

2-13-14 mins.

**MINUTES
ZONING BOARD OF APPEALS
February 13, 2014 at 6:00 pm.**
(held at Maxham School, 141 Oak St, Taunton, Ma.)

Meeting opens at 6:00 PM

Members Present: Dennis Ackerman, Steven Vieira,,Wayne Berube , Peter Wasylow, Michael Staples and George Moniz. Joseph Amaral present at 6:12 pm.

Chairman Ackerman explains the ZBA process. The petitioner presents their case, they listen to opposition & people in favor and then go back to petitioner to address any concerns of the opposition. They do not go back and forth.

Peter made motion to accept minutes of January 9, 2014, seconded by Steve. All in favor.

Case # 3161 - Frenette – 815 Middleboro Ave.- Requesting a 6-month extension.

Wayne made motion to approve the 6-month extension, seconded by Steve. All in favor.

Case # 3214 Young 220 High St.

A Variance from Section 6.3 of the Zoning Ordinance for a 14 foot sideline setback (instead of 35') and a Special Permit from Section 5.3.4 to allow a 0 foot side & rear landscaping buffer (instead of 40') for the construction of a 30' x 60' building.

Request for a continuance until next month & waive the time frame.

Peter made motion to grant continuance until next month, seconded by Wayne. All in favor.

Case # 3217 Thomas 137 Hart St. & 670, 680 & 702 County St.

for a Special Permit from Section 5.2 of the Zoning Ordinance for two (2) separate drive-thru facilities and a gasoline service and filling station in a Highway Business District on premises situated on the **east side of County Street and southerly side of Hart Street known as number 670, 680, and 702 County Street and 137 Hart St., Taunton, Ma. (Parcel I.D. 93-156; 93-155, 93-152, 93-153, 93-155; 93-262 and 93-151.)**

For the Petitioner: Atty. David Gay, P. O. Box 988, Taunton, Ma.
Bruce Thomas, 48 Church Green, Taunton, Ma.
C. Anthony Fruchtl, P.E., Ayoub Eng., 414 Benefit St. Pawtucket, R.I.

In favor: None

Opposed: Paul Sullivan, 166 Swan Dr., E. Taunton, Ma.
Bob Stevens, 144 Hart St. Unit 11, Taunton, Ma.
Diane Clifton, 144 Hart St, Unit 29, Taunton, Ma.
Ned Peterson, 244 Caswell St., Taunton, Ma.

Atty. Gay stated they are here tonight for 2 Special Permits, one for a gasoline service station and the other for 2 drive-thru facilities. This property is located on the corner of Hart Street and County Street, including the former Mozzone Lumber. The plans show no stacking and two lane traffic and right now there is no known tenant. Atty. Gay stated the retail and restaurant uses are allowed by right. They have met with the City Engineer and City Planner and they developed the site without any variances needed. They have already donated land from CVS project across the street for any future land takings for widening of the road. Atty. Gay stated they have over the required landscaping. Chairman Ackerman pointed out that the ZBA lost control when the Council, in their fine wisdom, changes the zoning to Highway Business District resulting in taking away the power from the ZBA for uses. He pointed out they can still build this project because the other uses are allowed by right. He stated if any abutters have any issues with the zoning they should contact the Council. Chairman Ackerman stated he doesn't blame the applicant for coming here tonight for this project because most of it is allowed by right and that is why he isn't asking for a traffic study. Atty. Gay stated they conducted a

