

Planning Board Minutes: August 6, 2013

Attending: Bernie Cahill (BC), Chair; Chuck Shea (CS); Gregory Tuzzolo (GT); and, Kevin (KC). Also attending representing the Town of Maynard, Eric R. Smith, AICP, Town Planner. Absent: Max Lamson (ML), Vice Chair and Jason Kreil (JK), Alternate.

At 7:00 P.M. BC called the meeting to order and began with the continuation of the **Public Hearing on Proposed Changes: Zoning General Definitions and Table of Uses.**

“Proposed Changes: Zoning General Definitions – To amend Section 11.0 by replacing the existing definition of Supermarket with the following definitions. Changes are in bold and underlined.

Supermarket: A retail establishment or full-service grocery store **occupying a space no greater than 75,000 square feet,** ~~primarily~~ selling **primarily** food and grocery items not limited to, fresh meats, fresh poultry, fresh seafood, organic foods, bakery products that are baked on the premises, a fresh produce department and a deli department offering freshly prepared foods and counter service. A **Supermarket** may contain a pharmacy and may sell other ~~merchandise such as~~ convenience items **such as** household supplies and **cleaning products,** hardware, **food preparation materials,** and personal care and health products.

Proposed Changes: Table of uses – To amend the Table of Uses in Section 3.1.2 Table A, Use Regulations, Principal Uses 4. Business Uses, by changing Supermarket under the Industrial district from “Y” to “Special Permit” with approval by the Planning Board.”

BC turned over discussion to ES. ES introduced Memo “Town Planner Recommendations Supermarket Definition and Dimensional Changes” (copy on file at the Planning Office) Board opened up Public Hearing for changing Supermarket definitions and changing permitting such use to SP. ES noted Greg Tuzzolo introduced concept of requiring Special Permit for buildings over 75,000 square feet.

ES noted he took the Board discussions, Public Discussion and letter from Marie Gunnerson received at last meeting. After that meeting, ES noted he posted a question on the MassPlanners list serve to see if other Massachusetts communities have developed a more specific Supermarket definition. ES thought Somerville had a good definition, which was read into the record: *“Supermarket: An establishment whose primary business is the sale of a general line of food such as fresh fruits and vegetable, fresh and prepared meats, fish and poultry, and canned and frozen foods, with none of the lines predominating. The floor area devoted to the sale and storage of food comprises at least 75% of the gross floor area of the establishment.”*

ES noted the exact mix of food and non-food could be subject to what the Town of Maynard residents. Noted input from Chuck Shea via email and Marie Gunnerson from her letter indicated support of 85% food/15% non-food mix. ES noted his recommendation of not putting the dimensional cap in the definition however supports idea of size cap, both Supermarket and retail in general.

BC opened the hearing up for Board comment/questions.

KC: My thoughts since last week was putting dimensional requirement in the definition is cumbersome and more applicable to dimensional section of the Bylaw. Dimensional requirements approach cover buildings of all nature not just supermarkets.

BC: Asked for clarification on cap for retail or general and also in regards to use protections by filing of ANR at 129 Parker Street. Regardless of what is changed on definition for Supermarket would not apply to 129 Parker Street for 3 years.

KC: Does the Town want to have a building size limit? Believes a conversation the Town needs to go through.

BC: The Town needs to be having this discussion, especially after attending the initial Stakeholder Meeting on the 129 Parker Street. Two questions to put before Town Meeting Voters: 1) Supermarket Definition and 2) Dimensional Requirements.

CS: noted the Somerville is pretty good overall in terms of defining Supermarket. I don't agree that you can cap retail alone. ES: Notes that they (Somerville) gave it a size range. Westminster notes that did in for retail, capped at 25,000 square feet. CS: Asked for more questions on dimensional specifics. ES: Noted that is outside of the scope for this hearing, and planning to prepare more for the August 27th hearing.

CS: Question on would it apply to 129 Parker Street? CS wanted it to get into dimensional. He does like the Supermarket definition but wants dimensional caps for protection of the Town. Currently 35% building coverage in Industrial Zone. He does support retail cap but still allowing larger research building. He noted his draft dimensional proposal to exempt the NBOD to make it more enticing to develop under the NBOD.

