



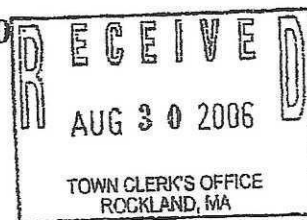
ROCKLAND ZONING BOARD OF APPEALS

242 UNION STREET

ROCKLAND, MASSACHUSETTS 02370

(781) 871-1874 x175

(781) 871-0386 fax



A public hearing was held on May 17, 2006 and continued to June 7, 2006, August 9, 2006 and August 17, 2006 in the H. Bernard Monahan Memorial Hearing Room, Town Hall, 242 Union Street, Rockland on the petition submitted by **John Melchione, 416 Plain Street, Rockland to allow the construction of a gas station, convenience store and a Dunkin Donut drive-up window in a B-2 zone. The Applicant is seeking a Special Permit for the gas station, a Special Permit for a drive-up window and a variance from the 400-foot requirement for a cueing lane for a donut shop.** The site is located at 200 VFW Drive (Old Suburban Auto) and is also known as Lot #80 on the Rockland Assessor's Map #19. A copy of this application is on file in the Town Clerk's office and is available for inspection during regular office hours.

ATTENDANCE (meeting of August 17, 2006): Chairman Robert Manzella, Vice-Chairman Stanley Cleaves, Anton Materna, Peter McDermott and Associate Members Gregory Tansey and Alan McPhee. Absent: Ms. Howes and Town Counsel.

MEMBERS VOTING: Robert Manzella, Anton Materna, Peter McDermott, Gregory Tansey and Alan McPhee. Mr. Cleaves step-down from this hearing and abstained from voting.

DISCUSSION:

May 17, 2006: The Chairman read the advertisement. At that time the Chairman stated that Mr. Cleaves would be stepping down from this hearing due to a legal matter and Ms. Howes would be abstaining from voting on this hearing as the Petitioner does work on her vehicle and is an abutter to the Petitioner's business on the corner of North Avenue and Plain Street. The Chairman also stated that there were not enough voting members in attendance as Mr. Materna and Mr. Tansey were not present for this hearing, therefore leaving only three voting members. The Board motioned to continue the hearing to June 7, 2006. The Chairman also stated that he wanted to hear input from the Water Department and Fire Department regarding this petition at the next hearing.

A TRUE RECORD, ATTEST

Mary Pat Kaszanek
MARY PAT KASZANEK, TOWN CLERK

200 VFW Drive Trust
John A Melchione TR

Certificate of Title # 107127

Page 2 – Decision of John Melchione – August 17, 2006

June 7, 2006: Attorney Shawn Cotter came before the Board to make a presentation on behalf of his client John Melchione. Attorney Cotter testified that many years ago there was a Chevron gas station on this site and that the tanks were removed. Attorney Cotter testified that his client proposes to build a gas station, have a convenience store operation (ex. 7-Eleven set-up) and have a drive-up window for a donut shop with no seating. Attorney Cotter testified that the primary issue before the ZBA is that his client needs 400 feet to meet the requirement for a drive-up window cueing lane which would be the smallest cueing lane proposed to the ZBA. Attorney Cotter testified that his client has more than 400 feet if you combine the double lane drive-up. Attorney Cotter testified that this new business would be a great asset to that area of Rockland especially for gas and grocery items. Attorney Cotter testified that the traffic volume has changed since the closing of the VFW cut-off. Mr. Randy Hubert, Engineer for the Applicant testified about that Mr. Melchione is seeking 4 gas pump islands, 1,800 square feet for the convenience store and 1,150 square feet for the Dunkin Donut operation. Mr. Hubert testified about the setbacks, drive-up layout and when fueling vehicles, customers would be facing the convenience store and Dunkin Donuts. Mr. Hubert testified that if his client were to meet the 400 foot cueing lane, they would have to turn the building and have people back out of the parking area. Mr. Hubert testified that he feels with the amount of stacking vehicles and two lanes, it would total 500 feet easily and does not expect the second lane to be used. Mr. Hubert testified that the vehicles would have to alternate when they got to a certain point and that the coffee facility would have the problem and make it work by maybe putting in a double order station. Attorney Cotter testified about other out-of-town locations with double drive-up cueing lanes. Attorney Cotter testified that the fuel delivery would be dropped off in a certain area and the fuel truck would not be exiting the cueing lane and delivery might be at 2:00 AM, but could change. Attorney Cotter testified that the existing building would be torn down, there would be tank installations, he believes the site is clean, but a 21E needs to be done for financing purposes. Attorney Cotter testified that Mr. Melchione owns the lot in question and would be leasing it out and that the soul owner would be responsible for spills, etc, new lighting, parking lot and landscaping. The Board discussed a double stacked, double order cueing lane. Mr. Hubert testified that there could be a bit taken off the back for a 2 foot curb. Mr. McPhee has concerns about the two lane cueing and the confusion of who what vehicle goes next, what the total acreage of the property was and there would be a problem with the turning radius from the gas pump as that the customers on the left would have to turn to the right. There was discussion with the Board and the Applicant about having vehicles go around and have the pumps heading out. There was discussion as to how

