



Town of Tyngsborough
Planning Board
25 Bryants Lane,
Tyngsborough, Massachusetts 01879-1003
Office: (978) 649-2300 ext. 115

MINUTES
February 16, 2012
APPROVED

Attachments:

1. Meeting Agenda
2. Special Permit Application for 61 Progress Ave. – 12/22/11
3. Tyngsborough Department Comments for 61 Progress Ave.
4. David E. Ross Associates Report: 61 Progress Ave. – January 18, 2012
5. Special Permit Application for 166 & 168 Middlesex Rd. – 12/19/11
6. David E. Ross Associates Report: 166 & 168 Middlesex Rd. – February 3, 2012
7. Tyngsborough Department Comments for 166 & 168 Middlesex Rd.
8. David E. Ross Associates Report: 413 Middlesex Rd. Bahama Breeze – February 8, 2012
9. Tyngsborough Building Commissioner Correspondence: 30 Progress Ave. – Feb. 8, 2012
10. NMCOG's Regional Strategic Plan – 9/2011

Members Present: Steve Nocco
Tom Delmore
Bill Gramer
Caryn DeCarteret
Pamela Berman, Administrative Assistant
Jesse Johnson, David E. Ross Associates

Members Absent: Steve O'Neill

7:00pm - Meeting called to order by Chairman Steve Nocco

7:02pm **81 Westford Rd. (M21, P4, L0)** – Special Permit and Site Plan Special Permit in connection to the proposed construction of a commercial development consisting of 1 free standing building to contain a Honey Dew Donuts, and another building dedicated to additional retail/office entities. Continued from February 2, 2012.

Atty. Peter Nicosia, traffic engineer Dermott Kelly, and the applicant appeared before the Board to address the traffic study report issued by Board traffic engineer Robert Duval of TF Moran. In addition, modified plans were submitted to Board engineer Jesse Johnson earlier in the day. Further review time is necessary in order to determine compliance. J. Johnson did note, however, the project engineer, Ken Lania, still needs to produce updated drainage calculations and submit the plans with those modifications. Any decision rendered tonight would be contingent on the approval of those plans by J. Johnson.

There was discussion regarding the exit from the parking lot. Specifically, cars would be lining up within the parking lot while waiting for cars to take a left turn on to Westford Rd. It was suggested that a “Right Turn Only” be designated for exit onto Westford Rd. which would help alleviate any bottle-neck that might occur. The alternate exit onto Industrial Ave. would be available for left or right turn exiting.

John Sullivan spoke on behalf of the Sisters of Notre Dame Academy. He conveyed to the Board that Notre Dame has no problems with the re-designed plan as it removes any work being proposed for their property. However, he went on to explain that this process financially impacted Notre Dame and asked the Board to consider making a condition on any decision whereby the applicant would reimburse Notre Dame for the engineering expenses they incurred. The Board noted that the request is outside of their jurisdiction, and therefore, could not impose such a condition. All Board members were pleased with the applicant’s willingness to work with the Board to produce a well designed plan. There were no other abutters present to speak on this hearing.

T. Delmore: Motion to close the public portion of the hearing.

W. Gramer: 2nd the motion

In Favor: 4 Opposed: 0 Absent: 1

Passes: 4-0-1

W. Gramer: Motion to approve a Special Permit and Site Plan Special Permit for 81 Westford Road based on plans dated February 16, 2012. Such permit is conditioned on the following:

In accordance with Section 1.16.14 of the Zoning By-Law the Planning Board finds that this proposed use:

1. Is in harmony with the purpose and intent of this By-Law.
2. Will not be detrimental or injurious to the neighborhood in which it is to take place.
3. Is appropriate for the site in question.
4. Complies with all applicable requirements of this By-Law.
5. The Board’s Decision is as follows:

The Town of Tyngsborough Planning Board (the “Board”) hereby certifies that the following is a detailed record of its proceedings relative to the application of FMP Realty Trust and Yenoh Corporation (the “Applicant”) for a Special Permit and Site Plan Special Permit under Section 1.16.00 et. seq. and 2.16.00 of the Town of Tyngsborough Zoning Bylaws (the “Bylaws”) to construct a major business complex known as “Honey Dew Donuts, et al” off of Westford Road, in Tyngsborough, Middlesex County, Massachusetts.

