



City Of Attleboro, Massachusetts

ZONING BOARD OF APPEALS
GOVERNMENT CENTER, 77 PARK STREET
ATTLEBORO, MASSACHUSETTS 02703
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MINUTES

MAY 19, 2022

In accordance with the provisions of the General Laws of Massachusetts, Chapter 40A, as amended, public hearings were held on Thursday, May 19, 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, Johnny Bender, Kathy Rautenstrauch, Kent Richards, and Sandra Varrieur

Members Absent: None

The Board heard Case #5612, the application of David M. Turner for a variance pursuant to §17-8.9 VARIANCES under §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS from the minimum lot width requirement to create a buildable lot, the subject premises being located at 235 Tiffany Street, more specifically Assessor's plat #86, lot #5A, #5D, #6, and #8C, located in the Single Residence-D zoning district.

Speaking in favor of the application was attorney Jack Jacobi of Coogan Smith, LLP, on behalf of David Turner, who stated that the property is oversized and has the potential to be subdivided without relief if a property line jog is used to divide the property. He stated that his client would prefer to create a traditionally shaped lot, so they are seeking a lot width variance of 29.17 feet for Parcel 1 as shown on the plan.

Cathy Merkle sought confirmation that the lot width variance request is for the existing house.

Attorney Jacobi answered yes. He noted that the house is about 90-feet back from the roadway.

Director of Planning and Development Gary Ayrassian noted that this plan proposes to create a non-conforming situation for the existing house and that it has been the Zoning Board's policy that in such instances, the non-conformity/variance rest with the proposed lot.

Attorney Jacobi countered that if a variance were to be granted, the discrepancy would be legitimized.

Cathy Merkle agreed with the Planning Director and asked whether there is any reason the relief is being sought for Parcel 1 containing the existing house versus Parcel 2 that would constitute the new vacant buildable lot.

Attorney Jacobi stated he felt it was just a choice made by the engineer, but that the plan could be redrawn to request the relief for the new lot instead, as suggested by the Planning Director.

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

The Board heard Case #5613, the application of Keith Shepard for a variance pursuant to §17-8.9 VARIANCES under §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS from the minimum front yard

setback requirement 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 741 North Main Street, more specifically Assessor's plat #91, lot #14B and #15, located in the Single Residence-D zoning district.

Speaking in favor was Keith Shepard who stated they are requesting a 13-foot variance from the minimum front yard setback requirement so that they can build an addition onto their home. He stated that they want to remodel their kitchen and create a master bedroom. He noted that the house is a pre-existing non-conforming structure, as it is located within the front yard setback.

Cathy Merkle asked if they are proposing that the addition will maintain the same setback as the existing house.

Speaking in favor was Melissa Shepard who answered yes.

Mr. Ayrassian noted that the structure is on a corner lot and therefore has the burden of satisfying two front yard setback requirements. He pointed out that the applicant needs to request an amendment to the application to include a special permit to alter a pre-existing, non-conforming, structure.

Mr. Shepard requested the application be amended to include a special permit to alter a pre-existing, non-conforming, residential structure.

Cathy Merkle made a motion to allow the petitioner to amend the application to include a special permit to alter a pre-existing, non-conforming, structure. Kathy Rautenstrauch seconded the motion. All voted in favor to allow the petitioner to amend the application to include a special permit to alter a pre-existing, non-conforming, structure.

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

The Board heard Case #5614, the application of José Cruz for a variance pursuant to §17-8.9 VARIANCES under §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS from the minimum lot width requirement to create a buildable lot, the subject premises being located at 0 Torrey Street, more specifically Assessor's plat #61, lot #203, # 209, #210, and # 211, located in the General Residence -A zoning district.

Speaking in favor of the application was Sean Smith who stated that the lot only has 62-feet of lot width and requires 80-feet. He stated that the original plan was to construct two houses on the lot, but due to wetland limitations, they have reduced that plan to a single two-family house.

Mr. Gary Ayrassian sought to confirm that the access to this lot is proposed from Torrey Street.

Mr. Smith answered yes.

Mr. Ayrassian asked where Torrey Street currently ends.

Mr. Smith noted that the roadway was not paved the full length of the layout. He pointed out the edge of pavement by use of the plan.

Mr. Ayrassian noted no pavement edge was shown on the plan and asked that the edge of pavement be added to the plans. He stated that the 125-foot no-build buffer of the certified vernal pool on the abutting buffer extends onto this property.

Mr. Smith agreed and stated that they moved the proposed houses out of the 125-foot buffer.

Cathy Merkle sought to confirm that they will tap into existing city utilities on Torrey Street.

Mr. Smith answered yes.

Sandy Varrieur asked which way the houses will face.

Mr. Smith answered towards Torrey Street.

