

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

**TOWN OF UXBRIDGE
ZONING BOARD OF APPEALS**

REC'D UXB TOWN CLERK
2020 SEP 16 AM 11:47

MEETING MINUTES: Wednesday, August 5, 2020

Present: Rob Knapik, John Gniadek, Thomas McNulty, Jim Blackburn and Administrator Melissa Shelley
Absent: Mark Kaferlein

I CALL TO ORDER

It being approximately 6:00pm, the meeting being properly posted, duly called, and a quorum being present, the meeting was called to order by the Chair. He made the following statement to explain the purpose for the remote meeting: *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, this meeting of the Uxbridge Conservation Commission is being conducted via remote participation. Although, no in-person attendance of members of the public will be permitted, the Town of Uxbridge has made every effort to ensure the public can adequately access the proceedings in real time via technological means. This meeting is being streamed on Uxbridge Community Television and Zoom per the instructions on the agenda alternatively members of the public can call in by calling 301-715-8592 and using meeting i.d 871 9429 3994. All motions will be voted on with roll call vote.*

II PUBLIC HEARINGS

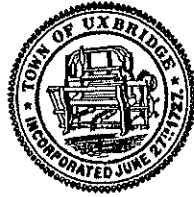
1. **FY21-01: 502 and 486 Douglas Street**, the applicant **Uxbridge Gas and Market, LLC**, is seeking a **SPECIAL PERMIT**, in accordance with the Uxbridge Zoning Bylaws Appendix B: Table of Uses, for a 5000 s.f. Filling Station/Convenience Store and drive through coffee shop with five (5) gasoline pump islands and two (2) high speed diesel pump islands. The applicant is also requesting a **VARIANCE** to the requirements of Zoning Section 400-10 D.3 that prohibit billboards which include any sign over forty (40) s.f. in area. The proposal is for two (2) 20-foot-high pylon signs and one (1) 70-foot high-rise sign equaling a total area of three hundred forty (340) +/- s.f. The properties are shown on the Town of Uxbridge Assessor's Map 23 Parcels 4364 and 4424 and described in deeds recorded at the Worcester Registry of Deeds in Book 54556 and Page and Book 27722 Pages 63 and 346.

Discussion: Tom Reidy, Attorney Bacon/Wilson PC, Dave Faist, Principal Engineer CMG Environmental, Dennis Darveau, Site Consultant, Tarek Yatem, Project Owner, Rich Watts, Project Owner's sales manager attended on behalf of the applicant.

Mr. Reidy introduced the project and team members. He said they would ultimately like to request a continuance but wanted to be available to present and take in concerns of the board and members of the public. The reason for the continuance request is to allow the applicant time to consider and address the abutters' concerns submitted and the results of Planning Board and Conservation Commission initial reviews. Mr. Reidy summarized the request before the ZBA - a Special Permit for the gas pumps noting that retail is an allowed use by right in the Business Zoning District. He requested tabling the request for Variance to the signage requirements for their own clarification on the requirements.

Mr. Knapik said the request seemed reasonable and that he anticipated the hearing may occur over several meetings due to the complexity of the project and the potential to be informed by the other Boards' reviews. He appointed Mr. Gniadek and Mr. McNulty as voting members for the project. He acknowledged the high public interest and the number of comments the Board received including a petition signed by over 180 residents opposed to the project. After discussion, members agreed to hear from abutters in attendance with the hopes that the applicant will hear the concerns and see if there is a way to address them.

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The following is a summary of the public comments made during the hearing. A * denotes this person submitted written comments to the Board prior to the hearing which are part of the public record.

*Attorney Ed Allcock, Marcus, Errico, Emmer & Brooks, P.C., representing the Board of Trustees of the Summerfield at Taft Hill Condominium Trust "Condominium Trust": The Condominium Trust opposes the project for the following reasons – potential issues with the ground lease lot; they do not believe the request for a variance for the sign meets the strict criteria for the issuance; they believe traffic on the site and in general area, health and safety, and neighborhood character all will be adversely affected. He also referenced a prior proposal for a gas station on this parcel in 2016 that the ZBA denied for the same concerns he highlighted this evening.