Subject Property: Tyngsborough Assessors Map 21, Parcel 4, Lot 0 (the “Property”)

I. FINDINGS:

1. The Board finds that the Applicant has fully complied with the submittal requirements for the application for a Special Permit and Site Plan Special Permit established under Sections 1.16.14, 1.16.20, 1.16.22, 4.10.20 and 4.10.21 of the Tyngsborough Zoning Bylaws as well as the Planning Board’s own Rules and Regulations.
2. The proposed plan and application submittals are in compliance with Tyngsborough Zoning By-Laws Sections 4.10.30(2) & (3).
3. Under Section 1.16.14 of the Bylaws, the Board shall only issue a Special Permit where such relief:
 - a. Is in harmony with the purpose and intent of the Bylaws;
 - b. Will not be detrimental or injurious to the neighborhood in which it is to take place;
 - c. Is appropriate for the site in question; and,
 - d. Complies with all applicable requirements of the Bylaws.
4. The Applicants have obtained the required Variances from the Tyngsborough Zoning Board of Appeals pursuant to Sections 2.12.50 (Front Yard and Open Space); 3.10.41 (Parking Distance to a Right of Way and Entrance and Exit Separation), 3.10.49 (Landscaping

Tree Distance to Parking Spaces), 3.13.21 (Side and Rear Yard Distance), and 3.13.33 (Side and Rear Yard Distance) of the Tyngsborough Zoning By-Laws.

IV. SPECIAL USE PERMIT CONDITIONS:

1. Pursuant to Section 1.16.16 the Applicant shall have two (2) years to complete the project and shall be able to develop the project in two (2) Phases as shown on the Phasing Plans and Phasing Submittals.
2. Subject to the receipt of revised design plans and drainage calculations, which are subject to final review and approval of the Planning Board's engineer consultant.
3. An as-built plan must be submitted, and a final inspection done by the Planning Board's engineer for each Phase of the project prior to issuance of an Occupancy Permit.
4. The Westford Road exit from the property shall be constructed with an island and appropriate signage that creates a "Right Turn Only" exit lane onto Westford Road.
5. The Tyngsborough Planning Board reserves the right to impose an obligation for the applicant to install road striping and signage along Westford Rd. if deemed necessary.

C. DeCarteret: 2nd the motion

Roll Call Vote:

William Gramer: In Favor

Tom Delmore: In Favor

Steve Nocco: In Favor

Caryn DeCarteret: In Favor

Steve O'Neill: Absent

In Favor: 4 Opposed: 0 Absent: 1

Passes: 4-0-1

7:50pm **61 Progress Ave. (M13, P52, L0)** – Special Permit for the operation of a heavy duty truck repair shop in an existing building.

T. Delmore: Motion to waive the reading of the legal notice and abutters list.

W. Gramer: 2nd the motion

In Favor: 4 Opposed: 0 Absent: 1

Passes: 4-0-1

Applicant Ashton Bosch appeared before the Board regarding the above special permit request. Mr. Bosch explained that he is in the process of buying the building for his truck repair business. The use will be exactly the same with no selling of vehicles or parts; it will be a repair shop only. The Board asked if there would be any salvage vehicles or parts piling up on the property, because that would not be allowed. Mr. Bosch assured the Board that his business is strictly repair, much like what the use is right now in the building. Abutter Jim Patierno suggested that there is a development covenant on Progress Ave. that requires all occupants to get permission from the “Development Association” to operate the business at the site. Mr. Bosch was unaware of this requirement and said that he would look into it. The Board asked Mr. Patierno to put his concerns in writing and forward them to the Planning Board in order to be sufficiently addressed and reported at the next meeting.

