



TOWN OF HOPEDALE
ZONING BOARD OF APPEALS
TOWN HALL
78 HOPEDALE STREET
HOPEDALE, MA 01747

Christopher P. Hodgens, Chairman
Nicholas A. Alexander, Member
Sandra E. Biagetti, Member
Louis J. Costanza, Member
Scott M. Savage, Member

**Hopedale Zoning Board of Appeals
Meeting Minutes
May 18, 2022**

Chairman Christopher P. Hodgens called the Zoning Board of Appeals (ZBA) public meeting and public hearing to order on May 18, 2022, at 7:00 pm. Meeting was held in the Town Hall Draper Room, streamed live via Zoom and on Hopedale Cable Access. Participation was made available through the following Zoom link:

Join Zoom Meeting

<https://us02web.zoom.us/j/89428044314?pwd=SUFVVmo3V2UydVRoN014a3cyT2tHZz09>

Meeting ID: 894 2804 4314

Passcode: 439560

Recorded meeting can be found on the Town of Hopedale website under meeting videos.

Members that were present:

Christopher P. Hodgens, Chairman
Scott M. Savage
Sandra E. Biagetti
Nicholas A. Alexander
Louis J. Costanza

Mr. Hodgens indicated that all members were present, and the meeting was being recorded. He invited people to join by zoom or in person.

Continued Hearing on Application of Mauricio A. Oliveira and Patriots Custom Auto, Inc. (Case # 2-2022)

Mr. Hodgens called the case of Mauricio Oliveira and Patriots Custom Auto.

The applicants, Mauricio A. Oliveira and Patriots Custom Auto, Inc., are seeking a special permit for used motor vehicle sales at 6 Airport Road. The matter was continued by agreement.

Mr. Hodgens asked if the applicant was present. No one answered by zoom or in person. Mr. Hodgens moved on to the next matter on the agenda.

Continued Hearing on Application of GFI Partners (Rosenfeld Concrete property) (Case # 4-2021)

Mr. Hodgens called the case of GFI Partners. He said the public hearing commenced on September 22, 2021, and the matter has been continued to give the Planning Board a chance to conduct its site plan review. Mr. Hodgens said that he just received the decision of the Planning Board. He read correspondence from the Planning Board regarding the 23-page decision. William Buckley, on behalf of the applicant said that he brought copies of the decision and offered to distribute them to the ZBA. Mr. Hodgens thanked him for bringing copies, and Mr.

Buckley distributed them. Mr. Hodgins also read correspondence from Town Administrator Dianna Schindler indicating that the applicant was willing to pay for legal review if we needed it.

Mr. Hodgins noted, but did not read aloud, correspondence received from the following residents in connection with the application: Amanda Mitchell, Colleen and Bryan Stone, and Vicki and Steven Zuromski.

Mr. Hodgins said that he needs a chance to look at the material from the Planning Board and will not likely be an active participant in the hearing should people want to present information. He said presentations are fine, but it might be more productive to have a meeting in the future. He would like to print material that has been received by email so that everyone can have access. He wants the process to be fair to all. The goal is to have a full and fair opportunity for everyone to be heard.

Mr. Hodgins asked if other members of the board had any comments. No one offered any comments. Mr. Hodgins recapped some of these points for those joining by zoom. He said that he would like to mark all documents and make a record.

Lou Costanza, directing a question to the applicant's engineer, said that we are only considering the water issue. The engineer, Doug Hartnett, agreed that the hearing is for greater than 15% impervious surface in a Ground Water Protection District.

Mr. Hodgins asked if anyone else wanted to be heard. Sandra Biagetti said that the hearing is like the legal system. There is a prosecution and defense. We need to hear from "for" and "against" and provide an opportunity for questions. It is frustrating for people who feel they have not had the opportunity to speak, or they feel ignored. She wants to hear what people have to say. She asked if the Planning Board decision is available online.

Mr. Hodgins asked if the Planning Board has it posted online. Planning Board Chairman Stephen Chaplain responded by zoom and said that he has asked that the decision be posted online.

