



TOWN OF BOXBOROUGH

Zoning Board of Appeals

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

APPROVED ON: September 7, 2021

Meeting Minutes

August 03, 2021

7:30 PM

Remote Meeting

Members Present: Mark White (Chair), Michael Toups, Stefano Caprara, Than Stuntz (alternate) and Shawn McCormack (alternate).

Also Present: Simon Corson (Town Planner)

Mr. White outlined the meeting process.

7:35 Hearing – 871 Massachusetts Avenue

Special Permit for the extension of a pre-existing nonconforming use

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

Nick Facendola, Level Design Group, presented the case for High Quality Landscape Construction, Inc. He explained that the nonconforming portion of this request is the use of the parcel located at 871 Massachusetts Avenue. The original business was developed in its current state as High Quality Landscape Construction, Inc. in 2008. At that time there was no separate designation for landscape services/businesses in this zone. This use was allowed through site plan approval by the Planning Board in 2008. The property is approximately 2 acres and most of it is currently developed. There is a small office building, with an approximate 1,600 s.f. footprint, a garage structure, with an approximate 3,000 s.f. footprint, associated parking, a paved center area, a main access driveway of Massachusetts Avenue, and operational storage in the back of the lot.

Mr. Facendola stated that this application is for a 4,920 s.f. canopy accessory structure to be built. The primary use of this facility is for a landscape construction business. The property owner has a lot of heavy equipment on site as part of the business. The owner would like this equipment to be covered so that it is easily accessible during snowstorms or other weather events. This equipment needs to be readily available because it is used to provide emergency services for snowplowing and tree work.

Mr. Facendola explained that the canopy structure will not have any walls or panels. The structure will have a solid roof over the equipment. There are no utilities, such as water or sewer, proposed for the structure, but there will be electricity for some small lights. The owner applied to the Planning Board and received site plan approval for this project already, with one of the

conditions being that the owner also apply to the Zoning Board of Appeals for the extension of this pre-existing nonconforming use. The previous Building Inspector stated that a permit was not needed for this application, which is why the owner previously went directly to the Planning Board. However, it is agreed that this is an extension of the use because the zoning in Town has changed. The Zoning Use Table has been updated for the definition of Zoning Use categories. Landscape services are now allowed by right, with site plan approval from the Planning Board, and Landscape Contractors are allowed by special permit. This application falls into the later category.

Mr. Facendola stated that there are no major site improvements being proposed as part of this application. The canopy will be located within an existing paved area, so no additional stormwater management is needed. There are some plantings proposed to mitigate the view of this structure from the abutting parcel. The posts of the structure are also proposed to have bollards, per the Town Engineer's suggestion, to protect the structure.

Than Stuntz joined the meeting.

Mr. Facendola briefly reviewed the presentation for Mr. Stuntz. He noted that the structure will be no more than 25' high.

In response to a question from Mr. Stuntz, Mr. Facendola stated that, if this application is approved, the temporary structure currently on site will be removed and replaced with the proposed canopy structure.

In response to a question from Mr. Stuntz, Mr. Facendola stated that the site is graded to go to a stormwater basin at the front, and there is not a concern about more runoff from the structure.

Mr. White asked for public comment at this time.

Cindy Markowitz, of the Planning Board, stated that the outdoor lighting associated with the structure was not mentioned during the site plan review by the Planning Board. Mr. Facendola stated that this lighting will be located within the structure, not outside of it. Ms. Markowitz questioned if the lighting is technically inside if there are no walls to the structure. Mr. Facendola stated that he believes this is part of the building code.

Ms. Markowitz stated that the Planning Board did not add a condition for lighting because it was not aware there was any proposed. She noted that the Zoning Board of Appeals could put in a condition regarding the lighting not being offensive to neighbors.

Mr. Stuntz stated that the current condition does not allow for external lighting on the canopy structure.

Mr. White questioned if the lighting would be dark sky compliant, or only cast downward.

Mr. Facendola explained that the lighting aspect has not been designed yet but will be minimal for the winter months when it gets dark early. The lights will be on for a short time in order to get the gear ready. This is not permanent lighting that will be left on overnight, or security lighting. The lighting will be internal to the canopy to illuminate under the area.

Mr. Toups asked if this proposal will be compliant with Section 4203 - *No change, alteration, or extension of any nonconforming use or structure shall result in an extension of the structure or an increase in the use to more than one hundred percent in excess of the gross floor area of the structure or of the total area of the use existing or begun when this Bylaw was adopted.*

Mr. Facendola stated that, in his opinion, this area is already used on site to store these vehicles; the proposal is only to put a canopy over the area. Thus, this is not expanding the business, as this storage of vehicles was already approved per the site plan of 2008. He also noted that there are no other nonconformities or issues noted by the acting Building Inspector for this application.

Mr. White noted that this structure was not part of the original site plan approval. He noted that this is an extension of a pre-existing nonconforming use.

Mr. Facendola stated that the structure generally will not increase the nonconformity of the site by more than 100%. He stated that he could understand this bylaw definition being adhered to if part of the site was being developed and extended into, but this proposal is not for that.

