



**Office of the
Kingston Planning Board**
Kingston Town House
26 Evergreen Street
Kingston, Massachusetts 02364

Meeting Minutes of March 27, 2023
APPROVED at the regularly scheduled meeting on Monday, September 11, 2023

Members:

Tom Bouchard, Chair
Dave Gavigan, Vice Chair
Joanne Cullen, Clerk
Bob Gosselin, Member
Jonathan Barnett, Member
Rich Kenney, Alternate Member

Chair Tom Bouchard called the meeting to order at 7:15 PM

ROLL CALL

Tom Bouchard: Present
Dave Gavigan: Present
Joanne Cullen: Present
Jon Barnett: Present

Bob Gosselin and Rich Kenney were not present.

Staff Present

Valerie Massard, Town Planner

MEETING MINUTES

There were no minutes for review

COMMUNICATIONS

The Attorney General has issued a general memorandum on its website to all cities and towns subject to the MBTA Zoning legislation that a failure to comply with the requirements to zone for potential higher-density housing as required will result in penalties and fines (in addition to disqualification for several grant and funding resources).

The State has extended online meetings and hybrid meetings under the Open Meeting Law for two more years.

Mr. Bouchard invited Valerie Massard to comment on some new happenings. Ms. Massard stated that the Town is excited about having the opportunity to offer the Assistant Town Planner position to Erin Benoit of Kingston, who is scheduled to be appointed tomorrow evening by the Board of Selectmen and start later this week.

Public Hearing regarding Modification of Special Permit and Site Plan for 121 Main Street-Spencer Realty LLC. Daycare and Dunkin Donuts Drive Thru- Traffic/ Site Plan in the Route 3A Design District, read into the record by Joanne Cullen and Tom Bouchard opened the hearing. The applicant was notified and agreed to proceed with the hearing with four members present.

William Simms, Attorney representing the Petitioner, confirmed the information in the staff report regarding the history of the discussions regarding the parking lot and traffic circulation for the site. The proposed Dunkin' Donuts drive through and the existing daycare use, together, at the site, have necessitated a review of the site plan and traffic impacts through this special permit. Mr. Simms does not oppose the recommended conditions in the staff report. Mike Sutton of Northeast Traffic Control walked through the site plan, and traffic study prepared by VHB of Watertown, MA for the applicant, and included responses to peer review by Jeffrey Dirk, PE of VAI on behalf of the town.

From the staff report for the March 27 Planning Board meeting from Valerie Massard, Town Planner:

The original special permit and site plan did not have a day care facility listed as an allowed use; however, this use is exempt so long as parking, bulk and massing is satisfied under state zoning laws. The day care facility is in the building originally intended for medical and business office use as stated in the original special permit and site plan, has approximately 80 children during the week, and is very successful.

Cadete (Dunkin' Donuts) has submitted to occupy the permitted drive through retail portion of the site (and will in turn close down the site on the opposite side of the street nearby); however, in light of the day care facility tenant, the Owner, Spencer Realty LLC, was asked to modify the special permit to show the two uses and show that they operate safely through provision of a revised site plan and traffic information to demonstrate adequate parking and traffic circulation at the property.

Jeff Dirk, PE of Vanasse & Associates (VAI) has done a peer review of the traffic information and revised site plan to evaluate the proposed Dunkin' Donuts drive through at the above location, which is to be shared with the existing day care facility, on behalf of the Planning Board. The recommendation is favorable with a series of conditions contained in the report, and staff is favorable to these conditions.

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Recommendation – Approve with the following conditions:

- This special permit modification must be recorded with the Registry of Deeds and evidence of recording presented to the Planning Board and Building Department.
- A Municipal Lien Certificate showing that there are no fines, penalties or late taxes owed by the Owner, to the Town, if any, prior to Occupancy for the Dunkin' Donuts.
- Conditions of VAI memorandum, as written, relative to traffic circulation to be installed/satisfied – even on a temporary basis while permitting is reviewed for signage by the Board of Appeals, not later than March 30th, 2023, in order to ensure traffic safety, and this includes the proposed parking signs at the daycare as shown on the revised site plan, prior to operation of the Dunkin' Donuts drive-through window. The bicycle rack shall be installed prior to June 30, 2023.
- No seats are allowed for the Dunkin' Donut's retail use.
- No additional tenants may occupy, nor may any tenant changes be approved, without Site Plan Review by the Planning Board to ensure that adequate parking requirements are satisfied, and if necessary, a revised TIAS submitted for peer review, as determined by the Planning Board

for the proposed tenant. Changes that will not affect parking or traffic circulation may proceed without additional review after said determination is made through review by the Planning Board or its Agents on a case-by-case basis.

- This special permit may not be transferred to a new owner without further review and approval by the Planning Board.
- Within six (6) months of the issuance of the Occupancy Permit for the Dunkin' Donuts, if there is a problem with the operation of the Dunkin' Donuts (with the daycare center as the other tenant) in terms of parking or traffic circulation within, or external to, the site as a result of the uses within as determined by the Planning Board, the Building Inspector or its Agents, the Owner must appear before the Planning Board with proposed modifications, prepared by a professional licensed civil or traffic engineer and subject to peer review, that will mitigate these circumstances in a timely manner, subject to Planning Board approval. Failure to do so will result in penalties, and the Planning Board reserves the right to modify the special permit and site plan through a public hearing process in the event that this condition is not met.
- A revised landscaping plan showing proposed fence screening of mechanicals and plantings along the outer edge of the parking lot, shall be provided for approval by the Planning Board at a regular meeting not later than May 1, 2023. Failure to do so is a violation of this special permit and site plan approval.
- Approved architectural details to the Main Street facing façade, with fenced screening of the mechanicals and with additional plantings per the approved landscaping plan, shall be installed not later than June 30, 2023. Failure to do so is a violation of this special permit and site plan approval.
- Evidence of a two year guarantee on new plantings shall be provided to the Planning Board not later than June 30, 2023. Failure to do so is a violation of this special permit and site plan approval.

