



**Zoning Board of Appeals
Meeting Minutes
August 27, 2013**

Members in attendance: Fran Bakstran, Chair; Mark Rutan, Clerk; Richard Rand; Robert Berger; Richard Kane; Jeffrey Cayer, Alternate

Members excused: Brad Blanchette, Alternate

Others in attendance: Kathy Joubert, Town Planner; Fred Lonardo, Building Inspector; Fred Litchfield, Town Engineer; Elaine Rowe, Board Secretary; Kevin Duggan, Metro Sign and Awning; Brad Bogosian; Cliff Chase; James Murphy; Attorney George Pember; Maurice Tougas; Phyllis Tougas; Andre Tougas; Paul Ayoub; Jim Vogel; Clay Smook; James Tetreault, Thompson-Liston; Joe Higgins, Innovate Engineering Solutions; Philip Gaudette; Kevin Carroll; Theresa Capobianco; Kevin Thompson; Amy Poretsky

Chairperson Fran Bakstran called the meeting to order at 7:00PM.

Public Hearing to consider the petition of Kevin Duggan, Metro Sign & Awning, for a Variance/Special Permit to add an internally lit (Subway) wall sign to the front of the Walmart store, on the property located at 200 Otis Street

Kevin Duggan of Metro Sign and Awning appeared on behalf of the applicant. He explained he was hired to install a 27" x 104" internally lit sign for the Subway franchise located within the Walmart store. He noted that the store has used all of their allowable signage, so approval is needed for the additional sign for Subway. Ms. Joubert stated that Walmart has provided a letter indicating their approval for a sign of up to 20 square feet. Mr. Rutan asked if the sign will be shut off at night. Mr. Duggan agreed to make it possible to shut the sign off when appropriate. Mr. Lonardo indicated that Walmart had previously been granted a variance to allow for sign illumination between the hours of midnight and 6AM. Ms. Joubert commented that that variance would not cover the Subway sign. Mr. Lonardo explained that a variance will be required if Subway wants their sign illuminated after midnight. Ms. Joubert asked if there had ever been an external sign for Subway. Mr. Duggan stated that there has not.

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

Public Hearing to consider the petition of James Murphy for a Variance/Special Permit to allow a 10-foot high retaining wall to be placed along a portion of the side and rear of the site to support the foundation of an attached garage, on the property located at 15 Patriot Drive

James Murphy discussed issues with the foundation at the rear corner of the garage on his property. He explained that the home and garage were built on a sloping lot, and the foundation

has split at the corner and is starting to move. He indicated that he is seeking a variance to construct a retaining wall closer to the property line than is allowed so that he can build up the ground to keep the wall from moving any further. Mr. Kane asked why the wall needs to be 10 feet high. Mr. Murphy stated that it needs to be built up to be level with the height of the foundation.

Mr. Murphy distributed photographs of the crack in the foundation and the current conditions. Mr. Lonardo indicated that there are no issues with the height of the wall, only with the setback encroachment. He also asked Mr. Murphy if he has consulted with a structural engineer. Mr. Murphy stated that there is no indication that the foundation is settling, and the opinion of the engineer is that the fill underneath the garage is pushing out. He also stated that, by balancing the force of the fill under garage, the expectation is that the wall will not go anywhere. Mr. Kane asked if anything can be done to divert the water. Mr. Murphy voiced his opinion that there is not, given that his property is at the bottom of the cul-de-sac. He also stated that the foundation has been cracked for over 12 years, and the movement started about 3 years ago. Mr. Rutan asked if there is anything proposed to prevent access to the top of the wall. Mr. Murphy noted that there will be a fence installed along the top of the wall. Mr. Rand questioned the height of the wall for the abutter. Mr. Murphy indicated that it will be as high as 10 feet on the back corner of the lot. Mr. Rand asked about the height of the wall near the road. Mr. Murphy stated it will be even with the grade.

