

Maynard Zoning Board of Appeals - Minutes: September 16, 2013

Attending: Paul Scheiner (PS), Chair; Marilyn Messenger (MM); Carlos Perez (CP); and, Leslie Bryant (LB), Alternate. Absent: Christopher Etchechury. Also attending on behalf of the Town of Maynard: Eric R. Smith, AICP, Town Planner, Recording Secretary.

PS called the meeting to order at 7:00 PM noting the Board has 3 cases before it tonight.

**Petition of Seawitch, Inc., 175-177 Main Street for a Variance from the Dimensional Regulations within Section 4.1.1. of the Maynard Zoning Bylaw**

PS – Stated that the Board had received a Petition of Seawitch, Inc., 175 Main Street, Maynard, Map 14-Parcel 187 for a Variance from the Dimensional Regulations within Section 4.1.1. of the Maynard Zoning Bylaw related to minimum lot area, minimum yard area and maximum coverage for said lot located in the Business District. PS asked for Applicant to come before the Board.

Chris Basile, representing the petitioner: I own the Quarterdeck Seafoods and the lot next to Quarterdeck Seafoods. I am trying to sell the lot and I have a buyer. When looking for the selling process, Rick Asmann (Maynard Building Commissioner) said by selling that lot and zoning changes years ago that combined both pieces of property under one ownership. This lot is next to my building. The frontage for the Town is 75 feet and the lot has more than enough frontage. It is the building that does not have the frontage. It is short by 15 feet or so. Rick said I couldn't sell the lot because of the zoning law. I would like to sell off that lot. In reviewing the Business District Zoning Map almost every building in Maynard in that District is nonconforming.

PS: is the lot you want to sell off a legitimate building lot? Mr. Basile: Yes. I think if you did grant this Variance it would only help the Town. If someone did put a building on it would bring more tax revenue to the Town. Being an empty lot think it doesn't help the Town.

PS: If you moved the lot boundary, could you make both lots (conforming)? Mr. Basile there is not enough frontage to make dual lots.

MM: Are the two lots currently combined? So are you getting some of the frontage for the Quarterdeck building from this lot? Mr. Basile: No. They are two separate lots they have always been two separate lots. MM: I don't understand if they are two separate lots and you are not borrowing frontage, then I am having trouble understanding what the issue is.

ES, Town Planner: the Building Commissioner is not present tonight, but he told me of what is known under Massachusetts Zoning Law as "Merger Theory". ES read into the record information included in a Memo he prepared to the ZBA, which is from the Mass. Department of Housing and Community Development: "*Substandard buildings lots much be combined to form one lot that will meet or more closely approximate the minimum lot area and frontage requirements of a local zoning bylaw.*" MM: So it is not a separate lot. ES: Yes for zoning purposes you are correct. There was discussion of creating an ANR Plan. Chris: But that doesn't help either lot because there is not enough frontage to make two lots under zoning. MM: Right. LB: It is what it is. It is one lot.

Vic Tomyl disagreed with the Building Commissioners Merger Theory concept stating that he bought these as two separate lots and gets two tax bills.

PS: Any other comments. In favor or in opposition.

The Board then held discussions regarding the proposed Petition with Mr. Basile.

MM: How much frontage would you need, Fifteen? ES: Twenty-Five plus. MM: The other vacant lot, how much frontage? Mr. Basile and PS: 97 feet. CP: So that is conforming.

MM: I have a question, one of the Board members asked if you could in fact change where the lot line is, because you do have more than the required frontage on the larger lot you are trying to sell. I don't really know if this Bylaw applies to what you are saying or if it is after the fact and you own the lots. I don't know the answer to that. But if you could move it, it would make the Quarterdeck less non-conforming. Part of the intent of the bylaws, is that builders should not come in and do whatever they want, but also for Public Safety and have a little space between buildings. So it is not an unreasonable to ask that.

MM: It is a subjective situation. (To Mr. Basile): you are asking for a variance. Variance is not the letter of the law. Variance is asking to get some relief from the letter of the law.

The Board discussed the Merger Theory and questioned if it is applicable.

LB: Is this something we should put the question to Town Counsel? To say if the Merger is not just a theory but it is merged and in fact in separate. MM: I would like to the answer to that. LB: I think we should have a continuance and put the question to Town Counsel.

