

TOWN OF SUTTON- ZONING BOARD OF APPEALS
SUTTON TOWN HALL
MEETING MINUTES

November 2, 2023

7:00pm. -Meeting called to Order and held by way of Hybrid setting. The instructions for outside participation was read into the record by R. Deschenes

Board Members in Attendance by Roll Call:

C. Matera, Aye; D. Petrelli, Aye; R. Deschenes, Chairman, Aye; P. O'Hara, Aye; Kyle Bergeson, Aye via Zoom;

R. Deschenes read into the record the written certification of D. Petrelli that he had examined all testimony/evidence received by the Board at the October 5, 2023 meeting.

7:00pm Public Hearing: 171 Whitins Road
Matthew Jonasch
Special Permit: Addition

R. Deschenes read the Public Hearing notice into the record as it appeared in the Millbury Sutton Chronicle.

Matt Jonasch explained he had a growing family and they needed room to "stretch out" adding they were proposing to add a bedroom, family room, and office.

D. Petrelli asked why they wanted to build out to the side rather than to the rear where there was plenty of space and it was said it was a big hill and a mountain of ledge as well plus the well was located there. It was added that the original variance granted for the construction of the house noted the same restrictions. It was said that there would be no encroachments to the side with a step back from the original construction in the front. D. Petrelli asked the date of the first variance and it was responded 2010. It involved a tear-down and rebuild mostly within the same footprint.

R. Deschenes questioned the septic and was told it was town sewer with on site well water.

Arrival of Rich Haskins by remote. Deschene.

R. Haskins questioned if a residence was located on the lot to the right side and it was responded that there was not and it was listed as having an unknown owner with the Town.

Public Commentary: None

D. Petrelli questioned what was located across the street and it was answered wetlands owned by a gentleman who lived a "couple of homes down the street".

Chris Matera was comfortable with not performing a site visit and the rest of the Board agreed.

C. Matera motioned to close the Public Hearing

D. Petrelli 2nd

Vote by Roll Call: C. Matera, Aye; D. Petrelli, Aye; R. Deschenes, Aye; P. O'Hara, Aye; K. Bergeson, Aye; R. Haskins, Aye.

7:10pm Public Hearing: 352 Manchaug Road
Sutton Finess, Inc.
Special Permit: Health Club

R. Deschenes read the Public Hearing notice into the record as it appeared in the Millbury Sutton Chronicle.

Tim Harringer and Brian Asacker of Rte 146 Fitness presented their application. They noted that they had run their business in town for the last 7 years and found themselves in a panic as their location was sold and they needed to relocate.

D. Petrelli noted that the Board had heard a request for another use on the property and questioned if that had moved forward. L. Dahlin noted it was previously approved for a restaurant use which did not move forward.

C. Matera asked if the applicant would be using the same 45% of the building as the prior approved use and it was said yes.

R. Haskins questioned if the back of the lot was paved as it related to emergency vehicle access around the building and it was responded by the applicants that it was.

It was also asked if the apartments had been rented and it was also answered yes noting that one of the residents was a member.

D. Petrelli questioned the number of trips in and out of the site within an hour and it was responded roughly 60+ customers a day which was roughly broken down to 6-12 cars an hour during the daytime with a little more of a rush between 4:30pm and 6:30pm. He added that around 7:00-7:30pm “the sidewalks roll-up and people go home”. D. Petrelli noted that it would be less trips than a restaurant.

Public Commentary: None

P. O’Hara stated that the hours of operation were 5am-9pm noting current hours were open 24 hours and the response was that they wanted to be considerate of the tenants next door and the option of 24 hours was “really not a need”. Brian Asacker noted that they really would like to extend the hours to 10pm but agreed that 24 hours would open them up to certain safety measures that they did not want to get involved with.

The Board agreed that a site visit would not be necessary as the Board was familiar with the site.

R. Haskins questioned if they had spoke with the tenants and it was answered that the tenants were excited.

C. Matera questioned if they were doing anything to the site that would prevent the use of a restaurant in the future and it was answered that they were just moving in the equipment and not changing the build-out or footprint but also had no plans of leaving.

