



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* • Than Stuntz, *Alternate*

APPROVED ON: September 13, 2022

Meeting Minutes

May 31, 2022

7:15 PM

Remote Meeting

Members Present: Mark White (Chair), Mark Barbadoro, Kristin Hilberg, Michael Toups, Stefano Caprara, Shawn McCormack (Alternate)

Also Present: Tracy Murphy (Town Planner)

Mr. White outlined the meeting process and opened the meeting at 7:19pm.

Introduction Town Planner Tracy Murphy

The Board welcomed new Town Planner Tracy Murphy.

Review Correspondence – None at this time.

Special Permit Hearing 235 Summer Road

Mr. White read the legal notice to open the special permit hearing.

Daryl Gresham, American Tower, explained that the proposal is to place an optional standby generator system at 235 Summer Road. The generator will be accessible for all carriers that use the tower. This is an emergency backup system only. The generator will be placed into an existing compound, but the compound will need to be slightly expanded by approximately 11'. This is within the company's lease rights.

In response to a question from Mr. Toups, Mr. Gresham stated that this is a diesel generator. Mr. Toups explained that this is in the Aquifer Protection Zone, which limits the amount of fuel that can be stored. Mr. Gresham stated that this is a self-contained unit that holds 300 gallons of diesel.

There was discussion regarding a liquid propane tank that exists in the compound.

Mr. Barbadoro suggested including language that the system will only be tested on certain days at certain times. He would also like to know what the decibel level is of the generator due to there being residential houses nearby.

Art Root, owner of a nearby property, noted that the tower has been in place for approximately 17 years now. He asked why this generator is being proposed now. Mr. Gresham stated that this is to allow people nearby to still make phone calls if the power is out.

Mr. Root stated that there is a propane tank that exists already on the property. He asked why this cannot be used for the generator. Mr. Gresham stated that all American Tower generators are diesel.

In response to a question from Mr. Root, Mr. Gresham stated that he believes there may be an emergency light on the compound, but that it will not be lit at all times.

Mr. Root stated that he is concerned regarding the decibel level of the generator. Mr. Gresham explained that this system has a noise insulator installed in it.

Mr. Root asked if this generator would explode, if struck by lightning. Mr. Gresham stated that he does not know the answer to this.

Mr. White noted that the plans need to be updated to show the lot lines, proposed location of the generator, and other specifics for the generator itself. He noted that he would also like to see where the fence falls relative to the setbacks.

Mr. Barbadoro moved to continue the 235 Summer Road Special Permit hearing to July 5, 2022, 7:40pm. Seconded by Mr. Toups.

Roll call: Stefano Caprara - aye, Kristin Hilberg - aye, Michael Toups - aye, Mark Barbadoro - aye, and Mark White - aye. 5-0-0, motion carried.

Special Permit Hearing 60 Codman Hill Road

Mr. McCormack entered the meeting.

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

Travis Snell, Concord Property Management, Inc., explained that 60 and 70 Codman Hill Road were previously foreclosed upon. Two investor groups purchased 60 Codman Hill Road and separate investor groups purchased 70 Codman Hill Road. The two properties share a common driveway. 70 Codman Hill is fully leased to Intertek USA. 60 Codman Hill Road contains a 103,000 s.f. building, built in 1986. The building does not meet the needs of today's tenants. Most potential tenants would prefer a flexible single-story space with a high, clear height. There has been some interest from a solar panel manufacturing company, a furniture distribution business, electronic circuit board company, etc. This building has sat vacant for approximately 4-5 years. The existing building is a conforming building with a nonconforming dimensional item. The proposal is to demolish the building and replace it with an approximately 82,000 s.f. flexible warehouse building. This could be available to single or multiple tenants. In his opinion, this would reduce the FAR impact from 0.26 to 0.21, while adding a valuable tenant to the community. A brokerage firm has been hired for this project, but there is no end tenant known at this time.

George Dimakarakos, Stamski & McNary, Inc., explained that the proposed usage would amount to approximately 200 vehicle trips per day. It is also estimated that this use will reduce the amount of septic load on the site from what it previously was. The well is tested monthly for water quality. A Special Permit from the ZBA is being sought under Section 4200 of the bylaw. The impervious areas on site will either be the same or less.

Mr. Snell stated that the plan is to keep the existing septic system and well on site.

Mr. Toups stated that he is unsure if this proposal falls under Section 4202, as the building is to be completely razed and not reused. This was also addressed in the report from PLACES Associates. The new building may need to be conforming.

Mr. Dimakarakos stated that one small section of the building could be kept, in order to be proposed under this Section. The Board could possibly condition this approval on the Planning Board's site plan review decision.

Mr. Barbadoro stated that he believes this proposal should likely go before the Planning Board for site plan review before a decision by the ZBA is given.

In response to a question from Mr. Barbadoro, Mr. Dimakarakos stated that there is a significant stormwater system in place, but improvements to it are proposed as part of this project. Mr. Dimakarakos stated that he believes the project will meet the requirements of the section in regard to stormwater. He noted that the impervious area on site will not be increased overall, and it will not be increased in Zone 1.

Mr. McCormack noted that this application is focused on an expansion of a structure which is nonconforming through the FAR. The applicant may then need to come back for a use special permit in the future, depending on the end tenant.

Mr. Caprara stated that he believes the intent of Section 4202 does not specify the type of change occurring to the building. The Fire Clause, 4208, does consider the complete destruction of a property and the ability to rebuild it differently using a Special Permit.

Mr. Toups noted that the Board cannot generate use variances for different uses than are allowed through the bylaw.

Mr. White agreed that more specific details can be flushed out through the site plan review process by the Planning Board. The proposed impacts will inform the ZBA as to whether the proposal will be beneficial or not to the Town.

