



TOWN OF MILTON INSPECTIONAL SERVICES

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2/26/15

To: Planning Board, Alex Whiteside, Chair

From: J. Prondak, Building Commissioner

Joseph Prondak
Building Commissioner
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Re: Special Permit, 270 Hillside St.

The purpose of this memo is to highlight the points stated by me at the 2/12/15 public hearing, in an effort to clarify existing concerns with application of certain aspects of the new bylaw, to demonstrate inherent difficulties in enforcement and to provide some suggested conditions to any new special permit that may issue:

1. THE BYLAW

- a. The last sentence of the paragraph under the heading “**LANDSCAPING BUSINESS USE**”, delegates authority to the Zoning Board of Appeals to revoke the Special Permit for cause. This should be the Planning Board as it is the Permit Granting Authority, in this case. A bylaw change would likely be required here.
- b. The last sentence of section 1. Purpose, mentions “reasonable limits on the amount of infrastructure, equipment and operations.” Any limits placed must be specific.
- c. In section 2. Definition of Landscaping Business; Permissible Activities, the terms “patios, related grounds and other outdoor areas which are owned by others” is vague and needs specificity so as to prevent the landscape business from morphing into a construction business. They should not be allowed to build house foundations, accessory buildings such as garden sheds or cabanas, retaining walls over 4’ in height, pools or pool aprons, or pave driveways with asphalt or any masonry product.
A further sentence in this section says “... and may be authorized to sell stone, stone dust, gravel, pavers, landscape ornamentations, timbers and related material needed to implement a landscape design.” This must be limited in a very detailed manner so as to prevent this business from becoming a landscape, masonry or lumber supply operation.
- d. Under Section 2., a paragraph entitled “Subsection”, states “Authorization of an activity shall be no greater than the level of that activity existing in 2012...” This is extremely difficult to quantify. Language such as this has been a source of substantial confusion in prior special permits which contained similar language.
- e. Section 3 states that this new use may exist in conjunction with other uses, such as an agricultural use. This is an issue that has proven to be extremely problematic for the Town in administering and enforcing prior special permits and conditions. Thayer has claimed the “Farm Exemption” to perform a number of its activities which would otherwise be in violation of its permitted uses. If allowed, this can undermine, even negate the intent and

effectiveness of this entire permitting process.

- f. Section 4. (d), Drainage. All drainage should be designed by a qualified engineer and the installation of the approved system must be monitored and certified by that same engineer.
- g. Similarly, sound attenuation measures should be undertaken with the input of an engineer qualified in the design of such measures.

2. RECOMMENDED CONDITIONS (in addition to any imposed by the Planning Board, should a Special Permit issue)

- a. Hours of operation conditions should include overall hours, allowable hours for delivery of stock and materials, equipment operation and special event hours.
- b. Specify quantities of material such as loam, mulch, stone dust, gravel and similar products used for the **nursery operation** in number of cubic yards along with turnover rates.
- c. Specify quantities of loam, mulch, stone dust, gravel and similar products used for the **landscaping business** in number of cubic yards along with turnover rates.
- d. Specify amounts of stone, wood timbers and/or masonry products stored, displayed or made available for sale on this site.
- e. Prohibit sales/service of tractors, mowers, blowers, chainsaws and other related machinery.
- f. Prohibit sales of storage/garden sheds, fencing or other similar products.
- g. Restrict retail sales of arts, crafts and any other retail product, not ancillary to the nursery.
- h. Specify the number of allowable trucks, trailers, bobcats, backhoes and loaders and the allowable size/series of each, for the entire landscape/ nursery operation.
- i. Restrict the allowable times of music during seasonal festivals.
- j. Prohibit any offering of construction related services such as the building of stairs, porches, retaining walls over 4' in height, foundations, sheds, etc.
- k. Provide sanitary facilities for employees.
- l. The Building Inspector or authorized designee shall have the right to inspect the entire premise for compliance at any time during normal hours of the operation of the business.
- m. Thayer Nursery should be conditioned in such a way that they forfeit the right to any use under the "Agricultural Exemption" of MGL 40A-3. Any use desired or currently enjoyed under that section can be made known now, by Thayer, and specifically written in as an allowed use.

ENFORCEMENT/ADMINISTRATION OF TERMS AND CONDITIONS

Upon allegation or other report of a violation of the Zoning Bylaw and/or the terms or conditions of a Special Permit, the Building Inspector is required to investigate same and determine whether or not a violation has occurred. If it is determined that a violation has occurred, the Building Inspector must notify the offending party of the violation and order its remedy. If no violation is found, the Building Inspector must notify the complainant, if known, that no violation was found.

If either party is aggrieved or otherwise disagrees with the determination, directive or order of the Building Inspector, they have the right, within 30 days, to file an appeal with the Permit Granting Authority (in this case, the Planning Board). It should also be noted that if the Building Inspector chooses not to or otherwise fails to act on a particular issue, that too is appealable to the Permit Granting Authority.

If either party or any party of interest is aggrieved by the decision of the Permit Granting Authority, they have the right, within 20 days of filing the decision with the Town Clerk, to appeal that decision to Superior Court.

Over the last several years, there have been multiple enforcement/ administrative actions by the Building Inspector relative to Thayer Nursery. There were 3 recent appeals to the Zoning Board. These resulted in a total of roughly 8 separate hearings. There are currently 5 separate cases pending at Norfolk Superior Court. A considerable amount of Town resources have been expended toward these efforts.

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