The Board read the letter of opposition, dated May 19, 2022, submitted by Jackie and Andy Solberg of 25 Torrey Street.

Speaking in opposition was Debra King of 26 Torrey Street who stated that she agreed with the concerns raised in the Solbergs' letter. She noted that the plan did not show her side of the street and asserted that it is not very wide and the pavement does not go all the way to the end. She stated that she did not know where the proposed driveway is located and whether it would be directly across the street from her driveway or staggered. She expressed a great deal of concern that the applicant would trespass onto her property during construction. She stated that the site plan shows a different length of frontage as compared to the Assessor's records. She noted that the proposed turnaround would be right in front of her barn. She stated that there are only two houses on the street and this proposal will negatively impact her.

Cathy Merkle announced that the area abuts a MA Electric right-of-way but that it would not influence her decision-making as she is employed by National Grid.

Mr. Ayrassian pointed out that the applicant would need relief from the Conservation Commission in addition to the Zoning Board.

Ms. King stated that she was concerned she could not clearly foresee the impacts to her property because she was not shown the plan previously.

Mr. Ayrassian stated that she could review the plan tonight or stop by the Planning Department anytime during regular City Hall hours to review the plan and that staff would help. He stated that regarding her concern about trespassing, construction vehicles and the contractor know better than to trespass on her property or store construction supplies on her property.

Cathy Merkle agreed that it will be up to the construction company how to perform the work without trespassing.

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

The Board heard Case #5615, the application of YMCA of Attleboro for a variance pursuant to §17-8.9 VARIANCES under §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS from the minimum front yard setback requirement to construct an egress onto a building 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 non-residential structure, the subject premises being located at 44 Peck Street, more specifically Assessor 's plat #28, lot #83, located in the General Residence -A zoning district.

Speaking in favor was Paul Fournier of the YMCA of Attleboro who stated that they are leasing the facility at 44 Peck Street to the Attleboro Area Interfaith Collaborative and that they are looking to renovate the existing kitchen to a professional grade kitchen. He stated that in doing so, they are looking to add a second means of egress for safety, which will require a front yard setback variance.

Cathy Merkle asked if it would be providing access from the basement.

Mr. Fournier answered yes.

Mr. Ayrassian noted that the structure is on a corner lot and therefore has the burden of satisfying two front yard setback requirements. He stated that the petitioner is requesting a variance of 14-feet from the Bank Street right-of-way. He pointed out that the applicant needs to request an amendment to the application to include a special permit to alter a pre-existing, non-conforming, structure.

Mr. Fournier requested the application be amended to include a special permit to alter a pre-existing, non-conforming, structure. Cathy Merkle made a motion to allow the petitioner to amend the application to include a special permit to alter a pre-existing, non-conforming, structure. Sandra Varrieur seconded the motion. All voted in favor to allow the petitioner to amend the application to include a special permit to alter a pre-existing, non-conforming, structure.

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

The Board heard Case #5616, the application of Tomasz and Anita Brojek for variances pursuant to §17-8.9 VARIANCES from the minimum lot area requirement, minimum lot width requirement, minimum front yard setback requirement, minimum side yard setback requirement, and the minimum rear yard setback requirement under §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS associated with Assessor's lot #95 and lot #96 located on plat #37, the subject premises being located at 0 and 9 Riverside Avenue, more specifically Assessor 's plat #37, lot #95 and #96, located in the General Residence -A zoning district.

Speaking in favor of the application was attorney Ed Casey who explained they are seeking a number of variances so that his client can subdivide 9 Riverside Avenue to create another lot to build a house. He stated that one single-family dwelling exists on the property. He stated that should all of the relief be granted, Assessor's lot #95 which contains the existing home would contain 7,000 square feet of lot area and the vacant lot, Assessor's lot #96, would contain 8,750 square feet of lot area, both of which would be under the 10,000 square foot minimum lot area requirement. He stated that a pool and deck are currently located on Lot #96. He described the area as being an established, older neighborhood with a variety of lot sizes. He noted that houses on Short Street, which is within 210-feet of this property, vary in size from approximately 3,000 to 7,700 square feet in area. He acknowledged that the applicant's neighbor, Mr. Patel, has submitted a letter of opposition, which speaks to the peaceful nature of the neighborhood. He asserted that his client is not seeking to change the neighborhood's character. He argued that the size of the house lot does not necessarily correlate with whether a neighborhood is appealing or quiet. He noted that the proposed single-family home on Lot #96 would meet all the required setbacks. He stated that the balance of the relief is needed for lot #95 and the existing house. He suggested a condition of approval for a fence or screening to protect the neighbors could be imposed. He noted that as the property is zoned General Residence-A, the owner could construct a wo-family dwelling as a-matter-of-right or a three unit by special permit. He stated that the Brojeks are instead seeking to create one additional single-family home, as they feel it will be more attractive for the neighborhood.

