

## Zoning Board of Appeals Minutes, 08/17/2016

### Zoning Board of Appeals Minutes August 17, 2016 Landuse Meeting Room

**Members present:** Chair Ethan Berg, (EB); Clayton Hambrick, (CH); Al Harper, (AH); Robert Fuster Jr., (RFjr); Clifford Snyder, (CS)

**Staff present:** Gwen Miller, Land Use Director/Town Planner

AH requested that in the future, in addition to the paper copies, all applications include an electronic version of the petition so that the Board and members of the public can have access. GM agreed that this will be done.

**Thomas and Janice Durfee, for the property owned by Lenox Dale Service Station at 1 Crystal Street (Map 38, Parcel 34)** Special Permit under Section 3.3.3 "Nonconforming Uses", to change a pre-existing non-conforming use, retaining the commercial use of the property. Instead of a service station, the property will be used as a home heating oil business.

George Jordan, who owns property at 528 Walker St., presented a letter which was read into the record. Mr. Jordan claimed that the legal notice for the Durfee petition was defective as it provided limited information. He said that the published notice provided more details than the posted notice and that he received his abutter's notice on August 11<sup>th</sup>. GM responded that the published notice was identical to the public notice. The petition was filed on August 2, 2016, advertised in the Berkshire Eagle on August 3<sup>rd</sup> and August 10<sup>th</sup> and the notices were mailed to abutters on August 8<sup>th</sup>. He argued that the abutters' notices should be sent out at the same time as the first published notice. GM responded that statute does not say specifically when they should be mailed. However, the first of the two published notices is to be within 14 days of the hearing. The public notice was posted on the official bulletin board in Town Hall on August 1<sup>st</sup>. It was the consensus of the Board that they were satisfied there had been adequate notice.

EB noted that the notice referred to Section 3.3.3 of the bylaw, not Section 3.3.2 that the petition called for. It was agreed that this was a "scrivener's error" and that the text in the notice was accurately described.

It was also noted that included in the petition was a "request a change of 3.3 and 3.3.2 zoning bylaw" as well as "that the commercial line be moved to the southern side of the property". The Durfees were advised that the Zoning Board would be ruling only on their request to change the use.

Presenting the application was Tom and Jan Durfee. Mr. Durfee addressed the fact that the property is zoned R-15, but that it has never been residential and has a history dating back to the 1800's as a service station. There had been underground storage for gas but they were removed in 1986. He operated as a car repair facility at this location up until about 2 ½ years ago and did store motor oil, fuel etc., in a certified tank with the maximum amount estimated to be a couple of hundred gallons.

The Durfees will be leasing their property to Pioneer Valley Oil, which is owned by Jeff Hunter. The intended use is an office and dispatch center for a home heating fuel business. (At this point RFjr disclosed that he knew Mr. Hunter, but felt that he could be objective in making a decision. He offered to recuse himself if anyone objected. There were no objections.) Mr. Durfee said that there are codes with which the proposed operation must comply. There is a limit up to 15,000 gallons of fuel on site or up to 5 delivery trucks at one time. The maximum fuel on a truck is 2800 gallons. He pointed out that the delivery trucks will be filled off site, and often will make deliveries before returning to the site. There will not be storage containers on site for the purpose of holding fuel.

The Building Commissioner, Don Fitzgerald and Deputy Fire Chief O'Brien have been consulted and as long as the building has been brought up to code, they have no problems with the proposed use.

There were three who supported the petition and they were Ed Lane, Mike Oft and Jeff Clifford.

The public hearing was adjourned and the Board discussed the Durfee's request. The consensus of the Board was that it was a good reuse of property and less detrimental than the previous use. AH made a motion to approve the requested change of use to a distribution center for home heating oil. RFjr seconded the motion and the Board voted to approve 5-0.

RFjr made a motion to condition the approval that the use has to comply with all building codes and the Fire Marshal's recommendation, regulations, etc. AH seconded the motion and the Board voted to approve 5-0.

**Steve C. Morrison, 25 Pittsfield Road (Map 17, Parcel 37,** Special Permit and or Variance under Sections 5.2.4, 5.2.6 & 5.2.0 The Petitioner seeks to place a free-standing commercial business sign with LED time and temperature indication within 6 feet from Pittsfield Road (Route 7). Originally scheduled for August 3, 2016, but the applicant failed to appear.

Presenting the application was Mr. Morrison and his daughter, Ashley Morrison.

Mr. Morrison said that he was re-locating his business from Pittsfield. It is a home improvement design center in which he will be providing space for some vendors. The building has been vacant for some time and is currently being rehabilitated. He will have parking for 26 cars. The building will be handicap accessible as part of his business is providing handicap bathrooms. He said that they felt that a sign with the

temperature and time would provide a service to the public. It would be internally lit and placed ten feet from the street. The location and height of the sign is being requested as trees and the contour of the surrounding land as one approaches the property impedes visibility which then presents a safety issue. There are two existing curb cuts which are connected by a drive thru around the back of the building. Parking will be on either side of the building. Currently the plans are, heading south, to have the first curb cut the entrance.

Board members discussed the fact that this property is in the Gateway District, having both commercial and residential properties, unlike the commercial strip north on Pittsfield Road. The signs in this district are lower key and internally lit signs would not be appropriate. Signs in the immediate area are smaller and more are at ground level. When asked, Mr. Morrison said that he didn't feel that not having the proposed sign would harm his business, but he pointed out that more height was necessary so as to not block the sight of drivers.

Mr. Morrison confirmed that the Board was comfortable with the 10 foot setback, and that he agreed with them that he would use his oval sign design; two sided, made of carved wood, and to be held up by two wooden 6x6 posts. The lighting would be external, "mushroom style" lights. He offered to provide more renderings. The Board felt that would not be necessary. RFjr pointed out that what had been discussed and agreed upon during the hearing was binding.

There was a brief discussion regarding granting a special permit versus a variance and it was decided that a special permit would be more appropriate. RF made a motion to grant the application as modified with conditions. AH seconded the motion and the Board voted to agree 5-0. All agreed that the six criteria for a special permit had been met.

The Board agreed to vote on the three conditions as a set.

RFjr made a motion to add the following conditions:

- There will be no internal illumination; external illumination only using the mushroom lights; will comply with the Town's light ordinance and LED lights will not be used.
- The material be wood
- Two wooden posts which is to be consistent with engineering and the building code

AH seconded the motion and the Board voted to approve 5-0.

Earlier in the hearing the size for the post had been stated at 6" x 6", but Mr. Morrison said that it might be necessary to increase the size to 8" x 8". It was decided that the size should not be stipulated in the conditions.

AH asked that Mr. Morrison look at the height of signs and what is proportional to the signs in the area of his property. The height will not exceed 11' 6".

**Minutes:**

The minutes were tabled.

July 6, 2016

(No meeting July 20<sup>th</sup>)

August 3, 2016

Respectfully submitted,

Peggy Ammendola