

Minutes Meeting of September 22, 2004 – P.G.I./Texaco

Members Present: Stuart Schulman, Chase Duffy, Robert Cadle, Cindy Maxwell, Jay Prager

The Chairman reconvened the hearing, noting that the main concern is to hear from the Chief of Police regarding traffic safety.

Chief Mulhern said that if the Board (as he noted to the PB as well) looks at the original site vs. the new plan, the new plan pushes the building back, pushes the pumps back and makes the traffic flow better. He said that trucks will have to go out on Champney St., and noted that the traffic engineer will explain. He said that trucks would not go up through the neighborhood because they will want to get to Main Street to expedite other drops. The applicant said he was willing to install no parking signs and if the driver is not following rules, the police can get to him. He noted that the plan shows safety improvements over the present site. He said that any time the traffic flow is shifted and more directed, it is better. He noted that currently the internal traffic is terrible, as with the other stations in town. He stressed that more internal traffic flow is better and he said that believes this is a proper plan.

The Chairman asked whether the schools have crossing guards at Champney St. if school is in session,

The Chief said not yet but noted that are meeting to address that.

Mrs. Duffy said there are many more younger students there now who will be walking.

The Chief said that it is a deceptive number and noted that his show only about 3 students walking to school, which is what it was before.

Diane Rice said that that is because it is so dangerous to walk.

Mrs. Duffy said that she doesn't understand the internal traffic design.

Mr. Prager asked the Chief if he could make the traffic flow any better. He felt that the the driveways, etc. looked fine and had no problem with the snow storage design either. He asked whether there would be any benefit to reducing the size of the landscaping section.

Art Scarnio, traffic engineer, said that now it is entrance only onto Champney St. from the first egress. He said that there are wide open curb cuts there now and stressed that this is a much better defined approach. He said that no plantings will obscure the view. Discussion ensued regarding how cars would be likely to approach and enter/exit. He said that the pass by use rate is from 63 to 68 percent, depending on traffic and ease of leaving the site. He said that delivery trucks often backed onto Rt. 119 and that is not safe. He said that the traffic study was performed pursuant to

state regs. He then submitted a report from JNEI (hired by the PB). He noted that gas deliveries are usually done during off peak hours and noted that truck can pass even when all parking spaces are filled.

Mr. Palmer said will get onto a schedule and have no more than one delivery per week. He said he has a lot of control of when this happens and stressed that he wants it during off-peak hours.

Discussion ensued regarding what are peak hours. Atty. Collins said that it would mimic Rt.119 traffic

Mr. Scarnio said that it is between 7-8 and 3:30-4:30.

Ms. Rice said that the former gas station had deliveries at night and it never bothered her. She thinks this is better from a safety perspective.

Mrs. Duffy noted concern that six cars facing all different ways to get gas as well as traffic for convenience store could be problematic. She feels drivers need to remember which side the gas tank is and the could be like the post office parking lot, which is a night mare.

Atty. Collins said that this is a very spacious parking lot, designed to accommodate larger vehicles.

Mr. Prager asked why the Rt. 119 egress is not larger.

Mr. Scarnio said that there are state regs and said that he does not want to create confusion between left vs. right turns.

Mr. Sargent said that he thinks this is a wonderful plan, particularly compared to the truck deliveries at Cumbies and Dunkin' Donuts. He stressed the excellent engineering and design.

The Chairman said the issues are the canopy variance and a special permit to operate a gas station at the site. He said that there are many issues but the Board needs to stick to its purview.

Mr. Cadle said that the scope of the ZBA is the prior use, conceding that more than two years of non-gas selling has occurred.

Atty. Collins said that they are not conceding that, but noted that it will have been more than two years before the construction is done.

Mr. Cadle suggested that if the Board is just granting an extension than the applicant needs to keep pumps at four stations with two units.

The Chairman asked how that relates to the status and character of the neighborhood.

Atty. Collins noted that the car repair is still there and said that there was a car wash there for a while. He said that this use seems less intense than what has been there historically.

Mr. Cadle doesn't disagree but purely from a gas pumping station this use is more intensive.

Atty. Collins noted that this not a non-conforming use but a special permit use. He said that that discussion is much more relevant in an R-A district with a non-conforming use. He said that this was a major car repair operation.

Mr. Sullivan, abutter, said that he is happy to have a town owned and run business and said that he only has a right to complain when it infringes on the zoning by-law. He said that he was concerned with the size of the operation because the site seems to be bursting at the seams. He said that there needed to be a waiver for the 4 ft planter in front of the building and noted that gas truck could not pull in without closing the station. He said he has issues with the size of the canopy which is too big and with light emanating because all of this can't be fit on the site. He said that he is concerned about the traffic study because empirical data was used to fit the applicant's needs. He also thinks an environmental study should be triggered.

Discussion ensued regarding the status of any canopy.

Mr. Sullivan said that the canopy should comply with setback requirements. He said that Mr. Palmer said that he couldn't fly without six pumps.