Mr. Ayrassian asked about the other types of residential land uses on the street and whether they are one-family dwellings, two-family dwellings, or multi-family.

Attorney Casey stated that he thought most of the homes were single-family dwellings.

Speaking in favor of the application was Anita Brojek who stated that the area is comprised mostly of single-family dwellings but that there are two-family and three-family houses behind her home.

The Board read the letter of opposition from Mr. Maganbhai Patel of 15 Riverside Avenue, received May 16, 2022, and also the petition signed and submitted by nine residents from Riverside Avenue, South Main Street, and Short Street, received May 19, 2022, expressing opposition to the variance application.

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

The Board heard the continued 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 .

The Board read the Form Z1 - Request to Continue a Public Hearing from No Fossil Fuel, LLC, received May 18, 2022, requesting the Board to continue the public hearing to June 9, 2022. Cathy Merkle made a motion to continue the public hearing to June 9, 2022. Kent Richards seconded the motion. All voted in favor to continue the public hearing to June 9, 2022.

There being no one else to speak, the public hearing was continued to June 9, 2022.

The Board heard the continued 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 Pitias Avenue bridge over the Seven Mile River, the subject premises being located within the Pitias Avenue right-of-way, located in the Single Residence -B zoning district and Single Residence -C zoning district .

The Board read the Form Z1 - Request to Continue a Public Hearing from Public Works Superintendent Michael Tyler on behalf of the City of Attleboro, received May 19, 2022, requesting the Board to continue the public hearing to June 9, 2022. Cathy Merkle made a motion to continue the public hearing to June 9, 2022. Kent Richards seconded the motion. All voted in favor to continue the public hearing to June 9, 2022.

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

The Board heard the continued 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.

Speaking in favor of the application was Architect Steve Medeiros who stated that at the initial hearing, there was a question as to the Magnolia Street right-of-way and the distance of the house to the property line. He stated that they had a survey performed and that they are requesting with confidence a variance of 8.9-feet. He submitted a diagram showing the house and block, documenting that six out of eleven of the surrounding houses are also already within the front yard setback and that the proposed addition would be in line with many of the other houses in the neighborhood. He stated that the placement of the addition is dictated by the attachment point to the second floor, where a bathroom needs to be avoided. He noted that the house is very narrow, only 18-feet by 42-feet, so it makes more sense to construct an 'L' shaped addition than to further increase the length of the house.

Mr. Ayrassian inquired about the existing access to the garage towards the back of the property.

Speaking in favor of the application was Samantha Fischbach who stated that existing gravel leads to it.

Mr. Ayrassian asked if that area would all become lawn.

Ms. Fischbach answered yes.

Mr. Medeiros stated that the existing house contains only 1,100 square feet of livable space and that the proposed addition will nearly double that. He stated that the intent is to expand the kitchen by 10-feet as well as create a master bedroom and a playroom above the garage. He stated that the plan has been modified to show the landing in line with the existing house and that the configuration of the lot justifies the granting of the variance.

Speaking in favor of the application was Brian Fischbach who stated that the house was built in 1990 and has very little closet space. He stated that they love their neighbors and neighborhood, so would rather invest in an addition than to look to buy a different house in a different neighborhood. He submitted to the Board a letter of support from abutting neighbors on both sides and across the street. There being no one else to speak, the public hearing was closed.

The Board heard the continued 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.

Speaking in favor of the application was Steven Mayer of Allen and Major Associates who reacquainted the Board with the proposed project and the relief that they were seeking. He stated that the Planning Board and the Conservation Commission had both rendered their respective decisions and approved the project.

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

The Board heard the continued 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.

Steven McDavitt of H&L Bloom spoke in favor and noted that he had submitted response comments to the Senior Planner's staff report. He stated that in regards to sporting events, H&L Bloom had 34 sports trips last December, 22 of which were out of the Taunton terminal. He stated that if the Board granted the special permit, they would agree to running sports trips during the entire holiday season out of the Taunton terminal so it does not exacerbate LaSalette holiday traffic. He stated that lighting details from the local contractor have been submitted. He stated that the proposed cameras will mimic those recently installed at the Taunton site and that they make notifications via cell phone operators if there is a problem on the site. He stated that a revised plan had been submitted identifying the light pole and the portable trailer and toilets. He stated that the plan also highlights where the buses will be located, behind Row B, towards Park Street.

Mr. Arassian asked where regular motor coaches park during the holiday season.

Speaking in favor of the application was Brother Ronald Taylor of LaSalette who stated that the Shrine has not experienced many motor coaches in recent years, but that the lot provides three rows for them and there is plenty room near the building to accommodate the commercial buses during the holiday season. He stated that one row was historically for unloading the buses and the other two were for picking-up. He stated that back in the 80's and 90's, he would not have even considered H&L Bloom's proposal, as they were too busy with holiday motor coaches. He stated that due to increases in diesel fuel prices, LaSalette has seen very few motor coaches recently. He stated that in 2018, they had a total of 22 buses on Saturdays and a total of 9 buses on Sundays. He stated in 2019, they had 15 buses on Saturday and 14 on Sundays.