R. Deschenes questioned if all activities would be held indoors and it was answered yes.

C. Matera motioned to close the public hearing.

D. Petrelli. 2nd

Vote by Roll Call: C. Matera, Aye; D. Petrelli, Aye; R. Deschenes, Aye; P. O’Hara, Aye; K. Bergeson, Aye; R. Haskins, Aye.

7:19pm Public Hearing Continued: 12 Pleasant Valley Road
Alrig USA Acquisitions LLC
Special Permit : Restaurant Use

R. Deschenes read into the record a written request to continue the public hearing to the next monthly meeting due to non-finalized items of submission.

C. Matera motioned to grant the continuance to December 7, 2023 at 7:05pm.

D. Petrelli. 2nd

Vote by Roll Call: C. Matera, Aye; D. Petrelli, Aye; R. Deschenes, Aye; P. O’Hara, Aye; K. Bergeson, Aye; R. Haskins, Aye.

7:21pm Public Hearing Continued: 100 Worcester Providence Turnpike
Chad Boardman
Special Permit: Trailer Repair
Present: Travis Brown, Turning Point Engineering
Heather Monticup, GPI

D. Petrelli stepped down

Travis Brown noted that the site visit had taken place and they had the information the Board requested regarding Site Plan Changes, Fire Truck Maneuvering Plan and Traffic Study Peer review responses.

Heather Monticup noted that they were providing peer review responses to Chappell Engineering concerns.

- Addressed Site Lines and parking spaces and added to the Plans
- Agreed to the restriction of Landscaping Height of (2) feet.
- Collected empirical data from the NE Great Dane site in Auburn, projected it onto the proposed site which doubled the numbers (5 bays to 10 bays).
- Compiled detailed traffic count numbers from 5-9am and 3-6pm peak periods on 10-18-23 which was agreeable with Chappell Engineering. They found that when projecting the Auburn Data to the proposed site it was found that weekday am trips were lower than projected and the pm trips were a little higher so they said they were very close within 6-8 trips of info within their original traffic letter and less than 1% in traffic increase.
- Comments re: striping will be reviewed with the Planning Board
- Confirmed that a MA DOT permit will be sought.
- Fire apparatus turning plan was provided and it was stated that both Chappell Eng. and the Deputy Fire Chief, Robin Dresser, had given their approvals.

R. Deschenes asked the audience if there was anyone who wanted to add new information:

William Pepka of Sibley Road questioned the site visit finding it a problem that it was not opened to the public. L. Dahlin noted that it was not a posted public meeting. Mr. Peka felt the applicant should have opened the gate and left. In regards to Town Counsel's opinion he wanted to point out that it also stated "it was certainly not expressly allowed" in reference to the use in which he added that Section III of the Bylaw added that if not listed it's prohibited. He suggested to the Board that Town Counsel's report was not an endorsement for the use. He urged the Board to review his submission and reject the petition. He did not feel this was the type of business wanted in the Town of Sutton noting another trucking business was already coming into town.

Jim Marran, 80 Burbank Road questioned if other than discussed where there any other changes made to the plan in regards to building location or parking spaces and it was replied no.

He questioned the Chairman if all the Board members in addition to himself had the opportunity to review Town Counsel's opinion and it was answered absolutely. Mr. Marran noted that Town Counsel was very careful to state that the use was not expressly permitted suggesting two potential avenues needed to consider. Mr. Marran disagreed with both avenues. He noted that related to accessory uses, Town Counsel noted that the ZBA had the authority to make conditions of which he reviewed the potential conditions he outlined at the last meeting.

- Landscape screening against residential property line.
- No trailers stored on site for sale lease or rent, maximum numbers to be established with designated parking.
- No Back-up alarms bu company owned vehicles with drop off and pick up areas being established.
- Hours of operation to include no back up alarms on weekends or before 7am or after 6pm Monday through Friday.
- No Spray Booth or application of vehicle coatings now or in the future.
- Any accessory use not outlined in the application should require a new application or amendment through a public hearing process.

