

Approved
12-28-2021

CARVER PLANNING BOARD MINUTES OF NOVEMBER 9, 2021

Present: Chairman Bruce Maki, Jimi Walsh, Ellen Sordillo, Cornelius Shea, Kevin Robinson, John Gaskey, and Richard Dionne.

Meeting was called to order at 7:01 P.M.

Pledge of Allegiance was recited.

Minor Modification:

1. Request for Minor Modification to Site Plan: 96 Forest Street, EJCP LLC, Eric Pontiff, to modify approved site plan to allow owner to combine 4 bays into 5 bays to lease to tenant of front building. This matter is continued from Planning Board Meeting of October 26, 2021. Mr. Maki explains that 96 Forest Street has two existing buildings, a front building and a rear building. At time this was approved there was to be five bays, but since then, the applicant is requesting modification to the plan to allow four bays to become storage area for the front building, and there would be a fifth bay in the rear to be leased as a craftsman/tradesman building. Mr. Maki has spoken to the Building Inspector and he considered a secondary use to the main building. He continued that previously there was a discussion of elimination of the craftsman/tradesman bays and, in his opinion, this would hopefully allow Nutrien to continue with its operation. There are other sites in this area that have craftsman/tradesman buildings, and he doesn't believe this modification will be detrimental to the area or town. He mentioned that conditions to the project were mailed out to those involved and would have to be discussed. Attorney Rob D'ambrosio presents remarks and would be interested in what the proposed conditions are. He reiterates what the applicant proposed initially removing three demising walls, and a portion of the building to be used by Nutrien with full access to the other, The remainder of the rear building will not change – it will be used by a tradesman. Continuing, he indicates that the Fire Department and Building Commissioner weighed in on the alarm issue and he believes there is no issue from either. He notes that the issue of spill containment has come up but indicates that high hazard used issued according to the definition of the state building code and the code doesn't require spill containment. He indicates that Nutrien was pleased to be moved to the front building, which is actually the more active building. The rear building is much smaller and there will not be any retail traffic and very limited foot traffic on the site. On the other hand Nutrien is a local business that supplies local businesses and is used frequently by farmers and community farmers on a regular basis. Also according to Assistant Deputy Chief Jesse Boyle of the Fire Department an alarm for the rear building is not necessary. Mr. Maki indicates he has talked to the Building Commissioner this week, and to Jim Walsh. He explains that the fire alarm system is required in the front building, but by law it is not required in the rear building because the size of the rear building doesn't meet the square footage by law to need a system. Mr. Maki indicates even though it is the law he has mixed feelings about this. He asks the Petitioner, Eric Pontiff, if the same materials that will be stored in

the front building will be different from the materials stored in the rear building. Mr. Pontiff responds that liquid materials will be stored in the front building in containment, and all dry materials will be stored in the rear building. Nutrien has 3,000 locations across the USA and it is their corporate policy to separate liquid material from dry materials, regardless of the laws and codes. Mr. Maki indicates when the project was first presented to the board it was to be one big building but the applicant didn't want to do that because it would cost too much money for the fire apparatus, such as sprinklers to be installed, so it was decided to have two buildings, with the smaller building in the back, leaving a retail use and also an accessory retail use. Attorney D'Ambrosio argues that he doesn't believe the uses of the buildings is detrimental to the general business area. Mr. Maki indicates that one building and it is over a certain amount of square footage therefore it must meet sprinkler requirements per the law. The smaller building is under the required square feet required for a sprinkler system. He continues this minor modification does not change the footprint of the site, nor the parking, or drainage. Although this isn't a public hearing Mr. Maki allows Mr. William Sinclair, a neighbor, of 5 Lillian Way, to speak. Mr. Sinclair indicates he was a member of the planning board when this proposal was first presented to the board. He also states the initial proposal was for one building but, as stated by others, it was too costly to add a sprinkler system to the one large building and therefore it was decided to go to two buildings. This is where Mr. Sinclair states, he has a problem. The rear building was to be used for craftsman/tradesman and the front building was to be used as retail. He states that these two are totally different types of businesses. He goes to say what was presented to the board was that the two buildings were both to be used for retail businesses and that's why it was approved by the prior board. The selling point was to have a dual use on that site. Attorney D'Ambrosio speaks repeating he believes this is a minor modification because there will be no structural exterior alterations, and no change to parking, traffic, or drainage. Cornelius Shea believes the classification of use should be changed to an accessory use, and not include craftsman/tradesman use. He believes the four bays should be re-classified as an accessory use class. Mr. Maki indicates that if this is denied as a minor modification there is a possibility of lawsuits to follow. He has spoken to professionals and they stated they consider this as a minor modification, and that a lawsuit would not be good for the town and its residents. Cornelius Shea states that it is not the job of the planning board to worry about legal actions rather they should be focused on what is good for the town in their capacity as planning board members. He continues that in his opinion lawsuits in any way, shape, or form should not impact decisions made by the planning board. Attorney D'Ambrosio believes that there is no classification such as accessory, but there is a classification for craftsman/tradesman and retail. He believes the rear building is an accessory to the larger building which is in the retail classification. Mr. Maki asks the Attorney D'Ambrosio and Mr. Pontiff what they think of writing into the decision that the rear building with one bay will be for craftsman/tradesman use and the other four bays will be a secondary use to the main building. Attorney D'Ambrosio states yes, but he could call them retail because they are an accessory to the retail. Cornelius Shea believes the use of the buildings will have a negative impact on the town. He states that this this is a blue collar town and when the