Mr. Ayrassian asked about the traffic flow for the motor coaches. Brother Taylor stated that the buses take a left and then pull into the provided space and stay there. He noted that they usually arrive around 3:00 p.m. in time for them 4:00 p.m. mass. He stated that thereafter, they see the light display and then have something to eat before leaving.

Mr. Ayrassian asked when the last school bus is expected to arrive at the end of the day.

Mr. McDavitt replied 4:00 p.m. and that they would remain parked until 6:30 a.m. the next morning.

Brother Taylor noted that they have added a police detail at the bottom of the hill, which keeps traffic moving much more smoothly during the holiday season.

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

The Board heard the continued 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.

Debra Carroll spoke in favor of the application and stated that she is seeking a special permit to run a co-op in an area of 2,000 square feet. She stated that the concerns expressed at the previous public hearing were the variety of businesses located in the building and the amount of parking needed for each business. She stated that although she speculates that she will have up to 20 vendors in the co-op, they would not all be on site at the same time because they take staggered turns running the market. She stated that one cash register is proposed to handle sales for all of the vendors and that there will be three or four members of the co-op working at any one time. She stated that the only time all 20 members would be on site would be for business meetings that they would schedule to be held outside of normal operating hours.

Cathy Merkle asserted that the previous presentation envisioned members operating their own booths to interact with the public directly. She sought to confirm that is no longer the proposed business model.

Ms. Carroll answered that that is correct. She stated that the co-op will not be like a flea market where each vendor sells its own goods, but rather like a store with a single point of sale. She stated that booths would simply be filled with merchandise from individual vendors. She stated that it is more like a retail store layout with co-op members on hand to help sell all of the products.

Mr. Ayrassian asked if the sales will be split evenly amongst the members.

Ms. Carroll replied that they track sales by vendor and each will have their own code that is applied when a purchase is made. She stated that this ensures that the proper vendor is paid for their goods, as well as sales tax is applied, which the co-op pays monthly.

Mr. Ayrassian asked whether the co-op makes a percentage off each sale to create a revenue stream.

Ms. Carroll replied no, but she has ideas for generating revenue, like renting out gallery space to a museum.

Mr. Ayrassian sought confirmation about the maximum number of employees on site at any one time.

Ms. Carroll replied five during sales hours. He asked how many people would be typically at the premises browsing products and whether all patrons would drive there in separate cars.

Ms. Carroll stated that she did not think so, as people typically attend in groups. She also noted that the co-op employees did not have to park on site, as they could park at her house half a mile up the road and walk there or carpool over with her.

Mr. Ayrassian noted that based on the Senior Land Use Planner's report, when considering all the present land uses on site, 31 spaces are required and the property has 65.

Ms. Carroll stated that the Building Inspector has been to the site three times and that she was not sure of exactly what transpired, but knows the owner was given certain orders about the junk vehicles. She explained that he is away in Florida right now, but she was aware he had an appointment to have the Fire Department come down and inspect the building. She stated that she hasn't been to the site in the last week, but has driven down Bank Street several times and observed that the junk vehicles have been removed from the site, so she felt the owner was complying with the Building Inspector.

Cathy Merkle stated that she was not satisfied that the issue was resolved and instructed staff to check with the Building Inspector on the status.

Speaking in opposition was attorney Jack Jacobi who stated that he does not oppose the concept but is concerned about the parking situation. He stated that the uses on site have been made significantly clearer and agreed that there are fewer junk vehicles on the property, but that they are still there. He stated his understanding that the Building Inspector deferred issuing an Enforcement Order because the owner intends to apply for the required special permit and Class 3 junk yard permit. He stated that if upwards of 30 junk cars are kept on the site, it will present a conflict. He expressed concern about the antique shop which is assigned one parking stall. He stated that they were advertising an estate sale, which is not permitted without a special permit. He stated that he does not trust the landlord to run his business properly.

Mr. Ayrassian asked attorney Jacobi whether he knew the antique store has a Certificate of Occupancy.

Attorney Jacobi stated only for storage, not sales.

Mr. Ayrassian asked whether the sales were occurring physically on site or virtually.

Attorney Jacobi stated that he did not know but he wanted to ensure that patrons to the subject building do not park in his parking lot. He stated that an estate sale is likely to have a different parking requirement than that for storage, so he is looking for clarity on those concerns.

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

The Board heard the continued 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.

