



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

MINUTES  
May 3, 2012

**APPROVED**

Attachments:

1. Meeting Agenda
2. Hearing continuance form for 166 & 168 Middlesex Rd. – 5/3/12
3. Zoning Amendment Application for 1 & 11 Pawtucket Blvd. – 4/17/12
4. Zoning Amendment Application for 257 Middlesex Rd. – 4/17/12
5. Application for Special Permit Amendment for Smokey Bones Restaurant – 5/3/12

Members Present: Steve Nocco  
Caryn DeCarteret  
William Gramer  
Jesse Johnson, David E. Ross Associates

Members Absent: Tom Delmore  
Steve O'Neill  
Pamela Berman, Administrative Assistant

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

**7:02pm** **166 & 168 Middlesex Road (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. Continued from April 5, 2012.

Attorney Nicosia appeared to request a continuance given that he is still waiting for designs/reports from the client's architect, traffic engineer and landscape architect.

**W. Gramer:** Motion to continue the hearing to June 7, 2012.

**C. DeCarteret:** 2<sup>nd</sup> the motion

**In Favor: 3 Opposed: 0 Absent: 2**

**Passes: 3-0-2**

**7:05pm      Zoning By-Law Amendment Review - 1 & 11 Pawtucket Blvd. (a.k.a National Carpet) reclassify the existing R1 Zone to a B2 Zone.**

**W. Gramer:** Motion to waive reading of the public notice and to open the public hearing.

**C. DeCarteret:** 2<sup>nd</sup> the motion

**In Favor: 3   Opposed: 0   Absent: 2**

**Passes: 3-0-2**

Attorney Peter Nicosia appeared for the applicant and recapped the outcome of prior meetings with the Board, namely, that the original request to change this parcel to an I1 zone is now being changed to a request that the parcel be changed to a B2 zone. Attorney Nicosia continued to explain that this parcel has a preexisting legal nonconforming business use in a residential zoning district. Historically the site was a business zone, but changed at some point in the 1980's to a residential zone. However, given all of the changes since that time, including the new bridge roadway system and elimination of homes in that area, we now have an opportunity to change the zoning back to a more appropriate business zone in order to allow new opportunities for use of this site. Atty. Nicosia went on to say that without a change to the zoning district the site will remain a carpet business and the existing structure would remain as that is the only permitted business use at this time.

Chairman Nocco requested comments from any members of the public.

Corliss Lambert of Middlesex Rd. stated that he has spoken with other residents about this matter and in his memory of the past 10-15 years everyone in Town has had a vision that the Town Center would be developed to maintain a very historic setting. In addition, historic homes in the area are the Town's principal asset, and that we should capitalize on the peaceful setting of the area and the Merrimack River and the historic bridge. Mr. Lambert went on to state that the Board has an obligation to carry forward development that is consistent with this historic vision. Mr. Lambert further stated that the existing structure and business should be allowed to die a natural death, and that further business use of this site is inconsistent with the historic vision and we do not want another detrimental structure on this site. Mr. Lambert also stated it was up to the Board to decide how best to make sure this vision is realized.

Attorney Nicosia stated he agreed that the existing structure is not what we want on the site, and that voting down the proposed zoning change would only serve to ensure that the building stays there and remains a carpet business for the long term. Attorney Nicosia went on to say that Tyngsborough's Master Plan does not restrict the development of the Town Center to keeping periodic homes or more residential uses, but rather encourages mixed uses. Attorney Nicosia provided the Board with highlighted excerpts from the Master Plan. Attorney Nicosia further explained that regardless of what type of new business use may be proposed in the future the Board and other boards in Town would have control over the aesthetics of any new structure and would be in a position to make sure that a new structure fits within the intent of the Master Plan.

Chairman Nocco commented that the size of the lot also restricts the size and scope of certain business uses along with the size of the structure given the dimensional requirements among other zoning by-laws.

Laurel Brown of 16 Pawtucket Blvd. stated her concern was over what types of uses a B2 district allows. Board member W. Gramer commented that the by-laws contain a table of permitted uses in each zoning district that she could review to see all of the as-of-right uses. Mr. Gramer also commented that originally this was brought forward by the petitioner as wanting a change to I1 zoning district, but that the Board was not receptive to this and through working with Attorney Nicosia at prior meetings the Board voiced that it would be supportive of the B2 uses, and that the Board also looked at B3 uses and decided that B3 was also not favored. Mr. Gramer also stated that if the business shuts down and is abandoned for two years the grandfathered business use would expire and thereafter only a residential use would be permitted, and that the lot is too small for single-family residential use, and so the Board agreed that changing to one of the business districts was the best way to utilize this property and we worked to choose the best district. Mr. Nocco commented that other uses could be 40B projects if residential zoning remained.

