

Zoning Board of Appeals Meeting Minutes

Minutes of May 4, 2016

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

Alternate members present: Dick Johnston, Jim Reinke, Mary Moore

Hearing on the petition of 1181 Spileo, LLC of 1181 Main Street, Leicester, MA for a Variance to allow an increase of impervious area greater than 30% to 64% within the Water Protection Overlay District

Meeting called to order at 7:30PM

Instructions were given on the hearing procedures and the regulations & requirements for the granting of a variance.

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

Mr. Buckley read the Notice, Application, submittal letter from DC Engineering into the record.

Submitted into evidence: a Registered Plot Plan, the green & white receipts from the Certified Mailing, WT&G legal ad fee

Correspondence received: Site Consideration from the Building Inspector; an email letter from Elaine Casey of 1191 Main Street concerned with the changes being made; and a copy of the comments that were sent to the Planning Board from Quinn Engineering. Mr. Kirwan read the correspondence into the record.

At this point, the hearing was opened to the applicant to present their application.

Mr. Jason Dubois of DC Engineering, representing the applicant, made the presentation.

The site is where the current Mike's Donuts Shop is located, at 1181 Main Street, situated at the intersection of Main & Pine Streets. The lot currently contains a business, known as Mike's Donuts and there's a multi-family structure to the right of the business.

The current pavement comes off Main Street, goes down the side, in between the buildings and along the front of the lot, having multiple exits and entrances from Main Street and one entrance off Pine Street.

The order window currently is located on the left side of the building. It's both an order and pick up window. The vehicles enter off of Pine Street, place their order at the window and wait at the window for their order; in the meantime cars are queuing up in a small area and become backed up onto Pine Street.

The site is a fairly busy site, especially on the weekends and there are vehicles that currently park along Pine Street because there's not enough parking on site.

With the proposed development, they want to maintain the existing entrances off of Route 9 and the entrance along Pine Street will be closed off and become grass green space area. They felt this will allow for a better traffic flow around the site.

The pickup window will remain in its current location, having an order speaker placed in back. Vehicles will come in, place their order at the speaker in the back, and then drive around to the pickup window for their order and exit from there back out onto Route 9.

They will be putting in a one way bypass lane that will exit out to Pine Street for the people who decide they can't wait in line and need to leave. The area between the buildings will become green space, as well as the area along Pine Street that is currently paved.

Overall the site is currently over the 30% impervious at 54% impervious. The proposed development will bring it to 64%, but taking the additional green space into account, brings it down to 61% impervious.

The site currently does not have any stormwater management and runoff just goes into the street. They are proposing to improve the site by adding catch basins that will go into an oil/water separator and once treated, it goes into a depression area in back. They will be recharging over 600 cubic feet of water, which is enough recharge that if the site was a new site, it would actually meet the recharge for the entire site. The required recharge is around 90 cubic feet and they are actually adding 2500 square feet of impervious.

Due to the shape of the lot and the two buildings there, they need the long drive-thru to make that circular motion happen and allow space for the bypass lane.

Mr. Kirwan said there was a point made during the presentation that potentially there was a dangerous situation with the current traffic flow. He asked if the Police Department had mentioned anything that would substantiate there was a dangerous situation there.

Mr. Dubois said no, he had not asked for any police reports, but felt having cars waiting in the road was not a very safe condition.

Mr. Orth asked during the house the store is opened, how long were cars waiting on Pine Street. Ms. Gjergji Disho, property/business owner, said after an order is placed, they try to get the order out within 2 minutes. With a larger order, it could take up to 10 minutes and she felt 10 minutes was too long for someone to wait, which was one of the reasons they were asking to reconfigure the drive thru.

She explained the setup of the order window inside the building; currently there are 5 stairs the employees have to go up and down on. The server goes to the window, gets the order, submits the order and then brings the order back to the customer who is waiting at the window.

Mr. Orth asked how the new drive thru will improve the 5 steps.

Ms. Disho said they were also reconfiguring the inside of the building and the 5 steps will be eliminated.