Attorney George Spatcher stated that a packet with a proposed Captive Air exhaust design and specifications had been submitted to the Board. He stated that the system mitigates cooking odors and smoke. He stated that it consists of a hood directly above the cooking area, which pulls air right up to the roof to a pollution control unit, which provides the primary mitigation. He stated that once the cooking odors and smoke are filtered by the system, the air will be exhausted towards the back of the building. He explained that a third component draws in fresh air to improve air quality in the store and around the building. He stated that this system is also used by Bliss Brothers and that it appears to be an effective system, as he has never detected an odor there. He stated that the proposed system is designed for an operation of this size and was highly recommended by another

local restaurant. He stated that the filters in the system are cleaned and replaced periodically and with proper maintenance, it should be an indefinite solution to the issue of smells and smoke.

Mr. Ayrassian asked attorney Spatcher to discuss the on-site traffic circulation patter and stated that when he had met with the applicant initially with the Building Commissioner and Senior Planner, it was emphasized that the business was just selling prepared foods. He stated that the current model makes it more of a destination. He sought to confirm that no outdoor seating is proposed.

Attorney Spatcher answered no, that only take out is offered.

Mr. Ayrassian questioned how many parking spaces are available on site aside from the fuel dispensers.

Attorney Spatcher stated that he was not sure and would have to look into the matter. He stated that on the basic survey done, the gas pumps were found to be the draw for the site. He stated that the owner asserted that if he did not have the gas pumps, he would not have a business, but that he cannot argue against Mr. Ayrassian's concerns.

Mr. Ayrassian stated that the demand needs to be accommodated for and suggested that alternative options be ready for presentation to the Board, should they deem the parking to be insufficient.

Speaking in opposition was Jeff O'Gara who submitted written comments on the proposed exhaust system. He pointed out that the pollution control portion of the system appears to have an optional odor control component and that it should be required in this case. He stated that 100% elimination of the odors was unlikely, but that if approved, every effort should be made to maximize cleaning of the air. He asked whether there is a maintenance schedule for the filter changes on the system, as it will only function as optimally as it is maintained. He stated that there is also a discrepancy with the hours of operation on the website that says they are open 10:00 a.m. to 7:00 p.m. and he wants to ensure that cooking only occurs during those assigned hours. He asked whether inspections would be made.

Mr. Ayrassian replied yes when a complaint being filed with the Building Inspector.

Mr. O'Gara stated that he has already observed customers buying chicken and then sitting in their cars eating. He stated that he is concerned with such patrons taking up parking spaces and creating a traffic issue for the site for other patrons who might not be able to find a parking space. He stated that the owner is doing a fair amount of advertising to bring in new customers. He asked what could happen in the future if the owner wants to remodel the building for a different restaurant use.

Mr. Ayrassian stated that another application would need to be filed with the Zoning Board. He noted that market conditions change and business plans can evolve. He stated that at any time in the future, the owner could return to request further changes, for instance installing a drive-through.

Mr. O'Gara stated that he did not attend any hearings about changing the site to a restaurant use.

Mr. Ayrassian asserted that it was the Building Commissioner's opinion that the use, as first presented, was an operational aspect of a normal convenience store. He noted that Mr. O'Gara had the opportunity to appeal that determination, but was convinced when Mr. McDonough explained his rationale. He stated that when it was discovered that the business model had changed, the public hearing process was triggered. He stated that Mr. O'Gara will have the opportunity to appeal this decision, as well if he is not satisfied.

Mr. O'Gara stated his dissatisfaction with the change to a restaurant use occurring without public notice or input.

Cathy Merkle asked whether Mr. O’Gara would retract his opposition if they installed the proposed system and the odors were addressed.

Mr. O’Gara answered no, as he still has concerns about the additional traffic that will be brought in by the use. He stated that he has already observed traffic backing up and people going to the site specifically for chicken and not gas.

Speaking in opposition was Mary Chun who stated that the site was originally approved for a 7-11 in association with a gas station and that she understands that things may change, but the Board has the opportunity to refuse to approve what is occurring. She stated that entertaining a request does not mean it needs to be approved. She argued that the change in terminology to a restaurant raises many implications for the site.

Cathy Merkle agreed that part of the reason the applicant is before the Board is that the original special permit was for a “grab and go” type establishment rather than restaurant. She stated that there may or may not be a restaurant permitted when the Board renders their decision.

Ms. Chun stated that the neighborhood is boycotting the business as they are not good neighbors and keep pushing the limits without being honest. She stated that she hoped the Board was not just giving the neighbors lip service.

Johnny Bender asserted that he has notes going back to Mr. O’Gara’s complaints about the initial changes on the site and that the Board is listening to what the neighbors are saying. He stated that the Board’s goal is to accommodate the neighbor’s concerns while ensuring the business meets zoning requirements. He stated that the Board cannot just deny something arbitrarily, if the business is operating within their rights. He emphasized that the Board takes the neighbors’ concerns seriously.

