



Zoning Board of Appeals Minutes

July 21, 2020

MEETING HELD VIRTUALLY USING GOTOWEBINAR PLATFORM

Present: Elisabeth Garber-Miller, Chair; Darlene Pruitt, Clerk; Matthew Cummings, Eric Correira; Matthew List, Associate Member
Jennifer Davis, Planning Department Administrative Secretary

The chair read the following notice:

Whereas both the Federal Centers for Disease Control and Prevention and the Massachusetts Department of Public Health have advised residents to take extra measures to put distance between themselves and other people to further reduce the risk of being exposed to COVID-19, Governor Baker has issued an order suspending certain provisions of the Open Meeting Law, Massachusetts General Law c. 30A, §20.

In order to satisfy the Open Meeting Law requirements, today's Town of Mansfield Planning Board meeting will available for to public via GoToWebinar and Mansfield Cable. The instructions for joining via GoToWebinar are in the Meeting Notice on the Town's Website at www.mansfieldma.com and then clicking on today's date on the calendar.

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

2. Public Hearing – Appeal of Planning Board’s Decision – 1 Mansfield Avenue – MCG Mansfield, LLC

The chair read the public hearing notice on the appeal filed by MCG Mansfield, LLC of the Planning Board’s March 5, 2020 decision to deny a modification to the July 22, 2015 site plan/special granted for 1 Mansfield Avenue. The appeal is of the Planning Board’s denial of the applicant’s request to use approximately 4,582 square feet of the first floor of the building to provide tenant storage cubicles, a fitness facility that includes an area to congregate, and a conference/party/office room that can be rented by tenants, and an area for tenant meetings.

The following documents were introduced at the public hearing:

- Copy of public hearing notice, which ran in the [Mansfield] *Journal-News Independent* on July 3, 2020 and July 10, 2020;
- Application for Appeal of a Local Decision, filed with the Town Clerk’s Office on April 30, 2020;
- July 16, 2020 letter from Attorney Sander A. Rikleen, Sherin and Lodge

Mr. List was appointed a voting member for this public hearing.

Attorney Sander A. Rikleen and property owners Jeffrey Cohen and Gregory Cohen, MCG Mansfield, LLC were present.

Attorney Rikleen explained the appeal of the Planning Board’s denial of his client’s request for a modification to the 1 Mansfield Avenue site plan to use approximately 4,582 square feet of the first floor of the building to provide tenant storage cubicles, a fitness facility that includes an area to congregate, a conference/party/office room that can be rented by tenants, and an area for tenant meetings.

Attorney Rikleem said there is a property across the North Common from this site [North Main Street/Thomas Street] for which the Planning Board approved the same uses proposed for the 1 Mansfield Avenue building. He explained his client purchased the property from the original developer, Crugnale Properties, and has tried to rent the first floor space for traditional retail. He said they have an accounting office and a cellphone store on the first floor, but have been unsuccessful attracting traditional retail renters for the corner space. They proposed the alternate uses for that space, which the Planning Board denied, resulting in this appeal. He said the Zoning By-Law does not include a precise definition of retail or mixed use, and noted their proposal was virtually identical to what was allowed across the common. He said the original Planning Board approval for 1 Mansfield Avenue was both a site plan and a special permit because the site has two buildings; one was a special permit because it is strictly residential, and the other was site plan because it included retail.

Attorney Rikleem showed the board two memos from the building inspector, dated February 4, 2020 and May 30, 2018.

Attorney Rikleem explained they are asking for the alternate uses in the corner space of 1 Mansfield Ave to be allowed, like the building across the common, and are asking for the ZBA to overturn the Planning Board's denial.

Public Comment

The chair read the following notice:

It is important to us that you have a platform for your questions and comments during this meeting, therefore to ask questions or make a public comment during tonight's virtual meeting you must have registered and joined the meeting via GoToWebinar where you now have the ability to submit your question or comments through the questions option in your control panel, or you can use the raise your hand option to be allowed to speak.

*For those who have joined the meeting via telephone who would like to ask a question or make a comment, you are now welcome to unmute your phone. We ask that you only have your phone unmuted while you are asking your question. Please mute when you are no longer live. You can unmute your phone by pushing *6. Please then state your name and address, and when acknowledge by the Chairperson you can then state your question or comment. When you are done with your comment please mute your phone again by pushing *6.*

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.