Mr. Orth asked how long people waited in line on Pine Street, because he passed this site on many occasions and has never seen a line on Pine Street.

Ms. Disho explained that they didn't have a huge problem right now, but only 2 to 3 cars can fit there at one time.

The point of having a drive-thru is to improve their business and increase the customer base. They have a drive-thru at the Spencer Dippin Donuts and they get people from Paxton stopping there.

Mr. Dubois said at different times there can be up to 20 cars waiting in line at the drive thru in Spencer.

Mr. Orth asked if that was the issue at the Leicester store. Mr. Dubois said no, but probably would be.

Mr. Hathaway said what he is hearing is the current drive-thru can have up to 2 cars at one time. He asked if there could be a problem at the new drive-thru and cars backed out onto Route 9. He felt having cars backed up on Pine Street would be a lot better than having cars backed up onto Route 9.

Mr. Dubois explained there was several hundred feet before cars would reach Route 9, whereas on Pine Street, there's only around 40-feet before reaching the service window.

Ms. Nancy Massey, 3 Pine Street said her home is directly across from where the Pine Street access is currently located for the drive-thru and has never seen traffic backup like that.

She said that there was a no parking sign posted on the telephone pole located right before the garage and sometimes it's enforced and sometimes it's not. She understood the no parking sign was initiated after a very serious situation where there was a car fire on Pine Street and the fire truck sideswiped her husband's car.

She didn't understand how changing the traffic pattern would change anything there because to come from Spencer going towards Worcester, they would still have to take a right off Route 9 and from Worcester to Spencer, they would still have to take a left.

She has never been inconvenienced because of traffic there except when trying to pull out of Pine Street onto Route 9.

She wanted to know why they have had to wait 4 months before voicing their concerns, because the work had already started.

She felt this would be more of a detriment to the people who live in this neighborhood and the hardships they will have to live with.

She said that there was a dumpster there now that they have to look at and asked that the dumpster be hidden and not be visible. Another concern was with car headlights shining into homes when coming around that building at night.

She was concerned about losing the residential atmosphere of their neighborhood.

Mr. Bill Massey, 3 Pine Street asked what the traffic pattern would be in the front of the garage; what will happen with the garage and where will the traffic exit.

Mr. Dubois explained they are proposing a bypass lane that will exit out onto Pine Street and not be used as regular access.

Ms. Massey felt this will be a detriment to the neighborhood and will affect their property values.

Mr. Massey asked what will be happening with the garage. Mr. Dubois said the garage will be staying.

Mr. Bob Daigle, 20 Pine Street said that garage's driveway sits 10-feet from where he sits to watch TV. Now he is going to have to live with people driving through there, day and night, up to 9:00PM. He can't see why it can't stay the way it is, there has never been a problem before.

Mr. Kirwan asked for clarification on whether the garage driveway that is under discussion currently exists.

Mr. Dubois said yes the driveway exists, but is not connected to the main site. It's a driveway for the house and garage for tenant's.

Mr. Orth said assuming the Board approves this, and the order window goes in, it was mentioned it could take up to 15 minutes or so from the time that people go to the window and get their order. He asked where those 15 minutes would be now.

Ms. Disho said it would be absorbed into serving more customers.

Mr. Orth said if someone orders the same thing that takes the same amount of time to make it, there still is the 15 minutes before they are gone.

Ms. Disho explained on big orders that will take longer than 5 minutes, the customer will be instructed to park their car in front to pick up their order. Otherwise, when a person places their order at the speaker, by the time they get to the pickup window, their order would be waiting for them.

She explained there were no changes being made to the house or garage and that the business has been there for 20+ years.

They are proposing to put up a fence to keep the lights and any noise from disturbing their neighbors. They understood how people feel about having their privacy. They want to keep a good relationship with their neighbors.

Mr. Orth explained he was trying to understand what the hardship was.

Mr. Dubois explained the current layout of the order window inside the building.

She said currently the employee goes down 5 stairs to take an order, goes back up the stairs to bring the order back to the kitchen, wait for it to be done and then take it back to the customer waiting at the window.

