



THE COMMISSIONERS OF ST. MICHAELS

BOARD OF ZONING APPEALS
300 MILL STREET
P.O. BOX 206
ST. MICHAELS, MD 21663

SETTLED 1670-1680

INCORPORATED 1804

TELEPHONE: 410.745.9535

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AGENDA

Tuesday, October 9, 2018

Town Office

5:30 PM

I. CALL TO ORDER

II. NEW BUSINESS

BOZA-586-18: Appeal of the Planning Commission approval made on August 7, 2018 on a Preliminary Site Planning approval made for a proposed development at 906 South Talbot Street (Tax Map 0201, Parcel 1312 and 1313). The appeal hearing will be in accordance with Article VIII and XI of Chapter 340 of the St. Michaels Town Code. The Appeal application was filed by David E. Beauregard, II c/o Zach A. Smith Agent. The Appeal hearing is scheduled for Tuesday, October 9, 2018 at 5:30pm as part of the Board of Zoning Appeals' regular meeting at the Edgar M. Bosley, Jr. Building, 300 Mill Street, St. Michaels, MD 21663.

III. REVIEW AND APPROVAL OF MINUTES
September 10, 2018

IV. ITEMS FROM BOARD OR STAFF

V. ADJOURNMENT

BOARD OF ZONING APPEALS
MEETING MINUTES
Tuesday, October 9, 2018
Town Office
5:30 p.m.

CLOSED SESSION

Chairman Harvey opened the public hearing on BOZA 586-18 at 4:30 p.m. and made a motion to move into closed session. Member Hunnicutt seconded the motion, which then passed on a voice vote of 3-0 in favor.

CALL TO ORDER

Chairman William Harvey reopened the public meeting of the St. Michaels Board of Appeals (the Board) at 5:34 p.m. in the meeting room of the Edgar M. Bosley, Jr. Municipal Building, 300 Mill Street, St. Michaels, Maryland. Also present were Members John Hunnicutt and Douglas Rollow, Alternate Member Maurice Nelson, and Zoning Officer Sarah Abel. The Board was represented by Attorney Andrew Meehan. Approximately 50 members of the public were present in the meeting room, with approximately 100 outside the meeting room intending to testify.

NEW BUSINESS

BOZA 586-18: Appeal of the Planning Commission approval made on August 7, 2018 on a Preliminary Site Plan approval made for a proposed development at 906 South Talbot Street) Tax Map 0201, Parcel 1312 and 1313). The appeal hearing will be in accordance with Article VIII and XI of Chapter 340 of eh St. Michaels Town Code. The appeal application was filed by David E. Beauregard, II c/o Zach A. Smith Agent.

Chairman Harvey welcomed all and introduced the members of the Board. Chairman Harvey said the hearing would follow Board Rules of Procedure that were adopted on December 22, 2008, and Roberts Rules of Order. Chairman Harvey introduced the parties to the Appeal, David Beauregard represented by Zach Smith, American Corner LLC represented by Brynja Booth, and the St. Michaels Planning Commission represented by Patrick Thomas. Chairman Harvey announced that there was a sign-up sheet available for all non-party participants and members of the public wishing to testify who wished and noted that, even if the hearing needed to be continued, all those who signed up would have an opportunity to be heard. Chairman Harvey then addressed counsel saying that the Board was considering this hearing a de novo proceeding and asking if counsel were prepared to go forward and argue based upon the existing record and any additional witnesses for this evening, or in any continuation. Zack Smith, counsel for the Appellant David Beauregard, said yes. Brynja Booth, counsel for American Corner LLC, asked for clarification of case law, and Patrick Thomas, counsel for the Town of St. Michaels, agreed to the de novo proceeding. Chairman Harvey called upon Vice-Chairman Rollow, who summarized the case law supporting the de novo procedure. Chairman Harvey then announced the Board had met in closed session just prior to the hearing, to take advice from counsel. Mrs. Weisman said the meeting was being put on speaker phone so that attendees in the adjacent room could hear the proceedings. Chairman Harvey reviewed other rules and parameters for the conduct of the hearing, and introduced the parties and counsel. Brynja Booth, counsel representing American Corners LLC, asked for time to explain the hearing parameters to her clients. Chairman Harvey recessed the proceedings for five minutes.