Mr. Rand asked about the elevation difference from the street to the back of the lot. Mr. Murphy commented that the engineering drawings have not yet been completed. Ms. Bakstran asked about worst-case scenario. Mr. Murphy stated that there is 24 feet of fill beneath the garage that is shifting. Mr. Lonardo reiterated the need to engage a structural engineer in order to do this project correctly. Ms. Bakstran suggested that it would not make sense to consult an engineer until a variance is granted.

Mr. Rutan asked Mr. Lonardo if it is standard practice for a structural engineer to guarantee this type of construction. Mr. Lonardo reiterated the need for an engineer to supply the design. Mr. Berger commented that an engineer's stamp is insured. Mr. Lonardo stated that, once construction is completed, the engineer should verify that the wall was installed in accordance with the design. Mr. Rutan voiced concern about the wall buckling in years to come. Mr. Lonardo stated that, if the wall is constructed in accordance with engineered plans, there should not be any issues. Mr. Rand asked if there will be any finish on the wall. Mr. Murphy stated that the wall will be constructed with block, not simply poured concrete. Ms. Joubert noted that there were no letters or calls received in opposition to this application.

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

Public Hearing to consider the petition of Brad Bogosian for a Variance/Special Permit to allow the gross floor area of a proposed addition to a non-conforming single-family home, (second floor and garage), to exceed 80% of the existing gross floor area, on the property located at 409 Hudson Street

Mr. Bogosian discussed plans for the addition of a second floor and garage. Mr. Lonardo explained that a special permit is required to exceed the allowable 80% increase in gross floor area. He noted that the proposed expansion will result in a 93% increase in gross floor area.

Mr. Kane asked if any of the neighbors object to the proposal. Mr. Bogosian indicated they have not, and stated that there are similar houses across the street. Ms. Joubert stated she has not received any communications from any of the abutters. Mr. Rutan noted that the original

house encroached on the lot line, and it appears that there will be no additional encroachment with the addition.

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

Public Hearing to consider the petition of Phyllis & Maurice Tougas, Ball Street Realty, LLC, for a Variance/Special Permit to allow a lot line with a setback of less than 30 feet on the property located at 114, 120 & 124 Ball Street

Attorney George Pember and Maurice Tougas presented the petition. Mr. Tougas stated that this is the same petition that was brought before this board two years ago, which was approved but challenged by an abutter in superior court. He explained that, in response to the challenge, he chose to wait the required two years and reapply.

Mr. Tougas noted that the property is part of the 37 acre Kachan parcel that was acquired in 2001. He stated that, of the 37 acres, there were 12 acres that were not put into the APR program. He explained that his son, Andre, had built a home at 120 Ball Street and ended up having to configure his driveway to circumvent the entire 12 acres. He is now looking to modify the lot lines and driveway location, but in order to do so will need to encroach on the property line. Mr. Tougas stated that the driveway will be 24 feet from the property line.

Mr. Rutan voiced his opinion that this case is what zoning boards are for, and that allowing this variance and then creating the lot lines makes sense for everyone involved. Ms. Bakstran asked about the concerns that were argued by the previous abutter. Mr. Tougas noted that the previous objection was that the driveway location would diminish the abutter's property values. Mr. Berger suggested that the change in driveway location may necessitate an address change. Ms. Joubert suggested that Mr. Tougas discuss the issue with the Town Assessor and Fire Chief.

Mr. Rand asked about the Superior Court's decision. Attorney Pember stated that Mr. Tougas had chosen not to defend his case, so a default judgment was issued. Ms. Joubert stated that she had received a letter from one of the abutter's who voiced support for the proposal.

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

Continued Public Hearing to consider the petition of Northborough Commons, LLC, for a Variance/Special Permit/Special Permit, Groundwater Protection Overlay District to allow a proposed horizontal mixed-use development, consisting of a single-story building for retail use and a 2-story building with retail use on the first floor and residential use on the second floor, on the property located at 61 and 65 West Main Street in Groundwater Protection Overlay District Area 3

Ms. Bakstran appointed Jeffrey Cayer as a voting member for this hearing, since Mr. Rand was not present at last month's meeting.

