

Town of Amherst
Zoning Board of Appeals - Special Permit
DECISION

Applicant and Owner: Tofino Associates, Inc. (Doug Kohl, President)
31 Campus Plaza Road, Hadley, MA 01035

Date Application filed with the Town Clerk: October 11, 2005

Nature of request: Petitioner seeks a Special Permit, under Section 6.3 and Section 7.7 of the Zoning Bylaw, to create 2 new flag lots, to change the lot lines of 2 previously-approved flag lots, to create an access strip longer than 400 feet on 2 flag lots and to create a common drive longer than 400 feet for 3 flag lots.

Location of property: Belchertown Road and Linden Ridge Road, (Map 21B, Parcels 64, 69, 71 & 72, and Map 21D, Parcels 125, 126 & 127, R-O/ARP Zones)

Legal notice: Published in the Daily Hampshire Gazette on October 26 and November 2, 2005, and sent to abutters on October 26, 2005.

Board members: Zina Tillona, Barbara Ford and Russ Frank

Submissions: The applicants submitted the following documents:

Preliminary Plans as follows:

- “Grading Plan”, dated October 6, 2005, showing a proposed common driveway on the east side of the site and an existing common driveway on the west side of the site;
- “Grading Plan”, revised November 10, 2005, showing a revised proposed common driveway on the east side of the site and an existing common driveway on the west side of the site;
- “Revised Lot Plan”, dated November 30, 2005, showing a proposed common driveway on the west side of the site and two individual driveways on the east side of the site;
- “Lot and Driveway Plan”, dated December 5, 2005, showing the proposed driveways and lots;

Final Plan as follows:

- “Lot and Driveway Plan”, dated December 15, 2005, revised January 4, 2006, prepared by The Berkshire Design Group, Inc., showing the proposed driveways and lots;

Miscellaneous documents as follows:

- A letter dated December 6, 2005, from Douglas A. Kohl, President, Tofino Associates, Inc., regarding revised lot layout;
- A letter dated January 4, 2006, from Douglas A. Kohl, President, regarding Fire Department comments;

- A draft Common Driveway Maintenance Agreement for Lots 1, 2 and 6, undated;
- A final Common Driveway Maintenance Agreement for Lots 1, 2, 3 and 4, undated.

Town staff submitted the following documents:

- From the Planning Department, a Memorandum dated November 3, 2005, commenting on zoning, dimensional requirements, length of driveways and access strips, phased growth and review by other committees and departments;
- Special Permit ZBA FY95-28 issued to Tofino Associates to create 2 flag lots on Belchertown Road;
- From the Assistant Fire Chief, Mike Zlogar, a Memorandum dated November 8, 2005, commenting on access, water supply and address assignments;
- From the Assistant Fire Chief Mike Zlogar, a Memorandum dated December 12, 2005, commenting on access, water supply and address assignments;
- From the Assistant Fire Chief, Mike Zlogar, an email dated January 9, 2006, regarding his review of the revised site plan;
- From Jason Skeels, Town Engineer, a transmittal dated October 8, 2005, commenting on required sewer easement;
- From Jason Skeels, an email dated November 3, 2005, stating that the sewer easement issue has been resolved;
- From Stephanie Ciccarello, Wetlands Administrator, a transmittal, dated November 7, 2005, stating that work on one of the proposed lots falls within 100 feet of the bordering vegetated wetland;
- From the Conservation Commission, Orders of Conditions numbered NOI05-1000, NOI05-1001, NOI05-1002, NOI05-1003 and Determination of Applicability numbered RFD05-1004 regarding the proposed work.

The public submitted the following documents:

- From Carl Seppala, co-owner of Pelham Auto Service, photographs showing the Pelham Auto Service and Squash Trucking properties, including the trucks, the parking lot and the proximity of the existing house on the adjacent property;
- From Attorney Dick Howland, a booklet containing information on noise abatement techniques for residential developments located near industrial development;
- From Carl Seppala, an estimate from Jay's Fencing for installation of a 14 foot high solid board fence and a 6 foot high chain link fence, dated December 14, 2005.

Site Visit: November 8, 2005

At the site visit the Board was met by Doug Kohl, President of Tofino Associates and Kohl Construction, and Gloria McPherson, an employee of Kohl Construction. The Board observed the following:

- The location of the property on a heavily-traveled road, Route 9;
- The location of the east property line;
- The location of the existing single-family house and its driveway;
- The approximate location of the new houses and common driveway, as they were originally proposed on the plan dated October 6, 2005, along the east property line;
- The front section of the 16-foot-wide existing common driveway;
- The approximate location of the northernmost proposed house, along the west property line;

- The surrounding neighborhood, consisting of scattered single-family homes along Belchertown Road, with Pelham Auto Service and Squash Trucking to the east and wooded land to the north and west;
- The approximate location of the lots on the cul-de-sac on Linden Ridge Road, another development located to the west of the site;
- The heavily-wooded site;
- The wetland ravine area that runs along the west side of the site.