wide the buffer zone was and that zoning requires a 20 foot front landscaped buffer in a B-2 zone. Mr. Hubert testified that there is a 6-foot front landscaped buffer proposed. The Board also discussed that the Applicant would be changing the use of the property. Mr. McDermott discussed what was allowed in a B-1 zone and a B-2 zone and Attorney Cotter testified that a supermarket is a box store and it falls under the category with this application. Mr. McDermott had concerns about removing the old building, building a new building and leasing out to three (3) businesses. Attorney Cotter testified that it would be one lease (example: Mobil on the Run in Rockland). Mr. McDermott had concerns about the fact that three different people would be managing three (3) businesses on one lot and you would definitely need a manager for the convenience store and gas station. Attorney Cotter testified that Mobil Gas station sells convenience store items, has a gas station and also sells coffee and the only difference his client is asking for is a drive-thru window. Attorney Cotter testified that his client would not be selling liquor, but possibly sell cigarettes and have the lottery. The Board had concerns about the double lane with the vehicles weaving in and out. The Board discussed in length the leasing process and who would be in the donut shop, convenience store and gas station. Attorney Cotter testified that there would be one person for the gas and convenience store and that the donut shop would be separate. The Board had concerns about the traffic at this location, with a 102 unit condominium complex abutting the property. Attorney Cotter testified that the only way to meet the 400 foot zoning requirement was to have two lanes which would be about 260 feet from the drive-up window to VFW Drive by having an inside and outside lane. The Board discussed that the intent of the 400 foot lane for a drive-up window was a long strip, not two lanes put together to total 400 feet. Mr. Materna asked the Applicant if the tanks were removed and if the removal operation was supervised. Attorney Cotter testified that the removal was done under Fire Chief Tanzi and that he has no records of the removal and leakage at this site. Attorney Cotter testified that the new gas tanks would be double hulled fiberglass and with alarms. The Board read into the record a letter from Mayor David M. Madden of the Town of Weymouth stating that this location is within the watershed of the Old Swamp River which is part of the Town of Weymouth's drinking water supply and that the stream flows under Forest Street. Attorney Cotter replied that his client is not putting in a service station and thinks the parking spaces meets the requirements of the Zoning By-Law and does not think double wall tanks will affect the drinking water. The Chairman asked Attorney Cotter if he and his client would like to meet with Mayor Madden to discuss this letter and their response was that the Town of Weymouth can appeal this decision and his