Ms. Joubert discussed some materials that were received since the date of the last meeting including a letter from a town resident and the applicant's response to the issues raised in the letter; a second comment memo from the Planning Board; and an email from a town resident that came today.

Mr. Ayoub stated that, when they last appeared, there were two remaining issues to be addressed; the environmental status and traffic study.

Mr. Berger asked if the property is in compliance with the MCP. Mr. Higgins indicated that the site is currently in temporary solution, Class C, with a timeframe in place to clean it up. He noted that an RAO (Response Action Outcome) was filed in 2009 and there were some ongoing status reports required as part of that process. He voiced his understanding that the process cannot be completed until the existing building is removed. He commented that the 5 year review of the RAO is due in September 2014, and stated that he has no knowledge of any plans for reimbursement under 21J.

Mr. Berger questioned the temporary solution status. Mr. Higgins stated that there are concerns about what might be under the building because of the existence of some stained soils and some slightly elevated levels of petroleum. Mr. Berger asked if the issue is with the soil and not the groundwater. Mr. Higgins confirmed that it is. Mr. Berger asked about catching up with the reporting, and whether there had been any uncontrolled migration. Mr. Rutan noted that the fuel tanks were removed years ago, and asked if there had been any leakage. Mr. Higgins noted that a decent amount of remediation has already been done, and there is an ongoing groundwater monitoring program at the site. Ms. Bakstran asked if the applicant has assumed full responsibility for the site. Mr. Higgins voiced his understanding that they have agreed to do so.

A gentleman from the audience commented that there were 20,000 gallons of tainted water and 1266 tons of hydrocarbon impacted soil found on the site, and asked if there was any evidence of migration in the monitoring wells. Mr. Higgins stated that the petroleum contamination across the street seems to have been resolved. He also noted that there were some concerns about migration vapors in the residence, but no evidence was found. Mr. Higgins reiterated that the remaining concerns involve what might be found underneath the building.

Ms. Bakstran noted that a second area of concern was trip generation from the proposed project. Mr. Tetreault stated that the traffic engineer conducted traffic counts in April 2013. He noted that the daily traffic on Route 20 showed 16,700 trips per weekday and 16,300 trips on Saturdays. He stated that the traffic calculations show that this site will produce an increase of 1% - 4% during peak hours with no effect on level of service. He noted that the level of service eastbound out of the site shows an average of a 40 second wait time, which is similar to what is already experienced leaving the Dunkin Donuts across the street. Mr. Tetreault explained that this was one reason why they chose to provide a right-turn-only exit from the project, in an effort to prevent cars from stacking up behind a vehicle turning left. He also commented that most traffic coming through the site will be vehicles already on the roadways.

Mr. Rand asked about the site distance from the driveway. Mr. Tetreault noted that a site distance of more than 200 feet exists in each direction.

Ms. Bakstran asked the applicant to address the concerns raised in the letter Amy Poretsky (copy attached). Mr. Ayoub reiterated that he and his partner are doing this project in order to address improving the site. He stated that they have taken all

comments seriously from Mrs. Poretsky and while they are well intentioned, in some cases there are factually wrong and sometimes misleading. He also reiterated that they have not maximized the site, but have developed a concept that works legally, civically, and aesthetically.

Mr. Ayoub noted that one of the issues was with the number of housing units, and commented that up to 8 multifamily units are allowed by special permit. He also discussed the need for more than a 20-foot setback given that the only location where they can capture stormwater runoff is at the front of the parcel. He reiterated that they have maintained as much space as possible and have made accommodations in excess of what is required.

Ms. Bakstran stated that she walks downtown all the time, and wants a friendly, pedestrian downtown. She commented that the only difference between a strip mall and a pedestrian friendly downtown is the location of parking, and the proposed L-Shaped building sits back in more of a strip mall type setting. She also stated that, while she realizes the size of the building is allowed by right, she still does not like it. She suggested that there might be some finessing of the project that could be done to make it more appealing.