traffic study for CVS. Wayne asked if they have considered any steps in improving the traffic? Atty. Gay stated if the Casino goes in then there will be future improvements to the lights. Atty. Gay stated the drive thru won't affect the gross impact of the site. He stated the people who will be using the gas station will be people coming in this direction. Engineer Tony stated the gasoline station will be 3,500 sq. ft. with store which will have 5 double pumps and 3 underground tanks. He stated there could be 11 cars in line is the worst case scenario. Engineer Tony stated the other drive-thru window is for either a bank or a high turnover donut/coffee shop. He shows 14 cars. He stated the large building (restaurant) in back with loading dock and if the use decreases there will be plenty of parking. The property slopes from front to back and the runoff goes into the middle and piped in rear and will continue to do that. They have been to conservation and they are making area better by creating grass and vegetation. He explains how the 51 footers will enter from rear and exit onto Hart Street. Chairman Ackerman asked about the tankers and how they are going to loop out of Hart Street. Atty. Gay stated the deliveries are done at low peak hours. Atty. Gay stated the hours of operation might be 5 -6 AM to midnight and if a restaurant may be later. Chairman Ackerman asked if the gas will be 24 hours 7 days a week. Atty. Gay stated he cannot disclose what brand name gas is going it but it a well known brand. George stated the biggest concern is deliveries. Atty. Gay stated they will have deliveries in the middle of the day. The gasoline tanks will consist of two 10,000 gallons, one 15,000 gallon and 7,000 gallons. George asked if they will sell diesel and said yes. Mike asked if the State reviewed the right only closes to the intersection? Atty. Gay stated if they can conveniently make left turn they will. He stated Mass. Highway approved it. It was asked if the second driveway is further up from the CVS entrance? Mike stated he has hard time getting out of 800 County Street. Atty. Gay stated discussion the mitigation for CVS of which his client donated land and \$350,000. He stated in his opinion that is more than generous. He did point out other business like Home Depot, TGIFridays have also given mitigation. He did say if the Casino goes in there will be more mitigation. In his opinion no further mitigation is required from his client. His client is proposing to donate cash for a Police Cruiser and have it dedicated to the late Troy Medeiros, former ZBA member & Police Officer. Wayne stated in his opinion, it's not appropriate for a local board to ask for monies for a vote on a project. He is totally against this and that is very nice if they wish to donate monies for a police cruiser in memory of Troy Medeiros. Peter stated that he thinks it's blackmail for asking for monies. Chairman Ackerman recommends that if the applicant wishes to donate in Troy's memory he can do that on his own. We are not going to make it a condition. Wayne stated this will be taxed as commercial which is a lot of monies. Chairman Ackerman asked how much will the project cost? Bruce Thomas answers about 9 million including the land sales. Wayne asked about the City Planner's recommending donating land for future land takings? Atty. Gay stated they have dedicated land on other side along County Street. Opposed: Paul Sullivan, 166 Swan Dr., stated he has been a residence for 30 years and this is a bad intersection. He disagrees in that this is a poor project with a gas station in this busy area. He stated there are other gas stations in the area and he thinks this will be more traffic. He said if you are going for a special permit that will produce some negative impacts then you should be asked for mitigation. He thinks there should be 3 lanes on County Street. Wayne stated the applicant has paid \$350,000 in 2006 for CVS and no improvements have been done. Opposed: Bob Stevens, 144 Hart St. Unit 11 stated this will add more traffic to intersection. He stated between 3 -6 pm the traffic is horrendous. Opposed: Diane Clifton, 144 Hart St Unit 29 stated she glad the old dilapidated house on the corner is going to be removed and the old burned out building (former Mozzone Lumber) which has been there just sitting for a few years. She using the intersection about 6-7 times a day and you have to exercise patience. She stated if you are coming from Home Depot the traffic is backed up. The lanes are not marked on Hart Street as 2 lanes but that is how it is used. She is not in favor of drive-thru. She stated it's still congested when taking left at light and she doesn't know how the semi tractor trailers are going to get able to get through. They need to alter lights and she agrees the truck drivers do not want to block traffic. Opposed: Ned Pederson, 244 Caswell St., stated VHB is working on design plans for the widening of the roadway. He asks that they consider widening a stretch of land on Hart Street until the State and City do the improvements? Chairman Ackerman stated the City is working with the State on the improvements. Mr. Pederson suggests tabling for a few weeks to see if they could possibly widen roadway while this is being constructed. Chairman Ackerman suggests he go to the Council and complain about the recent zoning change. Atty. Gay stated they met with the Engineer and they cannot transfer any more water than what is current on site. He also stated they donated land so the City could widen County Street. Atty. Gay stated they could put dedicated light (like at former mall on Washington Street) which works wells. Chairman Ackerman asked how far from the intersection is the entrance? Atty. Gay answers about 80 feet and he pointed out the State line is across from the old Coca Cola bottling company lot. Chairman Ackerman stated the drive-thru is essential for the development of the site. He stated it will take cars off the street and the gas station is a positive for cars coming from Route 24. He agrees with Wayne about the mitigation as they already gave. Peter asked how the delivery trucks are going to make the entrance? There was some discussion on if and how they can make the turn into the property from Hart Street. Bruce stated they made lumber deliveries at Mozzone Lumber. It was noted the opening was a lot wider than the curb cut? Atty. Gay stated the deliveries will be made off business hours. Letters from the City Planner, B.O.H., Conservation Commission were read into the record. Peter asked about the City Planner's letter in regards to mitigation? Wayne stated he didn't agree with it and several Board members agreed.