The hearing was reconvened, and Chairman Harvey asked Ms. Booth if she had any objection to any sitting member. She responded no. Alternate Member Maurice Nelson was excused and left the meeting. Chairman Harvey said that the third and final matter before the board was a Motion to Dismiss filed by Ms. Booth, Counsel Zack Smith and Attorney Patrick Thomas said they rejected the Motion to Dismiss and would rely on the record and responses as submitted. Chairman Harvey said the board would take the

Motion to Dismiss under advisement and proceed with the hearing. Ms. Booth made an objection for the record, noting that she was not advised of the de novo format in advance, and that there was no precedent for the procedure, and the Board has no jurisdiction to sit as the Planning Commission. She added that the appeal should be on the record and limited to the six points raised in the original pleading by David Beauregard. Ms. Booth said she would participate and go forward, but asked for a copy of the rules. Chairman Harvey said Ms. Booth's objection was noted and directed that all three counsel receive a copy of the rules that were currently available in the room.

Chairman Harvey continued that the hearing was based on six alleged errors in the preliminary site plan review as set forth in the appeal filed by David Beauregard. Chairman Harvey said the six allegations were as follows:

1. Parking calculations were not calculated per 340-34
2. Parking calculations shown are inconsistent and do not match square footages
3. Parking not provided for the proposed car wash
4. Site plan counts gasoline bays as parking spaces
5. Site plan proposes a storm water management feature in an area where it is not permitted
6. Site plan proposes landscape beds that are three feet wide, and not five feet wide as required by the Code.

Chairman Harvey said that the de novo hearing would be limited to these six allegations and declared that any and all testimony should address only the alleged errors. Counsel Zach Smith noted that his client, David Beauregard, owns the property directly across the street from the proposed gas station. Mr. Smith said his client believed that the Planning Commission approved the preliminary site plan without following the code, as outlined in the six allegations. Mr. Smith said that if the Board, sitting as the Planning Commission, finds that any of the six allegations are correct, they must reject the Site Plan. Counsel Smith then reviewed the six allegations in greater detail, citing relevant code sections.

Chairman Harvey asked Zoning Officer Sarah Abel if all paperwork and exhibits had been included in the record. Ms. Abel said all had been logged, not including the sign-in sheets or correspondence that would be collected and logged at the next break. Chairman Harvey then called for a five minute recess in order for Ms. Booth and the other attorneys to review the record, and copies of the current exhibit list were handed out to the public as requested. Chairman Harvey and other participants stipulated and confirmed for Ms. Booth that the exhibits included Ms. Abel's staff report, and further confirmed that Ms. Booth's letter submitted included all attachments thereto. Zoning Officer Abel noted that there 55 exhibits for the Planning Commission site plan review and 33 additional exhibits submitted for the Board de novo hearing.

Brynja Booth, counsel for American Corners LLC, identified her witnesses as her American Corner clients, Sarah Abel, Zoning Officer, and Sean Callahan, Lane Engineering. Chairman Harvey swore in the witnesses. Ms. Booth then responded to Mr. Smith's arguments, noting that for points 1 and 2, the property has already been approved for a special exception, i.e. auto service station, and parking spaces are not required. Ms. Booth also noted that for point 2, no parking spaces are required for a car wash, adding that the building is not occupied and dedicated parking is not required by the code. With regard to point 4, Ms. Booth said parking spaces are not required for the gasoline bays, adding that the Site Plan shows 36 parking spaces and only 22 are required, as determined by the Planning Commission. Regarding points 5 and 6, Ms. Booth noted that the property has a 30' buffer which is more than adequate for landscaping and for storm water management and the Site Plan exceeds what is required.

