



City Of Attleboro, Massachusetts

ZONING BOARD OF APPEALS
GOVERNMENT CENTER, 77 PARK STREET
ATTLEBORO, MASSACHUSETTS 02703
TEL 508.223.2222 FAX 508.222.3046

MINUTES

APRIL 28, 2022

In accordance with the provisions of the General Laws of Massachusetts, Chapter 40A, as amended, public hearings were held on Thursday, April 28, 2022 at 6:30 p.m. in the Municipal Council Chambers located at Government Center, 77 Park Street, Attleboro, MA 02703, relative to the following:

Zoning Board Members Present: Chairwoman Cathy Merkle, Kathy Rautenstrauch, Kent Richards, and Sandra Varrieur

Members Absent: Johnny Bender

The Board heard the continued public hearing relative to Case #5569, the application of Bright Path Investments, LLC for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-6.0 NON-CONFORMING USES, STRUCTURES, AND LOTS to alter a pre-existing non-conforming residential structure and a variance pursuant to §17-8.9 VARIANCES from the minimum front yard setback requirement pursuant to §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS to construct a two-family dwelling, the subject premises being located at 22 Mann Street, more specifically Assessor's plat #3, lot #1, located in the Industrial zoning district .

David Kantussi spoke in favor and stated that when he was last before the Board, he was proposing a two-family dwelling with two bedrooms each for a total of four bedrooms. He explained that due to septic system constraints, he has revised the plan to reflect a single-family dwelling containing 3-bedrooms.

Senior Land Use Planner Stephanie Davies confirmed that a revised site plan and architectural plans were submitted reflecting a single-family dwelling with 3-bedrooms.

There being no one else to speak, the public hearing was closed.

The Board heard the continued public hearing relative to Case #5565, the application of Beacon Compassion, Inc. for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-10.15 MARIJUANA BUSINESS USES to establish a Marijuana Business (cultivation, manufacturing, and medical marijuana treatment center), the subject premises being located at 30 Franklin McKay Road, more specifically Assessor's plat #148, lot #5A, located in the Industrial zoning district .

Peter D'Agostino of Tenax Strategies spoke in favor of the application and reviewed the history of the application. He stated that the plans were originally presented to the Board in September 2021 and that many of the staff comments were addressed at the Board's October 2021 meeting. He stated that the primary outstanding matters since then that needed to be addressed were the proposed stormwater management system and also the peer review from the city's third-party expert for odor and noise mitigation. He stated that the Conservation Commission issued the stormwater management permit in January 2022 and that the city's third-party expert for odor and noise mitigation submitted its peer review to the Board in mid-April. He stated that the peer reviewer's final report contained a set of recommended conditions. He stated that his client

submitted in writing its agreement to the conditions. He stated that he believes they have addressed all outstanding matters.

Speaking in favor of the application was Tony Capachietti of Hayes Engineering, Inc. who stated that some revisions were made to the plan to accommodate and reflect the Conservation Commission's decision. He stated that they mapped out all the existing drain lines on the property and added some pretreatment mechanisms at the existing catch basin inflow. He stated that they were also granted a Negative Determination of Applicability for the proposed excavation in a jurisdictional bordering land subject to flooding. He stated that an 8-foot chain link fence also has been added around the loading dock and additional landscaping was added at the front. He noted that they revised the parking space dimensions back to 10'x20', which resulted in narrowing the travel lane to a width of 20-feet. He stated that snow storage areas were added to the site plan.

Ms. Davies stated that all of the Planning Staff report comments have been addressed in the most recent set of plans. She noted that she had also received an email from Police Chief Heagney stating his satisfaction with the security plan.

There being no one else to speak, the public hearing was closed.

The Board held a business meeting.

The Board discussed Case #5602, the application of Omar Halabi and 473 Washington Street, LLC a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.5(#21B) TABLE OF ACCESSORY USE REGULATIONS to establish a non-residential parking lot in a zoning district different from the zoning district of the principal use, and a variance pursuant to §17-8.9 VARIANCES under §17-5.6(C) LOCATION OF PARKING AND LOADING SPACES to eliminate the requisite twenty-five (25') foot wide landscaped buffer strip intended to separate an accessory non-residential parking lot from adjacent residential property, the subject premises being located at 473 Washington Street and 0 Washington Street, more specifically Assessor's plat #12, lot #59, #79A, #80A, and #81, located in the General Business zoning district and Single Residence-B zoning district.

