

Zoning Board of Appeals Minutes

July 20, 2021

**“HYBRID” MEETING HELD IN PERSON IN MEETING ROOM 3 A/B AND
VIRTUALLY USING GOTOWEBINAR PLATFORM**

Present: Elisabeth Garber-Miller, Chair; Darlene Pruitt, Clerk; Eric Correira, Matthew Cummings, Philip Shannon; Associate Members Ryan Maxwell and Matthew List

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1. Zoning Board of Appeals Meeting called to order at 7:30 p.m.

2. Variance Public Hearing continued – Sign – 65 Copeland Drive – Poyant Signs

The chair reopened the public hearing on the application of Poyant Signs on behalf of CGMA Mansfield LLC is for a Variance from Zoning By-Law Section 230-4.7 (2), Freestanding Signs, allow a 63.92 square foot, 20-foot tall freestanding sign where a maximum of 32 square foot, 15-foot high freestanding sign is allowed at 65 Copeland Drive (Assessor’s Map 21, Parcel 110) in the Business 4 (B4) zone.

The following documents were introduced at the public hearing:

- Copy of public hearing notice, which ran in the [Mansfield] *Journal-News Independent* on April 23, 2021 and April 30, 2021;
- Application for Variance, filed with the Town Clerk’s Office on March 30, 2021;
- “Proposed Sign Location 65 Copeland Drive” plan dated June 24, 2019, prepared by DePrete Engineering;
- Sheets 1B.1 and 1B.2 of sign renderings “Carpionato Properties 65 Copeland Dr. Mansfield, MA 02048” sign renderings dated February 15, 2021 and revised Mach 19, 2021 and June 15, 2021, prepared by Dion Signs.

Attorney Jack Jacobi explained the revised sign plan, which reduces the size of the sign from 63.9 square feet to 54.4 square feet, and reduces the height to 15 feet. The 15-foot height complies with the by-law and no longer needs a variance.

Board Comment

There was no board comment.

Public Comment

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As with any public hearing we ask you to be respectful of the Board members and the other residents who are making their comments by patiently and quietly waiting your turn. Thank you.

There was no public comment.

Ms. Garber-Miller closed the public hearing.

Motion: To approve the application of Poyant Signs on behalf of CGARBER-MILLERA Mansfield LLC is for a Variance from Zoning By-Law Section 230-4.7 (2), Freestanding Signs, allow a 54.4 square foot, 15-foot tall freestanding sign where a maximum of 32 square foot, 15-foot high freestanding sign is allowed at 65 Copeland Drive (Assessor's Map 21, Parcel 110) in the Business 4 (B4) zone in accordance with the "Proposed Sign Location 65 Copeland Drive" plan dated June 24, 2019, prepared by DePrete Engineering; and Sheets 1B.1 and 1B.2 of sign renderings "Carpionato Properties 65 Copeland Dr. Mansfield, MA 02048" sign renderings dated February 15, 2021 and revised Mach 19, 2021 and June 15, 2021, prepared by Dion Signs. (Cummings-Shannon)

Mr. Shannon said he thinks this is a better plan than the original

Mr. Correira said he appreciates the applicant working to address the board's concerns about the size and height.

Shannon –In favor

Correira- In favor

Cummings –In favor

Pruitt – In favor

Garber-Miller – In favor

Five (5) in favor. Zero (0) opposed. Zero (0) abstentions. PASSES

Motion PASSES 5-0-0

3. Variance/Finding Public Hearing – Front and Side Yard Setbacks – Pergola Roof – 254 Chauncy Street – Cibo Matto

The chair read the public hearing notice for a Variance/Finding from Zoning By-Law Section 230-4.2.A, Front Yard Setback and Side Yard Setback, for the construction of a roof over an existing pergola resulting in a 6.13-foot front yard setback where 30 feet is required and a 10-foot side yard setback where 20 feet is required at 254 Chauncy Street (Assessor's Map 20 Parcel 156) in the Business 4 (B4) zone.

The following documents were also introduced at the public hearing:

- Application for Variance, filed with the Town Clerk's Office on May 12, 2021;
- Copy of public hearing notice;
- Plans titled "Proposed Roof Line at No. 254 Chauncy Street Mansfield, Massachusetts" dated May 5, 2021, prepared by RIM Engineering Co., Inc.

Owner Peter Kuplast explained the plan to place a roof over the existing pergola at the front of the building to make it more comfortable for customers.

Ms. Garber-Miller asked if the sides of the pergola would be enclosed; Mr. Kuplast said they would not be.