Board engineer J. Johnson looked at the site and did not have any comments that would prevent this business from operating in this location as it is an allowed use with a Special Permit. The Board asked whether the other tenants of the building would have to reapply for special permits with the change in ownership. It was determined that more research is needed on this site in order to answer some of the Board’s concerns.

C. DeCarteret: Motion to continue to March 1, 2012

W. Gramer: 2nd the motion

In Favor: 4 Opposed: 0 Absent: 1

Passes: 4-0-1

8:10pm **166 & 168 Middlesex Rd. (M21, Parcels 21 & 42, L0)** – Special Permit and Site Plan Special Permit for the razing of an existing building and the construction of a ~9,870 s.f. building with associated parking and utilities.

C. DeCarteret: Motion to waive the reading of the legal notice and abutters list.

T. Delmore: 2nd the motion

In Favor: 4 Opposed: 0 Absent: 1

Passes: 4-0-1

Atty. Peter Nicosia, engineer Doug Lees, and applicant Jayesh Patel appeared before the Board regarding the above application. Mr. Lees presented the Board with plans for the redevelopment of an existing structure. The applicant is proposing to raze that existing structure and re-build a ~9,800 s.f. building that would house 1 restaurant, 1 variety type store and 2 other business, as

yet undetermined. The site is on septic, and would require a new system. In addition, the new structure would require ZBA relief, which they have already been granted. The Board reiterated its position of applying for relief with ZBA ahead of obtaining a Special Permit from the Planning Board. They have stated in the past that applicants requiring ZBA relief and a special permit and site plan special permit, must first get approvals from the Planning Board before going before the ZBA.

J. Johnson reported that the site plans require some modifications in order to be compliant with our regulations. In addition, the Conservation Commission commented that a Notice of Intent must be filed with them in order for this project to move forward. Atty. Nicosia said that he would work with all parties to perhaps meet in a work session to work out the particulars of this project.

C. DeCarteret: Motion to continue this hearing until March 15, 2012.

W. Gramer: 2nd the motion

In Favor: 4 Opposed: 0 Absent: 1

Passes: 4-0-1

Discussion

Regional Strategic Plan for Greater Lowell – Joint discussion with members of the Board of Selectmen.

In attendance for the BOS were R. Reault, C. Lambert, B. Jackson, E. Coughlin. Beverly Woods and Jay Donovan were in attendance for NMCOG.

There was a lengthy discussion as to the necessity of adopting this plan and the benefits it would have to Tyngsborough. NMCOG Executive Director Beverly Woods explained the plan as follows:

The Regional Strategic Plan for Greater Lowell is a plan that was written by the Northern Middlesex Council of Governments (NMCOG) which will be used by the State to determine where grant funds for municipal projects can be earmarked in participating towns. NMCOG is looking for the Town of Tyngsborough to adopt this plan in order to be eligible for that potential funding. The development of this plan came from State legislation titled the “State Land Reform Act”. This legislation states that the regional planning office (NMCOG) is responsible for developing a strategic plan (Regional Strategic Plan for Greater Lowell). The adoption of the plan by municipalities does not bind the Town to anything. Selectmen Jackson asked what the benefit would be for the Town of Tyngsborough. B. Woods said that it would enable Tyngsborough to get “bonus points” towards potential grants. If the Town doesn’t adopt the plan, then they would not be eligible for the bonus points. Essentially the plan can be adopted by the BOS, but it’s up to the Community whether to implement it.

The Planning Board felt that the plan was satisfactory and supported the BOS with an endorsement if they so voted.

Administrative

The minutes from the February 2, 2012 meeting were not ready for approval. Therefore, they will be voted on at the next meeting.

9:35pm

C. DeCarteret: Motion to adjourn
W. Gramer: 2nd the motion
In Favor: 4 Opposed: 0 Absent: 1
Passes: 4-0-1

Minutes respectfully submitted by
Pamela Berman
Planning Board Administrative Assistant