

Planning Board

APPLICATION FOR
SPECIAL PERMIT HEARING

MAR 09 2017

Attest.
Received
2/17/2017

Julie S. Hoar

Name of Applicant 377 Builders, LLC

Address 222 Pleasant Street, P.O. Box 483, Housatonic, MA 01236

Location of Property 64 Main Street, South Egremont, MA 01258

Registry of Deeds Recorded Book 1704 Page 102

Applicant is a prospective buyer (owner, tenant, licensee, prospective buyer)

Applicable Section of the By-Law Section 4.1.1.3.

Nature of Application (description of business, hours of operation, etc.)

Adaptive reuse of an existing non-conforming structure for commercial purposes. The existing structure will be used as an office building for 377 Builders, LLC, a general contracting company who specialize in custom cabinetry and sustainable practices. The building will house offices, workshops, and showrooms. The hours of operation will be Monday through Friday, 8 a.m. to 5 p.m..

I/We hereby request a hearing before the Special Permit Granting Authority with reference to the above noted application.

Signed: [Signature] Date: 2/27/17

Signed: (EVAN HARGREAVE)

Title or Interest: ~~Owner of 377 Builders~~ Owner of 377 Builders

Applicant must also submit all information required by the Planning Board Rules and Regulation, available at the Egremont Town Hall.

Please note that Assessors require seven (7) days notice to compile abutters list.

Received from the Applicant(s) the sum of \$ 410⁰⁰ ~~XX~~ to be applied against postage, advertising costs, and permit fee on (date) 2/27/2017.

Signed: [Signature]

Julie S. Hoar

ADDENDUM TO SPECIAL PERMIT PETITION

Applicant: 377 Builders, LLC
Property Location: 64 Main Street, South Egremont, MA 01258
Property Owner: Donna J. Leep and Donald Waite

March 2016

Introduction

The Petitioner, 377 Builders, LLC, is requesting a Special Permit from the Planning Board pursuant to Sections 4.1.1.3. of the Town of Egremont Zoning Bylaws (“Bylaws”) to alter the use of a structure on parcel Map 14, Lot 637. The property encompasses approximately 1.51 acres and is located in the General District..

The existing structure encompasses approximately 1632 s.f. (building and deck) in footprint area. The applicant does not propose to expand or alter this footprint area in any way. The existing building is a non-conforming structure as it lacks an adequate side yard setback.

Pursuant to Subsection 4.1.1.3. of the Bylaws, the Planning Board may authorize by Special Permit, the change of use for a consumer service establishment, subject to the special requirements of Section 4.1.2.1.

Zoning Bylaw Excerpts:

4.1.1.3. Uses and Structures Permitted in the General District by Special Permit

- a. Uses and land structures which may be authorized by the Planning Board by special permit in accordance with provisions of this Bylaw.*
- ii. Retail business or consumer service establishment, subject to the special requirements specified in §4.1.2.1.*

The Petitioner is requesting the Planning Board authorize a change in use of a consumer service establishment by Special Permit. Subject to the special requirements specified in Section 4.1.2.1. of the Bylaw, a Special Permit from the Planning Board in accordance with Section 6.2. of the Bylaw is required.

4.1.2.1. Table of Intensity Regulations

- a. General - Any building or structure used for dwelling purposes or housing a principal permitted use, shall be so located on a lot as to meet the requirements of this Section except as specifically otherwise provided in this Bylaw.*
- b. Table of Intensity Regulations – “All Other Principal Uses”*

	Min. Lot Area	Min. Lot Frontage	Min. Front Setback	Min. Rear Setback	Min. Side Setback (East)	Min. Side Setback (West)	Min. Building Height
Conforming	1.00 ac	150 ft	40 ft	25 ft	25 ft	25 ft	35 ft
Existing	1.51 ac	150 ft	38.9/44.5 ft	454 ft	26.5 ft	19.4 ft	20 ft
Proposed	1.51 ac	150 ft	38.9/44.5 ft	454 ft	26.5 ft	19.4 ft.	20 ft

The pre-existing structure does not meet the minimum side setback; The existing building is believed to meet the existing front yard setback, however detached stone landscape steps serving the structure are infringing on the front setback. Due to inadequate side yard setback, the current structure is non-conforming.

