



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

MEETING MINUTES

BOARD OF APPEALS will hold A PUBLIC HEARING ON WEDNESDAY EVENING
April 17, 2019 AT 7:00 P.M. in ROOM 202, CITY HALL, to hear the following items:

Appeal of the Building Inspector's Decision:

Leota Sarrette and Lisa Palmaissano for 806 N. Broadway (575.2.8): Appeal of the Building Inspector's decision to issue a building permit to build a water booster station at 806 N. Broadway.

Comments from Attorney Andrew Caffrey:

My name is Andrew Caffrey Attorney, I am here tonight on behalf of Leota Sarrette and Lisa Palmisano. And as you know, this is a highly contested matter. Attorney Bobrowski just handed me some materials which I haven't had the opportunity to take a look at. But I think we're asking this board to do something very difficult. But I think it's the right thing to do. And that is to instruct the building inspector that there, the permit that has been issued for the building on the water booster station should not have been issued and that it should be rescinded. And that should be no further permits issued under the Crystal Springs subdivision until such time as a new plan is approved. The reason for that is that when the project was initially approved, the developers required to put up a Form E covenant. A form E covenant, as I'm sure you're aware of says that all the municipal services will be built, and it has language in it that specifically says the construction of all ways and the installation of all municipal services shall be completed within two years from the date of approval. I believe the subdivision was approved in 2009. Failure to complete shall automatically rescind approval of the plan. So the covenant was put up, it was extended several times with tripartite agreements by the town and by the bank that was lending the money and by the developer, but those covenants, the bonds expired, and the work was not done. So at that point under this under the approval of the subdivision The plan was automatically rescinded. I wrote to Mr. Pillsbury back on August 6 of 2018. And brought this to his attention that I thought the plan if it automatically rescinded, and gave him the reasons why, I did not hear back from him. Subsequently, on August 27, I wrote to Richard Osborne, who I understood then to be the building inspector and explain the same thing to him and gave him a copy of the letter that I've given to Mr. Pillsbury, and I have a copy of those for you if you'd like. Subsequently, I did get a response, October 3 of 2018, from Mr. Bridgewater. And while I had requested in my letter that the building inspector make a determination as to whether or not the definitive plan had been automatically rescinded. That was my request. He simply said, I hereby deny your request. He said that the water boost station is being constructed reports (inaudible) with the foundation parameters (inaudible) locators depicted on the definitive plan. So that was October 3 of 2018. We have subsequently been involved in litigation and as a result of that litigation I had an opportunity to depose Mr. Bridgewater on April 3, 2019 in my office. Also, the city has filed various pleadings as part of that litigation. And in those pleadings, they provided an affidavit from Mr. Bridgewater, signed by Mr. Bridgewater are the ^ inaudible and penalty of perjury wherein he admits that the plan been rescinded there was also an affidavit from Mr. Ward I believe it is. Yes, Robert E. Ward. And I have a copy of this for you also number 14 it says premier did not build the required booster pump station by the planning boards deadline of November 1, 2016. As a result, the Planning Boards approval of the subdivision was automatically rescinded. So Mr. Ward and Mr. Bridgewater in their affidavits, both admitted that the board's deadline of November 1, 2016 had not been met, and that the subdivision plan was automatically rescinded. I have a copy of those pleadings for you also. Some six weeks ago, I sent an email to Attorney Bobrowski and asked him if he would educate me as to why he and the town thought that the building permit that have been issued for the structure, both for the foundation and for the structure, why they were properly issued. And if he could educate me on that, or perhaps send us and save us all some time and energy. I do not get a response to that either. In the deposition of Mr. Bridgewater, he repeatedly said that he, as of April 3rd did not know whether the plan was rescinded or not. I asked him several times about that. He said I don't know. Or I don't recall. I said, here's an affidavit signed by you wherein you state that it had been rescinded? I don't know. I don't know was his response. I said what is your present impression? What do you currently think? Do you know the plan has been rescinded? I don't know. So it really comes down to in our eyes, the plan was rescinded. And once that plan was rescinded, there is nothing for the building inspector to look at. There is no site review that can be done. There is there is no permit that can be issued because there is no longer a plan showing the easement area that the booster station was supposed to go within. And so the both the foundation permit issued last summer, and the building permit issued I believe in January of this year, they should be rescinded. There was no reason there was no justification to issue them. There are other issues with the building permit itself. The application doesn't list who the owner of the property is. In his deposition, Mr. Bridgewater did not know who owned the property. And yet he issued building permits. And he issued building permits to Sterling Golf Crystal Lake LLC. And he said he didn't know if they own the property or not. The all we have on the application and on the permit is the is the Stephen Smollack. But we don't know who he's working for. We don't know who the owner is. There was no apparent authority, there was no letter of agency that have been submitted with it. So there are any number of issues relative to this permit and so that's basically our position that the plan was rescinded. What's the plan is rescinded. It can't be revived. You can't bring something back to life. And so, the only out for this really is for the I think it's the Lowell Five Savings Bank. I think they're the owner of the project for them to file a new plan with this town and with the city and revive everything. But right now, under operation of law and the and the documents that the



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

planning board put in place, the plan shall automatically be rescinded and the town has city as acknowledge that in pleadings and in affidavits. Thank You.

Comments From Attorney Mark Bobrowski:

Mark Bobrowski, my office is in Concord, serving as Special City Solicitor.

First of all, with regard to the covenant in place, when the subdivision was originally approved, it doesn't say that the plan will be automatically rescinded. It says that the approval will be rescinded. There's a big difference. The plan doesn't go away, the plan stays where it is. The approval is rescinded, largely as punishment for the developer failing to meet deadlines that were put in place in the covenant, the original covenant is always for two or three years because it's anticipated. Nobody really expects the developer to finish the subdivision in two or three years. It's a timing mechanism. If they promised to finish it, and it doesn't have a deadline, then every time you ask them to finish it, they'll just say I'll get to it. And you're never going to have a deadline to act upon in order to get the performance guarantee activated. So typically, when a covenant is a covenant is the first type of performance guarantee that a developer will choose in a subdivision because you can't bond the whole thing all the road work all the utility installation all of the pump stations, it'd be millions of dollars in a large subdivision. So typically, the covenant gets you to about the 80% mark where the work is done, the first courses down the drainage installation is taking place some of the curving is in and then you put a performance guarantee in place for the rest of it. At that point, typically the covenant goes away. Because you don't need two forms of security for a subdivision one will do. So the covenant is just a placeholder usually at the outset. And the more sophisticated device like the tripartite agreement is used to secure the remaining work, if you will. Thus, in this case, my first reaction upon seeing this and doing a little bit of registry of deeds research was defined that the covenant has in fact been released and is terminated as of June of 2017. It's gone. The covenant is no longer in effect, it has nothing to do with the subdivision any longer. The operating security agreement was the fourth tripartite agreement between Mr. Moroney the bank and the city planning board. And now it has been reinstated in a letter of credit issued by the Lowell Five Bank at the February meeting of the planning board. And one of the things that given the chairman, is the minutes from that meeting at which the bank came with the letter of credit. It's not a tripartite agreement anymore, because there's only two players in the game. Now, the bank and the city. When the bank flips it to a buyer who will finish the subdivision the bank's not in the business, then there will be a tripartite agreement again, if there's remaining work to be done. But the as a result of them giving us a letter of credit for an amount certified by the City Engineer, the planning board revoked the rescission of the plan. And the plan is back in effect at this point in time revoked the disapproval. But that was rescinded that was automatically put in place when they fail to meet their deadlines. So my view of automatic rescission is that the approval is suspended if you will, to give either one of two things must happen. Either the owner of the subdivision comes in and re establishes a new schedule, in which case the board will vote to extend the time to complete, or the owner of the subdivision as happens in this case, can't finish. And the bank now is chased typically, to get action on the tripartite agreement or whatever else they're holding as a form of security. We were very lucky in this case in that Lowell Five Bank stepped up to the plate, they met their obligations that we didn't have to go to court in order to get them to build the pump station. And now they're, I believe their construction is moving forward at full speed. So that that's more or less an update on what's happened. A) the covenant is not in place. It's been rescinded. It's been terminated and released. And I've given the chairman, a copy of the recording instrument that the planning board signed on June 14, 2017. And more. I think equally as important. The bank has given us the planning board, a letter of credit. And as a result, the Planning Board has reinstated the definitive plan. It's fully operating definitive plan. And there's that's a normal event in the course of things. In my experience. I think where Mr. Caffrey and I fundamentally disagree is what happens when automatic rescission occurs and what procedures are necessary in order to end it. I would agree with Mr. Caffery that if the planning board used a statutory device like chapter 41, section 81W to do a recession that protect public hearing, two weeks notice, and then the planning board could take action, it would take another 81W notice, two weeks of public advertising, and a public hearing to reinstitute the approval. But here automatic rescission is a tool that's been allowed by the court. And I don't think that the plan goes away and has to be redone. I think it's just put on a shelf, until these matters, fix themselves in the normal course of events. As I said, either the bank steps into the void, or the developer asks for an extension of time and the board grants it to finish the work.

