

TOWN OF BELMONT
ZONING BOARD OF APPEALS

MEETING MINUTES
DECEMBER 5, 2011

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BELMONT, MA.
FEB 7 2 20 PM '12

Attendance: William Chin (Chair), Nicholas Iannuzzi, James Ryan-Fagan, Eric Smith, Jim Zarkadas, Christopher Henry (Associate), David Iaia (Associate), Jay Szklut, Staff

7:00 p.m. Meeting called to order.

William Chin welcomed everyone to the December meeting of the Zoning Board of Appeals. He gave a brief outline of the process and encouraged audience participation before the committee's deliberations at the end of the meeting, as well as encouraging the submission of relevant documents and other materials necessary to support each case. He stated that whenever possible, the Board tries to deliberate and present a decision the same evening that the case is heard.

CONTINUED PUBLIC HEARING:

CASE NO. 11-31 – 82 SOUTH COTTAGE ROAD: Variance to increase the number of units allowed from 7 to 11.

William Chin reported that this case will not be heard tonight, as the applicant requested a continuance. Eric Smith requested that the documents supporting the case be presented in advance of the next meeting in a timely manner.

Nick Ianuzzi made a motion to continue the case until January 9, 2012. Jim Zarkadis seconded the motion.

Motion passes: Case No. 11-31 is continued to January 9, 2012.

NEW PUBLIC HEARINGS:

CASE NO. 11-34 – 59A LEONARD STREET: Special Permit to open a 'Subway' fast food restaurant..

Chris Cho, a managing member of BGGG Belmont LLC gave an overview of the Subway store operations. He stated that:

- each store is independently owned by the franchisees
- the hours of operation for the Belmont store are 7:00 am to 10:00 pm
- there are 40 seats in the restaurant, 20 seats upstairs and 20 seats downstairs
- there will be 15 full and part-time staff
- the restaurant will feature an upscale Tuscan design
- there is ample parking in the rear of the restaurant
- the signage for the restaurant will be custom made to conform to local laws
- the restaurant meets and exceeds safety standards

He felt that a Subway Restaurant would be beneficial to the community and spoke to the benefits. He stated that Subway would support youth sports team and community fundraising. So as not to negatively impact the sales of the other nearby pizza restaurants, they would not sell pizza products.

William Chin inquired about the downstairs seating. Mr. Cho told the Board that the downstairs would be monitored utilizing closed circuit TV. Mr. Cho also told the Board that they would provide the Health Department with the supplemental information they asked for in their memo tentatively approving the restaurant.

Mr. Iannuzi verified that there was ample parking for the restaurant in the rear of the property.

Mr. Chin asked for comments from the audience.

Those in favor:

Kevin Foley, owner of the property – Mr. Foley notes that a successful commercial district should have a good mix of national and regional tenants, and that there should be the option of having a national chain as a tenant. Additionally, he felt that a Subway draws a lot of people.

Those opposed:

Ray Lemieux, 55 Alexander Avenue – He felt that a national chain restaurant like Subway was not the best option and did not think it was a good fit for the town.

Leon DeMagistris, 19 Alexander Avenue – He stated that a chain restaurant was not the place for Belmont Center. He feared it would open up the gate to ruin Belmont Center, and felt that allowing Subway in would result in the loss of Belmont's uniqueness and quaintness.

Jack Kelley, 480 Concord Ave. – He also felt that a chain restaurant would dilute the feel and uniqueness of the town and urged everyone on the Board not to be "chain driven".

Dan Morris, 14 Alexander Road – He felt that a Subway Restaurant would not enhance the character and uniqueness of the town.

Others who spoke:

Joe Tellier, owner of adjoining building – He felt that there should be support for businesses who want to locate in the town.

William Chin then closed the public hearing and stated that the Board will take the matter under advisement.

CASE NO. 11-35 – 57 LEXINGTON STREET: Special Permit to operate a large family Childcare.

Joseph and Monoshini Gordon, owners of the property and their attorney Joseph Noone addressed the Board of Appeals. They noted that the home day care is currently licensed by the Commonwealth of Massachusetts and is being run out of a two family home. In addition to Mrs. Gordon, there are one certified assistant and one helper on the premises neither of whom drive to work.. The Gordons reside on the second & third floor, and state that noise is kept to a minimum because the child care activity only takes place on the third floor, and the 2nd floor is a buffer between the 1st floor tenant and the child care. Additionally, the property has a fenced in back yard which serves as a play area for the children.

Mr. Chin inquired about smoke detectors on the premises, and instructed the Gordons to apply for a smoke detector certificate issued by the Fire Department.

Mr. Chin then asked for comments from the audience.

Paula Van Horn, 97 Sycamore Street- Opposes the application. Her backyard abuts the Gordon's Day Care. She reports loud crying, diapers being changed out in the open, and unsightly messes (and claims that the applicants never pick up the backyard). She also notes that her driveway is frequently blocked when parents drop off and pick up their children, that sandwich boards were placed on the sidewalk, and an overall lack of consideration. She says the Gordons have proven not to be good neighbors, and she asks the Board to restore her rights. She present several photographs to the Board.

Elizabeth Schmidt, 59 Lexington Street – Ms. Schmidt is the owner of the 1st floor unit, and works from home. When the daycare first began operations, she was promised that there would be no noise and that the driveway would not be blocked. She read the condominium regulations which forbids anything but residential uses. She feels the situation has morphed into a difficult situation. She no longer can enjoy the use of her backyard, and is very concerned about liabilities. She also states that there are unsightly large plastic child toys in the yard, dirty diapers hanging from the fence, that the shared driveway is frequently blocked, and that it is no longer a peaceful place to live. She requests that the Board please restore her right to quiet.