Board Comment

Mr. List asked when the existing pergola was added; Mr. Kuplast said it was installed about five years ago. He said he had not wanted to cover it until the pandemic, but people want to eat outside more often now, so he would like to cover the tables.

Public Comment

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Rick Rosemark, 9 North White Pine Lane, said he is in favor of the design, it will help the restaurant's curb appeal from Route 106 and he thinks it should be approved.

Mr. List said the building itself is pre-existing, non-conforming.

Ms. Garber-Miller closed the public hearing.

Motion: To approve the application of Peter Kuplast for a Variance/Finding from Zoning By-Law Section 230-4.2.A, Front Yard Setback and Side Yard Setback, for the construction of a roof over an existing pergola resulting in a 6.13-foot front yard setback where 30 feet is required and a 10-foot side yard setback where 20 feet is required at 254 Chauncy Street (Assessor's Map 20, Parcel 156) in the Business 4 (B4) zone in accordance with the plan titled Proposed Roof Line at No. 254 Chauncy Street Mansfield, Massachusetts" dated May 5, 2021, prepared by RIM Engineering Co., Inc. (Cummings-Shannon)

DISCUSSION

Ms. Garber-Miller said this is in the Business 4 district, which is a gateway to Mansfield. She said having a nice, unique restaurant adds to the character of the town. She said the outside seating it behind a fence, is nicely landscaped and presents an attractive oasis.

Mr. List said there is no other place on this site to locate outdoor seating.

Mr. Correira said the roof will be an improvement over the tarp over the pergola now.

Cummings – In favor
Correia – In favor
Shannon – In favor
Pruitt – In favor
Garber-Miller – In favor

Five (5) in favor. Zero (0) opposed. Zero (0) abstentions. PASSES

MOTION PASSES 5-0-0

4. Variance/Finding Public Hearing – Parking on the Side of the Building – 20-22 Pleasant Street – McDermott

The chair read the public hearing notice for a Variance/Finding from Zoning By-Law Section 230-4.4,D.3, Off Street Parking, Design Standards, Location, to allow parking at the side of the building rather than at the rear at 20-22 Pleasant Street (Assessor’s Map 22 Parcel 6) in the Business 1 (B1) zone.

Ms. Pruitt recused herself and Ms. Garber-Miller appointed Mr. Maxwell to vote on this matter.

The following documents were also introduced at the public hearing:

- Application for Variance, filed with the Town Clerk’s Office on June 17, 2021;
- Copy of public hearing notice;
- Plans titled “Proposed Apartment Building at No. 22 Pleasant Street Mansfield, MA” dated June 14, 2021, prepared by RIM Engineering Co., Inc.

Craig Cygawnoski, RIM Engineering and applicant Bill McDermott were present.

Mr. Cygawnoski explained the existing property has two separate buildings with two units in one and three in the other, both built prior to 1950. Both need major repairs so the applicant would like to raze the buildings and parking and replace them with one seven unit-building and parking on the side rather than at the back, as required. He said because the lot is 69 feet wide and 138 feet long, it would be difficult to get the dumpster in and out if the parking were at the back of the site. The applicant also proposes a six-foot tall white vinyl fence with landscaping and landscaping along Pleasant Street, and a walkway around the building to the rear entrance. Mr. Cygawnoski said there are several existing buildings on the street with parking on the side.

Board Comment

Ms. Garber-Miller asked the style of the proposed building. Mr. McDermott showed the board a photograph showing the style of building he would like to build. He said he would like to build something modern rather than a block-style apartment building.

Mr. Maxwell asked where the existing parking is; Mr. Cygawnoski said the parking is on the side.

Mr. Cygawnoski said they are proposing seven units, so one will be affordable.

Mr. Maxwell asked about the side of the building facing Pleasant Street; Mr. McDermott said they will dress up that face of the building.

Ms. Garber-Miller asked if the units will be three-story townhouses. Mr. McDermott said they will be. Mr. Cygawnoski said they will have to present full building plans to the Planning Board for the special permit.

Public Comment

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Erick DiPietrantonio, GEM Realty, 30 Pleasant Street, asked if the parking spaces would be on the same side of the driveway as they are now. Mr. Cygawnoski said there will be 12 parking spaces on the opposite side of the property from Mr. DiPietrantonio's property. Mr. DiPietrantonio asked where visitors would park and asked if seven units are allowed. Ms. Garber-Miller said the only variance requested is for the location of the parking on the side of the building rather than the rear.

Mr. DiPietrantonio said part of this property's parking area is on his property. Mr. Cygawnoski said the plan shows all of Mr. McDermott's parking on his own property.