Motion made and seconded to Grant as Presented:

Vote: Staples, Wasylow, Berube, Ackerman. MonizYes
Petition Granted.

George Moniz excused at 7:25 pm.

Case # 3213 Aspen Properties LLC 17 Oxford St.

A Variance from Section 6.3, 7.1 and 7.3.1 of the Zoning Ordinance for a side setback of 2.5' (instead of 25') 6 parking spaces (instead of 8) and a reduction from the 10' landscaped buffer as shown on plans; A Special Permit from Section 5.3.4 for a front setback of 5.8' on Oxford St., & 19.1' on Broadway (instead of 30') for an Office Use in a pre-existing non-conforming structure.

For the Petitioner: Atty. Matthew Costa, Gay & Gay, P O. Box 988, Taunton, Ma.
Christopher Coute, Aspen Properties LLC, 301 Broadway, Raynham, Ma.

In favor: None
Opposed: None

Atty. Costa stated they are here tonight for approval to convert the existing single family to an office use in the Highway Business District. The property is pre-existing non-conforming and the City Planner informed them they need a Special Permit to convert to office use. There will be no change in the building. The applicant has a real estate development company which will relocate to Taunton. The office will consist of 4 rooms and they will have reception area and conference room. They have 6 parking spaces instead of the required 8. Atty. Costa points out the parking requirement was based on the basement and covered porch. When using the actually usable floor area in reality they only need 6 parking spaces. Atty. Costa pointed out when using as Office Use the setback requirements change. They will be adding a handicapped ramp. Atty. Costa pointed out this is a permitted use in Highway Business District but because it's a pre-existing non-conforming lot they required a Special Permit. There was a garage on the property but was recently taken down. Chairman Ackerman asked where the Handicapped parking was and Atty. Costa pointed out it's behind #4. Peter asked how many full-time employees? They have 4 full time and 2 part time employees. Peter asked how is 6 parking spaces going to be enough? Atty. Costa pointed out that all employees will not be there at once. Christopher Coute stated the employee are usually on the road and there will be one full time receptionist there at all times. Nick Dufrense, Thomas Farland stated they tried different layout but due to the aisle and parking requirements this is the best layout. Atty. Costa stated in the rare event they need another parking space they could park on Oxford Street. Letters from the City Planner, Conservation Commission and B.O.H. were read into the record.

Motion made and seconded to Grant as Presented:

Vote: Amaral, Ackerman, Wasylyow, Berube, Vieira Yes
Petition Granted.

Case #3215 Fenway Realty Trust 427 Winthrop St.

A Special Permit from Section 5.2 of the Zoning Ordinance for Mixed Use consisting of 14 residential apartments with 2,095 square feet of business/retail use in a Highway Business District .

For the Petitioner: Richard Feodoroff, 54 Longmeadow Rd., Taunton, Ma.

In favor: Joseph Baptista, Vice President, 1877 TMP Corp., 308 Bay St., Taunton, Ma.
Jordan & Susanne Fiore, 425 Winthrop St., Taunton, Ma. had some questions
Thomas Raposa, Bay State Pet & Garden, 429 Winthrop St., Taunton, Ma.