Mr. Ayoub indicated that they have determined that a variance is not needed for the retaining wall setback. In addition, he also stated that they are withdrawing their variance requests for one retail establishment in excess of 15,000 square feet and also for a free standing sign to exceed the height limit. This reduces the number of variances being sought from 7 down to 4. Mr. Ayoub also voiced his understanding that it would be their preference to have smaller tenants in the retail space, but at this time they just do not know what type of tenant they might draw.

Ms. Bakstran asked about the placement of the free standing sign, and commented that she liked the fact that she could look underneath the sign. Mr. Ayoub stated that they had agreed to withdraw that request during their meeting with the Planning Board, and will abide by that agreement.

Ms. Joubert confirmed that there is no variance needed for the retaining wall setback, because the bylaw has no setback requirements for a retaining wall in the downtown area.

Ms. Bakstran commented that 20 multifamily units originally sounded like a lot, but given the proposed size of the building and the fact that they will be 1-bedroom apartments, she is not as concerned. She does, however, want to address the concerns voiced by the community that the units might be enlarged if tenants cannot be found for the smaller units. She asked if the applicant would be agreeable to a condition that would restrict the units to a single bedroom. Mr. Vogel commented that he would like to retain some flexibility.

Mr. Smook discussed his background and experience with urban planning, and noted a project on Great Road in Bedford as a nice example of a successful urban project. He

also voiced his opinion that the best development on Route 20 in Northborough is the project at 290 West Main Street.

Mr. Smook commented that tenants in this project will likely be local and not national. He reiterated the need to pull the building further back on the property because the soils at the front section are the only ones that are appropriate for leaching. He stated that the proposed project will have a reasonable amount of both hardscape space and pedestrian space and will not have a strip mall character like the plaza where Lowe's is located.

Mr. Cayer stated he has some concerns with the density of the apartments. Ms. Bakstran voiced her opinion that the apartments give the project more of a downtown feel. Mr. Rutan and Mr. Rand stated that they are in favor of 20, 1-bedroom units as there is no recreational space onsite for children. Mr. Rutan noted that he would not be in favor of 2 or 3 bedroom units, as he would want to discourage families with children. Ms. Bakstran agreed.

Ms. Joubert explained that the front setback for downtown has always been 6 feet and in 2009 the ZBL was amended to include a maximum front setback of 20 feet.

Mr. Cayer stated that he does not believe very many people walk to the center of town. Ms. Bakstran asked if a section of sidewalk within this project could be extended so that she could walk to the Boost Fitness building. Mr. Vogel agreed to do so. Mr. Rand voiced his opinion that the project, with 1-bedroom units, is a good use of the property.

Ms. Bakstran asked if there will be onsite management of the apartment complex. Mr. Vogel stated that they have not yet addressed that issue, but agreed that there will be if needed.

Mr. Berger asked about snow storage. Mr. Tetreault indicated that there is an area behind building 2, along with some other areas onsite, for snow storage.

Ms. Joubert reminded board members that the DPW Director and the Planning Board both requested that the board include a condition in any decision requiring the applicant to extend the sidewalk in front of the adjacent property (73-79 West Main Street) so that there would be continuous sidewalk.

A gentleman in the audience stated that he is proud of what has been done lately in the downtown area. He also voiced support of this proposal as it provides a place for small businesses and local "mom & pop" shops that are missing from the town. He also likes the idea of the apartment building, and suggested that it might be appealing to young professionals and medical professionals, so offering a few 2 bedroom units might not be a bad idea. He also commented that the property has been an eyesore for years.

Ms. Bakstran noted that the board had received additional comments from the Planning Board. She also commented that a 5,000 square foot retail space would likely be a "mom & pop", while a 15,000 square foot store would more likely be a national chain. She mentioned that the EMS store at Northborough Crossing is closer to 15,000 square

feet, and noted that allowing the 8800 standalone building to house one tenant may be an appropriate compromise.