Ms. Garber-Miller said the proposal includes two additional units and more parking spaces than currently exist, so if there isn't a parking problem now, it may not be an issue in the future.

Mr. DiPietrantonio asked how many bedrooms each unit will have; Mr. McDermott said the existing units are two bedrooms, and the new units will have two bedrooms. He said there is more parking proposed than currently exists, and said the 12 spaces proposed meets the parking requirement for the zone.

Marcia Szymanski, 29 Pleasant Street, asked about the fence. Mr. Cygawnoski said the fence would block the view of the parking spaces from Pleasant Street. Ms. Szymanski asked about lighting; Mr. Cygawnoski said a lighting plan has been prepared that shows the parking lot lighting does not spill over to the neighboring properties.

Ms. Szymanski said the rendering doesn't fit in with the neighborhood and asked the dimensions of the building; Mr. Cygawnoski explained the proposed building is 20 feet wide by 126 feet long. He noted there are no setback requirements in the B1 zone, but the plan includes setbacks of between five and seven feet.

Ms. Garber-Miller said if residents have concerns about things like lighting and building design, those issues will be discussed at the Planning Board special permit public hearing.

Ms. Szymanski asked the reason for requiring parking in the rear and asked why projects are approved that go against that. Ms. Garber-Miller said this property existed before zoning was adopted. Mr. Cygawnoski said the six-foot tall fence will block the view of the parking lot from the street. Ms. Garber-Miller said the applicant said there will also be landscaping in front of the fence.

Sharon Friedman, 29 Pleasant Street, said she appreciates the desire to put two more units on the property, but she is concerned about the change to the neighborhood. She said she is concerned about the rendering, which shows a lot more landscaping than would be possible on this property and said she does not think the concept in the rendering will translate here. She said the site is in a zone with no setbacks, which is different from other properties on the street. She said it would be nice to consider another design where the parking could be accommodated according to zoning, such as garages so there would be fewer on-grade parking spaces. She said the plan only includes seven feet for landscaping along Pleasant Street, and trees would have to come down.

Chris Lanza, owner of 25-27 Pleasant Street, said his renters have consistently commented on the charm of the architecture and beauty of Pleasant Street, which he said is important to him. He asked the board to consider the neighbors' concerns and said each location should be assessed on its own merit. He said this property and 21-23 Pleasant Street anchor the residential charm of Pleasant Street, and he is concerned that doing something radical to this property would erode that charm and extend the commercial character of new development on North Main Street. He said the proposed building would be the largest apartment building on the street and asked the board to consider that.

Ms. Friedman said if the board decides not to grant the variance, it only means the applicant has to come back with a different design.

Mr. List asked if it would be possible to make the building more L-shaped with the parking behind it. Mr. Cygawnoski said it is possible, but it would make the entrance to the unit on the L difficult.

Mr. Maxwell asked how wide the parking spaces are; Mr. Cygawnoski said they are nine feet wide by 18 feet long, per the regulations. Mr. Maxwell asked how parking at the rear would work; Mr. Cygawnoski said parking in the back would make turning around to empty the dumpster and to do electrical service difficult.

Mr. Cummings asked if the parking area is being expanded; Mr. Cygawnoski said five of the spaces would be where the existing back building is, but the parking area would not be wider than it currently is. He said they will remove any pavement that is currently on the neighboring property.

Mr. Maxwell asked about the possibility of garages; Mr. Cygawnoski said that would push the building to four stories, which would be allowed in this zone. Mr. Cygawnoski said that would result in less parking, but it would still have to be on the side of the building.

Mr. List asked about building five units instead of seven; Mr. Cygawnoski said that is a possibility.

Ms. Garber-Miller closed the public hearing.

Motion: To approve the application of William McDermott for a Variance from Zoning By-Law Section 230-4.4,D.3, Off Street Parking, Design Standards, Location, to allow parking at the side of the building rather than at the rear at 20-22 Pleasant Street (Assessor's Map 22 Parcel 6) in the Business 1 (B1) zone in accordance with the plan titled "Proposed Apartment Building at No. 22 Pleasant Street Mansfield, MA" dated June 14, 2021, prepared by RIM Engineering Co., Inc. (Cummings-Maxwell)

Mr. Correira said he thinks the applicant is trying to do the best he can with the lot, but there may be other options available that do not require a variance. He said he isn't sure the neighbors would like those options any better.

Ms. Garber-Miller said she thinks the applicant has tried to come up with a creative design, which will be discussed with the Planning Board during the special permit public hearing. She said they have the required amount of parking. She said something will have to happen with the existing buildings and she thinks the applicant is trying to do something unique.