LB made a Motion to continue the Public Hearing until Monday October 21<sup>st</sup> @ 7:00p.m. for this petition until and the ZBA Chairman will contact if it is fact one lot or two lots. Seconded by PS. Petitioner had discussion with the Board. Vote 4 to 0 in favor of continuing the Public Hearing until Monday, October 21<sup>st</sup> @ 7:00p.m.. Town Planner noted that under M.G.L. Chapter 40A, the Zoning Board of Appeals has 100 days to issue a decision on a Variance from date of application filing.

**Petition of Stephen Trouskie, 39 Great Road, Maynard, Map 18-Parcel 211, for a Special Permit pursuant to Maynard Zoning Bylaw, Section 3.0 for a Private Kennel** PS: This was rescheduled from Monday, August 19<sup>th</sup> as we did not have a quorum of members on that date. PS then called for the Petitioner to present their case.

Laura Petterson, 39 Great Road: Stephen Trouskie is not available and I was wondering if I could now reschedule. PS: are you relative to him, or are you co-owner? Ms. Petterson: we own the house together. Board held discussions about rescheduling. Fred George: There are about a dozen people here tonight. Last time there were 16. Now we are going to put it off another month? Noted concerns of the residents in the neighborhood and that is why they are all here.

MM: The other question, now that this gentlemen brings it up, (to Ms. Petterson) you are not the Applicant? Then how can you request a postponement. What is your legal authority? Are you a co-applicant? PS: It says here (reading Application form) that they are both petitioners. MM: Both petitioners don't have to be here. There is no rule. PS: noted that it states "other applicant Laura Petterson." Board asked Ms. Petterson to proceed.

Ms. Petterson: We have one dog over the law. This Golden Retriever is 10 years old and their life span is only 9-11 years. She explained their family situation as to why they are now one dog over.

PS: So you are here for a Special Permit for a Kennel. Ms. Petterson: The woman I spoke to at the Town Hall said it is a private kennel. She (the dog) is on her last leg anyways. However it goes it goes.

MM: Is this the full application? Is there a site plan or any other things that are required? Town Planner: Noted a sketch plan was provided with the Application.

LB: It is not up to us to say if she can have three dogs. It is up to us to say she can have 4 dogs there. It is up to the Animal Control and Sanitation Department to deal with some of these other issues. The Kennel issue specifically is a matter of whether or not there can be more than 3 dogs on the property. What to do about this dog if we vote no?

CP: If we do give her a Special Permit for a Kennel how many dogs would the Special Permit (allow)?

MM: You can limit for a period of time for then it would need to be reviewed.

PS: We are reviewing the items that need to be in a Special Permit. That includes, site plan layout, construction materials for any shelter or run, facilities and locations for the storage or disposal of animal wastes and process for managing the animal wastes. (To Ms. Petterson) Do you have that? Is that in the this packet? Ms. Petterson: I have an invisible fence installed. Town Planner and the Board then conferred that not all items required under Section 7.6.2 were submitted as required.

PS then asked for Public Comment in Support of the Petition and heard none.

PS then asked for Public Comment in opposition of the Petition.

Ethan Mattor, 37 Great Road: I live directly next to the cages. The space is inadequate. The barking keeps me up every night.

Cheryl Roy, 43 Great Road: Night and after night there is the noise. The mess in the yard and then you add dogs to the mix. They don't have enough room and it is dangerous. Debris. It is nightmare there.

Michael Roy, 43 Great Road: I can attest of the noise issue. We have called the police many times waken up in the middle of the night. They (Petitioners) have sign puppies for sale. My concern is if you grant them a Kennel license, then if they don't sell the dogs they will keep them on their property in the space we all agree is inadequate.

Lee Caras, 32 Great Road: I live kitty corner across the street. Not directly observant of what goes on in the backyard. Just observing the front of the house, they never clean up from storms, have signs for special puppies and kittens for sale. Don't keep up their property and it is a blight on the neighborhood.

Bob Caras, 32 Great Road: Yes we are somewhat removed, being three houses across the street. But the noise from the dogs constantly we can hear it.

Janet Benson, 2 Allen Drive: I want to reiterate what has been said. The noise, totally unsanitary, unkept. As has been said, unsanitary conditions.

