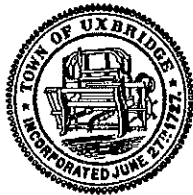


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**TOWN OF UXBRIDGE
ZONING BOARD OF APPEALS**

APR 5 '17 10:04

Received by
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MEETING MINUTES: WEDNESDAY, MARCH 1ST, 2017

Minutes of the Uxbridge Zoning Board of Appeals meeting on **Wednesday February 1st, 2017** in the **Board of Selectmen Meeting Room, Uxbridge Town Hall, 21 South Main Street, Uxbridge, MA:**

Present: Chair, Mark Wickstrom, Members Bruce Desilets and Kevin Harn; Clerk, Christopher Currie; Also present, Administrative Assistant Lynn Marchand, & Special Town Council Jay Talerman

Absent: Alternate Members Joseph Frisk, & Joseph Alves

It being approximately 6:00 pm, the meeting being properly posted, duly called, and a quorum being present, the meeting was called to order by the Chair, who led the Pledge of Allegiance.

I. PUBLIC HEARINGS

1. **FY17-10: 124 & 126 N. Main St., 128-130 N. Main St., 4 Hazel St., & 8-10 Hazel St., Special Permit and Determination/Special Permit Application.** The Applicant of record are **Cumberland Farms, Inc. and the owners of record, Richard & Edward Riley, Lori & Scott Brady, Blackstone Realty, LLC, & Blackstone Realty, LLC.** The Special Permit request is for permission to allow the operation of a gasoline filling station in a Business Zone. The Determination/Special Permit portion is to allow the alteration or change to a pre-existing nonconforming sign support structure by constructing a new double pole sign and relocating it to a less nonconforming location. The properties are shown on the Town of Uxbridge Assessor's Map 304, Parcels 2966, 2967, 2964, & 2958. The titles to said land are recorded in the Worcester District Registry of Deeds Books 34960, 41846, 18685, & 20548 Pages 391, 394, 305, & 195; Properties are located in a Business zone.

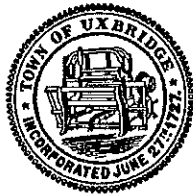
Discussion: On 2/23/17, the applicant requested to continue the public hearing until the next regularly held ZBA meeting scheduled for April 5, 2017. Mr. Desilets questioned the reason for the repeated continuances. Mr. Wickstrom explained there is a parallel application before the Planning Board and the applicant's request to continue was to ensure any required revisions and 3rd party reviews are complete and provided to the ZBA prior to consideration.

MOTION: Mr. Desilets moved to accept the applicant's request to continue Public Hearing FY17-10 for 124, 126, 128 & 130 N. Main St. and 4, 8, & 10 Hazel St. to the April 5, 2017 meeting of the ZBA. **Seconded by Mr. Currie, the motion passed 3-0-0.** (Voting members Kevin Harn, Bruce Desilets and Chris Currie)

2. **FY17-12: 46 Capron Street, Special Permit.** The Applicant of record is **Peter Frabotta, III** and the owner of record, **Frabotta Family Irrevocable Trust of 2005.** The Special Permit request is for permission to rent the property for office or business use. The property is shown on the Town of Uxbridge Assessor's Map 19, Parcel 2588. The title to said land is recorded in the Worcester District Registry of Deeds Books 38243 page 386. The property is located in a Residential A Zone.

Discussion: After the initial public hearing, Mr. Wickstrom recalled a footnote in the Table of Use Zoning Bylaws that states the ZBA can only issue a Special Permit for a Business/Professional use in a Residential A zone if it meets the following criteria: The property must be over 4000 sq. ft., must be built before 1930 and must be listed on the National and State historic registries. Since this property does not meet the criteria, a Special Permit could not be approved. The applicant was notified of this information and after review decided to withdraw his application. Mr. Wickstrom suggested allowing the

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applicant to withdraw his application without prejudice so he has the ability to bring it before ZBA again in the future. Additionally, given the confusion and delay that may have led to the marketing of the property, Mr. Wickstrom recommended returning the unused balance of his application fee.

MOTION I: Mr. Desilets moved to allow the applicant's request to withdraw without prejudice and return the unused balance of his application fee to close the public hearing FY-12 46 Capron St. Seconded by Mr. Currie, the motion passed 4-0-0.

3. **FY17-15: 116 & 118 Providence Street, A-1 Realty Trust, Brad Letourneau Trustee, Owner/Applicant.** Applicant is seeking a **SPECIAL PERMIT** to reconstruct a residential house on each lot. Property is shown on the Town of Uxbridge Assessor's Map 51 Parcels 3744 and 3663, and described in a deed recorded at the Worcester Registry of Deeds Book 49174 Page 137. The property is located in a Business Zone.

