



# Town of Ashland

MASSACHUSETTS

MINUTES OF MEETING  
ASHLAND ZONING BOARD OF APPEALS  
April 12, 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 Andrea McCarthy  
13 Jacqueline Nastro-Hathaway  
14 Angelo Catanzaro  
15 Peter Lavoie  
16 Robert DePietri  
17  
18

19 **Prior Meeting Minutes:** Mr. McNulty moved and Mr. Daner seconded the motion to approve  
20 the minutes of March 8, 2016 as drafted. The motion passed 6-0-0.  
21

22 Mr. Daner moved and Mr. McNulty seconded the motion to approve the minutes of March 22,  
23 2016 as drafted. The motion passed 6-0-0.  
24

25 **60 Pleasant St. – Appeal Hearing:** A continuation of the public hearing convened at 7:05 PM to  
26 consider a Petition for Relief from the Building Commissioner's Zoning Determination of  
27 Request for Enforcement at 60 Pleasant Street, Ashland, Massachusetts 01721. The petition has  
28 been submitted on behalf of: Spinazzola Revocable Trust, Mary T. Spinazzola (Settlor) and Bret  
29 N. Spinazzola (Co-Trustee), 9-13 Forest Avenue, Ashland, MA 01721.  
30

31 Mr. Jack, Mr. Daner and Mr. McNulty are sitting members on the hearing.  
32

33 Mr. Jack read a copy of a letter to the Building Commissioner dated April 4<sup>th</sup> from Jacqueline  
34 Nastro-Hathaway, Attorney representing the petitioner Spinazzola Revocable Trust that  
35 requested the Board require a site plan review at 60 Pleasant St.  
36

37 Paul Haverty, Town Counsel of BBMT, LLC explained that he and Atty. Hathaway discussed the  
38 additional appeal, and because the item concerning new uses is currently not before the Board,  
39 he suggested she submit a more definitive request specifying the exact nature of the violation, in  
40 order to move forward with the request.  
41

42 Atty. Hathaway appeared before the Board and stated that the expanded use, specifically the  
43 three additional businesses and activities and the resultant nuisance and violation of zoning  
44 bylaws 5.2.5 and 5.2.3 is the crux of the petitioner's position and should have triggered a site  
45 plan review. Atty. Hathaway also put forth the economic benefit of conducting the review near-  
46 term rather than later.  
47

48 Atty. Haverty stated that the Board is limited to only ruling on matters that have been raised with  
49 the Building Commissioner, and change of use has not been officially raised.  
50

51 Mr. Trefethen asked and Atty. Haverty responded that there are categories of uses allowed in the  
52 Industrial zoning district and although Atty. Hathaway is arguing changes to the facility, there are  
53 site plan provisions that address this concern. The proposed expansion of additional parking

54 would trigger site plan review in the future; however the current loading area is not considered  
55 part of the parking lot.  
56

57 Mr. Siegel reviewed his theory of how subdividing the original permitted locus brought the  
58 problem to bear, given the single corporation was no longer able to control the resulting  
59 activities.  
60

61 Mr. Trefethen asked and Atty. Hathaway responded that continuing the hearing would allow the  
62 petitioner to join the item concerning the additional use, and if Board ruled a site plan review was  
63 warranted, the current petition would be withdrawn.  
64

65 Mike Crisafulli, Building Commissioner, explained that his decision was based on the fact that  
66 there was no preexisting non-conforming violation and the previous owner waived the right for  
67 screening and site plan review when they change the zoning to Industrial use in order to expand  
68 their business.  
69

70 Andrea McCarthy, Attorney for Sixty Pleasant Realty, LLC, stated that the Board is only to rule  
71 on the five items before them and whether or not Mr. Crisafulli was right to deny the applicable  
72 zoning enforcement, not site plan review.  
73

74 Mr. Jack asked and all agreed that Item 6 is no longer in question, because the additional signage  
75 at Forest Ave and Pleasant St. was permitted.  
76

77 Mr. Crisafulli reviewed his reasoning for denying enforcement of the remaining four items.  
78

79 2) Lack of proper screening: Mr. Crisafulli reported that additional screen was installed and  
80 therefore this point was satisfied. Atty. Haverty reviewed the bylaw and stated there is nothing  
81 before the Board to enforce compliance. The sitting members concurred with Mr. Crisafulli's  
82 decision.  
83

