

Zoning Board of Appeals  
Minutes  
September 16, 2014

**Approval of Minutes** - August 26, 2014, Sept. 2<sup>nd</sup> and Sept. 16<sup>th</sup>, 2014.

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

**Public Hearings**

**7:00 PM**      **512 Hemenway St.** - Stephen and Durvalina Demers

Petition: The applicant is requesting a road opening permit thru the Dept. of Public Works. The proposal will deviate from Section 650.48(5)(a) of the City of Marlborough Zoning Code states that only one driveway opening is allowed for any parcel with less than 200 ft. of frontage. And Section 650.49.B(2)(a) states that off street parking shall not be permitted in the area between the front lot line and the prescribed minimum front yard setback line. Property is located in Zoning District Residential A-1, being Map 35, Parcel 26 of the Assessors' Maps. Also known as 512 Hemenway St.

Present this evening were the applicants, Stephen and Durvalina Demers.

The Board finds that the abutting lots are similar in shape and size to the lot in questions.

The applicant stated the following:

- They purchased this house in 2011.
- They have gone to the city's engineering department in an attempt to receive a "street opening permit" and this is when they learned they needed a variance.
- Their house is located 25 ft. vs. the 30 ft. minimum required Front Yard Setback for Zoning District A-1. They do not know how this house got built with this deviation.
- They cannot widen the existing driveway because of a power line located to the right, as you face the driveway.
- The applicants are opened to any solutions.
- Coming up Hemenway St. there is a blind corner and it is marked with a 20 miles per hour sign. As stated by the applicant, "regardless of the sign, there are people who will not slow down." As a safety issue, the applicants would like to install this horse shoe style driveway at the front of their house to add more parking spaces for their visitors and as a "safety issue.

- They have an existing 2 car garage with an additional 2 car parking area at the head of the driveway. They could park about 4 cars in the driveway without blocking any vehicles in.
- They own 3 vehicles.
- They have 3 children living at home. They and the children have many friends (some of which are physically challenged) that come to visit. With the drop off and pick up of the friends and relatives, it creates a “safety” issue when visitors park on the street. Exiting from their driveway is dangerous, because of the sight distance onto Hemenway St.
- With their aging parents, it would be nice to have a driveway close to the front of the house for easy access to the house.

Board member, Paul Giunta, stated:

- He did not see any evidence of other homes in the area that have a “horse shoe” shape driveway at the front of their house.
- The applicant will have to consider drainage issues if a variance is granted. One cannot have water runoff into the street.
- With the city’s right of way at the front of their home, the city may in the future widen the street, add sidewalks and curbing.
- The Board does not want to create a domino effect with other lots in the neighborhood requesting his type of driveway.

The Board asked that the applicant prepare a plan done by a land surveyor to show elevation...etc.

Board Member, Theodore Scott stated the following:

- A “hardship” cannot be personal.
- The applicant has to look at their lot concerning, topography, shape and structure(s) on the lot.
- How their lot separates them from their neighboring lots.
- The applicant has to make their case.
- Hardship has to be proven by the applicant.

Board Member, Robert Levine stated that a hardship cannot be an inconvenience.

**Hardship as stated by applicant:**

- Safety issue with the “blind” corner. A Board member stated that many people have this problem....but does this qualify as a hardship?
- Can’t move the house back to give them more room in the front.
- Can’t widen the existing driveway, because of a utility pole.

The Board asked the applicant the following:

- Re-think your hardship and how you may qualify for a variance.
- Is the hardship relates to the building or land

- Come back with a certified plot plan of the lot in question
- Can vehicles park on the street? Answer-yes.
- Can they extend the existing driveway back a little? Answer-yes.

The Board asked the applicant if they wanted to continue the hearing until such time they can produce a Certified Plot Plan of their lot, to address drainage and to investigate further their criteria(s) for a variance as related to “hardship”.

There was no one in the audience to speak in favor or in opposition to the petition.

The applicants agreed to continue the public hearing.

On a motion by Ralph Loftin and seconded by Theodore Scott, the Board voted 5-0 to continue the public hearing to Oct. 14, 2014 at 7:00 PM

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**7:30 PM**

**525 Maple St. – NGP Management LLC**

**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 Levin.

Also present this evening was:

- Atty. Bergeron of Mirick O’Connell, 100 Front St., Worcester, MA 01608-1477
- Mike Scott of Waterman Design Associates, Inc., 31 East Main St. Westborough, MA 01581

- Atty. Gregg S. Haladyna – representing 181 Mill St. South – Brox Industries.
- Mr. Scrivanos – prospective buyer of said property.

Mike Scott of Waterman Design Associates presented revised plans to the Board. The revised plans have changes to the landscaping requirements, but no changes to the parking. (copies of the plans and the revised variance request were not made for the Board)

**Parking:** The 4 employees’ parking spaces at the entrance of the site will be roped off for the employees only. The other 4 parking spaces on the lot will be marked as “employee parking spaces only”.

**Exhibits and Letters:**

- Atty. Bergeron presented a letter dated Sept. 16, 2014 to the Zoning Board of Appeals, RE: Variance application of NGP Management LLC
- Letter from Ms. Ippolito, dated Sept. 16, 2014 (read into the file)
- Letter from Engineering Division, Evan Pilachowski, dated Sept. 16, 2014 RE: Variance Application – 525 Maple St. – Dunkin Donuts. (read into the file)
- Memo from Priscilla Ryder, Conservation Officer, dated Sept. 16, 2014 RE: Variance Application: 525 Maple St. (Dunkin Donuts) ZBA Case #1430-2014. (read into the file)

**Mr. Scrivanos** stated the following:

- The proposed Dunkin Donuts will have their major shift from 4 AM – 1:00 PM. This shift will have the majority of employees (12-14 employees). The parking that is designated for their employees will remain the same as shown on their original plan. These parking spaces will be roped off as “employee” parking spaces only.
- He owns 125 Dunkin Donut stores. He stated that when and if this proposed Dunkin Donut location is approved and up and running, he will close the existing Dunkin Donut store on Maple St.
- Snow will be removed from site during a snow incident of 2 inches or more within 48 hrs.

