



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

May 14, 2013

7:00 p.m.

MINUTES

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

STAFF BRIEFING

Day told the Board that Bunky's Marina had submitted a Site Plan Application to redevelop the former CAI Site and they will be heard at the next meeting after requesting to be continued.

Day stated the Medical Marijuana Article was going before Town Meeting on May 20th. Henry stated that the Department of Public Health (DPH) had released the final regulations. Day thought they did a good job with the draft regulations and final regulations. The DPH put out the draft, held a series of public hearings, and have finalized the regulations which go into effect on May 24th. The Board can act any time to promulgate zoning changes concerning medical marijuana for a special Town Meeting.

Day directed the Board to an e-mail highlighting the difference of language in the draft and final regulations. Town Meeting does not like to entertain floor amendments to warrant articles, but in this situation the DPH language and warrant articles should match. She told them that this was reviewed by Town Counsel to ask if he thought an amendment should be made at Town Meeting and he agreed. She looked to the Planning Board for a consensus that it is a good idea to make the language consistent. Cheetham stated she did not have a problem with this if Town Counsel agreed, and she suggested letting the Town Moderator know. Zilinsky and Sears stated they were agreeable. Prentiss stated that it is a change for consistency with the definition of a Medical Marijuana Treatment Center. Prentiss stated he did not want to create confusion on the floor. Prentiss asked what would happen if the moratorium was shot down on the floor, and Day replied that existing zoning laws would prevail, allowing dispensaries in the I-II and Healthcare District by right.

MOTION: Prentiss moved to amend Article 8 "Medical Marijuana Treatment Centers" to be consistent with final Department of Public Health language as adopted on May 8, 2013. Zilinsky seconded the motion. The motion passed by a unanimous vote.

Prentiss asked about the Site Plan Application for Bunky's Realty at 128 Water Street. He stated he knows the site from the explosion, but he has never walked it. He asked if anyone else had walked it and Zilinsky responded that she had been down the road. Prentiss stated he would like to take a walk around the site. Day stated it was probably fenced, but she would contact the owner to get the gate unlocked.

Cheetham stated that she is looking for a crosswalk in that area to unite the two neighborhoods. She asked if this should be brought before DTAC.

FORM A

204 Locust Street. Request by Black Door Properties, LLC for endorsement of Form A plan to divide the premises into two conforming lots which will comply with zoning regulations for zoning district Residential – II. (Assessor's Map 21, Lot 36). (*Approval Not Required Action Date: May 16, 2013.*)

Bob Griffin of Griffin Engineering Group appeared before the Board on behalf of the applicant, and stated this was a straight-forward application. The current lot has approximate one acre of land and the goal was to simply divide it into two lots. He stated that one nuance was to remove the garage from the existing residence to make the lot line setbacks work.

Prentiss asked what the setback was from the sideline when the garage is removed and Griffin responded 15 ½ feet.

Zilinsky pointed out that Engineering had questions regarding utility easements, and Griffin stated they were not at a point where they know where the buildings are going and felt it was best handled later.

MOTION: Sears read the Certificate of Action and moved to find that Planning Board approval is not required to divide the property located at 204 Locust Street. Prentiss seconded the motion. The motion passed by a unanimous vote.

PUBLIC HEARING

128R Water Street. Request for Special Permit and Site Plan Approval pursuant to Section 30 and Section 4 of the Zoning Bylaw submitted by Bunky's Realty LLC for property located in the Waterfront Village District. The applicant proposes to build a boat yard containing boat storage, brokerage and related uses in said District. The proposed building on the site will contain 4,500 square feet of gross floor area containing an office, men's and women's bathrooms, and a garage area. (Assessor's Map 64, Lots 62) (*Site Plan action date: June 7, 2013/Special Permit action date: June 14, 2013*) (**TO BE CONTINUED WITHOUT DISCUSSION AT THE APPLICANT'S REQUEST TO MAY 28, 2013**).