Opposed: None

Mr. Feodoroff stated this is the former Fielder's Choice building which was constructed in 2010 and unfortunately went up for foreclosure in 2012 and since that time the building has been vacant. Mr. Feodoroff stated the bank owns it and he has a purchase & sales agreement. In the last few months he has met with the City Planner and is trying to get approved for a mixed use. He will maintain the retail use out front and residential use in rear. Mr. Feodoroff stated the building will remain the same in size. There will be 2 commercial spaces in front and residential on second floor in front and in rear. The commercial/retail space is about 1100 sq. ft. and back section will consist of 14 apartments, 12 two-bedroom, 2 one bedroom. Mr. Feodoroff also stated he has a P&S agreement with Matt St. Germain for property adjacent to this to add to it to provide small recreation area consisting of small basketball court, gazebo, picnic table and outside grill. His target for apartment is people between the ages of 20-30 years old. He will also provide vinyl fencing around residential part to create privacy from the front area. There will be an electronic gate for security and there will be parking for 28 behind the gate. There is an existing fire lane and there will be one way in and one way out. The parking for the retail will be in front and the pedestrian gate will have buzzer to let in. He stated this size building is kind of out of the area. The batting cages along was 1,000 square feet. They have had no interest in the building since it has been vacant. Mr. Feodoroff posted No trespassing signs on pressure treated posts and they were stolen. This property attracts thief and putting something there will only benefit the area. The property will be serviced by municipal sewer. Mr. Feodoroff stated he would not build this but since it's there he thinks it's the best use for the building. He stated due to the recession some people cannot buy a house and this is an option for them. He stated they will be connecting to sewer and natural gas & water. He stated the 2 bedroom will be between 950 sq. ft. – 1,300 sq. ft. and one bedroom will be 850 sq. ft. There will be laundry on site in basement along with storage area. He stated he is taking big building and developing it as the best use. He stated the owner of Bay State Garden Tom Souza has no issues with this proposal. Mr. St. Germain is also in favor and he is direct abutter. Peter asked if he any idea what type of business? Mr. Feodoroff answers no. Mr. Feodoroff stated he has been a developer for 33 years and currently owns the carriage house on Longmeadow Road and says he might move his office here. Chairman Ackerman asked if he thought about adding second floor to entire building and Mr. Feodoroff answers no. He wants to use what is there. He stated it would be a huge undertaking to remove roof and add second floor. Mr. Feodoroff said he thinks this is the best use for this building because its existing. He saw the uniqueness of the building and he thinks it has potential. He stated he met with the City Planner and there is no need for any variances. Joe states this will bring life back into the neighborhood. Wayne stated this building is truly unique in that it's large but too large for a single commercial and he thinks it's a good proposal. Steve asked if in future he sees any future business going in and these residents complaining. Mr. Feodoroff stated they will be aware they are in the Highway Business

District. He thinks he could get \$1,250 for 2 bedroom and \$1,100 for one bedroom. In favor: Matt St. Germain, 164 Somerset Avenue stated he's in favor. Mr. Feodoroff is making the best out of a bad situation. This isn't the ideal first choice but a good second choice for the use of this building. Joseph Baptista, 33 Joceclyn Circle, VP of Mechanic's Bank is in favor. He thinks this proposal maintains the character of the neighborhood. He stated studies show that rentals must increase. Jody & Charlene Fiore, 425 Winthrop Street had some questions. They would ask the Board to permit the proposal with conditions that the applicant has stated to him. Mr. Fiore stated that Mr. Feodoroff stated he would fix the existing lighting on building that currently shines into his bay window. He also said he would put fencing and clear vegetation. Mr. Fiore stated there will be more vehicles trips and the lights are down near Joseph Warner Boulevard and he just hopes the site distances is ok. Charlene Fiore stated the traffic is dangerous and she has problem getting out at times. She too asked that he fix lights. Letter from the City Planner, Conservation Commission, and B.O. H., were read into the record. Wayne said in his opinion, this is a unique building because it's existing and currently being vandalized. He thinks the site will fill quickly and he commends the applicant for preserving the commercial aspect of the building. Each case is based on their own merits. There was a former petition down the road that wanted to do all residential on each lot. Joe agrees that case was different that this one.