Chairman Moriarty: Any comments or questions from the board, to either Attorney Caffrey or Attorney Bobrowski

Member Brown: What was the Planning Board date that they the planning board met on

Attorney Bobrowski: the Planning Board met on February 14, I recall being here, it was Valentine's Day. I was here, the board duly posted this under the Open Meeting Law, the bank was in attendance that night, as they are tonight, Mr. Hall from the law firm representing the bank gave the board a revocable standby letter of credit. Issue day, February 13, 2019. It's got a number, and it basically steps up to the plate and gives the city a promise of \$992,329. To finish the remaining work. That's roughly what the tripartite agreement was for with inflation, but minus the pump station, because that's now under construction. So this is the remaining work at Crystal Springs of the place. It's almost exactly a million dollars and the bank has issued its letter of credit for that purpose.



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

Attorney Caffrey: It appears to me the city of scrambling, city and the bank scrambling this thing alive?

You know, Mr. Bobrowski talks about typically, there is no typically here I don't think and I think some of the dates are, are important. He said that on June 14, 2017. The some covenant was released. Well, according to the town zone, the city's own admission, the plan, approval was rescinded in November of 2016. So the rescission in 2017, I think is somewhat meaningless. And also the fact that on February 14th of you know, some one month, two months ago, this process went on, Mr. Bridgewater wasn't aware of that in his is deposition. I had asked Mr. Bobrowski how this was going to be resolved and never heard from him. So I think there's a real serious legal issue here. And I can't blame the city for scrambling and trying to figure this out. But I think there's a problem. And I think under the documents that the city imposed that the plan shall automatically be rescinded. It's been rescinded. And I don't think you can revive it. Thank you.

Chairman Moriarty: Thank you very much. Thank you. Any other final comments or questions from the board?

Attorney James Hall: If I could speak, I represent the Lowell Five Savings Bank I represent the Law Offices of Fives and Savings Bank and concur with Attorney Bobrowski 100%. But just wanted to add a little more background to this matter. This board I believe, approved three or four tri-party agreements, I believe four but I could stand corrected and only three. And in those tri-party agreements. The board released the cover the covenant E or covenant F, it has been referred to in two different ways. And then this place took money from the bank to guarantee the performance. As what Attorney Bobrowski said you don't have two securities you only have one. So when these tri-party agreements were signed, three or four of them from 2010 through 2014, they specifically released any and all applications as they apply to the current lots, the unfinished lots. And so therefore, the what the attorney is referring to what Caffrey is referring no longer was binding on any of the parties with respect to this unfinished subdivision. And I just wanted to make note we didn't just have the information that Attorney Bobrowski provided we have on the record, be happy to give the board these four tri-parties that conclusively prove on the second page or some on the first that the covenant had been released. So, Attorney Caffrey is relying on a statement in the covenant, and the covenant is has been released. So in 2019, I don't believe you can stand here and say, oh, by the way, even though the Planning Board has taken four different covenants and a letter of credit, the fifth document, and we can still go back to 2010. And stop you from developing this proposal. Because it's more than two years old, it seems ridiculous that the planning board would be here in 2014, 2016 and not have protection that these tri-party agreements would give them and to release this other covenant. So it just doesn't make sense. That's all I say. And I think these additional attorney Bobrowski has said we have four other instances on the record recorded to the registry of deeds. It says that the Planning Board has released the covenant with respect to these unfinished lots and front nine and all the infrastructure. So that will preserve the typing the infrastructure, the sewers, and the pumping station, which the water will flow through. So I've had my say thank you very much. Thank you.

Attorney Andrew Caffrey: I believe the covenant what it released were the finished lots, it did not release the unfinished work. That's why the covenant and the bonds continue in place. But houses that have been constructed or roadways that have been done, those were released.

Attorney Mark Bobrowski: Can I address that? The last tripartite agreement was dated September 20, 2014. It lasted for two years, and that's when Mr. Maroney fell behind, and the bank executed foreclosure proceedings. The subject the tripartite agreement says in order to secure the completion, the complete construction of ways and installation of municipal services to the buildings to be constructed, and said lots numbered 1, 2,3,4,5,6,7,8,9,24,25,26,27,28,29,30,31,32 and 33. And the private way refer to was front nine drive. The planning board hereby releases the said lots numbered, and I won't read them again. And the private way from any and all covenants, particularly those commonly referred to as Form E covenants executed and consented to buy SECC Associates Inc. dated January 10th and recorded with the registry of deeds, book 29244 page 17. That is the covenant that Attorney Caffrey attached to his letter to you. So this is a recorded instrument and it releases those that covenant with regard to those remaining unbuilt lots.

Chairman Moriarty: Thank you, entertain a motion

Member Soraghan: I make a motion we uphold the building inspector's decision to issue a building permit to build a water booster station.

Member Vathally: Second

Chairman Moriarty: motion made by member Soraghan, seconded by member Vathally.

Member Soraghan: yes

Member Vathally: yes



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

Member LaPlume: yes
Member Brown: yes.

And the chairman votes Yes. So the building inspectors decision has been upheld.
Thank you, both attorneys.

The attorney for the applicants argued that the failure to complete work on all municipal services, as stipulated in the Form E Covenant within the two-year timeline, caused the permit for the booster station to be automatically rescinded. In rebuttal, the Special City Solicitor argued that there is nothing in the zoning code or the Statutes prohibiting the granting of the permit. He further stated that the Covenant states that the "plan" will be rescinded, not the permit. He also noted that Lowell Five Bank has stepped in to provide a letter of credit just under \$1 million to allow work to continue. Therefore, there is no need for two agreements.

Q. What was the date of the Planning Board Meeting?
A. February 14, 2019.

The Board voted 5-0 to uphold the Building Inspector's decision to issue the permit for the booster station.

Continued from the January 16, 2019 Meeting:

2. David Kennedy for Lots 67-70 Birch Avenue (536, 17, 67-70): Applicant is seeking dimensional variance for a single-family home in the RM Zone. Has 120' of frontage where 150' is required and 12,000 s/f where 20,000 s/f is required.

The attorney for the applicant provided a letter requesting a four-month Continuance and waived the notification period, as all of the necessary plans have yet to be completed. Neighbors voiced continued concern about the application, its impact on the area and the eagle's nest and roosting tree. Neighbors also noted that the applicant's failure to develop the plans speaks to the applicant's inability to develop the property.

Opposition:

Tasha Ryan, 1035 Western Avenue: I am the four lots below the three lots that are in question. I did have a nice speech planned, but with a continuance the extension. I just wanted to know is that common? I mean, how many extensions is going to be offered?

Chairman Moriarty: Well, I will say it's common with the continuous is are often there's no doubt about it. Well, part of the reason is, yes, sir. Part of the reason is when in fact the opposition and raises questions about an application. And the applicant is saying, Okay, I'll listen to your concerns and your issues. Give me an opportunity to go back and correct those. So I think, you know, it's the same thing we have a continuance once we've listened to opposition is kind of unfair to the to the applicant. And in this case, I think last time around, we heard a lot of opposition. And many of us have gone out there and looked at the site that we understand what it looks like and what the challenges are. And the applicant and his attorney heard those concerns. And they asked me for a four month extension, which is a little bit unusual. It suggests to me that they're taking all of this in serious consideration. And I think it would only be fair to say I'm not here, that wouldn't be fair to say no, we're not even listen to your request. Because you're gonna come back hopefully with a plan that's a lot better. And it still may not pass your consideration and may not pass the boards consideration. But it says that kind of fairness and balance, it's it. It's difficult because people come to the meetings, and they're expecting there and then it gets continued and continued longer. But so that's the reason.