Public Hearing: November 10, 2005.

At the public hearing Doug Kohl presented the petition. Mr. Kohl made the following statements:

- The property is located on Route 9, also known as Belchertown Road
- It abuts the Belchertown and Pelham town lines.
- Pelham Auto Service and Squash Trucking are located on an adjacent property to the east.

Mr. Kohl described the proposed plans including:

- Three lots on the east side of the site including two flag lots and one frontage lot, originally Lots 3, 4 and 5 on plans dated October 6, 2005;
- Three lots on the west side of the site including two flag lots and one frontage lot, originally Lots 1, 2 and 6 on plans dated October 6, 2005;
- The fact that the flag lots on the west side had been approved 10 years ago, by Special Permit FY95-28, but the lot lines for these lots are proposed to be changed;
- The length and grades of the proposed driveways and access strips;
- The proposed detention basin which is part of the Linden Ridge Road development to the south of this site and straddles the property lines between two lots; it will open up the forest and provide good views for these houses.
- The fact that most of the trees along the eastern property line are on the applicant's property.

The Board asked about the width of the existing driveway on the west side of the ravine, whether its construction was complete and whether it has shoulders. The Board also asked about how the lots have changed since the previous permit was granted.

Mr. Kohl described how the lots, the driveways and the access strips have changed. He stated that the existing driveway was 16 feet wide but did not have stabilized shoulders. The Board discussed the grading plan and asked that the proposed house locations be shown on the plan for all lots. There was discussion about the new location and grade of the driveway for Lot 1 (the lot with the existing house, as shown on the plan dated October 6, 2005).

The Board inquired about the Management Plan for the common driveways. Mr. Kohl distributed copies of the draft common driveway maintenance agreement to the Board. The Board noted that all 6 of the lots need to be included in the agreement since two common driveways are being shown on the plan dated October 6, 2005.

Bonnie Weeks, Building Commissioner, inquired about signs, specifically address signs at the entries to the driveways, with house numbers. She stated that the street addresses will be Belchertown Road.

The Board expressed concern about the sight lines from the driveway entries onto Belchertown Road, recommending that the trees and brush at the entrances be cut back to improve sight distances for those entering and exiting the driveways.

Mr. Kohl stated that the grade on the new driveway on the east side will be flatter than the existing grade, which will improve sight distances.

Carl Seppala, 1315 Federal Street, Belchertown, one of the owners of Pelham Auto Service and Pelham Industrial Group, stated that his business and Squash Trucking abut the property under consideration. Mr. Seppala stated that the owners of Pelham Auto Service have no objection to the houses being built on Mr. Kohl's property. However, they are concerned about a residential area in Amherst abutting an industrial area in Belchertown. He explained to the Board that Pelham Auto Service is a worker-owned cooperative that is organized to exist in perpetuity. It will be difficult to sell the business because of the way it is organized and therefore it is likely to remain in business, in this location, for a long time.

Mr. Seppala described in detail the activities that occur on the Pelham Auto and Squash Trucking properties that are incompatible with residential use, including towing of vehicles and snow plowing in the middle of the night, chemical processes, fumes, smoke, noise, use of dumpsters, parked vehicles including a tractor, light manufacturing, parts delivery, large trucks entering and exiting, trucks being loaded in the middle of the night and bright security lighting. He noted that the Pelham Industrial Group's establishment is on high ground and that Squash Trucking uses tractor trailer trucks that are 13 feet tall. The sound from the truck compressors carries a long distance.

Mr. Seppala noted that two of the proposed houses on the east side of the property would face the industrial area. He went on to talk about safety issues related to the vehicles on the industrial site and the fact that neighborhood children might be attracted to these vehicles. He also spoke about the noise associated with the operations of these companies. He suggested that a high wall could be installed to prevent the noise from Pelham Auto and Squash Trucking from penetrating into the neighboring residential lots.

Mr. Kohl responded that the houses could be moved away from the east property line.

Mr. Frank stated that he had concerns about the buffer between the properties. He would like to prevent as much as possible unauthorized access to the Pelham Auto and Squash Trucking properties, including access by neighboring children running through the property.

