

PLANNING BOARD MEETING MINUTES

December 1, 2020

PRESENT: Steven Strojny, Elmer Clegg, Daniel Doucette, Jeanne Azarovitz, Sandra Goldstein, Elizabeth Brown, David O'Connor, John Carroll, William Meier (alternate)

Absent: Lou Gallo

Staff: Coreen Moore, Jennifer Copeland

Public: Robert Troy, Ford O'Connor, Mr. & Mrs. Hamilton, Dan Ojala, Roger Brooks, Michael Morizio, James Berry, Ken Chelitin, Kathy Adreas, Rob Hanflig and other member of the public

Chairman Strojny called the meeting to order at 7:04pm.

This meeting was conducted by Zoom access.

Public Hearing for Court Remand of Supportive Finding #11-2019: ERS Realty Trust. 183 Shore Rd, Bourne.

Explain reasoning and basis of findings.

Chm. Strojny: I spoke with Town Counsel regarding this. In 2019 we approved a supportive finding that the requested changes were not substantially more detrimental. Then approved a site plan review with conditions. Eight witnesses spoke and it was approved four in favor, 3 opposed. Dumpsters not property shielded, striping of the lot to help with traffic flow, stormwater plan. Lou Gallo reviewed as he's in the business. The facts are still the same today. A supportive finding as opposed to if site plan review would be more detrimental without hearing witnesses. The focus of this remand is to determine if the decision is more detrimental than existing. We received a substantial amount of documentation today. Normally require submission Monday before a hearing.

Ford O'Connor: Land court case, not a protected non-conforming use (brought up in land court). Sent a package a while ago to the Board. In 1958 it was Monument Neck Rd, now Shore Rd. 1959 Mr. Beaton got a building permit for a store. Assessors map shows the store. The building now is what was permitted then. Has always been a small local market with a deli in the back. Things alleged, no entertainment. Proposed addition is only for storage. Does the use reflect zoning laws at that time, yes. Same and will stay the same with the addition. No one has objected to the liquor license, no interest in entertainment. Quality and character exactly the same, only difference wall on the south side for the addition. Explored all the options, will put up the requested fences. A previous Planning Board gave a special permit for a drive-thru for Dunkin Donuts. Make it work better providing screening. Not changing the nature, quality and kind of store/use.

Atty. Morizio: Like to resolve this at the Planning Board level not in court. Legal requirement will look if significant evidence is it consistent with law. The arguments by lawyers are evidence, they aren't. Help to understand the evidence. Stormwater needs engineered calculations, not a lawyer. Grandfathered – in legal sense it's referred to as lawful non-conforming use. Deeds, town meeting warrant, actual building permits, not a summation of permits generated years later, that's not evidence. Unlawful use is different than lawful grandfathered use, if lawful when first began. This is unlawful, two parcels of land acquired in 1959. Has to be prior to a zoning change. I provided notice of town meeting adopted is enough, 1/19/1959. This parcel was acquired 9 days later. Impossible to have bought, gotten a building permit and started the use in nine days and that's just for one lot. Less than 40,000 s.f. required today. A second lot was acquired in March 1959 used now as parking, driveway has 60' of frontage, contains

7,200 s.f. and was acquired in March 1959 after the Town Meeting. Uses there today are parking, pavement and one of the driveway entrances. These uses are illegal, don't qualify for zoning protection, grandfathering protection or consideration at all with this land. We submitted an affidavit, the great niece of the original owner of parcel one. Her aunt owned it, were friends, it was always raw land. Opened a market with butcher shop, no food prep/service was ever done in that building. The Beatons owned the building 1959-1971. The Planning Board had to publish a hearing prior to town meeting, impossible to do in 9 days. Illegal and unlawful. Small grocery operation, liquor store, restaurant, catering, food service uses. Look online, photos of entertainment, they have tables and have indoor seating. Serve breakfast and lunch, propane sales. Not appropriate for a residential district. Reached out to the owners to try and avoid this. They moved the dumpsters closer to my client's property. Might be something wrong with the septic, no grease traps, no evidence that it can handle a restaurant. Not just storage, but food prep too. Rooftop mechanical equipment, smells and is noisy. Has gotten worse. There are two containers that require permits, none that we can find, no special permit on these. Compressors outside for refrigeration. It's a 28.5% increase as per the plans, 100' long berm in Shore Rd layout with the sign. Driveways go around the berm, required to be 10' away from boundary line, it's not. Was going on the Andrew's property, this fight was unnecessary. If uses were legal and to be expanded, you need evidence you haven't gotten that. Special permit, they gave you no evidence. 30' of screening is not there. If Board had a lawful non-conforming use, which it doesn't, still has to meet section 2300. Character was a butcher shop, nowhere near a liquor store, not even close to what it was. Same with a restaurant food catering business. Ask to read my memo carefully, look for evidence, it was never lawful. Uses there today were never lawful and don't qualify for expansion. Burden of proof is on the applicant. Has to show that it was legal. The building was constructed in 1961, no evidence uses existed prior to January 1959. Board should rescind the prior approval.