Tasha Ryan: I guess where I'm coming from is we were prepared for the last meeting on January 16th, came prepared, I had done my due diligence, I had a lot of information for you. And he was not prepared. So you gave him two months. I was the one who asked for the extra month. So he had three months to prepare. If he couldn't get that prepared. Four more month and now at seven months. He did not do his job, though. How would that work? If you are I in the public sector? Would it go to your job not prepared? That that wouldn't cut it? It's really it's absurd that they think that they need four more months? It's not fair to us as a neighborhood who has to now sit on this for another four months, we've done our job, we have plenty more information for you. Again, I don't think -- you're right. I don't think it's fair for me to read that information without them here. But I don't think it's fair that he didn't show up. He didn't care enough to show up here.

Chairman Moriarty: As a board, I don't want to see a better organization could be a lot of reasons for I almost died, by the way. Reason it wasn't good. I didn't care, I have other obligations (inaudible)



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

Tasha Ryan: I have to wonder too

Chairman Moriarty: I think what it will speak to when the plan comes in -- I think the board will be saying, okay, you had Let's count that up seven months to create a very, very solid plan. And I think board members take that into consideration. And if the plan comes in, and it still does not feel like a good plan, I'm not predicting anything. I can't do that, obviously, and I can't speak for all, you might certainly any applicant that's been given seven additional months to put together a reasonable plan. And to talk to the neighbors more. I certainly we need to know that they talk to you.

Tasha Ryan: They haven't talked to us at all, there are two points I would like to make if me as a ^ (inaudible) person was able to get the surveyors out in the middle of winter to survey my land, he certainly could have got his engineering department out to do what they needed to do. And if he thinks he's waiting until July or August to test the water table, I have a problem with that. That should be done now, while it is wet. I believe that that's part of this tactic is he's waiting until the middle of summer, where he's going to go tap that water table and find not a heck of a lot of water. I'm telling you right now, my basement floods every time it rains every time and putting a house up there is going to make it worse.

Chairman Moriarty: Just as a total aside, first of all, I can't, I can't assume any intent on anybody's part of what comes before us. So that's point number one. Point number two, I've been up there, I think three different times myself, I've driven up that avenue I've driven in the whole area. I know what the area looks like and what the challenges are, so and again, all I can say is I think the board, having giving the applicant as much time as we're giving the applicant doesn't necessarily work in the applicants favor my we're going to expect that all of the issues will either be resolved, or it can be resolved. And those that can't be, we have to take a look at whether it has an impact on the overall design.

Tasha Ryan: I do thank all of you. I do know I've seen your cars or you've stopped in and I appreciate that you've taken the time to come and look. I am very disturbed with the way this is going. And we do not agree with August. We want September. So if that gives them an extra month, right, but that's vacation season, we all -- we're a neighborhood, we have kids, it's summertime. If we're going to put this off, we want September.

Chairman Moriarty: One of the first questions we will probably ask is have you talked to the neighbors?

Tasha Ryan: Not once.

Inaudible from audience: stating "Not once"

Tasha Ryan: I've talked to every neighbor, I've gone door to door multiple times

Chairman Moriarty: I'm respectfully saying when he comes back in has he talked to the neighbors in this hiatus period? If not -- that was not-- the board will take that into consideration also. So I apologize for everyone having to come out again. I apologize for the delay. But in the interest of making sure that all applicants get a fair hearing. Well haven't voted on it yet. The members may disagree with me. Of course, obviously. I don't pay them. But we certainly listen to the concerns of residents, we're residents too.

Chairman Moriarty: Could you tell us your name and address?

Donna Row 1063 Western Avenue: My name is Donna row from at 1063 Western Avenue, I'm two houses down from Tasha and this 8 month period. Is there ever a limit where you can just say all right, that's enough you guys have done enough of your research come on already.

Chairman Moriarty: It's always up to the discretion of the board, ^ Inaudible comments

Donna Row: Alright guys, I know you don't want to make assumptions. But I mean, that's it's a good, a good amount of time and Tasha's point about it being there's a lot of water there now, because we've had a lot of rain. And in the middle of August and July, July and August, there won't be that much. But back in September, when it starts raining and melting again, there's going to be more water. So I think that's why Tasha asked for some time

Chairman Moriarty: Those are points the board will take into account when we hear them if they say yes, we just did a test two weeks ago. June July -- ^ (inaudible)



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

Donna Row: Right? Cause you know, cause that's it. That's a big consideration and being right on the Merrimac River, and not to mention the bald eagles

Ruth Wilson, 961 Western Avenue:

I have two little stories, and there nothing about -- I know nothing about I don't know variances in water tables or nothing like that. The first one is, and it makes me cry, so just bear with me. My son was at my house. And he was telling his son, his son, my grandson, things. And Scott saw a bald eagle. So my grandson thinks it's my bald eagle. But anyways, he went back home in Texas. And he told everybody at school and his teachers how his grandma owns bald eagles that's first thing. Second thing is today. It was so nice stepping outside. There was a huge American flag. I don't know if anybody else noticed, on one of the cranes doing the highway, which was very nice. So I did yard work. And every once in a while it was nice. Looked up at the flag. So it got me to wonder you know, I wanted to visit my parents, my sister and my son. So I went to go visit them. And I couldn't remember where they were because the flags weren't up. It was a cemetery, I went to go visit my father World War II, my mother, my sister and my son who fought five tours overseas. It's so hard. It's just hard. I can't remember. Oh, yes. I came home. I came home. I was so upset. I laid on my lawn chair. I laid back and there's that Eagle flying above me. It made me smile. We don't have much in life. Let us have our nature. It's a house he can build somewhere else. I don't know. That's my thought.

Chairman Moriarty: Okay, thank you very much.

Tasha Ryan: little backstory for those that weren't here last time, there is an eagle's nest on our street in front of 1063. And the roosting tree is in my backyard on the lot in question. So there are two bald eagles and they have recently hatched at least two young eagle-lets. So that's the backstory just for those of you that one of the trees, the trees, the roosting tree that's in my backyard would be removed. And that causes problems. I have a lot more to say. But we'll say it next time when he's here.

Chairman Moriarty: I would entertain a motion.

Member LaPlume: you know, I've listened to these people. In coming in here, meeting after meeting, and the attorney isn't present. Is there? Is it legal for us? Approve a shorter time?

Chairman Moriarty: Yes.

Member LaPlume: He asked for 4 he isn't here, can we give him 2?

Chairman Moriarty: It's within our purview? Yes.

Member LaPlume: Well I suggest we give them 2

Chairman Moriarty: So you want to make the motion then?

Member LaPlume: Sure, I would like to make the motion that the continuance be for two months and not for four months, if that's ok to June 19, 2019.

The Chairman noted that the Board customarily allows a Continuance. Member LaPlume suggested that the length of the Continuance be only two-months, not the four requested.

Motion by Member LaPlume, seconded by Member Vathally.

Member Soraghan: yes

Member Vathally: yes

Member LaPlume: yes

Member Bevilacqua: yes

Chairman votes: yes



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

Chairman Moriarty: And the chairman votes, yes. So the two month continuance is granted. And thank you all for coming out this evening. And thank you for your story.

The Board granted the Continuance on a vote of 5-0, with the stipulation that it be limited to two months.

Continued from the March 20, 2019 Meeting:

3. **Guzzardi Family Trust for 1 Knipe Road (752, 3, 4):** Applicant is seeking a variance, lot area of 19,130' where 22,500 is required, open space of 17.04% where 25% is required, parking set back of 1' where 20' is required.

Comments from Attorney Michael Migliori:

Good evening, Mr. Chairman, members of the board. My name is Michael Migliori representing the applicant, my offices and 18 Essex Street. And it looks like we've misplaced an easel in here. So I put it here, I do believe it was emailed to everybody. In any event, this is just a larger rendering what you've already see, saying. And excuse me, I'll be brief, to briefly summarize what happened last month. Number one, we advised the board that we reached an agreement with a direct abutter Deborah Rogers Thornton, whose property has a drainage pipe that's located on the subject property and we agreed to relocate the pipe grant her any easement give her or her engineer input over the location, screening of any dumpsters, install abrovites. So among other things that agreement in its totality has been submitted to the board, there was a lot of interest about what the building might look like, and what it would be used for last month as well. I sent you all a rendering of what a typical retail building of this size would most likely look like and that's larger version here. With regard to the proposed use of the building, and I recall that I was personally attacked when I said that there were no tenants lined up, and that the site had not been marketed. It being premature, since we didn't have the variances we needed. And since we don't have ownership, I do have the hope the owner of the property here tonight, which I think you were all hoping to see as the King Weinstein. When you wanted to hear from and I'm going to ask to come up now and address the board, to discuss his background for those of you don't know him and discuss the use of site. Thank you.