84 3) Shielding of external lights: Mr. Crisafulli reported that he asked the owner to point the lights  
85 downward and lighting is required for egress. Atty. Haverty asked and Atty. Hathaway stated  
86 bylaw 5.3.6 is in question. Atty. Haverty stated that bylaw is for illumination of signs and  
87 therefore there is no bylaw specific to shielding. The sitting members concurred with Mr.  
88 Crisafulli's decision, since there is no applicable bylaw to rule on.  
89

90 4) Truck access and turning maneuvers: Mr. Crisafulli explained this item is applicable to bylaw  
91 5.2.3. Mr. Trefethen read the bylaw. Mr. Crisafulli reported that the current parking practices  
92 prohibit proper maneuvering by the trucks.  
93

94 Mr. Jack asked if a door was recently installed and whether the enlarged door was a changed to  
95 accommodate a loading bay. The property owners stated that there were no changes to original  
96 design. Atty. Haverty explained that the bylaw is a planning provision and a new loading area  
97 could constitute a change in design.  
98

99 Ms. McCarthy stated that the new doors were permitted and no new design was executed when  
100 they were installed. The entering, exiting and cueing of the trucks is limited, due to the parking  
101 practices that interfere with turning maneuvering.  
102

103 Mr. McNulty moved and Mr. Daner seconded the motion to recess for five minutes. The motion  
104 passed 6-0-0.  
105

106 4) Truck access and turning maneuvers (continued): The sitting members concurred with Mr.  
107 Crisafulli's decision.  
108

109 5) Lack of proper screening of the loading area and landscape buffering: Atty. Haverty stated  
110 bylaw 5.2.5 is applicable and if screening was reduced it would constitute a change.  
111

112 Mr. Crisafulli stated the removal of grass did not require site plan review and no screening was  
113 removed.  
114

115 Bret Spinazzola, 11 Forest Ave., said fencing was removed to accommodate maneuvers. Tabitha  
116 Ruggles of United Home Experts, Real Estate Operations Manager for the property, stated the  
117 fence gates and dead trees were removed, but the chain link fence is still in place to screen the

118 loading areas. Atty. Hathaway questioned whether a tarp on a fence qualifies as landscape  
119 screening.

120  
121 The sitting members concurred with Mr. Crisafulli's decision.

122  
123 Mr. Daner moved and Mr. McNulty seconded the motion to affirm the Building Inspector's  
124 decision on Items 2-6 based on the testimony before the Board. The motion passed 3-0-0.

125  
126 Mr. McNulty moved and Mr. Jack seconded the motion to close the hearing. The motion passed  
127 3-0-0.

128  
129 **133 W. Union St. - 40B Comprehensive Permit:** A continuation of the public hearing convened to  
130 consider the application for a 40B Comprehensive Permit at the request of Capital Group Properties,  
131 Southborough MA.

132  
133 Angelo Catanzaro, representing the applicant provided an overview of the application and  
134 activities that have taken place by the Conservation Commission, based on the 12/31 plan before  
135 the Board.

136  
137 Mr. Catanzaro requested an extension of the 40B Comprehensive Permit public hearing for 133  
138 W. Union St. until May 24, 2016 at 7:05 P.M.

139  
140 The applicant provided a presentation of the pro forma and the requested waivers.

141  
142 Peter Lavoie reviewed changes to the drainage analysis and infiltration rates, and stated that the  
143 buildings and drainage areas are in the same locations.

144  
145 Robert DePietri, Capital Group Properties provided an overview of the pro forma recently sent to  
146 the Board. Mr. DePietri reported that the project is downsized from the original proposal and  
147 now has 132 units in 2 buildings with a gross square footage of 167,060 square feet or 40,000  
148 square feet smaller than the original plan.

149  
150 Affordable Units: 17 - 1 bedroom units, 12 - 2 bedroom units, and 4 - 3 bedroom units.  
151 Rate Rates: \$1,164 – 1 bedroom units, \$1,418- 2 bedroom units and \$1,619 - 3 bedroom units.

152  
153 Market Rate Units: 51 - 1 bedroom units, 36 - 2 bedroom units and 12 - 3 bedroom units.  
154 Rate Rates: The rates for the market rate units will be priced according to the market when they  
155 are built.

156  
157 Mr. DePietri reviewed the funding sources, including the first mortgage and the 75% loan to cost  
158 of the project, as well as the market value of the project that is estimated to be \$700,000.

159  
160 The construction, landscaping, legal, title and recording, accounting, marketing, real estate taxes,  
161 insurance, appraisal, construction loan interest, inspection engineer, development consultant and  
162 traffic engineer, administrative expense, contingency, reserves costs were reviewed for the  
163 current proposed project plans.

164  
165 The total development costs are estimated to be \$26,038,802, the construction loan of  
166 \$19,529,101 and permanent debt will be the same at a \$19,529,101 mortgage with an annual  
167 interest rate of 4.7% with a 30 year amortization.

168  
169 The rental pro forma projection of rental income is \$2,576,688 and other net income is \$181,800  
170 from garage and storage unit rentals and view and floor premiums.

171  
172 Mr. DePietri reported the permanent loan debt service coverage is 1.47%, which is down 0.5%  
173 over what it was with the original the 144 unit plan.

174  
175 Mr. Jack asked for the return on total cost. Mr. DePietri responded the estimate is 6.86% of total  
176 cost.

177  
178 Atty. Haverty stated that the uneconomic threshold is based on 4.5% above the current 10 year  
179 treasury yield, which is at 1.78%, so the uneconomic threshold is 6.28%, therefore the project is  
180 economic.

181

182 Mr. Trefethen asked if a peer review should be conducted on the figures. Atty. Haverly said a  
183 peer review can be done, but the applicant may state they will accept the condition.  
184  
185 Mr. Catanzaro asked the Board to submit questions concerning the pro foram to the applicant  
186 ahead of the next hearing.  
187  
188 Mr. Lavoie reviewed the list of requested waivers pertaining to the Zoning bylaws.  
189  
190 Section 3.1 – Seeking a Comprehensive Permit for a 132 unit multi-family apartment complex  
191 under Chapter 40B  
192  
193 Section 3.1 – Seeking a Comprehensive Permit for a 132 unit multi-family apartment complex  
194 under Chapter 40B and club house and office building is required for this size complex.  
195  
196 Section 4.1.1 – Building A is 34 feet from front yard setback, to accommodate emergency access  
197 around the building  
198  
199 Section 4.1.1 - Building proposed height for both structures is 56 feet in height.  
200  
201 Section 5.1.2 – Proposing 1.74 spaces per unit, since more than half of the units are 1 bedroom.  
202  
203 Section 5.1.4.3 – One handicap parking spot is in the front yard setback and 25 spaces will be  
204 extended in the rear yard setback, and 3,600 square feet of parking area will be extended into the  
205 rear yard setback.  
206  
207 Section 5.3.12.4 – Two illuminated signs that are approximately 9 square feet will be installed,  
208 per the landscaping plan.  
209  
210 Section 5.7.3.1 – There will be slopes greater than 2 to 1; however provision such as riprap will  
211 be put in place to prevent erosion.  
212  
213 Section 5.7.3.5 – There are slopes greater than 30% that will be stabilized with riprap.  
214  
215 Section 5.8.3 – The site will be altered, due to grading and clearing beyond the specified limits.  
216  
217 Section 9.4 – Site Plan Review falls under the 40B project and the ZBA.  
218  
219 Section 9.6 – All Design Plan Review falls under the 40B project and the ZBA.  
220  
221 Mr. Lavoie reviewed the Town of Ashland wetland bylaws.  
222  
223 Mr. Catanzaro stated that the applicant is done with their presentation under the application and  
224 presented the Board with a hand written request for an extension until May 24<sup>th</sup>.  
225  
226 Mr. McNulty moved and Mr. Daner seconded the motion to continue the 40B Comprehensive  
227 Permit public hearing for 133 W. Union St. until May 10, 2016 at 7:05 P.M. The motion passed  
228 6-0-0.  
229  
230 Mr. McNulty moved and Mr. Daner seconded the motion to adjourn. The motion passed 6-0-0.  
231  
232 The next meeting is scheduled for May 10, 2016 at 7:00 PM.  
233  
234 The meeting concluded at 9:30 P.M.  
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236  
237  
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