

Topsfield Zoning Board of Appeals

January 5, 2012

Chairman Moriarty called the meeting to order at 8:00 PM at the Town Library. Board members present were Bob Moriarty, Kristin Palace, Jody Clineff, David Merrill and David Moniz. Roberta Knight, Community Development Coordinator was also present as well as the applicants, their representatives and interested residents. See attendance sheets for specific public hearings.

Visitors: Selectman Richard Gandt; Suzanne Snell, Joseph Giammarco, Brent Roeder, Foti Qirjazi, Gerald MacDonald, George Anderson, Chris Bandereck, Mary Bandereck, Kevin Breuer, Matt McQuaid and Dick Man

53 Main Street: At 8:06PM, Chairman Moriarty called to order the continued public hearing to consider the application of Foti Qirjazi for premises located at 53 Main Street for a change in use of the second floor storage area to a one bedroom apartment over a first floor limited service restaurant, construction of an emergency egress for second floor within setback, and the addition of two parking spaces requesting: (1) a special permit modification pursuant to Article V, Section 5.04 and Article III, Section 3.09; (2) a finding pursuant to Article III, Section 3.05 and Article IV, Section 4.12 C of the Zoning By-Law; (3) a variance modification pursuant to Article IV, Section 4.02; (4) site plan review pursuant to Article IX of the Zoning Bylaw.

The Board reviewed the new site plan with Mr. Foti and Mr. Roeder who were joined by the site development engineer Gerald MacDonald of Graham Associates Inc. of Ipswich MA. Mr. MacDonald reviewed the new site plan dated January 5, 2012 with the members. He noted that the parking lot would now service the two buildings at 53 Main Street and Mr. Roeder's building at 49 Main Street. There will be one driveway entrance for access and egress with a 24 foot access width; 16 parking spaces including two handicapped spaces. Space No. 14 would be the apartment's dedicated space and space No. 13 would be used by the dry cleaners. After reviewing the plan and proposed traffic flow, the Board requested the following revisions:

- Buffer strip against building at 49 Main Street be increased to four (4) feet for landscaping
- Driveway from School Street be closed off
- Easement document for parking lot

Applicant Foti Qirjazi signed both a request for a continuance of the public hearing to January 24, 2012 and gave the Board an extension on the application for the variance to February 24, 2012. Clerk Kristin Palace made the motion to continue the public hearing to January 24, 2012 at 8:00PM; seconded by Member David Merrill; so voted 5-0.

285 Boston Street: At 8:46PM, Chairman Moriarty called to order the public hearing to consider the application submitted by AT&T Wireless PCS, LLC (“AT&T Mobility”) a Special Permit pursuant to Article XII, Section 12.04, paragraph C sub-sections 3 & 4 of the Topsfield Zoning By-law to add three (3) panel antennas at a centerline of approximately 158’ and one (1) GPS antenna mounted on existing shelter within the existing fenced compound to the existing Major Wireless Telecommunications Facility located at 285 Boston St.

Attorney Joseph Giammarco, the applicant’s representative, addressed the Board and noted that based upon his review of the Topsfield Zoning By-law, he was concerned that the application and its subsequent legal notice did not provide the required notice for relief that should have been requested pursuant to the By-law for the parameters of the application. Attorney Giammarco informed the Board that based on his review of the By-law a finding and site plan review would also be required. The Board then reviewed the request for relief and determined that a finding under Section 3.05 would be required; however, site plan review would not be required. Further, the Board determined that the application needed to be re-noticed for both a special permit and finding. Since there was sufficient time to publish a new legal notice for the January 24th meeting, the public hearing was then scheduled for 8:30PM on January 24, 2012.

46R Main Street: At 9:00PM, Mary & Chris Bandereck met with the Board to discuss the Cease & Desist Order issued by the Inspector of Buildings on December 2, 2011 regarding retail sales under the special permit for a catering operation. Ms. Bandereck requested clarification of the special permit approved by the Board on January 19, 2010 that allowed the sale of excess bulk product to customers. Ms. Bandereck noted that walk-in customers enter the premises and requests are made to purchase excess bulk product in the display case. She stated that she did not want to be a “NO” business, and did not want to place a sign noting “no walk-in sales.” Ms. Bandereck also noted that her primary business is for providing bulk product for catering events, specialty items such as wedding cakes and the bulk sale of whoopie pies delivered on-site to business customers. Ms. Bandereck stated that she would follow the direction of the Board as to how to rectify the current situation.

Chairman Moriarty noted that he agreed with the Inspector of Buildings and with the order that the special permit approved by the Board’s decision dated January 19, 2010 does not allow retail sales. The Board discussed the current operation and possible alternatives to rectify the situation. Clerk Kristin Palace noted that the Board had public safety concerns such as the traffic pattern, provisions for lined parking spaces, walk way and driveway access. These issues would need to be addressed for a retail sales operation and would require site plan review under Article IX of the Topsfield Zoning By-law. Ms. Bandereck noted that she would speak with the Inspector of Buildings and move forward and file an application for retail sales and site plan review. However, in the meantime, she requested direction from the Board to address walk-in customers. The Board clearly stated that all orders must be for future use. Orders may be called-in ahead of time for future pick-up or a walk-in may place an order for future pick-up.

It was agreed that the Board would send the Inspector of Buildings a letter specifically stating the parameters of the allowable operation during the interim period. See attached letter to the Inspector of Buildings dated January 18, 2012 for specific details.

Minutes: Member David Merrill made the motion to approve the minutes of November 22, 2011; seconded by Member Jody Clineff; so voted 5-0.

The meeting was adjourned at 10:17 PM

Respectively submitted,

Roberta M. Knight
Community Development Coordinator