

Rob Knapik, Chairman
John Gniadek, Vice Chairman
Mark Kaferlein, Clerk
Thomas McNulty, Associate Member
Jim Blackburn, Associate Member



Uxbridge Town Hall
21 South Main Street, Room 205
Uxbridge, MA 01569
508-278-8600 x2019 p

Zoning Board of Appeals Decision

ZBA Case #: FY20-11

Zone: **Industrial B Zone**

Owner/Applicant: **Ronald Parsons**

Property Address: **56 Industrial Drive**

Assessor's Reference Map: **40** Parcel: **4659**

Worcester District Registry of Deeds References: Book: **61681** Page: **145**

REC'D UXB TOWN CLERK
2020 MAY 20 PM 2:21

VARIANCE DENIED

Decision Date: May 6, 2020

BACKGROUND: The applicant Ronald Parsons, Trustee of 56 Industrial Drive Realty Trust, is seeking a VARIANCE on four (4) dimensional zoning requirements. The applicant proposes to split the existing lot so that each existing building occupy its own lot for a future conveyance. Proposed Lot 1 will contain the smaller building and is the subject of this request.

SUBMITTALS:

- Complete Zoning Board of Appeals Application including: Attachment A, Property Deed, Municipal Lien Certificate, Certified Abutters List, and Application Fee
- Land Plan prepared by Turning Point Engineering, titled ZBA Plan for 56 Industrial Drive, dated April 6, 2020

VOTING MEMBERS: Robert Knapik, Mark Kaferlein, Thomas McNulty

PRESENTATION:

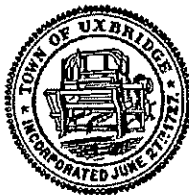
A public hearing was open and closed on May 6, 2020. The hearing was conducted via remote participation pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place due in response to Covid-19. Additionally, permitting timelines have been extended and outlined in Section 14 of House Bill 4598.

Stephen O'Connell, Turning Point Engineering, attended on behalf of the applicant. The following dimensional variances are being sought to allow the applicant to legally divide the lot: a 9,535 square foot variance for lot area, a 68.1-foot variance for lot frontage, a 21.2-foot variance for the right-side setback, and a 4.4-foot variance for the left side setback. Mr. O'Connell reasoned the shape of the existing larger structure is the circumstance leading to a hardship of being left with an unconventional building configuration constructed by the previous owner for their unique business operation which the applicant is finding difficult to utilize.

FINDINGS:

1. The site is 1.71 acres with 331.33 feet of frontage along Industrial Drive and contains two (2) existing buildings connected by a concrete loading dock.
2. The easterly building is 27, 545 sq. ft. and the westerly building is 4,825 sq. ft.
3. The larger building was constructed with the loading dock in 2007 and the smaller building was constructed in 2008.
4. There is ample area for the existing lot to be divided into 2 conforming lots however, the shape of the larger structure prevents the proposed property line to be placed in a location that would allow both proposed lots to meet the dimensional requirements within the district.
5. 56 Industrial Drive is a pre-existing non-conforming lot and a Variance was granted in 2008 to modify the side setback requirement from 30 feet to 26 feet as described in a Decision recorded at the Worcester Registry of Deeds, Book 42020 Page 393.
6. The applicant purchased the property in December 30, 2019 as described in the Deed provided with the application.
7. The site is serviced by a private well and public sewer.
8. The existing loading dock could be subjected to an easement allowing one/both parcels its use.
9. If the Variance is granted, both parcels would have adequate parking.
10. If the Variance is granted, both parcels would be used for legal purposes allowed in the Industrial B zone.
11. Abutting parcels contain structures close to the lot lines.

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DISCUSSION & DELIBERATIONS:

Members discussed the following four requirements outlined in MGL of Ch. 40A Section 10, that use variances are not permitted and cannot be granted unless all four conditions below are met. They acknowledged the difficulty in meeting the standard for a variance and the uniqueness of this application in particular as the circumstance for the hardship relates to the structure and not the actual land.

