



OFFICE OF THE
LITTLETON BOARD OF APPEALS
LITTLETON, MASSACHUSETTS 01460

received
8/3/2021 2:30pm
Kathleen O'Connor

Petitioner: NBPII Littleton LLC
Case No: 955A
Date Filed: July 9, 2021

The Littleton Board of Appeals conducted a virtual hearing on July 29, 2021 at 7:15 PM via the Zoom program hosted by Littleton Community Television, Shattuck Street, Littleton, for a Variance from Section 173-61, to allow a dimensional variance for a commercial building and associated parking at 151 and 153 Taylor Street, Littleton. Notice of the hearing was given by publication in the Lowell Sun, a newspaper circulated in Lowell and circulated in Littleton, on July 15 and 22, 2021, and by mail to all abutters and parties in interest. Present and voting: Members, Sherrill Gould, Rod Steward, Marc Saucier, John Sewell, and Alternate, John Field. Present and not voting were alternates Kathleen O'Connor and Eli Constantinou.

The Petitioner, represented by Larry Beals of Beals Associates, Inc., engineers for the applicant, presented plans and a proposal in support of allowing a dimensional variance as the final stage of permitting for a new Last Mile Amazon Distribution Facility on Taylor Street, Littleton, Ma. The subject property consists of approximately 87.8 acres of land lying between Route 495 and the Beaver Brook in the vicinity of the intersection of Routes 495 and 2. The site has received all approvals from the Littleton Planning Board, and supported by the Board of Selectmen as documented by a Host Community Agreement, for the construction of a distribution facility and associated parking on approximately 29.4 acres (the "Developed Area") of the land. The improvements are in place. The site is in the aquifer protection and water resource districts in Littleton and complies with the maximum impervious coverage limits of Section 173-61 of the Littleton Zoning Bylaw as an 87.8 acre parcel.

The Host Community Agreement, however, was negotiated with the cooperation of the Littleton Planning Board to provide significant benefits to the Town, including, *inter alia*, job opportunities, tax revenues, a contribution to the Town's Brown Woods Gift Fund, a voluntary contribution toward essential Town needs, and a gift to the Water Department of all of the land not needed by the Developer (emphasis added). The area of land not needed by the Developer consists of approximately 58.4 acres (the "Undeveloped Area"). It is comprised of a distinctly if not uniquely large area of unimproved land supporting the Beaver Brook aquifer and the drinking water supply of the Town of Littleton.

If the Developer donates this land to the Town of Littleton Water Commissioner, as was contemplated by the parties in the Host Community Agreement, the remaining land retained by the Developer, the "Developed Area" will no longer meet the maximum allowable impervious coverage limits of Section 173-61 of the Bylaw, and the Developer seeks a variance to allow the "Undeveloped Area" to be conveyed to the Water Department, without violating Section 173-61.

Therefore, the purpose of the proposed variance from the maximum impervious coverage limits in the Aquifer Protection District and the Water Resource District is solely to allow the applicant

to make a gift of the Undeveloped Area to the Littleton Water Department, as contemplated by the Host Community Agreement between the Town and the applicant. A condition of that agreement is that the Developed Area meet all applicable legal requirements, including zoning, without the benefit of the Undeveloped Area. The requested variance is essential to the continued legal compliance of the Developed Area.

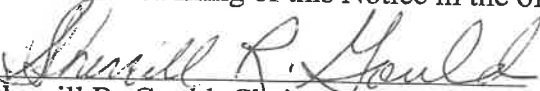
FINDINGS: . The Board agreed that under the circumstances, which are unusual if not unique, the foregoing variance standards are met, to wit:

- (a) the literal enforcement of the limits on the impermeable coverage of the Developed Area (30% in the Aquifer Protection District and 50% in the Water Resource District) would involve a substantial hardship to the applicant in that it would prevent the applicant from completing the full set of enhancements brought to the Town by the project on the Developed Area;
- (b) the hardship is owing to the fact that once the Undeveloped Area is conveyed to the Littleton Water Department, the limits on impermeable coverage would apply to the Developed Area alone, without taking into account the stewardship of the Undeveloped Area by the Littleton Water Department and the symbiotic manner in which the combined parcels would continue to achieve the objectives of the Aquifer Protection District and the Water Resource District. Thus the hardship arises because the soil conditions and topography of the Undeveloped Area, and the fact that they would be under the stewardship of the Littleton Water Department, would not be taken into account (and only the soil conditions and topography of the Developed Area would be considered) in evaluating whether the purposes of the Aquifer Protection District and the Water Resource District are being respected after the conveyance. Further, the soil conditions and topography of the Undeveloped Land, its proximity to the Beaver Brook, and its availability for gift to the Littleton Water Department, do not generally affect other parcels in the Industrial A district; and
- (c) desirable relief may be granted without substantial detriment to the public good for two reasons: (i) the public good is enhanced by the Town gaining title to and control over a large area that contributes to the aquifer of the Beaver Brook and the drinking water supply of the Town of Littleton, and (ii) there is no detriment to the public good, substantial or otherwise, because the recharge of stormwater to the aquifer will be unaffected by the zoning relief and conveyance of the Undeveloped Area because the combined parcels will continue to function as designed and permitted.
- (d) further, desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the Bylaw because the purposes of the Aquifer Protection District and the Water Resource District will continue to be satisfied by a combination of (i) the Developed Area having been improved in a manner that is fully consistent with the limitations and requirements of those Districts and (ii) the Undeveloped Area, which would otherwise have continued to be owned by the applicant and perform the recharge function that underlies the purposes of the Aquifer Protection District and the Water Resource District, will instead be owned by the Littleton Water Department, under whose stewardship it will continue to perform the recharge function that underlies the purposes of the Aquifer Protection District and the Water Resource District.

The Board further acknowledges that because the improvements are in place, the rights authorized by the variance will have been exercised upon the conveyance of the Undeveloped Area to the Littleton Water Department.

DECISION: The Board voted unanimously to GRANT a Variance from the dimensional requirements of the Bylaw, including specifically Section 173-61, to allow the applicant to exceed the maximum impervious coverage for the "Developed Area" for the purpose of allowing the conveyance of the "Undeveloped Area" to the Town of Littleton acting by and through the Board of Water Commissioners.

Appeals, if any, shall be made pursuant to G.L. 40A, Section 17 and shall be filed within twenty days after the date of filing of this Notice in the office of the Town Clerk.

Signed: 
Sherrill R. Gould, Chairperson

Dated: August 4, 2021
Book 72547, Page 175 and Book 76740, Page 508

I hereby signify that twenty days have elapsed since the filing of the above decision by the Board of Appeals and that no appeal concerning said decision has been filed or that any appeal that has been filed has been dismissed or denied.

True Copy Attest: _____

Town Clerk

Littleton, Massachusetts

Dated: