

**Zoning Board of Appeals
Meeting Minutes**

Minutes of February 3, 2016

Members present: David Kirwan, Chair; Paul Schold, Vaughn Hathaway, Jim Buckley, Clerk; David Orth

Alternate members present: Mary Moore, Dick Johnston

Meeting called to order at 7:15PM

Approval of Minutes

8/5/2015 – 149 White Birch Street

MOTION: Mr. Hathaway moved to approve the minutes of August 5, 2015, 149 White Birch Street with noted corrections

SECONDED: Mr. Schold – Discussion: None- VOTE: All in Favor

10/28/2015 – 1 Oakwood Lane

MOTION: Mr. Hathaway moved to approve the minutes of October 28th, 2015, 1 Oakwood Lane with noted corrections

SECONDED: Mr. Schold – Discussion: None- VOTE: All in Favor

10/28/2015 – 47 Salminen Drive

MOTION: Mr. Hathaway moved to approve the minutes of October 28th, 2015, 47 Salminen Drive with noted corrections

SECONDED: Mr. Schold – Discussion: None – VOTE: All in Favor

12/9/2015 – 30 Huntoon Highway

MOTION: Mr. Hathaway moved to approve the minutes of December 9, 2015, 30 Huntoon Highway with noted corrections

SECONDED: Mr. Schold – Discussion: None – VOTE: All in Favor

12/9/2015 - 6 So Main Street

MOTION: Mr. Hathaway moved to approve the minutes of December 9, 2015, 6 So Main Street with noted corrections

SECONDED: Mr. Schold – Discussion: None – VOTE: All in Favor

Hearing on the petition of the Town of Leicester for a variance for the amount of impervious coverage exceeding 30% in the Water Resource Protection Overlay District on property located at 1 & 3 Paxton Street, Leicester, Ma. to be used for the Fire/EMS Headquarters building

Meeting called to order at 7:30PM

Voting at tonight's meeting: David Kirwan, David Orth, Vaughn Hathaway, Paul Schold, and Jim Buckley

Mr. Kirwan gave instructions on hearing procedures and then read the requirements for the granting of a Variance, as stated, within Chapter 40A, Section 10 Variances.

Mr. Buckley read the Notice and Application into the record

Submitted into evidence: Registered Plot Plan, green and white return receipts from certified mailing

Correspondence received: site consideration from building inspector

Mr. Kirwan opened the hearing to the applicant to address the Board.

Mr. Chris Logan of Donham & Sweeney Architects made the presentation.

Mr. Logan reviewed the site plan showing the location of Paxton Street and Main Street.

The existing structure at 1 Paxton Street will not be altered and the new EMS/Fire Headquarters will be located at 3 Paxton Street.

The Main Entrance will be off Paxton Street with a drive-thru to Main Street. There will be parking available for staff and visitors. The public will see a one-story structure from Paxton Street and lower down will be a multi-story building, with an entrance from Main Street and where the garage will be located to park the large apparatus in back.

The driveway off Main Street will be 30 feet wide and can be used for an egress of the fire apparatus, as well as the public. There will be parking in the back of the lot for the fire fighters where they can park their vehicles when called to a fire.

Because of the existing grading, they will be nesting the building into the fill of the land they are filling around the side, in order to be in conformance with the Stormwater Management Design. They are capturing the water from the impervious pavement and building that will be collected into an infiltration basin designed to meet all the requirements.

The amount of impervious material on site will come from the parking driveway, the building footprint and the walkways around the building that are off the Paxton Street's entrance and rear parking lot.

There are certain requirements to meet the turnaround width for the large apparatus and that is what dictates a 60-foot dimension at the turnaround. They will also be conforming to the Town of Leicester's parking requirements for space width and depth.

Mr. Hathaway asked for clarification regarding the infiltration basins.

Mr. Logan said they will be able to retain infiltration greater than what is required.

Mr. Hathaway explained the reason the Town has a Water Overlay is because they want to make sure of capturing water within the water district.

Mr. Logan said there are catch basins in the rear parking lot that diverts the water runoff into the infiltration basin. That can be seen clearer on the grading plan.

There are two catch basins at the apparatus garage entrance that will connect to a forebay basin and will filter the water directly into the infiltration basin. The grading is being built up and the fill used so this will have a better filtration rate than what currently exists.

The water that goes beyond the two catch basins, at the rear of the parking lot, will go across the parking lot, into a formed swale, directed into the forebay and into the infiltration basin. The water from the parking lot off Paxton Street will go into a surface swale that will bring it down to the forebay and into the infiltration basin.

The grading in the back has been redesigned slightly to form a more gradual grade and follows the natural contour of the site.

The runoff won't be traveling as fast and this will allow for better absorption before it gets to the forebay and transferred to the infiltration basin and then absorbed back into the ground within a 72 hour period. During a 100 year storm, there are two spill ways that will allow the water to leave one infiltration basin.

Mr. Hathaway asked if the abutters will need to be concerned where the water is being directed.

Mr. Logan said they have actually greatly decreased the amount of water runoff going to the abutting properties with this design.

Mr. Orth said it looks like all the water from this area will be going into the abutting backyards. He asked what will prevent the abutters from being flooded out.

Mr. Logan said the previous existing design of the site had all the water shedding across the site and into the back yards.

Mr. Orth noted the water does not absorb into the ground throughout that entire area.

Mr. Logan explained the water doesn't absorb well right now because the soils in that area are not pervious. The existing soil has a lot of clay and the water actually collects and puddles at the bottom of the site and then works its way across the street and eventually down into the pond.

They will be bringing in a lot of new soil that will help absorb the water greater than the existing soil. They will have the infiltration system built from the new soil that is a better pervious material of grass that will help filter the water. The water will stay on site longer and will filter slower into the ground, as opposed to running across the existing grade and into the abutting yards.

The Stormwater Management System calculations show the water retained & absorbed on site will be much greater than what exists.

Mr. Hathaway asked if there was maintenance schedule for cleaning the infiltration basins.

Mr. Logan said the basins are usually cleaned on an annual basis or within a reasonable amount of time, but the forebays also act as an additional filtration system.

Mr. Hathaway asked what was a reasonable amount of time and if there was a schedule already in place.

Mr. Logan said it would be monitored to see how it was performing, but he felt the vegetation that is planned and the design of the basins, in the early basis, would only need to be checked to make sure there wasn't much built up.

Mr. Kirwan asked who would be responsible for cleaning the basins.

Mr. Logan said the fire department would be responsible for checking the basins and cleaning them out when needed.

Mr. Kirwan asked if the fire department would require additional training on recognizing when there was a potential issue.

Ms. Sandy Wilson said the Highway Department is well aware and versed in these kinds of systems and agreed to assist the Fire Department in the oversight of all the maintenance needed on and around the property.

Mr. Schold asked about the percentage of proposed impervious surface coverage. He noted the bylaw states, owing to circumstances relating to soil conditions, shape or topography in relation to hardship. He asked what the hardship was.

Mr. Logan said the current percentage coverage allowed wouldn't allow the department to operate on the site. They need a certain amount of impervious coverage for the parking and driving areas in order to design the EMS/Fire Facility.

Mr. Schold asked if the was a big enough lot.

Mr. Logan said this is the lot they have and are trying to work with the best they can.

Mr. Orth asked if the Town knew this property was within the Water Overlay District and that it would require a variance for a larger impervious area, if so, why did they choose this area over another piece of property that is Town owned.

Mr. Kevin Mizikar, Town Administrator said this is the property that was approved by Town Meeting. It was approved by the legislative body of the Town that has the sole authority to grant approval to acquire this property. The presentation made to the Town was that this was the most cost effective site that the Town could acquire to meet the department's mission to build a fire station and EMS facility.

Mr. Orth said he was not at that Town Meeting but asked if the Town was aware that the soil conditions and topography would require a variance.

Mr. Mizikar said the variance was not discussed at Town Meeting. Mr. Orth asked if the Town knew a variance was going to be required. Mr. Mizikar said a variance wasn't discussed.

Mr. Orth said so the Town was not aware of the potential problems that could occur.

Mr. Mizikar said that wasn't discussed.

Mr. Orth said that's not his point. He felt that the public was not informed and didn't have the information they needed to make an intelligent vote.

Mr. Hathaway felt Mr. Orth's concern was this variance having a self-imposed hardship.

Mr. Orth agreed.

Mr. Hathaway said when he first looked at this request, he thought of it being a self-imposed hardship. When he looked at it again, he thought about whether it would make things better overall and if it did, he would be willing to look the other way, recognizing that the Board does not do that for people in general, who have created their own hardship.

Mr. Orth explained if someone else were to purchase that property to build a house on that lot, it would be considered a self-imposed hardship. He questioned that when the Town voted on this particular spot, were they aware of the self-imposed hardship, when they made that decision to vote for that spot. It would seem to him that the Town didn't have all the information they needed to make a wise vote.

He is looking at this as a self-imposed hardship, regardless of who owns the property, whether it's the Town or an individual. He felt there were other lots that are Town owned, of this size that would have been just as good.

Ms. Moore agreed and clarified that the Town could have used property where a variance wouldn't be needed. Mr. Orth agreed.

Ms. Wilson said this process had been in place for almost 3 years. The Committee looked at 18 different sites that fit the criteria and the need for the fire station. This was the only piece of property available that met the Town Budget.

There were 3 Town Meeting votes, as well as a Debt Exclusion Vote for this project and around 4 Public Informational Meetings held.

Mr. Schold said getting back to the Variance, the provisions of the Town Bylaw does not allow the Board to approve a Variance on this because the project exceeds the percentage of impervious surface allowed. He said this either needs a reduction in the pavement surface or the structure needs to be smaller, because the law says that is what you have to have.

Mr. Hathaway explained exceeding the percentage allowed was the reason for a Variance and why it's not a Special Permit.

Mr. Schold said this is self-imposed and that is the law the Town has. After reading the law for the granting of a Variance, he cannot see how the Board can approve this the way the Bylaw is written.

Ms. Moore agreed, and asked what would the Board say to the person who just bought property on a lake and assumes they should be allowed to have what they want because the ZBA said okay to the fire station.

Mr. Kirwan said there have been some good points brought out, but he wanted to step back and explain that the Board does approve variances from time to time, based on the information provided that makes sense.

The Board does not rubber stamp these types of decision, but he would like to hear some very clear arguments on hardship, described in more detail. There have been some discussion done in bits and pieces and he also understood that the Purchase and Sale Agreement has not been finalized, so this isn't quite a done deal yet.

He asked the applicant to describe in more detail, as to why the Variance should be granted.

Mr. Logan explained the restrictions they have with the site & the way this fire station operates as an On-Call Department. Fire departments have to be geographically located within the different sections of the community, in order for fire fighters to get to the station within a reasonable time frame.

He felt the Town was much more limited than a private resident was when choosing a lot to build a house. The Town needs to be within the geographic area in order to meet the needs of the community. They just can't pick any lot in Town where people think to build a fire station. This location is within their comfort area where they were able to build the station. The other properties looked at were not within their comfort area.

In order to be able to provide fire services, they have to have an impervious surface to allow a 75 foot long ladder truck to turn around, which is not like a common car. These trucks require a larger area to build out the need for this facility. They need to be able to house all pieces of equipment within the facility, protect the assets of the Town and to provide parking for the public and employees.

He understood the complications on a resident buying a lot with the desire to build the way they want and then not being able to do so. But the type of use and the limitations and type of service the fire department would provide, prevents them from locating just anywhere in Town. The intent on the use of the operation and the equipment they have requires a much different footprint for a proper operation and courtesy provided.

Mr. Kirwan asked if the Variance was denied, what would be the financial hardship be to the Town.

Mr. Mizikar said they are currently three quarters of the way through a \$600,000 design process. They are approximately \$450,000 into the design, with an option agreement on the corner property at 1 Paxton Street that money has been spent on. Beyond the specific dollar figure, they would also have to restart the process, which would put them back 2 years.

Mr. Orth asked for confirmation on purchasing the house. Mr. Logan said yes.

Mr. Schold asked if the house square footage was included. Mr. Logan said yes.

Mr. Orth asked if there was a use planned with the house. Mr. Logan said no, not at this time.

Ms. Moore asked if the variance was on both parcels. Mr. Logan said yes and they have not altered any of the impervious surfaces or footprint at 1 Paxton Street.

Given the topography of the site, from the site design and architectural point of view, there was a hardship that they had to encounter to be able to accommodate a building that had public use, having a main drive off of Paxton Street.

They are limited on what can be designed, with the budget they have to work within and in order to satisfy the Stormwater Management criteria, they had to build up the lot and will be bringing in a large amount of fill to construct those areas and alleviate hardship to the neighborhood.

Mr. Hathaway asked for clarification. The variance would be granted on the amount of impervious land and that the house was part of the impervious area, but he also heard the Town could turn around and sell the house.

His question was, will it be more impervious than the rear percentage that's impervious before the remaining lot after they sold the house on the corner.

If the Board granted the variance for impervious for XX%, and the Town sells off part of it, is it going to be a greater percentage, in which case it could be in violation of the variance that was granted?

Mr. Ed Boudreau said he was the architect for the project and it appears that this lot has greater than 6% coverage of the impervious surface, with the house and current parking lot there and they would subtract that from their proposal. If anything were to change with the percentage, the numbers would go down. The amount of impervious is greater than what they are asking for existing, in addition to the impervious area that would already be in place.

They did discuss taking out the asphalt at 1 Paxton Street, but they didn't want to diminish any future potential use.

Mr. Kirwan informed the audience that there was an 8PM hearing scheduled and asked the 8PM applicant if they were okay with the delay.

Mr. Marc Belanger, representing Cumberland Farms, agreed to wait.

Mr. Johnston asked what if they were to substitute some kind of easily maintained pervious material just in the parking area. He asked how many square feet were just in that parking area. There is material currently out there that allows the water to go through, it's not as easily maintained as asphalt, but it's better than grass.

Mr. Boudreau said it would be an added cost to the Town.

Mr. Orth said every vehicle that will use the parking lot has the potential of leaking gas or oil; he asked how that will be addressed.

Mr. Logan said the emergency vehicles will be housed inside the building and drippings from those vehicles will be captured within the building.

Mr. Orth said he wasn't referring to the emergency vehicles parked inside the building, he was asking about the vehicles parked outside in the parking lot.

Ms. Wilson said how is that any different than any other parking lot?

Mr. Hathaway said with public parking lots, within the water overlay district, the Board does ask how contaminants from parked vehicles are captured.

Ms. Wilson said the fire vehicles weigh a lot, so they need to be able to go everywhere in the parking lot and part of the back wall is a training wall. The trucks need to be back there and it would be very hard to make that pervious because of the weight of the trucks.

Mr. Orth asked when the fire fighters park in the back, any automotive fluids that leak out, how that will affect the water collection system and was there maintenance plan to deal with that issue. Because this is in a water overlay district, it is an important issue to address.

Mr. Logan said the nature of the swales, on either side before the forebays, is filtered vegetation that will take out the sediments and the forebays will take out larger sediments that manage to get through the swale before it gets to the infiltration basin.

Mr. Hathaway said as far as this being impervious, if there is water collection, the whole purpose of a water overlay bylaw is to make sure that the water is recharged.

Ms. Michelle Buck, Town Planner said this application was before the Planning Board for Site Plan Approval and part of the approval is for a Stormwater Permit. The Planning Board did have Quinn Engineering do a review on the stormwater system. Part of the Planning Board decision does require that the system be maintained in accordance with the Operation and Maintenance Plan that was submitted as part of their application packet.

Mr. Logan said the catch basins will be cleaned by the Highway Department, just like they would clean the roadway catch basins. He felt the catch basins on site, would be maintained better than they would if it were a private parking lot.

Ms. Wilson said when there is a gas or oil spill, the fire department is the one who would get the call for cleanup. All the material needed for cleanup would be right there and they should be able to capture everything before it could leave the site.

Mr. Kirwan asked about the proposed landscaping and buffer along the perimeter of the site from the abutting neighborhood.

Mr. Logan reviewed the landscaping plan, noting the landscaping was shown in green and the gray represents trees. Some of the trees along the stonewall are in poor health and with the site work being right near them, will probably not survive. They plan to re-plant new trees in the place of the dead trees, with arborvitaes and will be planting trees along the west and north side as well and below the planting of the trees will be rhododendrons.

Along Paxton Street, they will plant London pine trees, which is a street tree along the long grass buffer between Paxton Street and the drive off of Paxton. In other areas, they will place additional rhododendrons and will reuse some of the fieldstone removed from the old retaining wall at 1 Paxton Street and will reuse along the Paxton Street parking area.

The lawn areas will have a special grass species that will require minimal maintenance of mowing.

Mr. Orth asked about the granite post. Ms. Wilson said the granite post can't be relocated, but the wrought iron fence and fieldstone wall will all be reused on the property.

Ms. Orth asked if there was a traffic light being proposed. Ms. Wilson said there won't be one there, but they will make use of the light in the center. There is a little white light sensor that sits at the top of the traffic light and when an emergency vehicle needs to get through, they hit a button that sends a radio signal that will change the light to either red or green.

