

Hi Winnie, Just a followup email to my phone conversation with you this AM.

The Board granted a special permit and site plan approval (among other forms of relief) to permit the razing of the old Ship Restaurant and construction of a Planned Shopping Center (ZBL Section 4.5.1.2, old bylaw) at the above address, which relief was granted.

The allowed uses include both retail and consumer service establishments, however, through out the Decision and on the Site Plan, the proposed areas are designated 'proposed retail'. The Building Inspector has interpreted both the Decision, as well as the Site Plan as limiting the allowed uses within the new buildings to only retail uses, although consumer service establishments are also permitted within the PSC, subject to the restrictions of the BL to less than 50% of the total area of the PSC.

The BOA specifically reserved continuing jurisdiction over the project in the Decision and we are asking to return to the BOA under their continuing jurisdiction with a clarification of the decision to also include the right to lease to consumer service establishments and a slight revision to the approved site plan to add 'consumer service establishments to the space designation 'retail'.

As the petitioners currently have two pending lessees awaiting clarification of this issue before signing leases, time has become of the essence in this matter, so it would be greatly appreciated if the BOA would allow us to appear before them at their April 2, 2019 hearing to present and seek approval of this clarification.

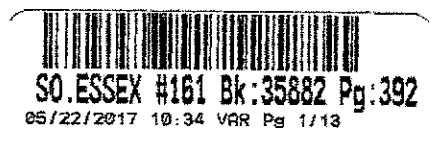
Thanks

Jay Kimball, Esq.
Kimball & Kimball
618 Main Street
Lynnfield, MA 01940
p. 781-334-3200 f. 781-334-2852 Email: kimballjay2468@aol.com
Statement of Confidentiality

The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, please notify Attorney Jay Kimball immediately at (781)334-3200 or kimballjay2468@aol.com and destroy all copies of this message and any attachments.

5B

**TOWN OF LYNNFIELD
BOARD OF APPEALS**



CASE NO. 17-02

**Certificate of Granting of Variance or Special Permit
(General Laws Chapter 40A, Section 11)**

The Board of Appeals of the Town of Lynnfield hereby certifies that a Variance or Special Permit has been granted.

To: SHIP MALL LLC

Address : 24-38 BROADWAY

City or Town: Lynnfield, MA 01940

Affecting the rights of the owner with respect to land or buildings at

24-38 BROADWAY, Lynnfield, Ma 01940

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance – special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the planning board and the city or town clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

Tom Howard (5B)
Chairman

Kevin Barron
Board of Appeals

THE 20 DAY APPEAL PERIOD WILL EXPIRE ON 5-12-17 AT WHICH TIME A CERTIFIED COPY OF THIS DECISION CAN BE PICKED UP AT THE TOWN CLERKS OFFICE FOR FILING AT THE REGISTRY OF DEEDS IN SALEM, MASACHSETTS.

BOV 12/6
TCR #44936
Salt
1880

RECEIVED

2017 APR 21 A 11:37

**TOWN CLERKS OFFICE
LYNNFIELD, MA**

**TOWN OF LYNNFIELD
ZONING BOARD OF APPEALS
PETITION OF SHIP MALL, LLC
FOR SITE PLAN APPROVAL, SPECIAL PERMIT AND OTHER RELIEF
FOR PROPERTY AT 24-38 BROADWAY, LYNNFIELD, MA
ASSESSOR'S MAP 59, PARCEL 1319**

CASE NO. 17-02

A Public Hearing was held on Tuesday February 7, 2017 at the Lynnfield Town Hall hearing room, and continued until Tuesday, March 7, 2017 at the same location on the Petition of Ship Mall, LLC (the "Applicant" or "Petitioner") for requested relief as follows:

1. Site Plan Approval under Section 7.4 of the Zoning Bylaws (April 29, 2013 revision);
2. Special Permit under Section 4.5.1.2 of the Zoning Bylaws (April 29, 2013 revision) to allow a retail, drive-up restaurant/coffee shop and free standing bank building; and
3. Variance for number of tenant identification signs where only one per building is permitted under Section 6.2.1 of the Zoning Bylaws (April 29, 2013 revision),

for property located at 24-38 Broadway, Lynnfield, Massachusetts (the "Property") and shown as Assessor's Parcel 1319, Map 59, and containing 6.786 acres±. The Deed to the Property is recorded with the Essex South District Registry of Deeds in Book 26515, Page 491.

