

CITY OF CAMBRIDGE, MASSACHUSETTS
PLANNING BOARD

CITY HALL ANNEX, 57 INMAN STREET, CAMBRIDGE 02139

NOTICE OF DECISION - AMENDED #2

Case No: PB#149 B

Address: 275 Fresh Pond Parkway

Zoning: Business A/Parkway Overlay District

Owners/Applicants: Fresh Pond Realty, LLC, 275 Fresh Pond
Parkway, Cambridge, Ma 02138

Application Date: March 10, 1999

Public Hearing: October 5, 1999, continued to February 15, 2000

Planning Board Decision: February 15, 2000

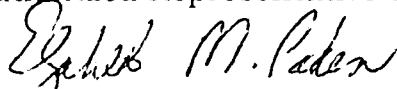
Date of Filing Decision: February 22, 2000

Application: Parkway Overlay Special Permit (Section 11.63.7) for a waiver of the screening and landscaping requirements (Section 11.66), in order to display parked cars in those portions of the lot that fall within the Parkway Overlay District and have been exposed due to the demolition of sections of the existing building on the site.

Decision: GRANTED with conditions

Appeals, if any, shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the filing of the above referenced decision with the City Clerk. Copies of the complete decision and final plans, if applicable, are on file with the Office of the Community Development Department and the City Clerk.

Authorized Representative to the Planning Board:



For further information concerning this decision, please call Liza Paden at 349-4647, TTY: 349-4621, email lpaden@ci.cambridge.ma.us.

Special Permit #149B
275 Fresh Pond Parkway

2000 FEB 22 10 30 AM
CITY CLERK

Application Documents

1. Special Permit application, ownership certificate, Statement in support of the special permit for 275 Fresh Pond Parkway.
2. Application fee
3. Site Plan, C-1, revised 10/2/97, dated 9/8/97 scale, 1"=20'.
4. Undated photographs of the site.

Other Documents Submitted

1. Letter to Liza Paden of CDD, from Vincent J. Panico, Attorney, dated 4/28/99, for the applicant, requesting a continuance to June 1, 1999.
2. Letter to Elizabeth Paden, from Judith L. Lindahl, abutter to the project, dated 5/27/99.
3. Letter to Les Barber of CDD, from Vincent J. Panico, dated 5/27/99, requesting a continuance to September 1999.
4. Letter to Les Barber, from Judith Lindahl, dated 8/4/99, re: the application.
5. Copy of letter to Judith L. Lindahl, from John Connolly, Jr. Attorney for the applicant, dated 8/9/99, with draft of conditions for special permit as a suggested resolution.
6. Submittal of opposition from the neighborhood and abutters, dated 10/1/99.
7. Fax to Liza Paden, from Vincent Panico, dated 8/5/99, re: extension of a new hearing to 10/5/99.
8. Letter to the Planning Board from Judith Lindahl, dated 10/6/99, re: meeting of 10/5/99.
9. Memo to Beth, Malaina, and Stuart of CDD, from Les Barber, dated 10/27/99, re: questions from the public hearing.
10. Copy of letter to Andrew V. Bellizia, Cambridge Motorcar Company, LLC from Richard Scali, Licence Commission Executive Officer, dated 12/21/99, re: the noise violation complaints.

11. Letter to Liza Paden from Vincent Panico, dated 12/27/99, extending the time for public hearing to February 2000.
12. Letter to the Planning Board from Judith Lindahl, dated 1/31/00, re: meetings between the abutters and the applicant.
13. Copy of letter to Vincent Panico, from Richard Scali, License Commisison, dated 2/7/00, re: the decision on the license conditions.
14. Letter to Liza Paden from Vicent Panico, dated 2/8/00, re: conditions and agreements with the abutters.
15. Letter to Liza Paden and Stuart Dash from Vincnet Panico, dated 2/8/00, re: revision of above letter.
16. Submittal from neighbors re: the requests and positions on the conditions, dated 2/10/00
17. Undated photograph of fence at 261 Lakeview Avenue, erected 12/99
18. At the public hearing held on October 5, 1999, the applicant's attorney, Vincent Panico, presented the application.
19. Submittal from applicant of the public benefits and mitigation measures performed to date, dated 2/15/00

Public Hearing

At the public hearing on October 5, 1999 Vincent Panico, attorney for the applicant and Andrew Baligiri, the manager of the business, presented the proposal. There was discussion as to whether this was in the jurisdiction of the Parkway Overlay District or a variance. There was also discussion as to whether this was the storage of inventory, cars, or parking. This question was to be discussed with the Traffic, Parking and Transportation Department.

Mr. Richard Rossi, Deputy City Manager, presented the discussions with the neighbors of the concerns over the operation of the sales facility, the lighting on the lot, the noise and the special permit question.

The applicant removed approximately 600 square feet from the existing 30,000 square foot building on the site. The Board felt that there was a great deal of confusion about the issues of conflict between the neighbors and the car sales, and the relief that was being sought.