Catherine Merkle made a motion to grant a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.5(#21B) TABLE OF ACCESSORY USE REGULATIONS to establish a non-residential parking lot in a zoning district different from the zoning district of the principal use, as shown on the site plan entitled "ZONING SUBMISSION FOR ACCESSORY OFF-STREET PARKING," prepared by Crossman Engineering, 103 Commonwealth Avenue, North Attleborough, MA 02763, dated February 2022 and revised through March 31, 2022. Sandra Varrieur seconded the motion. A discussion followed. All voted in favor. Catherine Merkle made a motion to grant a variance pursuant to §17-8.9(A) VARIANCES of twenty-five (25') feet under §17-5.6(C) LOCATION OF PARKING AND LOADING SPACES to eliminate the requisite twenty-five (25') foot wide landscaped buffer strip intended to separate an accessory non-residential parking lot from adjacent residential property, as shown on the site plan entitled "ZONING SUBMISSION FOR ACCESSORY OFF-STREET PARKING," prepared by Crossman Engineering, 103 Commonwealth Avenue, North Attleborough, MA 02763, dated February 2022 and revised through March 31, 2022. Sandra Varrieur seconded the motion. A discussion followed. All voted in favor. The Board attached conditions.

The Board discussed Case #5599, the application of Damaso Hernandez for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-5.9(F) GENERAL PARKING AND LOADING SPACE STANDARDS to eliminate the required minimum number of off-street parking stalls pursuant to §17-5.10 TABLE OF OFF-STREET PARKING REGULATIONS associated with the establishment of a retail bakery shop, the subject premises being located at 9 Park Street, more specifically Assessor's plat #28, lot #7, located in the Central Business zoning district .

Cathy Merkle made a motion to grant a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-5.9(F) GENERAL PARKING AND LOADING SPACE STANDARDS to eliminate the required minimum number of off-street

parking stalls pursuant to §17-5.10 TABLE OF OFF-STREET PARKING REGULATIONS associated with the establishment of a retail bakery shop at 9 Park Street located in the Central Business zoning district (thereby reducing the minimum requirement number of off-street parking stalls on the premises from six (6) off-street parking stalls to zero (0) off-street parking stalls). Kent Richards seconded the motion. A discussion followed. All voted in favor. Catherine Merkle made a motion to grant a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-5.11 TABLE OF OFF-STREET LOADING REGULATIONS to eliminate the required minimum number of off-street (un)loading spaces pursuant to §17-5.11 TABLE OF OFF-STREET LOADING REGULATIONS associated with the establishment of a retail bakery shop at 9 Park Street located in the Central Business zoning district (thereby reducing the minimum requirement number of off-street (un)loading spaces on the premises from one (1) off-street (un)loading space to zero (0) (un)loading spaces). Kent Richards seconded the motion. A discussion followed. All voted in favor. The Board attached conditions.

The Board discussed Case #5606, the application of Elite Signs for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-16.3 ADMINISTRATION to vary from the sign regulations pursuant to §17-16.9 TABLE OF PERMITTED SIGNS & DIMENSIONAL REGULATIONS to accommodate a wall sign, the subject premises being located at 677 Washington Street, more specifically Assessor's plat #6, lot #73, #74, and #98 through #101, located in the General Business zoning district .

Catherine Merkle made a motion to grant a special permit pursuant to §17-16.3 ADMINISTRATION to vary the applicable sign regulations pursuant to §17-16.9 TABLE OF PERMITTED SIGNS & DIMENSIONAL REGULATIONS and allow the installation of a forty-five (45) square foot wall sign, which exceeds the maximum permissible surface area limitation of thirty (30) square feet – a delta of an additional fifteen (15) square feet, as shown on the plan. Sandy Varrieur seconded the motion. A discussion followed. All voted in favor. The Board attached conditions.

The Board discussed Case #5608, the application of Adam and Melissa Gravit for a variance pursuant to §17-8.9 VARIANCES under §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS from the minimum side yard setback requirement to construct an addition onto an existing single-family detached dwelling, the subject premises being located at 34 Seth Drive, more specifically Assessor's plat #70, lot #425G, located in the Single Residence -C zoning district .

Catherine Merkle made a motion to grant a variance pursuant to §17-8.9 VARIANCES of eleven (11') feet from the minimum side yard setback requirement of fifteen (15') feet pursuant to the provisions of §17-4.9 TABLE OF DIMENSIONAL AND DENSITY to accommodate the construction of a multi-dimensional one-story addition onto the north side of the existing single-family detached dwelling, as shown on the site plan, entitled "VARIANCE PLOT PLAN," drawn by John H. Risser, P.L.S, Risser Engineering Company, 93 George Leven Drive, Unit 3, North Attleborough, MA 02760, dated March 11, 2022. Sandra Varrieur seconded the motion. A discussion followed. All voted in favor. The Board attached conditions.