King Weinstein, 9 Traverse Street:

I've been going by this time site forever, pretty much un-developed apartment neighborhood up just a little ways beyond there is Lincoln Crossing up at Farwood. And previously we got a comprehensive permit from this board to do some additional units at the end of Sterling Lane. When we did it a required a bunch of improvements over on Main Street here from Boston Road up to the waterline and we put a pump station in for Farwood also, which was failing at the time. So very familiar with this and I go to the restaurant next door and I've been looking at this site for quite a while it has never been developed. And you know, I saw it advertised for sale it's kind of a unique shape triangle a lot. It's pretty hard to make anything work there, but it's actually very good location it has very good visibility and traffic count is good. We're pretty easy to get too off the connector and 125 to have good demographics coming from North Andover Bradford, you know, going on for 95. And coming off, I proposed to do a retail approximately one story 3000 square feet, which would most likely be two tenants in their retail tenants that a lot of other retail are pretty familiar with the markets generally reach out to what's called credit tenants, which are more like nationally recognized franchises have chains because they have a lot more probability of success in the long term. And banks have to go to get a loan to buy the land and build a building and do the sewer water. It's kind of expensive. And they want to make sure you have tenants with like a 10 year lease that are qualified financially and otherwise have experience who are not going to go out of business. So it's generally some type of franchise operation. As we propose here, as of date, I've, I've talked to a national Coffee Company Starbucks to look at it and I've talked to one another. The bank was actually a very good bank location in terms of total deposits and how many bags in the area and the growth, which is quite a bit in Haverhill now. So for access people coming and going to work as a franchise. So I can answer any other questions on that.

Chairman Moriarty: Questions? Member Bevilaqua.

Member Bevilaqua: The rendering, hypothetical rendering shows three establishments.

King Weingstein: Yeah, also be about 1000 square feet just from doing market research. Probably the bigger spaces like 1500 square feet each little bit bigger can say maybe three, but I think they're dealing with either

Member Bevilacqua: Do you have a specific thing in mind?

King Weinstein: No

Member Soraghan: I have a question for him or Attorney Migliori, you were here last month you had discussed the landscaping agreement with?



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

Ms. Rodgers.

Attorney Migliori: Yes.

Member Soraghan: And I don't have the site plan in front of me. But the best of my recollection, it was a one-foot strip that wasn't paved in that rear property line, and my question to you is – well I'll go a little bit further. We also talked about parking that was shown in the plans, it was my understanding that we're going to be revisions to the site plan presented to us that showed a landscaping strip at the rear of the property and the possibility of losing some of the parking spaces. I guess, if you need 24 spaces, I'd like to know why.

Attorney Migliori:

Well, I you know, and again, until you know who the tenant is. Some of them are more traffic intensive than others, until we know who the tenant is. We'd like to reserve that we hear you on can you do something and reduce it to 24. If we find out that ultimately we get a tenant t hat doesn't need anywhere near that we'd be happy to do that. And you know, we'd be willing to go on record and say that but without knowing what the tenants needs are going to be, and again, we don't have we don't have a tenant.

Member Soraghan: I understand what you're saying. But let's just go back to the landscaping, is that on her property?

Attorney Migliori: no, the agreement says a buffer will be installed in the rear of the new building on owner side of the property line, such as arborvitae planted the recommended distances and amounts 7-8 arborvitae, emerald green planted ^inaudible. And each three feet from each other and four feet from the Deborah Rogers Thornton property line.

Member Soraghan: Your plan doesn't reflect that.

Attorney Migliori: I know that. The agreement was incorporated was given to the board, we also given her oversight regarding the final plan, her architect or engineer...

Member Soraghan: There's one other component to that, that's the Board of Appeals, I expected a revised plan, I will leave it at that.

Attorney Migliori: (inaudible) Who has this agreement?

Chairman Moriarty: Other comments?

Member Vathally: Mr. Weinstein have you spoke to any other prospective tenants for this property?

King Weinstein: No.

Member Vathally: So as you're presenting that you have nobody ready to go in there.

King Weinstein: correct.

Member Vathally: Three empty spaces.

King Weinstein: Two or Three

Member Vathally: ok, thank you sir

Member LaPlume: I wasn't here last week, ^ (inaudible) a plan of a building, up a little bit bigger ^ (inaudible)

Attorney Migliori: The footprint can't be any larger, you do have a plan I don't know if you didn't get it but it was submitted to everybody, there is a plan. There is a rendering of the building. The building on the site is a 40 foot by 75 foot building 3000 square feet. It can't get any bigger.

Member LaPlume: I don't have the plan with me, maybe because I was not at the last meeting.



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

Attorney Migliori: Everything was submitted

Chairman Moriarty: Other comments?

Member Bevilacqua: It's my understand when I left the meeting last time that Mr. Guzzardi would be present today

Attorney Mirgliori: Mr. Guzzardi cannot answer the questions that you wanted answers to. Mr. Weinstein can, Mr. Guzzardi is the seller.

Member Bevilaqua: But you represent him.

Attorney Migliori: I do, but he is the seller, he doesn't know anything about it. He's got a purchase and sales agreement that says subject to obtaining a variance for building 40 by 75 feet.

Member Bevilaqua: Are you in serious negotiations with Starbucks?

King Weingstein: Preliminary

Member Bevilaqua: Where I live, which is the one - that square area beyond me is is a Starbucks and the traffic is horrendous and the traffic in that area is already horrendous. I know that and we discussed that last time that we that I mean there was – you would need...

King Weinstein: As I said, it's preliminary. They may say absolutely not we have one that close.

Member Bevilaqua: I mean they have a drive through and may have – people go in there and its always going out to Main Street, waiting to get into Starbucks.

King Weinstein: We tried not having drive up and Haverhill is pretty restrictive on drive ups, which is exactly the reason why I wanted additional parking so we can have the drive up.

Chairman Moriarty: We have some individuals that would like to speak in opposition

Stephen Rodgers, 161 Neck Road:

I gave the clerk a map of the, - map of the and if you look at the map that I as I indicated the last time that we're here There isn't one road access. A safe angle, right angle. I mean, it's the stretch of road. It may be posted 35 miles an hour. But we all know that it's 45-50 and how many Different accesses Can you look at any individual time, I just think it's a it's a real safety issue to put something there as congested as it's been proposed. And I don't know, I'm not I'm not an engineer. And I don't know don't pretend to know all the other the other point is, has there been a traffic study to determine what that looks like. Safety wise. I don't know if that's something that needs to be done before.

Something – a plan gets approved like this. But and if again, if you look at the plan that was submitted, and then you look at the rendering, the cartoon rendering that was given of the three unit facility structure they want to put up to my lame and eyes, it looks to me like that's the front of the building that you're looking at the three storefronts. If that's the case, the back of the building needs 20 feet, according to Haverhill's setbacks, and this is only showing 15. But to actually-- one place shows 12 another place shows 15. So that brings that building further into the parking lot. There's already a curb cut, does that affect where that curb cut is currently on Oxford Ave? I just think it's the wrong project on the wrong spot? I guess that's all I have to say.

Chairman Moriarty: Any other people want to talk in opposition?

Richard Lantini, 11 Cross Realty Trust:

We have three properties almost immediately adjacent in the in that same area where this projects proposed. You know, I gave you a memo, one of the major points that I, I made a couple of points there. One is the kind of outlandish number of accommodations, they are asking the board to approve. Generally someone has a house that they want to build near a property line, maybe they have some ledge on the property or wetlands, and they have to be five feet closer. And you know, that's granted, they have a need there. And then that's a reasonable accommodation. But in



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

this case, there's a whole laundry list of accommodations that are required to make the development that they're proposing go through. So that that's one of the real problems. The other thing is on the plan you have, is there a scale listed on that plan?