4.1.2.3. Special Intensity Regulations for the General District

b. Retail business and consumer service establishment special requirements

- i. The lot shall be sufficient in size so as to provide suitable off-street parking area with adequate disposal of storm water, able to accommodate in the judgment of the Selectmen parked vehicles for maximum use of the proposed facility.*

The existing facilities are anticipated to be sufficient in size. A total of four (4) parking spaces are provided at the rear of the building.

- ii. No commercial building, structure, parking areas or driveway providing access to or from a public way for such use, shall be located within fifty (50) feet of any side or rear property line, except in cases where strict compliance with this requirement may cause unnecessary hardship.*

The pre-existing commercial building, parking lot, and driveway providing access from Route 23 is located within 50-feet of a side property line. Since the building, parking lot, and driveway are pre-existing, a waiver of strict compliance is being sought.

4.3.2. Signs

4.3.2.2. Types of Permitted Signs - The only uses for which permits shall be granted by the Board are as follows:

- b. One (1) sign, not exceeding six (6) square feet in area, for a permitted accessory use on the same premises.***
- c. On other than residential premises, signs shall be limited to the name of the firm or goods or services available, saleable, or produced on the premises.***
 - i. There shall not be more than two (2) signs or advertising per business, excepting those which are attached to and are part of the architectural design of a building or structure including a gas pump.*
 - ii. The total area of all signs and/or advertising devices shall not exceed twenty (20) square feet per business nor shall any sign or device project above the eaves or parapet wall of any building to which it is affixed.*

The Petitioner will meet all desired signage requirements, including lighting.

Additional Zoning Bylaw Requirements:

6.2.4. Criteria - Before granting a special permit for any use requiring such permit under a provision of this Bylaw, the special permit granting authority shall find that the proposed use:

6.2.4.1. Is in compliance with all other provisions and requirements of the Bylaw, and in harmony with its general intent and purpose.

Upon issuance of a Special Permit, the proposed use to be located within the structure, will be in compliance with the general intent and purpose of the Bylaw. Further efforts will be required to achieved lawful zoning relief for the before the existing structure may be occupied. The adaptive reuse of the existing building provides a net benefit to the town via enhanced tax base and preservation of an existing structure, with limited drain on public resources (schools, fire, police, etc.).

6.2.4.2. Is essential or desirable to the public convenience or welfare at the proposed location.

Adaptive reuse of an existing structure within the downtown corridor is significantly more desirable for commercial purposes than outlying greenfield development.

6.2.4.3. Will not be detrimental to adjacent uses or to the established or planned future character of the neighborhood.

Primarily there are commercial occupancies in the neighborhood, with limited residential impacts. In keeping with the character of the neighborhood, the existing structure will continue to be of commercial use. In addition, the exterior façade will remain similar to the existing façade.

6.2.4.4. Will not create undue traffic congestion, or unduly impair pedestrian safety.

There will be no change in level of service compared to that that is currently experienced on State Route 23. Visibility for vehicles and pedestrians is adequate as currently constituted.

6.2.4.5. Will not overload any public water, drainage or sewer system or any other municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the Town will be unduly subjected to the hazards affecting public health, safety or general welfare.

There will be no net detriment to public services. The lot is currently on town water; the new use is not anticipated to generate an increase in water consumption. The lot has a private septic system; thus, no impact to public sewer is anticipated. In addition, the change in use will not lead to any addition of school children.

SPGA NOTES

Nicholas Andersen

Subject: 64 Main St Egremont Zoning review
Start Date: Tuesday, January 03, 2017
Due Date: Tuesday, January 03, 2017

Status: Not Started
Percent Complete: 0%

Total Work: 0 hours
Actual Work: 0 hours

Owner: Nicholas Andersen

The special permit granting authority designation for non-residential uses is defined by either section 4.1.1.3 or 4.3.1.5 of the Egremont Bylaw. The following annotations outline our assumption that the Planning Board is the special permit granting authority for this proposed use. This reasoning is predicated on the fact that no alteration or extension is proposed to the building footprint. The intention of this proposal is to permit a "Retail business or consumer service establishment" within the general district.

When the bylaw is read with regard to use and structure:

4.1.1.3. Uses and Structures Permitted in the General District by Special Permit:

a. Uses and land structures which may be authorized by the Planning Board by special permit in accordance with provisions of this Bylaw.

