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January 24, 2022

Carolyn Britt, chair
Ipswich Planning Board
25 Green Street
Ipswich, MA 01938

Dear Members of the Ipswich Planning Board:

I represent 50-56 Market Street LLC, which has applied for a special permit authorizing a multi-family project at 50-56 Market Street. I am writing to provide you with a project summary and legal analysis regarding the application currently pending before your Board.

As you can see from the summary and legal analysis below, in circumstances where an abutting project with the same density was granted a special permit by the Board, the Board is required to treat similarly situated applicants fairly and may not arbitrarily require a reduction in units.

Project Summary

The property at 50-56 Market Street has been in multifamily use for nearly 100 years, most recently as a five-unit apartment building. Located in the Central Business District, it is zoned for this use and further encouraged within the town's Community Development Plan. The provisions of footnote 11 to the Table of Dimensional and Density regulations allow 10 units on this lot by special permit subject to meeting affordable housing requirements along with other special permit criteria. New state statutes promoting multi-family housing within a half mile radius of commuter rail stations further justify this development at an even greater density than proposed.

The benefits to the Town outweigh any adverse impacts, taking into account the characteristics of the site. In this case, there are no adverse impacts to the surroundings with a parking lot to the south, a parking garage to the east, and a recently developed 10-unit residential project of almost the same lot size to the north. The existing front yard along Market Street will remain open, preserving an important landmark feature at this gateway to downtown.

The project meets the special permit criteria listed under Section XI (J)(2)(i-vi) of the Ipswich Zoning Bylaw as follows:

- Social, economic and community goals are met: Much-needed multi-family housing would be provided in a dense downtown location near the train station and a beautiful historic building would be preserved and improved.
- Positive fiscal impact: The project would provide a net financial benefit to the town through increased property value.
- Traffic, circulation and parking standards are met with only minor waivers: The town's engineering consultant concluded that the vehicle turning movements as currently proposed are "generally satisfactory," with a question remaining only about one tandem space.
- Adequate utilities available.
- The project is compatible with the neighborhood character: In 2016, this Board approved an almost identical 10-unit proposal next door to this property at 48 Market Street, including two waivers related to parking.
- Minimal environmental impact by incorporating solar collection in the building design, improving stormwater management, and preserving green space.

The only significant waiver required on the project is a reduction in the rear setback for the construction of the five new townhouse units from 20 ft. to 10 ft. There is no adverse impact to the neighboring three-story rear wall of the EBSCO parking garage that is also located 10 ft. from the lot line. Arrangements have been made with EBSCO to landscape the unkept strip for the benefit of the townhouse occupants. Most importantly, this waiver allows development to the rear of the lot where it will have minimal visual impact from the street and thereby preserve the open space in the front yard.

Legal Analysis

It has long been the law in Massachusetts that the delegation of authority to a planning board to grant special permits cannot leave the decision subject to the uncontrolled discretion of the board. See *McGibbon v. Board of Appeals of Duxbury*, 356 Mass. 635, 637-638 (1970). Specifically, the Board's decision must be in harmony with the purpose and intent of the bylaw and the Board must abide by the specified rules contained in the bylaw. Simply put, the Board does not have unrestrained power to withhold a special permit by the arbitrary exercise of the discretion granted to it. A board does not have the authority to deny a special permit based solely on visceral feelings, conjecture, and personal beliefs unrelated to the bylaw. See, generally, *Britton v. Board of Appeals of Gloucester*, 59 Mass.App.Ct. 68, 75 (2003).

The courts have consistently ruled that a board's decision must be reasonable, grounded in the provisions of the bylaw, and supported by relevant facts found by the board. It may not be whimsical, capricious, or arbitrary. These principles are all laid out in the *McGibbon* case cited above and have been repeated by many courts up to and including recent 2020 decisions of the Massachusetts Appeals Court. See, for example, *160 Moulton Drive LLC v. Shaffer*, 2020 WL 7319366 (2020), where the Land Court ordered the town of Lynnfield to issue permits for a 23-unit apartment building.

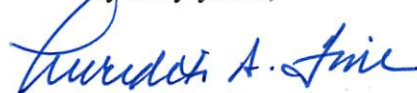
Furthermore, the Board may not apply dramatically different standards to similarly situated applicants. Wendy's Old Fashioned Hamburgers of New York, Inc. v. Board of Appeals of Billerica, 545 Mass. 374, 388 (2009) is a strong case in point. There, the town of Billerica withheld permits from one food establishment but later granted permits to a neighboring business with the exact same request. "[T]he general deference afforded actions of a local special permit granting authority may yield to a court's sense of fairness when it appears that special permit granting authority has applied dramatically different standards to similarly situated applicants." Wendy's at 388 (2009).

Applying these legal standards to the decision before you, it is clear that, while you are not required to grant the special permit, you must have a rational, factual and legal basis for refusing to do so. As described in the project summary above, the proposal amply satisfies the bylaw's criteria; it fulfills the objectives of the town's Community Development Plan encouraging residential development near the commuter rail station; and is in line with a recently enacted state law to a similar effect.

Not only is the density of 10 units specifically permitted by the bylaw's footnote 11 to the table of dimension and density regulations, an abutting project was granted a special permit by the Planning Board with the **same** density under the **same** provisions of the bylaw. In these circumstances, the Board's desire to reduce the number of units must yield to the requirement of fairness in its treatment of similarly situated applicants under the same provisions of the bylaw.

I hope this letter is helpful to you in arriving at a prompt decision to grant the special permit requested.

Very truly yours,



Meredith A. Fine

cc: Ethan Parsons
Anthony Marino