

East Longmeadow Planning Board

60 Center Square

East Longmeadow, Massachusetts 01028

since 1894

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Ralph Page, chair

George Kingston, vice chair

Tyde Richards, clerk

Michael Carabetta

Deborah Bushnell

robyn d. macdonald, director

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Minutes of August 23, 2016

Present were: Chair, Ralph Page; Vice, Chair, George Kingston; Clerk, Tyde Richards, Michael Carabetta and Deborah Bushnell.

Public Hearing Special Permit Section 6 – James Lentz, 116 Colony Drive

Chair, Ralph Page opened the public hearing and Clerk, Tyde Richards read the legal notice and correspondence into the record.

Marion Creamer, 117 Meadow Road:

Due to a conflict in my schedule I am unable to attend the Public Hearing scheduled for tonight on the application for a Special Permit submitted by Mr. James Lentz construction of a deck to his property located at 116 Colony Drive.

I am a backyard abutter to Mr. Lentz's property and wish it known that I am in full support of the construction of his planned deck. Furthermore, I would like to say that in the very short time he and his family have resided in their home they are maintaining their property in a manner that has been sorely missing for several years. They additionally have landscaped their front bank in a way that is esthetically pleasing for them as well as any of us who abut their property. I wish to welcome them to our neighborhood.

Mr. Page asked the applicant to explain to the Board what it she would like to do.

Jennifer Lentz, said that they just bought the house and the backyard is small with a deep slope and they can't really use it. She said that they are looking to add a 16' x 16' deck off the back of their house to be able to have some outdoor space.

Mr. Page said that the house is pre-existing, non-conforming and it looks like there is an existing set of stairs there which are 29.5 feet off the rear yard lot line. Ms. Macdonald said that a variance to add the addition to the house was previously granted but the deck doesn't need a variance it just needs a Special Permit.

Mr. Page addressed the Board for any questions or comments.

Mr. Kingston said his only comment is that the non-conformance they are looking at is the rear yard setback and it will be the same setback as the existing situation and he doesn't see any problems there.

Mr. Carabetta and Ms. Bushnell both said that they had no problems with the request as presented.

Mr. Richards said that he agreed with Mr. Kingston's comments and feels the same way.

Mr. Page addressed the audience for any questions.

Todd Marchant, 130 Meadow Road said that he has no problem with what they want to do and it is very nice to see someone living there. He said that all of the neighbors he asked were in favor of it also.

Upon motion duly made by Michael Carabetta and seconded by George Kingston, the Board voted unanimously (5-0) to close the public hearing. Upon motion duly made by George Kingston and seconded by Michael Carabetta, the Board voted unanimously (5-0) to approve the Special Permit, Section 6 for James Lentz, 116 Colony Drive.

Continuation of Public Hearing – Dr. Kevin Coughlin, 250 North Main Street

Chair, Ralph Page continued the public hearing of Dr. Kevin Coughlin for 250 North Main Street.

Mr. Carabetta recused himself because he was not part of the original discussions.

Mr. Page asked the representative to give the Board an update on their project.

Gary Weiner, said that he understands that the Fire Department has responded to the concerns raised at the last meeting and the issues that remain on the table are the entrance driveway and the radius required by the Fire Department to get into the site adequately to make certain that the fire truck entering the site does not cross over the center line of the aisle. Mr. Weiner said he has a plan with a 45 foot radius that would allow the fire trucks to swing into the site. He said that they end up losing one parking space at the head end and they will add that space to the rear parking lot. They will push the dumpster into the riverfront area in order to accommodate those changes. Mr. Weiner said one other concern raised by the Fire Department was backing up on the site. At the round table that question did arise and they indicated at the rear of the parcel that the backup would be very short and they have plenty of radius to get into the parking isle and go out. He said that no further discussion took place at that point and there was no concern raised by the Fire Department about that one movement that would have to be made. Mr. Weiner pointed out that if you drive down North Main Street and look at the number of office buildings and medical buildings in town none of them provide turn around access for a fire vehicle. He said that they do feel that the 45

foot radius is adequate based on the Town Engineer also looking at it and having the correct scale template. Mr. Weiner said all other concerns they agreed to including the setting aside of the money for the traffic study.

Mr. Page asked Mr. Weiner if a fire truck goes in and pulls in behind the building and if the parking lot is full of cars can the fire truck still make the swing and back out. Mr. Weiner said yes because they will have the radius on the far side of the isle and the template shows that and also for the record the building will have sprinklers. Mr. Page addressed the Board for any questions.

