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TOWN CLERK, ACTON

DECISION #13-01

DECISION ON THE PETITION FOR SPECIAL PERMIT FOR 492-494 MAIN STREET

Public hearings of the Acton Board of Appeals were held in the Town Hall on Monday, June 17, 2013 and on Monday, August 5, 2013 on the Petition of Steven E. Murra as attorney for D&G Main Street, LLC for a **SPECIAL PERMIT** under Section 8.2.2 of the Zoning Bylaws to change the use from one nonconforming USE to another nonconforming USE for the property located at 492-494 Main Street. Map F3A/Parcel 23.

6/17/2013 Hearing

Present at the 6/17/2013 hearing were Kenneth Kozik, Chairman; Jonathan Wagner, Member and Richard Fallon, Member. Also present were Scott Mutch, Zoning Enforcement Officer; Cheryl Frazier, Board of Appeals Secretary; Attorney Steven E. Murra and Dionissios Pantazelos, manager of D&G Main Street, LLC (owner of record).

Kenneth Kozik opened the hearing and read the contents of the file. The file contained no correspondence or communications other than the Petition and related public notices. Chairman Kozik asked Attorney Murra to explain the reasons for his Petition.

Attorney Murra explained that his Petition requests a Special Permit under Section 8.2.2 of the Zoning Bylaws to change the use from one nonconforming use to another non-conforming use at the property having an address of 492-494 Main Street. He further explained that the site currently contains 2 structures having diverse commercial uses, including office, garage and pizza shop; but that the request for the Special Permit pertained only to the portion of the front structure adjoining the pizza shop and most recently used by Congresswoman Niki Tsongas as a local district office. Prior uses included a real estate office and a "head shop". The legal use of the site is questionable because of the paucity of Town's records for the property and historically diverse commercial uses. However, since the site is currently in an R-2 Residential District, any such commercial use is nonconforming. The Petition seeks a Special Permit to change the

present nonconforming use (undetermined other than commercial) to another non-conforming use, i.e. retail. He was advised that such a Special Permit was necessary to permit use of the space by a retail florist (for which a lease was being negotiated).

In response to questions by the Board Members concerning the property's current legal use, Zoning Enforcement Officer Scott Mutch stated it was unclear because the Town records were not informative and that his personal knowledge was limited to the last several years since he was hired. Further discussion ensued as to what portion of the site the Special Permit would apply to, as the site was being used presently for other than retail uses. The Board Members suggested in light of the uncertainties as to the historical use of the site, the current legal use of the site and the specificity of the requested change of use for a portion of the site, that it would be in both the Petitioner's and Board's interest to continue the hearing in order to gather more complete information. With the Petitioner's agreement, the Board voted to continue the hearing to August 5, 2013 at 7:30 PM.

8/5/2013 Hearing

The hearing reopened on August 5, 2013. Present at the 8/5/2013 hearing were the same parties as at the 6/17/2013 hearing.

In reviewing the file, Chairman Kozik noted that a 7/19/2013 Interdepartmental Communication had been submitted by Roland Bartl, Planning Director. The IDC Memo summarized the historical uses of the site dating back from 1830 and concluded that it was clearly used for various commercial uses from that time right up to the present.

In response to Chairman Kozik's question to the Petitioner whether he wanted to add anything to what was presented at the previous hearing, Attorney Murra stated that the potential tenancy for the florist had not reached fruition and that he had negotiated a tenancy with a party who intended to use it for educational instruction and tutoring. He was now requesting that the Special Permit be approved for use as "Commercial Education and Instruction" as defined in Section 3.4.11 and not for retail use.

The tenant testified as to how he expected that the space would be utilized and that it was going to be very low profile with limited student use and no measurable traffic impact.

Further discussion ensued as to the exact address of the portion of the property to which the Special Permit would apply (if granted); and it was ascertained that the applicable portion of the property had an address of 492 Main Street.

The Board of Appeals, after considering the materials submitted with the Petition, together with the information developed at the hearing, finds that:

1. The Petitioner seeks a **SPECIAL PERMIT** under Section 8.2.2 of the Zoning Bylaws to change the USE from one non-conforming USE to another non-conforming USE.

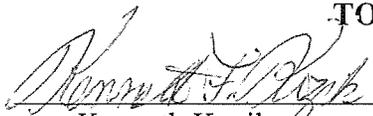
2. The site is located in a Residential District and is currently used for various commercial purposes.
3. The current USE of the site for commercial purposes is nonconforming because commercial USE is not permitted in a Residential District.
4. The Petitioner seeks a **SPECIAL PERMIT** under Section 8.2.2 of the Zoning Bylaws to change the USE to Commercial Education and Instruction.
5. The proposed USE is nonconforming because Commercial Education and Instruction is not permitted in a Residential District (except by **SPECIAL PERMIT**).
6. A change in USE in a Residential District from a nonconforming USE to Commercial Education and Instruction is authorized by Section 8.2.2 of the Zoning Bylaws.
7. The proposed USE of the property for Commercial Education and Instruction is:
 - (a) in harmony with the character of the neighborhood and the applicable requirements of the zoning district;
 - (b) consistent with the Master Plan and is in harmony with the general purpose and intent of the Zoning Bylaws;
 - (c) appropriate for the site and will not be detrimental or injurious to the neighborhood; and
 - (d) otherwise complies with the applicable requirements of the Zoning Bylaws.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **GRANT** the **SPECIAL PERMIT** subject, however, to the following **condition**:

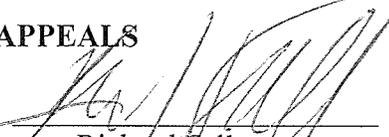
The USE of the site for Commercial Education and Instruction as authorized by this **SPECIAL PERMIT** shall be applicable to that portion of the site identified as and having an address of 492 Main Street.

Any person aggrieved by the decision may appeal pursuant to Massachusetts General Laws, Chapter 40A, Section 17 within twenty (20) days after this decision is filed with the Acton Town Clerk.

TOWN OF ACTON BOARD OF APPEALS


Kenneth Kozik
Chairman


Jonathan Wagner
Member


Richard Fallon
Member

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on September 10, 2013.


Cheryl Frazier, Secretary
Board of Appeals

EFFECTIVE DATE OF SPECIAL PERMIT: No Special Permit, or modification, extension or renewal thereof shall take effect until a copy of the decision has been recorded in Middlesex County South District Registry of Deeds. Such decision shall bear the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, it has been dismissed or denied.

EXPIRATION DATE OF SPECIAL PERMIT: This Special Permit must be exercised within two (2) years of its effective date.