



**Zoning Board of Appeals
Meeting Minutes
June 23, 2015**

Members in attendance: Richard Rand, Chairman; Mark Rutan, Clerk; Jeffrey Leland; Fran Bakstran; Brad Blanchette

Others in attendance: Kathy Joubert, Town Planner; Nick Antanavica, Building Inspector; Elaine Rowe, Board Secretary; Attorney Marshall Gould; Kevin Giblin, 920 LLC; Paula Thompson, Waterman Design; Bob Depietri, Capital Properties; Bill Depietri, Capital Properties; Matthew Amdur; David Amdur; Don Lavin; Scott Thornton; Mark Rhodes; Roger Leland

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

Public Hearing to consider the petition of Matthew Amdur for a Variance/Special Permit to allow a proposed over-sized one-car garage to be located within a required 15-foot side setback on the property located at 79 Crestwood Drive, Map 75, Parcel 163

Matthew Amdur discussed plans to construct an over-sized, one-car garage addition on the side of the house. He noted that the long, narrow parcel and existence of a sewer easement on the right side of the property severely restricts where the garage can be located. He explained that he is trying to provide a better means for his disabled father to get in and out of the house.

Matthew Amdur confirmed that he has spoken with his neighbors about the plan and there have been no objections. Chairman Rand asked about the dimensions for the garage. Matthew Amdur indicated that he has not had plans drawn up yet as he wanted to determine what he could get approval for before doing so. He stated that the house is 23 feet from the property line, but the new addition will encroach another 18 feet.

Ms. Bakstran asked if the current driveway is to be the footprint of the garage. She also noted the existence of a deck at the back of the pavement. Matthew Amdur stated that the deck will be removed and the garage will be attached directly to the house. Ms. Bakstran commented that the proposed garage will not encroach on the property line any more than the existing driveway. Chairman Rand asked if it is possible to put the garage on the back of the house. David Amdur noted that there is currently an addition on the back of the house that makes it unfeasible to do so. He also reiterated that there is an easement for sewer lines on the other side of the property.

Mr. Blanchette asked if there is to be a second floor and, if so, what will be in that space. David Amdur noted that the plan includes 3 bedrooms upstairs, with a portion to be over the garage. Ms. Joubert asked if the house is currently one or two stories. Matthew Amdur indicated that it is currently a single story, but he is looking to expand in a manner similar to his neighbor's home. Ms. Bakstran asked if there are any issues with the addition of the bedrooms. Mr. Antanavica noted that there would only be an issue if the space is to be an accessory apartment. He also stated that the bedrooms will be reviewed by him and the Fire Chief during the building permit process. Matthew Amdur confirmed that the house is served by public water and sewer.

Ms. Joubert asked about the proposed setback from the roadway. Mr. Antanavica explained that moving the proposed garage forward would increase the nonconformity and would require the applicant to come back to the ZBA for approval.

Don Lavin voiced support for the project as proposed.

Brad Blanchette made a motion to close the hearing. Mark Rutan seconded; motion carries by a unanimous vote.

Public Hearing to consider the petition of 920 LLC for the Amendment of Special Permits with Site Plan Approval issued for ZBA Case Nos. 14-12 and 14-14, to allow additional restaurants serving alcoholic beverages; to allow the use of commercial amusement; and for approval of the revised site plan, including the addition of a 3,000 square-foot building for restaurant use, on the property located at 370 Southwest Cutoff, Map 109, Parcel 15 and Map 108, Parcel 2

Attorney Marshall Gould introduced Kevin Giblin, Bob Depietri, Bill Depietri, and Paula Thompson. For the benefit of new board members, Mr. Gould briefly reviewed the history of the project and noted that pages 6 through 10 of the application contain the critical information.

Mr. Gould stated that the site is a 19 acre parcel that was to be the final phase of the Northborough Crossing development. He explained that Mr. Giblin had partnered with New England Development to construct the Northborough Crossing project, and noted that NE Development has since sold the other portion of the project to Equity One.