1. Circumstances relating to soil conditions, shape, or topography that especially affect the property for which a variance is sought but do not generally affect the zoning district in which the land or structure is located. Members agreed there were no soil conditions, shape, or topography that especially affect the land of the property. However, they did agree that the shape of the building is unique in that it consists of two separate structures connected by a loading dock. There was the additional consideration as to whether this constitutes as one structure per the Uxbridge Zoning Bylaw definitions.
2. Facts showing that substantial hardship, financial or otherwise, will result from literal enforcement of the applicable zoning restrictions to the land or building. Members could not agree whether the applicant clearly established a substantial hardship, financial or otherwise.
3. Facts supporting a finding that the relief sought will be desirable and without substantial detriment to the public good. Members did not note any detriment to the public good. Per the applicant's presentation, the smaller parcel and the existing unique building could be available for lease or purchase for uses that are allowed in the Industrial B zone.
4. Facts supporting a finding that the relief sought may be given without nullifying or substantially derogating from the intent and purpose of the Zoning Bylaws. The Board may impose conditions and limitations both of time and of use, including the continued existence of any particular structures. However, the Board cannot impose conditions based on the continued ownership of the land or structures to which the variance pertains. Members agreed that the findings support the belief that the relief sought may be given without nullifying or substantially derogating from the intent and purpose of the Zoning Bylaws.

Larry Lench, Uxbridge Building Inspector attended the hearing and presented the following legal precedence for consideration: "The extent that nonconforming structures or uses may be extended, altered or changed is left to the discretion of the local legislative body. The Zoning Act does not require that communities authorize the extension, alteration or change of nonconforming structures or uses. Blasco v. Board of Appeals of Winchendon 31 Mass. App. Ct 32 (1991)".

No members of the public offered comments during the hearing.

MOTION / VOTE:

Thomas McNulty made a **MOTION** to close the Public Hearing for FY 20-11 for 56 Industrial Drive. **MOTION SECONDED** by Mr. Kaferlein passed unanimously by roll call **VOTE** of 3-0-0 (Kaferlein – aye, Knapik – aye, McNulty – aye).

Mr. McNulty made a **MOTION** that the Zoning Board of Appeals **APPROVE** the **VARIANCE** as requested in ZBA application FY20-11. **MOTION SECONDED** by Mr. Knapik. **MOTION FAILED** by a roll-call vote of 2-1-0 (Kaferlein – no, Knapik – aye, McNulty – aye).

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SIGNATURE PAGE 1 of 3

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May 20, 2020
Date

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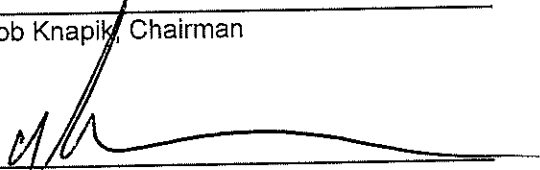
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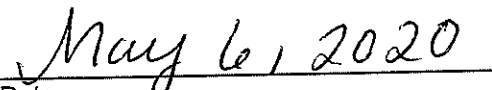
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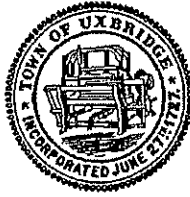
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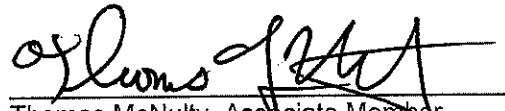
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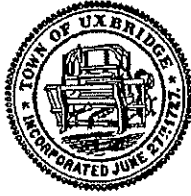


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Appeals, if any, from this decision shall be made pursuant to M.G.L. Chapter 40 A, Section 17 and filed within 20 days after the date of the filing in the Office of the Town Clerk.

I hereby certify that twenty (20) days has elapsed from the file date and no appeal has been filed in this office.

A true copy: ATTEST

Town Clerk, Kelly Dumas or
Assistant Town Clerk

Date

Town Seal

****THE APPLICANT IS REMINDED OF THEIR RESPONSIBILITY TO RECORD THIS
DECISION AT THE REGISTRY OF DEEDS PER THE CERTIFICATE OF GRANTING.
NO PERMITS SHALL ISSUE UNTIL THE PERMIT IS RECORDED. ****