- i. Multi-family dwelling, subject to the special requirements specified in §4.1.2.3.*
- ii. Retail business or consumer service establishment, subject to the special requirements specified in §4.1.2.1.*
- iii. Accessory buildings exceeding the maximums set for height in §4.1.2.1 of this Bylaw.*

Response: Use may be authorized by special permit from the PB subject to the special requirements of 4.1.2.1

When the bylaw read with regard to the special requirements of 4.1.2.1

4.1.2.1. Table of Intensity Regulations:

a. General Any building or structure used for dwelling purposes or housing a principal permitted use, shall be so located on a lot as to meet the requirements of this Section except as specifically otherwise provided in this Bylaw.

Response: Continued use of pre-existing non-conforming structures is "specifically otherwise provided for in this bylaw" by section 4.3.1. "Nonconforming Uses and Structures"

When section 4.3.1 is read with regard to use:

4.3.1.5. Reversion to Nonconformity

Preexisting nonconforming structures or uses may be extended, altered or changed to another nonconforming use by special permit from the Zoning Board of Appeals provided that the Board finds that such change, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use. In addition, any alteration, reconstruction, extension, or structural change to a one-family or two-family building or structure that complies with the three minimum yard in feet requirement and with the maximum height in feet requirement set forth in §4.1.2.1 shall be permitted by right, whether or not the lot on which such alteration, reconstruction, extension or structural change is being made meets the minimum lot area and minimum frontage in feet requirements of §4.1.2.1.

Response: The current use is conforming (see further reasoning section) and proposed use would be conforming by obtaining Special Permit. The proposal neither permits nor proposes a nonconforming use, therefore that a ZBA Special Permit is not appropriate.

When section 4.3.1 is read with regard to structure:

4.3.1.5. Reversion to Nonconformity

Preexisting nonconforming structures or uses may be extended, altered or changed to another nonconforming use by special permit from the Zoning Board of Appeals provided that the Board finds that such change, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use. In addition, any alteration, reconstruction, extension, or structural change to a one-family or two-family building or structure that complies with the three minimum yard in feet requirement and with the maximum height in feet requirement set forth in §4.1.2.1 shall be permitted by right, whether or not the lot on which such alteration, reconstruction, extension or structural change is being made meets the minimum lot area and minimum frontage in feet requirements of §4.1.2.1.

Response: Structure is non-conforming but current and proposed use are conforming. No change, extension or alteration to the structure is proposed, therefore a ZBA Special Permit is not appropriate.

Further reasoning:

With regard to use:

The current use is assumed to be conforming single family. This assumption is made because the occupancy has never received a special permit to exist in any other fashion, and if it were a pre-existing non-conforming use that pre-dated zoning, it would have reverted to a conforming residential use due to a recent period of inactivity.

The proposed retail business or consumer service establishment would not exist until such time as a special permit were obtained. Only upon receipt of a special permit from PB for a retail business or consumer service establishment would the proposed use begin to exist; and it would be deemed a "principal permitted use", not a non-conforming use.

Therefore, with regard to use, at its core this proposal is for the conversion of an existing conforming use, to a new conforming principal permitted use. ZBA special permits are only appropriate for non-conforming uses.

With regard to lot:

The existing lot, in spite of the current structure, is a conforming lot of record if the occupancy is single family home or "All other principal uses". The lot meets or exceeds the frontage and area requirements outlined in the bylaw and could support either of those uses by-right if it did not currently house an existing structure. The lot itself conforms to zoning.

The proposal is to maintain conformity with respect to frontage and lot area. The lot will not be altered.

With regard to structure:

The existing structure is a pre-existing non-conforming structure which does not comply with the intensity regulations of Table 4.1.2.1.b. Specifically, the existing structure does not maintain an adequate side yard setback to the west. (19.5' existing, 25' required).

No extension, alteration or change is proposed to the structure. No extension or increase in non-conformity is proposed with regard to intensity regulations or setbacks. ZBA special permits are only appropriate for a change or alteration to an existing non-conformity. The proposal does not include an extension or alteration to any existing non-conforming element, specially the structure and setbacks thereto.

As an aside and apropos of nothing in this filing, it's unclear that ZBA SPGA would technically ever apply to nonconforming structures when the text of 4.1.3.5 is read literally.

“Preexisting nonconforming structures or uses may be extended, altered or changed to another nonconforming use by special permit from the Zoning Board of Appeals”

This passage would seem to imply that ZBA SPGA extends to extension of nonconforming uses only, as by its very nature a structure, which is a physical thing, can never be extended, altered or changed into a use, which is an action.