Discussion: Mr. Letourneau explained his original plan was for commercial use of the property so the existing homes were demolished approximately 18-24 months ago. He was not aware there is a specified period to maintain the residential aspect of the property. He described the area and adjacent properties - solar field to the NW and residences on all other sides. The properties comply with frontage and acreage zoning requirements and the use has been historically residential. Mr. Wickstrom reviewed the Zoning Bylaws, Section 400-12 (F) Abandonment or Non-Use and determined their standard is that the reestablishment shall not cause substantial detriment to the community. The applicant and maps show that residential use fits in with this neighborhood. An abutter, Bruce Chartier, 104 Providence Street, asked whether the zone would change to residential if a permit were issued. Mr. Wickstrom explained the zone will not change but conditions can be placed in the permit that it remain residential.

MOTION I: Mr. Desilets moved to close the public hearing for 116 and 118 Providence Street. Seconded by Mr. Currie, the motion passed 3-0-0.
(Voting members Kevin Harn, Bruce Desilets and Mark Wickstrom)

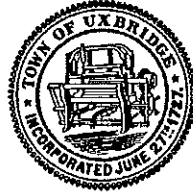
Deliberations: The board agreed that the highest "use" in this area is residential and substantial detriment would not be caused by allowing the construction of residential homes on the lots.

MOTION II: Mr. Harn moved to approve the application and grant a special permit to allow residential construction on lots 3663 and 3744 with the condition that the properties be used for residential use only and not for business purposes and that the board made the finding that the reestablishment of a residential nature of the properties is not detrimental to the community. Mr. Desilets seconded and the motion passed 3-0-0.

(Voting members Kevin Harn, Bruce Desilets and Mark Wickstrom)

4. **FY17-16: 175 South Street, Richardson-North Corporation/Elias Richardson III, Owner/Applicant** represented by Henry J. Lane. Applicant is **APPEALING** from a decision of the building inspector/zoning enforcing officer dated January 10, 2017, determining that the principal use of the property at 175 South Street is a commercial soils operation. The applicant also appeals from the determination that the trailer on the premises is an unpermitted construction trailer. Property is shown

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on the Town of Uxbridge Assessor's Map 55 Parcels 2255, and described in a deed recorded at the Worcester Registry of Deeds Book 14191 Page 319. The property is located in an Agricultural Zone.
Please note: Mr. Currie recused himself from public hearing FY17-16 for 175 South Street

Presentation: Atty. Henry Lane, on behalf of the applicant, described the 111 acre property and its historic use as a farm; most of property is used to grow corn for silage and a smaller area is used to harvest timber under a sustainable forestry management plan. Approximately 10-15 years ago, the farm began excavating and selling soil under an earth removal permit issued by the town. Mr. Lane indicated that the earth removal has negatively affected the drainage of the cropland and subsequently the characteristics of the farming operation and production. He explained they took advantage of an opportunity of to obtain a large amount of soil with organic material to restore the growing characteristics of the farm and improve the land and it is incidental to the primary use which is farming. The plan is to restore, in phases, the original contours and drainage with more organic material to support a more productive farming enterprise. Mr. Lane requested the board find Mr. Lench's determination erroneous and that the principal use of the property is a farm and that the activity is an exempt activity pursuant to the statute. He also mentioned it appears that the town has permitted the importation of soil by adopting new soil importation bylaw and therefore a legal activity.

Discussion: Mr. Lane answered questions about the trailer on-site and status of the earth removal permit for the property. He confirmed they have not stopped the earth removal. The Board inquired how much soil was taken out and how much is brought in comparatively. Mr. Lane did not have that specific information available. He did state he thought during the last permit renewal process an engineer concluded there was approximately 33000 cu yards earth remaining to be removed. He also mentioned the AG provisos in our bylaws that clearly state they cannot interfere w/ agricultural use of land.

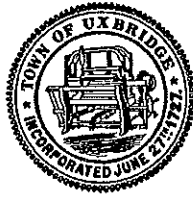
Mr. Lench spoke on behalf of the town clarified the trailer was not on site 3/8/16 when he inspected footings for the scale that was being installed. Mr. Lench indicated it was his understanding there has been very little offsite gravel removal and that it appears the scale house and scale are set up for incoming vehicles. On 1/11/17 an earth removal permit was granted with conditions for a discrete area of the property. Some of the conditions are currently under appeal by the property owner. Mr. Lench determined the importation of soil outweighs the agricultural use and importation is not in the use table.

Special Town Council Mr. Talerman and the Board had a discussion regarding accessory and subordinate use to the principal use of the land. He explained to by-pass the use table you would have to find it's customarily incidental and subordinate to the agricultural use. If the soil importation cannot be found as an accessory use, they would need to demonstrate that it was an allowable as a secondary principal use.

