

**COMMITTEE ON SPECIAL PERMITS**

**APRIL 24, 2018 at 6:27 p.m.**

**WOBURN CITY HALL**

**COMMITTEE ROOM**

Voting members present: Chairman Richard Gately, Alderman Joanne Campbell, and Alderman Darlene Mercer-Bruen. Not present: Alderman Edward Tedesco and Alderman Mark Gaffney

Non-voting members present: Alderman Michael Anderson, Alderman Michael Concannon, and Alderman Lindsay Higgins. Not present: President Richard Haggerty

**285 Locust LLC for a special permit and site plan for the demolition of the existing commercial building and site improvements, and for the construction of a 41 unit, attached townhouse development with integrated parking, landscaping and infrastructure improvements at 285 Locust Street:** Appearing for the petitioner were Attorney Mark Vaughan, Reimer & Braunstein, 700 District Avenue, Burlington, MA; F. Giles Ham, Managing Principal, Vanasse & Associates, 35 New England Business Center Drive, Andover, MA, and Kevin Duffy and William Duffy, of 285 Locust St. LLC, 465 Waverly Oaks Road, Suite 500, Waltham, MA. Attorney Vaughan reiterated his client believes there will be no adverse impact from the project and that the city's mitigation ordinance does not apply to the petition, but added his client is willing to contribute to a study for traffic improvements to the Bedford Road/Cambridge Road/South Bedford Street intersection because any enhancements to the intersection will be beneficial to the residents of his client's development. Chairman Gately said the petitioner's project will have an impact and he thinks the petitioner has an obligation to provide mitigation to the city. Chairman Gately said the previous use was as a garage that used about 1,000-1,500 gallons of water per day and the petitioner's use will be around 13,000 gallons of water per day. Attorney Vaughan replied the petitioner will be paying appropriate fees to the city for water. Chairman Gately said there is something wrong with the fire hydrant on the property and that the post-vale indicator has got to go. Chairman Gately said there will also be an impact on the drainage system on Locust Street and there is a resident on Kennedy Park whose yard is already impacted by flooding. Chairman Gately said they are trying to get the Kennedy Park resident some relief but he doesn't want to make his situation any worse and the petitioner saying there will be no impact from the project is untrue. Attorney Vaughan said he is not saying there will be no impact; he is asking whether the project requires mitigation as it relates to the city ordinance. He said he does not think his client is going to make the traffic in the area worse. Chairman Gately said he has seen traffic impact statements before from the Herb Chambers petition for the site and his problem with that traffic study was it was conducted in the summertime, when there were no students in the Joyce Middle School. Mr. Ham said the traffic study for the townhouse project was conducted in September 2017, when school was in session. Mr. Ham said City Engineer Corey agrees with the assessment that the petitioner's impact on traffic will be minimal. Chairman Gately said the intersection of Locust Street and Cambridge Road needs to be looked at because there were more than 20 accidents between 2010-14 and that there will be an impact from the petitioner's project. Mr. Ham said there is a consensus that an improvement to the Bedford Road/Cambridge Road traffic signal will improve the intersection of Locust Street and Cambridge Road. Chairman Gately said turning from Locust Street onto

