

Town of Ipswich

ZONING BOARD OF APPEALS

**Meeting Minutes
January 20, 2022**

Pursuant to a written notice posted by the Town Clerk and published in the Ipswich Local News, a newspaper of general circulation; the Ipswich Zoning Board of Appeals held a special meeting on Thursday January 20, 2022 at 7:00 p.m. remotely via Zoom Video Conferencing, in accordance with the Governor's 3.12.20 Order suspending provisions of the Open Meeting Law to promote public health and safety and social distancing during the public health emergency.

Members tuned in were Chair Robert Gambale, Benjamin Fierro, Rob Clocker and new member Elliot Posada. Also, Administrative Assistant Marie Rodgers and Ethan Parson, Planning Director.

Citizen Queries:

29 North Main St., Molly Friedman and Susanne Clermont request an amendment to a previously issued special permit (9/3/2020) pursuant, but not necessarily limited to, Sections XI.J, Special Permits, and V.D, Use Regulations, to expand production area into adjoining area at the Sandpiper Bakery, located in the Intown Residence District (IR), shown on the Ipswich Tax Assessor's Map as parcel 42A, 128.

Chairman Gambale read the legal notice and opened the public hearing at 7:14 p.m.

The Petitioners were present to explain their request to expand the production area into the adjoining unit. Business has been good and this will allow them cater events. No additional seating was proposed.

The Board reviewed the plans submitted by the Petitioners that showed the proposed expansion would add approximately 560 square feet to the existing retail and production areas for a total of 1,410 square feet. The Board noted that the bakery has not created any traffic, parking or any other problems since it opened.

The building owner, Mr. Paul DeRonde, spoke in favor of their request.

There were no objections from abutters or others.

The Board reviewed the criteria.

MOTION:

Mr. Fierro moved the Board find the applicant has met the criteria under section II.J a&b. Mr. Posada seconded. The motion passed with a roll call vote; Gambale, yes; and Fierro, yes; Clocker, yes; Posada, yes.

MOTION:

Mr. Fierro moved the Board find the applicant has met the criteria under section XI.J sub paragraph 1-6. Ms. O'Leary seconded. The motion passed with a roll call vote; Gambale, yes; and Fierro, yes; Clocker, yes; Posada, yes.

MOTION:

Mr. Fierro moved the Board grant the special permit as requested by the petitioner to amend the previously issued special permit (9/3/2020) to expand production area into adjoining area at the Sandpiper Bakery according to plans dated

12/10/2021. Ms. O'Leary seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes; and O'Leary, yes. *Documents and exhibits used by the Appeals Board:* Petition and supporting documentation.

26-40 Market St., David Cutter requests a special permit and/or variance pursuant to, but not necessarily limited to, Section V.D, Table of Use Regulations, and XI.K and J. to reconstruct an existing non-conforming accessory building, for a storage/barn/workshop, located in the in the Central Business District (CB), shown on the Ipswich Tax Assessor's Map as parcel 42A, 184. Chairman Gambale read the legal notice and opened the public hearing at 7:49 p.m.

Mr. Ken Savoie of Savoie and Nolan Architects was present representing the Petitioner. Chairman Gambale questioned the accuracy of the measurement of the structure, noting a discrepancy between the assessor's card and the size of the structure on the application. Mr. Savoie confirmed the measurements were taken outside the existing structure.

Mr. Savoie presented the proposal, citing the history and size of the accessory building to be reconstructed. He spoke to the area susceptible to the river flooding and deteriorating the structure under several feet of water, several times a year. The use proposed is storage, possible for a car, and loft for dry storage. The existing foundation is loose stone and proposed foundation will have flood gates at grade level.

The side setback is too close to the property line and creates the non-conformity and requires relief from the bylaw; the building will be in the same footprint. Discussion took place concerning exterior lighting, windows and siding.

Chair recognized Sissy ffolliott, 91 Old Right Road and Conservation Commissioner and Jennifer Hughes, 117 High St also member of the Conservation Commission. Issues of lighting on the river and location of a structure and structure height as not to obstruct flood waters were discussed. Mr. Savoie said he spoke with the Conservation Agent who said the structure could be built at grade with flood gates.

Mr. Fierro led the review for zoning relief under section II.B.2 non-conforming structures

MOTION:

Mr. Fierro moved the Board find the existing accessory structure is a legally pre-existing nonconforming structure due to an inadequate left side setback of one-foot, instead of five-feet is required. Ms. O'Leary seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O'Leary, yes.

Mr. Fierro led the discussion concerning the proposed re-constructed structure would not substantially more detrimental to the neighborhood than the existing nonconforming use.

MOTION:

Mr. Fierro moved the Board find that the re-constructed structure would not be more detrimental, it would be an improvement. Mr. Posada seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O'Leary, yes.

