



# Town of Ashland

MASSACHUSETTS

MINUTES OF MEETING  
ASHLAND ZONING BOARD OF APPEALS  
March 31, 2016

1 Present: Phil Jack, Chair  
2 Stanley Daner, Vice Chair  
3 Tom McNulty  
4 John Trefethen  
5 Stuart Siegel  
6 Pete Kopecky  
7  
8 Absent: Brian Forestal  
9  
10 Guest: Paul Haverty  
11 Mike Crisafulli  
12 Jacqueline Nastro-Hathaway  
13 Jerry Effren  
14

15 **60 Pleasant St. – Appeal Hearing:** A public hearing convened at 7:00 PM to consider a Petition  
16 for Relief from the Building Commissioner's Zoning Determination of Request for Enforcement  
17 at 60 Pleasant Street, Ashland, Massachusetts 01721. The petition has been submitted on behalf  
18 of: Spinazzola Revocable Trust, Mary T. Spinazzola (Settlor) and Bret N. Spinazzola (Co-  
19 Trustee), 9-13 Forest Avenue, Ashland, MA 01721.  
20

21 Mr. Jack, Mr. Daner and Mr. McNulty are sitting members on the hearing.  
22

23 Mr. Jack read the petition on appeal which listed 9 Items regarding failure to enforce the Zoning  
24 By-Laws, involving Sections 5.2.3, 5.2.5, 5.2.13, 5.4, 5.4.2 and 5.4.3. Paul Haverty, Town  
25 Counsel of BBMT, LLC, advised that items 1,7,8,9 on the petition were not presented to the  
26 Building Inspector for enforcement and not included in the letter of November 11, 2015 from  
27 Atty. Hathaway; therefore the Board cannot include those items as part of this appeal.  
28

29 Mr. Jack concluded that the petition before the Board is limited to items; 2) landscape buffering,  
30 3) shielding of external lights, 4) truck access maneuvers, 5) lack of proper screening of the  
31 loading zone, and 6) signage.  
32

33 Jacqueline Nastro-Hathaway, Attorney representing the petitioner, Mary T. Spinazzola appeared  
34 before the Board. Atty. Hathaway provided Google Earth pictures of the site to compare with earlier  
35 pictures to illustrate the physical material changes. Atty. Hathaway explained that had proper site  
36 plan view been completed given the expanded and extended use of the property, she feels these  
37 issues would have been addressed. Atty. Hathaway cited case law, Charles Powers versus the  
38 Building Inspector of Barnstable; 363.Mass.648 (1973) and explained the similarities concerning the  
39 writ of mandamus. Atty. Hathaway further explained the activities currently taking place and how  
40 she feels they amount to zoning violations.  
41

42 Mr. Trefethen asked and Atty. Haverty responded that the area in question is zoned industrial and is  
43 part of the downtown overlay district. Given the zoning Atty. Haverty questioned whether the cited  
44 changes qualify as expanded or change of use.  
45

46 Mike Crisafulli, Building Commissioner, explained that 100 cubic yards of material brought in or  
47 removed from a site would trigger a site plan review. Mr. Crisafulli estimates that less than 20 yards  
48 of grass was removed from 60 Pleasant St. Atty. Haverty stated that the installation of bays outside  
49 of the building where doors existed does not constitute a change in use inside of the building.  
50

51 Mr. Crisafulli stated that the removal of the fence from the site is outside of his jurisdiction.  
52

53 Mr. Jack asked if a current use is moved outside of the building would that constitute a change in  
54 use. Atty. Haverty responded that such a change would not qualify as a change of use.