The Board discussed Case #5610, the application of Eric Cooper for variances pursuant to §17-8.9 VARIANCES under §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS from the minimum side yard setback requirement and rear yard setback requirement to install an above-ground pool and deck, the subject premises being located at 60 Brigham Hill Road, more specifically Assessor's plat #219, lot #7P, located in the Single Residence -D zoning district .

Catherine Merkle made a motion to grant a variance pursuant to §17-8.9 VARIANCES of ten (10') feet from the minimum rear yard setback requirement of fifteen (15') feet pursuant to the provisions of §17-4.9 TABLE OF DIMENSIONAL AND DENSITY to accommodate the installation of a 24-foot diameter above-ground swimming pool and a detached 24'x24' semi-encircled pool deck, as shown on the site plan. Kent Richards seconded the motion. A discussion followed. All voted in favor. Catherine Merkle made a motion to grant a variance pursuant to §17-8.9 VARIANCES of nine (9') feet from the minimum side yard setback requirement of fifteen (15') feet pursuant to the provisions of §17-4.9 TABLE OF DIMENSIONAL AND DENSITY to accommodate the installation of a 24-foot diameter above-ground swimming pool and a detached 24'x24' semi-encircled pool deck, as shown on

the site plan. Kent Richards seconded the motion. A discussion followed. All voted in favor. The Board attached conditions.

The Board discussed Case #5569, the application of Bright Path Investments, LLC for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-6.0 NON-CONFORMING USES, STRUCTURES, AND LOTS to alter a pre-existing non-conforming residential structure and a variance pursuant to §17-8.9 VARIANCES from the minimum front yard setback requirement pursuant to §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS to construct a two-family dwelling, the subject premises being located at 22 Mann Street, more specifically Assessor 's plat #3, lot #1, located in the Industrial zoning district.

Kent Richards made a motion to grant a variance pursuant to §17-8.9 VARIANCES of twenty-five (25') feet from the minimum front yard setback requirement of thirty (30') feet pursuant to §17-4.9 TABLE OF DIMENSIONAL AND DENSITY to construct a single-family detached dwelling, as shown on the site plan, entitled "A.P. 3, LOT 1, 22 MANN ST, DRAWING NUMBER: C-1" drawn by E.A. Design Ltd, 570 Broad Street, Providence, RI, dated October 6, 2021, revised through March 21, 2022. Sandra Varrieur seconded the motion. A discussion followed. All voted in favor. Kent Richards made a motion to grant a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-6.0 NON-CONFORMING USES, STRUCTURES, AND LOTS to alter a pre-existing, non-conforming, structure and use and construct a single-family detached dwelling, as shown on the site plan, entitled "A.P. 3, LOT 1, 22 MANN ST, DRAWING NUMBER: C-1" drawn by E.A. Design Ltd, 570 Broad Street, Providence, RI, dated October 6, 2021, revised through March 21, 2022. Sandra Varrieur seconded the motion. A discussion followed. All voted in favor. Kent Richards made a motion to grant a special permit pursuant to §17-6.0 NON-CONFORMING USES, STRUCTURES, AND LOTS to alter a pre-existing, non-conforming, structure and use and construct a single-family detached dwelling, as shown on the site plan, entitled "A.P. 3, LOT 1, 22 MANN ST, DRAWING NUMBER: C-1" drawn by E.A. Design Ltd, 570 Broad Street, Providence, RI, dated October 6, 2021, revised through March 21, 2022. Sandra Varrieur seconded the motion. A discussion followed. All voted in favor. The Board attached conditions.

The Board discussed Case #5565, the application of Beacon Compassion, Inc. for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-10.15 MARIJUANA BUSINESS USES to establish a Marijuana Business (cultivation, manufacturing, and medical marijuana treatment center), the subject premises being located at 30 Franklin McKay Road, more specifically Assessor's plat #148, lot #5A, located in the Industrial zoning district .