Mr. Marran's struggle was majorally that the applicant was in front of the Board for a "build to suit" petition and not actually the company who will utilize the site. It was felt that the applicant was doing a good job at outlining what is being

requested from the Board but the website of the company who would be utilizing the site projects a different image than what was submitted to the Board for consideration. He noted that Mr. Pepka had indicated that the way the bylaws were structured were very clear in that if a use was not specifically outlined it wasn't permitted. Mr. Marran's opinion was that the appropriate place to reconcile "any potential ambiguities" in the bylaws/Use tables should be addressed through an amendment at Town Meeting. J. Marran's list of 7 conditions were submitted to Chairman.

Chris Horne of Eastland Partners wanted to re-iterate that they did not agree with Mr. Marran's condition requests noting that they had met with him several times, moved the building an extra 100 feet losing 2 acres of useable space which they thought was a good consolation to him and the neighbors. It was felt it was a good use with good tax revenue. He responded to Mr. Marran's statement that though they would not be the end users, they would be the owners and property managers / landlords with himself being there probably every day checking on the property. In response to the website concern which Mr. Maran kept bringing up it was said the company was the largest manufacturer in the country with hundreds of locations and what they do at one location, they may not do at another and if they said that this is what they are going to do at this location, that was what they were going to do.

C. Matera noted that when you look up the North America Industrial Classifications it did say that it included truck repair which he felt was helpful from Town Counsel.

J. Marran, in response to C. Matera's remarks, stated that there was nothing in the bylaws stating that the National Institute of "whatever" has any jurisdiction over the use table or was relevant to the discussion.

Chris Matera motioned to close the public hearing.

2nd: P. O'Hara

Roll Call Vote: C. Matera, Aye; R. Deschenes, Aye; P. O'Hara, Aye; K. Bergeson, Aye; R. Haskins, Aye.

Board Business:

Approval of Minutes:

C. Matera motioned to approve the August 3, 2023 Minutes

2nd: D. Petrelli

Roll Call Vote: C. Matera, Aye; D. Petrelli, Aye; R. Deschenes, Aye; P. O'Hara, Aye; K. Bergeson, Aye; R. Haskins, Abstained.

R. Haskins motioned to accept the Minutes from September 7, 2023

2nd: D. Petrelli

Roll Call Vote: C. Matera, Aye; D. Petrelli, Aye; R. Deschenes, Aye; P. O'Hara, Aye; K. Bergeson, Aye; R. Haskins, Aye.

Decisions:

171 Whitins Road:

Matthew Jonasch

Special Permit: Addition

C. Matera motioned to open the Worksession.

2nd: D. Petrelli

Roll Call Vote: C. Matera, Aye; D. Petrelli, Aye; R. Deschenes, Aye; P. O'Hara, Aye; K. Bergeson, Aye; R. Haskins, Aye.

R. Haskins motioned to approve the application for the special permit at 171 Whitins Road

2nd: D. Petrelli

Discussion:

C. Matera noted it was a great application, no neighbors and would improve the property.

P. O'Hara added that they were very constrained as to where they could place the addition.

D. Petrelli noted there were 2 "asks", one being an increase in 30% of footprint while the current footprint was very small and dwarfed by the size of the property. He did not mind what he saw as there was so much land and they were limited as to where to place it. The other "ask" is encroachment of the front setback which he would normally be more sensitive about if:

- a. the home wasn't already in the front setback adding that the addition would in this case be placed further back than the existing front of the home,
- b. If there were neighbors across the street where in this case there were none adding that there were trees and wetlands. He felt these were pretty in-offensive asks.

D. Petrelli went over the criteria needed for the special permit noting that it was also outlined in the application.

1. It was an existing residential use with the addition of more square footage of the residential use making it appropriate for the site.
2. Currently serviced by Town Sewer
3. Effect of the developed use on the neighborhood would be minimal in that the nearest neighbor on the opposite side of the addition would not have a direct view.
4. It was said there would not be undue nuisance or serious hazard to vehicles or pedestrians adding that if it did matter, the addition was pushed back further off the road than the existing residence.
5. The Board found that there would be adequate and appropriate facilities provided to ensure the proper operation of the proposed use, structure, or condition.