N/F LAND OF
BENJAMIN W. SCHWORM
62 MAIN STREET
BOOK 2202, PAGE 315

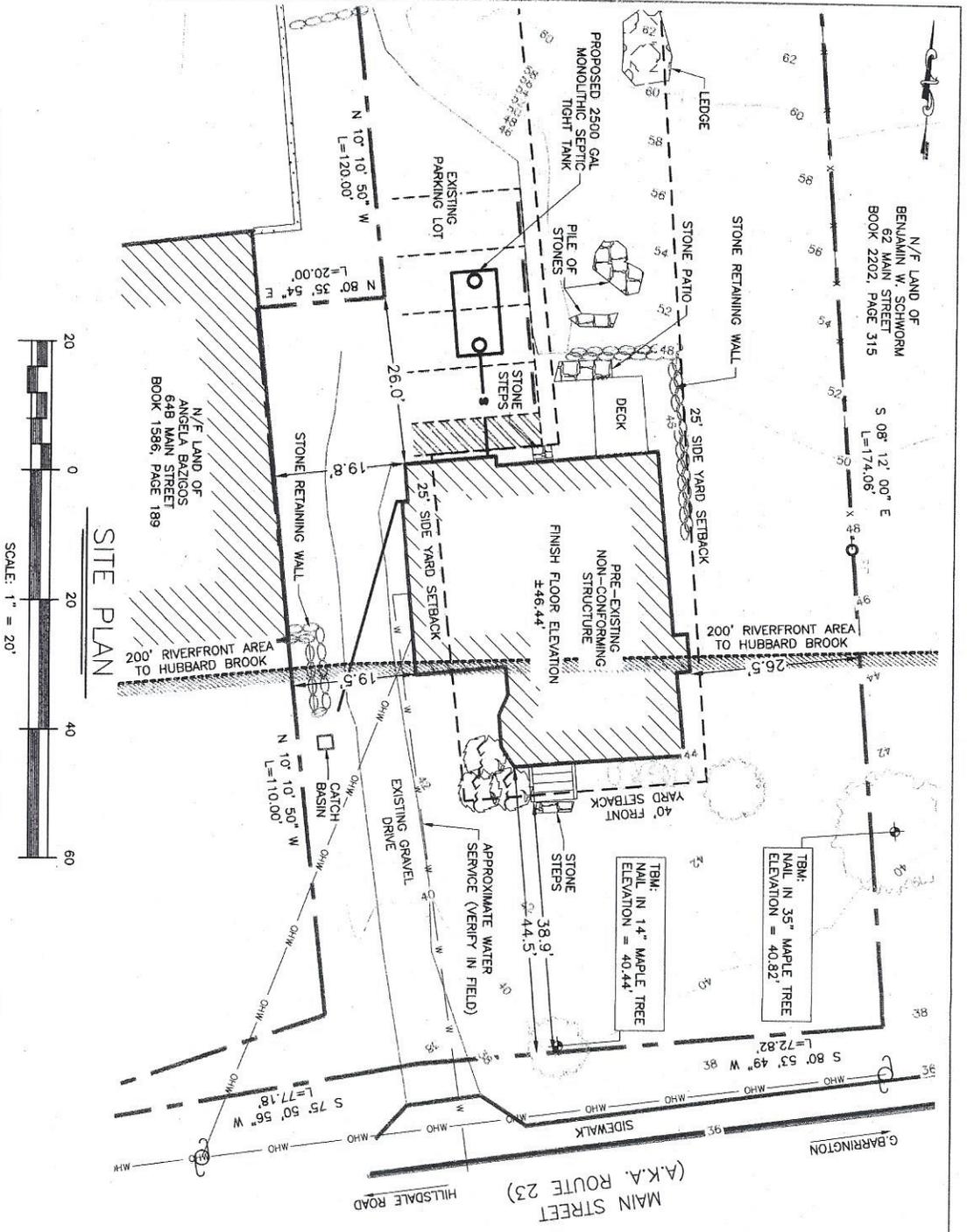
S 08° 12' 00" E
L=174.06

200' RIVERFRONT AREA
TO HUBBARD BROOK

S 80° 53' 49" W
L=72.82

S 75° 50' 56" W
L=77.18

S 80° 53' 49" W
L=72.82



SITE PLAN
SCALE: 1" = 20'

