

FOREIGN MOTORS WEST  
83 & 103 Boston Post Road  
02-7, 8, 9, 10, 11

MINUTES OF THE PUBLIC HEARING CONTINUATION  
SUDBURY BOARD OF APPEALS  
TUESDAY, MARCH 12, 2002

The Board consisted of:

Mark A. Kablack, Chairman  
Patrick J. Delaney III, Clerk  
Thomas W.H. Phelps  
Lauren S. O'Brien  
Jonathan G. Gossels, Alternate

The hearing was reconvened by the Chairman, Mr. Kablack

Attorney Fox noted that at the February 12, 2002 hearing the Board had made some suggestions to the project. In addition, there was a site visit with the Board on March 2, 2002 where more suggestions were made. As a result, a revised site plan has been prepared with the greatest difference in the plan being the relocation of the demonstration course from the northerly side to the westerly side of the building.

In addition, the Board was interested in a traffic study which has been done by Conley Associates and is dated March 11, 2002. The conclusions are that the proposed development is not expected to change the level of service for any of the study area intersections. The vehicles exiting the site will continue to experience Level of Service (LOS) F during the weekday peak hours. Saturday peak hours will be LOS D. The intersections used for this study were the Minuteman intersection at the Longfellow Club, Old County Road, and the entrance to this site. The report indicates that overall the addition of site traffic is expected to increase area traffic by less than 2% during peak hours.

Copies of the site plan and landscape plan and elevation drawings were submitted for the record.

Regarding the status of this project with other Boards/Departments in town as well as Wayland, Attorney Fox said he has met twice with the Design Review Board, there has been a site visit with the Conservation Commission. Filings with both the Sudbury and Wayland Conservation Commissions will be made by the beginning of next week. The site plan application was submitted to the Selectmen last week. Application to Wayland Zoning Board will be made next week.

Bruce Ey presented the latest plans. At the last hearing he said the Board had asked for an overall plan of the site which shows the entire property. He pointed out each individual property owners' parcel which also includes the land in Wayland.

Mr. Kablack asked whether the ultimate use of the property in back was discussed with the Conservation Commission. Attorney Fox said it was not; that the Sudbury Conservation Coordinator was going to contact the Wayland Commission. Attorney Fox would guess that there would be a conservation restriction on that portion.

Mr. Ey said at the last hearing there was some concern over the issue of whether large trucks entering the property could maneuver within the property. He put together a turning radius for a 50-foot wheel base tractor trailer which can carry cars. A copy of the plan was submitted for the record. From that plan he described the way a truck would enter, maneuver and exit the site.

Mr. Ey said he also took a look at the parts storage area which is in the back. Normally trucks delivering to this area would be smaller than a 50-foot wheel base truck; however, that area was designed so that a truck of this size could actually back up to the door. He described how this would occur. Mr. Ey felt there would be no problem with maneuverability on the site.

In response to a question regarding deliveries, Mr. Hopwood said deliveries are made during normal business hours. He said he is able to restrict both parts deliveries and deliveries of cars to those hours regardless of where they may be coming from or the direction from which they are entering the site.

Mr. Kablack asked how truck deliveries might affect customers coming in for service. Mr. Hopwood said the trucks would be able to pull further to the rear. It would not be a problem.

Mr. Delaney asked whether the maneuvering aisles were the same as existing or in compliance. Mr. Ey said while those aisles are located in Wayland, they were brought into compliance with Sudbury's Bylaw.

Mr. Ey said the site plan he was presenting consisted of the existing conditions plan, site layout plan, grading, drainage and erosion control plan, and three detail sheets. Also included is the landscape plan, site lighting plan, floor plan, and two sheets of building elevation plans.

The elevation plans reflect the latest revision and accommodate a request to remove one of the towers. Those plans also reflect changes suggested by the Design Review Board as a result of two meetings with them.

