



Town of Danvers
Planning Board

Danvers Town Hall
One Sylvan Street
Danvers, MA 01923
www.danvers.govoffice.com

Planning Board Members:

Aaron Henry, Chairman
Kristine Cheetham
Margaret Zilinsky
William Prentiss
James Sears

Daniel J. Toomey Hearing Room

March 26, 2013

7:00 p.m.

MINUTES

Chair Aaron Henry called the meeting to order at 7:00 p.m. Planning Board members James Sears, Kristine Cheetham, Margaret Zilinsky and William Prentiss were present. Planner Kate Day was also present.

STAFF BRIEFING

Day informed the Board that a draft had been prepared of the medical marijuana warrant article. She stated that the timing was going to be very tight since Monday, May 20th is the date for the Town Meeting. Even though two of the Board members are not able to attend this meeting on the 16th of April, Karen Nelson felt they should have this meeting in case there was the need to have another meeting on April 23rd. Nelson will come to the meeting on the 16th and will cover on the 23rd of April if necessary. Day wants to remind the Board that she is going to be away for the meeting on the 23rd of April, which may lack sufficient agenda items anyway.

She informed the Board that at the next meeting they will be hearing a Minor Modification application for 155 Andover Street, the Infiniti dealership, looking to bump out a wall. It is a very small change to the site, but according to the Zoning Bylaws, it needs to come before the Board as a Minor Modification.

Day stated that she spoke with Sam Cleaves as a follow up conversation from his presentation at the previous Planning Board meeting and he is requesting that the Board submit a letter of support. Day stated she would craft the letter for Aaron's signature.

OTHER MATTERS

6 Hutchinson Drive. Request for a Minor Modification to an approved Site Plan pursuant to Section 4 of the Zoning Bylaw submitted by Stephanie Sayre on behalf of Hutchinson Realty Trust for property located in the Commercial III Zone District for the installation of a 1,000 gallon propane tank, a dispenser cabinet and a cylinder exchange cage. (Assessor's Map 64, Lot 9A) (*SPA action date: April 16, 2013*)

John Dzwonczyk, the Engineer from JGD Associates, Inc., appeared before the Board on behalf of the applicant, Hutchinson Realty Trust relative to the request for a Minor Modification to an Approved Site Plan application. George Goff, Manager of Site Development, was also present. Dzwonczyk stated that the plans were reviewed by Chief Farrell, and he indicated they are fire code compliant in every way. He reiterated that there will not be a cylinder exchange program. He presented the Board with the most descriptive item, a before and after picture of the site. Dzwonczyk stated that Farrell requested no landscape screening for safety's sake.

Dzwonczyk stated the location of the propane filling station will be in an existing grass area by the tire bays which is south of the main BJ's store. He indicated that the station will be attended by tire store employees, and will not be self-serve in any way. He stated there were no issues because the setbacks are all within ordinance and fire code. He stated that a set of stairs will be installed between the service bays and the parking lot so people are not walking over turf to get to the propane area. Only employees will be operating the apparatus. He directed the Board to sheet F-4 of the plan showing the miscellaneous signs shown on the plans.

Zilinsky asked if there was a comment about lighting and Dzwonczyk stated he had a light meter and would be going to the site to take readings after it gets dark. . Dzwonczyk stated there was a provision in the plans for another light pole, but he felt that they will only need a spot light to shine on the area, which would be operated by a switch.

Cheetham asked where the snow storage was located on that side of the building and Dzwonczyk showed the location at the northeast corner of the building.

Cheetham inquired if bollards were being used and Dzwonczyk stated they were required by code.

Prentiss asked if any parking spaces were going to be used, and Dzwonczyk responded no. Dzwonczyk stated the trailer that is used to collect old tires will be moved. He also stated that people will need to go into the store in order to purchase propane.

MOTION: Sears moved to find the proposed changes constitute a Minor Modification to Site Plan for 6 Hutchinson Drive. Prentiss seconded the motion. The motion passed by unanimous vote.

MOTION: Sears read the Certificate of Action and moved to approve the Minor Modification for 6 Hutchinson Drive. Prentiss seconded the motion. The motion passed by a unanimous vote.

