

Zoning Board of Appeals

Minutes

September 23, 2014

Members Present: Paul Giunta - Chairman, Theodore Scott, Thomas Golden-Clerk, Ralph Loftin and Robert Levine

Public Hearings

7:00 PM 55 Highland St. – Gonzalo Sanchez - Continuation (ZBA Case # 1428-2014)

Petition: To construct a 15 ft. x 16 ft. attach addition on the side of the existing house which will increase the current non-conforming residential use by greater than the maximum required 30 percent. (Chapter 650 Article VII) The existing lot coverage is 41 percent and the proposed addition will increase Lot Coverage at 45 percent. The property is located in Zoning District Residence B, being Map 56 Parcel 236 of the Assessor's Maps, also known as 55 Highland St.

The Applicant, Gonzalo Sanchez was present.

This hearing was opened on August 19th, 2014 with continuation dates of Sept. 2nd and 23rd, 2014. The hearing was opened with the reading of the legal ad.

The property in question is a 2 story structure containing 2 dwelling units. The applicant, Ismael Sanchez resides on the 1st Floor with his wife and 2 children and his brother Gonzalo Sanchez resides on the 2nd floor. He and his brother own the house. Ismael Sanchez and his brother bought the house 8 yrs. ago. As you face the house, there is an existing driveway to the left (where the proposed addition will be erected at the head of the driveway) and to the right there is an existing driveway and a garage

The applicant and owner, Ismael Sanchez was present this evening. There was no one in the audience to speak in favor or in opposition to the petition.

Abutting properties are similar to the lot in question, being fairly flat, with roughly 7,400 sq. ft. ± of area

Proposal: The applicant is proposing to erect a 16 ft. x 15 ft. addition to the left side of the house (as you face the house). He has a son and a daughter who will need separate bedrooms. He currently has 2 bedrooms in the house. The applicant stated he cannot afford to move to another house with more bedrooms.

List of plans and exhibits:

- Hand drawn by applicant onto a Xerox plan. The plan shows a shed, but with a note that states "not existing".
- A floor plan entitled: Addition Plans (front elevation, rear elevation and left elevation, 1st floor plan and 2nd floor, Sectional View and

Foundation Plan - #4814 Page 1 of 2 and Page 2 of 2, Dated 4/11/2014.

- Colored pictures of existing house and the proposed addition super imposed onto the photo.

Lot Coverage:

Maximum required Lot Coverage 30%	Existing Lot Coverage 41%	Propose Lot Coverage 45%
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Hardship: The Board explained to the applicant that “hardship” cannot be personal.

- The applicant stated a “hardship” pertaining to the existing house on the lot with the existing 2 driveways which leaves a small area to construct an addition. His lot size is 7,400 sq. ft. which is undersized for Zoning District Residence B, which is a minimum of 8,000 sq. ft. He also stated his 2 children (1 boy and 1 girl) need a separate bedroom which is the reason for an addition. He cannot afford to purchase another house to accommodate his family’s needs.

The Board made a few suggestions to the applicant:

- Removing the existing driveway material by the garage at the right side of the house and replace it with something that is pervious, so it will reduce lot coverage.
- Removing the existing driveway material on the left side of the house and replace with something that is pervious, so it will reduce lot coverage.
- Reduce the proposed addition, so it will reduce lot coverage.

The Board determines the following:

- Existing Lot Coverage is over the maximum required 30% being at 41%. The applicant is proposing 45% “Lot Coverage” with the proposed addition.
- The Board feels that removing the existing driveway material at the left of the house (33 ft. x 25 ft. = 825 sq. ft. per applicant) and replacing it with some type of pervious material would not only off set the lot coverage created by the proposed addition, it would result less of an existing non-conforming lot.
- Based upon dimensions furnished by the applicant concerning he changes mentioned above, the Board calculates a reduction in lot coverage from the 41% existing to 34%. Thus creating a less of an existing non-conforming situation.
- With regards to removing the existing driveway and reducing the addition size, a reduction in the addition size to make the lot conform to the required lot coverage would not be feasible and any feasible adjustment to the addition size would have negligible effect on the lot coverage percentage.