GT: How critical is it including the percentage within the definition? CS: You won't get my vote without it. GT: Is there a way that someone could appeal to ZBA, no leniency? CS: Yes they would go to ZBA for a Variance.

GT: Explain why the percentage would protect us? ES: noted that Marie Gunnerson's concerns in her letter is that "primarily" could be defined 51%. BC: noted that if we wanted to eliminate a Wal-Mart, percentage would be more important to him that square-footage.

GT: Didn't want to put a burden on business owner with proposal. Asked what percentage Stop and Shop in Acton is? Nervous if we put in numbers without understanding market place. CS: Are you nervous we would be preventing a Market Basket from coming into Maynard? GT: Discussed going with 75% versus 85%. ES noted that Marie's letter indicated that the 15% non-food is based on research of Food Marketing Institute (FMI) Store Format Definitions for Supermarket.

GT: Noted we don't have dimensional regulations in the Table of Uses, is that what Westminster does? ES: Yes. Somerville breaks down retail in size categories. Smaller by right; larger Special Permit.

GT: Supports putting cap to specific uses. Although it wouldn't apply to 129 Parker and not sure if it is scope of tonight. ES: Noted the cap for Supermarket was in your Supermarket definition advertised.

CS: Three things going on here: 1) Supermarket Definition, 2) a Supermarket Size Cap and 3) cap applying to all districts or thresholds for Special Permit in Town.

BC: Noted these changes would not apply to 129 Parker Street. CS: Noted yes for the change to Special Permit. He cited the Cape Ann case. For permitted use change from Y to SP then yes the project would be subject to SP as long as your conditions are not extremely unrestrictive.

BC asked for opinion of Planning Board members on change of Supermarket from by-right to Special Permit.

KC: It is straight forward it should be SP; unclear why it ever got changed to yes or "Y" back then.

GT: I support it. Need to consider the politics and consideration of doing all these changes together. CS: Could do amendments? ES: Or make separate articles. Board then deliberated pros and cons of one large article with amendments versus separate articles for the supermarket definition, changing Y to SP and the proposed dimensional regulations that will be subject of August 27th hearing. Board consensus emerged for two separate articles for the Supermarket Definition and the change of use of Supermarket from Y to Planning Board Special Permit.

BC then opened up the Public Hearing to the Public.

George Kulik, 6 Field Street: I am not quite clear on the percentage. How do you monitor the percentages? BC: It would be the Building Inspector who would do the monitoring. ES: Confirmed. Mr. Kulik: are you still going to do a square footage requirement? BC: Looking forward to do dimensional requirements at the August 27th Public Hearing.

Marie Gunnerson, 119 Parker Street: Noted since she could not attend the last hearing she had sent a letter instead. Besides concerned about the Wal-Mart Supercenter and didn't think our existing definition was specific enough she decided to do the research, including the Food Marketing Institute (FMI), that looks at what typical percentage of non-food sales are at a Supermarket and found range 10-15% of non-food sales, 15% being high.

Ms. Gunnerson noted they have to leave space for storage, administrator offices, etc. For non-food plus the back store items. She does the reverse, limit for non-food items and they can decide (15% been for non-food and back store items). She then had question: are we talking about Special Permit versus Y/SP or not talking about percentages and not specific dimensions? BC: Noted both in original proposal. We added the percentages later. Marie was concerned with how Rick was interpreting primarily and thought best if Maynard could utilize percentages as researched from the FMI.

GT: Even if we get our uses right, there are still certain protections in NBOD that don't exist in by-right development, such as ability to negotiation traffic improvement, setbacks, landscaping and pedestrian friendly elements.

Michelle Booth, 2 Field Street: I had done some research when the Building Commissioner's interpretation of Supermarket definition came out. American Express, under the American Express rewards program, Wal-Mart is not a grocery store, either is Target and BJ's. Also noted when we created NBOD in 2006, Supermarkets were not allowed in the Industrial District. Michelle Booth and BC discussed the 2011 Zoning Bylaw Amendments to HCI and impact to zoning that now allows Supermarkets by-right in Industrial Zone.