client will fight it. Attorney Cotter testified that there would be two employees for the donut shop and one employee for the convenience store/gas station. Attorney Cotter testified that the hours of operation would be 6:00 A.M. to 11:00 P.M. for all businesses. Attorney Cotter testified that the walk-in area for the donut shop operation would be at the left front corner of the building. Mr. Manzella had concerns about the cross over traffic, the frontage buffer and parking spots. There was much discussion as to why there was a need for a drive-up window. Attorney Cotter testified that the customers are looking for service and convenience to a drive-up window and if there is no drive-up, his client would have to build a bigger store for seating. Attorney Cotter testified that there are minor issues here such as single drive up, double order board and this type of business is much needed. Mr. McPhee testified that he thinks there is a need for this kind of business, but also thinks that there is not enough on parking to do minimal shopping. Locate the parking in back of the store instead of a drive-thru lane. The Applicant testified that restrooms would only be available for the employees. There was discussion about the State law requirements for a handicap person at the pump island and that the employee in the convenience store would have to come out to help the customer, which would then leave the convenience store abandoned. There was discussion from an abutter that if someone had gone through the drive-thru lane and then decided they needed gas, it might get more congested at the pump. There was discussion as to whether the Boxberry Square tenants would drive or walk-up to the convenience store. Mr. Solari, abutter to the property had questions about the drainage, sewerage and the Swamp River being 800 feet away from the property. Mr. Melchione testified that the grade has to be changed a bit. Mr. Mark Trabucco of Boxberry Square Condominiums testified that he thought this would be congested, there is only one entry next to Boxberry and feels there is too much going on off of VFW drive the first 30 feet or so. The Chairman again asked the Applicant for reports from the Water Department Fire Department and the Board still does not have their input. Attorney Cotter testified that he has not heard from those departments. The Chairman discussed the run-off and Attorney Cotter replied that the only concern was the 18 foot drive behind the building for the Fire trucks. The Chairman asked about how wide the rear buffer zone was and the Applicant replied 10 feet. The Chairman discussed that the issue presented was good, the Applicant is pushing a lot into a little box, they need to work on the front, drive-up window cueing lane and parking spaces and try to reconfigure the building. Attorney Cotter testified that he was looking for a positive vote from the Board and if they like the idea, what are the major issues. Mr. McPhee testified that if approved without a variance/special permit for a drive-up window, option would be like having a Mobil quick mart and to reposition the

building to make more parking spaces. Mr. McPhee also had concerns about the pile up of vehicles that could possibly end up on VFW Drive while waiting to get into the drive-up cueing lane. The Board discussed another gas station in town and that the customers are not blocking the street and are still able to get supplies, staples and gasoline. The Chairman asked the Applicant if he wanted the Board to vote to reconfigure and that you need 400 feet for a cueing lane for drive-up as you are creating the hardship. An Abutter replied that this is not a grandfathered lot and the applicant is changing the use. Attorney Cotter testified he and his client argue the front buffer line and landscape issue and will revise the variance, buffer, the front parking space and maybe, possibly come up with 310 feet for drive thru lane. Mr. McPhee testified that this plan is so congested, there are too many businesses on one lot and it cannot support all of that. Other Board members discussed that no wall go up between the donut shop and the convenience store as this is also a gas station/convenience store selling donuts. The Chairman stated that there are two separate entities, two companies with one building. Attorney Cotter testified that a name brand donut client wants a drive-up window for the customers. The Applicant testified that there would be 4 dispensers at each gas pump island (2 sides) and 3 grades of gas and figured each island can pump gas up to eight (8) vehicles. The Chairman asked for the wish of the Board. The Board replied that they would not vote for drive-up 2 lanes, the By-law requirement is 400 feet for a drive-up window cueing lane and that is the purpose of the By-law to keep the vehicles off the main road and keep them traveling in an orderly fashion, possibly turning the building and gas pump and make a smaller building with less gas pump dispensers. At this point Mr. McDermott made a motion to table the hearing to the next available date on August 9, 2006. Mr. Tansey seconded the motion. The vote of the Board was unanimous. Attorney Cotter testified that he will talk to his potential tenants about removing a pump, not sure about the parking space and drive-up window, but maybe he could get a few more feet by turning the building, and have one drive-up cueing lane, not two and work on the front buffer.

August 9, 2006: The Chairman read the continuance and stated that he did not have a full Board to continue the hearing this evening and asked the Applicant to continue the hearing to August 17, 2006. Mr. McPhee made a motion to continue the hearing to August 17, 2006 and Mr. Tansey seconded the motion. The vote of the Board was 3-0. An Extension of Waiver was signed by Attorney Cotter at this meeting and filed with the Town Clerk's office.