On a motion by Ralph Loftin to remove the existing driveway at the left of the house and create a pervious area, motion seconded by Theodore Scott, thus reducing the lot coverage to approximately 34%.

The Board voted 5-0 to grant a variance as noted above.

Paul Giunta made a motion to close the public hearing, seconded by Robert Levine. The Board voted 5-0 to close the public hearing.

7:30 525 Maple St. – NGP Management LLC - Continuation (ZBA Case # 1430-2014)

Petition: The applicant, NGP Management LLC, seeks to raze the existing structures on the property and construct a new 2,615 sq. ft. restaurant with drive-through facilities and parking for 41 vehicles. The project would need relief from a front setback requirement with respect to Mill St. in addition to various landscaping, parking design and driveway design requirements, set forth in the following sections of the Marlborough Zoning Code: Dimensional: §650-41; Landscaping: §650-47(D)(5)(a), §650-47(D)(5)(b), §650-47(D)(6), §650-47E(1)(a)(3), §650-47(E)(1)(b), §650-47(F)(3), §650-47(G), §650-47(H)(1), §650-47(H)(2)(b), §650-47(1)(2), §650-47(K); Parking: §650-48(C)(5)(a)(3), §650-48(D)(2), §650-48(D)(5); Driveways: §650-49(B)(2)(a), §650-49(B)(2)(b), §650-49(D)(1), and §650-49(D)(6). The property is located in Zoning District CA-Commercial Automotive, at 525 Maple St. (the former registry building), being Map 104, Parcel 37 of the Assessors' Maps.

Members Present: Paul Giunta-Chairman, Theodore Scott, Ralph Loftin, Thomas Golden and Robert Levine.

Also present this evening was:

- Atty. Brian Falk
- Mike Scott of Waterman Design
- Councilor Robey

Revised Plans presented entitled: Site Plans for Dunkin Donuts, 525 Maple St., Marlborough, MA 01752, dated revised September 16, 2014. Prepared by Waterman Design Associates, Inc. and prepared for NGP Management, LLC.

The applicant has reduced the original 21 variance request to 18 variance request. As noted in the revised "draft" Notice of Decision" from Atty. Brian Falk.

Revised Table of Variance request:
 Variance Request

Dimensional	Required	Proposing	Deviation
Front yard setback (Minimum required 50 ft.)	Minimum 50 ft.	Mill St. 24 ft. ±	26 ft. ±
[REDACTED]			
Maple St.	10 trees 80 shrubs	2 trees (revised 10 trees) 40 shrubs (revised 43 shrubs)	8 trees (meets) 40 shrubs (deviation 37)
Mill St.	10 trees 110 shrubs	3 trees (revised 4 trees) 19 shrubs (revised 29 shrubs)	7 trees (deviation 6 trees) 91 shrubs (deviation 81 shrubs)
Side Planting Area – along the parking lot and Ms. Ippolito (north side)	6 trees 42 shrubs	0 trees 14 shrubs (revised 17 shrubs)	6 trees 28 shrubs (deviation 25 shrubs)
Interior Plantings (required 4 trees and 14 shrubs)	4 trees 14 shrubs	2 trees (revised 5) 56 shrubs (revised 80)	2 trees (meets) Shrubs (meets)
See below for additional Revised Variance Request:			

Revised Relief Requested:

The Applicant petitioned for relief from the provisions of the Zoning Ordinance as follows:

[Type text]

Dimensional:

1. Section 650-41 (Table of Lot Area, Yards and Height of Structures) requires a 50 foot building setback from the street right of way for corner lots (defined under Section 650-42(D)). The proposed plan has a building setback from Mill Street South of 24 feet.

