**Zoning Board of Appeals**

**Minutes**

**October 6, 2020**

**This meeting was held virtually via Microsoft Teams**

**The Board’s meeting in Memorial Hall had audio, but no visual**

**The meeting was recorded**

**Nature & Basis of Application:** According to the denial letter dated July 31, 2020 from Jeffrey Cooke, Building Commissioner, the proposal to expand and reconfigure the parking lot at 447 Boston Post Rd. East, Map 73, Parcel 23, located in the Business Zoning District (B) does not comply with Chapter 650-41 Attachment 2, “Table of lot area, yards, and height of structures” and 650-48 C4b of the City Code of Marlborough. The zoning code states that your use requested exceeds the allowable in the following Business Zoning District:

650-41 Attachment 2 “Table of lot area, yards and height of structures” states that the maximum lot coverage allowed is 30%. The existing condition has a lot coverage of 69.7% and you propose to increase the lot coverage to 71.3%. Thus a 1.6% increase from the existing 69.7% to 71.3% lot coverage.

**650-48 C4b - Compact-sized parking spaces**…The Building Commissioner informed the applicant thru e-mail, dated Aug. 12, 2020, stating in part: “The original denial letter stands, you do not have to request relief of the compact parking spaces. If the issue arises at the meeting state that the plan has been revised and that you do not need relief.” The legal ad and notice to abutters do not reflect this section of the ordinance.

**Members** meeting in City Hall: Paul Giunta-chairman, Robert Levine, Thomas Golden, and Thomas Pope. **Meeting remotely**: Ralph Loftin.

**Meeting also remotely were**: Katie Enright and Jeff Bruce.

**Proceedings:**

The Zoning Board of Appeals, acting under the City of Marlborough Zoning Ordinance and General Laws, Chapter 40A, as amended opened the public hearing on October 6, 2020. Said meeting being held at Marlborough City Hall, 140 Main St., the public hearing was conducted by remote participation, allowing the Board, members of the public, and the Applicant to participate in the hearing through real-time audio conferencing, telephone access and live internet streaming. (It should be noted that city hall’s video was not working.) In accordance with Section 17(d) of Chapter 53 of the Acts of 2020 and “An Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, § 20” issued by Governor Charles D. Baker on March 12, 2020.

**Date of Application:** August 20, 2020

**Name and Address of Applicant:** Jeff Bruce, 369 Lindsay Pond Rd. Concord, MA 01742.

An Application filed with: Zoning Board of Appeals and City Clerks’ Office on August 20, 2020 for project site 447 Boston Post Rd. East - Map 73, Parcel 23 (Harrison Arms)

Section of the Zoning Ordinance involved: Section 650-41 Attachment 2 “Table of lot area, yards, and height of structures.”

Notice was sent by certified mail to parties in interest, including the petitioner, abutters, owners of land directly opposite on any public or private street or way, owners of land within 300 feet of the property lines, including owners of land in another municipality, all as they appear on the most recent applicable tax lists.

The Project Site is located in the Business (B) Zoning District, being Map 73, Parcel 23. The Project site is an existing apartment complex consisting of 109 units in 5 multi-family buildings with an existing 148 space parking lot, sidewalks and drainage, with frontage on Boston Post Road East.

According to the applicant’s summary dated August 20, 2020, the applicant proposes to keep all the structures the same as they are in the existing condition, but to repave and reconfigure the existing parking area onsite to conform more to the city standards. Currently the City of Marlborough requires 2 parking spaces per unit, or 218 total parking spaces, 6 of which are to be handicap. The proposed layout shows an addition of 17 parking spaces, including 6 handicap spaces added throughout the site at the entrances to the buildings, 3 of which are van accessible spots. With the addition of 17 parking spaces, along with various other improvements to the parking layout, this will allow for more of the tenants and guests to remain parking onsite instead of utilizing other means of parking off site. Additional green space will be added. Several encroachments on adjacent properties, which prior to the purchase of the property were thought to be owned by Wayside Apartment, LLC, are to be removed and revegetated. (summary is in Board’s file)

**Site Plans**: In board’s file are the following:

* Site Plan for Multi-Family Redevelopment, 447 Boston Post Rd. East, Marlborough, MA Prepared by Howard Stein Hudson, Sheets 1 thru 9, dated 5/13/2020 Rev. 8/20/2020.
* Site Plan, 447 Boston Post Rd. East, Prepared by Mistry Associates, Inc. stamped by Nalia Mistry, dated 2/5/2020.
* Presentation Plan, prepared by Howard Stein Hudson, Sheet 1, dated 8/20/2020

At the public hearing, the Applicant, Jeff Bruce was present, along with his representative Katie Enright, P.E., Associate Principal, Senior Civil Engineer, of Howard Stein Hudson, 114 turnpike Rd. Suite 2C, Chelmsford, MA

The applicant has purchased this apartment complex and is working to upgrade the parking, public safety, landscaping and drainage to improve the current condition of this complex. They will add additional parking and will remove pavement within the 20’ buffer zone and restore that area. Required maximum Lot Coverage for Zoning District Business is 30%.