Mr. List said this would not only be a new building, it would be a larger building.

Ms. Garber-Miller said this is in the Business 1 zone, which does not have setback and open space requirements.

Mr. List asked if the hardship is the width of the lot, and if it would still be hardship if there were five units rather than seven. Ms. Garber-Miller said the parking would still probably have to be on the side. Mr. Correira said if the building were smaller, the parking may not all have to be on the side.

DISCUSSION

Shannon – In favor

Correira - Opposed

Cummings – In favor

Maxwell – In favor

Garber-Miller – In favor

Four (4) in favor. One (1) opposed. Zero (0) abstentions. PASSES

MOTION PASSES 4-1-0

5. Appeal of Planning Board Site Plan Decision and Appeal of the Grant of the Building Permit continued – Hands On Montessori School – 19 Knight Way – Attorney Jason R. Talerman

The clerk read the public hearing notice for an appeal filed by Attorney Jay Talerman of the Building Inspector's grant of a building permit to Hands-On Montessori School with respect to the proposed construction of a 1,200 square foot school at 19 Knight Way

(Assessor's Plat 3, Parcel 51) in the Residential 1 (R1) Zone. This public hearing will run concurrently with the Zoning Board of Appeals public hearing that was opened April 20, 2021 and continued to June 8, 2021 at 7:40 p.m. on an appeal filed by Attorney Jay Talerman of the Planning Board's February 12, 2021 grant of site plan approval with respect to the proposed construction of a 1,200 square foot school at 19 Knight Way (Assessor's Plat 3, Parcel 51) in the Residential 1 (R1) Zone.

The following documents were also introduced at the public hearing:

- Appeal of Planning Board's February 12, 2021 site plan approval and the April 23, 2021 issuance of the building permit, filed with the Town Clerk's Office on May 13, 2021;
- Copy of public hearing notice.

Attorney Jason Talerman, representing the appellants, said he was hoping for an opinion from town counsel on the status of this project with relation to the Dover Amendment. Ms. Garber-Miller said Ms. Miller has said she is not a non-profit, which would not fit the Dover Amendment for an educational use. However, she said Attorney Lanza submitted a letter regarding the valid group child and Care license [*June 2, 2021 letter from Denise J. Karlin, Assistant General Counsel, Department of Early Education and Care*], which he said the state considers as meeting the requirements of the Dover Amendment.

Ms. Garber-Miller said this hearing is about the 1,200 square foot building, which, with 50% pre-school aged children, would fall under the Dover Amendment. Attorney Talerman said elementary school programs cannot be run under the child care definition. Ms. Garber-Miller said the definition in Chapter 15D, Section A allows older children with special needs under child care. Attorney Talerman said he does not believe that section includes a 50% allowance. Ms. Garber-Miller said Ms. Miller has said that because she does not consistently have more than 50% older children, she is a group child care center. Attorney Talerman agreed with the child care center definition, but said there is no 50% threshold. He said the letter from the Department of Early Education and Care is about a licensure requirement, not a zoning requirement.

Ms. Garber-Miller said she agrees this use does not meet the requirements for a non-profit school, but said she has read the definitions of "child care center" and "school aged child care program," as well as MGL Chapter 40A, Section 3, and thinks this use would fall under the child care provision of the Dover Amendment. Attorney Talerman said there is no case on record that defines "primarily."

Attorney Talerman asked that if the board issues a decision, it specify what the applicant is allowed to do, and if they exceed that, it would not be allowed. He said he believes that is what they intend to do, and what they already do. He said if the focus could be narrowed to specify that day care is allowed under Chapter 15D, it would help. He said if that is town counsel's opinion, the applicant should be held to that.

Ms. Garber-Miller said the Montessori program is known as a "school," but that doesn't make it a school. Attorney Talerman said they plan to offer programs beyond day care; he said they have stated for the record that this will be a small version of what they are

already doing. He asked the board to define the day care use in its decision, and said he is not asking the board to go beyond that at this point. He said if they want to do day care and the board decides not to grant the appeal, they should be held to the day care use.

Ms. Garber-Miller said the letter from the Department of Early Education and Care says is licensed as a group childcare program, also known as a childcare center as defined in Chapter 15D, Section 1A, so the definition of childcare applies to Hands On Montessori School.

Attorney Talerman said he is trying to frame the debate and said if the board decides to deny the appeal, the decision should specifically call out the use child care. He said he appealed the building permit because it was too broadly-based and calls the use a school. He said everyone agrees there is an opportunity to do some kind of daycare at the location, subject to other arguments. He said he would like to try to whittle down the debate about what can and cannot be done on that site. He said the applicant is entitled to do a day care, but not a school, and if day care includes a certain percentage of school, then at least the scope has been narrowed.