Landscaping:

2. Section 650-47(D)(5)(a) (Landscaping Planting Area, Planting Quality and Spacing) requires 1 shrub per five linear feet or 35 square feet of ground area, whichever results in a greater number of shrubs, and at least 1 tree per 40 linear feet of planting area length, and 1 tree per 30 linear feet of street frontage planting area abutting Route 85. The proposed plan provides the following shrub and tree counts:

Along Maple Street:	43 shrubs (80 required).
Along Mill Street South:	4 trees (10 trees required) and 29 shrubs (110 required).
Along the side line:	17 shrubs (42 required).

3. Section 650-47(D)(5)(b) (Landscaping Planting Area, Planting Layout) requires that groups of shrubs shall be spaced no further apart than 10 linear feet and groups of trees no further apart than 50 feet. The proposed plan does not meet these requirements along Mill Street South, with one space of 75 feet and another space of 72 feet.
4. Section 650-47(D)(6) (Landscaping Planting Area, Existing Vegetation) requires that wherever possible, planting area requirements shall be met by retention of existing plants, and that within the street frontage planting area, no existing tree of 6 inches in caliper or greater shall be removed. The proposed plan would remove the 2 crabapple trees of 6 inches in caliper or greater along Mill Street South.
5. Section 650-47(E)(1)(a)(3) (Street Frontage Planting Area, Location and Width) requires a 10 foot wide landscaped strip along a street. The proposed plan has a landscaped strip of at least 10 feet along less than half of the Mill Street South frontage, and no landscaped strip along Mill Street South adjacent to the drive-through lane.
6. Section 650-47(E)(1)(b) (Street Frontage Planting Area, Location and Width, Nonresidential) requires an additional landscaped area width of 12.4 feet along Maple Street and 14.8 feet along Mill Street South. The proposed plan does not meet these additional landscaped area width requirements, and has no landscape strip along portions of Mill Street South adjacent to the drive-through lane.
7. Section 650-47(F)(3) (Side Line Planting Area) requires a 7 foot wide planting along the side line. The proposed plan provides a planting area between 3 to 7 feet along less than half (western portion) of the side line.
8. Section 650-47(G) (District Boundary Planting Area) requires dense planting 4 feet high to provide a year-round dense screen within 3 years or a fence or wall at least 6 feet high, along the full length of the district boundary. The district boundary planting area along Maple Street does not meet these requirements.

9. Section 650-47(H)(1) (Parking Lot Planting Area) requires a planting area on three sides of an outdoor parking lot with at least 10 parking spaces. The proposed plan does not meet this requirement.
10. Section 650-47(K) (Retaining Walls and Embankment Stabilization) requires that retaining walls visible from the exterior of the lot shall be planted with shrubs, one per 50 feet. The retaining walls located along Mill Street South and the side line on the proposed plan is not planted with shrubs.

Parking:

11. Section 650-48(C)(5)(a)(3) (Parking Setbacks, Nonresidential Uses) requires that no off-street parking shall be closer than the minimum distances from the front lot line prescribed in Section 650-47(E) governing the requirement for a street frontage planting area, which requires an additional landscaped area along Maple Street and Mill Street South. Parking spaces along Maple Street and Mill Street South on the proposed plan do not meet this requirement.
12. Section 650-48(D)(2) (Parking Grades) requires that the maximum grade of any parking area shall be 5%. The proposed plan has a grade in excess of 5% for 2 of the 41 parking spaces, located along the southeast portion of the site.

