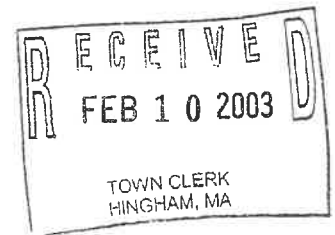


**TOWN OF HINGHAM
BOARD OF APPEALS**

210 Central Street
Hingham, MA 02043-2759



Telephone: (781) 741-1494
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IN THE MATTER OF:

Applicant: W/S/M Hingham Properties, LLC
c/o WS Development
1330 Boylston Street
Chestnut Hill, Massachusetts 02167

Premises: 100 Derby Street
Hingham, Massachusetts 02043
Book 9552, Page 31, Book 16895, Page 1 and Book 16895, Page 6

SUMMARY OF PROCEEDINGS:

This matter came before the Board on the application of W/S/M Hingham Properties, LLC ("Applicant") in connection with the Applicant's desire to expand and improve the existing shopping center on the Premises, presently known as "Hingham Plaza". The Applicant has requested the following zoning relief from the Board: (i) a Variance from the maximum lot coverage restriction of Section IV-A of the Zoning Bylaw; (2) a Special Permit A-2 and site plan review pursuant to Section III(E)(5)(b) to allow, within the South Hingham Development Overlay District, a retail group (III-A, 4.17), a sit down restaurant (III-A, 4.9A), and a bank automated teller machine (III-A, 4.11); (3) a parking waiver pursuant to Section V-A; (4) a Special Permit A-1 with Variances from Section V-B to display multiple building and ground signs, and (5) a Special Permit A-2 for earth removal.

A public hearing was duly noticed and held on Thursday July 11, 2002, and continued on August 1, 2002, September 5, 2002, October 10, 2002, November 7, 2002, December 5, 2002, January 2, 2003, and January 30, 2003. The public hearings and deliberations were conducted by a panel consisting of regular members Mario Romania, Jr., and Jerry Seelen, and associate member James Broderick. Mario Romania, Jr. served as Chairman.

BACKGROUND:

The Petitioner proposes additional retail and restaurant space and related improvements to the Premises, which is currently operated as a retail shopping center. The Premises, heretofore known as Hingham Plaza, was originally developed in the late 1950's and early 1960s. The parcel as it presently exists, with the possible exception of the recently renovated Kohl's building, is a 1950's style shopping center, and consists of approximately 309,990 square feet of retail space.

The Applicant's proposed redevelopment of the site (hereinafter, the "Project"), to be known as the "Derby Street Shoppes", involves the transformation of the Premises into a 424,500 square foot "lifestyle" shopping center, and would include significant on-site and off-site traffic, parking and utility improvements. Upon completion, the Project would be comprised of 371,200 s.f. of retail space, and 53,300 s.f. of restaurant space.

By its Decision dated December 12, 2002 (the "Phase I Decision"), the Board addressed and granted, with conditions, the following two types of relief requested by the Applicant: (1) the Variance from the maximum lot coverage restriction of Section IV-A of the Zoning Bylaw, and (2) the parking waiver under Section V-A of the Zoning Bylaw. At its November 7, 2002 hearing, at the Applicant's request, the Board voted on the two aspects of the requested zoning relief addressed in the Phase I Decision and continued the hearings with respect to the other areas of relief requested. This Decision (the "Phase II Decision") addresses (i) the Applicant's requested Special Permit A-2 and site plan review pursuant to Section III(E)(5)(b) of the Zoning Bylaw, and (ii) the Applicant's requested relief with respect to signage. This Phase II Decision also makes two minor amendments to the Phase I Decision.

The final plans (hereinafter the "Plans") submitted and reviewed by the Board for purposes of this Phase II Decision are identified on Schedule A attached hereto and incorporated herein.

REQUESTED RELIEF:

A. SPECIAL PERMIT A-2 AND SITE PLAN REVIEW

As noted above, Applicant is proposing a major redevelopment of the shopping center at the Premises. Zoning relief is necessary for particular uses at the site because the Premises is located within both the Industrial Park District and the South Hingham Development Overlay District. In particular, Section III(E)(5)(b) of the Zoning Bylaw requires the issuance of a Special Permit A2 for the following uses proposed by the Applicant: (i) sit-down restaurant, and (ii) retail group.¹

B. SIGNAGE

The Applicant has proposed extensive and detailed signage for this multi-tenant Project. These signs include both tenant specific building signage, and a number of shopping center identification signs, which in the latter case include both building and ground signs.