Addressing the changes made to the site layout plan, Mr. Ey referred to the grading plan. He noted that the demonstration course has now been moved over to the west side of the building. He said that area is fairly well shielded from the Mass. Highway Dept. property. Moving that freed up approximately 20 feet up front which can be used for landscaping.

The new vehicle storage area was enlarged to provide for more maneuvering space. He pointed out the location of the three 16-foot stalls and 19-foot aisle. He emphasized that this area was for storage only and no customers would be moving those vehicles.

Mr. Ey presented cross sections depicting the grading.

With regard to landscaping of the area where the new vehicles will be stored, Mr. Gossels said he would have liked to see a higher berm to shield the front row of cars.

Mr. Ey said an 8-foot fence has been added on the westerly side to shield the vehicles from the restaurant side. He felt that the new vehicle storage area would not look like a used-car lot. He said those cars will only be able to be seen when one is in front of them because of the fence. He said there will be landscaping in front and it will not be a bare parking lot. He then described the slope and proposed grading for that area.

Mr. Kablack asked whether a rendering could be provided as to how the vehicle storage area will look like from Route 20. He asked whether looking at it from Route 20 one would see three stories of cars.

Mr. Ey said portions of three levels of cars would be seen.

Mr. Kablack said this plan clearly mitigates the exposure of the Mass. Highway barn. He asked whether the grading as proposed is a result of site conditions or is it designed to enhance the appearance of the cars on the lot, or both.

Mr. Ey said it makes sense to use the site effectively. He felt the slope will enhance the vehicle display. He said he could make the whole area flat, but would rather have people looking at new vehicle storage than the Mass. Highway salt barn. He emphasized that the area will not be wide open but will be landscaped.

From Sheet 7 which is a cross section showing the existing grade, Mr. Ey reviewed the discussions held during the site walk with regard to the proposed grading of the hill section and described the grading coming in from Route 20 at the three levels on which cars will be displayed.

Mr. Gossels asked how high from the back it is needed to be in order to shield the Mass. Highway Dept. barn.

Mr. Ey would anticipate between a 142-143-foot contour. He said the vehicles will of course be higher. The hill itself is at 147-148.

Mr. Phelps commented on whether the applicant was wrestling with a problem that this is a car dealership that wants to display cars and therefore is mounting them this way.

Mr. Gossels had no issue with display. However, he felt there should be a balance between an “in your face display” and the opportunity for lowering that area to make it less intrusive. His belief, given the plans, was that this was entirely possible to do.

Mr. Ey pointed out that the first 12 feet is owned by the State and rises a bit. After that there is 20 feet or so of mature trees which he has to work with. From the landscape plan he described the species and location of the proposed trees and shrubs which per the Conservation Commission must be indigenous. He said there is no intent to have a swath of just vehicles. He said one will be looking through the trees to see the vehicles. Although it would have been preferable to use other trees which would have been taller and more hardy, these indigenous trees are maintainable. The existing oak trees which will remain were also pointed out.

It was noted that the cedar fence will also come down the length of the side to the chain link fence. Mr. Ey felt that driving east, this will shield that area.

Mr. Kablack did not want to have a “wall appearance” and still wanted to see a rendering. He did not want to see three stories of land rovers.

Mr. Ey said originally there was not going to be three rows of cars; it was going to be flat and only the cars in front would be seen. However, the building in back would have been seen. He added that while the site is being used to some advantage to display the cars, it is important for the dealership to show that it does have vehicles for sale. He said this will be a discrete area where new vehicles will be located.

Mr. Kablack asked how far down the fence would come. He did not want to see it coming right down to Route 20. Mr. Ey said he could cut it back. Mr. Gossels said if the fence does not go all the way down, some landscaping should be put in there.

Mr. Kablack said he liked the idea of natural species of plants and trees but hoped there is no compromise of their ability to take hold and fulfill the purpose of mitigating the appearance of the site. Mr. Ey believed this was something he needed to discuss with the Conservation Commission. He said there are cultivated versions of the native species which are more resistant to salt, etc.