Valerie Massard, Town Planner, presented a brief response/summary. Change of tenants, possibly seats in the future, should come back to the Planning Board administratively in the future, safe operations are the key nature of the need to include these conditions.

Tom Bouchard reviewed the highlights of the current status: in the future, administrative simple site plan review for safety rather than new public hearings will be the process, signage for directional or public safety measures are not part of what he would consider official signage under the zoning bylaw. Mr. Bouchard asked if there was any discussion. Joanne Cullen offered that the recommended conditions look well-vetted and detailed. Mr. Bouchard asked if the Board would support having any adjustments to the timing of landscaping or architecture in the future be handled through the Chairman and Town Planner, there were no objections. Mr. Dirk was thanked for attending, although comment was not needed.

David Gavigan moved to close the public hearing, Joanne Cullen seconded. 4-0

Joanne Cullen moved approval of the special permit with conditions as presented and discussed at the public hearing, seconded by Jonathan Barnett. 4-0

Joanne Cullen moved approval of the site plan with conditions as presented and discussed at the public hearing, seconded by Jonathan Barnett. 4-0

DISCUSSIONS

Citizen Petitioned Articles received last week – brief overview for the Planning Board.

1. **Site Fill and Reclamation** – a public hearing has been scheduled for two weeks from now, Ms. Massard stated that she wanted to be sure the Planning Board would have adequate time to see the proposed information. Both a Zoning and a General Bylaw to allow for Site Fill and Reclamation, proposed as a Planning Board Permit, have been filed by a member of the O'Donnell family, which would affect the DEP Consent Order Fill being received at the O'Donnell land on Marion Drive.

The Planning Board and Town Planner did not receive any prior notice of the proposed petitions. Mr. Bouchard offered that the site has had clean earth removed, and DEP "reclamation" is bringing in urban fill which is not considered clean fill. Ms. Massard stated that the Town is in a law suit with the O'Donnells over this specific Consent Order use, which is not an allowed use in the Zoning Bylaw. Joanne Cullen asked for clarification – is the DEP associated with the article. Ms. Massard and Mr. Bouchard offered some additional information about the soils being brought in to Mary O'Donnell's land, not knowing exactly what is in the soil coming into the property – Mr. Bouchard offered as an example – each oyster is tracked from harvest to plate – these soils are tracked from dig to O'Donnell's land – but in this case, the soil can't be lived on or used without at least 10 feet of clean fill. The DEP oversees the program of tracking this soil, and is motivated to have a "disposal site" for these soils, making questions about compliance hard to resolve with the state. If this were to be passed at town meeting, it would make the Town's legal argument that the use is not allowed moot, which would not be supporting the position of the town.

2. **Street Acceptances.** Recommendation to the Board of Selectman regarding requested Citizen Petition Articles for Street Acceptance. Mr. Bouchard and Ms. Massard reviewed the process for street acceptance.

Indian Pond Estates' **Country Club Way.** Mr. Bouchard opened discussion and members discussed the issue with the Developer not finishing the road. Mr. Tonsberg Sr. has recently lost a court case with the Planning Board, where the court ordered Mr. Tonsberg Sr. to finish the road. This is a very recent decision and it is possible that Mr. Tonsberg Sr. may appeal the decision.

Rocky Nook's **Cedar Street.** Low spot on the road where a house was constructed recently, and the water is now in the street – the water was directed over the years, by various property owners, into the street/that vacant lot. The property is all private property.

Recommendation to the Board of Selectman regarding requested Citizen Petition Articles for Street Acceptance:

Joanne Cullen made a motion to recommend that the Selectmen lay out Country Club Way. Second: John Barnett
All in Favor
Vote: 0-4-0 – The Planning Board does NOT support laying out Country Club Way.

Joanne Cullen made a motion to recommend that the Selectmen lay out Cedar Street in Rocky Nook. Second: John Barnett
All in Favor
Vote: 0-4-0 – The Planning Board does NOT support laying out Cedar Street.

3. **Revised Bylaw-** Tree Clearing / Grading Bylaw being prepared by the Town Planner and Conservation Agent (Matt Panella) in order to respond to the comments received from the Planning Board, Conservation Commission, Jason Silva and others on the initial draft. This is a revision in progress, looking for some additional comment. This draft is hoped will be reviewed for a vote at the next meeting on April 10th.

Meeting adjourned 8:07 PM

Next meeting to be held Monday, April 10th, 2023

Materials discussed/reviewed at this meeting:

- Agenda for March 27, 2023
- Public Hearing Notice for Special Permit 121 Main Street
- Traffic Engineering Peer Review Vanasse & Associates 3/21/2023
- Revised Parking and Circulation Plan for 121 Main Street dated March 23, 2023 and prepared by Atlantic Desing Engineers, Inc., and Updated Traffic Impact Evaluation dated March 10, 2023 by VHB, submitted by Owner of 121 Main Street; and Architectural Elevation Plan prepared by bfArchitects (Bill Forniciari) dated February 17, 2023
- Staff Report for Planning Board meeting of March 27, 2023 re 121 Main Street
- Planning Board original decision for 121 Main Street
- Petitioned Articles for Town Meeting that would affect the Planning Board – Street Acceptances for two different roads, and a Citizen’s Petitioned article for a Zoning Bylaw and General Bylaw, as received from the Town Clerk
- Revised Draft of Tree Clearing / Grading General Bylaw proposed as a joint article on the Town Meeting warrant between the Planning Board and Conservation Commission