¹ Although the Applicant's original submittals to the Board also requested a similar Special Permit A2 for a bank automated teller at the Premises and a Special Permit A-2 for earth removal, during the hearing process the Applicant withdrew those two requests.

The Applicant's requested zoning relief for its signage can be broken down as follows:

1. Tenant Building Signs.

- a. A Special Permit A-1 pursuant to Section V-B of the Zoning Bylaw to allow multiple building signs for each tenant, provided that in the aggregate the maximum area of all such signage does not exceed the 10% of wall area limitation set forth in the Zoning Bylaw. It is anticipated that tenants may utilize a mix of primary signs, blade signs, awnings, under-walk signs and other signs in this regard.
- b. A Variance from the sign quantity limitations of Section V-B of the Zoning Bylaw to allow "multi-frontage" tenants located at the corners of buildings within the shopping center to include frontage of each side of the building for purposes of determining allowable signage.
- c. To the extent necessary, a Variance to allow awning signs within the Industrial Park District.
- d. To the extent necessary, a Variance to allow the use of "blade" signs within the allowable mix of building signage.
- e. A Variance from the quantity limitations of Section V-B to allow buildings facing Route 3 additional building signs.

2. Shopping Center "Common" Signs

- a. A Special Permit A-1 to allow additional shopping center accessory signs on the Pavilion Building towers (2 signs) and on the wastewater treatment plant building (1 sign).
- b. To the extent necessary, Variances to allow modification and continued internal illumination of the existing pylon sign located at the Derby Street entrance to the shopping center.

FINDINGS:

A. SPECIAL PERMIT A-2 AND SITE PLAN REVIEW

As noted above, this Project and the Applicant's requested zoning relief have been the subject of extensive review by various Town boards and departments, and by the Town's outside consultants. In addition, abutters and other interested parties actively participated in the Board's hearing process, both through the submission of written materials and through attendance and oral input. The existing shopping center in its current form is in a state of disrepair, and is not considered to be a particularly valuable asset to the Town.

However, the site has a long history of retail use, and its proximity to Route 3 suggests that a retail shopping center remains one of the site's most practical uses.

The Special Permit uses at issue in and of themselves are not controversial. In fact, the site has historically been used for these uses. Accordingly, the Board considers the site plan review process to be the most significant aspect of this Special Permit A-2 requested relief.

Through the hearing process, numerous parties commented upon the Applicant's Plans with respect to concerns relating to such issues as surface water drainage, wetland protection, on-site and off-site traffic flows, on-site parking requirements and access for emergency vehicles. As a result, the Applicant's Plans were significantly modified during the process, and the Board believes that the final Plans greatly improved the Project and sufficiently mitigated the foreseeable adverse impacts the Project may generate.

Ultimately, upon consideration of the specific site plan review criteria set forth as Section I-I(4) of the Zoning Bylaw, the Board made the following findings:

1. The proposed retail and restaurant uses are in harmony with the general purpose and intent of the Zoning Bylaw.
2. The proposed retail and restaurant uses comply with the purposes and standards of the relevant sections of the Zoning Bylaw.
3. The Premises is an appropriate location for such retail and restaurant uses, and such uses are compatible with the characteristics of the surrounding area.
4. The retail and restaurant uses as developed will create positive impacts and potential adverse impacts will be mitigated.
5. There will be no nuisance or serious hazard to vehicles or pedestrians.
6. Adequate and appropriate facilities exist or will be provided as part of the Project for the proper operation of the proposed retail and restaurant uses.
7. The proposal meets accepted design standards and criteria for the functional design of facilities, structures and site construction.

B. SIGNAGE

With respect to the signage generally, the Board found that the sign regulations applicable to the Industrial Park District do not adequately anticipate, and are not practical in application to, a large, multi-tenanted shopping center such as this Project. The Board recognizes that a viable shopping center must allow each tenant to promote its presence within the center, and that the shopping center as a whole needs to create an

identity through signage. In addition, customary signage concerns are of less significance in this particular case because the shopping center will for the most part be self-contained, meaning that most of the signage at issue will not be visible from adjacent roadways. The Board found that the requested signage relief was reasonable for the scope of the Project, and that it would not be detrimental to the surrounding area.