August 17, 2006: Attorney Cotter passed out a new plan to the Board for the convenience store, gas station and donut shop. Attorney Cotter testified that the ordering window is now on the left side and is 325 feet to the curb. Attorney Cotter testified that the location of the building will take the Hingham Street business away and it might be the same owner as the Hingham Street property. Attorney Cotter testified that his client anticipates drawing Hingham Street traffic to this VFW location, which will help with the high volume of traffic on Hingham Street. Attorney Cotter testified that there will be a wide island with a lot of greenery and this will improve the area. Attorney Cotter testified that there are more parking spaces leaving a total of 14, but he is only required to have 9 spaces. Attorney Cotter testified that the customers would have to go into the convenience store to pay for their gasoline. Attorney Cotter testified that the Fire Department had concerns about the drive-up lane and wanted it to be 14 feet wide in the back area. Attorney Cotter testified that they reduced the width of 25 feet to add parking out front. Attorney Cotter testified that it was important for a drive-up window as the primary gas company and the primary Dunkin Donut business would work together. Attorney Cotter testified that without the drive-up window his client would go down leasing to a well known gas name and national donut company. Attorney Cotter testified that the cueing lane proposed on this plan is 325 feet and shows on the plan 14 full sized vehicles in the lane. Attorney Cotter testified that if the drive-up window is approved, his client has the commitment of Dunkin Donuts store coming. Attorney Cotter testified that there are 9 parking spaces for the convenience store customers. Attorney Cotter testified that there are no gas tanks on the site now and that a 21E needs to be done for financing and to have a clear history of lot being cleaned. Attorney Cotter testified that the gas tanks would meet all standard requirements for a gas station. Mr. McDermott had concerns about the operation of three (3) businesses in operation on a 27,600 square foot lot. Attorney Cotter testified that they would work in conjunction of each other as other towns on smaller lots seem to function well. Mr. McDermott testified that not all Dunkin Donuts have drive-up windows, (ex. Tedeschi in West Hanover has Dunkin Donut that you need to get out of your vehicle to purchase coffee). Attorney Cotter testified that his client is asking for a drive-up window, which would then free up parking spaces for customers entering the convenience store. Mr. McPhee has seen many changes since the first plan, but is still concerned about the traffic flow. Mr. Tansey testified that there has been an improvement with setbacks, cutting down the size of the building, the cueing lane is now closer to 400 feet and having a window is an efficiency issue which might improve traffic flow. Attorney Cotter testified that the 14 foot wide lane increases into 20 feet in the back of the building. Attorney Cotter testified that his client has gone

from four (4) gas pump dispensers down to three (3) dispensers and that the Dunkin Donut shop would have no seating area, just counter space. Attorney Cotter testified that the distance between the ordering kiosk and the pick-up window is about 25 feet. Mr. Manzella stated that he thought that Dunkin Donuts wanted five (5) car separation between the two (2) windows. The Chairman mentioned the possibility of a customer who is in the middle of the cueing lane might want to get out of that lane for whatever reason they choose. Attorney Cotter testified that at the fire lane, the customer could not go by the order window as he sees the turn over quickly and unlikely would someone escape the cueing lane. Mr. Manzella asked how the Board could justify his client asking for a 75 foot variance. Attorney Cotter testified that he could do the 400 feet but would have to reconfigure the building. Attorney Cotter testified that hours of operation would be same as other Dunkin Donut businesses. Mr. McPhee discussed the hours of the drive-up be at 5:00 A.M. and inside area open at 6:00 A.M. and closing be 10:00 P.M. due to the residential neighborhood that surrounds this lot and convenient store/gas station would be from open 6:00 A.M. to 11:00 P.M. Mr. McDermott stated that there is high volume of traffic and is still concerned with the operation of three (3) businesses on one small lot. Attorney Cotter testified that he believes that the corporate businesses in that area such as Reservoir Park Drive, would come to the VFW Drive Dunkin Donut shop as they would easily be able to get gas, coffee and a newspaper, than stop at two different places on Hingham Street. Attorney Cotter testified that the Boxberry Square residents would have to access the property through the front entrance off of VFW Drive. At this point the Chairman asked Attorney Cotter if he wanted separate votes on what his client is requesting. Attorney Cotter replied yes.

DECISION and VOTE ON DECISION:

Special Permit for gas station/convenience store: Mr. McPhee made a motion to grant the Special Permit for a three (3) dispensing units (total of 3 hoses on each side within one island as per plan submitted to the Board and attached to this decision. There shall be one hose per dispensing unit per side. In no event shall there be more than six (6) hoses for the dispensing units. The following conditions are stated below for the gas station, convenience store and donut shop:

- (1) Hours of operation: Convenience store/gas station – 6:00 A.M. to 11:00 P.M. Donut shop (inside building) – 6:00 A.M. to 10:00 P.M. (drive-up only 5:00 A.M to 10:00 P.M.) and if any changes are made, the Applicant would have to come back to the ZBA.