Notices of the Public Hearing held on February 7, 2017 were published in the Lynnfield Villager on January 18, 2017 and January 25, 2017; Notices of the Public Hearing held on March 7, 2017 were published in the Lynnfield Villager on February

15, 2017 and February 22, 2017. Copies of Notices were mailed, postage prepaid to all abutting property owners appearing on the most recent tax list of the Town who were deemed by the Board to be affected and to the Town Clerk to be posted on the Town Hall bulletin board as well as to the Planning Board of each neighboring city and town, as well as the Planning Board of the Town of Lynnfield.

The Petitioner was represented throughout the hearings by Attorney Theodore C. Regnante of Lynnfield; Project Engineers Wayne Morrill of Jones and Beach Engineers, Inc. and Peter J. Ogren of Hayes Engineering, Inc., and Project Architects Tim Tobin and Anh Nguyen of Phase Zero Design.

The Applicant initially petitioned the Zoning Board of Appeals (the "ZBA" or "Board") for the following:

1. To demolish the existing "Ship" facility (but not the Christmas Tree Shop building) located at 24 Broadway, Lynnfield, Massachusetts, and replace it with a retail building with retail areas of 2,000 square feet and 5,580 square feet and a proposed restaurant (coffee shop) containing 2,200 square feet with a drive-up window. During the course of the hearing, the 5,580 square foot retail area was divided into two tenant areas, each containing 2,790 square feet.
2. A free standing bank building containing 2,500 square feet with a drive-up window and signage.
3. An outside sales area adjacent to the Christmas Tree Shop building (38 Broadway) containing 2,500 square feet for the seasonal sale of plants, flowers, Christmas trees and wreaths was also requested. This request was withdrawn during the course of the hearing by the Applicant after consultation with its abutter Combined Properties, Inc.
4. An additional new entrance way was proposed off Daly Road. This request was withdrawn during the course of the hearing by the Applicant after consultation with its abutter Combined Properties, Inc.
5. Reconfiguration of the existing curb cut on Route 1 and the on-site parking and driveway layout.
6. Additional landscaping and building lighting.
7. Installation of tenant identification signage (variance originally requested for five (5) tenant signs on the retail building and two (2) tenant signs on the bank building) and internally lit tenant signage and menu board.

The final revised plans on file with the Board and showing the proposed improvements are as follows:

1. Site Plan entitled "Planned Shopping Center The Ship Mall Tax Map 59 Lot 0000-1319 24-38 Broadway Lynnfield, MA" Owner of Record: Ship Mall, LLC said plan dated January 6, 2017, revised February 1, 2017, February 16, 2017, February 20, 2017, and March 3, 2017, drawn by Jones & Beach Engineering, Inc., Sheets 1-12, filed with the Board (the "Site Plan").
2. Architectural plans entitled "Ship Mall Route 1 Lynnfield, MA A-1 Proposed Retail Elevations A and B" Scale 1/16" = 1', dated February 6, 2017, revised March 3, 2017, drawn by Phase Zero Design (the "Architectural Plans").
3. External site lighting shown on "Existing Lighting Plan in Lynnfield, Mass." dated March 2, 2017, Scale: 1"=40', drawn by Hayes Engineering, Inc. ("Existing Lighting Plan").

The Board noted that during the course of the hearings that the Applicant worked cooperatively with the Historical Commission regarding the proposed demolition of the Ship facility. In lieu of invoking the Demolition Delay Bylaw and a finding that the Ship was an "architecturally or historically significant" structure, the Commission accepted the offer by the Applicant to pay homage to the Ship's memory and to incorporate features of the Ship into the new construction, a copy of the Agreement with the Historical Commission is attached hereto and marked Exhibit "A". The commemorative items which are shown on the Architectural Plans are as follows:

1. The celestial window detail at the Tower of the new left side elevation and front elevation will mimic the current window detail at the rear elevation of the Ship and throughout reflecting the Ship's Captain's Cabin.
2. The new sconce lights and pilaster details will resemble the existing gun ports on the Ship's hull.
3. The storefront windows will resemble the Ship's window style.
4. The eagle and six stars at the stern of the Ship will be relocated to the new left side elevation to maintain design continuity.
5. The new building color scheme will pay homage to the Ship's old color scheme and complement the New England harbor village theme of the shopping center.
6. A stylized version of the Ship's mast as shown on the Plan will be attached to the front elevation, at the tower of the restaurant space.
7. An information plaque (18" x 12" x 30" high) shall be provided at the grass area in front of the free standing bank building. It will be mounted on a granite podium. The final message and design will be coordinated

with the Commission.

8. Any artifacts and items of personal property at the Ship which the Commission desires will be donated to the Commission and/or the Historical Society.

The Applicant also addressed issues raised by the abutter, Combined Properties, Inc., and made the following changes to the originally submitted plans:

1. Deleted the new entrance/exit along the side of Daly Road retaining the existing entrance/exit at the rear of the Property;
2. Withdrew its request for an outside sales area for the Christmas Tree Shop along the side of the existing Christmas Tree Shop building. The Applicant did indicate its desire to return to the Board at some future time for an alternative location, perhaps in the rear parking lot, but indicated it would consult with its neighbor, Combined Properties, Inc., regarding the alternative location.

Attorney Brian Caferty, in-house counsel for Combined Properties, Inc., appeared at both hearings of the Board and supported the proposal as modified.

The Board noted that the Planning Board voted 4-1 no objection to the proposal and submitted a letter dated February 2, 2017. The Planning Board wanted the ZBA however to address the issue that the existing "reader board sign" which was approved by a variance and is otherwise lawful. Mr. Regnante submitted a letter dated March 1, 2017 in which he included a copy of the variance granted by the ZBA for such "reader board sign" on December 4, 2006, subject to the restriction that there be no flashing lights on the sign and limiting the frequency to change the content on the sign to a maximum of four (4) times per day.

Mr. Regnante's letter also pointed out that since the six (6) year Statute of Limitations and ten (10) year Statute of Repose have both expired, the variance cannot be challenged and no action to remove or modify the reader board sign could now be undertaken. The Board accepted Mr. Regnante's opinion, but wanted to insure that the terms of the variance be strictly complied with and insisted that the restrictions outlined in the December 4, 2006 ZBA decision be reaffirmed as part of its approval on the subject application.

There was discussion among the Board members whether a variance was necessary for the internally lit tenant identification signs and the Board agreed that such internal lighting was not prohibited under Section 6.2.1 of the Bylaws (April 29, 2013 revision) but only that such sign may be white lighted and shall not be flashing.

The Board also noted that a variance was necessary of the four (4) tenant signs on the retail building and the two (2) tenant signs on the bank building under Section

6.2.1 of the Bylaws. The Applicant agreed to substitute a tenant logo not exceeding ten (10) square feet on the left side elevation in lieu of the originally requested additional tenant identification sign. The logo however still requires a variance.

The Board also reviewed the building lighting, landscaping and outside lighting (as shown on the Existing Lighting Plan) and approved same as shown on the Site Plan and Architectural Plans. The Board did however require that after completion of construction it will revisit the external lighting to determine the "as built" sufficiency of the lighting in the rear parking lot.

The Applicant presented a letter dated February 3, 2017, from the Fire Chief, Mark Tetreault, and the Fire Prevention Officer, Richard Ripley, that the Applicant had presented appropriate information to the Fire Department and had addressed any concerns with regard to access and water supply and that the Fire Department had no opposition to the plans presented.

The Applicant also noted that a Notice of Intent had been filed with the Conservation Commission and submitted a letter dated March 3, 2017, from its engineer, Jones & Beach Engineering, Inc. to Linden Engineering Partner's LLC, the Conservation Commission's consultant, addressing the engineering and wetlands issues raised by such consultant. The Applicant indicated it expected to receive an Order of Conditions from the Commission on March 21, 2017 or shortly thereafter. The Board indicated that it would make its approval subject to compliance with the terms and conditions of the Conservation Order.