Accordingly, with respect to the signage Special Permit A-1's described above, the Board found that the location, nature and use of the Premises are such that the proposed signage may be permitted in harmony with the general purpose and intent of Section V-B of the Zoning Bylaw.

With respect to the signage Variances described above, the Board found that, owing to circumstances relating to conditions and shape of the existing and proposed shopping center buildings, which are unique to the Premises and are not common to the Industrial Park District as a whole, a literal enforcement of a prohibition of awning signs and blade signs and the prohibition of any signage on the side of the building fronting Route 3 would involve substantial hardship to the Applicant, and that the requested relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

RULINGS AND DECISION:

At the conclusion of the written and oral testimony received at the hearings, and on other information available to the Board, the Board took the following actions:

A. SPECIAL PERMIT A-2 AND SITE PLAN REVIEW

The Board voted to grant the Applicant's requested Special Permit A-2 with Site Plan Review, subject to the following conditions:

1. The terms and conditions of the Phase I Decision are incorporated herein.
2. The Project shall be developed in accordance with the Plans, and there shall be no increase in floor area beyond 424,500 s.f. absent subsequent relief from the Board.
3. Prior to the issuance of a Certificate of Occupancy for any additional space at the Premises (meaning space in excess of the existing 309,990 s.f.), Applicant shall demonstrate to the satisfaction of the Building Commissioner that all on-site and off-site improvements identified in the Plans have been substantially completed.
4. Applicant is to obtain a street opening permit from the Board of Selectmen and any and all other permits necessary in connection with the abandonment of the portion of Old Derby Street as shown on the Plans, and Applicant shall landscape such portion of Old Derby Street as required by the Board of Selectmen or other governing body.
5. It is acknowledged that the Applicant's Plans are subject in part to the Massachusetts Highway Department's ("Mass. Highway") plans for alterations to

Derby Street. To the extent that Mass. Highway's activities in this regard result in any change to the Applicant's Plans, the Applicant shall submit such changes to the Board for approval. Notwithstanding the foregoing, the Board acknowledges that the Zoning Administrator shall have the authority to approve minor changes to the Plans on behalf of the Board.

6. The Applicant shall seek approval from Mass. Highway for the following additional mitigation:

(a) Traffic signals proposed for the main entrance to the site and the existing lights at Cushing Street shall be sequenced for maximum safety and efficiency.

(b) Per request of the Police Department and A.G. Edwards, a direct abutter across Derby Street from the site, right turn on red lights shall be prohibited from Cushing Street to Whiting Street during peak morning commuting hours.

In the case that such initial improvements are not initially warranted by Mass. Highway standards, the Town may, from time to time, request that the Applicant submit the appropriate permit applications to Mass. Highway. If requested by the Town, the Town shall be a co-applicant in that the Town will have standing and opportunity to present such evidence as the Town may deem fit to support such application(s).

7. Applicant shall provide and install Opticom equipment (or comparable alternative equipment as directed by the Fire Department) at the traffic signals proposed for the main entrance to the site and at the existing lights at Cushing Street.

8. During the construction period, the Applicant shall exercise diligent efforts to provide temporary directional signs sufficient to ensure that construction vehicles' use of residential roads is minimized, and shall also exercise diligent efforts to keep both on-site and off-site roadways clean from construction debris and dust.

9. If at any time in the opinion of the Building Commissioner on-site snow storage is materially interfering with the Premises' need for on-site parking, the Applicant shall be obligated to remove the snow to an off-site location.

10. There shall be no tent sales or other promotions in parking areas at the Premises that may reduce the number of available parking spaces at the Premises.

11. The Applicant shall not allow any outdoor display of merchandise to the extent the same interferes with pedestrian access on or about the Premises.