Ms. Booth then called Zoning Officer Sarah Abel to testify regarding her calculations based on the code. Zach Smith directed cross-examination to Ms. Abel regarding parking spaces and landscaping. Ms. Abel also responded to questions Member Rollow had about whether the definition of gross floor area of a

structure as applied to the calculation of required parking spaces, required that the structure be a habitable structure, to which Ms. Abel replied that it did. Ms. Booth then called upon Waqar Cheema, Lane Engineering, who provided testimony on the storm water management plan. Mr. Cheema confirmed that plantings are non-structural features, according to the ESD Manual. Ms. Booth submitted additional landscaping exhibits and photos of a car wash project in Easton showing micro bio retention as landscaping.

Sean Callahan, planner for Lane Engineering, provided testimony on landscape coverage, the reasons for the 3-foot width of the planter boxes, and drainage. After some additional questions regarding landscaping, Chairman Harvey recommended a five-minute break as it was 8:00 o'clock. Chairman Harvey and Counsel Booth had a discussion clarifying the special exception, uses, and traffic; and the board members agreed they could continue with the hearing until 9:00 o'clock.

Chairman Harvey re-convened the hearing. Ms. Booth had questions for Nadeem Ashliff, American Corners LLC, who testified that the car wash required no attendant and that the vacuum stations were also self-serve. Christian Chute, architect with Atelier 11, was sworn in, and testified that he had prepared the architectural plans and described how the square footage was calculated at 3250 square feet. Chairman Harvey and Mr. Smith had questions about square footage. Ms. Booth had no additional witnesses.

Attorney Patrick Thomas, representing the Planning Commission, made a brief statement directing the proceeding to testimony by Dennis Glackin, Chairman of the Planning Commission. Mr. Glackin was sworn in. Mr. Glackin said that the Planning Commission had given approval for a preliminary plan, and that there were issues to be worked out between preliminary and final site plan review, including the planters and landscaping. Mr. Glackin said that the Planning Commission had reduced the square footage of the original building to 3250 square feet. Mr. Glackin addressed Mr. Smith's question about the timeframe for the appeal and the 2 year vesting of the preliminary plan. Mr. Glackin said that the attorneys could address that issue, but that it was his understanding the 2-year vesting would begin after the appeal process was completed. Mr. Glackin said he agreed with Ms. Abel's review of the preliminary site plan and, at the end of the day, the Commission must rely on the findings and interpretation of the zoning inspector and on the independent decision of the Planning Commission. Mr. Glackin said he felt that all of the six allegations had been addressed, with the exception of the landscaping, and a revised circulation plan, which would be fully addressed by and at final site plan review. Mr. Glackin concluded his testimony by stating that the same process is followed for all site plans reviewed by the Planning Commission. Mr. Hunnicutt verified that the parking issues were addressed in that no additional parking is required. In conclusion, Attorney Thomas said he felt that the appeal was premature in that there was still a final site plan review by and at which outstanding issues could change or be resolved. Mr. Smith had one brief question for Mr. Glackin, after which Chairman Harvey called for public comment.

Chairman Harvey said that due to the late hour, those residents of the Town would be taken first. Ms. Abel read all the names of residents who had signed in and determined which members of the public were still present to testify. Chairman Harvey re-stated that comments should address the issues of the hearing. The following residents were sworn in and expressed concerns about the planned project and its effects on the character of the Town, and/or the size of the station complex:

Susan Reiswerg of E. Chew Avenue
Marie Martin of Cherry Street
John Novak of W. Chew Avenue
Erin Henson of E. Maple Avenue

Ms. Abel read a number of names of non-residents, many of whom were no longer present. Mrs. Nadine Mulkelroy of Claiborne, MD was still present and made comment, having concern about increased traffic

congestion. Ms. Abel said that the members of the public who were no longer present, but who were on the sign-in sheets, would be included in the record and Ms. Abel read the names of individuals who had submitted comments via email into the record, and agreed to print out the emails for the members.