Henry read the legal notice to open the public hearing.

MOTION: Prentiss moved to continue the public hearing for 128R Water Street at the applicant's request to May 28, 2013. Sears seconded the motion. The motion passed by unanimous vote.

OTHER BUSINESS

155 Andover Street. Request for a Major Modification to an approved Site Plan pursuant to Section 4 of the Zoning Bylaw submitted by Kelly Automotive Group/Kelly Infiniti for property located in the Route 114A Zone District. The applicant proposes to modify the previously approved Site Plan by eliminating the triangular addition on the front of the building and constructing a new glass wall façade treatment, adding a second story to a small portion of the building for a uniform appearance, and relocating the entrance vestibule. (Assessor's Map 55, Lots 14) (*SPA action date: May 17, 2013*)

Henry read the legal notice to open the public hearing.

Nancy McCann appeared before the Board on behalf of the applicant. With her were Brian Kelly and Sal Sachetta, along with Charlie Weir from Meridian Associates. She indicated that in 1997 Site Plan Approval was allowed for the renovation of Kelly Infiniti which has been operating since 1998, but is now in need of a facelift. She stated that the addition of 11 feet made this a Major Modification. McCann showed the existing conditions and proposed renovations on the plans. The two story façade will continue across the building and the vestibule area would be eliminated and replaced with another vestibule area closer to Route 114.

Charlie Weir stated the only change is the entryway next to the vestibule. Because the vestibule is being relocated, handicapped spaces will move as well. Weir stated there was no change in impervious surface on the site other than the 11 square feet.

McCann stated that Rodgers did not have any issues with the application.

Prentiss stated that the Fire Department thought the parking on the left hand side of the building was narrow and McCann replied that it was not meant as a travel lane. There may be cars parked there, but it is not a driveway since there is going to be parking all around the corner of the building.

Prentiss felt the concern was about getting fire trucks through the lane, and McCann stated it was not a fire access and was never intended for that matter.

Henry stated he thought it appropriate to address the issue regarding the travel lane, but felt the Fire Department would pursue this if they felt there was an issue.

MOTION: Zilinsky moved to determine this was a Major Modification for 155 Andover Street. Cheetham seconded the motion. The motion passed by unanimous vote.

MOTION: Prentiss moved to close the public hearing for 155 Andover Street. Sears seconded the motion. The motion passed by unanimous vote.

MOTION: Prentiss read the Certificate of Action and moved to approve the Major Modification for 155 Andover Street. Sears seconded the motion. The motion passed by unanimous vote.

Twin Echo Lane (formerly Duffill Drive) Definitive Subdivision. Request for acceptance of covenants and endorsement of plans.

Sears recused himself.

MOTION: Prentiss moved to endorse the covenant for Twin Echo Lane, formerly Duffill Drive. Zilinsky seconded the motion. The motion passed by a vote of 4-0. Sears abstained.

Request by Ventura Baking to find specific and material changes in the conditions upon which a previous unfavorable action was taken by the Board under MGL 40A, §16 for property at **420 Newbury Street**, and to further consent to a new hearing of the requests for a Special Permit and Site Plan Approval at the Board's regular meeting of Tuesday, May 14, 2013.

Henry noted that the applicant was denied the Special Permit at a previous hearing. Since they have reapplied they have triggered the State's provision of 40A that requires the SPGA to have a finding to allow a re-hearing of a denied petition. This is a two part issue. Day has been working with the advice of Town Counsel to be sure this is done correctly.

Henry stated that the Board needs to make a determination that there is a material change to the application forwarded by the applicant, and then consent to allow the application to come forward. If both of those are done in the affirmative, the Board can then open the hearing for 420 Newbury Street. Henry asked if it required a majority vote or supermajority, and Day confirmed that it was supermajority.

Henry felt there were material changes to the application with landscaping, loading and the entryway. He felt it was not the same application, and asked how the other members of the Board felt.

Prentiss stated that he was confused with what was considered a material change. He felt the biggest change was the finding and recommendation from the DOT on the curb cuts, but felt that this was more informational rather than a material change. He stated that he did not have a major problem with this application coming back from a procedural standpoint.

Sears stated his first impression was that this was a repetitive in nature, and he thought they would get more guidance from Town Counsel.

Cheetham felt it is specific and considered it a material change. She stated she was in favor of the project.

Zilinsky felt there was a material change since they have done work to the entrance and other areas. She does not have a problem going forward as long as the definition holds.

Day stated that the Ranney v. Board of Appeals of Nantucket decision, which she forwarded to the Planning Board was given to her by Town Counsel. This takes an almost minimalist view of what constitutes a material change. She pointed out that this was a denied application where the court said that a lot of small modifications warranted that it could be reheard.

Henry stated that there is an appeal coming regarding the decision that was given, and he asked if they should wait for the judge to decide. Day replied that Town Counsel again referred to the Ranney decision in providing the guidance that it is appropriate to rehear an application currently under ZBA appeal.

Prentiss stated he felt more comfortable hearing this application again because of the rumble strips.

Henry stated that four members of the Board were comfortable going forward, and he asked Sears if he felt the same way. Henry looked for a determination that there are material changes.

MOTION: Prentiss moved to accept that there was enough material change for a finding to rehear the Special Permit/Site Plan application of 420 Newbury Street.

Henry stated that Town Counsel had instructed the Board to include the reasons, such as rumble strips, landscaping and loading area.

MOTION: Prentiss moved to accept that there were enough material changes to rehear the application due to the changes in the access and egress with the rumble strip, and change in landscaping, and loading area. Zilinsky seconded the motion. The motion passed by a vote of 4-1.

MOTION: Prentiss moved to consent to the request to rehear the Special Permit/Site Plan application. Zilinsky seconded the motion. The motion passed by a vote of 4-1.

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, to add a drive-thru window and to alter curb cuts to provide two divided entrance drives. (Assessor's Map 8, Lots 51A) (*Site Plan action date: June 17, 2013/Special Permit action date: June 21, 2013*).

Henry read the legal notice to open the public hearing.

Jason Panos appeared before the Board on behalf of the applicant, along with Engineer Scott Cameron, Heather Monticup of GFI Associates, and Richard Ventura, on behalf of Ventura Baking Corp. Panos

expressed his regret for filing the appeal, which was done to preserve Ventura's interest. He stated he appreciated the votes that were taken to rehear the application. Hopefully, the issues can be resolved to mutual satisfaction.

Panos recapped the application to the Board members. The property is located on the south-bound side of Newbury Street and Interstate Highway Route 1, which curb cuts are under the jurisdiction of the Mass DOT. They currently operate their business at 425 Newbury Street, and they propose to relocate the shop to accommodate customers traveling South. The applicant's lease is expiring at the end of this month. The site has a convenience store and a gas station which conforms to the Zoning Board of Appeals, but it does not conform to Site Plan. The proposed changes to parking allow for additional landscaping as depicted on the revised plans. There have been significant improvements to visual aesthetics from the street, which provides screening to the abutting properties. This helps reduce the runoff to the street even further by decreasing the paved surface area. He stated that it is up to the Board to determine whether they require a waiver from the Site Plan requirements. The plans are waiver free, and conform to the zoning bylaws. The applicant proposes significant alterations to parking. The Zoning Board laws require 11 parking spaces, and they show 18 spaces. They are showing 13 cars in the queue with the capacity for 15 cars with 3 cars to exit. Panos stated there is good traffic flow into, through, and out of the property. The applicant proposes to add a 700 foot addition to the rear of the building.

Panos stated that they request Special Permit/Site Plan approval, and grant of waiver from 4.10.2c.2, and any other relief the Board deems necessary.