Steve Kulik, 1B Street: We told you what we wanted do with new NBOD. Then he noted there is a timeline document on the website. ES noted that is a Draft Timeline prepared by Kevin Sweet based on working with the Board of Selectmen and the Developer after the failed Town Meeting Vote. He noted that the Board of Selectmen have only approved the 1st three items on that Timeline. Mr. Kulik: Are we heading to another Sunday Town Meeting Vote? BC: Noted currently holding two visioning sessions, the first of which we are trying to schedule. BC: Noted this Public Hearing is not related to any specific proposal but in response to discrepancies we found in past year in our Zoning Bylaw.

Paul and Karen Grimes, 4 Field Street: If we do the dimensional changes, what happens to the NBOD? CS: We could apply it to the NBOD or we could exempt, it depends on how we craft the Bylaw.

Paul Chiodo, 2 Cutting Drive: In your conversation with Mr. Kulik around Supermarket by-right in the grid from the 2010 Special Town Meeting you indicated there was a mistake. Are you saying it is a mistake in the Bylaw? BC: Not a mistake. I was not on the Board, but you can say it was an unintended consequence.

Greg McColm, 11 Sherman Street: There were three things I see advertised for this hearing: 1) The Special Permit; 2nd is the Definition and third is including size limit in definition. For #1 seems everyone seems it is a good idea, especially where they could do a Supermarket without any mitigation. The other issue is what is a Supermarket? We have seen that can be used as a loophole. He sees that the sales provision is helpful. He wants to see this attacked on all fronts. Sees the size limit is the strongest protection. Is still advocating for the size limit, believes the size limit would be within Town's rights and not give developer use protection. The applicability would be determined down the line when an actual project is filed.

BC wanted the Town Planner to clarify his recommendations. ES: just didn't recommend the square-foot limit in the definition, but recommend going in the Town's use table, per Somerville and Westminster's approach.

GT: Agreed we should put the applicability aside.

CS: That is all and good, but we advertised for the cap.

GT: As for the cap, I think Eric's approach is clear.

BC: Eric, under dimensional requirements can we put gross floor area as well as square footage, as there is a difference? ES: Yes. CS: Notes we do define gross floor area already. Second question is related to the definition and related to putting in the table of use. Would you be willing to put that in a Draft for next meeting?

Lynda Thayer, 14 Chandler Street: Have you considered, keeping in mind that Supermarket is also allowed by-right in Central Business District and Business District, would the Board ever consider looking at the meeting minutes for that Planning Board meeting (back in 2011) to see what the Board at that time was considering? BC: Noted he would discuss with Max and Jason. He understands Joe Mullin was thinking a Supermarket, like Trader Joe's for the Downtown.

Ms. Thayer noted that someone could come in a buy bunch of buildings downtown and raise buildings to put up a large building. BC: Noted we do have the Downtown overlay District, which has the additional design requirements. Ms. Thayer and the Board discussed the availability of meeting minutes.

Eric Zeller, 73 Nason Street: Question on design requirements? BC: There is Design Review. Mr. Zeller gave example of pizza building downtown and cited Jimmy's buildings.

BC confirmed we are in agreement for Special Permit. BC is ok going with Food Marketing Institute's #'s of 85%/15%. CS: Addresses your concerns; There is health and beauty and the seasonal and few other things jammed in. Marie noted she had checked couple other sources.

Paul Grimes, 4 Field Street. That 85% is the minimum, they like to get up to 90% as they get less profit margin from food sales. Not that much back-storage. BC: Marie had made a good point, make it percentage of what you are selling versus floor area. Mr. Grimes asked what about outdoor space being included in that 85%?

BC: Are we doing exactly what Somerville is doing? ES: Asked if we are going to continue the hearing? I believe we can only do the Supermarket use changes now for Industrial at this time. Would check with Town Counsel to see if possible for the other zoning districts. CS: Think she will say it is outside the scope. GT: If you are adding new rows and boxes how would you fill those in? CS: Would be "N"s.

The Board then deliberated draft language to use in the revised Supermarket definition, including discussions of outdoor storage. BC asked the Town Planner if he had enough information to prepare a revised draft Supermarket definition before the Zoning Bylaw.