Mr. Rutan voiced his opinion that the applicant is trying to maintain the maximum amount of flexibility with his project. He also commented that it would be preferable to have several small tenants, so that if one leaves it won't have a devastating financial impact. He also suggested that there could be a restaurant tenant that could start small and look to expand in the future. Mr. Rutan stated that commercial development is a huge risk, and it is reasonable for the developer to try to minimize the risk. He commented that the last thing we would like to see is a commercial failure. Ms. Bakstran stated that a 15,000 square foot retail store may not be what we envision for this area. She indicated that she would not like to see a big store in this project, but would prefer to build a project that will encourage pedestrian traffic. Mr. Rutan disagreed, and reiterated that he would not want to burden the applicant unnecessarily. While he does not believe that the applicant will get a tenant seeking 15,000 square feet, he wants to allow him the flexibility to be able to fill the space.

Ms. Bakstran asked if there were any further issues with any of the special permits or waivers. Mr. Cayer stated that he continues to struggle with the variance to allow 20 multifamily units but he sees both sides of the issue. Mr. Berger agreed.

Ms. Bakstran discussed the request for a variance to allow two wall signs for one tenant, and asked if the signs could be externally lit instead of backlit. Mr. Smook indicated that there would be no issue with doing so. Ms. Bakstran asked if the freestanding sign can be externally lit as well. Mr. Smook suggested that the options be kept open for the pylon sign to avoid creating lighting problems for the residential tenants.

Ms. Joubert suggested that board members voice any concerns they may have with regard to allowing a front setback of greater than 20 feet. Ms. Bakstran asked how much of a setback will be required. Mr. Tetreault stated that it will be 44 to 50 feet. Mr. Smook requested approval for up to 60 feet.

Mr. Vogel stated that he and Mr. Ayoub have assembled a first class team and they believe that they have developed a first class project. He asked the board for a bit of leeway, and reiterated the need for the residential component. He emphasized the importance of maintaining a good degree of flexibility to ensure that they have a viable project. Ms. Bakstran stated that she is also taking her role seriously, and needs to ensure that she is doing her due diligence to be sure that what the applicant is requesting is reasonable. Mr. Ayoub voiced his desire for the board to have a positive impression of the applicants, and an appreciation for the sincerity they bring so that they can feel comfortable about what will be done with the site.

Regarding the name of Northborough Commons on the application, Ms. Joubert noted that the property owner of 4 West Main Street refers to his building as Northborough Commons, which may or may not be an issue.

Teresa Capobianco, 34 Samuel Gamwel Road, voiced concern about delivery trucks that may park and remain running, and questioned if it is possible to include a restriction to prevent this from happening. She also stated that, at last month's meeting, she voiced opposition to the increased square footage but has since changed her mind. As someone who is in the business of finding tenants, she agrees that restricting the developer's options will inhibit his ability to market the project.

Leslie Harrison, 28 Moore Lane, stated that the Planning Board voted in favor of granting both special permits for retail size, and noted that she was the one dissenter. She stated that she likes the idea of the compromise for the 8800 square foot building, and does not want to see a large national chain in the development.

Amy Poretsky, 47 Indian Meadow, suggested that the total project exceeds the 15,000 square feet that is allowed per section 7-5-030, Table of Uses, in the bylaw. Ms. Joubert clarified that the 15,000 square foot limit is per retail space and stated that there is no limit as to how big a commercial building can be. Ms. Bakstran commented that small stores have smaller delivery trucks, and no back door deliveries, whereas a larger truck is going to back up to a bigger retail store.

Ms. Harrison asked about the size of the largest stores in the 290 West Main Street and the Kendall Homes developments. Ms. Poretsky commented that most are about 1290 square feet, with a couple of stores combining two retail units. Ms. Joubert stated that the project at 290 West Main Street may have predated the zoning changes. Ms. Harrison asked about the size of Lowe's Market. She also commented that the CVS store is approximately 13,000 square feet.

