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THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF LUNENBURG
ZONING BOARD OF APPEALS

January 5, 2015

Denial of a Special Permit Application

This special permit denial follows the application for the construction and use of the property located at 790 Massachusetts Avenue as a gasoline service station with convenience store, drive thru and car wash. The application also requested an increase of the sign sizes for the proposed site. The application was submitted and reviewed under the applicable provisions of the Protective Bylaw existing at the time of its filing. The procedural history and grounds for the Zoning Board of Appeals denial are set forth herein.

Board Members present: Donald F. Bowen, Chairman, Hans Wentrup, Alfred Gravelle, David Blatt, Paul Doherty and James Besarkarski (present but not voting).

The Board of Appeals certifies that the decision attached hereto is a true and correct copy of its decision denying said Special Permit, and that copies of said decision, and all plans referred to in the decision, have been filed with the Planning Board and the Town Clerk.

Appeals of this decision, if any, shall be filed within twenty (20) days following the filing of this decision with the Town Clerk.

DISCUSSION

On August 14, 2014 a Special Permit application for the construction and use of 790 Massachusetts Avenue, Lunenburg, MA 01462 as a gasoline service station with a convenience store, drive thru window and car wash was submitted by Gary Archer, on behalf of G.W. Archer, Inc., 70 Main Street, Ayer, MA 01432. The subject property is administered by Marcia K. Luoma, Personal Representative for the Estate of Edward H. Riley. Portions of the subject property are located in the Limited Business/Residential district and the Commercial district. The location of the proposed development is limited to that portion of the property located in the Commercial District.

In accordance with the statutory requirements, including notice, a public hearing was opened on September 10, 2014 in the Lunenburg Town Hall before the Zoning Board of Appeals. Many abutters attended the meeting and voiced their opposition to the project both in writing and during the public comment session. At the meeting, the engineer for the project, Huseyin Sevincgil of MHF Engineering, gave an overview of the proposed site. Heather Monticup, of Greenman-Pederson attended and informed the Board that a traffic study was being prepared but the report was not yet available for the Board to

review. Attorney Robert Cirillo, who represented the applicant before the Board, indicated that he was looking for feedback from the Board as well as from abutters. At the meeting the Zoning Board of Appeals voted to continue the public hearing until October 8, 2014.

On October 8, 2014, the public hearing was continued in the Lunenburg Town Hall before the Zoning Board of Appeals. At the October 8, 2014 session, the applicant presented a significantly revised plan that removed the car wash, added additional buffer areas and reduced the gas pumps from ten to eight. The building size was reduced from 4440 square feet to 3940 square feet and the pylon sign was reduced from 90.6 square feet to 82.9 square feet. The traffic report was available to the Board one week prior to the meeting and Ms. Monticup did a presentation and answered several questions from the Board. The outcome of the study was that it was safe from a traffic perspective according to Ms. Monticup. At the meeting several Board members voiced their concerns that the abutters across the street from the subject property would be adversely impacted by the project. Specifically, the members had reservations with regard to the lighting, the size of the sign and the fact that the facility proposed their hours for business as twenty-four hours a day, seven days a week. The Zoning Board of Appeals requested modification to the Applicant's proposal including modifications to the size of a proposed sign and modification to the proposed hours of operation. Additionally, the Zoning Board of Appeals requested the Applicant to address the adverse impact the plan may have on the surrounding neighborhood including potential light spill and negative sound impacts. The applicant relented in the business hours and a motion was made by Paul Doherty to modify the hours to 5:00 A.M. to 11:00 P.M., David Blatt seconded the motion and all of the members voted in favor of the modification. At the October 8, 2014 session, the Zoning Board of Appeals approved a motion to continue the public hearing until November 12, 2014.

On November 4, 2014, the Applicant submitted a revised Site Plan addressing some of the Zoning Board of Appeals concerns that were voiced at the October 8, 2014 public hearing. The Revised Preliminary Site Plan was prepared by MHF Design Consultants, Inc. of 44 Stiles Road, Salem, NH 03079.