Attorney Migliori: Yes.

Richard Lantini: What is that?

Attorney Migliori: One inch equals 20'

Richard Lantini: So 1" equals 20 feet. Now there's a there's a state highway there that is listed at 60 feet. And, you know, if you look at the measurements on that state highway, is that the state highway there and 60 feet? That's the plan right there? Yeah, well, if you look at that 60 feet, and then go inside the triangle, and layout 60 feet, you'll see that doesn't match the 60 foot measurements inside the triangle. So I think there's a problem the scale on that plan. And I have there's a couple of pages there. To illustrate the effect of that problem. The you take one of the areas where 60 feet syndicated on the State Road, you go into the plan, and the hundred and 25 foot available on the site is really 115 feet.

Attorney Migliori: So 142'

Richard Lantini: I am talking about the width of the state highway

If you look at the plan, the state highway is immediately adjacent to both sides of the triangle, two sides of the triangle. And it's listed as 60 feet. If you compare that distance to the site plan, you'll see that the site plan is a different scale than the highway next to it. So that allows a greater amount of space indicated in there. And there really is the boundaries on the two state highways determine this amount of land, you've got to develop. So I just like the board to take a careful look at that. And, you know, we're not opposed to any project in that area. But that's a big problem. And the curb cut onto onto state highway 125 is I would think the state of Massachusetts is going to look at the other curb cut on Oxford Avenue. And they're going to indicate that that's the one that you're going to use. There won't be curb cut on the state highway. Oh, it's just just a think I think it's an appropriate plan for that site.

Sean Scharneck, Neck Road:

I have a question, as they're here before you for I look at it as three to four variances for one project. And I guess I have to ask why. I think you know, you're you're buying a piece of property your intent is to buy a piece of property. You know what, that property is worth? the property's been vacant for quite some time. But yet, they want they want for three to four variants, and they come before you for three to four variances. And I guess that's my question is why the variance for a hardship now for monetary gain, and it looks like that's, you know, what's the hardship of buying, you know, buying this property is that a hardship? Where's the hardship?

Chairman Moriarty: Other people want to speak in opposition?

Betty Rogers, Neck Road: And I live on Neck Road and travel to Knipe Road Oxford Ave roads to and from work several times a day. This is a very busy intersection that has received numerous accidents resulting in two fatalities in the last few years, with one being a little over a year ago. In my opinion, the plan submitted this plot of lot is much too ambitious for what the lot can handle. A 3000 square foot building is simply over kill. The building setbacks are too small according to code. According to his plan, the rear of the building has a 15 foot setback and it should be 20 feet to grant the variance asking for one foot step back as opposed to the 20 foot required will invite more opportunity for accidents to take place. You would be creating more blind spots while entering the already busy road. I urge the board to take this into serious consideration. What is being proposed for the lot size is more than the lot can reasonably hold. The building is to large in there are far too many parking spaces being crammed into a lot that does not warrant it. I also wonder if there has been a traffic study done. Where proposed curb cut on 125 ^ (inaudible) is also shown. The last thing I want to mention is a conflict of interest with the potential landowner also being the engineer and surveyor on this property. Thanks for your time and consideration.

Barbara Rogers Scharneck, 46 Neck Road: I'm here tonight to express my concerns with a proposed building size as stated in the previous meeting. This plan has many flaws, which to date none have been addressed. As asked from the March meeting. The size of the proposed building is not appropriate for the size and shape of the lot like trying to cram a 3000 square foot. Building into this lot multiple variants have been requested and still this building setbacks are not to code. And they have not been noted in the



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

variance request. When further information was requested from the developer, a stock photo of the proposed building was submitted showing the front of the building was storefront. The building is longer than it is wide which also shows the intended use of the building. This being the information presents the back of the building does not have the 20 foot requires step back. This is more proof that a building that is too large for the area is trying to be manipulated onto the lot.

Attorney Bob Harb on behalf of Deborah Thornton Rogers: One comment. Sure remind you very hard. I was here last time representing Mrs. Rogers. And as Mr. Migliori already said, the agreement we submitted part of that agreement says if this board were to grant the variances it would be subject all those conditions in the agreement within the granting of the variance I just wanted to bring that to your attention. nd Mr. Migliori and his client agreed to that.

Chairman Moriarty: Thank you very much for sharing. Attorney Migliori would you like to comment on the points made?

Attorney Migliori: So the hardship lies in fact that we've got a very odd parcel -triangular in nature, and on its own doesn't have enough square footage to meet cope. Those are two significant hardships. If anybody were to read, you know, case law on when variances are granted, when they should be granted. To me find that this is a textbook variance that should be granted based on the ^ (inaudible)dimensions of the lot. You know I really think the variances are minor in nature, thank you very much.

Chairman Moriarty: Any more questions from the Board?

King Weinstein: 'll just answering a couple of those items. Just to set back to them. It doesn't mean it doesn't mean that whatever, I can almost guarantee the board that we'll meet it because we have Mr. Tom Bridgewater there that will guarantee you that he will not give me a permit for anything that does not meet code. Secondly, it was granted, this is like only the start of the process, we still have to go to the to the city engineer, the sewer department, the water department site plan. Yeah, the whole site plan approval and there's nothing going to be rushed through or put there that's not safe, that doesn't meet all codes and up to our standards in there. And I'm sure traffic study and other things will be involved in that.

Member Soraghan: I agree, with Attorney Migliori you do have extra hardships there that reflect some of these agreements are is accurate. My feeling is if you're giving a 7' planting strip on the real lot line, everything's going to push forward I don't understand how you're going to plant the arborvitaes and have the adequate circulation behind that building, I'm just looking for an you know, I just didn't have any idea.

Attorney Migliori: The only thing that plan doesn't have I guess is the planting strip that's in the agreement that you have.

Member Soraghan: But there's a certain width to that, you're not going to plant a 7' arborvitaes in one-foot loam.

Attorney Migliori,: The agreement called for both parties to resolve any of those issues, both parties, we're going to get together and determine these items. That's it.

Member Soraghan: Is/if there is going to be some resolution will it, is it going to be shown on a plan? Is it that difficult to show it on a site plan? You should ask your engineer to do that, and then provide us with a revised plan, that's what I thought we were getting tonight. I don't have the old plan as I thought we would get new plans.

Attorney Migliori: The only difference to the plan would be planting strips along the rebound

Member Soraghan: But there's a dimension to that point

King Weinstein: I totally agree with you. But I mean, we have to have the butter and us agree to the width as well as a city and the city knows that the conditions are not going to prove it without it. You can't develop it and didn't do all the plans. I just think of it tonight until we know what other concessions and constraints they're going to put on the whole thing. I can come back to the planning and for approval with that on there.

Member Soraghan: I would like that, I would like that before I make a decision and a revised site plan, before I make a decision.

King Weinstein: Because our plan may change 10 different times. I mean, if you want to say we need it 4' or whatever the footage is, you want for we can do it.



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

Member Soraghan: ^ (inaudible)

Attorney Bob Harb: I'm a little confused. Because I think the agreement spells out the width how many feet it needs to be from the sideline. And I think that would be nice. But with Mr. Migliori already said he had to work that out with us. But I think it's pretty specific as to how far it should be. So I think he could put that on based upon the agreement. Those are still our numbers as far as the others issues Mrs. Thornton Rogers will speak.

Deborah Thornton Rogers: no one has spoken to me about any new plan and I was under the impression and my attorney contacted the other attorney several couple times throughout the month to see what the new plan was going to look like. Because I was under the impression that the agreement would cover the arborvitaes would cover the pipe which hasn't even been mentioned. That's there that's not even on showing on your plan. And nothing new has been presented. And it was specifically asked the way I heard it from the board that this information be brought forth. I reached out to Attorney Harb he reached out to Attorney Migliori got a not so nice email back from him. What don't you understand about this? That's the plan. Well, that's not the plan because the plan doesn't have what it's supposed to have in it. And that's just a pacifier on plan. So we need to see these things that were promised.

Attorney Migliori: The problem with the agreement as it pertains to removing the existing terrain that that doesn't have an easement there and replacing it is something that doesn't get done quickly takes the city engineer his involvement and so my understanding of the inaudible work with the abutter her engineer to come up with the best location you know, for all parties and something that she had to find acceptable. I mean, it just wasn't going to get done from last month to this month.