Mr. Lambert commented that perhaps the Town may want to buy this property, and that changing the zoning to a business district would increase the value and thus the cost to the Town. Attorney Nicosia disagreed.

Board member C. DeCarteret commented that any new structure would require a great deal of permitting through the various boards, that there were lots of issues to deal with including setbacks. Attorney Nicosia agreed.

**W. Gramer:** Motion to close the public portion of the hearing.

**C. DeCarteret:** 2<sup>nd</sup> the motion

**In Favor: 3 Opposed: 0 Absent: 2**

**Passes: 3-0-2**

**W. Gramer:** Motion that the Board vote to recommend the proposed zoning change at Town Meeting for the subject property, namely, from the existing residential zoning to a B2 zoning classification.

**C. DeCarteret:** 2<sup>nd</sup> the motion

**In Favor: 3 Opposed: 0 Absent: 2**

**Passes: 3-0-2**

**7:30pm 257 Middlesex Road (a.k.a. 3A Gas) reclassify the existing B2 Zone to a B3 Zone.**

**W. Gramer:** Motion to waive the reading of the public notice and to open the public hearing.

**C. DeCarteret:** 2<sup>nd</sup> the motion

**In Favor: 3 Opposed: 0 Absent: 2**

**Passes: 3-0-2**

Attorney Peter Nicosia explained the request being presented tonight for the Board's consideration. The current use is a lawful use in the B2 zone, but that his client wishes to redevelop the site and to invest money into upgrading the structure for the gas station use to include two additional uses that are not allowed in B2 but are allowed in B3, namely, automotive sales and retail services. Attorney Nicosia explained that his client wishes to add a used car sales use and also to incorporate a convenience store use into the gas station similar to the larger national gas station chains in the area. Attorney Nicosia explained where the existing B2 and B3 parcels were in the immediate vicinity of the 3A Gas parcel and Town Center, and that expanding the B3 zoning to include this parcel was consistent with the Master Plan. Attorney Nicosia explained that he was currently before the Zoning Board of Appeals seeking a variance, which the Planning Board has commented on by letter, and that the ZBA hearing was continued to a later date; that the by-law allows rental of motor vehicles on the site as-of-right but for some reason "sales" are excluded which does not make any sense; his client could have an Enterprise Rent-a-Car business but that he cannot sell used cars; and that changing the zoning to B3 would cure this problem and allow maximum use of the site by his client.

Corliss Lambert of Middlesex Rd. spoke against recommending the change, stating that automotive sales in our Town Center are inconsistent with the vision of the Master Plan and that we run the risk of having such a use explode into a much larger operation as happened with Modern Auto in his opinion. Mr. Lambert stated he did not believe anyone will want to invest in Tyngsborough and come to our Town if we lose the existing peaceful setting and that slowly but surely the business uses are creeping into Town Center and we have lost many historic homes in the area. Mr. Lambert stated he has no ill will toward the owner of 3A Gas, but that he feels we should strive to preserve the character of the Town Center and not allow this industrialization of the Town Center that he sees is happening.

Elizabeth Coughlin of Lakeview Ave. commented that she was concerned about the size of the lot and that the proposed use for car sales was similar to a proposed use on a site on Pawtucket Blvd. where that gas station pumps encroached into handicapped parking spaces, and would this site cause similar problems. She further asked whether there were any issues with the underground storage tanks.

Attorney Nicosia stated that there is no proposal on the table for a change to the structure or anything else on the site, that tonight is a limited question of whether the Board will recommend the zone change to B3, and that if and when any new use or modifications to the structure are

proposed that the Board and other boards would be highly involved in the process and the limitations on the site as to its size would of course limit the number of cars that could be parked for sale.

Ms. Coughlin again commented she had concerns about handicapped parking spaces.

Chairman Nocco stated we are not here to talk about a proposed use or modifications, that in fact the Board had voiced by letter to the ZBA its negative opinion of automotive sales due to failure to comply with existing zoning by-laws for that site, and that the only question is whether the Board will tonight vote to recommend or not recommend for Town Meeting the proposed zone change.