- (2) Deliveries of baked goods are to be made between the hours of 4:00 A.M. and 5:00 A.M. and the lights from delivery vehicles shall not shine into abutting condominium units. Trucks shall not park overnight on the site.
 - (3) Delivery vehicles shall refrain from making excessive noise and shall be shut down during delivery hours.
 - (4) Paper good deliveries shall be twice per week and shall not be during peak rush hours.
 - (5) This decision shall be reviewed, and if there is a problem that arises due to traffic with the gas island and convenience store/donut shop, the Applicant will be asked to then come back to the Zoning Board.
 - (6) There shall be no parking of vehicles from other abutting businesses. The parking is for employees and customers of the site only.
 - (7) There shall be no chairs, stools or table within the donut shop/gas station/convenience store as this will prevent customers from hanging around and causing a parking problem.
 - (8) The Applicant shall meet all the standard requirements for installation and operation of a gas station.
- Mr. Tansey seconded the motion. The vote of the Board was 4-1 (Mr. McDermott opposed).

Special Permit for drive-up window: Mr. McPhee made a motion to grant the Special Permit for the drive-up window. Mr. Materna seconded the motion. The vote of the Board was 3-2 (Mr. McDermott and Mr. Manzella opposed). The Applicant needed a 4-0 vote in order for this drive-up window to pass.

Variance: This vote was now moot for a variance for less than a 400 foot cueing lane.

The Board voted for the Applicant to have a gas station, convenience store and an inside donut shop without a drive up window and deliveries would then be in the back of the building.

REASON FOR DECISION: Upon motion duly made and seconded, the Board found that the Applicant is now seeking to have an island with three (3) dispensing pumps for gasoline that will have 3 levels of octane, a convenience store and a donut shop for inside services. The Board found that there is a need for these services in this location, but also found that if granted a drive-up window, there would be heavy traffic that would impact the surrounding residential neighborhood, the cueing lane does not meet the By-law requirements of 400 feet. The Board also found that there would be an

increase in truck and vehicular traffic and where would they park on the site. The Board found that deliveries would be done in a UPS size truck and would come two times per day as Abington has a warehouse for this location and that deliveries would be done in the off hour between 3:00 A.M. – 5:00 A.M. The Board found that by granting the Special Permit for gas station/convenience store with conditions stated herein would not derogate from the intent or purpose of the By-law or be detrimental to the public good. The Board found that the proposed location is small and that the plan presented to the ZBA on 8/17/06 hearing would be the Boards vote for the location of the building, gas pumps and parking. The Board found that a drive-up window would create more traffic and if the drive-up window special permit was granted, there would be a major derogation to the Zoning By-law and would not be in harmony with the surrounding neighborhood. The Board found that the Petitioner did not meet the hardship requirement for the drive-up window. The Board found that there was no hardship and is self created; therefore the Board could not grant the variance. The Board found that the convenience store/gas station would not be offensive by reason of the emission of odor, fumes, dust, smoke, noise and/or vibration, or that it would have a negative impact on the environment of living conditions within the Town. The Board found that the gas station/convenience store would be in harmony with the surrounding businesses and would not be a detriment to the intent of the Zoning By-law.

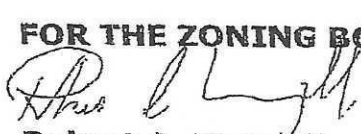
THIS DECISION, ALONG WITH THE CERTIFICATION FROM THE TOWN CLERK THAT NO APPEAL HAS BEEN FILED, MUST BE RECORDED WITH THE PLYMOUTH COUNTY REGISTRY OF DEEDS PRIOR TO OBTAINING A BUILDING PERMIT AND PROOF OF RECORDING MUST BE FILED WITH THE BUILDING INSPECTOR.

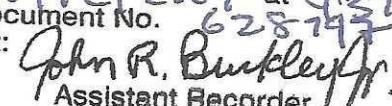
NOTE:

- This decision may be appealed to the District Court, Housing Court, Land Court or Superior Court pursuant to Chapter 40A, Section 17. Said appeal must be filed within twenty (20) days after this decision is filed with the Town Clerk.

- Chapter 40A, Section II, states that in part, that no variance or Special Permit shall take effect until the Town Clerk certifies that twenty (20) days have elapsed, and no appeal has been filed.
- This Board certifies that copies of this decision have been filed with the Planning Board as well as with the Town Clerk.