PUBLIC HEARING

78 Holten Street. Request for Site Plan Approval pursuant to Section 4 of the Zoning Bylaw submitted by 78 Holten Street Trust for property located in the I-1 Zone District. The applicant proposes to demolish the existing structure and construct a new mixed use building. (Assessor's Map 50, Lot 187) (*SPA action date: April 29, 2013*)

Attorney James Cote appeared before the Board on behalf of the applicant, 8 Holten Street Realty Trust. With him this evening was Engineer Scott Cameron and the applicants, Peter Pantezelos and Daniel Mammola. He stated the applicants have received ZBA approval for the first floor retail use. He stated that they showed a café, but they are not sure what will go in that area. There will be six residential units above. Cote stated that the only comments they received were from Rodgers, and Cameron dealt with these issues in the new set of plans. Cote stated that this will bring the site more in line with other units in the area. The adjacent units have a mixed-use feel. He told the Board that they met the parking requirements but they are looking for relief from the landscaping requirement. He stated that they have landscaped as much as possible without taking away from parking. He pointed out that they are at 16% with landscaping which is more than other properties in this industrial area with no green space at the building next to their site. He pointed out the filling station has no landscaping, very little at the building next to them and very little at McKinnon's. Cote stated that Engineering's comments have been addressed, and Cameron was here to answer any technical questions.

Cameron described the site as an old church as shown on the existing conditions plan. The parking was scattered helter-skelter throughout the property, and there is an encroachment of gravel at the rear of the property. Cameron stated there is no substance to the current 12% landscaping at the existing site. It is really just dirt or weeds.

Cameron reiterated what Cote stated indicating the intention was to remove the church, and rebuild within the original footprint, however, the new building will be a few feet shorter. The two curb cuts on the property were going to remain, and they were going to be enhanced with granite curbing, concrete sidewalks and aprons at the entrance points which would define the frontage of the property. He pointed out that the Board received supplemental landscape plans which showed landscape islands on each side of the property with trees. This would preserve the short frontage of 113 feet for the commercial use in the front. Cameron further described the parking on the site, and mentioned comments from Code pertaining to the location of the handicapped accessible parking spaces, in particular, the space in the rear should be moved to the front for the commercial use. Cameron stated the space was included on the plan for the residences, and based on regulations, we are only required to have one handicap space in the front for the commercial use. The second space is not needed, but is being kept on the plan as a bonus. The property line will be bounded by a screening fence and he described the abutting properties. Cameron stated that pavement that goes right up to the property line next door will be removed and replaced with side-yard screening of grass and hedging. He showed where the trash and snow areas would be.

Cameron described the stormwater on the site stating that it currently flowed front to back and discharged onto adjacent properties. He stated a fully compliant stormwater management system will be on site and all water will go into the ground. Cameron pointed out that Engineering did review this, and their comments pertained to utility systems that were addressed.

Cameron stated that landscaping trees were proposed at the front of the property. The ZBA had asked for feedback from the Planning Board and comments were received regarding landscaping and open space. He stated that they eliminated one of the parking spaces and added more landscaping indicating that they were trying to squeeze as much landscaping as possible onto the site. He stated the landscaping would stand out in this neighborhood. Cameron further described the elevations and

lighting which would be downcast and building mounted. There would be residential type sconces, and he stated that they were not required to submit a photometric lighting plan.

Cote told the Board that Pantazelos and Mammola are Danvers residents, and they have agreed to having an affordable unit at the site.

Day told the Board that the applicant went through Technical Review Committee and Zoning Board of Appeal review. LIP Certification language was included in the ZBA decision, and a LIP certified unit would be put in place. She suggested adding what the timing should be in their decision.

Cote stated they have been instructed what to do by the state. Day stated that they should have a condition that the applicant will initiate and work with staff to obtain approval from DHCD.