Mr. Posada read the special permit criteria.

MOTION:

Mr. Clocker moved the Board find the project meets the criteria in XI.J-2. Mr. Posada seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O'Leary, yes.

MOTION:

Mr. Fierro moved the Board grant the special permit as requested by the Petitioner pursuant to section II.B.2 and XI.J to reconstruct a preexisting non-conforming structure as shown on plans titled “Cutler Realty Workshop” dated December 8, 2021, subject to the conditions: lights located on the riverside are motion sensor lights and face downward; the lighting on the north and west side of the structure be located under the eaves; and the lighting adjacent to the doors be directed downward. In accordance with 17 pages of application. Mr. Clocker seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O’Leary, yes.

Documents and exhibits used by the Appeals Board; Petition and associated documents; email dated 1/20/22 from James Bone, Town’s Building Commissioner; Letter of support from Shawn M. Cayer Trustee MaDex Realty Trust, 16 Market St. Ipswich MA.

2-4 Winter St., Kevin Babineau requests an extension of 24-months’ time for reconstruction of a non-conforming structure after a fire, provided that the reconstructed building shall be only as great in volume or area as the original nonconforming structure, pursuant to Section II.B.5, located in the Industrial District (I), shown on the Ipswich Tax Assessor’s Map as parcel 41D, 067.

Chairman Gambale read the legal notice and opened the public hearing at 8:32 p.m. Present were Roger LeBlanc and Sarah Winderlin, 14 Mill Rd and Mr. Savoie, of Savoie Nolan Architects.

Mr. LeBlanc informed the Board he has a fully signed Purchase and Sale Agreement, between himself and Kevin Babineau dated 12/23/2021; submitted to the Board (hereby incorporated by reference). He presented the current conditions and proposed use and requested to continue permitting under consideration by the ZBA. He reviewed historic documents, code review, and letter of inspections from 1979 by then building inspector, historic building permits, previous ZBA decision from 9/30/1991, and numerous historical documents (hereby incorporated by reference).

He spoke to the recently submitted application requesting an extension to the two-year window of time legally provided in the Ipswich Zoning Bylaw to rebuild the burnt multi-unit residential dwelling at 4 Winter Street.

After a lengthy discussion regarding the proposal and process and procedures. The Board had previously found that the structure was a legally pre-existing nonconforming two-family dwelling. The Board can grant an extension of time up to 24 months for the completion of the re-construction.

The Board discussed a reason for good cause; the COVID 19 pandemic has created delays in supply chain and delayed residential construction and development.

MOTION:

Mr. Fierro moved the Board grant the request of the petitioner for an extension of 24-months finding good cause; justified by the COVID 19 pandemic that has created delays in supply chain and other issues. Mr. Posada seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O’Leary, yes.

Continued Public Hearing

2 and 4 Winter Street, Winter Street Realty Corp. Kevin Babineau, requests a Special Permit and/or Variance pursuant, but not necessarily limited to Sections, XI.J, X.I.K.,II.B Non-conforming Uses and Structures, II.B2 change to another non-conforming use; II.B.2 Extension of a non-conforming structure/use and II.B.3d.5 Reconstruction of a fire damaged non-

conforming structure, for renovation and expansion of the existing 11 room motel rooming house into a 13 unit multifamily residential building with 11 efficiency units and 2 one bedroom units. Property is shown on the Assessors Map 41D Lot 067 in the Industrial (I) Zoning District. (Continued from June, July, August, September, October November and December 2, 2021)

Chairman Gambale read the legal notice and re-opened the public hearing at 9:34 p.m. Present were Roger LeBlanc and Sarah Winderlin, 14 Mill Rd, and Mr. Savoie, of Nolan Savoie Architects.

The Petitioner Kevin Babineau placed the property under agreement with Roger LeBlanc & Sarah Winderlin in a fully signed Purchase & Sale Agreement dated 12/23/2021.

This P&S provided permission from Mr. Babineau to the buyer Mr. LeBlanc, to continue permitting process with the ZBA.

The Board reviewed prior building permits, plans, communications, sketches, newspaper articles, and assessor's records for years past.

In response to Ms. O'Leary query regarding handicapped accessible units, Mr. LeBlanc indicated there is a handicapped accessible unit on the ground floor.

Mr. LeBlanc continued to review the site plan for 2 Winter Street and affordability proposal of three units at 50% AMI with all thirteen units counting toward the subsidized housing inventory (SHI).

Lengthy discussion was held concerning parking spaces, the new state law under ch40A section 9 which authorizes the Board to reduce parking for housing created within half mile of the MBTA. The lot has enough area to add parking if needed. Landscaping and lighting were discussed.

Mr. LeBlanc related his proposal to return in February with details regarding landscaping cut sheets.

