

**Zoning Board of Appeals  
Minutes  
June 28, 2011**

The meeting was called to order at 7:15 P.M.  
A quorum was present.

**1. Roll Call**

**In Attendance:** Duncan LaBay, Charles Ciovacco, Jamie Pennington, Ed Ramsdell, Robert Ciampitti (7:17pm)

**Absent:** Nat Coughlin, Sean Leonard

**2. Business Meeting**

a) Approval of minutes June 14, 2011 – moved to the July 12, 2011 meeting

**3. Public Hearings**

a) **Robert Hugo**

**52-56 State St.**

**Special Permit:** convert office space to residential resulting in mixed use (use #405) and

**Dimensional Variance:** request relief for two parking spaces for the conversion from office space to a residential unit

**The notice of public hearing was read aloud for the record.**

Chairman Ramsdell, speaking to the board, said there appeared to be a problem with the ordinance and parking in the downtown area. He read through the ordinance and it says to use the municipal lot for resident parking you have to petition the city council, and that will not take effect until the municipal parking structure is built. The City Clerk did not know if the old parking section should have remained or if it was not written clearly. The board could consider requirements for mixed use, and then determine what to do relative to parking. The board has the ability to grant dimensional variance under hardship finding. He asked for the board's thoughts.

Mr. Pennington asked if the board could take into account the parking under current use.

Mr. Ramsdell stated there is no parking per se currently. By commercial use if within 300ft of municipal lot you have the right to use. Mr. Ramsdell said if the new ordinance is not in effect it would indicate they should have left in the old parking ordinance as well. Mr. Pennington said it seemed like the board would have latitude on parking lots. If the ordinance were in effect, the applicant would go to the council for the special permit.

Mr. Ciovacco asked where the applicant would expect to park? **He thought within 300ft, tenants would be living there, in the day they don't need parking, but do at night. Right now paid parking ends at 6pm.**

Mr. Ciovacco asked if they could be there overnight? **Yes, they can. They work out of town, and don't need the daytime parking.**

Mr. Ciovacco stated there are residential units in downtown buildings. Mr. Ramsdell said that many of those either come in prior to 1986, or post 1986 they would have gone to the council. Mr. Ramsdell said if we grant a special permit for mixed use my recommendation would be to grant under the variance.

**Chairman Ramsdell opened the hearing to the public comment.**

**In favor:**

Pam Fullerton, 13 Milk Street

John Hugo and Catalina Cuervo, 50 Meagan's Way, Haverhill

**In opposition:**

None.

**Questions:**

Mr. LaBay asked if the documents submitted are justification for arguments to the legal hurdles required for variance. **Yes**

Mr. Ciovacco asked if this is an overlay of current space and looking to replace 7 offices? **Yes, the 2<sup>nd</sup> floor stays the same - it has 3 tenants.**

Mr. LaBay asked about the second means of entry/egress from top floor, and at second floor. **Right now the entry is on State Street to upper floors and alley way in back.**

Mr. Pennington asked if the windows meet requirements for egress for ladders. **Yes, the architect will make sure.**

Mr. Pennington asked if the building has sprinklers. **No, the bookstore is not and the upstairs is not.**

**Deliberations:**

Mr. Pennington stated the mixed use is great, the city wants this.

Mr. Ramsdell agreed that it is encouraged.

Mr. LaBay said that for State Street and downtown buildings, its logical for building to be reconfigured with residences on top floor.

Mr. Ciampitti stated that it creates a vibrant commercial district, and having diversity is fundamental to protecting ongoing vitality of the zone. It is consistent with what is on the street.

Mr. Ramsdell said new use has a parking requirement when the parking use is in less demand.

Mr. Ciampitti stated that it is a de-sensitization in the parking requirement.

Mr. Ciovacco stated new residents will have to deal with the new parking regulations in downtown and that trumps everything.

**Motion to approve a special permit for mixed use by Mr. LaBay, seconded by Mr. Ciovacco.**

Unanimously approved.

**Votes:**

Mr. LaBay – yes

Mr. Ciampitti - yes

Mr. Ciovacco – yes

Mr. Pennington – yes

Chair Ramsdell – yes

**Motion to approve dimensional variance by Mr. Ciovacco, seconded by Mr. LaBay.**

Unanimously approved.