Prentiss stated that he likes the project overall. He thinks it is an improvement and he does not have a problem with the landscaping waiver. This is what he was envisioning for the site. He asked the Board if the applicant would have to reapply if the use is changed from being a café. Day stated the ZBA decision read "first floor commercial, café, restaurant use" which covers all uses. Cote stated that they will do whatever is allowed in that area. He stated the only reason they would not do a café was due to the fact that a liquor license may not be available. He pointed out that they were not looking for a use variance. The finding they received from the ZBA was for residential.

Prentiss inquired about the two curb cuts and noted Engineering's desire that the two curb cuts remain. He understood the curb cuts originally, but asked why they wouldn't want to eliminate the cut on the front side and widen the other.

Cameron replied this was due to the retail component. It would facilitate parking for the commercial area and would allow delivery trucks to pull in and out. He does not anticipate a conflict, and actually feels it will assist. It is a very busy site across the street and feels it is critical to have the curb cuts to be able to get people onto their site quickly.

Prentiss felt there may be a conflict with people using the trash area with a handicapped spot next to it. Cote replied when they were contemplating the affordable unit, they thought it was required that it be handicapped accessible, but this is not the case. Cameron stated they could remove this handicapped space.

Sears felt this was a great reuse of the site since it needed to be prettied up. He does have concerns with the effect on the residential neighborhood with a potential 51 seat café/bar. He felt it maximized the use of the site, but is concerned with parking for the commercial part. Cameron stated they were not expecting a problem. They took the intense allowed use by right and determined what the maximum potential for parking was and that is what they provided.

Sears felt that if the parking area was full, there could be a problem with the abutting neighborhood.

Cote responded it was an allowed use. This was an industrial area, not a neighborhood. He stated that at the ZBA hearing there were two neighbors present, and there only concern was when deliveries would

be made. Cote stated it was not an issue of whether a variance was needed, it was an allowed use. He stated at the end of the day it may not be a café, it may be a coffee shop or two retail spaces. He is not going to be concerned with a neighborhood that does not show up and express that there is any sort of issue with this. Sears asked if they had met with the neighbors. Cote responded that this is an industrial area with a busy grocery store across the street generating more traffic than a restaurant would generate. Sears pointed to the neighbors on Wadsworth Street and Cote responded that there was no one at the hearing from Wadsworth Street. Sears asked if they would agree to a condition to close at 11:00 p.m. and the applicant agreed.

Sears asked what the color of the building was going to be, and Cameron stated the color palate had not yet been decided.

Cote stated they met with the Preservation Commission and they made a request that the new façade resemble the church's original architecture.

Cote stated that Mammola and Pantezelos own Pellana's in Peabody and Pete's-a-Place in Danvers and they have not had issues with neighbors. Whatever goes into their sites is "high-end".

Sears asked if some of the parking could be restricted for residences, and Cameron said there will be times that all spaces would not be used. Sears asked where deliveries would be made and Cameron showed him on the plan. Camerson stated that circulation can be made on the site without backing up onto the street.

Sears asked how the residences would be accessed, and this was pointed out by Cameron.

Zilinsky stated she was glad to see the reuse. She liked that the curb cuts were being delineated on the plan. She stated that maybe they could use barrels on the landscape corners instead of trees. She was concerned with commercial use versus a café. Zilinsky was concerned with parking on the site for commercial use and Cameron pointed out there were 21 spaces. Zilinsky was concerned with the parking especially visitors, and she understands that people will park in the commercial area. She would like to see more landscaping. She went by the site and saw that trees had been cut and Cameron pointed out where the trees had been removed.

Cheetham stated that she did not have a problem with the handicapped van space in the back of the site. She was glad Sears had addressed the issue about deliveries. She asked about hours of operation and she confirmed that they would have a condition for hours. She stated she was excited to see the use, but she is concerned with the outside café. She addressed the landscape buffer between the café and street, and suggested putting in landscaping instead of just grass. She thought it would be nice to have potted planters in the front, but understands the issues with the sidewalk. She asked Day about a sidewalk in the area, and she said it may be the right time to talk to DPW about a crosswalk. She does not have concerns with lighting. She asked about snow storage and Cote said that it was determined with the ZBA that snow would be removed if there was a lot of snow. Cameron said she answered her own question with regard to why there is grass between the café and Holten Street since this is a spot for snow storage. He also pointed out the other areas for snow storage. He said they would look into

putting planters on the side of the building. He stated that the trees were going to be maples and did not feel that should be understated.