Mr. Gould noted that ZBA case 14-12 granted certain variances and special permits to allow limited access on Route 20. At that time, there was some discussion about having the entrance come off of Shops Way as opposed to off of the Route 20 frontage. He noted that there was an issue with the height of the retaining wall, and a variance was requested for that. Mr. Gould also noted that the original plan included a couple of restaurants and retail space of approximately 65,000 square feet. Mr. Gould stated that the wording of the decision approved what was shown on the original plan, though at the time the applicant did not know the specifics about tenants or realize the demand there would be for restaurants in the project.

Mr. Gould discussed Town Meeting approval of five new all alcohol beverage licenses for the original development, and noted that none of them have yet been used. He reiterated the demand for restaurants in the project, and explained that the applicant is now seeking to remove the limitation from the original decision restricting restaurants to no more than two. In addition, the applicant is now seeking a special permit to allow commercial amusement. He stated that the bylaw allows for such, and indicated that one potential tenant is interested in the site for a restaurant/bar/bowling alley venue. He explained that the bowling venue is not like the AMF site on Route 9 in Shrewsbury, but will simply be 11 to 16 alleys to compliment the other amusements in the venue. Mr. Gould noted that the third request is for approval of modifications to the site plan to accommodate the addition of a 3,000 square foot building, which will be done without a significant change to the site plan.

Paula Thompson of Waterman Design explained that the approved plan included 65,000 square feet in 5 buildings. She noted that the proposed plan, based on tenant requirements, is for 6 buildings. She also noted that there is currently no tenant for a drive through bank and that both spaces in that particular have been leased.

Ms. Thompson explained that the new plan includes the addition of enclosed dumpster areas and an additional 70 parking spaces, primarily employee spaces to be located behind the buildings.

Ms. Thompson stated that traffic circulation and the driveway will be the same as that in the approved plan. She noted that the two restaurant buildings were pushed closer together with the elimination of much of the outdoor seating. She also noted that the parking was pushed back and will encroach in the buffer zone a bit more, but this was already approved by the Conservation Commission.

Mr. Gould discussed meetings with town staff and the Planning Board, who has provided a letter of support contingent upon a traffic signal being installed.

Traffic Consultant Scott Thornton discussed his review of the potential traffic impacts due to the additional buildings. He mentioned that, initially, the applicant had expected that he would do a monitoring study of the intersection to determine if signaling warrant levels would be met. He noted that, using those guidelines, the large project was expected to generate 30% more traffic than it currently does. Mr. Thornton explained that, with the proposed expansion, he anticipates that at least one signal warrant will be met. He stated that the new signal will be interconnected with the existing signal at Route 20 and the baseball facility, and the crosswalk on the north side of intersection will be moved to the south side and will include pedestrian signaling. Mr. Thornton stated that, with that in place, the intersection will operate at level service C or better.

In response to a question from Chairman Rand, Mr. Thornton indicated that the distance from the proposed light to Route 20 is 275 feet. Chairman Rand commented that there is close to 500 feet of traffic waiting to head westbound onto Route 20, and asked how the applicant proposes to handle the flow. Mr. Thornton stated that the lights will all be timed to be on the right cycle to process the traffic, and noted that the goal is to prevent traffic from backing up into the site. He explained that he had spoken to the MassDOT about installing queue detectors. Chairman Rand asked if the pedestrian light

will interrupt the flow of traffic. Mr. Thornton confirmed that it will on occasion, but stressed the importance of ensuring that pedestrians are able to cross safely.

Chairman Rand asked about the height of the retaining walls along Route 20. Ms. Thompson indicated that they will be 16 to 20 feet high, and this detail has not changed from the original plan. She noted that the highest point will be at the corner, with the height tapering down to approximately 5 feet at the end.

Mr. Rutan commented about the traffic, specifically on Saturdays when he has seen the line for BJ's gas back up almost all the way to Route 20. Mr. Gould voiced surprise that patrons would wait that long, and suggested that this is an issue for BJ's gas to address. Ms. Bakstran asked if the traffic flow would be the same if the site had been developed as originally planned. Attorney Gould indicated that it would be. He also stated that, though the plan has been altered only slightly, the result is better and safer.

Ms. Joubert explained that the board received two comment letters; one from the Fire Chief and one from the Planning Board. She noted that the Fire Chief's concerns appear to be primarily with regards to the water distribution system, which is not necessarily a ZBA issue. She also indicated that the applicant had attended the Planning Board's last meeting, and that board has voiced support of the project.

