**

Mr. Kane made a motion to grant a variance to allow for a pylon sign larger than what is allowed, as was approved in the past and as specified in the earlier decision. Mr. Rutan seconded, vote unanimous.

Mr. Rutan made a motion to grant a variance to allow for the location of the pylon sign on the property referred to as parcel 1 on plan book 863, plan 47 (page 9 of the application) to advertise a business or businesses located on a lot other than the lot on which the sign is erected. Mr. Kane seconded, vote unanimous.

Mr. Rutan made a motion to allow a sign to be located within the setback of parcel 1 as shown on site plan 3. Mr. Kane seconded, vote unanimous.

**Minutes of the Meeting of February 23, 2010** – Mr. Kane made a motion to approve the Minutes of the Meeting of February 23, 2010 as submitted. Mr. Rutan seconded, vote unanimous.

**Bond reduction for Church Street Village** – Ms. Joubert explained that Mr. Litchfield had prepared a bond reduction calculation in response to a request from the developers of Church Street Village. She explained that the applicant had originally posted a \$392,000 bond in the form of a tri-party agreement and a separate \$44,500 bond for site stabilization. She noted that the site has been stabilized and much of the drainage and utility work has been completed, so Mr. Litchfield has suggested that the board reduce the bond from \$392,000 to \$359,000 and return the \$44,500 site stabilization bond.

Mr. Rutan made a motion to approve the bond reduction as indicated in Fred Litchfield's letter. Mr. Kane seconded, vote unanimous.

**Meeting agendas** - Members of the board discussed their opinions about whether they should post all hearings for 7:00p.m. or schedule them in 15 minute intervals. Mr. Kane voiced his preference to keep them all at 7:00p.m. to allow the board to move through the hearings as appropriate. Bill Farnsworth disagreed. Board agreed to keep all hearings advertised for one time slot at 7:00pm.

**Adjourned at 8:35PM.**

Respectfully submitted,

Elaine Rowe  
Board Secretary