Chairman Moriarty: This is my opinion okay. It seems like we're at an impasse seems like both attorneys and abutter need to have another conversation here, and certainly one of our members is we'd like to see a revised plan we do not have all of that tonight and I agree that this has to go to site plan review and everything else but it's always been this My position is to not kick things down the kick the can down the road we can help it if there's something that we feel we need to see before we can make a take a vote I think that's reasonable so in given the back and forth that we've seen we could keep going back and forth on this for quite some time. We've got a lot of people here a lot more items to go so I don't know how the rest of the board feels but I certainly would entertain a continuance

Attorney Bob Harb: Mr. Chairman yeah, we're not looking I don't think because I went over the agreement with Mrs. Rogers we're not looking for the pipe relocation but we had asked last time to have the plan at least show the existing pipe maybe a note pipe to be relocated per agreement.

Michael Migliori: A continuance, that would be my client says he believes he can get all that done in one month? I thought it would take longer. Continue to May 15, 2019.

The attorney for the applicant noted that the applicant has reached an agreement with the abutter regarding the drainpipe and the screening, as well as the location and screening of the dumpster. No specific tenants for the proposed building have been selected, although the owner has had conversations with a few retail businesses. The owner anticipates that the potential tenants would be "credit tenants" probably from national firms, such as Starbucks. The presentation included a sample rendering of the proposed one-story building, which will be 40 X 75 for a total of approximately 3,000 square feet.

Q. The rendering shows three tenants. Is that the number you expect?

A. It could be three or two, given the limited amount of space.

Q. Do you require 24 parking spaces?

A. Won't know until the owner enters into an agreement with tenants.

Q. What will the landscaping involve near the butter's property?

A. Some type of shrub on the applicant's property, not on the abutter's property.

Q. One member noted that he expected a revised plan. Why no new plan?

A. The plan has not been revised.

Opposition:

>The site has no real access that is acceptable and safe.

>This is the wrong project for the wrong site.

>The applicant is asking for a laundry list of accommodations. Too many.



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

- >The curb cut will have to be on Oxford Street, not has shown on Rt. 125.
- >The applicant wants 3-4 variances. Why? What is the hardship?
- >The site has a one-foot setback, where 20 feet is required.
- >Has a traffic study been done?
- >The building setback doesn't meet code.

Rebuttal:

- >The lot is 19,130 where 22,500 is required. Not that great of a difference.
 - >This is a very odd triangular shaped lot.
 - >The variances are minor in nature.
 - >This is just the first step in the process. Still need site plan review.
- A Board Member again asked for a revised plan that would show the width of the planting area. The abutter and her attorney spoke, noting that they still don't have a complete plan.

The applicant requested a Continuance and waived the notification period.
Motion by Member Soraghan
Seconded by Member Vathally

Member Soraghan: yes
Member Vathally: yes
Member LaPlume: yes
Member Bevilaqua: yes
Chairman votes: yes

The Board granted the Continuance on a vote of 5-0

New Business:

4. Glenn Fogarty for un-numbered Linwood Street (411, 138, 5): Applicant seeks a variance for lot frontage of 32.5' where 150' are required and lot mean width of 24.38' where 112.50' are required in an RM Zone.

Attorney Bob Harb: Chairman, members of the board for the record my name is attorney Bob Harb with offices and 17 West Street, Haverhill with me is Mr. Fogarty and with him is his mother will go have a few words to mention n to the board. As you can tell from the brief and the plan filed. It's a request for frontage waiver and a mean lot width which relates to why we need the mean lot width because we don't have the required frontage. This is a very unique remaining law that came from a parcel. It's a 10 times the required square footage in area. And if you say the frontage and mean a lot with really the same kind of variance, we're really only asking for that one type of a variance, because we can't make the lot any wider. But Mr. Fogarty had gone around the neighborhood talked to some of the neighbors in their concerns were if we were going to disturb any of the area next to them, they of course, the neighbors always liked them land undisturbed. So we did put in our petition and on the plan that there's a non disturb area. So essentially, almost all the area except for where the house is going to go in the driveway to get in will remain the way it is today. If there's trees there, they'll stay. It's going to remain undisturbed. For the over 200,000 square foot lot. As I said more than 20,000 is required. We just can't get the required frontage, because there's no more land to get frontage if we don't get a variance for Mr. Fogarty, who's a policeman in town and wants to build a house for himself, a very small cape type house, not a giant house on a big lot on a mansion, and he just wants a small cape. If we don't get these variance, then the lot will remain on buildable and it will just stay vacant. Knowing the concerns of the neighbors. That's why we added and Mr. Fogarty agreed we added the know disturb on the plan. And if you look at it, you may have originally been surprised that most of the whole lot in the back hundreds of thousands of square feet, we're going to leave not disturb undisturbed. The house it shows the location of the house small cape, and then we're going to have the road coming in the Mr. Forggarty he talked to the fire department and they were not against the petition, but did say can you would like you to build the road or the driveway to our specifications. He agreed to that. And I put that in my petition. They also asked Can you sprinkle the house, he's agreed to do that to sprinkle the cape when it's built. The lot has been this way since the plan was approved. I believe I went back a number of years and it's nothing that he's done. And it's basically he'd like to build a small cape for himself. So he can be closer to his in Haverhill and as a Haverhill Officer serving the community, I think it's appropriate that we allow him this opportunity to have a small house in town, so he can live here serve the city. And it's not going to be a detriment to the neighborhood because I've tried to consider what all their issues might be about, or you're going to tear down the trees, you're going to do this you're going to do that is not going to do any of that in that whole area of the lot only disturb what he needs to come



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

in with the house. As I said in my brief, he's not the person that created this condition, but the shape. And the frontage of this a lot is unique. I can't get any more frontage. If we go by a strict application, we won't be able to do anything with this lot. You won't be able to build anything there. It's not his actions that caused this. I don't know how it can hurt the public good be interesting when the neighbors speak, to have a small cape on the lot with all this undisturbed area. And we're going to ask you to sit to find for him for this waiver and as I said just frontage and width the width relates to how much front end you have. That's why we had to ask for the width. But as you can see, if you go back, the lot opens up like crazy once you're in a few hundred feet. So if that was the frontage, we wouldn't need a width. But the width is the depth of the property, which is the required hundred feet. But we have more than 100 feet. I believe we got over 500 feet depth. I just don't have frontage. And all he wants is a waiver to put in the small house, which should not disturb the neighborhood. Now I do listen to my wife sometimes says I don't. But I was listening. I heard somebody mentioned wetlands. Yeah, there's wetlands he has to go for wetlands order condition, he's going to have to comply with whatever conditions the wetlands commission puts on them. So this is as another petitioner said, this is just the start you still gotta go site plan review all for small paper on a 200 plus thousand square foot lot. I really don't know what else to say Mr. Fogarty would like to mention something I'm not sure as mother wants to speak because she's very nervous about speaking in public. But we'll start with Mr. Fogarty. He wanted to make a presentation to you. Thank you.

Glen Fogarty: For the record, my name is Glenn Fogarty I currently live at 1 Green Leaf Circle Merrimack Massachusetts. I just want to give a little background on myself. I was raised and educated in the city of Haverhill, I moved into Patricia and drive with my mother and my father was in new development of beautiful development built in the 80s. I remain there. I worked as a construction worker until I was hired on a police department in 1997. And 1997, I guess to put a time stamp on that I have brown hair, I was skinny and James Rurak was the Mayor in James Rurak made me sign an agreement if I wanted to work as a police officer that I was going to remain and keep residency in the city. And I did that, since then that that clause had been lifted. I like to live in the city of Haverhill and I've lived here for many years 98 I got married. Me and my wife remained in a Haverhill until we bought a house on Edwards Court, which is across the street from my mother's house. It's about 100 feet away. It was quite convenient when we had my son Ryan, we both work nights for the city. So childcare was an issue Christmas Thanksgiving, holidays when we're working it out and others are enjoying themselves. As time went on, me and my wife was divorced. So through the divorce, it was the best interest to have my son stay at the at the family home on Edward Court, it didn't make much sense to up the apple cart. So since then, I purchased a house in Merrimack and I knew that was a temporary arrangement I wanted to move back to the city it I'm rooted here, you know, rooted in the city, I enjoy being a resident here I enjoy the ability to vote to be involved in many ways. So the opportunity of this property come up and it was it was good because it was a it was a location at about 1000 feet away from my mother's house. And this becomes important as time comes on, my father wasn't able to attend tonight. And he has some health issues that are that are arising, they're not going to get any better at time. My mother needs my father's at certain times needs need some help. And I and I go overnight and I do what I can do. He's a big man, at times he falls by my mother can't my mother cant pick them up. To give you some history on my father, he served the city of Lawrence for 32 years as a firefighter. So back in them days they want in the in the mill buildings with a pack of cigarettes, instead of a scott pack, and has caught up to him amongst all the chemicals that he's breathed in through the years and being trapped in buildings. So those are some of the some of some of the reasons that he's having some problems now. And I don't know if you want to come up to speak mom I know it's hard for you. Thank you.

