



TOWN OF HOPKINTON

OFFICE OF
BOARD OF APPEALS

TOWN HALL
18 MAIN STREET – THIRD FLOOR
HOPKINTON, MASSACHUSETTS 01748-3209

WAYNE R. DAVIES, Chairman
ROBERT W. FOSTER, Vice Chairman
TOM GARABEDIAN, Clerk

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Minutes of the Board of Appeals

Minutes: April 27, 2005
Town Hall, 2nd Floor

Called to Order: 6:40 PM
Adjourned: 11:05 PM

Members Present: Wayne Davies, Chairman; Thomas Garabedian, Clerk; Vascen Bogigian; Henry Kunicki; Michael DiMascio; Rory Warren

Members Absent: Robert Foster, Vice Chairman; Patricia Rackauskis

Others Present: Michael Shepard, Zoning Enforcement Officer

6:40 PM Administrative Session of the Board of Appeals

Minutes

The Board reviewed the minutes of January 28, 2004. Mr. Garabedian moved to adopt the minutes of January 28, 2004 as amended. The motion was seconded and passed 2-0-4. The votes were Mr. Davies: Yes; Mr. DiMascio: Yes; Mr. Garabedian: abstain; Mr. Bogigian: abstain; Mr. Kunicki: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of February 11, 2004. Mr. Garabedian moved to adopt the minutes of February 11, 2004. The motion was seconded and passed 3-0-3. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. DiMascio: Yes; Mr. Bogigian: abstain; Mr. Kunicki: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of March 10, 2004. Mr. Garabedian moved to adopt the minutes of March 10, 2004. The motion was seconded and passed 1-0-5. The votes were Mr. Davies: Yes; Mr. Garabedian: abstain; Mr. DiMascio: abstain; Mr. Bogigian: abstain; Mr. Kunicki: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of May 12, 2004. Mr. Garabedian moved to adopt the minutes of May 12, 2004 as amended. The motion was seconded and passed 4-0-2. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. Kunicki: Yes; Mr. DiMascio: Yes; Mr. Bogigian: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of May 26, 2004. Mr. Garabedian moved to adopt the minutes of May 26, 2004 as amended. The motion was seconded and passed 4-0-2. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. Kunicki: Yes; Mr. DiMascio: Yes; Mr. Bogigian: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of June 30, 2004. Mr. Garabedian moved to adopt the minutes of June 30, 2004 as amended. The motion was seconded and passed 4-0-2. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. Kunicki: Yes; Mr. DiMascio: Yes; Mr. Bogigian: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of July 14, 2004. Mr. Garabedian moved to adopt the minutes of July 14, 2004. The motion was seconded and passed 2-0-4. The votes were Mr. Davies: Yes; Mr. Kunicki: Yes; Mr. Garabedian: abstain; Mr. Bogigian: abstain; Mr. DiMascio: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of July 28, 2004. Mr. Garabedian moved to adopt the minutes of July 28, 2004 as amended. The motion was seconded and passed 3-0-3. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. DiMascio: Yes; Mr. Bogigian: abstain; Mr. Kunicki: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of August 25, 2004. Mr. Garabedian moved to adopt the minutes of August 25, 2004 as amended. The motion was seconded and passed 2-0-4. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. Bogigian: abstain; Mr. Kunicki: abstain; Mr. DiMascio: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of October 13, 2004. Mr. Garabedian moved to adopt the minutes of October 13, 2004 as amended. The motion was seconded and passed 2-0-4. The votes were Mr. Davies: Yes; Mr. Kunicki: Yes; Mr. Garabedian: abstain; Mr. Bogigian: abstain; Mr. DiMascio: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of October 27, 2004. Mr. Kunicki moved to adopt the minutes of October 27, 2004. The motion was seconded and passed 4-0-2. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. Kunicki: Yes; Mr. DiMascio: Yes; Mr. Bogigian: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of November 10, 2004. Mr. Kunicki moved to adopt the minutes of November 10, 2004 as amended. The motion was seconded and passed 4-0-2. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. Kunicki: Yes; Mr. DiMascio: Yes; Mr. Bogigian: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of December 1, 2004. Mr. Garabedian moved to adopt the minutes of December 1, 2004 as amended. The motion was seconded and passed 3-0-3. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. DiMascio: Yes; Mr. Bogigian: abstain; Mr. Kunicki: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of December 8, 2004. Mr. Garabedian moved to adopt the minutes of December 8, 2004. The motion was seconded and passed 4-0-2. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. Kunicki: Yes; Mr. DiMascio: Yes; Mr. Bogigian: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of December 15, 2004. Mr. Garabedian moved to adopt the minutes of December 15, 2004 as amended. The motion was seconded and passed 2-0-4. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. Bogigian: abstain; Mr. Kunicki: abstain; Mr. DiMascio: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of January 12, 2005. Mr. Garabedian moved to adopt the minutes of January 12, 2005 as amended. The motion was seconded and passed 4-0-2. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. Kunicki: Yes; Mr. DiMascio: Yes; Mr. Bogigian: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of January 26, 2005. Mr. Garabedian moved to adopt the minutes of January 26, 2005 as amended. The motion was seconded and passed 5-0-1. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. Bogigian: Yes; Mr. Kunicki: Yes; Mr. DiMascio: Yes; Mr. Warren: abstain.