Cameron addressed the Board and stated they felt that they had fine-tuned the plan. The noted change is the concrete rumble strips and striping at the entrance. They did a lot of research regarding the entrance, and felt that the significance of the divided entrance would help facilitate traffic in and out of the site. Striping will stand out, and the concrete on the dark pavement will be seen which will act like an island to deter people from driving over them. He felt it helped maintain egress and circulation on the site. The drive-through and parking have been shifted farther north. Cameron stated there is a provision for a dedicated loading space to accommodate box trucks and tractor trailers. There will be two designated employee parking spaces, with two additional spaces at the front of the site. All these changes resulted in additional landscaping, which reduces the impervious situation, thereby further ameliorating runoff conditions. Cameron stated that the lighting is still moving closer to the building, and there is a full landscaping buffer between the abutting properties.

Monticup addressed the Board and stated that there are no changes to the traffic study, other than the minor updates concerning the drive-through.

Cheetham stated that she felt the improvements are fine, and that the rumble strips are effective. She stated she likes the landscaping, and does not have a problem with the waiver for the foundation plantings. She felt that they have taken an existing site and have provided as much landscaping as possible. She questioned if the change of landscaping affected the snow storage area, and Cameron stated that it is the same square footage.

Prentiss stated that he liked the original site plans, but the improvements shown have made them better. He asked if the DOT has a problem with these changes.

Panos replied that the DOT was careful stating that the curb cuts are within their jurisdiction, but what happens inside the site is the Board's decision.

Prentiss stated he liked the circulation on the site.

Sears asked what the size of the rumble strip was, and Cameron replied it was 4 feet wide and 8 feet deep. He asked if the landscaping percentage changed, and Cameron replied that it increased from 30.3 to 32.3 which is a two percent increase.

Henry asked what this was in absolute terms, and Cameron responded that it was 800 square feet.

Sears stated that there is the potential for 15 cars in the queue, but there are vehicles entering to park and other vehicles going around to load and unload for different uses. He asked how they planned to coordinate the vehicles exiting from the left side of the site. He stated his biggest concern is the movement happening within the site. He felt that people were being encouraged to go to the rear of the site to exit, while there are a lot of other uses going on. He asked how they were going to coordinate all of this.

Cameron stated that a good example of merging vehicles to the left side of the site is the McDonald's on Route 114. He stated there is a CAUTION sign before the drive-through, and the drive-through has the right-of-way.

Sears asked where the tanker truck would load/unload on the site. Cameron stated that the applicant has the option for the time of delivery of gas, which will be off-peak from the drive-through. He indicated that the lane can be fully shut-down if needed.

Sears asked if they would accept a condition for a time of delivery for the fuel.

Ventura stated he would accept the condition to close the drive-through for gas delivery/emergencies.

Panos stated that the ZBA had asked for similar conditions, and he asked how this would be accommodated during gas shortages when whether emergencies arise.

Cheetham stated that with a lot of storms, the business owner would do what is in their best interest. She felt that they did not need to have a condition.

Panos stated that he would accept the condition to close the drive-through. He stated that they can endeavor to stick to gas delivery times, but stated during emergencies like Hurricane Sandy, this may need to change.

Henry stated that that the Board would have to acknowledge that the condition is a good idea should it be needed.

Sears stated it is a business decision.

Zilinsky stated that she is not in favor of a condition.

Panos stated there is no additional cost with times of delivery.

Sears stated he is concerned with safety on the site, and how all the movements are going to relate. He stated they will have movements in and out for the gas, and felt it is still a concern.

Henry stated that this is a Site Plan review, and it is well within the Board's right to put a condition to the decision. He pointed out that the owner of the property has consented to this.

Prentiss felt that the site will dictate what goes into it. If the gas is delivered during the peak Dunkin Donuts hours, the business will fail. He does not care whether there is a condition, because the site will dictate when the timeline will work best. He would vote against putting a condition on the decision. He thought the first month or two there might be some juggling, but he felt the Ventura's have been in business for a long time, and they can discuss when the timeline coordinates for both.