Cambridge Road in the morning is problematic. Attorney Vaughan said he thinks improvements to the Cambridge Road/Bedford Road intersection will help the traffic situation at Locust Street, and that his client is willing to bring the design study to fruition. Alderman Campbell said the City Engineer made it clear the mitigation should be 3 percent, according to the city ordinance, which has been in place for years. She said other developers have paid huge sums of mitigation money in the past and it would not be fair to them to charge them and not the petitioner. She said she stands firm and will continue to ask for \$150,000 for the intersection and \$150,000 for sidewalks. Alderman Campbell said she is OK with the other conditions. Attorney Vaughan said there is one other item on the list of conditions he wishes to address. Alderman Campbell said the city's mitigation ordinance says the mitigation fee is 3 percent. She said City Engineer Corey said the mitigation fee is 3 percent. She said either the petitioner agrees with the mitigation fee or he doesn't and she is getting frustrated by the tip-toeing during the discussion. Alderman Mercer-Bruen said she agrees with Alderman Campbell, that the intersection already operates at a level of service F and that the petitioner's project will have an impact. She said the project is a good one but it has to be done right. Alderman Higgins said the ordinance does say the Council can impose a fee of up to 3 percent, and the Council is going on a recommendation of City Engineer Corey. She said traffic is a problem at the intersection of Locust Street and Cambridge Road and you can't get out of Locust Street during rush hours. She said she hopes the petitioner's contribution to traffic study for the Cambridge Road/Bedford Road intersection will speed up the process of obtaining a Massworks grant. Alderman Higgins said she thinks the project is good but the Council has to make sure it goes forward with the mitigation. Alderman Concannon said he is not on the same page as his colleagues about the mitigation. He said the Council has an opinion from its own lawyer indicating the mitigation ought to be limited to traffic and utilities. He said he thinks the Council is not following the process. He said he thinks City Engineer Corey is not interpreting the mitigation ordinance correctly. He said he spoke to City Engineer Corey for an hour and a half and his subsequent memo of April 23 more closely follows the rules. He said the City Engineer's initial review of the petitioner's development impact statements was cursory at best. He said the City Engineer is supposed to review the development impact statement and render an opinion to the Council and that he's not supposed to immediately jump to 3 percent. Alderman Campbell said the ordinance uses the term "sole discretion." Alderman Concannon said the ordinance also includes the phrase "in lieu of" and that doesn't necessarily mean picking 3 percent. He said the City Solicitor is adamant that it's not the way to read it. Alderman Campbell said the Council has been interpreting the mitigation ordinance the same way since she has been on the Council. She said she understands the interpretation of the mitigation ordinance is an important issue to Alderman Concannon but she added it is something the Council ought to hold on to. Alderman Concannon asked Alderman Campbell if she disagrees with the City Solicitor's opinion. Alderman Campbell replied she does disagree. She said if Alderman Concannon wants to change the mitigation ordinance he can certainly submit different legislation. Alderman Concannon said the legislation is correct, but it's not being interpreted correctly. Attorney Vaughan said he googled the mitigation ordinance and found a memo from City Solicitor Callahan Doucette which he submitted at a previous committee meeting. He said mitigation is limited to utilities or traffic, and that his client is willing to participate in the traffic study for Bedford/Cambridge roads, and that he would expect contributions from other projects in Burlington would be applied to the \$150,000 cost of the study, so the petitioner isn't paying for all of it. Alderman Campbell said these are the conditions the Committee has put together and if the petitioner doesn't agree with them, he is certainly

entitled to appeal. Alderman Higgins asked if there has been anything added to the list of conditions from the April 9 meeting. Alderman Campbell said a 22<sup>nd</sup> condition was added that reads: "That an ADA accessible sidewalk be established on Locust Street as determined in the field by the Police Chief and DPW Superintendent." Attorney Vaughan reiterated an anecdote from the April 9 committee meeting when he stated that if the McDonald's on Montvale Avenue was converted to a project with 15 townhomes, the developer would not be asked to provide mitigation because the traffic impact would be reduced. Alderman Anderson said he agrees with the petitioner's statements about the impact of the project and said slavishly adhering to a 3 percent mitigation fee is not the way it's supposed to be done. Alderman Anderson asked if the petitioner is asking for the \$150,000 fee for the traffic study to be reduced by any subsequent contributions. Attorney Vaughan answered in the affirmative. Alderman Anderson said the Council has to articulate what the impact of the project will be, and he does think there will be an impact. He said he thinks the traffic situation on Cambridge Road is a state problem that the state ought to resolve. Chairman Gately said Cambridge Road is the second-worst road in that area and any additional traffic brought in by the petitioner has to be mitigated. He said there will be more than 148 vehicles per day and there are going to be major traffic disruptions on Locust Street. He said he believes mitigation is more than justified in this instance and until the mitigation ordinance changes, the Council has to work with the ordinance it has. Attorney Vaughan said his client is willing to contribute up to \$150,000 to address traffic issues but he is not sure where the other \$150,000 stipulated in the City Engineer's memo would go. Alderman Gately said there are sidewalks that need to be improved. Alderman Campbell said a townhouse project with 41 units is a perfect fit for Ward 1 and she is happy the developer is here and will be in Woburn. Attorney Vaughan asked the Council to consider a mitigation fee that is consistent with the zoning regulations but allowed he doesn't think there is anything he can say that will persuade the Council to impose anything less than 3 percent. Attorney Vaughan asked the Committee to adjust condition #9 so two small pieces of snow removal equipment can be stored on site. Alderman Mercer-Bruen asked if the snow removal equipment will be seen from the street. Attorney Vaughan said no. Chairman Gately said the petitioner should be allowed to store a couple of small pieces of equipment. Alderman Mercer-Bruen asked if the Council should stipulate what type of equipment and when it will be removed after the winter. Alderman Anderson suggested having the homeowners' association deal with the issue. Attorney Vaughan asked about the second sentence of Condition #11 and whether the mitigation fee has to be paid prior to the issuance of the building permit. Alderman Higgins suggested changing the language to read the mitigation has to be paid prior to the permanent occupancy permit. Alderman Mercer-Bruen said the Council needs to be careful it is not creating a loophole through which the developer could keep obtaining temporary occupancy permits. Alderman Concannon asked if the Committee wants to impose a condition suggested by Alderman Tedesco that returns any unexpended mitigation funds to the petitioner after 48 months. Alderman Higgins asked 48 months from when. Alderman Anderson suggested 48 months after the issuance of the permanent occupancy permit. Motion made by Alderman Mercer-Bruen and seconded by Alderman Campbell to add condition #11(f) that reads: "Any funds not expended or encumbered within 48 months after the issuance of the permanent occupancy permit shall be returned to the Petitioner;" approved, 3-0. Alderman Mercer-Bruen asked who is going to do the sidewalks. Attorney Vaughan said the way conditions 11(b) and 11(c) are written, the money would not go very far. Kevin Duffy agreed the \$150,000 mitigation fee will not cover the costs of constructing sidewalks along Locust Street. Alderman Campbell suggested installing sidewalks between