Cheetham asked the Board if they would like bushes instead of trees, and Henry and Sears stated they preferred trees.

Henry asked Cameron to explain the sidewalks since it was mentioned that the sidewalks were going to be redone in the public right of way.

Cameron stated that presently there is a bituminous berm that people drive over, and it was going to become a concrete sidewalk with granite curbing.

Henry requested to have spaces designated in the back with a "residents only" sign. Cote did not have a problem with signage, but Cameron stated they would like to work it into the lease instead of signage. The applicant stated they would have no problem putting signage up for residents. Cote recommended putting the signage on the ground.

Henry was concerned with the handicapped spot next to the dumpster. Cameron stated that the trash truck has hooks that grab the containers and lift them out.

Cheetham asked where the opening of the dumpster was, and it was shown on the plan. A discussion ensued regarding the dumpster location. It was suggested that the handicapped spot designated as 6R on the plan be eliminated and the concrete pad for the dumpster be rotated 90 degrees for better access.

Sears inquired about lighting specifications and Cameron replied that all lighting was on the site plan. The lights are downcast illuminating the face of the building.

Sears had a question regarding the outdoor seating and asked if the outdoor audio could be limited or eliminated altogether. Mammola said he would agree to limiting the audio, but he did not want to eliminate it completely.

Henry suggested that it be a condition they accept and once the plans are in place, they could come back before the Board.

Cote asked if audio approval came from the Planning Board or the Board of Selectmen and he was told it was the Planning Board. Cheetham stated that they do their best to reduce noise on projects and they have been asking a lot of applicants to accept this. Sears stated that they have had problems with noise with the car dealerships.

Cote asked if they can legally request this and Sears pointed out they did under Section 4, General Conditions. Cote asked if the Board was requesting they waive outdoor audio. Sears asked that they have no outdoor audio for the outside café and the applicants accepted this request.

Zilinsky requested if more landscaping could be provided between the two curb cuts it would be appreciated.

John Mroszczyk of 74 Holten Street stated he thought this was a great project and he would like it to go forward.

Zilinsky pointed out that Rodgers recommended not approving the plans since they had not yet been reviewed by him and Cote stated they would take the approval subject to Rodgers approving the plans.

MOTION: Cheetham moved to close the public hearing for the Site Plan Approval for 74 Holten Street. Zilinsky seconded the motion. The motion passed by unanimous vote.

MOTION: Day read the Certificate of Action and Sears moved to accept the Site Plan approval for 74 Holten Street. Zilinsky seconded the motion. The motion passed by unanimous vote.

CONTINUED PUBLIC HEARING

420 Newbury Street. Request for Special Permit and Site Plan Approval pursuant to Section 30 and Section 4 of the Zoning Bylaw submitted by Ventura Baking Corp. for property located in the Industrial I Zoning District. The applicant proposes to relocate the donut shop located within the Exxon Service station on the northbound side of Newbury Street (Route 1) to the Mobil station located on the southbound side of Newbury Street, to install a small addition to the rear of the building for cooler and storage capacity, and to add a drive-through window. (Assessor's Map 8, Lots 51A) (*Site Plan action date: March 29, 2013/Special Permit action date: March 29, 2013*)

Jason Panos appeared before the Board on behalf of the applicant. He stated that Cameron had completed some plan revisions on March 18th as had been requested by the Board. He indicated that traffic responses to the McMahon letter were submitted on March 21st, and a summary of activity and uses on the property were submitted on Friday March 22nd which Day confirmed receiving.

Panos indicated that a letter was received from the Mass DOT, and they confirmed a permit from DOT is not required for the development being proposed.

Jason Panos introduced himself stating he was from the law firm of Kopelman and Paige and introduced Scott Cameron from the Neve-Morin Group, Inc., Heather Monticup from GPI, Jose Ventura and Richard Ventura from Ventura Baking Corp., Richard Davenport for Global and Jim Murphy, site manager.