Conditions: Foundation Asbuilt and approvals from any other involved Departments, Boards and Commissions of the Town.

Roll Call Vote:

C. Matera, Aye; D. Petrelli, Aye; R. Deschenes, Aye; P. O'Hara, Aye; K. Bergeson, Aye; R. Haskins, Aye.

Motion Passes

352 Manchaug Road

Sutton Finess, Inc.

Special Permit: Health Club

R. Haskins motioned to open the worksession.

2nd: C. Matera

Roll Call Vote: C. Matera, Aye; D. Petrelli, Aye; R. Deschenes, Aye; P. O'Hara, Aye; K. Bergeson, Aye; R. Haskins, Aye.

D. Petrelli motioned to approve the request to relocate the Health Club to the new location.

2nd: R. Haskins

Discussion: C. Matera noted that there was enough space and it would be nice to keep a business in town.

D. Petrelli noted that they had looked closely at this site for the restaurant use and found that this use would have less impact. There would be little needed to change it including no new construction.

Hours of operation: 5am -10pm. The Board found that allowing closing at 10pm was agreeable as originally they were 24hr operation which the Board did not find would work at this site.

Criteria review:

1. The Board found that the use was appropriate for the location.
2. Adequacy of public Sewerage and Water: Both available
3. Minimal effect of the developed use on the neighborhood. It was said it was an existing mixed use site with residential and business and this would incur less impact than the previously approved restaurant.
4. There would not be undue nuisance or serious hazard to vehicles or pedestrians as there was paved access around the building.
5. The Board found that there would be adequate and appropriate facilities provided to ensure the proper operation of the proposed use, structure, or condition. R. Haskins had questioned lined parking spaces. D. Petrelli noted that there were spaces demarcated on the plan. C. Matera noted that when he was on site he did not notice haphazard parking and assumed that there were lines there adding he did not know if more were needed. The Board found 29 spaces on the plan with 2 handicap spots. L. Dahlin reminded the Board that the applicant would be going to the Planning Board for either a site plan review or waiver so if needed Jen Hager would review the plan.

Condition: Approval of all other Town Boards and Commissions required.

Roll Call Vote:

C. Matera, Aye; D. Petrelli, Aye; R. Deschenes, Aye; P. O'Hara, Aye; K. Bergeson, Aye; R. Haskins, Aye.

Motion passes

100 Worcester Providence Turnpike

Chad Boardman

Special Permit: Trailer Repair

D. Petrelli stepped off the Board

C. Matera motioned to open the worksession.

2nd: R. Haskins

Roll Call Vote: C. Matera, Aye; R. Deschenes, Aye; P. O'Hara, Aye; K. Bergeson, Aye; R. Haskins, Aye.

C. Matera motioned to approve the request for a special permit to operate a tractor trailer repair business with conditions.

2nd: P. O'Hara

Discussion:

R. Haskins questioned if the Attorney's document was public in which it was responded yes. He noted that he had no issues with the project with conditions but he was not comfortable with the language of the letter as it seemed weak and without clear direction. He was questioning receiving something more definitive.

C. Matera agreed but disagreed noting that the Attorney had pointed out that under 1B of the Bylaws it was clarified that uses noted under the use table under retail and service trades were further defined by the North American Industrial Classification System (NAICS). When you looked at that classification system it expressly included truck and tractor trailer repair. He added that the bylaw may need clarification in future but because it is not expressly prohibited the Board could allow it which was his interpretation. He also noted that while looking at the criteria needed for a Special Permit under effect to the neighborhood, it was definitely an improvement from what was there if the Board remembered from walking around the site.

K. Bergeson agreed with C. Matera.

C. Matera reiterated that for any argument that the bylaw was not clear, he did agree but added that the Bylaws say to check out the (NAICS), "and when you do that, you will find that the use is specified".

