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Preston Crow, Chairman

Special Permit
Site Plan Review Approval

Isabel M. Pérez and David Butenas
40 Cherry Street
Map 14 Lot 89
November 26, 2018

David R. Butenas and Isabel M. Perez, applicants, applied for Special Permit under Chapter 282 Sections 8.5, 8.5.6, 9.3, and for a Site Plan Review under Chapter 282 Section 9.4, and any other applicable sections of the zoning by-laws, to refurbish the existing building and add a solarium; and to operate a brewery, tap room, and café with outdoor seating. The applicants are also requesting a waiver of the required off-street parking regulations, loading and landscaping requirements under Section 5.0 of Chapter 282. The property, Map 14 Lot 89, is located at 40 Cherry Street in the ADD C Zoning District. A public hearing and public discussion was held on November 26th, 2018 at 7:45 PM in the Board of Selectmen's Room located at Ashland Town Hall, 101 Main Street, Ashland, MA.

Documents of Record

The application packet stamped at the Town Clerk's Office November 9, 2018 contained:

- a) Application Site Plan Review and Special Permit.
- b) Description of Relief Sought.
- c) Application Site Plan Review and Special Permit dated July 3, 2018.
- d) Zoning Letter from Building Commissioner dated June 28, 2018.
- e) Property Card.
- f) Ortho Map with Parking Options
- g) Set of Architectural Drawings titled "Cover", "Site Photos", "1st Floor Plan Existing", "Exterior Elevations", "1st Floor Plan -proposed", "1st Floor Plan - Use Groups", "Proposed Elevation North" prepared by Austin Design, Inc., signed and stamped by Thomas Chalmers Registered Architect no. 8817 dated June 29, 2015.
- h) Site Plan titled "Proposed Ashland Brew-Café" prepared by McClure Engineering, Inc. signed and stamped by David Faist RPE civil no. 41192 dated May 15, 2018.
- i) Site Plan titled "Proposed Ashland Brew-Café" prepared by McClure Engineering, Inc. signed and stamped by David Faist RPE civil no. 41192 dated May 15, 2018, revised: June 19, 2018, and July 2, 2018.
- j) Existing Conditions Plan prepared by Existing Grade, Inc. dated July 2, 2018.
- k) E-mails from Claire Goss, Chris Boulanger both dated June 28, 2018.

- l) E-mails from Kristen Caira, Ariana Carroll, Pamela Sage, Abby Marschke, Aislyn and Charles Subrt, Jennifer Snow, Paul and Patricia Callahan, Cate and Jason McDonald, Giannina Wilkinson, Lindsay Atherton all dated June 26, 2018.
- m) E-mails from Marcy Culverwell, Jennifer Robinson, Meredith Connery, Jamie Tripp, Chris Mathieu, Patrick Maki, Cory Chase, Nicola Buckley, Christin Sanders, Caroline Walsh, Peter Fell, Cheri Boulanger, Mike Garcia, and Barb Carter all dated June 27, 2018.
- n) E-mail from Mark Oram dated July 16, 2016.
- o) Design Review Meeting Minute: August 2, 2018.
- p) Set of Architectural Drawings titled "Cover", "Site Photos", "1st Floor Plan Existing", "Exterior Elevations", "Landscape Plan", "1st Floor Plan –proposed", "1st Floor Plan – Use Groups", "Proposed Elevation North", "Proposed Elevation East", "Proposed Elevation South", and Proposed Elevation West" prepared by Austin Design, Inc. signed and stamped by Thomas Chalmers Registered Architect no. 8817 dated July 26, 2018.
- q) Article: *Our Vanishing "Third Places"* by Ray Oldenburg.
- r) Power Point Presentation to the Planning Board on July 26, 2018.
- s) Planting Palette.
- t) Set of Perspective Drawings – 5 pages.
- u) 40 Cherry Street Operating Plan.
- v) Site Plan prepared by Merritt Chase Landscape Architecture, dated August 20, 2018.
- w) Set of Architectural Drawings titled "Proposed Elevation North", "Proposed Elevation East", "Proposed Elevation South", "1st Floor Plan –proposed" prepared by Austin Design, Inc. signed and stamped by Thomas Chalmers Registered Architect no. 8817 dated September 19, 2018.
- x) Set of Perspective Drawings – 7 pages.
- y) Turn diagram.
- z) Document of Hours of Nearby Breweries.
- aa) E-mail from Cory Chase dated August 21, 2018.
- bb) E-mail from Rob and Tessa Piantedosi dated August 23, 2018.
- cc) E-mail from Tim Adler dated August 23, 2018.
- dd) Memo dated October 25, 2018 -.Summary of Project Challenges and Accompanying Solutions.
- ee) Draft Decision
- ff) Letter dated November 8, 2018 – withdrawal without prejudice
- gg) Draft Minutes from the July 26, 2018, August 9, 2018, August 23, 2018, September 27, 2018, October 11, 2018, October 25, 2018 and November 8, 2018 Planning Board meetings.
- hh) Concept Plan prepared by McClure Engineering, signed and stamped by David Faist RPE – Civil no.41192 dated November 7, 2018.
- ii) E-mail from Maeghan DosAnjos, Conservation Agent dated November 20, 2018.

