



TOWN OF BOXBOROUGH

Zoning Board of Appeals

29 Middle Road, Boxborough, Massachusetts 01719

Phone (978) 264-1723 • Fax (978) 264-3127

www.boxborough-ma.gov

Mark White, *Chair* • Kristin Hilberg, *Clerk* • Mark Barbadoro • Stefano Caprara • Michael Toups • Shawn McCormack, *Alternate*

APPROVED ON: June 15, 2021

Meeting Minutes

March 16, 2021

7:30 PM

Remote Meeting

Members Present: Mark White (Chair), Mark Barbadoro, Stefano Caprara, Michael Toups, Kristin Hilberg [7:43 pm], and Shawn McCormack (Alternate).

Also Present: Simon Corson (Town Planner)

Several members of the public were also present.

Mr. White called the meeting to order at 7:30 PM.

7:30 Hearing – 429 Hill Road Special Permit for Home Occupation

Mr. White read the public notice and opened the hearing.

Alex Jordan, applicant, explained that he is a clinical psychologist. He is applying for a special permit to allow for 1-2 other non-resident occupants for his business, which is located on his property. He explained that his request complies with all Zoning Bylaws. His wife stated that they previously reached out to all abutters regarding this request and received no feedback. Mr. Jordan explained that there are no alterations to the property proposed as part of this application. The existing structure will be utilized and there is sufficient parking for the business on site. This proposal is to help expand the practice a bit.

Owen Neville stated that this is a great opportunity. This property is adjacent to the Town Common. This proposal is no more obtrusive than previous businesses that were located on this site.

There was no other public comment at this time.

Mark Barbadoro stated that this property appears to be well off the street and seems to have adequate parking.

In response to a question from Mr. Barbadoro, Mr. Jordan explained that sessions are held in the accessory (barn style) building on site. It is possible that this could become a telehealth practice.

The accessory building is heated, lit, and there are entry/exit points. If patients are seen in person in this building, some interior updates would be made. All patients are currently being seen through telehealth appointments. This special permit would allow for 1-2 additional therapists to come on site for appointments. The hours of operation are likely to be general business hours, with some additional appointments in the evening on weekdays.

Kristin Hilberg joined the meeting at 7:43 pm.

In response to a question from Bentley Herget, Building Commissioner, Mr. Jordan stated that a bathroom inside the accessory building is one of the interior upgrades being looked into. The property's septic system would support an additional bathroom. This accessory building does have a concrete foundation to it.

In response to a question from Mr. Barbadoro, Mr. Jordan stated that he is unclear what the modifications would need to be in order to make the accessory building wheelchair accessible.

Mr. White reviewed the Staff Report for this application.

Mr. Corson reviewed the conditions he proposed as part of this application. Mr. Corson stated that there is also a waiver as part of this application, for submittal of a detailed site plan. He is recommending that the Board accept this waiver request.

In response to a question from Mr. Barbadoro, Mr. Corson explained that a home occupancy permit needs to be updated every four years. The ZBA can then decide to hold a hearing on this item.

Shawn McCormack voted in place of Kristin Hilberg, as she arrived late to the meeting.

Mark Barbadoro moved to close the public hearing. Seconded by Michael Toups.

Roll call: Mark White, Mark Barbadoro, Stefano Caprara, Michael Toups, and Shawn McCormack – all aye. Motion carried unanimously.

Mark Barbadoro moved to approve the request for a site plan waiver. Kristin Hilberg seconded.

Roll call: Mark White, Mark Barbadoro, Stefano Caprara, Michael Toups, and Shawn McCormack – all aye. Motion carried unanimously.

Mark Barbadoro moved to approve the Special Permit as written in the Staff Report. Stefano Caprara seconded.

Roll call: Mark White, Mark Barbadoro, Stefano Caprara, Michael Toups, and Shawn McCormack – all aye. Motion carried unanimously.

Shawn McCormack moved to authorize the Chair to get the voted conditions signed. Michael Toups seconded.

Roll call: Mark White, Mark Barbadoro, Stefano Caprara, Michael Toups, and Shawn McCormack – all aye. Motion carried unanimously.

7:45 Hearing - 1197 Massachusetts Avenue Appeal of an Official's Decision

Mark White read the notice and opened the public hearing. This is an appeal of a decision made by the Building Inspector to not allow the parking of boats on a property, due to this being an excluded or prohibited use in the "AR" and "B" zone.

Georgia Berry explained that she was approached by JP Robinson who runs Boxborough Marine regarding extra parking for his clients' boats for the winter. He suggested storing the boats in a large field on her property, and she agreed. She then received the letter from the Town. This letter indicates that the regulations, per Section 7400 – Trailers, apply to house trailers or other movable dwellings, such as construction trailers. Further, Section 2188/2186 defines trailers as having a roof, floor, and walls. She does not believe that applies to this situation, and thus appealed the decision.

Michael Toups explained that he agrees with the applicant that the use of the word "trailer" in the bylaws does not apply to boat trailers. With that meaning, no one in the Town would be able to own a boat.

Mr. White asked for public comment at this time.

Jeanne Kangas agrees with Mr. Toups. She has a neighbor who has a boat and a trailer that no one has ever commented on. She wonders if the view of the trailers from the nearby conservation trail might be more of an issue here. She does not believe the proposal is against the bylaws, but it might have a negative impact on the viewshed.

Dennis Reip, citizen and Chair of the Conservation Commission, stated that he may have been the one to bring this to the Building Inspector's attention. He had heard complaints from residents regarding these boats and a negative impact on the viewshed. He is agreeable to the applicant's appeal, as he agrees that the bylaw does not apply to these boats. The larger issue, he believes, is that the bylaw may be lacking in terms of how many boats are being stored on the property (30+). He wonders if there should be any limitation on the quantity being stored. This property is in Chapter 61-A. There is an issue if rent is being collected for this storage in the "AR" zone, as this may be seen as a commercial activity. There is concern on behalf of the Conservation Commission that there may be some encroachment into the buffer on the southern half of this property. If the boats are going to be gone come April and not come back, he is okay with that, but there may still be some other issues at play.

Mr. White stated that this hearing is specifically regarding the bylaw used as a cease and desist. The only thing to discuss in this hearing is if the definition for boat was used correctly in this case.

Nathan Stuntz stated that the use of trailer in the bylaws does not apply in this case.

JP Robinson stated that the boats will be removed by the end of April. He also believed that the bylaw dealt with campers and house trailers, not boat trailers.

There was no other public comment at this time.

Mr. Herget stated that it does not matter if this case is dealing with a boat attached to a trailer; the bylaws state specifically that trailers are not allowed. The Zoning bylaws say that trailers cannot be stored. There is another section for mobile homes, etc., but that is not what he was referencing when he made this decision. The issue is with the 30 other trailers on the property.

Mr. Barbadoro read the definition of “trailer” and does not believe that this case meets that definition. He does not believe this was the correct citation for this case. He believes that there is a use issue here though. If a marina is being run on this farm, he would look at the Use Table and see if this type of business fits with the zone. There could still be a violation here. He agrees with a grace period, especially if the boats will be removed shortly.

Ms. Berry stated that she was led to the definition for trailers because of the letter from Mr. Herget. There has been no money exchanged for this storage. She was simply trying to do someone a favor.

Ms. Hilberg agreed with Mr. Barbadoro. She believes that the bylaw section used for this case was not appropriate, but that there may be a larger issue in terms of conservation. She does not believe the boats need to be removed before they were planned to be but does not believe that storage on this property in the future would be the best idea.

Ms. Kangas stated that Ms. Berry did the right thing in helping a neighbor. She prefers that the boat trailers are being stored away from the public view.

Mr. Herget stated that he is not sure if these boats are leaking oil or other fuels.

Mr. White stated that the discussion will be kept to if the reasoning used in the cease and desist was done correctly.

Mr. Neville stated that, if the boats are leaking oil or other fluids while on trailers, then they likely do so in bodies of water anyway.

Mark Barbadoro moved to close the hearing. Seconded by Michael Toups.

Roll call: Mark White, Mark Barbadoro, Stefano Caprara, Michael Toups, and Kristin Hilberg – all aye. Motion carried unanimously.

Ms. Hilberg stated that she agrees with the applicant. She does want this looked into for next year, in terms of zoning codes and buffer concerns.