Chm. Strojny: The 1959 date, speak to date and relevance?

Coreen: Engineering records 1959, there was a building permit pulled. No exact date. Assessors records historic card shows 4.14.60. Showed the building construction and recorded. Deeds and when purchased. Had many occasions when the property was permitted then purchased to make sure met the criteria then closed on the property. The sale of the property doesn't mean it wasn't permitted. Town report 2/9/59 ATM. A section under general provisions regarding Use - Any building or structure on the premises at the time of adoption of the bylaw is being put into non-conforming use may continue to be used for the same purpose. Many times use the day of the publication, but can put an exemption to that, section 5 of that bylaw. Zoning map at that same town meeting, that map was indefinitely postponed. Marked first existed in a General use district first, then changed to residential later on. Handwritten that the map was approved by the Attorney General but I don't see the article. Map adoption needs further research. A lot of branches out there that needs to be brought in, what's an official document, what's not.

Mike: Burden of applicant, not for the Town to dig into it. As to the 1959 pulling of a building permit, you cannot pull a building permit unless the property owner signs off and approves it. Doesn't mean it happened. Have to show it in fact happened. Haven't seen any record showing that. This paper shows it happened in 1959. I've used the 1.19.59 date as the Town Meeting publication, not the Planning Board hearing, that's the first publication. Record in Tax Assessors said building was completed in 1961. Use of a grocery store didn't start until then at the earliest. A lawful use can be continued. Can't have a lawful use if no building. The applicant must prove that they were using the property as a grocery in 1959.

Ford: I submitted certified copies from the Town Clerk, a permit #9 was issued to John C Beaton for a store. In the package was assessors records, grocery store 1959, another record shows it was there in 1960. I'd suggest to you it was built in 1959. Ch. 40A sec. 7, original accordance with a store, any action had to be brought within 6 years and that didn't happen. I don't think what you approved is any different in the nature and quality than what's there now. The issue of when the bylaw map went into effect is up for a judge to decide.

Chm. Strojny: Was the store permitted property? We are not a court of law. You indicated that you would like to resolve this tonight. How can we resolve this because it seems as though a resolution is not possible that would work for everybody. How could we resolve this tonight?

Mike: Leave the store as a grocery store and maybe a liquor store but stop all the food service and don't expand it. There is a berm with illegal signage in the road layout. Can't have driveways and parking spaces where they are. Build on town land, block roads, put driveways in...Trying to find a way to let this continue without harming my clients.

Chm. Strojny: The way it is today, you read our decision and saw our conditions. Do you think that would be an improvement from what is there today?

Mike: Absolutely. Put trash in proper enclosures, fix the lighting. Are you going to let the off premise signage continue?

Chm. Strojny: A number of those items are more for the zoning enforcement officer.

Mike: Disagree. When you allow those illegal conditions to continue when you allow a business to expand and bring more traffic. The driveway isn't changing, berm is still on Town property.

Chm. Strojny: I believe the term was flow of traffic would be improved.

Mike: The driveway isn't changing, the berm is still there with illegal signage. You're supposed to count food service for parking spaces, retail has another number, and then you're supposed to add them together.

Ford: We didn't put the island up, it was there when my client bought the property. We don't have a restaurant license. You can listen to both of us or look at the property.

Mike: Chm. Strojny: Based on the fact that we received so much information just this afternoon, it's clear we're not going to be able to resolve this tonight.

Ms. Brown: References to the liquor store aspect. I've lived here close to 17 year, they've been selling alcohol there the whole time. Anyone know how long alcohol has been there?

Ford: Liquor license since 1981.

Mr. Clegg: This addition that is planned is essentially going to take place of temporary storage container. How long have they been in place? Were they put on by the owners?

S. Hamilton, neighbor: They were put in by the current owner.

Mr. Clegg: They've been in for a number of years. Has anyone lodged an official complaint? Is there a time limit for filing a complaint on such a thing?