Patricia Moffet: My name is Patricia Moffet and I live on Patricia Ann Drive as Glenn said, my husband was a firefighter for 30 years. Or better. And he has a lot of issues now. Occasionally, he's the last time he felt he split his head open its hard for me to I can't lift them. I mean, he's a big Man he's 6'4" and it's so good if Glenn lived close by and family members, I have none anymore. The only one I have is Glenn and my husband, everybody else is deceased. So it's good if Glenn lives close to me, he is there helping out. So I don't know. But I guess that's all I can say.

Chairman Moriarty: Thank you very much. Any comments and questions from the board before we

Member Vathally: How long have you owned the property? So he is purchasing this property under agreement with the intent to build a home and live there.

Attorney Harb: He doesn't own it. It's under agreement in the application. Like I say he didn't create anything. He just wants to build a little home.

Member Brown: ^ (inaudible)

Glenn Fogarty: you will see a 2x4 wooden fence, there is a shed in the back



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

Member LaPlume: can you do us a favor, can you remind your clients when they purchase something, try to stake it out on to something I had the same problem. I couldn't find it. One of the neighbors told me where it was. So I saw the fence going down over here. So I'm you know, just a little reminder, if you do that, it'd be great.

Attorney Harb: I will, thank you.

Member Soraghan: If you could remind the engineer we would really appreciate like a location plan on the on the site. You know, every other engineer does it for some reason. Merrimack does not, I don't know why.

Chairman Moriarty: We'll hear from opposition. Your name and address.

Patricia Graham 137 Golden Hill: Good evening. I'm Patricia Graham. I live at 137 Golden Hill Ave, this is our second time coming up against the development there. The first one didn't pass either. It. We're in opposition and I'm representing 39 homeowners on Linwood Street and Golden Hill Ave. that oppose it. It does not meet the local ordinance were 150 feet of frontage is required. This parcel has only 32.5 feet. The lot mean width of 24.38 feet, where 112.50 feet is required. This is we have huge concerns. They said they would leave areas alone it is all wetlands. There's only a very small buildable area. Let's see. So we do have the concerns over the impact of the wetland wildlife and changes that could cause to the abutting properties. We disapprove of this, of this project going forward for the reasons that I just gave to the clerk and I do have a petition signed here with almost 40 homeowners. And as well. This is the second time we've been up against this.

Chairman Moriarty: Anybody else? Anybody else wants to speak or is that everybody?

Lori Peterson, 65 Linwood Street: I'm at 65 Linwood Street, I'm an abutter. If you go back to the reason why this exists, the original developer didn't plan well. And my mother were back in the house we're the abutter next to the one of the two houses that he built. He never addressed the water shed problems that my mother presented, he didn't care. Her garden was flooded, her basement was flooded. There's a lot of water problems on Linwood Street. Part of the problems come from natural springs that run down from Golden Hill. Sorry, from Powerhouse Hill, there were new homes that were built up there. I've been there for 16 years. There wasn't always water on Linwood Street. Even in the winter, if you drive up Linwood Street that's when you can see the water running down the hill causes ice flow problems is all kinds of slippery issues. There's just a lot of water on Linwood Street. Even now, if there's a rainstorm, the water runs into our driveways, runs across our lawns. And I just because you're not going to disturb part of the woods doesn't mean that there's not going to be a new water flow problem for the abutters. I just don't understand how you can put in a long driveway and not address all of the water. That's it just doesn't make sense. And I respect the fact that he wants to live on Linwood Street. But we just sold two houses there. If you wanted to live on Linwood Street, he could have bought a house there already. So there are other options, I guess, is what I'm saying is not just this one.

Attorney Bob Harb: Thank you just a couple of points. One, regarding the prior petition, I didn't handle that. And I understand from reviewing the record it was withdrawn. So the board didn't make a decision that the prior one. Secondly, as Ms. Peterson said, perhaps the development didn't well plan it – and that this isn't that developer. This is a gentleman that just wants to have a small cape on a very large land. As you know from other petitions, the drainage, the wetlands, the flow, the waters act that limits any additional runoff from the property, those will all be covered by conservation in the city engineer. Those are the issues of the neighbors, I believe they'll all be protected by the rest of the process, which means he has to go through site plan approval, the engineer has to certify there's no additional run off. And that would take care of any streams are run off that might be caused by any small development in this large lot. So I don't think the neighbors concerns are incorrect about the prior developer and about there is wetlands, and they want to make sure they're protected. But it has been as in the past, well, the City Engineer the Conservation Commission, the certifications that need to be done about no additional run off, will protect them for that issue. And the concern of Ms. Graham about what we were asking for well, yeah, we don't have the 150 feet frontage. That's why we're here for. But I appreciate your attention.

Chairman Moriarty: how much of that is wetlands?

Attorney Bob Harb: So it's marked on the large plan that was drawn by Merrimack Valley Engineering, okay, that actually and then he said this was delineated by excuse me from making a noise, for wetlands shown on this plan would delineated by North Environmental in the fall of 2008 those are where you see the flags and the little looks like grass. So that's why there's a line that says the area to remain undisturbed. It goes into the dotted line, which is 25 feet from where the wetlands are for a "no" disturb area. And then there's also a 50 foot "no" build area. These are all requirements by the Conservation Commission, the 50 the 25. And then you're going to see where the house is, it's away from that wetlands



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

buffer and where the area is. So as I mentioned in my presentation, it's just coming up this small driveway, and the house in and garage, you're going to go probably what the abutter says, and probably the uplands there and the rest will remain undisturbed. And these would have to be validated by the Conservation Commission because it was decided to come to you first instead of going to the conservation because you might want to put some conditions or changes. So we still asked to go to conservation for full a full order of conditions. And for the Conservation with Mr. Moore and the board to delineate. Yes, we agree that's where the wetlands are. Thank you.

Member LaPlume: We were asking about scale. The width it's buildable is 80 feet wide by about 120 feet.

Karen ^ 125 Golden Hill Avenue: I have lived up in Golden Hill Ave for over 40 years. Probably for the first 20 years we lived there. We never took a drop of water and[^] inaudible and then they build up on Powerhouse and up Golden Hill Ave and change the whole water flow up there. And we have a lot of underground springs. Now I had to put in a pump, a permanent pump in my cellar. So if you don't know that area, you don't understand how much water is up there. People think because you're on a hill. You can't possibly have water. Well, our backyards are so wet in the spring. And because we've had such a wet winter, if you go look at that property out there, that property is floating. Caroline's pond is overflowing. Where do you think this water is going to go? They built Patricia Ann Drive. And my kid used to ice skate on a pond out there. When they built on it, where do you think water went it went further down Golden Hill Avenue in people's backyards. You just can't allow them to keep building on land like this. I don't understand how can you can give them a variance for this. And I feel bad for Mr. Fogarty. I understand his issues. And I understand he didn't create this. But that's the problem of the builder that started this whole project, and he doesn't have to buy into it. Like I said, two houses on golden Hill just sold. There are two more estates going up for sale on Golden Hill and Linwood. There's a house already for sale on golden Hill, and there's the house for sale on Patricia Ann Drive. So why would you go through all of this? What is the purpose? I just don't understand. And I appreciate your time. Thank you.