Mr. LeBlanc expressed his concern for the prospect of a building moratorium at the spring town meeting. Discussion took place concerning process.

Mr. Fierro cited section II.B.1 Non-conforming uses and structures.

MOTION:

Mr. Fierro moved the Board find the current use as a motel is pre-existing non-conforming use; it does not meet the definition of motel. Mr. Posada seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O'Leary, yes.

MOTION:

Mr. Fierro moved the Board find the proposed use as a multi-family structure would not be more detrimental to the neighborhood than the current use legally existing non-conforming use. Mr. Posada seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O'Leary, yes.

Mr. Fierro led the review of the special permit criteria. The proposal will provide needed affordable housing. Fiscal impact may increase tax revenue. Town services will not be increased, parking provided is ample safe and well lit. Existing utilities will be upgraded, using less energy. Compatibility with the current neighborhood, it's a newer design and appearance in integrated. Impacts on the natural environment, the site will be cleaned up and there will be more open space.

MOTION:

Mr. Clocker moved the Board find the proposal met the criteria. Mr. Posada seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O'Leary, yes.

MOTION:

Mr. Fierro moved the Board grant the special permit as requested by the Petitioner to change the use, existing eleven unit structure at 2 Winter Street to a multi family structure; change use from eleven units to thirteen units in a dual building unit – multifamily in two buildings. Ms. O'Leary seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O'Leary, yes.

Discussion took place regarding non-conforming structures vs non-conforming use. The deficient front and rear setback create the non-conformity. The affordability is tied to the use.

MOTION:

Mr. Fierro moved to reconsider the previous motion. Mr. Gambale seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O'Leary, yes.

MOTION:

Mr. Fierro moved to amend the prior motion to require three of thirteen rental units restricted to 50% AMI all thirteen units to be placed on the Subsidized Housing Inventory (SHI) in perpetuity. Ms. O'Leary seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O'Leary, yes.

MOTION:

Mr. Fierro moved the Board approve the motion as amended. Mr. Gambale seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O'Leary, yes.

MOTION:

Mr. Fierro moved the Board find the eleven units legally existing non-conforming structure due to insufficient front and rear setbacks. Mr. Posada seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O'Leary, yes.

MOTION:

Mr. Fierro moved the Board find the proposed alterations and renovations proposed to the structure are not more detrimental to the neighborhood than the existing non-conforming structure. Mr. Gambale seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O'Leary, yes.

The Board reviewed special permit criteria for alterations of a structure.

MOTION:

Mr. Clocker moved that notes reflect the same argument special permit criteria as the previous motion. Ms. O'Leary seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O'Leary, yes.

MOTION:

Mr. Fierro moved the Board grant the Petitioner request to reconstruct the existing eleven unit structure and construct the second, two unit building at 2 Winter Street for thirteen unit multi-family structure subject to conditions: prior to issuance of a building permit the petitioner submits a landscape plan showing number and varieties of plants; the landscape plan shall include a lightning diagram including three pole lights with a cut off sheet in parking area 1-16; spec sheet include for any building mounted lights and waiver for nineteen parking spaces, as indicated on plan titled dated 1/20/2022
According to plans dated 1/11/2022 and 1/20/2022

Clarification – The plans showing a four unit building at 4 Winter Street, are not part of this decision.

Ms. O’Leary seconded, the motion passed with a roll call vote. Gambale, yes; Fierro, yes; Clocker, yes; Posada, yes and O’Leary, yes.

Documents and exhibits used by the Appeals Board; Petition and associated documents. plans titled 2 & 4 Winter St from Savoie Nolan Architects, LLC dated 1/11/2022; Site Renderings Proposed Multifamily Development dated 1/12 /22; Proposed New Construction for 4 Winter St Level 1 – Multi unit Building dated 2/1/21; Proposed New Construction for Winter St Realty Corp 4 Winter St Level 2 – Multi-unit Building dated 4/20/2021; floor plans for ground level, first and second and third for proposed 4 unit building dated 1/20/2021

Approval of Minutes:

Mr. Fierro moved to approve the meeting minutes of 11.18.2021 and 12.2.2021 with minor edits. Ms. O’Leary seconded, the motion passed unanimously. *(meeting minutes hereby incorporated by reference)*

Adjourn - It was moved, seconded and unanimously voted to adjourn at 10:50 p.m.

Respectfully submitted,

Marie Rodgers
Administrative Assistant

These minutes were approved by the Board on 2.17.2022

Pursuant to the ‘Open Meeting Law’ the approval of these minutes by the Board constitutes a certification of the date, time and place of the meeting; the members present or absent; the findings made and actions taken. Any other description of statements made by any person, or the summary of the discussion on any matter, is included for the purpose of context only, and no certification, express or implied, is made by the Board as to the completeness or accuracy of such statements.