A few abutters spoke and expressed concerns that the imported soil may contain contaminants and that the imported soil is not being placed in the area where the gravel was removed. Another resident recommended the Board take the economic factors into consideration.

Mr. Lane agreed to provide additional information to the Board.

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MOTION I: Mr. Harn moved to continue Public Hearing FY17-16, 175 South Street, until the next regularly scheduled ZBA meeting April 5, 2017. Mr. Desilets seconded and the motion passed 3-0-0.

5. **FY17-18: 217 River Road, Steve Bevilacqua Owner, Jarad Hatch Applicant/Representative.** Applicant is seeking a **SPECIAL PERMIT** to locate his business, a contractor's yard, in an industrial zone. Property is shown on the Town of Uxbridge Assessor's Map 45 Parcels 4066, and described in a deed recorded at the Worcester Registry of Deeds Book 51014 Page 1. The property is located in an Industrial Zone.

Discussion: The applicant was not in attendance to present to the Board.

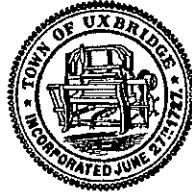
MOTION I: Mr. Harn moved to continue public hearing FY17-18 217 River Road until the next regularly scheduled meeting of the ZBA on 4/5/17. Mr. Desilets seconded and the motion passed 3-0-0.

6. **FY17-19: 775 Millville Road, Immanuel Corporation/Lawrence P. McCarthy owner applicant.** Applicant is **APPEALING** the decisions of Uxbridge's Building Inspector/Zoning Enforcement contained in his letters dated January 9, 2017 and February 1, 2017. Property is shown on the Town of Uxbridge Assessor's Map 46 Parcels 2079, and described in a deed recorded at the Worcester Registry of Deeds Book 21529 Page 249. The property is located in a Residential C Zone.

Presentation: Lawrence McCarthy, VP & Chairman of Immanuel Corp., which owns the Rolling Hills Habitat Restoration Project, stated they are seeking a reversal of Mr. Lench's determination on the use of the property and they believe the importation of soil is actually a permitted use. Mr. McCarthy stated Immanuel and predecessors had been removing gravel from the site, to use for asphalt and other construction related purposes for 55 years. He added it's only logical if you are allowed to remove the soil over that period of time you should be able to restore it. Mr. McCarthy claimed that the general bylaw approved at the fall town meeting which regulates earth removal and soil importation acknowledges soil importation as a permitted use. He also argued that the zoning prohibition on soil importation approved at the spring town meeting implied that prior to that time, soil importation was an allowed use and this site would be grandfathered as a pre-existing non-conforming use. In regards to the non-permitted trailer Mr. McCarthy stated 2 trailers have been removed and they have been taxed on the remaining trailer in use for the past 40 years. Finally, he stated that they believe there is no legal or factual basis for the Cease-and-Desist order because it is permitted use and added there is no credible threat to the public health and safety.

Discussion: Mr. Wickstrom asked questions about the history of the property and Mr. McCarthy explained it was an active processing facility, mining and crushing rock, asphalt, brick and concrete. The current company owns 6 asphalt plants and currently this sight is being used as reserve for use for the other facilities. The crushing was "mothballed" but is available for back up as needed. When asked for the general statistics about material coming in, Mr. McCarthy estimated approximately 100,000 tons was delivered to the site (1 dump truck is about 30 tons) and only a small amount was removed this year. He went on to say the investment in the property was not made for the importation of soil and it is there as a reserve.

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Mr. Talerman recommended the applicant provide additional information regarding the relationship between earth removal and importation and to go through the analysis of subordination and the relationship between the two. Immanuel Corp.'s gravel removal permit had lapsed and an application is has been submitted to the Planning Board.

Mr. Lench indicated the volume of trucks bringing soil into the site has slowed but was still going on.

MOTION I: Mr. Harn moved to continue Public Hearing FY17-19, 775 Millville Road, until the next regularly scheduled ZBA meeting April 5, 2017. Mr. Desilets seconded and the motion passed 3-0-0.

7. **FY17-20: 271 Hartford Avenue East, Merit Management LLC Owner/Applicant** represented by Stephen J. O'Connell-Andrews Survey and Engineering. Pursuant to Section 400-12 (E), the applicant is seeking a **SPECIAL PERMIT** to construct an addition to the existing non-conforming single-family structure. Property is shown on the Town of Uxbridge Assessor's Map 7 Parcels 4289, and described in a deed recorded at the Worcester Registry of Deeds Book 55721 Page 147. The property is located in a Residential B Zone.

