



TOWN OF HOPKINTON

OFFICE OF THE PLANNING BOARD

**TOWN HALL
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HOPKINTON, MA 01748
(508) 497-9755**

February 15, 2008

DECISION OF SITE PLAN REVIEW

Application for Site Plan Review filed by Hallmark Ventures, Inc., 11 Grove St., Hopkinton, MA, for Major Project Site Plan Review, consisting of a mixed use retail, office and residential development at 25 and 35 Main Street, Hopkinton, shown on Assessors Map U16 Block 218 Lot 0 and Block 219 Lot 0.

The Planning Board held a public hearing on the application submitted by Hallmark Ventures, Inc. (the "Applicant") for Site Plan Review on February 11, 2008, pursuant to Article XX of the Zoning Bylaw, Site Plan Review (the "Bylaw"). The proposal constitutes a Site Plan Review Major Project, as it involves construction of 1,500 sq. ft. or more gross floor area, grading or re-grading of land to planned elevations and/or disturbance of existing vegetation over an area of 5,000 sq. ft. or more, and construction of a parking area containing 25 or more parking spaces. The property is currently owned by 25 Main Street Realty Trust and 35 Main Street Realty Trust.

Under the Town of Hopkinton Zoning Bylaws, Site Plan Review is an administrative review procedure of plans for non-residential uses and structures which may have impacts on traffic, services and utilities, environmental quality, water resources, drainage and community character.

The development site, currently consisting of two parcels which will be combined, contains 2.87 acres, is zoned Downtown Business, and is also within the Water Resources Protection Overlay District. The front of the parcel, to a depth of approximately 180 feet, is within the Hopkinton Center Historic District. The two existing historic buildings on the property at 25 and 35 Main St. are currently in commercial use and are within the Historic District. The Applicant proposes to construct a new building behind the existing buildings and outside the Historic District, with 42,000 sq. ft. of floor area. The new building will have underground parking, retail uses on the first floor, office uses on the second floor, and nine residential condominium units on the third floor. The Site Plan shows 152 parking spaces, consisting of 32 under the building and 120 surface parking spaces. The Hopkinton Village Center project consists of all three buildings which will be located on one parcel.

The Site Plan showed proposed lighting, building location and design, landscaping, stormwater management facilities, driveways and parking spaces. The site would be served by the municipal water and sewer systems, and the stormwater management system is designed to comply with the Massachusetts Department of Environmental Protection (DEP) Stormwater Management Policy

and Guidelines, as required by the Site Plan Review Submission Requirements and Procedures adopted by the Planning Board pursuant to the Bylaw.

The Planning Board previously approved an application for Site Plan Review submitted by the Applicant, which approved the same site design shown on the submitted Site Plan. The Decision of Site Plan Review dated November 1, 2007 was appealed to the Board of Appeals, which overturned the Decision due to concerns with four specific conditions of approval. The Decision of the Board of Appeals denied approval of the Site Plan for uses and structures permitted as of right, necessitating a new application by the Applicant to the Planning Board for Site Plan approval.

Review Standards

Section 210-136 of the Bylaw contains the following Decision Criteria:

The Planning Board shall approve an application for Site Plan Review if it finds that:

- A. The Site Plan conforms to the purpose and intent of the bylaw and proposes an appropriate and beneficial development of this site;
- B. The surrounding area will be protected from the proposed use on the site by provision of adequate surface water drainage, buffers against light, sight, sound, odors, dust and vibration and the preservation of adequate light and air;
- C. The convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas and public ways is ensured;
- D. Environmental features of the site and surrounding areas are protected;
- E. The Site Plan is consistent with the Master Plan;
- F. The proposed building scale and/or site development plan is consistent with the surrounding neighborhood;
- G. All variances or special permits required from the Zoning Board of Appeals have been granted;
- H. Notwithstanding the above, regulation of uses and structures referred to in MGL c.40A, §3 shall be limited to the extent allowed under said section of the General Laws.

The Bylaw further states that Site Plan approval may be made subject to conditions, modifications and restrictions as the Planning Board may deem necessary.

Site plan review is concerned with regulation of a use rather than its prohibition and with the imposition of reasonable terms and conditions for protection of the public. Site plan review operates in conjunction with the building permit process to authorize a use or structure, and is a prerequisite for obtaining a building permit for most of the projects requiring site plan review. The only cases where site plan review is not a prerequisite for obtaining a building permit is where a building permit is not necessary, such as for construction or expansion of a parking lot and clearing and grading for recreation fields.