Panos wanted to state for the record that they have been in business in the town for 25 years.

Sears felt that by making it a condition it would reflect that the Board has thought about the impact this may have on the site. He asked what was wrong with putting a sentence for delivering off-hours unless there is an emergency, to show that the Board has put some thought into this.

Henry stated if we did not go with the condition, the material submitted shows the intent.

Prentiss stated it was not a deal breaker, and felt they did not need it.

Zilinsky stated the applicant has agreed to close the drive-through, and she felt it was not that much of a safety issue. There are a number of businesses on the site that need to work together in order for them all to profit. She stated that she does not like a condition closing the drive-through lane, or a condition for the time of delivery. She felt the Dunkin Donuts and Mobil will work this out, and if we get too involved we are telling businesses how to run their business. They have taken every step to mitigate the filling of the fuel tanks.

Henry asked the Board if this was a Special Permit question or a Site Plan question. He thought it was more site plan.

Leo Vercollone, the owner of the Gulf Station at 425 Newbury Street addressed the Board. He has been in the business for 30 years and felt the 12,000 gallon trucks delivering fuel was a safety issue. Their biggest concern with this project is that vehicles exiting the site could hit the truck that it unloading. He suggested that they do a remote fill since the drive-through traffic will be exiting where the trucks are parked delivering the fuel. He informed the Board that trucks deliver in windows for delivery, not a specific time, and the delivery trucks want daytime deliveries because of safety.

Vercollone questioned the delivery of products to the site. When delivery trucks come in, their objective is to make deliveries during a specific time frame. He felt if the delivery truck is moved to the corner, now the driver needs to two-wheel the products to the front of the store. Since there were two to four

deliveries a day, with even more with beer and wine, Vercollone felt the delivery pad should be moved to the front corner. He pointed to the e-mail from the DOT stating that most of the traffic would be coming towards the south. He asked the Board when will people turning onto the site understand it is divided because he felt people coming onto the site will want to cross the site.

Vercollone asked when would people realize it was divided, and Panos said when they drive over it, they will know that it is a rumble strip.

Monticup stated that anything within the state right-of-way needs to be maintained by the state. They do not care what people do on their own property.

Cameron stated they did a lot of research, and through ASHTO they determined concrete was the best option, and is the preferred type of island for this application. Cameron stated it is there more for the people exiting the site.

Stephanie Keifer addressed the Board. She reminded the Board that they were talking about an existing active gas station and convenience store. She recapped the last motion at the last meeting, and she stated the only difference is the rumble strip. Keifer stated pursuant to Section 30.3 Section 2, a divided entrance is required, but the changes are not addressing Section 30.3, Section 6. She felt when access is being made to the site, with the loading facility at the back left, the delivery people are being exposed to hazards, and she pointed out that there are 12 different deliveries being made to this site.

Keifer also stated that the Special Permit requires ten spaces in the queue, and they only have nine on the plan. She felt they were trying to mitigate the multiple uses. She said while the DOT is not favorable of it, the Board needs to address the safety issues of entering the site since it presents an issue.

Keifer questioned the Board trying to determine whether to condition deliveries. She stated that ZBA issued the variance because it was coming before the Board for a Special Permit.

Henry replied that the Board did talk about the queuing and stacking.

Cameron addressed the Board stating the original plan had 13 queue spaces which is the requirement under the bylaws. He stated that the order box was pushed back in response to the abutter's concern.

Henry stated that the stacking and queuing is according to the bylaw.

Day stated there are quirks in the bylaw where there is one requirement for queuing under Special Permit and another under Site Plan. Henry stated the Special Permit criteria should be used .

Keifer stated within Section 4 of the bylaws, it requires four spaces between the order box and the pick-up window.

Henry stated that the use is triggered by a Special Permit. He stated that there will be another side to any reasonable conclusion.