Mr. Orth said the customer is only at the order window a few minutes and then would park the car in the lot to get their order.

Ms. Disho explained the order window process.

When the customer rings the bell, the waitress goes down the stairs to take the order, goes back up the stairs to place the order and then goes back down the stairs to deliver the order.

She said by eliminating the stairs, it would allow for two or more people to work the window for a quicker process on taking & delivering the orders. There have been complaints about people waiting in line forever at the drive thru and that turns people away from their business.

Mr. Reinke asked if there was an ADA ramp or any accessibility inside the building where the order window was located. Ms. Disho said no, just stairs.

Mr. Reinke felt that was the hardship right there. He asked how much money had been spent to date. Ms. Disho said approximately \$25,000 just on the inside building.

Mr. Reinke explained the building has an assessed value of \$129,200 and once the owners have spent \$38,000 in renovations; it triggers all the ADA accessibility requirements for inside and outside the building, such as; ADA parking, providing a ramp, and accessible bathrooms.

He considered the hardship would be the fact the stairs exist, because there isn't an accessible way for a handicapped person to work at the order window area.

Additionally, they will end up spending more money than originally thought, because now they have to accommodate accessible land to get into the building.

He felt that satisfied the hardship requirement.

Mr. Kirwan asked if discussion didn't involve all the extra tarmac going down there, was the ADA issue a valid issue.

Mr. Reinke said right now the owners are in noncompliance and once they reach \$38,000 in improvements that will trigger that ADA compliance threshold.

Mr. Orth said right now they aren't in compliance.

Mr. Reinke said right now they have only spent \$25,000 and noted that approval for ADA compliance in a business structure would be done by the Building Inspector.

Mr. Orth said as of right now, they don't have to comply, but once all the improvements were complete, they will be required to comply, which will trigger other things that haven't been discussed yet. Mr. Reinke agreed.

Mr. Kirwan said he sees the hardship discussion as more of a public safety issue, such as vehicles waiting on the street to order and apparently that isn't really happening at this point in time.

He asked if the applicant could quantify the number of cars or if there was a traffic study ever done showing there was a loss in business because of this particular configuration.

Ms. Disho said the way the lot is configured in Spencer is the way she would like to see this lot configured.

Mr. Kirwan noted the Spencer business having a slightly different operation.

Ms. Disho explained the difference was not serving a full breakfast, but everything else is the same, i.e. donuts, pastry, coffee, etc.

Mr. Kirwan said if someone was rushing to get to their job, it would be unlikely they would pull into the driveway right now. Ms. Disho agreed.

Mr. Kirwan asked if she could quantify or say how much business was being lost.

Ms. Disho said it's not even close to where she wants her business to be.

Mr. Schold said he stopped going to Mike's Donuts drive-thru quite a while ago because it's configure all wrong. The way the lot is laid out, the way cars access the site.

He explained owning a restaurant for 12 years and from a restaurant perspective, the inside was all wrong and the setup was a detriment to the business.

In a kitchen environment, you want to be able to handle 4 jobs at the same time and their employees are running and having those steps to deal with is a detriment. The owners want to do volume and people going to work in the morning, just want their coffee and be on their way. He felt the hardship was the layout of the drive-thru.

He felt by leveling the grade at the drive thru would eliminate any traffic on the Pine Street. The neighbors concern with lights shining through their windows and the dumpster concerns can all be addressed. The peak time of business would be in the morning and then it's just managed the rest of the day.

Mr. Kirwan thought by having a study done, it could point out for example that based on a typical business of this nature, they should be serving 500 cups of coffee in the morning, but because of the setup, they are only serving 4.

Mr. Orth said the variance is for impervious coverage and right now, going from the drive-thru window out to Pine Street is already impervious and the applicant wants to eliminate the steps inside. He asked if it would be possible to add a grade to that side of the building, keeping it impervious, therefore not increasing the impervious area further.

Mr. Dubois explained because of the layout of the site it wouldn't work. They would have to raise the window around 3-feet.