A decision of the Planning Board on an application for site plan review must be in accordance with the standards established by the court in *Prudential Insurance Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 268 (1986). The court held that a board may:

- Reject a site plan that fails to furnish adequate information required by the bylaw;
- Impose reasonable conditions in connection with site plan approval, even at the expense of the applicant; and
- Reject site plans where “although in proper form, (the site plan) may be so intrusive on the needs of the public in one regulated aspect or another that rejection by the board would be tenable.”

Case law has established that reasonable conditions in approval of a site plan may include (but are not limited to):

- Private disposal of solid waste;
- Deadline to commence construction;
- Possession or use of hazardous substances;
- Limitations on signage;
- Alarm system;
- Limits on vehicles;
- Limit as to number of students or residents;
- Noise limits;
- Maintenance guarantees;
- Landscaping requirements;
- Parking spaces;
- Dust control;
- Sewer connection;
- Bond or other performance guarantee;
- Hours of operation;
- Public safety;
- Traffic control;
- Police details during periods of heavy traffic.

The Planning Board may impose reasonable terms and conditions on the proposed use, but does not have the discretionary power to deny the use. Reasonable conditions may be imposed to implement the goals of the Site Plan Review process set forth in the Zoning Bylaw, Article XX, Site Plan Review. Section 210-133, Purpose, of Article XX is as follows:

“The purpose of this Article is to protect the health, safety, convenience and general welfare of the public by providing a comprehensive review procedure for plans for uses and structures which may have impacts on traffic, services and utilities, environmental quality, water resources, drainage and community character.”

Site plan review differs from special permits in several aspects, most importantly that the award of a special permit is discretionary but approval of a site plan is not, since it is the regulation of a use rather than its prohibition.

Discussion at the Public Hearing and Information Received

The Applicant submitted a complete application package to the Planning Board, which supplemented materials previously submitted to the Board with the prior Site Plan Review application in 2007 and reviewed by Fay, Spofford & Thorndike, LLC, the Board’s consulting engineer.

The Board received letters of comment and recommendation from Fay, Spofford & Thorndike, LLC dated February 7, 2008, and the following Town departments: Hopkinton Board of Health, dated Feb. 26, 2008, Design Review Board, dated Jan. 24, 2008, and Fire Department, dated Jan. 31, 2008.

At the public hearing, aspects of the proposed development of the site were discussed, including the design, use and location of the proposed building, traffic circulation, parking lot design, landscaping and screening, site lighting and the stormwater management system. Also discussed was the wider context of how the project would fit into its downtown setting and the Historic District, pedestrian connections to the project, and the relationship to existing on-street parking spaces.

General areas of concern were discussed during the public hearing, including:

Parking

The submitted Site Plan shows 152 parking spaces on the development site, which exceeds the 139 spaces required by Zoning Bylaw Section 210-124, Off-Street Parking, for the retail, office and residential uses anticipated on the site. Municipal on-street parking spaces line Main St. on both sides of the street. In order to provide the required turning radius for SU-30 vehicles (i.e. a 30 ft. long fire truck) at the two site drives, two existing on-street parking spaces at the entrance and one at the exit will be eliminated. The owner of the abutting property at 43-45 Main St. expressed concern about the loss of a parking space in front of that business, so that there would only be one space where there are presently two. It was noted that the present spaces, both in this location and elsewhere along Main St., are undersized, both from a practical standpoint given the actual size of vehicles and the amount of space needed to parallel park, and also because they do not conform to the parking space dimensional requirements of Section 210-124. This results in vehicles blocking driveways and using more than one space to park one vehicle.

The owner of 43-45 Main St. and the operator of the Hopkinton Gourmet, a business at 43 Main St., both appeared before the Board and showed a sketch of how the one-way entrance driveway into the site could be moved to the east in order to save the second on-street parking space in front of the business. Neither individual submitted a plan to the Board, nor has one been filed with the Planning Department as of this date. The sketch plan mounted on a board was shown to the Board at the public hearing, but was not submitted to the Board for review or inclusion in the file or public record.