Mr. Ey presented the lighting plan. It is proposed to install pole mounted 100-watt metal halide fixtures on 16-foot stands which will shine directly downward. They will be placed around the perimeter of the parking lot and will blend in with the 70-watt fixtures which will hang over the doors of the building.

Attorney Fox added that approximately 40% of the lights can be shut off during nighttime hours. The lights are on timers and certain ones can be shut off.

Mr. Delaney said while there will be a lot of light, it was not unreasonable to try it out. He asked about the sign light.

Attorney Fox said the lighting will be changed from internal to external. Mr. Ey said it will be incandescent lighting and will not stay on after business hours.

Mr. Ey said he asked the lighting designer how this would compare to the Sudbury Farms parking lot. His reply was that it would be a lower level lighting. Mr. Delaney felt it reasonable for business hours.

Referring to the floor plan, Mr. Ey said there are no changes. With regard to the elevation plans, the tower originally shown on the north elevation has been removed. Some windows have been changed as a result of suggestions from the Design Review Board. He noted that Board has not yet seen these latest plans.

Mr. Kablack complimented the applicants on meeting the concerns raised by the ZBA and addressing the concerns of other Town Boards.

Mr. Kablack felt the biggest issue was the vehicle storage area and how it would look and whether another look should be taken with regard to minimizing the impact on Route 20. He was thinking along the lines of an architectural perspective as to how it would look.

Mr. Gossels felt it will appear to be an "in your face" with cars. He could see one row of cars, but not three tiers. Mr. Phelps agreed.

Mr. Delaney felt that it will look like a presentation of automobiles regardless of what small visual changes are made. He noted that these applications are for special permits which are granted for a period of time and which affords the ZBA at some time in the future, should it overlook something, to make small adjustments.

Mr. Kablack added that the Board could also add a condition to the special permit that the reserve area be designed in such a way so as to mitigate impact to Route 20.

Attorney Fox said one of the problems is that there are many different Boards dealing with the same issue. He would suggest that with respect to the grading, lighting and landscaping, that it be considered conceptual in nature with wording added to address concerns. Then, when it gets to the Selectmen, they can "tweak" it without having to come back to the ZBA. He asked that if this Board could find a way to approve the applications this evening he would then be able

to work on it and take it to the Selectmen. He would prefer this route rather than another continuation of this hearing.

Mr. Delaney said the ZBA must make a determination as to whether this overall plan is consistent with the neighborhood, even with the concerns raised, and meets the criteria for granting of special permits. He asked whether the applicant intended to display any other signs, banners, flags, pennants or other advertising devices. Attorney Fox said it was not the intent and that any additional required permit would be sought should this change.

There were no further comments or input. The public hearing was closed.

After deliberation the following motions were placed and seconded:

CASE: 02-7

MOTION: "To grant Foreign Motors West, Inc., applicant, Arber Realty Trust and Evergreen Realty Trust, and M. Claire McManus Trust No. 2, owners of properties, for a Special Permit under Section 2420 of the Zoning Bylaws, for alteration of a nonconforming structure and for extension of a nonconforming use (parking), property located at 83 and 103 Boston Post Road, Industrial District #4."

CASE: 02-8

MOTION: "To grant Foreign Motors West, Inc., applicant, Arber Realty Trust and Evergreen Realty Trust, and M. Claire McManus Trust No. 2, owners of properties, for a Special Permit under Section 2230, Appendix A,C, Use 12, of the Zoning Bylaws, to allow for the sale and rental of new and used motor vehicles, property located at 83 and 103 Boston Post Road, Industrial District #4."

CASE: 02-9

MOTION: "To grant Foreign Motors West, Inc., applicant, Arber Realty Trust and Evergreen Realty Trust, and M. Claire McManus Trust No. 2, owners of properties, for a Special Permit under Section 2230, Appendix A,C, Use 13, of the Zoning Bylaws, to allow for new and used motor vehicle general and body repair, property located at 83 and 103 Boston Post Road, Industrial District #4."