The Board reviewed the minutes of February 16, 2005. Mr. Garabedian moved to adopt the minutes of February 16, 2005 as amended. The motion was seconded and passed 4-0-2. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. Bogigian: Yes; Mr. Kunicki: Yes; Mr. DiMascio: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of February 23, 2005. Mr. Garabedian moved to adopt the minutes of February 23, 2005 as amended. The motion was seconded and passed 4-0-2. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. Bogigian: Yes; Mr. Kunicki: Yes; Mr. DiMascio: abstain; Mr. Warren: abstain.

The Board reviewed the minutes of March 9, 2005. Mr. Garabedian moved to adopt the minutes of March 9, 2005 as amended. The motion was seconded and passed 4-0-2. The votes were Mr. Davies: Yes; Mr. Garabedian: Yes; Mr. Bogigian: Yes; Mr. DiMascio: Yes; Mr. Kunicki: abstain; Mr. Warren: abstain.

**7:55 PM Request to Amend Special Permit
61 Main Street – Colella’s Supermarket**

Dale Danahy, applicant
Attorney Doug Resnick, legal counsel

Members sitting: Mr. Davies, Mr. Garabedian, Mr. Bogigian, Mr. Kunicki, Mr. DiMascio.

Atty. Resnick stated they are here to request an amendment to relief granted from the Board for a drive-thru window. Atty. Resnick stated the bank has elected to stay where they are.

Mr. Davies asked if they have submitted revised plans. Atty. Resnick stated yes.

Mr. Davies asked if there were any public comments and there were none.

Mr. Kunicki moved to close the public hearing. The motion was seconded by Mr. Garabedian and passed unanimously.

Mr. Garabedian moved to grant an amendment to the Special Permit that was granted and relocate the drive-thru window in accordance with the plans submitted. The motion was seconded by Mr. Kunicki and passed by all except Mr. DiMascio who abstained.

**8:05 PM Request for Special Permit
68 Elm Street – Caliper Life Sciences**

Thomas P. Nealon, legal counsel
Rick Ekstrom – Caliper Life Sciences, Director of Operations
Brian Watts – BCIA New England Holdings, Property Manager

Members sitting: Mr. Davies, Mr. Garabedian, Mr. Bogigian, Mr. Kunicki, Mr. DiMascio.

Atty. Nealon stated the property is located on the north side of Elm Street and the parcel consists of 48 acres with four buildings. Atty. Nealon stated it was built in the 1980's and the current owner is BCIA New England Holdings. He stated that the 68 Elm Street building serves as world headquarters for Caliper Life Sciences. Atty. Nealon stated the applicant is proposing a 5000 SF addition to be built on the westerly side of the building. The reason for the special permit request is that the building is approximately 1 foot non-conforming on the easterly side and section 210-128C requires a special permit for such non-conformity.

Mr. Shepard stated they are seeking relief in the form of a special permit because the building is only 29 feet from the residential district and the requirement is 30 feet.

Mr. Davies asked if there are any setback requirements for Parkwood Drive. Mr. Shepard stated no. Mr. Davies asked about the breezeway between the two buildings. Mr. Shepard stated there will be an issue with that but rather than hamper this issue they will put that on the backburner and file an application for that later.

