

Maynard Planning Board Meeting and Public Hearing

February 23, 2021 – 7:00 p.m.

(Held remotely via Zoom due to COVID-19)

Board Members Present: Greg Tuzzolo – *Chair*; Andrew D’Amour – *Vice Chair*; Bill Cranshaw; Jim Coleman; Chris Arsenault; Natalie Robert – *Alternate Member*

Others Present: Bill Nemser – *Town Planner*; Kaitlyn Young – *Assistant Town Planner*; Wayne Amico – *Town Engineer*; John Whitten – *Town Counsel*; Danny Ruiz – *Capital Group Properties*; Normand Martin – *Market Basket*; Mark Wallace – *Tech Environmental*

Called to Order at 7:00 p.m. by Greg Tuzzolo

Approval of Minutes – 2.9.21

Greg Tuzzolo noted that a correction should be made to the spelling of Normand Martin’s name.

Jim Coleman made a motion to approve the corrected Minutes dated 2.9.21, which was seconded by Andrew D’Amour.

The Board voted unanimously in favor of the motion.

Maynard Crossing (129 Parker Street) Community Workshop

A) Market Basket Compactor Sound Study Report Review

Greg Tuzzolo and Bill Nemser provided a background summary and introduction of the discussion. Greg Tuzzolo noted that the trash compactor was not called out on the site plan that was approved and that the Planning Board will need to address that issue with a major or minor modification determination.

Wayne Amico provided a summary of the sound recording process that took place and indicated that there were some questions from his team to the sound tech engineers from Tech Environmental, including a question about compliance of the compactor noise with DEP regulations. DEP compliance has not yet been analyzed by Tech Environmental. In the event that the sound from the compactors qualifies as a nuisance based on DEP regulations, there would need to be mitigating factors to address that issue.

Mark Wallace of Tech Environmental explained that, at the direction of the Board on January 12, there was attended sound monitoring conducted on both the Market Basket side and the adjacent Dettling Road area. Tech Environmental had met with VHB and Capital Group on January 14 to determine the specifics of setting up the attended monitoring. Two properties, 13 and 15 Dettling Road, were considered for the sound monitoring and it was determined that 13 Dettling Road would be the best location. The attended monitoring was conducted over a six-hour period on February 10, from 11 a.m. to 5 p.m. in one-minute measurements. In addition there was unattended monitoring that occurred overnight between 8 p.m. and 6 a.m.

Mark Wallace reviewed the results of the sound tests in detail. Jim Coleman asked if the sound levels meet the required DEP levels. Mark Wallace noted that a DEP compliance test was not part of the scope of the test that was conducted, but that the variation in levels would appear to meet the DEP regulations. He feels that the sound levels that were captured as part of the monitoring appear to meet the DEP standards but that he would need to confirm that.

Greg Tuzzolo asked for feedback from the other Board members. Bill Cranshaw asked about the quantity and frequency of the compactor being active. Mark Wallace stated that the attended monitoring report indicated that there were 69 one-minute events that were observed during the six-hour period, of which there were 31 times during which the recorded noise was coming from just the compactor and not the compactor along with other noise. Bill Cranshaw noted that it appears from the data that the compactor was being activated a little more than 10 times per hour on average. He asked if the data indicates the busy time for the compactor to be operating.

Normand Martin estimated that the busiest time for the compactor is probably between 10 a.m. and 3 p.m.

Bill Dipietri of Capital Group stated that there is a set of plans that the Planning Board signed on 11/26/19 in which both compactors are shown. He stated that there is no notation but that the compactors are shown on the plans. Chris Arsenault stated that the Board had recently taken a look at those plans and that it was not clear to the Board that there were compactors on the plans.

Greg Tuzzolo asked for clarification from John Whitten on the process moving forward since the Capital Group is not asking for a determination to be made. The issue came up as a noise complaint and not a request for a determination of major or minor modification. John Whitten confirmed that if what exists on the site is not consistent with the approved site plan, then the Planning Board can require a determination for the modification. He indicated that the first step is to determine whether what was built is consistent with the approved plan or not. If the Board determines that what was built differs from what was approved, then the next step is to either require the removal of the compactors or modify the approved plans so that the compactors are approved.

Danny Ruiz showed the Board and attendees a copy of the approved plan and noted that the compactors are on the plan. He asked what the modification would be since the compactors are already shown. The Board agreed that they would need to be clearly labeled as compactors. Natalie Robert also noted that a previous version of the plan had shown a dumpster instead of a compactor and that the change was not clearly called out.

Greg Tuzzolo asked for public comment.

Trish Saunders of 11 Dettling Road thanked the Board for addressing the issue and stated that she does still hear the compactor, though moving the motor inside did improve the noise level. She stated that it appears there are noises coming from mechanical compactor parts that are on the exterior of the building, and she would like for the noise to be mitigated. She noted that she has not spent much time in her yard due to the season, but is concerned about the noise level when she is spending more time outside in nicer weather.

Michael Hughes of 13 Dettling Road stated that he believes that the sound level has improved but noted that his windows have not been open. He questioned what it will be like in the nice weather when his windows are open.

Jim Coleman made a motion that the compactor being on site at Market Basket constitutes a major modification to the site plan, which was seconded by Andrew D'Amour.

