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ADAM J. BRODSKY
abrodsky@dtm-law.com

February 5, 2024

Via Hand Delivery

Catherine Harder-Bernier, Town Clerk
Town of Hanover
550 Hanover Street
Hanover, MA 02339

RE: 1070 Washington Street, LLC
1070 Washington Street, Hanover
Request for Modification of Approval of Special Permit and Site Plan
Case No. TPL—16-19

Dear Clerk Harder-Bernier:

You will recall that this office represents 1070 Washington Street, LLC ("1070 Washington") regarding the above referenced matter. Enclosed please find the following Civil Cover Sheet and Complaint filed on February 2, 2024;

Thank you for your courtesy.

Very truly yours,

Adam J. Brodsky
Drohan Tocchio & Morgan, P.C.

cc: Eve Tapper, Interim Town Planner (*via* email)
Kevin Feeley, Esq, Town Solicitor (*via* email)

Date Filed: 2/2/2024 4:22 PM
Land Court
~~Docket Number~~:

Trial Court of Massachusetts Land Court Department	DOCKET NUMBER	COURT USE ONLY

CIVIL COVER SHEET

(For use in all Land Court case types except tax foreclosures, mortgage foreclosures under the Servicemembers Civil Relief Act, and all cases related to original and subsequent registration under G. L. c. 185, §1)

CASE NAME

1070 Washington Street LLC

v.

Town of Hanover Planning Board, Consisting of MaryAnn Brugnoli, Giuseppe Fornaro, Meaghan Neville-Dunne, Kenneth Blanchard, Bernie Campbell, Anthony Cavallaro, and David Treggorth

LOCUS ADDRESS/DESCRIPTION	CITY/TOWN
1070 Washington Street	Hanover

PART I – TYPE OF ACTION

Using the list below, place the **Number "1"** next to the main cause of action asserted in your complaint.

Place an "**X**" next to each other cause of action asserted in your complaint.

Is this complaint verified? ☐ Yes ☒ No

Any related cases (open or closed) filed in the Land Court Department? ☐ Yes ☒ No

Case No(s). _____

X	ZAC	Appeal from Zoning/Planning Board G. L. c. 40A, § 17
	ZAD	Appeal from Planning Board G. L. c. 41, § 81BB
	ZJA	Validity of Zoning G. L. cc. 240, § 14A, 185, § 1 (j ½)
	ZEN	Enforcement of Zoning G. L. c. 40A, § 7
	COT	Remove Cloud on Title G. L. c. 240, § 6 - 10
	DOM	Discharge of Old Mortgage G. L. c. 240, § 15
	LVT	Affirm Tax Foreclosure - Land of Low Value G. L. c. 60, § 80B
	MTB	Try Title G. L. c. 240, § 1 - 5
	MWA	Recover Freehold Estate (Writ of Entry) G. L. c. 237
	MRC	Determine Validity of Encumbrances G. L. c. 240, § 11 - 14
	CER	Enforce Restrictions G. L. c. 240, § 10A - 10C
	MAD	Determine Fiduciary Authority G. L. c. 240, § 27

	PAR	Partition G. L. c. 241
	RED	Redemption G. L. c. 60, § 76
	SP	Specific Performance of Contracts G. L. c. 185, § 1 (k)
	MBF	Determine Municipal Boundaries G. L. c. 42, § 12
	MFE	Determine Boundaries of Flats G. L. c. 240, § 18
	CNC	Certiorari G. L. c. 249, § 4
	MAN	Mandamus G. L. c. 249, § 5
	TRE	Trespass to Real Estate Involving Title G. L. c. 185, § 1 (o)
	EQA	Equitable Action Involving Any Right, Title or Interest in Land G. L. c. 185, § 1 (k)
	AHA	Affordable Housing Appeal G. L. c. 40B, § 21
	OTA	Other

SIGNATURE OF SELF-REPRESENTED PLAINTIFF	DATE

PART II – UNIFORM COUNSEL CERTIFICATE (SJC RULE 1:18)

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

SIGNATURE OF ATTORNEY	BBO NUMBER	DATE
	548018	02/02/2024

Date Filed: 2/2/2024 4:22 PM
Land Court
Docket Number:

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

LAND COURT
DOCKET NO. _____

1070 WASHINGTON STREET LLC,

Plaintiff,

v.

TOWN OF HANOVER PLANNING BOARD, CONSISTING OF MARYANN BRUGNOLI, GIUSEPPE FORNARO, MEAGHAN NEVILLE-DUNNE, KENNETH BLANCHARD, BERNIE CAMPBELL, ANTHONY CAVALLARO, AND DAVID TRAGGORTH,

Defendant.

COMPLAINT

INTRODUCTION

1. Plaintiff 1070 Washington LLC files this action, pursuant to M.G.L. c. 40A, § 17, seeking judicial review of a decision to deny a request for Major Modification of Special Permit/ Site Plan Review (the "Decision") by defendant Town of Hanover Planning Board to (1) extend the period of time for conversion of a residential structure to a conforming use an additional two years, and (2) eliminate the requirement that the residential structure be razed regardless of the outcome of the request for extension regarding a three-unit residential dwelling located at 1070 Washington Street, Hanover, Massachusetts (the "Property"). A certified copy of the Decision is attached as **Exhibit A**.

PARTIES

2. Plaintiff 1070 Washington Street LLC ("1070 Washington") is a Massachusetts limited liability company with a principal place of business at 80 First Street, Bridgewater, Massachusetts. 1070 Washington owns the Property under a Deed recorded in the Plymouth County Registry of Deeds at Book 48990, Page 38.

3. Defendant Town of Hanover Planning Board (the "Planning Board") is a special permit granting authority of the Town of Hanover, with a principal place of business at Hanover Town Hall, 550 Hanover Street, Hanover, Massachusetts. On January 22, 2024, the Planning Board caused to be filed with the Town Clerk of the Town of Hanover the Decision from which 1070 Washington appeals.

4. The Board presently consists of Maryann Brugnoli, Giuseppe Fornaro, Meaghan Neville-Dunne, Kenneth Blanchard, Bernie Campbell, Anthony Cavallaro, and David Traggorth, and they reside at, on information and belief, the following addresses: Maryann Brugnoli, [redacted], Hanover, Massachusetts; Giuseppe Fornaro, [redacted], Hanover, Massachusetts; Meaghan Neville-Dunne, [redacted], Hanover, Massachusetts; Kenneth Blanchard, [redacted], Hanover, Massachusetts; Bernie Campbell, [redacted], Hanover, Massachusetts; Anthony Cavallaro, [redacted], Hanover, Massachusetts; and David Traggorth, [redacted], Hanover, Massachusetts.

FACTS

Background

5. On June 13, 2017, the Planning Board issued an Approval of Special Permit and Site Plan ("Special Permit") to the prior owner and applicant, Michael J. McSharry, for the Property approving the construction of a 9,000 s.f. commercial building. A copy of 1070

Washington's request for Major Modification ("Request") is attached as **Exhibit B**; the Special Permit is attached to the Request as **Exhibit 1**. Special Condition #1 of the Special Permit allowed the existing nonconforming three-unit residential dwelling ("Residential Structure") to remain on the Property for two years after which the Residential Structure was to be razed, reconstructed, and converted to a conforming use.[1]

6. Thereafter, on October 18, 2022, the Planning Board granted to 1070 Washington a Major Modification of Special Permit/Site Plan Review ("First Modification") permitting the Residential Structure to remain for an additional year through October 17, 2023 to allow 1070 Washington to continue to actively market the Property for business use. A copy of the First Modification is attached to the Request as **Exhibit 2**.

7. The First Modification also required that 1070 Washington provide the Planning Board with a status report within six months which was provided on April 24, 2023. At that time, 1070 Washington provided the Planning Board with copies of a Brokerage report and Listing Report Summary. Copies of the Brokerage report and Listing Report Summary are attached to the Request as **Exhibit 3**.

---

[1] Special Condition #1 states:

> The Planning Board issues a two (2) year temporary allowance of the existing nonconforming residential dwelling located on the property from the date of the Planning Board's filed decision with the Town Clerk. After such time or prior to the application shall be required to raze the existing dwelling identified as 1070 Washington Street, a three unit residential structure and reconstruct a new building. Preexisting non-conforming setbacks of 1070 Washington Street shall be grandfathered for further building development. Said land uses within all new builds shall be in accordance with the current zoning standard at the time of application acceptance. All further proposed development at 1070 Washington Street shall require Planning Board Site Plan Approval and Special Permits if necessary.

8. On October 2, 2023, 1070 Washington wrote to the Planning Board requesting the opportunity to meet with it to discuss a further extension of time of the deadline to convert the use of the Residential Structure and/or alternatives. A copy of the October 2, 2023 letter is attached to the Request as **Exhibit 4**. As reported, 1070 Washington had seen additional interest by commercial tenants in the building but had yet to secure a commercial tenant. In fact, several potential tenants consulted with Town departments regarding permits but ultimately decided not to lease the Residential Structure.

9. Thereafter, on October 11, 2023, Eve Tapper, the Interim Town Planner, advised 1070 Washington that it should submit an application for an additional Modification if 1070 Washington was seeking a further extension and any other relief from the Special Permit.

10. Accordingly, on October 12, 2023, 1070 Washington filed its Request seeking a Modification to:

(1) extend the period of time for conversion of the Residential Structure to a conforming use an additional two years;

(2) eliminate the requirement that the Residential Structure be razed regardless of the outcome of the request for extension; and

(3) consider any other alternative proposed by either 1070 Washington or the Planning Board to resolve the use of the Property.

11. 1070 Washington asserted in its Request that a further extension was reasonable given 1070 Washington's good faith efforts to lease the Residential Structure and the continued challenging commercial leasing market on account of the COVID 19 pandemic. Additionally, 1070 Washington asserted that the Property has several land use restrictions which limits the allowed uses making the search for a commercial tenant even more challenging. Notwithstanding, 1070 Washington requested the opportunity to continue those efforts.

12. 1070 Washington also asserted in its Request that there is no good reason to raze the Residential Structure regardless of its use. The Residential Structure is structurally sound, has been improved, and is currently leased to three residential tenants. 1070 Washington asserted that there is no good reason to raze the existing structure and replace it with a new structure. Moreover, the construction of a new building, particularly without a new commercial tenant, is not financially viable. Accordingly, 1070 Washington requested that the Planning Board eliminate this requirement regardless of the use.

13. On January 9, 2024, the Planning Board conducted a public hearing on 1070 Washington's Request. At the public hearing, 1070 Washington offered as an alternative use that one unit in the Residential Structure be deed-restricted to be affordable and to have all three units formally included on the Town of Hanover's Subsidized Housing Inventory ("SHI") as maintained by the Commonwealth of Massachusetts.

14. At the conclusion of the public hearing, the Planning Board voted to deny the request for Modification and subsequently issued its Decision. The Planning Board erroneously found that 1070 Washington had not done an adequate job of marketing the Property for commercial use. Further, the Planning Board erroneously found that 1070 Washington's proposal to include three residential units on the SHI did not guaranty that the current tenants would be evicted. Lastly, the Planning Board gave no reason why the Residential Structure should be razed other than the original Special Permit remains in effect.

CLAIMS

Count I
(Judicial Review Pursuant to M.G.L. c. 40A, § 17)

15. 1070 Washington hereby realleges the matters set forth in Paragraph Nos. 1-15 of the Complaint.

16. M.G.L. c. 40A, § 17, provides:

> Any person aggrieved by a decision of... any special permit granting authority... may appeal to... the superior court department in which the land concerned is situated... by bringing an action within twenty days after the decision has been filed in the office of the... town clerk.

17. 1070 Washington is aggrieved by the decision of the Planning Board denying its Request for Modification.

18. The decision of the Planning Board denying 1070 Washington's Request for Modification is legally untenable, unreasonable, capricious and arbitrary for the reasons set forth above.

WHEREFORE, 1070 Washington Street LLC requests that this Court:

1. Enter judgment in its favor under Count I of the Complaint annulling the decision of the Town of Hanover Planning Board denying its Request for Modification;

2. Enter an Order compelling the Town of Hanover to grant 1070 Washington's Request for Modification; and

3. That this Court grant such other and further relief as may be just.

1070 WASHINGTON STREET LLC,

By its counsel,

February 2, 2024

Adam J. Brodsky (BBO #548018)
Jeffrey H. Katzenstein (BBO # 674749)
Drohan Tocchio & Morgan, P.C.
175 Derby Street, Suite 30
Hingham, Massachusetts 02043
Telephone: (781) 749-7200
Facsimile: (781) 741-8865
abrodsky@dtm-law.com

EXHIBIT A

Major Modification SPECIAL PERMIT/SPR APPROVAL
1070 Washington Street
TPL #23-13

DATE: January 22, 2024

A TRUE COPY. ATTEST:
Andrea J Dellorusso
ASST. TOWN CLERK, HANOVER

TOWN OF HANOVER
2024 JAN 22 AM 11:08
TOWN CLERK

PLANNING BOARD
TOWN OF HANOVER, MASSACHUSETTS

MAJOR MODIFICATION OF SPECIAL PERMIT/SITE PLAN REVIEW

LOCUS:	1070 Washington Street shown as Assessors Map 30, Plot 94
ZONING:	Business District Water Resource Protection Overlay District.
PROPERTY OWNER(S):	1070 Washington Street LLC C/o Stephen Callahan 80 First Street Bridgewater, MA 02334
APPLICANT(S):	Same as Property Owner
ENGINEER & SURVEYOR	Not Applicable

DRAWINGS & REPORTS: *(ALL INCORPORATED HEREIN BY REFERENCE)* - Not Applicable
See prior Decisions PB File #16-19 – Recorded at Plymouth County Registry of Deeds Book 57307 and Page 152 (10/7/22) and PB File TPL# 22-13 – Recorded at the Plymouth County Registry of Deeds Book 57410 and Page 179 (11/10/22)

On January 9, 2024: VOTE ON MAJOR MODIFICATION SPECIAL PERMIT/SITE PLAN REVIEW: Giuseppe Fornaro **MOTION** to vote deny modification of condition #1 of the original 2017 Special Permit/Site Plan Review (PB File #16-19) and require that the existing residential dwelling be razed, seconded Kenneth Blanchard

VOTE: (Y) MaryAnn Brugnoli, (Y) Giuseppe Fornaro, (Y) Meaghan Neville-Dunne (Y), Kenneth Blanchard, (Y) Bernie Campbell, (A) Anthony Cavallaro, (A) David Traggorth

(A) = Absent or not present during the entire hearing process and therefore not eligible to vote.

MAJOR MODIFICATION SPECIAL PERMIT AND SITE PLAN APPROVAL APPLICATION

Major Modification SPECIAL PERMIT/SPR APPROVAL
1070 Washington Street
TPL #23-13

DATE: January 22, 2024

Notice is hereby given in accordance with Massachusetts General Laws (MGL), Chapter 40A Sections 9 & 11 and the Zoning By-Law of the Town, Section 6,8,9,10 and 11 in the entirety the Town of Hanover Planning Board will hold a Public Hearing on Monday, November 6, 2023 at 7:00 p.m. at Hanover Town Hall and also via Zoom video call for the purpose of hearing the application submitted by 1070 Washington Street, LLC, Steve Callahan, 80 First Street Bridgewater, MA 02324.

The applicant is requesting a Major Modification of an approved 2017 Special Permit and Site Plan Review (PB File #16-19) and an approved 2022 Major Modification of that Special Permit (PB File #22-13) to modify condition #1, to extend the period of time for conversion of the residential structure to a conforming use an additional two (2) years and to eliminate the requirement to the residential structure be razed.

The site is located at: 1070 Washington Street and is further identified as Lot 94-1 on Assessor's Map 30 consisting of 1.43 acres (62,291 square feet). The site lies in the Business Zoning District and Aquifer Protection Zone.

The Public Hearing notice was advertised in the Hanover Mariner on October 25 & November 1 2023 with notice mailed to abutters as well. The initial public hearing on November 6, 2023 was continued, at the request of the applicant, until November 20, and December 18, 2023 and January 8, 2024 when the Planning Board voted.

FINDINGS

After thorough analysis and deliberation, the Planning Board acting as the Special Permit Granting Authority (SPGA), under the applicable ZBL Sections, the original 2017 Special Permit/Site Plan Decision (PB# 16-19) and the 2022 Major Modification of the 2017 Special Permit/Site Plan Decision (TPL# 22-13) found the applicant's request to be a major modification. The original decision (PB#16-19) under condition #1 required the existing dwelling to be razed within two (2) years of the approval. Under the 2022 Major Modification Decision, the Planning Board granted a one-year extension for the existing structure to remain standing and continue to be occupied with three residential units. In an application submitted on October 13, 2023, the applicants were requesting that the residential structure be allowed to remain occupied with three (3) residential units for an additional two (2) years and that regardless of the outcome of the request for the two-year extension for the residential use that the requirement that the residential structure be razed be eliminated. They further requested consideration of any other alternative to resolve the use of the property.