Mr. Hodgins thanked the Planning Board for all of its diligent work.

Mr. Hodgins asked if any ZBA members had any further comment. Mr. Costanza once again said that the discussion is limited to water.

Mr. Hodgins said that the discussion will not be limited to water. Mr. Costanza said that the applicants are only asking for a review of the water issue. Mr. Hodgins said that is up to the applicants to decide how they want to proceed, but they may end up not addressing all of the concerns that people have.

Scott Savage asked if it would be helpful to ask town counsel about the purview of the hearing. He said that he believes all special permit criteria should be considered, but he wonders if town counsel should be consulted.

Mr. Hodgins said that he was comfortable going forward. The board has broad jurisdiction. It is not up to the applicant to decide the scope of review. We will proceed with the hearing and see how it goes. If we run into an issue, we can always reach out to counsel.

Mr. Hodgins asked if the applicant would like to make a presentation.

Mr. Buckley, principal of GFI Partners, said that they have a powerpoint presentation that they would like to make, and Attorney Joseph Anotellis will open the presentation.

Nick Alexander asked about consideration of the information received late today. He said the applicant will be making a presentation, but what about everyone else.

Mr. Hodgins said that if it were his choice, he would wait until board members had a chance to read the information, but he would leave it up to the applicant to decide if they want to make a presentation tonight. Mr. Hodgins did not want to tell the applicant how to proceed. The applicant has invested time and money being here, and it will be heard if that is its desire.

Attorney Antonellis introduced Mr. Buckley, Mr. Hartnett, and Attorney Jay Tallerman. Attorney Antonellis discussed the background of the property.

Mr. Hodgins asked for spelling of all names mentioned. He said that minutes are going to be prepared, and it would be helpful if speakers introduce themselves.

Attorney Antonellis said the warehouse is allowed as of right. The Planning Board has now approved the site plan under section 18 of the zoning by-laws. Water resource protection is the limit of ZBA review. It is an overlay zone. Other towns designate the Planning Board as the permit granting authority, but in Hopedale the ZBA is the permit granting authority. The Planning Board made specific and extensive findings. He said the applicant is not applying for a "use" special permit. He said a special permit is not required for warehouses. The 15% limit on impervious material has triggered ZBA review. He then read from the zoning by-laws regarding the purpose of the Ground Water Protection District. He discussed section 17.6(c)(6), the 15% limit, and the scope of ZBA review. He said that is the only criteria involved. He does not want to rehash other matters that have been discussed before the Planning Board. He does not want to discuss other criteria for special permits. The Planning Board conditions are acceptable to the client and were crafted after 9 months of hearings with public input. He welcomes public participation, but it is limited in scope.

Mr. Hodgins introduced members of the board and reminded everyone that 4 out of 5 votes are needed for special permit approval. He said that he is not going to argue points about jurisdiction. If the applicant wants to address a narrow scope as has been said, that is the prerogative of the applicant; however, all should keep in mind that 4 out of 5 votes are needed for the special permit to issue.

Mr. Alexander asked what is the nature of the warehouse. Mr. Hodgins asked if that information would be part of the powerpoint. Mr. Buckley said that it would not be part of the powerpoint. Mr. Buckley said that it is a typical warehouse for the storage of goods and materials within the region, and the extent of storage is unknown. Mr. Alexander asked how long goods would be stored. Mr. Buckley said it may be long-term storage or more of a transload. Mr. Alexander asked if the delivery of goods needed 24/7 operation. Mr. Buckley said that is what was proposed before the Planning Board. Mr. Alexander asked if some material may be stored only for hours. Mr. Buckley said that is unknown at this point. Mr. Alexander said that he would like to know what is going in the warehouse before deciding. Mr. Buckley said they have agreed not to store hazardous material, and the by-law prohibits that as well. Mr. Hodgins said that this goes to what he was saying previously. The applicant is welcome to present on whatever theory it deems appropriate, but that decision does not bind the ZBA. If the applicant puts all of its chips on the groundwater issue, that is fine. If members disagree with that approach, however,

the applicant runs the risk of creating an issue by not satisfying members' concerns. Mr. Buckley said let's continue with the powerpoint.