Discussion: Steve O'Connell with Andrews Survey and Engineering, on behalf of the applicant, described the property and project to the Board. The single-family structure sits on a lot with non-conforming dimensions to the setbacks. Pursuant to Section 400-12 (E) of the Uxbridge Zoning Bylaws, the applicant proposes to remove the existing bulkhead and construct an addition to the structure that will fill in the corners. The addition on the lower corner creates a bigger non-conformity to the front setback – the corner will be approximately 5.8'. The bulkhead is exempt from zoning but appears closer to the setback than the proposed addition. The house is approximately 70 years old. Mr. O'Connell stated that the property was somewhat in disrepair and was purchased for rehabilitation and that there is a fairly new septic system that is sized to accommodate all the bedrooms proposed. He sees the proposed changes as significant improvement to the property's appearance and overall value. With the exception of Tri-River Health Care, abutting properties are single family homes.

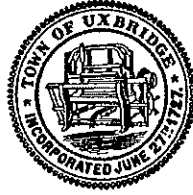
Mr. Wickstrom reviewed the standard they are operating under Section 400-12 (E) of the Uxbridge Zoning Bylaws. In short, it states that if it is determined that the nonconforming nature of such structure would be increased by the proposed alteration, the ZBA may by special permit allow for such alteration where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

Mr. Wickstrom asked whether the applicant would consider the condition to maintain the structure as a single family to which they agreed. No abutters attended to speak to the application.

The board considered the following criteria outlined in Section 400-50 (B) of the Uxbridge Zoning Bylaws:

1. Social, economic or community needs
2. Traffic flow and safety, including parking, and loading
3. Adequacy of utilities and other public services
4. Neighborhood character and social structures
5. Impacts on natural environment

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6. Potential fiscal impact including impact on town services, tax base and employment

The Board found the existing driveway will be used and so construction should not affect traffic or safety; the property is utilizing a new septic system and town water and town resources are adequate; there is a positive impact on the tax base; and the improvement of the property will help the character.

MOTION I: Mr. Wickstrom moved to close Public Hearing FY17-20 271 Hartford Avenue East. Mr. Desilets seconded and the motion passed 3-0-0.

MOTION II: Mr. Wickstrom moved to grant the proposed additions as shown on the ZBA plan of Hartford Ave East drawn by Andrew's Survey and Engineering and furthermore the board find that all of the conditions of Section 400-50 of the Zoning Bylaws and that under Section 400-12 (E) that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood with the condition that the construction be limited to single family use and not multifamily. Mr. Desilets seconded and the motion passed 3-0-0.

II. NEW BUSINESS

III. MINUTES/MAIL/INVOICES

1. 2/1/17 Meeting Minutes Review

MOTION: Mr. Desilets moved to approve the 2/1/17 meeting minutes as written. Mr. Harn seconded and the motion passed 2-0-1.

IV. ANY OTHER BUSINESS, which may lawfully come before the Board.

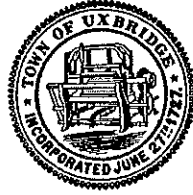
1. 16 Hazel Street (Applicant requested ZBA to review ZEO action)

- **Discussion:** Mr. Wickstrom explained the request and noted that a complete application was submitted to the ZBA pending the outcome of this discussion. Mr. Bonci, 16 Hazel St., stated he was issued an enforcement action for a zoning infraction by the town Zoning Enforcement Officer, Mr. Lench. Mr. Bonci also said there had been no written complaint and he did not agree with Mr. Lench's assessment. In exploring his options for moving forward, he stated that Mr. Genereux advised him to explore the option of "Predetermination" – "have the ZBA review the complaint and if it's clear enough in their eyes it could be dismissed before needing a public hearing". Mr. Bonci explained his purpose was not to use this as a back door to a public hearing but have the board review it to see if they do not need an interrogative period to raise new information. After reviewing the letters, Mr. Wickstrom indicated to Mr. Bonci that he has a pending letter that needs to be acted on and there may be some provisions in the bylaws that allow a ZBA special permit for what you are doing but you would have to formally come before the board.

2. Application Packet and Fee Schedules

- Mr. Bonci had questions for the board regarding the waiver process and fees and provided a sample form and suggestions for a process to be put in place. They all agreed to continue discussion at the next meeting if time permits.

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V. **ADJOURNMENT: NEXT ZBA MEETING: WEDNESDAY, APRIL 5, 2017 IN UXBRIDGE TOWN HALL Board of Selectman's Room at 6:00pm.**

MOTION I: Mr. Desilets moved to adjourn the meeting. Seconded by Mr. Harn, the motion passed 3-0-0.

Respectfully submitted,

Melissa Shelley
Land Use Administrative Assistant

SIGNATURE PAGE

Mark Wickstrom, Chairman

Bruce Desilets, Alternate Member

Kevin Harn, Alternate Member

Christopher Currie, Alternate Member

ABSENT

Joe Frisk, Alternate Member

ABSENT

Joe Alves, Alternate Member

April 5, 2017
Date