Mr. Vogel addressed the sidewalk request. He indicated that he is willing to install the sidewalk requested by Ms. Bakstran but believes the 450+ feet of sidewalk being requested by the DPW Director is unreasonable. Ms. Bakstran commented that the DPW Director's request would allow extension of the sidewalk to the west of the property and would provide continuous sidewalk for pedestrians. Mr. Vogel voiced his opinion that he should not be burdened with fixing an issue on an abutting property. Ms. Bakstran commented that the state had completed the sidewalk in front of Mr. Vogel's property and the town is simply asking him to install other sidewalk to enhance pedestrian access.

Mr. Litchfield noted that Mr. Vogel has expended quite a bit of money to extend the utilities. He discussed the state policy that prohibits curb cuts for five years, and noted that the town's letter requesting a delay in the paving work had benefited the applicant. He stated that the sidewalk that the applicant is being asked to complete will add to his project and to the downtown. Mr. Litchfield explained that the existing sidewalk on the adjacent property was built to meet the building code and provide access to the front of the buildings, and the town cannot go back and have the owner redo it. He also stated that installing sidewalk at the road grade is the appropriate thing to do, and voiced his opinion that 415 feet is not unreasonable. He voiced his opinion that the town had worked cooperatively with this applicant, and would appreciate the same in return.

Mr. Rutan voiced concern about asking the applicant to do roadwork on a neighboring property. Ms. Joubert noted that the work is within the town's right-of-way, and reminded the board that they had required similar work from an applicant for a project at 9 Monroe Street. Mr. Rand voiced his opinion that asking this of the applicant is excessive. Ms. Capobianco agreed that it should not be the applicant's responsibility. She commented that it is grossly unfair to require this developer to invest money in property improvements on someone else's property because that property owner was allowed to do less than adequate work.

DECISIONS:

200 Otis Street (Subway) – Mr. Rutan commented that he was not aware that there was a Subway franchise within the store. He also stated that, given the size of the building and the distance from the street, the sign makes sense. He suggested that illumination between the hours of midnight to 6AM should only be allowed if the Subway is open.

Jeffrey Cayer made a motion to grant a variance to allow an internally lit (Subway) wall sign on the front of the Walmart Store on the property located at 200 Otis Street with the condition that it can only be illuminated between the hours of midnight and 6AM if Subway is in operation during those times. Robert Berger seconded, vote unanimous.

15 Patriot Drive – Mr. Rutan voiced his opinion that the proposed wall will be an improvement and ensure safe conditions on the site. Jeffrey Cayer made a motion to grant a variance to allow a 10 foot retaining wall to encroach within the setback. Mark Rutan seconded, vote unanimous.

409 Hudson Street – Mark Rutan made a motion to grant a special permit to allow construction of an addition to exceed 80% of the existing gross floor area by no more than 350 square feet. Richard Kane seconded, vote unanimous.

Ball Street – Mr. Rutan voiced his opinion that approving this petition makes sense, and will allow the back lot to be larger so the resident there can enjoy a more contiguous property. Ms. Bakstran reiterated that the board had previously approved this request. Mark Rutan made a motion to grant a variance to allow a lot line with a setback of less than 30 feet on the property located at 114, 120 and 124 Ball Street, Map 25, Parcels 06, 15, & 16, respectively. Richard Rand seconded, vote unanimous.