project was approved for a craftsman/tradesman site, it would fit in with the kind of businesses that are in this town. However, Attorney D'Amboise believes that agriculture is probably the biggest industry in this town and that distribution center ship mostly to other local businesses. Kevin Robinson doesn't believe this is a minor modification and asks the applicant if they can proceed with the project without taking down the walls. Mr. Robinson would like to take the matter of language concerning minor modification to legal counsel regarding what the building was approved for and what it's proposed use is for now. The board discusses bringing the matter before legal counsel regarding the minor modification and usage issues. It is decided by Mr. Maki that a vote would be taken and he states the conditions. Mr. Maki proceeds to read a draft of the decision, conceding there may be changes before it is signed.

Mr. Maki discusses items in the draft with the applicant and board members regarding the issue of fire safety, noting that liquid materials will be stored in the front building, and dry materials in the rear building. He continues that there is containment at the catch basin in the parking lot and asks Attorney D'Ambrosio and Eric Pontiff if they know what the specifications are. Mr. Pontiff indicates that they have taken extra precautions with the drainage and containment system to contain any runoff and it also has a gate valve to close it if there were ever to be an emergency so that none of the water would leach into the ground. Cornelius Shea points out that if a large amount of water was to reach the rear building where materials such as fertilizer are stored, at that point the material would become liquid which would then leach into the aquifer system and thereafter affecting the water supply. Mr. Maki asks the applicant if he would be willing to add an entrapment system to the back four bays as a containment system, with a concrete berm surrounding the system, similar to the system in the front building front. Mr. Pontiff responds that there is a steel perimeter with gates at the doors, but he would consider the change if it alleviates the board's concerns. Mr. Maki reads the conditions associated with this project. He then entertains a motion to approve the minor modification at 92 Forest Street, to approve the five bay building for four bay use as a secondary use to the building in front with one bay in the back as a craftsman/tradesman with the conditions as noted. A motion is made by Kevin Robinson and seconded by Ellen Sordillo. Mr. Maki indicates that this is a regular vote and not a super majority vote. Rather he decides to do a roll call vote. Cornelius Shea votes nay, John Gaskey, Kevin Robinson, Ellen Sordillo and Richard Dionne vote aye. 4-1-0. According to Mr. Maki the decision will be finalized and will be signed at the next meeting.

Public Hearings (Cont'd):

2. **On the application of JCM Carver Acquisitions LLC** requesting a Special Permit (for Fast Food or Drive-In Restaurant) and Site Plan Review pursuant to sections 2200 (Use Regulations), 2300 (Dimensional Requirements), 2330 (Multiple Principal Structures), 3100 (Site Plan Review), 4300 (Water Resource Protection), 5300 (Special Permit) and other pertinent sections of the Carver Zoning Bylaw, located at 287 Tremont Street (Assessor's Map 94, Lot 5-0-R) to demolish an existing 525 square foot building and construct a new 50 ft. by 25 ft. ice-cream shop building and a 90 ft. by 50 ft. storage

garage, landscaping and parking. Property is located in the General Business (GB) District. Although this matter is not represented by anyone tonight Mr. Maki gives a general background of the matter. This site was Erickson's Ice Cream Shop and was discussed in a few recent board meetings. He met with the engineer and building inspector this week and he thought the representative would be present tonight.