The Planning Board took under consideration the amount of time passed since the original 2017 Decision and 2022 Major Modification Decision and the effort that the applicants/owners had

put into marketing the property to attract a compliant business use. The Applicants offered an alternative to allow the three residential units to remain provided that the Owners take appropriate steps to have one of the unit's deed-restricted to be affordable under the Commonwealth of Massachusetts' guidelines and to have all three of these units be formally included on the Town of Hanover's Subsidized Housing Inventory (SHI) as maintained by the Commonwealth. While the SPGA has the right to insist that the Applicants comply with the unappealed and legally binding conditions the SPGA did consider the issues raised by the Applicants. Taking all of the factors of this application into consideration the SPGA found that the Applicant had not done an adequate job of marketing the property for commercial use despite the extension of time granted in 2022. The SPGA further found that the Applicants' proposal to include the three residential units on the SHI did not guarantee that the current tenants would not be evicted nor did it ensure that all three units be affordable. Ultimately, SPGA concluded that since the original decision of the SPGA remains in effect and was not appealed the Applicant/Owner remains obligated to comply with the condition that the structure be razed.

DECISION

Now, therefore, by unanimous vote, the Planning Board hereby denies the subject application for a Major Modification of the Special Permit/Site Plan Review Decision (PB# 24-13) in accordance with the provisions of the Hanover Zoning By-law and requires that Special Condition #1 on the 2017 Special Permit/Site Plan Decision (PB# 16-19) be enforced to its full effect.

The Planning Board affirms that all provisions of Sections 9 & 11 of Chapter 40A of the Massachusetts General Laws and Sections of the Hanover Zoning Bylaws were complied with as regards to procedures.

NOW, THEREFORE, by vote of the Planning Board, this Special Permit/ Site Plan Approval is granted consistent with the requirements of said Sections 4.00, 6.00, 7.00, and 10.00 and all other pertinent sections of the Hanover Zoning Bylaw and upon the Special and General Conditions contained herein.

This Special Permit/Site Plan Approval shall not be effective until the Planning Board receives evidence from the applicant of recording with the Plymouth County Registry of Deeds in accordance with M.G.L., Ch. 40A, §11. Copy of proof of recording shall also be submitted by the applicant to the Planning Board (SPGA) and to the Hanover Building Inspector prior to the initiation of any construction activities.)

Major Modification SPECIAL PERMIT/SPR APPROVAL
1070 Washington Street
TPL #23-13

DATE: January 22, 2024

HANOVER PLANNING BOARD

Maryann Brugnoli, Chair

I hereby certify that twenty (20) days have elapsed from the date that this decision was filed with this office and no notice of appeal was received during that period.

A TRUE COPY ATTEST

_____
Catherine Harder-Bernier
Town Clerk
Date: _____

EXHIBIT B

DROHAN TOCCHIO & MORGAN, P.C.

ATTORNEYS AT LAW
175 DERBY STREET, SUITE 30
HINGHAM, MASSACHUSETTS 02043
Telephone: (781) 749-7200 ~ Facsimile: (781) 740-4335
www.dtm-law.com

ADAM J. BRODSKY
abrodsky@dtm-law.com

October 12, 2023

Via Email and Federal Express

MaryAnn Brugnoli, Chair
Town of Hanover Planning Board
550 Hanover Street
Hanover, MA 02339

RE: 1070 Washington Street, LLC
1070 Washington Street, Hanover
Request for Modification of Approval of Special Permit and Site Plan
Case No. TPL—16-19

Dear Chair Brugnoli:

You will recall that this office represents 1070 Washington Street, LLC ("1070 Washington"), the current owner of the real property located at 1070 Washington Street (the "Property") in Hanover, Massachusetts. On June 13, 2017, the Town of Hanover Planning Board ("Planning Board") issued an Approval of Special Permit and Site Plan ("Special Permit") to the prior owner and applicant, Michael J. McSharry, for the Property approving the construction of a 9,000 s.f. commercial building. A copy of the Special Permit is attached as Exhibit 1. Special Condition #1 of the Special Permit allowed the existing nonconforming three-unit residential dwelling ("Residential Structure") to remain on the Property for two years after which the Residential Structure was to be razed, reconstructed, and converted to a conforming use.[1]

[1] Special Condition #1 states:

> The Planning Board issues a two (2) year temporary allowance of the existing nonconforming residential dwelling located on the property from the date of the Planning Board's filed decision with the Town Clerk. After such time or prior to the application shall be required to raze the existing dwelling identified as 1070 Washington Street, a three unit residential structure and reconstruct a new building. Preexisting non-conforming setbacks of 1070 Washington Street shall be grandfathered for further building development. Said land uses within all new builds shall be in accordance with the current zoning standard at the time of application acceptance. All further proposed development at 1070 Washington Street shall require Planning Board Site Plan Approval and Special Permits if necessary.

Thereafter, on October 18, 2022, the Planning Board granted to 1070 Washington a Major Modification of Special Permit/Site Plan Review ("Modification") permitting the Residential Structure to remain for an additional year through October 17, 2023 to allow 1070 Washington Street to continue to actively market the Property for business use. A copy of the Modification is attached as **Exhibit 2**. The Modification also required that 1070 Washington provide the Planning Board with a status report within six months which was provided on April 24, 2023. At that time, 1070 Washington provided the Planning Board with copies of a Brokerage report and Listing Report Summary. Copies of the Brokerage report and Listing Report Summary are attached as **Exhibit 3**.

On October 2, 2023, we wrote to the Planning Board requesting the opportunity to meet with it to discuss a further extension of time of the deadline to convert the use of the Residential Structure and/or alternatives. A copy of our October 2, 2023 letter is attached as **Exhibit 4**. As we reported, 1070 Washington Street has seen additional interest by commercial tenants in the building but has yet to secure a commercial tenant. Thereafter, on October 11, 2023, Eve Tapper, the Interim Town Planner, advised me that 1070 Washington should submit an application for an additional Modification if 1070 Washington Street was seeking a further extension and any other relief from the Special Permit.

Accordingly, we request on behalf of 1070 Washington Street a Modification to:

(1) extend the period of time for conversion of the Residential Structure to a conforming use an additional two (2) years;

(2) eliminate the requirement that the Residential Structure be razed regardless of the outcome of the request for extension; and

(3) consider any other alternative proposed by either 1070 Washington Street or the Planning Board to resolve the use of the Property.

Grounds for Request.

1. **A Further Extension is Reasonable Given 1070 Washington Street's Good Faith Efforts to Lease the Residential Structure and the Continued Challenging Commercial Leasing Market.**

1070 Washington Street requests two additional years to convert the Residential Structure to a conforming use. 1070 Washington Street changed brokers and has diligently marketed the Property to commercial tenants and recently seen additional interest in the Property. However, its efforts to date have been unsuccessful. The market for commercial tenants continues to be depressed on account of the COVID 19 pandemic. Additionally, the Property has several land use restrictions which limits the allowed uses making the search for a commercial tenant even more challenging. Notwithstanding, 1070 Washington Street would like the opportunity to continue those efforts.

During the additional two years, 1070 Washington Street would continue to lease the residential units to their existing workforce tenants. There is a clear need for residential housing in Hanover. While the units are not technically affordable, the rents are maintained to provide housing for workforce tenants. There is similarly no good reason to evict the existing residential tenants and have yet another vacant building on Washington Street.

2. **There is No Good Reason to Raze the Residential Structure Regardless of Its Use.**

1070 Washington previously requested in connection with the Modification to eliminate the requirement to raze the Residential Structure regardless of use. The Modification decision does not specifically rule on this the request other than to state that:

> If a tenant is found the Hanover Zoning Bylaws permits only one residential structure above a business and that would be by Special Permit which the applicant would also need to seek that approval to move forward with any proposal to save the existing structure from being demolished.

The Residential Structure is structurally sound, has been improved, and is currently leased to three residential tenants. There is no good reason to raze the existing structure and replace it with a new structure. Moreover, the construction of a new building, particularly without a new commercial tenant, is not financially viable.[2] Accordingly, 1070 Washington repeats its request to eliminate this requirement regardless of the use.

---

[2] There does not appear to be a dispute that there can be more than one building on the Property. Attached please find a copy of our letter to Lauren Galvin, former Town Solicitor, dated February 22, 2017 as **Exhibit 5**. However,

Conclusion

For these reasons, 1070 Washington Street requests that the Planning Board modify the Special Permit as requested.

Should you have any questions, please do not hesitate to contact me. Thank you for consideration.

Very truly yours,

Adam J. Brodsky
Drohan Tocchio & Morgan, P.C.

cc: Catherine Harder-Bernier, Town Clerk (*via* email)
Eve Tapper, Interim Town Planner (*via* email)
Kevin Feeley, Esq, Town Solicitor (*via* email)
Stephen R. Callahan, Sr., Manager, 1070 Washington Street LLC (*via* email)

Attorney Galvin and, subsequently, Attorney Feeley dispute our assertion that there may be more than one primary use on the Property.

EXHIBIT 1

SITE PLAN/SPECIAL PERMIT APPROVAL
1070 Washington Street
TPL-16-19

DATE: June 13, 2017

PLANNING BOARD
TOWN OF HANOVER
MASSACHUSETTS

APPROVAL OF SPECIAL PERMITS & SITE PLAN

LOCUS: 1070 Washington Street, Hanover, MA 02339, further identified as Assessors Lot: 94 Map: 030

ZONING DISTRICT: Business Zoning District, and Aquifer Protection Zone

OWNERS: 1070 Washington Street. Realty Trust, Donald E. Shute, Trustee, 41 Fox Hill Lane Norwell, MA 02061

APPLICANT: Michael J. McSharry, 6 Leah Drive, Rockland, MA 02370

ENGINEER: McKenzie Engineering Group, Inc., 150 Longwater Drive, Suite 101, Norwell, MA 02061

DRAWINGS & REPORTS: *(ALL INCORPORATED HEREIN BY REFERENCE)*

- A Eleven (11)-sheet site plan titled "Site Development Plan for 1070 Washington Street (Assessor's Map 30, Lot 94) Hanover MA, 02339. Dated November 14, 2016 with a most recent revision date of May 4, 2017.

Sheet #/Plan Description	Plan Date	Recent Revision Date
1. Cover Sheet	November 14, 2016	May 4, 2017
2. General Notes, Legends, Symbols & Abbreviations	November 14, 2016	May 4, 2017
3. Existing Conditions Plan	November 14, 2016	May 4, 2017
4. Site Layout Plan	November 14, 2016	May 4, 2017
5. Grading and Utility Plan	November 14, 2016	May 4, 2017
6. Construction Details I	November 14, 2016	May 4, 2017
7. Construction Details II	November 14, 2016	May 4, 2017
8. Construction Details III	November 14, 2016	May 4, 2017
9. Construction Details IV	November 14, 2016	May 4, 2017
10. Erosion Control Details	November 14, 2016	May 4, 2017
11. Landscaping Details	November 14, 2016	May 4, 2017

- Architectural rendering photos of proposed building 1070 Washington Street
- Drainage Calculation and Stormwater Management Plan for Proposed Site Development located at 1070 Washington Street (Assessors Map 30, Lot 94) Hanover, MA 02339. Dated January 24, 2017 with the most recent revision date of May 4, 2017.
- Construction Phase Best Management Practices and Operation and Maintenance Plan for Proposed Site Development located at 1070 Washington Street (Assessors Map 30, Lot 94) Hanover, MA 02339. Dated December 1, 2016 with the most recent revision date of May 4, 2017.
- Best Management Practices Long-Term Operation & Maintenance Plan for Proposed Site Development located at 1070 Washington Street (Assessors Map 30, Lot 94) Hanover, MA 02339. Dated December 1, 2016 with the most recent revision date of May 4, 2017.
- Requested public hearing continuance from Al Loomis, McKenzie Engineering Group dated October 24, 2016
- Notice of public hearing continuance from Hanover Planning dated October 26, 2016.
- Letter from Abutter Bob and Laura Steele addressed to the Planning Board dated November 14, 2016.
- Requested public hearing continuance from Al Loomis, McKenzie dated January 9, 2017.
- Letter addressed to Peter Matchak, Town Planner, dated January 30, 2017 regarding legal opinion of the Hanover Bylaws from Adam J. Brodsky, Drohan Tocchio and Morgan, P.C.
- Letter addressed to Peter Matchak, Town Planner, dated February 13, 2017 regarding legal opinion of the Hanover Bylaws from Lauren Galvin, Town Council, Murphy Hesse Toomey and Lehane LLP.
- Letter addressed to Lauren Galvin, Town Council, dated February 22, 2017 regarding legal opinion of the Hanover Bylaws from Adam J. Brodsky, Drohan Tocchio and Morgan, P.C.
- Consultant review letter submitted to Town of Hanover: Department of Municipal Inspections dated April 12, 2017 from Comprehensive Environmental Incorporated (CEI).
- Requested public hearing continuance from Al Loomis, McKenzie dated April 24, 2017.
- Requested public hearing continuance from Al Loomis, McKenzie dated March 13, 2017.
- Consultant review letter submitted to Town of Hanover: Department of Municipal Inspections dated May 2, 2017 from Comprehensive Environmental Incorporated (CEI).
- Requested public hearing continuance from Al Loomis, McKenzie Engineering Group dated March 13, 2017.
- Letter addressed to Town Planner, Peter Matchak, from McKenzie Engineering Group, Inc., dated May 8, 2017 addressing consultant review letter.
- Consultant review letter submitted to Town of Hanover: Department of Municipal Inspections dated May 30, 2017 from Comprehensive Environmental Incorporated (CEI).

ACTION ON APPLICATION FOR SITE PLAN APPROVAL: APPROVED WITH CONDITIONS

VOTE: (Y) Jeff Puleo (A) Kenneth Blanchard (Y) Richard DeLuca
(A) Kara Nyman (Y) Maryann Brugnoli
(Y) *Meaghan Neville Dunn (NA) *Bernie Campbell

(A) = Absent or not present during the entire hearing process and therefore not eligible to vote.
(*)= Associate Member
(NA)= Associate Member no vote cast

ACTION ON APPLICATION FOR All SPECIAL PERMITS: APPROVED WITH CONDITIONS

VOTE: Y) Jeff Puleo (A) Kenneth Blanchard (Y) Richard DeLuca
(A) Kara Nyman (Y) Maryann Brugnoli
(Y) *Meaghan Neville Dunn (NA) *Bernie Campbell

(A) = Absent or not present during the entire hearing process and therefore not eligible to vote.
(*)= Associate Member
(NA)= Associate Member no vote cast

SITE PLAN APPROVAL AND SPECIAL PERMIT APPLICATION FOR
1070 Washington Street
Michael McSherry
6 Leah Drive
Rockland, MA 02370

In accordance with Massachusetts General Laws (MGL), Chapter 40A (The Zoning Act), Sections 9 & 11 and the Zoning By-Law for the Town, Section 6.130.A (Uses Permitted by Special Permit from the Planning Board) and Section 6.860 B.1(Uses Permitted by Special Permit in an Aquifer Protection Zone), Section 7.660 (Change of final grade greater than 500 sq. ft.), and Section 10 (Site Plan Approval) the Town of Hanover Planning Board opened the public hearing on Monday, November 14, 2016 at 7:00 p.m. in the second floor hearing room of the Hanover Town Hall, 550 Hanover Street, Hanover, MA 02339 for the purpose of hearing the application of 1070 Washington Street, Michael McSharry, 6 Leah Drive, Rockland, MA 02370.

The applicant proposes a construction of a new 9,000 sq. ft. commercial building for the purpose of garaging contractor's vehicles. The applicant intends to continue the current use of the pre-existing non-conforming 2,045 sq. ft. three-family house on said premise. The site is located at 1070 Washington Street and is further identified as Lot 94-1 on Assessor's Map 30. The site lies in the Business Zoning District, and Aquifer Protection Zone.

The Public Hearing and continuances thereof were held pursuant to public notice published in the Hanover Mariner on October 10, 2016 and October 17, 2016 and mailed to parties in interest.