Attorney Talerman said at the last meeting, he presented a list of conditions he thought the Planning Board could have imposed, many of which were agreed to by Ms. Miller but were not included in the site plan decision. He said there have been a number of violations of the site plan, and suggested it would make sense to include some conditions.

Ms. Garber-Miller said she understands and agrees, but said she thinks the discussion of placing additional strictures on the property would appropriately come after the vote on whether or not to overturn the site plan decision and/or the building permit. Attorney Talerman said site plan is really a set of conditions on the building permit. Ms. Garber-Miller said the ZBA's decision would include the action one way or the other on both the site plan and building permit, and could include its own set of conditions.

Ms. Garber-Miller said the board has received a large number of comments from the public, the board members have received and reviewed them all and they will be part of the record, but will not be read at the public hearing because of the volume.

Ms. Garber-Miller reminded the public to restrict their comments to the Planning Board site plan and the grant of the building permit.

Public Comment

The board received the following written public comment:
April 23, 2021 email from Dorothy Ellsworth, 12 Maverick Drive
April 26, 2021 email from Dan Casamento, 7 Waldor Drive
April 26, 2021 letter from Randy Miller, Miller Recycling
April 26, 2021 email from Judee Marchionda, 7 Waldor Drive
April 26, 2021 email from Corina Pfeffer, 63 East Street
April 27, 2021 email from Oradee Adams, 15 Lantern Lane
April 27, 2021 email from John Kowal, 2 Wayside Drive

Undated letter from Peter Maricle, 5 Juniper Drive
May 3, 2021 email from Nicole Mullen, 3 Knight Way
May 5, 2021 email from Ken Butler, MMAS
June 8, 2021 email from Jill Keyes
July 20, 2021 email from Cindy Cavanaugh, 113 Balcom Street

Mark Larochelle, 19 Justin Drive, said he doesn't understand how a for-profit educational use is protected under the Dover Amendment.

Rick Rosemark, 9 North White Pine Lane, said the building being built now does not conform to the requirements of the Dover Act. He said he called the Department of Early Education and Care about the use of "school" and looked at the Ellsworth case against the town. He asked if Ms. Ellsworth was an employee of the school. He said the Department of Revenue issued Ms. Miller a tax-exempt number, which he said is still in use. Ms. Garber-Miller said the fact that she is not a non-profit entity does not disqualify her from Dover Amendment protection under a different section of the law.

Jill Keyes, 11 North White Pine Lane, asked if this is a legal, non-conforming lot. Ms. Garber-Miller said it is a conforming lot with the exception of access via the easement, which has been upheld by the court. Ms. Keyes asked if two new structures have ever been built on a legal, non-conforming lot. Ms. Garber-Miller said there is one new structure in front of the board. Mr. List said the Ellsworth case said two buildings are ok as long as they have Dover protection. Ms. Keyes asked if this were allowed, would it pave the way for other developers to do the same type of thing. Ms. Garber-Miller said there was a house and a day care on the same lot on Route 106 that was allowed because it was a child care facility. Ms. Keyes asked if that was a legal lot; Ms. Garber-Miller said it was. Ms. Keyes said this lot is non-conforming; Ms. Garber-Miller said it is not because the court has opined on the easement as access.

Ms. Keyes said other towns require a buffer between a commercial use and a residential use. Ms. Garber-Miller said there will have to be landscaping. Ms. Keyes said Hopkinton requires a 75-foot buffer zone; Ms. Garber-Miller said Mansfield requires landscaping when a business district abuts a residential district.

Jay Brolin, 7 Claire Avenue, said there is agreement this is a day care. However, he said the building was referred to as a STEM building, which he said seems to be an educational use. Ms. Garber-Miller said the ZBA is reviewing the 1,200 square foot building for 30 children. Mr. Brolin said the information presented to the Planning Board was that the building would be for educational purposes. Ms. Garber-Miller said the proposal before the ZBA is for a 1,200 square foot building, with no discussion about how the building will be equipped. Mr. Brolin said if it was presented to the Planning Board as a STEM building, it should be part of the discussion.

Bob Cavanaugh, 113 Balcom Street, said the building being built does not conform to the Dover Amendment because it does not have a classroom. He said at every Planning Board meeting, the building was described as a STEM building, which he said would be an education use. Mr. Correira said a lot of child care centers have STEM programs. Mr. Cavanaugh asked how he can get a copy of a letter from town counsel; Ms. Garber-Miller said that is confidential information.