Cheetham stated that by putting landscaping at the front of the site, parking is being taken away from the convenience store. Cheetham would be in favor of reconsidering the parking spaces at the front of the site. She likes that the option be there for delivery trucks to pull over and wait. She would like to reconsider the landscaping verses bumping the parking to the back of the site.

Sears stated there is a 15 foot wide exit lane to the right of the drive-through. He asked how deep the parking spaces were, and Cameron stated they complied with the 9 x 18 foot requirement. Sears asked where a delivery truck would wait if another delivery truck is utilizing the delivery space, and Panos responded it would work the way it presently does.

Sears questioned the maximum use on the site asking what would happen when a large delivery truck shows up and there is now someone behind them.

Cameron replied that they are trying to address 12 deliveries per week. He felt if this happened and they could not unload, they would go to the next site and come back. If it is a business use, it will work itself out.

Panos stated that Ventura said all their deliveries take place off peak to not interfere with the business on site.

Sears asked how people would know if the drive-through was closed if there was a gas delivery.

Panos replied that they would use cones. Ventura said he would do whatever the Board wanted.

Sears wanted a condition to close the drive-through.

Sears was concerned that the cones would be placed to the right of the handicapped parking spaces. A delivery truck with 12,000 gallons of gas concerned him.

MOTION: Prentiss moved to close the public hearing for the special permit application for 420 Newbury Street. Zilinsky seconded the motion. The motion passed by unanimous vote.

MOTION: Zilinsky moved to close public hearing for site plan approval for 420 Newbury Street. Prentiss seconded the motion. The motion passed by unanimous vote.

MOTION: Zilinsky read the Certificate of Action and moved to approve the Special Permit application for 420 Newbury Street. Cheetham seconded the motion.

Sears felt that the applicant had not met the requirements for Special Permit Section 30.3, Sections 2, 5, 6 & 7 of the bylaw and wanted to say this for the record.

The motion passed by a vote of 4-1.

Cheetham wants the Board to reconsider two parking spaces at the front of the site instead of trees.

Sears questions putting two spaces at the front near the divided entrance.

Cheetham stated there are seven spaces there presently, and there are no major problems.

Sears wanted her to confirm which tree was being removed.

Cheetham stated this is Site Plan review, and you want people to get near the door.

Prentiss stated he did not have a problem with this.

Zilinsky stated she did not have a problem. She felt the applicant is agreeable to it, and we are suggesting the change.

Sears asked the Board how they would condition the plan when the hearing has been closed, and we are changing their plan without their input.

Henry wanted to clarify that for Site Plan approval they required a vote of 3.

Henry asked Day if there was a problem imposing a plan change since the hearing was closed.

Sears asked if changing the parking would affect stormwater management, and Prentiss responded that he did not feel it would.

Sears felt the hearing could be reopened since it was reopened at the last meeting.

MOTION: Cheetham moved to re-open the public hearing for 420 Newbury Street to address the landscaping and parking spaces. Zilinsky seconded the motion. The motion passed by unanimous vote.

The applicant stated they were fine with the change in landscaping and parking spaces.

Keifer stated this may impact stormwater calculations.

Henry asked Cameron his opinion on this and Cameron responded that he felt it did not affect stormwater calculations.

MOTION: Cheetham moved to close the public hearing for site plan approval for 420 Newbury Street. Sears seconded the motion. The motion passed by unanimous vote.

MOTION: Cheetham read the Certificate of Action moved to approve the site plan approval for 420 Newbury Street. Zilinsky seconded the motion. The motion passed by a vote of 4-1.

MINUTES

MOTION: Prentiss moved to approve the minutes of April 16, 2013. Sears seconded the motion. The motion passed by unanimous vote.

ADJOURNMENT

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

The meeting adjourned at 9:15 p.m.

Respectfully submitted:

Francine T. Butler

The Planning Board approved these minutes on May 28, 2013.