

**ZONING BOARD OF APPEALS
MEETING MINUTES
February 5, 2018**

2018 NOV 27 PM 12:55

Present: Nick Iannuzzi, Chair; Jim Zarkadas, Vice Chair; Andrew Plunkett;
Tino Lichauco; Phil Ruggiero, Craig White

Staff: Ara Yogurtian, Liaison to the Office of Community Development

1. Meeting called to order 7:00 PM

Chairman Iannuzzi welcomed the public to the February 5, 2018 Zoning Board of Appeals meeting. He introduced the Board members asked the audience to sign in on the sign-in sheet if they were planning to be heard by the Board that evening.

2. Continued Public Meeting:

- A. CASE NO. 17-30 – ONE (1) SPECIAL PERMIT
344 Pleasant Street – NICOLAS LEO, d/b/a PATRIOT DONUTS

[Mr. Iannuzzi recused himself from the case at 7:05 PM].

Mr. Joseph Noone, Attorney, representing Mr. Leo came before the Board and described the proposal for the donut shop. He also reviewed the parking requirements and how they have been met. He noted that there would be 21 parking spaces and the remediation LSP parking space will only take up one parking space for monitoring. There was more than sufficient parking for the proposed use. Mr. Noone explained the history of the traffic reports and noted that the traffic analysis had been vetted by the ZBA and a traffic engineer was hired by the Town to review this study. He explained the Level of Service agreement between the Applicant and the Belmont Planning Board. He noted that the number of trips generated on this site would result in a zero-net increase in trips from the site and there would be less than 2% impact as compared to the existing auto repair shop. He stated that the Level of Service would not be impacted. He briefly explained the proposed building's aesthetics and hours of operation. Mr. Noone provided over 500 signatures in support of the application. He met with the abutters on many occasions to address their concerns as best as they could, they worked closely to revise the site plan in order to appease their needs. He noted that there were some abutters that were in opposition of the Dunkin Donuts but would not be in opposition of a convenience store.

Mr. Lichauco asked Mr. Noone to explain how the statistical noise level would be impacted. Mr. Noone explained that the noise level would not be impacted.

Mr. Plunkett asked for clarification regarding the net 21 trips as compared to the prior use. Mr. Noone noted that the net refers to the original number of 96 total trips and it was deducted by the pass-by rate of 75%.

Mr. Giagrande, Traffic Engineer, noted that the baseline was the 96 trips, of the 96 there were base trips and pass-by trips and a percentage were already on the roadway network and did not affect how the intersection would function.

Mr. White asked the Applicant to explain how the pass-by trips percentage was determined. Mr. Giagrande noted that it was 89% with a drive-through of new trips, 89% of the trips would already be passing by on the roadway. The number of 75% was determined and agreed upon by the Town's traffic engineer.

Mr. White asked for clarification of the traffic counts and he noted that an automobile repair shop was not a permissible use in the LB-3 district. It was not a logical comparison; a fair comparison would be a dental office or something like that. Mr. Giagrande explained that the report compared to a convenience store in the August report on page 3.

Mr. Lichauco asked for clarification in the pass-by trips percentage, calculations of percentage of trips and how they were weighted. Mr. Giagrande noted that the measure of impact was the Level of Service at the intersections, those cars going into the intersection, then go into the donut store and then go back into the network again. Mr. Lichauco also asked if turbulence or side friction will be caused by pass-by trips with cars coming in and out of the stream of traffic. The traffic engineer noted that the gap between cars was big enough to allow for plenty of time for the cars to pull in or out of the subject site.

Mr. Leo noted that he was obligated to the Planning Board not to change to Level of Service and he would not consider adding a convenience store (in addition to the donut store) because of the Level of Service condition applied to the special permit by the Planning Board.

Mr. Iannuzzi opened up the hearing for public comment.

Spoke in favor:

Timothy McCarthy, 18 Simmons Avenue, spoke in favor of the project.

Frank Vittiello, 24 Hurley Street, spoke in favor of the project and noted that he was pleased with the possible income for the city and it unified the area which was now very dead as an old gas station with no activity. He noted that he thought the proposed building was very pretty.