*Pat Stephen, 44 Summerfield Drive, Chairman of the Board of the Condominium Trust: He reviewed the reasons for a 2016 ZBA denial of a gas station at same location and asked what has changed. He requested the Board vote on the project tonight given all information from the residents and because nothing has changed.

*Paul Balutis, 40 Taft Hill Lane, Treasurer of the Board of the Condominium Trust: He expressed concerned that the Chair is showing deference for the applicant by allowing for a change to the request and granting the request for a continuance. He also believes with the information provided by the abutters and the two previous denials and the fact nothing has changed he questioned what more does the ZBA need to deny the special permit.

John Crawford, 53 Summerfield Dr. – he noted the elevations of one the proposed signs is about 412' – he lives at one of the highest points of the development at 470'. His concern is the impact of having such a tall structure on their site and the future effects on condominiums' property values. He noted he comes from a law enforcement background and requested the Board consider police reports on security and safety for such facilities, particularly due to its proximity to 146 and the element that uses the road.

*Randy Fields, 21 Summerfield Dr. (a direct abutter to 502) – he questioned whether the canopy (372 sq. ft) constitutes a sign? He pointed out a discrepancy on the plan related to the number of diesel fuel islands. He had questions about the turning radius. He pointed out that 3 of the 4 test pits hit boulders and he is concerned blasting will be required to install the gas tanks which could lead to damage to their homes (as has happened during other development). He also noted the water was seen in the test pits and the ground water table in the area is high & proximity wetlands should be considered.

*Vinnie Cataldo, 39 Andrews Dr., - he questioned whether turn radius were evaluated. He is concerned the project is being presented as a gas station but the design appears to be more like a truck stop which can lead to pollution and other issues for the residents close by. Lighting and hours of operation were also mentioned as concerns and Mr. Cataldo asked the board to take into consideration and how the project will impact the quality of life for the residents of Taft Hill.

*Beth Zersky, 7 Summerfield Dr. – she reviewed up a recent ZBA decision permitting a single-family Home to be built in the Business District on Douglas St (3 houses up from the W Taft Hill entrance). The decision stated that residential was the best use for the area and she questioned why this parcel would be different. She also reviewed the prior ZBA denial for a gas station in 2016.

Bob Contursi – 16 Nikki Way, - questioned what more does the Board need from the abutters and asked them to render a decision or answer why they won't. Mr. Knapik explained the Zoning Board's difficult job of balancing competing

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interests of the all property owners involved and that it's not incumbent upon the board to merely conclude because there was a similar application denied in 2016 that this application should also be denied. Each application stands on its own merits and the applicant is entitled to allow a fair hearing. He reexplained his opening statements to assure the members of the public in attendance that the Board is not showing deference to the applicant.

Mr. Knapik re-capped the constant theme heard this evening and in the submissions regarding expectations for privacy and concern for lights, noise, traffic and safety. He noted the Planning Board process will properly address most of the concerns and the ZBA will be informed by that process. He also emphasized that ZBA's role is dictated by the bylaw and the 6 criteria the members must objectively apply to the project.

Mr. Gniadek and Mr. McNulty both had questions about the Ground Lease Lot – Mr. Reidy responded that they are looking into taking care of that in another matter but they would provide one to the ZBA for review if necessary and members agreed to defer discussion. Mr. Blackburn asked for clarification on the variance requests for the signage and requested the elevations (or some type of visual representation) of the project and the condominium development if the applicant does proceed with the request for a variance.

Motion: Mr. McNulty moved to continue the public hearing FY21-01 for 502 and 486 Douglas Street to the September 2nd meeting of the ZBA. Mr. Gniadek seconded, and the motion passed unanimously by roll call vote of 3-0-0 (Gniadek – aye, McNulty – aye, Knapik – aye).