FINDINGS

After thorough analysis and deliberation on October 10, November 14, December 12, 2016 and January 30, February 13, March 27, April 10, May 15, 2017, the Planning Board on June 6, 2017 finds that the applicants has complied with all pertinent provisions of the Zoning By-Law for the Town, Section 6.130.A (Uses Permitted by Special Permit from the Planning Board) and Section 6.860 B.1(Uses Permitted by Special Permit in an Aquifer Protection Zone), Section 7.660 (Change of final grade greater than 500 sq. ft.), and Section 10 (Site Plan Approval) and all other pertinent sections of the Hanover Zoning Bylaw subject to compliance with the conditions contained herein. Specifically, the Planning Board finds that:

A) The proposed uses are appropriate to the specific site and they will not create a nuisance or not cause a derogation of the intent of this Bylaw by virtue of noise, odor, smoke, vibration, traffic generated or unsightliness.

B) The intent and specific criteria of the Hanover Zoning Bylaw Section 10 are met by the proposed project. The construction conforms to all provisions of this Zoning Bylaw and does not cause any extension or intensification of existing non-conformances or the creation of any new non-conformances. The Board finds the permitted construction shall not be substantially more detrimental to the neighborhood.

C) Any alteration, reconstruction, extension or structural changes proposed herein to the existing structures or uses on the site will not be substantially more detrimental to the Town's water resources (as protected by the Water Resource Protection District and Aquifer Protection Zone) than the existing structures or uses. The proposed alteration, construction, extension or structural changes will not violate any of the provisions of this Bylaw.

D) With respect to the proposed grading of the property, the final grade or elevations will not adversely impact nor interfere with the safety and privacy of adjoining properties or ways nor cause an immediate or potential devaluation of property values of adjoining properties and/or of the general area.

DECISION

By unanimous vote, the Planning Board hereby approves the subject application for Site Plan Approval and Special Permits in accordance with the provisions of the Hanover Zoning By-law Section Sec. 10, (Site Plan Approval), Section 6.130.A (Uses Permitted by Special Permit from the Planning Board) and Section 6.860 B.1(Uses Permitted by Special Permit in an Aquifer Protection Zone), Section 7.660 (Change of final grade greater than 500 sq. ft.) with authorization for the subject construction in accordance with the above referenced and approved plans, subject to the below listed Special and General Conditions.

SPECIAL CONDITIONS

1. The Planning Board issues a two (2) year temporary allowance of the existing nonconforming residential dwelling located on the property from the date of the Planning Board's filed decision with the Town Clerk. After such time or prior to the applicant shall be required to raze the existing dwelling identified as 1070 Washington Street, a three unit residential structure and reconstruct a new building. Preexisting non-conforming setbacks of 1070 Washington Street shall be grandfathers for further building development. Said land uses within all new builds shall be in accordance with current zoning standards at the time of application acceptance. All further proposed development at 1070 Washington Street shall require Planning Board Site Plan Approval and Special Permits if necessary.
2. All proposed tenants of the newly constructed building shall be in compliance with the underlying Business Zoning District and Aquifer Protection District Section 6.800 of the Hanover Zoning Bylaws.
3. There shall be no overnight parking of vehicles, equipment and or trailers in the rear of the proposed building as identified on the approved site plan. All vehicles shall be parked indoors overnight.
4. There shall be no manufacturing or production of goods to be performed outdoors in the rear of the newly proposed building as identified on the approved site plan.
5. The applicant will be required to plant trees 12' on center but slightly varied to assist with the buffer including evergreens and ivy or cover ground for vegetation barriers.
6. The Planning Board waives the standard parking space dimension specified by the Zoning Bylaw Sections 9.110.D and E, to permit the smaller dimensions of 9' by 18'.
7. The applicant shall obtain from the Hanover Conservation Commission an Order of Conditions permitting the work within jurisdiction under the Massachusetts Wetland Protection Act Regulations, as well as the Town of Hanover Wetlands Protection By-law and Regulations, as depicted on the drawings.
8. The applicant and owner and all future owners, operators, tenants and/or lessees shall comply with the Stormwater Management Operations and Maintenance Plan submitted to the Conservation Commission in accordance with the requisite Notice of Intent. Compliance with said plan shall become a condition of this approval and said plan shall be recorded at the Registry of Deeds together with this decision. Evidence of such recordings shall be submitted to the Planning Board and to the Building Inspector prior to the issuance of an Occupancy Permit.
9. If the site is subject to the EPA's NPDES Construction General Permit, the applicant shall provide the Town a copy of the NOI filed for this permit coverage with EPA, together with a copy of the required Stormwater Pollution Prevention Plan. This information shall be provided at the time of the Preconstruction Meeting with the Town.

10. The proposed development will be constructed within the Town's fragile and irreplaceable Aquifer Protection District and adjacent to the Town's Well Protection Zone. The applicant shall renew and maintain compliance with the Board of Public Works "Certificate of Water Quality Compliance" (CWQC) issued for the subject development.
11. In order for the Department of Public Works to monitor the applicant's operation of the stormwater system, the applicant shall furnish to the DPW copies of all stormwater operation and maintenance records on a biannual basis. Additionally, the applicant agrees to allow representative from the DPW to inspect the property on an annual basis to ensure compliance with the water quality certificate.
12. Prior to the issuance of an occupancy permit, the applicant shall be required to file a spill control plan with the Department of Public Works addressing the methods to be used to contain and control any spills on the site. This plan shall be reviewed each year to maintain compliance with DPW requirements.
13. During construction, each drainage structure that will be retained shall be dewatered, cleaned and inspected to note any pipe connections that could be a source of a non-stormwater discharge. If any such pipes are noted they shall be brought to the site engineer's attention and steps shall be taken to terminate any non-stormwater discharge. Records of such inspections along with photo documentation and records of corrective action should be provided to the Planning Department prior to the issuance of occupancy permits.
14. Catch basins shall contain respective controls to treat for oil and hazardous materials that could potentially run-off into the basins, and all basins and manholes shall be inspected and cleaned on a regular basis with records of such actions provided to the DPW to ensure that the basins are operating as designed.
15. Prior to installing the infiltration basin, the applicant shall provide verification to the Planning Board that the soils and groundwater conditions at the proposed basin are suitable to allow for infiltration. If these conditions are not suitable the applicant shall submit an alternate design that will ensure proper drainage.
16. In accordance with the Hanover Zoning Bylaw, Section 10.110.T, and to ensure that the municipal water supply system can fulfill the additional water demands of the development, no municipal water shall be used within the development for the irrigation and maintenance of landscaping. All landscape features shall be maintained with private wells or captured and treated stormwater in order to prevent unnecessary use and/or waste of a limited Town water supply. No irrigation systems shall be installed without prior written approval of the Department of Public Works. This condition shall not apply to private irrigation wells installed within the project.

17. The proposed development will be constructed within the Town's Aquifer Protection District and adjacent to the Town's Well Protection Zone. For this reason, no nitrogen-containing fertilizers, pesticides or chemicals shall be used during planting and maintenance of the required landscaping or lawn areas. Additionally, there shall be no use of pesticides or herbicides within the project containing Inorganic Compounds (IOC) as listed in Massachusetts Drinking Water Regulation (310 CMR 22.06), or Synthetic Organic Compounds (SOC) or Volatile Organic Compounds (VOCs) as listed in the Massachusetts Drinking Water Regulation (310 CMR 22.07).
18. The use of sodium chloride as a deicer is prohibited within the development, unless previously approved in writing by the Superintendent of Public Works. Instead, alternatives such as magnesium chloride and calcium chloride may be utilized for this purpose.
19. Any and all uses within the development shall comply with the Safe Drinking Water Act (SDWA), including the use of oil and hazardous materials. No solvents, hazardous cleaners or oil and/or hazardous materials shall be disposed of or allowed to enter into the wastewater or stormwater systems.
20. As the proposed redevelopment requires the applicant to excavate and install utilities within the existing Right-of-Way of Washington Street (Route 53), the applicant shall be required to pay the cost of any and all damages caused to the base, paved surface, or shoulder of Washington Street (Route 53) and repair the roadway to the satisfaction of the Department of Public Works and Mass DOT requirements. The applicant shall perform proper repairs including but not limited to cold plane and overlays at the effected or damaged areas, as required by the Department of Public Works. No occupancy permit shall be issued for this development until such time as the DPW has certified all required work, or that sufficient financial security is in place (funds held in escrow) to ensure proper completion of such work.
21. The applicant shall arrange for weekly sweeping as needed of affected area of State Highway (Washington Street / Route 53) during the period of construction truck traffic.
22. At the Pre-Construction meeting the applicant shall provide the Town Planner a copy of the proposed construction schedule indicating projected bi-weekly progress on this project. The applicant shall also provide at the meeting a complete 24-hour contact list for this project (including applicant, engineer, general contractor, major subcontractors, wetlands specialists, and any other representatives relative to this project).
23. No Building Permits shall be issued within the project until the Town Planner certifies that the completion of ways and drives, and the installation of water supply and municipal services are adequate to ensure access and public safety to the proposed construction site in the event of an emergency, by signing the Building Permit or by written certification to the Building Commissioner.

24. The proposed dumpster enclosure shall be an opaque wood stockade fence (or similar enclosure approved by the Town Planner) at least six (6) feet high, and of sufficient height in order to shield any dumpster placed inside from public view. No fences constructed as part of this development (including those of dumpster enclosures) shall be chain-link or wire-mesh. All such fences shall be decorative solid stockade or similar design. In addition the applicant will plant trees surrounding the dumpster.
25. If the applicant requires any extension to the time for completion, written request shall be provided to the Planning Board for review and approval of the extension.
26. The subject project is a sizable development and therefore will require regular inspection by the Planning Board's Consultant Engineer as well as the Department of Public Works (DPW) Inspector. Such inspections are necessary to ensure that the proposed project is constructed in accordance with the approved plans, to summarize and estimate the cost of remaining work, and to immediately address any issues which may arise during the construction of the project. The cost of such review and inspections shall be borne by the applicant. To cover the cost of these services the applicant shall replenish and maintain the Consultant Review Fee of $4,000 (utilized for peer engineering review) required by the Planning Board during the construction process. Such funds shall be held by the Planning Board in an escrow account. Whenever notified that the funds in said escrow account have depleted to less than $2,000, the applicant shall deposit sufficient funds to return the account to the $4,000 balance. The balance of said consultant review account shall be replenished to $4,000 prior to the required Pre-Construction Meeting. Upon completion of the project, any remaining funds shall be returned to the applicant. Such fund will provide for regular inspections of the construction progress by the Planning Board Consultant and DPW Inspector on an as-needed basis.
27. All construction activities, including the maintenance, startup, and operation of any construction vehicles or trucks on site, shall be limited to between 7:00 AM and 6:00 PM on weekdays and 8:00 AM and 5:00 PM on Saturdays. Any exception to these limitations shall be through written and specific approval of the Building Inspector and Police Department.
28. Prior to the end of the 20-day appeal period and the signing of this decision by the Planning Board the applicant shall provide one copy of the revised and approved plan set to the Planning Department in PDF format.

GENERAL CONDITIONS

1. **ENDORSEMENT OF DECISION:** Within thirty (30) days of the expiration of the twenty (20) day appeal period, and after having obtained the signature of the Town Clerk indicating that there has been no notice of appeal, the applicant shall present an original of this decision to the Planning Board for endorsement by the Chairperson of the Board.

2. **REQUIRED CERTIFICATION:** Prior to, or at the time of, submittal of the decision for endorsement, the applicant shall submit to the Planning Board a certification indicating, in effect, the following:

> "I (We), Michael J. McSharry as representatives of/for 1070 Washington Street, Michael McSharry, 6 Leah Drive, Rockland, MA 02061 on this date, June 14, 2017 do hereby certify that I (We) have completely read and do fully understand all Special and General Conditions of Planning Board Decision, TPL-16-19, dated June 7, 2017, relative to the proposed and permitted alteration for 1070 Washington Street (Assessors Map: 30, Lot: 094), Hanover, MA 02339. In particular, I (We) have completely read and fully understand the Procedure for Final Site Plan Completion, Town Planner/Planning Board Sign-Off, and Issuance of Occupancy Permit as described on the final pages of the Decision. Furthermore, it is my (our) intention to comply fully, to the best of my (our) ability, with all aspects of the approved Site Plan and with all Special and General Conditions of the Decision.
>
> Signature(s)

3. **RECORDING AT REGISTRY OF DEEDS:** Within six (6) months of the expiration of the twenty (20) day appeal period, the applicant shall record the endorsed Decision at the Plymouth County Registry of Deeds. Evidence of such recording shall be submitted to the Planning Board and to the Building Commissioner prior to the initiation of any construction activities.

4. **NO DEVIATION FROM APPROVED PLAN:** There shall be no deviation from the approved Site Plan and Conditions of this Decision without prior written approval of the Planning Board. In the event that the applicant anticipates that some deviation is either necessary or desirable, he (she) shall notify the Planning Board in writing requesting modification of the Plan or the Conditions. If the Planning Board determines that the requested modification is minor in nature, the Board may grant such request. If the Board determines that the modification is not minor in nature, no such request may be granted until after a subsequent Public Hearing conducted for the purpose of fully discussing such

modification. In any event, no such modification shall be undertaken until such time as the Board has approved the request in writing. Any modification or deviation shall be fully processed in accordance with this General Condition prior to the applicant initiating a request for Final or Conditional Site Plan Sign-Off. In the event that the applicant intends to seek a Conditional Site Plan Sign-Off, any paving or landscaping relief shall be completely processed in accordance with this General Condition prior to the applicant initiating a request for Conditional Site Plan Sign-Off.

5. ZONING BY-LAW COMPLIANCE: No aspect of this Site Plan Approval/Special Permit decision or of any Condition of Approval shall be construed in such a manner so as to alleviate an owner, applicant, assign, or successor from full compliance with all pertinent provisions and requirements of the Zoning By-Law for the Town. Unless otherwise called for in this decision, requirements shall be as specified under the Hanover Zoning Bylaw.

6. CONDITIONS FOR DEVELOPMENT: During the course of all development activities and throughout the period when uses and activities authorized by this Site Plan/Special Permit decision are conducted, the applicant, owner, agents, assigns and successors shall comply with all provisions of Section 6.420 of the Zoning By-Law for the Town relative to odor, dust, smoke, noise, heat, vibration, etc.

7. PRE-CONSTRUCTION MEETING: At least four weeks prior to initiating any construction activities, the applicant(s) shall notify the Town Planner and Planning Board by certified mail of their intentions. An on-site pre-construction meeting shall be conducted with the applicant's engineer, the on-site construction supervisor and representatives of the Planning Board, Board of Health, Building Inspector, Conservation Commission, Department of Public Works and Fire Department.

8. LANDSCAPING GENERAL: Prior to the issuance of a Certificate of Occupancy for the subject expansion, all parking areas and landscaping shown on the Plan referenced above shall be completed.

9. LANDSCAPE MAINTENANCE: In accordance with Section 8.320 of the Zoning By-Law, it shall be the responsibility of the owner(s) of the site to ensure that all vegetation and landscaping is maintained in a healthy condition and that any dead or dying materials be replaced at the earliest appropriate season. Any violation of this General Condition shall be considered a violation of this Site Plan Approval and of the Zoning By-Law for the Town and may be treated accordingly.

10. CURBING REQUIREMENTS: Whenever the approved site plan holding the most recent revision date of May 4, 2017 indicates a requirement for granite curbing, pre-cast concrete curbing, or sloped granite edging, all curb joints shall be grouted and sealed with a substance and in a manner compatible with the curbing material.

11. REVIEW BY OTHERS: The applicant shall secure all requisite permits prior to commencing any work under this Site Plan. We specifically call your attention to the possibility of need for permits from the Board of Health, the Board of Public Works, the Board of Selectmen and the Conservation Commission. Additionally, regulatory agencies of the Commonwealth may have jurisdiction over this project.

12. PLAN MODIFICATION BY OTHERS: Should a permit from any other entity include provisions which require a revision of the Plan, such revision shall be submitted to and approved by the Planning Board prior to the start of any construction activities in accordance with General Condition 4, above.

13. OFF-SITE WORK: All work done off-site shall be to the satisfaction of the appropriate owner or public body having jurisdiction. In the case of Town roads, public ways, Town lands and Town easements, the work shall conform to the requirements of the Hanover Board of Public Works and to the satisfaction of the Planning Board. In the case of State roads, (Route 3, Route 53 and Route 139), the work shall conform to the requirements of the Massachusetts Highway Department.

14. SITE CLEARING: No trees larger than 3" caliper may be removed without the prior and specific approval of the Planning Board.

