

**Town of Needham
Board of Appeals**

MINUTES

THURSDAY, May 26, 2016 at 7:30 PM

Broadmeadow School Performance Center - Media Room
120 Broad Meadow Road, Needham, Massachusetts

Pursuant to notice published at least 48 hours prior to this date, a meeting of the Needham Board of Appeals was held in the Media Center, Broadmeadow School, 120 Broad Meadow Road, Needham, Massachusetts. Jon D. Schneider, Chairman, presided and the following members were present: Jonathan D. Tamkin, Howard S. Goldman, and Peter Friedenberg. The Agenda of the meeting is attached.

Mr. Schneider opened the meeting at 7:33 p.m.

Mr. Goldman made a motion to approve the April 27, 2016 meeting minutes. Mr. Tamkin seconded. The Board unanimously approved the minutes.

Case # 1 9 Ridgeway Avenue

Granted

Informal Matter - 348 Manning & 34 Parkinson Special Permit
- Plan Substitution

Granted

Informal Matter - 1361 South Street Special Permit application: 7:45 p.m.- At the April 27, 2016 Board of Appeals hearing for the 1361 South Street Special Permit, the Board voted to deny the application to substitute a non-conforming commercial use for another non-conforming use, namely five residential units. Attorney Robert T. Smart, Jr. on behalf of the applicant, Brian Millerick, has filed a request to be heard as an informal matter that the Board determine the "repetitive petition" statute (MGL Chapter 40A, Section 16) is not currently applicable; and either to allow the applicant to withdraw without prejudice or to allow the applicant to amend the application to propose a four unit residential project. Notice of this informal matter was sent by the Board via U. S. mail to the addresses on the certified abutters list.

Mr. Schneider said that although he has watched the hearings on cable tv, he did not participate in earlier hearing. Tonight's voting members will be Mr. Tamkin, Mr. Friedenberg and Mr. Goldman. He said that he does not think that the issue of a repetitive petition is properly before the Board because there is no new application. The Board has to decide whether to give the extraordinary relief to allow a withdrawal without prejudice or an amendment to the application after three hearings, many hours of testimony and a vote. The Decision is written, but the Board held off signing and filing in order to consider the applicant's request.

Mr. Smart explained that the Board voted 2 - 1 to deny the application for five units primarily because of density. He is not asking the Board to reconsider the five units. Instead, he is asking that they be given the opportunity to amend or withdraw the application. He thinks there is no time limit set forth in the rules to amend or withdraw.

Mr. Schneider suggested that the applicant file another application. If it is filed before the decision on the pending matter is filed with the Town Clerk, then the new application may not be subject to the repetitive petition rules. He would be willing to give a short time like a week before filing the decision.

Mr. Friedenberg disagreed with this suggestion because there would be two live petitions for two different projects on the same property.

Mr. Tamkin agreed with Mr. Friedenbergr. The Applicant's option is to file a new application and go through the repetitive petition process.

Mr. Smart said he was trying to avoid going to two boards as required and to make it simpler for his client by amending the current application before the decision is filed the Town Clerk. They did not submit a new application because they did not want to spend the money on new plans when their position was uncertain.

Mr. Friedenbergr said it would be a horrible precedent to grant Mr. Smart's request. Since it takes a few weeks to sign and file the decision, no vote would be final if the petitioner had the opportunity to amend the proposal after a vote. The applicant was specifically asked to reduce the scope before the vote. And now, he wants the opportunity to amend after the Board voted to deny the application.

Mr. Goldman said that he watched the video from the last hearing which he had missed, and he attended the other hearings. He thinks that submitting a new application before this decision is filed may avoid the repetitive petition process. He would like to see a smaller residential project that is suitable to the neighborhood. He does think, after the effort of neighbors and the Board, allowing a withdrawal or amendment would be inappropriate.

Mr. Smart said he should have requested a continuance before the vote, but he asks the Board to hold off on the decision so they have the opportunity to file another application. He asked the Board for guidance on whether a new application would be a repetitive petition.

The Board felt that they should not give an advisory opinion on an application that has not yet been filed.

Mr. Tamkin said that he supported residential development and wished the developer had reduced the scope. He suggested that the next application if filed should be designed to not be repetitive and should address the scenic roadway jurisdiction issue that was raised.