Mr. Palmer said that that was not so and said that he was choosing not to support the operation without three stations.

Mr. Sullivan said that he didn't create a hardship when he asked for a permit to board horses. He said that this operation has the potential to be another strip type area, and noted that the brighter the place, the more business.

The Chairman felt that lighting is a PB issue.

Mr. Sullivan said that the canopy is protruding into the setback area, with brighter lights and more than twice the size. He said that Rose Warren, abutter, feels the same way. He also wondered about the 15 gas stations used in their study and where they are, etc.

Mr. Scarnio, said that traffic engineers use empirical data whenever possible. He stressed that they weren't manipulating the data and that they use both empirical data and peak hours for the worse time of day to analyze. He said that this has no bearing on the actual operation and any mitigation that may be necessary. He said that it is only whether they categorically need to prepare environmental data. He said that they filed with mass highway for curb cut permits, etc. He

stressed that if they find the figures are wrong, the State will let them know and stressed that the engineer hired by the town concurred with all figures and findings.

Mr. Sullivan said that the traffic study said that the intersection is below average for accidents for the district, making it appear safe. He stressed that it is really dangerous, as known by those who live nearby. He said that the volume of cars passing through is enormous and thus skews down the percentage of accidents because 60% of the accidents during non-peak hours.

Diane Rice said that she feels like the Board is rushing comments.

The Chairman said that he resents being accused of rushing things, because he doesn't get paid to be here and has spent hours on this particular application.

Ms. Rice said that she is not accusing anyone of fudging figures but noted that abutters have intimate knowledge of what is happening on site. She said that she is not asking for special favors, but only that current zoning regulations be met. She said that it doesn't matter that something is happening on-site; it shouldn't be continued if it is wrong.

Mr. Prager said that rules provide for special permits and variances.

Ms. Rice said that she hasn't looked at it that way but hopes that abutter concerns would be taken into consideration. She also asked about safety issues and whether it relates to the character of the neighborhood.

Tim Dumont submitted a memo into the record and read it aloud. He said that he wanted to add comments regarding the delivery of fuel. He said that in the past, trucks have tried to be there late at night, although it is not always guaranteed. He stressed that trucks never came up Champney St.

Mr. Cromwell said that he wants to make a couple of points, and noted respect for Mr. Dumont's opinions although he tends to disagree. He said that he is looking forward to not having mechanics operating on the back side of the building but stressed that the proposed operation is too big for the lot. He said that that is why so many variances are needed, as well as credits for non-existing parking on Main St. He said that the canopy is 69 feet, and is too long. He said that it is the Board's job to protect the town's rural character and noted that there is no 6-pump operation like this except in Littleton by Rt. 495. He said that this is an operation found in Nashua or Fitchburg and is out of scale with the neighborhood. He said that the frontage of town hall is 50 feet and stressed that the by-laws say that any retail operation needs to be designed to serve residents. He said that it is too big and it is not serving only townspeople.

The Chairman said that in using that logic one would never have a gas station in town because the very nature of gas stations serve a larger population.

Mr. Praager noted concern that if a station with too few pumps is put in, there could be a safety issue. He said that the station needs to be able to serve traffic going by. He said that is not a ZBA issue to decide the scope of business.

Mr. Cromwell said that as proposed it is too out of scale with the neighborhood, like the McElroy's house on Hollis St.

Of note: the existing building is longer than the proposed canopy.

Mr. Dumont said he has the biggest impact because only a row of trees divide the properties and the new roof is taller.

Mr. Palmer said that he believes that he needs to involve direct abutters, but stressed that he can't invite everyone in town to determine the gas station's viability. He said that that is the job of experts.

Mrs. Duffy suggested making the canopy as short as possible and to play down as much as possible in height and appearance.

The Chairman asked how much light is going to come from structure as opposed as to what is already there.

The Engineer said that the lighting design for the canopy and site include five cans for the drive and building. He said that this is much scaled back from a typical site and noted that all fixtures are flush and the bulbs are recessed to minimize glare. He said that they are also using the lowest wattage that can get ie 250 watts instead of 1000. He said that they need a certain level of light under the canopy to allow for reading of pumps, slips, etc. and noted that they have worked with the PB since there is no by-law addressing wattage limitations. He said that they need to return to the existing 4200 square foot building. He said that the new building is 2900 feet and noted that the existing canopy is 2 feet from the road, whereas the new will be 24 feet from the road. He said that every single light in the canopy is further away from the lights on the existing canopy. He said that the new operation is less intense rather than more intense. He said that the pumps are the minimum standard of separation allowed. He said that if the canopy size is further reduced, this could only be done through reducing the overhangs and it would reduce both the effectiveness and point of the canopy. He stressed that a canopy over the gas pumps and gas positions is much safer, even if not needed for fire protection. He said that the alternative to the canopy would be a network of pipes for fire suppression that would be very visible. He noted that the canopy width has been reduced several times and that the site meets the parking by-law. One PB member suggested adding parking around the perimeter but the engineer doesn't think this is a good idea. He said that the proposal has 25% green space and currently there is only 5%. He said that the smallest curb cut is bigger than the largest in the proposal and stressed that they have scaled back the project significantly.