15. TIME LIMIT APPROVAL: If substantial use of the site under this permit or construction of this project does not begin within one year of the date of filing of this decision with the Town Clerk, then the granting of these Site Plan/Special Permits shall become null and void. The applicant shall notify the Planning Board by certified mail at least four weeks prior to commencing any work on the site. The Planning Board will thereupon schedule an on-site construction meeting. In attendance at said meeting shall be the applicant's engineer, construction supervisor and representatives of town agencies as specified in Section 10.300 of the Zoning By-Law. Furthermore, all work must be completed within two years of the on-site construction meeting. A new application and approval shall be necessary to proceed with such construction if no extension is granted by the Planning Board.

16. APPROVAL SCOPE: This Special Permit/Site Plan Approval, and the obligations of the applicant set forth in the conditions hereto, shall run with the land comprising the site and shall inure to and be binding upon the applicant, its successors and assigns (including lessees and tenants). This special permit/ site plan approval is issued specifically to the named applicant and shall not be transferred to any successor or assign prior to the completion of construction and occupancy of the project unless expressly approved by vote of the Planning Board.

17. SIGNS: All signage shall be erected in conformance with the Hanover Sign By-Law and all permits shall be secured before proceeding. No waivers have been granted in this Decision, and the Board will not support any future waivers with regard to signs.

18. SITE LIGHTING: All site lighting shall be designed and erected in a manner such that no illumination shall spill onto adjacent lots or public ways. We specifically call your attention to the observation that the typical fixtures provided by utility companies or those generically known as "floodlights" are unlikely to provide acceptable lighting. The fixtures generically known as "sharp-cut-off" or "shoebox" are, when correctly adjusted, more likely to accomplish the required lighting.

19. NO BUILDING PERMIT AND/OR OCCUPANCY PERMIT shall be issued for construction/occupancy until all debits to the Town have been satisfied.

20. SITE PLAN SIGN-OFF REQUIRED No Occupancy Permit shall be issued for the proposed development until the Town Planner certifies to the Building Inspector in writing that all site work indicated on the above referenced plans has been substantially completed in accordance with said plans, this decision, and all applicable Zoning Bylaws and Planning Board Rules and Regulations. At least 2 weeks prior to seeking an Occupancy Permit from the Building Inspector, the applicant shall submit a written request to the Town Planner to make such inspections as are necessary to verify said completion.

    a. In the event asphalt plants cease operations and trees or shrubs may not be successfully transplanted during the winter months, it is incumbent upon the Applicant to carefully schedule the work of the Site Plan to completion prior to the onset of cold weather. If for documentable reasons, beyond the Applicant's control (e.g. water use ban, bankruptcy of the contractor, etc.) the work of the Site Plan will not be completed prior to winter, the Town Planner will conduct a Conditional Final Inspection. The Town Planner and Planning Board may require a Performance Guarantee or evidence, in the form of executed and prepaid contacts, that the otherwise undone and undoable work will be completed, at the earliest possible date. If this procedure is deemed necessary and unavoidable, the Town Planner and Planning Board will recommend to the Building Inspector that any Temporary Certificate of Occupancy he may issue be limited to a minimal period of time (in no case should this exceed 200 days) and tied to the completion of the Site Plan.

    b. The Board reserves the right to treat as violations of the Zoning By-Law (Section 10) any uncompleted work which remains undone at the termination of the Temporary Certificate of Occupancy.

    c. The Applicant shall submit interim "as-built" plans to the Town of Hanover within 60 days of the installation of all stormwater structures to verify installation in accordance with the approved site plans. The submitted "as-built" plan shall be prepared and stamped by a Massachusetts Registered Land Surveyor or Professional Engineer.

In addition, the Applicant shall submit a letter prepared and stamped by a Massachusetts Registered Professional Engineer certifying that the stormwater system has been installed in compliance with the approved plans. For stormwater detention, infiltration, or water quality pre-treatment and treatment structures, the letter shall be documented with construction phase photographs showing the prepared subgrade prior to placement of system components, and each major structural feature of the system (for example, embankment construction, placement of fill materials that replace unsuitable material beneath the system, stone bedding and backfill for subsurface components, subsurface structural units such as storage chambers or treatment devices, flow control structures, and inspection/access structures).

d. At the completion of all permitted work and prior to the issuance of an occupancy permit, the Applicant shall submit to the Planning Office two paper copies and a PDF copy of an "as-built" plan to verify that all site improvements have been completed in accordance with the approved plans. The submitted "as-built" plan shall be prepared and stamped by a Massachusetts Registered Land Surveyor or Professional Engineer.

   In addition, the Applicant shall submit a letter prepared and stamped by a Massachusetts Registered Professional Engineer certifying that the site improvements have been installed in compliance with the approved plans.

21. All construction shall be in accordance with the approved drawings and reports referenced above.

22. All water services and installations shall be in accordance with the requirements of the Town of Hanover Department of Public Works.

23. The applicants shall appoint a qualified professional who will be responsible for, and oversee, all aspects of implementation and monitoring of the erosion/sedimentation control measures. The name of such individual shall be submitted to both the Planning Board and Conservation Commission. He/she shall also be responsible for coordinating and communicating with the Board and Commission regarding such matters.

24. All development and construction sequences and activities shall be in conformance with any Order of Conditions issued by the Conservation Commission for this project.

SITE PLAN/SPECIAL PERMIT APPROVAL **DATE: June 13, 2017**
1070 Washington Street
TPL-16-19

The Board affirms that all provisions of Sections 9 & 11, Chapter 40A of the General Laws and Section 10, of the Hanover Zoning By-Law were complied with as regards procedures.

NOW, THEREFORE, by vote of the Planning Board this Site Plan and Special Permit Approval is granted consistent with the requirements of said Section 10 and all other pertinent sections of the Hanover Zoning By-Law and upon the conditions contained herein.

This Site Plan and Special Permit Approval are not effective until the Planning Board receives evidence from the applicant of recording with the Plymouth County Registry of Deeds in accordance with M.G.L., Ch. 40A, S.11. (Copy of proof of recording must also be submitted by applicant to the Hanover Building Commissioner.)

HANOVER PLANNING BOARD

Chairperson
Jeff Puleo

I hereby certify that 20 days have elapsed from the date this decision was filed with this office and no notice of appeal was received during that period.

A TRUE COPY ATTEST

Margaret M. Pallotta (ASST)
Catherine Harder-Bernier, Town Clerk

Date: July 13, 2017

cc: Hanover Town Clerk
Hanover Building Commissioner
Hanover Board of Health
Hanover Board of Appeals
Hanover Fire Dept.
Hanover Police Dept.
Hanover Board of Public Works
Hanover Conservation Commission
Hanover Board of Selectmen

EXHIBIT 2

Major Modification SPECIAL PERMIT/SPR APPROVAL
1070 Washington Street
TPL #22-13

DATE: October 18, 2022

TOWN OF HANOVER
2022 OCT 20 PM 1:58
TOWN CLERK

*** Electronic Recording ***
Doc#: 00090832
Bk: 57410 Pg: 179 Page: 1 of 9
Recorded: 11/10/2022 11:35 AM
ATTEST: John R. Buckley, Jr. Register
Plymouth County Registry of Deeds

PLANNING BOARD
TOWN OF HANOVER, MASSACHUSETTS

MAJOR MODIFICATION OF SPECIAL PERMIT/SITE PLAN REVIEW

LOCUS:	1070 Washington Street shown as Assessors Map 30, Plot 94
ZONING:	Business District Water Resource Protection Overlay District.
PROPERTY OWNER(S):	1070 Washington Street LLC C/o Stephen Callahan 80 First Street Bridgewater, MA 02334
APPLICANT(S):	Same as Property Owner
ENGINEER & SURVEYOR	Not Applicable

DRAWINGS & REPORTS: *(ALL INCORPORATED HEREIN BY REFERENCE)* - Not Applicable
See prior Decision PB File #16-19 – Recorded at Plymouth County Registry of Deeds Book 57307 and Page 152 (10/7/22)

On October 17, 2022: VOTE ON MAJOR MODIFICATION SPECIAL PERMIT/SITE PLAN REVIEW: Giuseppe Fornaro **MOTION** to vote approval pursuant to condition #1 of the original 2017 Special Permit/Site Plan Review (PB File #16-19) to allow a one year extension until **October 17, 2023** for the existing structure to remain standing conditional to an interim report before the Planning Board within 6 months on the progress of marketing efforts for the existing structure, seconded Bernie Campbell

VOTE: (Y) MaryAnn Brugnoli (A) Kenneth Blanchard (Y) Meaghan Neville-Dunne (Y) Giuseppe Fornaro (Y) Bernie Campbell (A) Anthony Cavallaro (Y) David Traggorth

(A) = Absent or not present during the entire hearing process and therefore not eligible to vote.

Major Modification SPECIAL PERMIT/SPR APPROVAL
1070 Washington Street
TPL #22-13

DATE: October 18, 2022

MAJOR MODIFICATION SPECIAL PERMIT AND SITE PLAN APPROVAL APPLICATION

Notice is hereby given in accordance with Massachusetts General Laws (MGL), Chapter 40A Section 9 and 11 (the Zoning Act) and the Hanover Zoning Bylaws Sections 6, 8, 9, 10 and 11 in their entirety; that the Town of Hanover Planning Board will hold a public hearing on Monday, September 26, 2022 at 7:00 p.m. at Hanover Town Hall and also via Zoom video call for the purpose of hearing the application of 1070 Washington Street, LLC, 80 First Street, Bridgewater, MA 02324. The applicant is requesting a major modification of an approved 2017 Special Permit and Site Plan Review (PB File #16-19) to modify condition #1 for existing structure on the property to remain and not be razed as required and be allowed two (2) additional years for marketing to convert to the residential structure to a conforming use in a Business zone.

The site is located at: 1070 Washington Street, Hanover and is further identified as Map 30 Lot 94 consisting of 1.43 acres of Lot area located in the Business District and Water Resource Protection Overlay District.

The Public Hearing notice was advertised in the Hanover Mariner on September 7 & September 14, 2022 with notice mailed to abutters as well. The initial public hearing on September 26, 2022 was continued, at the request of the applicant, until October 17, 2022 when the Planning Board voted.

FINDINGS

After thorough analysis and deliberation, the Planning Board acting as the Special Permit Granting Authority (SPGA), under the applicable ZBL Sections and the original 2017 Special Permit/Site Plan Decision (PB# 16-19) found the applicant's request to be a major modification. The original decision (PB#16) under condition #1 required the existing dwelling to be razed within two (2) years of the approval. Under the Major Modification application submitted 8/29/2, the applicants were requesting that the structure be allowed to remain standing for an additional two (2) years and continue to be occupied with three residential units for this period of time while the property owner actively marketed the property for a business use.

The Planning Board took under consideration, the amount of time passed since 2017 to 2022, along with the delays COVID had made relative to business properties, and that the applicants had not recorded the original decision (PB#16-19) at the Plymouth County Registry of Deeds until October 7, 2022 and no As-Built Approval had ever been requested, into their deliberations. Taking all of these factors into consideration The SPGA found a one (1) year extension until **October 17, 2023** should be sufficient to find a business tenant with active marketing. In addition, if a tenant is found the Hanover Zoning Bylaws permits only one residential structure above a business and that would be by Special Permit which the applicant would also need to seek that approval to move forward with any proposal to save the existing

structure from being demolished. The SPGA also requested the applicant to return within six (6) months to the SPGA with a status report as to the active marketing in April of 2023.

DECISION

Now, therefore, by unanimous vote, the Planning Board hereby approves the subject application for a Major Modification of the Special Permit/Site Plan Review Decision (PB# 16-19) in accordance with the provisions of the Hanover Zoning By-law with authorization for the subject use in accordance with the above referenced and approved plans, subject to the below listed General and Special Conditions.

GENERAL CONDITIONS FOR SPECIAL PERMIT AND/OR SITE PLAN REVIEW

1. **ENDORSEMENT OF DECISION AND SITE PLAN:** Within thirty (30) days of the expiration of the twenty (20) day appeal period, and after having obtained the signature of the Town Clerk indicating that there has been no notice of appeal, the Planning Department shall present an original of this decision and Site Plan to the Planning Board for endorsement by the Chairperson of the Board.

2. **REQUIRED CERTIFICATION:** Prior to, or at the time of, submittal of the decision for endorsement, the applicant shall submit to the Planning Board a certification indicating, in effect, the following:

> "I Stephen R Collins as representatives of/for 1070 Washington Street LLC on this date, 10/27/22 do hereby certify that I (We) have completely read and do fully understand all General AND Special Conditions of Planning Board Decision, File #22-13, dated October 17, 2022, relative to the Major Modification Request at 1070 Washington Street. In particular, I (We) have completely read and do fully understand the Procedure for Final Special Permit/Site Plan Completion, Town Planner/ Planning Board Sign-Off, and Issuance of Occupancy Permit as described on the final pages of the Decision. Furthermore, it is my (our) intention to comply fully, with the best of my (our) ability, with all aspects of the approved Special Permit/Site Plan and with all Special and General Conditions of the Decision.
>
> Signature(s)

3. RECORDING AT REGISTRY OF DEEDS: Within sixty (60) days of the expiration of the twenty (20) day appeal period, the applicant shall record the endorsed Decision at the Registry of Deeds. Evidence of such recording shall be submitted to the Planning Board and to the Building Commissioner prior to the initiation of any construction activities.

4. NO DEVIATION FROM APPROVED PLAN: there shall be no deviation from the approved Special Permit/Site Plan and Conditions of this Decision without prior written approval of the Planning Board. In the event that the applicant anticipates that some deviation is either necessary or desirable, he (she) shall notify the Planning Board in writing requesting modification of the Plan or the Conditions. If the Planning Board determines that the requested modification is minor in nature, the Board may grant such request. If the Board determines that the modification is not minor in nature, no such request may be granted until after a subsequent Public Hearing conducted for the purpose of fully discussing such modification. In any event, no such modification shall be undertaken until such time as the Board has approved the request in writing. Any modification or deviation shall be fully processed in accordance with this General Condition prior to the applicant initiating a request for Final or Conditional Special Permit/Site Plan Sign-Off. In the event that the applicant intends to seek a Conditional Special Permit/Site Plan Sign-Off, any paving or landscaping relief shall be completely processed in accordance with this General Condition prior to the applicant initiating a request for Conditional Special Permit/ Site Plan Sign-Off. The applicant may be required to submit a cash guarantee for the remaining outstanding work which will be returned once work is completed and As-Built Approval is voted by the Planning Board.

5. ZONING BY-LAW COMPLIANCE: No aspect of this Special Permit/Site Plan Approval decision or of any Condition of Approval shall be construed in such a manner so as to alleviate an owner, applicant, assign, or successor from full compliance with all pertinent provisions and requirements of the Zoning By-Law for the Town. Unless otherwise called for in this decision, requirements shall be as specified under the Hanover Zoning Bylaw.

6. CONDITIONS FOR DEVELOPMENT: During the course of all development and construction activities and throughout the period when uses and activities authorized by this Special Permit/Site Plan Approval decision are conducted, the applicant, owner, agents, assigns and successors shall comply with all provisions of Section 6.420 of the Zoning By-Law for the Town relative to odor, dust, smoke, noise, heat, vibration, etc.

7. PRE-CONSTRUCTION MEETING: (Not Applicable) At least four weeks or sooner, but prior to initiating any construction activities, the applicant(s) shall notify the Town Planner and Planning Board by electronic mail of their intentions to start development and/or construction. A pre-construction meeting is mandatory and shall be conducted with the applicant's engineer, on-site construction supervisor or site contractor and if deemed necessary by the Town Planner ,representatives from the Board of Health, Building Commissioner, Conservation Commission, Department of Public Works and Fire Department.

8. REVIEW BY OTHERS: The applicant shall secure all requisite permits prior to commencing any work under this Special Permit/Site Plan Approval. We specifically call your attention to the possibility of need for permits from the Board of Health, the Board of Public Works, the Board of Selectmen and the Conservation Commission. Additionally, regulatory agencies of the Commonwealth may have jurisdiction over this project.

9. PLAN MODIFICATION BY OTHERS: Should a permit from any other entity include provisions which require a revision of the Plan, such revision shall be submitted to the Town Planner and if necessary approved by the Planning Board prior to the start of any construction activities in accordance with General Condition #4, above.

10. OFF-SITE WORK: All work done off-site shall be to the satisfaction of the appropriate owner or public body having jurisdiction. In the case of Town roads, public ways, Town lands and Town easements, the work shall conform to the requirements of the Hanover Board of Public Works and to the satisfaction of the Planning Board. In the case of State roads, (Route 3, Route 53 and Route 139), the work shall conform to the requirements of the Massachusetts Highway Department.