Steve Schoonveld, Newton Street, said the 1 Mansfield Avenue project was permitted as a two-building project, and when the Planning Board discussed it, they did not have to have retail on the first floor of one of the buildings. He said the building on the curve, facing the train station, was supposed to have included retail. He said the building at North Main Street/Thomas Street has room for businesses on both North Main Street and along the Route 106 side, so he said he doesn't think a direct comparison can be made between the two buildings. He said Town Meeting recently adopted a Zoning By-Law amendment amending the definition of retail. He said that building is a cornerstone of the train station area and he thinks the residents would support retail there.

Board Comment

Mr. List said the Zoning By-Law allows residential and non-residential uses on the same lot in B1 and B2. Attorney Rikleem said those uses are not specifically defined in the by-law. He said the building across the common is in the same zoning district as 1 Mansfield Avenue and similar first floor uses were approved; he said he doesn't think two properties in the same district should be treated differently.

Attorney Rikleem said the proposed uses would be predominantly for the people living at 1 Mansfield Avenue, who could pay for storage space or to have a meeting or a party. He said it is not living space and he understands residential uses do not belong on the first floor. He said they would be happy to have a restaurant or a bagel shop in the corner space, but there has not been any interest; he said the commercial real estate brokers they have spoken to could not get any interest either. He said he doesn't think it is good for the town to have vacant space downtown, so they tried to be creative and come up with alternate uses. He said Covid-19 has had a negative impact on small businesses, so he is concerned about more vacant space on the ground floor.

Ms. Garber-Miller asked if the alternate uses were to be allowed, would the owners continue to try to find traditional renters for the space. Mr. Jeffrey Cohen said the space has been marketed for almost five years and said one of the problems is there is no off-street parking. He said they talked to the Town Manager about dedicating on-street parking spaces, but that did not work out. Mr. Gregory Cohen said the traffic flow around the neighborhood inhibits drivers' ability to get to the space; he said there is very little visibility and little access to the site. Mr. J. Cohen said the on-street parking spaces are MBTA spaces during the day. Mr. G. Cohen said the on-street parking spaces have a two-hour limit.

Ms. Pruitt asked if the proposed first-floor space would only be available to the residents; Mr. G. Cohen said that is correct.

Mr. Correira asked if that space would be part of the condominium association; Mr. J. Cohen said there would be a separate charge to use that space.

Mr. Cummings asked how much fluctuation there has been in lease prices over the last five years; Mr. G. Cohen said they have changed the prices during the two years they have owned the property. Mr. J. Cohen said the space was difficult to lease prior to Covid-19, and now it is even more difficult.

Mr. Schoonveld said there is plenty of public parking around the corner in front of the building without retail. He said the traffic flow is odd, but it is also difficult for all the other businesses there. Mr. Schoonveld asked if the new zoning is in effect for this site and asked the board to take its time and do some research on this issue. Attorney Rikleem said the Attorney General's office has to approve the zoning amendments, which he said usually takes about 90 days.

Ms. Pruitt asked how long they have owned the property; Mr. G. Cohen said 17-18 months.

Mr. Cummings asked if they have looked into making the proposed uses available to the general public for a charge; Mr. J. Cohen said at the current time, it is restricted to tenant only because of liability issues.

Attorney Rikleem said the Planning Board's original decision was called a "special permit/site plan" decision; he said Building A was site plan review because it had retail on the first floor, and Building B was a special permit with only residential uses. He said both buildings were dealt with in the same document. Ms. Garber-Miller said the Planning Board's original decision included separate votes for each building. She said Mr. Blackman's memo indicated the proposed uses are not inconsistent with the uses allowed by right in that zone. Attorney Rikleem said because this was site plan approval, the appeal goes to the ZBA, but he has also filed a court appeal. He said since this issue only deals with Building A, which was site plan approval, he thinks the Planning Board should have dealt with it as a site plan.

Ms. Garber-Miller said the original Planning Board approval in July 2015 made it clear that board was considering a site plan for Building A and special permit for Building B. The Building B special permit was initially denied, then the Planning Board reconsidered and approved it. She said the building inspector provided an opinion that the proposed uses were not residential, that the by-law does not specifically define retail, and in his opinion, if it is not a residential dwelling unit, it is non-residential.