Mr. Johnston said Mr. Mizikar recited a number of hardships the Town occurred in order to realize what they have at this site now. He asked if there was a way of working that into this

discussion so the Board members are comfortable with the fact that it's not strictly a financial hardship or self-imposed hardship.

Mr. Kirwan felt they provided the information as to why the Town feels it's a hardship and now it's up to the Board to discuss and to determine if there is a hardship.

Mr. Hathaway said some of the things that were described as a hardship, such as the amount of money already spent, he considered as self-imposed.

The other argument mentioned about the other sites looked at and that it would have cost more to develop, so the Town dismissed them. He felt hardship could be argued more on that term than on what the Town has already spent.

Ms. Wilson said they need two waivers to build the fire station. They can't expand on Water Street because it is too crowded an area and it's also in the water overlay.

They need two waivers for the building and the parking lot and if the new station is in the water overlay district as described, that would be the entire center of Town. So there isn't a lot where they wouldn't be in the overlay district.

Mr. Hathaway agreed that would be more of a hardship than what has already been spent.

Ms. Wilson said everywhere they looked was within the water overlay district, which means they would have been before the Board no matter what.

Mr. Buckley agreed and added that the Bylaw says, financial or otherwise, and he felt the other part of there being a hardship was the fire department being able to provide fire protection for the Town.

Mr. Schold said that is not what the Board was voting on and considered that just a made up statement. It wasn't something they stated in their application. He didn't see that as being a hardship and felt it was just made up tonight.

Mr. Hathaway said the Board would still be voting on whether or not to grant the variance on the amount of impervious area. People are often allowed to discuss their feelings and usually they don't understand what is required for a variance and what a hardship was. There are other ways to work around a hardship and the fact that it wasn't specifically stated in the application isn't a concern. If they were to change the nature of what the Board would be voting on, that would be a concern to him.

What the Board is being asked to vote on is whether or not to allow the amount of impervious.

Mr. Buckley agreed.

Mr. Kirwan opened discussion to the public, hearing none, he asked for any further comments from the Board. With no further discussion from the Board, he asked for a motion.

MOTION: Mr. Hathaway moved to approve the petition of the Town of Leicester for a Variance for the amount of impervious coverage exceeding 30%, to 53.88%, in the Water Resource Protection Overlay District on property located at 1 & 3 Paxton Street, Leicester, Ma. to be used for the Fire/EMS Headquarters Building, with the condition the Stormwater Management Systems be maintained in accordance with the Operation and Maintenance Plan.

SECONDED: Mr. Buckley – Discussion:

VOTE: 4 In Favor – 1 Opposed (Mr. Schold)

Finding of Facts:

Jim Buckley voted in favor of the motion because he felt this was a unique situation where the fire department had to be located in a limited area within the Town. Also due to the hardship where it would potentially be more costly to the Town having to relocate to another location in Town and may not be able to provide fire protection service for Town.

David Kirwan voted in favor of the motion because he felt there has been a great effort put in designing a service that met the needs of the Town and working within the confines of the geography based on available land. Also, on the fire department being able to respond in a timely manner to emergencies; he felt they were very limited in which lots could be chosen and agreed a significant financial hardship was demonstrated.

Vaughn Hathaway voted in favor of the motion and agreed with the findings Mr. Kirwan stated. He also felt the Board did need to be careful in granting a variance, and that this was not a precedent setting Board, but needed to explain why one person gets approved and another one denied. He did feel discussion on a self-imposed hardship was valid and the Board did make sure that the overlay district was protected by these changes. He also agreed hardship was shown on how they eliminated other locations as to how it would meet the needs of the Town. He felt the Town did meet the financial hardship requirement.

David Orth voted in favor of the motion and agreed with their explanation on hardship. Based on the fact the fire station location is limited in the geographical area and based on the evidence presented on the finding of hardship in that it would be more expensive relocating to a different location in Town.

Paul Schold voted in opposition because he felt it did not meet the provisions of the Bylaw relating to the soil conditions, shape or topography of the land and that it was a self-imposed hardship.

Instructions were given on the appeal process and the filing of this decision with the Registry of Deeds.

MOTION: Mr. Hathaway moved to close the hearing

SECONDED: Mr. Buckley – Discussion: None

VOTE: All in Favor

Meeting adjourned at 8:38PM

Respectfully submitted:

Barbara Knox

Barbara Knox