He said addressing the concerns regarding the dumpster and headlights shining into neighboring homes, they were proposing to place the dumpster above the retaining wall with a stockade fenced around it and to put in a few trees to help screen out the headlights.

Mr. Reinke asked about the proposed green space along the right-of-way on Pine Street and whether the Planning Board would agree taking away the sidewalk there.

Mr. Dubois explained that the Highway Department recommended not continuing the sidewalk.

Mr. Reinke said there was a sidewalk there that went down Pine Street on that side of the road.

Mr. Dubois said right now that area is all open and just asphalt.

Mr. Reinke noted the area being a walkable surface versus not a walkable surface.

Mr. Dubois agreed, but said that once it got to the end of the public pavement, it turned to grass anyway.

Mr. Schold noted that Quinn Engineering recommended continuing the sidewalk and Highway is saying no. Mr. Dubois said Quinn Engineering recommended extending the sidewalk and Highway recommended eliminating it and keeping it as shown on the plan for snow storage.

Ms. Moore said there was a sidewalk that went from the garage to the cutoff leading to Pine Street now and there was also a sidewalk in front of 20 Pine Street.

Mr. Dubois wasn't sure if the sidewalk connected and thought it stopped.

Ms. Moore said the sidewalk probably stopped where the cut out was and then continued on the other side.

Mr. Reinke noted there were sidewalks along Pine Street on both sides of the road.

Ms. Moore asked where parking for the tenants was located and how many spaces would be available.

Mr. Dubois said they will be adding 4 additional spaces on site and wasn't sure where the tenants currently parked.

Ms. Disho said the tenants currently park in front of the house and it will remain there.

Mr. Daigle said right at the end of the driveway there was a huge maple tree marked with orange paint, which means it will be removed. He felt the applicant wanted to strip the street for donuts.

Mr. Paul Chase, 1197 Main Street asked if an order window and a pick up window were being proposed. Mr. Dubois said yes.

Mr. Chase asked where the order window was going. Mr. Dubois explained the order area will be before the alleyway between the buildings.

Mr. Chase felt there could be a problem if someone couldn't get out their front door in an emergency and only having an exit. He didn't understand that with the amount of space there was in the back, it's not being taken up front now.

Mr. Dubois point out there was still plenty of area that came out along the side and along the fenced in area in back.

Mr. Reinke asked about the stairs around the back of the commercial building.

Mr. Dubois said by doing this and raising the grade, right now there are 4 steps that will go down to one step.

Mr. Reinke asked if they had a chance to review Quinn Engineering's report.

Mr. Dubois said yes.

Mr. Reinke asked what their take was on the 14-foot radius on the drive.

Mr. Dubois said right now it was 12, but he felt it could be modified to meet the 14-foot.

Mr. Reinke asked if there were any regulations in zoning having a maximum volume on order speakers. Mr. Orth wasn't sure.

Mr. Disho said they have neighbors on both sides of the business in Spencer and have a great relationship with them and they have been there for 8 years.

In regards to the dumpster, it's been there for 3 years and they have been told about the complaints. They want to move it and put it behind a fence.

Mr. Reinke asked if the applicant would be willing to put an additional vegetated buffer, such as arborvitaes, to block out as much sound as possible from abutting neighbors.

Mr. Dubois said they would look into it.

Ms. Massey said his home is across from where the traffic would exit to Pine Street and felt it would not be a pleasant situation having that traffic. That area is residential and she felt it would be a financial detriment to her and her husband.

She felt there should be more concern regarding the situation inside the building and to make some accommodations with that.

Mr. Hathaway explained they were not talking about all the business traffic using the Pine Street access. That it would only be used by the people who decide not to wait in the drive thru.

Ms. Massey understood and asked if parking would be expanded in back where the garage was located.

Mr. Orth said they wouldn't be able to do that without coming back before the Board.

Mr. Dubois agreed because that would increase the impervious coverage.

Mr. Kenneth Wood, 20 Pine Street asked where the fence would be located and how it would block the lights from their property and neighboring properties.