Mr. Gramer asked Attorney Nicosia about the B2 and B3 parcels in the area, and about other existing business uses in the immediate area, what businesses existed as we move toward Town Center from the 3A Gas parcel and then away from Town Center toward New Hampshire along Middlesex Road. Attorney Nicosia recited all of the business, including the bank, Blossoms, and the salon and bakery. Attorney Nicosia commented that he considers Middlesex Rd. to be both B2 and B3 uses, that the zoning map needs significant updating but that until the Town does so these changes are brought about by the business owners in the Town themselves piecemeal.

C. DeCarteret commented that she had concerns about recommending the change, that she did not see the benefit to the Town.

Attorney Nicosia made a final comment about needing approval at Town Meeting, needed approval of the Attorney General's Office, and that sales of used cars requires a license from the Board of Selectmen, and that his client will have to overcome these hurdles, but nonetheless the B3 zone would maximize his client's ability to redevelop the site, to improve what is there now.

**W. Gramer:** Motion to close the public portion of the hearing.

**C. DeCarteret:** 2<sup>nd</sup> the motion

**In Favor:** 3 **Opposed:** 0 **Absent:** 2

**Passes:** 3-0-2

**W. Gramer:** Motion that the Board vote to recommend the proposed zoning change at Town Meeting for the subject property, namely, from the existing B2 zone to a B3 zoning classification.

**C. DeCarteret:** 2<sup>nd</sup> the motion

**In Favor:** W. Gramer, S. Nocco; **Opposed:** C. DeCarteret **Absent:** 2

**Passes:** 2-1-2

**8:00pm**      **431 Middlesex Road (a.k.a. Smoky Bones Restaurant) - Special Permit**  
Amendment application submittal to permit the construction of a ~2,400 s.f.  
addition.

Attorney Peter Nicosia appeared on behalf of the application and presented the completed application and filing fees. Attorney Nicosia explained that he had already been communicating with Planning Board Administrative Assistant Pam Berman and Board engineer Jesse Johnson regarding the filing. The abutter notifications and public notice have already gone out, and the plans are prepared. He believes this matter can be scheduled for the May 17, 2012 meeting. There was discussion regarding the 35 day notice requirement, but that this can be shortened by vote of the Board.

**C. DeCarteret:** Motion to waive the 35 day requirement and schedule the public hearing for May 17, 2012.

**W. Gramer:** 2<sup>nd</sup> the motion

**In Favor: 3 Opposed: 0 Absent: 2**

**Passes: 3-0-2**

**8:10pm**      **DISCUSSION**

**Tyngsboro Commons** - no updates, Mr. Eriksen was not present.

### **Street Acceptance Update**

Jesse Johnson stated that the signs needed for St. Mary's Lane were installed and that the deed and other necessary paperwork was signed and filed in satisfaction of the conditions for the bond release as voted by the Board at its last meeting.

Selectwoman Elizabeth Coughlin asked if she could speak to the Board regarding the Street Acceptance Update, specifically about the status of Morgan Way and addressing the drainage issues that have been discussed in the past which included the recommended fix by Jesse Johnson. Chairman Nocco explained that the Board is waiting for Attorney Zaroulis to approve the letter to be sent to the developer following which we can take the balance of the bond money and use it to do an as-built plan for street acceptance purposes and then make any repairs that can be made, and that this is the process for all of the roads we are working on to accept.

**8:15pm**      **ENGINEER REPORTS** - None

**8:15pm**      **ADMINISTRATIVE**

Chairman Nocco stated that the Board could not vote on the April 5, 2012 minutes since Ms. DeCarteret was not present at that meeting and so we did not have a quorum tonight for a vote as to those minutes.

**W. Gramer:** Motion to approve the minutes of April 19, 2012 as written.

**C. DeCarteret:** 2<sup>nd</sup> the motion

**In Favor: 3 Opposed: 0 Absent: 2**

**Passes: 3-0-2**

**8:30pm**

**C. DeCarteret:** Motion to adjourn

**W. Gramer:** 2<sup>nd</sup> the motion

**In Favor: 3 Opposed: 0 Absent: 2**

**Passes: 3-0-2**

Minutes respectfully submitted by  
William Gramer, Planning Board Clerk