The new owner requires a certificate of occupancy and that was what lead to the discussion of the special permit for the Parkway Overlay District regulations.

The Board requested that the Community Development Department meet with both groups as well as the Inspectional Services Department to determine the proper status of the site and to see if there is a workable solution.

The continued public hearing was held and closed on February 15, 2000.

Findings

After review of the application documents, testimony presented at the public hearing and subsequent information provided by the applicant, staff of the City of Cambridge and the general public, the Planning Board makes the following findings.

1. Conformance to the requirements of Section 11.63.7

Section 11.63.7 permits the Planning Board to waive various requirements of the Parkway Overlay District if the Board can find that the development proposed will better serve the objectives of the Parkway Overlay District. The particular waiver sought in the application is for the screening of parked cars and the landscaping required within parking areas. The objective of these requirements is to ensure public safety, moderate the microclimate and minimize noise, glare, and the unsightly intrusion of automobiles and unbuffered hard surfaces in the area of public open space. Enclosed parking is encouraged and on grade parking is to be located behind buildings or arranged so as to minimize its impact.

The applicant's premises are substantially out of conformance with the requirements of the Parkway Overlay District and its intent. While it cannot be expected that the operation while located here will be brought into substantial compliance, every opportunity to move toward serving the objectives of the Overlay District should be taken as changes are made on the site. It is true that literal enforcement of the screening and landscaping requirements on those new parking areas produced in the front of the building as a result of earlier demolition of portions of the Original building would produce odd results: a modest fence running through the middle of parked cars and trees inconveniently located midst cars that are constantly moved and rearranged. Such literal compliance would seriously inconvenience the daily operation of the parking facility while providing no real benefit to the general public or real advancement

of the objectives of the Overlay District. Therefore, the Board finds it appropriate to waive the application of screening and landscaping requirements in this instance because other improvements can be made to the site that more forcefully serve the public interest and the objectives of the Overlay District.

In partial support of the application, the applicant has indicated that many aspects of the current operation of the site can be modified so that neighbors will be less impacted by activities on the site.

2. Compliance with the criteria for issuance of a special permit, Section 10.43.

Section 10.43 – Criteria provides that a special permit will normally be granted where specific provisions of this Ordinance are met, except when particulars of the location or use, not generally true of the district or of the uses permitted in it, would cause granting of such permit to be to the detriment of the public interest because of the following.

a. It appears that requirements of this Ordinance cannot or will not be met.

Compliance with the requirements of the Overlay District could literally be possible but they would serve neither the interest of the applicant or the general public. By granting the special permit, the objectives of the Overlay District can be met in a more effective way and aspects of the operation of the current facility that are seriously at variance with the intent of the Overlay District, can be modified through conditions of the permit so as to moderate the existing negative impacts on the general public.

b. Traffic generated or patterns of access or egress would cause congestion, hazard, or substantial change in established neighborhood character.

There are no changes proposed in the access or egress from the site. Part of the applicant's proposal is to use the public way for loading and unloading of cars to the site. This would be mitigated through the controlled use of the commercially zoned portion of the public way.

c. The continued operation of the development of adjacent uses as permitted in the Zoning Ordinance would be adversely affected by the nature of the proposed use.

The site is within a business district that is only one block in depth. Residential uses and residential districts are only separated from the site and the business district by narrow public streets. The sale and repair of automobiles is only allowed in this district by special permit in recognition of the potential negative impact such operations may have in circumstances like these where residential uses are immediately abutting. In such instances, any request for relief from any requirements of the zoning ordinance that are meant specifically to moderate the impact of this use on the general public and abutters should be accompanied by progress in reducing identified negative impacts that currently exist. Therefore, the proposed mitigation measures established as conditions by the Planning Board and to be followed by the applicant are a necessary prerequisite for relief in order to mitigate the negative impacts currently experienced by residents abutting this commercial use.

d. Nuisance or hazard would be created to the detriment of the health, safety and/or welfare of the occupant of the proposed use or the citizens of the City.

The existing observed impacts on abutters from operations at the site are significant. As noted above, any relief from provisions of the Ordinance intended to moderate or eliminate any nuisance or hazard should be accompanied by conditions that will reduce existing nuisances or hazards. Reasonable conditions requiring the visual shielding of parked vehicles, outside auto repair and maintenance, and the closure of the garage doors against fumes and noise, should in part mitigate the impacts of the commercial use on the residences.

e. For other reasons, the proposed use would impair the integrity of the district or adjoining district, or otherwise derogate from the intent and purpose of this Ordinance.