Mr. McCormack stated that he agrees that the specific order is probably not sustainable in this case. He does not see that storing 30 boat trailers, as a commercial purpose in connection with a business, can be allowed in the “AR” zone.

Mr. Toups agreed that the definition used in the letter that is in front of the Board currently, probably does not fit the case. He is unclear if this is otherwise allowable under the Use Table.

Mr. Barbadoro stated that he is in support of the comments made by Ms. Hilberg and Mr. McCormack. He believes incidental uses for farmland are a good thing in order to keep the farms going. He agrees with overturning the Building Official's ruling in this instance but does believe that there is a violation.

Ms. Hilberg questioned if this could be done as a home occupancy for next year.

Mr. White stated that he believes the bylaws do not say what was given as the reason for this cease and desist. The Board must uphold what the bylaws say.

Mark Barbadoro moved to overturn the Building Official's order, on the grounds that the boat trailers do not meet the bylaw definition of a "trailer" and would not be subject to the Use Table for trailers, and an uphold the applicant's appeal. Seconded by Ms. Hilberg.
Roll call: Mark White, Mark Barbadoro, Stefano Caprara, Michael Toups, and Kristin Hilberg – all aye. Motion carried unanimously.

Mr. Herget stated that he referenced "trailer" not "boat trailer" in his ruling.

Discussion of development options for Cisco/Beaver Brook Road Review 881 Massachusetts Avenue Special Permit Decision

Mr. White suggested adding a sunset clause to this document.

The Board further discussed details of the document.

Stefano Caprara moved to approve the decision as drafted by Mr. Corson with two amendments:
1) that the granting of the special permit be conditional on the landlord or owner of the property waiving the prior special use permit [Decision 2020-02]

2) that the special permit be revoked in the event that the use ceases for 6 months

Seconded by Mark Barbadoro.

Roll call: Mark White, Mark Barbadoro, Stefano Caprara, Michael Toups, and Kristin Hilberg – all aye. Motion carried unanimously.

Mark Barbadoro moved that the Chair be allowed to sign the decision on behalf of the Board.
Seconded by Michael Toups.

Roll call: Mark White, Mark Barbadoro, Stefano Caprara, Michael Toups, and Kristin Hilberg – all aye. Motion carried unanimously.

Minutes – none at this time.

Review Correspondence

Mr. White explained that there is a potential buyer for the Cisco property. There was a meeting last week with the company. They are asking if the Town is willing to allow at least a partial

residential-style, potentially mixed use, development on this site. Planning Board, Economic Development Committee, Select Board, ZBA, and Board of Health members were present at this meeting. The site is not zoned for residential use, which would require complete rezoning. The original concept presented was 50+ housing but other scenarios were presented. The buyer will not pursue this sale if a residential development is not allowed by the Town. The biggest piece of this puzzle is water. The Water Committee has identified one place left in Town for a public water supply, which is right near the Cisco property. The Town is asking each Board to weigh in on this proposal.

Mr. Barbadoro stated that there could be leaching issues as part of this proposal. He believes that the group should weigh in after more deeply looking into the bylaws. Cisco is currently using their system as a storage tank and pumping it all the time. The more that is drawn from the well, the larger the well radius gets. This also needs to be considered.

Mr. White stated that the largest building would be proposed to be torn down. There is a potential that the buyer would look into this property for flex space. There was some discussion about the buyer being made to pay for the new well needed on site. This also needs to be considered by the public.

The Board reviewed Les Fox's draft letter in response.

The Board discussed how its members feel about residential and mixed use of this property.

Ms. Hillberg moved to adjourn the meeting at 9:30pm. Seconded by Mr. Toups.

Roll call: Mark White, Mark Barbadoro, Stefano Caprara, Michael Toups, and Kristin Hillberg – all aye. Motion carried unanimously.

Join Zoom Meeting

<https://us02web.zoom.us/j/83371341148?pwd=T1hKZ0JCdEpLSGhORzN5Y2JZVWlNQT09>

Meeting ID: 833 7134 1148

Passcode: 890772

One tap mobile

+19292056099,,83371341148#,,, *890772# US (New York) +13017158592,,83371341148#,,, *890772# US (Washington DC)