Atty. Collins said the site is next to four commercial buildings and stressed that this is smaller than the largest of the four. He said that the canopy is significantly shorter than the façade of the existing building.

Mr. Sergeant, Moisons, said that he is a business supporter and noted that if the Board remembered Main St. 15 years ago, it was desolate and barren. He felt that this will look so much better than what is there now.

Mark Fredrickson said that competition is good and noted that it is better for both the neighborhood and the town to have a good commercial development.

Mr. Sullivan agreed that good business is welcome but noted concern with the size of this operation/canopy.

The Chairman reminded him that the bank of lights is further from his house in the new proposal.

Mr. Palmer said that hours of operation will be no later than 10 pm on weeknights and 9 pm on weekends. He stressed that he wants to support the town and not live at the business.

Mr. Sergeant said that there used to be six gas stations in town and now there is only 2.

Mr. Sullivan thanked the Board for listening to abutters.

The Chairman reiterated his annoyance at the implication that the Board is not listening. He said that this will be revisited if need be.

Mr. Cadle asked about the hardship from the variance standard and noted that a self-created hardship doesn't meet the standards.

Atty. Collins said that in the letter he submitted he presented some findings for board. He said this is an oddly shaped site because it is a reverse trapezoid and this dictates how the canopy will be placed on site and have traffic flow properly. He said that the lot doesn't have the depth to place it elsewhere.

Discussion ensued regarding what could be done with the site vs. the reality of what is proposed.

Atty. Collins said that with minimal changes the building could support three retail units.

Mr. Cromwell asked the Board to consider the fact that this project is taking 10 spaces on Main St.

The Chairman said that that doesn't have anything to do with ZBA purview.

The Board moved to close the public hearing. The motion was seconded and passed unanimously.

Discussion ensued regarding whether to consider the Special Permit or Variance first.

The Chairman listed the special permit criteria and said that they need to be clear whether comparing this to no gas station on-site or to traditional use.

Mrs. Duffy feels that there should be a gas station there.

Mr. Cadle thought the Board should consider the traditional historical use.

The Chairman said that there is evidence that the traffic flows better with the new design, pursuant to the police chief, JNEI and the traffic engineer.

Mr. Cadle expressed concern about dumping traffic onto Champney St, particularly related to the school.

Mr. Prager said that anything economically viable on that site will generate traffic. He said that he thinks the issue is between the PB and police to monitor traffic safety. He said that he thinks a Dunkin' Donuts in the existing building would create worse traffic situation.

The Chairman said that the utilities seem okay and moved on to neighborhood character. He said that there was a gas station there historically and this is an improvement.

Mrs. Duffy said that the operation is enlarging and thus affects the neighborhood.

Mr. Prager said that he thinks the canopy there now is ugly.

Discussion ensued regarding canopies.

Mr. Prager said that it is no worse than what is there and seems to be better.

The Chairman said that new stuff can be much better for the town, neighborhood and environment, particularly with this project and the redesign of pumps, etc. He noted that the fiscal impact is positive.

Of note: reference plan and egress and all site plan review conditions, approving as shown and subject to what approved by the PB under site plan review. A condition is attached that the operation is limited 3 pumps and is non-transferable.

The Board moved to grant a special permit to operate a gas station with findings as just discussed

and based on the plan as presented and with any modifications as requested by the PB.

The motion was seconded and passed unanimously.

Discussion moved to the variance request for a 69-foot canopy, and whether the trapezoidal shape of the lot held any grounds.

Further discussion ensued regarding whether a hardship for the applicant could be construed since he got a special permit to operate the gas station and a canopy is necessary to maximally operate a gas station.

Of note: no matter what happens on the lot, the applicant would need a variance. Another difference exists because the business is already in operation and the plan just changes the configuration of the building and canopy.

Discussion ensued regarding neighboring setbacks.

Mrs. Duffy said that there is already a gas station and there is no way to have a conforming canopy and safely located pumps. Further, she said that moving the building is better.

Mr. Prager said that there is no way to have even a smaller building with a greater setback with pumps and canopy to be conforming anywhere on the lot. He said that the new placement is better than what is there now and the non-conformity of the canopy is decreased. He said that it would be a hardship to not allow the canopy when the site is improved.

Given the shape of the lot and the fact that a literal enforcement of the provision of the chapter would create substantial financial and other hardship given the placement on the lot of the gas station and given that the proposal does not substantially derogate from the intent of the zoning by-laws, the Board moved to grant a setback variance for the placement of the canopy.

Findings of the Board: new canopy setbacks are greater than the existing canopy and building and it is safer and more aesthetically pleasing.

The meeting adjourned at 10:45 pm.