Ms. Chun argued that the business is already not meeting the regulations by making a change without prior review and approval.

Cathy Merkle stated that this public hearing process was started at the same time for the same reason as the neighbors’ concerns, which was for a chicken restaurant generating odors and smoke. She stated that she finds the assumption that the Board is paying lip service to the neighbors as offensive, as the Board has listened to the neighbors at every hearing and are working to address their concerns. She stated that the Board has an obligation to hear both sides, which is what they are doing.

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

The Board heard the continued 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 associated with the construction of the marijuana facility, 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, a variance pursuant to §17-8.9 VARIANCES from the provisions of §17-5.1 OFF-STREET PARKING REQUIREMENTS to reduce the required off-street parking stall dimensions, and a variance a variance pursuant to §17-8.9 VARIANCES from the provisions of §17-5.11 TABLE OF OFF-STREET LOADING REGULATIONS to reduce the required minimum number of off-street (un)loading stalls, the subject premises being located at 76 Frank Mossberg Drive, more specifically Assessor ’s plat #145, lot #1A, located in the Industrial zoning district.

Speaking in favor of the application was attorney Jack Jacobi who requested an extension of time to June 30, 2022.

Cathy Merkle made a motion to grant an extension of time to June 30, 2022. Kent Richards seconded the motion. All voted in favor to grant an extension of time to June 30, 2022.

Attorney Jacobi stated the need to amend the application to reduce the number of loading spaces on site from two to one to be in compliance with the CCC. He stated that the CCC only allows one loading space.

Cathy Merkle made a motion to amend the petition and allow the request to reduce the number of loading spaces to one space. Kent Richards seconded the motion. All voted in favor.

Attorney Jacobi stated that they have submitted updated site and facilities security plans to the Police Department as well as filed an operations manual and written security procedures with the Police Chief. He stated that they are also before the Conservation Commission for a stormwater management permit. He stated that they secured the fee for the odor and noise mitigation peer review with the city yesterday.

Speaking in favor was Bill Blais of OHI Engineering who stated that they performed additional test pits on the left hand side of the building, that they have incorporated an additional infiltration system in that area, and that they converted the detention basin at the front of the property to an infiltration basin. He stated that 99% of runoff will be captured and treated. He stated that the Department of Public Works expressed to him their concern with the capacity of the drainage system in Frank Mossberg Drive and so they are proposing to infiltrate runoff as much as possible on site.

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

The Board heard the continued public hearing relative to Case #5582, application of Anthony Properties Realty, Inc. for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.4(#3) TABLE OF USE REGULATIONS - RESIDENTIAL for the construction of a 323-unit multi-family development contained in four buildings, a special permit pursuant to §17-9.0 SPECIAL PERMITS and §17-10.2 EARTH REMOVAL for an earth removal operation associated with the construction the multi-family development, a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-5.9(E) GENERAL PARKING AND LOADING SPACE STANDARDS to allow a reduction from the requisite minimum number of off-street parking spaces pursuant to §17-5.10 TABLE OF OFF-STREET PARKING REGULATIONS, a special permit pursuant to §17-9.0 SPECIAL PERMITS and §17-6.0 NON-CONFORMING USES, STRUCTURES, AND LOTS to alter a pre-existing non-conforming commercial building and parking lot, a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.5(#23) TABLE OF ACCESSORY USE REGULATIONS to construct two drive-thru windows in association with the proposed commercial/restaurant buildings, a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-16.3 ADMINISTRATION to vary from the sign standards by exceeding the maximum number of signs on the site, variance pursuant to §17-8.9 VARIANCES to exceed maximum allowable number of stories for a residential building under §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS, a variance pursuant to §17-8.9 VARIANCES from the provisions of §17-5.9(D) GENERAL PARKING AND LOADING SPACE STANDARDS to exceed the maximum permissible entrance/exit driveway width, a variance pursuant to §17-8.9 VARIANCES from the provisions of §17-5.1 OFF-STREET PARKING REQUIREMENTS to reduce the requisite minimum off-street parking stall dimensions of some parking stalls, and a variance pursuant to §17-8.9 VARIANCES from the provisions of §17-5.9(A) GENERAL PARKING AND LOADING SPACE STANDARDS to allow some off-street parking stalls to be located within the in minimum requisite front yard setback, in association with the construction of a mixed-use development consisting of 323-unit multi-family residential dwelling units, two commercial/restaurant buildings and associated drive-up windows, a children's day care center, travel lanes, parking lots, landscaping, lighting, public amenities, water and sewer infrastructure, stormwater management system, utilities, and associated grading, 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.