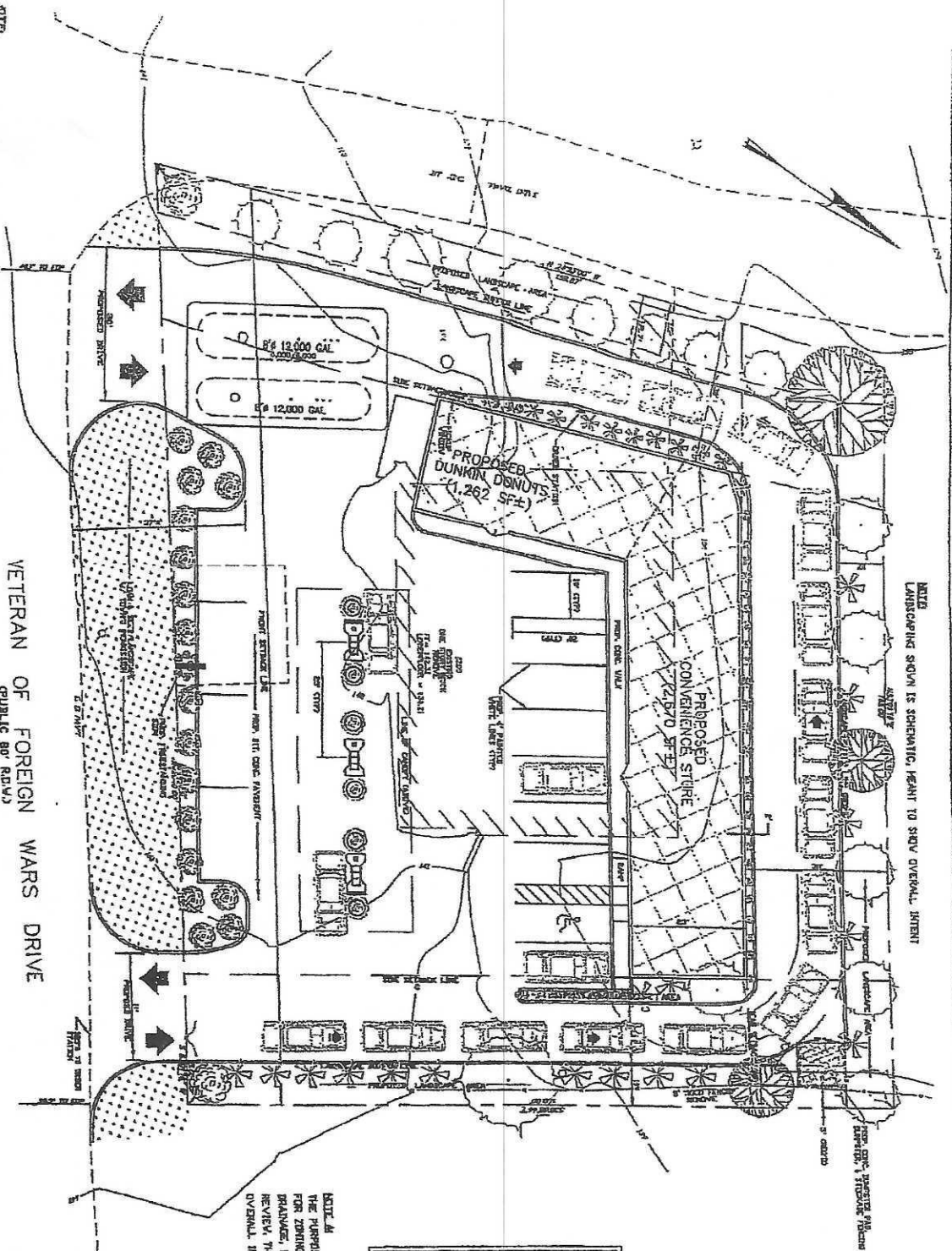
FOR THE ZONING BOARD OF APPEALS


Robert A. Manzella
Chairman

A true copy of document filed in
Plymouth District of the Land Court
on 10/12/2007 at 9:57 AM
as Document No. 628797
Attest: 
Assistant Recorder

NOTE: PROPERTY LINE, CONTOURS, AND SITE DETAIL INFORMATION SHOWN IS TAKEN FROM PLAN ENTITLED "SITE PLAN FOR 200 VFW PARKWAY IN ROCKLAND", DATED APRIL 4, 2005, PREPARED BY ROSS ENGINEERING COMPANY INC., 600 MAIN STREET, NORWELL, MA, AND SUPPLIED THE BASE PLAN USED FOR THIS DRAWING.