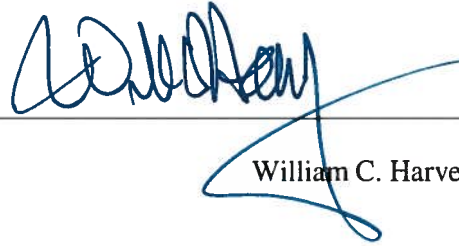
Attorney Zach Smith made a closing statement saying that his client was asking for a scaled down version of the project that was in strict compliance with the code. Brynja Booth affirmed the Planning Commission's decisions. Patrick Thomas said that the Planning Commission did not ignore any item, the dispute is based on interpretation, and he supports the Planning Commission's position. Chairman Harvey closed the public comment period at 9:03 p.m., with no objection.

Chairman Harvey then called for member deliberation and arguments for dismissal or for continuation of the hearing. The Board members said they would like to take everything under advisement and would prefer a continuation. As there was agreement on a continuation date and time, Chairman Harvey made a motion to continue the hearing to Friday, October 12th at 1:00 p.m. in the Town Office. Member Hunnicutt seconded the motion, which then passed on a voice vote of 3-0 in favor.

ADJOURNMENT

Chairman Harvey adjourned at 9:30 p.m. and noted the continuation to Friday, October 12, 2018 at 1:00 p.m.

Minutes approved by 30 vote in favor on 10 day of Dec, 2018.



William C. Harvey II, Chairman



PUBLIC NOTICE
BOARD OF ZONING APPEALS OF ST. MICHAELS

The Board of Zoning Appeals of St. Michaels will continue deliberation and decision on BOZA-586-18, an Appeal of the Planning Commission approval made on August 7, 2018 on a Preliminary Site Planning approval made for a proposed development at 906 South Talbot Street (Tax Map 0201, Parcel 1312 and 1313) filed by Mr. David Beauregard, to **Friday, October 12, 2018 at 1pm at the Town Office, 300 Mill Street.**

By authority of the
Board of Zoning Appeals

1 **BOARD OF ZONING APPEALS**
2 **MEETING MINUTES**

3 Friday,
4 October 12, 2018
5 Town Office
6 1:00 p.m.
7

8 **I. CLOSED SESSION**

9 Chairman Harvey opened the public meeting and the continuation of the public hearing on
10 BOZA 586-18 at 12:48 p.m., and made a motion to move into closed session. Member
11 Hunnicutt seconded the motion, which then passed on a voice vote of 3-0 in favor.
12

13 **II. CALL TO ORDER**

14 Chairman William Harvey re-convened the public meeting of the St. Michaels Board of Appeals
15 (BOZA) at 1:00 p.m. in the meeting room of the Edgar M. Bosley, Jr. Municipal Building, 300
16 Mill Street, St. Michaels, Maryland. Also present were Members John Hunnicutt and Douglas
17 Rollow, and Zoning Officer Sarah Abel. There were a number of members of the public present.
18

19 **III. OLD BUSINESS**

20 **Continuation of hearing on BOZA 586-18: Appeal of the Planning Commission approval**
21 **made on August 7, 2018 on a Preliminary Site Plan approval made for a proposed**
22 **development at 906 South Talbot Street) Tax Map 0201, Parcel 1312 and 1313). The**
23 **appeal hearing will be in accordance with Article VIII and XI of Chapter 340 of eh St.**
24 **Michaels Town Code. The appeal application was filed by David E. Beauregard, II c/o**
25 **Zach A. Smith Agent.**
26