The intent of the Parkway Overlay District to provide a buffer between commercial uses and the parkway cannot be met on this site because of the substantial ways in which the current site organization is non conforming. Imposition of literal provisions of the Overlay District randomly as small changes to the site are made, does not serve the public interest or the interest of the applicant. However, the integrity of the Ordinance and the Overlay District objectives can be served by adopting alternate measures that will have a more substantial and lasting impact. It is the Board's finding that implementation of the conditions attached to the grant of the requested waiver are

reasonable and will address the legitimate concerns of abutting residents. At the same time, the Board finds that the imposition of such conditions are reasonable alternate means by which the applicant can address the objectives of the Overlay District in exchange for the requested waiver from literal enforcement of specified requirements in the District

Decision

Based on a review of the application documents, comments made at the public hearing and other comments received by the Board, and based on the above findings the Planning Board **GRANTS** the requested Parkway Overlay Special Permit, Section 11.63.7 and 11.66, subject to the following conditions and limitations:

The petitioner shall:

1. Comply with all state and local ordinances diligently, and specifically shall:
 - a) Remove snow and ice in accordance with Municipal code 12.16.110, and conduct its snow removal without blocking the sidewalks or street drains.
 - b) Maintain all portions of its lot and the adjacent public ways clean and free of trash, litter, and weeds, in accordance with 8.24.040 A, B(1) and (2), and C.
 - c) Notify in writing all suppliers, and in person all drivers servicing the site, of the prohibition against idling engines (M.G.L. c90, s.16A), and cooperate with the Cambridge Police in enforcing compliance.
 - d) Prohibit deliveries between 9:00 p.m. and 7:00 a.m. when the following day is a weekday, and 9:00 a.m. when the following day is a Saturday, Sunday, or holiday, in accordance with 8.16.080 E.
 - e) Dismantle the existing external public address system, and operate no public address system or radio audible beyond the site 8.16.080
 - f) Keep hydrants, sidewalks, and driveways free of cars parked by employees and invitees, and otherwise comply with traffic laws.

2. Cause an employee daily to patrol the perimeter of the site and remove all of applicant's litter from the site.
3. Comply with the previously agreed upon measures governing the external lighting by:
 - a) completing the shading scheme by shielding the three lights on the west side of the building;
 - b) adjusting the spotlights on the existing free-standing sign to eliminate their glare into any adjacent residence; and
 - c) extinguishing the lot lights between 9:30 p.m. and 6:30 a.m., with the sole exception of the three security lights at the corner near the Gulf Station, at mid-lot, and on Lakeview Avenue.
4. Require on-site delivery, loading, and unloading, with the sole exception of vehicle inventory trucks (i.e. car carriers), which may park at the northern most ends of Lakeview or Lexington Avenues within the commercial zone.
5. Perform all detailing, bodywork, mechanical repair, testing, and modification within the building, except for emergency work required to transfer a disabled vehicle from the lot into the building. Any work to be done outside of the building shall be done without power tools, radios, or amplified sound, and shall be shielded visually from abutters by a fence.
6. Keep all seven bay doors facing the residences on Worthington and Lexington fully closed during working hours. A bay door opened to allow the egress or ingress of a vehicle shall be closed promptly after its passage.
7. Effectively control the volume of employees' conversations, particularly before and after work hours, by policy and oversight.
8. Post and enforce measures to ensure the right of way and safety of pedestrians on public ways adjacent to the site.
9. In testing or demonstrating alarms, and in opening alarm-equipped vehicles, confine the noise to the initial chirp, and immediately suppress the remainder of the alarm cycle.

10. Confine all painting to the paint booth, which shall be operated in compliance with all federal, state, and local regulations governing air quality; and – at a minimum – with all manufacturer’s specifications with respect to filter changes.

11. Cooperate with the City of Cambridge in allowing construction access for its traffic calming and sidewalk reconstruction projects; and respect the resultant greenspace in the use and maintenance of the site and adjacent areas.

12. Cooperate with the Metropolitan District Commission in the landscaping of the MDC property or in the event that there is not enough setback for landscaping with trees, plant trees of a minimum of 3 inch caliper every 25 feet along the Parkway Overlay District.

13. The applicant is encouraged to comply with the sign ordinance with regard to any changes proposed to or replacement of the free standing pylon sign.

Voting in the affirmative to **GRANT** the Special Permit were T. Anninger, W. Tibbs, L. Brown, B. Shaw, H. Russell, constituting more than the two thirds of the members of the Board necessary to grant a special permit.

For the Planning Board,

A handwritten signature in black ink, appearing to read "Larissa Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

Larissa Brown, Chair

A copy of this decision #149 shall be filed with the Office of the City Clerk. Appeals, if any, shall be made pursuant to Section 17, Chapter 40A, Massachusetts General Laws, and shall be filed within twenty (20) days after the date of such filing in the Office of the City Clerk.

ATTEST: A true and correct copy of the above decision filed with the Office of the City Clerk on February 22, 2000, by Elizabeth M. Paden, authorized representative of the Cambridge Planning Board. All plans referred to in the decision have likewise been filed with the City Clerk on such date.

Twenty (20) days have elapsed since the filing of this decision.

No appeal has been filed.

DATE:

City Clerk
City of Cambridge