

Topsfield Zoning Board of Appeals

October 28, 2008

Chairman Moriarty called the meeting to order at 8:00 PM. Board members present were Bob Moriarty, Kristin Palace, Tony Penta, 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.

12 Ross Road: At 8:00PM, Member Kristin Palace called to order the public hearing to consider the application of Harry & Kathleen Faust for premises located at 12 Ross Road requesting a finding pursuant to Article III, Section 3.05 of the Zoning By-Law relative to the demolition and replacement of a deck with a sunroom.

Applicant Harry Faust reviewed the plans for the demolition of the rear deck and its replacement with a sunroom. The sunroom would be built on the same footprint as the deck and there would be no increase in the setbacks. The current footprint of the deck conforms to the district's setback. The lot is non-conforming due to the frontage and acreage requirements.

Member Kristin Palace made the finding that the replacement of the deck with the sunroom would not be substantially more detrimental or objectionable to the neighborhood; seconded by Member Lisa Taylor; so voted 5-0.

Minutes:

Chairman Moriarty made the motion to approve the minutes of August 28, 2008 as written: seconded by Member Scott Dow; so voted 4-0. Member Tony Penta abstained.

Chairman Moriarty made the motion to approve the minutes of September 23, 2008 as written: seconded by Member Lisa Taylor; so voted 4-0. Member Kristin Palace abstained.

53 Main Street: At 8:15PM, Chairman Moriarty called to order the public hearing to consider the application of Foti Qirjazi, Trustee of the 53 Main Street Realty Trust, for premises located at 53 Main Street requesting (1.) a finding pursuant to Article III, Section 3.05 of the Zoning By-Law to permit the alteration of a non-conforming building for construction of a second floor apartment over restaurant with side entry, and access to roof; and (2.) a special permit pursuant to Article IV, Section 4.12B to reduce the required on-site parking requirement.

Mr. Qirjazi reviewed the plans for the project that consisted of converting the second floor storage area to a one bedroom apartment, the addition of an outside stairwell; deck and door on left side of building to provide second access for the apartment; and

extension of the railing on roof to access chimney for clean-out. He also provided the Board with a parking plan showing eleven parking spaces and an easement document with 49 Main Street for the eight head-on parking spaces.

Chairman Moriarty noted that this request is a change in use from the original request in 2006. It was noted that the Board made its original decision to grant the special permit for the restaurant use and grant a waiver relative to the required number of parking spaces was based on Mr. Qirjazi's presentations that the second floor would be used only for storage and his private office. Moreover, the final construction of the building deviated from the approved architectural plans relative to the type of windows installed on the first floor. Relative to the site plan, the placement of the building on the site, which was moved to the right approximately 18 inches into the lot, deviated from the approved plan. The landscaping is non-compliant with the site plan and the curb stops have not been installed.

The Board upon reviewing the submitted plans for the apartment and exterior renovations noted that the various plans had different dates going back to 2006 & 2007. Mr. Qirjazi responded that he updated the architectural plans from the original hearings. He also noted that the original plans presented had included plans for a second floor apartment but was changed due to the BOH ruling on the septic system. The Board members responded that the plans showed only storage for the second floor. He stated that the current BOH agent has given him approval for the apartment relative to the septic system. He also responded to the Board members questions concerning the parking configuration in which he stated that there is stacked parking against the building housing Topsfield Cleaners and noted that the parking plan provided sufficient parking for the two businesses due to the different hours of operation for each business as well as the proposed apartment. The Board noted that the additional spaces along the side of the building could not be considered legal parking spots since there are blocked by parking space seven on the plan.

Selectman Gandt requested that the Board check with the Board of Health relative to the approval of the original variances for the septic system as well as the Board of Health's current determination on the addition of an apartment which is a change of use. He also requested that the Board consider "peak load" for the site's parking requirement. According to Selectman Gandt, citizen input has noted that the parking is tight.

The Board informed Mr. Qirjazi that it could not render a decision based on the presented plans and continued the public hearing to the November 25th meeting. The Board directed Mr. Qirjazi to submit at that time architectural plans stamped by a registered architect and a revised site plan showing access into area for outside stairwell, curb stops, set back distances (specifically for staircase), square footage for Topsfield Cleaner's building.

7 Grove Street / Station Sweet Shoppe: At 9:20PM, Chairman Moriarty called to order the continued consolidated 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; and also requesting a special permit pursuant to Article IV, Section 4.12B to reduce the required on-site parking spaces for the “Station Sweet Shoppe”.

Chairman Moriarty queried the Selectmen as to whether a comprehensive plan had been approved for the easement, trail and parking. Selectman Morrison noted that the Board of Selectmen had appointed a Rail Trail Design Committee. This Committee working with the Town’s consultant engineer has developed a proposed plan that the Selectmen believe to be a viable solution. Selectman Morrison then presented copies of the plan for the easement, trail and parking to the Board. Selectman Morrison reviewed the plan with the Board and explained that under this plan there would be no parking in front of the building. The trail would begin 7.9 feet from the building that would encompass a 3-foot shoulder, 8-foot trail and 2-3 foot shoulder then landscaping to granite curb. There would be a walking zone in front of the building with bollard signs noting the walk only area.