Panos stated that they had received the decision from the ZBA a few days ago. He indicated that the proposal is simply a change in location from a current use in existence across the street with significant community impact improvements. The operation at the 425 Newbury Street location has gas service, a convenient store that sells items competing with the Dunkin Donuts, keno and a Dunkin Donuts. He stated that 420 Newbury Street has all of these uses, but has the existing use of the sale of beer and wine. 420 Newbury Street provides them with the opportunity to do something that cannot be done at the site located at 425 Newbury Street. The addition of a bypass lane and drive-through will allow them to manage traffic better. There will be a substantial decrease of left turns from the site onto Route 1, they

will have the ability to determine fuel deliveries and they will eliminate the sale of competing items at the convenience store. Panos stated they will add and enhance landscape buffers and lighting will be improved. He pointed out there are no residential abutters to the site. They have addressed employee parking by even taking into account Keifer's concern with queuing. He stated that all materials have been provided and in every circumstance this is a better site.

Cameron addressed the Board and went over the changes made to the plan. In response to traffic, a row of parking spaces were shifted and a street tree was added. A small landscape foundation planting will extend off the drive-through, and the curb radius was slightly increased to address the concern of the movement of trucks on site. He stated that the trash compactor has been moved and employee parking spaces have been designated. They now have 19 parking spaces. The air compressor will be removed from the corner of the building, and the sign board will be shifted back to accommodate more vehicles. They have added a yield to pedestrians sign near the drive-through area.

Monticup stated that they responded to the McMahon letter which they received at the last Planning Board meeting. They had received a comment letter dated March 25th from Smolak and Vaughn and another letter from McMahon Associates dated March 26th. She stated she was going to summarize the issues going back and forth. The first issue was trip generation which she felt there was a difference of opinion. They looked at two methodologies which were ITE data and local data, and this is what they used. They are just relocating the site across the street on an existing roadway servicing existing customers. Concerning the drive-through queuing, they used the ITE data which states that the movements on the site are the same with or without a drive-through.

She stated that the facility will not have competing items, and they did not decrease traffic for not having these items on their site. For this reason they feel the trip generation numbers are accurate. They did look at Newbury Street and North Street, and the traffic impacts of left hand turns into either site is negligible. The levels of service do not change on either site with the facilities being fully operational. Monticup stated that even under the 2018 No Build Conditions, the delays at 425 Newbury Street are only 9 seconds away from being a Level F. Monticup described what she thought was going to happen. There presently exists the site on the northbound side of the road at 425 Newbury Street. They are going to move the operation to 420 Newbury Street and in time it will be occupied so trips in the area will be shared with both sites. She stated in general, if you have 100 trips at 425 Newbury Street today, it will move to 420 Newbury Street. The trips in the area may increase to 150, but they would be split between the two facilities so you could have 75 customers using each store. The traffic study assumes that the traffic will be going on at both facilities.

Monticup stated they were also requested to look at the driveway configurations, and she indicated that if you look at existing traffic volumes, they use north to enter and south to exit. She stated that having two-way traffic flow in the driveways allows people to exit or enter where they can. She felt if all traffic exited at the south, it could back up into the order window. She would not recommend an exit only and entrance only because it would not help the site circulation. She wanted to confirm that the DOT letter that Panos referred to had no issues regarding the driveways.

Cheetham asked Monticup what the level of service was for the 420 driveway and she replied that it was Level B & C on the south-side driveway and Level B & E on the north-side driveway.

Sears asked Monticup what the differences were and Monticup explained.

Cheetham does not have concerns about the trip generation numbers and access use. She stated that Monticup said that there are times of the day where the increase may push the level to F on the site. A discussion ensued concerning the level changes based on the increased use in the area. Henry pointed out that the level changes could flip from one site to another.

Cheetham stated that she likes the improvements such as the yield to pedestrians sign. She does not disagree with the traffic calculations.

Zilinsky agreed with what Cheetham said. She also likes that parking spaces were moved back and felt it is an appropriate use with the site.