Mr. Kingston said that he is happy to see that they are meeting the main criteria of the Fire Department getting the truck in there and has no objection to it.

Mr. Page asked if the new plan was submitted to the Fire Department. Ms. Macdonald said no because it hasn't been submitted to the Board yet.

Mr. Weiner submitted the new plan for the record.

Mr. Page addressed the audience for any questions, there being none addressed the Board for any further comments.

Ms. Macdonald said one of the issues was the traffic study and the Board has to determine whether or not they are going to waive it.

Mr. Page said that he thinks part of the Board's first decision is if they want to continue it until after the Fire Department has approved it.

Ms. Bushnell said that she thinks they should wait for the Fire Departments approval.

Mr. Page asked the Board if they want to discuss the traffic study.

Mr. Kingston said that he thinks it would be a good idea to make a ruling on the traffic study.

Mr. Page asked Ms. Macdonald if there was a formal offer that came into the town. Ms. Macdonald said no there was not.

Mr. Weiner said certainly they are on the record indicating that the money would be put forth and if they need that in writing they could write that up that evening. He said that they could also vote an approval subject to an acceptance of the construction North Main Street fund or something like that.

Mr. Richards said what came up at the last meeting was that they waive the traffic study but the amount that goes to the traffic study goes to a slush fund to eventually fix all the issues along that section of that road. He said that the applicant asked what if all the money is not used can he get some of the money back again. Mr. Richards said that he thinks that was the issue and no one is holding anyone hostage about a traffic

study and would rather take the \$8,500 put it in the slush fund to fix issues in that section of the street and put the traffic study to bed.

Ms. Bushnell said it's her understanding that they don't have to give the \$8,500 that they could just do a traffic study.

Mr. Weiner said that is correct but they would prefer to make that the North Main Street improvement fund for the purposes of being able to use that money anywhere on North Main Street. He said that he understands Dr. Coughlin's concern if that money doesn't get used but feels that the \$8,500 on North Main Street is going to go quickly.

There being no further discussion and upon motion duly made by George Kingston and seconded by Tyde Richards, the Board voted unanimously (4-0) to waive the traffic study contingent on receiving a written agreement between the town and the applicant to use the \$8,500 for the North Main Street traffic improvement. Upon motion duly made by and seconded the Board voted unanimously (4-0) to continue the public hearing for Site Plan Review of 250 North Main to give the Fire Department and Planning Board time to review the plan.

Mr. Richards said that his feeling is that he would approve it contingent upon the Fire Chief signing off on everything. Ms. Macdonald said that he can't do it behind closed doors because of the Open Meeting Law.

Mr. Page said the concern is if they have to move a parking space they can't resubmit anything to the Board because the hearing would be closed.

Upon motion duly made by George Kingston and seconded by Deborah Bushnell, the Board voted unanimously (4-0) to continue the hearing to September 6, 2016 at 6:00 p.m.

Discussion with Joe Dilk re: signage on Shaker Road – Massachusetts Tae Kwon Do Academy

Joe Dilk, owner of Connecticut Valley Artesian Well and J.D. Holding Company, the owner of the property under Connecticut Valley Artesian Well. Mr. Dilk said the he is also the owner of the previous Hafey Funeral Home next door which he purchased in 2009 and the sign came with it and the sign that is out front has been there about 35 years. He said that his tenant for the Tae Kwon Do Studio has to change his name from Olympic Tae Kwon Do because the Olympic Committee found out and forced him to take the name Olympic out his company name and because of that they will have to change their sign. He said that his tenant went to the town to change to it and was informed that it was a non-conforming sign which was news to him. Mr. Page said that the sign is not actually on the property that the building is on, correct. Mr. Dilk said exactly that is the part that is non-conforming.

Mr. Kingston asked what was previously on the sign before it was most recently changed. Mr. Dilk said that was Hafey and the Real Estate sign and then it went to the Tae Kwon Do. Mr. Kingston said neither of them ever got a sign permits to begin with.

Mr. Dilk said not to his knowledge and asked the Board if it is possible for him to join the two parcels being that there is street in between them. Mr. Page said that he doesn't think so because of the street. Mr. Dilk asked if there is anything that can be done. Mr. Kingston said that the sign properly should be on their property as an accessory to the building and realizes that loses visibility from Shaker Road. He said the original Hafey's sign was never permitted and if it went in before the sign by-law went into effect then it was pre-existing and it can't be changed. Ms. Macdonald asked Mr. Dilk if his tenant was going to change the building sign. Mr. Dilk said he assumes he is going to. Ms. Macdonald asked Mr. Dilk to have his tenant go into the office and speak with her.