James E. Weston, 9 Lakeview Street, South Carver speaks stating he and his brother own Weston Brothers Cranberries and their bogs are completely around the site, except for the Route 58 section. The applicant wants to put three bays with three sets of bathrooms with a 4,500 foot square foot building on the site and the applicants are concerned about water runoff. They were told the parking lot, which is now dirt, will be blacktopped resulting in runoff water. They understand the applicant would like to double the size of the ice cream shop and have a bathroom installed there as well. He went to the DEP and talked to Mr. McLaughlin and found the site is permitted at present for 1,000 gallons of water usage per day. The reason the owners of the bog are concerned is that their cranberry bogs are directly behind the site which goes right to the edge of their bogs. Mr. McLaughlin said if the applicant wanted to put in a drive-through that would water increase the output of water to 3,500 gallons of water a day whether they use it or not. Mr. Maki interrupts Mr. Weston indicating the board as of yet do not have plans to review. He states the planning board will look at the project from a building standpoint and whether there can be two buildings on the lot, which he believes are allowed due to the bylaws. The building inspector also agreed the applicant can do this. The Conservation Committee is reviewing this matter as well as the Board of Health because there will be use of the public water supply and it needs to be determined how much water will be used on this site. This case has to go through the conservation process and health board process before being reviewed by the planning board. Cornelius Shea makes a motion to continue the case to the meeting on December 14, 2021 at 7:00 P.M., seconded by Kevin Robinson. Unanimously approved, 5-0-0.

3. **On the application of Bayberry Dunes, LLC** requesting a Special Permit pursuant to Sections 2330 and 5300 of the Carver Zoning by Law, located at 2 Lillian Way in Carver, MA (assessors Map 49 Lot 62-2) to construct 2 commercial buildings, one 6,000 sf and one 7,200 sf for a total of 13,200 sf on one lot. The proposed building use will be Craftsman/Tradesman in the General Business District. This matter was discussed at a recent meeting. Mr. Maki summarizes the plans thus far: There will be windows with shutters added beside the 5 doors on the route 58 side and on the Lillian way side of building, in addition to installing 5 x 8 building lattices, 6 total with three on each building, on which Ivy or clematis will grow. The lattice will hide a majority of the building. Also along the route 58 side of the buildings extensive landscaping will be planted to include arborvitaes, maple and dogwood trees and an additional 4 giant arborvitaes on each corner of the building, 2 on each corner. There is a tremendous amount of landscaping being done on this property. Attorney D'Ambrosio addresses the board explaining he and his client reviewed the draft decision. In general they are pleased with the draft but have a question on the condition under section 3b regarding the

five windows. Mr. Maki said this will be addressed later in the meeting. Ms. Judy Richards of 5 Lillian Way is concerned about the timing of the building changes and landscaping being done in conjunction with the renters/occupants moving in. The applicant responds that the buildings will be done in December and the major hurdles being addressed now include bringing power to building, from Eversource. The oil company has placed the pump and expansion tank and paving will be done next week. With all this going on he is thinking it's not the right time to install landscaping, not to mention we are moving into the winter months, which are not optimal for new plantings. He doesn't even know if he will have electricity in the next four weeks. Without electricity in the building he won't be able to obtain a permit for occupancies, but once the electricity is installed he will request a permit for occupancy. Mr. Maki will speak to the building inspector to have a condition drawn up concerning occupancy. Mr. Robinson comments perhaps the applicant could hold off on filling the building with total occupancy to show good faith to the neighbors that the rest of the occupancies will be filled when the landscaping is completed. The applicant is fine with this suggestion/condition. Willian Sinclair, another neighbor speaks to a clarification of holding back on occupancy of two bays to wait for the landscaping to be completed. He states the building commissioner's job is supposed to be as the code enforcement officer ensuring the plans are done and for the planning board to make sure that the project is done the way it was approved. By handcuffing the applicant he believes by holding back occupying a couple of bays is puzzling. Cornelius Shea indicates that the board is trying to make all parties involved happy with the project. Cornelius Shea asks permission to close the public hearing for Bayberry Dunes requesting a special permit to construct two commercial buildings on a lot and Ellen Sordillo seconded the motion. Mr. Maki requests a vote from the board. Mr. Gaskey abstains in lieu of Mr. Dionne's vote. Unanimously approved 4-0-0. Mr. Maki now reads the conditions associated with this project.