Mr. Hartnett presented the powerpoint slides and summarized the project. The Planning Board recommended approval to the Zoning Board. The Water and Sewer Department recommended favorable action. The third-party review through Graves Engineering provided favorable review. The Conservation Commission hearing is pending. The site is the old Rosenfeld Concrete property. It comprises 144.6 acres, 109 of which were disturbed by the Rosenfeld operation. The sand mining was exhausted, but the concrete operation continued. The operation stripped topsoil, and some vegetation has returned.

According to Mr. Hartnett, the proposed project fits into the disturbed acreage. The "distribution center / warehouse" will have the following characteristics: 616,875 square feet, 300 parking spaces, 138 loading docks, 206 trailer storage spaces, and 100 planned additional trailer storage spaces.

Mr. Hartnett outlined the efforts to comply with section 17.6(d)(6) in the by-laws. The impervious ground exceeds 15% (and will cover 28.7%) of the area. The gravel mining will cease. Existing industrial buildings will be removed. Fueling and underground storage tanks will be removed. New landscaping will be added. Groundwater will be recharged. There will be a "net benefit" to the town water supply. A spill prevention and management plan will be implemented. The Water and Sewer Department has approved the project. Mr. Hartnett read from sections 17 and 18 of the zoning by-laws and said there will be no compliance issues. He read an excerpt from the Tim Watson (Water and Sewer) letter about being comfortable with the protection of the well field. There will be two emergency spill sheds added with absorbent materials. No calcium or salt products will be allowed. A 20,000 gallon underground storage tank will be removed. Mr. Hartnett read excerpts of the Planning Board decision. Benefits to the town will include \$34 million in new tax assessments, \$1 million in new tax revenue, 300 jobs, and \$700,000 in building permit fees.

Mr. Hodgins confirmed that the applicant accepted conditions set forth in the Planning Board decision.

Mr. Costanza made a motion to consult with town counsel regarding the scope of the hearing. No one seconded the motion, and Mr. Hodgins declared the motion defeated.

Mr. Hodgins asked if any residents had a strong desire to speak tonight (keeping in mind there would be an opportunity to be heard in the future).

Julie Guido noted that the proposed warehouse is a "monstrosity" and asked if anyone knew how the building compares to other structures. Mr. Hodgins noted that Shaw's Supermarket is about 30,000 square feet, making the project the equivalent of about 20 Shaw's Supermarket buildings.

Mr. Savage said that he was distracted when Mr. Costanza made his motion. He was willing to second it if the motion were made again. Mr. Costanza moved once again to consult with town counsel regarding the scope of the hearing. Mr. Savage seconded the motion. Mr. Savage said that it might be diligent to seek legal advice. Mr. Hodgins outlined five points against seeking legal advice at this time: (1) premature; (2) it would be an abdication of the responsibility of the ZBA to turn to legal counsel now; (3) the ZBA members, not legal counsel, represent the residents of Hopedale; (4) we cannot say "legal counsel made me do it"; and (5) it is incumbent on the ZBA to discharge its duty.

Mr. Savage said that he is amenable to Mr. Hodgens' remarks. He does not want to limit discussion at this time.

Mr. Hodgens asked Mr. Costanza if he wanted to withdraw his motion in light of the comments. Mr. Costanza asked for a vote. The following roll call vote was recorded on seeking the advice of legal counsel on the scope of the hearing:

Mr. Costanza: yes

Mr. Alexander: no

Ms. Biagetti: no

Mr. Savage: no

Mr. Hodgens: no

Mr. Hodgens declared the motion defeated.

Bob Manning asked about the scale of the project and asked about comparing it to the old Draper factory. Mr. Hodgens said it is difficult to compare because the factory square footage included multiple levels.

Michael Maurias noted that there is water under this land. He asked about the consequences of a fire and the impact on the water supply.