Ricardo Rullo, 18 Chandler Street, noted that it was a tremendous upgrade as a gateway to Belmont, it was important that the community looks and feels good too. It was a great upgrade and it should be a nice gathering place.

Spoke in opposition:

Ellen O'Brien Cushman, 38 Scott Road, had no objection to the upgrades at the site. She was concerned about the impact of this use at that intersection and that a fast food restaurant with a 75% pass-by rate, if dropped to 50% there would be a considerable increase. She noted that a fast food restaurant was inappropriate at that intersection.

Jon Robotham, 19 Scott Road, echoed what Ellen Cushman had said and to also consider the hours of operation and the impact that this would make to LB-3 as there are adjacent neighbors to most of the business in this area. He noted that this was going to set a really bad precedent. He urged the Board to maintain the intent of the Town's by-laws.

Claudia Nasson, 45 Simmons Avenue, provided the ZBA with a map of her home location. She asked for clarification on when the traffic study numbers were collected and she was concerned that they were collected during a school break week. She is concerned about being about to get out of her neighborhood and she couldn't get out of her street when she was commuting for work. She does not want to wait for light cycle to change just to pull out of her street.

Albert Barsoumian, 311 Brighton Street, had issues with the restaurant use; idling car issues and friction. He is concerned that there was not enough room for all of those cars. He cannot get out of his driveway at 6:45 AM on a weekday morning and he noted that the friction will be impacted. He was also concerned that an 18-wheeler truck would be going behind to drop off food at the rear of the building and this would block an entire lane on Pleasant Street. He asked for clarification in the ITE traffic code 936 (coffee shop with no drive-through) and noted that the traffic studies should be reviewed again.

Russell Mann, 308 Brighton Street, noted that he disapproves of the usage at the building and he was really concerned and disappointed that there was new information regarding some kind of discussion about pass-by rate and it was really critical and he said that the pass-by rate was 44% for the Trapelo Road Dunkin Donuts application. The Alewife Dunkin Donuts on the north side of Concord Street was not convenient for people going into Boston. He noted that the pass-by rate should be much lower here at this site. The hours of operation of 7am - 11pm would be onerous on this community. He noted that the Auto Repair Shop was not a permitted use and still comparing the proposed use to a gas station doesn't make any sense.

Elizabeth Pew, 27 Wellington Lane, Town Meeting Member Precinct 2 and member of the Traffic Advisory Committee, noted that she sees bumper to bumper traffic at 6:30 AM and she thinks that a lot of people will need to make a left turn into the Donut Shop

and she was worried about pedestrian safety. She asked the Board to please consider what will be safe for the greater neighborhood and surrounding streets.

Camille Fulechan, 3 Sandrick Road, went to the BOS to talk about traffic issues and friction and he noted that the friction was going to be horrendous and there was already a problem with the Rt. 2 cut through traffic.

Christina Marshall, Town Counsel for the Town of Belmont, Anderson & Kreiger, LLP, briefly reviewed the history of the case and she noted that the traffic study was reviewed by the Town's Traffic Engineer and additional information was provided to the Board. The Town's Traffic Engineer has not signed off on or approved a traffic study and it was up to the ZBA to decide to approve it or not.

Mr. Noone addressed the ITE manual and noted that there was only a pass-by rate for a coffee shop with a drive-through. Code 936, the coffee shop code gives you the multiplier but not the pass by rate. This rate was determined by the traffic engineers as they felt 75% was reasonable.

Mr. Leo reviewed hours of operation, dumpster pickup times and truck delivery times.

The Board took the matter under advisement.

[Mr. Iannuzzi returned to the meeting at 8:38 PM.]

3. Public Hearings:

A. CASE NO. 18-01 – TWO (2) SPECIAL PERMITS

47 Hillside Terrace – Richard and Karin Lehr

Mr. Iannuzzi reviewed the Applicant's request.

Mr. Lehr came before the Board to describe his proposal. He submitted signatures from abutters who were in support of his project. He also submitted some pictures and showed how the building was resting on some pavers.

MOTION to approve was made by Mr. Iannuzzi and seconded by Mr. Zarkadas. Motion Passed, vote 4-1.

B. CASE NO. 18-02 – ONE (1) SPECIAL PERMIT

101 Cushing Avenue – Gary and Elaine Westermarck

Mr. Iannuzzi reviewed the Applicant's request.