Willow Street and the Joyce Middle School. Mr. Duffy said the sidewalk is about 1,750 linear feet and that if he agrees to the mitigation, which he is not sure he will, he does not want the fee to be in excess of \$300,000. Alderman Anderson suggested deleting sections b, c and d of condition #11 from the April 9 memo and replacing them with a new condition #11(b) that reads: “\$150,000 of the funds shall be used to install sidewalks on Locust Street beginning at the intersection with Willow Street, as determined by the DPW superintendent.” Alderman Campbell suggested adding the phrase “with granite curbing” to Alderman Anderson’s proposed condition. Motion made by Alderman Mercer-Bruen and seconded by Alderman Campbell to delete conditions #11b, 11c, 11d of the April 9 memorandum and create a new condition #11b with “\$150,000 of the funds shall be used to install sidewalks with granite curbing on Locust Street beginning at the intersection with Willow Street, as determined by the DPW superintendent;” approved 3-0. Alderman Concannon suggested adding a condition that would return any unused mitigation money to the developer. Alderman Campbell suggested the condition ought to read any unused mitigation money could be returned after 48 months. Alderman Mercer-Bruen asked how much it would cost to do the sidewalk. Mr. Duffy said it would cost about \$250,000, using bituminous material. Mr. Ham said it would cost about \$300,000 using all granite. Alderman Campbell said there has been mitigation money sitting in accounts for a long time and adding a condition to return the money to a petitioner is probably not the best thing. Alderman Concannon said if the money isn’t used in four years, then the Council should probably give it back to the developer. Alderman Higgins suggested adding a clause that the money must be expended or encumbered within four years. Motion made by Alderman Campbell and seconded by Alderman Mercer-Bruen that the petition “ought to pass” with the following conditions; approved, 3-0:

1. The Petitioner shall construct and improve the Site as substantially described in the plans submitted with the Petition for Special Permit entitled: “Site Plan for 285 Locust Street, Woburn, Massachusetts” Cover Sheet, Sheets EX-1, C-1, C-2, C-3, C-4, L-1, L-2, C-5, C-6, C-7, C-8, SL-1, A1.0, A1.1, A1.2, A1.3, A1.4 and A1.5 dated June 13, 2017, January 18, 2018, January 22, 2018, January 26, 2018, revised March 22, 2018, revised April 6, 2018, prepared by RJ O’Connell & Associates, Inc., 80 Montvale Avenue, Stoneham, Massachusetts 02180, William Fleming Associates, Inc., 375 Main Street, Suite 3, Stoneham, Massachusetts 02180, and HDS Architecture, 625 Mount Auburn Street, Cambridge, Massachusetts 02138 (hereinafter the “Site Plan”) although design adjustments and modifications generally associated with: (i) preparing so-called “working drawings” or (ii) site conditions shall be permitted so long as such changes do not constitute substantial changes from said plans as determined by the Building Commissioner. In the event that the Building Commissioner determines that the building plans filed with the building permit application are not in substantial conformance with the Site Plan, the Petitioner may request a review of said plans by the City Council Special Permits Committee who shall make a final determination. If the Special Permits Committee makes a determination that the proposed plans are not in conformance with the Site Plan, the Petitioner shall be required to file a Special Permit Petition seeking approval to modify the Site Plan.
2. All exterior building illumination shall be shielded in such a manner that will prevent direct light from impacting any abutting properties.