KC: Can we get numbers now? BC: Would want to be conservative. KC: What is conservative.

BC: Average I have looked at 50,000 square feet. BC then gave examples of retail building size caps size of other communities, including Westford, which is 65,000 square feet. 20K

by right. CS: I was at 20,000 square feet before Supermarket. ES: Are you going to want the same numbers exactly the same? I mean for both Supermarket use table and then the new Section 4.1? Would then replicated for both Supermarket and the Dimensional changes.

The Board and the Town Planner then held conversation to help clarify this matter for the Town Planner. BC: So you want a maximum number of square feet for just Supermarket? CS: 50,000 square feet. KC: Some places there are large supermarket, say 80,000 square feet. Is that too large for our Industrial Zone? BC: Noted that 85,000 square feet was shot down at the last Town Meeting. GT: 75,000 square-foot already passed in the NBOD, that's got merit. Bernie, remember this is for the Industrial District. Thus, it would be an incentive if they want to building a larger grocery store then they would for using the NBOD. ES noted that 50,000 square feet based on research in the Institute for Local Self-Reliance's Big Box Toolkit.

CS: Stop and Shop in Wayland is 45,000 square feet. Then he got Eric's report it makes sense. Karen Grimes noted that originally the NBOD supermarket size was 65,000 square feet, but with Price Chopper, the NBOD was amended at last minutes for 75,000 square feet.

CS: Did note there is a sense of urgency as if there is a subdivision, not just an ANR, there would be a zoning freeze. The Board then had discussion of subdivision freeze protections under State Zoning Act. CS noted it is 8 years.

CS made motion to continue the Public Hearing for the Zoning Bylaw Amendment Proposal for Supermarket definition change and changing such use to SP in the Industrial Zones to August 27, 2013 @ 7:20p.m. Second by GT. Vote 4 to 0 in favor.

ES discussed State Zoning Act requirements for submittal of zoning bylaw amendments for Town Meeting warrants and Planning Board public hearings. CS noted the minimum dates, they are triggered by Town Charter.

Old/New Business

Planning Board Rules and Regulations

GT: Regardless of what we currently have, I don't know what we currently have. I think we should have independent rules and reg for Site Plan, Special Permit Subdivision, and any other processes, such as Design Review. BC: Did we have discussion with Eric to have you get the Rules and Regulations from Marie. CS: Regarding rules and regulations that are actually in the bylaw, we would have to go to Town Meeting and change them. Otherwise we change them with a public hearing and just vote on them. Eric has the old 2008 Zoning Bylaw in his hand, which has the rules and regulations in the appendix.

The Board had discussion related to the various Planning Board Rules and Regulations and process to update them accordingly. CS: Noted that the Subdivision Rules and Regulations are established under a different Chapter (Chapter 41) versus Special Permit and Site Plan

Rules and Regulations (Chapter 40A). Eric would research the status of rules and regulations.

GT: Imagined a developer's handbook that would have all the Rules and Regulations. CS: Mr. Chairman, the Town should give new members when they start a copy of the Zoning By-laws, Rules and Regulations and Chapter 40A. ES: We had something similar while I was working at the Town Planner in the Town of Ashburnham; I had such a set too.

ES: Noted we had a sub-committee in Ashburnham to develop new changes to the various sets of Rules and Regulations. Recommended a similar approach. GT: This is a project. Maybe we shouldn't bring up again until we have full a set of draft requirements. BC: Suggest having a Subcommittee. GT: Can work individually with each member. BC: Also Jason had some ideas.

The Board and Town Planner discussed Appendix D and E from the 2008 Town of Maynard Zoning Bylaws, which are exiting Rules and Regulations and Fee Schedule. Some members not aware of these Appendices at this time.

Assabet River Rail Trail Update Discussions

ES noted end of August deadline for Planning Board member comments. BC asked ES about status of design consultant review team and the Town of Maynard's representative. ES noted Linda Hansen, Conservation Agent, will represent Maynard.

Correspondence

The Planning Board Reviewed the Correspondence on Agenda and in file.

GT: Motion to adjourn the meeting. Second by CS. Vote 4-0 in favor.

Prepared by Eric R. Smith, AICP, Town Planner