Mr. Bogigian stated that Parkwood Drive says private on the plans. Mr. Shepard stated the entire property is owned by BCIA New England. Mr. Bogigian asked then if it is private property then why are there setback issues. Mr. Shepard stated there shouldn't be.

Mr. Davies stated the 29 foot setback isn't changing. We have a pre-existing non-conforming structure in front of us for approval to change. Mr. Davies asked if there were any issues with the Planning Board. Mr. Watts stated the main issue is with the lighting.

Mr. Bogigian stated he believes the Board has enough information on the plans to make a decision. Mr. Davies stated his concern is there are 2 different plans. Mr. Davies stated the site plan review plans will be different from the ones we have.

Mr. Davies asked if there were any public comments and there were none.

Mr. Garabedian moved to close the public hearing subject to receipt of the complete plans. The motion was seconded by Mr. Kunicki and passed unanimously.

**8:30 PM Request for Special Permit and Variance
39 Oakhurst Road – McNamara**

Ria McNamara, applicant

Members sitting: Mr. Davies, Mr. Garabedian, Mr. Bogigian, Mr. Kunicki, Mr. DiMascio.

Ms. McNamara stated the property was built in the 30's as a cabin. She is the middle of three properties that when they subdivided the properties it became pre-existing non-conforming. Ms. McNamara stated she is looking to put an addition on the house to modernize it. Ms. McNamara stated the relief on the side setback is roughly 8 feet.

Mr. Davies asked how far over 25% is the addition. Ms. McNamara stated 46%.

Mr. Kunicki asked what her intentions were for the home office. Ms. McNamara stated that all she does is make phone calls.

Mr. Bogigian asked if she was looking for a side setback under 210-119 and a variance under 210-128. Ms. McNamara stated yes.

Mr. Davies asked if she was running a business from this property. Ms. McNamara stated she is just making phone calls and there would be no traffic. Mr. Davies asked if she registered that business with the Town of Hopkinton. Ms. McNamara stated not yet.

Mr. Davies asked if the public had any comments and there were none.

Mr. Shepard stated this property is on the lake and the addition is lower than the peak of the existing house so it will not change anyone's view of the lake.

Mr. DiMascio asked if she was taking down the car port. Ms. McNamara stated yes.

Mr. Davies asked what the requested relief is on the northerly side. Mr. Davies stated to include in the decision that the existing northerly setback is 4 feet and the addition is 17 feet so it is not a greater conformity. Ms. McNamara stated the requested relief is 9 feet. Mr. Davies asked how far is the existing house from the southerly side. Ms. McNamara stated 20 feet. Mr. Davies stated the addition on the southerly side meets the setback requirements. Ms. McNamara respectfully requested a speedy decision.

Mr. Bogigian moved to close the public hearing. The motion was seconded by Mr. Garabedian and passed unanimously.

**8:40 PM Request for Special Permit
102 East Main Street – Able Limousine, Inc.**

Mike Callahan – Able Limousine, Inc., owner and operator
Art Fairbanks, property owner
Timothy Nealon, legal counsel

Members sitting: Mr. Davies, Mr. Garabedian, Mr. Bogigian, Mr. Kunicki, Mr. DiMascio.

Atty. Nealon stated in the mid 40's the property was operated as a welding shop. In 1963 Mr. Fairbanks moved in. Atty. Nealon stated Mr. Fairbanks purchased the property in 1983 or 1984 and operated a body shop from 1963. When Mr. Fairbanks retired rather than lease the property for another body shop Mr. Callahan approached him to open a limousine business. Atty. Nealon stated Mr. Callahan has 18 vehicles. He stated the limo's leave early in the morning and late in the evening to make airport runs. Atty. Nealon stated it is a pre-existing non-conforming use and a special permit is needed to change the use to a limousine business and it is not substantially more detrimental.

Mr. Garabedian stated that the application indicated there would be storage and repair and an office. Atty. Nealon stated that was a mistake that there would be no repair done there. Mr. Garabedian asked to what extent are the vehicles stored outside. Atty. Nealon stated 5 vehicles would be stored inside and the rest stored outside.