The Zoning Compliance Check list was not calculated correctly and Mr. Yogurtian noted that he would have it updated.

Mr. Westermarck came before the Board and noted that he would like to add a tool shed to his lot to store tools and a lawn mower, etc. He uses his garage to park his car.

Mr. Lichauco was concerned with “creep” and the request for increases in lot coverage.

The ZBA asked the Applicant to meet with Mr. Yogurtian to discuss ways to minimize the impact to his property and to revise his plans.

MOTION to continue was made by Mr. Iannuzzi and seconded by Mr. Zarkadas. Motion Passed. 5-0

C. CASE NO. 18-03 – TWO (2) SPECIAL PERMITS
60 Prentiss Lane – Janice Christo

Mr. Iannuzzi reviewed the Applicant’s request.

The Applicant was not able to stay for the hearing as the meeting was running very late.

A letter of opposition was received by the Board during the hearing.

There was an issue with the Zoning Compliance checklist.

MOTION to continue was made by Mr. Iannuzzi and seconded by Mr. White. Motion Passed, vote 5-0.

D. CASE NO. 18-04 – ONE (1) SPECIAL PERMIT
80 Leonard Street – Richard Smairi, d/b/a Bellmont Café

Mr. Iannuzzi reviewed the Applicant’s request.

The Applicant was not available.

MOTION to continue was made by Mr. Iannuzzi and seconded by Mr. Zarkadas. Motion Passed, vote 5-0.

E. CASE NO. 18-05 – TWO (2) SPECIAL PERMITS
36-38 Upland Road – Brian Dawe

Mr. Iannuzzi reviewed the Applicant’s request.

Mr. Dawe came before the Board and noted that this was the smallest lot on Upland Road. There are five adults living at this address and there were only two parking spots. The house was built in 1920’s and it has two bedrooms and one bathroom in each unit. He noted that the sheds are used for storage of stuff.

The Board members mostly agreed that this was a case that was not detrimental to the neighbor because the rest of the neighborhood had front yard parking.

Marc O'Brien, 41 Drew Road, had a question about how many sheds might be approved. The special permit was for the two sheds that are already existing. He was in opposition to having two sheds, he would be fine with just one.

Ellen O'Brien Cushman, 38 Scott Road, noted that there had been complaints received and tickets issued to people who had their cars parked on the sidewalk. If someone was trying to walk with a baby carriage and they could not get by the car that was parked partly in the sidewalk, they may place a complaint.

MOTION to approve the installation of paving the front parking special permit was made by Mr. Ianuzzi and seconded by Mr. White. Motion Passed, vote 4-1.

MOTION to approve the special permit was made by Mr. Zarkadas and seconded by Mr. Iannuzzi. Motion Passed, vote 3-2. Motion denied.

The ZBA took a five-minute break.

4. Deliberate and Vote on the following cases:

Case No. 17-30 344 Pleasant Street

Mr. White noted that one of his concerns was that if it were a convenience store it would be permitted by right because it was less than 5,000 square feet so if the Board did not approve the Dunkin Donuts somebody could come back with a worse plan and create a bigger traffic mess. The hours of the Dunkin Donuts (6am-11pm) pushed the limits for the LB-3 district and it was possible that a convenience store could open for those hours. He felt that the hours were a significant detriment to the neighborhood.

Mr. Lichauco noted that there were a lot of testimonies and the neighbors felt that this proposal was a detriment to the neighborhood and the testimony against it had a rational basis. The Applicant's traffic study numbers suggest that it should not be a problem. The testimonies by neighbors showed otherwise and the neighbors were in the best position to know.

Mr. Noone suggested that the Applicant would be willing to pay for an independent peer review in order to answer the ZBA's questions regarding traffic safety issues.

Mr. White noted that he feels that the traffic issues are not as minimal as we think they are.

Mr. Giagrande noted that the Level of Service was measured by the average vehicle delay at an intersection (graded A-F).

Mr. White asked that the peer review of the traffic study further justify the number of trips that pass by.

MOTION to continue to March 5, 2018 was made by Mr. White and seconded by Mr. Plunkett. Motion Passed, vote 5-0.

5. Adjourn: 10:34 PM