Robert Van Horn, 97 Sycamore Street – Submitted a petition signed by several neighbors in opposition.

Also speaking in opposition were James Pazzanese, 177 Lexington Street and John McDonough, 45 Lexington Street.

There were several comments made regarding the fact that the Home Child Care was not licensed. Mr. Chin explained that the Town of Belmont requires all Day Care providers to get a Special Permit to run and own a Day Care. He further stated that a Special Permit was never sought before this, and that the Gordons incorrectly thought they only needed a state license to operate which they have.

Joe Noone, attorney for the Gordons, requested copies of all the documents that had been submitted to the Board. He also stated that the interpretation of the Condominium By-laws and other documents is not within the purview of the Board, as the ZBA is not a court of law.

At this point, a member of the Board questioned whether the appropriate abutter's list had been generated. After review, the Board determined that proper notice of this hearing was not given to the abutters and other neighbors. The Chairman therefore stipulated that the hearing had to be re-noticed and re-opened on January 9, 2012 and that all testimony and materials presented would retained as part of the public record.

(Note: Although originally scheduled to be re-noticed for January 9, 2012, following discussion with the applicants, the hearing was re-noticed for February 6, 2012 as a result of scheduling conflicts.)

CASE NO. 11-36 – 762 PLEASANT STREET: Special Permit for construction and operation of a take-out restaurant.

Adel Ibrahim, applicant President of Crosta Pizza, indicated that the restaurant will serve lunch and dinner, with a take-out option. It's hours of operation will be 11:00 am to 12:00 midnight, 7 days a week. The dumpster will be emptied several times a week, and that there was plenty of parking available.

William Chin read a memo from the Board of Health, which approved food preparation for pizza, cold sandwiches, and salads only. Mr. Ibrahim stated that as soon as they get the hood to the fryolator installed and the Board of Health reviews that, then they can provide hot meals which they would like to do in the future. Mr. Chin stated that a Special Permit if granted would be conditioned by the current approval of the Board of Health and that any changes would require amending the permit.

He then asked if there was anyone in favor or opposed. There were no comments. Mr. Chin then closed the public hearing and stated that the Board will take the matter under advisement.

CASE NO. 11-37– 1000 PLEASANT STREET, UNIT 5: Special Permit for operation of an automotive repair business.

Owner Murat Cinar stated that he has been in the business for 17 years, having worked at Executive Motor Cars in Cambridge. He has a 4 year lease with an option to renew annually. Mr. Chin asked if there was anyone opposed, and no one spoke in opposition. Mr. Chin then closed the public hearing and stated that the Board will take the matter under advisement.

CASE NO. 11-38 – 244-248 TRAPELO ROAD: Special Permit to alter roof line in order to install windows in second floor and create usable office space.

Andy Rojas, Architect for the Applicant addressed the Board stating that the applicant seeks to raise the roof at the rear 11 inches so that it would be flat, and get rid of the existing Mansard roof. This would allow for installation of windows in the office space, making it a nicer space and more habitable. Additionally a 2' high parapet would be constructed around the entire roof with a decorative peak in the front.

Brian Burke, the applicant, noted that the existing special permit allowed a flat roof, the existing roof is sloped and as a result interior height is only 7' 1" in the rear. Raising the height will make the space desirable to prospective medical health professional tenants. The existing permit also required leasing of parking spaces from the CVS and this arrangement would be maintained.

Mr. Burke noted that he had spoken with the rear abutter and he did not oppose the proposal.

No one spoke in opposition or in favor of the proposal. Mr. Chin closed the hearing and referred the matter to the Board for deliberations.

DELIBERATIONS AND VOTES

59A Leonard Street, Case Number 11-34 - During deliberations the Board felt that approval should be granted to applicants only and subject to compliance with the Board of Health, and also that the signage not be back-lit and not be plastic.

Motion – Nick Ianuzzi moved approval of the special permit subject to the conditions as stated: Seconded by Eric Smith. Motion passed unanimously.

762 Pleasant Street, Case Number 11-36 - During deliberations the Board felt that approval should be granted to applicants only and subject to Board of Health approval and a one year review.

Motion – Nick Ianuzzi moved approval of the special permit subject to the conditions as stated. Seconded by Eric Smith. Motion passed unanimously.

1000 Pleasant Street, Case Number 11-37 – No objections were raised.

Motion – William Chin moved approval of the special permit. Seconded by Nick Ianuzzi. Motion passed unanimously.

244-248 Trapelo Road, Case Number 11-38 - During deliberations, the Board felt that approval should be granted with the condition that blinds be put on the 2nd floor windows to use after 8:00 pm. And that the parking arrangements with CVS be continued.

Motion – William Chin moved approval of the special permit. Seconded by Nick Ianuzzi. Motion passed unanimously.

OTHER BOARD MATTERS

After deliberations, the Board discussed the fact that many of the family day care facilities didn't have Special Permits from the town because of the incorrect assumption that a license from the state is all that is needed to operate in Belmont. Anticipating an influx of applications for Special Permits from family day care operators, Jay Szklut raised the question of how they should be handled. The Board will take up applications in chronological order based on the date of application.

The Board discussed scheduling changes for the year 2012. They changed the November 12, 2012 meeting to November 4, 2012.

The Board approved the minutes of September 2011, October 2011 and November 2011 with minor changes.

Meeting Adjourned – 10:00 pm