11. SITE CLEARING: (Not Applicable) Approved Site Plans shall have a line of work established on the plan prior to endorsement. No trees larger than 3" caliper may be removed outside of the line of work without the prior and specific approval of the Planning Board.

12. TIME LIMIT APPROVAL: If substantial use of the site under this permit or construction of this project does not begin within **one (1) year** of the date of filing of this decision with the Town Clerk, then the granting of this Special Permit/Site Plan Approval shall become null and void (See ZBL Section 13.200). Furthermore, all work must be completed within **two (2) years** of the on-site construction meeting. A new application and approval shall be necessary to proceed with such construction if no extension is granted by the Planning Board.

13. APPROVAL SCOPE: This Special Permit/Site Plan Approval, and the obligations of the applicant set forth in the conditions hereto, shall run with the land comprising the site and shall inure to and be binding upon the applicant, its successors and assigns (including lessees and tenants).

14. LANDSCAPING GENERAL: Prior to the issuance of a Certificate of Occupancy for the subject construction, all parking areas and landscaping shown on the Plan referenced above shall be completed.

15. LANDSCAPE MAINTENANCE: In accordance with Section 8.320 of the Zoning By-Law, it shall be the responsibility of the owner(s) of the site to ensure that all vegetation and landscaping is maintained in a healthy condition and that any dead or dying materials be replaced at the earliest appropriate season. Any violation of this General Condition shall be considered a violation of this Special Permit/Site Plan Approval and of the Zoning By-Law for the Town and may be treated accordingly.

16. CURBING REQUIREMENTS: Whenever an approved Site Plan indicates a requirement for granite curbing, pre-cast concrete curbing, or sloped granite edging, all curb joints shall be grouted and sealed with a substance and in a manner compatible with the curbing material. A street opening permit shall be required from the Department of Public Works prior to initiating any work within the right of way.

17. SIGNS: All signage shall be erected in conformance with the Hanover Sign By-Law and all permits shall be secured before proceeding. No waivers have been granted in this Decision, and the Board will not support any future waivers with regard to signs.

18. SITE LIGHTING: (See Condition # N/A) all site lighting shall be designed and erected in a manner such that no illumination shall spill onto adjacent lots or public ways. We specifically call your attention to the observation that the typical fixtures provided by utility companies or those generically known as "floodlights" are unlikely to provide acceptable lighting. The fixtures generically known as "sharp-cut-off" or "shoebox" are, when correctly adjusted, more likely to accomplish the required lighting.

19. NO BUILDING PERMIT AND/OR OCCUPANCY PERMIT shall be issued for construction/occupancy until all debts to the Town have been satisfied.

20. SPECIAL PERMIT/SITE PLAN SIGN-OFF REQUIRED No Occupancy Permit (temporary or permanent) shall be issued for the proposed project until the Town Planner certifies to the Building Commissioner in writing that all site work indicated on the above referenced plans

has been substantially completed in accordance with said plans, this decision, and As-Built Approval has been voted by the Planning Board. At least two (2) weeks prior to seeking an Occupancy Permit/Final Inspection from the Building Commissioner, the applicant shall submit a written request to the Town Planner to make such inspections, based on an As-Built Plan provided by the Applicant showing any minor field changes. Upon recommendation from the Town Planner, the Planning Board at a public meeting will vote As-Built approval and issue an As-Built Certificate. If the request is for a temporary Certificate of Occupancy, the Planning Board shall require a cash performance guarantee be held until all work is completed and an As-Built Certificate is issued and then said funds shall be released.

21. In as much as the asphalt plants cease operations and trees or shrubs may not be successfully transplanted during the winter months, it is incumbent upon the Applicant to carefully schedule the work of the Special Permit/Site Plan to completion prior to the onset of cold weather. If for documentable reasons, beyond the Applicant's control (e.g. water use ban, bankruptcy of the contractor, etc.) the work of the Special Permit/Site Plan will not be completed prior to winter, the Town Planner will conduct a Conditional Final Inspection. The Town Planner and Planning Board may require a Performance Guarantee or evidence, in the form of executed and prepaid contacts, that the otherwise undone and undoable work will be completed, at the earliest possible date. If this procedure is deemed necessary and unavoidable, the Town Planner and Planning Board will recommend to the Building Commissioner that any Temporary Certificate of Occupancy he may issue be limited to a minimal period of time (in no case should this exceed 200 days) and tied to the completion of the Special Permit/Site Plan.

22. The Board reserves the right to treat as violations of the Zoning By-Law (Section 10) any incomplete work which remains undone at the termination of the Final Inspection by the Building Department.

23. All construction shall be in accordance with the approved site plans, building elevations/ drawings and reports referenced above in this decision.

24. All water services and installations shall be in accordance with the requirements of the Town of Hanover Department of Public Works.

Major Modification SPECIAL PERMIT/SPR APPROVAL **DATE: October 18, 2022**
1070 Washington Street
TPL #22-13

SPECIAL CONDITIONS

25. The SPGA grants a major modification of the original Special Permit/Site Plan Review Approval (PB #16-19) of condition #1 to allow an additional one (1) year extension until **October 17, 2023** to allow the existing residential structure to remain as is and preventing the requirement of razing the structure per the original decision condition #1 recorded at the Plymouth County Registry of Deeds as Book 57307 Page 152.

26. In accordance with condition #25, the applicant shall re-appear before the SPGA within six (6) months of this approval with a status report as to the marketing of the structure for a business use. The status report shall identify how the project was marketed, potential interest and if not leased those reasons provided by interested parties. Said status report shall be provided in writing before meeting at a regularly scheduled meeting of the SPGA/Planning Board within six months.

27. As a major modification relative to condition #1 of the original PB #16-19, all of the conditions of the original decision remain in force and applicable to the project site.

The Planning Board affirms that all provisions of Sections 9 & 11 of Chapter 40A of the Massachusetts General Laws and Sections of the Hanover Zoning Bylaws were complied with as regards to procedures.

NOW, THEREFORE, by vote of the Planning Board, this Special Permit/ Site Plan Approval is granted consistent with the requirements of said Sections 4.00, 6.00, 7.00, and 10.00 and all other pertinent sections of the Hanover Zoning Bylaw and upon the Special and General Conditions contained herein.

This Special Permit/Site Plan Approval shall not be effective until the Planning Board receives evidence from the applicant of recording with the Plymouth County Registry of Deeds in accordance with M.G.L., Ch. 40A, §11. Copy of proof of recording shall also be submitted by the applicant to the Planning Board (SPGA) and to the Hanover Building Inspector prior to the initiation of any construction activities.)

HANOVER PLANNING BOARD

Maryann Brugnoli

Maryann Brugnoli, Chair

Major Modification SPECIAL PERMIT/SPR APPROVAL
1070 Washington Street
TPL #22-13

DATE: October 18, 2022

I hereby certify that twenty (20) days have elapsed from the date that this decision was filed with this office and no notice of appeal was received during that period.

A TRUE COPY ATTEST

Mary O. Hollahan (asst)
Catherine Harder-Bernier
Town Clerk
Date: 11/9/2022

EXHIBIT 3

OVERTIME
REAL ESTATE

April 21, 2023

Steve Callahan
Joe Callahan
1070 Washington Street
Hanover, MA 02339

RE: 1070 Washington Street, Hanover MA 02339

Regarding the property at 1070 Washington Street in Hanover, Overtime Real Estate has been hired to market the property for "business/commercial use". Since taking on this listing, we have worked diligently to market this property in a number of different ways.

Current marketing measures include the following:

- Installed property signage directly on Rt. 53 for maximum exposure(both on pylon sign and step in company signage)
- Develop and distribute marketing brochure to prospective tenants
- Email blasts to active area broker
- Email blasts to active area tenants
- Canvassing/Cold calling for potential tenants
- Active listing on Loopnet(commercial end user listing service)
- Active listing on Costar(commercial broker listing service)
- Active promotion on Overtime Real Estate website
- Property information promoted via social networking websites

I have included a copy of the latest Listing Activity Report from the Loopnet website. This shows you the traction the listing is getting, both locally and nationally. On this site alone, it received over 13,000 total views, and over 700 detailed page views. The average time on the page was roughly 1 minute. As you can see from the details of the report, these inquiries range from local to national prospects, end users and brokers, and more.

We have had a number of inquiries and quality leads for the spaces available at 1070 Washington Street. These range from retail shops and boutiques, to medical prospects, to health and wellness users, to food and restaurant prospects, to salons and barbers, and Dog day care/groomers, among others. While we are happy with the number of inquiries, we have not been able to secure qualified tenants for the spaces. The reasons for this are varied.

- Time of year: The commercial real estate industry typically slows down tremendously from beginning of November through March. The holidays and the weather play a significant factor in this. We are already starting to see an uptick in the traction for this sector in the recent weeks.
- Parking: The parking allotment has been a factor for a few of the prospects for the spaces. With a high number of employees needed for some of the intended uses, coupled with a high volume of consumer/patient daily visits, some of these prospects did not feel the parking was adequate for their volume needs.
- Septic: The existing septic system, shared with the new building, has brought up some issues with some tenant prospects. Whether it be by-products of use(hair

(617) 797-2241
pat@overtimere.com
P.O. Box 2203 Duxbury, MA 02331
www.overtimere.com

OVERTIME
REAL ESTATE

dye, food waste, water usage, among others) or septic capacity restrictions(gallons per day, etc), some of these potential tenant leads were forced to seek alternative options that were prepared to accommodate their septic usage requirements.

- Aquifer Zone: The restrictions placed on the property due to it being located within an aquifer protected area, have created other roadblocks for some potential tenants. Even though some uses do not have any major impact on the aquifer or surrounding land per se, these restrictions in place inherently reduce the ability to appeal to a broader commercial audience for tenancy.

All these factors added together have made this a difficult property to lease up. However, we are hopeful the economic conditions continue to strengthen this spring, and it brings added tenant prospects to bolster the commercial market sector.

Sincerely,

Patrick Leahy
President & CEO
Overtime Real Estate
pat@overtimere.com
617-797-2241

Menu CoStar™ LoopNet™ Sign Out

< BACK

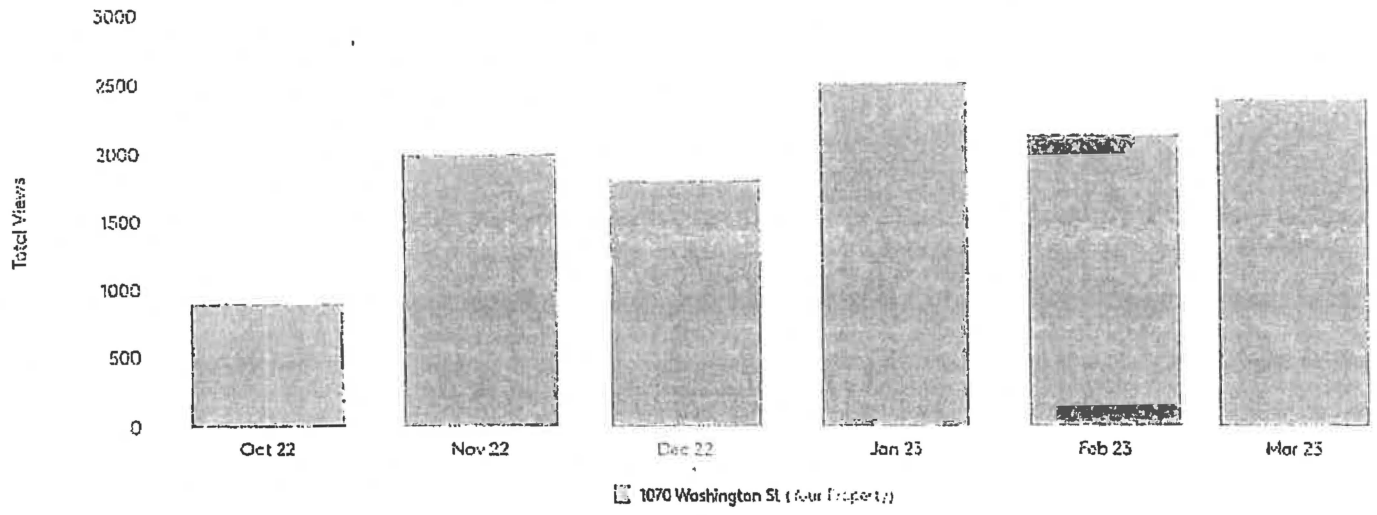
1070 Washington St | Hanover, MA

Retail For Lease | 800 SF - 1,600 SF | Rent Not Disclosed

In the last 30 days, 566 people have seen your property 1,984 times. Your listing is getting 12x more exposure than a typical basic Retail listing.

	188	75%
	Started advertising 10/15/2022	last updated on 3/31/2023
	Silver	
	since 10/10/2022	

Listing Activity Report | Total Views | CoStar and LoopNet | Select a Competitor | 1 Year



*Current month's data is in progress.

Activity Summary

1 Year

Summary of everyone that has seen your property.

13,005 Total Views	3,386 Unique Prospects	55s Average Time on Page
701 Detail Page Views	3.8 Frequency	7h 7m 14s Total Time on Page

Visitor Details

All Visitors

Search Impression Views

*Using publicly available [illegible] IP company information, [illegible] is able to identify about 10% of the visitors to your listing. The vast majority [illegible] is anonymous and [illegible] in the visitor details report.

Company	Location	Visitors	Views	Return Visitors	Total Time On Page	Most Recent View	First View	
Pegasystems Inc	Cambridge, MA	4	8	3	3m 7s	3/1/2023	10/31/2022	∨
Commonwealth of Massachusetts	Boston, MA	3	4	1	1m 41s	3/25/2023	3/21/2023	∨
Partners Healthcare System Inc	Boston, MA	3	4	1	1m 56s	4/17/2023	2/15/2023	∨
Brewster Ambulance Service	Jamaica Plain, MA	1	3	1	23s	11/2/2022	11/2/2022	∨
Hinckley Allen & Tringale	Boston, MA	2	3	1	52s	2/35/2023	10/23/2022	∨
Catered Affair	Boston, MA	2	2	-	44s	3/14/2023	2/21/2023	∨
Sisters of Notre Dame De Namur Congregational Mission Office	Ipswich, MA	1	2	1	36s	1/21/2023	1/21/2023	∨
South SHR YNG MNS Christian Associates	Quincy, MA	1	2	1	2m 16s	1/27/2023	1/4/2023	∨
Center For Physical Medicine	Herndon, VA	2	3	1	10m 58s	3/13/2023	1/20/2023	∨
Compass Inc	New York, NY	1	3	1	3m 55s	12/15/2022	12/14/2022	∨
Amazon.com, Inc.	Seattle, WA	1	2	1	3m 33s	10/23/2022	10/23/2022	∨
Brennan Interior Contractors Inc	Plymouth, MA	2	2	-	10m 32s	3/1/2023	2/8/2023	∨
Coldwell Banker Preferred Inc	Plymouth Meeting, PA	1	2	1	1m	3/24/2023	3/24/2023	∨
Enterprise Bank	Lowell, MA	1	2	1	7s	1/25/2023	1/25/2023	∨
Freightliner of Hartford	East Hartford, CT	1	2	1	39s	12/13/2022	12/13/2022	∨
Liberty Mutual Insurance	Trumbull, CT	2	2	-	36s	4/1/2023	4/1/2023	∨

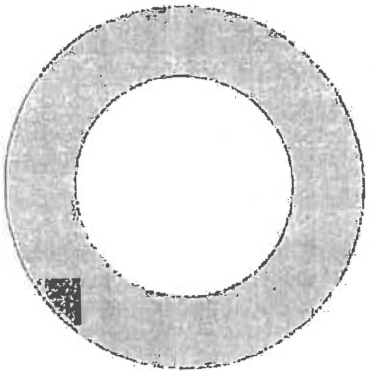
Mettler-Toledo International Inc	Columbus, OH	1	2	1	1m 32s	5/14/2023	3/14/2023
Paychex, Inc.	Rochester, NY	1	2	1	50s	1/17/2023	1/17/2023
The HF Group	North Manchester, IN	1	2	1	52s	11/10/2022	11/7/2022
The Walt Disney Company	Burbank, CA	1	2	1	10s	12/1/2022	12/1/2022
CGI Child-Genovese Insurance Agency	Hingham, MA	2	3	1	33s	11/18/2022	11/18/2022
Ellis Realty Advisors	Norwell, MA	2	8	1	3m 51s	3/28/2023	10/17/2022
Summit Realty Partners	Lexington, MA	1	6	1	4m 54s	11/2/2022	11/2/2022
CARR	Franklin, MA	1	4	1	2m 25s	2/28/2023	2/28/2023
CBRE	Boston, MA	1	4	1	2m 1s	12/14/2022	12/14/2022
Atlantic Properties	Plymouth, MA	2	3	1	1m 28s	2/9/2023	1/6/2023
Courtside Sports Bar & Grill	Fort Myers, FL	1	3	1	31s	10/24/2022	10/24/2022
Movementum Realty LLC	Hanover, MA	1	3	1	7m 1s	2/19/2023	1/17/2023
Unicorn Realty	Norwell, MA	1	3	1	1m 17s	10/24/2022	10/24/2022
Conway Commercial	Hanover, MA	2	2	-	-	4/4/2023	12/27/2022
Morgan Group - Berkshire Hathaway Commercial	Watertown, MA	1	2	1	59s	4/18/2023	4/18/2023
Sungard Availability Services Canada Ltd	Oakville, Canada	1	2	1	59s	11/29/2022	11/29/2022
TCI	Marion, MA	1	2	1	14s	1/4/2023	12/14/2022
US Coast Guard	Marina Del Rey, CA	2	2	-	40s	10/23/2022	10/19/2022

Traffic Sources

All Traffic

1 Year

New Visitors vs Returning

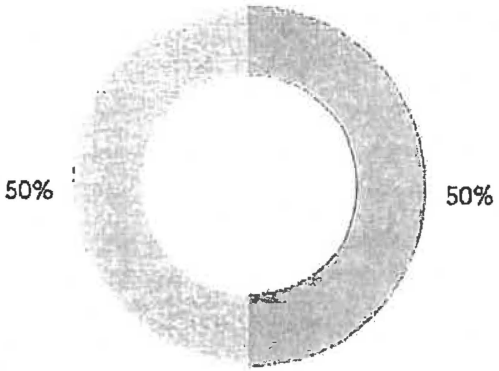


100%

459 New

0 Returning

In Market vs Out of Market



50%

50%

354 In Market

347 Out of Market

Traffic Sources

33%

25%

296 Organic

173 Paid

232 Direct, Referral, Ap

Visitor Map

1 Year

*Due to data privacy we do not have visibility for all user locations.