However, despite the fact that the plan was not given to the Board for examination, the Board discussed the idea of moving the driveway to the east at the public hearing. The Board reviewed the Grading and Drainage Plan contained within the Site Plan submission set (sheet C-3.0), and noted that moving the driveway would appear not to be feasible or desirable for several reasons, including:

- The owner of 43-45 Main St. stated that the sketch plan showed a driveway that was moved to the east by several feet which would go straight back into the site and not require a curve to the right. This was a change from the 2007 Site Plan Review public hearings on the plan, in which a similar sketch (also not submitted to the Board for review or inclusion in the file or public record) was shown to the Board that included a fairly sharp curve to the right. The

Board reviewed the Grading and Drainage Plan, which is to scale and was prepared by a Registered Professional Engineer. The Board noted that the location of the existing building at 35 Main St., which would remain, and the turning radii required to accommodate an SU-30 vehicle would in fact dictate the need for a curve to the right to effectively maneuver around the building and stay a suitable distance away from the structure. In the opinion of the Board, a driveway configuration involving a curve in that location would not provide safe and efficient access for emergency response vehicles, a matter on which the Fire Department commented in the letter to the Planning Board regarding this project.

- The front of the parcel, to a depth of approximately 180 feet, is within the Hopkinton Center Historic District, including the building and the lawn in front of it. Preservation of the setting of the building at 35 Main St. is a concern of the Historic District Commission, not just the building itself. Placing a driveway further to the east than shown on the submitted Site Plan would jeopardize that setting.
- The Grading and Drainage Plan shows that stormwater management infrastructure and municipal water and sewer connections would be located under the driveway. Moving the driveway would require moving the utilities, most significantly the drainage pipe, which must connect to an existing Town structure at the end of the driveway in Main St. Grading work is also required for the driveway. Location of the driveway closer to the 35 Main St. building would likely require significant grading work closer to the structure, which is not desirable.
- The on-street spaces are municipal spaces and are for public use. The Town of Hopkinton has jurisdiction over the spaces, and may at any time decide to reconfigure, eliminate, or change their location and design. In short, they should not be considered permanent fixtures, and they will change over time as they have in the past.

After discussion, the Board noted that it was sympathetic to the desire of the business owner to have two on-street parking spaces directly in front of the business instead of one, but to compromise the public safety for a temporary benefit to one business is not a tradeoff the Planning Board was willing to make. It was also noted that over 100 new parking spaces will be created on the site adjacent to the business, which may be used by the public to access any downtown business. The submitted Site Plan shows pedestrian connections to Main St. along both of the driveways accessing the site, and the Applicant has repeatedly stated that the above-ground parking on the site will not be restricted to patrons of the businesses at the site.

Screening

A review of the screening provided to properties abutting the development site was conducted by the Planning Board. The owner of 17 Grove St. expressed concern about the loss of mature trees on the development site immediately adjacent to the property line. It was noted that the four existing trees agreed upon by the owner of 17 Grove St. and the Applicant would be retained along the property line.

Stormwater Management

The stormwater management system shown on the Site Plan was discussed in relation to compliance with the Mass. DEP Stormwater Management Policy and Guidelines and the existing infrastructure in the area. All aspects of the system had been reviewed by the Board's consulting engineer.

The Planning Board noted that the Site Plan as designed conforms to the Mass. DEP Stormwater Management Policy and Guidelines, and that no increase in stormwater runoff volume to abutting property should result.

Findings and Votes of the Board

The Planning Board conducts its review of Site Plans in accordance with the Decision Criteria contained in the Bylaw. The review is of the design and functionality of the site elements and impacts on traffic, services and utilities, environmental quality, water resources, drainage and community character. The Board voted on February 11, 2008 to determine that the Decision Criteria were met:

- A. The Site Plan conforms to the purpose and intent of the bylaw and proposes an appropriate and beneficial development of this site;
- B. The surrounding area will be protected from the proposed use on the site by provision of adequate surface water drainage, buffers against light, sight, sound, odors, dust and vibration and the preservation of adequate light and air;
- C. The convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas and public ways is ensured;
- D. Environmental features of the site and surrounding areas are protected;
- E. The Site Plan is consistent with the Master Plan adopted January 22, 2007;
- F. The proposed building scale and/or site development plan is consistent with the surrounding neighborhood;
- G. No special permits or variances are required of the Board of Appeals.
- H. The project is not a use referred to in MGL c.40A, §3 of the General Laws.