**Votes:**

Mr. LaBay – yes

Mr. Ciampitti - yes

Mr. Ciovacco – yes

Mr. Pennington – yes

Chair Ramsdell – yes

**b) Bethany Groff**

**77 Prospect St.**

**Special Permit for Non-Conformities:** Construct 1-story sunroom with shed roof over existing deck.

**The notice of public hearing was read aloud for the record.**

Bethany Groff stated that she would like to make a small sunroom on the existing deck and widen so it covers the back of house. Not going further into the yard. She has agreement from side neighbor who wrote letter in support.

**Chairman Ramsdell opened the hearing to the public comment.**

**In favor:**

Susan Hoffman, 4 Charles Street, doing work on the room and in favor of the plan.

**In Opposition:**

None.

**Questions:**

Mr. Ciovacco asked if her neighbor was here from the last meeting, and as it relates to his house looking at the street, this house is to the left. **It would have most impact on him. He is set back from the street.** His house is currently empty. **Yes, for about 1 month.** Mr. Wyatt is on the other side. **Yes, we share half of the house.** Does it impact him. **No, it will more match his side.** Does it impact his view. **No, it will make more symmetry. He has a patio.**

Mr. LaBay asked if the two loose drawings with no information belonged to this file. **Yes, the new drawing is for after the construction.**

**Deliberations:**

Mr. Pennington stated that this is a reasonable request.

Motion to approve special permit for noncom-conformities by Mr. Pennington, seconded by Mr. Ciampitti.

Unanimously approved.

**Votes:**

Mr. LaBay – yes

Mr. Ciampitti - yes

Mr. Ciovacco – yes

Mr. Pennington – yes

Chair Ramsdell – yes

**c) Global Companies, LLC c/o Anthony Guba, Ayoub Engineering**

**76 Storey Avenue**

**Use Variance:** replace existing single wall underground tanks with new double wall underground tanks with increased capacity from 26,000 gallons to 32,000 gallons and adding diesel fuel

**The notice of public hearing was read aloud for the record.**

Anthony Guba stated that this has been a long standing gas station. Recently purchased from Exxon Mobil. Five years ago replaced piping not tanks. Alliance is part of Global Companies. Currently single ZBA minutes June 28, 2011

wall fiberglass tanks that are fine as they are but the company wants to upgrade tanks. These are small for station, typically 50,000-60,000 gallons but they only want 32,000 gallons which is 6,000 over what is there now to accommodate diesel. The only thing different is there will be new concrete over tanks, the dispenser closest to the street would have 4 pumps instead of 2 pumps to serve diesel. This is in response to Shell station across the street that added diesel 1 year ago. Three storage tanks will be replaced by two tanks. The larger volume of the two tanks will increase safety by reducing the number of deliveries.

**Chairman Ramsdell opened the hearing to the public comment.**

**In favor:**

None.

**In Opposition:**

Joe Cheever, 89 Storey Ave. He lives in an R2 zone that abuts the B1 zone. He likes the idea of larger tanks, and fewer deliveries. Diesel is concerning him as he does not want to see tractor trailers going in and out. **The way the island is set up does not encourage tractor trailers, but the deliveries are by tractor trailer. Dispensers at truck stops deliver much more quickly than these dispensers. Maybe in an emergency but tractor trailers are not going to be attracted to this location for fuel.**

From my house the overall station will look the same? **Just the underground tanks, the pavement, and the island with the four dispensers.** Construction - time frame how long, hazardous waste? **Typically 4-6 wks, not changing piping between. Noise standpoint excavation about 1 week, driving piling 1 day, then back-fill and concrete. Hazardous waste is all regulated. An LSP representative that screens soil, tanks are closed when tanks are pulled, samples taken around area to determine situation. An Environmental Consultant would be called if anything is found, and a case opened and remediation. Often it is pre-classified if there would be problem. Pavement is taken to an asphalt plant, not disposed of on site. Tanks are fiberglass and we're pretty confident that they are solid and there are no problems right now. Piping is 5 years old, double walled, also confident no problems. At the time of transfer of the property to Exxon Mobil there was an environmental assessment and no problems found.**

**Chairman Ramsdell closed the hearing to the public comment.**

**Questions:**

Mr. Ciampitti said to the point of tractor trailer use, how would tractor trailer drivers know presuming a sign on Rt. 95 that would indicate the diesel service. **Mr. Guba had not thought of that and possibly there will be a sign on 95. From what he knows of tractor trailers when they fuel it would be a ½ hour deal, and if its only 10 minutes to fill the tank they will go a few more exits to the truck stop. They talk to each other and they know where the stops are. If you take a look at the Shell station they've had diesel for a year and their site is easier to move around in. If they are not having an impact, then this station won't either.**

Mr. LaBay asked if they will try to keep the market open as Shell shut down during their changes. **Not sure if market will stay open.**

Mr. Ciovacco asked if it will remain a Mobil station. **Yes, for the foreseeable future**

Mr. Pennington asked when the current tanks were installed. **Mr. Guba said he knows but can't think of it and would have to get that date. Twenty years? What's the lifespan? Not sure but unlike steel it does not corrode.**

Mr. Pennington asked the grounds for the variance. **Looking at the variance, existing use modifying or altering, more under special permit than variance. Site already has underground storage, and presently hardship is this site is unique because of higher volume and proximity to highway from**

**town and off highway volume. The fact that you have other locations that have higher storage than what we're asking for, and others have diesel puts us at an unfair advantage.**

Mr. Ramsdell clarified that with a use variance not dimensional variance there are not as many hurdles to jump over.

Mr. LaBay stated that Mr. Guba touched on how the single wall fiberglass tank is safer than steel, the double wall is that another safety feature or because the tank is larger? **Currently Massachusetts law requires double wall.** If single wall were to fail you would replace with double? **If we were replacing like for like, we would not need to be here. Here because of volume, and double makes tank stronger and allows you to monitor space between layers and gives immediate indication when you do have a leak**

Mr. Ciovacco asked that even if not increasing in size, to replace you would have to replace with double. **Correct.**

#### **Deliberations:**

Mr. Ciovacco stated the thing of note is the addition of diesel, and he agreed with Mr. Guba that these areas are car driven, and does not see any increase in commercial diesel tractor trailer trucks coming through. He does not live far from there and he also would not want that. He considers a 6,000 gallon change a minor increase. He supported the request.

**Motion to approve the special permit by Mr. Pennington, seconded by Mr. Ciovacco.**

#### **Votes:**

Mr. LaBay – yes

Mr. Ciampitti - yes

Mr. Ciovacco – yes

Mr. Pennington – yes

Chair Ramsdell – yes

#### **d) Christopher Smith d/b/a Sal's Pizza**

**25 Storey Avenue**

**Special Permit:** allow a pizza restaurant (fast food/carry out Use #502)

**The notice of public hearing was read aloud for the record.**

John Matthews, of Newbury, property manager for Demoulas Supermarkets here with Christopher Smith. The shopping plaza was originally permitted in 1985, he has handled expansions and when Block Buster Videos closed last year 8,600SF of space at end of end cap became available. Olympia Sports is taking part, Anna Jaques Hospital is taking some space and 1,500 SF will hopefully be Sal's Pizza. It represents 1.3% of gross SF, there are 595 parking spaces, only 536 required. It will add a nice use to the shopping center. There currently isn't any take out food in the center for people to get on a break, etc. The adjacent plaza has 4 fast food restaurants, so we think this adds to our mix and with very little impact.

Use is consistent with use in the district, in a shopping center, is desirable and adds convenience. It does not create undue traffic congestion, pedestrian access like any other store, will not overload any public services and the use is not detrimental to health or welfare of others. No trucks before 7am.

Christopher Smith, 7 Briarwood Drive, Westford, MA, is a partner and in charge of business development for Sal's Pizzeria and Restaurant Group. They have 46 units in their chain today. Focus is on pizza and looking to bring quality, quantity, and price value. They had been looking at Newburyport for some time. They feel they will do well and this fits nicely into their demographics. Commissary in Salem, NH that delivers dough, sauce, and cheese every day. They have a few stores they can't deliver before a certain time and have never had any issues.