The Board discussed how close the industrial operations were to the property line. Mr. Seppala confirmed that in some areas near the property line there is pavement, and thus the industrial operations could occur right up to the property line.

The Board discussed lighting of the industrial properties. Mr. Seppala noted that Pelham Auto and Squash Trucking wish to illuminate their sites for security reasons and that there are no restrictions on lighting in the Light Industrial Zone in Belchertown. The implication was that the light from Pelham Auto and Squash Trucking might be bright.

The Board discussed the issue of potential conflicts between future owners of the houses and the industrial operations on the abutting property. The Board also discussed various options for sound barriers.

Attorney Dick Howland of North Pleasant Street gave a presentation about sound barriers and security barriers that might help the two uses to exist side by side. He presented a booklet to the Board that contained information about sound barriers. He concluded by saying that a solid wooden barrier works well to block noise.

Eric Stocker, a co-owner of Squash Trucking, described some of the operations that occur on the Squash Trucking property that are incompatible with nearby residential uses, such as loading of trucks in the middle of the night and constant noise from refrigeration units and diesel engines. He also expressed concerns about the safety of future neighbors and about security on his property.

Margie Levenson a co-owner of Squash Trucking described her company, stating that it is an important part of the local community. It has 30 to 40 full-time employees and it is a member of CISA (Community Involved in Sustaining Agriculture).

The Board expressed its appreciation to Mr. Seppala and Squash Trucking for the information that they had presented.

Barbara Ford MOVED to continue the public hearing to December 15, 2005, at 7:30 p.m. Russ Frank SECONDED the motion. The Board VOTED unanimously to continue the public hearing.

Continued Public Hearing: December 15, 2005

At the continued public hearing, Doug Kohl again presented the petition. He showed the revised plan including:

- New house locations, four of which will be along the western side of the property
- The existing house will remain and will be served by an individual driveway.
- Another house will be located in front of the existing house, on a frontage lot, with a short driveway connecting it to Belchertown Road; this house may become a duplex in the future but the Board noted that the applicant would need to file a separate application for a Special Permit for the duplex and recommended that Mr. Kohl remove reference to this duplex from the current plans.
- Lot numbers were changed from the previously-submitted plans (dated October 6, 2005). The Lot numbers have been changed to Lots 1, 2, 3 and 4 on the west side of the site and Lots 5 and 6 on the east side of the site, as shown on revised plans dated November 30 and December 15, 2005.

The driveway to the existing house will now have a length of approximately 295 feet. Lot 6, the lot with the existing house, will now be a flag lot. The flag lot will have an area of 85,859 square feet, exclusive of access strip, which is more than twice the lot area required for a frontage lot in the R-O zone (30,000 square feet). The driveway for the existing house will be 12 feet wide, as required for an individual driveway. The access strip for this flag lot will be 40 feet wide.

Lot 5, the new frontage lot, will have an area of 40,071 square feet, which is more than the 30,000 square feet required in the R-O district, and is large enough to accommodate a duplex in the future. It also has 160 feet of frontage, more than the 150 feet required.

Mr. Kohl noted that he had received a new letter from Assistant Fire Chief Mike Zlogar commenting on the revised plan. The Board told Mr. Kohl that he needed to confer with Assistant Chief Zlogar regarding the plan, the water supply and the hydrant location. Mr. Kohl noted that there is a fire hydrant on an adjacent property approximately 200 feet to the west of the property line.

Mr. Kohl stated that the existing driveway on the west side of the site will be improved, lengthened and shoulders will be added. The length of the common driveway will now be approximately 660 feet, with another 160 feet or more of individual driveway to the last house, on Lot 4.

The Board inquired about a turnaround for a fire truck on the common driveway. Mr. Kohl pointed out that the driveway for Lot 3 has a 52 foot radius that can accommodate a turnaround for a fire truck.

Christine Brestrup, Land Use Planner with the Planning Department, reported that the project had received approval (an Order of Conditions) from the Conservation Commission.

The Board asked about the detention basin at the south end of the site, located on Lots 3 and 4. Mr. Kohl stated that this detention basin is associated with Linden Ridge Road, to the south, and that either the Town of Amherst or the homeowners' association for the Linden Ridge Road development will maintain the basin. The basin is part of the drainage system for a subdivision road that is expected to become a public way. He also noted that the sewer had already been installed to serve the new lots currently being proposed, that tie-ins and easements had been accommodated and that the Conservation Commission had reviewed and approved the sewer line.

Ms. Brestrup reported that the three western flag lots (Lots 2, 3 and 4) and the one western frontage lot (Lot 1) associated with the common driveway on the west side of the site met the zoning dimensional requirements with regard to lot size and frontage.