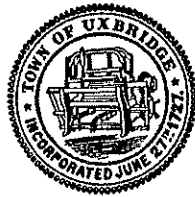
2. **FY21-02: 83 St. Andre Drive**, the applicant **James Priestly**, is seeking a **SPECIAL PERMIT**, for a new 12'x20' garage storage structure on site in accordance with Section 400-12 C. Non-Conforming Structures. The existing lot does not have the required area, frontage, and does not meet the current setbacks for an existing accessory structure. The proposed new accessory use structure will not further increase any existing setbacks and will not make the site more non-conforming. The property is shown on the Town of Uxbridge Assessor's **Map 12C Parcel 3372** and described in deeds recorded at the Worcester Registry of Deeds in **Book 58718 and Page 244**.

Discussion: Mr. Priestly, the homeowner, presented his application to the Board to add a detached garage to his property, located approximately one hundred forty feet (140') from the road, to be used for storage of a restored military jeep. He explained that during the building permitting process, it was discovered by the Building Inspector that a portion of what appears to be his property is designated on plans as St. Andre Drive and some relief from the ZBA would be required. Mr. Priestly also noted that the existing shed on the property will be removed and the existing driveway carried through to the proposed garage.

Larry Lench, Uxbridge Building Inspector, attended and confirmed there are two different plans for the road. He also said that if the lot lines were drawn from the street, relief would not be required.

After review of the plan and the street acceptance documents provided, members agreed, at some time, St. Andre Drive was intended to end as a cul-de-sac with an approximate sixty-foot (60') radius and a property line was established on road plans. As aerial images and observations confirmed, St. Andre was not constructed with cul-de-sac the road is connected to Robert Street and Beverly Avenue as confirmed by the Building Inspector and current aerial images.

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Existing Grade Inc. and Uxbridge GIS Property Information, confirm that Mr. Priestley's property line is the cul-de-sac which is just a few feet from the principal structure, rendering it non-conforming. Additionally, the lot as it exists, does not have the required area, frontage, and does not meet the current setbacks for the current existing accessory structure, the shed.

Members evaluated the regulations and criteria to determine whether a Special Permit or a Variance would be the proper relief. Specifically, Section 400-12, Non-Conforming Uses and Structures of the Uxbridge Zoning Bylaws was explored but because the proposal is for a separate structure, members concluded applying the standard of a Variance would be more appropriate. After further discussion, it was agreed that the specific relief required is to the sixty-five foot (65') Front Yard Setback requirement for an Accessory Structure as defined in the Uxbridge Zoning Bylaw Appendix B.

Members discussed an abutter comment that was provided prior to the hearing. The neighbor was not opposed to the project but was looking for assurance a tree or its roots on her property would not be adversely affected. Mr. Priestly said he spoke with the neighbor about her concerns and he did not believe there would be any impact to the tree due to the distance and that the structure would be placed on a concrete slab.

During deliberations, everyone agreed that there is a hardship owing to the unique shape of the property with the existence of the St. Andre Drive cul-de-sac which was never constructed. Members also concurred, based on the applicant's presentation and the building inspector's report, that granting a Variance will not be detrimental to the public and does not derogate from the intent of the bylaw.

Motion: Mr. Blackburn made a motion to close the Public Hearing for FY21-02 83 St. Andre Drive. Motion seconded by Mr. Gniadek passed unanimously by roll call vote of 3-0-0 (Blackburn – aye, Gniadek – aye, Knapik – aye).

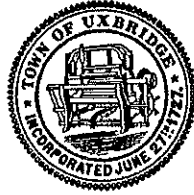
Motion: Mr. Blackburn made a motion that the Zoning Board of Appeals grant a variance of eighteen feet (18') from sixty-five feet (65') to forty-seven feet (47') in accordance to the plan submitted on a finding that the lot shape is unique and creates a hardship. Motion seconded by Mr. Gniadek passed by a unanimous roll-call vote of 3-0-0 (Blackburn - aye, Gniadek – aye, Knapik – aye).