Prior to submitting their application for a Special Permit and Site Plan Review, the Applicants presented concept plans to the Planning Board on June 28, 2018. Before the public hearing was noticed the Board received several e-mails in support of the project. These are not listed above because they were received before the formal process began.

A public discussion for the Site Plan Review opened on July 26, 2018 and the public hearing for the Special Permit opened August 9, 2018. The public hearing and public discussion then

ran concurrently on August 9, 2018; August 23, 2018; September 27, 2018, October 11, 2018, October 25, 2018, and November 8, 2018. Neighbors and residents participated in the process. Additionally, the Applicant met with the Board of Selectmen on July 11, 2018 and the Design Review Committee on August 2, 2018.

On November 8, 2018, the applicants requested to withdraw their application for Special Permit and Site Plan Review without prejudice due to Planning Board members' absences, there was not a quorum to vote on the Special Permit. The Applicants stated their intention to immediately reapply by submitting all the testimony submitted at the previous public hearing and public discussion. The Planning Board voted to accept the withdrawal. The Applicant has reapplied to restart the public hearing and public discussion.

Facts and Findings

Based on the evidence presented, the Board makes the following findings:

1. The approximate 13,000 square-foot property is located in the Ashland Downtown District "C" and is improved with single-family house and a commercial building in the rear. The Property is bounded by Cherry Street to the west with residential properties across the street and a multi-family property to the south; and the public parking lot used by Town Hall to the north and east. The properties surrounding the parcel are either in the Ashland Downtown District "C" or the Downtown Commerce Zoning Districts where both commercial and residential uses are allowed.
2. The Applicant seeks to operate a brewery and café in the commercial building in the rear and live in the single-family house in the front of the property. The Applicants propose to locate the customer entrance off the public parking lot.
3. The property was used as single-family residence and as a paper box manufacturing company. This is considered mixed-use. The Applicant is seeking a Special Permit under Chapter 282 Section 8.5.6 of the Ashland By-laws to use the property as a retail sales and/or services in a building less than or equal to 10,000 sq. ft. of gross floor area; and for a light manufacturing use. A Site Plan Review under Chapter 282 Section 9.4 is needed because the change of use has a parking requirement of over 6 parking spaces. In addition, the parking requirement, based on 151 seats in a restaurant/place of assembly as calculated using the mixed-use bonus described in Chapter 282 Section 8.5.13, is 21.23 parking spaces. The proposed project provides for zero commercial parking spaces. It does provide three spaces which by location are not practicable to use for customers, but could be used by employees.
4. In asking for the parking waiver, the Applicant presented a parking plan that shows approximately 216 available parking spaces in downtown; including spaces in the Town Hall parking lot, the Library municipal parking lot; Stone Park, and nearby on-street parking. The Applicants using their own documented parking counts and a study by Toole Group conducted recently for the Downtown Streetscape project were able to show that during most of their proposed peak hours such as weekend evenings there is an abundance of parking. The Board agreed that most of the time there was available parking; but the Board remained concerned that during public meetings at Town Hall most often during Tuesday, Wednesday and Thursday evenings there would be a shortage of parking.
5. The Applicant identified, with the help of the Economic Development Director, a town-owned parcel that could be constructed for future parking. Since the Applicant

was solely relying on public parking for their business some Board members initially felt that the Applicant should contribute substantially to creating more public parking. However, since this is a widely supported project among town residents and the Applicant has worked diligently to mitigate noise concerns expressed by neighbors, the Board members were flexible on this issue. The Applicant proposed and the Board accepts a \$15,000 contribution to use as the Planning Board sees fit to alleviate parking issues within the downtown area. In addition, the employees of the Applicant shall park elsewhere other than the Town Hall parking lot to save those spaces for residents and customers. The Applicant also has said they will provide parking information on their website. The Board agreed to waive the parking requirement.

6. The Applicant initially proposed to locate the dumpster at the rear of their property behind the commercial building to be accessed through the town hall parking lot. The Applicant preferred this location because it gave them more room to accept deliveries through their driveway off Cherry Street. Town staff and Board members were concerned that this location would be difficult for the Applicants to police the dumpster, the location adds a level of difficulty to snow removal in an area that is already constrained, and finally staff and some Board members were uncomfortable with the idea that one business was getting preferential treatment over other businesses. As a result of these conversations the Applicant has agreed to locate the dumpster in the 40 Cherry Street driveway.
7. The customer entrance for the brewery café is proposed to be on the eastern side of the building directly from the Town Hall parking lot. An entrance in this location would need a parking lot curb cut and would eliminate one existing parking spot from the Town Hall parking lot. This idea was presented to the Board of Selectmen at their July 11, 2018 meeting. After an explanation of the proposed project the Board of Selectmen were okay with altering the parking to provide room for safe egress as long as the Planning Board came to the same conclusion after the Site Plan Review process.
8. Several neighbors and town residents participated in the public hearing and public discussion process. Residents were overwhelmingly in support of the project as having a brewery in Ashland is highly desired and is seen as a catalyst for economic development in Ashland's Downtown. Direct abutters and nearby neighbors have grave concerns of noise and parking. The proposed brewery building and the residential building on the abutting property at 48 Cherry Street are only 6 to 8 feet apart. The neighbor at 48 Cherry Street had a particular concern with the cycling on-off of the glycol chillers as it will be operating 24-hours a day. As a result of these concerns and several discussions, the Applicant has agreed to locate the glycol chillers on the ground and enclose the patio with a solarium. The HVAC units will remain on the roof but will be located on the town hall parking lot side of the gable roofs where possible and will be outfitted with a noise reducing "jacket". The Board appreciated the efforts of the Applicant and the neighbors resolving the noise issue.
9. The neighbors asked that no business parking be allowed on Cherry Street which could pose potential congestion and noise problems. While the Planning Board understood the concern, parking on public streets was under the jurisdiction of the Board of Selectmen as their roll of Road Commissioners. It was suggested that after the business opened and had a period to settle in, if parking on Cherry Street became a problem, the neighbors could request that the Board of Selectmen institute a parking permit program.

10. The construction of the solarium as an addition to the commercial building increases the impervious surface by 13% which is well below the stormwater management bylaw threshold. The site does not have any known stormwater runoff or erosion issues. A site plan review from the Planning Board, automatically requires the Applicant to seek a stormwater permit from the Conservation Commission. Because the project is located above the Nyanza groundwater plume, it is impracticable to infiltrate stormwater. In addition, there is no easy way to connect into the Town's drainage system. The Applicant sought and received at the Conservation Commission's November 19, 2018 meeting stormwater permit waiver.
11. Operating hours had been discussed several times through this process. The Board was both concerned with potential disruption as customers leave the premises at closing time as well as a desire to allow appropriate hours to give this new and widely supported business the best opportunity for success. The Applicant originally asked for operating hours of 9:00 a.m. to 11:00 p.m. Given concerns raised by the neighbors the Applicant revised their hours to be Sunday through Wednesday 9:00 a.m. to 10:00 p.m. and Thursday through Saturday 9:00 a.m. to 11:00 .pm. The Applicant requested and the Board agreed that Applicant shall have the opportunity to revising their operating hours after 12 months of being in business.
12. Design Review discussed the proposed landscaping and building façade. They were okay with the design as presented. While there were differing aesthetic tastes, the Board was also okay with the design as proposed

Decision

Following presentations by the Applicant and its consultants, a review by Board members and members of the public, the Board voted 4-0 to approve the Site Plan as shown on Concept Plan prepared by McClure Engineering, signed and stamped by David Faist RPE Civil no.41192 dated November 7, 2018; and voted 4-0 to approve the Special Permit to operate a brewery café at 40 Cherry Street subject to the following conditions:

- 1) This special permit cannot be transferred without approval from the Planning Board.
- 2) The Planning Board waves the required number of parking spaces for the proposed business.
- 3) Operating hours shall be Sunday through Wednesday 9:00 a.m. to 10:00 p.m. and Thursday through Saturday 9:00 a.m. to 11:00 p.m. With the exception of New Year's Eve when they may stay open until 1:00 a.m. The day before Thanksgiving, and Sundays before Federal or State holidays shall have the same hours of operation as a Saturday. The Applicant may request from the Planning Board permission to extend the operating hours with notification to the neighbors of such request after 12 months of being in business.
- 4) The HVAC units will remain on the roof but will be located on Town Hall parking lot side of the gable roofs where possible and will be outfitted with a noise reducing jacket or barrier.
- 5) No land disturbance or construction shall occur before building permits are issued.