Request for Signage – Mattress Firm, 32 Center Square

Clerk, Tyde Richards read a request for signage from Mattress Firm.

After review of the proposed signage and upon motion duly made by George Kingston and seconded by Michael Carabetta, the Board voted unanimously (5-0) to deny the signage as presented because the total square footage of sign was too large.

Continuance of Request for Waiver of Site Plan Review - Subway, 24 Shaker Road

Mr. Page continued the Request for Waiver of Site Plan Review for Subway for change of ownership.

Clerk, Tyde Richards read a letter dated August 22, 2010 into the record from Matthew Porter of Vieira & DiGianfilippo LTD representing the new owner, Dhaval Patel. Mr. Porter was asking whether or not a Special Permit is required or can it stay under a Waiver of Site Plan Review.

Mr. Richards read the Waiver of Site Plan Review approval into the record dated February 17, 2011 to change hours of operation.

Mr. Carabetta said that he was part of the decision to move forward with that decision. He said to him it is just a straight forward change of ownership and doesn't think that requires a Special Permit.

Ms. Bushnell said that she went back & forth with it and initially agreed with Mr. Carabetta but however to get a Special Permit it's just one more step. She said that the Waiver does it does say any changes will trigger the requirement of a Special Permit and said that she is a little conflicted.

Mr. Kingston said that he understands getting a Special Permit is an additional step with some small additional cost but he really thinks the change of ownership in their case should trigger a Special Permit to bring the restaurant into conformity with all the other restaurants in town and in his opinion change of ownership is a significant change because essentially it's a new business.

Mr. Richards said that he has mixed feelings about it. He said they are grandfathered if they have the same ownership and everything remains the same, since there are changes the question is if the grandfathering goes away and he would have to say that it does.

Mr. Page said one of his thoughts is if they are going to bring restaurants that are pre-existing into conformity with the by-laws and what point in time do they do that. He said his thought is that a change in ownership would trigger that as under s Special Permit. Mr. Page said it's not that they would be denying the restaurant because it's been there, it's been fine but he thinks it just brings it into compliance with what they have.

Mr. Carabetta said that he thinks they are making too much of it. He said it was a Subway and it is going to stay a Subway, the sign will say the same and feels that it is a waste of time and money.

Mr. Page opened the discussion up for Mr. Burack, Owner of the property.

Dan Burack said on December 23, 1991 he entered into a lease with Subway Real Estate Corp. the entity that leases the property from him. Mr. Burack said to this day after five amendments Subway Real Estate Corporation that leases the space have extended their options out to December 31, 2025 with no changes to their lease. He said because there is a change of manger in their case, the franchisee, they enter into that with Subway Corporation not Real Estate Corp. He said that he doesn't really think anything has changed as far as they go and if Subway Real Estate Corp wants to remodel or change something he thinks it's up to them to go before the Board and at that time it would trigger a Special Permit. Mr. Burack said at this particular point & time they are not changing anything, the lease is still with the same people and they are the ones that are responsible to pay the rent to him and he doesn't think it triggers anything.

Mr. Richards said since it is the same lease, it is the same tenant but a different operator, you could call it a sub-lease if you want to, basically it's the same lease and he thinks he agrees that there is no change.

Mr. Kingston said his feeling is that the franchisee is the owner of the business, whether they are leasing it directly from Mr. Burack the Subway Real Estate people are the owner of the business and they are dealing with not the land owner but the owner of the business. Mr. Richards said the owner of the business is the owner of the lease. Mr. Kingston said that the way he understand it is that the business is owned by the franchisee not by Subway.

After further discussion, the Board determined that the change of Manager and change of the Corporation falls under a Waiver of Site Plan Review. Upon motion duly made by Michael Carabetta and seconded by Deborah Bushnell, the Board voted (3-2) to approve the original Request for Waiver of Site Plan Review for change of ownership with the hours that are consistent with what was there for Subway located at 24 Shaker Road.

Waivers of Site Plan Review Approved

Dmitriy's Home Improvement, 48 Braeburn Road

Hometown Lawn and Property Services, 158 Maple Street

Plastipak Packaging Inc., 108 Industrial Drive

Town Lyne Foreign Motors, Inc., 14 Oak Bluff Circle

Minutes

The Board reviewed the minutes of July 26, 2016 and upon motion duly made by George Kingston and seconded by Deborah Bushnell, the Board voted (5-0) to approve the minutes.

With no further business and upon motion duly made by George Kingston and seconded by Tyde Richards, voted 5-0 to adjourn at 7:10 p.m.

For the Board,

Tyde Richards, Clerk