



TOWN OF HOPKINTON

OFFICE OF THE PLANNING BOARD

TOWN HALL
18 MAIN STREET
HOPKINTON, MASS. 01748
(508) 497-9755

March 19, 2007

DECISION

Request of Jerry Lazzaro d/b/a Hopkinton Exxon for the consent of the Planning Board to a renewed/repetitive petition to the Board of Appeals for property located at 60-64 Main Street, pursuant to the requirements of Massachusetts General Laws Chapter 40A Section 16 and the Town of Hopkinton Zoning Bylaw, Article XXII, Appeals, Section 210-147.

The Planning Board of the Town of Hopkinton (the "Planning Board") held a duly noticed public hearing on March 12, 2007, on the request of Jerry Lazzaro d/b/a Hopkinton Exxon (the "Applicant") for the consent of the Planning Board to a renewed/repetitive petition to the Board of Appeals for property located at 60-64 Main Street. The property is located within the Business District.

Review Criteria

The Planning Board must review the Applicant's request in accordance with the following provisions.

Massachusetts General Laws, Chapter 40A Section 16 states:

No appeal, application, or petition which has been unfavorably and finally acted upon by the special permit granting authority or permit granting authority shall be acted favorably upon within two years after the date of final unfavorable action unless said special permit granting authority or permit granting authority finds, by a unanimous vote of a board of three members or by a vote of four members of a board of five members or two-thirds vote of a board of more than five members, specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and unless all but one of the members of the planning board consents thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

Hopkinton Zoning Bylaw Section 210-147 states:

A repetitive application for a special permit or variance which has been unfavorably acted upon by the Board of Appeals within the past two years shall not be reconsidered until after a public hearing held by the Planning Board and a vote of consent of eight of its members to the resubmittal, and unless four of the members of the Board of Appeals vote to admit the resubmittal after a finding, described in the record of its proceedings, that there are specific and material changes in the conditions upon which the previous unfavorable action was based.

Discussion at the Public Hearing

At the public hearing, it was stated that the Applicant had submitted applications to the Board of Appeals in 2006 to amend special permits granted on March 31, 1971 and amended on October 16, 1992 to allow for the sale of bottled gas, and to request a special permit to allow for the storage of unregistered vehicles overnight and the sale of vehicles from the property. In a decision dated July 7, 2006, the Board of Appeals denied the requested amendments and special permits. The Board of Appeals found that: 1) the sale of bottled gas is not a primary use customarily associated with the primary use of a gasoline service station and automobile repair garage; and 2) the storage of unregistered vehicles and the sale of vehicles is not a primary use customarily associated with the primary use of a gasoline service station and automobile repair garage.

The Applicant's representative requested that the Planning Board consent to a renewed/repetitive petition to the Board of Appeals and stated that the petition will request an amendment to the special permit to remove the prohibition of the sale of propane fuel. It was stated that an amendment to the Business District section of the Zoning Bylaw on December 21, 2006 expressly included the sale of propane fuel as an accessory use to a gasoline service station, and in the opinion of the Applicant, this constitutes a specific and material change in conditions.

At the Special Town Meeting on December 21, 2006, an amendment to the Zoning Bylaw was adopted which modified the language of the Business District. Section 210-19, Uses allowed by special permit, was modified as follows:

From:

- A. Gasoline service stations and automobile repair garages.

To:

- A. Gasoline service stations and automobile repair garages, expressly including the accessory use of retail sale of propane, provided the maximum size of a propane storage tank does not exceed 2,000 gallons, and also provided there is compliance with all other federal, state, and municipal regulatory requirements.

The Applicant's representative stated that a request to store and sell unregistered vehicles on the property would not be included in the renewed/repetitive petition, only the sale of propane fuel.

The Planning Board reviewed and discussed the information presented by the Applicant and the comments of those in attendance at the public hearing.

Planning Board Action

The Planning Board certifies that at the public hearing on March 12, 2007, it voted to determine that there have been specific and material changes in the conditions upon which the previous unfavorable action of the Board of Appeals was based, those changes consisting of the modifications to Section 210-19 of the Zoning Bylaw adopted at the Hopkinton Special Town Meeting on December 21, 2006.

On the motion to make the foregoing determination, the vote of the Board was as follows:

Mark Abate	Yes
Scott Aghababian	Yes
Sandy K. Altamura	Yes
Evan Ballantyne	Yes
John H. Coolidge	Yes
Jaime Goncalves	Yes
Joseph Markey	Yes
Claire Wright	Yes

The Planning Board consents to a renewed/repetitive petition to the Board of Appeals.

Mark A. Abate
Chairman

Cc: Board of Appeals
Thomas P. Nealon
Town Clerk