Mr. Gould reiterated that the applicant is only seeking approval of an additional 3,000 square foot building, commercial amusement use, and some minor changes to the site plan.

Ms. Bakstran asked if the Fire Chief is concerned about the width of the travel lanes. Ms. Thompson indicated that all of the lanes meet the Chief's requirements. She explained that there were some concerns about valve pit pressures, so the plan is to include a valve pit at the entrance to the site to reduce the pressures coming onto the site.

Ms. Joubert asked about the additional restaurants with alcohol service. Mr. Gould reiterated that the applicant would prefer multiple restaurants without limitations and suggested that the market will set the appropriate number.

Ms. Joubert asked if the commercial amusement tenant is interested in a specific building. Mr. Gould indicated that they have expressed a preference for the larger building, but the applicant would prefer to have a bit of flexibility for tenant placement.

Mr. Gould noted the following changes to the site plan:

1. additional 3,000 square foot building
2. additional parking spaces
3. installation of a traffic signal
4. removal of the drive-through
5. relocation of the dumpsters

Mr. Antanavica stated that the location of the dumpsters does not need to be part of the decision. He also commented that the eventual locations will be dictated by the tenants and how they are arranged within the development.

Chairman Rand asked for more specifics for the commercial amusement use. Bill Depietri voiced a desire not to be limited to specifics, in order to allow them flexibility when securing tenants.

Don Lavin, 360 Southwest Cutoff, explained that he had previously spoken with Mr. Giblin who was interested in buying his property, but they were unable to agree on a figure. He noted that, at that time, an easement was negotiated that has negatively impacted his business and his property. He also stated that he had not received notifications about the public hearings and has been unsuccessful in his attempts to reach Mr. Giblin. Mr. Lavin voiced frustration about the negative impacts and devaluation of his property. Chairman Rand explained that this is a private issue between Mr. Lavin and Mr. Giblin and does not fall under the board's purview.

Mr. Giblin stated that he had made many offers to buy Mr. Lavin's property, with an offer as high as 3 million dollars, but they were unable to come to agreement on terms. He also noted that an easement was negotiated, but Mr. Lavin made demands that Mr. Giblin is unable to comply with. He indicated a willingness to effectuate the easement, once the project is completed. He also explained that he does not have the authority to grant an easement on Shops Way. Chairman Rand reiterated that this is not a matter that the board can address.

Bob Depietri explained that three of the pads in the proposed development are leased. While details are not yet finalized with potential larger tenants, he has secured Anthony's Coal Fired Pizza, MedPost Emergency Care, Applebee's, Margarita's, Sprint, and Flex Nails as tenants in the space.

Mr. Giblin stated that, while he is not pleased about having to install the traffic signal, he understands that town boards are not enamored with the project without it.

Brad Blanchette made a motion to close the hearing. Jeffrey Leland seconded; motion carries by unanimous vote.

Bond Reduction, Church Street Village – Mark Rhodes explained that he has a Tri-Party agreement in place with Avidia Bank in the amount of \$87,000. He noted that the project was completed several years ago and, since that time, he has gone through a series of punch lists with the town. He stated that the project audit was completed last year and accepted by the town, but Mr. Litchfield had some lingering concerns. He indicated that, in response to those concerns, three manholes were brought up to grade in the spring, the surveyor located and put them on a plan with elevations, and the plan was stamped and provided to Mr. Litchfield. Mr. Rhodes voiced his desire to terminate the tri-party agreement and have his bond returned to him.

Chairman Rand asked Mr. Rhodes if he had reviewed Mr. Litchfield's letter of June 22, 2015 in which he indicates that there are still issues that need to be addressed. Mr. Rhodes commented that the interceptor drains are shown on the as-built plan that was submitted to Mr. Litchfield. He also voiced his opinion that the new drainage calculations that Mr. Litchfield requested are not necessary; the basins are not filling up with water so he sees no need to recalculate. He also stated that submission of an electronic copy of the as-built compatible with the Town's GIS system was not a condition of his original approval. He commented that Mr. Litchfield is imposing conditions that negatively impact his profit and requested that Mr. Litchfield's list be waived and the tri-party agreement be eliminated.

