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TOWN OF DUXBURY



BOARD OF APPEALS

DUXBURY BOARD OF APPEALS MEETING MINUTES

July 11, 2019 @ 7:30 p.m.

ATTENDANCE: Judith Barrett, Kathleen Muncey, Borys Gojnycz, Freeman Boynton, Jr. & Emmett Sheehan

CALL TO ORDER: Judith Barrett, Chair Pro Tem, called the meeting to order.

- **ZBA Case #2019-08 Trapelo Realty, Inc, 46 Depot Street (Brothers Marketplace):** *The Board voted to approve the special permit application as proposed. All in favor, 5-0.*

ADMINISTRATIVE

- **ZBA Case #2014-25 Webster Point Village:** *The Board voted to extend the comprehensive permit lapse date for 90 days from August 6, 2019 until November 4, 2019. All in favor, 5-0.*

BOARD OF APPEALS — MINUTES

Case No: 2019-08

Petitioner: Trapelo Realty, Inc.

c/o Bob Galvin

Address: 46 Depot Street

Date: July 11, 2019 Time: 7:30 p.m.

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, July 11, 2019 at 7:30 p.m. to consider the application of Trapelo Realty, Inc. for a Special Permit under Article(s) 400, 600 and 900, Section(s) 421.1 #2, 424, 601.4, 601.6, 601.9, 601.10 and 906.2 of the Duxbury Protective Bylaw. The property is located at 46 Depot Street, Parcel No. 110-771-045 of the Duxbury Assessors Map, consisting of 3.26 Acres in the Neighborhood Business District (NB-1) and owned by Trapelo Realty, Inc. and W. J. & E.M. Davidson. The Applicant proposes to remove and replace one (1) existing freestanding sign, one (1) flush mounted sign, and erect (1) flush mounted sign, all with illumination. A Special Permit is required.

Members present: Judith Barrett, Kathleen Muncey, Borys Gojnycz, Freeman Boynton, Jr. & Emmett Sheehan

Members Voting: Judith Barrett, Kathleen Muncey, Borys Gojnycz, Freeman Boynton, Jr. & Emmett Sheehan

Other persons present at the hearing: Angela Ball, Administrative Assistant

- Judith Barrett, Chair Pro Tem, opens the meeting and then reads the public hearing notice for 46 Depot Street into record, therefore opening the hearing. She cites the correspondence received – the application, site plan and building/sign plans. Ms. Barrett goes on to cite and read, some in part, the Conservation Commission Memo, the Board of Health Memo, the Planning Board Memo, the Design Review Board Memo and an email from Valerie Massard, Planning Director.
- Borys Gojnycz states that he'd like to state for the record that he's been an employee for Whole Foods for 26 years but he feels he can still participate and does not have any bias, but wanted to mention it for the record. No opposition.
- Attorney Tony Riley of Galvin and Galvin introduces himself and explains he is there to represent Brothers Marketplace. Mr. Riley explains that they are there for special permits for 2 signs and 3 light fixtures [points to them on a display board] and gives details on the monument sign proposal stating that originally it was proposed as 30", fine-tuned to 42" but it's still under the 12' in the Bylaw.
- Frank Killilea, also representing the applicant, states that they brought it down in response to the Design Review Board's comments.
- Tony Riley states that per 601.9 the illumination will be shielded white lights not affecting other properties, that suitability is good for area, no damage to others having signs there, no seasonal consequences, it creates employment opportunities, fits with the character of the neighborhood and since it's replacing Foodies it's not a change of use.
- Attorney Robert Galvin of Galvin and Galvin states that he has sight distance plan prepared by McKenzie engineering and he will email to all here but he has it for viewing now on an iPad. Robert Galvin states that the issue with the sight lines was northerly entrance/exit was only if sign was 30" below and it went up to 54" but then down to 42" to accommodate the Design Review Board's request and that per McKenzie they could go to 42" and still be safe.
- Borys Gojnycz asks if it shows the number of feet off the road.

- Robert Galvin states that big sign is actually nonconforming and this one is not [referring to the monument sign proposed], stating that you can't see the old sign with the street trees blocking so the only option for an effective sign needs to be under the canopy. [Robert Galvin points this out on a site plan]
- Borys asks again how far in from Depot the sign needs to be in.
- Bob Galvin states that the sight distance is measured about 4 or 5' in.
- Borys Gojnycz and Galvin discuss setbacks from the street.
- Freeman Boynton, Jr. states that you can see under the sign so only a big truck would be affected.
- Galvin goes on to state that site distance was done at 35mph.
- Kathleen Muncey asks about Design Review Board's suggestion for a mock up and was that done
- Frank Killilea states that they met with the Design Review Board and we held up some mocks to see what they thought and to see if lowering it to 42" would work and that's how we arrived at that height. Killilea states that if it creates a problem we could raise or lower the legs without a problem.
- Freeman Boynton, Jr. wonders aloud about a banner with two poles as a mock
- Frank Killilea states that it's timing issue as well as they plan to open on 8/1.
- Galvin states that is why they made sure to get the sight distance report done by McKenzie.
- Freeman requests the sight plan on iPad be passed around, which is done. Freeman states the sight distances noted on the plan.
- Emmett Sheehan asks if the trees can be trimmed.
- Robert Galvin states that the building is leased and they are able to do the sign, but that is not part of their lease. Galvin goes on to state that the trees are 30' high and canopy is like 14'.
- Borys states that he drove by and had no trouble seeing in an SUV but just pulling out you'd need room to look around.
- Freeman questions if the Bylaw allows this many signs for one user. Grandfathered signs etc. and permissibility is discussed.
- Kathleen Muncey asks about the lighting hours and to confirm the plan is to turn off ½ hour after close of business.
- George Giannouloudis, also representing the applicant, confirms.
- Judith Barrett asks if there are any questions of the audience. None.
- Judith Barrett asks if there is any discussion from the Board. None.
- Emmett Sheehan moves to close the public hearing. Borys Gojnycz seconds. All in favor, 5-0.
- Kathleen Muncey makes a motion to accept the proposal for the special permit as presented. Emmett Sheehan seconds. All in favor, 5-0.

Motion: It was moved, seconded and unanimously voted to close the public hearing.

Moved by: ES

Seconded by: BG

Number in favor: 5

Number opposed: 0

Motion: It was moved, seconded and unanimously voted to approve the special permit.

Moved by: KM

Seconded by: ES

Number in favor: 5

Number opposed: 0

BOARD OF APPEALS — MINUTES

ADMINISTRATIVE

ZBA Case #2014-25 Webster Point Village: Applicant requests to modify the Comprehensive Permit issued August 6, 2015, by extending the lapse date from August 6, 2019 to August 6, 2020.

Members present: Judith Barrett, Kathleen Muncey, Borys Gojnycz, Freeman Boynton, Jr. & Emmett Sheehan

Members Voting: Judith Barrett, Kathleen Muncey, Borys Gojnycz, Freeman Boynton, Jr. & Emmett Sheehan

Other persons present: Angela Ball, Administrative Assistant

- Judith Barrett, Chair Pro Tem, states that we have an administrative request next, to extend a comprehensive permit lapse date. Ms. Barrett asks who is there to speak.
- Frank Gioso states that he is there to speak and that we've requested to extend the comprehensive permit to August 6, 2020. Mr. Gioso reads aloud part of a letter to the ZBA dated June 26, 2019, sent by his attorney Robert Shelmerdine.
- Judith Barrett asks for him to bring the ZBA up to speed on the project as of now.
- Frank Gioso states that we thought we'd have the Conservation Commission take the permit in 2015 and that was denied and we've sought many private land trust and they've been refused.
- Judith Barrett asks why that was
- Gioso states that he believes it was a buffer of CR area. He goes on to state that last year the Marshfield Neighborhood Association proposed they'd hold the CR and we've been negotiating with them and we are close to an agreement.
- Judith Barrett asks where they stand with Marshfield.
- Gioso states that they agreed to extend the permit for 90 days.
- Kathleen Muncey asks if he requested a year.
- Gioso states that yes they did, but they had issues and last year we had a public hearing with this same request.
- Freeman Boynton, Jr. states that he recalls that Shelmerdine had said it'd be 200 hours and it seems it could've been moved forward by now.
- Judith Barrett asks aloud if the Board has ever asked the Conservation Administrator for his opinion on this.
- Freeman Boynton, Jr. states it's his understanding that they haven't.
- Gioso states that it's a buffer, not really an area.
- Freeman states it's a specific area and it'd be a benefit to keep it going
- Gioso states that he understands that Conservation inspects it
- Kathleen Muncey asks if it's Duxbury or Marshfield condition or both. Both
- Judith Barrett asks Attorney Robert Galvin, still present at the meeting and whom represents the Town of Marshfield, what efforts have been made on the Marshfield side.
- Robert Galvin, stating that he represents the Town of Marshfield, states that he understands that Mr. Gioso wanted to sell the CR for a couple of million
- Frank Gioso disagrees.
- Robert Galvin states that the Conservation Commission in Marshfield does not accept CR as a policy.

- Kathleen Muncey asks if the Developer usually pass on stewardship of payments to the HOA
- Robert Galvin states that the 90 day extension shows Marshfield's frustration.
- Kathleen Muncey asks if there is a condition in permit here.
- Robert Galvin states that yes, it was a 1 year requirement for CR inspection.
- Gioso states that the million dollar quote was a value, not a price.
- Robert Galvin state that he wanted to put that value on it for tax value and Marshfield will not agree to land value or buying the CR.
- Gioso states that the HOA will monitor and report to National Heritage and I don't see why the HOA can't monitor it all, additional monitoring is overkill.
- Attorney Dennis Murphy, on behalf of the Marshfield HOA states that last year it went to a public hearing and that tonight the only thing to decide is if this request is substantial or insubstantial and anything substantial I'd suggest a public hearing. Mr. Murphy states that this is two towns with one project with concurrent recordings, that the Marshfield ZBA did not want to go longer than 90 days and that it's not our responsibility to secure a CR, it's the developers.
- Mr. Murphy states that there was discussion about the neighborhood association taking on the CR and we should know within that 90 days about that. He goes on to state that option would be ok, but they'd need more time to make it happen for the neighborhood association like getting a non-profit status to qualify, that it's important to note that this is not just a buffer, there's wildlife involved and this CR condition is a crux, if you will, of the old settlement. Mr. Murphy concludes by stating that if you consider any more than that, I'd ask for another public hearing.
- Judith Barrett states she thinks they should do the 90 day extension.
- Freeman Boynton, Jr. wonders why not a year as they still need to handle the CR part.
- Dennis Murphy states that if Marshfield doesn't accept, then the issue would be having multiple permits with different expiration dates.
- Emmett Sheehan asks if he thinks they are close.
- Dennis Murphy states that he thinks they are
- Freeman Boynton asks why this is so difficult.
- Judith Barrett asks Jon Witten, present at the public hearing, if he'd weigh in on this matter.
- Jon Witten, states that it is possible for a neighborhood association to take this on and it'd take the creation of a 501c3 an adoption and that the commonwealth will approve CR once all parties are aligned, that you'd have to show public charitable purpose to the commonwealth vs an HOA that does not.
- Gioso states that in Marshfield Mr. Murphy did touch on all this with the Chairman and we agreed if we let it lapse we'd have to start all over again, that in 2015 we reached an agreement that Conservation would take it on and it should've been quick.
- Judith Barrett states that she knows the whole story, that she suggests they grant the 90 days like Marshfield and hopes it's settled by then.
- Freeman states that if the neighbors are willing to do this, it seems like a good option.
- Emmett Sheehan moved to extend the Comprehensive Permit lapse date for 90 days until November 4, 2019. Borys Gojnyecz seconded. All in favor, 5-0.

Motion: It was moved, seconded and unanimously voted to extend the Comprehensive Permit lapse date for 90 days until November 4, 2019.

Moved by: ES

Seconded by: BG

Number in favor: 5

Number opposed: 0