

Topsfield Zoning Board of Appeals

August 28, 2008

Chairman Moriarty called the meeting to order at 8:00 PM. Board members present were Bob Moriarty, Kristin Palace, Lisa Stern-Taylor and Scott Dow. 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.

Topsfield Station And Rail Trail: At this time, Brian Woodland, developer of Topsfield Station joined the Board for a preliminary discussion relative to parking modifications, including diagonal head-on parking in front of the building, in relation to the rail trail that is located on the property. Chairman Moriarty noted that modifications to the approved site plan would require a public hearing. However, the most significant issue is the location of the 20-foot easement on the property within which the “Topsfield Rail Trail” would be located. The Board members reviewed the approved site plan dated April 13, 2007, the Alternative Transportation Corridor Lease Agreement between the MBTA and the Town, the 7 Grove Street Quitclaim Deed, and the Reciprocal Easement Agreement between Grove Street Realty Partners and the Topsfield Village Shopping Center.

The quitclaim deed refers to an easement on the premises for an alternative transportation corridor that is “...contemplated to be generally twenty (20) feet in width and will extend along the entire length of the Premises...”. Chairman Moriarty noted that the ATC easement was different than the trail, and that the deed specifically notes that the Grantee needs to coordinate the location of the easement with the Town. Mr. Woodland stated that he had met with the Selectmen relative to the easement and trail, and that five feet of the head on parking spaces needed to be located within the easement.

Chairman Moriarty also noted that the location of the air handlers had not been approved as part of the site plan and would need to be relocated since they were placed along the edge of the trail. Mr. Woodland responded that they would be screened. However, no further discussion ensued as to the actual re-location within the site. The Board also questioned whether there was a utility easement running on the property located within the ATC easement, and Chairman Moriarty suggested that Mr. Woodland check his title insurance regarding this issue. The Board members and Mr. Woodland with input from Selectman Morrison entered into a discussion concerning public safety. Chairman Moriarty noted that the ATC Agreement stated that no motorized vehicles are allowed within the corridor. The members noted their respective concerns regarding bicycle traffic relative to pedestrian access entering and exiting the building directly from and onto the rail trail. Selectman Morrison stated that the public safety team that included the Police and Fire Chiefs and the Highway Superintendent were reviewing this issue at the request of the Selectmen and would have a recommendation shortly.

Mr. Woodland stated that his position is (1) that he can grant a 20' easement with a 15' trail located within, and (2) that he acknowledges the right of the Town to build and maintain the trail.

The discussion then moved to potential snow storage on the bike path. Chairman Moriarty requested to see the recorded plan that is referenced in the recorded Reciprocal Agreement. Mr. Woodland noted that during site plan review he stated that snow would be removed. It was noted that the recorded Reciprocal Agreement was different from the one given to the Board at the time of the site plan review hearing.

In summary, Chairman Moriarty stated that any modifications to the original site plan would require a public hearing with the submittal of a revised site plan for review by the Zoning Board. He directed Mr. Woodland to work out an agreement with the Board of Selectmen concerning the use of five feet of the easement for parking. The Selectmen would need to grant a license to Topsfield Realty Partners for its parking use within the easement. The Zoning Board would require a written document between the Town by its Board of Selectmen and Topsfield Realty Partners and a plan showing all its uses in order to consider and review any site plan modifications, and specifically any that occur within the easement.

7 Grove Street / Topsfield Sweet Shoppe: At 8:22 PM, Chairman Moriarty called to order the public hearing to consider the application of Peter Rakip for premises located at 7 Grove Street requesting a special permit pursuant to Article V, Section 5.04 and Article III, Table of Use Regulations Section 4 Retail and Service, Sub-section 4.12 Restaurant to allow the operation of a restaurant, "Station Sweet Shoppe" within the existing premises.