61 - 65 West Main Street – Ms. Bakstran suggested addressing the waivers first. Mr. Rutan commented that this is a property that needs remediation and would be greatly improved by having something built on it. He voiced his opinion that the applicant is taking a big risk, and he would be willing to give some leeway on some of the issues. Ms. Bakstran stated that she sees the risk in allowing the project without restraints and conditions. Mr. Cayer stated that he dislikes multifamily use in general and, while he believes in the concept of a downtown feel, he doesn't think it will ever happen. He indicated that he greatly dislikes the idea of 8, 3-bedroom units but also struggles with the idea of 20, 1-bedroom units. Mr. Berger stated that he has no issues with the project and the size of the buildings, but he does not like the idea of 20 housing units. Mr. Rutan reiterated that if the applicant reduces the project to the 8 units allowed by special permit, it could end up being 8, 3-bedroom units. Ms. Bakstran suggested that

the board could approve 8 units and restrict them to 1-bedroom units, but she does not believe that would be reasonable. She commented that it is not likely that you would find tenants interested in a 2,000 square foot apartment located above a retail store. Mr. Berger asked if the applicant could build something different if an approval is granted for 20, 1-bedroom units. Mr. Rutan stated that the developer would have to come back to the board for permission to do so. Mr. Rand stated that he has no issue with the proposed 20, 1-bedroom units.

Jeffrey Cayer made a motion to combine the 5 waivers as submitted for a single vote. Richard Kane seconded, vote unanimous.

Jeffrey Cayer made a motion to approve the following waivers:

1. 7-09-030C(1)(a) Waiver to increase width of access drive from 24 feet wide to 32 feet wide.
2. Section 7-09-030C(2)(b) Waiver to decrease distance of required 8 feet from parking space to building wall.
3. Section 7-09-030C(4)(a)[1] Waiver relating to 10 foot wide landscaped buffer strip around parking areas.
4. Section 7-09-030E(7) Waiver relating to number of trees provided on-site.
5. Section 7-09-020C(5)(a)[1] Waiver relating to landscaped buffer between business use and adjacent residential district. Waiver ability to approve a reduction in landscaped buffer width in Downtown Business District is given to Planning Board or applicable special permit granting authority if the proponent demonstrates an alternative landscaping plan will meet the intent of this section.

Richard Kane seconded, vote unanimous.

Special Permits were considered as follows:

Special Permit with site plan approval – Ms. Bakstran indicated that she will be happy with the project if we get the green space that was shown. Ms. Joubert stated that the plans need to be revised to include the additional sidewalk onsite.

Mark Rutan made a motion to grant a special permit with site plan approval. Jeffery Cayer seconded, vote unanimous.

Mark Rutan made a motion to grant a special permit for horizontal mixed use development. Richard Kane seconded, vote unanimous.

Mark Rutan made a motion to grant a special permit to allow a single tenant in Building 2 to exceed the 5,000 square feet allowed by right up to the maximum square footage of 15,000 square feet for one individual retail establishment. Jeffrey Cayer seconded, vote unanimous.

Mark Rutan made a motion to grant a special permit to allow a single tenant in Building 1 to exceed the 5,000 square feet allowed by right up to 15,000 square feet in Building 1 for one individual retail establishment. Richard Kane seconded. The vote was 4 in favor and 1 opposed (Fran Bakstran opposed).

Mark Rutan made a motion to combine items 4 & 5 on the list of special permits being requested for a single vote. Jeffrey Cayer seconded, vote unanimous.

Mark Rutan made a motion to grant the following special permits:

1. Section 7-07-010D(3)(c)[3] Special permit per Groundwater Protection Overlay District for commercial development.
2. Section 7-07-010D(3)(c)[6] Special permit per Groundwater Protection Overlay District for multifamily use.

with conditions as noted below:

- There is to be no accessory use involving the manufacturing, storage, application, transportation and/or disposal of toxic or hazardous materials.
- The proposed building is to be connected to Town sewer and water, and will use natural gas for heating.
- The application indicates a subsurface infiltration system and should include an overflow to the existing storm drain in West Main Street.
- At least one permeability test should be performed within the area of the proposed subsurface infiltration system to verify the rates of infiltration.
- An Operation and Maintenance Plan shall be included in any approval and a report shall be provided to the Town Engineer and Groundwater Advisory Committee annually.
- An as-built site plan shall be submitted to the Town Engineer for approval prior to the issuance of a certificate of occupancy. The as-built plan shall include, at a minimum, and as applicable to the project, a permanent benchmark, elevation of all pipe inverts and outlets, pipe sizes, materials, slopes; all other drainage structures; limits of clearing, grading and fill; all structures, pavement; contours; and all dates of fieldwork. Upon approval by the Town Engineer one (1) mylar and three (3) paper copies of the as-built plan shall be submitted in addition to an electronic copy compatible with the Town's GIS system and the Town's vertical datum (U.S.G.S. Datum of 1988).
- The proposed impervious cover is changing and should be verified within the standard form generally used by the Building Department at the time the building permit application is submitted. The application shall document all impervious cover installed both before and after 1986 as well as the limit of impervious cover to be recharged through infiltration.
- The most recent groundwater test results from the former gas station on this site shall be filed with the Town prior to the issuance of the building permit along with any correspondence from the Massachusetts Department of Environmental Protection regarding any contamination. The plans shall show the location of the existing monitoring wells and describe the use of these wells in the future.

Richard Kane seconded, vote unanimous.

Consideration of Variances

1. Variance for one individual retail establishment to be in excess of 15,000 square feet.

It was noted that variance #1 was withdrawn by the applicant.

2. Variance to allow twenty multifamily units on a lot.

Mr. Rutan stated that he sees no qualitative difference between 15 or 20 units. Ms. Bakstran indicated that she is not opposed, as the presence of residential units will make it more than just a strip mall. She also agreed that the project will need a balance between residential and retail in order to work. Mr. Cayer commented that he sees both sides, but believes that 20, 1-bedroom units is the lesser of two evils. Members of the board agreed that the 20 units would have to be limited to 1-bedroom only.

Mark Rutan made a motion to grant a variance to allow twenty single bedroom units. Richard Kane seconded. The vote was 4 in favor and 1 opposed (Robert Berger opposed)

3. Variance to allow front setback greater than 20 feet.

Jeffrey Cayer made a motion to grant a variance to allow the front setback to be greater than 20 feet but no more than 60 feet. Mark Rutan seconded, vote unanimous.

4. Variance for retaining wall setback.

It was noted that variance #4 was withdrawn by the applicant.

5. Variance to allow parking in front of building.

Mark Rutan made a motion to grant a variance to allow parking in front of the building. Richard Kane seconded, vote unanimous.

6. Variance to allow freestanding sign to exceed height limit.

It was noted that variance #6 was withdrawn by the applicant.

7. Variance to allow two wall signs for one tenant.

Mark Rutan made a motion to grant a variance to allow up to two externally illuminated signs for one tenant in building 2, each of which can be up to 32 square feet. Jeffrey Cayer seconded, vote unanimous.

Ms. Joubert reiterated the request for a condition for the site plan requiring the applicant to install sidewalk on the adjacent property. She noted that the DPW Director had emphasized that the town no longer has the resources to do this type of work, and the

Planning Board often requests offsite work. She also mentioned that this board had recently required offsite sidewalk as well as offsite drainage work from another developer at 9 Monroe Street. Mr. Rand voiced his opinion that it is excessive to require this applicant to install sidewalk on someone else's property. Ms. Bakstran reiterated that the board did just require the developer of a 5500 square foot project to install 300+ feet of sidewalk, and she believes that this situation is no different.

Robert Berger made a motion to require installation of concrete sidewalk with granite curbing on the southerly side of West Main Street from the end of the existing sidewalk recently installed by Mass DOT as part of the downtown traffic improvements approximately 415 feet to the west, to be completed prior to the issuance of the final certificate of occupancy for the project. Fran Bakstran seconded. Vote was 3 in favor and 2 opposed (Rutan and Cayer opposed).

Richard Rand objected to the seconding of the motion by the chairperson.

Ms. Bakstran also noted the request that overnight truck parking be prohibited.

The Board requested the comments for the Fire Chief, Groundwater Advisory Committee, and the DPW and Engineering Department be included in the decision.

Adjourned at 10:44PM

Respectfully submitted,

Elaine Rowe
Board Secretary