Driveways:

13. Section 650-49(B)(2)(a) (Driveway Location) allows a maximum of one (1) driveway, unless granted site plan approval. The proposed plan has two (2) driveways.
14. Section 650-49(B)(2)(b) (Driveway Location) requires a 7 foot separation between a driveway and side property line. The proposed plan has no separation between the north property line and the curb return of the north driveway located on Maple Street.
15. Section 650-49(D)(1) (Major Driveways) requires a 150 foot centerline separation between a major driveway and an intersecting street, unless granted site plan approval. The proposed plan has a 142 foot separation between the centerlines of the south driveway located on Maple Street and Mill Street South.
16. Section 650-49(D)(1) (Major Driveways) requires a 30 foot curb radius at a street, unless granted site plan approval. The proposed plan has 15-foot radius roundings for the north driveway located on Maple Street, and 20-foot radius roundings for the south driveway located on Maple Street.
17. Section 650-49(D)(1) (Major Driveways) requires acceleration and deceleration lanes, unless granted by site plan approval. The proposed plan does not have acceleration and deceleration lanes.
18. Section 650-49(D)(6) (Major Driveway Parking Restrictions) requires that a major driveway shall not be used as a parking lot aisle, and no parking spaces shall be permitted

requiring vehicles to reverse into a major driveway, unless granted site plan approval. The proposed plan would not meet this requirement for 8 of the 41 parking spaces.

The Board discussed the following:

- Hours of operation will be from 4:00 AM – 11:00 PM.
- Truck deliveries – small daily delivery is made very early. Then larger deliveries are made twice a week.
- There will be no sidewalks on Mill St. or on Maple St.
- The Board, Ralph Loftin, stated the speaker system is some 150 ft. from Ms. Ippolito's house. Maybe an informal sound study should be done to ease her mind. The Board is sensitive to her concerns. Ralph Loftin will write Ms. Ippolito a letter about the Board's decision this evening.
- 13 staff with 2 managers will be on site at one time and that is usually the morning hours during their peak hours of business.
- 8 spaces for employees only parking.
- Dumpster location and pickup.
- Snow removal.

Atty. Brian Falk stated the following:

- In regards to Ms. Ippolito's side lot line, they will erect a 6 ft. fence on top of a proposed wall with arborvitaes planted 6 ft. on center in the front of the wall on the Dunkin Donuts lot. With additional shrubs and perennials at that corner. They will not be planting anything on Ms. Ippolito's lot.
- Gina Ippolito of 168 Mill Street South. Ms. Ippolito opposed the number of parking spaces and the intensity of the use, raised concerns about noise from the drive-through facility and flooding onto her property, and suggested a redesign of the Project with a larger buffer along her property line.
- They will take every step to minimize the noise on the lot in question.
- He stated they cannot do what Ms. Ippolito is requesting. If they did less parking, that would affect the landscaping and queuing on the site.

The Board asked if anyone in the audience would like to speak. Councilor Robey was present and spoke of concerns on issues raised by Ms. Ippolito.

No one was in the audience to speak in **favor or in opposition** to the petition.

Board Member, Theodore Scott, felt the applicant has demonstrated a **hardship**. The applicant has submitted, per the ZBA's request, a drawing showing the building repositioned on the lot so that it meets the current setbacks. The drawing shows that the building just fits the 50 foot required setbacks from the two streets and the side lot line only by a couple feet. Although the drawing does not show, adding the 32 foot wide planting area along Maple Street and the 25 foot wide planting area along Mill Street South would leave very little usable space for parking. This usable area would be located to the north where there is a significant change in grade. Therefore, I believe there is a substantial hardship to the applicant owing to circumstances relating to the shape and topography of the land. A statement has been made that the structure could be built with the applicable setbacks. Although this may be true, I believe the constraints presented by the Zoning Ordinances severely limit the feasibility of the project or any potential future project.

With respect to the large number of variances requested, I believe that the quantity is due to the fact that the lot is considered a corner lot with two street frontages and the lot is actually wedged shaped not the standard 90 degree corner lot. I believe the reason for the large quantity of variances is not applicant imposed but is due to the wedged shape of the lot.

Theodore Scott made a motion to approve the “draft” Notice of Decision” with changes seconded by Ralph Loftin. The Board voted 5-0 to grant the variance with conditions.

Paul Giunta made a motioned to close the public hearing, seconded by Thomas Golden. The Board voted 5-0 to close the public hearing.

Respectfully submitted,


Paul Giunta - Chairman *sb*