Mr. Frank noted that the Fire Department had concerns about the intersections of the driveways on Lots 1 and 2 with the common driveway on the west side of the site. Mr. Kohl stated that these driveway intersections (also called "aprons") can be widened or realigned to accommodate emergency vehicles.

Carl Seppala spoke in support of the new plan. He stated that the plan was improved since the house locations had been moved to the west. He noted that Pelham Industrial Group may purchase Lot 6, which has the existing house on it. He spoke about the need for a fence and presented photographs of the site and information on a proposed 14 foot tall fence. He stated that a chain link fence could be used for security purposes on part of the property line and that a large, rough, wood fence could be used for sound attenuation along the area where noise is a problem.

Mr. Seppala and the Board discussed the issue of who would build the fence, Mr. Seppala or Mr. Kohl, and whether it should be required by the Special Permit. The Board discussed the location of the proposed solid wood fence and the chain link fence.

Margie Levenson, co-owner of Squash Trucking, commented that the revised plan was safer than the previous plan in that the houses were more removed from the industrial area. In addition, she supported the idea of a fence as a deterrent to children and adults coming onto the Pelham Auto and Squash Trucking properties.

The Board discussed what additional information, if any, they might need in order to make a decision. The Board recommended that Mr. Seppala and Mr. Kohl meet and discuss the purchase of the existing house and the fence and come to an agreement and present it to the Board.

Barbara Ford MOVED to continue the public hearing to January 12, 2006, at 6:30 p.m. Russ Frank SECONDED the motion. The Board VOTED unanimously to continue the public hearing.

Continued Public Hearing: January 12, 2006

Doug Kohl again presented the petition. He made the following statements:

- Referring to an email dated January 9, 2006, from Mike Zlogar, Assistant Fire Chief, he stated that the comments from the Fire Department had been addressed in the revised plans and that Assistant Chief Zlogar was satisfied with the revisions.
- He asked that the proposed tall fence not be made a condition of the Special Permit but rather allowed under the permit if it becomes necessary to build it.
- Tofino Associates, Inc. has an agreement with Pelham Auto for the purchase of the property where the existing house is located (Lot # 6).

Ms. Tillona made the following comments:

- The waivers that Mr. Kohl applied for will be contained in the Special Permit, if the permit and the waivers are approved.
- The Fire Department agrees that the new revised site plan is satisfactory and that final driveway entry configurations may be worked out during construction.

Mr. Seppala made the following comments:

- The noise from Pelham Auto and Squash Trucking is a pre-existing problem.
- The developer wishes to build the houses 500 feet away from the industrial site.
- The noise was not created by Mr. Kohl and so he should not be required to install the sound barrier.
- The fence should be permitted by the Special Permit but not required by it.

Ms. Tillona stated that if the fence is to be built, its location, size and materials should be approved by the Board at a public meeting.

Mr. Frank asked Mr. Seppala to confirm that Lot 6 was the lot that is proposed to be purchased by Pelham Auto Service.

Mr. Seppala pointed out on a plan the locations of the Pelham Auto Service and Squash Trucking properties and the location of Lot 6 that he was proposing to purchase. Pelham Auto Service and Pelham Industrial Group will continue to use the existing house as a residence. He stated that he had spoken with the owners of Squash Trucking and they agreed with the solution to the noise problem that was being proposed, as shown on the revised plans.

Russ Frank MOVED to close the evidentiary portion of the public hearing. Barbara Ford SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting – Discussion

Mr. Frank commented that he was concerned about the noise bothering future owners of new the houses.

The Board recognized Mr. Seppala who stated that he would like the fence to be approved, but not required, for the entire length of the eastern property line of Lot # 6. If Pelham Auto Service purchases Lot 6, including the existing house, it can decide if its tenants want or need a noise barrier.

This project is subject to Section 14 of the Zoning Bylaw, Phased Growth. The Board assigned the project a total of 30 points on the Phased Growth Tally Sheet, thus allowing 4 of the 5 new homes to be built within the first year and 1 of the new homes to be built in the second year.

Public Meeting – Findings:

Under Zoning Bylaw Section 10.38 the Board found that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because the site is located adjacent to other houses and future house lots.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the homes will be primarily single-family residences and will not produce any nuisances, pollution, dust, odor, noise, lights or visually offensive structures.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because four of the lots will be served by a common driveway which has been designed with the review and approval of the Fire Department and there will be only three driveway exits for six lots on to Belchertown Road, instead of six driveway exits, reducing the conflicts between cars exiting the site and cars already in the road. In addition there is little if any pedestrian traffic on

Belchertown Road.

