

Westhampton Planning Board

Public Hearing Minutes

March 2, 2021 – 6:30 pm

Board members present: Susan Bronstein (Chair), Pat Coffey, Wade Clement, Ger Ronan, Saxon Elliott

Others present:

Jesse and Wesley Fortier, DBA Rock Valley HVAC (applicants)

Mark Reed, Heritage Surveys

Chuck Connor and Meghan Connor Dragon, Taylor Real Estate (seller's agent)

*Ginny Curtis

*Shirl Morrigan

*Tim Korytoski

*attendees arrived 45 minutes late due to trouble logging into Zoom meeting (link error)

Susan called the meeting to order at 6:37 pm and read the Hearing Notice re: land use classification of 1 Main Road, application for special permit

Mark Reed presented current site plan and original survey; reviewed history of property use, intended use of applicants, current ownership (Northcountry Properties, LLC), current lease to operator of landscape business (Matt___)

- lot in question conforming since 1955
- special permit obtained by Northcountry when purchased in 2006 still in effect
- well and septic – passed Title 5 in Fall of 2020

Jesse Fortier (co-applicant) presented summary of HVAC business operation and plan for use of land

- Plans to run HVAC business (operations and storage) out of existing buildings – no new construction or additions/modifications to existing buildings
- “uninvasive operation” – most work takes place off-site, don't sell anything, minimal foot traffic - fabricate residential ductwork on-site
- noise: air hammer is loudest tool – minimal use
- parking: 6 trucks, 3 driven home each day, no vehicle repair on-site

Pat asked about discontinued roadway (Cross Road) – discontinued sometime after parcels cut out (after 1955)

Pat expressed concerns re: # of vehicles stored on site – applicant maintained vehicles could be parked out of sight of road

Tim Korytoski (current owner) expressed concerns that this transaction be handled properly to avoid any zoning issues if/when he attempts to sell his house (parcel #1) – has no problem with parcel #2 being used for proposed business

Ginny Curtis posed a number of questions and presented several zoning issues for consideration of the Board – she previously provided an outline of these issues to Board members via email prior to this hearing, included verbatim herein:

Zoning Issues:

1. The Merger Doctrine. "In MA , the doctrine of merger provides that adjoining land in common ownership and common control must be added to nonconforming land in order to bring it into conformity or reduce the nonconformity. Once merger occurs, it can not be undone." "Grandfathered status is not perpetual and can be lost."

1 Main Rd. (Parcel 2), without Parcel 1, has no public road frontage in Westhampton. Northampton claims the front triangular part of this deed as Parcel ID: 041-006-001 - 0.58 of an acre (value in 2008: \$8,800 - a City tax bill.)

2. Various Town Zoning Questions:

A. **6.24 - Application SP:** Was a new Site plan for a separate **Parcel 2** presented drawn to scale clearly showing boundaries and dimensions of lot, location of existing buildings, driveway, location of sewage system and water supply, proposed signs etc...." Was a Title V done on Parcel 2 at time of last sale (2008) or recently?

B. **3.30 - Discontinuance:** The Northcountry retail store use has not been open since 2017/2018 (exact date to be determined). After 24 months of discontinuance, compliance with existing by-laws is required.

C. **Schedule of Use Regulations/ Bylaw Number:** Application is for 3.06, Business Use: General Retail Store. Will the main use be for the general public coming to buy heating/ cooling systems or will it's main use be a Business office (3.065) also in combination with Repairs (3.066)?

D. MA Case Law: An owner of land can not create their own zoning non-conformity. It would appear these two Parcels, 1 & 2, were "unmerged" in 2008.

In 8/2006, T. Korytoski, and J. Pelis sold 3 Main Road (Parcel 1) to Tim & Kyla Korytoski with a Quitclaim Deed saying: "No Title Exam was performed for this conveyance."

In 3/2008, T. Korytoski, C. Moore, and J. Pelis sold 1 Main Road (**Parcel 2**) to Justin Pelis and Charles McDonald as Northcountry Properties, LLC with a Quitclaim Deed. In 2/2008, Charles McDonald and Justin Pelis filed with the Commonwealth their new limited corporation, Northcountry Properties, LLC. as the sole managers/ owners.