CASE: 02-10

MOTION: "To grant Foreign Motors West, Inc., applicant, Arber Realty Trust and Evergreen Realty Trust, and M. Claire McManus Trust No. 2, owners of properties, for a Special Permit under Section 2230, Appendix A,C, Use 14, of the Zoning Bylaws, to allow for new and used motor vehicle light service, property located at 83 and 103 Boston Post Road, Industrial District #4."

CASE: 02-11

MOTION: “To grant Foreign Motors West, Inc., applicant, Arber Realty Trust and Evergreen Realty Trust, and M. Claire McManus Trust No. 2, owners of properties, for a Special Permit under Section 3290 of the Zoning Bylaws, to erect a 30.03 s.f. oversized wall sign, property located at 83 and 103 Boston Post Road, Industrial District #4.”

All development, including demolition, building repairs and renovation, and parking area re-paving and re-striping shall be substantially in accordance with plans entitled “Foreign Motors West” prepared by Schofield Brothers of New England, Inc., dated February 28, 2002, revised March 12, 2002, Sheets 1 through 7, as may be modified in accordance with Site Plan approval of the Board of Selectmen.

The applicant shall obtain all necessary local, state and federal approvals for operation of the project, including, but not limited to, all approvals required for Site Plan Approval by the Board of Selectmen, Conservation Commission Order of Conditions, and such approvals required by the Town of Wayland.

CONDITIONS:

1. Hours of operation shall be Monday through Friday from 7AM-8PM, Saturday, 9AM-5PM, Sunday Noon to 5PM.

(Applicable to Case Numbers 02-7, 8, 9, 10)

2. No heavy bodywork is allowed on the premises.

(Applicable to Case Numbers 02-8, 9, 10)

3. No fuel storage is allowed on the premises.

(Applicable to Case Numbers 02-8, 9, 10)

4. The premises currently consist of three separate legal parcels spanning the Towns of Sudbury and Wayland, MA. The Board makes its findings based upon the applicant’s representation that all three parcels comprise the project premises. Certain of the applicant’s calculations, specifically lot coverage calculations as required by Section 2600 of the Zoning Bylaw, have been based on the entire lot area of the three parcels combined. As such, the entire area of the three parcels has been essential to the applicant’s proposal. All parcels comprising the project area must remain intact and dedicated to the applicant’s project and may not be alienated from the project, or otherwise developed in ways that are inconsistent with this decision, without further modification of the Special Permits issued herein by decision of this Board.

Notwithstanding the foregoing, the property consisting of 7.77 acres  $\pm$  now or formerly of the Evergreen Realty Trust, as shown on the Plan entitled “Plan of Land in Sudbury & Wayland, Massachusetts, Prepared for Foreign Motors West,” dated February 28, 2002, prepared by Schofield Brothers of New England, Inc., may be encumbered by a conservation restriction in accordance with the provisions of M.G.L.,c. 184, Section 26, et seq., or may be conveyed in fee

to a conservation organization, provided that said parcel shall be used for conservation purposes only.

(Applicable to Case Numbers 02-7, 8, 9 10)

5. Landscaping and fencing shall be substantially as proposed in the plans entitled "Site Plan," Sheet LP-1, prepared by Rico Associated dated March 12, 2002, as may be modified in accordance with Site Plan approval by the Board of Selectmen, with ongoing maintenance and replacement of materials as necessary. Additional fencing, consistent with the wood cedar fence on the westerly border, shall be provided in order to screen the adjacent Mass. Highway property.

(Applicable to Case Numbers: 02-7, 8, 9, 10)

6. Prior to the issuance of a Certificate of Occupancy, or applicant's commencement of use of the premises, whichever comes sooner, the applicant shall take such measures so as to legally combine all three lots comprising the project premises into a single parcel, with the exception of the 7.77 acre parcel, which may be alienated in the manner set forth above in Condition 4.