Prentiss stated if there is the argument that 90% of the population was using the entrance as a one way in or one way out, why not use it as such. Monticup replied that the exit would be affected. Prentiss stated they are not looking to narrow the exits. Panos stated they may have to notify the DOT. Cameron stated that the small change would have a large impact on the site. They were trying to eliminate chaos on the site and this would be less efficient for site layout and for circulation perspective. He stated that Monticup's numbers demonstrated that people trend towards the northern curb cut, and changing it would most likely create chaos.

Prentiss said it was not a major point for him but if a majority of the population is going to use the site like this, what is the difference of marking it. He understands it could be a circulation issue. Cameron stated putting up signs and having restrictions would make the situation worse.

Sears appreciates that they have tried to make the site work, however, he still has a problem with the congestion and chaos on the site. He felt there is a lot of uncoordinated cross-movement, and his concern is for safety. He is not happy that the northern entrance would not be restricted. He questions the applicant's ability to restrict the number of deliveries on the site. He is not satisfied that this site is going to work safely and protect the public. He does not see the harmony of the site to be conducive to the operation of all the uses and traffic flows. He feels there are too many oars in the ocean.

Panos responded that there is really not that much more going on at this site than what is going on across the street, and Sears responded that there was going to be a 14 car queue on their site. Panos responded that it is a benefit that they do not currently have and it would allow them to manage delivery traffic and separate it out from customer traffic.

Sears asked if deliveries would be restricted, and Panos said their preference is that the deliveries would be made between 6:00 p.m. and midnight. Panos stated that the main point was that they were not doing a lot more than what is going on across the street other than now it is managed.

Henry stated if there was not a distinct economic benefit to a drive-through they would not be doing it, and he felt it is not that same as 425 Newbury Street. He appreciates all the changes, but he insists on a one-way in and one-way out. He felt they need to deal with the issue of the bulk of the traffic going onto the site and felt it was worth changing the pattern. If the majority of the traffic goes onto the site

this way, have it defined. He stated that he cannot condone a weird movement cutting through the gas area and ending up in the queue.

Cheetham disagreed since there are a lot of gas stations with convenient stores that do not restrict how traffic goes in and out. She felt it was an overkill on an operation that is there now. Sears pointed out that there is a queue on this site.

Henry stated he would only be in favor if there was a condition of a one-way in and one-way out.

Monticup stated there would be a split of the traffic coming in for the drive-through queue and she explained her count.

Cameron stated there was a slope coming onto this site, but there is fantastic visibility as well. He felt the slope forces you to slow down. The parking spaces being pushed back allows more time to slow down when entering the site, and this is better than what is presently happening on the site. He felt that they are managing an existing use and making the site significantly better from on-site circulation.

Henry stated that this was one of the most complete submissions they have had in a while.

Leo Vercollone addressed the Board and stated he owned the Gulf station across the street. He was before the Town for a drive-through which was denied because of traffic. He stated it is a very busy area. His location is on an acre and one-half of land and 420 Newbury Street is located on an acre. His site does not have keno. He made reference to the ITE Trip generation manual stating that 98% of gas convenience stores do not have beer and wine. He felt that they need to take into account keno, beer and wine, and the drive-through. He loves traffic for his business, but it has to be safe traffic. The entrances to both sites are across from each other. Both sites were once repair sites and now they both have convenient stores. 420 Newbury Street has beer and wine and keno. We both are going to have a coffee and donut shop. He stated that he is not opposed to Ventura moving, but he is concerned with the traffic that is going to be generated with two coffee and donut shops with one having a drive-through. He requested if the Board was going to approve the site, it be approved with restrictions.

Vercollone also stated he was concerned about the gas truck delivering gas to the front of the site. It would block the drive-through lane during fuel delivery for an hour.

He respects the applicant's right to go across the street, but he is concerned with the drive-through and the traffic, and how the traffic is going to affect his business.

Stephanie Keifer, from Smolak & Vaughan, addressed the Board indicating that she represents Verc Enterprises.

She pointed to a letter she submitted regarding traffic, a letter from McMahon & Associates. She also brought up a letter from a resident at 466 Newbury Street, and Henry told her they had been in receipt of that letter.