Applicant Peter Rakip, proprietor of the new "Sweet Shoppe" housed in the Topsfield Station building joined the Board. Chairman Moriarty noted that the filing of the application for a restaurant special permit is a tacit acknowledgement that it is a restaurant. Mr. Rakip responded that his plan is to sell ice cream, high end candies, frappes, cold and hot drinks. He had 32 seats but now has reduced the number to 28 to provide four seats out back for his employees.

Chairman Moriarty requested input from Selectman Morrison who formerly served as the Planning Board's Chairman relative to the Topsfield Zoning Bylaws definition of a "restaurant". Ms. Morrison noted that the definition is very broad and cited said definition as "an establishment offering food and beverages for consumption on the premises and for take-out services," and further noted the Inspector Building's decision that the business is a restaurant based on the North American Industrial Code that an ice cream parlor is sub-classified under Limited-Service Restaurants and further under Snack and Nonalcoholic Beverages Bars. Ms. Morrison also referenced the parking regulations for restaurants in the Bylaw that states "...Restaurants with more than 50% take-out business must have 1 space per 3 seats and 1 space per employee during the busiest shift with a minimum of 20 spaces". A discussion followed with input from various attendees

relative to the removal of seats to eliminate the parking requirements and the classification as a “restaurant”. Abutter Jenifer Collins Brown noted her concern that she did not want the business to be a “restaurant” but would support the conditions of the Common Victualler license. The discussion continued concerning the number of people, the intensity of the use, the conditions of the type of food determining the parking requirements under the Bylaw, but most importantly the public safety concerns of patrons specifically small children entering and exiting the building over a bike path.

The Board approved the request for a continuance of the public hearing to the September meeting, and directed the applicant to apply for a special permit for a reduction in the number of required parking spaces before it could make a decision on the original request.

Special Permit Discussion: Prior to hearing the special permit application for 86 Central Street, Chairman Moriarty discussed with the other Board members his recommendation based on informal conversations with Town Counsel concerning the issuance of special permits based on case law. He recommended that special permits should run with the land unless limited to a particular person. Further, that a letter should be forwarded to the Selectmen and Inspector of Buildings stating that the Zoning Board of Appeals will not grant a special permit due to the simple change in ownership where a special permit is in place for said use unless there is a change, alteration or expansion of said use. A discussion followed and it was the consensus of the Board that the recommendation becomes the Board’s reviewing standard.

86 Central Street: At 8:55 PM, Chairman Moriarty called to order the public hearing to consider the application of Adam Thomson for premises located at 86 Central Street requesting a special permit pursuant to Article V, Section 5.04 and Article III, Table of Use Regulations Section 4. Retail and Service, Sub-section 4.10, retail establishment selling motor vehicles to allow the existing property to be permitted for retail sales of motor vehicles.

Mr. Thomson presented a parking plan and a copy of the lease for rental space between himself for Thomson Motors and the new owner of the premises Scott Mantel. Mr. Thomson noted that the parking plan was similar to what currently has existed on the property under the ownership of John Bell who held a special permit for the sale of motor vehicles. Mr. Thomson is requesting the same conditions for the sale of sixteen (16) vehicles on the premises. It was the consensus of the Board to grant a special permit specifically to Mr. Thomson for the sale of 16 vehicles at 86 Central Street.

Member Kristin Palace made the motion to grant a special permit specifically to Adam Thomson for the sale of 16 vehicles at 86 Central Street; seconded by Member Scott Dow; so voted 4-0.

13 Arrowhead Road: At 9:10 PM, Chairman Moriarty called to order the public hearing to consider the application of Michael & Lynn Conant for premises located at 13 Arrowhead Road requesting a finding pursuant to Article III, Section 3.05 of the Zoning By-Law relative to the demolition and replacement of area of existing room and deck with new family room with mudroom, and future construction of a detached two-car garage.