The Board voted unanimously in favor of the motion.

B) Ongoing Violations

Greg Tuzzolo noted that the proposed amendments to be discussed would address some of the issues of the ongoing violations and suggested that the Board discuss the amendment proposals. Bill Cranshaw stated that before the Board discusses the long-term solution, he would like to consider immediate mitigation considerations for existing violations. He noted that there is a sign indicating that there are no truck deliveries allowed prior to 7 a.m. and that a truck that's not supposed to be there until 10 a.m. might arrive at 7, or might arrive before 7 and idle or wait on site until 7 a.m.

Bill Nemser noted that the intent of the meeting was to conduct a workshop and that the current discussion is not part of a hearing.

Normand Martin indicated that the current Operations Manual states that deliveries are allowed between 1 a.m. and 5 a.m. for both tractor trailers and direct store deliveries. He noted that Market Basket is not utilizing those approved delivery hours as a courtesy to the abutters, but instead chose a 7 a.m. start for deliveries to be consistent with the approved start time for deliveries to the other surrounding businesses at the shopping center.

Bill Cranshaw reiterated that certain trucks are not supposed to arrive until 10 a.m. and that the delivery sign on site is misleading. Normand Martin pointed out that the original plan approval and delivery hours were specific to Market 32 and not Market Basket. Natalie Robert asked where the delivery hours that were approved in the Operations Manual came from. Bill Dipietri stated that the approved delivery hours were based on the specific needs of Market 32, the originally planned tenant for that space.

Chris Aresenault asked for clarification of the subject of the complaints. Bill Nemser said the complaints are primarily related to deliveries being inconsistent with the approved times in the Operations Manual, where deliveries are occurring between 7 and 10 a.m.

Jim Coleman stated that he has been regularly observing the site and that there are no trucks idling or waiting to enter at 7 a.m. He noted that Market Basket is not using the allowable delivery hours of 1-5 a.m. when they could be using those hours for any perishable deliveries. He recommended continuing to allow Market Basket to accept deliveries beginning at 7 a.m. until a hearing can be held to discuss the proposed amendments. Bill Cranshaw pointed out that the Operations Manual clearly states that grocery and frozen food deliveries can only be made after 10 a.m. The Board Members all agreed that the Operations Manual needs to be revised, as it was approved for a different store and does not reflect the needs of Market Basket, but that the existing violations must be addressed immediately.

Greg Tuzzolo asked for public comment.

Abutter Trish Saunders asked for clarification of a timeline for a hearing and resolution of a revised Operations Manual.

Abutter John Bresnahan of 11 Dettling Road stated that there needs to be enforcement of the rules that are in place for the developer.

Greg Tuzzolo pointed out that the workshop was precipitated by an action by the developer to initiate a change in the Operations Manual. Danny Ruiz stated that Capital Group Properties was waiting until the sound study was complete to initiate any changes in case there were additional revisions required as a result of the sound study results. He stated that the delivery hours that are being proposed in the revised Operations Manual are 7 a.m. to 5 p.m.

Bill Nemser noted that staff of the Office of Municipal Services has been actively responding to violation complaints and working to address them appropriately.

Abutter Michael Hughes, whose property is directly behind Market Basket, stated that he is fine with deliveries occurring at 7 a.m. rather than from 1-5 a.m.

Abutter Trish Saunders asked again for clarification on a timeline for a revision of the Operations Manual. Bill Nemser noted that, although a public hearing would require advertisement in advance, there could be discussions happening among the parties prior to the hearing in order to determine an appropriate resolution before the actual hearing takes place.

Trish Saunders asked Normand Martin to clarify weekend deliveries. Normand Martin stated that typically 95% of deliveries are done by 1 p.m. with occasional "stragglers" after 1. On Sundays there is one private-label truck for bread delivery and possibly a single delivery of milk, which Normand Martin will confirm.

There was a discussion among the Board Members on various options for the best way to proceed, including an informal agreement versus a formalized agreement through a temporary minor modification. All parties agreed to move the workshop to a future meeting.

Jim Coleman made a motion to determine a 120-day minor modification of the approved weekday and Saturday delivery hours to 7 a.m. to 5 p.m., with no deliveries to be allowed between the hours of 1 and 5 a.m., and up to five deliveries on Sundays between 9 a.m. and 1 p.m. The motion was seconded by Andrew D'Amour.

Abutter Marie ?? recalled that one of the reasons for the original decision not to have delivery hours between 7 and 10 a.m. was due to children walking to school and crossing the street in the area of the shopping center. The Board agreed to take that into consideration in the future hearing.

The Board voted unanimously in favor of the motion.

Bill Cranshaw noted that the current discussion is related to one particular business at the Maynard Crossing site but that there are other violations occurring on the site. He asked if those violations will be part of the Operations Manual revision discussion. John Whitten stated that the Public Hearing can be advertised with broad terms to allow for other violations and revisions to be part of the discussion.

Town Planner Update

Bill Nemser stated that the Master Plan Implementation Committee will have its first meeting on Thursday, February 25 at 6:30 p.m.

Jim Coleman made a motion to adjourn, which was seconded by Andrew D'Amour.

The Board voted unanimously in favor of the motion.

Adjourned at 9:04 p.m.