Keifer stated she had heard repeatedly that this was a relocation of a business from 425 to 420 Newbury Street, and she felt this cannot be viewed as a relocation since there is no drive-through at 425 Newbury Street. At 425 Newbury Street, all that currently exists is a gas station and a coffee shop. She felt they were layering on a site that has less than one acre which would create traffic issues. She addressed the Board stating Site Plan review was to mitigate adverse effect on a site. She felt the Board would have difficulty wrapping its head around what the traffic was going to be like. The letter from McMahon Associates stated that the traffic as calculated defies logic, and she felt there was a reason the applicant looked at the ITE numbers. If 72% of the business comes through the drive-through, she questioned whether the Board had the correct information available to them to determine what would happen with traffic.

Keifer pointed out that people playing keno needed to stay in the store and watch the board as opposed to purchasing a lottery ticket. She questioned whether the activity data presented was percent of sales or volume of sales. She felt the Board is impeded in evaluating the impact of layering on another use to this site.

Keifer addressed the issue of whether the driveway can be a one-way in or one-way out and she felt the bylaws did not allow that option.

Keifer stated there are traffic concerns based on the number of deliveries being made since they will block the driveway and drive-through. She stated that the applicant cannot restrict deliveries, and there is no commitment that the owner is going to do that. She stated that the applicant has not provided the Board with their hours of operation.

Sears asked Vercollone when he had applied for a drive-through, and he responded that he thought it was nine years ago. Panos pointed out that they applied to the ZBA at that time.

Sears asked Vercollone if the applicant was approved, would he anticipate applying for a drive-through, and Vercollone said he would. Sears asked if they had wetlands, and Vercollone responded that they did. Sears asked if this would restrict the use and Vercollone responded that they met ConCom requirements, but were denied because of traffic.

A discussion ensued about the possible affect of what could happen in potential future decisions with another drive-through, and Cheetham stated they could question every project on this basis.

Sears stated this could happen with the Holten Street approval. It is important to know because there could be two drive-throughs on opposite sides of the street, and he questioned whether there would need to be a lane to handle the traffic with potentially two drive-throughs.

Prentiss stated it would essentially stop left hand turns.

Sears pointed out the drive-throughs on Endicott Street were all on the same side.

Prentiss pointed out that this discussion cannot influence their decision.

Cheetham stated that they needed to keep in mind that the two sites presently have entrances and exits that are opposite each other that offer a decent level of service.

A discussion ensued between the Board regarding the traffic impact on the roadway.

Henry stated after reading all the traffic letters, he was going to come to the meeting tonight and suggest a third party review, but he did not feel he would get the votes needed to do this from the Board.

Henry stated the biggest issue with this site is the divided entrance. The bylaws are correct and say that the entrance "shall be divided" and we do not have the authority to waive this. It is the only one that has criteria as to what to do if the use has a certain volume. It states "if the traffic is expected to exceed 300 vehicles per day per acre, it shall be divided." Henry stated he will not vote in favor of it unless a divided drive is provided.

Monticup pointed out that the gas station today has traffic at 300 vehicles per day, and Henry pointed out that this is a pre-existing condition. Henry stated he interprets this bylaw as being one-way in and one-way out. Cheetham responded that she is not sure of the interpretation.

Panos asked if they could reach middle ground with an accommodation of striping through the middle on both sides with arrows.

At 9:28 p.m. the applicant requested a five minute recess.

Panos stated to the Board that they would not be averse to a condition of striping and signage at the entrances and exits for a one-way in /one-way out. Henry stated he was okay with this.

Prentiss stated he was a big proponent that the site had great circulation. If the decision is proven wrong, the applicant has the ability to come back before the Board for a Minor Modification.

Monticup stated they would submit the revised plan to the DOT for their approval. Henry stated they do not have the right to condition approvals on prior referrals. The DOT has their criteria to worry about, we have ours.

Cheetham asked the applicant to confirm the width of the curb cut and it was confirmed that it was 30 feet wide. Cheetham did not see the need to do a one-way in and one-way out with a curb cut that was 30 feet in width when they have the same thing happening at other sites in town.