Andrew Frenette, 12 South White Pine Lane, said the applicant has been to multiple boards availing herself of the Dover Amendment, but now seems to be saying Dover does not apply. Mr. Correira said the Dover Amendment issue was raised by counsel for the abutters. Ms. Garber-Miller said there was a discussion between the board and Attorney Talerman about what section of the Dover Amendment might have applied. Attorney Talerman said the Dover Amendment does not apply to the proposed facility because the owner is not organized as an educational non-profit, which is correct. However, he said she is licensed as a childcare program and as such is entitled to protection under the Dover Amendment.

Nicole Mullen, 3 Knight Way, said Ms. Miller has been in front of all the boards and has been unable to define what the use will be. She said she thinks the abutters are confused because they heard “school” and “STEM” and they are concerned about what is coming to their neighborhood because what the building will be has not been defined. She said if it is going to be a childcare facility, the applicant should be held to that use. She asked if the board would be deciding on the conditions that Ms. Miller put in herself, which the Planning Board voted on. Mr. Shannon said the ZBA public hearing is to discuss the issue before the board tonight. Ms. Mullen asked whether the conditions proposed by Ms. Miller will be discussed. Ms. Garber-Miller said Ms. Miller has not proposed any conditions, but the board will discuss Attorney Talerman’s conditions.

Rick Rosemark, 9 North White Pine Lane, said the Ellsworth case does not include the small building. He said two members of the Planning Board abstained from the vote because the small building was not included on the plan. He said Ms. Miller’s architect referred to the small building as a maintenance building, which does not have Dover protection because it lacks classrooms.

Mr. Brolin said the Planning Board’s site plan includes approval for a 1,200 school building with a 30-student maximum enrollment.

Board Comment

Mr. Maxwell asked about the project moving forward as a childcare center versus a school. Mr. List said it may help to determine the use and its protection under the Dover Amendment. Ms. Garber-Miller said Dover applies to childcare facilities, including supervised programs for children up to 14. Mr. List said the building could be defined as a childcare facility and/or a school-aged child program under Dover. Attorney Talerman said Dover is limited to childcare facilities.

Attorney Noemi Kawamoto read a portion of the Dover Amendment.

Cynthia Cavanaugh asked when the 1,200 square foot school changed from a school for 200 children to a day care for 30 children. Ms. Garber-Miller said the only thing the board is considering tonight is a 1,200 square foot facility for 30 children.

Attorney Mark Lanza, representing Emily Miller, said the applicant agrees with town counsel’s advice and he understands the board is considering verifying what the use of the property will be. He said the letter from the Department of Early Education and Care describes the use. He said his client is not going to offer non-profit education use as the primary use; he said the primary use will be child care. He said the questions before the board is whether the Planning Board or the Building

Inspector made an error in issuing the site plan and building permit. He said they did not and asked the board to deny the appeal.

Ms. Garber-Miller asked Mr. Lanza if the use of the property as a child care center and/or school aged childcare program would be an accurate assessment of what Ms. Miller is intending. Mr. Lanza said he would be happy with that.

Ms. Garber-Miller proposed the board vote on whether to support or overturn the decision of the Planning Board, then vote same on the issuance of the building permit. If both are upheld, the board should have further discussions on additional conditions that might be imposed.

Motion: To OVERTURN the Planning Board's February 12, 2021 site plan approval certificate of action with respect to the proposed construction of a 1,200 square foot school at 19 Knight Way (Assessor's Plat 3, Parcel 51) in the Residential 1 (R1) Zone. (Cummings-Shannon)

DISCUSSION

Ms. Garber-Miller said whatever this is called, it is clear to her it is intended to be a childcare center covered by the Dover Amendment and she said she thinks the Planning Board decision should be upheld.

Mr. List said this project has changed a lot. Ms. Garber-Miller said defining the use may provide some certainty to the abutters. Mr. Cummings suggested it could be described as either a childcare center or a non-profit educational use. Mr. List said the use should be clear. Mr. Maxwell said it is confusing that a use can act as a school if it is a non-profit. Mr. Correira asked the downside to citing the Dover Amendment. Mr. Shannon said clearly stating the use will reassure the neighbors. Mr. Cummings said it should be defined as a childcare facility or non-profit school. Mr. List said the site plan approval process was based on how the site will function. Mr. Maxwell asked how the board's decision would affect the owner down the line. Ms. Garber-Miller said it wouldn't change the use because it would still be under the same section. Mr. Cummings suggested including reference to 40A, Section 3.