TOWN OF EGREMONT ZONING BYLAWS

SECTION 4.1.1: USE REGULATIONS	31. TYPES OF DISTRICTS - THE GENERAL DISTRICT	4.1.1.3. USES AND STRUCTURES PERMITTED IN THE GENERAL DISTRICT BY SPECIAL PERMIT - 4.1.1.3.(a)(ii) RETAIL BUSINESS OR CONSUMER SERVICE ESTABLISHMENT, SUBJECT TO THE SPECIAL REQUIREMENTS SPECIFIED IN SECTION 4.1.2.1. TABLE OF INTENSITY REGULATIONS (ALL OTHER PRINCIPAL USES).
SECTION 4.1.2: INTENSITY REGULATIONS	CONFORMING	PROPOSED
MINIMUM LOT AREA	1 ACRE	1.51 ACRES (±65,775.6 SF)
MINIMUM LOT FRONTAGE	150 FT	150 FT
MINIMUM FRONT SETBACK (SOUTH)	40 FT	38.9 OR 44.5 FT TO BLD.
MINIMUM FRONT SETBACK (NORTH)	25 FT	26.0 FT
MINIMUM SIDE SETBACK (EAST)	25 FT	26.5 FT
MINIMUM SIDE SETBACK (WEST)	25 FT	19.5 FT
MAXIMUM BUILDING HEIGHT	35 FT	± 20 FT

LEGEND

- - - - - EXISTING CONTOURS
- - - - - PROPOSED CONTOURS
- - - - - APPROXIMATE PROPERTY LINE
- - - - - ZONING SETBACK
- - - - - 200' RIVERFRONT AREA SETBACK
- - - - - EXISTING OVER HEAD WIRE
- - - - - EXISTING WATER LINE
- - - - - PROPOSED SEWER LINE
- - - - - EXISTING FENCE
- - - - - EXISTING TREELINE
- - - - - BENCHMARK ELEVATION
- - - - - SURVEY CONTROL POINT
- - - - - IRON PIN/PIPE FOUND
- - - - - UTILITY POLE

GENERAL NOTES:

CONTOUR INTERVAL IS 2' REFERENCED TO A LOCAL ARBITRARY DATUM.
CONTRACTOR TO NOTIFY ENGINEER BEFORE PROCEEDING IF SUBSURFACE CONDITIONS DIFFER FROM THOSE INDICATED ON THIS PLAN.
ALL UNDERGROUND UTILITIES AS SHOWN ARE APPROXIMATE ONLY. CONTRACTOR IS RESPONSIBLE TO NOTIFY DIG-SAFE PRIOR TO COMMENCEMENT OF WORK. CONTRACTOR SHALL TRANSFER BENCHMARK TO SUITABLE PERMANENT LOCATION AWAY FROM DISRUPTION UPON COMMENCEMENT OF WORK AS NECESSARY.
ALL PROPOSED WORK SHALL BE IN COMPLIANCE WITH MASSACHUSETTS SANITARY, PLUMBING, BUILDING, AND FIRE CODE REQUIREMENTS.
THIS PLAN IS NOT THE RESULT OF A PROPERTY BOUNDARY SURVEY. ALL PROPERTY LINES SHOWN ARE APPROXIMATE. PROPERTY LINE INFORMATION IS BASED ON FIELD RECOVERED MONUMENTATION, INFORMATION PROVIDED BY THE LAND OWNER, ASSESSORS OFFICE AND PLAN ENTITLED "PLAN OF LAND SURVEYED FOR CALVIN'S HOLDINGS, LLC", PREPARED BY KELLY, GRANGER, PARSONS & ASSOCIATES, INC DATED JULY 2004.
TOPOGRAPHIC MAPPING PERFORMED BY BERKSHIRE ENGINEERING, INC. PLAN DEPICTS CONDITIONS AS RECORDED IN THE FIELD ON 10/13/2016.
ACCORDING TO F.E.M.A. COMMUNITY PANEL 2500220008B THIS PROJECT DOES NOT FALL WITHIN THE 100 YR FLOODPLAIN ELEVATION.
THIS PARCEL IS SERVICED BY A MUNICIPAL WATER SUPPLY.

A SPECIAL PERMIT IS REQUIRED FROM THE EGREMONT PLANNING BOARD.
LAWFUL ZONING RELIEF IS REQUIRED FROM THE EGREMONT ZONING BOARD OF APPEALS.
A DISPOSAL SYSTEM CONSTRUCTION PERMIT IS REQUIRED FROM THE EGREMONT BOARD OF HEALTH.
THE OWNER/CONTRACTOR IS RESPONSIBLE TO REVIEW AND ABIDE BY ALL NECESSARY PERMITS DURING ALL PHASES OF THIS PROJECT.