Mr. Dubois explained the fence would be put along where the cars would be waiting in line to keep the headlights from shining into anyone's home

Mr. Wood asked about the cars coming from the proposed driveway.

Mr. Dubois said there should not be any affect because the driveway will be at about a 6% grade with a down slope.

Mr. Wood's concern was when they go to sell their property, there will now be a lot of noise & lights and disruptions during the day and at night.

Mr. Dubois felt this business was more of a morning business.

Mr. Wood asked how late the business would be opened till. Ms. Disho said 8PM.

Mr. Wood said it gets dark early in the fall and winter.

Mr. Dubois said the bulk of the traffic will be in the morning and they do need the bypass lane for people who can't wait and need to leave.

Ms. Moore asked if it would be the applicant's responsibility to continue the sidewalk and if so, would there be a percentage change on impervious pavement.

She explained before the drive thru was constructed, the building was a pharmacy and there was a sidewalk there. Eventually it was paved over and became part of the driveway. She felt it was important to put the sidewalk back.

Mr. Dubois said he will talk with the Highway Department and see what their concerns were.

Mr. Kirwan said this property is located in the Central Business District and the purpose and intent of that district is to preserve the area's pedestrian-oriented characteristics, as pointed out by Ms. Moore. He was surprised by the Highway Department's comment not wanting to continue the sidewalk.

Mr. Reinke asked what the dollar value was on the proposed changes.

Ms. Disho said right now it's estimated between \$30-40,000, but that could change because they keep finding more areas that need work.

Mr. Reinke said the number he came up with was \$38,760 to trigger the ADA compliance requirement. He noticed the front entrance will require an ADA access ramp, which will probably require another financial adjustment and will also need to be added on the site plan.

Mr. Orth wasn't sure if ADA compliance was something the Board should have an opinion on. Mr. Reinke said he would like to see a plan that is accurate to what the Board would be approving.

Mr. Dubois said if they did add a handicapped ramp, it would be in front close to the door in an area that is already paved, so there won't be an increase to the impervious area.

Mr. Paul Chase asked when pulling off of Route 9, will there be a fence along the 1191 Main Street property. He felt it will affect the property sitting right next to where the cars are waiting, because people will be looking right into that yard, as well as his yard.

He was concerned with losing his privacy.

Ms. Disho said they will have a fence put up along the side of the residential properties to maintain their privacy.

Mr. Bob Daigle said the existing garage is 10 feet from his property and there is an existing driveway that comes down and they are proposing to put up a fence there. He asked if the owners were going to put up a 24-foot fence to keep the lights from his bedroom window. He has lived there 54 years and now someone comes along and does this to him. There is no call for this. It will only be a matter of time before there will be traffic problems. There has been talk about a telephone pole being moved and he was worried what will happen with the dumpster and how close it will be placed to his home. This guy comes into Town and gets what he wants. Mr. Schold said the Board understood his concerns and was trying to address those concerns, but this is pre-existing nonconforming and a business has been there for 54 years and we can't make it go away. Someone comes in and purchases a business, who is trying to improve the business. They have dramatically improved the stormwater control being in a water resource area. These people are spending a lot of money here and are willing to address everyone's concerns

Ms. Massey said she did appreciate some of the improvements being done, but was in strong opposition where the driveway will be coming out onto Pine Street. She felt it was not necessary and didn't help their property values or their way of life at 3 Pine Street.

She agreed a business has been there for many years, but it was originally a mansion before it became a drug store.

Ms. Disho addressed the comment made about a telephone pole being moved. She explained that it would not be up to them on moving a telephone pole because they don't make the decisions on that. The telephone company did come out to work on the pole and keep the wires off the ground, but it would be up to the telephone company on whether a pole gets moved or not.

Regarding the business, she comes into this with strong experience; she owns a business in Spencer and West Warren. After buying the Dippin Donuts in Spencer, the business has doubled. They started their business in West Warren from scratch and being a Town of only 5000 people, they felt very welcome there and have been there for 4 years.