27 Chairman Harvey said the Board had just met in closed session to take legal counsel and was
28 now in deliberations. Chairman Harvey asked member Hunnicutt if he had any questions.
29 Member Hunnicutt said he had no other questions at the moment. Member Rollow also said he
30 had no further questions. Chairman Harvey said thank you to all parties asked where the
31 members wanted to begin the deliberations. Member Rollow said he believed the motions to
32 dismiss were the primary issue and should be taken up first. Chairman Harvey said that the
33 position of the applicant in filing a motion to dismiss was that the Board of Appeals did not have
34 authority to even hear the appeal. Chairman Harvey said he believed the Board did have
35 authority under the Town's Code and state law and case law, and that the Board has the
36 authority to deal with the motion under the law. Member Hunnicutt said he concurred and said
37 that he believed the appeal pending was premature, that there was still opportunity for the six
38 issues raised in the appeal to be resolved through the Planning Commission's process. Member
39 Rollow said he would grant the Motion to Dismiss with respect to one of the six allegations –
40 that of landscaping, because it is still subject to Planning Commission review, but on the other
41 five allegations, the Board has statutory and subject matter jurisdiction. Chairman Harvey said
42 he agreed with both members, but the Board must do Findings of Fact, and ultimately the board
43 must determine whether or not the Planning Commission's decision to approve the Preliminary
44 Site Plan subject to conditions is or is not final decision. In response to a question from Member
45 Hunnicutt, Chairman Harvey stated that the ripeness of the question whether the Planning
46 Commission committed an error in its decision depends on whether the decision is final.

47 Chairman Harvey continued that the record and testimony shows there are 18 conditions
48 stipulated by the Planning Commission, and those conditions, including a required revised
49 parking plan, haven't been met. Chairman Harvey said that his conclusion is that the Planning
50 Commission's decision to approve the Preliminary Site Plan conditionally is not a final decision
51 and the Motion to Dismiss should be granted. Member Rollow said the Planning Commission's
52 condition on landscaping in the buffer zone was incorrect and the Board has the right to rule on
53 the issue. Chairman Harvey said that decision lies with the Technical Advisory Committee or
54 the consulting engineer. Chairman Harvey said that interpretation of the Code is called for with
55 regard to the parking tabulations and parking plan and the other allegations. Member Rollow
56 said that five of the six allegations of error pose questions of interpretation of the Code made by
57 the Zoning Officer or the Planning Commission and the appellant is alleging errors of law and
58 they are ripe for hearing. Chairman Harvey said he believed that a conditional Preliminary Site
59 Plan isn't subject to review until the conditions have been resolved, and only then would a final
60 decision be ripe for an appeal. Member Hunnicutt concurred. Chairman Harvey said the if the
61 Board Dismisses the Appeal without prejudice, that means that once all of the conditions of the
62 Preliminary Site Plan have been met, and if the Planning Commission's and the TAC's review of
63 the final Site Plan results in approval, then the appellants are free to appeal again.

64
65 Counsel to the Board stated that the case before the Board constitutes one appeal of the Planning
66 Commission's decision, not six appeals parsed out on six separate allegations. Member Rollow
67 asked the Chairman if, for purposes of looking at the six errors, there are no conditions
68 associated with a particular item, is that item not subject to review by the Board because all of
69 the items are not subject to review? Chairman Harvey said he believed so. Chairman Harvey
70 said the Motion to Dismiss should turn on whether the Board deems the Planning Commission's
71 conditional approval to be a final decision under the law.

72
73 The members then discussed applicable cases and points of law. Member Hunnicutt read the
74 Planning Commission minutes into the record, noting that the meeting closes with a "motion
75 to proceed to final site plan review subject to the following conditions," which conditions, Mr.
76 Hunnicutt said, include the six allegations contained in the appeal. Member Hunnicutt added
77 that the plan should be allowed to be revised and go to final review and decision before
78 accepting an appeal. Chairman Harvey reiterated that if the Board determines that the Planning
79 Commission decision is not a final decision under the law, and is not an appealable act, the
80 motion to dismiss is not a dismissal of the appeal because the appeal is premature or, under the
81 law, does not exist. Chairman Harvey said he is prepared to find that the Planning Commission's
82 decision is not appealable, because the approval of the Preliminary Site Plan conditionally is not
83 a final decision.