Mr. Davies stated he wants to make sure the applicant understands that once a grandfathered pre-existing use is altered you can not go back to what it was before. Mr. Davies stated there needs to be a very clear description of the proposed use. Mr. Davies asked if there would be any sales of auto's. Atty. Nealon stated no.

Mr. Shepard stated this is an effort to clean up a lack of a special permit the previous owner had.

Mr. Davies asked if the public had any comments and there were none.

Mr. Garabedian moved to close the public hearing. The motion was seconded by Mr. Kunicki and passed unanimously.

**8:55 PM Request for Special Permit
133 Spring Street – LaGoy**

Patty LaGoy, applicant

Members sitting: Mr. Davies, Mr. Garabedian, Mr. Bogigian, Mr. Kunicki, Mr. DiMascio.

Ms. LaGoy stated she was seeking relief for a special permit under 210-10 to run a Home Specialty Retail shop out of her existing barn. Ms. LaGoy stated she deals in antique and would like to open a shop to work out of. She stated the lighting would be the same as used for a home and she has received approval from the Planning Board to remove part of the stone wall to put in a parking area.

Mr. Shepard stated for the record that he is an abutter but does not get to vote. Mr. Shepard stated this is an allowed use by a special permit. He stated he has received phone calls from different abutters who are concerned with signage, lighting, hours of operation and dust from the driveway.

Mr. Davies asked if the applicant was suggesting she qualify under section 210-4 antiques for the home specialty retail permit. Ms. LaGoy stated yes. Mr. Davies asked what her special skill or knowledge is. Ms. LaGoy stated she has been in the business for 5 years and she buys and sells antiques. Mr. Davies asked if the applicant has a plan that shows access to the road and off street parking are adequate and safe. Ms. LaGoy stated yes. Mr. Davies asked if she submitted a plan to the Planning Board. Ms. LaGoy stated yes. Mr. Davies asked if she gave us that plan. Ms. LaGoy stated no.

Mr. Bogigian asked what kind of signage the applicant would have and if she has received approval for it. Ms. LaGoy stated it was her understanding that was part of the special permit. Mr. Bogigian asked when everything was done what kind of difference will we notice. Ms. LaGoy stated new windows, new boards and a better door on the barn. Mr. Bogigian asked if there was a license needed to sell antiques. Ms. LaGoy stated no.

Mr. Garabedian asked how many cars the parking area will accommodate. Mr. Shepard stated there will be 4 parking spaces. Mr. Garabedian asked where people would enter the business. Ms. LaGoy stated through the back way. Mr. Garabedian asked how much sales activity is there. Ms. LaGoy stated she grossed 30K last year. Mr. Garabedian asked what type of antiques she sells. Ms. LaGoy stated she buys cut glass, pressed glass, old paper goods, pottery, china, sterling silver, jewelry, etc.

Mr. Davies asked the applicant to comment on her opinion with respect to the bylaws requirement that states the business must be in the petitioners dwelling. Mr. Shepard stated in this case she could probably do everything she wants to do in the barn in her house but she wants to separate her business from her home.

Mr. Davies asked if there were any public comments.

Nick Palihnich, 119 Spring Street stated he has lived there for 11 years and has some concerns.

1. Driveway and parking area safety. There are blind spots for a car coming out of the driveway because it is reasonably steep coming off Spring Street. Hill Street in the winter is very dangerous and you would need to take a hard right then a hard left to enter the new driveway.
2. Revolves around the scope of the project. This will represent a permanent change to the property and when Patty moves the permit will become null and void but now the property is changed.
3. It will change the character of the neighborhood. It will devalue the property of others.

Joseph Fournier, 135 Spring Street stated he is concerned about future conditions. He stated he is concerned some people will park in the street.

Mike OBrien, 140 Spring Street asked if this sets precedence with future applicants coming to the Board. Mr. Davies stated no.

Gary Cincotta, 12 Norcross Road asked if this isn't granted will the wall be returned to its original state. Mr. Davies stated he did not know because the Planning Board did not condition their decision.

Bob Ryan, 146 Spring Street stated he has lived there 30 years and he has traffic control problems. He stated there is a new development coming in and another road and there is a danger with Hill Street.