They are not looking to disturb their neighbors and if a fence will help, they will provide the fence for the people's privacy. As a business person, she knows what she can do to build her business and give people another option to try something different.

Also, her business will generate additional tax money for the Town with the meal tax.

She understood that change is hard, but they will do their best to keep everyone's privacy.

Mr. Reinke reviewed relocating the dumpster and pass-thru access. He suggested moving the access over, so it points straight out. He felt it would keep the lights away from affecting any of the abutting properties.

Mr. Kirwan asked if it would still allow people enough room to get by if they changed their minds and wanted to leave. Mr. Dubois said yes.

Mr. Reinke said the dumpster could be moved down and over behind the garage.

Mr. Dubois agreed they could look into doing that.

Mr. Hathaway asked to review where the catch basins were located. It sounded like the basins would collect 100% of the runoff from that property.

Mr. Dubois said it won't collect 100% because of the way the lot crowns. One half goes towards Main Street and the other half will go the other way and anything new will be collected by the catch basins and a trench drain. It will all flow to one man hole that is an oil/water separator and discharge into the depression area.

Mr. Orth asked how that design will affect the water issues with the neighbors.

Mr. Dubois said it's designed to add no more runoff than what is currently there now and is controlled by 3" pipes and there is also a foot of water below the pipe that will infiltrate when it leaves the site.

Mr. Kirwan asked who's responsibility it was to maintain this.

Mr. Dubois said it is the owner's responsibility and it's basically a grassy area that will need to be occasionally mowed and to clean out the catch basins in the spring.

Mr. Kirwan asked if there would be standing water in there.

Mr. Dubois explained there is standing water, but designed to recharge and drain within 72-hours.

Ms. Moore asked if the question was answered about the sidewalks.

Mr. Dubois agreed to discuss keeping the sidewalk with the Highway Department.

Mr. Hathaway wanted to make sure that everything that can be addressed before this Board gets addressed. He wasn't sure how the Board wanted to proceed, whether to make a decision tonight or to continue so they can come back with a revised the plan.

If the hearing is going to be continued, he wanted to provide the applicant with the information they need, so they won't need to continue again.

In terms of capturing water, he would like to see on the plan the locations of the catch basins, and a maintenance schedule for the catch basins.

Mr. Johnston felt the meeting needed to be continued in order for the applicant to address all the Board's and abutter's concerns. Mr. Dubois agreed.

Mr. Hathaway said so if the meeting is going to be continued, he would like to see an arborvitae boarder with the fencing on the plan.

Mr. Dubois said they wanted to get all comments and concerns from every Board & Department first and then address everyone's concerns all at once with a revised plan.

He noted the Planning Board's Site Plan Review meeting will be on May 17th.

Mr. Hathaway asked if they wanted to continue.

Mr. Dubois requested a continuance.

Mr. Kirwan reviewed what the Board would like to see on the revised plan.

1) bigger plans that show clearly where the catch basins were located; 2) to show the relocated exit to Pine Street; 3) showing the relocated dumpster; 4) indicating where the fencing would be located; 5) showing the buffer between the neighbors; 6) showing the retaining wall location; 7) show the other side of Pine Street and where the headlights will aim; and 8) the resolution of the sidewalk.

MOTION: Mr. Hathaway moved to continue this hearing to June 1st at 7:30PM to address the items of concern as noted.

SECONDED: Mr. Schold – Discussion: how much

VOTE: All in Favor

Meeting adjourned at 9:02PM

Approval of Minutes

2/17/2016

MOTION: Mr. Hathaway moved to approve the minutes of February 17th, 2016

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

3/9/2016

MOTION: Mr. Hathaway moved to approve the minutes of March 9th, 2016

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

General Discussion:

Mr. Kirwan informed the Board that Attorney Cove contacted him regarding the Huntoon Highway Cell Tower appeal and Attorney Cove will be going to court and accepting all summons on the Board's behalf.

Meeting adjourned at 9:15PM

Respectfully submitted:

Barbara Knox

Barbara Knox