Sears pointed out that there are no pump gas stations in front of it.

Cheetham said she felt the site met the bylaw.

Henry stated he interpreted the bylaw as meaning divided.

Zilinsky stated that the applicant has agreed to the condition.

Monticup asked what would happen if the DOT says they do not like the new plan. Henry stated you need the permit from them so you would have to figure out what to do next.

MOTION: Sears moved to close the public hearing for the Special Permit Approval for 420 Newbury Street. Zilinsky seconded the motion. The motion passed by unanimous vote.

MOTION: Henry read the Certificate of Action and Prentiss moved to accept the Special Permit approval for 420 Newbury Street. Zilinsky seconded the motion. The motion failed by a vote of 3-2.

Discussion ensued as to how to reconsider the vote.

Cheetham thought this is unnecessary with a 30 foot entry. She felt that when this decision was made they need to apply this to the next applicant, so the Board needs to be consistent.

Sears stated that there are three to four uses on the same site with a lot of cross movements that are not safe within the site and access to the site. He asked to be shown another site in Town that had four distinct uses on one acre.

MOTION: Cheetham moved to reconsider the earlier vote given for the Special Permit Approval for 420 Newbury Street in order to re-evaluate the condition of a one-way entrance. Prentiss seconded the motion. The motion passed by unanimous vote.

Keifer asked the Board whether they were going to rescind the vote or reconsider the vote? Henry responded that they were going to reconsider a motion previously decided.

Prentiss stated that he would not like to see this one item be the sticking point on voting on this project. He felt the supermajority was going to be difficult if Board members are going to vote on either side. It is not a problem going to a two-way, but the way Cameron drew it on the plan was not an excellent way of making him feel comfortable with it.

Sears stated that the striping does not solve the problem for him. His concerns were with the cross movements and deliveries, and he felt there were going to be problems. He felt there was an overuse of the site and people were being encouraged to cut across to use the other entrance. He felt they were forgetting about the gas station because they are so concerned with the drive-through.

Henry stated that the cars have the option to drive around the site to get to the correct side, and he felt the site facilitates the movement.

Zilinsky stated she does not have a problem and felt it was a well-designed site. She is not totally opposed to the one-way in or one-way out. She is concerned about constricting the people to get the gas. She felt it was designed well and is not concerned about additional uses. As far as safety goes, it is not creating a safety hazard. She will vote for the one-way, but is not opposed to both ways on either side either.

Henry apologized because he did not mean to create a log jam. He felt it was a level of comfort for the site, and the applicant agreed to the condition. He is concerned about the 10% of site traffic traveling under the canopy to get into a lane. He felt they should talk about how the language of the bylaw should be interpreted.

Prentiss stated he would be happy to make a motion to accept the previous motion with the amendment of a two-way entrance striped as designed on sheet 2 of 4.

Sears stated he was not sure about this.

MOTION: Prentiss moved to make it the same as the original motion to approve the Special Permit for 420 Newbury Street with the exception of the condition to make a one-way entrance northbound and a one-way exit southbound making it a two-way entrance on the northbound and southbound side. Zilinsky seconded the motion. The motion failed by a vote of 3-2.

Henry felt they should take action on the Site Plan Approval so there would be no question whether it was approved or denied.

Henry stated that they should look for a motion to deny the Site Plan Approval since they cannot rule on it because the applicant did not get the Special Permit.

Zilinsky asked why they need to deny it, and the Board explained that it cannot be left on the table and it is a housekeeping issue.

MOTION: Sears moved to deny the Site Plan Approval for 420 Newbury Street. Prentiss seconded the motion. The motion passed by unanimous vote.

MINUTES

MOTION: Sears moved to approve the minutes of March 12, 2013. Prentiss seconded the motion. The motion passed by unanimous vote.

ADJOURNMENT

MOTION: Prentiss moved to adjourn. Zilinsky seconded the motion. The motion passed by unanimous vote.

The meeting adjourned at 10:10 p.m.

Respectfully submitted:

Francine T. Butler

The Planning Board approved these minutes on May 14, 2013.