Historical Record of Ownership & Control of Parcel 2 and Parcel 1:

Prior to 1940 - Both Parcels were deeded separately and owned by Albert Delisle, Jr.

July, 1940 - Parcel 1 (3 Main Rd.) was sold to Ernie & Rachel Delisle (Warranty Deed). They built the house in 1943.

May, 1946 - **Parcel 2** (1 Main Rd.) was bought by Ernie & Rachel (Warranty Deed).

1955 - They built their business structure on Parcel 2 in 1955

1955 - Survey done by Huntley for Ernie & Rachel showing **Parcels 1 & 2**.
1955 - Planning Board signed it: "Subdivision Control law not Required". Recorded on Sept. 9, 1955. This is the only surveyed plan on file to date at Registry of Deeds.
Aug. 1984 - **Parcel 2** was sold to S.G. Brooks, Inc. (\$60,000) w/Warranty Deed.
Aug. 1986 - **Parcel 1** was sold to Stillman & Joanne Brooks (\$80,000) Warranty Deed
Dec. 13, 2005 - Special Permit applied for **Parcel 2** by T. Korytoski & J. Pelis for Business Use 3.06 - General Retail store. 1955 Survey presented as Plot Plan showing Parcel 1 & 2.
Jan.4, 2006 - PB Granted SP. No Conditions were filed. SP recorded on 1/6/2006.
Jan.6, 2006 - **Parcel 2**: S.G. Brooks, Inc. sold to C. Moore, T. Korytoski, J. Pelis (\$200,000) with Quitclaim Deed. Bk.8581/ pg.89
Jan.6, 2006 - Parcel 1: Stillman & Joanne Brooks sold to T. Korytoski & J. Pelis (\$175,000) with Quitclaim Deed. Bk:8581/ pg. 106
Aug. 2006 - Parcel 1: T. Korytoski & J.Pelis sold (\$22,000) to Kyla & Tim Korytoski
Quitclaim Deed states: "No Title Exam was performed for this Conveyance"
Feb.25, 2008 - Charles McDonald & Justin Pelis filed w/ State as owners/ Managers of Northcountry Properties, LLC. Recorded corporation: March 5, 2008.

March 5, 2008 - **Parcel 2**: J. Moore, T. Korytoski, J. Pelis sold (\$36,842.50) to Charles McDonald & J. Pelis as Northcountry Properties, LLC w/Quitclaim Deed.

Present: **Parcel 2**: This parcel with its existing structure is being offered for sale by Charles McDonald and Justin Pelis as Northcountry Properties, LLC.

If the parcels were unmerged in 2008 or if the General Retail Store Business Use under SP of 2006 granted to T. Korytoski & J. Pelis was discontinued more than 24 months ago, a request for a Special Permit may not be the appropriate zoning bylaw for the Town PB to consider nor the lawful recourse for the intended use for the potential buyers, Wesley & Jessie Fortier, to pursue for **Parcel 2**.

Pursuant to these considerations, Ginny posed the following questions to the Board:

- Special permit was previously granted to current owners under 3.06 classification (general retail store). When was the previous general retail store last operational? > 24 months of discontinued use is an issue
- Have the applicants applied for the correct permit (general retail store vs. business office space) based on intended use?
- When did above-referenced Merger Doctrine go into effect? Implications for this application?
- What are the zoning implications of lot being shared with Northampton?

Board agreed that these issues require consultation with town counsel prior to proceeding with consideration of this special permit application

Shirl Morrigan expressed concern that these proceedings have not been, in actuality, a "public hearing" because of 45-minute delay in attendees logging in (due to inaccurate posting of Zoom link)

Susan moved that this hearing be continued to next regularly scheduled Planning Board meeting (3/9/21 at 6:30 pm), provided that consultation with counsel can occur before then, Saxon seconded, all voted in favor

Saxon moved to adjourn, Wade seconded, all voted in favor

Public Hearing adjourned at 8:05 pm.

Respectfully submitted,

Saxon Elliott

Planning Board