B. SIGNAGE

The Board voted to grant the Applicant's requested Special Permits and Variances from the provisions of Section V-B of the Zoning By-law, subject to the following conditions:

1. Subject to item number 4 below relating to the pylon sign, this Decision incorporates the two documents entitled "Supplemental Sign Regulations for Derby Street Shoppes" and "Tenant Sign Design Criteria", each dated as of January 30, 2003 and prepared by ADD Inc., and the renderings submitted by the Applicant therewith (collectively, the "Sign Package") submitted by the Applicant to the Board. All signage at the Premises shall be consistent with the Sign Package. Except for the signage relief expressly granted in this Decision, the Applicant's signage for the Project shall at all times comply with both the requirements of the Zoning Bylaw and the Sign Package. To the extent that any provisions of the Zoning Bylaw and the Sign Package conflict, the more restrictive of the two shall govern.
2. To the extent that any tenant elects to use multiple building signs of the types described in the Sign Package, the aggregate area of such signs on any particular frontage may not exceed the "10% of wall area" requirement of the Zoning Bylaw.
3. The Variance allowing additional signage on the building facing Route 3 shall be limited to a maximum of four (4) tenant building signs, which otherwise shall comply with the requirements of the Zoning Bylaw.
4. This Decision does not grant any relief with respect to the existing pylon sign located at the Derby Street entrance to the shopping center, nor does it adopt any plans or specifications for the pylon sign contained in the Sign Package. At the Applicant's Request, the Board has continued the hearing process solely with respect to the relief requested for this pylon sign, and any action to be taken by the Board in that regard will be evidenced by a subsequent Decision.

MODIFICATIONS TO PHASE I DECISION:

The Phase I Decision is hereby amended as follows:

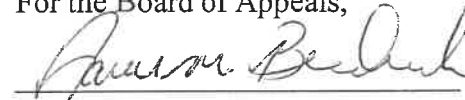
1. The Project plans were revised on one or more occasions after October 1, 2002 as a result of the Applicant's ongoing discussions with Town representatives, consultants and abutters. Accordingly, the "Plans" referenced in the Phase I Decision shall hereafter be deemed to refer to the Plans identified on Schedule A attached hereto and incorporated herein.
2. There is a typographical error on Page 7 of the Phase I Decision. Item 1 under the subheading "Lot Coverage Variance" should, and is hereby amended to, read as follows:

"1. The maximum building coverage for the Project shall be 21.81%."

The zoning relief granted herein shall not become effective until (i) the Town Clerk has certified on a copy of this Decision that twenty days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed or that if such an appeal has been filed, that it has been dismissed or denied, and (ii) a copy hereof has been duly recorded (indexed in the grantor index under the name of the owner of record of the Premises) with the Plymouth County Registry of Deeds.

February 6, 2003

For the Board of Appeals,


James M. Broderick

SCHEDULE A

PLANS

Title	Date, Rev, Date	Preparer
Cover Sheet	May 2, 2002, rev. 12/20/02	BSC Group
Existing Conditions, Sheet 2	May 2, 2002, rev. 12/20/02	Scott MacDonald, PLS
Existing Conditions, Sheet 3	May 2, 2002, rev. 12/20/02	Scott MacDonald, PLS
Existing Conditions, Sheet 4	May 2, 2002, rev. 12/20/02	Scott MacDonald, PLS
Layout Plan, Sheet 5	May 2, 2002, rev. 12/20/02	BSC Group
Layout Plan, Sheet 6	May 2, 2002, rev. 12/20/02	BSC Group
Grading Plan, Sheet 7	May 2, 2002, rev. 12/20/02	BSC Group
Grading Plan, Sheet 8	May 2, 2002, rev. 12/20/02	BSC Group
Utility Plan, Sheet 9	May 2, 2002, rev. 12/20/02	BSC Group
Utility Plan, Sheet 10	May 2, 2002, rev. 12/20/02	BSC Group
Landscaping Plan, Sheet 11	May 2, 2002, rev. 12/20/02	BSC Group
Landscaping Plan, Sheet 12	May 2, 2002, rev. 12/20/02	BSC Group
Details, Sheet 13	May 2, 2002, rev. 12/20/02	BSC Group
Details, Sheet 14	May 2, 2002, rev. 12/20/02	BSC Group
Details, Sheet 15	May 2, 2002, rev. 12/20/02	BSC Group
Layout and Grading Plan	September 20, 2002, rev. 11/5/02	BSC Group
Future Employee Parking Expansion Plan	September 20, 2002, rev. 11/5/02	BSC Group