On the Motion to determine that the Decision Criteria in Zoning Bylaw Section 210-136 were met, the vote of the Board was as follows:

Mark Abate	Yes
Evan Ballantyne	Yes
John Coolidge	Yes
Carol DeVeuve	Yes
RJ Dourney	Yes
Ken Weismantel	Yes
Claire Wright	Yes

The Board voted at its meeting on February 11, 2008 to approve the Site Plan entitled “Hopkinton Village Center”, prepared by Level Design Group and Gorman Richardson Architects, dated January 17, 2008 with the following conditions:

1. The Applicant shall review any significant proposed modifications to the building facade before or during construction with the Design Review Board prior to the commencement of construction of those items, to maintain consistency with the overall design concept.

2. The following conditions are required as mitigation of new traffic trips generated by the development and traffic impacts created by the development:
 - (a) The Applicant shall be responsible for re-alignment and re-striping of on-street parking spaces on Main St. between Grove St. and Church St. The spaces should be adjusted so that they conform to standard parking space dimensions, provide adequate space for vehicles to turn at driveway radii, and add on-street parking where the center driveway was located. The Applicant shall work with the Hopkinton Department of Public Works (DPW) in this regard, and the work shall be done under the supervision of the DPW.
 - (b) The sidewalk and curbing on Main St. along the frontage of the development site shall be repaired and improved.
 - (c) Left turns out of the site exit driveway shall be prohibited between the hours of 4:00 PM and 6:00 PM on weekdays. After the site's retail and office space is 75% occupied, and further as conditions warrant, the Applicant shall work with the Chief of Police to evaluate the operational functionality of the turning movements at both driveways during the morning and evening peak hours of traffic on Main St. Adjustments and additional restrictions on turning movements to address public safety issues may be made as conditions warrant.
3. The design of the parking lot behind 17 Grove St. had been modified as an attempt to save four large existing trees along the property line, which trees will be flagged by the owner of 17 Grove St. prior to commencement of construction. If any of the trees are damaged during construction and a certified arborist certifies that the tree will not survive and/or any of the trees do not survive during a three year period beginning on the date of the start of site construction, the Applicant shall remove said trees. The Applicant shall plant new trees in that location to replace ones that are removed on a one-for-one basis. The species and size of the tree shall be determined after consultation with the Hopkinton Tree Warden. The Applicant shall provide surety to the Town in the amount of \$10,000 as a performance guarantee to ensure that the trees are replaced if required.
4. The Director of Municipal Inspections inspects Site Plans under construction for compliance with the approved Site Plan. If the Director of Municipal Inspections determines at any time before or during construction that a registered professional engineer or other such outside professional is required to assist with the inspections of the stormwater management system or other component of the Site Plan, the Applicant shall be responsible for the cost of those inspections.
5. All exterior lighting shall be directed downward, not upward or outward, and shall not spill onto adjacent property. Light levels shall be reduced at night to only that which is necessary for safety and security.
6. All mechanical equipment shall be screened from view from the ground.
7. In accordance with Zoning Bylaw Sec. 210-138, the Applicant shall provide a performance guarantee in the amount of \$5,000 to the Town prior to the commencement of construction. The guarantee shall consist of a deposit of money or negotiable securities to guarantee completion of improvements to be made in compliance with the approved plans. The funds

will guarantee that any unforeseen problems which arise, such as erosion and sedimentation, visual screening of abutting property, and the correction of site lighting problems, will be addressed. The funds will be held by the Town and returned to the Applicant upon completion of the project.

On the Motion to Approve the Site Plan with the foregoing conditions, the vote of the Planning Board was as follows:

Mark Abate	Yes
Evan Ballantyne	Yes
John Coolidge	Yes
Carol DeVeuve	Yes
RJ Dourney	Yes
Ken Weismantel	Yes
Claire Wright	Yes

This Decision shall become void two (2) years from the date of issue if the actions authorized hereby are not exercised.

Any person aggrieved by this Decision may appeal in accordance with Article XX, Section 210-135 F. of the Hopkinton Zoning Bylaw within 30 days of the filing of the decision with the Town Clerk.

Mark A. Abate
Chairman

Cc: Town Clerk
Hallmark Ventures, Inc.
Director of Municipal Inspections
Director of Public Works
Fire Department
Police Chief
Board of Selectmen
Board of Health
Fay, Spofford & Thorndike, LLC