55  
56 Mr. Siegel asked and Mr. Crisafulli responded that the “box” contains seven businesses; and given  
57 the original box was intended for one business, the town has allowed the box to be subdivided and  
58 those businesses require various entrances and exits to access parts of the box.  
59  
60 Mr. Daner asked and Mr. Crisafulli responded that a site plan review by the Planning Board at this  
61 point is conceivable, given the owner of the building would like to expand the parking lot and the  
62 review would be required.  
63  
64 Jerry Effren, Attorney representing 60 Pleasant St. the property owner, provided an overview of the  
65 changes to the property and the Building Inspectors actions from his perspective. Atty. Effren cited  
66 actions of the petitioner when they joined the lots, in his opinion, waived the residential buffering the  
67 petitioner is seeking. Atty. Effren feels this case does not qualify as non-conformity use and the  
68 Powers case does not apply. In addition there is no change in use, as the loading bay, although  
69 recently dormant, was used in the past.  
70  
71 Atty. Effren explained the statute of limitation argument concerning screening applies because there  
72 has never screening. Atty. Haverty state if the landscaping was pre-existing non-conforming, the  
73 statute of limitation is irrelevant.  
74  
75 Atty. Effren state the sign was previously permitted, and the lighting existed in the past.  
76  
77 Atty. Effren stated there is a motion to dismiss the pending law suit based on exhaustion.  
78  
79 Atty. Haverty explained that the petitioner may request an extension in order to allow time for the  
80 potential site plan review; however the Board should consider the impact on the property owner.  
81  
82 Bret Spinazzola, 11 Forest Ave., appeared before the Board. Mr. Spinazzola stated that he was  
83 hired to seed and loom a 50 yards area from the access drive to the mechanical room. Mr.  
84 Spinazzola said he does not recall there ever being external lights until recently. Mr. Spinazzola  
85 stated there are glass deliveries at 2:30 AM and that he parks his cars adjacent to the gate to prohibit  
86 trucks from maneuvering onto his property. Mr. Spinazzola feels strongly that the current  
87 conditions are not pre-existing and are non-conforming.  
88  
89 Steve Surway, 7 Forest Ave., stated the lights, the dumpster activities and flooding conditions  
90 negatively impact his property, as well.  
91  
92 Tabitha Ruggles, Real Estate Operations Manager for the property, stated that the external lighting  
93 were retrofitted like for like by NStar or Eversource.  
94  
95 Mr. Crisafulli explained that the flooding in the area is a recurring natural phenomena and the loom  
96 that was installed would not fully absorb the runoff.  
97  
98 Atty. Effren stated that the expansions of the existing doors that are accessed via Forest Ave. are  
99 permitted.  
100  
101 Atty. Hathaway said that she feels had the activities that support the additional businesses been  
102 envisioned, it would have triggered site plan review.  
103  
104 Atty. Haverty stated that the request for zoning enforcement should have triggered a request for a  
105 site plan review.  
106  
107 Atty. Haverty questioned whether the question of a change of use that did not get site plan approval  
108 is actually before the Board, and stated that if the use is the same, but the user is different it would  
109 not trigger site plan approval.  
110  
111 Mr. Cruisafulli said that the items under review are not fully under his purview as the Building  
112 Inspector and are also in the jurisdiction of the Police Dept. and Board of Health.  
113  
114 Mr. Cruisafulli raised the question whether Mr. Spinozzola’s business also requires truck deliveries  
115 at different times.  
116  
117 Atty. Effren questioned whether the issue of flooding is before the Board.  
118

119 Mr. Spinozzola provided more details concerning the flooding that occurred on February 25, 2016  
120 and stated that he reported the issue to DPW and Conservation and neither conducted a site visit to  
121 review the conditions.  
122  
123 Mr. Cruisafulli reported that the owners did redirect the external lights down and installed screening  
124 at his request.  
125  
126 Mr. Daner moved and Mr. McNulty seconded the motion to continue the public hearing appeal  
127 for 60 Pleasant St. until April 12, 2016 at 7:05 P.M. The motion passed 6-0-0.  
128  
129 The next meeting is scheduled for April 12, 2016 at 7:00 PM.  
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131 The meeting concluded at 9:00 P.M.  
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