3. Except in the event of an emergency, exterior construction activities on the Site shall be from 7:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 4:00 p.m. on Saturdays. No construction activities on Site shall be permitted on Sundays or federal or state holidays.
4. The applicant shall comply with the requirements of Section 11.11 of the Zoning Ordinance (Affordable Housing Requirement) relative to the creation of a minimum of four (4) affordable housing units.
5. Any bituminous curbing that is installed within the property as part of the project shall be maintained by the property owner and/or condominium association and not the city.
6. All sidewalks installed within the property as part of the project shall be made of concrete or concrete pavers.
7. The petitioner shall provide a copy of an environmental report for the property, when available, to the City Council and the Woburn Board of Health.
8. Sheet C-4 of the Plan of Record shall be modified to reflect the island inside the development shall be bounded by sloped granite curbing, and the residential area shall be bounded by Cape Cod berm.
9. The snow storage areas on the plan of record shall be used only for snow. No snow removal-related equipment shall be stored on the property unless authorized by the City Council.
10. The Petitioner shall be responsible for snow removal until such time when all its legal rights in the development are transferred to the Townhouse Association or similar association. Once the Townhouse Association, or similar association, has been created and its legal rights vested in the development, the townhouse Association or similar association, will be responsible for snow removal.
11. The mitigation for this proposal shall be as indicated below and in accordance with the City Engineer's memoranda dated March 26, 2018, April 3, 2018 and April 23, 2018. The total mitigation fee shall be \$300,000 which shall be paid to the city prior to the issuance of an occupancy permit, temporary or otherwise, and the mitigation funds shall be used for the following purposes:
  - (a) Up to \$150,000 of the funds under the project shall be applied to the Bedford Road/Cambridge Road Traffic Signal Redesign Plans. Any of the funds remaining upon completion of the design study shall be applied to further upgrades of the Locust Street sidewalks.
  - (b) \$150,000 of the funds shall be used to install sidewalks with granite curbing on Locust Street beginning at the intersection with Willow Street, as determined by the DPW Superintendent.

(c) Any money designated in paragraph (a) not used for the Bedford Road/Cambridge Road Traffic Signal Redesign Plans within 18-24 months shall be used for the upgrades of Locust Street sidewalks.

(d) Any funds not expended or encumbered within 48 months after the issuance of the permanent occupancy permit shall be returned to the Petitioner.

12. Adequate rodent and pest control shall be put in place before demolition and reviewed by the Board of Health.
13. During construction, all vehicles shall be parked on Site. All staging and deliveries shall occur on Site.
14. During construction, no vehicles shall be parked on Locust Street, Kelly Drive or Cambridge Road.
15. Sidewalks and roadways shall be kept open and clear during construction.
16. This project shall not exceed forty-one (41) units.
17. All signage shall comply in all respects with the provisions of Section 13 of the Woburn Zoning Ordinance, unless modified herein.
18. All landscape shall be maintained by property owner, Townhouse Association or similar association. Any dead trees, shrubbery, plants, or grass shall be replaced with new plants within a reasonable amount of time.
19. All landscaped areas on property shall have an irrigation system.
20. Interior roadway shall be assigned a name and unit numbers assigned. No letters shall be used to identify units as requested by Police Department and Fire Department.
21. Units in development shall be serviced by weekly private trash collection and collection of recyclable materials.
22. That an ADA accessible sidewalk be established on Locust Street as determined in the field by the Police Chief and DPW Superintendent.

**Motion made by Alderman Mercer-Bruen and seconded by Alderman Campbell to adjourn, all in favor, 3-0. Chairman Gately adjourned the meeting at 7:25 p.m.**

Attest: \_\_\_\_\_

Gordon Vincent  
Clerk of Committees