**In Favor:**

None.

**Opposed:**

Charlene Smith, 24 Cutting Drive, formerly owned by parents. Long time problem with trucks coming and going. There are still deliveries after hours. They don't want that to continue. She doesn't think Sal's will it worse but this is an issue. The signs are ignored.

Sharon Boyle, 20 Cutting Drive. She assumes loading supplies are brought in the back door. The 7am issue is more of a problem with trash pickup as they like to sneak in at 5:00am. They have records in the Building and Health departments of the complaints. 9pm should be the end of deliveries and last night at 10pm there was a delivery for Market Basket still there. Asked for gates, instead of the barrels to prevent off hour deliveries. She has nothing against Sal's. She asked what the hours of operation are.

**11am to 9pm weekends till 10pm.**

**Questions:**

Mr. Ciovacco asked if this is a franchise. **Corporation – Sal & Chris are partners.**

Mr. LaBay asked who's trucks are the offenders. **Ms. Boyle said she didn't know because she doesn't go outside to see who's there. Trash trucks, one particular company comes in back way. She has called the police.**

Mr. LaBay asked if the property manager is aware of this. **He knows Ms. Boyle and Mr. Martin have been talking regularly.**

Mr. Pennington said this is a recurring thing we hear, a time period is negotiated and even an onsite manager can not enforce this. How many centers do you manage? How do you enforce at those centers? **We do the best we can , we make calls when we know its happening.** Mr. Ciovacco asked who picks up the trash. **Different for different tenants.** Mr. Pennington asked what about a gate, no transponder, we need to find solutions. Mr. Ciovacco said especially with trash collectors they want to start early.

**Property manager said he'd to facilities and residents and see what they can do.**

Ms. Boyle said there is no buffer zone. Ms. Smith said there was 8ft fences maintained all along, and 10 ft shrubbery at one point.

Mr. Ciampitti said he'd like to see what the buildout will look like and asked if they will have anything other than pizza. **Ambience will be Tuscan style, 35 seats, relatively small space, primarily pizza and a few sandwich wraps. No liquor license, no beer or wine.** Mr. Ciovacco asked if it is comparable to the one in Seabrook. **Correct.**

**Deliberations:**

Mr. LaBay stated the intended use is certainly appropriate for the area. He was not impressed with response and where they are with respect to noise and traffic. Promises to look into it are not enough.

Mr. Pennington said it is a totally reasonable request, but there is an issue that seems to be solvable, and doesn't want to delay the applicant but wants the issue resolved.

**Mr. Smith stated that their roles and responsibility are critical to the success of their business. In Methuen they cannot deliver before 7am and after 9pm and they had 1 incident, and never again. He personally deals with every issue. From the business standpoint they take every issue seriously.**

Mr. LaBay stated that there are other tenants that are not playing by the same rules. **The Property Manager said that he'd work with the board and residents, he thought it was under control.** Ms. Boyle said its good for a few weeks and then there is an issue.

Mr. Pennington said he'd like to hold a decision until it is looked into.

Mr. Ramsdell stated that its not appropriate to hang Sal's up. The board can make clear and repeat to the ZBA minutes June 28, 2011

owner of the center that there's a problem that needs to be looked into but unless there is a problem with Sal's application that's all the board can address.

Mr. Ciovacco stated that he's hesitant and also sees a problem. There are two separate issues. Unless Sal's were the ones with the history, then the board can't put the qualifier on them.

Mr. LaBay said that the board has had applicants come in with a history and they've been slowed down but this is not the case here.

**Motion to approve the special permit by Mr. Mr. LaBay, seconded by Mr. Ciovacco.**

Four affirmative.

**Votes:**

Mr. LaBay – yes

Mr. Ciampitti - yes

Mr. Ciovacco – yes

Mr. Pennington – no

Chair Ramsdell – yes

**4. Adjournment**

Motion made to adjourn by Mr. LaBay, seconded by Mr. Pennington.

Motion unanimously approved. Meeting adjourned at 9:01pm.

Respectfully submitted, Lynn Kinsella – Note Taker.