VETERAN OF FOREIGN WARS DRIVE



NOTE: LANDSCAPING SHOWN IS SCHEMATIC, MEANT TO SHOW OVERALL INTENT

ZONING DATA

ZONING DISTRICT: B-2 BUSINESS

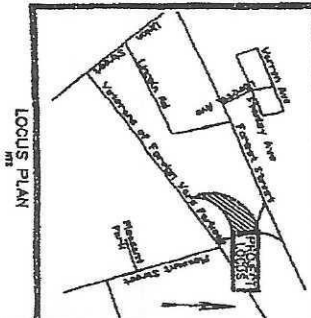
AUTOMOBILE SERVICE STATION IS ALLOWED BY SPECIAL PERMIT.
A DRIVE-IN/THRU IS ALLOWED BY SPECIAL PERMIT.

DIMENSIONAL REGULATIONS	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA	32,430 SF	27,840 SF	27,840 SF
MIN. LOT FRONTAGE	110'	100'	100'
MIN. LOT WIDTH	100'	100'	100'
MAX. LOT BUILD COVERAGE	50%	14.5%	14.5%
MAX. BUILD HEIGHT	35/20'	1/19'	1/20'
SET BACKS			
FRONT	20'	20'	24.8'
REAR	30'	33.5'	30'
SIDE	30'	33.5'	30'

PARKING: 1 SP / 300 SF FLOOR AREA = 8 SP TO BE DETAIL BY PLANNING BOARD PROVIDED 14 SP (+ FILLING POSITIONS, + STAGING 14)

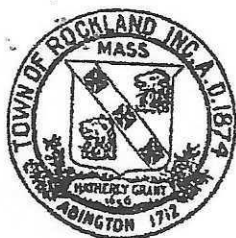
2-STORE ONLY

NOTE: THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED SITE LAYOUT FOR ZONING BOARD REVIEW/REVIEW. PROPOSED SITE GRADING, UTILITIES, DRAINAGE, ETC. WILL BE COMPLETED AND SUBMITTED FOR FULL SITE PLAN REVIEW. THE DRAINAGE LAYOUT SHOWN, THEREFORE, IS MEANT TO DEMONSTRATE OVERALL INTENT, AND WILL BE FINALIZED DURING FINAL SITE DESIGN.



NO.	REVISION	DATE	BY	FOR
1	ISSUED FOR PERMIT	07/20/07	JM	PROPOSED SITE LAYOUT

DESIGNED BY: JOHN MALCHIONI
200 VFW PARKWAY
ROCKLAND, MA
DRAWN BY: JIM
CHECKED BY: JIM
DATE: 07/20/07
SCALE: 1"=10'



(781) 871-1892

TOWN OF ROCKLAND

Town Clerk

Mary Pat Kaszanek, CMC, CMMC
Rockland Town Offices
242 Union Street
Rockland, Massachusetts 02370-1897

October 11, 2007

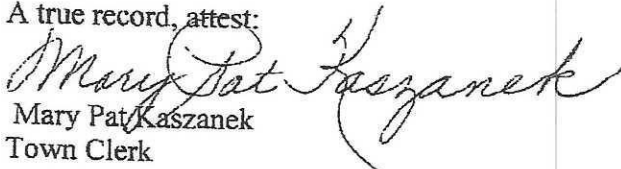
Re petition of: John Melchione
416 Plain Street
Rockland, MA 02370

Property location: Lot #80 Map #19
200 VFW Drive
Rockland, MA 02370

To whom it may concern:

I certify that 20 days have elapsed since the Zoning Board of Appeals filed the attached decision (August 30, 2006) for a Special Permit in this office, and that no appeal has been filed.

A true record, attest:


Mary Pat Kaszanek
Town Clerk

Plymouth Registry District

628747

Received for Registration

12 OCT 2007

09:37AM

Transaction: 10

Fee: 75.00

Affected Cert(s): 107127

Pages: 513

107127 OK
13ppp 77-
75-
1-copy
1-post
Cotter: Cotter