Listing History

This is a log of events and changes to your listing

Date Changed	Action
2/24/2023	The size for a space was changed
10/18/2022	Listing Exposure Level changed to Silver
10/15/2022	Attachment was added
10/15/2022	Photos were added (Primary Photo & other)
10/15/2022	Property description was changed
10/15/2022	New space was added
10/15/2022	Photo was added

1 - 7 of 7

1

Show 10 Records

EXHIBIT 4

DROHAN TOCCHIO & MORGAN, P.C.

ATTORNEYS AT LAW
175 DERBY STREET, SUITE 30
HINGHAM, MASSACHUSETTS 02043
Telephone: (781) 749-7200 ~ Facsimile: (781) 740-4335
www.dtm-law.com

ADAM J. BRODSKY
abrodsky@dtm-law.com

October 2, 2023

Via Email and First-Class Mail

MaryAnn Brugnoli, Chair
Town of Hanover Planning Board
550 Hanover Street
Hanover, MA 02339

RE: **1070 Washington Street, LLC**
1070 Washington Street, Hanover
Request for Modification of Approval of Special Permit and Site Plan
Case No. TPL—16-19

Dear Chair Brugnoli:

You will recall that we represent 1070 Washington Street, LLC ("1070 Washington") in connection with the above referenced matter. We request the opportunity to please meet with the Planning Board to discuss a further extension of time of the deadline to convert the use of the existing residential structure on the property and/or alternatives. 1070 Washington Street has seen additional interest by commercial tenants in the building but has yet to secure a commercial tenant.

Please let me know if you have any questions or concerns. Thank you.

Very truly yours,

Adam J. Brodsky
Drohan Tocchio & Morgan, P.C.

cc: Eve Tapper, Interim Town Planner (*via* email)

EXHIBIT 5

DROHAN TOCCHIO & MORGAN, P.C.

ATTORNEYS AT LAW
175 DERBY STREET, SUITE 30
HINGHAM, MASSACHUSETTS 02043
Telephone: (781) 749-7200 ~ Facsimile: (781) 740-4335
www.dtm-law.com

ADAM J. BRODSKY
abrodsky@dtm-law.com

February 22, 2017

Via Email and First Class Mail

Lauren C. Galvin, Esq.
Murphy Hesse Toomey & Lehane, LLP
300 Crown Colony Drive, Suite 410
Quincy, MA 02169

RE: 1070 Washington Street, Hanover

Dear Ms. Galvin:

You will recall that this office represents the potential purchaser of the real property located at 1070 Washington Street (the "Property") in Hanover, Massachusetts. We were provided with a copy of your letter to Peter Matchak, the Hanover Town Planner, dated February 13, 2017. In your letter, you opined that (i) the Town of Hanover Zoning Bylaw (the "Bylaw") does not prohibit the construction of a second building on a lot within the Business District, but (ii) there may be only one primary use permitted per locus. As a result, you concluded that once a new building is constructed at 1070 Washington Street, the use of the existing building will have to conform to the requirements in the Business District. In other words, the lawful pre-existing nonconforming residential use must be changed to an allowed use within the district.

We agree with your position on the first issue that the Bylaw does not prohibit the construction of a second building on the lot. However, we respectfully disagree with your position on the second issue. The Bylaw does not expressly prohibit multiple principal or primary uses on one locus.

First, your reliance on Ka-Hur Enterprises, Inc. v. Zoning Board of Appeals of Provincetown, 424 Mass. 404 (1997), and Gallagher v. Board of Appeals of Acton, 44 Mass.App.Ct. 906 (1997), is not supported by a reading of the cases. Neither case addressed the issue of multiple principal uses on one locus. In Ka-Hur, the issue for the Supreme Judicial Court was whether a property lost its protected status as a prior nonconforming use because the use had been abandoned or discontinued. The Court did not address whether multiple principal uses were permitted on the subject property in Provincetown. In Gallagher, the issue for the Appeals Court was whether a two-story addition to an existing house could be permitted as an accessory use under the Acton zoning bylaw. The answer was "No" because the addition, which

was approaching three times the size of the house, was not sufficiently subordinate. Again, the Appeals Court did not reach the issue of multiple principal uses on one locus.

There are, however, cases on point. In Petrucci v. Board of Appeals of Westwood, 45 Mass.App.Ct. 818 (1998), rev. denied 707 N.E. 2d 1079 (January 26, 1999), the Appeals Court reviewed a Land Court decision holding that the Plaintiff was entitled to a child care facility exemption to establish a child care facility in a barn located on a property with an existing home. The Zoning Board of Appeals had rejected the application for numerous reasons, one being that the proposed use would result in the establishment of two principal uses on one property. The trial judge concluded that the Board's reasoning was legally erroneous and affirmed the judgment in favor of the Plaintiff. The Appeals Court wrote that the judge "observed that nothing in the zoning by-law prohibited either child care facilities or the existence of more than one primary or principal use on a lot. He noted that the by-law even appeared to contemplate the possibility of multiple primary uses." Id. at 820-821.

In Ingoldsby v. Zoning Board of Appeals of Marshfield, 78 Mass.App.Ct. 1104 (2010) (Rule 1:28 order), the Plaintiff appealed the grant of a Special Permit for the operation of a children's summer camp which would result in two primary uses on the subject property. The Superior Court annulled the decision and the Appeals Court affirmed. The Appeals Court held that the board's decision to grant the Special Permit was legally untenable because it contradicted a by-law that contains no ambiguity concerning principal uses. The definition of "Use, Principal" under the Town of Marshfield Zoning Bylaw provides: "Only one principal use shall be allowed for each structure or lot except where permitted within a Mixed Use District." See Marshfield Bylaw art. II. The Court held that the approval of the Plaintiff's request to live year-round in their home while operating a children's summer camp on the same property violates the by-law. We enclose copies of these cases for your convenience.

In contrast, the Hanover Bylaw contains no provision prohibiting multiple principal uses on one locus.[1] There is no definition of "principal" or "primary use" unlike the Marshfield Bylaw. "Accessory Use" is defined in Section 2.100 of the Hanover Bylaw but also does not prohibit multiple principal uses. One must reasonably conclude that if the drafters of the Hanover Bylaw intended to prohibit multiple principal uses on one locus they would have explicitly stated as such.

[1] Section 5.010 provides that "any lawful building or structure or use of a building, structure or land, or part thereof, may be constructed, altered, enlarged, repaired or moved, occupied and used for any purpose which does not violate any section of this Bylaw or any of the provisions of the Bylaws of the Town of Hanover." (Emphasis added).

We respectfully request that you reconsider your position on the second issue and determine that multiple principal uses may be permitted on one locus in the Town of Hanover. Notwithstanding, the final resolution of this issue should not delay or affect the pending application before the Zoning Board of Appeals.

Thank you for consideration.

Very truly yours,

Adam J. Brodsky
Drohan Tocchio & Morgan, P.C.

enclosure
cc: Peter Matchak, Town Planner (via email)

45 Mass.App.Ct. 818
Appeals Court of Massachusetts,
Suffolk.

Joseph M. PETRUCCI
v.
BOARD OF APPEALS OF WESTWOOD.

No. 97–P–1057.
|
Argued May 27, 1998.
|
Decided Nov. 30, 1998.

Property owner challenged decision by Board of Appeals of Westwood denying his application for building permit to renovate and use barn on lot zoned for "single residence" as child care facility. The Land Court Department, Suffolk County, Leon J. Lombardi, J., ordered board to issue the requested building permit. Board appealed. The Appeals Court, Laurence, J., held that: (1) proposed use of barn as child care facility qualified for statutory child care facility exemption, and (2) evidence established that imposition of town's dimensional setback and height zoning requirements on proposed use of barn was unreasonable.

Affirmed.

West Headnotes (6)

[1] Zoning and Planning
⇐ Other particular cases
Zoning and Planning
⇐ Uses permitted or excluded

Proposed use of barn on lot in "single residence" zoning district as child care facility fell within statutory child care facility exemption providing that no zoning ordinance or bylaw shall prohibit use of land or structures for primary, accessory or incidental purpose of operating a child care facility. M.G.L.A. c. 40A, § 3.

2 Cases that cite this headnote

[2] Statutes
⇐ Similar or Related Statutes
Statutes
⇐ Plain, literal, or clear meaning; ambiguity

Although clear statutory language ordinarily obviates the need to resort to rules of interpretation, both related statutes and legislative history may be referenced by way of supplementary confirmation of the intent reflected in the words used.

4 Cases that cite this headnote

[3] Statutes
⇐ Subject or purpose

Statutory canon that use of different language in related statutes dealing with the same subject matter ordinarily indicates that different meanings were intended does not apply when the statutory language is so clear as to make extrinsic aids unnecessary, especially an aid whose application would be contrary to the Legislature's undoubted purpose.

2 Cases that cite this headnote

[4] Statutes
⇐ Relation to plain, literal, or clear meaning;ambiguity

Strictly literal reading of a statute should not be adopted if the result will be to thwart or hamper the accomplishment of the statute's obvious purpose, and if another construction which would avoid this undesirable result is possible.

Cases that cite this headnote

[5] Zoning and Planning
⇐ Architectural and Structural Designs
Zoning and Planning
⇐ Residential facilities and daycare

Evidence established that imposition of town's dimensional setback and height zoning requirements on property owner's proposed

use of barn as child care facility was unreasonable, where barn was rare building form that possessed historic and architectural merit deserving of protection, compliance with dimensional by-law was possible only by physically relocating barn on lot, cost of relocating barn would exceed cost of renovating it to serve as child care facility, town's concerns of safety, aesthetics, and privacy served by dimensional restrictions would be negatively affected by relocation of barn, and if barn was not moved and child care facility abandoned, all present zoning infirmities would continue to exist. M.G.L.A. c. 40A, § 3.

5 Cases that cite this headnote

[6] **Zoning and Planning**
⇐ Permits, certificates, and approvals

Land Court judge did not abuse his discretion or erroneously deprive abutting landowner's of their appellate rights by ordering Board of Appeals to issue property owner a building permit to renovate barn into child care facility, rather than remanding matter to board, where board failed to state that any such potential abutters existed or to suggest any additional issues that might be raised by such hypothetical abutters. M.G.L.A. c. 40A, §§ 3, 17.

9 Cases that cite this headnote

Attorneys and Law Firms

**48 *818 Thomas P. McCusker, Jr., Boston, for defendant.

Mark Bobrowski, Foxboro, for plaintiff.

Before BROWN, GREENBERG and LAURENCE, JJ.

Opinion

LAURENCE, Justice.

Joseph Petrucci and six family members reside in his home on a 53,000 square foot lot in Westwood's "single residence" zoning district. In 1995, he proposed to establish a child care facility in a barn located on his property. After interior renovations to the barn that would leave its exterior and footprint unchanged, the facility would serve forty-seven children daily and be staffed by six adults. The Westwood building *819 commissioner (commissioner) denied Petrucci's application for a building permit to begin the renovations. The denial was affirmed by the Westwood board of appeals (board), which agreed with the commissioner that Petrucci **49 was not entitled to the "child care facility exemption" he was relying on under G.L. c. 40A, § 3, third par., because the proposed use was not properly either "primary, accessory or incidental."[1] Following Petrucci's appeal pursuant to G.L. c. 40A, § 17, a Land Court judge agreed with Petrucci that the claimed exemption for a child care facility under § 3 applied and granted him partial summary judgment allowing the desired use.

The judge remanded the matter to the commissioner for review of Petrucci's application on the issue of the applicability of the "reasonable regulations" that the statute permits municipalities to impose on such a facility (see note 1, *supra*). The commissioner thereafter rejected the application because the barn failed to comply with the zoning by-law's rear yard, side yard, and height requirements. The board again affirmed the commissioner. After trial on the issue of the reasonableness of applying those regulations to the proposed project, the Land Court judge again upheld Petrucci, ruling that the imposition of the town's dimensional restrictions was unreasonable and ordering the board to issue the requested building permit. On the board's appeal, we affirm.

1. *Applicability of the § 3 exemption.* The commissioner initially denied Petrucci's application on his view that the proposed use "would result in the establishment of two princip[al] uses" on the property and was "not clearly accessory or incidental to a residential use." The board concurred, *820 because the proposed facility "was so intensive" as to constitute a primary use of the property, and it could find "no authority" for "two ... primary uses [to] ... be situated on one property." The board further determined that the facility was not sufficiently "subordinate and related to the primary [residential] use of the property ... [to] be construed [as] ... accessory or incidental." The judge concluded that the board's reasoning was legally erroneous. He observed that nothing

in the zoning by-law prohibited either child care facilities or the existence of more than one primary or principal use on a lot. He noted that the by-law even appeared to contemplate the possibility of multiple primary uses.[2]

The judge's chief basis for endorsing Petrucci's reliance on the § 3 exemption, however, was his rejection of the board's restrictive construction of the statute. The board focused (both below and here) on the words "primary, accessory or incidental" in the third paragraph of § 3. It contended that the difference between those terms and the language of the immediately preceding (second) paragraph of § 3, providing a zoning exemption for educational or religious uses,[3] betokened a much narrower exemption intended by the Legislature for child care facilities.