Mr. Schneider asked for public comment.

Mr. Jon Witten, attorney from the Law Firm of Huggins and Witten representing a group of neighbors, said that he agreed that the Board cannot give an advisory opinion on a project that has not yet been proposed. He asks that the Board file the decision as soon as possible. The Board has rendered a decision and the Applicant chose not to withdraw the application before the vote. The neighbors are relying on the vote. The purpose of the statute is to provide certainty to the public and that certainty is the Board's vote; otherwise they all need to watch when the decision is filed. He does think the law is clear that the Board has not taken final action. The vote has been taken, but we are now awaiting perfection which is the filing with Town Clerk.

Mr. Tamkin made a motion to deny the Applicant's request to amend the application. Mr. Goldman seconded the motion. The Board was unanimously in favor.

Mr. Tamkin made a motion to deny the Applicant's request to withdraw the application without prejudice. Mr. Goldman seconded the motion. The Board was unanimously in favor.

The Board declined to say when the Decision will be filed with the Town Clerk.

The matter adjourned at 8:20 p.m.

Informal Matter - 8:00 PM 900 Greendale Avenue - Greendale Village Bond Request. This matter was not discussed because a bond was not needed.

A summary of the discussions on each subject, a list of the documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including a record of all votes, are set forth in a detailed decision signed by the members voting on the subject and filed with the Town Clerk. The hearings can be viewed on the needhamchannel.org website or a DVD of the hearing is also available in the office of the Zoning Board of Appeals.

The meeting adjourned at 8:21 p.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Sheila Page", is written over the typed name.

Sheila Page, Administrative Specialist

**TOWN OF NEEDHAM
BOARD OF APPEALS
AGENDA**

Broadmeadow School Performance Center,
120 Broad Meadow Road, Needham, Massachusetts

THURSDAY, May 26, 2016 at 7:30 PM

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| Minutes | Review and approve minutes from April 27, 2016 meeting. |
| Case #1 - 7:30 PM | 9 Ridgeway Avenue - <u>Continued from April 27, 2016</u> - Public notice is hereby given that Mele Management Co., Inc., owner, has made application to the Board of Appeals for a Special Permit under Sections 1.4.6, 1.4.7.3, 7.5.2 and any other applicable Sections of the By-law; or in the alternative, a Variance under Sections 4.2.1 and 7.5.3 and any other applicable Sections of the By-law to demolish a pre-existing non-conforming single-family dwelling on a non-conforming lot and reconstruct a new non-conforming (as to side and front setbacks) single-family dwelling. The property is located at 9 Ridgeway Avenue, Needham, MA in the Single Residential B District. |
| Informal Matter -7:30 PM | 348 Manning Street and 34 Parkinson Street - John and Neila Whitbeck, were granted a Special Permit on November 19, 2015 to reconstruct a non-conforming two-family dwelling at 348 Manning Street and 34 Parkinson Street. The applicant has submitted a plan substitution to move the patio from the south side to the east side of one of the units. The Board will consider this as an informal matter on May 26, 2016 at 7:30 p.m. in the Broadmeadow School Performance Center, 120 Broad Meadow Road, Needham, Massachusetts at which time and place all persons interested may appear and be heard. |
| Informal Matter - 7:45 PM | 1361 South Street Special Permit application - At the April 27, 2016 Board of Appeals hearing for the 1361 South Street Special Permit, the Board voted to deny the application to substitute a non-conforming use and structure for another non-conforming use, namely five residential units. Attorney Robert T. Smart, Jr. on behalf of the applicant Brian Millerick, has filed a request to the Board of Appeals that the Board determine the "repetitive petition" statute (MGL Chapter 40A, Section 16) which requires a specific process is not currently applicable; and either to allow the applicant to withdraw without prejudice or to allow the applicant to amend the application. The Board will consider these requests at a public meeting on May 26, 2016 at 7:45 p.m. in the Broadmeadow School Performance Center, 120 Broad Meadow Road, Needham, Massachusetts. |
| Informal Matter - 8:00 PM | 900 Greendale Avenue - Greendale Village Bond Request |