Ms. Garber-Miller suggested voting on the motion to overturn, and depending on the result, then vote on the building permit. She said depending on that result, the ZBA could issue a decision that incorporates the conditions to accompany the use of the property.

Shannon – Opposed

Correira- Opposed

Cummings – Opposed

Pruitt – Opposed

Garber-Miller – Opposed

Zero (0) in favor. Five (5) opposed. Zero (0) abstentions. FAILS

Motion: To OVERTURN the April 23, 2021 issuance of the building permit with respect to the proposed construction of a 1,200 square foot school at 19 Knight Way (Assessor's Plat 3, Parcel 51) in the Residential 1 (R1) Zone. (Cummings-Shannon)

DISCUSSION

Shannon – Opposed
Correira- Opposed
Cummings - Opposed
Pruitt – Opposed
Garber-Miller – Opposed

Zero (0) in favor. Five (5) opposed. Zero (0) abstentions. FAILS

Discussion of Possible Additional ZBA Conditions:

The board discussed the following possible conditions.

1. The project is proceeding under the protection of Dover Amendment, MGL Chapter 40A Section 3;
2. The boundaries of the easement shall be delineated during construction. Ms. Miller said that has already been done.
3. All queuing, parking and drop-offs shall be contained within the site to the greatest extent possible;
4. All snow must be kept on site or removed, consistent with town by-laws;
5. Landscaping. Ms. Miller said one tree was removed because it was leaning on a telephone pole. She said the Dover Amendment precludes the Planning Board from imposing conditions about things like landscaping, but they have spoken with the Conservation Agent about landscaping. She said she intends to put in landscaping and that one of the two direct abutters has put up a fence. **Consensus was to not include this as a condition.**
6. Trash/dumpsters shall be in a fenced-in enclosure;
7. 15 mph speed limit. Ms. Garber-Miller said she has never seen a ZBA impose a condition like that. Mr. List said the Select Board does that. **Consensus was to not include this as a condition.**
8. Hours of operation from 6:00 a.m. to 6:00 p.m. Mr. List said the intent of the Dover Amendment is to prevent towns from impeding the operation of the use. **Consensus was not to include this as a condition.**
9. Limit operation to 165 days per year. The board discussed the fact that most childcare facilities operate year-round, so that would not be a reasonable condition. **Consensus was not to include this as a condition.**
10. Coordinate schedule with school bus schedule. Ms. Garber-Miller said that schedule changes and a condition could result in issues. **Consensus was not to include this as a condition.**
11. Lighting plan. The lighting plan was included with the Planning Board documents. **Consensus was not to include this as a condition.**
12. Delivery truck restriction 10am-2pm. The board discussed this seems overly restrictive and asked what types of deliveries will occur. Ms. Miller said right now, she does not have delivery trucks that are different than what residents use. She said she does not have a food service because children bring their own lunch. **Consensus was not to include this as a condition.**

Attorney Talerman said Dover cases don't mine down this deeply. He said public health and safety issues are fair game, but programmatic things are not because that gets into Dover protection issues. He said he thinks open space is sufficient to cover the landscaping issue.

Attorney Lanza said there is no case law about whether landscaping is part of Dover protection. He said he thinks the landscaping that will be done by the applicant and the off-site fencing will be sufficient.

Mr. Correira said snow removal is already addressed under the town's by-law.

Attorney Talerman said the applicant's presentation to the court was that there would be no traffic queueing and said that issue is fair game under Dover. He said keeping the traffic on site will help ameliorate the neighbors' concerns. Mr. List said he thinks that is a reasonable condition.

The board discussed a finding that based on the evidence provided and information gathered about the site plan decision and the building permit, it finds that as an addendum to the site plan and building permit, the following should apply:

1. The protections of MGL Chapter 40A, Section 3 shall apply to this site;
2. All queuing, parking and drop-offs shall be contained within the site to the greatest extent possible;

Mr. Correira said he is concerned that condition could create an opportunity for arguments because it is too open to interpretation. Ms. Garber-Miller said this is a large property with a long driveway and she doesn't think queuing will be a problem, but clearly the abutters are concerned. She said would help ensure the facility knows it has to make the best effort possible to not have it happen. Mr. Cummings said any daycare could have a queue. Mr. Correira said if it is just pick up and drop off, the queue will keep moving. Ms. Garber-Miller said there may be an issue sometimes, but most of the time there will not be. Mr. Maxwell said the traffic study showed there would not be queueing in the public way. He said if there is a problem, perhaps the driveway needs to be longer than it is and they will have to do something to address that. The board discussed what "to the greatest extent possible" means and whether that phrase should be included in the condition.