The Board noted it has received a traffic report from the Applicant's Traffic Engineer, Giles Ham of Vanasse & Associates, Inc., which adequately addressed traffic and safety issues and were informed by Mr. Ham that MassHighway had approved the traffic plans as finally received by the Board.

After due determination, the Board unanimously adopted the following votes:

1. To grant a Special Permit under Section 4.5.1.2 of the Zoning Bylaws (April 29, 2013 version) to authorize the following uses:
 - i. Retail areas of 2,000 ± sq. ft., 2,790 ± sq. ft. and 2,790 ± sq. ft.
 - ii. Drive-up restaurant/coffee shop of 2,200 ± sq. ft.
 - iii. Free standing bank building with drive-up containing 2,500 ± sq. ft.

All of the above shown on a Site Plan entitled "Planned Shopping Center The Ship Mall Tax Map 59 Lot 0000-1319 24-38 Broadway Lynnfield, MA" Owner of Record: Ship Mall, LLC said plan dated January 6, 2017, revised February 1, 2017, February 16, 2017, February 20, 2017, and March 3, 2017, drawn by Jones & Beach Engineering, Inc., Sheets 1-12, filed with the Board (the "Site Plan").

2. Site Plan Approval under Section 7.4 of the Bylaws (April 29, 2013 version) for the layout improvements shown on the Site Plan and the "Existing Lighting Plan in Lynnfield, Mass." dated March 2, 2017, Scale: 1"=40', drawn by Hayes Engineering, Inc. ("Existing Lighting Plan"), including curb cuts, parking, external lighting and landscaping.
3. Special Permit to grant approval for improvements as shown on the architectural plans entitled "Ship Mall Route 1 Lynnfield, MA A-1 Proposed Retail Elevations A and B" Scale 1/16" = 1', dated February 6, 2017, revised March 3, 2017, drawn by Phase Zero Design (the "Architectural Plans"), including:
 - i. External building (wall packs), security lighting and menu board as shown on the Architectural Plans; no spot lights allowed on the buildings;
 - ii. Internally lit tenant identification signs;
 - iii. Information plaque (18" x 12" x 30" high) with message approved by the Historical Commission to be erected in the grass area in the front of the free standing bank building; and
 - iv. External building details shown on the Architectural Plans as agreed upon with the Historical Commission, including the stylized Ship mast and insertion of the eagle and six stars on the left side elevation of the restaurant/coffee shop building.
4. Variance to allow four (4) tenant identification signs on the front elevation of the retail/restaurant/coffee shop building and one (1) tenant logo sign (not to exceed 10 sq. ft.) on the left side elevation of the restaurant/coffee shop building as shown on the Architectural Plans where only one (1) sign is permitted under Section 6.2(1) of the Zoning Bylaw (April 29, 2013 version).
5. Variance to allow two (2) tenant identification signs on the free standing bank building as shown on the Architectural Plans where only one (1) sign is permitted under Section 6.2(1) of the Zoning Bylaw (April 29, 2013 version).

The above relief is subject to the following conditions:

1. The existing permitted free standing "Reader Board" sign at the front of the property shall be limited to a change in content on the sign to a maximum of four (4) times per day with no intermittent static message and no flashing lights on the sign as set forth in the ZBA decision granting a variance for such sign on December 4, 2006 in Case No. 60-16.
2. A provision be added to future leases on the property requiring employees

of the tenants to use the rear portion of the site for parking of their vehicles rather than the front or sides of the site.

3. Issuance of an Order of Conditions from the Conservation Commission on the project.
4. ✓ After completion of construction the Board will review the External Lighting Plan to determine "as built" sufficiency of the lighting in the rear parking area. ✓
5. ✓ The ZBA shall maintain continuing jurisdiction over the approvals, the construction and the completed project to insure compliance with this decision, including but not limited to tenant signage and lighting. ✓

In voting its approval the ZBA took into account the following factors to a degree consistent with the reasonable use of the property in the zoning district in which the Property is located. Those factors include:

1. Protection of adjoining premises against seriously detrimental or offensive uses on the Property;
2. Convenience and safety of vehicular and pedestrian movement within the Property and in relation to adjacent ways and land; and
3. Adequacy of the methods of disposal of sewerage, refuse and other wastes and methods of drainage for surface water and for adequacy of provision for offloading incidentals in the normal operation of the establishment of the use.