(Applicable to Case Numbers 02-7, 8, 9, 10)

7. All signs on the property shall be in accordance with a Plan prepared by design-forum, Dayton, Ohio for the Land Rover project, submitted with the application and marked as Exhibit #1. All illumination of signs on the premises shall be external and otherwise in conformance with Section 3427 f. of the Zoning Bylaw. All such illumination shall be extinguished during non-business hours. No internal sign lighting will be allowed.

(Applicable to Case Number 02-11)

8. No flags, banners, spinners, pennants or other such display banners shall be displayed on the premises without first obtaining the required approvals.

(Applicable to Case Numbers 02-7, 8, 9, 10, 11)

9. All lighting shall be substantially the same as that proposed in the plan entitled "Site Lighting Plan", Sheet SL-1, prepared by Rico Associates, dated March 12, 2002, as may be modified in accordance with Site Plan approval by the Board of Selectmen, and shall be otherwise consistent with the provisions of Section 3427 f. of the Zoning Bylaw. Lighting shall be extinguished during non-business hours to the greatest extent possible so as to provide minimum lighting for security purposes consistent with adjacent properties.

(Applicable to Case Numbers 02-7, 8, 9, 10, 11)

11. All car repair and car service work shall be performed inside the buildings on the premises. There shall be no exterior storage of car parts or equipment. No car washing is permitted except for the incidental hand washing of cars with biodegradable soap.

(Applicable to Case Numbers 02-7, 8, 9, 10)

12. The parking and storage of vehicles and the loading of car parts, equipment and other supplies shall be substantially in accordance with Site Layout Plan SP-2, prepared by Schofield Brothers of New England, Inc., dated February 28, 2002, as may be modified in accordance with Site Plan approval by the Board of Selectmen. No parking or storage of vehicles will be allowed at the entrance drive on the north side of the building. At no time will cars be allowed to park or load on Boston Post Road (Rt. 20).

(Applicable to Case Numbers: 02-7, 8, 9, 10)

13. This permit is non transferable and will expire in one (1) year on March 12, 2003, and the Board will consider renewal upon receipt of proper application on or before that date.

(Applicable to Case Numbers: 02-8, 9, 10)

REASONS: The applicant requires five separate special permits for the purposes of operating a Land Rover dealership with its associated services. The Board finds that the proposed use is in harmony with the general purpose and intent of the Bylaw. The property is located in an industrial district and is an allowed use subject to the granting of a special permit(s) by the Board of Appeals.

The Board further finds that the use is in an appropriate location, will not be detrimental to the neighborhood and will not significantly alter the character of the zoning district. The proposed use does not abut any residential areas and is consistent with other commercial activity in the area, in particular the adjacent luxury automotive dealership to the east. Letters of support have been received from nearby businesses voicing a belief that this dealership will compliment their businesses and be an asset to the area.

The applicant has demonstrated that adequate and appropriate facilities will be provided for the proper operation of the proposed use, and further, that the proposed use will not be detrimental or offensive to the adjoining zoning districts and neighboring properties due to the effects of lighting, odors, smoke, noise, sewage, refuse materials or other visual nuisances. As stated above, there are no residences within sight of this property. A traffic study has shown that the impact of this proposed operation on Route 20 will be minimal and maneuverability within the site is adequate to insure that there will be no parking of vehicles or trucks on Route 20 at any time. The proposed landscape plans are intended to provide for screening of the site in an attempt to reduce the visual impact from Route 20.

With regard to the sign, the Board finds the oversized wall sign to be in scale with the building and, with the conditions imposed with regard to the lighting, will not create a visual nuisance.

The Board believes that with the conditions placed on the Decision with regard to the various special permits granted, the proposed project will exist consistent with special permit guidelines and be an asset to the area.

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Mark A. Kablack, Chairman

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Patrick J. Delaney III, Clerk

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Thomas W.H. Phelps

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Lauren S. O'Brien

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Jonathan G. Gossels, Alternate

VERRIL ET AL  
142 North Road  
02-6

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
TUESDAY, FEBRUARY 12, 2002  
TUESDAY, MARCH 12, 2002

The Board consisted of:

Mark A. Kablack, Chairman  
Patrick J. Delaney III, Clerk  
Thomas W.H. Phelps  
Lauren S. O'Brien  
Jonathan G. Gossels, Alternate

Notice was published in the Sudbury Town Crier on January 24 and 31, 2002, posted, mailed and read at this hearing.