Ms. Pruitt said she doesn't feel comfortable making a decision because it is unclear what the ZBA is being asked to decide. She said she is concerned if the ZBA overturns the Planning Board decision, it could cause problems with other developments in the future. She said she thinks the Planning Board understood there would be retail in the corner space, which would be open to the entire community, and not restricted to the residents of that building. Ms. Garber-Miller asked what information would help to provide clarity. Ms. Pruitt said she would like to know if the ZBA is being asked to voting on the special permit or the site plan. Ms. Garber-Miller said the ZBA is being asked to overturn the special permit modification denial, to find that the property in question should have been subject to site plan review standards rather than special permit standards, and to find the use proposed alternate uses are an allowed uses.

Mr. List asked if the board should be starting with the definition of retail in B1, or starting with the building inspector's opinion as zoning enforcement officer.

Attorney Rikleem said he thinks Ms. Garber-Miller has accurately described what his clients are asking for. He said there are confusing parts of all Zoning By-Laws, and because zoning should be applied the same to all properties in a district, the zoning enforcement officer sometimes has to help owners navigate the by-law. He said it is important for landowners in the same district to be treated the same. He said if this was the first time this alternate use issue has come up, he understands there may have been some questions. However, he said because this is at least the second time this issue has arisen, and the building inspector has made a determination, this property should be treated the same as the other property.

Mr. Correira asked what additional information the board would be gathering in the event it continues the public hearing; Ms. Garber-Miller said she thinks the board has all the information

it needs. She said she thinks if the residential versus non-residential question has been a problem, the Planning Board would have proposed a zoning article to clarify it. She said it is clear to her that the original Planning Board decision was a site plan approval with conditions, none of which specifically mentioned retail space. She said the word “retail” was used to describe the space on the first floor, but the decision did not appear to require it. She said it is clear the Planning Board anticipated that would be retail space, but said she understands the owners have been unable to rent the space. She said she thinks if the owners could have rented the space for retail uses, they would have done so, and said this is likely a temporary measure to bring in some income from the space. She said they are not proposing to change the permitted use of the space; she said the proposed uses are permitted uses. She said the proposal would not change the percentage of residential and non-residential uses, so it would still comply with the mixed-use approval.

Mr. Cummings noted the Planning Board denial of the modification was a 7-0 decision. Ms. Garber-Miller said the building inspector has opined that if it is not a dwelling unit, it is a non-residential use. Mr. Cummings said a lot of condominium associations have spaces for residents to use, so this seems to be a normal amenity for the residents of a building.

Mr. Schoonveld said he thinks there is not enough information and asked if the 2020 Town Meeting zoning amendment would apply to this. He said he thinks the Planning Board should have supplied information explaining its vote to the ZBA. He asked the board to take some time to look at whether the zoning amendment applies to this issue and said Mr. Blackman’s two letters seem contradictory. Ms. Garber-Miller said she thinks Mr. Blackman’s letters are consistent and said the Planning Board’s decision explains the rationale for the vote. Mr. Schoonveld asked if the ZBA has watched the Planning Board public hearing; Ms. Garber-Miller said the ZBA typically would not do that.

Ms. Garber-Miller asked if the members if they want to continue the public hearing; Ms. Pruitt said she would not be opposed. Mr. List said he would only want to continue if clarification on the zoning amendment would help; Mr. Cummings agreed. Mr. Correira said he is not opposed to continuing the public hearing.

Motion: To continue the public hearing to September 15, 2020 (Cummings-Pruitt)

Pruitt- In favor

List – in favor

Cummings –In favor

Correira – In favor

Garber- Miller- In favor

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

3. Discussion of Reconsideration of June 2, 2020 Vote to Deny 60 Oakland Street Variance Application

Architect Frank Karpowicz was present.

Motion: To reconsider the June 2, 2020 vote to deny the Variance application of Caera LLC for Variances from Section 230-4.7 B(2)(a), Signs, of the Zoning By-Law to allow for four (4) wall signs and an existing monument sign as follows: the existing monument sign is to be reused; two

(2) signs totaling 40.17 feet in length are proposed on the east (front) elevation where a 22.8 foot length sign is allowed; it is proposed that the allowed rear wall sign be divided and be placed instead on the north and south sides of the building, with the south side sign a proposed length of 17.7 feet and the north side sign a proposed length of 43.33 feet at 60 Oakland Street (Assessor's Map 19, Parcel 2) in the Industrial 3 (I3) zone. (Correira-Pruitt)

Pruitt- In favor.