Sean Peterson 65 Linwood Street: So we've talked about where the water is going to go, I'd like to talk about where the water is going right now, if you look at the when an average rainy day or the day after you see a river going down our street right now. And it's only half the water, the other half is going down the proposed driveway. So all that needs to happen is to put a berm up there, and we have twice the water going down the street, with the recent paving of our street, it went up another inch, I have to build another berm at the end of my driveway, just to keep it from washing out my upper driveway, and my lower driveway and my neighbor's driveway. So if you double that water, it's a hefty come up with it even bigger, berm. So, you know, each time somebody comes to talk to me about this, I asked, What are you going to do with the water that's coming down the street that's going down there, you know, you either the first guy said, Well, I'll just tilt the driveway, well, that puts it into my neighbor's yard, that's a lot of water to go into someone's yard. I don't know, if it's an interest in putting a sewer pipe up there, like, you know, it's on the side of the road. I don't know if that's even applicable, you know, running water down the street that way. But you know, that's my concern is just as a lot of water washing our driveways now, if we redivert this, so it doesn't go into his driveway, which I think is reasonable, not wanting all this water to come in my house either. You know, all you have to do is put a berm up and now I get twice the water down my street. That's higher. Thank you.

Attorney Bob Harb: I appreciate what this gentleman just said. But he talked about two times more water coming. But as I mentioned, the Water Act says we can't put any more water off the property. I don't go out before the property and see how much water is coming. But the engineer will validate that no additional water will flow off of it. And I'm sure they'll do whatever they can to lessen it. But I can't guarantee that because the state law just says they have to prove to the city engineer that there's no additional run off no additional water going. And you can always work with the city engineer. I don't know what's in the street to put a drain or a pipe or anything. Like so I can't promise you that. But I can promise you that on site review and the application for not only the wetlands ordinance order of conditions, but also site review with the city engineer he reviews all that about run off. So we're not going to impact any more runoff, and that's by state law. And I'm sure that the building inspector can validate.

Chairman Moriarty: entertain a motion

Member Soraghan: I make a motion we approve the variances requested for un-numbered Linwood street lot 138.
Seconded by Member Vathally:

Member Soraghan: yes
Member Vathally: no
Member LaPlume: yes



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

Member Brown: Yes.

And the chairman votes Yes.

Member LaPlume: Can we put a stipulation in, for a perk test to be done to calculate septic system and foundation

The lot in question has 10 times the required area, but has a very small frontage. The frontage cannot be altered, because of the abutting lands. The odd shape of the lot and its frontage issue where not created by the applicant. The applicant wishes to build a small cape there, so that he is close to his mother, who resides on Patricia Ann Drive. Without the frontage variance, the lot cannot be built on. The fire department requested that the access road be built to department specifications and that the house have installed sprinklers, which the applicant agreed to.

Opposition:

- >Most of the land is wetlands.
- >There are severe runoff problems when it rains. Houses have flooded basements.
- >The long driveway would create water problems.

Rebuttal:

- >The drainage, wetlands issue, and water flow will all be addressed when meeting with the City Engineer and the Site Plan review.
- >The law requires that any new development cannot create additional runoff problems.
- >The proposed house will be away from the wetlands. The non-wetlands area is 80 ft. X 120 ft.

The Board granted the Variance on a vote of 4-1.

5. Boston Hill Fence LLC for 977 Amesbury Road (439, 8, 3 & 3A): Applicant seeks a variance for one sign double sided with 48 square feet where 15 square feet are allowed in an SC zone. Applicant seeks a finding that the change of use from the current nonconforming commercial use as an automotive core recycling business, with outside storage, and no retail sales, hours of operations for office and warehouse Monday through Friday 10AM to 6PM, no subleasing or renting of space to anyone else in the building, and no storage of gasoline, oil or any hazardous materials, to a commercial use as a fence and snow plowing business with garage to provide repair of their company vehicles, with wholesale and retail sales, hours of operation from 7AM to 7PM Monday through Saturday, except during snow operations, and with outside storage is not substantially more detrimental to the neighborhood or environment in which it is sited than the existing commercial use.

The applicant is seeking a Finding for Use Variance and a Variance for a two-sided sign. The current business is an automotive core recycling company. The applicant wants to establish a fence business and a snow plowing business. A question arose about storage of salt, which is not allowed in wetlands areas. The applicant would rather store the salt outside; however, it must be on concrete pad, with sides that prevent salt from going on the ground. A separate shed might be required.

Q. How many vehicles will be onsite?

A. Three snow vehicles and maybe four vehicles for the crews installing fencing.

The Board granted the Finding on a vote of 5-0, subject to meeting with the necessary departments with regard to salt storage on the property. The Board granted the Variance for the two-sided sign on a vote of 5-0.

6. Bradford Unlimited Corp for 261 Hilldale Avenue (526, 1, 2): Applicant seeks a variance for lot depth for lot 2A of 83.4' lot 2 of 93.7' and lot 2D of 97.0' where 100' is required in an RH Zone.

The area is considered by the City Assessor as a single lot. The applicant proposes to demolish the existing house. The new lots meet all zoning requirements, but depth. Member LaPlume noted that the builder has a strong reputation for building excellent dwellings.

The Board granted the Variance on a vote of 5-0.



Haverhill

Board of Appeals
Phone: 978-374-2330 Fax: 978-374-2315
lpatel@cityofhaverhill.com

7. Viewpoint Sign & Awning, OBO Planet Fitness for 371 Lowell Avenue (569, 2, 3): Applicant seeks a variance, per by law, buildings in the CH zone are limited to one (1) 80 SF wall sign, we are proposing three (3) new wall signs a) east elevation, 150 SF, b) south elevation, 150 SF, and c) west elevation, 62.3 SF. b) south elevation sign non-conforming pre-existing sign no actual street frontage c) west elevation non-conforming pre-existing sign, no actual street frontage.

The applicant is establishing a Planet Fitness business on the site of the former Theater. The building will be expanded by 5,000 square feet. The Applicant is requesting signs to rebrand the site. One of the signs will be 150 square feet, because of the need to use 30 inch letters, which wouldn't be seen on a small surface area. The sign on the rear of the building will be illuminated. The Building Inspector noted that, since that sign will be facing the highway, the applicant might need state approval. The Building Inspector will research that and notify the applicant.

Q. Will the existing free-standing sign be used?

A. Not planned for at this time, but would come back to the Board for approval if the applicant decides to use that sign.

Comments from Dorothy Charest, 61 S. Chase Court:

Had questions/concerns regarding a sign on the state highway, applicant will be in close contact with her regarding the sign.

The Board granted the Variance on a vote of 5-0.

8. Giri Haverhill, LLC for 401 Lowell Street (569, 2, 2): The Applicant seeks to re-apply for previously approved BOA Dimensional Variance and parking relief that expired. Floor Area Ratio: 67% where 50% maximum allowed; building coverage of 80% and 20% open space where 25% minimum allowed. 1 proposed loading dock where 2 required in CH Zone. Applicant further seeks dimensional variance for building height of 57.6' where 40' is allowed and 5 stories (building) where 3.5 stories (building) allowed: 150 parking spaces where 163 allowed.

The variances requested by the applicant were previously approved by the Board. However, the work has yet to be done, and the variances have Lapsed. Variances now requested are largely the same, with one change. The applicant is requesting a height variance of 57.6 feet, where the Board previously approved 40 feet. The applicant has conducted a traffic study, which raised no concerns about traffic issues. The room count has been reduced from 126 rooms to 123 rooms. In addition to the hotel, there will be a small retail space within the footprint of the building.

Comments from Dorothy Charest, 61 S. Chase Court:

Had questions/concerns regarding traffic, applicant will be in close contact with her with the build out of the hotel and any questions she may have during the process.

The Board granted the Variances on a vote of 5-0, applicant will forward the traffic study that was conducted for the City Engineer to review.

9. Michael Della Paolera for 2 Federal Street (521, 318, 2-2): The Applicant seeks to re-apply for previously approved BOA Variance that expired. Applicant seeks a special use permit variance for 2 family dwelling to be allowed in CG Zone. Lot area 5000 sq. ft where 9,600 are required lot frontage of 62.23 feet where 80 feet are required, lot depth of 79.43 feet where 100 feet are required and a side yard set back of 7 feet where 10 feet are required.

The previous Variance has expired and the applicant sees to re-apply for a Special Permit for use Variance.

The Board granted the Variance on a vote of 5-0.

OTHER MATTERS:

Approval of minutes for the March 20, 2019 meeting. The Board approved the Minutes of the march 20, 2019 meeting.

-Adjourn-