Atty. Bergeron stated:

- This is an appropriate use of the site. It is in a Commercial Automotive zone. It could certainly be another car lot. This will be a quality use of the site.
- His associate, Atty. Brian Falk has showed Ms. Ippolito, 186 Mill St. the revised plans. Ms. Ippolito will oppose the revised plans.
- The applicant has offered to plant more trees to her site to act as a shield from the site and noise, but she refused. She did not want any plantings on her lot.
- The applicant did not want to do any additional landscaping on their lot as proposed on their revised plans, because it will interfere with their proposed parking and queuing.
- They approximate that Ms. Ippolito's house is some 160 ft.+ to the propose speaker system.

The Board discussed the type of lighting on the site. The applicant stated the lights will not shed outside their lot.

There were some questions regarding #15 of the Building Inspector's denial letter concerning granite or cement curbing. The applicant stated it will be granite on Maple St. and granite or concert inside the lot.

The Board discussed Ms. Ippolito's objections to the "revised" plans in her letter dated Sept. 16, 2014.

Speaking in **opposition**:

- Atty. Gregg S. Haladyna – representing 181 Mill St., South – Bronx Industries – stated he is opposed to the variance request.
  - The applicant has not demonstrated any hardship.
  - This lot can be constructed on within the envelope of the lot.
  - Bronx Industries has lots of trucks coming in and out of their site on a daily basis and this proposed Dunkin Donuts will impact their business and property.
  - This is a very difficult site and not an appropriate use as a Dunkin Donuts
  - The Board asked the attorney if they are opposed to the petition. They only stated they do not think the applicant has demonstrated a hardship.

There was no one in the audience to speak in favor of the petition.

**Councilor Robey stated:**

- She did go speak with Ms. Ippolito to hear her views.
- She also walked the property.
- Councilor Robey did see some over growth on her lot which abuts the proposed Dunkin Donuts and there is a fence in the back which is down.
- Ms. Ippolito loves sitting on her back porch.
- Councilor Robey was concerned that new plantings will not grow fast thus, Ms. Ippolito may not be getting her shielding from lights and sounds as quick as she would like.
- Ms. Ippolito would like to see the existing plantings between her lot and the proposed Dunkin Donuts to remain. The overgrowth will be removed off the Dunkin Donut site.
- The proposal of a 6 ft. fence on top of a wall, with arborvitaes 6 ft. on center planted in the front with some shrubs are being proposed.
- Sound will travel from the speakers, precaution must be taken.
- In speaking with Ms. Ippolito, she will not agree to anything with the applicant.
- It was noted that there is another house on Mill St. Councilor Robey will check the city's records of who owns this house.
- It was mentioned that Bronx Industries does emit an odor and there has been some complaints to the city regarding the odor.

**Issues discussed and possible Special Conditions if a variance is granted:**

- Lighting should be contained on the site in question.
- Planting of new trees on Ms. Ippolito's lot.
- Speaker will face Mill St.
- Board Member, Ted Scott would like to see the topo of the area. The applicant will have their plans reviewed by the appropriate city departments: city's engineering department, the conservation commission, Site Plan Review Committee, Fire and Police.
- Trash
- Delivery times
- Speaker system – minimum sound dispersion
- Lighting
- Water run off – review by city's engineer
- Where and when deliveries will be made
- Hours of operation

**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. ±
<b>LANDSCAPING</b>			
Maple St.	10 trees  80 shrubs	2 trees ( <b>revised 10 trees</b> )  40 shrubs ( <b>revised 43 shrubs</b> )	8 trees ( <b>meets</b> )  40 shrubs ( <b>deviation 37</b> )
Mill St.	10 trees  110 shrubs	3 trees ( <b>revised 4 trees</b> )  19 shrubs ( <b>revised 29 shrubs</b> )	7 trees ( <b>deviation 6 trees</b> )  91 shrubs ( <b>deviation 81 shrubs</b> )
Side Planting Area – along the parking lot and Ms. Ippolito (north side)	6 trees  42 shrubs	0 trees  14 shrubs ( <b>revised 17 shrubs</b> )	6 trees  28 shrubs ( <b>deviation 25 shrubs</b> )
Interior Plantings (required 4 trees and 14 shrubs)	4 trees  14 shrubs	2 trees ( <b>revised 5</b> )  56 shrubs ( <b>revised 80</b> )	2 trees ( <b>meets</b> )  Shrubs ( <b>meets</b> )

On a motion by Ralph Loftin and seconded by Theodore Scott, the Board voted 5-0 to have the applicant make copies of the “revised” plans that were presented this evening and make copies of the “revised” list of variance request for the Board before the Sept. 23<sup>rd</sup> continuation meeting.

On a motion by Paul Giunta and seconded by Ralph Loftin, the Board voted 5-0 to “draft” up special conditions for our next meeting on Sept. 23, 2014 at 7:30 PM

On a motion by Paul Giunta and seconded by Ralph Loftin, the Board voted 5-0 to continue the hearing to Sept. 23, 2014.

On a motion by Paul Giunta and seconded by Theodore Scott, the Board voted 5-0, to close the public portion of the hearing.

**Adjournment**

Respectfully submitted,

  
Paul Giunta - Chairman