

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 #: **FY20-12**  
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**

### VARIANCE APPROVED with Conditions

**Decision Date: June 3, 2020**

**BACKGROUND:** The applicant Ronald Parsons, Trustee of 56 Industrial Drive Realty Trust, is seeking to amend the decision for VARIANCE Case # FY08-02 to tailor the lot to the unique needs of future tenants. The applicant proposes to split the existing lot so that each existing building occupies its own lot. The following dimensional variances are being sought: 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.** 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 June 3, 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.

Eli Leino, Mayer, Antonellis, Jachowicz & Haranas, LLP and Stephen O'Connell, Turning Point Engineering represented Mr. Parsons. Mr. Leino stated in 2008 the ZBA granted relief finding that there was a "substantial hardship to the angular sideline and the shape of the lot and that the hardship was financial in nature and not detrimental to the public good". He said owing to circumstances relating to the shape of the land and existing structures, without the variance relief, the Applicant will either be forced to demolish and reconfigure the buildings on the site, or leave one of the buildings entirely vacant. A hardship, he suggested, that can be remedied through the requested relief without detriment to the public good nor substantial derogation from the Zoning By-Laws.

#### **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. A private well and public sewer service the site.
6. If the Variance were granted, both parcels would have adequate parking.
7. If the Variance were granted, both parcels would be used for legal purposes allowed in the Industrial B zone.
8. Abutting parcels contain structures close to the lot lines.

The owner of 40 Industrial spoke in opposition to the project and two Board of Selectmen wrote letters in support of the project.

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**DISCUSSION & DELIBERATIONS:** Members questioned why the lot needed to be divided and not be utilized as is. Mr. Leino explained the Applicant has a potential leaser for the larger building but water supply regulations limiting the number of employees would leave the smaller building unusable. He argued dividing the lot will allow the Applicant to apply for a second well which Mr. O'Connell said will "unequivocally meet any BOH/DEP requirements". A second well will allow the applicant to double the capacity of the allowable employees in a 24-hour period. Everyone agreed the Applicant will be required to comply with all applicable state and local regulations.

The Chair confirmed the Board must apply the following four statutory requirements outlined in MGL of Ch. 40A Section 10 to this request to amend an existing variance. Members acknowledged the difficulty in meeting the standard for a variance and the uniqueness of this application as the circumstance for the hardship relates to the structure, the hardship is operational and economic, and its equity aspects.

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 obvious 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. It was suggested that soil conditions could also be considered a circumstance due to the regulatory limitations for the water supply.*
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 agreed the applicant established a substantial economic and operational hardship.*
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. The larger building has a potential user, a cannabis company with a Host Community Agreement with the Town.*
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. *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.*

### MOTION / VOTE:

Mr. McNulty made a **MOTION** to close the Public Hearing for FY 20-12 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 **VARIANCES** requested in ZBA application FY20-12 with the **CONDITION** that the concrete loading dock between the two structures is removed. **MOTION SECONDED** by Mr. Knapik. **MOTION PASSED** unanimously by a roll-call vote of 3-0-0 (Kaferlein – aye, Knapik – aye, McNulty – aye).

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### SIGNATURE PAGE 1 of 3

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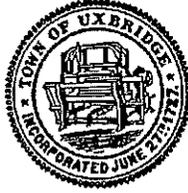
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June 3, 2020  
Date

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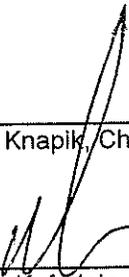


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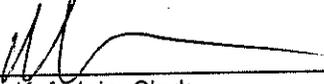
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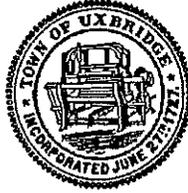
  
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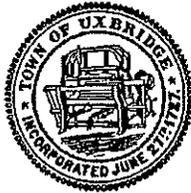
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Appeals, if any, from this decision shall be made pursuant to M.G.L. Chapter 40 A, Section 17 and filed within 20 days after the date of the filing in the Office of the Town Clerk.

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. \*\***