3. **FY21-03: 504 Quaker Highway, Justus Kyengo, Applicant**, is seeking a **SPECIAL PERMIT** in order to obtain a Class II Auto Dealer License to conduct the sales of used motor vehicles. The property is located in an **Industrial Zone** and shown on the Town of Uxbridge Assessor's Map 45, Parcel 0464 and described in a deed recorded at the Worcester Registry of Deeds in Book 53843, Page 130.

Discussion: The applicant Justus Kyengo, owner of Fairlane Motors, represented himself during the public hearing. He explained he will be leasing a portion of the property to operate his used car business. He said his business is primarily conducted online and this will be a place to meet with customers and temporarily store vehicles until they are picked up. He noted goal is to sell thirty (30) cars a month but did not expect to have that many vehicles at one time on the property. Mr. Kyengo estimated the location has the capacity to hold 40 cars.

This is a 1.08-acre parcel with an 8,194 square foot building containing an existing automobile repair shop and office space with restrooms. Mr. Kyengo is leasing the rear, north easterly, portion of the lot for the storage of his vehicles and space in the building for his office use. The length of the north easterly lot line is 206.15 feet.

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Members and Mr. Kyengo discussed hours of operation, a reasonable limit on the number of cars on site, and a safe distance from buildings for storage of vehicles that wouldn't interfere in an emergency.

Larry Lench, Uxbridge Building Inspector, attended the meeting. He commented that this is a typical Class II application and provided recommendations for conditions. There were no comments from abutters or members of the public.

During discussions, the Chair noted the Board's authorization to issue the Special Permit is identified in the Uxbridge Zoning Bylaws, Appendix A Table of Uses, Commercial Uses. Additionally, the Uxbridge Board of Selectman require a Special Permit to acquire a Class II Dealer License in Uxbridge. Board members agreed the application, as proposed, was an appropriate use of the property and that met the criteria outlined in Section 400-50 (B) of the Uxbridge Zoning Bylaws:

Motion: Mr. McNulty made a motion to close the Public Hearing for FY21-03 504 Quaker Street. Motion seconded by Mr. Gniadek passed unanimously by roll call vote of 3-0-0 (Gniadek – aye, Knapik – aye, McNulty – aye).

Motion: Mr. McNulty made a motion that the Zoning Board of Appeals grant the special permit for garaging and maintaining more than three (3) automobiles of the passenger type in pursuit of obtaining a Class II Dealer License with the following conditions:

1. The number of the applicant's vehicles available for sale on the lot is limited to fifteen (15).
2. The allowed hours of operation are as follows: 8:00am – 6:00pm on Weekdays and 8:00am – 4:00 pm on Weekends.
3. There is a prohibition on offering vehicle repairs to the public.
4. There is a prohibition on storing cars within twenty feet (20') of any of the buildings on the property.

Motion seconded by Mr. Gniadek passed by unanimous roll-call vote of 3-0-0 (Gniadek – aye, Knapik – aye, McNulty – aye).

III MINUTES/MAIL/INVOICES

1. 07/01/20 & 7/15/20 Meeting Minutes Review

Motion: Mr. McNulty made a motion approve the 7/1/20 meeting minutes of the ZBA. Motion seconded by Mr. Blackburn passed unanimously by roll call vote of 4-0-0 (Blackburn – aye, Gniadek – aye, Knapik – aye, McNulty – aye).

Motion: Mr. McNulty made a motion approve the 7/15/20 meeting minutes of the ZBA. Motion seconded by Mr. Blackburn passed unanimously by roll call vote of 4-0-0 (Blackburn – aye, Gniadek – aye, Knapik – aye, McNulty – aye).

IV ANY OTHER BUSINESS, which may lawfully come before the Board

V ADJOURNMENT: NEXT ZBA MEETING, Wednesday, September 2, 2020

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Jim Blackburn, Associate Member

John Gniadek, Member



Thomas McNulty, Associate Member

9/10/20

Date

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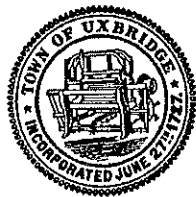
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