The board's argument runs thus: Whereas the exemption of the second paragraph of § 3 speaks broadly and generally of "use for **50 religious ... or for educational purposes," the third paragraph requires that the child care facility "use" be either "primary, accessory or incidental." Each of those words must be read literally so as to give them their customary meaning. *821 Since the principal use of the Petrucci property is already residential, the child care facility cannot be a "primary" use, because "[i]t is ... clear that you cannot have two primary uses [of the property] either under the by-law or by definition."[4] Nor can the facility pass muster as an "accessory" or "incidental" use under the zoning decisions construing those terms, which hold that such a use not only must be minor in significance to the primary use but also must have a normal or customary subordinate relationship to that use. Compare *Harvard v. Maxant*, 360 Mass. 432, 438, 275 N.E.2d 347 (1971); *Henry v. Board of Appeals of Dunstable*, 418 Mass. 841, 844–846, 641 N.E.2d 1334 (1994); *Gallagher v. Board of Appeals of Acton*, 44 Mass.App.Ct. 906, 907, 687 N.E.2d 1277 (1997); *Maselbas v. Zoning Bd. of Appeals of N. Attleborough*, 45 Mass.App.Ct. 54, 56–57, 694 N.E.2d 1314 (1998). Given the size of the facility (six adults and forty-seven children) in relation to the several Petrucci family members already there engaged in "typical family" residential living, it will be so comparatively large, intensive, and separate an operation as to be neither accessory nor incidental.[5]

[1] Assuming, without deciding, that the proposed child care facility cannot be deemed "accessory" or "incidental" to a residential use, we nonetheless conclude that the board was wrong and the judge correct in determining that the facility qualified for the exemption of the third paragraph of G.L. c. 40A, § 3. We need look no further than the language of the statute, which states that a zoning by-law may not "prohibit, or *822 require a special permit for, the use of ... structures, or the expansion of existing structures, for the primary ... purpose of operating a child care facility." Petrucci's proposal falls squarely within that injunction. His existing structure, the barn, will be used (whether or not expanded) for the primary, indeed the sole, purpose of housing a child care facility operation; it cannot, therefore, be prohibited or subject to special permit requirements.[6]

Even were the board correct in its assertion that the Westwood by-law does not permit multiple primary uses on a single lot, such a prohibition is exactly what the statute declares impermissible with respect to child care facilities. The board's reiterated assertions that the exemption applies only where the child care facility can be characterized as the sole primary use "of the property" overlook the second half of the disjunctive statutory phrase, "use of land or structures." The board thereby runs afoul of *Watros v. Greater Lynn Mental Health & Retardation Assn., Inc.*, 421 Mass. 106, 653 N.E.2d 589 (1995), dealing with the educational purpose exemption of the second paragraph of § 3.

[2] [3] [4] In dismissing the argument of abutters who challenged the proposed use on **51 residential property of a barn to house and educate retarded adults—that the exemption applied only when the educational use occupied the entire property—the court in *Watros* stressed that the second paragraph "speaks not once, but twice, of 'land or structures' as the focus of the exemption." 421 Mass. at 113, 653 N.E.2d 589. The "constrictive result" flowing from the abutters' reading of the statute was "neither required by the language of the statute nor consistent with its purpose," *id.* at 114, 653 N.E.2d 589, which was "to prevent local interference with the use of real property"—whether of land or of structures thereon—for the exempt purposes identified in the statute. *Id.* at 113, 653 N.E.2d 589. Here, also, the plain language of the statute (which, as in *Watros*, speaks not once but twice of "land or structures") and its manifest intent—to broaden, rather than narrow, the opportunities for establishing child care facilities in the Commonwealth[7]—overwhelm the board's constrictive effort to parse any

substantial child care facility on a residential property out of the statute.[8]

2. *Reasonableness of regulations.* As in *Campbell v. City Council of Lynn*, 415 Mass. 772, 777 & n. 6, 616 N.E.2d 445 (1993), we are concerned with a prior nonconforming structure. Despite the *Campbell* precedent, however, there was no inquiry as to whether alterations necessary to transform the barn **52 into a child care facility would take it outside the protection granted by G.L. c. 40A, § 6, to prior nonconforming structures. Pursuant to G.L. c. 40A, § 3, there could be no denial of the right to use the barn as a child care facility. Accordingly, analysis pursuant to § 6 would not turn on any impact of the *use* of the barn as a child care facility but on whether the barn *structure*, as altered, would be substantially more detrimental to the neighborhood than the existing nonconforming structure.

This case was decided in the Land Court solely on the basis of G.L. c. 40A, § 3, third par., and, while it appears unlikely that the proposed renovations of the barn would fail the § 6 test, the record does not invite resolution under § 6. In any event, we conclude that Petrucci is entitled to relief based on § 3 and that there is no reason to require proceedings under § 6. See *Campbell v. City Council of Lynn*, 415 Mass. at 777–778 n. 6, 616 N.E.2d 445.

The judge ruled that Petrucci had successfully demonstrated the unreasonableness of the dimensional requirements that the commissioner and the board imposed upon the barn. The relevant sections of the by-law require a side yard width of twenty feet and a rear yard depth of thirty feet, with a maximum building height of twenty-five feet. The barn is over thirty-four feet high and is located only twelve feet from both the side and rear lot lines. Compliance with the zoning requirements is possible only if the barn is physically relocated on the lot.[9]

The parties agree that the controlling authority on the reasonableness *825 of the application of zoning regulations to exempt uses under G.L. c. 40A, § 3, is *Trustees of Tufts College v. Medford*, 415 Mass. 753, 616 N.E.2d 433 (1993),[10] which announced an ad hoc, fact-specific approach to resolving disputes in most § 3 situations:

> "[T]he question of the reasonableness of a local zoning requirement, as applied to a proposed ... [exempt] use, will depend on the particular facts of each case. Because local zoning laws are intended to be uniformly applied, an [applicant] ... making challenges similar to those made by Tufts will bear the burden of proving that the local requirements are unreasonable as applied to its proposed project. The ... [applicant] might do so by demonstrating that compliance would substantially diminish or detract from the usefulness of a proposed structure, or impair the character of the ... [applicant's property], without appreciably advancing the municipality's legitimate concerns. Excessive cost of compliance with a requirement imposed [by the zoning ordinance] ..., without significant gain in terms of municipal concerns, might also qualify as unreasonable regulation of an ... [exempt] use." (Footnote omitted.) 415 Mass. at 759–760, 616 N.E.2d 433. The judge's conclusion, that enforcing Westwood's dimensional controls in Petrucci's circumstances would be unreasonable, represented a proper application of the factors set forth in *Tufts College*.

[5] Based upon the trial testimony of Petrucci's expert witnesses on zoning issues and historic buildings and of Petrucci himself (who had been in the construction business **53 for thirty-five *826 years),[11] the judge relied on the following findings and undisputed facts:[12] The two-story, 4,960 square foot barn was built between 1840 and 1850 and is "a wonderful example" of the transitional "Greek Revival Italianate" style. As such, it is "a rare building form" that possesses historic and architectural merit deserving of preservation. It is surrounded by mature trees and particularly dense foliage on the sides closest to adjoining lots. In order to comply with the by-law by relocating the barn elsewhere on Petrucci's lot, numerous mature trees would have to be cut down and removed (from both the old and the new locations), a new foundation excavated, the entire barn lifted up and moved to the new foundation, and its roof reconstructed to lower its height. All of that compliance work not only would destroy the barn's unique Italianate cupola and Palladian window, but also would adversely change the massing of the structure, disturb the sense of the building's continuity, and ruin both its historical character and architectural integrity. The cost to Petrucci to move the barn would be approximately $150,000, beyond the cost of renovating it to serve as a child care facility.[13] The municipality's legitimate concerns served

by the setback and height requirements in the by-law—safety, aesthetics, and privacy [14]—would all be negatively affected by the *827 relocation of Petrucci's barn. In its new, unscreened location, the barn would be significantly closer and more visible to Petrucci's residence and to neighboring homes. As a result, the potential fire danger would be increased, the privacy of the Petruccis and their neighbors would be reduced, and the loss of so many trees would adversely impair the community's character. Were the barn not moved and the child care facility abandoned, all of the present zoning infirmities would continue to exist.

In light of this evidence, the judge determined that imposition of the town's dimensional requirements on the project would levy excessive costs of compliance on Petrucci and effectively deny the use of the premises for a child care facility; would serve no valid goals of municipal zoning regulation, see *Campbell v. City Council of Lynn*, 415 Mass. at 779, 616 N.E.2d 445; and would, in fact, detrimentally affect neighborhood safety, aesthetics, and privacy. Therefore, he was satisfied that Petrucci had carried his burden under *Tufts College* of showing the unreasonableness of requiring compliance with those requirements. We agree. [15] Contrast **54 *Tufts College*, 415 Mass. at 762–764, 616 N.E.2d 433 (challenged zoning requirements were not shown to be unreasonable as applied to project because applicant failed to put in any evidence regarding estimated cost or difficulty or hardship of compliance, whereas municipality demonstrated that compliance would enhance safety and ease serious parking problems in the affected area).

[6] 3. *Judge's ordering of the permit.* The amended final judgment ordered the board, over its objection, to issue Petrucci a building permit for the child care facility. The board charged that such an order erroneously deprived abutters of their appellate *828 rights under G.L. c. 40A, § 17. The board's theory was that so long as it was defending its decisions upholding the commissioner, abutters were adequately represented and not aggrieved; but that they might become aggrieved, on bases other than those relied on by the board, when the board issued the building permit. The judge observed that the board had failed to state that any such potential abutters even existed (much less to identify them or their supposedly novel, separate grievances) or to suggest any additional issues that might be raised by such hypothetical abutters. Consequently, he rejected the board's position as sheer speculation supported by no relevant authority. He was satisfied that the facts in this case encompassed every criticism of the project which an abutter might reasonably raise in a § 17 appeal and reflected the board's protective persistence in pursuing all legitimate issues. The judge's refusal to allow further delay in implementing Petrucci's lawful project appears eminently sound to us. It was an exercise of his discretion under § 17 to grant such relief "as justice and equity may require," since it is clear from the record that the same ultimate result would ensue from an unspecific remand as that effected by the challenged order. See *Chira v. Planning Bd. of Tisbury*, 3 Mass.App.Ct. 433, 439–440, 333 N.E.2d 204 (1975), and cases cited; *Selectmen of Stockbridge v. Monument Inn, Inc.*, 8 Mass.App.Ct. 158, 163, 391 N.E.2d 1265 (1979), and cases cited, *S. C.*, 14 Mass.App.Ct. 957, 438 N.E.2d 365 (1982). Cf. *Lapenas v. Zoning Bd. of Appeals of Brockton*, 352 Mass. 530, 533–534, 226 N.E.2d 361 (1967); *MacGibbon v. Board of Appeals of Duxbury*, 369 Mass. 512, 520, 340 N.E.2d 487 (1976); *Leominster Materials Corp. v. Board of Appeals of Leominster*, 42 Mass.App.Ct. 458, 463, 677 N.E.2d 714 (1997).

Judgment affirmed.

All Citations

45 Mass.App.Ct. 818, 702 N.E.2d 47

Footnotes

1 General Laws c. 40A, § 3, third par., inserted by St.1990, c. 521, § 2, provides:

"No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the *primary, accessory or incidental* purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term 'child care facility' shall mean a day care center or a

school age child care program, as those terms are defined in section nine of chapter twenty-eight A." (Emphasis added.)

2 The judge quoted § 5 of the by-law, which states, in pertinent part: "No building or structure shall be constructed, and no building, structure or land shall be used, in whole or in part, for any purpose other than for *one or more* of the uses hereinafter set forth as permitted in the district in which said building, structure or land is located, or set forth as permissible by special permit in said district ...." (emphasis added).

3 General Laws c. 40A, § 3, second par., sets forth the so-called "Dover Amendment," inserted by St.1950, c. 325, and reinserted by St.1975, c. 808, § 3, which provides, in pertinent part, that no zoning bylaw shall "prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or ... by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements."

4 The board cites no statutory or decisional authority for this proposition. As indicated in note 2, *supra*, it was not at all "clear ... under the by-law."

5 There are no Massachusetts cases explicating the status or character for zoning purposes of a child care facility located on residential property. *Woodvale Condominium Trust v. Schaff*, 27 Mass.App.Ct. 530, 533–535, 540 N.E.2d 206 (1989), dealing with the question whether a family day care business was permissible in a unit of a condominium, the master deed of which stated that the unit could be used "solely for residential dwelling purposes," is as close as we can find. There, the court concluded that the many distinctions between normal, residential use and a busy day care operation made the latter so different from the former that it could not be deemed a usual incident of residential living. Cases in other jurisdictions appear divergent. Compare *Schofield v. Zoning Bd. of Adjustment of Dennis*, 169 N.J.Super. 150, 154–155, 404 A.2d 357 (1979) (home day care of twelve to eighteen children is not incidental to residential use), and *Metzner v. Wojdyla*, 125 Wash.2d 445, 452, 886 P.2d 154 (1994) (even small-scale child care incompatible with covenant restricting use of the property to residential purposes), with *People v. Bacon*, 133 Misc.2d 771, 776–778, 508 N.Y.S.2d 138 (N.Y.Dist.Ct.1986) (home day care of children is a permissible accessory use in a residentially zoned district).

6 The judge did not rely on the plain language of the statute in rendering judgment for Petrucci, but his correct decision may be sustained on appeal on any sound basis. See *Hickey v. Commissioner of Pub. Welfare*, 38 Mass.App.Ct. 259, 263, 647 N.E.2d 62 (1995).

7 Aside from the very fact that it creates an exemption from local zoning restrictions, G.L. c. 40A, § 3, third par., defines "child care facility" as a "day care center" as that term is used in G.L. c. 28A. Chapter 28A, § 1(4), inserted by St.1972, c. 785, § 1, states that it is the policy and purpose of the Commonwealth to "promote the development of day care services in order to provide that such services shall be available in every community for all families which express a need for them." Although clear statutory language ordinarily obviates the need to resort to rules of interpretation, *Bronstein v. Prudential Ins. Co. of America*, 390 Mass. 701, 704–705, 459 N.E.2d 772 (1984), both related statutes, see *Plymouth County Retirement Assn. v. Commissioner of Pub. Employee Retirement*, 410 Mass. 307, 309–312, 571 N.E.2d 1386 (1991); *Civitarese v. Middleborough*, 412 Mass. 695, 700–702, 591 N.E.2d 1091 (1992), and legislative history, see *Commonwealth v. Gove*, 366 Mass. 351, 354–355 & n. 4, 320 N.E.2d 900 (1974), may be referenced by way of supplementary confirmation of the intent reflected in the words used.

8 The board cites *Watros* as supportive of its position, because of the court's incidental observation there, 421 Mass. at 113, 653 N.E.2d 589, that the educational use exemption of G.L. c. 40A, § 3, second par., does not distinguish between "principal" and "accessory" uses, while the third paragraph of § 3 explicitly does. The board's invocation of *Watros* fails precisely because it rests on the assumption, rejected by *Watros*, that an entire parcel of "land" must be used to benefit from the exemption and ignores the presence of the word "structure" in the statute. The board cites no other relevant authority for its statutory construction argument, but presumably relies on two standard canons. First, the use of different language in related statutes dealing with the same subject matter ordinarily indicates that different meanings were intended. See 2B Singer, Sutherland Statutory Construction § 51.02 (5th ed. 1992). Cf. *Beeler v. Downey*, 387 Mass. 609, 616, 442 N.E.2d 19 (1982). However, like all such canons, this one does not apply when (as here) the statutory language is so clear as to make extrinsic aids unnecessary, especially an aid whose application would be contrary to the Legislature's undoubted purpose. See *Brady v. Brady*, 380 Mass. 480, 483–484, 404 N.E.2d 75 (1980); *Commonwealth v. Fall River Motor Sales, Inc.*, 409 Mass. 302, 315–316, 565 N.E.2d 1205 (1991). Second, "[w]henever possible, we give meaning to each word in the legislation; no word in a statute should be considered superfluous." *International Org. of Masters, Mates & Pilots, Atl. & Gulf Maritime Region, AFL–CIO v. Woods Hole, Martha's Vineyard & Nantucket S.S. Authy.*, 392 Mass. 811, 813, 467 N.E.2d 1331 (1984). Again, even if applicable, this is not an ineluctable doctrine, see

Bartlett v. Greyhound Real Estate Fin. Co., 41 Mass.App.Ct. 282, 289, 669 N.E.2d 792 (1996), and in any event must yield to the even more fundamental precept, expressly relied on by the Land Court judge, that "a strictly literal reading of a statute should not be adopted if the result will be to thwart or hamper the accomplishment of the statute's obvious purpose, and if another construction which would avoid this undesirable result is possible." *Watros*, 421 Mass. at 113, 653 N.E.2d 589. In light of our holding above, we do not have to depend upon the judge's rationale—that by use of the words "primary, accessory or incidental" in the statute "the legislature intended to cover all bases ... and to leave no type of [child care facility] use beyond the reach" of the exemption—although we find the judge's construction of this remedial statute persuasive. See *Champigny v. Commonwealth*, 422 Mass. 249, 251, 661 N.E.2d 931 (1996); *Wonderland Greyhound Park, Inc. v. State Racing Commn.*, 45 Mass.App.Ct. 226, 233, 696 N.E.2d 964 (1998). We note, in this connection, that the board has failed to identify any use or purpose that might be but was not included or encompassed within the words "principal, accessory or incidental."