Motion made and seconded to Grant with the following conditions:

- **Correct the existing lighting on building to not interfere with abutting properties.**
- **Proposed playground and fencing as shown on plans.**

Vote: Amaral, Ackerman, Wasylow, Berube, Vieira Yes

Petition Granted.

Case # 3216 Serpa 20 Jenny Lind St

A special permit from Section 5.3 4 to allow a 2 family dwelling on a lot having 11,364 sq. ft. (instead of 15,000 sq. ft.) with a side setback of 5.82' for stairs.

For the Petitioner: Joseph Serpa, 20 Jenny Lind St., Taunton, Ma.

In favor: None
Opposed: None

Mr Serpa states his dad has passed away and left the house to him and his sister. They wish to both live there and remain close. They are proposing to make 2 family to allow sister to live upstairs. No one in favor or opposed. Letters from the City Planner, B.O.H., and Conservation Commission were read into the record.

Motion made and seconded to Grant as Presented.

Vote: Vieira, Berube, Ackerman, Amaral, Wasylow Yes
Petition Granted.

Case #3161-Mod. Frenette 815 Middleboro Avenue

A modification of a previously approved Variance from Section 6.3 of the Taunton Zoning Ordinance to allow the division of one lot into 4 lots having 0 frontage on a public street (instead of 150 feet) but having access via a 24' wide driveway on Westcoat Drive, a Private Way, and to allow an 8 foot fence without having the req'd 30 foot rear setback on proposed lots 1-5 .

For the Petitioner: Atty. Michael Strojny, 277 Winthrop St., Taunton, Ma.
Paul Patneaude, P.E., 198 Crane Avenue South, Taunton, Ma.

In Favor: None

Opposition: Diane Medas, 817 Middleboro Avenue, E. Taunton, Ma.

Atty. Strojny stated this has been a long journey and they are here tonight for a modification to the previously approved variance. The City Planner stated he cannot issue a building permit because the P.B. approval says 18 feet pavement width and the ZBA decision says 24 feet width of pavement. He is here tonight to seek approval for the change from 24 feet to 18 feet of pavement width. He stated P.B. member Bob Campbell stated at the meeting that 18 feet wide is sufficient and will allow for snow removal and utilities along the driveway. Atty. Strojny stated the City Planner said he had choice to go to P.B. or ZBA for modification and he chose ZBA. Chairman Ackerman stated he heard rumor there was a water main hook up in the vicinity? Atty. Strojny stated it's \$10,000 to hook up to water they have already spent about \$6,000 in filing fees for P.B. & ZBA. Joe asked if they are required to tie into water or can they do wells? Atty. Strojny stated the trees along the driveway/roadway are the City of Taunton's. Peter said he has great respect for P.B. member Bob Campbell but he would like it 24 feet wide. Paul Patneaude stated there will be an emergency turnaround at end of cul-de-sac. Steven asked if they can get the driveway/roadway approved at sometime in the future? Atty. Strojny stated it' a driveway not a roadway. In favor: William Frenette, owner. Opposed: Diane Medas, 817 Middleboro

Avenue stated she has city water so it's true there is water out there. She is confused about who owns the trees and how are they going to widen driveway if its not their land? There was some discussion about who owns what and then Paul explained to Ms. Medas the plans and showed here what they were doing. She is asking for clarification. The Board explained to her the P.B. approved for 18 feet of pavement width so that would be less not wider? Ms. Medas asked about the e-mail sent to Atty. Strojny and the Law Office. Atty. Strojny stated she was asking the City for legal advice and the City Solicitor informed her he doesn't give out legal advice. Chairman Ackerman asked if they were planning on wells vs. city water? He asked the cost of wells and Paul answers about \$5,000 to \$10,000 and water connection is at least \$10,000 with a required 8 inch main.
Motion to Grant as Presented:

Ackerman, Berube, Amaral.....Yes
Vieira,Wasylow.....No

Petition Denied:

Meeting adjourned at 9:15 pm.