84
85 Member Rollow said that the Code allows a person aggrieved by an interpretation of the Zoning
86 Chapter by the Zoning Officer to file a petition. Member Rollow stated that the Zoning Officer
87 reached the conclusion that no parking was required for the car wash and that was a conclusion
88 under the Code. Member Rollow said that if that interpretation is in error, it is a deficiency in
89 the site plan that goes all the way through to process to the final site plan. Chairman Harvey
90 disagreed and noted that the Planning Commission and the TAC must re-review any decision
91 made during the Preliminary Site Plan review, as per the conditions, before final site plan review.
92 Member Rollow said then the Preliminary Site Plan approval was not an approval, to which

93 Chairman Harvey agreed and Member Rollow disagreed. Member Rollow said he believed
94 determinations have been made in the Preliminary Site Plan that are interpretations of the Zoning
95 Code that are critical to whether the Preliminary Site Plan does or does not conform to the
96 Zoning Code and that the appellant has raised sufficient questions to bring that under the Board's
97 jurisdiction. Chairman Harvey disagreed and said the re-review might yield a different result.
98 Chairman Harvey then proposed the following Findings of Fact and conclusions of law and
99 asked for members input for each proposal.

100

101 REPLACE THE FOLLOWING FINDINGS WITH A CUT AND PASTE FROM THE
102 OFFICIAL FINAL DECISION

- 103 1. Establish jurisdiction
104 2. Jurisdiction under 98-6D, 340 zoning, article IV
105 3. Applicant filed sketch plan on August 4, 2017
106 4. Zoning inspector found sketch plan application to be complete and forwarded it to the
107 Planning Commission
108 5. Per Code Section 110-4c, sketch plan approved and 110-6B
109 6. Special exception application filed on December 11, 2017
110 7. Per Code Section 340-74A6 special exception approved on January 17, 2018, subject to
111 five specific development conditions
112 8. TAC reviewed site plan on June 21, 2018 and recommended a re-review between the
113 preliminary site plan and final site plan review
114 9. Per Code Section 110-5 zoning inspector incorporated TAC comments into preliminary
115 staff review, and forward to the Planning Commission
116 10. Applicant filed an application for Preliminary Site Plan approval on May 8, 2018
117 11. Per Code Section 110-6A, the Planning Commission approved the Preliminary Site Plan
118 August 7, 2018 subject to 18 specific conditions, including, but not limited to, a TAC re-
119 review, revisions of the on-site circulation plan, correction of parking calculations,
120 revisions to the lighting plan, coordination with the zoning officer on tree preservation,
121 and inclusion of the board's development conditions on the plan; decision forwarded to
122 the Applicant on August 23, 2018.
123 12. Per Code Section 340-69, appellant filed an appeal of the Planning Commission's
124 decision on September 11, 2018, citing six specific errors allegedly made by the
125 Commission
126 13. The six errors contain elements of the 18 conditions which have yet to be satisfied
127 14. In order to satisfy the conditions, the applicant must make significant changes and revise
128 the Preliminary Site Plan.
129 15. Per Code Section 110-6C, the Zoning inspector may not approve the issuance of building
130 permits until such time as the significant changes in the Preliminary Site Plan occur, and
131 the revised plan is returned the Planning Commission for further review.
132 16. Per Code Section 10-6D, the significant changes necessary to satisfy the specific
133 conditions imposed on the plan require review by the Planning Commission and the
134 Technical Advisory Committee, and action by the Planning Commission to finalize the
135 conditional approval currently in place.

136 Chairman Harvey said he would add the appropriate case law read previously to the final
137 Findings of Fact.

138 17. As of October 12, 2018, the Applicant has not made the significant changes and revisions
139 to the Preliminary Site Plan required by the Planning Commission under its conditional
140 approval.

141 18. The decision of the Planning Commission must be final before it may be reviewed on
142 appeal by the Board of Appeals, U.S. Health Inc. vs. State of Maryland.