Mr. Correira said based on the history of this, he thinks there may have been an abuse of process with all the cases and appeals. Attorney Talerman disagreed that availing themselves of the legal process is an abuse of process and said that could taint the board's decision-making process. Mr. Correira said he thinks there is a line between being a zealous advocate and making frivolous arguments. Attorney Talerman said no one has raised a claim of frivolity. He said they went to trial, and that would have come up earlier. He said the condition should not include "to the extent possible," it should ban queueing because they said they were never going to queue. He said he thinks the condition should go a step further for clarity. Mr. Correira said while he doesn't agree with doing that, he said it would be clear. Attorney Talerman said he thinks including "to the greatest extent possible" would create an enforcement nightmare and said they claimed there will be no queuing. He said if they start queueing, their entire traffic report isn't worth what it was printed on and they will be back in court on the overburdening issue, but he said that is a separate issue. Attorney Talerman said he has been very courteous to the board and he cannot control the emails that come in. He said he has been trying to be professional, and to suggest there has been an abuse of process while the board is trying to deliberate is not helpful and not good for the record, not good for the board and not good for the process.

Ms. Garber-Miller said she thinks what Mr. Correira was alluding to was some of the emails the board members have received where people were complaining about interactions they had, which the board does not control. Attorney Talerman said he could not agree more. Ms. Garber-Miller said she doesn't think Mr. Correira was referring to actions Attorney Talerman was taking. Mr. Correira said Attorney Talerman represents some of the abutters, not all of the abutters, and there have been a lot of emails that have not been respectful to members of the board. He said he is not placing blame on Attorney Talerman or his clients, but said there have been a lot of disrespectful emails. He said the board members are all volunteers, and it is not helping. Attorney Talerman said he sits on boards and is moderator in his own town, and he understands it and is not condoning it. Ms. Garber-Miller said that is what Mr. Correira was referring to; Attorney Talerman said Mr. Correira mentioned the litigation and that is where he took issue. He said doesn't want to cloud the record with it and said the board is creating a good record; he said he might not agree with it, but legally it is a good record. He said he is not condoning the emails the board gets and he wouldn't want to get the emails either. He said they have emailed the Building Inspector because that is their right.

Mr. Correira said he is not in support of the queuing condition. Ms. Pruitt said she was not in support of the queuing condition. Mr. Shannon said if the driveway is long enough, there will be no queuing, so he is not in support of the condition. Mr. Cummings said he is not in support of the queuing condition.

Consensus was not to include the condition requiring queuing, parking and drop-offs to be contained within the site.

3. Snow shall be removed consistent with the town's by-laws.

The board discussed the fact that snow removal is already regulated by the town's by-laws.

Consensus was not to include this as a condition.

Mr. List said under site plan review, the town is supposed to minimize impacts to the neighborhood, and the number one impact to the neighborhood the board has heard from the appellant and the neighbors is about cars queuing in the street. He said the board has an opportunity to add a reasonable condition that is not preempted by Dover to address that reasonable concern.

Final ZBA Condition:

1. The protections of MGL Chapter 40A, Section 3 shall apply to this site.

Attorney Talerman thanked the board for its time and said he obviously disagrees with the decision; he said he appreciates the board's patience on this long-standing matter and said the board has been good to him. Mr. Shannon said the board hears the neighbors. Attorney Talerman said unfortunately, they are not getting enforcement, didn't get much here and that is disappointing. Ms. Garber-Miller said there isn't a person on the board who wouldn't feel the way the abutters feel because when they bought their houses, they thought more houses were going in there, and something else is going in, but that is allowed by right. Attorney Talerman said he thinks the board could have gone a little further and helped cut the issues down, but the fact that it chose not to is the board's prerogative.

Ms. Garber-Miller asked Ms. Miller if she had anything to add; Ms. Miller said she did not.

Ms. Garber-Miller closed the public hearing.

6. Correspondence and Minutes

The June 8, 2021 minutes will be reviewed at the July 27, 2021 meeting.

7. Adjournment

Motion: To adjourn at 10:45 p.m. (Correira-Shannon)

Shannon – In favor

Correira - In favor

Cummings - In favor

Pruitt – In favor

Garber-Miller –In favor

Maxwell – In favor

List – In favor

Seven (7) in favor. Zero (0) opposed. Zero (0) abstentions. PASSES

Next Zoning Board of Appeals Meeting: July 27, 2021 at 7:30 p.m.



Signature of Clerk

10/19/21

Date of Approval