On November 12, 2014, the third and final session was held. At the meeting, the engineer for the project, Huseyin Sevincgil, addressed the open issues. A lighting plan was submitted and the sign was further reduced from 93 square feet to 52 square feet and the height was reduced to 17.5 feet. The landscape buffer to the west was altered as well as to the rear of the property. At the meeting Board member Hans Wentrup voiced his concerns with the project's impact on the two residential homes across the street. Referencing Section 8.3.3.2 of the bylaws, Mr. Wentrup indicated that he felt that the project would have a deleterious effect on the value of the abutting properties. Chairman Bowen called for a vote on the motion. He apprised the audience that the once the decision was filed with the Town Clerk there is a twenty day period in which to appeal the decision of the Board to Superior Court. He also stated that four members must be in favor for the motion to carry.

MOTION

Paul Doherty made a motion to grant the Special Permit for the gas station/convenience store with drive thru window and sign contingent on the fact the Planning Board Development Plan review is satisfied with regard to the sign size and location. David Blatt seconded the motion.

After closing the discussion, the Board acting in its capacity as the Special Permit Granting Authority **denied** the Special Permit with the below members present and voting as follows:

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VOTE

Paul Doherty voted in **favor** of granting the Special Permit.
David Blatt voted in **favor** of granting the Special Permit.
Donald Bowen voted in **favor** of granting the Special Permit.

Hans Wentrup voted to **deny** the Special Permit.
Alfred Gravelle voted to **deny** the Special Permit.

FINDINGS IN SUPPORT OF DENIAL

- Section 4.6.3 of the Town of Lunenburg Protective Bylaws provides in relevant part that:

In a Commercial District, the Zoning Board of Appeals may authorize by Special Permit any of the following additional uses:

a) Any use which may be authorized by Special Permit within a Retail Commercial District

...

d) Gasoline service stations.

- Section 4.5.2.1 of the Town of Lunenburg Protective Bylaws provides in relevant part that:

In a Retail Commercial District, any of the following uses are permitted.

h) Restaurant, refreshment stand or other place for serving food or beverages within a structure, provided that any drive-in or window service shall require a Special Permit.

- The Applicant is applying for two Special Permits. One for the proposed gasoline station and one for the proposed drive thru window connected to the convenience store.

- Section 8.3.2.1(b)(4) of the Town of Lunenburg Protective Bylaws provides that:

In granting the Special Permit, the Board shall find that the permit may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of this bylaw, and shall find that:

- The specific site is an appropriate location for such a building;
- The proposed building is compatible with the existing neighborhood with regard to size, location and architecture;
- The granting of the special permit will not adversely affect the neighborhood;
- The granting of the special permit will not unreasonably diminish the available light, air, sunlight, and other amenities; and
- There will be no nuisance or serious hazard to vehicles or pedestrians.

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- Section 8.3.3.2 of the Town of Lunenburg Protective Bylaws provides that:

In granting any Special Permit, the Board of Appeals shall assure that the proposed use:

- a) Will not be injurious or dangerous to the public health or unduly hazardous because of traffic congestion, danger of fire or explosion or other reason.
 - b) Will not have a material adverse effect on the value of land and buildings in the neighborhood or on the amenities of the neighborhood.
 - c) Will be operated with reasonable regard for order and sightlines, if an open use.
 - d) Will not produce noise, vibration, smoke, dust, odor, heat or glare observable at the lot lines in amounts clearly detrimental to the normal use of adjacent property.
- The proposed site is located only 300 feet from a Residential Zoning District of the Town.
 - The proposed use of the property as a gasoline station and convenience store with a drive thru would result in an increase in the traffic and trip generation along Massachusetts Avenue.
 - Given the current road configurations and existing development, any increased traffic in the area presents an increased hazard to vehicles and pedestrians.
 - Despite being located in a commercial zone, the proposed site is incompatible with the existing neighborhood which is mostly residential and also hosts a church and funeral home across the street from the site.
 - The residential properties in the neighborhood, particularly the two homes across the street from the site, would be adversely affected by the grant of a special permit, including an adverse effect on the value of those properties. The gas station and store will be open from pre-dawn hours until late into the night. There will be lights from cars entering and exiting and lights from the site itself. It will be a very active site. The site is, therefore, not an appropriate location for the proposed use.
 - The applicant failed to demonstrate that the project would not produce noise or light in amounts clearly detrimental to the normal use of adjacent properties.

 1/5/2015
Donald F. Bowen, Chairman
Zoning Board of Appeals

Filed with Town Clerk: JANUARY 6, 2015

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