- 6) The Applicant and its contractor shall meet with Town staff for a pre-construction meeting before any building permits are issued. At that time a fencing schedule, and a construction schedule will be discussed and approved by staff.
- 7) Before any building permits are issued the Applicant shall provide the name and contact information of the contractor on site.
- 8) When the Applicant prepares to construct the curb cut and accessible ramp and to restripe the parking lot where needed, the application process and deposit is the same as what is required for a Road Opening Permit from DPW.
- 9) The Applicant shall comply with Department of Public Works and Fire Department regulations or requirements. Any permits and fees required by the Department of Public Works and Fire Department are separate from this approval.
- 10) Stormwater and Erosion management requirements, if needed, during the construction phase shall be managed by the Conservation Agent.
- 11) There shall be no parking, or standing of construction vehicles on Cherry Street or the Town Hall parking lot. If a truck must be unloaded from the Cherry Street or the Town Hall parking lot, the Applicant shall contact the Ashland Police Department to determine if a detail is needed.
- 12) If required, any police detail shall be paid for by the Applicant.
- 13) The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction activities shall not commence on any day before 7:00 a.m. and shall not continue beyond 7:00 p.m. There shall be no construction activities on any Sunday or federal legal holidays.
- 14) During construction, all local, state, and federal laws shall be followed regarding noise, vibration, dust, refueling and blocking of town roads.
- 15) The Applicant shall be responsible for any damage to Cherry Street and the Town Hall parking lot, curbing and sidewalks, if any. Baseline video or photographs shall be submitted before building permits are issued.
- 16) Before a final occupancy permit is issued, the Applicant has proposed and the Board has accepted that the Applicant shall pay a contribution in the amount of \$15,000.00 (fifteen thousand dollars) into an account to be used as the Planning Board sees fit to alleviate parking issues within the downtown area.
- 17) Employees shall park in locations other than the Town Hall parking lot or on-street parking on Main, Cherry, or Tilton Streets.
- 18) Before a final occupancy permit is issued the Applicant shall submit an as-built plan and geo-referenced CAD files stamped by an engineer.
- 19) Before final occupancy is issued the Applicant shall complete an emergency contact sheet with the Ashland Fire Department.
- 20) This approval and approved plan shall be recorded at the South Middlesex Registry of Deeds. A copy of the recorded documents and approved plan bearing the date of recording and the book and page number shall be delivered to both the Planning and Building Departments before any work can begin.

In accordance with Sections 9.3.8 and 9.4.14 of the Zoning Bylaw, special permit and site plan approval shall lapse after two (2) years from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Approvals may, for good cause, be extended in writing by the Board upon written request of the Applicant.

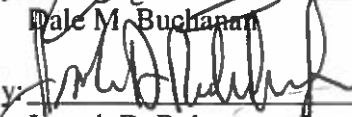
Pursuant to Section 9.4.17 of the Zoning Bylaw, any appeal of this decision of the Board shall be made in accordance with G.L. c. 40A, § 17, to a court of competent jurisdiction.

Town of Ashland Planning Board

By: 
Preston F. Crow, Chair

By: _____
John Gordon Rossi

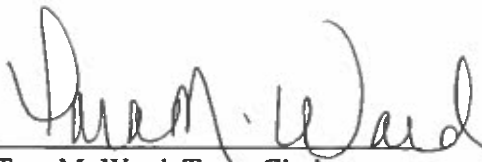
By: 
Dale M. Buchanan

By: 
Joseph D. Rubertone, Jr.

By: 
Philip R. Williams

Filed with the Town Clerk on:

Date: November 27, 2018


Tara M. Ward, Town Clerk

I HEREBY CERTIFY THAT TWENTY DAYS HAVE ELAPSED FROM THE DATE THIS DECISION WAS FILED IN THE TOWN CLERK'S OFFICE AND THAT NO APPEAL HAS BEEN FILED.

DATE: _____

Tara M. Ward, Town Clerk