4. **Bayberry Dunes, LLC – Special Permit to exceed number of signs for property located at 2 Lillian Way.** On the application of Bayberry Dunes, LLC requesting a Special Permit pursuant to Sections 3500, 3570 and 5300 of the Carver Zoning by Law, located at 2 Lillian Way in Carver, MA (Assessor's Map 49 Lot 62-2) for a special permit to exceed the number of signs and signage dimensional requirements in the General Business District.

Cornelius Shea asks if the directory sign is supposed to be facing north towards Lillian Way and North on Main Street or pointing in direction that one would see it coming down the road or is it pointing toward the dump. The applicant responds that the sign will be perpendicular to the road and will be seen from both sides like every other sign on North Main Street, so it will be facing Lillian Way and North Main Street. Mr. Maki confirms that Mr. Shea wants the sign a total of 11 feet from the ground to the top of the sign. Mr. Maki indicates that there will be landscape lights at the bottom of the sign. He took a drive through town at 11:30 P.M. and found that several businesses had their lights on, probably all night, although many businesses had their lights shut off at 11:00 P.M. Since this is a public hearing Mr. Maki asks if anyone would like to speak, and no one

does. Cornelius Shea makes a motion to close the sign hearing for the Bayberry Dunes LLC for a special sign permit for 2 Lillian Way and it is seconded by Ellen Sordillo. Mr. Gaskey will abstain. All other members vote aye. Approved 4-1-0. Mr. Maki then lists of the conditions associates with this project.

5. **North Light Realty Trust – Site Plan and Review and Special Permit at 1 Marion Drive.** On the application of North Light Realty Trust requesting Site Plan Review and Special Permit pursuant to sections 2200, 2300, 2330, 3100, 4300, 5300 and other pertinent sections of the Carver Zoning Bylaw, located at 1 Marion Drive (Assessor's Map 21, Lot 4-4) to construct two new 7,500 sq. ft. warehouse/office buildings, with associated driveways, parking, drainage and landscaping, in the Industrial "C" Zoning District. Mr. Maki asks if anyone in the audience would like to make any comments on this project. Since there are no comments from anyone he entertains a motion to close the meeting to the public. Ellen Sordillo makes a motion to close the public hearing and Cornelius Shea seconds the motion. Mr. Maki reads the conditions associated with this project. He then reads the waivers requested. Mr. Maki entertains a motion to approve the application of the North Light Realty Trust for site plan and special permit for the industrial zoning district warehouse office use on One Marion Drive. Kevin Robinson makes a motion and is seconded by Ellen Sordillo. Unanimously approved 5-0-0.

Topics not reasonably anticipated by the Chairman 48 hours in advance of meeting.

- Bruce Maki received an email from Elaine Weston about the town administrator search committee. The search committee would meet either once or twice a week between 4:30 – 6:30 for meetings or interviews. No members of the board offered to be nominated so Mr. Maki put his name forth to do so. A motion was made by Kevin Robinson and seconded by Ellen Sordillo to nominate Bruce Maki to the search committee. Unanimously approved 5-0-0.
- Planning board member notes. We do have candidates for planning director. Mr. Maki and Elaine Weston have been working this. Interviews will start Friday 11/12/21 and go into the following week. He is hopeful they will hire a new planning director some time in December.
- Mr. Gaskey makes a comment to wish the Carver Cowboys good luck as they are going to the playoff rounds. All three divisions are in the playoffs.
- Motion made by John Gaskey and seconded by Ellen Sordillo to approve the minutes of 09/14/2021. Unanimously approved, 5-0-0.
- Motion made by Ellen Sordillo and seconded by John Gaskey to approve the minutes of 09/28/2021. Cornelius Shea abstains. Approved 4-1-0.

- Motion made by Cornelius Shea and seconded by Ellen Sordillo to approve the minutes of 10/12/2021, with the condition of correcting the blank in lieu of the principal's name. John Gaskey abstains. Approved, 4-1-0.
- Minutes of 10/26/2021 meeting were tabled until the next meeting.

The next meeting of the planning board will be December 14, 2021 at 7:00 P.M.

Adjournment: Motion made by Cornelius Shea and seconded by John Gaskey. Unanimously approved. 5-0-0.

Minutes submitted by Maryann Spartichino-Graham