Mr. Barbadoro stated that this proposal could work, but he would like to make sure it happens in the right way.

Mr. Toups suggested speaking with Town Counsel regarding if this proposal can be considered under Section 4202. There needs to be a distinction made as to how much of the structure would need to be retained to be considered under this Section.

Mr. McCormack stated that there does not seem to be any case law on this item. This will likely be a policy choice made by the ZBA. He stated that he believes the applicant deserves an answer from the ZBA as to if the change to the nonconforming structure is going to be substantially more detrimental to the neighborhood. The Planning Board cannot deny the project through site plan review for this reason. The proposal is to reconfigure an existing structure in a development that has a prior nonconformity. He stated that he does not believe the applicant, with a flexible building proposed without a known tenant, is creating a more detrimental use, with the caveat that the owner may need to come back for a use special permit in the future.

Ms. Murphy stated that the ZBA generally tells an applicant if a project can be approved, and the Planning Board tells an applicant how the project can be constructed. There is an issue with having an applicant go through with the expense of a site plan review application through the Planning Board, without knowing if the ZBA will then grant an approval for the project.

Mr. Barbadoro stated that, if an applicant comes in with generalities and wants a hard approval from the ZBA, he is unsure if that is fair to the Town. It is unfair to the Town to vote on a project without specifics and clear purposes for the permit to be issued.

Mr. Toups stated that he is unclear if the Board can determine the project is less detrimental to the Town without knowing the end use. However, in terms of the existing nonconformity, it is clear that the applicant has shown that this will be reduced through the proposal. Allowing a different use to come into the building could create more or less traffic than the existing building, which could be more detrimental to the neighborhood.

Mr. White stated that the ZBA can request traffic studies, although this is usually done by the Planning Board. The ZBA can try to decide if there are social and community needs served through this project. There are certain criteria that need to be satisfied in a decision, such as intensity of use, which cannot be decided in a vacuum.

Ms. Hilberg stated that she believes the Board can determine if the preexisting nonconforming structure can be modified through Section 4200. The Code Enforcement Officer will need to determine what can occur inside the building.

Mr. McCormack stated that the criteria in Section 9204 discusses the proposal in terms of the previous structure; it does not deal with the potential use. There will be a chance to discuss traffic and other items if/when there is a request for a special permit for use in the future.

Mr. Dimakarakos stated that the design of the building shows that it will be used for storage space. It will not be used for an office building and will, thus, not generate that kind of traffic.

Mr. Caprara stated that the use is immaterial to the structure. This request is for a change to the structure only. The applicant would need to come back before the Board for a change of use.

Vincent Cannistraro, member of the firm hired to market the property and one of the property's investors, stated that there have been several offers on the property already which have been turned down based on use alone. The owners are trying to be thoughtful in picking the proper tenant for the building.

Rich Guzzardi, 92 Reed Farm Road and Economic Development Committee member, stated that there is a lot of impervious surface on this site, with a defunct building. There is no viable use for the building as it stands currently. The applicant's proposal is an interesting opportunity which aligns with the Town's goals. This will leverage existing space to make it developable. The proposal seems to fit with the intent of the community in terms of economic development. The Board is only being asked to decide the special permit on floor area ratio at this time. He suggested sending the applicant to the Planning Board for site plan review with the Zoning Board's approval.

Mr. Barbadoro stated that he will need to follow the special permit criteria in order to vote. The first is "the social and community needs serviced by the proposal." He cannot answer this in terms of changing the shape of the building. He stated that he has this same concern with each criteria item. Without knowing an end use, it will be hard to vote in the affirmative at this time.

Ms. Hilberg suggested putting conditions on the special permit in terms of following the criteria.

Mr. Caprara noted that the Section references that a special permit shall be granted unless the Special Permit Granting Authority shall find that the structure and/or use proposed shall not have an adverse effect which outweigh its benefits on either the town or the neighborhood. He is focused on the "and/or" language, and thus being able to focus on the structure without necessarily considering the use at this time.

Mr. Barbadoro stated that he believes this needs to be sent to the Planning Board for site plan review first, in order to have the conditions of that approval written into the special permit approval by the Zoning Board.

Mr. Dimakarakos suggested that this could be written into the Zoning Board's approval as "subject to approval by the Planning Board."

Mr. Caprara asked that Town Counsel be consulted on if the Board needs to know the use before ruling under Section 9204.

Ms. Hilberg moved to continue the 60 Codman Hill Road Special Permit hearing to June 7, 2022, 7:40pm. Seconded by Mr. Toups.

Roll call: Stefano Caprara - aye, Kristin Hilberg - aye, Michael Toups - aye, Shawn McCormack - aye, Mark Barbadoro - aye, and Mark White - aye. 6-0-0, motion carried.

Minutes February 1, 2022; April 25, 2022

Mr. Barbadoro moved to approve the meeting minutes of February 1, 2022, as written. Seconded by Ms. Hilberg.

Roll call: Stefano Caprara - aye, Kristin Hilberg - aye, Michael Toups - aye, Mark Barbadoro - aye, Shawn McCormack – aye, and Mark White –aye. 6-0-0, motion carried.

Ms. Hilberg moved to approve the meeting minutes of April 25, 2022, as written. Seconded by Mr. Barbadoro.

Roll call: Stefano Caprara - aye, Kristin Hilberg - aye, Michael Toups - aye, Mark Barbadoro - aye, Shawn McCormack – aye, and Mark White –aye. 6-0-0, motion carried.

New Business – None at this time

Next Meeting: June 7, 2022: 179 Burroughs Rd.

Mr. Toups moved to adjourn the meeting at 9:33pm. Seconded by Mr. Barbadoro.

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

Respectfully submitted,
Kristan Patenaude

Join Zoom Meeting

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