Mike: Google earth shows them there rather recently. If the zoning officer doesn't enforce the bylaws, that doesn't change things. We've not pulled out all the guns here. I feel confident I can shut the whole thing down. We are trying to make sure all the overflow things stop and that it doesn't get worse. Trying to work with everybody. Not trying to throw stones. My clients have to look at trash compactors that were put up against their properties, waste being dumped into stormwater drains, noise from rooftop mechanicals. Protect ourselves. Stop the harm.

Mr. Clegg: What we're looking at here goes back a long time. Business owner that bought in good conscious to run a grocery store. Grocery stores today have everything, including food service. They

have to in order to remain competitive. We heard this case a year ago. In my opinion, the Planning Board can't resolve this. Hope the parties get together and work something out that is beneficial to the neighborhood. It is a residential zoned neighborhood now and it's been a grocery store for so many decades.

Mr. Doucette: History of the project and the recent information we just got, might be advantageous to continue this.

Mr. Strojny: Want to give the public a chance to speak. Want to talk to town council and continue to January.

Brian Banks: Offensive that he calls Russ a bad neighbor. Don't see how a business or family that contributes to many charities, that. Been a customer there for 40+ years. There used to be a Dunkin Donuts there. A lot has changed. Over 7 decades the definition of a grocery store has changed. Prepared foods and liquor are common now in stores everywhere. Bourne cannot inhibit business owners. They bought under the premise that it can be run as a grocery store. They have expanded as a positive impact. Stores move forward.

Dan Moerman: Moved here in 2005, milk, bread, eggs main staple. Passed by so many times there but now the market is a community market and is important to my family. Stop there all the time. They sponsor Bourne youth soccer. It is a critical piece of our community.

Vince Disangro: The approved plan still shows both those storage containers. If you can show me a grocery store that has a restaurant in a residential area, please do. Gray Gables Market has been a non-conforming market in a residential zone since 1961. Customers using front door, delivery in front door. It has not been a café, bistro, cantina, or catering business. Loading zone on SE corner of the building with a roll up steel door where this isn't one now, how Mr. O'Connor can say that won't have impact on the neighbors, I don't know. Business exiting the rear of the store. This is substantially more detrimental to the surrounding properties. These losses can be proven by appraisals. Zoning and the land it sits on has been R-40 since 1958. Sec. 2140 Residence R-40 states "To ensure continuance of a residential environment, with any development carefully related to environmental capacities and existing character." It doesn't even have enough land for a single family residence, how is expanding that store maintaining the character of the neighborhood? Section 2200 Use Table in an R-40 district – restaurant not allowed, Restaurant, fast food take-out, service to patrons in motor vehicles not allowed. There is a restaurant use there as well as take-out. Sec. 2300(b) – extension will not be substantially more detrimental than the existing. Clearly it will be. 16' from property line. Every element of nuisance. Smells, lighting, noise, adversely affects the enjoyment of the neighbors. Have put up with lighting issues, noise from restaurant and mechanicals on the roof. The residents are tax payers, I take offence that the Town hired an attorney to protect the owners. The business expansion was approved not taking in the concerns of the neighbors. None of you would allow this next to your homes. Keep the store a store in its footprint.

Sharon Hamilton, neighbor: Been there over 20 years. In the middle of the night, dump trucks emptying the dumpsters, employees, slam crates, wakes my family up, constantly people talking, understand you have a business to run, but 6am and 2:30 am is unacceptable. Listen to the hum of the mechanicals on top of the store, it disturbs us and our friends.

Mr. Hamilton: I'm not denying it's a nice little store. I want them to comply with the rules, take down the sign in the front, get rid of the smells. Things have got to change.

Kathrynn Andrews: Our family has always been good neighbors to the market. Prior owners removed cedar trees, now paved over part of our property. Debris from plowing, trash moved to our boundary line. Very concerned if we want to sell or build on this property.

Chuck Rose: Live at 175 Shore Rd. Never had a problem with the market. Been there 31 years. Wife has lived next to the market since 1962. No problem with what goes on there. We live next to a store, we came to live there knowing there was a store there and that there would be noise, traffic and some paper blowing around there. They have done a great job fixing up the store.

Bob Troy: Regret the opportunity to have all the parties here has not been exercised to have a resolution. The intent of the remand in order to give the neighbors and property owners some dialog to identify the issues to see if something can be compromised. Can take years in a court battle. The biggest cost of litigation is the emotional cost. Not always a win-win for either side. That can be achieved by the parties themselves without going to trial. The Town will help to mediate things. Formal mediation would be appropriate in this instance.