Ms. Conant reviewed the architectural plans with the Board and noted that the location of the garage was changed in response to the Conservation Commission who requested that it be moved forward. As a result the garage is now a detached structure. Plans are to move forward with the house addition this fall and complete the garage in the spring of 2009.

Chairman Moriarty made the motion to approve the demolition and replacement of room and deck with a family room, mudroom and future garage; seconded by Member Scott Dow; so voted 4-0.

16 Maple Street: At 9:20 PM, Chairman Moriarty called to order the public hearing to consider the application of Christopher LeSaffre for premises located at 16 Maple Street requesting a special permit pursuant to Article V, Section 5.04 and Article III, Table of Use Regulations Section 4. Retail and Service, Sub-section 4.10, retail establishment selling motor vehicles to allow the existing property to be permitted for retail sales of motor vehicles.

At this time, Chairman Moriarty initiated a discussion relative to former granting of special permits for the premises when the property had frontage on Route 1. Mr. Alex Dearborn current owner of the property was present and confirmed that he did own the contiguous lot currently housing "Cottage Place" with the street address of 218 Boston Street. The Board reviewed the former decisions and plan provided by Ms. Knight who summarized the previous zoning actions regarding the property. Special permits for the sale of motor vehicles, change in use of building, the professional office addition and variance were granted in the 1980's when the property had frontage on Route 1. Said uses were allowable in the Business Highway District, and since the zoning line between the BH and CR district runs through the property with access in the BH zone at that time, those uses were extended to the entire parcel. However, with the sale of the contiguous lot with frontage on Route 1, the current property at 16 Maple Lane located in the Central Residential District is now a non-conforming lot.

It was the consensus of the Board that the applicant did not need a special permit since the lot is non-conforming and the requested use is grandfathered. In the future, any change in use, alteration or expansion would require the granting of a finding. Chairman Moriarty made the motion that not action was required and a letter would be forwarded to the Inspector of Buildings that the existing special permit granted in 1985 is still valid and/or the use (sale of motor vehicles) at premises is a prior existing non-conforming use. Given that, the Board is of the opinion that if the use is changed in intensity or extent that

the Zoning Board pursuant to Section 3.05 would require a finding seconded by Member Lisa Taylor; so voted 4-0.

35 Main Street: At 9:45 PM, Chairman Moriarty called to order the public hearing to consider the application of Silvana and James DiBlasi for premises located at 35 Main Street requesting site plan review pursuant to Article IX of the Zoning Bylaw for conversion of an existing non-conforming residential structure to professional office use and the demolition of existing barn and connector and replacement thereof for professional office use and related site improvements

James and Silvana DiBlasi and Architect Wayne Hunt presented the Board with a newly revised Site Plan that had been approved by the Conservation Commission at its August 26th meeting according to the applicants. The applicants informed the Board that the appellant Kevin Gillis was satisfied with the revised plan and would drop his legal appeal according to his attorney provided the Zoning Board approved the revised plan. Ms. Knight confirmed this and noted that she had a copy of the email forwarded by Attorney Bingham. The newly revised plan has all parking located outside the 40 foot front setback with three compact spaces in front of the existing barn and eleven spaces on right side with rain garden located between the parking and lot line with 27 Main Street. The driveway will be constructed with permeable pavement per the Order of Conditions. A master set of stamped drawings would be delivered to the Community Development Office. The Board reviewed the list of missing items as noted in the June 24th minutes and finding all in order Chairman Moriarty made the motion to approve the newly revised site plan as stamped dated August 28, 2008; seconded by Member Lisa Taylor; so voted 4-0.

Minutes:

Member Kristin Palace made the motion to approve the minutes of June 24, 2008 as written; seconded by Member Scott Dow; so voted 4-0.

Member Kristin Palace made the motion to approve the minutes of July 22, 2008 as amended; seconded by Member Scott Dow; so voted 4-0.

The meeting was adjourned at 10:16 PM

Respectively submitted,

Roberta M. Knight
Community Development Coordinator