- 10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the new homes will be constructed on appropriately sized lots, there is adequate driveway access for residents and emergency vehicles and there will be adequate parking areas for each house.
- 10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the town because no signs are being proposed and the requirement for two parking spaces per dwelling unit has been met.
- 10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because the lots are connected to the town sewer via a sanitary sewer line that traverses the site; the individual property owners will contract with local trucking companies on their own for weekly pick up of trash and recyclables.
- 10.391 – The proposal protects unique or important natural, historic or scenic features because much of the site is wooded and will remain wooded, and the ravine will remain largely untouched. In addition, grading will be minimal for the common and individual driveways.
- 10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential uses, because there is already a substantial amount of landscaping and screening on the site which will remain.
- 10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because the conditions of the permit require that all exterior flood lighting shall be downcast and shall not shine onto adjacent properties.
- 10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because the new homes will be single-family homes that are compatible with the existing house on the property and other houses in the neighborhood.
- 10.397 – The proposal provides adequate recreational facilities, open space and amenities for the proposed use because the lots are large enough and there will be ample space for passive and active recreation in the yards.
- 10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Public Meeting – Zoning Board Decision

Russ Frank MOVED to approve the waiver of Section 6.33 of the Zoning Bylaw to allow an access strip of greater than 400 feet for Lot # 3, to approve the waiver of Section 7.7130 of the Zoning Bylaw to allow a common driveway of greater than 400 feet for Lots # 2, 3 and 4 and to allow, under Section 6.29 of the Zoning Bylaw, a fence of up to 14 feet in height along the eastern property line of Lot # 6 for purposes of noise abatement and security. Barbara Ford SECONDED the motion. The Board VOTED unanimously to approve the waivers as moved.

Russ Frank MOVED to approve the petition with conditions. Barbara Ford SECONDED the motion. The Board VOTED unanimously to approve the application with conditions.

For all the reasons stated above the Board VOTED unanimously to GRANT a Special Permit with the above-referenced waivers and with conditions, as applied for by Tofino Associates, Inc., to create 2 new flag lots, to change the lot lines of 2 previously-approved

flag lots, to create an access strip longer than 400 feet on one flag lot, to create a common drive longer than 400 feet for 3 flag lots and to allow the construction of a fence of up to 14 feet in height along the eastern property line of Lot # 6, at Belchertown Road and Linden Ridge Road, (Map 21B, Parcels 64, 69, 71 & 72, and Map 21D, Parcels 125, 126 & 127, R-O/ARP Zones)

ZINA TILLONA

BARBARA FORD

RUSS FRANK

FILED THIS _____ day of _____, 2006 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2006.

NOTICE OF DECISION mailed this _____ day of _____, 2006
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2006,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, with waivers, under Section 6.3 and Section 7.7 of the Zoning Bylaw, as applied for by Tofino Associates, Inc., to create 2 new flag lots, to change the lot lines of 2 previously-approved flag lots, to create an access strip longer than 400 feet on one flag lot, to create a common drive longer than 400 feet for 3 flag lots and to allow the construction of a fence of up to 14 feet in height along the eastern property line of Lot # 6, at Belchertown Road and Linden Ridge Road-, (Map 21B, Parcels 64, 69, 71 & 72, and Map 21D, Parcels 125, 126 & 127, R-O/ARP Zones) with the following conditions:

1. Exterior flood-lighting shall be downcast. Other exterior lighting shall not extend past the property line.
2. The noise-barrier fence is not required by this Special Permit, but is permitted to be built if the owner of Lot #6 determines that it is needed for noise abatement. Prior to the issuance of a building permit for the fence along the eastern property line of Lot # 6 the design, material and location of the fence shall be reviewed and approved by the Board at a public meeting.
3. The common driveway shall be maintained in accordance with the common driveway maintenance agreement which was approved by the Board at the public meeting on January 25, 2006.
4. This project is subject to Section 14 of the Zoning Bylaw, Phased Growth. The Board assigned development authorization dates of February 2006 for the first 4 homes and January 2007 for the remaining home.
5. The project shall be built in accordance with the final plan, revised January 4, 2006, and approved by the Board on January 12, 2006, which is on file in the Planning Department.
6. The placement of street address signs shall be in accordance with Fire Department requirements.
7. The final dimensions of driveway entrances shall be determined on site by the Fire Department in conjunction with the developer.

ZINA TILLONA, Chair
Amherst Zoning Board of Appeals

DATE