The Board then queried Mr. Woodland, owner and developer of Topsfield Station, relative to the number of parking spaces for his project and whether he had a list of tenants and respective square footage of occupancy by each tenant. Mr. Woodland presented the Board with said information as requested at the September 23rd meeting. He noted that the current site plan as approved by the Board shows 42 parking spaces of which currently 37 are dedicated to the Station, the remaining five spaces are for the use of the Topsfield Village Shopping Center (TVSC). Under the Committee’s design plan there will be thirty-two spaces dedicated for the Station. The parking configuration, islands and traffic flow in front of the building would be changed under the new proposal. As a result, TVSC would have sufficient parking spaces and would not need the five head-on spaces as currently configured. Mr. Woodland noted that the current easement agreement with TVSC does not reflect the presented plan and would need to be changed before a site plan modification is filed with the Board concerning the reconfigured parking plan.

Chairman Moriarty queried the Selectmen as to whether the Board would allow the encroachment for parking within the easement. Selectman Morrison responded that the Selectman would enter into a license agreement with Brian Woodland to provide the necessary parking spaces as shown on the Town’s plan.

Satisfied that the Selectmen and Mr. Woodland have agreed on a comprehensive plan, Chairman Moriarty then took up the matter of Mr. Rakip’s applications for special permits for the use designation of restaurant and a waiver for a reduction in required parking spaces. The Board used the Town’s design plan with 32 parking spaces as the basis for the parking requirement for the special permit.

Mr. Rakip informed the Board that the Sweet Shoppe was down to 20 seats due to the installation of the candy area, and that there is a maximum of two employees per shift.

Member Tony Penta queried Mr. Rakip relative to bathroom accessibility for both employees and patrons. Mr. Rakip responded that the BOH had approved the use of the Station bathrooms to meet this requirement and that both the BOH Agent John Coulon and Inspector of Buildings Glenn Clohecy had signed off on the occupancy permit. Mr. Penta noted that there should be a restriction on usage, and the other members agreed.

Chairman Moriarty noted that the new layout of the site resolves the issues on safety that the members had previously expressed during the public hearing process.

Members Kristin Palace and Tony Penta reviewed the square footage occupancy list that Brian Woodland had provided earlier in the meeting, and made a determination of the required parking spaces for the building. Ms. Palace at this time informed the Board that based on the current occupancy configuration Topsfield Station would need 32 parking spaces. This number assigns 7 spaces for the Sweet Shoppe, which would require a waiver of two spaces based on twenty seats with less than 50% take-out.

The Board then discussed the use component for the special permit. Chairman Moriarty queried Mr. Rakip relative to his business plan. Mr. Rakip noted that he would like to be classified under the NAICS classification code as a “Snack & Non-Alcoholic Bar”. Upon review of the code, the Board decided to use it as a guideline but develop its own specific language for the special permit. After a lengthy discussion, the following conditions were delineated for the use special permit as an ice cream shop selling ice cream and items used to compliment ice cream sales:

- Cones, fruit toppings brownies, cookies etc;
- Frozen yogurt;
- Slush;
- Candy, popcorn and nuts (packaged and bulk);
- Commercial pre-packaged snack items;
- Non-alcoholic hot and cold beverages;
- Retail sale of any non-food items that directly compliment the sale of the above food items

The following uses shall not be permitted and are specifically prohibited:

- Cooking or baking of goods on premises, including the preparation of food by use of microwave cooking;
- The sale of sale of “fresh baked” goods on premises such as bagels, donuts, bread, pastries (other than commercially pre-packaged items);
- Preparation or sale of food items considered a “meal” whether to be prepared or consumed on premises or as take-out, including without limitation eggs, soups, sandwiches, pizza, hotdogs, hamburgers, salads, fried foods and prepared meals of any kind.

Regulations for Special Permit:

- No more than 20 seats
- Hours of operation: 11AM – 9PM, seven (7) days per week
- Restricted to Peter Rakip, managing partner of Glendale Partners, Inc.
- Subject to annual review by the Zoning Board of Appeals

Further discussion ensued, and Chairman Moriarty responded to a question posed by abutter Jenifer Collins-Brown that the building conditions from the May 2007 site plan review decision remain in effect. The Board noted that there were a number of tables in the patio area. Mr. Rakip responded that he had placed four tables in the patio area. Member Kristin Palace referred to the approved site plan noting the placement of one table, benches and bike racks for the area that was to be open to the public. Brian Woodland responded that the original plan was to house the Bike Shop on that side of the building; however due to square footage needs the Bike Shop moved to the other side. The Board stated that based on its site plan decision the tables must be open to use by the public and no signs may be placed noting use only by Station Sweet patrons.

Special Permit for Restaurant Use: Chairman Moriarty made the motion that pursuant to Article V, Section 5.04 and Article III, Table of Use Regulations Section 4 Retail and Service, Sub-section 4.12 Restaurant the Board grant a special permit for the restaurant use subject to conditions as discussed; seconded by Member Kristin Palace; so voted 4-0. Member Tony Penta abstained.

Special Permit for Parking Waiver: Chairman Moriarty made the motion that pursuant to Article IV, Section 4.12B the Board grant a special permit to reduce the required on-site parking spaces to not less than seven (7) spaces based on 20 seats; seconded by Member Tony Penta; so voted 4-0. Member Kristin Palace abstained.

17-19 Main Street: This appointment was scheduled as an informational update meeting per the request of developer Ara Aftandilian who presented the Board with the latest revised plans that reflected the site plan approval special permit requirements and reviewed the latest architectural drawing and current as-built conditions. Due to the slight upward grading of the lot, there are now two stairs in the front building to access the porch area. A handicapped ramp area has been placed at the Central Street side for access. There will also be a full basement. After discussion on the handicapped ramp, Mr. Aftandilian noted the Board's suggestions and would review the issue with his architect.

The meeting was adjourned at 11:10 PM

Respectively submitted,

Roberta M. Knight
Community Development Coordinator