Kent Richards made a motion to grant a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-10.15 MARIJUANA BUSINESS USES to establish a marijuana business consisting of marijuana cultivation, marijuana manufacturing, and medical marijuana treatment center at 30 Franklin McKay Road pursuant to §17-3.4(11C) TABLE OF USE REGULATIONS - COMMUNITY FACILITIES, as shown on the site plan entitled "PLAN TO ACCOMPANY REQUEST FOR DETERMINATION OF APPLICABILITY & STORM WATER PERMIT FOR PROPOSED MARIJUANA CULTIVATION FACILITY BEACON COMPASSION 30 FRANKLIN MCKAY ROAD" drawn and engineered by Anthony M. Capachietti, P.E., Hayes Engineering, Inc., 603 Salem Street, Wakefield, MA 01880, dated December 20, 2021, and revised through April 12, 2022, as shown on the floor plan entitled "FULL FLOOR PLAN" prepared by Graphite Architecture & Interiors, PLLC, 119 Olive Street, New Haven, CT 06511, dated September 23, 2021, and as shown in the report entitled "CONCEPTS AND SOLUTIONS FOR SOUND & ODOR CONCERNS", prepared by Allen Poist, Construction Engineers, Inc., 4326 Mountain Road, Pasadena, MD 21122, dated April 12, 2022, more specifically Assessor's plat #148, lot #5A, located in the Industrial zoning district. Sandra Varrieur seconded the motion. A discussion followed. All voted in favor. The Board attached conditions.

The Board continued the public hearing relative to Case #5609, the application of Brian Fischbach for a variance pursuant to §17-8.9 VARIANCES from the minimum front yard setback requirement pursuant to §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS to construct an addition onto an existing single-family detached dwelling and a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-6.0 NON-CONFORMING USES, STRUCTURES, AND LOTS to alter a pre-existing, non-conforming residential structure, the subject premises being located at 99 Magnolia Street, more specifically Assessor's plat #6,

lot #134, #135, and #136, located in the Single Residence-A zoning district. This public hearing was previously continued to May 19, 2022.

The Board continued the public hearing relative to Case #5607, the application of H&L Bloom, Inc. for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.1 USE DESIGNATIONS to operate a bus terminal/storage facility for public school busses, the subject premises being located at 947 Park Street, more specifically Assessor's plat #128A, lot #1, located in the Single Residence-D zoning district and Single Residence -B zoning district . This public hearing was previously continued to May 19, 2022 .

The Board continued the public hearing relative to Case #5611, the application of Debra Carroll for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.1 USE DESIGNATIONS to operate an artisan market, the subject premises being located at 129 Bank Street, more specifically Assessor's plat #47, lot #1, located in the Industrial zoning district. This public hearing was previously continued to May 19, 2022 .

The Board continued the public hearing relative to Case #5590, the application of No Fossil Fuel, LLC for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.1 USE DESIGNATIONS to construct a ground-mounted solar photovoltaic facility, the subject premises being located at 179 Peckham Street, more specifically Assessor's plat #209, lot #3, located in the Single Residence-D zoning district. This public hearing was previously continued to May 19, 2022 .

The Board continued the public hearing relative to Case #5593, application of JS Fuller TIC, LLC & Et. al. for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-12.0 FLOOD PLAIN DISTRICT to perform excavation work within the 100-year floodplain in association with the construction of a proposed 20,000± square foot warehouse building, the subject premises being located at 50 Fuller Avenue, more specifically Assessor's plat #21, lot #272 and #273, and Assessor's plat #24, lot #43A and #44A, located in the Industrial zoning district. This public hearing was previously continued to May 19, 2022.

The Board continued the public hearing relative to Case #5598, the application of City of Attleboro for a special permit pursuant §17-9.0 SPECIAL PERMITS and §17-12.0 FLOODPLAIN DISTRICT for work/excavation within the 100-year floodplain associated with the replacement of the Pitas Avenue bridge over the Seven Mile River, the subject premises being located within the Pitas Avenue right-of-way, located in the Single Residence-B zoning district and Single Residence-C zoning district. This public hearing was previously continued to May 19, 2022 .

The Board continued the public hearing relative to Case #5600, the application of S&A Fuels, Inc. for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-6.0 NON-CONFORMING USES, STRUCTURES, AND LOTS to expand a pre-existing non-conforming business use by adding a fried chicken eatery to an existing gasoline station/convenience store, the subject premises being located at 939 and 947 Newport Avenue, more specifically Assessor's plat #18, lots #486-#492, located in the Single Residence-A zoning district. This public hearing was previously continued to May 19, 2022 .

The Board continued the public hearing relative to Case #5582, the application of Anthony Properties, LLC for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.5(23) TABLE OF ACCESSORY USE REGULATIONS for drive-up windows associated with restaurants, a special permit pursuant to §17-9.0 SPECIAL PERMITS from the minimum off-street parking stall dimensions under §17-5.1 OFF-STREET PARKING REQUIREMENTS, a special permit pursuant to §17-9.0 SPECIAL PERMITS and §17-10.2 EARTH REMOVAL for an earth removal operation, a variance pursuant to §17-8.9 VARIANCES from the maximum number of stories for a residential building under §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS, and a variance pursuant to §17-8.9 VARIANCES from the maximum curb cut width under §17-5.9(D) GENERAL PARKING AND LOADING SPACE STANDARDS associated with the construction of 354 multi-family residential units contained in four buildings, two commercial/restaurant buildings, a children's day care center, parking lots, travel lanes, landscaping, lighting, grading, stormwater management system, water and sewer infrastructure, utilities, the subject premises being located at 754 Newport Avenue, more specifically Assessor's plat #69,

lot #26B, located in the General Business zoning district and General Residence-A zoning district. This public hearing was previously continued to May 19, 2022 .

The Board continued the public hearing relative to Case #5604, the application of Ashli's Farm, Inc. and Ashli's Extracts, Inc. for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-10.15 MARIJUANA BUSINESS USES to establish a marijuana cultivation and manufacturing facility, a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-10.2 EARTH REMOVAL for an earth removal operation, a special permit pursuant to §17-9.0 SPECIAL PERMITS to modify the minimum screening and bufferyard requirements pursuant to §17-4.4.5 REQUIRED SCREENS AND BUFFERYARDS, a variance pursuant to §17-8.9 VARIANCES from the minimum required distance between a proposed marijuana business and a residential zoning district pursuant to §17-10.15(G)(3)(A) MARIJUANA BUSINESS USES, a variance pursuant to §17-8.9 VARIANCES to exceed the maximum permissible entrance/exit driveway width pursuant to §17-5.9(D) GENERAL PARKING AND LOADING SPACE STANDARDS, and a variance pursuant to §17-8.9 VARIANCES from the provisions pursuant to §17-5.1 OFF-STREET PARKING REQUIREMENTS to reduce the required parking stall dimensions, the subject premises being located at 76 Frank Mossberg Drive, more specifically Assessor's plat #145, lot #1A, located in the Industrial zoning district. This public hearing was previously continued to May 19, 2022.

The Board read the letter from attorney John F. D. Jacobi, III of Coogan Smith, LLP, dated April 21, 2022, the Zoning Board to amend the perimeter security fencing associated with the marijuana business special permit issued to 220 ONEIL, LLC for 220 O'Neil Boulevard, Case #5556. The Board read the letter from Police Chief Kyle P. Heagney, dated April 20, 2022, in which he commented on attorney Jacobi's regarding the marijuana business special permit issued to 220 ONEIL, LLC for 220 O'Neil Boulevard, Case #5556 .

Director of Planning and Development Gary Ayrassian stated that he visited the site with attorney Jacobi and the Police Chief and explained that the proposed change requested by the abutting property owner Bonnie Moore would result in the loss of seven off-street parking stalls. He stated that instead, the three of them felt a fair compromise would be replace the section of fencing along the side property line with a gate so that Ms. Moore could still access the rear of her property over the subject property without eliminating the perimeter security fencing or eliminating the parking spaces.

Senior Land Use Planner Stephanie Davies pointed out that Ms. Moore would need to sign out a key from the marijuana business, as she imagined it would be a security hazard to grant her ongoing access.

The Board was amendable to the idea but noted it would not take any unilateral action and that 220 ONEIL, LLC would need to submit a written proposal to the Board for its consideration.

The Board read the letter from Project Manager Brian Martinelli of Centerline Communications, dated April 19, 2022, relative to the proposed dish wireless collocation at 55 Starkey Avenue.

Ms. Davies noted that this site should have been included in the Board's prior approval. The Board agreed it was the same project with the same standards.

The Board agreed.

The Board reviewed all remaining correspondence.

Cathy Merkle made a motion to approve the pending minutes of June 10, 2021, July 8, 2021, and August 12, 2021. Sandra Varrieur seconded the motion. All voted in favor to approve the minutes.

The Board tabled the pending minutes of September 9, 2021, September 9, 2021 (Executive Session), September 23, 2021, October 28, 2021, November 9, 2021, November 9, 2021 (Executive Session), November 10, 2021, November 18, 2021, December 9, 2021, December 15, 2021 (Executive Session) December 16,

2021, December 30, 2021 (Executive Session), January 13, 2022, February 10, 2022, March 3, 2022, March 3, 2022 (Executive Session), March 24, 2022, and April 14, 2022.

The meeting adjourned at 7:30 p.m.