Attorney Antonellis inquired about the expectation of the ZBA. Mr. Hodgens said that it would be presumptuous to suggest to the applicant how to proceed and noted that it wouldn't hurt to be as comprehensive as possible in the presentation. Attorney Antonellis asked for specific expectations. Mr. Hodgens read section 18.4 of the zoning by-laws and said that the ZBA is not a "rubber stamp" for the Planning Board.

Attorney Antonellis emphasized that he believes the ZBA is not authorized to add any conditions. The ZBA may only accept or reject the Planning Board conditions. Attorney Talerman said that we may all be on the same page and will provide any information that the ZBA needs. He added that the town has not updated the use table.

Mr. Hodgens responded that section 10.6(d) is essentially a "default" provision. Once the need for a special permit is triggered, all requirements for a special permit must be met under the by-laws. People should be heard by an impartial board that makes a good record of the proceedings.

Mr. Buckley said that the applicant has made an effort to address all resident concerns.

Heather Bliss noticed several items from the special permit checklist on the ZBA website and asked that these items be considered.

Colleen Stone on zoom asked about the origin of the 15% limit and the significance of being exceeded by 28.7%. Mr. Hartnett said that the number is really a trigger for site plan review. It is not uncommon to have such a standard, and he believes the number is arbitrary with no particular significance.

Attorney Talerman added that the Department of Environmental Protection and the Environmental Protection Agency like to see these standards adopted to show that they are making an effort to conserve water.

Mr. Buckley said the 15% number is just a trigger and not a maximum. There will remain 103 acres of open space.

Ms. Stone asked about the clean-up of the property. She noted that any owner would be responsible for cleaning up environmental problems. Mr. Hodgins agreed that the owner would bear responsibility. Mr. Buckley noted that the current use of the property will continue unless the project is approved. Mr. Alexander said that a bank would require clean-up of the property. Mr. Hartnett said the proposal seeks to completely restore the degraded areas. Ms. Stone said that the by-law likely pre-dated the concept of the warehouse being proposed. Mr. Savage said that he is unaware of the date of the use table. Attorney Talerman added that the Planning Board opinion states that the project cannot produce traffic consistent with a “fulfillment center.” Mr. Watson, by zoom, said that the Ground Water Protection District was adopted in the early 1990’s and came from the Department of Environmental Protection.

Mr. Costanza noted that this is the town’s largest aquifer, and the project will benefit Hopedale.

Mr. Savage said that he has a number of questions but will wait until the next meeting. Mr. Buckley asked what further evidence the board needed. Mr. Hodgins asked if the applicant is satisfied with what has been filed. Attorney Antonellis said the Planning Board decision is sufficient information in the record.

Mr. Hodgins said the matter is moving as it should with the applicant, Planning Board, and residents doing what should be done.

Mr. Alexander moved to continue the hearing to June 15 at 7 p.m. Ms. Biagetti seconded the motion, and all voted in favor. Mr. Hodgins declared the vote and scheduled the continued hearing for June 15 at 7 p.m. in the Town Hall.

Continued Hearing on Application of Mauricio A. Oliveira and Patriots Custom Auto, Inc. (Case # 2-2022)

Mr. Hodgins returned to the Patriots Custom Auto matter and entertained a motion to continue. Mr. Savage moved to continue the meeting to the same time and date as the GFI hearing, and Ms. Biagetti seconded the motion. All voted in favor, but Mr. Costanza opposed. Mr. Hodgins declared the vote and scheduled the continued hearing for June 15 at 7 p.m. in the Town Hall.

Mr. Savage mentioned the openings for alternates on the board. Mr. Hodgins invited members of the public to submit their names to the Select Board, said ZBA members would be happy to talk to anyone interested, and said it is a friendly and hard-working board that meets regularly and does its homework.

Mr. Alexander moved to adjourn, seconded by Mr. Savage. All voted in favor. Mr. Hodgins declared the vote. Meeting adjourned at 9:01 p.m.