The project falls within the 20 ft. buffer zone in which the applicant got an Order of Conditions thru the Conservation Commission (DEP 212-1227).

The Board received two e-mails dated Oct. 2, 2020 from Jeffrey Cooke stating “in my research, I found no prior relief for lot coverage and the applicant did not find any either.” Another e-mail from Jeffery Cooke dated Oct. 6, 2020 stated that the applicant is trying to fix a problem that resulted from the original project-reduce parking. The new owners acknowledge that there are not enough parking spaces on the lot to meet their tenant’s needs. In fact, some of the existing parking is on abutting properties. They are attempting to bring as much parking on to their lot as possible. They are increasing fire lane access to buildings by giving new aisles around existing buildings that were not there before.

In accordance with Section 6500-41 Attachment 2 “Table of lot area, yards and height of structures” the Board finds that:

* 1. The proposed increase in lot coverage from the existing 69.7% to 71.3% will not derogate from the intent and purpose of the zoning ordinance. In fact, this increase will tremendously improve the site in adding more parking spaces so tenants will not park their cars onto adjacent lots. Wider fire access lane around the building is an improvement according to the Fire Dept. Adding additional landscaped areas within the complex will be an improvement to the site.

**Hardship** as stated by the applicant: With the existing conditions on the lot (the existing 5 buildings, the paved parking lot and an existing lot coverage of 69.7% vs. the maximum required 30%) it would be difficult to conform to Section 650-41 of the city’s zoning ordinance concerning Lot Coverage and to meet the number of minimum required parking spaces. The slight increase in Lot Coverage will enable them to be closer to conforming to parking spaces and improve a safer fire access around the buildings. This is a small increase to Lot Coverage. Adding more parking spaces, will prevent tenants from parking on adjacent lots.

The Applicant will meet the requirements of the Building Department, Site Plan Review Committee and the Conservation Dept. (Order of Conditions-DEP 212-1227).

There was no one to speak in favor or in opposition to the petition, and no one in the audience had any questions.

A motion was made by Robert Levine to close the public hearing and seconded by Thomas Pope. Roll call vote taken: Paul Giunta-Chairman-yea, Robert Levine-yea, Ralph Loftin-yea, Thomas Golden-yea and Thomas Pope-yea. Vote 5-0 to close the public hearing.

A motion was made by Robert Levine, seconded by Thomas Pope to grant a variance for the increase in Lot Coverage from the existing 69.7% to 71.3%, an increase of 1.6% The Board took a roll call vote: Paul Giunta-yea, Robert Levine-yea, Ralph Loftin-yea, Thomas Pope-yea and Thomas Golden-yea. The Board voted 5-0 to grant the variance.

A motion was made by Ralph Loftin to adjourn the public hearing, seconded by Thomas Pope to adjourn the public hearing. A vote of 5-0 to adjourn.

**Based on the above, the ZBA grants a variance under City Zoning Ord. 650-41, Attachment 2 “Table of lot area, yards and height of structures” subject to the following CONDITIONS:**

1. The approved plans entitled: Site Plan for Multi-Family Redevelopment, 447 Boston Post Rd. East, Marlborough, MA Prepared by Howard Stein Hudson, Sheets 1 thru 9, dated 5/13/2020 Rev. 8/20/2020.

* Site Plan, 447 Boston Post Rd. East, Prepared by Mistry Associates, Inc. stamped by Nalia Mistry, dated 2/5/2020.
* Presentation Plan, prepared by Howard Stein Hudson, Sheet 1, dated 8/20/2020.

1. The variance is from an existing 69.7% Lot Coverage to 71.3% Lot Coverage, a 1.6% increase. This increase in Lot Coverage is for parking only.
2. Any modifications to the approved plans, will be subject to review by the Building Commissioner and/or the Conservation Officer, and/or Site Plan Review Committee to see if it warrants a return to the Zoning Board of Appeals for review.
3. No Building Permits can be issued until such time as the Applicant presents to the Building Commissioner evidence that this variance decision has been filed with the Registry of Deeds or Land Court as applicable.

Respectfully submitted,

Zoning Board of Appeals

Paul Giunta - Chairman