Chm. Strojny: Next available date is Jan. 14, 2021.

Mr. Clegg: What are we going to do on the 14th? Continue this discussion? We can't solve this problem. We need some guidance from counsel.

Mr. Clegg made a MOTION to continue to 1.14.21. The MOTION was seconded by Mr. Doucette. Roll call vote as follows:

Ms. Azarovitz - yes	Ms. Brown - yes	Ms. Goldstein – yes
Mr. Doucette – yes	Mr. Carroll – yes	Mr. O'Connor – yes
Mr. Gallo – absent	Mr. Clegg – yes	Mr. Strojny – yes

Public Hearing for Amendment of Special Permit #02-2018B: 1220 Rt. 28A. Robert Hanflig. To construct a 48'x156' storage/warehouse building in a Water Resource District.

Dan O: This building will be way in the back for storage only. It does put us just over the 40% impervious coverage. Want to match the height of the existing building. Will put in extra trees and they are shown on the plan. Will do 3" caliper if wanted, we proposed 2.5". Partially heated, under 7,500sf so don't need a sprinkler system. It's a safe use. Building is in the back, screened dumpster.

Mr. Clegg: Is this going behind the original building?

Dan O: Yes. Hard to see from the road.

Mr. Clegg: About the same size? The previous building came out very nice.

Ms. Brown: The proposed building is supposed to look very similar. The 3" caliper trees need to be on a revised plan. The 23 more shrubs is our request. They are to go in front of the retaining wall. The trees the Conservation Commission requested. Possible height change? Will this happen?

Dan O: Like to match the existing building height, won't be that noticeable.

Ms. Brown. Height is still within the bylaws, well under the max height. A preliminary sweep analysis was submitted with Mashpee fire equipment.

Dan O: About 2.5', well under the height limit. Will work with the Chief and give whatever he needs. Plenty of space to turn. Will be an ABC numbering system for the buildings on the lot.

Mr. O'Connor: Landscaping: would like to see more clearly what is being proposed. Provide sizes, materials and spacing and deliver a revised site plan back to the Planning Dept.

Dan O: ok.

Ms. Brown made a MOTION to approve subject to the following conditions:

- This plan is subject to all Rules, Regulations, and Bylaws of the Town of Bourne. All prior conditions of Special Permit #02-2018 shall continue to be in effect.
- Submission of an as-built plan before issuance of an occupancy permit.

- Coordinating with public safety officials as to the numbering and/or lettering of the buildings to assist with 911 emergencies.
- Emergency vehicle access plan, swept-path analysis, and Knox box as per the Fire Department.
- The prohibitions of the Water Resource District under section 4700 must be visibly posted in a public area of the warehouse building.
- Submit a revised landscape plan showing 66 trees with 3" caliper. Supplement plants, size and spacing detailed to the Planning Dept.

Dan O: 10 new trees.

Ms. Brown: 16 trees included.

The MOTION was seconded by Mr. Doucette. Roll call vote as follows:

Ms. Azarovitz - yes	Ms. Brown - yes	Ms. Goldstein – excused
Mr. Doucette – yes	Mr. Carroll – absent	Mr. O'Connor – yes
Mr. Gallo – absent	Mr. Clegg – yes	Mr. Strojny – yes
Mr. Meier, alternate - yes		

Minutes: 8.27.20, 9.24.20, 10.8.20

Mr. O'Connor made a MOTION to approve as a slate. The MOTION was seconded by Mr. Clegg. Roll call vote as follows:

Ms. Azarovitz - yes	Ms. Brown - yes	Ms. Goldstein – excused
Mr. Doucette – yes	Mr. Carroll – absent	Mr. O'Connor – yes
Mr. Gallo – absent	Mr. Clegg – yes	Mr. Strojny – yes

Mr. Doucette made a MOTION to adjourn. The MOTION was seconded by Ms. Azarovitz. Roll call vote as follows:

Ms. Azarovitz - yes	Ms. Brown - yes	Ms. Goldstein – excused
Mr. Doucette – yes	Mr. Carroll – yes	Mr. O'Connor – yes
Mr. Gallo – absent	Mr. Clegg – yes	Mr. Strojny – yes

With no further business before the Board, the meeting was adjourned at 9:01pm.

Respectfully submitted,

Ann Gutterson