The Board also determined that the Petitioner had satisfied the legal requirements of obtaining a variance to wit: the topography of the land and the extensive wetlands throughout the Property (soil conditions).

The Board also found that there was a hardship to the land based upon such topography and such soil conditions and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the bylaw; the Board notes that with regard to the requested signage variances it has in the past permitted tenant identification signage to exceed one per building where multiple tenants occupy such building.

Voting Members of the Board who attended and participated in all hearings were Patrick Rondeau, Brian Shaffer and Anders Youngren who unanimously approved this Decision and authorized the Chairman, Tom Aylward, to sign the Decision on behalf of the Board.

Dated: April 21, 2017

LYNNFIELD ZONING BOARD OF APPEALS

By Thomas Aylward
TOM AYLWARD, Chairman

EXHIBIT "A"

SHIP MALL, LLC
159 Cambridge Street
Allston, MA 02134

23
March 3, 2017
AK.

VIA FIRST CLASS MAIL AND
EMAIL: stevetodesco.rdg@gmail.com
Lynnfield Historical Commission
35 Common Street
Lynnfield, MA 01940
Attention: Steve Todisco, Chairman

RE: The Ship 24 Broadway, Lynnfield, MA

Dear Ladies and Gentlemen:

This will confirm our agreement to incorporate the following design features in the construction of the new retail and coffee shop space at the above address. These features which are shown on the attached plan prepared by our architect Phase Zero Design dated March 3, 2017 (the "Plan"), are designed to pay homage to the Ship's memory as we have previously discussed.

1. The celestial window detail at the Tower of the new left side elevation and front elevation will mimic the current window detail at the rear elevation of the Ship and throughout reflecting the Ship's Captain's Cabin.
2. The new sconce lights and pilaster details will resemble the existing gunports on the Ship's hull.
3. The storefront windows will resemble the Ship's window style.
4. The eagle and six stars at the stern of the Ship will be relocated to the new left side elevation to maintain design continuity.
5. The new building color scheme will pay homage to the Ship's old color scheme and complement the New England harbor village theme of the shopping center.
6. A stylized version of the Ship's mast as shown on the Plan will be attached to the front elevation, at the tower of the restaurant space.
7. An information plaque (18" x 12" x 30" high) shall be provided at the grass area in front of the free standing bank building. It will be mounted

Lynnfield Historical Commission
March 2, 2017

on a granite podium. The final message and design will be coordinated with the Commission.

8. Any artifacts and items of personal property at the Ship which the Commission desires will be donated to the Commission and/or the Historical Society.

This proposal is offered to the Commission in lieu of the action by the Commission adding the Ship to the inventory of "Significant Structures" under the Town's Demolition Delay Bylaw. The Commission agrees to notify the Building Inspector that it has no objection to the demolition permit being issued forthwith for demolition of such structure.

The Commission will also notify the Zoning Board of Appeals that it has agreed to the changes to the building construction as outlined herein and it supports the application for Site Plan Approval as finally submitted.

Please indicate the Commission's assent to these terms.


Thank you for your cooperation and assistance in reaching this accommodation.

Sincerely,

SHIP MALL, LLC

By 
NINO MICOZZI, Manager

Assented to:
Lynnfield Historical Commission

By 
Steve Todisco, Chairman
(Duly authorized by vote of the Commission)

Town of Lynnfield



TOWN CLERK'S OFFICE
55 Summer Street, Lynnfield, Mass. 01940
781-334-9400

MAY 12, 2017

BOARD OF APPEALS -CASE #17-02

PETITIONER: SHIP MALL, LLC

ADDRESS: 24-38 BROADWAY

WITH RESPECT TO LAND OR BUILDING(S) AT: 24-38 BROADWAY,
LYNNFIELD MA 01940

I hereby certify that twenty (20) days have elapsed from the date this certificate was issued and that no appeal has been filed in this office.

A TRUE COPY, ATTEST:

Diane Hammerbeck

Diane Hammerbeck,
Assistant Town Clerk



Date Recorded _____

Registry _____

Book _____ Page _____

Cc: Director, Zoning Enforcement and Inspections