Ms. Joubert indicated that Mr. Rhodes has visited the engineering office several times over the years, and Mr. Litchfield has been consistent in requesting this information. She noted several letters that have been provided to the applicant in the past, all of which address the same issues. She also stated that every project that comes before the town is asked to tie into the datum. Mr. Rhodes reiterated that this condition was not part of the original decision. Chairman Rand requested that Ms. Joubert review the decision and advise the board if this condition was included.

Ms. Bakstran noted that some of these issues have been outstanding since 2006, and asked Ms. Joubert if there had been any bond reductions approved during the process. Ms. Joubert confirmed that the board has previously approved bond reductions for this development.

Ms. Joubert discussed Mr. Litchfield's inability to appear tonight to address his letter due to a scheduled vacation. She suggested that the letter stands on its own; the conditions are not unreasonable and have been requested continually over the past several years. She stated that the town is currently holding a bond in the amount of \$100,000, which was verified earlier today.

Ms. Joubert explained that the board could vote not to reduce the bond based on the Town Engineer's letter or could table the decision until the next meeting when Mr. Litchfield will be available to address any questions. Chairman Rand stated that the board can also further reduce the bond and retain a portion of it until they have the opportunity to discuss the matter with Mr. Litchfield. Chairman Rand reiterated his request for Ms. Joubert to verify the conditions in the decision.

Mr. Rutan expressed a desire to retain \$30,000 until the board can get answers from Mr. Litchfield. Members of the board agreed.

Mark Rutan made a motion to reduce the bond to \$30,000. Fran Bakstran seconded; motion carries by unanimous vote.

Dunia Gardens – Ms. Joubert explained that the applicant is seeking an extension of the comprehensive permit to September 19, 2016.

Mark Rutan made a motion to extend the comprehensive permit for the Dunia Gardens development at 239 Hudson Street. Jeffrey Leland seconded; motion carries by unanimous vote.

DECISIONS

79 Crestwood Drive – Mr. Rutan commented that this seems to be a reasonable request, given that the applicant is constrained by the long and narrow lot and the easement. Mr. Antanavica suggested that the board require that an as-built plan be submitted when the foundation is completed to confirm compliance with the setback before the entire structure is constructed.

Brad Blanchette made a motion to approve a variance to reduce the side setback to 4 feet due to the shape of the lot. Jeffrey Leland seconded; motion carries by unanimous vote.

370 Southwest Cutoff – Ms. Bakstran voiced her opinion that multiple restaurants and commercial amusements are good uses on the site, as those types of business have peak hours that differ from those of retail. She also commented that the revised plans are nicer than what was originally proposed. Mr. Rutan commented that the traffic signal will result in improved safety.

Fran Bakstran made a motion to modify the special permits to allow additional restaurants serving alcoholic beverages; to allow the use of commercial amusement as defined in our bylaws; approval of the revised site plan including an additional 3,000 square feet of space and removal of the drive-through. Jeffrey Leland seconded; motion carries by unanimous vote.

Consideration of Minutes – Fran Bakstran made a motion to approve the Minutes of February 24, 2015 and March 24, 2015 as amended. Mark Rutan seconded; motion carries by unanimous vote with Jeffrey Leland abstaining.

Election of Officers – Mark Rutan made a motion to nominate Richard Rand as Chairman. Ms. Bakstran voiced her opinion that rotation of the Chairman is valuable, and expressed an interest in assuming the role. Mr. Blanchette agreed and nominated Fran Bakstran as Chair.

Board members discussed ways to improve the communication when reviewing decisions with a new chairman.

Members of the board voted unanimously to appoint Fran Bakstran as Chair. Jeffrey Leland nominated Richard Rand for Clerk. Richard Rand nominated Mark Rutan for Clerk. Fran Bakstran seconded Richard Rand's motion. Members of the board voted unanimously to appoint Mark Rutan as Clerk.

Mark Rutan made a motion to adjourn. Brad Blanchette seconded; motion carries by unanimous vote.

Meeting adjourned at 8:50PM.

Respectfully submitted,
Elaine Rowe, Board Secretary