9 The commissioner and the board determined that, short of relocation, Petrucci would have to obtain a variance, after site plan review. On Petrucci's second motion for partial summary judgment, the judge ruled that the proposed exempt use could not be made subject to either variance procedures or site plan review, a conclusion in accord with *Trustees of Tufts College v. Medford*, 415 Mass. 753, 760, 765, 616 N.E.2d 433 (1993). The board has not questioned that ruling in this appeal.

10 In his first partial summary judgment decision, the judge ruled that the *Tufts College* analysis, though arising in an educational use context, was applicable to child care facilities (another ruling unchallenged here). The basic rationale of *Tufts College* has been applied to another provision of G.L. c. 40A, § 3. See *Prime v. Zoning Bd. of Appeals of Norwell*, 42 Mass.App.Ct. 796, 802, 680 N.E.2d 116 (1997) (involving the agricultural use exemption of the first paragraph). Given the identity of the language of the "reasonable regulations" provisions in the second and third paragraphs of § 3, the teaching of *Tufts College* regarding the scope of the educational exemption vis-à-vis local zoning regulation was properly invoked by the judge. See *Insurance Rating Bd. v. Commissioner of Ins.*, 356 Mass. 184, 188–189, 248 N.E.2d 500 (1969); *Green v. Board of Appeals of Provincetown*, 404 Mass. 571, 573, 536 N.E.2d 584 (1989).

11 At the trial on the issue of the reasonableness of requiring Petrucci's compliance with Westwood's rear yard, side yard, and building height requirements, the board called no witnesses and adduced no evidence to show how the imposition of those limitations on Petrucci's project would advance legitimate municipal concerns.

12 The board does not complain that any of the judge's findings or the evidence presented by Petrucci's witnesses on which the judge relied was erroneous, except with respect to the finding regarding the estimated cost of compliance to relocate the barn. The board's challenge in that respect is wrong (see note 13, *infra*).

13 The board incorrectly maintains that the evidence regarding the cost of the barn's relocation (and, hence, the "cost of compliance" highlighted by the Supreme Judicial Court in the *Tufts College* test) was tainted by hearsay. This assertion overlooks the fact that Petrucci testified to his own understanding of the cost to move the barn, based on his thirty-five years of experience as a licensed builder. See *Colangell v. Construction Serv. Co.*, 353 Mass. 527, 529–530, 233 N.E.2d 192 (1968); *Varney v. Donovan*, 356 Mass. 739, 255 N.E.2d 605 (1970); *Larabee v. Potvin Lumber Co.*, 390 Mass. 636, 643, 459 N.E.2d 93 (1983). The judge noted that this testimony was received without objection. In any event, the judge ruled, quite appropriately in our view, that "it is a matter of common sense that the cost to move a structure of the size and age of this barn would be significant."

14 The board does not disagree that these are the municipal purposes served by the relevant by-law requirements.

15 The board's sole criticism of the judge's decision on the issue of regulatory reasonableness (other than its misplaced assertion that Petrucci's cost of compliance evidence was hearsay, see note 13, *supra*) is that Petrucci did not demonstrate what the profits might be from his venture, which, the board suggested, might easily support the cost of compliance and make it reasonable. The board's critique fails in two respects. First, it rests on the assumption, contrary to the record, that the child care facility would be a commercial, for-profit enterprise. Second, it is based on the premise that different standards for gauging the costs of compliance ought to apply for proprietary as opposed to nonprofit child care facilities. That premise finds no support in the language of the statute, nor in its purpose. Such a discrimination on the basis of corporate form would tend to create a significant disincentive for the private sector to address the public purpose of making child care services as widely available as their need requires. See note 7, *supra*.

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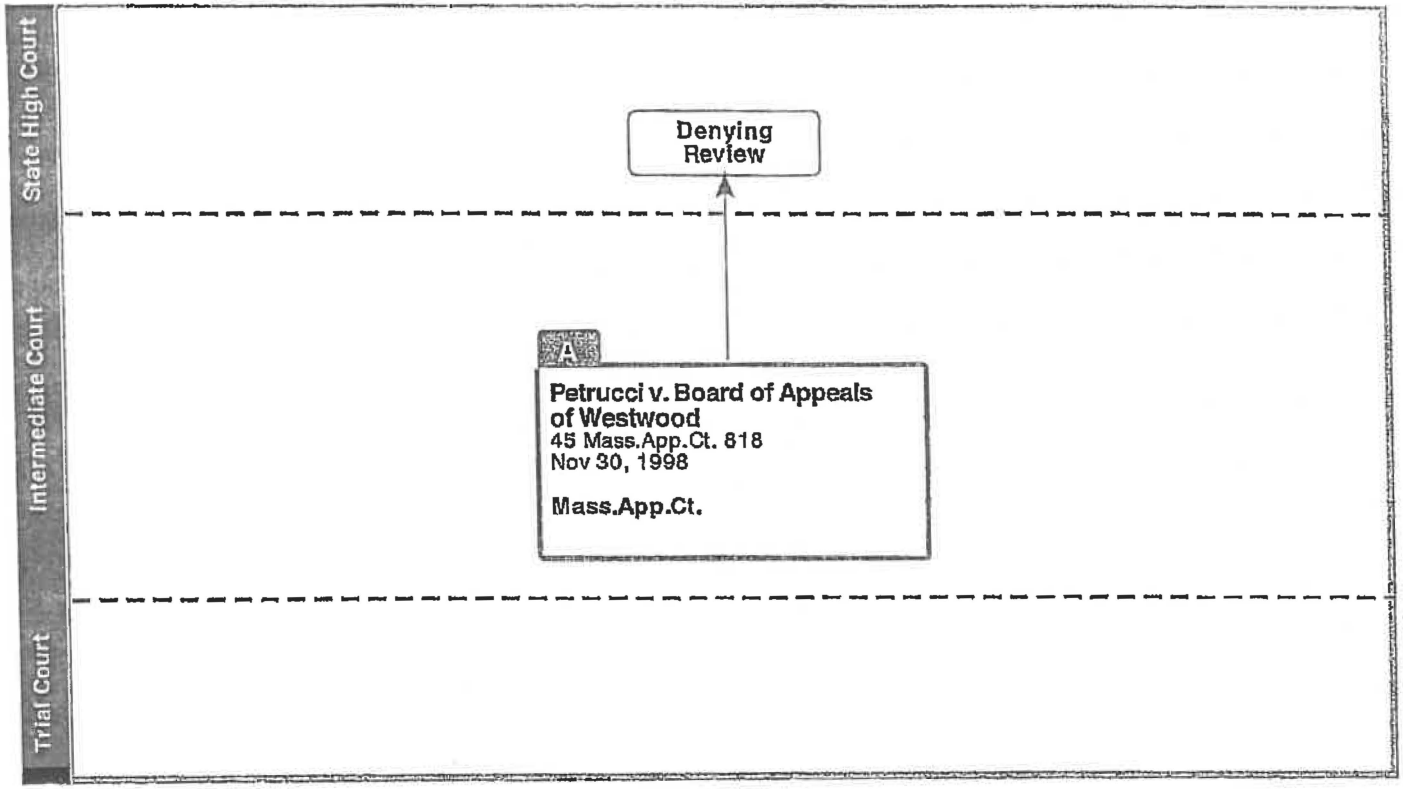

List of 2 History for Petrucci v. Board of Appeals of Westwood

History (2)

Direct History (2)

1. Petrucci v. Board of Appeals of Westwood
45 Mass.App.Ct. 818 , Mass.App.Ct. , Nov. 30, 1998

Review Denied by

2. Petrucci v. Board of Appeals of Westwood
707 N.E.2d 1079 , Mass. , Jan. 26, 1999

78 Mass.App.Ct. 1104
Unpublished Disposition
NOTICE: THIS IS AN UNPUBLISHED OPINION.
Appeals Court of Massachusetts.

Joseph INGOLDSBY & others [1]
v.
ZONING BOARD OF APPEALS
OF MARSHFIELD & others. [2]

No. 09–P–2161.
Oct. 21, 2010.

West KeySummary

1 Zoning and Planning
⇐ Entertainment and Recreation;Theaters and Clubs

Zoning board's grant of special permit allowing two principal uses on property not located in a mixed use district was untenable as it contradicted a by-law that contained no ambiguity concerning the one principal use rule. Zoning board approved property owners' request to live year-round in their single family home while operating a children's summer soccer camp on the same property. The bylaw restricting the property to only one principal use listed both one family detached dwellings and day camps or other camps for children as principal uses.

Cases that cite this headnote

By the Court (COHEN, GRAINGER & MEADE, JJ.).

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

*1 The plaintiffs (abutters) appealed to the town of Marshfield (town) zoning board of appeals (board) a special permit granted to the Eriksons for the operation of a children's summer soccer camp. The board upheld the grant of the permit and the abutters sought judicial review in Superior Court. See G.L. c. 40A, § 17. The judge annulled the board's decision, finding that the board had exceeded its authority by granting the special permit as it would impermissibly allow two primary uses of the Erikson's land. We affirm.

1. *Board deference.* While a local zoning board of appeals possesses "an intimate understanding of the immediate circumstances, of local conditions, and of the background and purposes of the entire by-law," *Berkshire Power Dev., Inc. v. Zoning Bd. of Appeals of Agawam*, 43 Mass.App.Ct. 828, 832, 686 N.E.2d 1088 (1997) (citation omitted), this does not mean that all board decisions must be affirmed. Instead, a local zoning board's decision can be upset if "it is based on a legally untenable ground, or is unreasonable, whimsical, capricious or arbitrary." *Roberts v. Southwestern Bell Mobile Sys., Inc.*, 429 Mass. 478, 486, 709 N.E.2d 798 (1999) (citation omitted). Here, as described below, the board's decision regarding the Eriksons' special permit is untenable as it contradicted a by-law that contains no ambiguity concerning the one principal use rule.

2. *Two principal uses.* Under the town's zoning by-law (by-law), a property not located in a mixed use district, which the Erikson's lot is not, is allowed one principal use only. See by-law art. II, Use, Principal. All other uses must fall under the accessory use category or they are prohibited. See by-law § 5.01. Section 5.04 of the by-law lists both a "[o]ne-family detached dwelling" and a "[d]ay camp or other camp for children" as primary uses. The board's approval of the Eriksons' request to live year-round in their single-family home while operating a children's summer soccer camp on the same property violates the by-law. Such permission would allow two primary uses to exist on one singular lot when the by-law prohibits such activity.

Furthermore, as the judge found, neither of the Eriksons' requested uses would be considered accessory uses under the by-law. According to section 5.04, the list of permissible accessory uses does not include a residence or children's day camp. The judge considered several listed accessory uses in connection with the Eriksons' single-family residence and correctly determined that none was applicable.

While the Eriksons argue their year-round residence would simply be a component of the principal day camp use of the property, the by-law does not provide for such a category. Nowhere in the by-law does it state that one listed principal use may serve as a *part* of another. Rather, the by-law states that one and one principal use alone is permitted.

Finally, the Eriksons argue that because the by-law allows multiple principal structures to exist on a single lot serving as a community facility, by-law § 6.08(2), and because a day camp or other camp for children constitutes a community facility, by-law § 5.04, an exception is created as to the one principal use rule. This argument fails for two reasons. First, the Eriksons' request raises only the issue of multiple principal uses not the issue of multiple principal structures. Second, even if the Eriksons were seeking approval of multiple principal structures on their property, § 6.08(2) does not create an exception to the one principal use rule. In operating a children's summer soccer camp, the Eriksons would be allowed multiple principal structures by § 6.08(2); however, the property would still be limited to one principal use.

*2 3. *Other camps.* The Eriksons' reliance on other existing child day camps in Marshfield with elements similar or identical to their requested uses does not further their position. As the judge found, there is no evidence in the record detailing whether these camps were ever challenged or granted as pre-existing and nonconforming uses. The mere existence of other camps the Eriksons wish to emulate does not allow this court to ignore the restrictions outlined by the town's by-law.

Second amended judgment affirmed.

All Citations

78 Mass.App.Ct. 1104, 935 N.E.2d 391 (Table), 2010 WL 4105501

Footnotes

1 Steven Masiello, Mary Judkins, and Richard Chute.

2 Ronald Erikson and Gloria Erikson.

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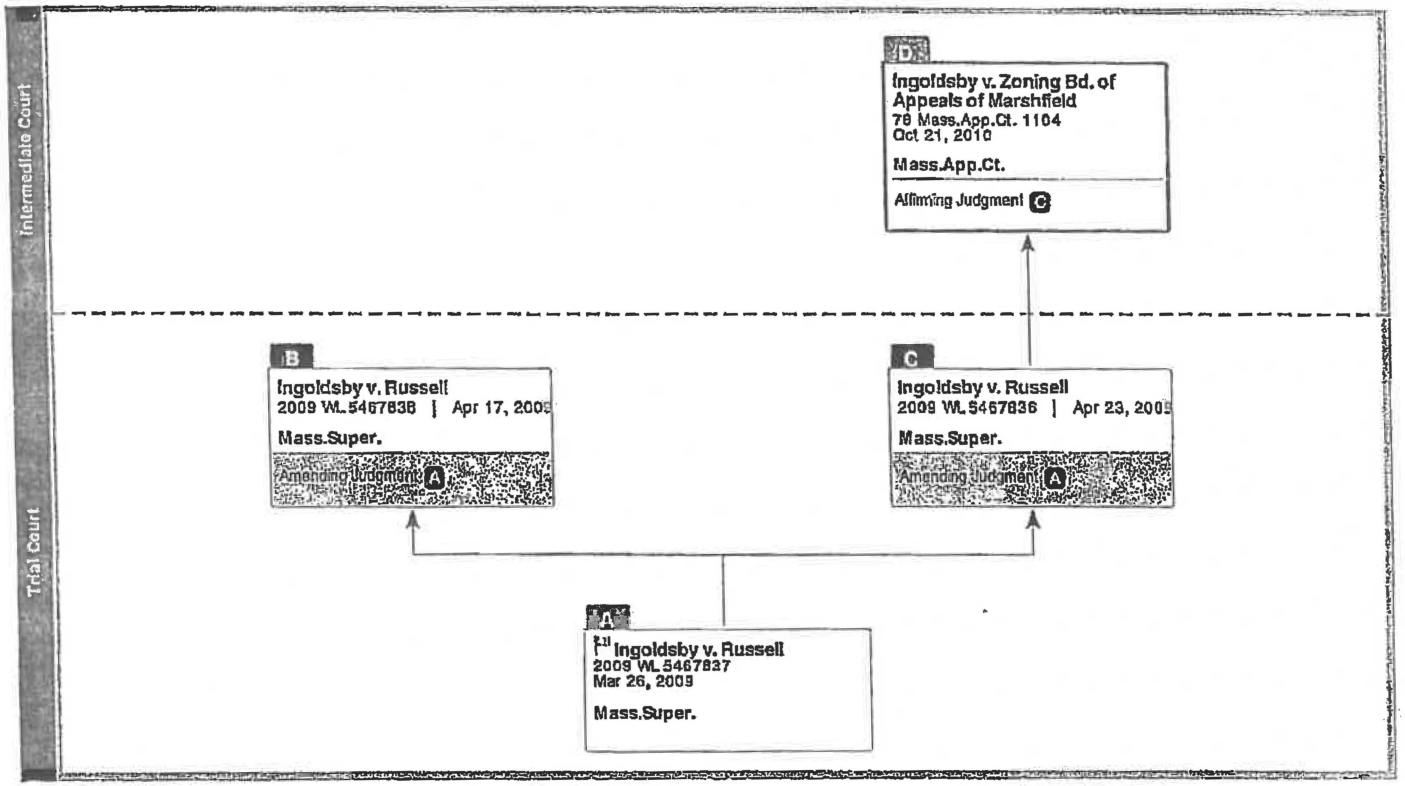
List of 5 History for Ingoldsby v. Zoning Bd. of Appeals of Marshfield



List of 5 History for Ingoldsby v. Zoning Bd. of Appeals of Marshfield

History (5)

Direct History (4)

1. Ingoldsby v. Russell
2009 WL 5467837 , Mass.Super. , Mar. 26, 2009

Judgment Amended by

2. Ingoldsby v. Russell
2009 WL 5467838 , Mass.Super. , Apr. 17, 2009

AND Judgment Amended by

3. Ingoldsby v. Russell
2009 WL 5467836 , Mass.Super. , Apr. 23, 2009

Judgment Affirmed by

4. Ingoldsby v. Zoning Bd. of Appeals of Marshfield
78 Mass.App.Ct. 1104 , Mass.App.Ct. , Oct. 21, 2010

Related References (1)

5. Ingoldsby v. Russell
2009 WL 5467835 , Mass.Super. , Jan. 16, 2009