The hearing was convened by the Chairman, Mr. Kablack, for the purpose of reading into the record a letter dated January 24, 2002 signed by Stephen and Joan Verrill, William M. Wagner, and Ralph S. Tyler, requesting a delay of this hearing until after March 6, 2002 since the Verrills would be away and not be able to be present.

No testimony was taken. The hearing was continued to March 12, 2002.

MINUTES – March 12, 2002

The hearing was reconvened by the Chairman, Mr. Kablack who noted he has reviewed the application including the additional information which was received with Mr. Tyler's letter dated March 5, 2002. There is also a packet which includes a letter from Mr. Verrill's attorney to the Town Clerk which is relative to the appeal of the Water Resource Special Permit issued by the Planning Board.

Items 1,2,3, & 9 of Case 02-6 pertains to issues with regard to the Water Resource Protection District and Mr. Kablack requested Mr. Tyler begin his presentation with those items and to only address matters with this Board that are outside of the jurisdiction of what was presented to the Planning Board and which is the subject of that appeal. He did not want this Board discuss issues that are within the jurisdiction of the Planning Board and are currently the subject of an appeal in the Land Court.

Mr. Delaney wanted to be sure that any issues to be discussed not have been the subject of a previous case which the Board had heard before.

Mr. Tyler noted that the appeals brought before to this Board were for the adjacent Northwood property and not for the Sudbury Research Center. He said although some of the

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zoning issues may be the same as for Northwood, they are issues which the Board has not previously discussed with regard to the Sudbury Research Center which is a different project altogether. He believed he was properly before the ZBA with regard to this appeal.

Mr. Kablack agreed that Mr. Tyler was properly before the Board with regard to zoning issues. He did not want the Board to get into those matters which are exactly the same as what this Board has discussed before. He suggested Mr. Tyler start with the zoning violations beginning with Violation #4.

Mr. Tyler requested Mr. Verrill be allowed to speak first.

Mr. Verrill wanted to get into a little background of some of the things that have been happening over the past eight years. He said eight years ago he was approached by the town and Unisys to for permission to go on my land and test for contamination trying to find the path of contamination. Permission was granted, they found PCE, but he wasn't informed of that. He later learned there were high levels of PCE on his property. Testing has been going on for eight years with remediation on top of that.

Mr. Verrill said every time he asked about the remediation from DEP or Unisys he was told remediation could not be done until it was understood where the plume and contamination was. Mr. Verrill said he felt it likely that the contamination was coming onto his property. He

went to numerous hearings on the developments at Northwood and Frost Farm with the idea that there shouldn't be any further development until the contamination was identified. He went to the Town Meeting in 1999 and spoke about Frost Farm and the contamination – it was an uphill fight. The Town pushed through Northwood and Frost Farm.

Mr. Verrill submitted a map from ERM's Final Report. He said he has a hydrologist working with DEP; that Unisys has accepted responsibility for what has migrated onto his property.

Mr. Kablack asked whether Unisys was spearheading the cleanup up there now.

Mr. Verrill said Unisys is doing the remediation on top of the hill. His issue was that the remediation isn't addressing the contamination that has leached onto his property.

Mr. Verrill submitted the following letters:

- from the Conservation Commission to the Planning Board dated January 23, 2002 where the Commission voiced concern that the contamination was still migrating based on the work that's recently been done.

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-letters dated February 1, 15 and March 5, 2002 from DEP to Unisys on future testing and private wells around the perimeters

Mr. Verrill he had a meeting with Unisys and DEP and they agreed to test the perimeter to identify the extent of the plume.