Speaking in favor was attorney Jack Jacobi who stated that the stormwater system had undergone a second peer review and felt all issues had been addressed. He stated that due to the presence of hydric soils on the property, they are required to file an application with the Army Corps of Engineers to verify whether such soils constitute wetlands on site. He stated that they are hoping to have a work session within the next few weeks relative to the traffic peer review. He stated that nothing of significance was found in the archeological study. He stated that sketches were developed for the Board's feedback before they sought revisions to the site plan.

Speaking in favor was Renee Codega of VHB who stated that the boulevard main access driveway has a one lane for entering and two lanes for exiting. She stated that although the peer reviewer thought the entrance was too wide for a single lane, they could only narrow it by a few feet while still meeting Fire Department regulations. She stated that they are adding more landscaping to the center island and eliminating the islands in the residential area which would result in an additional 14-feet of landscaping on the sides of the driveway in front of the buildings.

Mr. Ayrassian asked about the impact on the stormwater management system with the reduction in impervious surface area.

Ms. Codega stated that they are not proposing any changes to the system, which means the system is oversized.

Attorney Jacobi noted that by removing the median has the added benefit that motorists do not have to go all the way down to the residential area to turn around, which will improve traffic flows.

Ms. Codega stated that outdoor gathering spaces were recommended to make the natural areas on site a focal point. She stated that they are proposing to put in an overlook, benches and tables, and several other residential gathering places.

Attorney Jacobi noted that the Conservation Commission and Planning Board were in favor of such features.

Chairwoman Catherine Merkle stated that she appreciated the visual integration and transition from the commercial development to the residential development.

Zoning Board member Kent Richards noted that with the narrowing of the entrance, the vertical curbing could damage to cars and suggested that a speed hump or speed table be considered to slow traffic.

Zoning Board member Johnny Bender admired the proposed wall between Building 2 and Building 3, which he found aesthetically pleasing.

Attorney Jacobi stated that if the Board is comfortable with this direction, they will move forward with developing a fully updated set of plans. He stated that the Board's architectural peer reviewer suggested that the commercial layout is traditional and suggested a more modern concept be created with a central parking area and a ring of buildings around it. He stated that despite appreciating the concept, his team could not logistically manage it for this site. He emphasized that the success of the project is dependent upon the state approving a traffic light for the development and that the traffic anticipated from the coffee shop and daycare will be necessary to trip the warrant for the light. He stated that to accommodate such tenants, they need to be exceedingly aware of the drive-through lanes and queuing space, the parking, and traffic flows around the buildings.

Ms. Codega reviewed the options that they considered where they tried adjusting the locations of the buildings. She stated that when they pushed the buildings closer towards Newport Avenue, they could not provide sufficient queue length at the drive-through and could only provide five parking spaces at the building's front door. She stated that it did allow them to accommodate an outdoor seating area, but that feature is not highly

desirable to the tenant they have secured. She noted that pedestrians would have to cross internal traffic lanes, which is unsafe and it would create a lot of pavement for the drive through, passing lane, and loading lanes. She stated that they are unable to provide any additional buffer between the residential and commercial with this design. She stated that for a different layout, they tried rotating the buildings, which allowed for an outdoor sitting area and acceptable queue length, but left them substantially deficit in overall parking. She stated another layout involved moving the buildings forward which would allow for an acceptable queue length for the drive-throughs, but the dumpster and loading space locations would not be ideal. She stated that pedestrians would be crossing traffic and the parking is far from the building, which does not work for parents dropping off kids at the daycare. She stated that an additional design they tried meets the parking requirements, but there is no space to increase the buffer between the residential and commercial. She present the final design iteration that resulted in dead end parking and no way to get back around from the drive-through, making circulation impossible and eliminating connectivity to Newport Avenue. She stated that they are looking to keep things as originally proposed, as they cannot balance the Boards' suggestions with the needs of their tenants.

Mr. Ayrassian pointed out that the Planning Board expressed reservations with the traffic flow associated with the proposed daycare. Attorney Jacobi agreed but stated that the Board's proposal, that the southern traffic entrance be one way traffic, would force drivers to go through the residential area. He stated that their traffic engineer is reviewing the Planning Board's suggestion.

Ms. Codega stated that they have some reservations with forcing commercial traffic through the residential area.

Speaking in favor was traffic engineer Patrick Dunford of VHB who stated that they are proposing to have 25 parking spaces along the front of the daycare building and an additional seven spaces designated for the daycare employees. He stated that the remainder of the approximately 25 parking spaces on that side of the plaza are dedicated to the retailers and restaurateurs. He stated that he is satisfied with the parking plan. He stated that in meeting with MADOT, they want the primary entrance to the site to be controlled by a traffic signal and to limit the other means of access to the site. He stated that they are comfortable with a right-in access immediately to the south of the daycare. He stated that the proposed two-way traffic is not unusual for commercial uses. He stated that the Planning Board had requested making the traffic one-way heading north, behind the daycare. He stated, however, that if someone is entering the site from the signal and turns, they are trapped if none of the side spaces are open, forcing them to either make a 3-point turn or wrap around through the residential area. He stated that in such an instance, people are likely to try to sneak around the drive-through. He stated that two-way activity will still be generated, it just will be pushed elsewhere. He stated that if traffic is forced through the residential section of the development, and the length of the trip is increased, there may be a speed concern as parents rush to drop kids off before work.