List – in favor

Cummings –In favor

Correira – In favor

Garber- Miller- In favor

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

Ms. Garber-Miller apologized for any comments she made at the first hearing that caused discomfort to the applicant.

Ms. Garber-Miller said zoning allows for one 16-foot rear wall sign, which the applicant proposed to install on the side of the building instead, because there are train tracks at the rear. She said the board has the option to vote the original request sign by sign, to work with the applicant's representative to approve an amended signage plan and require a new plan to be submitted, or he can withdraw and file a new application.

Mr. Karpowicz said he understands the issue with the rear wall sign may have become confusing. He said zoning would allow for a large, 205 square foot sign on the front of the building, but the owner felt smaller signs on the front would be better because the building is so close to the street, and that wall signs on the sides of the building would be better for visibility. He said all of the proposed signage on the front and on both sides would still be less than the allowed front wall sign size by about 25%.

Ms. Garber-Miller said she is concerned about the other developments coming to this neighborhood all asking for signage relief. She said there are residential uses nearby and she wants to avoid a proliferation of signs. She said she understands signs are important to business owners, but she wants to make sure there are not too many. She said the owner told the board this is going to be a family restaurant, but one of the signs says "bar and grill," which she said she is concerned sends a mixed message.

Mr. Correira said he didn't think the rear wall sign by-law applies, and was concerned there is too much signage.

Ms. Garber-Miller said she understands having a sign facing the train tracks does not make sense. She asked the actual name of the restaurant; Mr. Karpowicz said it will be "Pizzeria Romana," which will be on the [existing] monument sign. He said he would be comfortable eliminating the "bar and grill" sign on the north side if that would make the board more comfortable. He said the north side would have a "Pizzeria Romana" sign, with the "Tutto Italiano" sign facing toward downtown. Mr. Correira said he would be comfortable with removing the "bar and grill" sign.

The board discussed the fact that the two signs on the East elevation, signs #1 and #2, are allowed signs and not part of the variance request.

Mr. Karpowicz explained the “Tutto Italiano” sign, #5 on the South elevation, will be 25.7 square feet.

Mr. Karpowicz explained the “Pizzeria Romana” sign, #4 on the North elevation, will be 46.0 square feet.

Mr. Karpowicz made a request to withdraw the “bar and grill” sign, #3.

Motion: To approve the Variance application of Caera LLC for Variances from Section 230-4.7 B(2)(a), Signs, of the Zoning By-Law to allow for four (4) wall signs and an existing monument sign; the existing monument signs will be reused and the four wall signs will be allowed as follows:

Sign 1, “Tutto Italiano” on the East elevation, 25.75 square feet;
Sign 2, “Pizzeria Romana” on the East elevation, 46.0 square feet;
Sign 4, “Pizzeria Romana” on the North elevation, 46.0 square feet; and
Sign 5, “Tutto Italiano” on the South elevation, 25.75 square feet

at 60 Oakland Street (Assessor’s Map 19, Parcel 2) in the Industrial 3 (I3) zone, subject to the submission of revised plans showing the locations and sizes of the approved signs.

(Correira-Cummings)

Pruitt- In favor

List – In favor

Cummings –In favor

Correira – In favor

Garber- Miller- In favor

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

4. Correspondence and Minutes

Minutes February 11, 2020

Motion: To approve the February 11, 2020 minutes as submitted (Cummings-Pruitt)

Cummings – In favor

Correira – In favor

List –In favor

Pruitt - In favor

Garber-Miller –In favor

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

Minutes June 16, 2020

Motion: To approve the June 16, 2020 minutes as submitted (Cummings-Pruitt)

Cummings – In favor

Correira – In favor
List –In favor
Pruitt - In favor
Garber-Miller – In favor

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

Mr. List asked if town counsel should be contacted about whether Annual Town Meeting Article 23 applies to the 1 Mansfield Avenue issue. Ms. Garber-Miller said she would contact staff at Town Hall to discuss that.

5. Adjournment

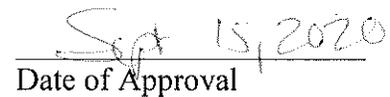
Motion: To adjourn at 9:45 p.m. (Cummings-Pruitt)

Cummings – In favor
Correira – In favor
List –In favor
Pruitt - In favor
Garber-Miller – In favor

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

Next Zoning Board of Appeals Meeting: September 15, 2020 at 7:30 p.m.


Signature of Clerk


Date of Approval