In response to a question from Mr. McCormack, this structure will be conforming based on the current zoning bylaws for an accessory structure. It will meet setbacks, not make the site an undersized lot, etc.

In response to a question from Mr. Caprara, Mr. Facendola stated that the existing building on the lot is conforming. There is a smaller setback due to it being a historic building, but this was discussed and approved during the original site plan approval.

Mr. White stated that the issue is if this accessory structure is a primary or secondary use of the site, and thus complies with the definition of an accessory building.

Mr. Toups questioned if the existing building is a pre-existing nonconforming structure, and thus the other structures on the property may be subject under Section 4203.

Mr. Corson noted that this application has not been brought before Town Counsel for an opinion.

Mr. Facendola stated that the only change to this property is of the use. He does not believe Section 4203 applies in this case, as there is no modification being proposed to the existing structure. The property is extending its current nonconforming use by constructing a canopy structure in a place on site that is already being used to park equipment.

Mr. Stuntz stated that if the canopy structure is considered an accessory structure than it not nonconforming.

Mr. White agreed that the determination is to if this canopy structure is a primary or accessory use of the site. If the business is a tree service and needs heavy machinery, then this might be a primary function of the business. The existing office building could also be considered the primary structure, as it was on site first.

Mr. Stuntz stated that considering the parking lot area the primary structure of the site would be strange, because the canopy structure itself does not affect the usage of this area. The area has been used for parking previously, without being covered. He noted that the Planning Board conditioned that this structure cannot be enclosed, and it would be difficult to consider an open carport a primary structure of the site as the business cannot be run out of it.

Mr. McCormack agreed that this appears to be a conforming structure and that the question is to if the proposal is an extension of a nonconforming use that will be substantially more detrimental to abutters.

Mr. White asked Mr. Corson to put Section 4203 on the Board's list of items to review and possibly clarify.

Mr. White stated that he is okay moving forward looking at the proposed canopy as an accessory structure that is compliant, and that the use of the site is an extension of an existing nonconforming use. This use was in place at the time that revisions were made to the bylaw and thus it is not substantially more detrimental to abutters. He measured this by looking for public interest on this item. He wants an approval to be clear that lighting needs to be downcast and not case toward the road or abutters.

Ms. Markowitz noted that she is concerned with the lighting being a nuisance to abutters.

In response to a question from Mr. Stuntz, Mr. Facendola stated that there is about a 10-12' grade between the structure and the nearest abutter. There is also an existing 6-8' retaining wall that abuts this area. The area is fairly well vegetated, but the applicant is proposing to add red cedar plantings into the open areas of the tree line. If there are further abutter concerns, the owner, as a landscape business, will be able to help. Mr. Facendola noted that the lighting will be downward directed.

Mr. Corson stated that the Planning Board and Zoning Board of Appeals could mimic the zoning bylaw in their decisions, such as Section 6204 – Outdoor Lighting - *To prevent unnecessary sky glow and other glare, particularly but not limited to that interfering with astronomical research, all outdoor lighting fixtures shall be shielded from above so as to prevent direct glare from the light source from interfering with the vision of motorists or pedestrians passing in the street or streets abutting the premises and as to prevent direct glare from the light source from lighting neighboring properties, particularly residences, and so that,*

- (a) all illumination is restricted to an area 15 degrees below the horizontal, and*
- (b) except for streetlights, direct rays from the light source are confined to the property boundaries.*

Mr. Facendola agreed that the lighting will be kept to a minimum, will not be left on overnight, and will only be on when the business is open.

Mr. McCormack also noted Section 6206 - *Outdoor Lighting Regulations for Special Permit – Developments and redevelopments requiring a Special Permit or an amendment thereof, shall comply with the standards for outdoor lighting unless otherwise permitted by the Special Permit Granting Authority.* Thus, the lighting standards sought for this application are enforceable by the bylaw.

Mr. McCormack moved to close the public hearing. Seconded by Mr. Toups.
Roll call: Shawn McCormack, Than Stuntz, Michael Toups, Stefano Caprara, and Mark White – all aye. Motion carried unanimously.

There was no further discussion on this item.

Mr. McCormack moved that the Board find under Section 4202 of the Boxborough Zoning Bylaw and Section VI Chapter 40-A that the proposed expansion of the existing nonconforming use is not substantially more detrimental to the neighborhood, and, under Bylaw Section 9200, that a Special Permit be issued. Seconded by Mr. Stuntz.

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

Minutes – none at this time.

Review Correspondence – none at this time.

Public Comment – none at this time.

Updating & Recodifying the Zoning Bylaw –

Mr. Corson stated that the RFQ for this project closed today. One bid was received from the Barrett Planning Group, LLC. The Planning Board will review this bid and, if accepted as a qualified bidder, will begin the contract procedures with Barrett Planning Group LLC. During this RFQ process, three qualified firms were contacted to bid on the project: only one applied.

Mr. Toups moved to adjourn the meeting at 8:24pm. Seconded by Mr. McCormack.
Roll call: Shawn McCormack, Than Stuntz, Michael Toups, Stefano Caprara, and Mark White – all aye. Motion carried unanimously.

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