Mr. Ayrassian stated that if traffic was directed through the residential area, he asked what means could be provided to prevent someone from making a right turn.

Mr. Dunford admitted that it would be difficult to accomplish with signage. He stated that it is likely the same people will be making the trip to the daycare daily, so they will get accustomed to the pattern. He noted that the Greek restaurant is likely to be pretty dead in the early morning and he would prefer to avoid creating a dead end aisle. He stated that it would not create a dramatic safety hazard to do so, but rather a nuisance. He stated that he is looking at the matter seriously, but he feels like the exercise is an attempt to solve a non-existent problem.

Chairwoman Catherine Merkle stated she felt there was merit in forcing a one way and pointed out where on the plans it would work.

Mr. Dunford agreed to look at the situation more closely. He noted that if traffic is being forced into the residential area, it will muddy the waters between the commercial uses and residential uses.

Sandra Varrieur expressed concern with the potential impact of so many residential units who may have children and the effects on the school system.

Attorney Jacobi stated that the parents utilizing the daycare will be those traveling from the South Attleboro train station. He stated that the national daycare company performed market studies and found this to be the perfect location for their target market. He stated that the daycare is not designed to accommodate parents that live in the residential portion of the site, which primarily consists of studios and one bedroom units.

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

The Board held a business meeting.

With an appointment to speak was attorney David Manoogian regarding the Bristol Place Shopping Plaza on Washington Street.

Attorney Manoogian distributed packets to the Board and explained that Bristol Place Shopping Plaza is located on a single Assessor's lot and that it is his client's intent to subdivide the lot and create five individual lots within the existing commercial plaza to make them more marketable and simplify financing. He stated that they are proposing to use the existing driveway of the plaza as their "subdivision" road and to subdivide off five lots of it. He stated that they have received preliminary approval through the Planning Board and that one of their conditions was that they apply concurrently before the Zoning Board when file the definitive subdivision. He stated that to make this plan work however, a number of variances will be required to legalize the setbacks of existing buildings, parking, so forth. He noted that the roadway will remain private and that they would not petition the city to accept it. He stated that he and his engineer met with Mr. Ayrassian a few months ago and while it was their position to approach this matter by filing a Form A plan and application with the Planning Board and concurrently the variance applications with the Zoning Board, he noted that Mr. Ayrassian disagreed for a variety of reasons and advised that they file a preliminary subdivision plan followed by a definitive subdivision plan with the Planning Board rather than the Form A plan. He stated that he advised that they file their variance application with the Zoning Board when they file the definitive subdivision plan with the Planning Board. He stated that he agreed with Mr. Ayrassian's recommendation and direction.

Mr. Ayrassian emphasized that should the Planning Board approve the definitive plan, Bristol Place Shopping Plaza will not be petitioning the city to accept the roadway.

Attorney Manoogian confirmed. He stated that there is plenty of parking on site and no existing conditions will change as result of the approved definitive subdivision plan and grant of the variances. He asserted that they are simply putting lot lines on paper to facilitate the sale of lots to tenants. He stated that the variances would avoid the creation of any non-conforming. He stated that if relief cannot be obtained from the Zoning Board, they would not pursue the definitive plan with the Planning Board and that for this reason, he stated that he is in front of the Board to get a sense whether the Board is amendable to the concept. He stated that he completely understands that the Board cannot state that they support their proposal at this time and that he is not looking for any such assurance. He stated that he just wants to get a sense as to whether the Board would consider entertaining the relief.

Mr. Ayrassian noted that what attorney Manoogian is proposing is very similar the request by New England Sports Village a couple of years ago. He stated that he advised the Planning Board and will also advise the Zoning Board that should the Board's approved the project, that they require an executed Letter of Reciprocal Easement to ensure that all tenants on any of the five lots continue to have access and use of the parking spaces throughout the plaza, use of the stormwater management system, snow plowing, so forth.

Cathy Merkle suggested a homeowner's association or the like, would be necessary.

Attorney Manoogian agreed and asserted that he would submit at the appropriate time a draft Owner's Association and a draft Reciprocal Easement letter to both Boards for review and approval.

Cathy Merkle polled the Board and then stated her and the Board's willingness to entertain the application.

The Board tabled all remaining correspondence.

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, April 14, 2022, and April 28, 2022.

The meeting adjourned at 11:00 p.m.