Fred George, 2 Allen Drive: Since they (Petitioners) moved in over 10 years ago they have had no compassion, no regard to the neighbors. The Maynard Police are there constantly. Nobody gets any relief and the Police can only do so much. On four separate occasions I was forced to call the Maynard Police cause of the dogs being out barking. There were five at that time. The supposed invisible fence, I think the dog needs a collar to observe the fence. How many times have their dogs been on 117? Or been hit? Have we gotten any input from the Animal Control Officer?

PS: Noted the Board did receive a note from the Animal Control Officer. And also received letter from the Board Of Health.

Mr. George: Can you read it (Animal Control Officer letter)?

PS: The Animal Control Officer dated August 19th notes *"that this office has handed several calls relating to the property and specifically the dog(s) well being....In addition we have over the years received complaints relative to the dogs barking continually."* Jennifer A Condon, Animal Control Officer, *"that No Kennel License should be granted"* is her opinion. From the Health Inspector, *"ticket warning notice of the intent to fine you if this condition is not corrected."* From Letter dated August 2nd.

PS: Any more people to speak in opposition?

Jean Thraeen, 34 Great Road: My husband works overnight shifts and has been constantly woken up throughout the night from the barking, barking, barking. And I agree with everyone else.

Unidentified woman: There was a hand drawn plan that was submitted and if you look at the area that is dedicated to the dogs. It is a very small area for one dog. If they are proposing 4 Golden Retrievers and if it is inadequate for one, they would be better off in a larger space.

Herbert Mallinson, 31 Great Road: I am partially deaf so I don't really hear the dogs. My concerns are focus on the environment. How are the dogs being cared for?

Bryan Denton 3 Allan Drive: I have a small child at home who has been woken up numerous time because of the dogs. I have had to call the Police.

MM made a Motion to the close the Public Hearing. Seconded by PS. Vote 4 to 0 in favor to close the Public Hearing.

PS called for ZBA member's discussions and deliberations of the Petition

MM: Because of the (concerns raised by) Board of Health, the neighbors, the Dog Officer, I don't see how we can possibly approve this.

CP: She would need a lot of changes to the Plans. Should she have the opportunity to make the changes?

LB: I am totally opposed.

MM made a motion to Deny the request for the Special Permit for the Private Dog Kennel for the property located at 39 Great Road, Maynard. Seconded by PS. Vote 4 to 0 to deny the Special Permit Petition.

**Petition of Dimopoulos Realty Trust, 170 Main Street for a Special Permit pursuant to Maynard Zoning Bylaw, Section 5.1.3, for reconstruction and alteration/extension of the existing structure on the property referred to as Jimmy's Garage**

Stephen Poole from Lakeview Engineering introduced himself as well as Nick Dimopoulos from Dimopoulos Realty Trust, who is the Applicant. Mr. Poole: 170 Main Street is the existing garage directly across the street from Town Hall. It's been a gas station, service area for the last 50 years. The property is a pre-existing nonconforming use per zoning. Just recently we were granted the Special Permit by the Planning Board to make it a permitted use of the site. And what we are asking the (Zoning) Board to do is to grant a second Special Permit to allow us to expand, reconstruct and improve the area.

Mr. Poole (pointing to site plan): What you see in red is limit of pavement right now. The existing building is a solid red line. The dashed red line is a concrete slab that at one time was a storage building since been demolished. There is a single gas island with a canopy. What we are proposing is to reconstruct the existing building. Take the mechanical, light service activities and move them to the rear of the structure. Then use the front portion of the building for dispensing of gasoline. The circulation now with single island becomes difficult with people coming from two different directions to fill gas on both sides of the car. We would like to put a second island in with expanded canopy to improve the circulation and activities there. We have service vehicles exiting and entering right into the gas pump areas and will move them out back. That requires expansion of the roadway and parking out back.

LB: Is that roadway on your property? Mr. Poole: Yes. Right now the building is 35 feet off that property line. The proposed new building would be 45 feet from the back line, which conforms to the zoning setbacks. This property was rezoned; originally we had residential /business line right through (the property). We went to Town Meeting back in 2011 and got the business district along the back property line on High Street.

LB: Are you saying there will be more pumps? Mr. Poole: There will be two islands (pointing to site plan): one slightly closer to the building, the other here.

