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August 18, 2015

Zoning Board of Appeals  
Town of Sterling, MA  
Butterick Municipal Building  
1 Park Street  
Sterling, MA 01583

RE: Objection of Brian Pierce, 49 Boutelle Road, Sterling, MA to the granting of a Special Permit for a Senior Center at 36 Muddy Pond Road, Sterling, MA Assessor's Map #137, Lot #11

Dear Board:

This office represents Mr. Brian Pierce, a party in interest, who resides at 49 Boutelle Road, Sterling, MA, directly opposite the proposed project on Muddy Pond Road in Sterling.

The Town's application, for a special permit pursuant to 6.3 of the Town of Sterling Protective Zoning By-Laws (hereinafter the "Town Zoning By-Laws"), seeks zoning relief to continue with construction and to obtain an occupancy certificate for a senior center at 36 Muddy Pond Road in Sterling. As the parcel is located in a neighborhood residential zone, and pursuant to the Town Zoning By-Laws, the proposed use is not allowed as of right, but only by special permit. The building inspector has issued a building permit in error for the construction of the building. Currently the present building under construction at the site is in violation of the zoning ordinance. It should also be noted that prior to seeking the special permit for zoning relief, the lot was clear-cut of all timber. Several hundred pine trees were clear-cut in order to prepare the site for the new commercial building. The clear-cutting directly across from my client's property at 49 Boutelle Road clearly negatively impacted the natural environment.

We believe that the present proposed project fails to satisfy these specific criteria for a special permit under Section 6.3.2 of the Town Zoning By-Laws:

- 1) Traffic flow, safety, parking and loading;
- 2) Neighborhood character and social structures; and
- 3) Impacts on the natural environment.

Based upon the above criteria, we are respectfully requesting the following stipulations in any grant of a special permit:

- 1) The agreed hours of operation will be 8 a.m. to 5 p.m. daily; the Senior Center will not be open on any Massachusetts or Federal Holidays; BOS
- 2) The Senior Center will be open to the general public only and will not be made available to private individuals or any other entities for rental use; the use of the building shall be for a senior center to serve the nutritional and social needs and general welfare of senior citizens; BOS
- 3) All lighting shall be directed away from the residential neighborhood; parking lot lighting shall be turned off at 5:00 p.m. Sean Donohue
- 4) The emergency access driveway off Boutelle Road shall be gated and locked except when being used for emergency purposes; Fire Police
- 5) The proposed 12' x 12' concrete pad with 8-foot-high white vinyl fence screening, and the proposed trash cans, shall be relocated to the opposite side of the building from the current proposed northerly side to the southerly side; ~~trash cans~~ → not dumpster
- 6) An arbor vitae landscape screen (trees) 6'-8' high be planted along the entire project's property line fronting Boutelle Road (with spacing of 25 trees for every 100 feet); this will mitigate the current clear-cutting of the lot and reduce noise from highway, ball fields and play ground on other side of lot, and limit snow drifting onto Boutelle Road as a result of the clear-cutting;
- 7) In the event that the Town on occasion desires to use the parking area as overflow for the abutting school parking area, the Town will install a connector access driveway between the two parking areas which the Town will control with a locked gate; and ~~Waste~~ not feasible
- 8) The temporary construction trailer shall be relocated to the southerly corner furthest away from Boutelle Road where the lot abuts the school (currently the trailer is located approximately six feet off the Boutelle Road across from my client's home). ~~Waste~~

The Massachusetts Zoning Manual §8.14.1 "Site Plan Approval is Permissible and May Include Reasonable Restrictions" reads as follows:

In considering a site plan ... the Board of Appeals shall assure, to a degree consistent with a reasonable use of the site for the purposes permitted or permissible by the regulations of the district in which located: (a) Protection of adjoining premises against detrimental or offensive uses on the site; (b) Convenience and safety of vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements; (c) Adequacy of the methods of disposal for sewage, refuse and other wastes resulting from the uses permitted or permissible on the site, and the methods of drainage for surface water; (d) Adequacy of space for the off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment ....

The definition of a Special Permit at p. 45 the Town Zoning By-Laws is:

...a permit issued pursuant to G.L. c. 40A, s.9 and this by-law. In accordance with case law, neither nor the Zoning Act nor the town zoning by-law gives the absolute right to a special permit. The special permit granting authority is not compelled to grant the permit; it has discretionary power in acting thereon. See, *MacGibbon v. Board of Appeals of Duxbury*, 356 Mass. 635,638-639 (1970)."

Section 6.3.4 "Conditions" states:

*Not Commercial*  
*Municipal - Not Commercial*

Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this By-law.

Section 6.4.7 "Approval" states, in part:

...New building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:

1. Minimize the volume of cut and fill, the number of removed trees 6" caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and threat of air and water pollution;
2. Maximize pedestrian and vehicular safety both on the site and egressing from it;
3. Minimize obstruction of scenic views from publicly accessible locations;
4. Minimize visual intrusion by controlling visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;
5. Minimize glare from headlights through plantings or other screening;
6. Minimize lighting intrusion through use of devices confining illumination to the site;
7. Minimize unreasonable departure from the color, character, scale and architectural style of buildings in the vicinity, as viewed from public ways;
8. Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances;
9. Compliance with the provisions of this Zoning By-law, including parking and landscaping.

A review of numerous decisions and votes by the Town of Sterling Board of Appeals shows that my client's requested stipulations to be included in any special permit are both reasonable and consistent with the Town's practice of including stipulations in the granting of special permits.

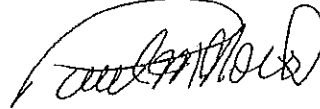
A particular example of stipulations for a commercial use in a residential zoning district is on record in the Town of Sterling was the special permit granted for the Sterling National Country Club which is on record at the Worcester District Registry of Deeds in Book 42071, Page 150.

August 18, 2015

Given that our client resides at 49 Boutelle Road, directly opposite the project, in a residentially zoned district, we respectfully request the Board to impose the above-identified restrictions on any grant of a special permit.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul M. Novak", written over a faint circular stamp or watermark.

Paul M. Novak

PMN/pcn

cc: Mr. Brian Pierce