R. Deschenes noted that the letter also specified that "based upon the above there is sufficient basis for the Board to determine that the use may be permitted as a Special Permit Use".

C. Matera noted that this was the reason for Town Boards. "We need to be able to interpret. If everything was crystal clear there would be no need for a Town Board".

R. Haskins asked the Board if they were in agreement that it was an allowed use and received yes responses and no nays. The Board moved forward.

Chris Matera noted that his first concern and condition would be related to the applicant receiving approval from MA DOT with concerns of entering and exiting the site.

R. Deschenes wanted a condition required for truck turning at Central Turnpike

R. Haskins requested no turning at Boston Road for Great Dane Drivers with on site postings.

P. O'Hara questioned on site property signage along the driveway entering and exiting the site.

R. Deschenes pointed out that the drivers would be employees of the company and should be educated on the matter.

R. Haskins had concerns regarding upward lighting and wanted to specify hours of operation so they were not operating 24/7. Also thought that a condition should be in place regarding non use of back up alarms to create harmony between the business and neighbors. He felt this could be achieved through limitation of hours.

R. Deschenes stated he had the hours of 6am - 8pm in his notes.

K. Bergeson was in agreement with the noted hours.

R Deschenes questioned the weekends and R. Haskins noted the hours of 7am -4pm.

R. Deschenes said there should be no hours on Sunday except for perhaps towing in an emergency trailer from an accident.

C. Matera questioned the Paint Booth and if they should make a condition that any changes needed to come back for approval. R. Deschenes responded that the decision should definitely state no paint bay so that if anything changed they

would have to come back if they wanted to. R. Haskins added that there was no harm in that even though they had not requested it as it would make it clear.

R. Deschenes noted the number of trailers which totaled 50 spots exterior and 10 spots internally.

C. Matera reminded the Board that discussion was brought up regarding a potential violation if an emergency trailer was brought in and put them above the allowed number.

R. Deschenes felt that there should be some leeway.

K. Bergeson added that the site itself would be limiting the number of trailers.

R. Haskins recommended that they spell out the 50 outside, the 10 inside and allow an emergency exception for 10% additional

P. O'Hara requested conditions for maintaining vegetation within the site line.

The question of no back up alarms during the day came up with a response by K. Bergeson that the hours of operation would limit the use of any potential alarms. He added that it would be bad to condition non use of alarms as OSHA laws could change at state or federal level at any given point and the Board would be basically rendering the business unable to do the job.

Check list:

1. Appropriateness of the site: The site is located within the Business Highway Zoning District and currently on site is a burnt out movie theatre. MA DOT will make further determinations for public safety.
2. Adequacy of public sewerage and water systems: A new private well and septic system will be installed.
3. Effect of the developed use upon the neighborhood: The Board found there would not be any detrimental effect caused because of the way the site would be graded and landscaped at the proposed location below and distant from the neighborhood with lots of vegetation in between. All work will be performed within the building.
4. Undue nuisance or serious hazard to vehicles or pedestrians: MA DOT will review the project and the Board agreed that if MA DOT did not allow a curb cut for safety reasons with trucks pulling out onto the highway the project could not move forward.
5. The Board found that adequate and appropriate facilities will be provided to insure the proper operation of the proposed use, structure, or condition: The Board found it was a brand new facility designed specifically for the use and therefore meets the condition.

Site plan to be referenced in the decision has a latest revision date of 10/25/23.

Roll Call Vote: C. Matera, Aye; R. Deschenes, Aye; P. O'Hara, Aye; K. Bergeson, Aye; R. Haskins, Aye.

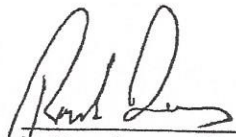
Motion passes

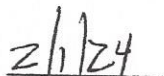
8:40pm

C. Matera motioned to adjourn

K. Bergeson: 2nd

Roll Call Vote: C. Matera, Aye; R. Deschenes, Aye; P. O'Hara, Aye; K. Bergeson, Aye; R. Haskins, Aye.


R. Deschenes, Chairman


Date

Prepared by:


Lynn Dahlin