Mr. Poole: One of the things we would like to get from the Board is to get a blessing on the setback requirements. This would be a nonconforming setback for the Business District. It is also a Downtown Overlay District, which

has zero setbacks. We are asking for the board to approve a Special Permit, so we can submit a Site Plan before the Planning Board. Talking to the Planning Staff, Building Commissioner and Town Counsel they gave us the 3 step process: 1) Town Meeting to rezone the property, 2) Planning Board for Special Permit for use and 3) Zoning Board for Special Permit to allow the expansion.

PS: Your inquiry is to have us give you the Special Permit, pursuant to the Planning Board review. Then you would not have to come back to us. Mr. Poole: Correct. Board reviewed the proposed site plan with the Applicant. Board discussed conforming with all building setbacks. Mr. Poole: All but the canopy in the front. We would be doing increased landscaping and repaving.

LB: How far back is the street is the new canopy? Mr. Poole: 10 and half feet back from the property line. Then the street is another 10 feet or so. Current canopy is 27 feet.

LB: So now more people could gas at the same time? Mr. Poole: Yes, 8. The Board discussed entering the gas station currently with fillers usually on the right. So with two islands we will try to set it up so it will improve flow.

PS: I am still trying to figure out the second island you are talking about relative to the property line. It looks like the property line is going right through the island. Or am I reading that wrong? Mr. Poole: (pointing to plan) here is the island, here is the property line. So the island is 21 feet back. The canopy is 10 feet back. PS: what is this big oval thing? Mr. Poole: This is new curbing. PS: I was reading that as the island.

LB: Would there really be enough room? Mr. Poole: Yes. There would be twenty feet in between islands. And again 21 feet from island to property line.

LB: There is issue of setback from the roadway. PS: Basically you asking us for the setback for the 2nd island canopy. Mr. Poole: Correct.

MM: Can't you just do it under the new overlay? Mr. Poole: We thought so. Nick: I think Counsel just wanted us to cross x's and dot our i's. We have been at this for past 4-5 years.

Mr. Vincent Dinh. I am the owner of 174 Main Street, the building next to the Gas Station. I am little bit concerned cause there is one single driveway that goes into the building for the six residences. If there is a lineup for cars turning right there could be potential for blockage. PS asked if there is an issue right now. Mr. Dinh: right now there is no issue cause it is wide open.

PS asked if anyone wished to speak in favor.

Mr. Vic Tomy: for background the Applicants proposed a few years ago quite a nice plan and it was discovered that the original zoning would not allow it as only part of the lot was zoned for business. If you do this with the Site Plan, I am sure it is going to improve the whole area.

Joe Russo, 1 High Street: This would be a great improvement. Absolutely in favor.

PS asked if anyone wished to speak in opposition. No one spoke in opposition.

MM made a motion to close the Public Hearing. Seconded by CP. Vote 4 to 0 in favor to close the Public Hearing.

Board then held deliberations.

LB: given that this is now part of the DOD it has taken away sorts of the issues that were there under the Business District. I have no objections. MM: I am good.

LB made a Motion to Grant the Application for a Special Permit for the reconstruction/alteration/extension of the existing structure, pursuant to Section 5.1.4. The Board makes the Finding the Overlay is not an issue. Finding is

we don't need the Special Permit. We do not need to grant the Special Permit. Board discussed the matter of the gas station use.

Mr. Poole: for clarification, we do have the Use Special Permit from the Planning Board. But we do need the Special Permit to expand the use. We are expanding the building and adding the second pumps. It is a pre-existing nonconforming and we are making the structure larger.

MM: We would need to determine that it is not any more detrimental than what already existing.

Nick: The expansion requires the Permit from you though.

LB then modified her Motion to Grant the Special Permit, as requested by the Applicant, pursuant to Section 5.1.3, for the construction, alteration and extension of the existing structure on the property, referred to as Jimmy's Garage given that within the Downtown Overlay District it is permitted. Seconded by MM. Vote 4 to 0 in favor to approve the Special Permit.

PB made a Motion to Adjourn to meeting. Seconded by MM. Vote 4 to 0 in Favor.

List of Documents Entered into the Record  
*On file at the Office of Municipal Services*

- Town Planner Memo to ZBA re: Review of Seawitch, Inc. Variance Application
- Animal Control Officer letter dated August 19, 2013, re: 39 Great Road Kennel Request
- Board of Health letter dated August 2, 2013, re: 39 Great Road