143 19. The Appellant's appeal is premature, as the Commission's conditional approval of the
144 Applicant's Preliminary Site Plan is contingent on specific conditions which have not yet
145 been met, and therefore cannot be considered as final action by the Commission under
146 Maryland Rule B 1 a.

147 Chairman Harvey said the above were his suggested Findings of Fact and conclusions of law,
148 and we welcomed comment. Zoning Officer Sarah Abel noted for the record that the applicant
149 has a pending lot line revision with the Town, which is subject to review, and has not yet been
150 approved. Chairman Harvey noted that the lot line revision is part of the 18 conditions. Member
151 Hunnicutt made motion that the Findings of Fact as outlined be made part of the record.
152 Member Harvey seconded the motion for purposes of discussion only. Member Rollow asked
153 whether all of the actions of the Planning Commission, particularly as related to the sketch plan,
154 are part of the record in this proceeding. Chairman Harvey said it is part of the record going
155 back to the original May 2018 Planning Commission where the Sketch Plan was part of the their
156 deliberations and the minutes. Member Rollow objected. Attorney Thomas confirmed that the
157 sketch plan was part of the record based on Ms. Abel's affirmative testimony at the beginning of
158 the hearing. Member Rollow withdrew his objection. Chairman Harvey said he was in favor of
159 adopting the Findings of Fact, but asked if Member Rollow had anything to add. He responded
160 that he may but not at this time. Chairman Harvey called for a vote. The motion to adopt the
161 Findings of Fact and conclusion of law carried on a vote of 2-1 in favor, with Member Rollow
162 voting "no.". Chairman Harvey said he would now entertain any further motion for any
163 supplement to anything else anyone would want to add.

164
165 Member Rollow then made a motion to add his conclusion of law, that the Board of Appeals is
166 empowered to consider each allegation of error on its own merits separately, and that certain of
167 these allegations involve interpretations of law which are unaffected by any conclusions of the
168 Planning Commission or the TAC, and that errors have been made and that under Code Section
169 340-69 we have the jurisdiction to correct those errors, and in fact we are mandated to if an
170 appellant appears. Chairman Harvey said for all the reasons aforementioned, he respectfully
171 disagreed and did not endorse the motion. There was no second to the motion. Chairman
172 Harvey said that hearing no second, the motion dies.

173
174 Member Rollow and Hunnicutt said they had nothing else to add. Chairman Harvey moved that
175 the Board of Appeals grant the Applicant's Motion to Dismiss without prejudice to Mr.
176 Beauregard, whereby the appellant will have leave to file an appeal to any decision by the
177 Planning Commission to approve a revised Preliminary Site Plan without conditions, or a Final
178 Site Plan pertaining to the subject property. Chairman Harvey added that to be clear, this motion
179 is intended to be expressly limited to the preliminary motion to dismiss of American Corners

180 LLC on procedural grounds, and is not a disapproval of the Appellant's appeal on its merits
181 under Town Code 340-71C. Member Hunnicutt seconded the motion.

182
183 Member Rollow then repeated that what this motion would do is to kick some interpretation cans
184 down the road and it would be better to decide them now rather than later. Member Hunnicutt
185 said he took a different view in that the Board owes the Planning Commission the opportunity to
186 resolve the business before it as it had intended, as referenced in the minutes of August 7, 2018,
187 and for the Board to impose itself in that role at this time is a mistake. Chairman Harvey agreed
188 that the Planning Commission should be allowed to complete its work, according to direction set
189 out in the Code.

190
191 Chairman Harvey then called for a vote. Member Hunnicutt voted "aye." Member Harvey
192 voted "aye." Member Rollow voted "no," and the motion carried 2-1. Chairman Harvey said
193 the appeal is dismissed and the appellant is free to re-file because there has been no disapproval.

194
195 There was a motion and second to adjourn the meeting, which concluded at 1:53 p.m.

196
197 Minutes approved by 3-0 vote in favor on 10 day of Dec, 2018.

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199
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201



William C. Harvey II, Chairman