Mr. Verrill described the ERM 1999 map. He said the blue and yellow blotches identify contamination at that time. He added the red line that scrolls around that connects the dots for recent wells that have been tested within the last months. Wells all along that line show contaminants have reached that area. It appears that the contamination is migrating.

Mr. Verrill said he would hope that the ZBA would take this into account when deliberating on this matter.

Mr. Tyler felt it incumbent upon the Board to address the issue of current zoning violations, at least those above the 25%, which would then get into the issue the other issues as to where the Zone II line is which has never been before the Board before. He said if, when we get into this and the Board gave the position that we're going to talk about using the Northwood method which it approved before, it's fine with us. He believed this was properly before the Board and needs to be in the decision. He did not believe he was precluded as a result of our

appealing not a zoning violation but the issuance of a special permit done in violation of the rules around which you can issue those permits.

Mr. Kablack suggested beginning with Item #4. He believed everyone was familiar with the territory of the nature of violations.

Mr. Tyler agreed as long as long as the WRPD issues be kept open, even if it means at a later date.

Mr. Kablack said the Board will not close the hearing until we discuss that again. However, he wanted Mr. Tyler to know where the Board wanted to set the ground rules, that if Mr. Tyler wanted, he could raise the distinction as to what this Board should do vs. what he is doing elsewhere. Again, he suggested beginning with Item #4.

Mr. Tyler said there is a provision in the Bylaw that parking is supposed to be shielded from public ways. He said the parking is clearly very visible from Route 117.

Mr. Kablack said on this item and throughout the other items, he felt it important that Mr. Tyler address when he thought the parking violation arose and whether it is a result of pre-existing conditions or whether it is the result of more recent construction activity.

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Mr. Tyler said it was his understanding that under the Zoning Bylaw, zoning enforcement, depending upon whether the violation occurred as a result of a building permit properly issued or not, it is something of 7 or 8 years or 10 years for the statute of limitations. The issue is that it began in 1959 when they built that building.

Mr. Delaney said the Bylaw only applies to structures.

Mr. Kablack added that another argument Mr. Tyler seemed to be making is that there is this zoning freeze as a result of a subdivision plan. However, he said there are also other zoning freezes and zoning protections that an existing use or structure gets under Chapter 40A. He said you don't pick or choose, you get the benefit of both, or all. In this instance, with regard to the SRC, he believed there are several grandfathered protections that are running with the development. There is grandfathering protection that stems to the fact that the building exists and has been used as an office building back into the late 50s. And it is grandfathered to that extent, other than for alterations and modifications or changes of use. So the 1959 zoning applies. He said that is one type of grandfathering protection which he believed is running to a certain extent today with respect to the SRC.

Mr. Kablack said the second type of zoning freeze or grandfathering protection that might be available here, which Mr. Tyler alluded to in his materials, is as a result of a subdivision plan filing. That is on top of the zoning protections that they already have relative to the 1959 issues.

They're not exclusive grandfathering provisions in the sense that the applicant gets to pick, or has the choice of, or has imposed upon one grandfathering protection on the other. They both run hand in hand. Therefore, Mr. Kablack said when the Board looks at these zoning violations, for instance with respect to parking, if it is a new parking scheme as a result of recent activity not clearly based upon what has been happening up there in the past decades, then maybe Mr. Tyler have brought us out of that grandfathering protection that dates us back into the 59 era and have brought us more current as a result of recent changes in use or alterations of the building so that they are subject to more recent zoning provisions.

Mr. Tyler said Mr. Kablack made some good point and some he had to clarify. First of all, as to some of the new uses when the building was owned first by Sperry Research, then Unisys and then taken over by Cummings, in the initial configuration there was very limited parking in front. It was not a double wide parking; it was only single. There was no parking along the driveway; there is now. He said the parking along the side is the most visible. So within Mr. Kablack's criteria, if that distinction could be made, we have an expansion of a use of a new character that is a more prominent violation. Mr. Tyler believed that qualifies as something new.