Mr. Davies asked the applicant if she has spoken with the Conservation Commission. Ms. LaGoy stated no. Mr. Davies stated he wants to see this property and he would like the applicant to speak with the Conservation Commission and that a plan prepared by an engineer would probably be prudent.

Ms. LaGoy requested a continuance of the public hearing until 5/25/05 at 8:15pm. Mr. Garabedian moved to continue the public hearing until 5/25/05 at 8:15pm at the applicant's request. The motion was seconded by Mr. Bogigian and passed unanimously.

10:05 PM Administrative Session of the Board of Appeals

102 East Main Street, Able Limousine decision

Change in a pre-existing non-conforming use

Mr. Garabedian moved to find that the property change is not more detrimental to the neighborhood and to grant the applicants request to change a pre-existing non-conforming use to use of the premises for a limousine service business with associated office use, parking of limousines, sedans, mini bus and other vehicles used in the ordinary course of a limousine business owned or leased and operated by Able Limousine subject to the following conditions.

1. All other pre-existing non-conforming uses protected under MA General Law 40A Section 6 are extinguished and the property shall otherwise be used exclusively in conformity with the existing zoning bylaws.

2. The premises shall not be used for the sale of vehicles and to the greatest extent possible vehicles used in conjunction with the limousine business shall be stored inside during the overnight from the hours of 9pm – 6am.

3. No storage of gasoline, diesel fuel or other fuels on this property.

Findings reference actual similar use or more restricted use. The motion was seconded by Mr. DiMascio and passed unanimously.

68 Elm Street, Caliper Life Sciences decision

Mr. Kunicki moved to find that the property change on the structure is similar to the existing structure and the change is not substantially detrimental to the neighborhood and grant relief as requested to conform with the plans submitted here to the board. The motion was seconded by Mr. Bogigian and passed unanimously.

39 Oakhurst Road, McNamara decision

Mr. Garabedian moved to find the applicant is under a substantial hardship due to topography and shape of the lot and allow consideration of the enlargement by 25% up to 47% and to grant a variance to consider a special permit for more than 25%. The motion was seconded by Mr. Bogigian and passed unanimously.

Mr. Garabedian moved to grant a special permit under section 210-128B under a finding of the Board of Appeals that the proposal is to enlarge the structure at the same use and that such change will not be more detrimental to the neighborhood. The motion was seconded by Mr. Bogigian and passed unanimously.

Mr. Garabedian moved to grant a special permit for side setback on the northerly side for 9 feet of relief. The motion was seconded by Mr. Bogigian and passed unanimously.

0 Clinton Street, Cueroni decision

Mr. Bogigian moved to find the applicant is under substantial hardship because of topography and shape of the property and to grant a variance for relief of front setback by 29 feet. The motion was seconded by Mr. Kunicki and failed 2-3. The votes were Mr. Bogigian: Yes; Mr. Kunicki: Yes; Mr. Davies: No; Mr. Garabedian: No; Mr. DiMascio: No.

Mr. Garabedian moved to grant the requested relief to the rear setback of 19 feet. The motion was seconded by Mr. DiMascio and failed 2-3. The votes were Mr. Bogigian: Yes; Mr. Kunicki: Yes; Mr. Davies: No; Mr. Garabedian: No; Mr. DiMascio: No.

2 West Elm Street, Community Covenant Church decision

Mr. Garabedian moved to enter a finding that the applicant has substantial hardship due to the shape of the lot and grant relief from the front setback request for 37 feet to allow the building to be 13 feet from the street. The motion was seconded by Mr. Bogigian and failed 3-2. The votes were Mr. Garabedian: Yes; Mr. Bogigian: Yes; Mr. Kunicki: Yes; Mr. Davies: No; Mr. DiMascio: No.

Mr. Garabedian moved to pay the June 11, 2004 bill in the amount of \$1,642.43 for Earth Tech from the E.L. Harvey & Sons, Inc. 53G account. The motion was seconded and passed unanimously.

Mr. Garabedian moved to pay the April 6, 2005 bill in the amount of \$54.26 for Corporate Express from the 53E 1/2 account. The motion was seconded and passed unanimously.

Mr. Garabedian moved to adjourn the meeting. The motion was seconded by Mr. Bogigian and passed unanimously.

Meeting Adjourned: 11:05 PM

Adina Wright, Administrative Assistant