Mr. Tyler said that although he is not an attorney, it was his understanding that when a portion of a 25-acre property is subdivided, you do lose a benefit of grandfathering His

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understanding was that when SRC did that subdivision that they did lose the grandfathering in general.

Mr. Kablack said he would need more from Mr. Tyler to be convinced of this. In his opinion the very fact that SRC sold off the property to Northwood doesn't, for example, make their building height issue one that goes from being grandfathered to one that becomes an illegal structure in a sense that they would then need to remove height from the structure. Along that same example if Mr. Tyler was saying that parking is in violation of the current zoning and yet parking has been in that section of the property pretty continuously over a decade, in fact the 1959 era, Mr. Kablack said he was going to need to know when Mr. Tyler thought the parking use was as a result of changes of use or other design modifications to the building reached and passed over the hurdle where it became nonconforming. He was not convinced that in 1995 when SRC subdivided and sold off Northwood that they lost all of their grandfather protection. He did not think that sat squarely with what the law says.

Mr. Tyler conceded that there may be some exceptions as to the height, etc.; however, he would be prepared to address that issue. He would say that for Violation #4 the most visible of the parking is that which is on the sloping driveways, and that is a new expansion in use. He believed this was clear from the original design.

Mr. Kablack said due to the late hour, the Board will have to continue this hearing with respect to the parking. He asked whether Mr. Tyler could pinpoint where on the site you think the parking is being violated, and then give the Board some sense of what the timeline is of when the parking use up there started violating the Zoning Bylaw.

Mr. Tyler showed a map, Exhibit #7, which shows where the parking lot is. He pointed out where parking used to be before and where parking is occurring now on the down slope which is visible from Route 117.

Mr. Delaney said where the parking is occurring is easy. He said the problem is in that order to reach a conclusion that the Zoning Enforcement Agent acted improperly in dismissing Item 4, Mr. Tyler would also have to demonstrate, with some evidence, when that parking was constructed and what the Zoning Bylaw was in effect at that time. Without those two pieces of information, the Board really can't reach a conclusion.

Mr. Tyler said the other violation is the open garbage dumpster which he pointed out.

Mr. Delaney said the Board needs similar evidence.

Mr. Tyler said he understood and will provide documentation. He said from the petitioners' point of view think it is important to say these violations can't go on because it sets

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the standard for understanding what SRC has to do or not do. He said the petitioners' main focus is the WRPD for which we think we're properly before the Board.

Mr. Delaney said the Board's focus is going to be on all nine items. He felt he should point out that the petitioners should have some evidence of how these things were constructed and what the zoning law was at that time, because in knowing these two things the Board can reach a conclusion as to whether or not there is a violation.

Mr. Tyler said he would provide the information. He said there is also within that context a major question as to what protection is lost when there is an expansion of use. It was Mr. Tyler's understanding that when an owner has the ability to stay in conformance with the Bylaw by not selling off property or something like that, then he loses. Most of the items he lost by subdividing; there may be some items which he can save such as building height which may be an exception.

Mr. Delaney suggested that for the next session, rather than talk about generalities, if that if Mr. Tyler get specific about that issue as well because there's either a section of state law, or if that's not the case, then there must be some precedent to the issue. He suggested Mr. Tyler be more specific with less generalities.

Mr. Kablack, addressing Mr. Tyler and Mr. Verrill, said a lot more work needs to be done in order to ground the Board on the zoning issues; i.e., the timeline, exactly where on the property this is occurring, when it was occurring, why the petitioners think it's not covered by grandfathered protection under Chapter 40A. In addition, to the extent you want the Board to get at all into the special permit issues that are currently under appeal before the land court, what aspect of this application is distinct from that appeal and what aspect of this application is distinct from what has been addressed in the special permit issue by the Planning Board should be provided in the documentation.

The hearing was continued to April 23.

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Mark A. Kablack, Chairman

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Patrick J. Delaney III, Clerk

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Thomas W.H. Phelps

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Lauren S. O'Brien

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Jonathan G. Gossels

